

By Mrs. Parente of Milford, petition of Marie J. Parente relative to the suspension of licenses to operate motor vehicles for refusal to take a blood test. Public Safety.

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

AN ACT PROVIDING FOR LICENSE SUSPENSION FOR REFUSAL TO TAKE A BLOOD TEST AFTER ARREST FOR DRIVING UNDER THE INFLUENCE OF DRUGS.

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

1 Paragraph (F) of subdivision 1 of section 24 of chapter 90 of  
2 the General Laws, as appearing in the 1994 Official Edition, is  
3 hereby further amended by adding the following subparagraph:—  
4 (3) Whoever operates a motor vehicle upon any way or in any  
5 place to which the public has right to access, or upon any way or  
6 in any place to which the public has access as invitees or  
7 licensees, shall be deemed to have consented to submit to a chem-  
8 ical test or analysis of his blood in the event he is arrested for  
9 operating a motor vehicle while under the influence of marijuana,  
10 narcotic drugs, depressants or stimulant substances, all as defined  
11 in section one of chapter ninety-four C; provided, however, that  
12 no such person shall be deemed to have consented to a blood test  
13 unless such person has been brought for treatment to a medical  
14 facility licensed under the provisions of section fifty-one of  
15 chapter one hundred and eleven; and provided, further, that no  
16 person who is afflicted with hemophilia, diabetes or any other  
17 condition requiring the use of anticoagulants shall be deemed to  
18 have consented to a withdrawal of blood. Such test shall be  
19 administered at the direction of a police officer, as defined in  
20 section one of chapter ninety C, having reasonable grounds to  
21 believe that the person arrested has been operating a motor

22 vehicle upon such way or place while under the influence of  
23 marijuana, narcotic drugs, depressants or stimulant substances.  
24 If the person arrested refuses to submit to such test or analysis,  
25 after having been informed that his license or permit to operate  
26 motor vehicles or right to operate motor vehicles in the common-  
27 wealth shall be suspended for at least a period of one hundred and  
28 twenty days, but not more than one year for such refusal, no such  
29 test or analysis shall be made and he shall have his license or right  
30 to operate suspended in accordance with this paragraph for a  
31 period of one hundred and twenty days; provided, however, that  
32 any person who is under the age of twenty-one or who has been  
33 previously convicted of a violation under this section or a like vio-  
34 lation by a court of any other jurisdiction within ten years of the  
35 date of the charge in question shall have his license or right to  
36 operate suspended forthwith for a period of one hundred and  
37 eighty days for such refusal; and provided, further, that any person  
38 previously convicted two or more times for a violation under this  
39 section or a like violation by a court of any other jurisdiction  
40 within ten years of the date of the charge in question, shall have  
41 his license or right to operate suspended forthwith for a period of  
42 one year for such refusal. If a person refuses to take a test under  
43 this section, the police officer shall do the following:—

44 (i) immediately and on behalf of the registrar take custody of  
45 such person's driver license or permit issued by the common-  
46 wealth;

47 (ii) provide each such person who refuses such test, on behalf  
48 of the registrar, with a written notice of intent to suspend, on  
49 forms prepared and provided by the registrar;

50 (iii) issue to each such person who refuses such test, on behalf  
51 of the registrar, a temporary driving permit, unless: (1) driving  
52 privileges of the person were suspended, revoked, or canceled at  
53 the time the person was arrested; (2) the person whose license was  
54 taken into custody was operating on an invalid license; (3) the  
55 person was not entitled to driving privileges at the time of the  
56 arrest for any other reason; or (4) the person holds a license or  
57 permit granting driving privileges that was issued by another state  
58 or jurisdiction.

59 The police officer before whom such refusal was made shall  
60 immediately prepare a written report of such refusal. Such written

61 report of refusal shall be endorsed by a third person who shall  
62 have witnessed such refusal. Each such report shall be made on a  
63 form approved by the registrar, and shall be sworn under the  
64 penalties of perjury by the police officer before who such refusal  
65 was made. Each such report shall set forth the grounds for the  
66 officer's belief that the person arrested had been operating a motor  
67 vehicle on any such way or place while under the influence of  
68 marijuana, narcotic drugs, depressants or stimulant substances,  
69 and shall state that such person had refused to submit to such  
70 chemical test or analysis when requested by such police officer to  
71 do so. Each such report shall be endorsed by the police chief, as  
72 defined in section one of chapter ninety C, or by the person autho-  
73 rized by him and shall be sent forthwith to the registrar along with  
74 the confiscated license or permit and a copy of the notice of intent  
75 to suspend.

76 The license suspension shall become effective fifteen days after  
77 the offender has received the notice of intent to suspend from the  
78 police officer. No license shall be restored under any circum-  
79 stances and no restricted or hardship permits shall be issued  
80 during the suspension period imposed by this paragraph; provided,  
81 however, that the defendant may immediately, upon the entry of a  
82 not guilty finding or dismissal of all charges under this section,  
83 section twenty-four G or twenty-four L, and in the absence of any  
84 other drug related charges pending against said defendant, apply  
85 for and be immediately granted a hearing before the court which  
86 took final action on the charges for the purpose of requesting the  
87 restoration of said license. At said hearing, there shall be a rebut-  
88 table presumption that said license be restored, unless the com-  
89 monwealth shall establish, by a fair preponderance of the  
90 evidence, that restoration of said license would likely endanger  
91 the public safety. In all such instances, the court shall issue  
92 written findings of fact with its decision.

93 The registrar shall provide police departments and agencies  
94 with permits for issuance as required by this subparagraph. The  
95 registrar shall establish the form and content of permits described  
96 in this section as the registrar determines appropriate, but in a  
97 manner consistent with this section. A temporary driving permit  
98 described in this section shall become effective twelve hours after  
99 the stated time of such issuance and shall remain valid until the

100 fifteenth day after the date of arrest; shall be issued without  
101 payment fee; and, except as otherwise provided, such permit shall  
102 grant the same driving privileges as those granted by the person's  
103 license taken into possession under this subparagraph.