



# LEGAL UPDATE

## OUI Defendants Must be Informed of and Provided with § 5A Rights

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Commonwealth v. Baez, Mass. App. Ct. (Oct. 24, 2025).

### RELEVANT FACTS

The defendant was pulled over in the early morning hours of August 14, 2022 for speeding. He was ultimately arrested for operating under the influence of alcohol. At booking, the defendant was informed of his right to an independent medical exam pursuant to M.G.L. c. 263, § 5A. The form was read aloud by the booking officer word-for-word at a normal speed and volume. The defendant had the form in his possession for eight seconds and signed it. The defendant also declined to take the breathalyzer, which he acknowledged on that same form. The defendant was not allowed to keep the form, nor was he provided a copy of it. The § 5A rights were not posted at the station.

The defendant filed a motion to dismiss alleging a violation of his rights guaranteed under § 5A. The motion was allowed. The Commonwealth appealed.

### DISCUSSION

M.G.L. c. 263, § 5A requires that defendants who are under arrest for operating under the influence of alcohol be informed of their right to an independent medical examination at booking and that a copy of § 5A either be provided to the defendant or be posted at the station.

**For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.**

The statute states:

"A person held in custody at a police station or other place of detention, charged with operating a motor vehicle while under the influence of intoxicating liquor, shall have the right, at his request and at his expense, to be examined immediately by a physician selected by him. The police official in charge of such station or place of detention, or his designee, shall inform him of such right immediately upon being booked, and shall afford him a reasonable opportunity to exercise it. Such person shall, immediately upon being booked, **be given a copy of this section unless such a copy is posted in the police station or other place of detention in a conspicuous place to which such person has access**" (emphasis added).

To satisfy the requirements of the statute, police must comply with both parts of the statute – informing and providing. Compliance with one part will not be sufficient.

"The Legislature has determined that written provision of the right to be examined by an independent physician assists criminal defendants in a way that oral provision alone does not, and thus we cannot consider the absence of a writing to be "hypertechnical."

In this case, the court found the defendant was properly informed on the right when the booking officer read the text of the statute to him. However, the statute was violated because the defendant was never provided with a copy of the rights nor were they posted.

When there is a violation of a defendant's § 5A rights, the Supreme Judicial Court ("SJC") had determined that the suppression of any breathalyzer result is ordinarily the appropriate remedy. In cases like this, where the defendant did not take a breathalyzer, the presumptive remedy is dismissal. This is because it is assumed the defendant has been prejudiced in their ability to obtain potentially exculpatory evidence.

The court will not dismiss a case in limited circumstances, such as exigent circumstances or in cases where there is overwhelming evidence of intoxication. Neither of those circumstances occurred in this case. Dismissal is also not required if the Commonwealth can show the defendant was not prejudiced by the error. The Commonwealth would do this by proving that the defendant would have acted the same way even if the statute had been complied with. The court found that the Commonwealth had not successfully rebutted the presumption of prejudice in this case.

The dismissal of the OUI was affirmed