



# LEGAL UPDATE

## SERUM CONVERSION DOES NOT REQUIRE CONSENT

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Commonwealth v. Gannett, Mass. (May 23, 2025).

### RELEVANT FACTS:

On October 28, 2021, the defendant was arrested for operating under the influence (“OUI”) of alcohol, third offense. At booking, officers saw the defendant spit a small amount of blood and brought him to the hospital. The medical team drew the defendant’s blood for treatment purposes.

The police obtained a search warrant for the defendant’s blood that was taken at the hospital. The blood was seized and tested at the State police crime laboratory. A motion to suppress the results of that analysis was allowed.

The Commonwealth also obtained the defendant’s medical records, which included the hospital’s test results for the analysis of the defendant’s blood. The medical records were reviewed by a forensic scientist at the State crime lab who then created a “Serum/Plasma Conversion Report” which calculated the defendant’s blood alcohol content (BAC) level to be between .24 and .26.

The defendant moved to exclude the conversion evidence. The judge suppressed the evidence. The Commonwealth appealed.

### DISCUSSION

MGL c 90 § 24(1)(e) states, in pertinent part:

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

In any prosecution for a violation of [§ 24 (1) (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 . . . 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...

This consent requirement only applies to simple OUI offenses, meaning OUIs that do not involve personal injury or death.

The court has interpreted this language multiple times in recent years. In Commonwealth v. Bohigian, 486 Mass. 209 (2020), the court ruled that the plain language of the statute requires that any testing or chemical analysis of a defendant's blood in connection with a simple OUI must be done with the defendant's consent. Officers cannot avoid the consent requirement by obtaining a search warrant.

The court provided further clarification in Commonwealth v. Moreau, 490 Mass. 387 (2022). In that case, the defendant's blood was drawn for medical purposes. The police obtained a search warrant for the blood sample which was then analyzed at the State lab. The results of the analysis were suppressed because that testing and analysis was done at the direction of the police and without the defendant's consent.

In this case, like Moreau, the defendant's blood was drawn for medical purposes and police obtained a search warrant for that blood and later analyzed it at the State police lab. Because this testing and analysis was done at the direction of the police without the consent of the defendant, it was properly suppressed by the court.

In this appeal the Commonwealth was seeking to admit into evidence the results of a mathematical calculation performed by the State crime lab that was based on the hospital's blood test. The defendant argued that this was an analysis of the blood and must be suppressed because it was done without his consent.

The statute requires that any "chemical test or analysis of" a defendant's blood be done with the defendant's consent. The court found that the serum conversion calculation done here was not a chemical analysis of the defendant's blood. For this reason, the Serum/Plasma Conversion Report was not an "analysis" as contemplated in MGL c 90 § 24(1)(e).

The order suppressing the Serum/Plasma Conversion Report evidence was reversed.