RICKY A. MCCOY *v.* COMMISSIONER
OF PUBLIC SAFETY
(SC 18545)

Rogers, C. J., and Norcott, Katz, Palmer, McLachlan, Eveleigh and Vertefeuille, Js.

*Argued September 8, 2010—officially released January 5, 2011**

Jane R. Rosenberg, assistant attorney general, with whom, on the brief, was *Richard Blumenthal*, attorney general, for the appellant (defendant).

Ralph D. Sherman, for the appellee (plaintiff).

Opinion

EVELEIGH, J. The defendant, the commissioner of public safety,[1] appeals from the summary judgment rendered by the trial court partially in favor of the plaintiff, Ricky A. McCoy, declaring illegal the defendant's designation of the plaintiff as a "convicted felon" and permanently enjoining the defendant from designating any person a convicted felon because of a second conviction within ten years under General Statutes § 14-227a,[2] operating a vehicle while under the influence of drugs or alcohol (driving while intoxicated). The sole issue in this appeal is whether a second conviction for a breach[3] of § 14-227a within a ten year period is classified under the Penal Code as a crime, specifically, a felony, or whether, as the trial court concluded, it is classified as a " 'motor vehicle violation.' " We conclude that a breach of § 14-227a does not fall within the motor vehicle violation exception to the definition of a criminal "offense" pursuant to General Statutes § 53a-24 (a) and, therefore, a second conviction under § 14-227a within a ten year period is a felony because it carries with it a term of imprisonment of up to two years. Accordingly, we reverse the judgment of the trial court.

The record reveals the following undisputed facts and procedural history. On May 7, 2004, the plaintiff was convicted of driving while intoxicated for the second time in a ten year period. Subsequently, at the plaintiff's request, the defendant provided him with a copy of his criminal history record, which included the designation "CONVICTED FELON." Following the receipt of that record, the plaintiff, pursuant to General Statutes § 4-174,[4] petitioned the defendant to repeal the regulations under which the plaintiff had been designated a convicted felon, and requested a new criminal history record without that designation. After the defendant denied this request, the plaintiff commenced the present action, seeking, inter alia: (1) a declaration that the defendant had enacted an unlawful regulation permitting it to classify the plaintiff as a convicted felon because he had failed to follow the rule-making procedures required under the Uniform Administrative Procedure Act, General Statutes § 4-166 et seq.; and (2) a permanent injunction prohibiting the defendant from classifying any individual as a convicted felon on the basis of a qualifying second conviction under § 14-227a.[5] Thereafter, the parties agreed that summary judgment was an appropriate manner by which to resolve the case, and filed cross motions for summary judgment.

The trial court granted in part and denied in part the parties' motions. Specifically, the trial court rendered judgment in favor of the defendant on the plaintiff's claim for a declaratory judgment, concluding that the defendant's designation of the plaintiff as a convicted felon did not constitute rulemaking. The trial court rendered judgment in favor of the plaintiff on the second

issue. It concluded that, although a second conviction under § 14-227a carries a term of incarceration consistent with the definition of a felony, a second conviction could not be classified as a felony because it falls under the motor vehicle violation exception to the definition of a criminal offense set forth in § 53a-24 (a). Accordingly, the trial court issued a declaratory judgment that the plaintiff's designation as a convicted felon was illegal and permanently enjoined the defendant from labeling any person as a convicted felon on the basis of a second conviction under § 14-227a within a ten year period. The defendant's appeal from the partial judgment in favor of the plaintiff followed.[6]

The defendant contends that the text and history of § 14-227a evidence a clear legislative intent that driving while intoxicated constitutes a criminal offense, which in turn is subject to classification as a felony upon a second conviction within a ten year period by virtue of the punishment prescribed. The defendant claims that, in concluding that a breach of § 14-227a falls within the motor vehicle violation exception to the definition of offense under § 53a-24 (a) of the Penal Code, the trial court improperly declined to apply the definition of violation to the phrase motor vehicle violation, which would have limited that exception to breaches punishable by fine only. Finally, the defendant contends that the trial court relied on mere dicta to support its construction. In response, the plaintiff claims that the trial court properly determined that a second conviction under § 14-227a falls within the motor vehicle violation exception to the definition of offense and therefore cannot be a felony. The plaintiff contends that this construction is supported by other statutes and case law evidencing that the definition of violation under the Penal Code does not apply to the motor vehicle violation exception to the definition of offense. We agree with the defendant.

At the outset, we set forth the standard of review. The resolution of this appeal requires us to interpret § 14-227a. "Well settled principles of statutory interpretation govern our review. . . . Because statutory interpretation is a question of law, our review is de novo. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to deter-

mine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Citation omitted; internal quotation marks omitted.) *Woodrow Wilson of Middletown, LLC* v. *Connecticut Housing Finance Authority*, 294 Conn. 639, 644–45, 986 A.2d 271 (2010).

We begin with the relevant statutory text. Section 14-227a provides in relevant part: "(a) No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the *offense* of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight . . . and 'motor vehicle' includes a snowmobile and all-terrain vehicle, as those terms are defined in section 14-379.

* * *

"(g) Any person who violates any provision of subsection (a) of this section shall . . . (2) for conviction of a second violation within ten years after a prior conviction for the same *offense*, (A) be fined not less than one thousand dollars or more than four thousand dollars, (B) *be imprisoned not more than two years*, one hundred twenty consecutive days of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) (i) if such person is under twenty-one years of age at the time of the offense, have such person's motor vehicle operator's license or nonresident operating privilege suspended for three years or until the date of such person's twenty-first birthday, whichever is longer, and be prohibited for the two-year period following completion of such period of suspension from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved interlock device, as defined in section 14-227j; or (ii) if such person is twenty-one years of age or older at the time of the offense, have such person's motor vehicle operator's license or nonresident operating privilege suspended for one year and be prohibited for the two-year period following completion of such period of suspension from operating a motor vehicle unless such motor

vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j . . . .'' (Emphasis added.)

The plain language of § 14-227a clearly indicates that the legislature intended a violation of that provision to be a criminal offense. First, the statute clearly defines operating a motor vehicle while under the influence of intoxicating liquor or any drug as an offense. Section 14-227a (a) provides in relevant part: ''A person commits the *offense* of operating a motor vehicle while under the influence of intoxicating liquor or any drug . . . .'' (Emphasis added.) Indeed, the statute repeatedly uses the term offense to describe a breach of § 14-227a. See General Statutes § 14-227a (b) (''at the time of the alleged offense''); General Statutes § 14-227a (c) (''at the time of the alleged offense''); General Statutes § 14-227a (g) (2) (''a prior conviction for the same offense''); General Statutes § 14-227a (g) (3) (''a second or third and subsequent offense . . . [and] a conviction in any other state of any offense . . . shall constitute a prior conviction for the same offense'').

Second, the statute repeatedly refers to a prosecution for a breach of § 14-227a. In two such instances the statute uses the term ''criminal prosecution.'' See General Statutes § 14-227a (b) (''in any criminal prosecution''); General Statutes § 14-227a (e) (''[i]n any criminal prosecution''). In the other instances, the statute uses the term prosecution without defining it. See General Statutes § 14-227a (b) (''any prosecution under this section''); General Statutes § 14-227a (c) (''[i]n any prosecution''); General Statutes § 14-227a (k) (''subsequent prosecution''). The legislature's use of the term prosecution in all of these instances supports the conclusion that the legislature intended a violation of § 14-227a to be a crime. This understanding of the legislature's use of the term prosecution is bolstered by the definition of prosecution in Black's Law Dictionary, which defines prosecution as ''[a] criminal proceeding in which an accused person is tried . . . .'' Black's Law Dictionary (9th Ed. 2009); see *Hartford/Windsor Healthcare Properties, LLC* v. *Hartford*, 298 Conn. 191, 200–201, 3 A.3d 56 (2010) (' 'In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly.' General Statutes § 1-1 [a]. 'If a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary.' '). It would torture the plain meaning of § 14-227a to conclude that the legislature established criminal guidelines for motor vehicle violations that, by definition, are not crimes. See General Statutes § 53a-24.

Third, the plain language of the statute demonstrates

that the legislature understood a breach of § 14-227a to be a serious criminal offense. Section 14-227a (g) provides that a conviction under General Statutes § 53a-56b, which defines the offense of manslaughter in the second degree with a motor vehicle and is a class C felony, or General Statutes § 53a-60d, which defines assault in the second degree with a motor vehicle and is a class D felony, shall constitute a prior conviction for the same offense as § 14-227a.[7] Accordingly, the plain language of the statute reveals that the legislature understood a violation of § 14-227a to be comparable to a felony involving a motor vehicle.[8]

The legislature made clear its intent that a second conviction under § 14-227a within a ten year period be a felony when it amended that statute in 1999. Public Acts 1999, No. 99-255, § 1 (P.A. 99-255). General Statutes § 53a-25[9] provides in relevant part: "(a) An offense for which a person may be sentenced to a term of imprisonment in excess of one year is a felony. . . .

"(c) . . . Any offense defined in any other section of the general statutes which, by virtue of an expressly specified sentence, is within the definition set forth in subsection (a) shall be deemed an unclassified felony." Section 14-227a (g) (2) provides, inter alia, that a person who is convicted of a second violation of § 14-227a within ten years after a prior conviction for the same offense shall "be imprisoned not more than two years . . . ." The legislature chose to increase the penalty for a second conviction under § 14-227a within ten years to a possible term of imprisonment up to two years in 1999. See P.A. 99-255, § 1. Prior to that time, a second conviction under § 14-227a within a ten year period was punishable by a term of imprisonment of not more than one year.[10] At the time the legislature chose to make a second conviction under § 14-227a punishable by a term of imprisonment of up to two years, § 53a-25 had been in effect for approximately thirty years. "Our case law is clear . . . that when the legislature chooses to act, it is presumed to know how to draft legislation consistent with its intent and to know of all other existing statutes and the effect that its action or nonaction will have upon any one of them. . . . *AvalonBay Communities, Inc.* v. *Zoning Commission*, 280 Conn. 405, 417, 908 A.2d 1033 (2006); see also *Fedus* v. *Planning & Zoning Commission*, 278 Conn. 751, 779, 900 A.2d 1 (2006) (noting presumption that, if legislature intends to limit or expand jurisdiction, it knows how to express that intent)." (Internal quotation marks omitted.) *Palmer* v. *Friendly Ice Cream Corp.*, 285 Conn. 462, 475 n.12, 940 A.2d 742 (2008); see also *Stein* v. *Hillebrand*, 240 Conn. 35, 42–43, 688 A.2d 1317 (1997) (legislature presumed to have knowledge of existing laws and presumed to intend to create harmonious body of law). Accordingly, the legislature's decision to make a second conviction under § 14-227a within a ten year period punishable by a term of imprisonment in excess of one year is a strong

indication that the legislature intended it to be a felony.

Thus, the plain language of the statute supports the conclusion that the legislature intended a breach of § 14-227a to be a crime. The plaintiff asserts, however, that a breach of § 14-227a is a motor vehicle violation and therefore excluded from the definition of offense by § 53a-24 (a).[11] As directed by § 1-2z, we look to related statutes for ascertaining whether the legislature intended a breach of § 14-227a to be a motor vehicle violation.

Section 53a-24 (a) provides in relevant part: "The term 'offense' means any crime or violation which constitutes a breach of any law of this state or any other state, federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or to a fine, or both, may be imposed, except one that defines a motor vehicle violation or is deemed to be an infraction. . . ." Section 53a-24 does not define the term motor vehicle violation. The term violation is defined, however, in General Statutes § 53a-27. Section 53a-27 provides: "(a) An offense, for which the only sentence authorized is a fine, is a violation unless expressly designated an infraction.

"(b) Every violation defined in this chapter is expressly designated as such. Any offense defined in any other section which is not expressly designated a violation or infraction shall be deemed a violation if, notwithstanding any other express designation, it is within the definition set forth in subsection (a)."

Because the legislature has not defined motor vehicle violation, but has defined violation, we conclude that it is reasonable to apply the definition of violation to the phrase motor vehicle violation. See *Rainforest Cafe, Inc.* v. *Dept. of Revenue Services*, 293 Conn. 363, 373, 977 A.2d 650 (2009) ("[i]t is axiomatic that this statutory definition is binding on our courts"); see also General Statutes § 1-2z ("[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes"); *International Business Machines Corp.* v. *Brown*, 167 Conn. 123, 134, 355 A.2d 236 (1974) ("[w]hen legislation contains a specific definition, the courts are bound to accept that definition"). Applying the definition of violation to the term motor vehicle violation, we conclude that a motor vehicle violation is an offense committed with a motor vehicle for which the only sentence authorized is a fine. Accordingly, because a violation of § 14-227a carries a possible term of imprisonment, it is not a motor vehicle violation.[12]

Indeed, under § 53a-24, the motor vehicle violation exception to the definition of offense is limited to those offenses that are *defined* as motor vehicle violations. Specifically, § 53a-24 (a) provides in relevant part that "[t]he term 'offense' means any crime or violation which

constitutes a breach of any law of this state or any other state, federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or to a fine, or both, may be imposed, *except one that defines a motor vehicle violation* or is deemed to be an infraction. . . ." (Emphasis added.) The legislature, therefore, created the term motor vehicle violation to have a discreet meaning within the statutory scheme and the legislature can define breaches of particular statutes as a motor vehicle violation, much like it defines a breach of some statutes as an infraction. See, e.g., General Statutes § 14-96b (d) ("[f]ailure to have headlamps in accordance with the requirements of this section shall be an infraction"); General Statutes § 14-96c (d) ("[f]ailure to have tail lamps or failure to illuminate the rear registration plate as required in this section shall be an infraction"); General Statutes § 14-96d (c) ("[f]ailure to carry and mount reflectors as required in this section shall be an infraction"). A review of § 14-227a reveals that the legislature has chosen not to define a breach of that statute as a motor vehicle violation.[13] Accordingly, the failure of the legislature to define a breach of § 14-227a as a motor vehicle violation is evidence that the legislature did not intend for it to fall within the motor vehicle violation exception to the definition of offense.

We also find it persuasive that the phrase "define[d] [as] a motor vehicle violation" is contained in the same clause as infraction within § 53a-24 (a). "Where a provision contains two or more words grouped together, we often examine a particular word's relationship to the associated words and phrases to determine its meaning pursuant to the canon of construction noscitur a sociis." *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, 273 Conn. 724, 740, 873 A.2d 898 (2005). Applying the principle of noscitur a sociis to the phrase motor vehicle violation further bolsters our conclusion that the legislature intended to exclude only breaches with relatively minor penalties from the definition of offense.

The plaintiff seems to assert that a breach of § 14-227a is a motor vehicle violation simply because of its placement within the motor vehicle chapter. We disagree. At the time § 14-227a was originally enacted in 1963, the Penal Code did not exist. See Public Acts 1963, No. 616, § 1. The Penal Code was not adopted until 1969, approximately six years after the legislature decided to criminalize driving under the influence in § 14-227a. Because the Penal Code did not exist at the time the legislature adopted § 14-227a, its placement within the motor vehicle statutes has no impact on determining legislative intent.

A review of the motor vehicle chapter reveals other statutes that, like § 14-227a, provide for a term of imprisonment without classifying the breach as a misde-

meanor or a felony. For instance, General Statutes § 14-215 (operating while registration or license is refused, suspended or revoked), General Statutes § 14-222 (reckless driving), General Statutes § 14-223a (striking officer with motor vehicle), General Statutes § 14-224 (evading responsibility with motor vehicle), and General Statutes § 14-225 (evading responsibility in operation of other vehicles), all provide for a term of imprisonment without classifying the breach as a misdemeanor or a felony. An examination of the statutes in the motor vehicle chapter reveals that the legislature has classified as misdemeanors or felonies simply reinforces our conclusion that the legislature intended a violation of § 14-227a to be a crime. All or some of the breaches of the motor vehicle code that the legislature has specifically classified as misdemeanors and felonies are much less serious breaches than driving under the influence of alcohol or drugs. For instance, the legislature has classified selling or repairing a motor vehicle without a license as a class B misdemeanor under General Statutes § 14-52, selling used motor vehicle parts without a motor vehicle recycler's permit as a class C misdemeanor under General Statutes § 14-62b, and operating without insurance as a class D felony under General Statutes § 14-223 (b). It is axiomatic that the legislature is presumed to have acted so as to create a consistent body of law. See *Brown & Brown, Inc.* v. *Blumenthal*, 297 Conn. 710, 725, 1 A.3d 21 (2010) ("legislature is presumed to have acted with knowledge of existing statutes and with an intent to create one consistent body of law" [internal quotation marks omitted]), citing *Envirotest Systems Corp.* v. *Commissioner of Motor Vehicles*, 293 Conn. 382, 398, 978 A.2d 49 (2009). It would yield an absurd result to interpret a second conviction of driving under the influence within a ten year period as a motor vehicle violation, while treating these other, less serious breaches of the motor vehicle code, as crimes.

Indeed, § 14-224 also supports the conclusion that a second conviction for a breach of § 14-227a within a ten year period is a felony. Section 14-224 addresses evading responsibility in the operation of motor vehicles. Subsection (f) of § 14-224 provides that "[a]ny person who [is knowingly involved in an accident which causes serious physical injury . . . or results in the death of any other person and does not at once stop and render such assistance as may be needed and give his name, address and operator's license number and registration number to the person injured or to any officer or witness to the death or serious physical injury of any person] shall be fined not more than ten thousand dollars or be imprisoned not less than one year nor more than ten years or be both fined and imprisoned." Applying the plaintiff's reasoning, any statute within the motor vehicle chapter that is not specified as a felony or misdemeanor is not a crime and, therefore,

an individual could be imprisoned for up to ten years for a violation of § 14-224, but it still would not be considered a crime.[14] Such an interpretation yields a result that is both absurd and unreasonable.

General Statutes § 53a-40f (a) further supports the conclusion that the legislature intended that a second conviction under § 14-227a would be treated as a felony. Consistent with the multiple offender provision in § 14-227a (g), § 53a-40f (a) provides: "A persistent operating while under the influence felony offender is a person who (1) stands convicted of a violation of section 53a-56b or 53a-60d and (2) has, prior to the commission of the present crime and within the preceding ten years, been convicted of a violation of section 53a-56b or 53a-60d or subsection (a) of section 14-227a or been convicted in any other state of an offense the essential elements of which are substantially the same as section 53a-56b or 53a-60d or subsection (a) of section 14-227a."[15] The enumerated offenses, manslaughter in the second degree with a motor vehicle and assault in the second degree with a motor vehicle, are class C and class D felonies, respectively. To deem a person a persistent felony offender presumably requires that all of the qualifying offenses, in and of themselves, could constitute felonies. It is also important to note that General Statutes §§ 53a-56b and 53a-60d were first referenced in § 14-227a at the same time that the legislature increased the term of imprisonment for a second conviction to up to two years. See P.A. 99-255. Accordingly, we conclude that the legislature's inclusion of §§ 53a-56b and 53a-60d in § 14-227a (g) evidences its intent that a conviction of a second breach of § 14-227a within a ten year period be a felony.[16]

An interpretation of § 14-227a as a crime is consistent with this court's reasoning in *State* v. *Dukes*, 209 Conn. 98, 124, 547 A.2d 10 (1988). In *Dukes*, this court was required to determine whether a defendant's federal and state constitutional rights were violated by the admission of evidence obtained during a motor vehicle stop for speeding in violation of General Statutes § 14-219 and operating a motor vehicle while license under suspension in violation of General Statutes § 14-215. Id., 100–101. In its discussion, the court concluded that a violation of § 14-215 is a misdemeanor, notwithstanding the fact that, like § 14-227a, § 14-215 is contained within the motor vehicle chapter and was not explicitly classified as a misdemeanor. Id., 124. Accordingly, the court's interpretation of § 14-215 as a misdemeanor is consistent with our interpretation of § 14-227a as a felony.

We acknowledge that the legislature, on occasion, has used the term violation and the phrase motor vehicle violation in a manner that is inconsistent with the definition of violation as an offense punishable by fine only as set forth in § 53a-27. See General Statutes § 53a-28 (e) (2) (referring to conditions relevant to probation

for "a motor vehicle violation for which a sentence to a term of imprisonment may be imposed"); General Statutes § 53a-173 (a) (1) (addressing failure to appear in second degree in context of person "charged with the commission of a misdemeanor or a motor vehicle violation for which a sentence to a term of imprisonment may be imposed"); General Statutes § 53a-222a (a) (addressing violation of conditions of release in second degree in context of person "charged with the commission of a misdemeanor or motor vehicle violation for which a sentence to a term of imprisonment may be imposed"). This inconsistency gives rise to some ambiguity in § 53a-24 as to whether the phrase motor vehicle violation is intended only to apply to breaches of a statute for which only fines may be imposed, or also to breaches of a statute for which a term of imprisonment may be imposed. "A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation." *In re Jan Carlos D.*, 297 Conn. 16, 21, 997 A.2d 471 (2010).

Therefore, we conclude that the statutory scheme is ambiguous as to whether a second conviction for a breach of § 14-227a within a ten year period is a felony. Under well established principles of statutory construction, when a statute is ambiguous, we may look to "the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Orr*, 291 Conn. 642, 651, 969 A.2d 750 (2009).

The legislative history of § 14-227a supports our conclusion that the legislature intended a second conviction of § 14-227a within a ten year period to be a felony. Section 14-227a was adopted in 1963. Public Acts 1963, No. 616, § 1. At that time, the statute authorized terms of imprisonment. Specifically, the statute provided for imprisonment of not more than six months for a first offense; not less than sixty days nor more than one year for a second offense; and not less than six months nor more than one year for a subsequent offense. See Public Acts 1963, No. 616, § 1. In 1983, the legislature amended the statute and increased the possible terms of imprisonment under the statute to not more than six months for a first offense; not more than one year, forty-eight consecutive hours of which cannot be suspended or reduced, for a second offense; not more than two years, thirty days of which cannot be suspended or reduced, for a third offense.[17] See Public Acts 1983, No. 83-534. In 1999 the statute was amended again to include the current possible terms of imprisonment—namely, not more than six months, forty-eight consecutive hours of which cannot be suspended or reduced, for a first offense; not more than two years, 120 consecutive days of which cannot be suspended or reduced, for a

second conviction within ten years; and not more than three years, one year of which may not be suspended or reduced in any manner, for a third offense.[18] P.A. 99-255, § 1 (h).

A thorough examination of the legislative history surrounding these amendments reveals that the legislature considered driving under the influence of alcohol or drugs a serious criminal offense. Indeed, each of these amendments was designed to discourage driving under the influence by making the penalties more severe. In discussing the 1983 amendments to § 14-227a, Representative Martha D. Rothman explained the purpose as follows: "[W]hat we're talking about is starting to change public attitude about drunken drivers. Can this attitude be changed? Yes, it can be . . . . We, as I said, are on a course now that is beginning to change. Change our whole attitude and that is exactly what we're talking about today. I'm not sure that this is going to be the end-all. Truly, it's probably just the first step in that direction. But it certainly is a step in the right direction and I urge passage of this amendment." 26 H.R. Proc., Pt. 19, 1983 Sess., p. 6916. Remarking on the same amendment, Representative Alan R. Schlesinger said, "[i]f we're going to make any statement here today, just one, [it] is that if you're a [repeat offender] and you get the pretrial and you come back again and you come back again, you're gonna do some time. That's one thing I think we want to establish here today." Id., p. 6764; see also id., p. 6685, remarks of Representative Eugene A. Migliaro ("[Drunk driving] has to be stopped. We have to get tough. And the plea bargaining be damned. Let these individuals pay the fine. Let these individuals go to jail and get these people off the road so that the families can go out on a Sunday or a holiday and drive with safety and not have to fear for their lives."); id., p. 6687, remarks of Representative Edith Prague (drunk drivers can no longer be let "off with only a slap on the wrist").

In 1985, when the legislature again amended § 14-227a and adopted a "per se" violation, the legislators again recognized the seriousness of driving under the influence and commented on the criminal nature of the offense. For instance, Representative Thomas Dudchik said that "[t]his legislation . . . will make the punishment fit the crime . . . ." 28 H.R. Proc., Pt. 19, 1985 Sess., p. 7031. Senator James Giulietti also remarked as follows: "I am in favor of this legislation . . . it is the only piece of drunk driving legislation that I've seen in fron[t] of the General Assembly, and that we've voted on, that deals with the individual. An individual who has committed the crime of drunk driving. . . . This is the only bill that pinpoints an individual, that punishes an individual, more severely for drunk driving." 28 S. Proc., Pt. 12, 1985 Sess., p. 3951; see also 28 H.R. Proc., Pt. 19, 1985 Sess., p. 7035, remarks of Representative David Wenc (asking whether "crime [of driving under

the influence] as defined under the state law meet the same definition as the federal crime"); 28 H.R. Proc., Pt. 30, 1985 Sess., pp. 10,879–80, 10,912, remarks of Representatives Wenc, Robert Farr, and Richard Cunningham (addressing question of whether amendment setting blood alcohol limit as proof of intoxication is setting forth "new crime" for driving with blood alcohol content above specified level, "new definition for the present crime" or "two different crimes"); 28 S. Proc., Pt. 16, 1985 Sess., pp. 5364–65, remarks of Senators Richard Johnston and Cornelius O'Leary (characterizing statute and punishment therein as "criminal prosecutions," "criminal penalty," and "criminal offense").

In 1999, the legislature again amended § 14-227a to provide for a term of imprisonment of not more than two years for a second offense within ten years. In the discussion of this amendment, the legislature again referred to the penalties under § 14-227a as "criminal penalties" and discussed the statute as "criminalizing" conduct. See 42 S. Proc., Pt. 9, 1999 Sess., pp. 2903–2904, remarks of Senator Martin Looney; see also 42 H.R. Proc., Pt. 19, 1999 Sess., p. 6732, remarks of Representative Paul Doyle ("[i]f the person drank a glass of wine and it was above .02 the normal *criminal* penalties would apply and for the first, basically that person would be able to get . . . the alcohol education program" [emphasis added]).

As the foregoing legislative history reveals, it is abundantly clear that the legislature considered driving under the influence a serious crime. In fact, a report on Substitute Senate Bill 1115, which was incorporated into P.A. 99-255, prepared by the office of legislative research indicates that the legislature, in passing P.A. 99-255 and increasing the penalty for a second conviction under § 14-227a within a ten year period, was well aware that a breach of § 14-227a was considered a criminal offense. See Office of Legislative Research, Amended Bill Analysis for Substitute Senate Bill 1115, available at http://cga.ct.gov/ps99/ba/1999SB-01115-R00-BA.htm (last visited December 30, 2010). " 'Although the comments of the office of legislative research are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill.' *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 124 n.15, 942 A.2d 396 (2008); cf. *State* v. *Tabone*, 279 Conn. 527, 542, 902 A.2d 1058 (2006) (consulting analysis of bill by office of legislative research to ascertain legislative intent)." *State* v. *Courchesne*, 296 Conn. 622, 700, 998 A.2d 1 (2010); *Butts* v. *Bysiewicz*, 298 Conn. 665, 688 n.22, 5 A.3d 932 (2010) (same). The report provides in relevant part: "*Criminal Offense. By law, it is a criminal offense to operate a motor vehicle while under the influence of alcohol.* This *offense* may be prosecuted with or without any direct evidence of a person's [blood alcohol content]. The

determinative issue is whether a person's ability to drive has been affected to an appreciable degree. It is also currently a *criminal offense* to operate a motor vehicle with a [blood alcohol content] of .10 [percent] or more. The existence of a [blood alcohol content] of .10 [percent] or more is sufficient to establish the offense. The bill redesignates this *offense* as driving with an 'elevated blood alcohol level' and defines this as driving (1) with a [blood alcohol content] of .10 [percent] or more or (2) with a [blood alcohol content] of .07 [percent] or more if the accused person has a previous conviction for drunk driving. The bill also makes it illegal [for] someone under age [twenty-one] to drive with a [blood alcohol content] of .02 [percent] or more and applies provisions of *the criminal drunk driving law* by reference and adapted accordingly to anyone who violates the prohibition." (Emphasis altered.) Office of Legislative Research, Amended Bill Analysis for Substitute Senate Bill 1115, available at http://cga.ct.gov/ps99/ba/1999SB-01115-R00-BA.htm (last visited December 30, 2010). The repeated use of the terms criminal offense and offense and the description of § 14-227a as "the criminal drunk driving law," although not dispositive of the legislature's intent, further buttress our conclusion that the legislature intended a breach of § 14-227a to be a criminal offense and not falling within the motor vehicle violation exception to the definition of offense.

The legislative history of § 14-227a clearly demonstrates that the legislature has long understood driving while under the influence to be a crime. Furthermore, this legislative history also demonstrates that, over time, the legislature has adopted increasingly more severe punishments in an effort to discourage driving under the influence.[19] Construing § 14-227a so that a breach is not a criminal offense, as the plaintiff urges, would frustrate the clear intent and public policy behind § 14-227a.[20]

The treatment of driving under the influence in other jurisdictions also bolsters our conclusion that a second conviction for driving under the influence within a ten year period is a felony. "It is true that '[w]here the meaning of a statute is in doubt, reference to legislation in other states and jurisdictions which pertains to the same subject matter, persons, things, or relations may be a helpful source of interpretative guidance.' 2A [J.] Sutherland, Statutory Construction [Sands 4th Ed. 1984] § 52.03." *Johnson* v. *Manson*, 196 Conn. 309, 318–19, 493 A.2d 846 (1985), cert. denied, 474 U.S. 1063, 106 S. Ct. 813, 88 L. Ed. 2d 787 (1986). Forty-five other states treat repeat offenses of driving under the influence as felonies.[21] Of these, five states treat the second conviction for driving under the influence as a felony.[22] In adopting amendments to § 14-227a, our legislature was mindful of driving under the influence laws in other states and sought to have Connecticut law be consistent with that of other jurisdictions. See, e.g., 28 H.R. Proc.,

Pt. 19, 1985 Sess., p. 7035, remarks of Representative Wenc (asking whether "crime [of driving under the influence] as defined under the state law meets the same definition as the federal crime"). Accordingly, based on the overwhelming majority of states that treat subsequent convictions for driving under the influence as felonies, we are persuaded that our legislature did not intend for driving under the influence to fall within the motor vehicle violation exception to the definition of offense.[23]

The official commentary to the definition of offense in § 53a-24 also evidences the legislature's intent to treat a breach of § 14-227a as a criminal offense and not include it within the motor vehicle violation exception to the definition of offense. The commentary explains: "(a). This section defines the terms 'offense', 'crime', and 'violation'. 'Offense' is a general term which means a breach of state or local 'criminal' law—i.e., one that calls for imprisonment or fine for breach thereof. 'Crime' means either a felony or misdemeanor. *'Violation', which must be read in connection with section 53a-27, means an offense calling only for a fine for breach thereof*. The concept of a 'violation', which is taken from the Model Penal Code, is new. Section 53a-24 makes clear that conviction of a violation does not 'give rise to any disability or legal disadvantage based on conviction of a criminal offense.' It is a new category of non-criminal offense; conduct which should be proscribed but conviction for which should in no way brand the offender a 'criminal.' Thus, for example, a person who has been convicted only of a violation can truthfully answer 'no' to the question: Have you ever been convicted of a crime? . . . (b). The definition of 'offense' in subsection (a) makes clear that it does not include motor vehicle infractions. *The purpose of this provision is to except from the operation of the Code, except as provided in subsection (b), motor vehicle infractions*. Subsection (b), however, provides that the sentencing principles enumerated in sections 53a-28 to 53a-44, inclusive, should apply to motor vehicle violations. Thus, a motor vehicle violator would have the limits of his sentence determined by the motor vehicle section, since his 'offense' would be an 'unclassified misdemeanor' within the meaning of section 53a-26 (c); but he would be sentenced under the principles and procedures of sections 53a-28 to 53a-44." (Emphasis added.) Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. (West 2007) § 53a-24, comment, pp. 454–55. " 'While the commission comment hardly has the force of enacted law, it, nevertheless, may furnish guidance.' *Valeriano* v. *Bronson*, 209 Conn. 75, 94, 546 A.2d 1380 (1988)." *State* v. *Ramos*, 271 Conn. 785, 795 n.9, 860 A.2d 249 (2004). This commentary demonstrates that the drafters of the Penal Code intended to incorporate the meaning of the term violation under § 53a-27 into the term motor

vehicle violation, and to exempt only motor vehicle infractions from the definition of offense in § 53a-24. Accordingly, the commentary to the Penal Code provides further support for our conclusion that § 14-227a does not fall within the motor vehicle violation exception to an offense and a second conviction for violation of § 14-227a within a ten year period is a felony.

Finally, we note that this court has frequently referred to a conviction under § 14-227a as a crime or a criminal prosecution. See *State* v. *Singleton*, 174 Conn. 112, 115, 384 A.2d 334 (1977), cert. denied, 440 U.S. 947, 99 S. Ct. 1425, 59 L. Ed. 2d 635 (1979); *State* v. *Englehart*, 158 Conn. 117, 119, 256 A.2d 231 (1969); *State* v. *DeCoster*, 147 Conn. 502, 504, 162 A.2d 704 (1960); *State* v. *McDonough*, 129 Conn. 483, 484, 29 A.2d 582 (1942). Indeed, in 1980, the Appellate Session of the Superior Court squarely considered and rejected an argument by the state that "operating under the influence is not a crime because it falls within the exception to the definition of 'offense' in § 53a-24, a provision of the [P]enal [C]ode. . . . The argument of the state necessarily assumes that any breach of law involving the use of a motor vehicle constitutes a 'motor vehicle violation' and would therefore fall within the exception." *State* v. *Anonymous (1980-5)*, 36 Conn. Sup. 527, 528–29, 416 A.2d 168 (1980). The court rejected that argument, relying on the commentary to the Penal Code and the definitions in that code that we have discussed previously herein. Id., 529–30. The court held "that the term 'motor vehicle violations,' not being otherwise defined, incorporates the definition of 'violation' contained in § 53a-27 (a) as an offense punishable only by a fine." Id., 530. The Appellate Session of the Superior Court twice thereafter reaffirmed its holding that a violation of § 14-227a is a crime. See *State* v. *Whitney*, 37 Conn. Sup. 864, 866, 440 A.2d 987 (1981); *State* v. *Lavorgna*, 37 Conn. Sup. 767, 778, 437 A.2d 131 (1981). The legislature never thereafter amended the definition of violation or added a new definition for motor vehicle violations, thus suggesting its acquiescence with these rulings.

The plaintiff relies, however, on the 1987 Appellate Court decision in *State* v. *Kluttz*, 9 Conn. App. 686, 521 A.2d 178 (1987). In *Kluttz*, the Appellate Court considered the question of "whether negligent homicide with a motor vehicle, as defined in General Statutes § 14-222a, is a lesser included offense of misconduct with a motor vehicle, as defined in General Statutes § 53a-57 . . . ." Id., 687. A conviction under § 14-222a was punishable by a term of imprisonment of up to six months. Id., 687 n.1. A divided Appellate Court panel concluded: "Although we agree with the defendant that negligent homicide with a motor vehicle is a 'motor vehicle violation' within the meaning of § 53a-24 and therefore is not an 'offense' or 'crime' within the meaning of that statute . . . we hold that it is an offense for purposes of the lesser included offense doctrine."

(Citation omitted.) Id., 690; but see id., 716 (*Bieluch*, *J.*, concurring) ("I concur in the results of the majority opinion, but disagree with the conclusion that . . . § 14-222a does not proscribe a criminal offense within the meaning of . . . § 53a-24 [a], and with the refusal to invoke the precedent established in *State* v. *Anonymous (1980-5)*, [supra, 36 Conn. Sup. 527]").

In concluding that a violation of § 14-222a fell within the motor vehicle violation exception to the definition of offense, the court in *Kluttz* primarily relied on the unique genealogy of § 14-222a. The Appellate Court noted that the negligent homicide with a motor vehicle statute was originally enacted in 1941, and was codified with the motor vehicle statutes. General Statutes (Sup. 1941) § 235f. Then, in 1971, after the adoption of the Penal Code, the legislature repealed General Statutes § 14-218, the prior negligent homicide with a motor vehicle statute, and reenacted it a few years later in the Penal Code. See *State* v. *Kluttz*, supra, 9 Conn. App. 696; Public Act 1971, No. 30. Then, in 1981, the legislature repealed essentially the same provision from the Penal Code and reenacted it almost verbatim in the motor vehicle chapter. See *State* v. *Kluttz*, supra, 697. The stated purpose of the change was "[t]o classify negligent homicide with a motor vehicle as a motor vehicle violation rather than a criminal offense in the [P]enal [C]ode." House Bill No. 5079 (1981). Significantly, the Appellate Court majority noted among the factors motivating this change: "One factor was that the conduct proscribed by the statute involved only ordinary civil negligence, which could be conduct relatively low on the blameworthiness scale, what was referred to as 'relatively simple acts of negligence,' not involving alcohol; 24 S. Proc., Pt. 3, 1981 Sess., p. 707, remarks of Senator Howard T. Owens, Jr.; and 'an act of simple negligence, nothing to do with criminal negligence, nothing to do with intent, nothing to do with drinking . . . .' 24 H.R. Proc., Pt. 3, 1981 Sess., p. 884, remarks of Representative Richard D. Tulisano." *State* v. *Kluttz*, supra, 697. Based primarily on this legislative history, the Appellate Court concluded that § 14-222a fell within the motor vehicle violation exception to the definition of offense. Id., 698. As we have explained previously herein, contrary to the legislative history of § 14-222a, the legislative history surrounding § 14-227a clearly evidences a legislative intent to impose criminal penalties on convictions for driving under the influence. Accordingly, the Appellate Court's reasoning in *Kluttz* is inapplicable to determining whether a conviction for a second breach of § 14-227a within a ten year period is a felony.

The plaintiff also relies on a number of cases, subsequent to the *Kluttz* decision, in which the Appellate Court concluded that a conviction under § 14-227a is not a crime because it falls within the motor vehicle violation exception to the definition of offense. These

decisions lack persuasive force because they simply adopted the *Kluttz* conclusion without undertaking any independent analysis. See *State* v. *Brown*, 22 Conn. App. 108, 111, 575 A.2d 699 (citing *Kluttz*), cert. denied, 216 Conn. 811, 580 A.2d 61 (1990); *State* v. *Trahan*, 45 Conn. App. 722, 733, 697 A.2d 1153 (citing portion of *Brown* that had cited *Kluttz*), cert. denied, 243 Conn. 924, 701 A.2d 660 (1997). As we have explained previously herein, the Appellate Court's reasoning in *Kluttz* is not applicable to § 14-227a. Moreover, in reliance on the reasoning in *Kluttz* that a conviction for a violation of § 14-222a could be deemed a crime for some purposes even though it was not classified as a criminal offense under the Penal Code, several appellate decisions did not analyze whether a conviction under other motor vehicle, or motor vehicle related, statutes constituted a criminal offense under the Penal Code, and instead simply analyzed whether the conviction constituted a crime for the particular purpose at issue. See *State* v. *Harrison*, 228 Conn. 758, 761, 638 A.2d 601 (1994), and cases cited therein.[24] Despite this tactical decision, we note that this court has continued to refer to convictions under § 14-227a as crimes. See *State* v. *Burnell*, 290 Conn. 634, 642, 966 A.2d 168 (2009); see also *Stash* v. *Commissioner of Motor Vehicles*, 297 Conn. 204, 211 n.6, 999 A.2d 696 (2010) (stating that § 14-227a "criminalizes the act of operating a motor vehicle while under the influence of intoxicating liquor or drugs or both").

On the basis of the foregoing, we conclude that the language of § 14-227a, its relationship to other statutes, its legislative history and the commentary to the Penal Code reveal that the legislature intended driving under the influence to be a criminal offense and not fall within the motor vehicle violation exception to the definition of an offense, and, therefore, a second conviction under § 14-227a within a ten year period constitutes a felony because it carries with it a possible term of imprisonment in excess of one year. Accordingly, we reverse the judgment of the trial court.

The judgment is reversed and the case is remanded with direction to render judgment for the defendant.

In this opinion NORCOTT, PALMER and VERTEFEUILLE, Js., concurred.

* January 5, 2011, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] We note that although the complaint specifically named Leonard C. Boyle, in his capacity as the commissioner of public safety, as the defendant, we refer herein to the commissioner of public safety as the defendant.

[2] General Statutes § 14-227a provides in relevant part: "(a) No person shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both. A person commits the offense of operating a motor vehicle while under the influence of intoxicating liquor or any drug or both if such person operates a motor vehicle (1) while under the influence of intoxicating liquor or any drug or both, or (2) while such person has an elevated blood alcohol content. For the purposes of this section, 'elevated blood alcohol content' means a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight . . . and 'motor vehicle' includes a snowmobile and all-terrain vehicle, as those terms are

defined in section 14-379.

* * *

"(g) Any person who violates any provision of subsection (a) of this section shall: (1) For conviction of a first violation, (A) be fined not less than five hundred dollars or more than one thousand dollars, and (B) be (i) imprisoned not more than six months, forty-eight consecutive hours of which may not be suspended or reduced in any manner, or (ii) imprisoned not more than six months, with the execution of such sentence of imprisonment suspended entirely and a period of probation imposed requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) have such person's motor vehicle operator's license or nonresident operating privilege suspended for one year; (2) for conviction of a second violation within ten years after a prior conviction for the same offense, (A) be fined not less than one thousand dollars or more than four thousand dollars, (B) be imprisoned not more than two years, one hundred twenty consecutive days of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) (i) if such person is under twenty-one years of age at the time of the offense, have such person's motor vehicle operator's license or nonresident operating privilege suspended for three years or until the date of such person's twenty-first birthday, whichever is longer, and be prohibited for the two-year period following completion of such period of suspension from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j; or (ii) if such person is twenty-one years of age or older at the time of the offense, have such person's motor vehicle operator's license or nonresident operating privilege suspended for one year and be prohibited for the two-year period following completion of such period of suspension from operating a motor vehicle unless such motor vehicle is equipped with a functioning, approved ignition interlock device, as defined in section 14-227j; and (3) for conviction of a third and subsequent violation within ten years after a prior conviction for the same offense, (A) be fined not less than two thousand dollars or more than eight thousand dollars, (B) be imprisoned not more than three years, one year of which may not be suspended or reduced in any manner, and sentenced to a period of probation requiring as a condition of such probation that such person perform one hundred hours of community service, as defined in section 14-227e, and (C) have such person's motor vehicle operator's license or nonresident operating privilege permanently revoked upon such third offense. For purposes of the imposition of penalties for a second or third and subsequent offense pursuant to this subsection, a conviction under the provisions of subsection (a) of this section in effect on October 1, 1981, or as amended thereafter, a conviction under the provisions of either subdivision (1) or (2) of subsection (a) of this section, a conviction under the provisions of section 53a-56b or 53a-60d or a conviction in any other state of any offense the essential elements of which are determined by the court to be substantially the same as subdivision (1) or (2) of subsection (a) of this section or section 53a-56b or 53a-60d, shall constitute a prior conviction for the same offense. . . ."

Several technical changes have been made to various subsections of § 14-227a since the relevant time of the proceedings in the present case. See, e.g., Public Acts 2004, No. 04-199, § 31; Public Acts 2004, No. 04-257, § 101; Public Acts 2006, No. 06-147, § 1; Public Acts 2010, No. 10-110, §§ 6, 45, 46. Those changes, however, are not relevant to this appeal. For purposes of clarity, we refer to the current revision of the statute.

[3] Throughout this opinion, we use the term "breach" to indicate conduct that is prohibited by a given statutory provision. In the interest of clarity, our use of the terms "violation," "infraction," "offense," or their various forms is restricted to the meanings provided in General Statutes §§ 53a-24 through 53a-27.

[4] General Statutes § 4-174 provides: "Any interested person may petition an agency requesting the promulgation, amendment, or repeal of a regulation. Each agency shall prescribe by regulation the form for petitions and the procedure for their submission, consideration, and disposition. Within thirty days after submission of a petition, the agency either shall deny the petition in writing stating its reasons for the denials or shall initiate regulation-making proceedings in accordance with section 4-168."

[5] The plaintiff also sought an order compelling the defendant to provide him with a new printed criminal history, without a convicted felon notation.

[6] The defendant appealed from the judgment of the trial court to the Appellate Court, and we thereafter transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[7] See footnote 2 of this opinion.

[8] It is important to note that the legislature amended § 14-227a to provide that convictions under §§ 53a-56b and 53a-60d constitute prior convictions for the same offense at the same time it increased the term of imprisonment for a second conviction to two years. See Public Acts 1999, No. 99-255, § 1.

[9] General Statutes § 53a-25 provides: "(a) An offense for which a person may be sentenced to a term of imprisonment in excess of one year is a felony.

"(b) Felonies are classified for the purposes of sentence as follows: (1) Class A, (2) class B, (3) class C, (4) class D, (5) unclassified and (6) capital felonies.

"(c) The particular classification of each felony defined in this chapter is expressly designated in the section defining it. Any offense defined in any other section of the general statutes which, by virtue of an expressly specified sentence, is within the definition set forth in subsection (a) shall be deemed an unclassified felony."

[10] From 1983 through 1999, a third conviction under § 14-227a within a ten year period was punishable by a term of imprisonment of up to two years.

[11] General Statutes § 53a-24 provides: "(a) The term 'offense' means any crime or violation which constitutes a breach of any law of this state or any other state, federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or to a fine, or both, may be imposed, except one that defines a motor vehicle violation or is deemed to be an infraction. The term 'crime' comprises felonies and misdemeanors. Every offense which is not a 'crime' is a 'violation'. Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

"(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of sections 53a-28 to 53a-44, inclusive, shall apply to motor vehicle violations. Said provisions shall apply to convictions under section 21a-278 except that the execution of any mandatory minimum sentence imposed under the provisions of said section may not be suspended."

[12] The dissent asserts that a breach of the laws contained in the motor vehicle code cannot constitute a crime because the legislature has drawn a distinction between a person convicted of a crime and a person convicted of a violation of § 14-227a, or other motor vehicle laws that carry a potential term of imprisonment. First, the dissent cites to General Statutes § 14-44 (b), which delineates the requirements for obtaining a commercial operator's license. Section 14-44 (b) provides in relevant part: "Each applicant for an operator's license bearing an endorsement or the renewal of such a license shall furnish the commissioner [of motor vehicles], or the commissioner's authorized representative, with satisfactory evidence, under oath, to prove that such person has no criminal record and has not been convicted of a violation of subsection (a) of section 14-227a within five years of the date of application and that no reason exists for a refusal to grant or renew such an operator's license bearing an endorsement. . . ."

It is important to note that, contrary to the language quoted in the dissenting opinion, § 14-44 (b) does not contain the word "or" between "criminal record" and "has not been convicted of a violation of subsection (a) of section 14-227a within five years . . . ." To the contrary, we conclude that the language of the statute allows for an applicant to have a criminal record containing a conviction for a violation of § 14-227a as long as it is not within five years of the date of application. Nothing in that statute prohibits this court from construing § 14-227a as a criminal offense.

Second, we disagree with the dissent that subsection (b) of § 53a-24, which sets forth the limitation on the motor vehicle violation exception to the definition of offense in subsection (a), supports the conclusion that a violation of § 14-227a falls within the motor vehicle violation exception to the definition of offense. That subsection provides in relevant part: "Notwithstanding the provisions of subsection (a) of this section, the provisions of sections 53a-28 to 53a-44, inclusive, shall apply to motor vehicle violations. . . ." General Statutes § 53a-24 (b). The dissent asserts that because § 53a-24 (b) references sections that apply to convictions with terms of imprisonment when it was describing procedures applicable to motor vehicle violations, that the legislature could not have intended the term motor vehicle violation to apply only to those breaches punishable by a fine. A review of §§ 53a-28 to 53a-44 reveals that some of the provisions in the specified range never could be applied to a breach of the motor vehicle laws. See, e.g., General

Statutes §§ 53a-35b and 53a-35c (addressing life imprisonment). Therefore, we conclude that the legislature intended to apply only those provisions, or parts thereof, within the stated range that are relevant to motor vehicle laws punishable by fine only to a motor vehicle violation.

[13] Indeed, a review of the other statutes in the motor vehicle chapter reveals that the legislature has not chosen to define a breach of any statute as a motor vehicle violation.

[14] The dissent asserts that "construing the 'motor vehicle violation' exception to the definition of offense in § 53a-24 to mean a breach of any motor vehicle law, irrespective of the penalty attached, is the only construction consistent with both these cases [treating breaches of motor vehicle statutes with potential terms of imprisonment as not being classified as criminal offenses under the Penal Code] and the body of our General Statutes . . . ." We disagree and conclude that it is entirely unreasonable to conclude that the legislature intended for an individual to be imprisoned for up to ten years for a breach that is not considered a crime.

[15] General Statutes § 53a-40f (b) provides: "When any person has been found to be a persistent operating while under the influence felony offender, the court, in lieu of imposing the sentence authorized by section 53a-35a for the crime of which such person presently stands convicted, may impose the sentence of imprisonment authorized by said section for the next more serious degree of felony."

[16] The dissent concludes that "[t]he 'persistent' designation is attached to the *conduct*—operating under the influence, an element shared by all the offenses—not the *felony designation*." (Emphasis in original.) In support of its conclusion, the dissent relies on the fact that "because a first offense under § 14-227a carries a maximum term of imprisonment that would render it a misdemeanor, if subject to classification as a criminal offense, it could not under such circumstances constitute a felony." The dissent also relies on the fact that driving under the influence may be considered a lesser included offense of §§ 53a-56b and 53a-60d. The dissent's position distorts the plain meaning of the statute. What the dissent fails to note is that the above-referenced criminal statutes were first referenced in § 14-227a at the same time that the legislature increased the term of imprisonment for a second conviction to up to two years. See P.A. 99-255. Therefore, "a conviction under the provisions of section 53a-56b or 53a-60d or a conviction in any other state of any offense the essential elements of which are determined by the court to be substantially the same as subdivision (1) or (2) of subsection (a) of this section or section 53a-56b or 53a-60d, shall constitute a prior conviction for the same offense." General Statutes § 14-227a (g).

Section 53a-40f is entitled: "Persistent operating under the influence felony offender. Authorized sentences." That section explains the elements of being "[a] persistent operating while under the influence felony offender . . . ." General Statutes § 53a-40f (a). Although § 53a-40f does not define the word persistent, in its common usage, the word persistent means, "insistently repetitive or continuous." American Heritage Dictionary of the English Language (3d Ed. 1992); see also *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010) ("When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." [Internal quotation marks omitted.]). Thus, if someone has (1) been convicted of a violation of § 53a-56b or 53a-60d, and (2) has "prior to the commission of the present crime and within the preceding ten years, been convicted of a violation of section 53a-56b or 53a-60d or subsection (a) of section 14-227a or been convicted in any other state of an offense the essential elements of which are substantially the same as section 53a-56b or 53a-60d or subsection (a) of section 14-227a"; General Statutes § 53a-40f (a); that person is a persistent operating while under the influence felony offender. There is no need to torture the wording of this statute. It is clear that if an individual previously was convicted of § 14-227a and violated the designated criminal statutes, that individual is a persistent driving under the influence felony offender. A fortiori, the first offense of § 14-227a is a felony for the subsequent convictions to qualify as persistent driving under the influence felony offenses. Clearly, the legislature's decision to include these other felony offenses in § 14-227a at the same time that it increased the possible term of imprisonment for a second breach of § 14-227a demonstrates that the legislature intended the second offense with a penalty of up to two years to be a felony. We need not refer to the first offense, as does the dissent, since it is the second offense which is in question in the present case. We note, parenthetically,

however, that the dissent's recognition of the fact that, with respect to a first conviction under § 14-227a, the "term of imprisonment . . . would render it a misdemeanor," only further serves to weaken the dissent's position that § 14-227a does not deal with a crime. Contrary to the dissent's position, it is our view that this statute, coupled with the language inserted in § 14-227a in 1999, evinces a strong legislative intent to make a second breach of § 14-227a a felony. There can be no other explanation that rationally explains a prior violation under the statute as the basis for a finding that a person is "[a] persistent operating while under the influence felony offender . . . ." General Statutes § 53a-40f (a).

[17] The dissent relies on the fact that the legislature did not explicitly state that the 1999 amendments to § 14-227a that increased the penalty for a second conviction under § 14-227a within a ten year period to not more than two years made it a felony. Specifically, the dissent asserts that it "simply cannot accept that the legislature would have intended to establish a new felony under our General Statutes without the barest acknowledgment of that decision and its consequences." As we have explained herein, however, 1999 was not the first time that a repeat offense of driving under the influence was deemed a felony. Indeed, the legislature has treated a third conviction under § 14-227a as a felony since 1983. Therefore, we are not persuaded that the legislature's failure to mention the term felony in discussing the 1999 amendments to § 14-227a is indicative of legislative intent.

[18] It is also important to note that General Statutes § 54-56g provides a pretrial alcohol education program for individuals who are facing their first charge of a violation of § 14-227a. If an eligible individual completes the program, he or she is not convicted of a violation of § 14-227a. Therefore, in most cases, a person who is convicted for a second violation of § 14-227a within a ten year period has actually been charged with a violation of § 14-227a three times during that period.

[19] Although the dissent asserts that, "[u]nlike the appropriateness of attaching such consequences to crimes of violence or moral turpitude, a review of the collateral consequences of having been convicted of a felony leads us to conclude that all but two of those consequences would seem to be inappropriately applied to an individual solely on the basis of a qualifying conviction under § 14-227a." We disagree and conclude that whether a second conviction under § 14-227a within a ten year period should carry the collateral consequences of a felony conviction was within the province of the legislature and when it chose to make a second conviction of driving under the influence punishable by up to two years imprisonment; the legislature was aware of the ramifications of its decision. Moreover, as we explained previously herein; see footnote 18 of this opinion; due to the existence of the pretrial alcohol education program, in most cases, a person who is convicted for a second violation of § 14-227a within a ten year period has actually been charged with a violation of § 14-227a three times during that period. Accordingly, we are not persuaded that the legislature did not intend for an individual who was convicted of a second breach of § 14-227a within a ten year period to suffer the collateral consequences of a felony conviction.

[20] The dissent asserts that "at the time the Penal Code was enacted and 'motor vehicle violations' were excepted from the classification of criminal offenses, the dominant opinion of breaches of § 14-227a was that such conduct was not particularly reprehensible, and certainly was not considered 'criminal.' " We disagree. First, as we previously explained herein, breaches of § 14-227a have always carried a possible term of imprisonment. Second, in construing § 14-227a for the purposes of this case, we must look to the entire legislative history of the statute and not just the public policy in place at the time the statute was enacted. As we have explained, this legislative history clearly indicates that the legislature considers driving under the influence to be a serious criminal offense.

[21] Alabama (Ala. Code § 32-5A-191 [1999]); Alaska (Alaska Stat. § 28.35.030 [2008]); Arizona (Ariz. Rev. Stat. Ann. § 13-604 [2010]); Arkansas (Ark. Code Ann. §§ 5-65-111 and 5-65-112 [2005]); California (Cal. Veh. Code §§ 23152, 23550 and 40000.15 [Deering 2000]); Delaware (Del. Code. Ann. tit. 11, § 4202 [b] [2007], Del. Code. Ann. tit. 21, §§ 4177 [d] and 4177B [e] [2] [2005]); Florida (Fla. Stat. §§ 316.193 and 775.082 [2007]); Georgia (Ga. Code. Ann. § 40-6-391 [c] and [k] [2007]); Hawaii (Haw. Rev. Stat. § 291E-61 [b] [2007]); Idaho (Idaho Code Ann. §§ 18-8004C [1] [a] and [2] [a], 18-8005 and 18-8006 [2004]); Illinois (625 Ill. Comp. Stat. Ann. 5/11-501 [West 2008]; 730 Ill. Comp. Stat. Ann. 5/5-8-1 [a] [7] and 5/5-8-3 [a] [1] [West 2007]); Indiana (Ind. Code Ann. § 9-30-5-1 et seq. [LexisNexis 2004]; Ind. Code Ann. §§ 35-50-2-6 and

35-50-3-2 et seq. [LexisNexis 2009]); Iowa (Iowa Code Ann. § 321J.2 [2] and [3] [West 2005]); Kansas (Kan. Stat. Ann. § 8-1567 [2001]; Kan. Stat. Ann. § 21-4502 [1] [2007]); Kentucky (Ky. Rev. Stat. Ann. § 189A.010 [5] [LexisNexis 2009]); Louisiana (La. Rev. Stat. Ann. § 14:98 [2004]); Maryland (Md. Code Ann. Transp. §§ 21-902, 27-101 and 27-102 [LexisNexis 2009]); Massachusetts (Mass. Ann. Laws c. 90, § 24 [LexisNexis 2005]; Mass. Ann. Laws c. 274, § 1 [Law. Co-op. 1992]); Michigan (Mich. Comp. Laws Serv. § 257.625 [8] and [10] [LexisNexis 2010]); Minnesota (Minn. Stat. § 169A.20 et seq. [2008]); Mississippi (Miss. Code Ann. § 63-11-30 [Cum. Sup. 2010]); Missouri (Mo. Rev. Stat. §§ 577.010, 577.012, 577.023, 558.011 and 560.016 [2000]); Montana (Mont. Code Ann. §§ 61-8-401, 61-8-711 [1] and 61-8-714 [2007]); Nebraska (Neb. Rev. Stat. §§ 28-105 and 28-106 [1995]; Neb. Rev. Stat. § 60-6,196 et seq. [2007]); Nevada (Nev. Rev. Stat. §§ 193.120 and 484C.400 [2009]); New Hampshire (N.H. Rev. Stat. Ann. § 265-A:18 [Cum. Sup. 2009]); New Mexico (N.M. Stat. § 66-8-102 [2004]); New York (N.Y. Veh. & Traf. § 1193 [McKinney 1996]); North Carolina (N.C. Gen. Stat. § 20-138.5 [2009]); North Dakota (N.D. Cent. Code § 12.1-32-01 [1997]; N.D. Cent. Code § 39-08-01 [2008]); Ohio (Ohio Rev. Code Ann. § 2929.14, 2929.16, 2929.18 [B] [3], 2929.19 [C] and 2929.21 [2006]; Ohio. Rev. Code Ann. § 4511.99 [2008]); Oklahoma (Okla. Stat. tit. 47, § 11-902 [2007]); Oregon (Or. Rev. Stat. §§ 813.010. 161.605 and 161.615 [2007]); Pennsylvania (75 Pa. Const. Stat. Ann. §§ 3735.1, 3802, 3803 and 3804 [West 2006]); Rhode Island (R.I. Gen. Laws § 31-27-2 [2010]); South Carolina (S.C. Code Ann. § 16-1-10, 16-1-20, 16-1-90 [F] and 16-1-100 [2003]; S.C. Code Ann. §§ 56-5-2940 [2006]); South Dakota (S.D. Codified Laws §§ 22-6-1 and 22-6-2 [2006]; S.D. Codified Laws § 32-23-2 et seq. [2004]); Tennessee (Tenn. Code Ann. § 40-35-111 [2010]; Tenn. Code Ann. § 55-10-403 [Sup. 2010]); Texas (Tex. Penal Code Ann. §§ 12.21, 12.22, 12.34, 49.04 and 49.09 [West 2003]); Utah (Utah Code Ann. § 41-6a-505 [2005]); Vermont (Vt. Stat. Ann. tit. 13, § 1 [200]; Vt. Stat. Ann. tit. 23, § 1210 [2009]); Virginia (Va. Code Ann. §§ 18.2-10 [f], 18.2-11 [a] and 18.2-270 [2009]); West Virginia (W. Va. Code Ann. § 17C-5-2 [LexisNexis 2009]); Wisconsin (Wis. Stat. Ann. §§ 346.63, 346.65, 939.50 and 940.25 [West 2005]); and Wyoming (Wyo. Stat. Ann. §§ 6-10-101 and 31-5-233 [2009]).

[22] Idaho, Indiana, Maryland, New York and Oklahoma treat a second conviction for driving under the influence as a felony. As previously explained herein; see footnote 18 of this opinion; due to the presence of the pretrial alcohol education program, in most cases in Connecticut, a second conviction under § 14-227a usually indicates that the person has actually been arrested three times in a ten year period for a violation of § 14-227a.

[23] The dissent asserts that it is "unpersuaded that the choices of other states in this area are relevant to the present question; the majority has not pointed to any state with a comparable motor vehicle exception in their laws, meaning that the question of classifying operating a motor vehicle while under the influence in other states would be, as a matter of statute, a far simpler exercise." See footnote 31 of the dissenting opinion. As we have explained herein, the legislative history of § 14-227a demonstrates that many of the amendments to § 14-227a over the years have been intended to make our driving under the influence law consistent with the law of other states and federally recommended guidelines. Accordingly, whether other states have a motor vehicle exception is irrelevant. The only factor that is indicative of whether our legislature intended a second conviction for § 14-227a within a ten year period to be a felony is the fact that the vast majority of other states treat repeat offenses of driving under the influence as a felony, regardless of whether those states have a motor vehicle exception.

[24] In *State* v. *Harrison*, supra, 228 Conn. 763, this court noted: "We have previously held that [w]hat may or may not be a criminal offense for purposes of a particular statutory categorization is not necessarily determinative of whether it is a criminal offense for [other] purposes . . . . *State* v. *Guckian*, [226 Conn. 191, 198, 627 A.2d 407 (1993), quoting *State* v. *Kluttz*, supra, 9 Conn. App. 699]. We do not mechanistically apply [P]enal [C]ode definitions to a statute but interpret the language in a manner that implements the statute's purpose. See, e.g., [*State* v. *Guckian*, supra, 202] (motor vehicle violation is a crime for purposes of qualifying for drug treatment program); *State* v. *Dukes*, [supra, 209 Conn. 122] (motor vehicle violation is a crime for purposes of a reasonable search of occupant of stopped vehicle); see also *State* v. *Brown*, [supra, 22 Conn. App. 112] (motor vehicle violation is a violation of criminal laws for purposes of determining whether condition of probation has been violated); *State* v. *Kluttz*, [supra, 698–700] (negligent homicide with a motor vehicle, a motor vehicle violation, is an offense for purposes of the lesser included offense statute); accord *Illinois* v. *Vitale*,

447 U.S. 410, 100 S. Ct. 2260, 65 L. Ed. 2d 228 (1980) (traffic violation may be considered an offense for purposes of double jeopardy analysis). Additionally, the Appellate Court has noted that motor vehicle violations are treated as criminal offenses under the Practice Book rules governing procedure in criminal cases. *State* v. *Kluttz*, supra, 698 n.9." (Internal quotation marks omitted.)