

# MDAAnet

## Legal Update

October 31, 2005

### Melanie's Bill: Detailed Summary of the Law

**Chapter 90, § 12 – Employing or allowing unlicensed operator to operate motor vehicle:** The previous law did not list penalties for an offense, nor did it contemplate ignition interlock restrictions.

#### **Old Law**

#### **Penalty**

No person shall employ an individual with a suspended license	No penalty listed
No person shall allow a vehicle owned by him or under his control to be operated by an unlicensed person	No penalty listed

#### **New Law**

#### **Penalty**

No person shall employ an individual with a suspended license	<b>1<sup>st</sup> Offense</b> = \$500 fine <b>2<sup>nd</sup> Offense</b> = 1 year in the house of correction and up to \$1000
No person shall allow a vehicle owned by him or under his control to be operated by an unlicensed person	<b>1<sup>st</sup> Offense</b> = 1 year in the house of correction and a fine of \$500 <b>2<sup>nd</sup> Offense</b> = 2 ½ years in the house of correction and a fine of \$1000
No person shall allow an individual with an ignition interlock restriction to operate a vehicle not equipped with the device	<b>1<sup>st</sup> Offense</b> = 1 year in the house of correction and a fine of \$500 <b>2<sup>nd</sup> Offense</b> = 2 ½ years in the house of correction and a fine of \$1000

- **The Registry of Motor Vehicles may suspend the registration of a vehicle used in the commission of such an offense for up to one year.**

**Chapter 90, §23 – Operation of motor vehicle after suspension or revocation of license:** Melanie's bill increases the penalties for Operating After Suspension for Drunk Driving

#### **Old Law - Penalty**

#### **New Law - Penalty**

<b>1<sup>st</sup> Offense:</b> No less than 60 days no more than 2 ½ years and a fine of \$1000-\$10,000. Minimum mandatory	<b>1<sup>st</sup> Offense:</b> No less than one year no more than 2 ½ years and a fine of \$2,500 - \$10,000. Minimum mandatory
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sentence of 60 days.	sentence of 1 year.
<b>2<sup>nd</sup> Offense:</b> No additional penalty	<b>2<sup>nd</sup> Offense:</b> No additional penalty

## **Chapter 90, §24 –**

### **A. Intermediate Sanction Language:**

The following language has been stricken from Chapter 90, §24:  
*“unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three.”*

- **No intermediate sanctions were ever promulgated thus making the language obscure.**

### **B. Waiting period for a hardship license:**

Melanie’s bill increases the waiting period to apply for a hardship license for a first and second offense.

#### **Old Law**

#### **New Law**

<b>1<sup>st</sup> Offense:</b> Six month waiting period to apply for a hardship license.	<b>1<sup>st</sup> Offense:</b> One year waiting period to apply for a hardship license.
<b>2<sup>nd</sup> Offense:</b> One year waiting period to apply for a hardship license.	<b>2<sup>nd</sup> Offense:</b> Eighteen months waiting period to apply for a hardship license.

**C. An ignition interlocking device is now required on all licenses issued for second or subsequent offenders for a period of two years.**

#### **Violation**

#### **Penalty**

Removal of the device, or failing to have the device inspected, maintained, or monitored on at least two occasions.	“An extended period” or for life. Allows for an appeal of the registrar’s decision to the superior court.
At least two attempts to start a vehicle with a blood alcohol level in excess of .02.	“An extended period” or for life. Allows for an appeal of the registrar’s decision to the superior court.

### **D. Introduction of certified prior conviction allowed without requiring corroborating evidence or live witness testimony.**

#### **Old Language**

#### **New Language**

<i>“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,</i>	<i>“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</i>
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<p><i>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."</i></p>	<p><i>the defendant's biographical and informational data from records of the department of probation, <u>any jail or house of corrections, the department of correction, or the registry</u>, shall be prima facie evidence that <u>the defendant before the court</u> 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. <u>The Commonwealth shall not be required to introduce additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions.</u></i></p>
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**E. Chapter 90, §24(f)(1): Period of suspension for breathalyzer refusal:** Melanie's bill dramatically increases the suspension period for subsequent breathalyzer refusals.

<b>Old Law</b>	<b>New Law</b>
1 <sup>st</sup> offense refusal = 180 day loss of license	1 <sup>st</sup> offense refusal = 180 day loss of license
2 <sup>nd</sup> offense refusal (or 1 <sup>st</sup> refusal if under 21 years) = 1 year loss of license	2 <sup>nd</sup> offense refusal = 3 year loss of license
3 <sup>rd</sup> offense refusal = 18 months loss of license	3 <sup>rd</sup> offense refusal = 5 year loss of license
	4 <sup>th</sup> or subsequent offense refusal = lifetime loss of license
	Refusal after previous conviction under Chapter 90, §24L = 10 year loss of license
	Refusal after previous conviction under Chapter 90, §24G or Chapter 265, § 13 ½ = lifetime loss of license

**F. Immediate suspension upon arrest:** Melanie's bill eliminates the 15-day temporary license. A defendant's license is immediately suspended upon written notice from a police officer.

**G. Impoundment of defendant's vehicle:** A defendant's vehicle will be impounded for 12 hours following an arrest.

**Chapter 90, §24D:**

**A. Aggravated OUI:** The second offenders program is now required on all defendant's age 17-21 charged with a first offense whose blood alcohol is .20 or greater.

**B. List of approved alcohol education programs:** The Department of Public Health will publish a list of approved alcohol education programs annually.

**Chapter 90, § 24G:** Melanie's bill increases the length of license suspension from 10 years to 15 years for a conviction of Motor Vehicle Homicide.

<b>Old Law</b>	<b>New Law</b>
Chapter 90, §24G(a) = 10 year loss of license	Chapter 90, §24G(a) = 15 year loss of license
Chapter 90, §24G(b) = 10 year loss of license	Chapter 90, §24G(b) = 15 year loss of license

**Chapter 90, §24Q: Mandatory Alcohol Assessment**

Melanie's bill requires the following defendant's to submit to an alcohol assessment as a mandatory condition of a sentence:

<b>Offense Required</b>	<b>Alcohol Assessment</b>
1 <sup>st</sup> offense with a .20 or higher	Yes
2 <sup>nd</sup> or subsequent OUI offense	Yes
Prior conviction under C. 265, § 13 ½	Yes
Prior conviction under C. 24G	Yes
Prior conviction under C. 24L	Yes

**Chapter 90, §24R(a) + (b): Mandatory lifetime loss of license for a conviction for Motor Vehicle Homicide or Manslaughter by Motor Vehicle with a prior OUI:** Melanie's bill makes it a lifetime loss of license for anyone charged with an offense under Chapter 90, §24G or Chapter 265, §13 ½ if there is a prior conviction for on the defendant's record for OUI.

\*The legislative intent was to create a mandatory lifetime loss of license for a conviction of OUI with a prior conviction for MVH or Manslaughter MV conviction on the record OR for a conviction of MVH or Manslaughter MV with a prior conviction for OUI; however, the language in this section does not appear to accomplish this.

**Chapter 90, §24S: Ignition Interlock Device:** The following new offenses have been created:

<b>Offense</b>	<b>Penalty</b>
Driving without an ignition interlock device when required to by law	180 days – 2 ½ years HOC or 2 ½ - 5 years state prison with a 150 day minimum mandatory sentence and \$1,000-\$15,000 fine
Tampering with an ignition interlock device	6 months – 2 ½ years HOC or 3-5 years state prison
Starting an ignition interlock device for a restricted person, 1 <sup>st</sup> offense	6 months – 2 ½ years HOC and \$1,000-\$5,000 fine
Starting an ignition interlock device for a restricted person, 2 <sup>nd</sup> or subsequent offense	3-5 years in state prison

**Chapter 90, §24V: Child Endangerment while Operating a Motor Vehicle:** Melanie’s bill creates a new law of child endangerment for any person charged with an alcohol related driving offense with a child 14 years of age or younger in the vehicle.

<b>Offense</b>	<b>Penalty</b>
1 <sup>st</sup> offense	90 days – 2 ½ years and \$1,000-\$5,000 fine; 1 year loss of license
2 <sup>nd</sup> or subsequent offense	6 months – 2 ½ years HOC or 3-5 years in state prison. 6 month minimum mandatory sentence; 3 year loss of license

- Sentence to be served consecutively and not concurrently with predicate sentence.

**Chapter 90, §24W: Forfeiture of a motor vehicle after conviction for 4<sup>th</sup> offense or higher.** This law allows prosecutors to file for forfeiture of a motor vehicle for any defendant convicted of a 4<sup>th</sup> alcohol related driving offense (or higher) (restrictions apply). The District Attorney’s Office receives a portion of the proceeds from the sale.

**Chapter 90, §24X: Registration cancelled for suspension period after conviction for 3<sup>rd</sup> offense or higher.** This law allows the registry to cancel the registration plates during the license suspension period for anyone convicted of a 3<sup>rd</sup> alcohol related driving offense (or higher).

**Chapter 266, §139: Motor Vehicle or trailers; defacement, etc.; of identifying numbers; penalties; arrest.**

The following language is included in this chapter and section,

*"Whoever takes and carries away the registration plate that is attached to the vehicle of another or is assigned by the registry of motor vehicles to another shall be punished by a fine of not less than \$500 nor more than \$1,000 or imprisonment in the house of correction for not more than 2 ½ years, or both."*

**Chapter 265, §13 ½ : Manslaughter by Motor Vehicle**

This law creates a new crime of Manslaughter by Motor Vehicle. The language essentially says, *whoever commits manslaughter while operating a motor vehicle while under the influence of alcohol or drugs shall be guilty of Manslaughter by Motor Vehicle.*

<b>Offense</b>	<b>Penalty</b>	<b>Loss of License</b>
Manslaughter and under the influence of alcohol or drugs	5-20 years state prison and fine of not more than \$25,000. 5 year minimum mandatory sentence	"any extended period up to life." Allows for an appeal of the registrar's decision to the superior court.

**Manslaughter by Motor Vehicle vs. Felony Motor Vehicle Homicide – What is the difference?**

The only difference between felony Motor Vehicle Homicide and the new offense of Manslaughter by Motor Vehicle is the **enhanced sentencing.**

**EFFECTIVE DATE:**

Melanie's Bill took effect immediately upon signing Friday, October 28, 2005. However, the following provisions do not go into effect until January 1, 2006:

1. Chapter 90, §12 - Employing or allowing unlicensed operator to operate motor vehicle
2. Ignition interlock Devices
3. Mandatory alcohol assessment
4. 17-21 year old .20 or higher required to attend a second offender's program.



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