

**SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS**

No. FAR-_____

2024-P-1185

COMMONWEALTH

v.

DEIVSON A. DASILVA

**APPLICATION OF DEFENDANT-APPELLEE
DEIVSON A. DASILVA
FOR FURTHER APPELLATE REVIEW**

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AUGUST 2025

REQUEST FOR FURTHER APPELLATE REVIEW

Pursuant to Mass. R. App. P. 27.1, Defendant-Appellee Deivson A. DaSilva requests further appellate review (“FAR”) of the Appeals Court’s published decision vacating his sentence in part. The Appeals Court misconstrued the relevant statute, G. L. c. 269, § 10(m), to impose a least possible maximum sentence (or “minimum maximum” sentence) of 2½ years. Section 10(m) is hopelessly ambiguous and criminal defendants are entitled to the benefit of that ambiguity, but the Appeals Court instead gave the benefit to the government. In doing so, the court ill-advisedly curbed the (until now) plenary power of trial judges to fix a maximum sentence.

Worse still, numerous other statutes are structured like § 10(m) and share its same ambiguity:

1. G. L. c. 90, § 24 (OUI-Second to OUI-Ninth)
2. G. L. c. 90, § 24G (Motor Vehicle Homicide)
3. G. L. c. 90, § 24L (OUI-Serious Bodily Injury)
4. G. L. c. 90, § 24S (Operation without Ignition Interlock)
5. G. L. c. 90, § 24V (Child Endangerment while OUI)
6. G. L. c. 90B, § 8A (Boat OUI-Serious Bodily Injury)
7. G. L. c. 90B, § 8B (Boat OUI-Death)
8. G. L. c. 272, § 6 (Maintaining House of Prostitution)
9. G. L. c. 272, § 7 (Deriving Support from Prostitution)

The Appeals Court’s decision in effect announces a new canon of construction that these (and perhaps other) statutes should all be interpreted to set forth

“minimum maximum” sentences. They should not, and this Court should grant FAR to so hold.

PRIOR PROCEEDINGS

On December 13, 2023 a Middlesex grand jury returned eleven indictments charging Mr. DaSilva with (1) possessing a machine gun (G.L. c. 269, § 10 (c)), (2) possessing a large capacity firearm (G. L. c. 269, § 10 (m)), (3) carrying a firearm without a license (G. L. c. 269, § 10 (a)), (4) carrying a loaded firearm without a license (G. L. c. 269, § 10 (n)), (5) improper storage of a machine gun (G. L. c. 140, § 131L), (6) assault and battery on a family or household member (G. L. c. 265, § 13M), (7) two counts of witness intimidation (G. L. c. 268, § 13B), (8) two counts of abuse prevention order violation (G. L. c. 209A, § 7), and (9) criminal harassment (G. L. c. 265, § 43A (a)). R.A. 6, 17-27.¹

On September 4, 2024 the parties resolved the case by plea. The Commonwealth nol prossed one count of witness intimidation, one count of abuse prevention order violation, and the criminal harassment charge. That same day Mr. DaSilva pleaded guilty to the remaining charges. Hon. Catherine Ham took the plea. R.A. 12-14.

¹ “R.A. 6” refers to page 6 of the record appendix, and other citations follow this format.

During the plea colloquy, the prosecutor claimed that the minimum sentence for possessing a large capacity firearm under *Rodriguez*, 482 Mass. 366, is one year to 2½ years. Tr. 6.² Judge Ham rejected this argument, explaining that *Rodriguez* actually holds that “it’s at least one year to serve, not one year to serve to two and a half years in state prison.” Tr. 7. Mr. DaSilva agreed with Judge Ham’s reading of the *Rodriguez*. Tr. 13.

Judge Ham sentenced Mr. DaSilva to one year to one year and a day in state prison, deemed served, on the count for possession of a large capacity firearm. R.A. 12. She also sentenced Mr. DaSilva to two years in the house of correction for possessing a machine gun, two years in the house of correction for carrying a firearm without a license, and eighteen months in the house of correction for improper storage of a machine gun, all to be served concurrently, with 408 days of credit. R.A. 12. Finally, the judge sentenced Mr. DaSilva to two years of probation on the remaining charges, to be served after imprisonment. R.A. 37.

The prosecutor moved to revise and revoke the sentence on the G. L. c. 269, § 10 (m) charge, renewing her argument that 2½ years was the least maximum sentence the judge could impose. Tr. 38; R.A. 14. Justice Ham again denied the motion in a margin order. Tr. 38; R.A. 14, 28.

² “Tr.6” refers to page 6 of the transcript of the sentencing hearing, and other citations follow this format.

On September 16, 2024, the Commonwealth noticed its appeal. R.A. 15, 34. In a published decision dated August 7, 2025 the Appeals Court reversed Judge Ham's denial of the Commonwealth's motion to revise the sentence, vacated her sentence for violation of § 10 (m), and ruled that DaSilva's maximum sentence on that charge could be no less than 2½ years.

FACTS RELEVANT TO APPEAL

The underlying facts are not relevant to this appeal, which presents a purely legal issue. In brief, the Framingham police responded to a domestic dispute on July 29, 2023 and found Mr. DaSilva's wife with bruises and a swollen eye. She reported that Mr. DaSilva had a gun and the police subsequently recovered a large capacity Glock handgun, with a fully automatic feature, from his truck. While in jail, in violation of a restraining order, Mr. DaSilva communicated to his wife that she should not cooperate with the prosecution. Tr. 28-30.

ISSUE FOR WHICH FAR IS SOUGHT

Did the plea judge lawfully sentence Mr. DaSilva to one year to one year and a day in the state prison on the §10(m) charge?

WHY FAR IS APPROPRIATE

Chapter 269, § 10(m) provides in relevant part (bracketed numbers added):

[1] Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry

firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. [2] The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. [3] The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term of such sentence...

The statute is confusing because the first provision [1] seems to speak of a 2½ year mandatory minimum sentence whereas the third provision [3] seems to speak of a one year mandatory minimum sentence. This Court resolved much of the confusion in *Commonwealth v. Rodriguez*, 482 Mass. 366 (2019). There, the trial judge had sentenced the defendant, who lacked a firearms identification card, to one to 2½ years in the state prison. *Id.* at 366. The Commonwealth objected that the sentence was illegal because (it claimed) the statute's 2½ year provision fixed the minimum sentence for defendants lacking a firearms identification card; the one year provision, on the Commonwealth's reading, did not concern sentencing at all, but rather post-sentencing actions by prison administrators, the parole board, and so on. *See Rodriguez Commonwealth Brief* at pp. 15-18.³ This Court

³ Available at https://www.ma-appellatecourts.org/pdf/SJC-12638/SJC-12638_03_Appellee_Commonwealth_Brief.pdf.

ultimately rejected the Commonwealth's interpretation and held that § 10(m) does indeed allow a judge to order a minimum sentence of one year imprisonment:

We answer the reported question, "Yes," a defendant who has been convicted of possession of a large capacity feeding device, in violation of G. L. c. 269, §10 (m), lawfully may be sentenced to State prison for not less than one year nor more than two and one-half years.

Id. at 374.

The Commonwealth now argues that because this Court approved a sentence of no more than 2½ years in *Rodriguez*, that is the least possible maximum sentence permitted under § 10(m). The Appeals Court, while acknowledging that *Rodriguez* had not addressed which maximum sentences are allowed under § 10(m), adopted the Commonwealth's argument. The Appeals Court reasoned that any other interpretation would render the "not less than two and one-half years" provision "null." Slip op. at 11.

While it is true that a statute should be construed to eliminate superfluous language if possible, *Commonwealth v. Fleury*, 489 Mass. 421, 427 (2022), the reality is that § 10(m) is a poorly-drafted statute which unquestionably contains superfluous language that cannot be eliminated. For instance, its prohibitions on suspended sentences and on parole prior to completion of the minimum sentence are both redundant of the 1993 truth-in-sentencing laws which already forbade these for state prison sentences. *See* G.L. c. 127, § 133; *Rodriguez*, 482 Mass. at 372-73 (noting that § 10(m) was enacted in 1998, five years after truth-in-

sentencing reforms). Furthermore, in *Rodriguez* this Court admitted that harmonizing §10 (m)'s two different minimum sentence provisions without rendering any language superfluous "is quite the job with this statute," 482 Mass. at 371, in seeming acknowledgement that all of the statutory language could not be used. This acknowledgment is consistent with the Court's later invocation of the rule of lenity to choose the less severe one year minimum sentence over the more severe 2½ year minimum sentence. *Id.* at 374. That the less severe provision was ultimately chosen over the more severe shows that the latter was to some degree superfluous.

Of course, a court should strive to reduce the amount of superfluous statutory language even when it cannot be totally eliminated, but here the Appeals Court's effort did more violence to the statute than Judge Ham's reading. In an effort to salvage the "not less than two and one-half years" provision the Appeals Court transformed it from a minimum sentence to a "minimum maximum" sentence. Slip op. at 10. There is no reason to think the legislature contemplated anything like this. *See Commonwealth v. Dale D.*, 431 Mass. 757, 760-761 (2000)("We construe statutes in accordance with the Legislature's intent and in order to effectuate the purpose of their framers.").

This Court has previously rejected a statutory reading like the one the Appeals Court adopted. In *Commonwealth v. Brown*, 431 Mass. 772, 775 (2000), the

defendant argued that a statute directing punishment “by imprisonment in the state prison for life or for any term of not less than twenty years” actually meant that “the judge would have the option of imposing a life sentence or an indeterminate sentence with a maximum number of not less than twenty years and a minimum number of not less than one year.” *Id.* at 773. In other words, the defendant argued that the apparent minimum sentence of 20 years was, in fact, a “minimum maximum” sentence of 20 years. The *Brown* Court rejected this reading of the statute as “strained.” *Id.* at 775. The Appeals Court’s reading of § 10(m) is likewise strained and unpersuasive.

It is especially doubtful that the legislature intended for § 10(m) to fix a “minimum maximum” sentence of 2½ years because the criminal code otherwise leaves trial judges with complete discretion to fix the maximum sentence. The indeterminate sentencing statute, which has existed in one form or another since 1890’s, places no limits on this discretion. *See* G.L. c. 279, § 24 (“The maximum term shall not be longer than the longest term fixed by law for the punishment of the crime of which he [the defendant] has be convicted...”). One would expect any abridgment of such a longstanding and nearly universal practice to be made with great clarity, and not in the garbled language of § 10(m).

The Appeals Court acknowledged that its restriction on judges’ discretion to fix maximum sentences was “one-of-a-kind,” but reasoned that § 10(m) was a one-

of-a-kind statute which required unique treatment. Slip op. at 10. Unfortunately, §10(m) isn't one of a kind. As the Commonwealth noted in a letter to the Appeals Court pursuant to Mass. R. App. P. 16(l), there are several statutes which share the same ambiguity as § 10(m)⁴. One example will suffice. General laws 272, § 6 provides:

Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse for money or other financial gain, shall be punished by imprisonment in the state prison for a period of five years and a five thousand dollar fine.

The sentence of imprisonment imposed under this section shall not be reduced to less than two years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct or otherwise until he shall have served two years of such sentence. Prosecutions commenced under this section shall not be continued without a finding nor placed on file.

Like G. L. c. 269, § 10(m), c. 272, § 6 sets forth two purportedly minimum sentences. Presumably, the lower of the two – the two year minimum specified in the second paragraph – controls under *Rodriguez*. Under the Appeals Court's reasoning in DaSilva's case, the five year minimum in the first paragraph of § 6 would then transform into a "minimum maximum" sentence of five years, so that the least possible sentence was two to five years. As with § 10(m), it is far from clear that the legislature intended this result for § 6, and the Appeals Court's

⁴ See the Addendum to this Application.

reading runs counter to the rule of lenity (because it construes an ambiguous statute against a criminal defendant) as well as the longstanding authority of judges to fix any maximum sentence above the statutory minimum.

What has just been said of G.L. c. 272, § 6 is true of the other statutes mentioned in the Commonwealth's 16(l) letter, and perhaps others still. Far from the one-off interpretation described in its decision, the Appeals Court's reading of § 10(m) in effect creates a new canon of construction that where a statute sets forth two minimum sentences, the greater is to be recast as a "minimum maximum." This Court should reject that interpretation. If the greater of two minimum sentences can only be given meaning through a "strained" reading which the legislature likely never contemplated, *Brown*, 431 Mass. at 775 – and in so doing curb judicial discretion in an area where it has always been greatest, as well as violate the rule of lenity – then the lesser evil is to simply ignore the greater minimum sentence and let the legislature make any necessary clarification.

CONCLUSION

The Court should affirm Mr. DaSilva's sentence of one year to one year and a day on the G.L. c. 269, § 10(m) indictment and the denial of the Commonwealth's motion to revise the sentence.

Respectfully submitted,

Deivson A. DaSilva,

By his counsel,

/s/ Christopher DeMayo

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CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE MASS. R. A. P. 16(K)

I, Christopher DeMayo, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs. In particular, this brief was composed in 14 point Times New Roman font and the “Why FAR Is Appropriate” section is 1,567 words long.

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CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify that on this date of August 18, 2025 I served the foregoing Application Of Defendant-Appellee Deivson A. Dasilva For Further Appellate Review by sending copies via efileMA to counsel of record, Chia Chi Lee, ADA at chichi.lee@mass.gov.

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24-P-1185

Appeals Court

COMMONWEALTH vs. DEIVSON A. DaSILVA.

No. 24-P-1185.

Middlesex. April 3, 2025. – August 7, 2025.

Present: Massing, Englander, & D'Angelo, JJ.

Firearms. Practice, Criminal, Sentence. Statute, Construction.

Indictments found and returned in the Superior Court Department on December 13, 2023.

A motion to revise and revoke an illegal sentence was heard by Catherine H. Ham, J.

Chia Chi Lee, Assistant District Attorney, for the Commonwealth.

Christopher DeMayo for the defendant.

MASSING, J. The language of G. L. c. 269, § 10 (m), which criminalizes unlawful possession of large capacity firearms and feeding devices, has been recognized as "vexing" and "confusing," as being "no grammatical paragon," and as having "caused courts some consternation" (citations omitted). Commonwealth v. Rodriguez, 482 Mass. 366, 368 (2019). In

Rodriguez, the Supreme Judicial Court "attempted to harmonize three less than harmonious provisions" of § 10 (m).

Commonwealth v. Rossetti, 489 Mass. 589, 607 (2022). It concluded that, for persons convicted of unlawfully possessing large capacity firearms or feeding devices who do not have a valid firearm identification card (FID),¹ § 10 (m) permitted a judge to impose a sentence with "a lower end of the sentencing range . . . from one to two and one-half years, with at least one year to serve, in State prison" (emphasis added).

Rodriguez, supra at 373. Accordingly, the court held that a State prison sentence with a minimum term of only one year and a maximum term of two and one-half years was a legal sentence under § 10 (m). See id. at 374.

In this appeal, we consider a question concerning sentencing under § 10 (m) that was neither asked nor answered in Rodriguez: When considering the upper end of the sentencing range for a violation of § 10 (m) by a person without a valid FID card, may the judge impose a maximum term of less than two

¹ A valid license to carry firearms is necessary to possess a large capacity weapon or feeding device. See G. L. c. 269, § 10 (m). Offenders who do not have a license to carry, but do have an FID card, are "sentenced quite differently, for reasons that are not made clear, although inferably to recognize that those who possess a valid FID card have at least attempted to be more compliant with the gun laws." Rodriguez, 482 Mass. at 373-374.

and one-half years -- specifically, one year and one day? We hold that such a sentence is unlawful, and that the maximum term of the sentence imposed must be at least two and one-half years. Phrased in the language of the Rodriguez decision, we conclude that the Legislature intended to establish, for non-FID-card holders, an upper end of the sentencing range of from two and one-half to ten years in State prison.

Background. A grand jury indicted the defendant, Deivson A. DaSilva, for eleven crimes that began with an incident of domestic violence in July 2023 and led to the discovery of his unlawful possession of several weapons. After 408 days of pretrial detention, the defendant pleaded guilty to eight of the charges: unlawful possession of a large capacity firearm, in violation of G. L. c. 269, § 10 (m); unlawful possession of a machine gun, G. L. c. 269, § 10 (c); carrying a firearm without a license, G. L. c. 269, § 10 (a), said firearm being loaded, G. L. c. 269, § 10 (n); improper storage of a machine gun, G. L. c. 140, § 131L; assault and battery on a family or household member, G. L. c. 265, § 13M; violation of an abuse prevention order, G. L. c. 209A, § 7; and intimidation of a witness, G. L. c. 268, § 13B. A Superior Court judge sentenced the defendant to a State prison term of from one year to one year and one day, deemed served, on the § 10 (m) conviction. The judge also sentenced him to house of correction sentences of two years for

possession of a machine gun, two years for unlawful carrying of a loaded firearm, and eighteen months for improper storage of a machine gun, all to be served concurrently with each other and with the State prison sentence, with 408 days of jail-time credit. Finally, the defendant received concurrent two-year terms of probation, from and after the incarcerated sentences, on the remaining convictions.

At the change of plea hearing, the Commonwealth argued that the sentence of from one year to one year and one day for the § 10 (m) conviction was not a lawful sentence under the plain language of the statute or under the holding of Rodriguez. The judge disagreed. The Commonwealth raised the same argument in a timely-filed motion to revise and revoke the § 10 (m) sentence, which was denied. See Mass. R. Crim. P. 29 (a) (1), as appearing in 489 Mass. 1503 (2022). The Commonwealth appeals from the order denying the motion to revise and revoke. We reverse the order, vacate the sentence, and remand for resentencing.

Discussion. In most cases in which a Superior Court judge imposes a State prison sentence, the judge must specify a sentencing range with a minimum term and a maximum term. See

Rossetti, 489 Mass. at 595-596; G. L. c. 279, § 24.² The statute governing the offense in question usually establishes the boundaries from which the judge must select the lower and upper ends of the sentence. See Rossetti, supra at 596, 601-602. The "'minimum term' refers to the length of time imposed as the lower end of a sentence expressed as a range; it indicates the shortest period of time to which the offender is sentenced." Id. at 595-596. The minimum term is the amount of time that the defendant must serve -- subject to certain potential reductions such as good conduct, for example -- before becoming eligible for release on parole. See id. at 596, 599.

With respect to the maximum term, the offense-specific statute usually "provides that a defendant 'shall be punished by imprisonment for not more than' a certain length of time." Rossetti, 489 Mass. at 601. The governing statute thus "creates the maximum term of incarceration that a sentencing judge may impose on a defendant and, therefore, 'the maximum amount of time that the prisoner will serve in prison if he . . . is not granted parole.'" Id. at 601-602, quoting Commonwealth v. Brown, 431 Mass. 772, 774 (2000).

² Under G. L. c. 279, § 24, when imposing a State prison sentence and except for habitual offenders and adults convicted of murder in the first degree, the judge "shall fix a maximum and a minimum term." The minimum State prison sentence "may not be less than one year." Id.

The sentencing provisions of § 10 (m) are the source of the confusion caused by the statute.³ Section 10 (m) initially

³ The first paragraph of § 10 (m), as appearing in St. 2014, c. 284, § 91, which was in effect when the defendant was indicted, provides,

"Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term 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 such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not apply to any person 18 years of age or over charged with a violation of this section."

states that unauthorized⁴ possession of "a large capacity weapon or large capacity feeding device therefor," without "a valid license to carry firearms . . . , shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years." G. L. c. 269, § 10 (m). As noted, the judge sentenced the defendant here to a minimum term of one year and a maximum term of one year and one day, which is entirely outside of the sentencing range set forth in

In 2024, after the defendant pleaded guilty, "An Act modernizing firearm laws," St. 2024, c. 135 (act), came into effect and struck the definition of "large capacity weapon," replacing it with a definition of "large capacity firearm." G. L. c. 140, § 121, as amended through St. 2024, c. 135, § 22. By § 125, the act also amended § 10 (m) to replace the word "weapon" with the word "firearm." These amendments are immaterial to the issue before us, and all statutory citations are to § 10 (m) as appearing in St. 2014, c. 284.

⁴ The second paragraph of § 10 (m) exempts the following persons from prosecution:

"(i) [A]ny officer, agent or employee of the commonwealth or any other state or the United States, including any federal, state or local law enforcement personnel; (ii) any member of the military or other service of any state or the United States; (iii) any duly authorized law enforcement officer, agent or employee of any municipality of the commonwealth; (iv) any federal, state or local historical society, museum or institutional collection open to the public; provided, however, that any such person described in clauses (i) to (iii), inclusive, is authorized by a competent authority to acquire, possess or carry a large capacity semiautomatic weapon and is acting within the scope of his duties; or (v) any gunsmith duly licensed under the applicable federal law."

above-quoted clause of the statute. The judge's choice of this seemingly unauthorized sentence was not unreasonable, however, given two other clauses in § 10 (m) as construed by Rodriguez.

The second relevant clause states that possession of an FID card is not a defense to § 10 (m), but that holders of FID cards "shall not be subject to any mandatory minimum sentence imposed by [§ 10 (m)]." This is immediately followed by the third clause, which mandates, "The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term of such sentence" (emphasis added). G. L. c. 269, § 10 (m). In harmonizing the three clauses, the Rodriguez court reasoned that "such person" in the third clause refers to violators who do not hold FID cards. See Rodriguez, 482 Mass. at 369.

As a result, the first and third clauses "each provide for mandatory minimum sentences, albeit different ones, each applicable to the same non-FID-card-holding felons." Rodriguez, 482 Mass. at 369. As the court later clarified, a more accurate description would be that the "not less than two and one-half years" clause in § 10 (m) sets forth a "minimum term," whereas § 10 (m)'s "not be reduced to less than one year" clause sets

forth a "mandatory minimum sentence." Rossetti, 489 Mass. at 608 n.30. Moreover, as reconciled in Rodriguez, supra at 368-370, the second clause regarding the significance of holding a valid FID card, while not intended "to act as a 'get out of jail free' card," id. at 368 n.1, does create a distinction whereby FID card holders are not subject to the mandatory minimum sentence of one year set forth in the third provision; that provision applies only to those who do not hold FID cards. And, as we stated at the outset, the court harmonized the three seemingly conflicting clauses by holding that for violators without FID cards, a judge is permitted to select a minimum term between one year and two and one-half years.

The precise question reported to the court in Rodriguez was whether the defendant, who was convicted of violating § 10 (m) and did not have a valid FID card, could "lawfully be sentenced to State [p]rison for not less than one year nor more than two and one-half years?" Rodriguez, 482 Mass. at 366. The Supreme Judicial Court answered, "Yes." Id. In sentencing the defendant here to a term of from one year to one year and one day, the judge found nothing in Rodriguez to require that the maximum term of a sentence under § 10 (m) must be at least two and one-half years. We agree that Rodriguez is silent as to the upper range of sentences available under § 10 (m), except to affirm that two and one-half years is an acceptable number. As

the defendant accurately states in his brief, in arguing that the maximum term of a sentence under § 10 (m) cannot go below two and one-half years, the Commonwealth is advocating for a one-of-a-kind restriction on a judge's sentencing discretion: "[a] minimum maximum sentence." We agree that the result the Commonwealth suggests is both unusual and unique. But, so is § 10 (m). See Rossetti, 489 Mass. at 609 n.31; Rodriguez, supra at 370. Given the unusual and unique terms of § 10 (m), we agree that a "minimum maximum" term of two and one-half years is consistent with the language of the statute as a whole and with the Legislature's intent as explained in Rodriguez.

To determine the permissible upper range of a sentence for a person convicted of a violation of § 10 (m) who does not hold an FID card, we must endeavor to "[h]armoniz[e] the provisions in a manner that does not make any of the statutory language superfluous, that sees the statute as a whole without internal contradiction, and that renders the legislation consistent with common sense, all as the Legislature intended." Rodriguez, 482 Mass. at 370-371, citing Commonwealth v. Figueroa, 464 Mass. 365, 368 (2012), and Commonwealth v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 352 Mass. 617, 618 (1967).

The only provision in § 10 (m) truly pertinent to the maximum term is the first of the three clauses discussed above, which states that an offender "shall be punished by imprisonment

in a state prison for not less than two and one-half years nor more than ten years." G. L. c. 269, § 10 (m). The clause "set[s] out a full sentencing range -- . . . a minimum of two and one-half years and maximum of ten years." Rodriguez, 482 Mass. at 370. While this clause refers to the maximum term available under the statute, the second and third clauses discussed above concern only the minimum term. The Rodriguez decision construed the second and third clauses to permit judges to set the lower end of a sentence below the range prescribed in the first clause, but we do not read the statute or Rodriguez as permitting the upper end of the sentence also to fall outside of the prescribed range. To permit judges to impose sentences with both the minimum and maximum terms falling completely outside of the full sentencing range set forth in the first clause would render the "not less than two and one-half years" language of that clause null.⁵ Adopting such a construction "would violate the fundamental and long-standing principle of statutory interpretation 'that we must strive to give effect to each word of a statute so that no part will be inoperative or

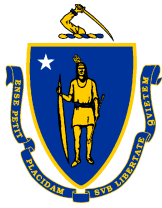
⁵ Already, a judge sentencing an offender holding a valid FID card may disregard the "not less than two and one-half years" language. See Rodriguez, 482 Mass. at 368 n.1 (sentencing judge has "discretion to sentence an FID-card-holding felon to a sentence ranging presumably from probation to no more than ten years in State prison").

superfluous.'" Commonwealth v. Fleury, 489 Mass. 421, 427 (2022), quoting Ciani v. MacGrath, 481 Mass. 174, 179 (2019).

Because the Legislature must have intended for the "not less than two and one-half years" provision to have some effect, we conclude that for a violator without an FID card, a State prison sentence that can be fully served in less than two and one-half years, without parole, cannot be what the Legislature intended. We conclude that the maximum term of a sentence for a violation of § 10 (m) committed by a person without a valid FID card must be at least two and one-half years. Whereas a sentence of from one year to two and one-half years is lawful, see Rodriguez, 482 Mass. at 366, 374, a sentence of from one year to one year and one day is not.

Conclusion. The order denying the Commonwealth's motion to revise and revoke an illegal sentence is reversed, the defendant's sentence for his violation of § 10 (m) is vacated, and the case is remanded to the Superior Court for resentencing.

So ordered.



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- WALTHAM
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April 2, 2025

Paul Tuttle, Clerk
Massachusetts Appeals Court
John Adams Courthouse, Pemberton Square
Rm. 1200, Boston, MA 02108

Re: Commonwealth v. Deivson A. DaSilva
Docket No. 24-P-1185

Dear Mr. Tuttle:

Under Mass. R. A. P. 16(l), the Commonwealth provides the following list of statutes relevant to Footnote 3 of the Commonwealth's brief on Page 11:

1. G. L. c. 90, § 24 (OUI-Second to OUI-Ninth)
2. G. L. c. 90, § 24G (Motor Vehicle Homicide)
3. G. L. c. 90, § 24L (OUI-Serious Bodily Injury)
4. G. L. c. 90, § 24S (Operation without Ignition Interlock)
5. G. L. c. 90, § 24V (Child Endangerment while OUI)
6. G. L. c. 90B, § 8A (Boat OUI-Serious Bodily Injury)
7. G. L. c. 90B, § 8B (Boat OUI-Death)
8. G. L. c. 272, § 6 (Maintaining House of Prostitution)
9. G. L. c. 272, § 7 (Deriving Support from Prostitution)

Respectfully yours,

\s\

CHIA CHI LEE (he/him)
ASSISTANT DISTRICT ATTORNEY
Office of the Middlesex District Attorney

15 Commonwealth Avenue
Woburn, MA 01801
BBO No. 704376
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CERTIFICATE OF SERVICE

Re: Commonwealth v. Deivson A. DaSilva,
Appeals Court No. 24-P-1185

I, Chia Chi Lee, Assistant District Attorney, hereby certify
that on this day I caused the above Rule 16(l) letter to be served on
the defendant via Tylerhost/eFileMA to his attorney:

Christopher DeMayo (BBO# 653481)
LAW OFFICE OF CHRISTOPHER DEMAYO
Attorney for Defendant
P.O. Box 760682
Melrose, MA 02176
lawofficeofchristopherdemayo@gmail.com

Signed under the pains and
penalties of perjury:



s\

CHIA CHI LEE (he/him)
ASSISTANT DISTRICT ATTORNEY
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Woburn, MA 01801
BBO No. 704376
Tel: (781) 897-8545
chichi.lee@mass.gov

Dated: April 2, 2025

§ 24. Driving while under influence of intoxicating liquor, etc.;..., MA ST 90 § 24

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24

§ 24. Driving while under influence of intoxicating liquor, etc.; second and subsequent offenses; punishment; treatment programs; reckless and unauthorized driving; failure to stop after collision

Currentness

(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

§ 24. Driving while under influence of intoxicating liquor, etc.;..., MA ST 90 § 24

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 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 twelve months sentence to the extent that resources are

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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

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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 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

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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

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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

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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.

(3 ½) 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

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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 ¼) 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 corroborating¹ 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

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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, 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 13 ½ 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 registrar² 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 under the influence of intoxicating liquor in violation of subsection (b) of said [section 24G](#), or [section 13 ½ 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;

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(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 13 ½](#) 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

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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-

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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.

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(a ½) (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 (a ½) 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 (a ½) 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 (a ½) 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 (a ½) 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 forgoing, 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

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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.

Credits

Amended by St.1932, c. 26, § 1; St.1935, c. 360; St.1936, c. 182, §§ 1, 2; St.1936, c. 434, § 1; St.1937, c. 117; St.1937, c. 230, § 1; St.1938, c. 145; St.1939, c. 82; St.1955, c. 198, §§ 1 to 3; St.1961, c. 340; St.1961, c. 347; St.1961, c. 422, § 2; St.1962, c. 394, § 2; St.1963, c. 369, § 2; St.1964, c. 200, §§ 1 to 5; St.1966, c. 191, § 1; St.1966, c. 316; St.1967, c. 773; St.1968, c. 259; St.1969, c. 7; St.1969, c. 163; St.1969, c. 202; St.1970, c. 253; St.1971, c. 1007, § 1; St.1971, c. 1071, § 4; St.1972, c. 111; St.1972, c. 376; St.1972, c. 488, §§ 1, 2; St.1973, c. 227; St.1973, c. 243; St.1974, c. 206, § 2; St.1974, c. 418; St.1974, c. 425; St.1974, c. 647, § 2; St.1975, c. 156, § 1; St.1980, c. 383, §§ 1, 2; St.1982, c. 373, §§ 2 to 5; St.1984, c. 189, § 65; St.1986, c. 620, §§ 5 to 13; St.1986, c. 677, § 1; [St.1991, c. 138, § 287](#); [St.1991, c. 460, §§ 1 to 4](#); [St.1992, c. 133, §§ 447, 587](#); [St.1992, c. 379, §§ 1B, 1C](#); [St.1993, c. 12, § 1](#); [St.1994, c. 25, §§ 3 to 6](#); [St.1994, c. 60, §§ 101 to 109](#); [St.1995, c. 38, §§ 110 to 116](#); [St.1996, c. 151, § 236](#); [St.1996, c. 450, §§ 137, 138](#); [St.1997, c. 43, §§ 79, 80](#); [St.1998, c. 161, § 317](#); [St.1999, c. 127, §§ 108, 109](#); [St.2002, c. 52, § 2](#); [St.2002, c. 302, §§ 1 to 4](#); [St.2003, c. 26, §§ 228, 229, eff. July 1, 2003](#); [St.2003, c. 28, §§ 1 to 7, eff. June 30, 2003](#); [St.2005, c. 122, §§ 3 to 5, 6A and 9 to 12, eff. Oct. 28, 2005](#); [St.2005, c. 122, §§ 6, 7 and 8, eff. Jan. 1, 2006](#); [St.2006, c. 428, § 13, eff. Jan. 3, 2007](#); [St.2008, c. 182, § 45, eff. July 1, 2008](#); [St.2008, c. 302, §§ 14, 15, eff. July 1, 2008](#); [St.2010, c. 155, § 11, eff. Sept. 30, 2010](#); [St.2010, c. 256, § 63, eff. Nov. 4, 2010](#); [St.2012, c. 139, § 97, eff. Jan. 1, 2013](#); [St.2012, c. 139, §§ 98 to 100, eff. July 1, 2012](#); [St.2013, c. 38, § 80, eff. Mar. 1, 2014](#); [St.2018, c. 69, §§ 32, 33, eff. April 13, 2018](#); [St.2020, c. 227, § 35, eff. July 1, 2021](#).

Footnotes

¹ So in enrolled bill; probably should read “corroborating”.

§ 24. Driving while under influence of intoxicating liquor, etc.;..., MA ST 90 § 24

2 So in enrolled bill; probably should read “registrar”.

M.G.L.A. 90 § 24, MA ST 90 § 24

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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§ 24G. Homicide by motor vehicle; punishment, MA ST 90 § 24G

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24G

§ 24G. Homicide by motor vehicle; punishment

Currentness

(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 2 ½ 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 2 ½ 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 2 ½ 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 2 ½ 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.

§ 24G. Homicide by motor vehicle; punishment, MA ST 90 § 24G

(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.

Credits

Added by St.1976, c. 227. Amended by St.1982, c. 373, § 9; St.1982, c. 376, §§ 1, 2; St.1986, c. 620, §§ 15, 16; [St.2003, c. 28, §§ 21, 22, eff. June 30, 2003](#); [St.2005, c. 122, § 16, eff. Oct. 28, 2005](#); [St.2018, c. 69, § 37, eff. April 13, 2018](#); [St.2018, c. 273, § 19, eff. Oct. 23, 2018](#).

M.G.L.A. 90 § 24G, MA ST 90 § 24G

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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§ 24L. Serious bodily injury by motor vehicle while under..., MA ST 90 § 24L

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24L

§ 24L. Serious bodily injury by motor vehicle while under influence of intoxicating substance; penalties

Currentness

(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.

§ 24L. Serious bodily injury by motor vehicle while under..., MA ST 90 § 24L

(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.

Credits

Added by St.1986, c. 620, § 17. Amended by [St.2003, c. 28, §§ 24, 25](#); [St.2018, c. 69, §§ 38, 38A](#), eff. [April 13, 2018](#).

M.G.L.A. 90 § 24L, MA ST 90 § 24L

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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§ 24S. Operation of motor vehicle on public way in violation of..., MA ST 90 § 24S

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24S**§ 24S. Operation of motor vehicle on public way in violation of ignition interlock device license restriction; penalties****Currentness**

(a) Whoever, upon any way or place to which the public has a right of access, or upon any way or place to which members of the public have access as invitees or licensees, operates a motor vehicle that is not equipped with a certified functioning ignition interlock device while his license or right to operate has been restricted to operating only motor vehicles equipped with such device shall be punished by fine of not less than \$1,000 nor more than \$15,000 and by imprisonment for not less than 180 days nor more than 2 ½ years or by a fine of not less than \$1,000 nor more than \$15,000 and by imprisonment in the state prison for not less than 2 ½ years nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than 150 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 150 days 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 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 that 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. The defendant may serve all or part of such 150-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.

(b) For the purposes of this section the term “certified ignition interlock device” shall mean an alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration over a preset limit of .02 or 20 mg of alcohol per 100 ml of blood.

CreditsAdded by [St.2005, c. 122, § 17, eff. Jan. 1, 2006](#).

M.G.L.A. 90 § 24S, MA ST 90 § 24S

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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§ 24V. Child endangerment while operating a motor vehicle or..., MA ST 90 § 24V

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24V

§ 24V. Child endangerment while operating a motor vehicle or vessel under the influence; penalties; suspension of license

Currentness

(a) Whoever violates [paragraph \(a\) of subdivision \(1\) of section 24](#), [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, [subsection \(a\) of section 8 of chapter 90B](#), or [section 8A or 8B of chapter 90B](#), or [section 13 ½ of chapter 265](#) with a child 14 years of age or younger in the motor vehicle or vessel shall also be guilty of child endangerment while operating a motor vehicle or vessel under the influence and shall be punished by an enhanced penalty of a fine of not less than \$1,000 nor more than \$5,000 and by imprisonment in the house of correction for not less than 90 days nor more than 2 ½ years. If a defendant has previously violated this subsection or a like offense in another jurisdiction preceding the date of the commission of the offense for which he has been convicted, he shall be punished by a fine of not less than \$5,000 nor more than \$10,000 and by imprisonment in the house of correction for not less than 6 months nor more than 2 ½ years or by imprisonment in state prison for not less than 3 years but not more than 5 years. The sentence of imprisonment imposed upon such person shall not be reduced to less than 6 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 he shall have served at least 6 months of such sentence but 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 the institution; or to engage in employment pursuant to a work release program. A sentence imposed under this subsection shall be served consecutively to and not concurrently with the predicate violation of said [paragraph \(a\) of subdivision \(1\) of section 24](#), [subsection \(a\) of section 24G](#), [subsection \(b\) of section 24G](#), section 24L, [subsection \(a\) of section 8 of chapter 90B](#), or [section 8A or 8B of chapter 90B](#), [section 13 ½ of chapter 265](#). [Section 87 of chapter 276](#) and [sections 1 to 9, inclusive, of chapter 276A](#) shall not apply to a person charged with a violation of this subsection. Prosecutions commenced under this subsection shall not be placed on file or continued without a finding.

(b) The registrar shall suspend the license or right to operate of person who violates this section for a period of 1 year for a first offense, and for a period of 3 years for a second or subsequent violation.

CreditsAdded by [St.2005, c. 122, § 17, eff. Oct. 28, 2005](#).

M.G.L.A. 90 § 24V, MA ST 90 § 24V

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

§ 8A. Operation of a vessel while under the influence of..., MA ST 90B § 8A

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90B. Motorboats, Other Vessels and Recreational Vehicles (Refs & Annos)

M.G.L.A. 90B § 8A

§ 8A. Operation of a vessel while under the influence of controlled substances causing serious bodily injury; penalties; parole, probation or furlough; license revocation

Currentness

(1) Whoever operates a vessel on the waters of the commonwealth 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 chapter ninety-four C, 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 said vessel 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 paragraph 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, 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. Prosecutions commenced under this paragraph 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 section.

(2) Whoever operates a vessel on the waters of the commonwealth 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 chapter ninety-four C, 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 by any such operation causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not less than thirty days nor 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.

§ 8A. Operation of a vessel while under the influence of..., MA ST 90B § 8A

(4) The registrar shall revoke the license or right to operate and the director shall revoke the certificate of number of a person convicted of a violation of this section 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 said license, right to operate or certificate of number provided, however, that such license, right to operate and certificate of number shall be restored if the prosecution of such person ultimately terminates in favor of the defendant.

Notwithstanding the foregoing, any person whose certificate of number has been revoked under this section may at any time apply for and shall within fifteen days be granted a hearing for the purpose of requesting the issuance of a certificate of number on the grounds of hardship and the director may, in his discretion, issue such certificate of number under such terms and conditions as he deems appropriate and necessary.

Credits

Added by [St.1994, c. 318, § 17](#). Amended by [St.2003, c. 28, § 30, eff. June 30, 2003](#); [St.2018, c. 69, §§ 41, 42, eff. April 13, 2018](#).

M.G.L.A. 90B § 8A, MA ST 90B § 8A

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§ 8B. Operation of a vessel under the influence of a controlled..., MA ST 90B § 8B

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XIV. Public Ways and Works (Ch. 81-92b)

Chapter 90B. Motorboats, Other Vessels and Recreational Vehicles (Refs & Annos)

M.G.L.A. 90B § 8B

§ 8B. Operation of a vessel under the influence of a controlled substance causing death; penalties; probation, parole or furlough; license revocation

Currentness

(1) Whoever operates a vessel on the waters of the commonwealth 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 chapter ninety-four C, 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 said vessel 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 vessel while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than fifteen years and a fine of not 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 a fine of not 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. Prosecutions commenced under this section 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 section.

(2) Whoever operates a vessel on the waters of the commonwealth 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 chapter ninety-four C, 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 vessel recklessly or negligent ¹ 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 vessel and shall be punished by imprisonment in a jail or house of correction for not less than thirty days nor more than two and one-half years, or by a fine of not less than three hundred nor more than three thousand dollars, or both.

(3) The registrar shall revoke the license or right to operate and the director shall revoke the certificate of number of a person convicted of a violation of this section for a period of ten years after the date of conviction for a first offense. The registrar shall revoke the license or the right to operate and the director shall revoke the certificate of a person convicted for a subsequent

§ 8B. Operation of a vessel under the influence of a controlled..., MA ST 90B § 8B

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, right to operate, or certificate provided, however, such license, right to operate and certificate of number shall be restored if the prosecution of such person ultimately terminates in favor of the defendant.

Notwithstanding the foregoing, any person whose certificate of number has been revoked under this section may at any time apply for and shall within fifteen days be granted a hearing for the purpose of requesting the issuance of a certificate of number on the grounds of hardship and the director may, in his discretion, issue such certificate of number under such terms and conditions as he deems appropriate and necessary.

Credits

Added by [St.1994, c. 318, § 17](#). Amended by [St.2003, c. 28, §§ 31, 32, eff. June 30, 2003](#); [St.2018, c. 69, § 43, eff. April 13, 2018](#).

Footnotes

¹ So in original; probably should read “negligently”.

M.G.L.A. 90B § 8B, MA ST 90B § 8B

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§ 6. Owner of place inducing or suffering person to resort in such..., MA ST 272 § 6

Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order (Refs & Annos)

M.G.L.A. 272 § 6**§ 6. Owner of place inducing or suffering person to resort in such place for sexual intercourse****Currentness**

Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse for money or other financial gain, shall be punished by imprisonment in the state prison for a period of five years and a five thousand dollar fine.

The sentence of imprisonment imposed under this section shall not be reduced to less than two years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct or otherwise until he shall have served two years of such sentence. Prosecutions commenced under this section shall not be continued without a finding nor placed on file.

Credits

Amended by St.1978, c. 379, § 5; St.1979, c. 472; St.1980, c. 409.

M.G.L.A. 272 § 6, MA ST 272 § 6

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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§ 7. Support from, or sharing, earnings of prostitute, MA ST 272 § 7

Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 272. Crimes Against Chastity, Morality, Decency and Good Order (Refs & Annos)

M.G.L.A. 272 § 7

§ 7. Support from, or sharing, earnings of prostitute

[Currentness](#)

Whoever, knowing a person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of his prostitution, from moneys loaned, advanced to or charged against him by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall share in such earnings, proceeds or moneys, shall be punished by imprisonment in the state prison for a period of five years and by a fine of five thousand dollars.

The sentence of imprisonment imposed under this section shall not be reduced to less than two years, nor suspended, nor shall any person convicted under this section be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct or otherwise until he shall have served two years of such sentence. Prosecutions commenced under this section shall not be continued without a finding nor placed on file.

Credits

Amended by St.1977, c. 589; St.1980, c. 409.

M.G.L.A. 272 § 7, MA ST 272 § 7

Current through Chapter 341 of the 2024 2nd Annual Session. Some sections may be more current, see credits for details.

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