

By Mr. Galvin of Boston, petition of William F. Galvin for legislation to provide for the testing of persons operating motor vehicles under the influence of controlled substances. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT TO PROVIDE FOR TESTING OF PERSONS OPERATING A MOTOR VEHICLE UNDER THE INFLUENCE OF CONTROLLED SUBSTANCES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111B of the General Laws is hereby
2 amended by striking out section 8 and inserting in place thereof the
3 following section: —

4 *Section 8.* Any person who is incapacitated may be assisted by
5 the police officer with or without his consent to his residence, to a
6 facility or to a police station. To determine for purposes of this
7 chapter only, whether or not such person is intoxicated or under the
8 influence of a controlled substance, the police officer may request
9 the person to submit to reasonable test of coordination, coherency
10 of speech and breath.

11 Any person assisted by a police officer to a police station shall
12 have the right, and be informed in writing of said right, to request
13 and be administered a breathalyzer test, or to have a sample of his
14 blood screened for controlled substances. For the purposes of
15 having a blood sample drawn from said person he may be assisted
16 to the nearest clinic or hospital. Any person who has a sample of his
17 blood screened for controlled substances shall be presumed intoxi-
18 cated if evidence from such toxic screen indicates the presence of a
19 controlled substance as defined in chapter ninety-four C of the
20 General Laws. Any person who is administered a breathalyzer test
21 shall be presumed intoxicated if evidence from said test indicates
22 that the percentage of alcohol in his blood is ten one hundredths or

23 more and shall be placed in protective custody at a police station or
24 transferred to a facility. Any person who is administered a breathalyzer
25 lyzer test, under this section, shall be presumed not to be intoxicated
26 if evidence from said test indicates that the percentage of alcohol in his
27 blood is five one hundredths or less and shall be released from custody
28 forthwith. If any person who is administered a breathalyzer test, under
29 this section, and evidence from said test indicates that the percentage of
30 alcohol in his blood is more than five one hundredths and is less than
31 ten one hundredths there shall be no presumption made based solely
32 on the breathalyzer test. In such instance a reasonable test of coordination
33 or speech coherency must be administered to determine if said person is
34 intoxicated by reason of alcohol ingestion. When such test of coordination
35 or speech coherency indicates said person is intoxicated or when such
36 toxic drug screen indicates a person is intoxicated, he shall be placed
37 in protective custody at a police station, a facility, clinic or hospital.

40 Any person presumed intoxicated and to be held in protective
41 custody at the police station, clinic or hospital shall, immediately after
42 such presumption, have the right and be informed of said right to make
43 one phone call at his own expense and on his own behalf. Any person
44 assisted by a police officer to a facility under this section shall have
45 the right to make one phone call at his own expense on his own behalf
46 and shall be informed forthwith upon arriving at the facility of said
47 right. The parent or guardian of any person, under the age of eighteen,
48 to be held in protective custody at a police station shall be notified
49 forthwith upon his arrival at said station or as soon as possible thereafter.

51 If any incapacitated person is assisted to a police station, the
52 officer in charge or his designee shall notify forthwith the nearest
53 facility that the person is being held in protective custody. If suitable
54 treatment services are available at a facility, the department shall
55 thereupon arrange for the transportation of the person to the facility
56 in accordance with the provisions of section seven.

57 No person assisted to a police station pursuant to this section
58 shall be held in protective custody against his will; provided, however,
59 that if suitable treatment at a facility is not available, an incapacitated
60 person may be held in protective custody at a police

61 station until he is no longer incapacitated or for a period of not
62 longer than twelve hours, whichever is shorter.

63 A police officer acting in accordance with the provisions of this
64 section may use such force as is reasonably necessary to carry out
65 his authorized responsibilities. If the police officer reasonably
66 believes that his safety or the safety of other persons present so
67 requires, he may search such person and his immediate surround-
68 ings, but only to the extent necessary to discover and seize any
69 dangerous weapons which may on that occasion be used against the
70 officer or other person present; provided, however, that if such
71 person is held in protective custody at a police station all valuables
72 and all articles which may pose a danger to such person or to others
73 may be taken from him for safekeeping and if so taken shall be
74 inventoried.

75 A person assisted to a facility or held in protective custody by the
76 police pursuant to the provisions of this section, shall not be consid-
77 ered to have been arrested or to have been charged with any crime.
78 An entry of custody shall be made indicating the date, time, place of
79 custody, the name of the assisting officer, the name of the officer in
80 charge, whether the person held in custody exercised his right to
81 make a phone call, whether the person held in custody exercised his
82 right to take a breathalyzer test, the results of a breathalyzer test if
83 taken, or the results of a toxic blood screen, which entry shall not be
84 treated for any purposes, as an arrest or criminal record.

1 SECTION 2. Section 5A of chapter 263 of the General Laws is
2 hereby amended by striking out the first sentence and inserting in
3 place thereof the following sentence: — A person held in custody at
4 a police station or other place of detention, charged with operating
5 a motor vehicle while under the influence of either intoxicating
6 liquor or a controlled substance, shall have the right, at his request
7 and at his expense, to be examined immediately by a physician
8 selected by him.

