

**HOUSE . . . . . No. 3580**

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**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>1/20/2017</i>

**HOUSE . . . . . No. 3580**

By Miss Garry of Dracut, a petition (accompanied by bill, House, No. 3580) of Colleen M. Garry relative to the penalty for operating a motor vehicle under the influence of alcohol or drugs. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninetieth General Court  
(2017-2018)**

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. Section 24 of chapter 90 of the General Laws, as appearing in the 2014  
2 Official Edition, is hereby amended by striking out in lines 1 to 11, inclusive, the words  
3 “Whoever, upon any way or in any place to which the public has a right of access, or upon any  
4 way or in any place to which members of the public have access as invitees or licensees, operates  
5 a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths  
6 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs,  
7 depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the  
8 vapors of glue shall be punished by a fine of not less than five hundred nor more than five  
9 thousand dollars or by imprisonment for not more than two and one-half years, or both such fine  
10 and imprisonment.” and inserting in place thereof the following words:-

11 Whoever, upon any way or in any place to which the public has a right of access, or upon  
12 any way or in any place to which members of the public have access as invitees or licensees,

13 operates a motor vehicle with a percentage, by weight, of alcohol in their blood of 8/100ths or  
14 greater, or while under the influence of any drug , shall be punished by a fine of not less than  
15 \$500 nor more than \$5,000 or by imprisonment for not more than 2 and 1/2 years, or both such  
16 fine and imprisonment. For the purposes of this paragraph, “drug” shall mean a substance which  
17 when taken into the human body can impair the ability of the person to operate a motor vehicle  
18 safely

19 SECTION 2. Said section 24 of said chapter 90, as so appearing, is hereby further  
20 amended by striking out paragraphs e to g, inclusive, and inserting in place thereof the following  
21 3 subsections:-

22 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by  
23 weight, of alcohol in the defendant’s blood at the time of the alleged offense, or evidence of the  
24 presence of a substance which when taken into the human body can impair the ability of the  
25 person to operate a motor vehicle safely, as shown by chemical test or analysis of the defendant’s  
26 blood or as indicated by a chemical test or analysis of the defendant’s breath, shall be admissible  
27 and deemed relevant to the determination of the question of whether the defendant was at such  
28 time under the influence of intoxicating liquor, or a substance which when taken into the human  
29 body can impair the ability of the person to operate a motor vehicle safely; provided, however,  
30 that if such test or analysis was made by or at the direction of a police officer, it was made with  
31 the consent of the defendant, the results thereof were made available to the defendant upon the  
32 defendant’s request and the defendant was afforded a reasonable opportunity, at the defendant’s  
33 request and expense, to have another such test or analysis made by a person or physician  
34 selected by the defendant; and provided further, that blood shall not be withdrawn from any party  
35 for the purpose of such test or analysis except by a physician, registered nurse or certified

36 medical technician. Evidence that the defendant failed or refused to consent to such test or  
37 analysis shall not be admissible against the defendant in a civil or criminal proceeding, but shall  
38 be admissible in any action taken by the registrar pursuant to paragraph (f) or in any proceedings  
39 provided for in section 24N. In the case of a test for the presence of alcohol, if such evidence is  
40 that such percentage was 5/100ths or less, there shall be a permissible inference that such  
41 defendant was not under the influence of intoxicating liquor, and the defendant shall be released  
42 from custody forthwith, but the officer who placed the defendant under arrest shall not be liable  
43 for false arrest if such police officer had reasonable grounds to believe that the person arrested  
44 had been operating a motor vehicle upon any such way or place while under the influence of  
45 intoxicating liquor; provided however, that in an instance where a defendant is under the age of  
46 21years and such evidence is that the percentage, by weight, of alcohol in the defendant's blood  
47 is 2/100ths greater, the officer who placed the defendant under arrest shall, in accordance with  
48 subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other  
49 actions directed therein, if such evidence is that such percentage was more than 5/100ths but less  
50 than 8/100ths there shall be no permissible inference. A certificate signed and sworn to, by a  
51 chemist of the department of the state police or by a chemist of a laboratory certified by the  
52 department of public health, which contains the results of an analysis made by such chemist of  
53 the percentage of alcohol in such blood or of the presence of a substance which when taken into  
54 the human body can impair the ability of the person to operate a motor vehicle safely, shall be  
55 prima facie evidence of the percentage of alcohol in such blood, or of the presence of a  
56 substance which when taken into the human body can impair the ability of the person to operate  
57 a motor vehicle safely.

58 (f) (1) Whoever operates a motor vehicle upon any way or in any place to which the  
59 public has right to access, or upon any way or in any place to which the public has access as  
60 invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis  
61 of the person's breath, urine or blood in the event that the person is arrested for operating a  
62 motor vehicle while under the influence of intoxicating liquor, or of a substance which when  
63 taken into the human body can impair the ability of the person to operate a motor vehicle safely;  
64 provided, however, that no such person shall be deemed to have consented to a blood test unless  
65 such person has been brought for treatment to a medical facility licensed pursuant to section 51  
66 of chapter 111; and provided, further, that no person who is affected with hemophilia, or any  
67 other condition requiring the use of anticoagulants, shall be deemed to have consented to a  
68 withdrawal of blood. Such test shall be administered at the direction of a police officer, as  
69 defined in section 1 of chapter 90C, having reasonable grounds to believe that the person arrested  
70 has been operating a motor vehicle upon such way or place while under the influence of  
71 intoxicating liquor, or of a substance which when taken into the human body can impair the  
72 ability of the person to operate a vehicle safely. If the person arrested refuses to submit to a  
73 chemical or physical test required by the police officer, after having been informed that the  
74 person's license or permit to operate motor vehicles or right to operate motor vehicles in the  
75 commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for  
76 each refusal, no such test or analysis shall be made, except by order of the court, and the person  
77 shall have the person's license or right to operate suspended in accordance with this paragraph  
78 for a period of 180 days; provided, that each suspension for a refusal pursuant to this section  
79 shall run consecutively; provided, further, that any person who is under the age of 21 years or  
80 who has been previously convicted of a violation pursuant to this section, subsection (a) of

81 section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of 8/100ths  
82 or greater, or while under the influence of intoxicating liquor, or of a substance which when  
83 taken into the human body impairs the ability of the person to operate a motor vehicle safely, in  
84 violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of  
85 chapter 90B, section 8A or 8B of said chapter 90B, or section 13 ½ of chapter 265 or a like  
86 violation by a court of any other jurisdiction shall have the person's license or right to operate  
87 suspended forthwith for a period of 3 years for each refusal; provided, further, that any person  
88 previously convicted of 2 such violations shall have the person's license or right to operate  
89 suspended forthwith for a period of 5 years for each refusal; and provided, further, that a person  
90 previously convicted of 3 or more such violations shall have the person's license or right to  
91 operate suspended forthwith for life based upon each refusal. If a person refuses to submit to any  
92 such test or analysis after having been convicted of a violation of said section 24L, the registrar  
93 shall suspend his/her license or right to operate for 10 years for each refusal. If a person refuses  
94 to submit to any such test or analysis after having been convicted of a violation of subsection (a)  
95 of said section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of  
96 8/100ths or greater, or while under the influence of intoxicating liquor in violation of said  
97 subsection (b) of said section 24G, or section 13 ½ of chapter 265, the registrar shall revoke the  
98 person's license or right to operate for life for each refusal. If a person refuses to take any test  
99 pursuant to this paragraph, the police shall:

100 i. immediately, on behalf of the registrar, take custody of such person's license or  
101 right to operate issued by the commonwealth.

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

104           iii.       impound the vehicle being driven by the operator and arrange for the vehicle to be  
105 impounded for a period of 12 hours after the operator's refusal, with the costs for the towing,  
106 storage and maintenance of the vehicle to be borne by the operator.

107           The police officer before whom any such refusal was made shall, within 24 hours,  
108 prepare a report of each refusal. Each report shall be made in a format approved by the registrar  
109 and shall be made under the penalties of perjury by the police officer before whom such refusal  
110 was made. Each report shall set forth the grounds for the officer's belief that the person arrested  
111 had been operating a motor vehicle on a way or place while under the influence of intoxicating  
112 liquor, or a substance which when taken into the human body can impair the ability of the person  
113 to operate a motor vehicle safely, and shall state that such a person had refused to submit to a  
114 chemical test or analysis when requested by the officer to do so, such refusal having been  
115 witnessed by another person other than the defendant. Each report shall identify the police  
116 officer who requested the chemical test or analysis and the other person witnessing the refusal.  
117 Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to  
118 suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A  
119 license or right to operate which has been confiscated pursuant to this subparagraph shall be  
120 forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts  
121 set forth therein at any administrative hearing regarding the suspension specified in this section.

122           The suspension of a license or right to operate shall become effective immediately upon  
123 receipt of the notification of suspension from the police officer. A suspension for a refusal of  
124 either a chemical test or analysis of breath, urine or blood shall run consecutively and not  
125 concurrently, both as to any additional suspension periods arising from the same incident, and as  
126 to each other.

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

138 (2) If a person's blood alcohol percentage is not less than 8/100ths, or the person is under  
139 the age of 21 years and the person's blood alcohol percentage is not less than 2/100ths, or if a  
140 person is under the influence of a substance which when taken into the human body can impair  
141 the ability of the person to operate a motor vehicle safely, such police officer shall do the  
142 following:

143 i. immediately and on behalf of the registrar take custody of such person's drivers'  
144 license or permit issued by the commonwealth:

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

147 iii. immediately report action taken under this paragraph to the registrar. Each report  
148 shall be made in a format approved by the registrar and shall be made under the penalties of

149 perjury by the police officer. Each report shall set forth the grounds for the officer's belief that  
150 the person arrested has been operating a motor vehicle on any way or place while under the  
151 influence of intoxicating liquor, or of a substance which when taken into the human body can  
152 impair the ability of the person to operate a motor vehicle safely, and that the person's blood  
153 alcohol percentage was not less than 8/100ths or that the person was under the influence of a  
154 substance which when taken into the human body can impair the ability of the person to operate  
155 a motor vehicle safely, or that the person was under the age of 21 years at the time of the arrest  
156 and whose blood alcohol percentage was not less than 2/100ths. The report shall indicate that the  
157 person was administered a test or analysis, that the operator administering the test or analysis  
158 was trained and certified in the administration of the test or analysis, that the test or tests were  
159 performed in accordance with the regulations and standards promulgated by the secretary of  
160 public safety and security, that the equipment used for the test was regularly serviced and  
161 maintained and that the person administering the test had every reason to believe the equipment  
162 was functioning properly at the time the test was administered. Each report shall be sent  
163 forthwith to the registrar along with a copy of the notice of intent to suspend, in a form, including  
164 electronic or otherwise, that the registrar deems appropriate. A license or right to operate  
165 confiscated under this clause shall be forwarded to the registrar forthwith.

166           The license suspension shall become effective immediately upon receipt by the offender  
167 of the notice of intent to suspend from a police officer. The license to operate a motor vehicle  
168 shall remain suspended until the disposition of the offense for which the person is being  
169 prosecuted, but in no event shall such suspension pursuant to this subparagraph exceed 30 days.

170           In any instance where a defendant is under the age of 21 years and such evidence is that  
171 the percentage, by weight, of alcohol in the defendant's blood is 2/100ths or greater, and upon

172 the failure of any police officer pursuant to this subparagraph to suspend or take custody of the  
173 driver's license or permit issued by the commonwealth, and, in the absence of a complaint  
174 alleging a violation of paragraph (a) of subdivision (1) or a violation of said sections 24G or 24L,  
175 the registrar shall administratively suspend the defendant's license or right to operate a motor  
176 vehicle upon receipt of a report from the police officer who administered such chemical test or  
177 analysis of the defendant's blood pursuant to subparagraph (1). Each such report shall be made  
178 on a form approved by the registrar and shall be sworn to under the penalties of perjury by such  
179 police officer. Each such report shall set forth the grounds for the officer's belief that the person  
180 arrested had been operating a motor vehicle on a way or place while under the influence of  
181 intoxicating liquor and that such person was under the age of 21 years at the time of the arrest  
182 and whose blood alcohol percentage was 2/100ths or greater. Such report shall also state that the  
183 person was administered such a test or analysis, that the operator administering the test or  
184 analysis was trained and certified in the administration of such test, that the test was performed  
185 in accordance with the regulations and standards promulgated by the secretary of public safety  
186 and security, that the equipment used for such test was regularly serviced and maintained, and  
187 the person administering the test had every reason to believe that the equipment was functioning  
188 properly at the time the test was administered. Each such report shall be endorsed by the police  
189 chief as defined in said section 1 of said chapter 90C, or by the person authorized by him, and  
190 shall be sent to the registrar along with the confiscated license or permit not later than 10 days  
191 from the date that such chemical test or analysis of the defendant's blood was administered. The  
192 license to operate a motor vehicle shall thereupon be suspended in accordance with section 24P.

193 (g) Any person whose license, permit or right to operate has been suspended under  
194 subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing

195 before the registrar which shall be limited to the following issues: (i) did the police officer have  
196 reasonable grounds to believe that such person had been operating a motor vehicle while under  
197 the influence of intoxicating liquor, or of a substance which when taken into the human body can  
198 impair the ability of the person to operate a motor vehicle safely, upon any way or in any place to  
199 which members of the public have a right of access or upon any way to which members of the  
200 public have a right of access as invitees or licensees, (ii) was such person placed under arrest,  
201 and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the  
202 registrar finds on any one of the said issues in the negative, the registrar shall forthwith reinstate  
203 such license, permit or right to operate. The registrar shall create and preserve a record at said  
204 hearing for judicial review. Within thirty days of the issuance of the final determination by the  
205 registrar following a hearing under this paragraph, a person aggrieved by the determination shall  
206 have the right to file a petition in the district court for the judicial district in which the offense  
207 occurred for judicial review. The filing of a petition for judicial review shall not stay the  
208 revocation or suspension. The filing of a petition for judicial review shall be had as soon as  
209 possible following the submission of said request, but not later than thirty days following the  
210 submission thereof. Review by the court shall be on the record established at the hearing before  
211 the registrar. If the court finds that the department exceeded its constitutional or statutory  
212 authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious  
213 manner, or made a determination which is unsupported by the evidence in the record, the court  
214 may reverse the registrar's determination.

215 Any person whose license or right to operate has been suspended pursuant to  
216 subparagraph (2) of paragraph (f) on the basis of chemical analysis of the person's breath, urine  
217 or blood may within 10 days of such suspension request a hearing and upon such request shall be

218 entitled to a hearing before the court in which the underlying charges are pending or if the  
219 individual is under the age of 21 years and there are no pending charges, in the district court  
220 having jurisdiction where the arrest occurred, which hearing shall be limited to the following  
221 issue; whether a blood test administered pursuant to paragraph (e) within a reasonable period of  
222 time after such chemical analysis of the person's breath, shows that the percentage by weight, of  
223 alcohol in such person's blood was less than 8/100ths or, relative to such person under the age  
224 of 21 years was less than 2/100ths, if the court finds that such a blood test shows that such  
225 percentage was less than 8/100ths or, relative to such person under the age of 21 years, that such  
226 percentage was less than 2/100ths, the court shall restore such person's license, permit or right to  
227 operate and shall direct the prosecuting officer to forthwith notify the criminal history systems  
228 board and the registrar of such restoration.