

By Mr. White of Boston, petition of W. Paul White and Andrew J. Rogers, Jr., relative to further defining judicial discretion in the disposition of certain misdemeanor cases. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Six.

**AN ACT FURTHER DEFINING JUDICIAL DISCRETION IN THE DISPOSITION OF CERTAIN MISDEMEANORS.**

*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 90 of the General Laws is hereby  
2 amended by striking out the first paragraph of Section 24E as  
3 most recently amended by Chapter 505 of the Acts of 1975, and  
4 inserting in place thereof the following paragraph.

5 The provisions of this section shall apply only to a person who  
6 has not been found guilty of a violation of paragraph (a) of  
7 subdivision (1) of section twenty-four in this Commonwealth or a  
8 like offense in any other state or federal jurisdiction within a  
9 period of two years immediately preceding the commission of  
10 the present offense with which he or she is charged, and against  
11 whom no such charge is pending; nor shall the provisions of this  
12 section apply to a person who has been charged with a violation  
13 of said paragraph (a) of subdivision (1) of said section twenty-  
14 four in this Commonwealth within a two-year period and has had  
15 such charge continued without a finding by any court in this  
16 Commonwealth. The provisions of this section shall not apply  
17 where notice from the registrar of intention to suspend or revoke  
18 a person's license or right to operate is pending prior to the date  
19 of complaint on the offense before the court nor to cases, where  
20 under paragraph (c) of subdivision (1) of section twenty-four, the  
21 violation is determined to have caused a death.

1 SECTION 2. Chapter 90 of the General Laws is further  
2 amended by striking out the fourth paragraph of section 24E as

3 most recently amended by Chapter 505 of the Acts of 1975, and  
4 inserting in place thereof the following paragraph:

5 Where a person has been charged with operating under the  
6 influence of intoxicating liquor and where the case has been  
7 continued without a finding for a year and where the person has  
8 been placed on probation for a year with his or her consent and  
9 the person is qualified for disposition under this section, a hearing  
10 shall be held by the court at any time after sixty days but not later  
11 than ninety days from the date where the case has been continued  
12 without a finding to review such person's compliance with the  
13 program ordered as a condition of probation, such hearing will  
14 include a review of any condition of probation which has required  
15 the surrender of the person's license to the court or has restricted  
16 the person's hours of driving.

1 SECTION 3. Chapter 90 of the General Laws is further  
2 amended by striking out the fifth paragraph of section 24E as  
3 most recently amended by Chapter 505 of the Acts of 1975 and  
4 inserting in place thereof the following paragraph.

5 At said hearing the probation officer shall submit to the court a  
6 written report which shall include but shall not be limited to a  
7 written statement by the supervisor of any program of alcohol  
8 education and of any program of alcohol treatment and  
9 rehabilitation to which the court has assigned such person. Said  
10 statement shall consider such person's participation and attend  
11 ance in each such court ordered program. The registrar shall  
12 submit a written report to the judge at said hearing regarding any  
13 entries made on said person's driving record in the period  
14 following placement in the program. If the judge finds sufficient  
15 basis to conclude that said person has satisfactorily completed or  
16 is satisfactorily complying with said program the judge may alter  
17 or modify the initial conditions of the one-year probationary  
18 period. Appropriate orders relative to said person's continued  
19 participation in a program or relative to a later hearing may be  
20 made by the court at its hearing, subject to the duration of the one  
21 year term of probation.