

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 adoption of the accompanying bill:

An Act relative to enhancing Melanie's Law.

PETITION OF:

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

SENATE No. 787

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

In the Year Two Thousand Eleven

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:

1 SECTION 1. Section 24 (1)(a)(1) of chapter 90 of the General Laws, as appearing in the
2 2008 Official Edition, is hereby amended by inserting at the end of the first paragraph the
3 following sentence:--- Any sentence imposed for the above offense shall not run concurrent with
4 a sentence for any prior or subsequent conviction or assignment to an alcohol or controlled
5 substance education program for any like offense in this Commonwealth or any other
6 jurisdiction.

7 SECTION 2. Section 24 (1)(a)(1) of chapter 90 of the General Laws, as appearing in the
8 2008 Official Edition, is hereby amended by deleting the fourth, fifth, sixth and seventh
9 paragraphs and inserting the following paragraphs in their place:---

10 If the defendant has been previously convicted or assigned to an alcohol or controlled
11 substance education, treatment, or rehabilitation program by a court of the commonwealth or any
12 other jurisdiction because of a like violation preceding the date of conviction or assignment in
13 the instant case, the defendant shall be punished by a fine of not less than six hundred nor more
14 than ten thousand dollars and by imprisonment for not less than sixty days nor more than two
15 and one-half years; provided, however, that the sentence imposed upon such person shall not be
16 reduced to less than thirty days, nor suspended, nor shall any sentence run concurrent with a
17 sentence for any prior or subsequent conviction for any like offense in this Commonwealth or
18 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

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 conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, 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 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 fifty 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 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 one 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 conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, 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 receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence; provided, further, that the commission 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 twelve months 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 conviction or assignment in the instant case, the defendant shall be punished by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment for not less than two and one-half years or by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than twenty years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twenty-four months, 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 receive any deduction from his sentence for good conduct until he shall have served twenty-four months 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 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

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,”.

SECTION 7. Section 24 (1)(c)(3³/₄) of chapter 90 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by replacing the words “preceding the date of the commission of the offense for which he has been convicted,” in lines 4 and 5 with the following words:- “, at any time,”.

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

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

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

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall 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.