

SENATE No. 1708

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Michael R. Knapik</i>	<i>Second Hampden and Hampshire</i>

SENATE No. 1708

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1708) of Bruce E. Tarr, Bradley H. Jones, Jr., Carolyn C. Dykema and Michael R. Knapik for legislation to increase protection against drivers under the influence of drugs. Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1795 OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 2010 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13 him; and provided, further, that blood shall not be withdrawn from any party for the purpose of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.

34 SECTION 2. Subsection (f) of section 24 of chapter 90 of the General Laws, as so
35 appearing, is hereby amended by striking, in lines 503-504, the words "breath or blood" and
36 inserting in place thereof the following words:-

37 "breath, blood or other bodily substance"; and

38 by inserting, after the word "liquor" in line 505, the following words:-

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

41 by inserting, after the word "liquor" in line 515, the following words:-

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

44 SECTION 3. Said subsection (f) of section 24 of said chapter 90, as so appearing, is
45 hereby further amended by inserting, after the word "made" in line 520, the following words:-

46 "absent a court order,"

47 SECTION 4. Said subsection (f) of section 24 of said chapter 90, as so appearing, is
48 hereby further amended by inserting, after the word "days" in line 521, the following words:-

49 "for each refusal; provided, that each suspension for a refusal under this section shall run
50 consecutively"

51 SECTION 5. Said subsection (f) of section 24 of said chapter 90, as so appearing, is
52 hereby further amended by inserting, after the word “years” in line 538, the following words:-

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

55 SECTION 6. Said subsection (f) of section 24 of said chapter 90, as so appearing, is
56 hereby further amended by inserting after the word “liquor”, in line 561, the following words:-

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

59 by inserting after the word “alcohol”, in line 584, the following words:-

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

61 by inserting after the word “one-hundredths,” in line 595, the following words:-

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

64 SECTION 7. Subparagraph 2 of subsection (f) of section 24 of said chapter 90, as so
65 appearing, is hereby amended by inserting after clause (ii) the following clause:-

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

69 by striking the figure (iii) in line 602 and inserting in place thereof:

70 “(iv)”.

71 SECTION 8. Clause (iii) of said subparagraph 2 of subsection (f) of section 24 of said
72 chapter 90, as so appearing, is hereby further amended by striking the sentence, which begins on
73 line 605 and ends with the figure “.02” in line 610, and inserting in place thereof the following
74 sentence:-

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

80 further by striking the word “a” in line 611 and inserting in place thereof the following:-

81 “one or more”.

82 SECTION 9. Subsection(g) of section 24 of chapter 90, as so appearing, is hereby
83 amended by inserting after the word “liquor”, in line 666, the following words:-

84 “or drugs”.

85 and by striking the word breath, in line 690, and inserting in place thereof the following
86 words:-

87 “breath, blood or other bodily substance”.

88 and by striking the word “one-hundredths.”, in line 700, and inserting in place thereof the
89 following words:-

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

92 and by inserting after the word “one-hundredths,” in line 703, the following words:-

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