

# SENATE . . . . . No. 1888

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***Bruce E. Tarr***

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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 increasing protection against drivers under the influence of drugs.

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PETITION OF:

| NAME:                         | DISTRICT/ADDRESS:                   |
|-------------------------------|-------------------------------------|
| <i>Bruce E. Tarr</i>          | <i>First Essex and Middlesex</i>    |
| <i>Bradford R. Hill</i>       | <i>4th Essex</i>                    |
| <i>Viriato M. deMacedo</i>    | <i>Plymouth and Barnstable</i>      |
| <i>Robert L. Hedlund</i>      | <i>Plymouth and Norfolk</i>         |
| <i>Donald F. Humason, Jr.</i> | <i>Second Hampden and Hampshire</i> |

# SENATE . . . . . No. 1888

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By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1888) of Bruce E. Tarr, Bradford R. Hill, Viriato M. deMacedo, Robert L. Hedlund and others for legislation to increase protection against drivers under the influence of drugs. Transportation.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1708 OF 2013-2014.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

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. Subsection (e) of section 24 of chapter 90 of the General Laws, as  
2     appearing in the 2014 Official Edition, is hereby amended by striking the subsection in its  
3     entirety and replacing it with the following:-

4           (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by  
5     weight, of alcohol in the defendant's blood at the time of the alleged offense, or evidence of the  
6     presence of drugs, as shown by chemical test or analysis of his blood, urine, breath or other  
7     bodily substance, shall be admissible and deemed relevant to the determination of the question of  
8     whether such defendant was at such time under the influence of intoxicating liquor or drugs;  
9     provided, however, that if such test or analysis was made by or at the direction of a police  
10    officer, it was made with the consent of the defendant, the results thereof were made available to

11 him upon his request and the defendant was afforded a reasonable opportunity, at his request and  
12 at his expense, to have another such test or analysis made by a person or physician selected by  
13 him; and provided, further, that blood shall not be withdrawn from any party for the purpose of  
14 such test or analysis except by a physician, registered nurse or other qualified medical personnel.  
15 Evidence that the defendant failed or refused to consent to such test or analysis shall not be  
16 admissible against him in a civil or criminal proceeding, but shall be admissible in any action by  
17 the registrar under paragraph (f) or in any proceedings provided for in section twenty-four N. In  
18 the case of a test for the presence of alcohol, if such evidence is that such percentage was five  
19 one-hundredths or less, there shall be a permissible inference that such defendant was not under  
20 the influence of intoxicating liquor, and he shall be released from custody forthwith, but the  
21 officer who placed him under arrest shall not be liable for false arrest if such police officer had  
22 reasonable grounds to believe that the person arrested had been operating a motor vehicle upon  
23 any such way or place while under the influence of intoxicating liquor; provided, however, that  
24 in an instance where a defendant is under the age of twenty-one and such evidence is that the  
25 percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the  
26 officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f),  
27 suspend such defendant's license or permit and take all other actions directed therein, if such  
28 evidence is that such percentage was more than five one-hundredths but less than eight one-  
29 hundredths there shall be no permissible inference. A certificate, signed and sworn to, by a  
30 chemist of the department of the state police or by a chemist of a laboratory certified by the  
31 department of public health, which contains the results of an analysis made by such chemist of  
32 the percentage of alcohol in such blood or urine or of the presence drugs shall be prima facie  
33 evidence of the percentage of alcohol in such blood or of the presence of drugs.

SECTION 2. Subsection (f) of section 24 of chapter 90 of the General Laws, as so appearing, is hereby amended by striking, in lines 514-515, the words “breath or blood” and inserting in place thereof the following words:-

“breath, blood or other bodily substance”; and

by inserting, after the word “liquor” in line 516, the following words:-

“or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue”; and

by inserting, after the word “liquor” in line 526, the following words:-

“or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue”.

SECTION 3. Said subsection (f) of section 24 of said chapter 90, as so appearing, is hereby further amended by inserting, after the word “made” in line 531, the following words:-

“absent a court order,”

SECTION 4. Said subsection (f) of section 24 of said chapter 90, as so appearing, is hereby further amended by inserting, after the word “days” in line 532, the following words:-

“for each refusal, provided, that each suspension for a refusal under this section shall run consecutively”

SECTION 5. Said subsection (f) of section 24 of said chapter 90, as so appearing, is hereby further amended by inserting, after the word “years” in line 544, the following words:-

for each refusal unless a longer suspension has been ordered pursuant to this section, in which case a suspension of 10 years shall run consecutively with the previous suspension.

SECTION 6. Said subsection (f) of section 24 of said chapter 90, as so appearing, is hereby further amended by inserting after the word “liquor”, in line 557, the following words:-

“or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue”; and

by inserting after the word “alcohol”, in line 576, the following words:-

“or marijuana, narcotic drug, depressant, stimulant, or glue vapor”; and

by inserting after the word “one-hundredths,” in line 608, the following words:-

“or if a person is under the influence of marijuana, narcotic drugs, depressants, or stimulant substances,”

SECTION 7. Subparagraph 2 of subsection (f) of section 24 of said chapter 90, as so appearing, is hereby amended by striking the word “and” in line 616 and by inserting after clause (ii) the following clause:-

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

by striking the figure (iii) in line 617 and inserting in place thereof:

“(iv)”.

SECTION 8. Clause (iii) of said subparagraph 2 of subsection (f) of section 24 of said chapter 90, as so appearing, is hereby further amended by striking the sentence, which begins on line 620 and ends with the figure “.02” in line 625, and inserting in place thereof the following sentence:-

“Each report shall set forth the grounds for the officer’s belief that the person arrested has been operating a motor vehicle on any way or place while under the influence of intoxicating liquor or drugs and that the person’s blood alcohol percentage was not less than .08 or that the person was under the influence of drugs, or that the person was under 21 years of age at the time of the arrest and whose blood alcohol percentage was not less than .02.,” and

further by striking the word “a” in line 626 and inserting in place thereof the following:-

“one or more”.

SECTION 9. Subsection(g) of section 24 of chapter 90, as so appearing, is hereby amended by inserting after the word “liquor”, in line 681, the following words:-

“or drugs”.

and by striking the word “breath”, in line 705, and inserting in place thereof the following words:-

“breath, blood or other bodily substance”.

and by striking the word “one-hundredths.”, in line 715, and inserting in place thereof the following words:-

91           one-hundredths; whether reasonable grounds existed for the arrest; and the reliability or  
92   validity of the machines, personnel, and procedures used in the chemical analysis or analyses.”

93           and by inserting after the word “one-hundredths,” in line 716, the following words:-

94           “or that there did not exist reasonable grounds for the arrest, or that the chemical analysis  
95   or analyses were not reliable or valid,”