SENATE DOCKET, NO. FILED ON: 1/14/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Robert L. Hedlund**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to enhancing Melanie's Law.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

|  |  |
| --- | --- |
| Name: | District/Address: |
| Robert L. Hedlund | Plymouth and Norfolk |

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act relative to enhancing Melanie's Law.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 24 (1)(a)(1) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting at the end of the first paragraph the following sentence:---

Any sentence imposed for the above offense shall not run concurrent with a sentence for any prior or subsequent conviction or assignment to an alcohol or controlled substance education program for any like offense in this Commonwealth or any other jurisdiction.

SECTION 2. Section 24 (1)(a)(1) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by deleting the fourth, fifth, sixth and seventh paragraphs and inserting the following paragraphs in their place:---

 If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-half years; provided, however, that the sentence imposed upon such person shall not be reduced to less than thirty days, nor suspended, nor shall any sentence run concurrent with a sentence for any prior or subsequent conviction for any like offense in this Commonwealth or any other jurisdiction, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served thirty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

      If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction because of a like offense two times preceding the date of conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, nor shall any sentence run concurrent with a sentence for any prior or subsequent conviction for any like offense in this Commonwealth or any other jurisdiction, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one hundred and fifty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

      If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times preceding the date of conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any sentence run concurrent with a sentence for any prior or subsequent conviction for any like offense in this Commonwealth or any other jurisdiction, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence; provided, further, that the commission of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

      If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense four or more times preceding the date of conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment for not less than two and one-half years or by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than twenty years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twenty-four months, nor suspended, nor shall any sentence run concurrent with a sentence for any prior or subsequent conviction for any like offense in this Commonwealth or any other jurisdiction, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served twenty-four months of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twenty-four months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

SECTION 3. Section 24 (1)(c)(1) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in line 5 with the following words:---

“at any time,”.

SECTION 4. Section 24 (1)(c)(2) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in line 4 with the following words:---

“at any time,”.

SECTION 5. Section 24 (1)(c)(3) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in line 4 with the following words:---

“, at any time,”.

SECTION 6. Section 24 (1)(c)(3½) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in line 4 with the following words:---

“, at any time,”.

SECTION 7. Section 24 (1)(c)(3¾) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in lines 4 and 5 with the following words:---

“, at any time,”.

SECTION 8. Section 24 (1)(c)(4) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the word, “corrobating” in the second to last line with the following word:---

 “corroborating”.

SECTION 9. Section 24 (1)(f)(1) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the word, “restistrar” in line 29 with the following word:---

 “registrar”.

SECTION 9. Section 24 (1)(f)(1) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by deleting the last paragraph containing the following language:

 No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.