

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:
Tarr, Bruce (SEN)

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 increasing protection against drivers under the influence of drugs

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Tarr, Bruce (SEN)	First Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT INCREASING PROTECTION AGAINST DRIVERS UNDER THE INFLUENCE OF DRUGS.

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

1 Section 1. This bill may be known as the “Drug Test Consent Bill”.

2

3 Section 2. Section 1 of Chapter 90 of the General Laws is hereby amended by inserting, after the
4 definition of “Department”, the following new paragraph:

5

6 “‘Drugs’, any substance except alcohol which, when ingested or otherwise introduced into the
7 body, impairs the ability of a person to drive, and whose impairing effect is known or should be
8 known to the ingesting person.

9

10 Section 3. Section 24(f) of Chapter 90 of the General Laws is hereby amended by striking the
11 subsection in its entirety and replacing it with the following paragraph:

12

13 “(f)

14

15 (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right
16 to access, or upon any way or in any place to which the public has access as invitees or licensees,
17 shall be deemed to have consented to submit to chemical tests or analyses of his breath, urine or
18 blood in the event that he is arrested for operating a motor vehicle while under the influence of
19 intoxicating liquor or drugs; provided, however, that no such person shall be deemed to have
20 consented to a blood test or tests unless such person has been brought for treatment to a medical
21 facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no
22 person who is afflicted with hemophilia or any other condition requiring the use of
23 anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test or tests
24 shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C,
25 having reasonable grounds to believe that the person arrested has been operating a motor vehicle
26 upon such way or place while under the influence of intoxicating liquor or drugs. If the person
27 arrested refuses to submit to any tests or analyses, after having been informed that his license or
28 permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be
29 suspended for a period of at least 180 days and up to a lifetime loss, for each refusal, no such test
30 or analysis shall be made absent an order of a court, and he shall have his license or right to
31 operate suspended in accordance with this paragraph for a period of 180 days for each refusal;
32 provided, that each suspension for a refusal under this section shall run consecutively; provided,
33 further, that any person who is under the age of 21 years or who has been previously convicted
34 of or assigned to an alcohol or controlled substance education, treatment, or rehabilitation
35 program for a violation under this section, subsection (a) of section 24G, operating a motor
36 vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while
37 under the influence of intoxicating liquor or drugs in violation of subsection (b) of said section

38 24G, section 24L or subsection (a) of section 8 of chapter 90B, section 8A or 8B of said chapter
39 90B, section 11 of chapter 90F, or section 13 1/2 of chapter 265 or a like violation by a court of
40 any other jurisdiction shall have his license or right to operate suspended forthwith for a period
41 of 3 years for each refusal; provided, further, that any person previously convicted of or assigned
42 to an alcohol or controlled substance education, treatment, or rehabilitation program for 2 such
43 violations shall have his license or right to operate suspended forthwith for a period of 5 years
44 for each refusal; and provided, further, that a person previously convicted of or assigned to an
45 alcohol or controlled substance education, treatment, or rehabilitation program for 3 or more
46 such violations shall have his license or right to operate suspended forthwith for life based upon
47 each refusal. If a person refuses to submit to any such tests or analyses after having been
48 convicted of or assigned to an alcohol or controlled substance education, treatment, or
49 rehabilitation program for a violation of section 24L, the registrar shall suspend his license or
50 right to operate for 10 years for each refusal unless a longer suspension has been ordered
51 pursuant to this section, in which case a suspension of 10 years shall run consecutively with the
52 previous suspension. If a person refuses to submit to any such tests or analyses after having been
53 convicted of or assigned to an alcohol or controlled substance education, treatment, or
54 rehabilitation program for a violation of subsection (a) of section 24G, operating a motor vehicle
55 with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under
56 the influence of intoxicating liquor in violation of subsection (b) of said section 24G, or section
57 13 1/2 of chapter 265, the registrar shall revoke his license or right to operate for life. If a person
58 refuses to take any test under this paragraph, the police officer shall:

59

60 (i) immediately, on behalf of the registrar, take custody of such person's license if said license
61 was issued by the commonwealth;

62 (ii) provide to each person who refuses a test, on behalf of the registrar, a written notification of
63 suspension in a format approved by the registrar; and

64 (iii) impound the vehicle being driven by the operator and arrange for the vehicle to be
65 impounded for a period of 12 hours after the operator's refusal, with the costs for the towing,
66 storage and maintenance of the vehicle to be borne by the operator.

67 The police officer before whom any such refusal was made shall, within 24 hours, prepare a
68 report of each refusal. Each report shall be made in a format approved by the registrar and shall
69 be made under the penalties of perjury by the police officer before whom such refusal was made.
70 Each report shall set forth the grounds for the officer's belief that the person arrested had been
71 operating a motor vehicle on a way or place while under the influence of intoxicating liquor or
72 drugs and shall state that such person had refused to submit to one or more chemical tests or
73 analyses when requested by the officer to do so, such refusal or refusals having been witnessed
74 by another person other than the defendant. Each report shall identify the police officer who
75 requested the chemical test or analysis and the other person witnessing the refusal. Each report
76 shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a
77 form, including electronic or otherwise, that the registrar deems appropriate. A license which has
78 been confiscated pursuant to this subparagraph shall be disposed of in a manner prescribed by
79 the registrar. The report shall constitute prima facie evidence of the facts set forth therein at any
80 administrative hearing regarding the suspension specified in this section.

81 The suspension of a license or right to operate shall become effective immediately upon receipt
82 of the notification of suspension from the police officer. A suspension for a refusal of either a
83 chemical test or analysis of breath, urine or blood shall run consecutively and not concurrently,
84 both as to any additional suspension periods arising from the same incident, and as to each other.

85 No license or right to operate shall be restored under any circumstances and no restricted or
86 hardship permits shall be issued during the suspension period imposed by this paragraph;
87 provided, however, that the defendant may immediately, upon the entry of a not guilty finding or
88 dismissal of all charges under this section, section 24G, section 24L, or section 13 1/2 of chapter
89 265, and in the absence of any other alcohol or drug related charges pending against said
90 defendant, apply for and be immediately granted a hearing before the court which took final
91 action on the charges for the purpose of requesting the restoration of said license. At said
92 hearing, there shall be a rebuttable presumption that said license be restored, unless the
93 commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said
94 license would likely endanger the public safety. In all such instances, the court shall issue written
95 findings of fact with its decision.

96 (2) If a person's blood alcohol percentage is not less than eight one-hundredths or the person is
97 under twenty-one years of age and his blood alcohol percentage is not less than two one-
98 hundredths, or if a person is under the influence of marijuana, narcotic drugs, depressants, or
99 stimulant substances, such police officer shall do the following:

100 (i) immediately and on behalf of the registrar take custody of such person's drivers license or
101 permit issued by the commonwealth;

102 (ii) provide to each person who refuses the test, on behalf of the registrar, a written notification
103 of suspension, in a format approved by the registrar;

104 (iii) impound the vehicle being driven by the operator and arrange for the vehicle to be
105 impounded for a period of 12 hours after the operator's test, with the costs for the towing, storage
106 and maintenance of the vehicle to be borne by the operator; and

107 (iii) immediately report action taken under this paragraph to the registrar. Each report shall be
108 made in a format approved by the registrar and shall be made under the penalties of perjury by
109 the police officer. Each report shall set forth the grounds for the officer's belief that the person
110 arrested has been operating a motor vehicle on any way or place while under the influence of
111 intoxicating liquor or drugs and that the person's blood alcohol percentage was not less than .08
112 or that the person was under the influence of drugs, or that the person was under 21 years of age
113 at the time of the arrest and whose blood alcohol percentage was not less than .02. The report
114 shall indicate that the person was administered one or more tests or analyses, that the operator
115 administering the tests or analyses was trained and certified in the administration of the tests or
116 analyses, that the test or tests were performed in accordance with the regulations and standards
117 promulgated by the secretary of public safety, that the equipment used for the test or tests was
118 regularly serviced and maintained and that the person administering the test or tests had every
119 reason to believe the equipment was functioning properly at the time the test of tests were
120 administered. Each report shall be sent forthwith to the registrar along with a copy of the notice
121 of intent to suspend, in a form, including electronic or otherwise, that the registrar deems
122 appropriate. A license or right to operate confiscated under this clause shall be forwarded to the
123 registrar forthwith.

124 The license suspension shall become effective immediately upon receipt by the offender of the
125 notice of intent to suspend from a police officer. The license to operate a motor vehicle shall
126 remain suspended until the disposition of the offense for which the person is being prosecuted,
127 but in no event shall such suspension pursuant to this subparagraph exceed 30 days.

128 In any instance where a defendant is under the age of twenty-one years and such evidence is
129 that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or
130 greater and upon the failure of any police officer pursuant to this subparagraph, to suspend or
131 take custody of the driver's license or permit issued by the commonwealth, and, in the absence of
132 a complaint alleging a violation of paragraph (a) of subdivision (1) or a violation of section
133 twenty-four G or twenty-four L, the registrar shall administratively suspend the defendant's
134 license or right to operate a motor vehicle upon receipt of a report from the police officer who
135 administered such chemical test or analysis of the defendant's blood pursuant to subparagraph
136 (1). Each such report shall be made on a form approved by the registrar and shall be sworn to
137 under the penalties of perjury by such police officer. Each such report shall set forth the grounds
138 for the officer's belief that the person arrested had been operating a motor vehicle on a way or
139 place while under the influence of intoxicating liquor and that such person was under twenty-one
140 years of age at the time of the arrest and whose blood alcohol percentage was two one-
141 hundredths or greater. Such report shall also state that the person was administered such a test or
142 analysis, that the operator administering the test or analysis was trained and certified in the
143 administration of such test, that the test was performed in accordance with the regulations and
144 standards promulgated by the secretary of public safety, that the equipment used for such test
145 was regularly serviced and maintained, and that the person administering the test had every
146 reason to believe that the equipment was functioning properly at the time the test was

147 administered. Each such report shall be endorsed by the police chief as defined in section one of
148 chapter ninety C, or by the person authorized by him, and shall be sent to the registrar along with
149 the confiscated license or permit not later than ten days from the date that such chemical test or
150 analysis of the defendant's blood was administered. The license to operate a motor vehicle shall
151 thereupon be suspended in accordance with section twenty-four P.

152 (g) Any person whose license, permit or right to operate has been suspended under
153 subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing
154 before the registrar which shall be limited to the following issues: (i) did the police officer have
155 reasonable grounds to believe that such person had been operating a motor vehicle while under
156 the influence of intoxicating liquor or drugs upon any way or in any place to which members of
157 the public have a right of access or upon any way to which members of the public have a right of
158 access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person
159 refuse to submit to such tests or analyses. If, after such hearing, the registrar finds on any one of
160 the said issues in the negative, the registrar shall forthwith reinstate such license, permit or right
161 to operate. The registrar shall create and preserve a record at said hearing for judicial review.
162 Within thirty days of the issuance of the final determination by the registrar following a hearing
163 under this paragraph, a person aggrieved by the determination shall have the right to file a
164 petition in the district court for the judicial district in which the offense occurred for judicial
165 review. The filing of a petition for judicial review shall not stay the revocation or suspension.
166 The filing of a petition for judicial review shall be had as soon as possible following the
167 submission of said request, but not later than thirty days following the submission thereof.
168 Review by the court shall be on the record established at the hearing before the registrar. If the
169 court finds that the department exceeded its constitutional or statutory authority, made an

170 erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a
171 determination which is unsupported by the evidence in the record, the court may reverse the
172 registrar's determination.

173 Any person whose license or right to operate has been suspended pursuant to subparagraph (2)
174 of paragraph (f) on the basis of chemical analysis of his breath, urine or blood may within ten
175 days of such suspension request a hearing and upon such request shall be entitled to a hearing
176 before the court in which the underlying charges are pending or if the individual is under the age
177 of twenty-one and there are no pending charges, in the district court having jurisdiction where
178 the arrest occurred, which hearing shall be limited to the following issues: whether a blood test
179 administered pursuant to paragraph (e) within a reasonable period of time after such chemical
180 analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood
181 was less than eight one-hundredths or, relative to such person under the age of twenty-one was
182 less than two one-hundredths; whether reasonable grounds existed for the arrest; and the
183 reliability or validity of the machines, personnel, and procedures used in the chemical analysis or
184 analyses. If the court finds that such a blood test shows that such percentage was less than eight
185 one-hundredths or, relative to such person under the age of twenty-one, that such percentage was
186 less than two one-hundredths, or that there did not exist reasonable grounds for the arrest, or that
187 the chemical analysis or analyses were not reliable or valid, the court shall restore such person's
188 license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the
189 criminal history systems board and the registrar of such restoration.

190 Section 4. Section 24(e) of Chapter 90 of the General Laws is hereby amended by striking the
191 subsection in its entirety and replacing it with the following paragraph:

192 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of
193 alcohol in the defendant's blood at the time of the alleged offense, or evidence of the presence of
194 drugs, as shown by chemical test or analysis of his blood, urine, or breath, shall be admissible
195 and deemed relevant to the determination of the question of whether such defendant was at such
196 time under the influence of intoxicating liquor or drugs; provided, however, that if such test or
197 analysis was made by or at the direction of a police officer, it was made with the consent of the
198 defendant, the results thereof were made available to him upon his request and the defendant was
199 afforded a reasonable opportunity, at his request and at his expense, to have another such test or
200 analysis made by a person or physician selected by him; and provided, further, that blood shall
201 not be withdrawn from any party for the purpose of such test or analysis except by a physician,
202 registered nurse or other qualified medical personnel. Evidence that the defendant failed or
203 refused to consent to such test or analysis shall not be admissible against him in a civil or
204 criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or
205 in any proceedings provided for in section twenty-four N. In the case of a test for the presence of
206 alcohol, if such evidence is that such percentage was five one-hundredths or less, there shall be a
207 permissible inference that such defendant was not under the influence of intoxicating liquor, and
208 he shall be released from custody forthwith, but the officer who placed him under arrest shall not
209 be liable for false arrest if such police officer had reasonable grounds to believe that the person
210 arrested had been operating a motor vehicle upon any such way or place while under the
211 influence of intoxicating liquor; provided, however, that in an instance where a defendant is
212 under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in
213 the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest
214 shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or

215 permit and take all other actions directed therein, if such evidence is that such percentage was
216 more than five one-hundredths but less than eight one-hundredths there shall be no permissible
217 inference. A certificate, signed and sworn to, by a chemist of the department of the state police or
218 by a chemist of a laboratory certified by the department of public health, which contains the
219 results of an analysis made by such chemist of the percentage of alcohol in such blood or urine or
220 of the presence drugs shall be prima facie evidence of the percentage of alcohol in such blood or
221 of the presence of drugs.