

**HOUSE . . . . . No. 3798**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

*Colleen M. Garry*

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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 adoption of the accompanying bill:

An Act known as the "Drug Test Consent Bill" aka "Christina's Law".

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PETITION OF:

NAME:

*Colleen M. Garry*

DISTRICT/ADDRESS:

*36th Middlesex*

**HOUSE . . . . . No. 3798**

By Miss Garry of Dracut, a petition (subject to Joint Rule 12) of Colleen M. Garry relative to the penalties for operating a motor vehicle while under the influence of alcohol or controlled substances. The Judiciary.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act known as the "Drug Test Consent Bill" aka "Christina'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:*

1 Section 1. This bill may be known as the “Drug Test Consent Bill” aka “Christina’s  
2 Law”.

3 (1)(a)(1) Whoever, upon any way or in any place to which the public has a right of  
4 access, or upon any way or in any place to which members of the public have access as invitees  
5 or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of  
6 eight one-hundredths or greater, or while under the influence of any drug, which is defined as:  
7 any substance which when taken into the human body can impair the ability of the person to  
8 operate a motor vehicle safely, shall be punished by a fine of not less than five hundred nor more  
9 than five thousand dollars or by imprisonment for not more than two and one-half years, or both  
10 such fine and imprisonment.

11 Section 2. Section 24(f) of Chapter 90 of the General Laws is here by amended by  
12 striking the subsection in its entirety and replacing it with the following paragraph:

13 (f)( 1) Whoever operates a motor vehicle upon any way or in any place to which the  
14 public has right to access, or upon any way or in any place to which the public has access as  
15 invitees or licensees, shall be deemed to have consented to submit to chemical tests or analyses  
16 of his/her breath, urine or blood in the event that he/she is arrested for operating a motor vehicle  
17 while under the influence of intoxicating liquor, or of any substance which when taken into the  
18 human body can impair the ability of the person to operate a motor vehicle safely: provided,  
19 however, that no such person shall be deemed to have consented to a blood test or tests unless  
20 such person has been brought for treatment to a medical facility licensed under the provisions of

21 section 51 of chapter 111; and provided, further, that no person who is affected with hemophilia,  
22 or any other condition requiring the use of anticoagulants , shall be deemed to have consented to  
23 a withdrawal of blood. Such test or tests shall be administered at the direction of a police officer,  
24 as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person  
25 arrested has been operating a motor vehicle upon such way or place while under the influence of  
26 intoxicating liquor, or of any substance which when taken into the human body can impair the  
27 ability of the person to operate a vehicle safely. If the person arrested refuses to submit to  
28 chemical and/or physical tests required by the officer, after having been informed that his/her  
29 license or permit to operate motor vehicles or right to operate motor vehicles in the  
30 Commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for  
31 each refusal, no such test or analysis shall be made, except by order of the court, and he/she shall  
32 have his/her license or right to operate suspended in accordance with this paragraph for a period  
33 of 180 days; provided, that each suspension for a refusal under this section shall run  
34 consecutively; provided, further, that any person who is under the age of 21 years or who has  
35 been previously convicted of a violation under this section, subsection (a) of section 24G,  
36 operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths  
37 or greater, or while under the influence of intoxicating liquor, or of any substance which when  
38 taken into the human body impairs the ability of the person to operate a motor vehicle safely, in  
39 violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of  
40 chapter 90B, section 8A or 8B of said chapter 90B, or section 13 ½ of chapter 265 or a like  
41 violation by a court of any other jurisdiction shall have his/her license or right to operate  
42 suspended forthwith for a period of 3 years for each refusal; provided, further, that any person  
43 previously convicted of 2 such violations shall have his/her license or right to operate suspended  
44 forthwith for a period of 5 years for each refusal; and provided, further, that a person previously  
45 convicted of 3 or more such violations shall have his/her license or right to operate suspended  
46 forthwith for life based upon each refusal. If a person refuses to submit to any such tests or  
47 analyses after having been convicted of a violation of section 24L, the registrar shall suspend  
48 his/her license or right to operate for 10 years for each refusal. If a person refuses to submit to  
49 any such tests or analyses after having been convicted of a violation of subsection (a) of section  
50 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-  
51 hundredths or greater, or while under the influence of intoxicating liquor in violation of  
52 subsection (b) of said section 24G, or section 13 ½ of chapter 265, the registrar shall revoke  
53 his/her license or right to operate for life for each refusal. If a person refuses to take any test  
54 under this paragraph, the police shall:

55 i. Immediately, on behalf of the registrar, take custody of such person's license or  
56 right to operate issued by the Commonwealth.

57 ii. Provide to each person who refuses a test, on behalf of the registrar, a written  
58 notification of suspension in a format approved by the registrar; and

59           iii.       Impound the vehicle being driven by the operator and arrange for the vehicle to be  
60 impounded for a period of 12 hours after the operator's refusal, with the costs for the towing,  
61 storage and maintenance of the vehicle to be borne by the operator.

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

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

82           No license or right to operate shall be restored under any circumstances and no restricted  
83 or hardship permits shall be issued during the suspension period imposed by this paragraph;  
84 provided, however, that the defendant may immediately upon the entry of a not guilty finding or  
85 dismissal of all charges under this section, section 24G, section 24L, or section 13 ½ of chapter  
86 265, and in the absence of any other alcohol or drug related charges pending against said  
87 defendant, apply for and be immediately granted a hearing before the court which took final  
88 action on the charges for the purpose of requesting the restoration of said license. At said  
89 hearing, there shall be a rebuttable presumption that said license be restored, unless the  
90 Commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said  
91 license would likely endanger the public safety. In all such instances, the court shall issue  
92 written findings of fact with its decision.

93           (2) If a person's blood alcohol percentage is not less than eight one-hundredths, or the  
94 person is under the age of 21 years and his/her blood alcohol percentage is not less than two one-  
95 hundredths, or if a person is under the influence of any substance which when taken into the

96 human body can impair the ability of the person to operate a motor vehicle safely, such police  
97 officer shall do the following:

98 i. Immediately and on behalf of the registrar take custody of such person's drivers'  
99 license or permit issued by the Commonwealth:

100 ii. Provide to each person who refuses the test, on behalf of the registrar, a written  
101 notification of suspension, in a format approved by the registrar; and

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

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

125 In any instance where a defendant is under the age of 21 years and such evidence is that  
126 the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater,  
127 and upon the failure of any police officer pursuant to this subparagraph to suspend or take  
128 custody of the driver's license or permit issued by the Commonwealth, and, in the absence of a  
129 complaint alleging a violation of paragraph (a) of subdivision (1) or a violation of section 24G or  
130 24L, the registrar shall administratively suspend the defendant's license or right to operate a  
131 motor vehicle upon receipt of a report from the police officer who administered such chemical  
132 test or analysis of the defendant's blood pursuant to subparagraph (1). Each such report shall be

133 made on a form approved by the registrar and shall be sworn to under the penalties of perjury by  
134 such police officer. Each such report shall set forth the grounds for the officer's belief that the  
135 person arrested had been operating a motor vehicle on a way or place while under the influence  
136 of intoxicating liquor and that such person was under the age of 21 years at the time of the arrest  
137 and whose blood alcohol percentage was two one-hundredths or greater. Such report shall also  
138 state that the person was administered such a test or analysis, that the operator administering the  
139 test or analysis was trained and certified in the administration of such test, that the test was  
140 performed in accordance with the regulation and standards promulgated by the secretary of  
141 public safety, that the equipment used for such test was regularly service and maintained, and the  
142 person administering the test had every reason to believe that the equipment was functioning  
143 properly at the time the test was administered. Each such report shall be endorsed by the police  
144 chief as defined in section 1 of chapter 90C, or by the person authorized by him, and shall be  
145 sent to the registrar along with the confiscated license or permit not later than ten days from the  
146 date that such chemical test or analysis of the defendant's blood was administered. The license to  
147 operate a motor vehicle shall thereupon be suspended in accordance with section 24P.

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

170 Any person whose license or right to operate has been suspended pursuant to  
171 subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath, urine or blood

172 may within ten days of such suspension request a hearing and upon such request shall be entitled  
173 to a hearing before the court in which the underlying charges are pending or if the individual is  
174 under the age of 21 years and there are no pending charges , in the district court having  
175 jurisdiction where the arrest occurred, which hearing shall be limited to the following issue;  
176 whether a blood test administered pursuant to paragraph (e) within a reasonable period of time  
177 after such chemical analysis of his/her breath, shows that the percentage by weight, of alcohol in  
178 such person's blood was less than eight one-hundredths or, relative to such person under the age  
179 of 21 years was less than two one-hundredths, if the court finds that such a blood test shows that  
180 such percentage was less than eight one hundredths or, relative to such person under the age of  
181 21 years, that such percentage was less than two hundredth's, the court shall restore such person's  
182 license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the  
183 criminal history systems board and the registrar of such restoration.

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

186 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by  
187 weight, of alcohol in the defendant's blood at the time of the alleged offense, or evidence of the  
188 presence of any substance which when taken into the human body can impair the ability of the  
189 person to operate a motor vehicle safely, as shown by chemical test or analysis of his/her blood  
190 or as indicated by a chemical test or analysis of his/her breath, shall be admissible and deemed  
191 relevant to the determination of the question of whether such defendant was at such time under  
192 the influence of intoxicating liquor, or any substance which when taken into the human body can  
193 impair the ability of the person to operate a motor vehicle safely, provided, however, that if such  
194 test or analysis was made by or at the direction of a police officer, it was made with the consent  
195 of the defendant, the results thereof were made available to him/her upon his/her request and the  
196 defendant was afforded a reasonable opportunity, at his/her request and at his/her expense, to  
197 have another such test or analysis made by a person or physician selected by him/her; and  
198 provided further, that blood shall not be withdrawn from any party for the purpose of such test or  
199 analysis except by a physician, registered nurse or certified medical technician. Evidence that the  
200 defendant failed or refused to consent to such a test or analysis shall not be admissible against  
201 him/her in a civil or criminal proceeding, but shall be admissible in any action taken by the  
202 registrar under paragraph (f) or in any proceedings provided for in section 24N. In the case of a  
203 test for the presence of alcohol, if such evidence is that such percentage was five one-hundredths  
204 or less, there shall be a permissible inference that such defendant was not under the influence of  
205 intoxicating liquor, and he/she shall be released from custody forthwith, but the officer who  
206 placed him/her under arrest shall not be liable for false arrest if such police officer had  
207 reasonable grounds to believe that the person arrested had been operating a motor vehicle upon  
208 any such way or place while under the influence of intoxicating liquor; provided however, that in  
209 an instance where a defendant is under the age of 21 years and such evidence is that the  
210 percentage, by weight, of alcohol in the defendant's blood is two one-hundredths greater, the

211 officer who placed him/her under arrest shall, in accordance with subparagraph (2) of paragraph  
212 (f), suspend such defendant's license or permit and take all other actions directed therein, if such  
213 evidence is that such percentage was more than five one-hundredths but less than eight one-  
214 hundredths there shall be no permissible inference. A certificate signed and sworn to, by a  
215 chemist of the department of the state police or by a chemist of a laboratory certified by the  
216 department of public health, which contains the results of an analysis made by such chemist of  
217 the percentage of alcohol in such blood or of the presence of any substance which when taken  
218 into the human body can impair the ability of the person to operate a motor vehicle safely, shall  
219 be prima facie evidence of the percentage of alcohol in such blood, or of the presence of any  
220 substance which when taken into the human body can impair the ability of the person to operate  
221 a motor vehicle safely.