

**SENATE . . . . . No. 1819**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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:*

1 SECTION 1. Chapter 90, Section 23, paragraph two, is amended by striking the entire  
2 paragraph and replacing it with the following:

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

15 four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or  
16 pursuant to a violation of section eight A or section eight B of chapter ninety B, or after a  
17 violation of a substantially similar law in another state, shall be punished by a fine of not less  
18 than three thousand and not more than twenty thousand dollars and by imprisonment in a house  
19 of correction for not less than one hundred and twenty days and not more than five years;  
20 provided, however, that the sentence of imprisonment imposed upon such person shall not be  
21 reduced to less than one hundred and twenty days, nor suspended, nor shall any such person be  
22 eligible for probation, parole, or furlough or receive any deduction from his sentence for good  
23 conduct until he shall have served one hundred and twenty days of such sentence; provided,  
24 further, that the commissioner of correction may, on the recommendation of the warden,  
25 superintendent or other person in charge of a correctional institution, or of the administrator of a  
26 county correctional institution, grant to an offender committed under this paragraph a temporary  
27 release in the custody of an officer of such institution for the following purposes only: to attend  
28 the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or  
29 psychiatric services unavailable at said institution; or to engage in employment pursuant to a  
30 work release program. The provisions of section eighty-seven of chapter two hundred and  
31 seventy-six shall not apply to any person charged with a violation of this paragraph. Prosecutions  
32 commenced under this paragraph shall not be placed on file or continued without a finding.”

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

35 If the defendant has been previously convicted or assigned to an alcohol or controlled  
36 substance education, treatment, or rehabilitation program by a court of the commonwealth or any  
37 other jurisdiction because of a like violation preceding the date of the commission of the offense

38 for which he has been convicted, the defendant shall be punished by a fine of not less than nine  
39 hundred nor more than fifteen thousand dollars and by imprisonment for not less than ninety  
40 days nor more than three and three-quarters years; provided, however, that the sentence imposed  
41 upon such person shall not be reduced to less than forty-five days, nor suspended, nor shall any  
42 such person be eligible for probation, parole, or furlough or receive any deduction from his  
43 sentence for good conduct until such person has served forty-five days of such sentence, unless  
44 otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission  
45 established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-  
46 three; provided, further, that the commissioner of correction may, on the recommendation of the  
47 warden, superintendent, or other person in charge of a correctional institution, or the  
48 administrator of a county correctional institution, grant to an offender committed under this  
49 subdivision a temporary release in the custody of an officer of such institution for the following  
50 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain  
51 emergency medical or psychiatric services unavailable at said institution; to engage in  
52 employment pursuant to a work release program; or for the purposes of an aftercare program  
53 designed to support the recovery of an offender who has completed an alcohol or controlled  
54 substance education, treatment or rehabilitation program operated by the department of  
55 correction; and provided, further, that the defendant may serve all or part of such forty-five day  
56 sentence to the extent such resources are available in a correctional facility specifically  
57 designated by the department of correction for the incarceration and rehabilitation of drinking  
58 drivers.

59           If the defendant has been previously convicted or assigned to an alcohol or controlled  
60 substance education, treatment, or rehabilitation program by a court of the commonwealth, or

61 any other jurisdiction because of a like offense two times preceding the date of the commission  
62 of the offense for which he has been convicted, the defendant shall be punished by a fine of not  
63 less than one thousand seven hundred and fifty nor more than twenty-five thousand dollars and  
64 by imprisonment for not less than three hundred days nor more than four and one-half years or  
65 by a fine of not less than one thousand seven hundred and fifty nor more than twenty-five  
66 thousand dollars and by imprisonment in the state prison for not less than four and one-half years  
67 nor more than nine years; provided, however, that the sentence imposed upon such person shall  
68 not be reduced to less than two hundred and fifty days, nor suspended, nor shall any such person  
69 be eligible for probation, parole, or furlough or receive any deduction from his sentence for good  
70 conduct until he shall have served two hundred and fifty days of such sentence, unless otherwise  
71 sentenced to an intermediate sanction as promulgated by the sentencing commission established  
72 in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three;  
73 provided, further, that the commissioner of correction may, on the recommendation of the  
74 warden, superintendent, or other person in charge of a correctional institution, or the  
75 administrator of a county correctional institution, grant to an offender committed under this  
76 subdivision a temporary release in the custody of an officer of such institution for the following  
77 purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain  
78 emergency medical or psychiatric services unavailable at said institution; to engage in  
79 employment pursuant to a work release program; or for the purposes of an aftercare program  
80 designed to support the recovery of an offender who has completed an alcohol or controlled  
81 substance education, treatment or rehabilitation program operated by the department of  
82 correction; and provided, further, that the defendant may serve all or part of such two hundred  
83 and fifty days sentence to the extent such resources are available in a correctional facility

84 specifically designated by the department of correction for the incarceration and rehabilitation of  
85 drinking drivers.

86           If the defendant has been previously convicted or assigned to an alcohol or controlled  
87 substance education, treatment, or rehabilitation program by a court of the commonwealth or any  
88 other jurisdiction because of a like offense three times preceding the date of the commission of  
89 the offense for which he has been convicted the defendant shall be punished by a fine of not less  
90 than three thousand nor more than fifty thousand dollars and by imprisonment for not less than  
91 four years nor more than five years, or by a fine of not less than three thousand nor more than  
92 fifty thousand dollars and by imprisonment in the state prison for not less than five years nor  
93 more than ten years; provided, however, that the sentence imposed upon such person shall not be  
94 reduced to less than two years, nor suspended, nor shall any such person be eligible for  
95 probation, parole, or furlough or receive any deduction from his sentence for good conduct until  
96 such person has served two years of such sentence, unless otherwise sentenced to an intermediate  
97 sanction as promulgated by the sentencing commission established in chapter four hundred and  
98 thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the  
99 commissioner of correction may, on the recommendation of the warden, superintendent, or other  
100 person in charge of a correctional institution, or the administrator of a county correctional  
101 institution, grant to an offender committed under this subdivision a temporary release in the  
102 custody of an officer of such institution for the following purposes only: to attend the funeral of a  
103 relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services  
104 unavailable at said institution; to engage in employment pursuant to a work release program; or  
105 for the purposes of an aftercare program designed to support the recovery of an offender who has  
106 completed an alcohol or controlled substance education, treatment or rehabilitation program

107 operated by the department of correction; and provided, further, that the defendant may serve all  
108 or part of such two years sentence to the extent that resources are available in a correctional  
109 facility specifically designated by the department of correction for the incarceration and  
110 rehabilitation of drinking drivers.

111           If the defendant has been previously convicted or assigned to an alcohol or controlled  
112 substance education, treatment or rehabilitation program by a court of the commonwealth or any  
113 other jurisdiction because of a like offense four or more times preceding the date of the  
114 commission of the offense for which he has been convicted, the defendant shall be punished by a  
115 fine of not less than five thousand nor more than one hundred and twenty-five thousand dollars  
116 and by imprisonment for not less than six and one-half years or by a fine of not less than five  
117 thousand nor more than one hundred and twenty-five thousand dollars and by imprisonment in  
118 the state prison for not less than six and one-half years nor more than twelve and one-half years;  
119 provided, however, that the sentence imposed upon such person shall not be reduced to less than  
120 five years, nor suspended, nor shall any such person be eligible for probation, parole, or furlough  
121 or receive any deduction from his sentence for good conduct until he shall have served five years  
122 of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the  
123 sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen  
124 hundred and ninety-three; provided, further, that the commissioner of correction may, on the  
125 recommendation of the warden, superintendent, or other person in charge of a correctional  
126 institution, or the administrator of a county correctional institution, grant to an offender  
127 committed under this subdivision a temporary release in the custody of an officer of such  
128 institution for the following purposes only: to attend the funeral of a relative; to visit a critically  
129 ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to

130 engage in employment pursuant to a work release program; or for the purposes of an aftercare  
131 program designed to support the recovery of an offender who has completed an alcohol or  
132 controlled substance education, treatment or rehabilitation program operated by the department  
133 of correction; and provided, further, that the defendant may serve all or part of such five years  
134 sentence to the extent that resources are available in a correctional facility specifically designated  
135 by the department of correction for the incarceration and rehabilitation of drinking drivers.

136           Section 3. Chapter 90 Section 24(1)(a)(1), paragraph 1 shall be amended by adding “but  
137 in no case shall the defendant receive less than ten days’ imprisonment.”