SENATE DOCKET, NO. 720 FILED ON: 1/20/2011

SENATE . . . . . No. 787

The Commonwealth of Massachusetts

PRESENTED BY:

Robert L. Hedlund

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:

An Act relative to enhancing Melanie's Law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert L. Hedlund	☐ *[District]* ☐
Stephen L. DiNatale	*3rd Worcester*
Thomas J. Calter	*12th Plymouth*
Bradley H. Jones, Jr.	*20th Middlesex*
James J. Dwyer	*30th Middlesex*
John F. Keenan	☐ *[District]* ☐
Elizabeth A. Poirier	*14th Bristol*
Bruce E. Tarr	☐ *[District]* ☐
Michael R. Knapik	☐ *[District]* ☐

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By Mr. Hedlund, a petition (accompanied by bill, Senate, No. 787) of Robert L. Hedlund, Stephen L. DiNatale, Thomas J. Calter, Bradley H. Jones, Jr. and other members of the General Court for legislation to enhance Melanie's Law. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1708* OF 2009-2010.]

The Commonwealth of Massachusetts

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

19 receive any deduction from his sentence for good conduct until such person has served thirty
20 days of such sentence; provided, further, that the commissioner of correction may, on the
21 recommendation of the warden, superintendent, or other person in charge of a correctional
22 institution, or the administrator of a county correctional institution, grant to an offender
23 committed under this subdivision a temporary release in the custody of an officer of such
24 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
25 ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to
26 engage in employment pursuant to a work release program; or for the purposes of an aftercare
27 program designed to support the recovery of an offender who has completed an alcohol or
28 controlled substance education, treatment or rehabilitation program operated by the department
29 of correction; and provided, further, that the defendant may serve all or part of such thirty day
30 sentence to the extent such resources are available in a correctional facility specifically
31 designated by the department of correction for the incarceration and rehabilitation of drinking
32 drivers. If the defendant has been previously convicted or assigned to an alcohol or controlled
33 substance education, treatment, or rehabilitation program by a court of the commonwealth, or
34 any other jurisdiction because of a like offense two times preceding the date of conviction or
35 assignment in the instant case, the defendant shall be punished by a fine of not less than one
36 thousand nor more than fifteen thousand dollars and by imprisonment for not less than one
37 hundred and eighty days nor more than two and one-half years or by a fine of not less than one
38 thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not
39 less than two and one-half years nor more than five years; provided, however, that the sentence
40 imposed upon such person shall not be reduced to less than one hundred and fifty days, nor shall
41 any sentence run concurrent with a sentence for any prior or subsequent conviction for any like
42 offense in this Commonwealth or any other jurisdiction, nor suspended, nor shall any such
43 person be eligible for probation, parole, or furlough or receive any deduction from his sentence
44 for good conduct until he shall have served one hundred and fifty days of such sentence;
45 provided, further, that the commissioner of correction may, on the recommendation of the
46 warden, superintendent, or other person in charge of a correctional institution, or the
47 administrator of a county correctional institution, grant to an offender committed under this
48 subdivision a temporary release in the custody of an officer of such institution for the following
49 purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain
50 emergency medical or psychiatric services unavailable at said institution; to engage in
51 employment pursuant to a work release program; or for the purposes of an aftercare program
52 designed to support the recovery of an offender who has completed an alcohol or controlled
53 substance education, treatment or rehabilitation program operated by the department of
54 correction; and provided, further, that the defendant may serve all or part of such one hundred
55 and fifty days sentence to the extent such resources are available in a correctional facility
56 specifically designated by the department of correction for the incarceration and rehabilitation of
57 drinking drivers. If the defendant has been previously convicted or assigned to an alcohol or
58 controlled substance education, treatment, or rehabilitation program by a court of the

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

82 If the defendant has been previously convicted or assigned to an alcohol or controlled
83 substance education, treatment or rehabilitation program by a court of the commonwealth or any
84 other jurisdiction because of a like offense four or more times preceding the date of conviction or
85 assignment in the instant case, the defendant shall be punished by a fine of not less than two
86 thousand nor more than fifty thousand dollars and by imprisonment for not less than two and
87 one-half years or by a fine of not less than two thousand nor more than fifty thousand dollars and
88 by imprisonment in the state prison for not less than two and one-half years nor more than
89 twenty years; provided, however, that the sentence imposed upon such person shall not be
90 reduced to less than twenty-four months, nor suspended, nor shall any sentence run concurrent
91 with a sentence for any prior or subsequent conviction for any like offense in this
92 Commonwealth or any other jurisdiction, nor shall any such person be eligible for probation,
93 parole, or furlough or receive any deduction from his sentence for good conduct until he shall
94 have served twenty-four months of such sentence; provided, further, that the commissioner of
95 correction may, on the recommendation of the warden, superintendent, or other person in charge
96 of a correctional institution, or the administrator of a county correctional institution, grant to an
97 offender committed under this subdivision a temporary release in the custody of an officer of
98 such institution for the following purposes only: to attend the funeral of a relative; to visit a

99 critically ill relative; to obtain emergency medical or psychiatric services unavailable at said
100 institution; to engage in employment pursuant to a work release program; or for the purposes of
101 an aftercare program designed to support the recovery of an offender who has completed an
102 alcohol or controlled substance education, treatment or rehabilitation program operated by the
103 department of correction; and provided, further, that the defendant may serve all or part of such
104 twenty-four months sentence to the extent that resources are available in a correctional facility
105 specifically designated by the department of correction for the incarceration and rehabilitation of
106 drinking drivers.

107 SECTION 3. Section 24 (1)(c)(1) of chapter 90 of the General Laws, as appearing in the
108 2008 Official Edition, is hereby amended by replacing the words "preceding the date of the
109 commission of the offense for which he has been convicted," in line 5 with the following words:-
110 "at any time,".

111 SECTION 4. Section 24 (1)(c)(2) of chapter 90 of the General Laws, as appearing in the
112 2008 Official Edition, is hereby amended by replacing the words "preceding the date of the
113 commission of the offense for which he has been convicted," in line 4 with the following words:-
114 "at any time,".

115 SECTION 5. Section 24 (1)(c)(3) of chapter 90 of the General Laws, as appearing in the
116 2008 Official Edition, is hereby amended by replacing the words "preceding the date of the
117 commission of the offense for which he has been convicted," in line 4 with the following words:-
118 ", at any time,".

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

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

127 SECTION 8. Section 24 (1)(c)(4) of chapter 90 of the General Laws, as appearing in the
128 2008 Official Edition, is hereby amended by replacing the word, "corrobating" in the second to
129 last line with the following word:--- "corroborating".

130 SECTION 9. Section 24 (1)(f)(1) of chapter 90 of the General Laws, as appearing in the
131 2008 Official Edition, is hereby amended by replacing the word, "restistrar" in line 29 with the
132 following word:- "registrar".

133 SECTION 9. Section 24 (1)(f)(1) of chapter 90 of the General Laws, as appearing in the
134 2008 Official Edition, is hereby amended by deleting the last paragraph containing the following
135 language:

136 No license or right to operate shall be restored under any circumstances and no restricted
137 or hardship permits shall be issued during the suspension period imposed by this paragraph;
138 provided, however, that the defendant may immediately, upon the entry of a not guilty finding or
139 dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter
140 265, and in the absence of any other alcohol related charges pending against said defendant,
141 apply for and be immediately granted a hearing before the court which took final action on the
142 charges for the purpose of requesting the restoration of said license. At said hearing, there shall
143 be a rebuttable presumption that said license be restored, unless the commonwealth shall
144 establish, by a fair preponderance of the evidence, that restoration of said license would likely
145 endanger the public safety. In all such instances, the court shall issue written findings of fact with
146 its decision.