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**ATT: 2025 JOINT LEGISLATIVE BUDGET HEARING – TRANSPORTATION**

**TESTIMONY IN OPPOSITION TO PART E – AMENDING THE “DRUGGED DRIVING” LAWS**

Distinguished Members of the New York State Legislature:

I am currently employed as an Assistant Public Defender in Ontario County, where I have served indigent defendants for over a decade. I have represented hundreds of individuals accused of impaired driving, many of whom were not actually impaired. I have spoken across New York State (and nationally via webinar) on the impaired driving laws and “drug recognition” to attorney groups and public defense agencies, and am an active member of the National College for DUI Defense, previously serving as a co-chair for their Public Defense Task Force. Over my career, I have studied and received first-hand training regarding impaired driving enforcement and litigation – completing coursework in standardized field sobriety testing and alleged drug impairment detection.

I am writing to you today to *emphatically* oppose the language proposed in Part E of the Transportation, Economic Development and Environmental Conservation Bill, which unduly expands the definition of the term “drug” for alleged impaired driving offenses, and mandates submission to scientifically unreliable field-testing methods as the basis for arrest and license suspension. The proposed bill would not, as it suggests, “strengthen drug-impaired driving provisions” or “enhance public safety”. To the contrary, these provisions would unjustly stigmatize those with chronic conditions or mental health diagnoses and deter them from seeking treatment – creating far more dangerous road conditions and public safety concerns. While the entirety of the bill is of serious concern, I would like to discuss a few of the most concerning:

**I. THE EXPANSION OF “DRUGS” AND “INTOXICATION” TO INCLUDE “ANY IMPAIRING SUBSTANCE”**

Without question, the significant risk posed to public safety by operating a motor vehicle while under the influence of dangerously impairing substances cannot (and should not) be understated. However, neither can the risk of criminalizing the vast number of New Yorkers who require a medication to manage chronic physical or mental health conditions. Because of the clear danger of overbroadly defining a “drug”, the Legislature enacted Vehicle and Traffic Law 114-a, limiting a “drug” to the hundreds of substances listed in Public Health Law 3306

(which itself mimics the Federal Controlled Substance schedules). As the Court of Appeals has noted, “The legislative history is conclusive that the Legislature in 1966, like previous Legislatures, intended that “intoxication” refer to inebriation by alcohol. It appears that **the Legislature did not want to penalize a driver who inadvertently took prescription drugs without knowing their side effects. In addition, the Legislature sought to limit criminalization by defining the drugs prohibited.**” *People v. Lito*, 8 NY 3d. 692 (NY Court of Appeals, 2007) (emphasis added). The proposals included in the Governor’s bill would not only upend decades of Legislative intent, it would unduly expand criminal culpability to a nearly infinite list of benign substances. (See *People v. Lito at 706*: “The Legislature has repeatedly and definitively concentrated on precise mechanisms to prevent deathly accidents related to alcohol and drugs ... Including driving while under the influence of limitless “drugs” as a violation of driving while intoxicated has not been part of that mechanism”)

Currently, for law enforcement to arrest someone for operating while impaired by drugs, they must allege that impairment is caused by a substance listed in the Public Health Law. While this may seem limiting, this list includes hundreds of substances – and has been (and will continue to be) amended on a myriad of occasions over the years to add substances deemed potentially dangerous by medical and scientific consensus. See *PHL 3306*. Conversely, per NHTSA’s own standardized training material, there are thousands of physical and mental conditions that can resemble and mimic drug impairment. Expanding the definition of a drug to an infinite number of unspecified “substances” will undoubtedly result in a number of unfounded arrests and wrongful accusations of those who are taking (but are not impaired by) a medication for legitimate purposes. To compound this danger, this could conceivably even include alleged impairment by something as ubiquitous as the caffeine found in coffee or over the counter allergy medications.<sup>1</sup> More importantly, those who take medications to manage the symptoms of a mental health or other chronic condition may choose not to take them for fear of being accused of a criminal act – resulting in substantially more dangerous driving conditions.

## II. MANDATING “DRUG RECOGNITION EVALUATIONS”

Currently, our law requires that those accused of impaired driving submit to a scientifically recognized chemical test to determine the presence of alcohol or drugs in their system. See *VTL 1194: Arrest and Testing*. The standardized administration of these tests is governed by the Public Health Law (10 NYCRR 59), and their use has been deemed scientifically reliable after significant study. The consequences for refusing such testing results in immediate license revocation. The Governor’s proposal seeks to expand this requirement to include mandatory submission to an evaluation by a “drug recognition expert” (DRE): a law enforcement officer with no formal scientific or medical background. By adding this language, the bill would serve to unjustly deprive innocent drivers of their operating privileges based on the subjective and unscientific opinion of a DRE, unwarrantedly equating it to the scientifically objective results of a chemical test result.

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<sup>1</sup> [California man fights DUI charge for driving under influence of caffeine | California | The Guardian](#)  
[The Drug Whisperer: How a single over-the-counter allergy pill nearly cost a man his children | kcentv.com](#)

Contrary to what the name would suggest, a “drug recognition expert” does not have any medical or scientific training. DRE’s are law enforcement officers who have undergone a 72-hour week-long training, followed by 12 practice “evaluations” under the supervision of another DRE.<sup>2</sup> The training and program itself, called the Drug Evaluation and Classification system, was created solely by law enforcement and involves an overly intrusive examination conducted by an officer with no medical training.<sup>3</sup> The protocol has not undergone any peer-reviewed scientific scrutiny.<sup>4</sup> Most notably, instances in which operators have been arrested under suspicion of drug impairment based on a DRE’s opinion - and were later exonerated with no substances in their system whatsoever – have been the subject of multiple media reports throughout the Country.<sup>5</sup> The language proposed by the Governor’s bill would irrevocably harm those accused of impaired driving by subjecting them to an intrusive test with questionable scientific accuracy, and placing the same evidentiary value on the DRE’s subjective opinion as an objective chemical test.

### **III. IMPORTANCE OF OPPOSING PART E IN ITS ENTIRETY**

Though keeping dangerously impaired drivers off the road is an important task, the overly broad amendments proposed by the Governor pose a significant and unjust danger to New York drivers – many of whom take a medication to manage a chronic physical or mental health condition. Not only is there an inexcusable risk that innocent drivers will be accused of a crime based upon scientifically unreliable and vague legislation, but the undue burden of provisions suspending driving privileges without reliable evidentiary proof will have a negative impact on thousands of people who rely on their ability to drive to live, work, and put food on the table. I implore you to oppose these unfair and unnecessary amendments.

Sincerely,

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<sup>2</sup> [DRE Training | International Association of Chiefs of Police](#)

<sup>3</sup> [12 Step Process | International Association of Chiefs of Police](#)

<sup>4</sup> The methodological quality of three foundational law enforcement drug influence evaluation validation studies” Kane Journal of Negative Results in BioMedicine, 2013

<sup>5</sup> [The Drug Whisperer: 'It happened to me' | 11alive.com](#)  
[More sober drivers arrested for DUI in Phoenix](#)