

HOUSE No. 4255

The Commonwealth of Massachusetts



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November 10, 2021

To the Honorable House of Representatives,

In 2017, we worked together to enact bipartisan legislation governing the cultivation, sale, and adult use of marijuana following the voter-approved ballot initiative of 2016. At the same time, we were keenly aware of the clear research establishing that the ingestion of THC can and does cause impairment in driving, and the severe consequences of impaired driving cannot be ignored.

The risks of impaired driving are not only borne by those who choose to drive after ingesting intoxicating substances. On March 16, 2016, Massachusetts State Police Trooper Thomas Clardy – for whom this bill is named – was killed while conducting a traffic stop on the Massachusetts Turnpike in Charlton when his parked cruiser was hit by a speeding motorist who swerved across three lanes of traffic. THC, the psychoactive ingredient in marijuana, was detected in the motorist’s blood. Trooper Clardy was 44 years old, an 11 year member of the state police, a United States Marine Corps veteran, and a devoted husband and father to 6 children.

To address the grave danger posed by impaired drivers and to avoid tragic outcomes like Trooper Clardy’s passing, in 2019 I filed legislation proposing statutory language to implement the recommendations of the Special Commission on Operating Under the Influence and Impaired Driving. That Special Commission – created by the same legislation that legalized marijuana – brought together stakeholders and experts from across the public safety spectrum including police, prosecutors, the criminal defense bar, medical and toxicological professionals, and the

civil liberties community. After hearing from these subject matter experts, the Special Commission issued a report that made recommendations (many of them unanimous) for legislative changes to laws that protect the public from impaired drivers. Those changes represent common sense improvements to the entire process by which we address drugged driving, beginning with the training of police officers, continuing through roadside encounters with motorists, and ending with what evidence is admitted at trials and how judges instruct juries.

It has been more than two years since I first filed this legislation, and impaired drivers continue to pose a threat to the public. Recent data released by the National Highway Traffic Safety Administration (NHTSA) showed that traffic fatalities reached a 15-year high during the first 6 months of 2021, with more than 20,000 total deaths. This alarming trend is attributable in part to an increase in risky behavior, including driving under the influence of drugs and alcohol. Indeed, the NHTSA's ongoing review of five trauma centers, including one in Worcester, revealed a significant increase during the COVID-19 emergency in the prevalence of drugs detected in seriously and fatally injured drivers.

Accordingly, I am re-submitting for your consideration, "An Act Implementing the Recommendations of the Special Commission on Operating under the Influence and Impaired Driving." This bill takes each legislative recommendation from the Special Commission's report and proposes statutory language to implement it. This legislation applies the tools that we have used for years to combat drunk driving and extends them to drugged driving. It also makes parallel changes to the law governing impaired operation of boats, planes, and other vehicles. I urge your prompt enactment of the Special Commission's thoughtful recommendations.

Respectfully submitted,

Charles D. Baker,
Governor

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act implementing the recommendations of the Special Commission on Operating Under the Influence and Impaired 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. This law shall be known as the Trooper Thomas Clardy law.

2 SECTION 2. Chapter 6 of the General Laws is hereby amended by inserting after section
3 116K the following section:-

4 Section 116L. (a) The municipal police training committee, in consultation with the
5 executive office of public safety and security, shall establish and develop an in-service training
6 program designed to train local law enforcement officials with authority to enforce chapter 90 in
7 Advanced Roadside Impaired Driving Enforcement. The committee shall determine training
8 requirements and minimum standards of the program.

9 (b) The municipal police training committee, in consultation with the executive office of
10 public safety and security, shall establish and develop an in-service training program designed to
11 train and certify local law enforcement officials as drug recognition experts. The committee
12 shall determine training requirements and minimum standards of the program.

13 SECTION 3. Section 8 of chapter 90 of the General Laws, as appearing in the 2020
14 Official Edition, is hereby amended by inserting after the word “substances”, in lines 52 to 53,
15 the following words:- , including alcohol and marijuana,.

16 SECTION 4. Section 8A of said chapter 90, as so appearing, is hereby amended by
17 striking out, in lines 31 to 35, the words “of marijuana, narcotic drugs, depressants or stimulant
18 substances, all as defined in section one of said chapter ninety-four C, or from smelling or
19 inhaling the fumes of any substance having the property of releasing toxic vapors as defined in
20 section 18 of chapter 270” and inserting in place thereof the following words:- any other
21 intoxicating substance or combination of substances.

22 SECTION 5. Section 8A½ of said chapter 90, as so appearing, is hereby amended by
23 striking out, in lines 27 to 31, the words “of marijuana, narcotic drugs, depressants or stimulant
24 substances, all as defined in section one of said chapter ninety-four C, or from smelling or
25 inhaling the fumes of any substance having the property of releasing toxic vapors as defined in
26 section 18 of chapter 270” and inserting in place thereof the following words:- any other
27 intoxicating substance or combination of substances.

28 SECTION 6. Section 21 of said chapter 90, as so appearing, is hereby amended by
29 striking out, in lines 20 to 23, the words “upon any way or place to which the public has the right
30 of access, or upon any way or in any place to which members of the public have access as
31 invitees, or who,”.

32 SECTION 7. Said section 21 of said chapter 90, as so appearing, is hereby further
33 amended by striking out, in lines 25 to 31, the words “, marihuana or narcotic drugs, or
34 depressant or stimulant substances, all as defined in section one of chapter ninety-four C, or

35 while under the influence from smelling or inhaling the fumes of any substance having the
36 property of releasing toxic vapors as defined in section 18 of chapter 270, carbon tetrachloride,
37 acetone, ethylene, dichloride, toluene, chloroform, xylene or any combination thereof” and
38 inserting in place thereof the following words:- or any other intoxicating substance or
39 combination of substances.

40 SECTION 8. Section 22F of said chapter 90, as so appearing, is hereby amended by
41 striking out, in line 11, the words “of intoxicating liquor or narcotic drugs”.

42 SECTION 9. Section 24 of said chapter 90, as so appearing, is hereby amended by
43 striking out, in lines 1 to 4, the words “, upon any way or in any place to which the public has a
44 right of access, or upon any way or in any place to which members of the public have access as
45 invitees or licensees,”.

46 SECTION 10. Said section 24, of said chapter 90, as so appearing, is hereby further
47 amended by striking out, in lines 6 to 8, the words “, or of marijuana, narcotic drugs, depressants
48 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the
49 influence from smelling or inhaling the fumes of any substance having the property of releasing
50 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof the following
51 words:- or any other intoxicating substance or combination of substances.

52 SECTION 11. Said section 24, of said chapter 90, as so appearing, is hereby further
53 amended by striking out, in lines 18 to 19, the words “, marijuana, narcotic drugs, depressants or
54 stimulant substances” and inserting in place thereof the following words:- or any other
55 intoxicating substance or combination of substances.

56 SECTION 12. Said section 24, of said chapter 90, as so appearing, is hereby further
57 amended by striking out, in lines 30 to 32, the words “marihuana, narcotic drugs, depressants or
58 stimulant substances, all as defined by section 1 of chapter 94C” and inserting in place thereof
59 the following words:- any other intoxicating substance or combination of substances.

60 SECTION 13. Subdivision (1) of said section 24 of said chapter 90, as so appearing, is
61 hereby further amended by striking out paragraph (e) and inserting in place thereof the following
62 paragraph:-

63 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by
64 weight, of alcohol in the defendant's blood at the time of the alleged offense, or of the presence
65 or concentration of any other intoxicating substance or combination of substances, or metabolites
66 of any intoxicating substance, as shown by chemical test or analysis of his blood or oral fluid or
67 as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant
68 to the determination of the question of whether such defendant was at such time under the
69 influence of intoxicating liquor, or any other intoxicating substance or combination of
70 substances; provided, however, that if such test or analysis was made by or at the direction of a
71 police officer, it was made either with the consent of the defendant or with the authority
72 conveyed by a search warrant; the results thereof were made available to him upon his request;
73 and the defendant was afforded a reasonable opportunity, at his request and at his expense, to
74 have another such test or analysis made by a person or physician selected by him; and provided,
75 further, that blood shall not be withdrawn from any party for the purpose of such test or analysis
76 except by a physician, physician's assistant, registered nurse or authorized medical staff of a
77 health care facility. Evidence that the defendant failed or refused to consent to such test or
78 analysis shall not be admissible against him in a civil or criminal proceeding unless such refusal

79 constituted a refusal to comply with the terms of a search warrant or court order, but shall be
80 admissible in any action by the registrar under paragraph (f) or in any proceedings provided for
81 in section 24N. If such evidence is that such percentage, by weight, of alcohol in the defendant's
82 blood was five one-hundredths or less, there shall be a permissible inference that such defendant
83 was not under the influence of intoxicating liquor, and he shall be released from custody
84 forthwith unless there is probable cause of intoxication caused by the ingestion of some other
85 substance or combination of substances, but the officer who placed him under arrest shall not be
86 liable for false arrest if such police officer had reasonable grounds to believe that the person
87 arrested had been operating a motor vehicle while under the influence of intoxicating liquor, or
88 any other intoxicating substance or combination of substances; provided, however, that in an
89 instance where a defendant is under the age of 21 and such evidence is that the percentage, by
90 weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who
91 placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend
92 such defendant's license or permit and take all other actions directed therein, if such evidence is
93 that such percentage was more than five one-hundredths but less than eight one-hundredths there
94 shall be no permissible inference of impairment by reason of alcohol.

95 In any prosecution for a violation of paragraph (a) in which the defendant is alleged to be
96 under the influence of intoxicating liquor; of a central nervous system depressant; of a
97 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of
98 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus
99 test conducted pursuant to a method approved by the National Highway Traffic Safety
100 Administration, and the detection of one or more of the following indicators: 1) lack of smooth
101 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum

102 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or
103 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible
104 and deemed relevant to the determination of the question of whether such defendant was at such
105 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a
106 permissible inference that such defendant was under the influence of intoxicating liquor; of a
107 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or
108 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such
109 indicators were present, there shall be a permissible inference that such defendant was not under
110 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative
111 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such
112 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from
113 such evidence with regard to whether the defendant was under the influence. In any such
114 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus
115 test has been demonstrated to have scientific validity and reliability when administered by
116 properly trained and certified police officers and when used in conjunction with other evidence,
117 in detecting impairment by alcohol; by central nervous system depressants; by dissociative
118 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and
119 (2) a contemporary publication of the National Highway Traffic Safety Administration with
120 regard to the proper administration of the horizontal gaze nystagmus test.

121 In any prosecution for a violation of paragraph (a) in which it is alleged that a defendant's
122 operation of a motor vehicle was impaired by an intoxicating substance other than intoxicating
123 liquor, evidence of the concentration of such intoxicating substance in a defendant's system shall

124 not be a precondition to the admissibility of evidence of the presence of such intoxicating
125 substance in the defendant's system.

126 In any prosecution for a violation of paragraph (a) in which it is alleged that a defendant's
127 operation of a motor vehicle was impaired, in whole or in part, by the consumption of marijuana,
128 marijuana products, or other forms of tetrahydrocannabinol (THC), the court may take judicial
129 notice that the ingestion of THC can cause impairment in motorists; that it can impair motor
130 function, reaction time, tracking, cognitive attention, decision-making, judgment, perception,
131 peripheral vision, impulse control, and memory; and that ingestion of THC does not enhance a
132 motorist's ability to safely operate a motor vehicle.

133 SECTION 14. Said section 24 of said chapter 90, as so appearing, is hereby further
134 amended by striking out, in lines 688 to 690, the words "upon any way or in any place to which
135 the public has right to access, or upon any way or in any place to which the public has access as
136 invitees or licensees,".

137 SECTION 15. Said section 24 of said chapter 90, as so appearing, is hereby further
138 amended by inserting, after the word "liquor", in lines 693 to 694, the following words:- ; and
139 shall be deemed to have consented to a chemical test or analysis of his blood, or of his oral fluid,
140 or to comply with all non-testimonial aspects of a Drug Recognition Expert examination in the
141 event that he is arrested for operating while under the influence of any other intoxicating
142 substance or combination of substances;

143 SECTION 16. Said section 24 of said chapter 90, as so appearing, is hereby further
144 amended by striking out, in line 703, the words "upon such way or place".

145 SECTION 17. Said section 24 of said chapter 90, as so appearing, is hereby further
146 amended by striking out, in lines 704, 715, 736, 756 to 757, and 867 to 868, every time they
147 appear, the words “of intoxicating liquor”.

148 SECTION 18. Said section 24 of said chapter 90, as so appearing, is hereby further
149 amended by inserting, after the word “analysis”, in lines 705, 709, 730, 733, 758, 761, and 872,
150 each time it appears, the following words:- or examination.

151 SECTION 19. Said section 24 of said chapter 90, as so appearing, is hereby further
152 amended by inserting after the word “made”, in line 709, the following words:- without first
153 obtaining a search warrant.

154 SECTION 20. Said section 24 of said chapter 90, as so appearing, is hereby further
155 amended by striking out, in lines 756 and 843, each time they appear, the words “on a way or
156 place”.

157 SECTION 21. Said section 24 of said chapter 90, as so appearing, is hereby further
158 amended by striking out, in lines 772 to 773, the words “either a chemical test or analysis of
159 breath or blood” and inserting in place thereof the following words:- any of a chemical test or
160 analysis of breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition
161 Expert examination.

162 SECTION 22. Said section 24 of said chapter 90, as so appearing, is hereby further
163 amended by inserting after the word “test”, in line 797, the following words:- , analysis or
164 examination.

165 SECTION 23. Said section 24 of said chapter 90, as so appearing, is hereby further
166 amended by striking out, in lines 804 to 805, the words “on any way or place”.

167 SECTION 24. Said section 24 of said chapter 90, as so appearing, is hereby further
168 amended by striking out, in lines 868 to 870, the words “upon any way or in any place to which
169 members of the public have a right of access or upon any way to which members of the public
170 have access as invitees or licensees”.

171 SECTION 25. Said section 24 of said chapter 90, as so appearing, is hereby further
172 amended by striking out, in lines 913 to 917, the words “marihuana, narcotic drugs, depressants
173 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the
174 influence from smelling or inhaling the fumes of any substance having the property of releasing
175 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof the following
176 words:- any intoxicating substance other than alcohol or a combination of alcohol and another
177 intoxicating substance.

178 SECTION 26. Section 24½ of said chapter 90, as so appearing, is hereby amended by
179 striking out, in lines 7 to 8, the words “of intoxicating liquor”.

180 SECTION 27. Section 24D of said chapter 90, as so appearing, is hereby amended by
181 striking out, in lines 4 to 7, the words “, controlled substance or while under the influence from
182 smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as
183 defined in section 18 of chapter 270” and inserting in place thereof, each time they appear, the
184 following words:- or any other intoxicating substance or combination of substances.

185 SECTION 28. Said section 24D of said chapter 90, as so appearing, is hereby further
186 amended by striking out, in lines 19 to 22, the words “, controlled substances or while under the

187 influence from smelling or inhaling the fumes of any substance having the property of releasing
188 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time
189 they appear, the following words:- or any other intoxicating substance or combination of
190 substances.

191 SECTION 29. Said section 24D of said chapter 90, as so appearing, is hereby further
192 amended by inserting after the word “liquor”, in lines 42 and 47, each time it appears, the
193 following words:- or any other intoxicating substance or combination of substances.

194 SECTION 30. Said section 24D of said chapter 90, as so appearing, is hereby further
195 amended by striking out, in line 54, the words “of intoxicating liquor” and inserting in place
196 thereof the following words:- offense.

197 SECTION 31. Said section 24D of said chapter 90, as so appearing, is hereby further
198 amended by striking out, in line 61, the words “of alcohol”.

199 SECTION 32. Said section 24D of said chapter 90, as so appearing, is hereby further
200 amended by striking out, in line 206, the word “drugs” and inserting in place thereof the
201 following words:- any other intoxicating substance or combination of substances.

202 SECTION 33. Section 24G of said chapter 90, as so appearing, is hereby amended by
203 striking out, in lines 1 to 3, the words “, upon any way or in any place to which the public has a
204 right of access, or upon any way or in any place to which members of the public have access as
205 invitees or licensees,”.

206 SECTION 34. Said section 24G of said chapter 90, as so appearing, is hereby further
207 amended by striking out, in lines 35 to 37 and 50 to 52, each time they appear, the words “, upon

208 any way or in any place to which the public has a right of access or upon any way or in any place
209 to which members of the public have access as invitees or licensees,”.

210 SECTION 35. Said section 24G of said chapter 90, as so appearing, is hereby amended
211 by striking out, in lines 5 to 9 and 39 to 43, each time they appear the words “, or of marijuana,
212 narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or
213 from smelling or inhaling the fumes of any substance having the property of releasing toxic
214 vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time they
215 appear, the following words:- or any other intoxicating substance or combination of substances.

216 SECTION 36. Subsection (a) of section 24I of said chapter 90, as so appearing, is hereby
217 amended by inserting after the definition of “Open container” the following definition:-

218 "Open or loose marijuana," finished marijuana or marijuana products, as defined by
219 chapter 94G, that are not contained in the original unopened packaging provided by a marijuana
220 retailer licensed under said chapter, or edible products prepared with marijuana, as defined under
221 said chapter, or marijuana, as defined in section 1 of chapter 94C; provided, that resealable
222 packages including but not limited to plastic zipper-top bags and screw-top jars shall constitute
223 an open container for purposes of this section.

224 SECTION 37. Said section 24I of said chapter 90, as so appearing, is hereby further
225 amended by striking out, in lines 17 to 19, the words “, upon any way or in any place to which
226 the public has a right of access, or upon any way or in any place to which members of the public
227 have access as invitees or licenses,”.

228 SECTION 38. Said section 24I of said chapter 90, as so appearing, is hereby further
229 amended by inserting after the word “beverage”, in lines 20 and 29, each time it appears, the
230 following words:- or open or loose marijuana.

231 SECTION 39. Section 24L of said chapter 90, as so appearing, is hereby amended by
232 striking out, in lines 1 to 3, the words “, upon any way or in any place to which the public has a
233 right of access, or upon any way or in any place to which members of the public have access as
234 invitees or licensees,”.

235 SECTION 40. Said section 24L of said chapter 90, as so appearing, is hereby further
236 amended by striking out, in lines 6 to 10, the words “, or marihuana, narcotic drugs, depressants,
237 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the
238 influence from smelling or inhaling the fumes of any substance having the property of releasing
239 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time
240 they appear, the following words:- or any other intoxicating substance or combination of
241 substances.

242 SECTION 41. Said section 24L of said chapter 90, as so appearing, is hereby further
243 amended by striking out, in lines 38 to 40, the words “, upon any way or in any place to which
244 the public has a right of access or upon any way or in any place to which members of the public
245 have access as invitees or licensees,”.

246 SECTION 42. Said section 24L of said chapter 90, as so appearing, is hereby further
247 amended by striking out, in lines 43 to 47, the words “, or of marihuana, narcotic drugs,
248 depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or
249 while under the influence from smelling or inhaling the fumes of any substance having the

250 property of releasing toxic vapors as defined in section 18 of chapter 270” and inserting in place
251 thereof, each time they appear, the following words:- or any other intoxicating substance or
252 combination of substances.

253 SECTION 43. Section 24N of said chapter 90, as so appearing, is hereby amended by
254 striking out, in lines 40 to 42, the words “on any such way or place while under the influence of
255 intoxicating liquor, and said defendant refused to submit to a chemical test or analysis of his
256 breath or blood” and inserting in place thereof the following words:- while under the influence
257 and said defendant refused to submit to any of a chemical test or analysis of breath, blood or oral
258 fluid or the non-testimonial aspects of a Drug Recognition Expert examination.

259 SECTION 44. Said section 24N of said chapter 90, as so appearing, is hereby further
260 amended by striking out, in lines 92 to 93, the words “a chemical test or analysis of his breath or
261 blood” and inserting in place thereof the following words:- any of a chemical test or analysis of
262 breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition Expert
263 examination.

264 SECTION 45. Said section 24N of said chapter 90, as so appearing, is hereby further
265 amended by striking out, in lines 99 to 102, the words “of intoxicating liquor upon any way or in
266 any place to which members of the public have a right of access or upon any way to which
267 members of the public have a right of access as invitees or licensees”.

268 SECTION 46. Said section 24N of said chapter 90, as so appearing, is hereby further
269 amended by inserting after the word “analysis”, in line 103, the following words:- or
270 examination.

271 SECTION 47. Section 24Q of said chapter 90, as so appearing, is hereby amended by
272 striking out, in line 11, the words “of intoxicating liquor”.

273 SECTION 48. Section 24R of said chapter 90, as so appearing, is hereby amended by
274 striking out, in line 7, the words “of intoxicating liquor”.

275 SECTION 49. Section 24S of said chapter 90, as so appearing, is hereby amended by
276 striking out, in lines 1 to 3, the words “, upon any way or place to which the public has a right of
277 access, or upon any way or place to which members of the public have access as invitees or
278 licensees,”.

279 SECTION 50. Section 24V of said chapter 90, as so appearing, is hereby amended by
280 striking out, in lines 4 to 5, the words “of intoxicating liquor”.

281 SECTION 51. Section 24W of said chapter 90, as so appearing, is hereby amended by
282 striking out, in line 7, the words “of intoxicating liquor”.

283 SECTION 52. Section 24X of said chapter 90, as so appearing, is hereby amended by
284 striking out, in line 7, the words “of intoxicating liquor”.

285 SECTION 53. Section 25 of said chapter 90, as so appearing, is hereby amended by
286 inserting after the word “examination”, in line 10, the following words:- , or who refuses to fully
287 lower his or her window to facilitate an interaction with such officer.

288 SECTION 54. Section 32C of said chapter 90, as so appearing, is hereby amended by
289 striking out, in line 16, the words “of any drug” and inserting in place thereof the following
290 words:- any other intoxicating substance or combination of substances.

291 SECTION 55. Section 40 of said chapter 90, as so appearing, is hereby amended by
292 inserting after the word “liquor”, in lines 59 to 60, the following words:- or any other
293 intoxicating substance or combination of substances.

294 SECTION 56. Section 44 of said chapter 90, as so appearing, is hereby amended by
295 inserting after the word “liquor”, in line 9, the following words:- or any other intoxicating
296 substance or combination of substances.

297 SECTION 57. Section 8 of chapter 90B of the General Laws, as so appearing, is hereby
298 amended by striking out, in lines 4 to 8, the words “marijuana, narcotic drugs, depressant or
299 stimulant substances, as defined in chapter ninety-four C, or from smelling or inhaling the fumes
300 of any substance having the property of releasing toxic vapors as defined in section 18 of chapter
301 270” and inserting in place thereof the following words:- any other intoxicating substance or
302 combination of substances.

303 SECTION 58. Paragraph (2) of subsection (a) of said section 8 of said chapter 90B, as so
304 appearing, is hereby amended by striking out the first 3 subparagraphs and inserting in place
305 thereof the following 6 subparagraphs:-

306 In any prosecution for a violation of paragraph (1), evidence of the percentage, by
307 weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by
308 chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath,
309 shall be admissible, and such failure or refusal shall be admissible in any action by the registrar
310 under this section or in any proceedings provided for in section 24N of chapter 90, and deemed
311 relevant to the determination of the question of whether the defendant was at such time under the
312 influence of intoxicating liquor, or any other intoxicating substance or combination of

313 substances; provided, however, that if such test or analysis was made by or at the direction of a
314 law enforcement officer, it was made with the consent of the defendant or pursuant to a search
315 warrant, the results thereof were made available to the defendant upon his request and the
316 defendant was afforded a reasonable opportunity, at his request and at his expense, to have
317 another such test or analysis made by a person or physician selected by him; and provided,
318 further, that blood shall not be withdrawn from any person for the purpose of such test or
319 analysis except by a physician, physician's assistant, registered nurse or authorized medical staff
320 of a health care facility; and, provided further, that a chemical test or analysis of the defendant's
321 breath shall be by means of equipment which has been calibrated within 30 days of its use.

322 Evidence that the defendant failed or refused to consent to such test or analysis shall not
323 be admissible against him in a civil or criminal process except in the case of refusal to cooperate
324 with a search warrant or court order, but any failure of the law enforcement officer to attempt to
325 administer or have administered such test or analysis, shall be so admissible. If such evidence is
326 that such percentage was five one-hundredths or less, and there is no evidence that the defendant
327 has also consumed another intoxicating substance or combination of substances, there shall be a
328 presumption that such defendant was not under the influence of intoxicating liquor, and he shall
329 be released from custody forthwith unless there is probable cause of intoxication caused by the
330 ingestion of some other substance or combination of substances, but the officer who placed him
331 under arrest shall not be liable for false arrest if such police officer had reasonable grounds to
332 believe that the person arrested had been operating a vessel while under the influence of
333 intoxicating liquor, or any other intoxicating substance or combination of substances; if such
334 evidence is that such percentage was more than five one-hundredths but less than eight one-
335 hundredths, there shall be no presumption.

336 Whoever operates a vessel on the waters of the commonwealth shall be deemed to have
337 consented to submit to a chemical test or analysis of his breath or blood in the event that he is
338 arrested for operating while under the influence of intoxicating liquor; and shall be deemed to
339 have consented to a chemical test or analysis of his blood, or of his oral fluid, or to comply with
340 all non-testimonial aspects of a Drug Recognition Expert examination in the event that he is
341 arrested for operating while under the influence of any other substance or combination of
342 substances; provided, however, that no person shall be deemed to have consented to a blood test
343 unless such person has been brought for treatment to a medical facility licensed under the
344 provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted
345 with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be
346 deemed to have consented to a withdrawal of blood. Such test shall be administered at the
347 direction of a law enforcement officer, having reasonable grounds to believe that the person
348 arrested has been operating a vessel under the influence.

349 In any prosecution for a violation of paragraph (1) in which the defendant is alleged to be
350 under the influence of intoxicating liquor; of a central nervous system depressant; of a
351 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of
352 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus
353 test conducted pursuant to a method approved by the National Highway Traffic Safety
354 Administration, and the detection of one or more of the following indicators: 1) lack of smooth
355 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum
356 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or
357 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible
358 and deemed relevant to the determination of the question of whether such defendant was at such

359 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a
360 permissible inference that such defendant was under the influence of intoxicating liquor; of a
361 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or
362 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such
363 indicators were present, there shall be a permissible inference that such defendant was not under
364 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative
365 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such
366 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from
367 such evidence with regard to whether the defendant was under the influence. In any such
368 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus
369 test has been demonstrated to have scientific validity and reliability when administered by
370 properly trained and certified police officers and when used in conjunction with other evidence,
371 in detecting impairment by alcohol; by central nervous system depressants; by dissociative
372 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and
373 (2) a contemporary publication of the National Highway Traffic Safety Administration with
374 regard to the proper administration of the horizontal gaze nystagmus test.

375 In any prosecution for a violation of paragraph (1) in which it is alleged that a
376 defendant's operation of a vessel was impaired by an intoxicating substance other than
377 intoxicating liquor, evidence of the concentration of such intoxicating substance in a defendant's
378 system shall not be a precondition to the admissibility of evidence of the presence of such
379 intoxicating substance in the defendant's system.

380 In any prosecution for a violation of paragraph (1) in which it is alleged that a
381 defendant's operation of a vessel was impaired, in whole or in part, by the consumption of

382 marijuana, marijuana products, or other forms of tetrahydrocannabinol (THC), the court may
383 take judicial notice that the ingestion of THC can cause impairment in operators of vessels; that
384 it can impair motor function, reaction time, tracking, cognitive attention, decision-making,
385 judgment, perception, peripheral vision, impulse control, and memory; and that ingestion of THC
386 does not enhance a person’s ability to safely operate a vessel.

387 SECTION 59. Said section 8 of said chapter 90B, as so appearing, is hereby further
388 amended by striking out, in lines 210, 221, and 245 to 246, each time they appear, the words “of
389 intoxicating liquor”.

390 SECTION 60. Said section 8 of said chapter 90B, as so appearing, is hereby further
391 amended by inserting after the word “analysis”, in lines 210 to 211, 222, and 248, each time it
392 appears, the following words:- or examination.

393 SECTION 61. Said section 8 of said chapter 90B, as so appearing, is hereby further
394 amended by inserting after the word “made”, in line 214, the following words:- without first
395 obtaining a search warrant.

396 SECTION 62. Section 8A of said chapter 90B, as so appearing, is hereby amended by
397 striking out, in lines 4 to 7, the words “marihuana, narcotic drugs, depressants, or stimulant
398 substances, all as defined in chapter ninety-four C, or from smelling or inhaling the fumes of any
399 substance having the property of releasing toxic vapors as defined in section 18 of chapter 270”
400 and inserting in place thereof the following words:- any other intoxicating substance or
401 combination of substances.

402 SECTION 63. Said section 8A of said chapter 90B, as so appearing, is hereby further
403 amended by striking out, in lines 37 to 40, the words “marihuana, narcotic drugs, depressants or

404 stimulant substances, all as defined in chapter ninety-four C, or from smelling or inhaling the
405 fumes of any substance having the property of releasing toxic vapors as defined in section 18 of
406 chapter 270” and inserting in place thereof the following words:- any other intoxicating
407 substance or combination of substances.

408 SECTION 64. Section 8B of said chapter 90B, as so appearing, is hereby amended by
409 striking out, in lines 4 to 7, the words “marihuana, narcotic drugs, depressants, or stimulant
410 substances, all as defined in chapter ninety-four C, or from smelling or inhaling the fumes of any
411 substance having the property of releasing toxic vapors as defined in section 18 of chapter 270”
412 and inserting in place thereof the following words:- any other intoxicating substance or
413 combination of substances.

414 SECTION 65. Said section 8B of said chapter 90B, as so appearing, is hereby further
415 amended by striking out, in lines 39 to 42, the words “marihuana, narcotic drugs, depressants or
416 stimulant substances, all as defined in chapter ninety-four C, or from smelling or inhaling the
417 fumes of any substance having the property of releasing toxic vapors as defined in section 18 of
418 chapter 270” and inserting in place thereof the following words:- any other intoxicating
419 substance or combination of substances.

420 SECTION 66. Section 26A of said chapter 90B, as so appearing, is hereby amended by
421 striking out, in lines 6 to 10 and 17 to 21, each time they appear, the words “of marijuana,
422 narcotic drugs, depressants or stimulant substances, as defined in section 1 of chapter 94C, or
423 from smelling or inhaling the fumes of any substance having the property of releasing toxic
424 vapors as defined in section 18 of chapter 270” and inserting in place thereof the following
425 words:- any other intoxicating substance or combination of substances.

426 SECTION 67. Section 1 of chapter 90F of the General Laws, as so appearing, is hereby
427 amended by striking out, in lines 111 and 118, each time it appears, the word “drugs” and
428 inserting in place thereof the following words:- any other intoxicating substance or combination
429 of substances.

430 SECTION 68. Said chapter 90F is hereby further amended by striking out section 11, as
431 so appearing, and inserting in place thereof the following section:-

432 Section 11. (A) Any person who operates a commercial motor vehicle upon the highways
433 of the commonwealth shall be deemed to have given consent, to a test or tests of that person's
434 blood, breath, or urine for the purpose of determining that person's alcohol concentration, or to a
435 test of that person’s blood, or oral fluid, or to all non-testimonial aspects of a drug recognition
436 expert examination for the purpose of determining the presence of other drugs, intoxicating
437 substances or combination of substances.

438 (B) A test or tests or examinations may be administered at the direction of a law
439 enforcement officer, who after stopping or detaining the operator of a commercial motor vehicle,
440 has probable cause to believe that the operator was operating a commercial motor vehicle while
441 having alcohol or any other intoxicating substance or combination of substances in his system.

442 (C) A person requested to submit to a test or examination as provided shall be advised
443 that a refusal to submit to the test or non-testimonial aspects of the examination will result in that
444 person being disqualified from operating a commercial motor vehicle.

445 (D) If the person refuses testing or examination, or submits to a test which discloses an
446 alcohol concentration of four hundredths or more, the law enforcement officer must submit a
447 sworn report to the registrar certifying that the test or examination was requested pursuant to

448 paragraph (A) and that the person refused to submit to testing or non-testimonial aspects of the
449 examination, or submitted to a test which disclosed an alcohol concentration of four hundredths
450 or more.

451 (E) Upon receipt of the sworn report of a law enforcement officer submitted under
452 paragraph (D), the registrar shall disqualify the driver from driving a commercial motor vehicle
453 for a period of 1 year; provided, however, that upon receipt of such report with respect to any
454 person who refuses to submit to such a test or examination or submits to a test which discloses an
455 alcohol level of four one-hundredths or more while transporting a hazardous material required to
456 be placarded, the registrar shall disqualify such person from driving a commercial motor vehicle
457 for 3 years. The registrar shall disqualify for life any person who refuses to submit to 2 or more
458 tests or examinations, or submits to two or more tests which disclose an alcohol level of four
459 one-hundredths or more, or any combination of the 2 or more thereof. Any operator who has
460 been disqualified shall be entitled to a hearing before the registrar which shall be limited to the
461 following issues: (1) did the law enforcement officer, who after stopping or detaining the
462 commercial motor vehicle driver, have probable cause to believe that the driver was driving a
463 commercial motor vehicle while having alcohol in his system or being under the influence of an
464 intoxicating substance or combination of substances; and (2) did such person refuse to submit to
465 such test or examination.

466 SECTION 69. Subsection (a $\frac{1}{2}$) of section 4 of chapter 94G of the General Laws, as so
467 appearing, is hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place
468 thereof the following 3 clauses:-

469 (xxxiii) requirements that prohibit marijuana product manufacturers from altering or
470 utilizing commercially-manufactured food products when manufacturing marijuana products
471 unless the food product was commercially manufactured specifically for use by the marijuana
472 product manufacturer to infuse with marijuana; provided, however, that a commercially-
473 manufactured food product may be used as an ingredient in a marijuana product if: (i) it is used
474 in a way that renders it unrecognizable as the commercial food product in the marijuana product;
475 and (ii) there is no statement or advertisement indicating that the marijuana product contains the
476 commercially-manufactured food product;

477 (xxxiv) energy and environmental standards for licensure and licensure renewal of
478 marijuana establishments licensed as a marijuana cultivator or marijuana product manufacturer;
479 and

480 (xxxv) requirements for retailers of marijuana and retailers of marijuana accessories to
481 distribute, with each retail sale of marijuana, marijuana products, or marijuana accessories,
482 educational materials relative to the dangers of operating a motor vehicle under the influence of
483 marijuana or marijuana products, and the penalties associated with such offenses.

484 SECTION 70. Section 13 of said chapter 94G, as so appearing, is hereby amended by
485 striking out subsection (d).

486 SECTION 71. Chapter 112 of the General Laws is hereby amended by inserting after
487 section 12A^{1/2} the following section:-

488 Section 12A^{3/4}. (a) Any physician duly registered under the provisions of section 2, 2A, 9,
489 9A or 9B, any physician assistant duly registered under the provisions of section 9I or his
490 employing or supervising physician, and any nurse duly registered or licensed under the

491 provisions of section 74, 74A or 76, and any authorized medical staff of a health care facility
492 who is a resident of the Commonwealth, shall faithfully assist a law enforcement officer seeking
493 to execute a valid search warrant or court order requiring the collection of a biological sample.
494 The assisting party or, during regular work hours, his or her employer, shall be entitled to be paid
495 a reasonable rate by such law enforcement officer's employer for his or her services . The
496 Secretary of Health and Human Services may promulgate regulations (i) requiring said
497 physicians, physician's assistants and authorized medical staff to collect such samples in
498 accordance with state and national practice standards and (ii) to establish the rate due a party
499 who assists a law enforcement officer in the collection of a biological sample obtained pursuant
500 to a search warrant or court order requiring the production of such evidence. Such fees shall be
501 borne by the law enforcement agency executing the search warrant in question.

502 (b) A person assisting a law enforcement officer under subsection (a) and any employer
503 of such person shall not be liable in a civil proceeding for any act or omission taken pursuant to
504 this section if acting in good faith; provided, that this subsection shall not alter the rights,
505 immunities, and liabilities of any public employee or public employer under chapter 258.

506 SECTION 72. Chapter 233 of the General Laws is hereby amended by adding the
507 following section:-

508 Section 84. A witness who has successfully completed a training program for drug
509 recognition experts that meets the National Highway Traffic Safety Administration guidelines
510 for training and certification of drug recognition experts may testify in the form of an opinion or
511 otherwise as to the significance of any symptoms of impairment or intoxication for which
512 evidence has been admitted or on the condition that such evidence be introduced.

513 SECTION 73. Section 5A of chapter 263 of the General Laws, as appearing in the 2020
514 Official Edition, is hereby amended by inserting after the word “liquor”, in line 3, the following
515 words:- or any other intoxicating substance or combination of substances.

516 SECTION 74. Section 2A of chapter 276 of the General Laws, as so appearing, is hereby
517 amended by striking out, in line 1, the word “The” and inserting in place thereof the following
518 words:- The signature on the warrant may be made by electronic signature. The.

519 SECTION 75. Section 2B of said chapter 276, as so appearing, is hereby amended by
520 inserting after the word “personally”, in lines 1 and 2, the following words:- or through wire or
521 electronic means.

522 SECTION 76. Said section 2B of said chapter 276, as so appearing, is hereby further
523 amended by inserting after the word “form”, in line 13, the following words:- and the signature
524 therein may be made by electronic signature.

525 SECTION 77. The special commission established by section 50 of chapter 55 of the
526 acts of 2017 is hereby revived and continued until December 31, 2023. The special commission
527 shall also study, review, and evaluate the reliability of oral fluid and other testing as evidence in
528 prosecutions for operating under the influence, as well as the practical availability of experts to
529 the commonwealth and defendants, and make annual reports of its progress.

530 SECTION 78. Notwithstanding any general or special law to the contrary, the highway
531 safety division shall, in collaboration with the National Highway Traffic Safety Administration,
532 the Massachusetts Chiefs of Police Association, and the commonwealth’s statewide drug
533 recognition expert coordinator, develop educational materials and programming relative to the

534 drug recognition expert program and make such materials and programming available to the
535 Massachusetts Judges Conference and the trial court.

536 SECTION 79. Notwithstanding any general or special law to the contrary, the municipal
537 police training committee shall take an annual census of certified drug recognition experts
538 employed by municipal police departments in the commonwealth and, if the number of such
539 experts is 350 or fewer, shall make efforts to recruit additional local law enforcement officials to
540 attend a training program to achieve certification.