

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

DAR-_____
Appeals Court No. 2022-P-0988

COMMONWEALTH OF MASSACHUSETTS, Appellee

v.

BRADLEY ZUCCHINO, Appellant, Defendant

Appellant Bradley Zucchini's Application for Direct
Appellate Review on Reported Question

Murat Erkan (BBO# 637507)
Erkan & Associates, LLC
300 High Street
Andover, MA 01810
978-474-0054
December 8, 2022 murat@erkanlaw.com

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. App. P. Rule 11, Bradley
Zucchini seeks leave to obtain direct appellate review.

STATEMENT OF PRIOR PROCEEDINGS

On December 10, 2020, an Essex County Grand Jury
returned indictments against Mr. Zucchini in
connection with a fatal accident on January 12, 2020.
Add. 22-23.

Mr. Zucchini filed a motion to suppress the results of blood alcohol testing ("BAC") which the State Police Crime Laboratory ("Crime Lab") conducted, contending that the testing constituted a search beyond the scope of the warrant as-issued ("First Motion"). Add. 35-36. The trial court (Hon. James F. Lang) issued written findings of fact and rulings of law denying the First Motion on August 24, 2022. Add. 35.

On September 23, 2022, the Superior Court docketed Mr. Zucchini's Amended Motion to Suppress ("Second Motion"). Add. 30. The Second Motion also sought to suppress the BAC evidence, but on statutory, rather than constitutional grounds. G.L. c. 90, §24(1)(e). Add. 39.

That same day, the Hon. Salim R. Tabit allowed Mr. Zucchini's request for an extension of the filing deadline of an interlocutory appeal of the denial of the First Motion, without prejudice to Judge Lang (who was away) revisiting the issue. Add. 30. On September 27, 2022, Judge Lang further extended the interlocutory deadline until 30 days after the court ruled on the Second Motion. Add. 30.

Judge Tabit considered and denied Mr. Zucchini's Second Motion on October 4, 2022. Add. 30. Finding that his "interlocutory order so affects the merits of the controversy that the matter ought to be determined by the Appeals Court," pursuant to G.L. c. 231, § 111 and Mass. R. Crim. P. 34, he reported the following question: "Is the Commonwealth required to seek a defendant's consent in order to admit his/blood testing results in the prosecution of a G.L. c. 90, § 24L offense?" Add. 39-40. The Appeals Court entered the appeal (2022-P-0988) on October 12, 2022. Add. 32.

Mr. Zucchini filed an application for interlocutory review of the First Motion, which the Court entered on November 4, 2022. SJ-2022-0428, Add. 33. On November 7, 2022, the Appeals Court granted a stay of proceedings regarding Judge Tabit's reservation and report, pending resolution of the interlocutory appeal application. Add. 32. On November 29, 2022, the Single Justice (Wendlandt, J.) denied interlocutory review. Add. 33.

STATEMENT OF FACTS RELEVANT TO APPEAL

On January 12, 2020, Bradley Zucchini was involved in a two-car accident. The driver of the other vehicle expired from her injuries and her

passenger was seriously injured. Mr. Zucchini was transported to Lawrence General Hospital as a result of injuries he sustained in the accident.

The next day, North Andover Officer Sousa applied for, obtained, and executed a search warrant at Lawrence General Hospital. The warrant sought blood which the hospital had drawn from Mr. Zucchini. The Hospital turned over the requested blood. Officer Sousa submitted the blood to the Crime Lab on January 23, 2020. On January 31, 2020, the Crime Lab conducted testing which revealed the presence of alcohol at .322 and .326 concentrations.

The Commonwealth did not seek or obtain Mr. Zucchini's consent prior to the Crime Lab testing.

On June 8, 2020, the Commonwealth summonsed Mr. Zucchini to the Lawrence District Court to answer criminal charges in connection with the accident.

On December 12, 2020, an Essex County Grand Jury returned the following indictments against Mr. Zucchini:

- 1) Manslaughter by Motor Vehicle G.L. c. 265, §13½
- 2) Operating under the Influence of Liquor and being Negligent Causing Serious Bodily Injury G.L. c. 90, §24L

- 3) Operating a Motor Vehicle while having a BAC of .08% or Greater and being Negligent causing Serious Bodily Injury G.L. c. 90, §24L
- 4) Assault and Battery by Means of a Dangerous Weapon causing Serious Bodily Injury G.L. c. 265, §15A(c)(i)
- 5) Leaving the Scene of Personal Injury, Death G.L. c. 90, §24(2)(a ½)(2)
- 6) Leaving the Scene of Personal Injury, G.L. c. 90, §24(2)(a ½)(1)

The Commonwealth seeks to admit the Crime Lab BAC testing against Mr. Zucchini at trial.

**STATEMENT OF ISSUES WITH RESPECT TO WHICH
MR. ZUCCHINO SEEKS DIRECT APPELLATE REVIEW**

In a prosecution for offenses greater than "simple OUI," did G.L. c. 90, § 24(1)(e) require the Commonwealth to obtain Mr. Zucchini's consent prior to testing his blood?

Mr. Zucchini properly raised and preserved the reported question before the Superior Court.

BRIEF STATEMENT OF ARGUMENT

- I. **G.L. c. 90, § 24(1)(e) required the Commonwealth to obtain Mr. Zucchini's consent prior to testing his blood.**

Mr. Zucchini argued that G.L. c. 90, §24(1)(e) forbade crime lab testing of his blood without his consent, citing Commonwealth v. Moreau, 490 Mass. 387

(2022)).¹ The Superior Court disagreed, citing Commonwealth v. Bohigian, 486 Mass. 209 (2020). In that case, this Court stated

"Section 24 (1) (e) applies only to prosecutions under § 24 (1) (a), which prohibits simple OUI ... as the defendant additionally was charged with a violation of § 24L (OUI causing serious bodily injury), § 24 (1) (e) had no bearing at all on the admissibility of the BAC evidence with regard to this more serious charge ... The same can be said for any defendant facing an OUI-related prosecution that is more serious than simple OUI.

Id. at 213-214, fn. 10.

Concededly, this language appears at first blush to foreclose application of §24(1)(e) to any offense greater than "simple OUI." Id. at 214. But closer examination reveals otherwise.

In ruling that the Government could not draw blood without consent, the Bohigian Court relied on §24(1)(f)(1) "quite apart from §24(1)(e)". Id. at 214. Thus, its treatment of the hypothetical applicability of §24(1)(e) in other contexts was dicta. Cf. Doughty

¹ Because Mr. Zucchini was not arrested, he did not seek suppression under the "implied consent" provisions of G.L. c. 90, §24(1)(f)(1) (operator "shall be deemed to have consented to submit to [BAC testing] in the event that he is arrested for [OUI.]")

v. Underwriters at Lloyd's, London, 6 F.3d 856, 861 (1st Cir. 1993) ("'Dictum' ... describes comments relevant, but not essential, to the disposition of legal questions pending before a court"). The dicta/holding distinction recognizes that

The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated ... [O]ur adversarial system of justice ... is premised on the well-tested principle that truth -- as well as fairness -- is best discovered by powerful statements on both sides of the question."

Commonwealth v. Rahim, 441 Mass. 273, 284 (2004) (citations / quotations omitted).

The "simple OUI" limitation to §24(1)(e) did not arise from the process which customarily accompanies the formulation of a rule of law. Contrast R.R. Cos. v. Schutte, 103 U.S. 118, 143 (1880) ("Here the precise question was properly presented, fully argued, and elaborately considered in the opinion.")

The question of whether §24(1)(e) was limited to "simple OUI" was not "properly presented". Rather,

the issue was whether a warrant obviates the OUI consent provisions. Id. at 212-213. Neither Bohigian, the Commonwealth, nor amici argued in their brief that §24(1)(e) was limited to "simple OUI". Consequently - this Court lacked the guidance which only "powerful statements on both sides of the question" could provide. Cf. Rahim, 441 Mass. at 284.

Neither do the Court's "simple OUI" comments reveal "elaborate[] consider[ation]" of the issue. Schutte, 103 U.S. at 143. They are unsupported by citation to precedent. That omission is noteworthy given the body of case law consistently applying §24(1)(e) to aggravated forms of OUI. See, e.g., Commonwealth v. Zevitas, 418 Mass. 677, 678 (1994) (holding application of §24(1)(e) to a §24G(a) motor vehicle homicide prosecution was "mandated by the statute," but reversing the defendant's conviction insofar as that version of §24(1)(e) required the trial judge, in effect, to instruct the jury that the defendant refused testing); Commonwealth v. McCravy, 430 Mass. 758, 760 (2000) (in §24G(a) prosecution, "[e]vidence that a person's blood alcohol level is 0.08 per cent creates a permissible inference that a

person is under the influence of alcohol," citing §24(1)(e). Bohigian makes no reference to the settled law it contradicts.

The "simple OUI" comments are also unsupported by statutory analysis, Commonwealth v. Dalton, 467 Mass. 555 (2014), much less any reason the legislature would frustrate its goal of ensuring that BAC testing is consensual and the results admissible. Bohigian, 486 Mass. at 221 (Lowy, J., dissenting)). Had the issue been "properly presented, fully argued, and elaborately considered," this Court would have decided otherwise. Schutte, 103 U.S. at 143.

"The meaning of a statute must, in the first instance, be sought in language in which the act is framed, and if that is plain, ... the sole function of the courts is to enforce it according to its terms." Dalton, 467 Mass. at 557 (citation omitted). Considering the issue from a purely textual perspective - which is in most cases the beginning and the end of the inquiry - the plain language of §24(1)(e) reveals its applicability to the prosecution of any offense containing each element of OUI.²

² Both offenses at issue here contain the elements of OUI. Commonwealth v. Guaman, 90 Mass. App. Ct. 36,

As pertinent here, §24(1)(e) provides:

In any prosecution for a violation of paragraph (a), [BAC] evidence ... shall be admissible ... provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant[.]

§24(1)(e) applies to "any prosecution for a violation of" §24(1)(a), which section, in turn, sets forth the elements common to the offense of OUI. (emphasis added). "'The word 'any' is generally used in the sense of 'all' or 'every' and its meaning is most comprehensive.'" Hollum v. Contributory Ret. Appeal Bd., 53 Mass. App. Ct. 220, 223 (2001) (citations / quotations omitted).

By using the word "any," the legislature intended inclusion in, not exclusion from, the universe of prosecutions to which §24(1)(e) applies. Id. at 225 ("in light of this language, we must construe the section as including employees such as Hollum because they are not expressly excluded"). Similarly here,

45 -46 (2016) (OUI manslaughter (G.L. c. 265, §13½)); Commonwealth v. Atencio, 12 Mass. App. Ct. 747, 753 (1981) (OUI serious bodily injury (G.L. c. 90, §24L)).

this Court cannot infer exceptions to §24(1)(e) in the absence of express exclusions³.

True, it would have been clearer had the legislature spelled out the elements of OUI rather than using the shorthand "violation of paragraph (a)".⁴ But a common sense reading of §24(1)(e) suggests the reference to "paragraph (a)" is just that - shorthand. It describes the offense conduct to which §24(1)(e) applies, not a limitation on its reach. This is only logical: because aggravated OUIs contain the elements of OUI, "any" such prosecution is necessarily a "prosecution for a violation of paragraph (a)".

Any construction of a statute must be in harmony with its intent. Saccone v. State Ethics Comm'n, 395 Mass. 326, 334 (1985) (if "the general meaning and

³ In other contexts, the legislature has made exclusions explicit in drafting otherwise broad legislation. See, e.g., G.L. c. 272, §28 (providing that "whoever ... disseminates ... any matter harmful to minors" shall be punished, then specifically excluding from its application persons in a parental relationship and certain academic institutions.)

⁴ The likely reason why the legislature chose this shorthand is because, when §24(1)(e) was added to the statute (Chapter 340, Acts of 1961), there were no other OUI offenses beyond those in paragraph (a). Thus, in 1961, reference to offenses under paragraph (a) referred to the full universe of OUI offenses. Aggravated OUIs were later enacted as follows: c. 90, §24G (1976); c. 90, §24L (1986); c. 265, §13 ½ (2005).

object of the statute should be found inconsistent with the literal import of any particular clause or section, such clause or section must, if possible, be construed according to the spirit of the act.") Given its purposes, a limiting construction of §24(1)(e) is unreasonable for two reasons.

First, one purpose of §24(1)(e) is to facilitate the use of consensually-obtained BAC evidence.

Bohigian, 486 Mass. at 221 ("Collection and use of [BAC] evidence is the statute's principal engine of enforcement: the Legislature crafted [§24 (1)(e) and (1)(f)(1)] to fuel that engine by imposing an efficient, consent-based procedure for warrantless, police-directed testing.") (Lowy, J., dissenting).

That purpose reveals an obvious conflict with the Court's "simple OUI" construction: the legislature's interest in mitigating the "'carnage caused by drunk drivers,'" Commonwealth v. Rodriguez, 430 Mass. 577, 581 (2000) (citation omitted), which motivated it to create "an efficient, consent-based procedure for warrantless, police-directed testing" of BAC, and evidentiary preferences rendering that evidence "presumptively admissible," Bohigian, 486 Mass. at

211-212, 221, is stronger in the case of aggravated forms of OUI than in simple ones.

Where the legislature drafted §24(1)(e) to increase the availability of BAC evidence, it is unreasonable to suggest that it would intend to frustrate the use of that evidence in more serious OUI cases. Yet that is precisely the result which the Bohigian dicta creates: in positing that §24(1)(e) applies only to "simple OUI", this Court suggests that the legislature intended to prohibit the presumptive admissibility of BAC evidence in OUI cases involving injury or death. This construction contradicts the plain language of the statute and frustrates the legislature's manifest intent.

Second, the consent provisions in §24(1)(e) and §24(1)(f)(1) "reflect[] a legislative intent to avoid forced testing". Opinion of the Justices, 412 Mass. 1201, 1208 n.6 (1992). Both consent provisions also serve the additional purposes of protecting privacy interests, avoiding unsafe blood draws, and ensuring the accuracy of test results. Moreau, 490 Mass. at 392; Bohigian, 486 Mass. at 216-217.

§24(1)(f)(1) applies to all forms of OUI, Id, at 214, but only in the case of an arrest. Thus, a limit of §24(1)(e) (which does not hinge on arrest status) to "simple OUI" cases would frustrate the legislature's intent because only aggravated OUI arrestees would receive the consent protection. That is, a person under arrest for OUI manslaughter would get the benefit of the §24(1)(f)(1) consent protection, while a person charged with that offense but not under arrest would get the benefit of neither consent provision. Nothing supports this result.

Where the legislature determined that actual consent is necessary to address safety, privacy, and accuracy concerns related to BAC testing, and specifically, as relevant here, prior to any crime lab testing for BAC, there is no rational reason to condition that requirement on a defendant's arrest status. Whether a subject is arrested has no bearing on the concerns animating the consent requirement - nor could it - given that crime lab testing necessarily occurs days or months after any arrest. And where the legislature intended to require consent prior to any government sponsored BAC testing,

limiting consent to arrestees only defeats that intent, and does so on an arbitrary metric. Moreau, 490 Mass. at 391-92 ("where a 'chemical test or analysis ... was made by or at the direction of a police officer,' the defendant's consent is required for the resulting BAC to be admissible[.]")

§24(1)(e) applies where Mr. Zucchini was charged with OUI offenses and not under arrest because its plain language so dictates and no rationale justifies deviating from that language.

This Court's decision in Moreau reinforces this conclusion. There, the Commonwealth sought to admit a non-consensual crime lab test against Moreau at trial for OUI and negligent operation. Id. at 388. On interlocutory review, this Court held that, regardless of how the blood was obtained, §24(1)(e) prohibits its analysis "at the direction of a police officer" without the defendant's consent. Id. at 391. Suppression was required.

The operative facts in Moreau are identical to those at bar; the same result must follow. By failing to obtain Mr. Zucchini's consent prior to testing his blood, the Commonwealth violated the requirements of

§24(1)(e). Given the plain statutory mandate, the BAC evidence must be suppressed. Id. at 397.

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state or federal constitutional questions; or (3) questions of substantial public interest. See Mass. R. App. P. 11(a). This case presents the first and third criteria.

First, this case squarely presents a question of first impression. Following the dicta in Bohigian, which dicta appeared to upend years of precedent to the contrary, this Court has not considered whether §24(1)(e) applies to charges more serious than "simple OUI."

Second, the question before the Court is of wide public interest. This Court has found in the legislative intent of §24 subsections (1)(e) and (1)(f)(1) the public's disapproval of forced testing as well as its concerns over privacy, unsafe blood draws, and accurate testing. Bohigian, 486 Mass. at 216-217; Moreau, 490 Mass. at 392. OUI, whether simple or aggravated, is a common offense. Given the

volume of these charges, a great many individuals may be subjected to non-consensual blood testing, anathema to the legislature's intent, solely as a result of the dicta contained in the Bohigian opinion.

At the same time, the people have a strong public safety interest in the admissibility of consensually obtained BAC evidence. The legislature has responded to the "'carnage caused by drunk drivers'"⁵ by passing a series of laws designed to deter drinking and driving and facilitating prosecution by rendering BAC evidence presumptively admissible. The Court's "simple OUI" dicta eliminates the presumptive admissibility of BAC evidence in serious OUI cases and thereby places barriers to those prosecutions which the legislature specifically sought to eliminate.

Moreover, there remains irreconcilable conflict between the Bohigian dicta and the substantial body of law which presumes the application of §24(1)(e) to aggravated OUI cases. Absent further guidance from this Court, it is not a stretch to anticipate a great many inconsistent rulings in the trial court on this key issue. The public has a strong interest in

⁵ Rodriguez, 430 Mass. at 581.

knowing whether the government may conduct testing without an individual's consent. It has an equally strong interest in knowing whether the "efficient, consent-based procedure for warrantless, police-directed testing" will facilitate serious OUI prosecutions in addition to minor ones. Bohigian, 486 Mass. at 221 (Lowy, J. dissenting).

Finally, clear guidance from this Court will also alleviate the unnecessary strain on judicial resources which will be occasioned by an unanswered question surrounding one of the most commonly charged offenses in the Commonwealth.

Because consideration of these factors demonstrates a need for direct review, Mr. Zucchini respectfully requests that this Honorable Court allow his application.

Respectfully submitted,
BRADLEY ZUCCHINO,
By his attorney,

/s/ Murat Erkan
Murat Erkan (BBO# 637507)
Erkan & Associates, LLC
300 High Street
Andover, MA 01810
978-474-0054
murat@erkanlaw.com

CERTIFICATE OF COMPLIANCE

I hereby certify, under the penalties of perjury, that this brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

Rule 11(b) (applications for direct appellate review);

Rule 16(a)(13) (addendum);

Rule 16(e) (references to the record);

Rule 18 (appendix to the briefs);

Rule 20 (form and length of briefs, appendices, and other documents);

Rule 21 (redaction).

Specifically, this brief was written in Courier, 12-point monospace font, and created on Google Docs and MS Word. The pages of non-excludable words contained in the argument section of the application for direct appellate review is 10 pages.

/s/ Murat Erkan
Murat Erkan

December 8, 2022

CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(e), I hereby certify under the penalties of perjury, that on December 8, 2022, I have made service of this Application for Direct Appellate Review filed in the matter entitled Commonwealth v. Bradley Zucchini, 2022-P-0988, currently pending in the Appeals Court via the Court's Electronic Filing System upon counsel for the Commonwealth:

Catherine L. Semel
Assistant District Attorney for Essex County
Office of the District Attorney
Ten Federal Street
Salem, MA 01970
catherine.semel@massmail.state.ma.us

/s/ Murat Erkan
Murat Erkan

December 8, 2022

ADDENDUM

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- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 12/11/2020
- DCM Track:
- C - Most Complex
- Initiating Action:
- MANSLAUGHTER WHILE OUI c265 §13½
- Status Date:
- 01/25/2021
- Case Judge:
-
- Next Event:
- 12/09/2022

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

Party Information

Essex County District Attorney
- Prosecutor

[Alias](#)

Party Attorney

- Attorney
- Stanbro, Esq., Stefanie Michelle
- Bar Code
- 687420
- Address
- Essex District Attorney's Office
- Ten Federal St
- Salem, MA 01970
- Phone Number
- (978)745-6610

[More Party Information](#)

Zucchini, Bradley T
- Defendant

[Alias](#)

Party Attorney

- Attorney
- Erkan, Esq., Murat
- Bar Code
- 637507
- Address
- Erkan and Associates, LLC
- 300 High St
- Andover, MA 01810
- Phone Number
- (978)474-0054

[More Party Information](#)

Party Charge Information

- **Zucchini, Bradley T**
- - Defendant
- **Charge # 1:**
- **265/1312-0 - Felony** MANSLAUGHTER WHILE OUI c265 §13½
- Original Charge
- 265/1312-0 MANSLAUGHTER WHILE OUI c265 §13½ (Felony)
- Indicted Charge
-
- Amended Charge
-
- **Zucchini, Bradley T**
- - Defendant

Charge # 2:
90/24L/E-3 - Felony OUI-LIQUOR OR .08% & SERIOUS INJURY & NEGLIGENT c90 §24L(1)

- Original Charge
- 90/24L/E-3 OUI-LIQUOR OR .08% & SERIOUS INJURY & NEGLIGENT c90 §24L(1) (Felony)
- Indicted Charge
-
- Amended Charge
-

• **Zucchini, Bradley T**

• - Defendant

Charge # 3:
90/24L/E-3 - Felony OUI-LIQUOR OR .08% & SERIOUS INJURY & NEGLIGENT c90 §24L(1)

- Original Charge
- 90/24L/E-3 OUI-LIQUOR OR .08% & SERIOUS INJURY & NEGLIGENT c90 §24L(1) (Felony)
- Indicted Charge
-
- Amended Charge
-

• **Zucchini, Bradley T**

• - Defendant

Charge # 4:
265/15A/D-1 - Felony A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i)

- Original Charge
- 265/15A/D-1 A&B WITH DANGEROUS WEAPON, SERIOUS BODILY INJURY c265 §15A (c) (i) (Felony)
- Indicted Charge
-
- Amended Charge
-

• **Zucchini, Bradley T**

• - Defendant

Charge # 5:
90/24/B-0 - Felony LEAVE SCENE OF PERSONAL INJURY & DEATH c90 §24(2)(a½)(2)

- Original Charge
- 90/24/B-0 LEAVE SCENE OF PERSONAL INJURY & DEATH c90 §24(2)(a½)(2) (Felony)
- Indicted Charge
-
- Amended Charge
-

[Load Party Charges 6 through 6](#) [Load All 6 Party Charges](#)

Events

Date	Session	Location	Type	Event Judge	Result
01/25/2021 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Arraignment	Tabit, Hon. Salim	Held as Scheduled
04/20/2021 10:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Motion Hearing	McCarthy-Neyman, Hon. Kathleen	Rescheduled
06/22/2021 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Motion Hearing	McCarthy-Neyman, Hon. Kathleen	Held - Under advisement
08/06/2021 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Hearing on Compliance	Tabit, Hon. Salim	Held as Scheduled
08/19/2021 03:00 PM	Criminal 3 - I	SALEM-5th FL, CR I (SC)	Hearing for Probation Report	McCarthy-Neyman, Hon. Kathleen	Held as Scheduled
08/25/2021 03:00 PM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Conference to Review Status	Lang, Hon. James F	Held as Scheduled
08/25/2021 03:00 PM	Criminal 3 - I	SALEM-5th FL, CR I (SC)	Conference to Review Status	McCarthy-Neyman, Hon. Kathleen	Held as Scheduled
10/08/2021 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Hearing on Compliance	Drechsler, Hon. Thomas	Held as Scheduled
11/29/2021 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Filing of Motions	Drechsler, Hon. Thomas	Held as Scheduled
02/11/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Tabit, Hon. Salim	Rescheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
03/18/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Tabit, Hon. Salim	Rescheduled
03/21/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Tabit, Hon. Salim	Rescheduled
04/22/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Drechsler, Hon. Thomas	Rescheduled
06/07/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Drechsler, Hon. Thomas	Rescheduled
07/11/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Karp, Hon. Jeffrey	Rescheduled
07/25/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Final Pre-Trial Conference	Karp, Hon. Jeffrey	Rescheduled
08/01/2022 08:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Karp, Hon. Jeffrey	Rescheduled
08/02/2022 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Non-Evidentiary Hearing on Suppression	Drechsler, Hon. Thomas	Not Held
08/19/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Non-Evidentiary Hearing on Suppression	Drechsler, Hon. Thomas	Rescheduled
08/19/2022 10:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Non-Evidentiary Hearing on Suppression	Lang, Hon. James F	Held as Scheduled
08/31/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Drechsler, Hon. Thomas	Canceled
10/04/2022 02:00 PM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Non-Evidentiary Hearing on Suppression	Tabit, Hon. Salim	Held as Scheduled
10/14/2022 10:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Tabit, Hon. Salim	Held as Scheduled
11/07/2022 08:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Tabit, Hon. Salim	Rescheduled
11/08/2022 09:00 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Tabit, Hon. Salim	Not Held
12/09/2022 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Tabit, Hon. Salim	

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	01/25/2021	07/23/2021	179	
Final Pre-Trial Conference	01/25/2021	01/06/2022	346	
Case Disposition	01/25/2021	01/20/2022	360	
Under Advisement	06/22/2021	07/22/2021	30	07/01/2021

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/10/2020	Attorney appearance On this date James Michael Dulany, Esq. added as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
12/10/2020	Indictment(s) returned	1	Image
12/14/2020	Attorney appearance On this date Murat Erkan, Esq. added as Private Counsel for Defendant Bradley T Zucchini		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/25/2021	Event Result:: Arraignment scheduled on: 01/25/2021 10:00 AM Has been: Held as Scheduled Comments: FTR MF Hon. Salim Tabit, Presiding Staff: Danette Schrader, Assistant Clerk Magistrate		
01/25/2021	Defendant arraigned before Court. Judge: Tabit, Hon. Salim		
01/25/2021	Defendant waives reading of indictment Judge: Tabit, Hon. Salim		
01/25/2021	Plea of not guilty entered on all charges. Judge: Tabit, Hon. Salim		
01/25/2021	Released on Personal Recognizance with the following conditions: Other Special Condition SCRAM Device No Driving Without a Valid License		
01/25/2021	Bail warnings read Judge: Tabit, Hon. Salim		
01/25/2021	Commonwealth 's Notice of Automatic Discovery	2	Image
01/25/2021	Case assigned to: DCM Track C - Most Complex was added on 01/25/2021	3	Image
01/25/2021	Finding and Order on Bail: Conditions of Release Judge: Tabit, Hon. Salim	4	Image
01/25/2021	Defendant 's Motion of Discovery	5	Image
01/25/2021	Defendant 's Motion of Discovery (Agreed as marked)	6	Image
01/25/2021	Defendant 's Motion for Return of Property	7	
01/25/2021	Defendant 's Motion for Rule 17 (a)(2) Summons	8	
01/25/2021	Endorsement on , (#5.0): No Action Taken See amended copy		
01/25/2021	Endorsement on , (#6.0): ALLOWED ALLOWED as amended without objection		
01/25/2021	Endorsement on , (#7.0): ALLOWED ALLOWED without objection. Vehicle available for return Thursday, January 28th, 2021 and no earlier		Image
01/25/2021	Endorsement on , (#8.0): ALLOWED After hearing, ALLOWED without objection		
01/25/2021	ORDER for Medical Records for from Rule 17 (a)(2) Summons and Court Order for Production of Documents (Lawrence General Hospital)	9	
02/25/2021	Medical Records Lawrence General Hospital received from Delivered in hand by Attorney Michael Morris, Jr., Esq.	10	
03/11/2021	Commonwealth 's Notice of Automatic Discovery	11	Image
04/07/2021	Commonwealth 's Motion for Production of Saliva Sample From Defendant; memorandum & affidavit filed	12	Image
04/15/2021	Event Result:: Motion Hearing scheduled on: 04/20/2021 10:30 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
04/16/2021	Defendant 's Motion to dismiss memorandum filed	13	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
06/22/2021	Hearing held on Motion to Dismiss on Counts 005 & 006 ONLY Matter taken under advisement: Motion Hearing scheduled on: 06/22/2021 09:30 AM Has been: Held - Under advisement Comments: FTR-K-CH Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		
06/22/2021	Defendant is subject to the following special conditions: Court Adds Condition of Release: 1. Be compliant with any medication Judge: McCarthy-Neyman, Hon. Kathleen Applies To: Erkan, Esq., Murat (Attorney) on behalf of Zucchini, Bradley T (Defendant); Dulany, Esq., James Michael (Attorney) on behalf of Essex County District Attorney (Prosecutor)		
06/22/2021	Commonwealth 's Motion for a Court Order for the Production of the Victim's Medical Records	14	
06/22/2021	Commonwealth 's Motion for a Court Order for the Production of the Victim's Medical Records	15	
06/22/2021	Endorsement on Motion for Production of Saliva Sample from Defendant, (#12.0): ALLOWED Upon review and without objection from the defendant the motion is ALLOWED.		
06/22/2021	Endorsement on Motion for a Court Order for the Production of the Victim's Medical Records, (#14.0): ALLOWED Upon review and after hearing without objection from patient or patient's family motion is ALLOWED.		
06/22/2021	Endorsement on Motion for a Court Order for the Production of the Victim's Medical Records, (#15.0): ALLOWED Upon review and after hearing without objection from patient or patient's family motion is ALLOWED. Judge: McCarthy-Neyman, Hon. Kathleen		
06/22/2021	ORDER: for Medical Records sent Certified Mail to: Boston Medical Center Health Information Management (Medical Records) Release of Information Unit, Basement Yawkey Building 850 Harrison Avenue Boston, MA 02118 Tracking # 7017 1450 0001 5937 3762	16	
06/22/2021	ORDER: for Medical Records sent Certified Mail to: Health Information Services Department Lawrence General Hospital 1 General Street Lawrence, MA 01842 Tracking # 7017 1450 0001 5937 3779	17	
06/22/2021	ORDER: for Medical Records sent Certified Mail to: Health Information Services Department Lawrence General Hospital 1 General Street Lawrence, MA 01842 Tracking # 7017 1450 0001 5937 3755	18	
06/30/2021	Medical Records received from Lawrence General Hospital	19	
07/01/2021	Endorsement on Motion to Dismiss, (#13.0): DENIED See endorsement		Image
07/02/2021	Medical Records received from Lawrence General Hospital	20	
07/06/2021	Medical Records received from Boston Medical Center (LARGE BOX)	21	
08/06/2021	Event Result:: Hearing on Compliance scheduled on: 08/06/2021 10:00 AM Has been: Held as Scheduled Comments: FTR-K-MF Hon. Kathleen McCarthy-Neyman, Presiding Staff: Lisa Partelow, Assistant Clerk		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/19/2021	<p>Defendant is subject to the following special conditions:</p> <p>Additional conditions of release:</p> <ol style="list-style-type: none"> 1. Random drug screens 2. No use of illegal/nonprescribed drugs <p>Judge: McCarthy-Neyman, Hon. Kathleen</p> <p>ALL OTHER CONDITIONS REMAIN IN EFFECT</p>		
08/19/2021	<p>Event Result:: Hearing for Probation Report scheduled on: 08/19/2021 03:00 PM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR I</p> <p>Hon. Kathleen McCarthy-Neyman, Presiding</p> <p>Staff: Michael Ruane, Assistant Clerk</p>		
08/19/2021	<p>Violation of pre-trial conditions of release:</p> <p>Judge: McCarthy-Neyman, Hon. Kathleen</p> <p>Positive Drug Screen</p>		
08/25/2021	Defendant 's Assented to Motion to Amend Conditions of Pre-Trial Release	22	Image
08/25/2021	<p>Endorsement on Motion to Amend Conditions of Pretrial Release, (#22.0): ALLOWED</p> <p>August 25, 2021: After hearing by agreement of the parties, the Motion is Allowed. McCarthy-Neyman, J.</p> <p>Judge: McCarthy-Neyman, Hon. Kathleen</p>		
08/25/2021	<p>Event Result:: Conference to Review Status scheduled on: 08/25/2021 03:00 PM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR J</p> <p>COURT REMOVES RANDOM DRUG SCREENS; ALL OTHER CONDITIONS OF PRETRIAL RELEASE REMAIN</p> <p>Hon. Kathleen McCarthy-Neyman, Presiding</p> <p>Staff: Michael Ruane, Assistant Clerk</p>		
10/08/2021	<p>Event Result:: Hearing on Compliance scheduled on: 10/08/2021 10:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR K CH</p> <p>Hon. Thomas Drechsler, Presiding</p> <p>Staff: Lisa Partelow, Assistant Clerk</p>		
10/08/2021	<p>Defendant oral motion</p> <p>Request to Travel for Thanksgiving.</p> <p>DENIED Drechsler, J.</p> <p>Judge: Drechsler, Hon. Thomas</p> <p>Applies To: Erkan, Esq., Murat (Attorney) on behalf of Zucchini, Bradley T (Defendant); Dulany, Esq., James Michael (Attorney) on behalf of Essex County District Attorney (Prosecutor)</p>		
10/18/2021	Commonwealth 's Notice of Automatic Discovery 3	23	Image
11/29/2021	<p>Event Result:: Filing of Motions scheduled on: 11/29/2021 10:00 AM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR K CH</p> <p>Hon. Thomas Drechsler, Presiding</p> <p>Staff: Lisa Partelow, Assistant Clerk</p>		
11/29/2021	<p>Scheduled:</p> <p>Judge: Karp, Hon. Jeffrey</p> <p>Event: Jury Trial</p> <p>Date: 08/01/2022 Time: 08:30 AM</p> <p>Result: Rescheduled</p>		
11/29/2021	Defendant 's Motion to Suppress. Memorandum in Support of	24	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
02/02/2022	Commonwealth 's Motion to Continue Non-Evidentiary Motion to Suppress	25	
02/02/2022	Endorsement on Motion to Continue Non-Evidentiary Motion to Suppress, (#25.0): ALLOWED		Image
02/02/2022	Event Result:: Evidentiary Hearing on Suppression scheduled on: 02/11/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: p#25 Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
02/02/2022	Event Result:: Conference to Review Status scheduled on: 03/21/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: p#25 Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
03/10/2022	Commonwealth 's Motion to Advance and Continue	26	
03/10/2022	Endorsement on Motion to Advance and Continue, (#26.0): After review motion is ALLOWED by agreement.		Image
03/10/2022	Attorney appearance On this date Stefanie Michelle Stanbro, Esq. added as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
03/10/2022	Attorney appearance On this date James Michael Dulany, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Essex County District Attorney		
03/10/2022	Event Result:: Evidentiary Hearing on Suppression scheduled on: 03/18/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: p#26 Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
03/10/2022	Event Result:: Conference to Review Status scheduled on: 04/22/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: p#26 Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
03/10/2022	Event Result:: Jury Trial scheduled on: 08/01/2022 08:30 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Lisa Partelow, Assistant Clerk		
03/10/2022	Scheduled: Judge: Tabit, Hon. Salim Event: Jury Trial Date: 11/07/2022 Time: 08:30 AM Result: Rescheduled		
04/01/2022	Commonwealth 's Notice of discovery 4	27	Image
04/04/2022	Commonwealth 's Notice of discovery 5	28	Image
04/27/2022	Commonwealth 's Notice of discovery 6	29	Image
05/09/2022	Commonwealth 's Notice of discovery 7	30	Image
05/20/2022	's Assented to Motion to Continue filed and ALLOWED	31	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/20/2022	Event Result:: Evidentiary Hearing on Suppression scheduled on: 06/07/2022 09:30 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
05/20/2022	Event Result:: Conference to Review Status scheduled on: 07/11/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Lisa Partelow, Assistant Clerk		
05/20/2022	Event Result:: Final Pre-Trial Conference scheduled on: 07/25/2022 09:30 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Jeffrey Karp, Presiding Staff: Lisa Partelow, Assistant Clerk		
07/27/2022	Opposition to Motion to Suppress filed by Essex County District Attorney	32	Image
08/01/2022	Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 08/02/2022 10:00 AM Has been: Not Held For the following reason: Request of Commonwealth Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
08/01/2022	Commonwealth 's Motion to Advance and Continue Filed and ALLOWED. Drechsler, J.	33	Image
08/09/2022	Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 08/19/2022 09:30 AM Has been: Rescheduled For the following reason: Transferred to another session Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
08/19/2022	Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 08/19/2022 10:00 AM Has been: Held as Scheduled Comments: U/A Hon. James F Lang, Presiding Staff: Katelyn Draper, Assistant Clerk Magistrate		
08/19/2022	Event Result:: Conference to Review Status scheduled on: 08/31/2022 09:30 AM Has been: Canceled For the following reason: Joint request of parties Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
08/19/2022	Commonwealth 's Motion And Affidavit For Judicial Order To Produce Non-Privileged medical records Pursuant To Mass. R. Crim. P. 17(a)(2)	34	
08/19/2022	Endorsement on Motion and Affidavit For Judicial Order To produce Non-Privileged Medical records Pursuant To Mass. R. Crim. P. 17(a)(2), (#34.0): ALLOWED		
08/19/2022	ORDER: For Non Privileged Records (North Andover Fire Department) records: DAS sent out	35	
08/24/2022	MEMORANDUM & ORDER: ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE ORDER: For the foregoing reasons, the defendant's suppression motion is DENIED. Judge: Lang, Hon. James F	36	Image
08/24/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Murat Erkan, Esq. Erkan and Associates, LLC 300 High St, Andover, MA 01810 Prosecutor, Attorney: Stefanie Michelle Stanbro, Esq. Essex District Attorney's Office Ten Federal St, Salem, MA 01970		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/29/2022	Medical Records received from North Andover Fire Department	37	
09/23/2022	Defendant 's Motion to Enlarge Time for Filing Interlocutory Appeal	38	
09/23/2022	Defendant 's Motion to Suppress (Bohigian / Moreau) AMENDED. Memorandum of Law filed in Support of	39	Image
09/23/2022	Endorsement on Motion to Enlarge Time for Filing Interlocutory Appeal, (#38.0): ALLOWED 9/23/22 Allowed w/o prejudice until consideration by Lang, J.		Image
09/26/2022	Opposition to Motion to Suppress filed by Essex County District Attorney	40	Image
09/27/2022	Endorsement on Motion to enlarge time for filing interlocutory appeal, (#38.0): ALLOWED		Image
10/04/2022	Hearing held on NEMS - DENIED. Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 10/04/2022 02:00 PM Has been: Held as Scheduled Comments: FTR K LP Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
10/04/2022	Event Result:: Jury Trial scheduled on: 11/07/2022 08:30 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: Judges' Conference. Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
10/04/2022	Scheduled: Judge: Tabit, Hon. Salim Event: Jury Trial Date: 11/08/2022 Time: 09:00 AM Result: Not Held		
10/04/2022	ORDER: for Report Pursuant to G.L. c. 231, § 111, and Mass. R. Crim. P. 34	41	Image
10/07/2022	Notice to Clerk of the Appeals Court of Assembly of Record	42	
10/07/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	43	
10/07/2022	Notice of assembly of record sent to Counsel	44	
10/12/2022	Notice to Commonwealth of Assembly of Record	45	
10/13/2022	Notice of docket entry received from Appeals Court Case entered	46	
10/14/2022	Event Result:: Conference to Review Status scheduled on: 10/14/2022 10:00 AM Has been: Held as Scheduled Comments: FTR K LP Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
10/14/2022	Event Result:: Jury Trial scheduled on: 11/08/2022 09:00 AM Has been: Not Held For the following reason: By Court prior to date Hon. Salim Tabit, Presiding Staff: Lisa Partelow, Assistant Clerk		
11/02/2022	Court Reporter OTS is hereby notified to prepare one copy of the transcript of the evidence of 10/04/2022 02:00 PM Non-Evidentiary Hearing on Suppression FINDINGS ONLY	47	Image
11/04/2022	Notice to the Appeals Court of Interlocutory Appeal Applies To: Zucchini, Bradley T (Defendant)	48	Image
11/07/2022	Transcript received - FINDINGS ONLY - Hearing held on 10/4/22, before Hon. Salim R. Tabit		Image
11/09/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	49	
11/09/2022	Notice to Clerk of the Appeals Court of Assembly of Record	50	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/09/2022	Notice of assembly of record sent to Counsel Applies To: Erkan, Esq., Murat (Attorney) on behalf of Zucchini, Bradley T (Defendant); Dulany, Esq., James Michael (Attorney) on behalf of Essex County District Attorney (Prosecutor)	51	
11/10/2022	Notice of docket entry received from Appeals Court RE: #6 the Appeals Court has received, from the Superior Court, the Mass. R.A.P. 9 transmission related to the assembly of the record on the defendant's interlocutory appeal of an order denying his motion to suppress evidence. A review of the Supreme Judicial Court's docket containing the defendant's petition for leave to pursue this appeal (SJ-2022-0428) indicate that the defendant's petition remains pending before a single justice of that court. Therefore, appellate proceedings remain stayed to 12/8/22 and the defendant's status report remains due at that time	52	Image
11/29/2022	Notice of docket entry received from Supreme Judicial Court Order Denying Application for Interlocutory Appeal "For the above reasons, it is ORDERED that the defendant's application for leave to appeal the denial of the motion to suppress is DENIED." By the Court, (Wendlandt, J.) /s/ Maura S. Doyle, Clerk	53	Image
12/02/2022	Commonwealth 's Notice of Discovery 8	54	Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Active	01/25/2021	

APPEALS COURT
Full Court Panel Case
Case Docket

COMMONWEALTH vs. BRADLEY T. ZUCCHINO
2022-P-0988

CASE HEADER

Case Status	Stayed till certain date	Status Date	11/08/2022
Nature	Manslaughter	Entry Date	10/12/2022
Appellant	Defendant	Case Type	Criminal
Brief Status	Awaiting blue brief	Brief Due	11/21/2022
Arg/Submitted		Decision Date	
Panel		Citation	
Lower Court	Essex Superior Court	TC Number	
Lower Ct Judge	Salim Rodriguez Tabit, J.	TC Entry Date	12/11/2020
SJ Number		FAR Number	
SJC Number			

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee
Awaiting red brief
Due 01/09/2023

Bradley T. Zucchini
Defendant/Appellant
Stay granted

ATTORNEY APPEARANCE

[Catherine L. Semel, A.D.A.](#)
[Stefanie M. Stanbro, A.D.A.](#) - Inactive
[Marina Moriarty, A.D.A.](#)

[Murat Erkan, Esquire](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
10/12/2022		Transcripts received: NONE
10/12/2022	#1	Lower Court Assembly of the Record Package
10/12/2022	#2	Notice of entry sent.
10/13/2022	#3	Docketing Statement filed for Bradley T. Zucchini by Attorney Murat Erkan.
11/07/2022	#4	Motion of Appellant to extend date for filing brief and appendix filed for Bradley T. Zucchini by Attorney Murat Erkan.
11/08/2022		RE#4: Allowed. Appellate proceedings stayed to 12/8/22. Status report due then concerning the status of SJ-2022-0428. Notice
11/08/2022	#5	Notice of appearance filed for Commonwealth by Attorney Marina Moriarty.
11/09/2022	#6	Assembly of the record on defendant's interlocutory
11/09/2022		RE#6: The Appeals Court has received, from the Superior Court, the Mass. R.A.P. 9 transmission related to the assembly of the record on the defendant's interlocutory appeal of an order denying his motion to suppress evidence. A review of the Supreme Judicial Court's docket containing the defendant's petition for leave to pursue this appeal (SJ-2022-0428) indicates that the defendant's petition remains pending before a single justice of that court. Therefore, appellate proceedings remain stayed to 12/08/2022, and the defendant's status report remains due at that time. *Notice/Attest.

As of 12/05/2022 5:15pm

SUPREME JUDICIAL COURT
for Suffolk County
Case Docket

COMMONWEALTH v. BRADLEY ZUCCHINO
SJ-2022-0428

CASE HEADER

Case Status	Interlocutory appeal denied	Status Date	11/29/2022
Nature	Lv for interloc appeal	Entry Date	11/04/2022
Sub-Nature	Mot to Suppress	Single Justice	Wendlandt, J.
TC Ruling		TC Ruling Date	
SJ Ruling		TC Number	
Pet Role Below		Full Ct Number	
Lower Court	Essex Superior Court	Lower Ct Judge	Salim Rodriguez Tabit, J.

ADDITIONAL INFORMATION

Envelope #1514967

INVOLVED PARTY

Bradley Zucchini
Defendant/Petitioner

Commonwealth
Plaintiff/Respondent

ATTORNEY APPEARANCE

[Murat Erkan, Esquire](#)

[Catherine L. Semel, Chief, App. Div.](#)
[Marina Moriarty, Assistant District Attorney](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
11/04/2022		Case entered.
11/04/2022	#1	New E-Filed Case Cover Sheet
11/04/2022	#2	Petition for Interlocutory Appeal Pursuant to Mass. R. Crim. P. 15 (a) (2) and Joinder with Related Pending Appeal filed for Bradley Zucchini by Atty. Murat Erkan.
11/04/2022	#3	Defendant's Memorandum of Law in Support of Application for Interlocutory Appeal with Certificate of Service filed for Bradley Zucchini by Atty. Murat Erkan.
11/04/2022	#4	Appendix to P# 3 filed by Atty. Murat Erkan.
11/07/2022		Filing fee paid. (\$315)
11/18/2022	#5	Commonwealth's Opposition to the Defendant's Application Pursuant to Mass. R. Crim. P. 15 (a) (2) for Leave to Appeal from the Denial of His Motion to Suppress with Certificate of Service filed by ADA Marina Moriarty.
11/28/2022		Under advisement. (Wendlandt, J.).
11/29/2022	#6	<p>ORDER: Interlocutory appeal denied. (Wendlandt, J.)...This matter came before the Court, Wendlandt, J., on the defendant's application for leave to pursue an interlocutory appeal, pursuant to Mass. R. Crim. P. 15(a)(2), of the August 24, 2022, order of the trial court, Lang, J., denying a motion to suppress evidence. In addition, the defendant requests that the Court join the instant application with the pending review of a question reported to the Appeals Court on October 4, 2022.[1]</p> <p>Leave to appeal under Rule 15(a)(2) should be granted only where it will facilitate "the administration of justice," such as by avoiding a lengthy trial or by resolving a difficult and important legal issue. See <u>Commonwealth v. Cavanaugh</u>, 366 Mass. 277, 279 (1974), and cases cited. See also <u>Commonwealth v. Ringuette</u>, 443 Mass. 1003, 1004 (2004) (single justice, "as a matter of discretion," may allow application if administration of justice would be facilitated).</p> <p>I conclude that interlocutory appeal of the denial of the motion to suppress will not advance the administration of justice. The matter presented to the Court does not present a novel issue. See <u>Commonwealth v. Valerio</u>, 449 Mass. 562, 567-568 (2007) ("There are times when a warrant, insufficient on its face, incorporates by reference an extrinsic document [usually an affidavit] that is physically attached to the warrant and . . . [i]n such circumstances, we have held that the affidavit cures the particularity deficiency in the warrant and, essentially, validates the warrant"). The defendant, if he were to be convicted, must await final disposition before seeking full appellate review, where the appellate court will have the benefit of considering together this motion and any appellate issues that arise at trial. As such, the Court need not consider the defendant's request to join the instant application with the pending reported question. For the above reasons, it is ORDERED that the defendant's application for leave to appeal the denial of the motion to suppress is DENIED.</p>

[1] In a separate motion in this matter, the trial court, Tabit, J., reported the following question for decision by the Appeals Court pursuant to G.L. c. 231, § 111 and Mass. R. Crim. P. 34: "Is the Commonwealth required to seek a defendant's consent in order to admit his/blood testing results in the prosecution of a G.L. c. 90, § 24L offense?"

As of 11/29/2022 9:25am

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

**SUPERIOR COURT
Cr. No. 20-0375**

COMMONWEALTH

vs.

BRADLEY ZUCCHINO

ON DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

The defendant, Bradley Zucchini, is charged by indictment with manslaughter by motor vehicle, operating a motor vehicle under the influence of intoxicating liquor and causing serious bodily injury, operating a motor vehicle with a blood alcohol content (BAC) of .08% or greater and causing serious bodily injury, assault and battery by means of a dangerous weapon with serious bodily injury resulting, leaving the scene of personal injury where death resulted, and leaving the scene of personal injury. The defendant has moved to suppress the results of BAC testing that was done by the Massachusetts State Police after the North Andover Police obtained by search warrant a blood sample that was taken from the defendant at Lawrence General Hospital (LGH) following that motor vehicle accident that gave rise to the various charges against him and which resulted in the death of Yahaira Colon (Paper #32). The court held a non-evidentiary hearing on the suppression motion on August 19, 2022. Based on the court's consideration of the written submissions of the parties and the appended exhibits, which include the search warrant, search warrant application, and supporting affidavit, and the arguments of counsel, the motion is, for the following reasons, **DENIED**.

The defendant argues that the search warrant that authorized the seizure of his blood sample that was in the custody of LGH did not authorize the subsequent State Police testing of his blood,

which resulted in determination that the BAC of the sample tested was .32. The defendant relatedly contends that the testing constituted a search for constitutional purposes that required the express approval of the reviewing magistrate. The court need not reach the issue whether the BAC testing was a search in the constitutional sense, although the court is inclined to the view that such testing was not, because it concludes that the testing was authorized.

In the affidavit in support of the search warrant, the affiant, North Andover Police Officer Anthony Sousa, stated as follows:

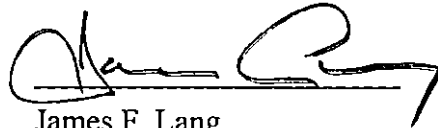
In order to investigate this incident and obtain any information that might indicate that Bradley ZUCCHINO was operating his motor vehicle with diminished intelligence, cognitive agility, targeting ability and/or reaction time as a result of consuming or ingesting some quantity of an intoxicating substance, a warrant is requested authorizing the seizure of the aforementioned blood, serum and urine samples, associated paperwork generated in the course of obtaining the samples and any subsequent toxicological analysis performed by the hospital. Upon receipt of this evidence, the samples will be submitted to the Massachusetts Department of State Police Crime Laboratory and examined for the presence of alcohol and other intoxicating substances.

The application for the search warrant expressly stated that Officer Sousa's affidavit was attached thereto and was incorporated in the affidavit by reference. The application went on to state that Officer Sousa was "seeking issuance of a warrant to search for the following property . . . : Blood, urine, and serum samples, associated paperwork generated in the course of obtaining the samples, records of medical treatment and subsequent toxicology analysis performed by Lawrence General Hospital . . . from the person known as Bradley Zucchini" The search warrant itself, which was issued by a magistrate of the Lawrence District Court, stated, "Proof by affidavit, which is hereby incorporated by reference, has been made this day and I find that there is PROBABLE CAUSE to believe that the property described below . . . is evidence of a crime or is evidence of criminal activity." The listed property mirrored that set forth in the application, i.e., samples of

the defendant's blood, urine, and serum, paperwork associated with the taking of such samples, and treatment and toxicology records. The warrant authorized the police to "search for" such listed property. It did not by its express terms authorize any subsequent search or testing of any seized property, such as BAC testing of any blood, urine, or serum samples that were obtained from LGH.

The court does not view the omission as fatal to a determination that the warrant authorized the BAC testing that was performed. To the contrary, the court concludes that the affiant's statement that such testing would be conducted, the attachment of the affidavit to the search warrant application, the incorporation of the statement into both the application and the search warrant itself, and the magistrate's fully supported finding of probable cause to believe that the defendant's blood sample was evidence of a crime (which was tantamount to a finding of probable cause to believe that the blood sample would show a BAC of .08 or above), viewed collectively, is sufficient to establish that the warrant did in fact authorize the testing that was conducted. The court notes as well that it was clear that the Commonwealth was seeking approval from the magistrate to both obtain and test any blood sample of the defendant that was in the custody of LGH. That is what the warrant that was issued by the magistrate permitted. See *Commonwealth v. Stewart*, 358 Mass. 747, 750-751 (1971) (affidavit in support of search warrant must be interpreted in a "commonsense and realistic fashion;" "[t]he sufficiency of the affidavit is to be decided on the basis of a consideration of all of its allegations as a whole, and not by first dissecting it and then subjecting each resulting fragment to a hypertechnical test of its sufficiency standing alone"). See also *Commonwealth v. Truax*, 397 Mass. 174, 180 (1986) (reading search warrant affidavit in commonsense manner and as a whole, omission of allegation that defendant owned premises to be searched was inconsequential where there was sufficient

information in affidavit to show defendant resided at premises, and failure to omit inapplicable words “has been stolen” from affidavit did not invalidate search warrant where it was clear from affidavit as a whole that search was requested for illegal property rather than for stolen property). For the foregoing reasons, the defendant’s suppression motion is **DENIED**.¹

A handwritten signature in black ink, appearing to read 'James F. Lang', written over a horizontal line.

James F. Lang
Associate Justice of the Superior Court

August 23, 2022

¹ After the defendant filed his suppression motion, and before the hearing on it, the Supreme Judicial Court issued its decision in *Commonwealth v. Moreau*, ___ Mass. ___, 190 N.E.3d 1060, 1062-1067 (2022), in which it held, as a matter of statutory interpretation of G.L. c. 90, s. 1(a)(1), that BAC testing of a defendant’s blood sample that was performed by or at the direction of the police is not admissible in a prosecution under that statute absent the defendant’s consent to such testing, even when the blood sample has been taken by a third party, such as a hospital. Because the Commonwealth was not prepared at the suppression hearing to address the implications of *Moreau* to the charges in the instant case under G.L. c. 90, s. 24(a)(1)(a), and because, the Commonwealth contends, that decision would not apply in any event to its manslaughter charge under G.L. c. 265, s. 13 ½, the court set a schedule for the filing by the defendant of a motion to statutorily exclude the BAC results based on *Moreau* and for a hearing on such motion, in the event that the instant motion to suppress is denied (as it now is herein).

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. 2077CR0375

COMMONWEALTH

vs.

BRADLEY ZUCCHINO

**ORDER FOR REPORT PURSUANT TO G. L. c. 231, § 111,
AND MASS. R. CRIM. P. 34**

Bradley Zucchini ("Zucchini") stands indicted of various serious offenses, including among others, Operating Under the Influence of Intoxicating Liquor and Being Negligent Causing Serious Bodily Injury (G. L. c. 90, § 24L) and Operating a Motor Vehicle While Having a BAC of 08% or Greater and Being Negligent Causing Serious Bodily Injury (G. L. 90, § 24L . On October 4, 2022, the court heard argument on Zucchini's Amended Motion to Suppress, wherein he sought to suppress evidence of blood samples taken from his person and tested without his consent. After hearing, the court (Tabit, J.) denied Zucchini's motion.

In issuing its decision the court (Tabit, J), relying on *Commonwealth v. Bohigian*, 486 Mass. 209 (2020), concluded that the Commonwealth was not required to obtain Zucchini's consent to test his blood for the results of the that testing to be admissible in the prosecution of Operating Under the Influence of Intoxicating Liquor and Being Negligent Causing Serious Bodily Injury charge.

Now, it is the opinion of the court that this interlocutory order so affects the merits of the controversy that the matter ought to be determined by the Appeals Court before any further proceedings in the trial court.

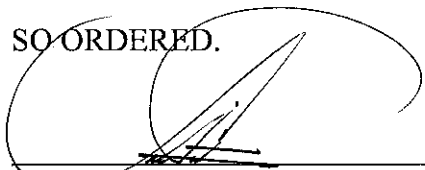
Wherefore, it is hereby **ORDERED** that:

1. The court respectfully reports the following questions for decision by the Appeals Court, pursuant to G. L. c. 231, § 111, and Mass. R. Crim. P. 34:

Is the Commonwealth required to seek a defendant's consent in order to admit his/blood testing results in the prosecution of a G. L. c. 90, § 24L offense?

2. The court's decision and order on the Zucchini's Amended Motion to Suppress is **STAYED** until further order of the Appeals Court.

SO ORDERED.



Salim Rodriguez Tabit
Justice of the Superior Court

Date: October 4, 2022

ALM GL ch. 90, § 24

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
(Chs. 1 - 182) > TITLE XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > TITLE
XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > Chapter 90 Motor Vehicles and
Aircraft (§§ 1 - 63)**

**§ 24. Driving Under the Influence of Intoxicating Liquor or
Controlled Substance.**

(1)

(a)

(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#) shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment.

There shall be an assessment of \$250 against a person who is convicted of, is placed on probation for, or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle while under the influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances under this section; provided, however, that but \$187.50 of the amount collected under this assessment shall be deposited monthly by the court with the state treasurer for who shall deposit it into the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment shall be credited to the General Fund. The assessment shall not be

subject to reduction or waiver by the court for any reason.

There shall be an assessment of \$50 against a person who is convicted, placed on probation or granted a continuance without a finding or who otherwise pleads guilty to or admits to a finding of sufficient facts for operating a motor vehicle while under the influence of intoxicating liquor or under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined by [section 1 of chapter 94C](#), pursuant to this section or section 24D or 24E or subsection (a) or (b) of section 24G or section 24L. The assessment shall not be subject to waiver by the court for any reason. If a person against whom a fine is assessed is sentenced to a correctional facility and the assessment has not been paid, the court shall note the assessment on the mittimus. The monies collected pursuant to the fees established by this paragraph shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to time, into the Victims of Drunk Driving Trust Fund established in [section 66 of chapter 10](#). The monies shall then be administered, pursuant to said [section 66 of said chapter 10](#), by the victim and witness assistance board for the purposes set forth in said section 66. Fees paid by an individual into the Victims of Drunk Driving Trust Fund pursuant to this section shall be in addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any other chapter. The administrative office of the trial court shall file a report detailing the amount of funds imposed and collected pursuant to this section to the house and senate committees on ways and means and to the victim and witness assistance board not later than August 15 of each calendar year.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-half years; provided, however, that the sentence imposed upon such person shall not be reduced to less than thirty days,

nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served thirty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction because of a like offense two times preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one hundred and fifty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent,

or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times preceding the date of the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence; provided, further, that the commission of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the

funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 4 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment for not less than 2 and one-half years or by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment in the state prison for not less than 2 and one-half years nor more than 5 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 24 months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 24 months of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided

further, that the defendant may serve all or part of such 24 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 5 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment for not less than 2 and one-half years or by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment in the state prison for not less than 2 and one-half years nor more than 5 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 24 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 24 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 24 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth

or any other jurisdiction because of a like offense 6 times preceding the date of the commission of the offense for which defendant has been convicted, the defendant shall be punished by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment in the state prison for not less than 3 and one-half years nor more than 8 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 36 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 36 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 36 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 7 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment in the state prison for not less than 3 and one-half years nor more than 8 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 36 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction

from his or her sentence for good conduct until he or she shall have served 36 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 36 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 8 or more times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than \$2,000 nor more than \$50,000 and by imprisonment in the state prison for not less than 4 and one-half years nor more than 10 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 48 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 48 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the 664 administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a

critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 48 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

A prosecution commenced under the provisions of this subparagraph shall not be placed on file or continued without a finding except for dispositions under section twenty-four D. No trial shall be commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on such complaint, nor shall the prosecution on such complaint be transferred to another division of the district court or to a jury-of-six session, until the court receives a report from the commissioner of probation pertaining to the defendant's record, if any, of prior convictions of such violations or of assignment to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense; provided, however, that the provisions of this paragraph shall not justify the postponement of any such trial or of the acceptance of any such plea for more than five working days after the date of the defendant's arraignment. The commissioner of probation shall give priority to requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty-five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be

postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived his right to a jury trial on all elements of said complaint.

(2) Except as provided in subparagraph (4) the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be imprisoned only on designated weekends, evenings or holidays; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such violation or assigned to an alcohol or controlled substance education, treatment or rehabilitation program preceding the date of the commission of the offense for which he has been convicted.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense two or more times of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation department of a copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years; provided, however, that a condition for such

probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program and to participate in an out patient counseling program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of health and human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program. Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced. In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation, the court shall forthwith specify a second date before which such defendant shall attend or complete such program, and unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such person be eligible for furlough or receive any reduction from his sentence for good conduct until such person has served two days of such sentence; and provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the

second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than thirty days as provided in subparagraph (1) for such a defendant.

The defendant shall pay for the cost of the services provided by the residential alcohol treatment program; provided, however, that no person shall be excluded from said programs for inability to pay; and provided, further, that such person files with the court, an affidavit of indigency or inability to pay and that investigation by the probation officer confirms such indigency or establishes that payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of the cost of said program.

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D; provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Notwithstanding the provisions of section twenty-two, the revocation, reinstatement or issuance of a license or right to operate by reason of a violation of paragraph (a) shall be controlled by the provisions of this section and sections twenty-four D and twenty-four E.

(c)

(1) Where the license or right to operate has been revoked under section twenty-four D or twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has been terminated in favor of the defendant, until one year after the date of conviction; provided, however, that such person may, after the expiration of three months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. In all such cases where the defendant operated a motor vehicle with a percentage, by weight, of alcohol in their blood of fifteen one-hundredths or greater, the registrar may place a restriction on a hardship license granted by the registrar under this subparagraph requiring that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation

program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of 1 year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and that such person shall have successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-four D, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of 18 months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said

section due to a prior revocation under paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after the expiration of two years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day, on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of four years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3½) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation three times preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of the conviction, apply for and shall be granted a hearing

before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes which license shall be effective for an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under the terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3~~4~~) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation four or more times preceding the date of the commission of the offense for which such person has been convicted, such person's license or right to operate a motor vehicle shall be revoked for the life of such person, and such person shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person has been terminated in favor of such person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section.

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested

copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections, the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating* evidence, nor live witness testimony to establish the validity of such prior convictions.

(d) For the purposes of subdivision (1) of this section, a person shall be deemed to have been convicted if he pleaded guilty or nolo contendere or admits to a finding of sufficient facts or was found or adjudged guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file, and a license may be revoked under paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise after such a conviction. Where there has been more than one conviction in the same prosecution, the date of the first conviction shall be deemed to be the date of conviction under paragraph (c) hereof.

(e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided,

* So in original

further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any proceedings provided for in section twenty-four N. If such evidence is that such percentage was five one-hundredths or less, there shall be a permissible inference that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor; provided, however, that in an instance where a defendant is under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other actions directed therein, if such evidence is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall be no permissible inference. A certificate, signed and sworn to, by a chemist of the department of the state police or by a chemist of a laboratory certified by the department of public health, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

(f)

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of [section 51 of chapter 111](#); and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of

anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in *section 1 of chapter 90C*, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 years or who has been previously convicted of a violation under this section, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L or subsection (a) of [section 8 of chapter 90B](#), [section 8A](#) or [8B](#) of said chapter 90B, or section 13½ of chapter 265 or a like violation by a court of any other jurisdiction or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction for a like offense shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided, further, that any person previously convicted of, or assigned to a program for, 2 such violations shall have the person's license or right to operate suspended forthwith for a period of 5 years for such refusal; and provided, further, that a person previously convicted of, or assigned to a program for, 3 or more such violations shall have the person's license or right to operate suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the registrar* shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while

* So in original

under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, or section 13½ of chapter 265, the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

- (i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;
- (ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and
- (iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

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

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or

analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

(2) If a person's blood alcohol percentage is not less than eight one-hundredths or the person is under twenty-one years of age and his blood alcohol percentage is not less than two one-hundredths, such police officer shall do the following:

(i) immediately and on behalf of the registrar take custody of such person's drivers license or permit issued by the commonwealth;

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

(iii) immediately report action taken under this paragraph to the registrar. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer. Each report shall set forth the grounds for the officer's belief that the person arrested has been operating a motor vehicle on any way or place while under the influence of intoxicating liquor and that the person's blood alcohol percentage was not less than .08 or that the person was under 21 years of age at the time of the arrest and whose blood alcohol percentage was not less than .02. The report shall indicate that the person was administered a test or

analysis, that the operator administering the test or analysis was trained and certified in the administration of the test or analysis, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for the test was regularly serviced and maintained and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend, in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate confiscated under this clause shall be forwarded to the registrar forthwith.

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

In any instance where a defendant is under the age of twenty-one years and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater and upon the failure of any police officer pursuant to this subparagraph, to suspend or take custody of the driver's license or permit issued by the commonwealth, and, in the absence of a complaint alleging a violation of paragraph (a) of subdivision (1) or a violation of section twenty-four G or twenty-four L, the registrar shall administratively suspend the defendant's license or right to operate a motor vehicle upon receipt of a report from the police officer who administered such chemical test or analysis of the defendant's blood pursuant to subparagraph (1). Each such report shall be made on a form approved by the registrar and shall be sworn to under the penalties of perjury by such police officer. Each such report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor and that such person was under twenty-one years of age at the time of the arrest and whose blood alcohol percentage was two one-hundredths or greater. Such report shall also state that the person was administered such a test or analysis, that

the operator administering the test or analysis was trained and certified in the administration of such test, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe that the equipment was functioning properly at the time the test was administered. Each such report shall be endorsed by the police chief as defined in section one of chapter ninety C, or by the person authorized by him, and shall be sent to the registrar along with the confiscated license or permit not later than ten days from the date that such chemical test or analysis of the defendant's blood was administered. The license to operate a motor vehicle shall thereupon be suspended in accordance with section twenty-four P.

(g) Any person whose license, permit or right to operate has been suspended under subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall forthwith reinstate such license, permit or right to operate. The registrar shall create and preserve a record at said hearing for judicial review. Within thirty days of the issuance of the final determination by the registrar following a hearing under this paragraph, a person aggrieved by the determination shall have the right to file a petition in the district court for the judicial district in which the offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation or suspension. The filing of a petition for judicial review shall be had as soon as possible following the submission of said request, but not later than thirty days following the submission thereof. Review by the court shall be on the record established at the hearing before the registrar. If the court finds that the department exceeded its constitutional or

statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the registrar's determination.

Any person whose license or right to operate has been suspended pursuant to subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath may within ten days of such suspension request a hearing and upon such request shall be entitled to a hearing before the court in which the underlying charges are pending or if the individual is under the age of twenty-one and there are no pending charges, in the district court having jurisdiction where the arrest occurred, which hearing shall be limited to the following issue; whether a blood test administered pursuant to paragraph (e) within a reasonable period of time after such chemical analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood was less than eight one-hundredths or, relative to such person under the age of twenty-one was less than two one-hundredths. If the court finds that such a blood test shows that such percentage was less than eight one-hundredths or, relative to such person under the age of twenty-one, that such percentage was less than two one-hundredths, the court shall restore such person's license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the department of criminal justice information services and the registrar of such restoration.

(h) Any person convicted of a violation of subparagraph (1) of paragraph (a) that involves operating a motor vehicle while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#), may, as part of the disposition in the case, be ordered to participate in a driver education program or a drug treatment or drug rehabilitation program, or any combination of said programs. The court shall set such financial and other terms for the participation of the defendant as it deems appropriate.

(2)

(a) Whoever upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, operates a motor

vehicle recklessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and thereby violates any provision of section seventeen or any regulation under section eighteen, or whoever without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or whoever loans or knowingly permits his license or learner's permit to operate motor vehicles to be used by any person, or whoever makes false statements in an application for such a license or learner's permit, or whoever knowingly makes any false statement in an application for registration of a motor vehicle or whoever while operating a motor vehicle in violation of section 8M, 12A or 13B, such violation proved beyond a reasonable doubt, is the proximate cause of injury to any other person, vehicle or property by operating said motor vehicle negligently so that the lives or safety of the public might be endangered, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a motor vehicle without authority knowing that such use is unauthorized shall, for the first offense be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than two years, or both, and for a second offense by imprisonment in the state prison for not more than five years or in a house of correction for not less than thirty days nor more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; and whoever is found guilty of a third or subsequent offense of such use without authority committed within five years of the earliest of his two most recent prior offenses shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment for not less than six months nor more than two and one half years in a house of correction or for not less than two and one half years nor more than five years in the state prison or by both fine and imprisonment. A summons may be issued instead of a warrant for arrest upon a complaint for a violation of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons.

There shall be an assessment of \$250 against a person who, by a court of the commonwealth, is convicted of, is placed on probation for or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle negligently so that the lives or safety of the public might be endangered under this section, but \$250 of the \$250 collected under this assessment shall be deposited monthly by the court with the state treasurer, who shall deposit it in the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment shall be credited to the General Fund. The assessment shall not be subject to reduction or waiver by the court for any reason.

(a $\frac{1}{2}$)

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which members of the public shall have access as invitees or licensees, and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away after knowingly colliding with or otherwise causing injury to any person not resulting in the death of any person, shall be punished by imprisonment for not less than six months nor more than two years and by a fine of not less than five hundred dollars nor more than one thousand dollars.

(2) Whoever operates a motor vehicle upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public shall have access as invitees or licensees and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if the injuries result in the death of a person, be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and by a fine of not less than one thousand dollars nor more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this paragraph be eligible for probation, parole, or furlough or receive any deduction

from his sentence until such person has served at least one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this paragraph, a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution or to engage in employment pursuant to a work release program.

(3) Prosecutions commenced under subparagraph (1) or (2) shall not be continued without a finding nor placed on file.

(b) A conviction of a violation of paragraph (a) or paragraph (a½) of subdivision (2) of this section shall be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate. If it appears by the records of the registrar that the person so convicted is the owner of a motor vehicle or has exclusive control of any motor vehicle as a manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all motor vehicles so owned or exclusively controlled.

(c) The registrar, after having revoked the license or right to operate of any person under paragraph (b), in his discretion may issue a new license or reinstate the right to operate to him, if the prosecution has terminated in favor of the defendant. In addition, the registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate to a person convicted in any court for a violation of any provision of paragraph (a) or (a½) of subdivision (2); provided, however, that no new license or right to operate shall be issued by the registrar to: (i) any person convicted of a violation of subparagraph (1) of paragraph (a½) until one year after the date of revocation following his conviction if for a first offense, or until two years after the date of revocation following any subsequent conviction; (ii) any person convicted of a violation of subparagraph (2) of paragraph (a½) until three years after the date of revocation following his conviction if for a first

offense or until ten years after the date of revocation following any subsequent conviction; (iii) any person convicted, under paragraph (a) of using a motor vehicle knowing that such use is unauthorized, until one year after the date of revocation following his conviction if for a first offense or until three years after the date of revocation following any subsequent conviction; and (iv) any person convicted of any other provision of paragraph (a) until sixty days after the date of his original conviction if for a first offense or one year after the date of revocation following any subsequent conviction within a period of three years. Notwithstanding the foregoing, a person holding a junior operator's license who is convicted of operating a motor vehicle recklessly or negligently under paragraph (a) shall not be eligible for license reinstatement until 180 days after the date of his original conviction for a first offense or 1 year after the date of revocation following a subsequent conviction within a period of 3 years. The registrar, after investigation, may at any time rescind the revocation of a license or right to operate revoked because of a conviction of operating a motor vehicle upon any way or in any place to which the public has a right of access or any place to which members of the public have access as invitees or licensees negligently so that the lives or safety of the public might be endangered. The provisions of this paragraph shall apply in the same manner to juveniles adjudicated under the provisions of section fifty-eight B of chapter one hundred and nineteen.

(3) The prosecution of any person for the violation of any provision of this section, if a subsequent offence, shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentence according to the regular course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on motion in writing stating specifically the reasons therefor and verified by affidavits if facts are relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons relied upon are sufficient and that the interests of justice require the allowance of the motion, the motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and certificate shall be sent by the court or magistrate forthwith to the registrar.

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or prior finding of sufficient facts by either original court papers or certified attested copy of original court papers, accompanied by a certified

attested copy of the biographical and informational data from official probation office records, shall be prima facie evidence that a defendant has been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense by a court of the commonwealth one or more times preceding the date of commission of the offense for which said defendant is being prosecuted.

History

1906, 412, § 4; 1908, 648, § 7; 1909, 534, §§ 22, 31; 1913, 123; 1916, 290; 1924, 183; 1925, 201, § 3; 1925, 297, § 1; 1926, 253; 1926, 296; 1928, 213, § 1; 1928, 281, § 1; 1929, 274; 1932, 26, § 1; 1935, 360; 1936, 182, §§ 1, 2; 1936, 434, § 1; 1937, 117; 1937, 230, § 1; 1938, 145; 1939, 82; 1955, 198, §§ 1-3; 1961, 340; 1961, 347; 1961, 422, § 2; 1962, 394, § 2; 1963, 369, § 2; 1964, 200, §§ 1-5; 1966, 191, § 1; 1966, 316; 1967, 773; 1968, 259; 1969, 7; 1969, 163; 1969, 202; 1970, 253; 1971, 1007, § 1; 1971, 1071, § 4; 1972, 111; 1972, 376; 1972, 488, §§ 1, 2; 1973, 227; 1973, 243; 1974, 206, § 2; 1974, 418; 1974, 425; 1974, 647, § 2; 1975, 156, § 1; 1980, 383, §§ 1, 2; 1982, 373, §§ 2-5; 1984, 189, § 65; 1986, 620, §§ 5-13; 1986, 677, § 1; [1991, 138, § 287](#); [1991, 460, §§ 1-4](#); [1992, 133, §§ 447, 587](#); [1992, 379, §§ 1B, 1C](#) (as amended by [1993, 12, § 1](#)); [1994, 25, §§ 3-6](#); [1994, 60, §§ 101-109](#); [1995, 38, §§ 110-116](#); [1996, 151, § 236](#); [1996, 450, §§ 137, 138](#); [1997, 43, §§ 79, 80](#); [1998, 161, § 317](#); [1999, 127, §§ 108, 109](#); [2002, 52, § 2](#); [2002, 302, §§ 1-4](#); 2003, 26, §§ 228, 229; [2003, 28, §§ 1-7](#); [2005, 122, §§ 3-12](#); [2006, 428, § 13](#); [2008, 182, § 45](#); [2008, 302, §§ 14, 15](#); [2010, 155, § 11](#); [2010, 256, § 63](#); [2012, 139, §§ 97-100](#); [2013, 38, § 80](#); [2018, 69, §§ 32, 33](#), effective April 13, 2018; [2020, 227, § 35](#), effective July 1, 2021.

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ALM GL ch. 90, § 24G

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

**Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
(Chs. 1 - 182) > TITLE XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > TITLE
XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > Chapter 90 Motor Vehicles and
Aircraft (§§ 1 - 63)**

§ 24G. Homicide by Motor Vehicle; Penalty.

(a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in [section 1 of chapter 94C](#), or from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#), and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than 2½ years nor more than 15 years and a fine of not more than \$5,000, or by imprisonment in a jail or house of correction for not less than 1 year nor more than 2½ years and a fine of not more than \$5,000. The sentence imposed upon such person shall not be reduced to less than 1 year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from a sentence until such person has served at least 1 year of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a relative; (ii) to visit a critically ill relative; (iii) to obtain emergency medical or psychiatric services unavailable at said

institution; or (iv) to engage in employment pursuant to a work release program. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file. [Section 87 of chapter 276](#) shall not apply to any person charged with a violation of this subsection.

(b) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in [section 1 of chapter 94C](#), or from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#), or whoever operates a motor vehicle negligently so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than 30 days nor more than 2½ years, or by a fine of not less than \$300 nor more than \$3,000 dollars, or both.

(c) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of reckless homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not more than 2½ years, or by imprisonment in the state prison for not more than 5 years, or by a fine of not more than \$3,000 dollars, or by both such fine and imprisonment. For the purpose of this section, a person operates recklessly when that person consciously disregards a substantial and unjustifiable risk that the lives or safety of the public might be endangered.

(d) When a motor vehicle is the instrument of the offense, the registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a), (b) or (c), or punished under [section 13 of chapter 265](#), for a period of 15 years after the date of conviction for a first offense. The registrar shall revoke the license or right to operate of a person convicted for a subsequent violation of this section for the life of such person. No appeal, motion for a new trial or exceptions shall operate to stay the revocation of the license or of the right to operate; provided, however, that such license shall be restored or

such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

History

1976, 227; 1982, 373, § 9; 1982, 376, §§ 1, 2; 1986, 620, §§ 15, 16; [2003, 28, §§ 21, 22](#); [2005, 122, § 16](#); [2018, 69, § 37](#), effective April 13, 2018; [2018, 273, § 19](#), effective October 23, 2018.

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ALM GL ch. 90, § 24L

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

*Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT
(Chs. 1 - 182) > TITLE XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > TITLE
XIV PUBLIC WAYS AND WORKS (Chs. 81 - 92B) > Chapter 90 Motor Vehicles and
Aircraft (§§ 1 - 63)*

**§ 24L. Causing Serious Bodily Injury by Driving While Under
Influence of Liquor or Drugs; Imprisonment and Fine; Minimum
Sentence; Definition of "Serious Bodily Injury"; Revocation
of License.**

(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#), and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes serious bodily injury, shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than six months nor more than two and one-half years and by a fine of not more than five thousand dollars.

The sentence imposed upon such person shall not be reduced to less than six months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least six months of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed

under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this subdivision shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this subdivision.

(2) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in [section 18 of chapter 270](#), and by any such operation causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years, or by a fine of not less than three thousand dollars, or both.

(3) For the purposes of this section "serious bodily injury" shall mean bodily injury which creates a substantial risk of death or which involves either total disability or the loss or substantial impairment of some bodily function for a substantial period of time.

(4) The registrar shall revoke the license or right to operate of a person convicted of a violation of subdivision (1) or (2) for a period of two years after the date of conviction. No appeal, motion for new trial or exception shall operate to stay the revocation of the license or the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

History

1986, 620, § 17; [2003, 28, §§ 24, 25](#); [2018, 69, §§ 38, 38A](#), effective April 13, 2018.

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ALM GL ch. 231, § 111

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

*Annotated Laws of Massachusetts > PART III COURTS, JUDICIAL OFFICERS AND
PROCEEDINGS IN CIVIL CASES (Chs. 211 - 262) > TITLE II ACTIONS AND
PROCEEDINGS THEREIN (Chs. 223 - 236) > TITLE II ACTIONS AND PROCEEDINGS
THEREIN (Chs. 223 - 236) > Chapter 231 Pleading and Practice (§§ 1 - 147)*

§ 111. Report by Justice of Superior Court or Land Court or by Judge of Housing Court to Appeals Court.

A justice of the superior or land court or the judge of the housing court of the city of Boston, the western division of the housing court department, the northeastern division of the housing court department, the southeastern division of the housing court department or the housing court of the county of Worcester, after verdict or after a finding of the facts by the court, may report the case for determination by the appeals court.

If a justice of the superior court is of the opinion that an interlocutory finding or order made by him so affects the merits of the controversy that the matter ought to be determined by the appeals court before any further proceedings in the trial court, he may report such matter to the appeals court, and may stay all further proceedings except such as are necessary to preserve the rights of the parties.

A justice of the superior court may, upon request of the parties, in any case where there is agreement as to all the material facts, report the case to the appeals court for determination without making any decision thereon.

History

1859, 196, § 32; GS 1860, 115, § 6; 1869, 438, § 1; 1878, 231, § 1; PS 1882, 153, § 6; 1887, 332, § 4; 1891, 227, § 2; 1899, 131, § 2; 1900, 311; RL 1902, 128, § 13; 1902, 173, § 105; 1902, 458; 1904, 448, § 8; 1910, 555, § 5; 1910, 560, §§ 1, 6; 1917, 345; 1971, 843, § 12; 1973, 591, § 11; 1973, 1114, § 199; 1983, 575, § 8; 1987, 755, § 11; [2000, 159, § 281](#).

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ALM GL ch. 265, § 13½

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

**Annotated Laws of Massachusetts > PART IV CRIMES, PUNISHMENTS AND
PROCEEDINGS IN CRIMINAL CASES (Chs. 263 - 280) > TITLE I CRIMES AND
PUNISHMENTS (Chs. 263 - 274) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 -
274) > Chapter 265 Crimes Against the Person (§§ 1 - 60)**

§ 13½. Manslaughter – Driving Under the Influence.

Whoever commits manslaughter while operating a motor vehicle in violation of paragraph (a) of subdivision (1) of [section 24 of chapter 90](#) or [section 8A of chapter 90B](#), shall be punished by imprisonment in the state prison for not less than 5 years and not more than 20 years, and by a fine of not more than \$25,000. The sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his sentence for good conduct until he shall have served 5 years of such sentence. The commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this section a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Upon receipt of notice of a conviction under this section, the registrar may suspend the license or right to operate of such person for any extended period up to life, provided that such suspension be at least a 15 year period. A person aggrieved by a decision of the registrar pursuant to this section may file an appeal in the superior court of the trial court department. If the court determines that the registrar abused his discretion, the court may vacate the suspension or revocation of a license or right to operate and reduce the period of suspension or revocation as ordered by the registrar, but in no event may the reduced period of suspension be for less than 15 years.

History

[2005, 122, § 20.](#)

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ALM GL ch. 272, § 28

Current through Chapter 267 of the 2022 Legislative Session of the
192nd General Court

**Annotated Laws of Massachusetts > PART IV CRIMES, PUNISHMENTS AND
PROCEEDINGS IN CRIMINAL CASES (Chs. 263 - 280) > TITLE I CRIMES AND
PUNISHMENTS (Chs. 263 - 274) > TITLE I CRIMES AND PUNISHMENTS (Chs. 263 -
274) > Chapter 272 Crimes Against Chastity, Morality, Decency and Good
Order (§§ 1 - 107)**

**§ 28. Matter Harmful to Minors – Dissemination or Possession
with Intent.**

Whoever purposefully disseminates to a person he knows or believes to be a minor any matter harmful to minors, as defined in section 31, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to a person he knows or believes to be a minor, shall be punished by imprisonment in the state prison for not more than 5 years or in a jail or house of correction for not more than 2½ years, or by a fine of not less than \$1000 nor more than \$10,000 for the first offense, not less than \$5000 nor more than \$20,000 for the second offense, or not less than \$10,000 nor more than \$30,000 for a third or subsequent offenses, or by both such fine and imprisonment. A person who disseminates an electronic communication or possesses an electronic communication with the intent to disseminate it shall not be found to have violated this section unless he specifically intends to direct the communication to a person he knows or believes to be a minor. A prosecution commenced under this section shall not be continued without a finding or placed on file. It shall be a defense in a prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in a prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

History

1711-12, 6, § 19; RS 130, §§ 10, 12; GS 165, §§ 15, 17; 1862, 168, §§ 1, 3; 1880, 97; PS 207, §§ 15, 16; 1890, 70; 1894, 433; 1895, 162; RL 212, § 20; 1904, 120; 1913, 259; 1918, 257, § 450; 1919, 5; 1920, 2; 1930, 162; 1934, 231; 1943, 239; 1945, 278, § 1; 1948, 328; 1959, 492, § 1; 1966, 418, § 1; 1974, 430, § 1; 1982, 603, § 2; [2011, 9, § 19](#).

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ALM App. Proc. Rule 11

Current with rule changes received through October 15, 2022.

MA - Massachusetts Court Rules > Appellate Procedure > A. Massachusetts Rules of Appellate Procedure

Rule 11. Direct Appellate Review

(a) Application; When Filed; Grounds. An appeal within the concurrent appellate jurisdiction of the Appeals Court and Supreme Judicial Court shall be docketed in the Appeals Court before a party may apply to the Supreme Judicial Court for direct appellate review. Within 21 days after the docketing of an appeal in the Appeals Court, any party to the case (or 2 or more parties jointly) may apply in writing to the Supreme Judicial Court for direct appellate review, provided the questions presented by the appeal are (1) questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; or (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court.

(b) Contents of Application; Form. The application for direct appellate review shall contain, in the following order: (1) a request for direct appellate review; (2) a statement of prior proceedings in the case; (3) a short statement of facts relevant to the appeal; (4) a statement of the issues of law raised by the appeal, together with a statement indicating whether the issues were raised and properly preserved in the lower court; (5) a brief argument thereon (consisting of not more than either 10 pages of text in monospaced font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) including appropriate authorities, in support of the applicant's position on such issues; and (6) a statement of reasons why direct appellate review is appropriate. A copy of the docket entries shall be appended to the application. The applicant shall also append a copy of any written decision, memorandum, findings, rulings, or report of the lower court relevant to the appeal. The application shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the

foregoing length limit was ascertained, as specified in Rule 16(k).

(c) Response; form. Within 14 days after the filing of the application, any other party to the case may, but need not, file and serve a response thereto (consisting of not more than either 10 pages of text in monospace font or 2,000 words in proportional font, as defined in Rule 20(a)(4)(B)) setting forth reasons why the application should or should not be granted. The response shall not restate matters described in Rule 11(b)(2) and (3) unless the party is dissatisfied with the statement thereof contained in the application. The response shall comply with the requirements of Rule 20(a), and shall contain a certification of such compliance, including a statement of how compliance with the foregoing length limit was ascertained, as specified in Rule 16(k). A response may be filed in a different form as permitted by the court.

(d) Filing; service. One copy of the application and of each response shall be filed in the office of the clerk of the full Supreme Judicial Court. Filing and service of the application and of any response shall comply with Rule 13.

(e) Effect of application upon appeal. The filing of an application for direct appellate review shall not extend the time for filing briefs or doing any other act required to be done under these rules.

(f) Vote of Direct Appellate Review; Certification. If any 2 justices of the Supreme Judicial Court vote for direct appellate review, or if a majority of the justices of the Appeals Court shall certify that direct appellate review is in the public interest, an order allowing the application (or transferring the appeal sua sponte) or the certificate, as the case may be, shall be transmitted to the clerk of the Appeals Court with notice to the lower court. The clerk of the Appeals Court shall forthwith transmit to the clerk of the full Supreme Judicial Court all documents filed in the case.

(g) Cases transferred for direct review; time for serving and filing briefs. In any appeal transferred to the full Supreme Judicial Court from the Appeals Court:

(1) If at the time of transfer all parties have served and filed briefs in the Appeals Court, no further briefs may be filed by the parties except that a reply brief may be served and filed on or before the last date allowable had the case not been transferred, or within 14 days after the date on which the

appeal is docketed in the full Supreme Judicial Court, whichever is later.

(2) If at the time of transfer only the appellant's brief has been served and filed in the Appeals Court, the appellant may, but need not, serve and file an amended brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court. The appellee shall serve and file a brief within 30 days after service of any amended brief of the appellant, or within 50 days after the date on which the appeal is docketed in the full Supreme Judicial Court, whichever is later.

(3) Service and filing of a reply brief shall comply with Rule 19.

(4) If at the time of transfer to the full Supreme Judicial Court no party to the appeal has served or filed a brief, the appellant shall serve and file a brief within 21 days after the date on which the appeal is docketed in the full Supreme Judicial Court or within 40 days after the date on which the appeal was docketed in the Appeals Court, whichever is later.

History

Amended effective July 1, 1979; effective July 1, 1991; March 29, 1995, effective April 14, 1995; effective Jan 10, 1996, effective Jan 29, 1996; effective Jan 1, 1998; effective Sept 3, 2002; October 31, 2018, effective March 1, 2019.

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ALM R. Crim. P. Rule 34

Current with rule changes received through October 15, 2022.

MA - Massachusetts Court Rules > Massachusetts Rules of Criminal Procedure

Rule 34. Report

[For cases initiated on or after Sept. 7, 2004. For cases initiated prior to that date, see below.]

If, prior to trial, or, with the consent of the defendant, after conviction of the defendant, a question of law arises which the trial judge determines is so important or doubtful as to require the decision of the Appeals Court, the judge may report the case so far as necessary to present the question of law arising therein. If the case is reported prior to trial, the case shall be continued for trial to await the decision of the Appeals Court.

History

Amended by court order dated Mar 8, 2004, effective Sept 7, 2004.

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twelfth, — so as to read as follows: — *Section 33.* The provisions of this chapter shall apply from midnight to midnight on each of the following holidays, except as provided in section thirty-seven, and the public offices shall be closed on all of said days: — January first, May thirtieth, July fourth, First Monday of September, October twelfth, November eleventh, Thanksgiving Day, and Christmas Day.

SECTION 2. Section thirty-four of chapter one hundred and thirty-six, as so inserted, is hereby repealed. *Approved April 7, 1961.*

Chap. 339. AN ACT AUTHORIZING THE TOWN OF WEBSTER TO APPROPRIATE AND PAY A SUM OF MONEY TO LAPLANTE BROS.

Be it enacted, etc., as follows:

SECTION 1. The town of Webster is hereby authorized to appropriate and pay to LaPlante Bros. the sum of two hundred and fifty-one dollars and fifteen cents for materials furnished by it to said town, claim for which materials is legally unenforceable against said town by reason of the failure to conform with a town by-law.

SECTION 2. No bill shall be approved by the town accountant of said town for payment or paid by the treasurer thereof under authority of this act unless and until certificates have been signed and filed with said town accountant, stating under the penalties of perjury that the goods and materials were delivered and actually received by said town.

SECTION 3. Any person who knowingly files a certificate required by section two, which is false, and who thereby receives payment for goods or materials which were not received by said town, shall be punished by imprisonment for not more than one year or by a fine of not more than three hundred dollars, or both.

SECTION 4. This act shall take effect upon its passage.

Approved April 10, 1961.

Chap. 340. AN ACT PROVIDING THAT, IN PROSECUTIONS FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, EVIDENCE OF THE PERCENTAGE OF ALCOHOL IN THE BLOOD OF THE DEFENDANT SHALL BE ADMISSIBLE AND CREATE CERTAIN PRESUMPTIONS.

Be it enacted, etc., as follows:

Section 24 of chapter 90 of the General Laws is hereby amended by adding after paragraph (1) (d) the following paragraph: — (e) In any prosecution for a violation of paragraph (1) (a) of this section, evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request, and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such

test or analysis made by a person or physician selected by him. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in any civil or criminal proceeding. Blood shall not be withdrawn from any such defendant for the purposes of any such test or analysis except by a physician. If such evidence is that such percentage was five one hundredths or less, there shall be a presumption that such defendant was not under the influence of intoxicating liquor; if such evidence is that such percentage was more than five one hundredths but less than fifteen one hundredths, there shall be no presumption; and if such evidence is that such percentage was fifteen one hundredths or more, there shall be a presumption that such defendant was under the influence of intoxicating liquor.

Approved April 10, 1961.

Chap. 341. AN ACT RELATIVE TO THE DISTRIBUTION OF DIVIDENDS ON INSURANCE POLICIES AND ANNUITY CONTRACTS AND THE DISCONTINUANCE OF THE ISSUANCE OF SUCH POLICIES AND CONTRACTS BY SAVINGS AND INSURANCE BANKS.

Be it enacted, etc., as follows:

SECTION 1. The last sentence of section 21 of chapter 178 of the General Laws, as appearing in section 2 of chapter 285 of the acts of 1936, is hereby amended by adding after the word "seventy-five", in line 7, the following: —, provided, however, that a savings and insurance bank having an insurance department which has been licensed for over five years, whose surplus is less than five per cent of its net insurance reserve, may distribute to its holders of insurance policies and annuity contracts only such amount as dividends as the trustees of the General Insurance Guaranty Fund approve.

SECTION 2. Section 25 of said chapter 178, as appearing in the Tercentenary Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — When a bank which has voted to discontinue said business has so reinsured its outstanding policies and annuity contracts, or fully performed the same, it shall transfer all the assets of the insurance department remaining after paying all its liabilities, including special guaranty fund certificates issued under section four or five, to such reinsuring savings and insurance banks or such purely mutual legal reserve life insurance company.

Approved April 10, 1961.

Chap. 342. AN ACT PROVIDING A PENALTY FOR COMPELLING OR COERCING ANY PERSON TO REFUSE AN APPOINTMENT OR PROMOTION IN THE CLASSIFIED CIVIL SERVICE.

Be it enacted, etc., as follows:

Chapter 268 of the General Laws is hereby amended by inserting after section 8A the following section: — *Section 8B.* Any appointing authority or appointing officer, both as defined in chapter thirty-one, who, by himself or by some other person acting on his behalf, compels, or induces by the use of threats or other form of coercion, any person on an eligible list, as defined in chapter thirty-one, to refuse an appoint-