STATE OF CONNECTICUT
DIVISION OF PUBLIC DEFENDER SERVICES

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TESTIMONY OF
CHRISTINE PERRA RAPILLO, CHIEF PUBLIC DEFENDER

BEFORE THE JUDICIARY COMMITTEE
FEBRUARY 22, 2019

Chairs Winfield and Stafstrom, Ranking Members Kissel and Rebimbas, Vice-Chairs Bergstein and Blumenthal, and distinguished members of the Judiciary Committee:

Thank you for raising Senate Bill 842, An Act Concerning Motor Vehicle Offenses, a bill reflecting concepts proposed this year by the Office of Chief Public Defender. My name is Christine Perra Rapillo, and I serve as Connecticut's Chief Public Defender. I am joined here today by Attorneys Marc McKay, of our Danielson office, and Ben Daigle, our assistant legislative liaison, who have done the research on these ideas.

The **Office of Chief Public Defender supports SB 842 (LCO 4105)**, while recognizing that collaborative discussions may be helpful as the bill proceeds through the process.

Section 1 – Setting a Lookback on Certain Offenses and Treating Past Offenses Fairly

The first section of the bill addresses C.G.S. § 14-215, which involves the operation of a motor vehicle under certain circumstances if one's operator's license has been refused, suspended, or revoked. Under current law, there is a graduated penalty for such driving; repeat offenders face heightened penalties. However, the qualifying offenses serving as grounds for the enhanced penalties could be decades in the past. SB 842 would limit the lookback to violations occurring in the ten years preceding a new incident. Such a lookback is reasonable and similar to how the law addresses the offense of operating a motor vehicle under the influence.

Further, this section of SB 842 would ensure fair treatment of any person whose operator's license was suspended prior to July 1, 2015 as a result of refusing or failing a test administered by police during an OUI stop, or as a result of a first or second conviction of operating under the influence. Before that date, if a person drove ***during*** the specified suspension period, he or she would be subject to the mandatory minimum jail sentence set forth in 14-215(c). However, if a person drove ***after*** the specified suspension period, never having restored his or her license, the person would be deemed 'restorable' and face prosecution under 14-215, which does not include a mandatory minimum jail sentence.

Since July 1, 2015, Connecticut's framework has been different. The suspension was shortened to only 45 days, and the new requirement was imposed that "as a condition for the restoration" of driving privileges, the person must install an ignition interlock device (IID) in their vehicle. A

recent Superior Court decision articulated the following rationale: "The legislature adopted the IID law after much debate and as a compromise to restore driving privileges sooner to citizens that needed such privilege to, for example, commute to work or bring children to school. The final 2015 statute reflected a reasonable balance of reducing the mandatory suspension period down from a year to 45 days plus whatever time it takes for the driver to install the IID with the state's public safety concerns with drunken drivers." *State v. Schimanski*, 2018 WL 1769180.

Under 14-215 as it existed at the time, a person whose operator's license was suspended before the 2015 change would not face mandatory jail time for operating under suspension ***after*** the specified suspension period. Yet, that very same person, stopped today never having restored his or her license, would face prosecution and mandatory jail time under 14-215(c).

SB 842 would ensure that such persons, stopped for driving without a valid license after a specific suspension imposed prior to July 1, 2015, are treated as they would have been under the law at that time.

Section 2 – Setting a Suspension Period for Indigent Persons with Suspended Licenses

The second section of the bill follows up on Public Act 18-30, which expressly articulated ignition interlock device (IID) vendors' authority to discount or waive fees to individuals determined to be indigent under federal Supplemental Nutrition Assistance Program (SNAP) guidelines. As noted above, Connecticut became a "mandatory" IID state in 2015; a person found to be operating under the influence must install an IID for a set period of time—and drive only vehicles so equipped—in order to become eligible to restore his or her operator's license. Because of the significant costs of IID installation, maintenance, removal, and other fees, public defender clients often have no choice but to forego an IID and face a de facto lifetime suspension.

PA 18-30 was the result of much discussion among relevant stakeholders. For public defenders, it was an approach we hoped might benefit our clients while respecting the IID vendors as businesses and respecting the fiscal constraints of the Department of Motor Vehicles (DMV). However, in reaching out to IID vendors and public defenders across Connecticut, we have been unable to find any instance of such a discount or waiver since the law took effect on 10/1/18.

SB 842 is a further effort to address the de facto lifetime suspension taking place when people cannot afford the various IID expenses. SB 842 would set a certain suspension time before a lower-income person could be eligible to restore his or her operator's license. Where an offense would require IID use for one year, such a lower-income person, unable to afford an IID, would face a suspension of two years – fully twice the period set for IID use. Where an offense would require IID use for two years, such a lower-income person would face a suspension of four years. SB 842 would not change the current lifetime suspension for third and subsequent offenses.

Section 3 – Clarifying the Eligibility of Certain Offenses for Accelerated Rehabilitation

The third section of the bill expressly states that a person is not made ineligible for pretrial accelerated rehabilitation (AR) (C.G.S. § 54-56e) because he or she faces a charge of operating under the influence (a violation of 14-215(c)), or a charge for which a mandatory minimum jail sentence may be imposed. Currently, some courts interpret certain offenses as being too serious for AR simply because the offenses carry mandatory minimum jail sentences (which can be reduced at judges' discretion upon findings of mitigation). SB 842 would clarify AR eligibility, thereby supporting consistency across our justice system.

Section 4 – Allowing CDL License Holders Fair Access to the Alcohol Education Program

The fourth section of the bill addresses the current prohibition on holders of commercial driver's licenses (CDLs) from participating in the pretrial alcohol education program (AEP) (C.G.S. § 54-56g). One situation this bill addresses is that a CDL holder arrested for operating under the influence is ineligible for the AEP even if he or she was operating his or her personal motor vehicle separate and apart from his or her employment. SB 842 would ensure that CDL holders have equitable access to the AEP.

We recognize that federal dollars are tied to the accurate and timely reporting of OUI convictions. Respectful of that, we want to explore this concept fully, particularly because our initial analysis indicates that such funding may not be impacted by pretrial programs where there is no conviction at hand. Thus, we look forward to meetings already being planned to determine the viability of this section of SB 842.

Thank you for your consideration of SB 842. I look forward to addressing your questions and engaging in productive conversations to refine and advance this legislation.