SENATE DOCKET, NO. 894 FILED ON: 1/13/2009

SENATE . . . . . No. 1819

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to combat recidivist drunk driving..

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. Chapter 90, Section 23, paragraph two, is amended by striking the entire paragraph and replacing it with the following:

"Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of section twenty-four, or pursuant to section twenty-four D, twenty-four E, twenty-four G, twenty-four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or pursuant to a violation of section eight A or section eight B of chapter ninety B, or after notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate, or after his license to operate has been suspended or revoked pursuant to a substantially similar law in another state, or, in the case of a person operating a motor vehicle without obtaining a license, any person convicted of operating a motor vehicle after a violation of paragraph (a) of subdivision (1) of section twenty-four, or pursuant to section twenty-four D, twenty-four E, twenty-four G, twenty-

four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or pursuant to a violation of section eight A or section eight B of chapter ninety B, or after a violation of a substantially similar law in another state, shall be punished by a fine of not less than three thousand and not more than twenty thousand dollars and by imprisonment in a house of correction for not less than one hundred and twenty days and not more than five years; provided, however, that the sentence of imprisonment imposed upon such person shall not be reduced to less than one hundred and twenty days, 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 twenty 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 of the administrator of a county correctional institution, grant to an offender committed under this paragraph 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; or to engage in employment pursuant to a work release program. The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this paragraph. Prosecutions commenced under this paragraph shall not be placed on file or continued without a finding."

Section 2. Chapter 90, Section 24(1)(a)(1), paragraphs 4 through 7 shall be stricken and replaced by the following paragraphs:

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 the commission of the offense

for which he has been convicted, the defendant shall be punished by a fine of not less than nine hundred nor more than fifteen thousand dollars and by imprisonment for not less than ninety days nor more than three and three-quarters years; provided, however, that the sentence imposed upon such person shall not be reduced to less than forty-five days, 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 such person has served forty-five days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; 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 forty-five 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 the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand seven hundred and fifty nor more than twenty-five thousand dollars and by imprisonment for not less than three hundred days nor more than four and one-half years or by a fine of not less than one thousand seven hundred and fifty nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than four and one-half years nor more than nine years; provided, however, that the sentence imposed upon such person shall not be reduced to less than two hundred and fifty days, 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 two hundred and fifty days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; 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 two 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 the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than three thousand nor more than fifty thousand dollars and by imprisonment for not less than four years nor more than five years, or by a fine of not less than three thousand nor more than fifty thousand dollars and by imprisonment in the state prison for not less than five years nor more than ten years; provided, however, that the sentence imposed upon such person shall not be reduced to less than two years, 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 such person has served two years of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; 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 two years 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 the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than five thousand nor more than one hundred and twenty-five thousand dollars and by imprisonment for not less than six and one-half years or by a fine of not less than five thousand nor more than one hundred and twenty-five thousand dollars and by imprisonment in the state prison for not less than six and one-half years nor more than twelve and one-half years; provided, however, that the sentence imposed upon such person shall not be reduced to less than five years, 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 five years of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; 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 five years 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. Chapter 90 Section 24(1)(a)(1), paragraph 1 shall be amended by adding "but in no case shall the defendant receive less than ten days' imprisonment."