

# SENATE . . . . . No. 885

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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 to combat recidivist drunk driving..

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

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*Bruce E. Tarr*

*Benjamin Swan*

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*11th Hampden*

# SENATE . . . . . No. 885

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By Mr. Tarr, a petition (accompanied by bill, Senate, No. 885) of Bruce E. Tarr and Benjamin Swan for legislation to combat recidivist drunk driving. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1819 OF 2009-2010.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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  
4 has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of  
5 section twenty-four, or pursuant to section twenty-four D, twenty-four E, twenty-four G, twenty-  
6 four L, or twenty-four N of this chapter, or pursuant to subsection (a) of section eight, or  
7 pursuant to a violation of section eight A or section eight B of chapter ninety B, or after notice of  
8 such suspension or revocation of his right to operate a motor vehicle without a license has been  
9 issued and received by such person or by his agent or employer, and prior to the restoration of  
10 such license or right to operate or the issuance to him of a new license to operate, or after his  
11 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:

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

80 program designed to support the recovery of an offender who has completed an alcohol or  
81 controlled substance education, treatment or rehabilitation program operated by the department  
82 of 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  
87 controlled substance education, treatment, or rehabilitation program by a court of the  
88 commonwealth or any other jurisdiction because of a like offense three times preceding the date  
89 of the commission of the offense for which he has been convicted the defendant shall be  
90 punished by a fine of not less than three thousand nor more than fifty thousand dollars and by  
91 imprisonment for not less than four years nor more than five years, or by a fine of not less than  
92 three thousand nor more than fifty thousand dollars and by imprisonment in the state prison for  
93 not less than five years nor more than ten years; provided, however, that the sentence imposed  
94 upon such person shall not be reduced to less than two years, nor suspended, nor shall any such  
95 person be eligible for probation, parole, or furlough or receive any deduction from his sentence  
96 for good conduct until such person has served two years of such sentence, unless otherwise  
97 sentenced to an intermediate sanction as promulgated by the sentencing commission established  
98 in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three;  
99 provided, further, that the commissioner of correction may, on the recommendation of the  
100 warden, superintendent, or other person in charge of a correctional institution, or the  
101 administrator of a county correctional institution, grant to an offender committed under this  
102 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

126 person in charge of a correctional institution, or the administrator of a county correctional  
127 institution, grant to an offender committed under this subdivision a temporary release in the  
128 custody of an officer of such institution for the following purposes only: to attend the funeral of a  
129 relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services  
130 unavailable at said institution; to engage in employment pursuant to a work release program; or  
131 for the purposes of an aftercare program designed to support the recovery of an offender who has  
132 completed an alcohol or controlled substance education, treatment or rehabilitation program  
133 operated by the department of correction; and provided, further, that the defendant may serve all  
134 or part of such five years sentence to the extent that resources are available in a correctional  
135 facility specifically designated by the department of correction for the incarceration and  
136 rehabilitation of drinking drivers.

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