

HOUSE No. 1317

The Commonwealth of Massachusetts

PRESENTED BY:

Colleen M. Garry

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 known as the "Drug Test Consent Bill" aka "Christina's Law".

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/13/2015</i>

HOUSE No. 1317

By Miss Garry of Dracut, a petition (accompanied by bill, House, No. 1317) of Colleen M. Garry relative to the penalties for operating a motor vehicle while under the influence of alcohol or controlled substances. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3798 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act known as the "Drug Test Consent Bill" aka "Christina'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. This bill may be known as the “Drug Test Consent Bill” aka “Christina’s
2 Law”.

3 (1)(a)(1) Whoever, upon any way or in any place to which the public has a right of
4 access, or upon any way or in any place to which members of the public have access as invitees
5 or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of
6 eight one-hundredths or greater, or while under the influence of any drug, which is defined as:
7 any substance which when taken into the human body can impair the ability of the person to
8 operate a motor vehicle safely, shall be punished by a fine of not less than five hundred nor more
9 than five thousand dollars or by imprisonment for not more than two and one-half years, or both
10 such fine and imprisonment.

11 Section 2. Section 24(f) of Chapter 90 of the General Laws is here by amended by
12 striking the subsection in its entirety and replacing it with the following paragraph:

13 (f)(1) Whoever operates a motor vehicle upon any way or in any place to which the
14 public has right to access, or upon any way or in any place to which the public has access as
15 invitees or licensees, shall be deemed to have consented to submit to chemical tests or analyses
16 of his/her breath, urine or blood in the event that he/she is arrested for operating a motor vehicle
17 while under the influence of intoxicating liquor, or of any substance which when taken into the
18 human body can impair the ability of the person to operate a motor vehicle safely: provided,
19 however, that no such person shall be deemed to have consented to a blood test or tests unless
20 such person has been brought for treatment to a medical facility licensed under the provisions of
21 section 51 of chapter 111; and provided, further, that no person who is affected with hemophilia,
22 or any other condition requiring the use of anticoagulants, shall be deemed to have consented to
23 a withdrawal of blood. Such test or tests shall be administered at the direction of a police officer,
24 as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person
25 arrested has been operating a motor vehicle upon such way or place while under the influence of
26 intoxicating liquor, or of any substance which when taken into the human body can impair the
27 ability of the person to operate a vehicle safely. If the person arrested refuses to submit to
28 chemical and/or physical tests required by the officer, after having been informed that his/her
29 license or permit to operate motor vehicles or right to operate motor vehicles in the
30 Commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for
31 each refusal, no such test or analysis shall be made, except by order of the court, and he/she shall
32 have his/her license or right to operate suspended in accordance with this paragraph for a period
33 of 180 days; provided, that each suspension for a refusal under this section shall run

34 consecutively; provided, further, that any person who is under the age of 21 years or who has
35 been previously convicted of a violation under this section, subsection (a) of section 24G,
36 operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths
37 or greater, or while under the influence of intoxicating liquor, or of any substance which when
38 taken into the human body impairs the ability of the person to operate a motor vehicle safely, in
39 violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of
40 chapter 90B, section 8A or 8B of said chapter 90B, or section 13 ½ of chapter 265 or a like
41 violation by a court of any other jurisdiction shall have his/her license or right to operate
42 suspended forthwith for a period of 3 years for each refusal; provided, further, that any person
43 previously convicted of 2 such violations shall have his/her license or right to operate suspended
44 forthwith for a period of 5 years for each refusal; and provided, further, that a person previously
45 convicted of 3 or more such violations shall have his/her license or right to operate suspended
46 forthwith for life based upon each refusal. If a person refuses to submit to any such tests or
47 analyses after having been convicted of a violation of section 24L, the registrar shall suspend
48 his/her license or right to operate for 10 years for each refusal. If a person refuses to submit to
49 any such tests or analyses after having been convicted of a violation of subsection (a) of section
50 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-
51 hundredths or greater, or while under the influence of intoxicating liquor in violation of
52 subsection (b) of said section 24G, or section 13 ½ of chapter 265, the registrar shall revoke
53 his/her license or right to operate for life for each refusal. If a person refuses to take any test
54 under this paragraph, the police shall:

55 i. Immediately, on behalf of the registrar, take custody of such person's license or
56 right to operate issued by the Commonwealth.

- 57 ii. Provide to each person who refuses a test, on behalf of the registrar, a written
58 notification of suspension in a format approved by the registrar; and
- 59 iii. Impound the vehicle being driven by the operator and arrange for the vehicle to be
60 impounded for a period of 12 hours after the operator's refusal, with the costs for the towing,
61 storage and maintenance of the vehicle to be borne by the operator.

62 The police officer before whom any such refusal was made shall, within 24 hours,
63 prepare a report of each refusal. Each report shall be made in a format approved by the registrar
64 and shall be made under the penalties of perjury by the police officer before whom such refusal
65 was made. Each report shall set forth the grounds for the officer's belief that the person arrested
66 had been under the influence of intoxicating liquor, or any substance which when taken into the
67 human body can impair the ability of the person to operate a motor vehicle safely, and shall state
68 that such a person had refused to submit to one or more chemical tests or analyses when
69 requested by the officer to do so, such refusal or refusals having been witnessed by another
70 person other than the defendant. Each report shall identify the police officer who requested the
71 chemical test or analysis and the other person witnessing the refusal. Each report shall be sent
72 forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including
73 electronic or otherwise, that the registrar deems appropriate. A license or right to operate which
74 has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith.
75 The report shall constitute prima facie evidence of the facts set forth therein at any administrative
76 hearing regarding the suspension specified in this section.

77 The suspension of a license or right to operate shall become effective immediately upon
78 receipt of the notification of suspension from the police officer. A suspension for a refusal of

79 either a chemical test or analyses of breath, urine or blood shall run consecutively and not
80 concurrently, both as to any additional suspension periods arising from the same incident, and as
81 to each other.

82 No license or right to operate shall be restored under any circumstances and no restricted
83 or hardship permits shall be issued during the suspension period imposed by this paragraph;
84 provided, however, that the defendant may immediately upon the entry of a not guilty finding or
85 dismissal of all charges under this section, section 24G, section 24L, or section 13 ½ of chapter
86 265, and in the absence of any other alcohol or drug related charges pending against said
87 defendant, apply for and be immediately granted a hearing before the court which took final
88 action on the charges for the purpose of requesting the restoration of said license. At said
89 hearing, there shall be a rebuttable presumption that said license be restored, unless the
90 Commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said
91 license would likely endanger the public safety. In all such instances, the court shall issue
92 written findings of fact with its decision.

93 (2) If a person's blood alcohol percentage is not less than eight one-hundredths, or the
94 person is under the age of 21 years and his/her blood alcohol percentage is not less than two one-
95 hundredths, or if a person is under the influence of any substance which when taken into the
96 human body can impair the ability of the person to operate a motor vehicle safely, such police
97 officer shall do the following:

98 i. Immediately and on behalf of the registrar take custody of such person's drivers'
99 license or permit issued by the Commonwealth:

100 ii. Provide to each person who refuses the test, on behalf of the registrar, a written
101 notification of suspension, in a format approved by the registrar; and

102 iii. Immediately report action taken under this paragraph to the registrar. Each report
103 shall be made in a format approved by the registrar and shall be made under the penalties of
104 perjury by the police officer. Each report shall set forth the grounds for the officer's belief that
105 the person arrested has been operating a motor vehicle on any way or place while under the
106 influence of intoxicating liquor, or of any substance which when taken into the human body can
107 impair the ability of the person to operate a motor vehicle safely, and that the person's blood
108 alcohol percentage was not less than .08 or that the person was under the influence of any
109 substance which when taken into the human body can impair the ability of the person to operate
110 a motor vehicle safely, or that the person was under the age of 21 years at the time of the arrest
111 and whose blood alcohol percentage was not less than .02. The report shall indicate that the
112 person was administered one or more tests or analyses, that the operator administering the tests
113 or analyses was trained and certified in the administration of the tests or analyses, that the test or
114 tests were performed in accordance with the regulations and standards promulgated by the
115 secretary of public safety, that the equipment used for the test or tests was regularly serviced and
116 maintained and that the person administering the test or tests had every reason to believe the
117 equipment was functioning properly at the time the test or tests were administered. Each report
118 shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend, in a
119 form, including electronic or otherwise, that the registrar deems appropriate. A license or right to
120 operate confiscated under this clause shall be forwarded to the registrar forthwith.

121 The license suspension shall become effective immediately upon receipt by the offender
122 of the notice of intent to suspend from a police officer. The license to operate a motor vehicle

123 shall remain suspended until the disposition of the offense for which the person is being
124 prosecuted, but in no event shall such suspension pursuant to this subparagraph exceed 30 days.

125 In any instance where a defendant is under the age of 21 years and such evidence is that
126 the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater,
127 and upon the failure of any police officer pursuant to this subparagraph to suspend or take
128 custody of the driver's license or permit issued by the Commonwealth, and, in the absence of a
129 complaint alleging a violation of paragraph (a) of subdivision (1) or a violation of section 24G or
130 24L, the registrar shall administratively suspend the defendant's license or right to operate a
131 motor vehicle upon receipt of a report from the police officer who administered such chemical
132 test or analysis of the defendant's blood pursuant to subparagraph (1). Each such report shall be
133 made on a form approved by the registrar and shall be sworn to under the penalties of perjury by
134 such police officer. Each such report shall set forth the grounds for the officer's belief that the
135 person arrested had been operating a motor vehicle on a way or place while under the influence
136 of intoxicating liquor and that such person was under the age of 21 years at the time of the arrest
137 and whose blood alcohol percentage was two one-hundredths or greater. Such report shall also
138 state that the person was administered such a test or analysis, that the operator administering the
139 test or analysis was trained and certified in the administration of such test, that the test was
140 performed in accordance with the regulation and standards promulgated by the secretary of
141 public safety, that the equipment used for such test was regularly service and maintained, and the
142 person administering the test had every reason to believe that the equipment was functioning
143 properly at the time the test was administered. Each such report shall be endorsed by the police
144 chief as defined in section 1 of chapter 90C, or by the person authorized by him, and shall be
145 sent to the registrar along with the confiscated license or permit not later than ten days from the

146 date that such chemical test or analysis of the defendant's blood was administered. The license to
147 operate a motor vehicle shall thereupon be suspended in accordance with section 24P.

148 (g) Any person whose license, permit or right to operate has been suspended under
149 subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing
150 before the registrar which shall be limited to the following issues: (i) did the police officer have
151 reasonable grounds to believe that such person had been operating a motor vehicle while under
152 the influence of intoxicating liquor, or of any substance which when taken into the human body
153 can impair the ability of the person to operate a motor vehicle safely, upon any way or in any
154 place to which members of the public have a right of access or upon any way to which members
155 of the public have a right of access as invitees or licensees, (ii) was such person placed under
156 arrest, and (iii) did such person refuse to submit to such tests or analyses. If, after such hearing,
157 the registrar finds on any one of the said issues in the negative, the registrar shall forthwith
158 reinstate such license, permit or right to operate. The registrar shall create and preserve a record
159 at said hearing for judicial review. Within thirty days of the issuance of the final determination
160 by the registrar following a hearing under this paragraph, a person aggrieved by the
161 determination shall have the right to file a petition in the district court for the judicial district in
162 which the offense occurred for judicial review. The filing of a petition for judicial review shall
163 not stay the revocation of suspension. The filing of a petition for judicial review shall be had as
164 soon as possible following the submission of said request, but not later than thirty days following
165 the submission thereof. Review by the court shall be on the record established at the hearing
166 before the registrar. If the court finds that the department exceeded its constitutional or statutory
167 authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious

168 manner, or made a determination which is unsupported by the evidence in the record, the court
169 may reverse the registrar's determination.

170 Any person whose license or right to operate has been suspended pursuant to
171 subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath, urine or blood
172 may within ten days of such suspension request a hearing and upon such request shall be entitled
173 to a hearing before the court in which the underlying charges are pending or if the individual is
174 under the age of 21 years and there are no pending charges, in the district court having
175 jurisdiction where the arrest occurred, which hearing shall be limited to the following issue;
176 whether a blood test administered pursuant to paragraph (e) within a reasonable period of time
177 after such chemical analysis of his/her breath, shows that the percentage by weight, of alcohol in
178 such person's blood was less than eight one-hundredths or, relative to such person under the age
179 of 21 years was less than two one-hundredths, if the court finds that such a blood test shows that
180 such percentage was less than eight one hundredths or, relative to such person under the age of
181 21 years, that such percentage was less than two hundredth's, the court shall restore such person's
182 license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the
183 criminal history systems board and the registrar of such restoration.

184 Section 3. Section 24 (e) of Chapter 90 of the General Laws is hereby amended by
185 striking the subsection in its entirety and replacing it with the following paragraph:

186 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by
187 weight, of alcohol in the defendant's blood at the time of the alleged offense, or evidence of the
188 presence of any substance which when taken into the human body can impair the ability of the
189 person to operate a motor vehicle safely, as shown by chemical test or analysis of his/her blood

190 or as indicated by a chemical test or analysis of his/her breath, shall be admissible and deemed
191 relevant to the determination of the question of whether such defendant was at such time under
192 the influence of intoxicating liquor, or any substance which when taken into the human body can
193 impair the ability of the person to operate a motor vehicle safely, provided, however, that if such
194 test or analysis was made by or at the direction of a police officer, it was made with the consent
195 of the defendant, the results thereof were made available to him/her upon his/her request and the
196 defendant was afforded a reasonable opportunity, at his/her request and at his/her expense, to
197 have another such test or analysis made by a person or physician selected by him/her; and
198 provided further, that blood shall not be withdrawn from any party for the purpose of such test or
199 analysis except by a physician, registered nurse or certified medical technician. Evidence that the
200 defendant failed or refused to consent to such a test or analysis shall not be admissible against
201 him/her in a civil or criminal proceeding, but shall be admissible in any action taken by the
202 registrar under paragraph (f) or in any proceedings provided for in section 24N. In the case of a
203 test for the presence of alcohol, if such evidence is that such percentage was five one-hundredths
204 or less, there shall be a permissible inference that such defendant was not under the influence of
205 intoxicating liquor, and he/she shall be released from custody forthwith, but the officer who
206 placed him/her under arrest shall not be liable for false arrest if such police officer had
207 reasonable grounds to believe that the person arrested had been operating a motor vehicle upon
208 any such way or place while under the influence of intoxicating liquor; provided however, that in
209 an instance where a defendant is under the age of 21 years and such evidence is that the
210 percentage, by weight, of alcohol in the defendant's blood is two one-hundredths greater, the
211 officer who placed him/her under arrest shall, in accordance with subparagraph (2) of paragraph
212 (f), suspend such defendant's license or permit and take all other actions directed therein, if such

213 evidence is that such percentage was more than five one-hundredths but less than eight one-
214 hundredths there shall be no permissible inference. A certificate signed and sworn to, by a
215 chemist of the department of the state police or by a chemist of a laboratory certified by the
216 department of public health, which contains the results of an analysis made by such chemist of
217 the percentage of alcohol in such blood or of the presence of any substance which when taken
218 into the human body can impair the ability of the person to operate a motor vehicle safely, shall
219 be prima facie evidence of the percentage of alcohol in such blood, or of the presence of any
220 substance which when taken into the human body can impair the ability of the person to operate
221 a motor vehicle safely.