

HOUSE No. 71

The Commonwealth of Massachusetts



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COMMONWEALTH OF MASSACHUSETTS
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January 23, 2019

To the Honorable Senate and House of Representatives,

In 2017, we worked together to enact bipartisan legislation governing the cultivation, sale and adult use of marijuana following the voter-approved ballot initiative of 2016. As we carry out the will of the voters and implement this new law, we must continue to work together to minimize the negative impacts of increased marijuana use in Massachusetts. As marijuana use increases in Massachusetts, we can expect an increase in impaired driving as well. The research is clear: ingestion of THC can and does cause impairment in driving. The consequences can be severe. Nationally, the percentage of fatally injured drivers with drugs of all kinds detected in their systems has risen from just under 28% in 2005 to over 40% in 2015.

An important component of the 2017 legislation was the creation of a Special Commission on Operating under the Influence and Impaired Driving. Bringing together stakeholders and experts from across the spectrum including police, prosecutors, the criminal defense bar, medical and toxicological professionals, and the civil liberties community, the Special Commission heard from a range of subject matter experts and recently issued its report. That report recommends a series of changes to how Massachusetts combats operating under the influence. The majority of these recommendations were unanimous. They represent common sense improvements to the entire process by which we address drugged driving, beginning with the training of police officers, continuing through roadside encounters with motorists, and ending with what evidence is admitted at trials and how judges instruct juries. Almost all of the Special Commission’s recommendations require legislative changes. Accordingly, I am submitting for

your consideration “An Act Implementing the Recommendations of the Special Commission on Operating under the Influence and Impaired Driving.”

This legislation takes each recommendation that requires legislation and proposes statutory language to implement that recommendation. It applies the tools that we have used for years to combat drunk driving and extends them to drugged driving. It also makes parallel changes to the law governing impaired operation of boats, planes and other vehicles. I urge your prompt enactment of the Special Commission’s thoughtful recommendations.

Respectfully submitted

Charles D. Baker,
Governor

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act implementing the recommendations of the Special Commission on Operating under the Influence and Impaired Driving.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by inserting after section
2 116G, as inserted by section 2 of chapter 69 of the acts of 2018, the following section:-

3 Section 116H. (a) The municipal police training committee, in consultation with the
4 executive office of public safety and security, shall establish and develop an in-service training
5 program designed to train local law enforcement officials with authority to enforce chapter 90 in
6 Advanced Roadside Impaired Driving Enforcement. The committee shall determine training
7 requirements and minimum standards of the program.

8 (b) The municipal police training committee, in consultation with the executive office of
9 public safety and security, shall establish and develop an in-service training program designed to
10 train and certify local law enforcement officials as drug recognition experts. The committee
11 shall determine training requirements and minimum standards of the program.

12 SECTION 2. Section 8 of chapter 90 of the General Laws, as appearing in the 2016
13 Official Edition, is hereby amended by inserting after the word “substances”, in lines 52 to 53,
14 the following words:- , including alcohol and marijuana,.

15 SECTION 3. Section 8A of said chapter 90, as so appearing, is hereby amended by
16 striking out, in lines 31 to 33, the words “of marijuana, narcotic drugs, depressants or stimulant
17 substances, all as defined in section one of said chapter ninety-four C, or of the vapors of glue”
18 and inserting in place thereof the following words:- any other intoxicating substance or
19 combination of substances.

20 SECTION 4. Section 8A½ of said chapter 90, as so appearing, is hereby amended by
21 striking out, in lines 27 to 30, the words “of marijuana, narcotic drugs, depressants or stimulant
22 substances, all as defined in section one of said chapter ninety-four C, or of the vapors of glue”
23 and inserting in place thereof the following words:- any other intoxicating substance or
24 combination of substances.

25 SECTION 5. Section 21 of said chapter 90, as so appearing, is hereby amended by
26 striking out, in lines 25 to 29, the words “, marihuana or narcotic drugs, or depressant or
27 stimulant substances, all as defined in section one of chapter ninety-four C, or under the
28 influence of the vapors of glue, carbon tetrachloride, acetone, ethylene, dichloride, toluene,
29 chloroform, xylene or any combination thereof” and inserting in place thereof the following
30 words:- or any other intoxicating substance or combination of substances.

31 SECTION 6. Section 22F of said chapter 90, as so appearing, is hereby amended by
32 striking out, in line 11, the words “of intoxicating liquor or narcotic drugs”.

33 SECTION 7. Section 24 of said chapter 90, as so appearing, is hereby amended by
34 striking out, in lines 1 to 4, the words “, upon any way or in any place to which the public has a
35 right of access, or upon any way or in any place to which members of the public have access as
36 invitees or licensees,”.

37 SECTION 8. Said section 24, of said chapter 90, as so appearing, is hereby further
38 amended by striking out, in lines 6 to 8, the words “, or of marijuana, narcotic drugs, depressants
39 or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of
40 glue,” and inserting in place thereof the following words:- or any other intoxicating substance or
41 combination of substances.

42 SECTION 9. Said section 24, of said chapter 90, as so appearing, is hereby further
43 amended by striking out, in lines 16 to 17, the words “, marijuana, narcotic drugs, depressants or
44 stimulant substances” and inserting in place thereof the following words:- or any other
45 intoxicating substance or combination of substances.

46 SECTION 10. Said section 24, of said chapter 90, as so appearing, is hereby further
47 amended by striking out, in lines 28 to 30, the words “, or of marihuana, narcotic drugs,
48 depressants or stimulant substances, all as defined by section 1 of chapter 94C” and inserting in
49 place thereof the following words:- any other intoxicating substance or combination of
50 substances.

51 SECTION 11. Subdivision (1) of said section 24 of said chapter 90 is hereby further
52 amended by striking out paragraph (e) and inserting in place thereof the following paragraph:-

53 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by
54 weight, of alcohol in the defendant's blood at the time of the alleged offense, or of the presence

55 or concentration of any other intoxicating substance or combination of substances, or metabolites
56 of any intoxicating substance, as shown by chemical test or analysis of his blood or oral fluid or
57 as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant
58 to the determination of the question of whether such defendant was at such time under the
59 influence of intoxicating liquor, or any other intoxicating substance or combination of
60 substances; provided, however, that if such test or analysis was made by or at the direction of a
61 police officer, it was made either with the consent of the defendant or with the authority
62 conveyed by a search warrant; the results thereof were made available to him upon his request;
63 and the defendant was afforded a reasonable opportunity, at his request and at his expense, to
64 have another such test or analysis made by a person or physician selected by him; and provided,
65 further, that blood shall not be withdrawn from any party for the purpose of such test or analysis
66 except by a physician, physician's assistant, registered nurse or authorized medical staff of a
67 health care facility. Evidence that the defendant failed or refused to consent to such test or
68 analysis shall not be admissible against him in a civil or criminal proceeding unless such refusal
69 constituted a refusal to comply with the terms of a search warrant or court order, but shall be
70 admissible in any action by the registrar under paragraph (f) or in any proceedings provided for
71 in section 24N. If such evidence is that such percentage, by weight, of alcohol in the defendant's
72 blood was five one-hundredths or less, there shall be a permissible inference that such defendant
73 was not under the influence of intoxicating liquor, and he shall be released from custody
74 forthwith unless there is probable cause of intoxication caused by the ingestion of some other
75 substance or combination of substances, but the officer who placed him under arrest shall not be
76 liable for false arrest if such police officer had reasonable grounds to believe that the person
77 arrested had been operating a motor vehicle while under the influence of intoxicating liquor, or

78 any other intoxicating substance or combination of substances; provided, however, that in an
79 instance where a defendant is under the age of 21 and such evidence is that the percentage, by
80 weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who
81 placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend
82 such defendant's license or permit and take all other actions directed therein, if such evidence is
83 that such percentage was more than five one-hundredths but less than eight one-hundredths there
84 shall be no permissible inference of impairment by reason of alcohol.

85 In any prosecution for a violation of paragraph (a) in which the defendant is alleged to be
86 under the influence of intoxicating liquor; of a central nervous system depressant; of a
87 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of
88 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus
89 test conducted pursuant to a method approved by the National Highway Traffic Safety
90 Administration, and the detection of one or more of the following indicators: 1) lack of smooth
91 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum
92 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or
93 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible
94 and deemed relevant to the determination of the question of whether such defendant was at such
95 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a
96 permissible inference that such defendant was under the influence of intoxicating liquor; of a
97 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or
98 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such
99 indicators were present, there shall be a permissible inference that such defendant was not under
100 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative

101 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such
102 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from
103 such evidence with regard to whether the defendant was under the influence. In any such
104 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus
105 test has been demonstrated to have scientific validity and reliability when administered by
106 properly trained and certified police officers and when used in conjunction with other evidence,
107 in detecting impairment by alcohol; by central nervous system depressants; by dissociative
108 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and
109 (2) a contemporary publication of the National Highway Traffic Safety Administration with
110 regard to the proper administration of the horizontal gaze nystagmus test.

111 In any prosecution for a violation of paragraph (a) in which it is alleged that a defendant's
112 operation of a motor vehicle was impaired by an intoxicating substance other than intoxicating
113 liquor, evidence of the concentration of such intoxicating substance in a defendant's system shall
114 not be a precondition to the admissibility of evidence of the presence of such intoxicating
115 substance in the defendant's system.

116 In any prosecution for a violation of paragraph (a) in which it is alleged that a defendant's
117 operation of a motor vehicle was impaired, in whole or in part, by the consumption of marijuana,
118 marijuana products, or other forms of tetrahydrocannabinol (THC), the court may take judicial
119 notice that the ingestion of THC can cause impairment in motorists; that it can impair motor
120 function, reaction time, tracking, cognitive attention, decision-making, judgment, perception,
121 peripheral vision, impulse control, and memory; and that ingestion of THC does not enhance a
122 motorist's ability to safely operate a motor vehicle.

123 SECTION 12. Said section 24 of said chapter 90, as so appearing, is hereby further
124 amended by striking out, in lines 532 to 534, the words “upon any way or in any place to which
125 the public has a right of access, or upon any way or in any place to which members of the public
126 have access as invitees or licensees,”.

127 SECTION 13. Said section 24 of said chapter 90, as so appearing, is hereby further
128 amended by inserting, after the word “liquor”, in lines 537 to 538, the following words:- ; and
129 shall be deemed to have consented to a chemical test or analysis of his blood, or of his oral fluid,
130 or to comply with all non-testimonial aspects of a Drug Recognition Expert examination in the
131 event that he is arrested for operating while under the influence of any other intoxicating
132 substance or combination of substances;

133 SECTION 14. Said section 24 of said chapter 90, as so appearing, is hereby further
134 amended by striking out, in line 547, the words “upon such way or place”.

135 SECTION 15. Said section 24 of said chapter 90, as so appearing, is hereby further
136 amended by striking out, in lines 548, 559, 580, 600 to 601, and 711 to 712, every time they
137 appear, the words “of intoxicating liquor”.

138 SECTION 16. Said section 24 of said chapter 90, as so appearing, is hereby further
139 amended by inserting, after the word “analysis”, in lines 549, 553, 574, 577, 602, 605, and 716,
140 each time it appears, the following words:- or examination.

141 SECTION 17. Said section 24 of said chapter 90, as so appearing, is hereby further
142 amended by inserting after the word “made”, in line 553, the following words:- without first
143 obtaining a search warrant.

144 SECTION 18. Said section 24 of said chapter 90, as so appearing, is hereby further
145 amended by striking out, in line 600 and 687, every time they appear, the words “on a way or
146 place”.

147 SECTION 19. Said section 24 of said chapter 90, as so appearing, is hereby further
148 amended by striking out, in lines 616 to 617, the words “either a chemical test or analysis of
149 breath or blood” and inserting in place thereof the following words:- any of a chemical test or
150 analysis of breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition
151 Expert examination.

152 SECTION 20. Said section 24 of said chapter 90, as so appearing, is hereby further
153 amended by inserting after the word “test”, in line 641, the following words:- , analysis or
154 examination.

155 SECTION 21. Said section 24 of said chapter 90, as so appearing, is hereby further
156 amended by striking out, in lines 648 to 649, the words “on any way or place”.

157 SECTION 22. Said section 24 of said chapter 90, as so appearing, is hereby further
158 amended by striking out, in lines 712 to 714, the words “upon any way or in any place to which
159 the public has a right of access, or upon any way or in any place to which members of the public
160 have access as invitees or licensees”.

161 SECTION 23. Said section 24 of said chapter 90, as so appearing, is hereby further
162 amended by striking out, in lines 757 to 759, the words “marihuana, narcotic drugs, depressants
163 or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of
164 glue” and inserting in place thereof the following words:- any intoxicating substance other than
165 alcohol or a combination of alcohol and another intoxicating substance.

166 SECTION 24. Section 24½ of said chapter 90, as so appearing, is hereby amended by
167 striking out, in lines 7 to 8, the words “of intoxicating liquor”.

168 SECTION 25. Section 24D of said chapter 90, as so appearing, is hereby amended by
169 striking out, in lines 4 and 17 to 18, the words “, controlled substance or the vapors of glue” and
170 inserting in place thereof, each time they appear, the following words:- or any other intoxicating
171 substance or combination of substances.

172 SECTION 26. Said section 24D of said chapter 90, as so appearing, is hereby further
173 amended by inserting after the word “liquor”, in lines 38 and 43, each time it appears, the
174 following words:- or any other intoxicating substance or combination of substances.

175 SECTION 27. Said section 24D of said chapter 90, as so appearing, is hereby further
176 amended by striking out, in line 50, the words “of intoxicating liquor” and inserting in place
177 thereof the following words:- offense.

178 SECTION 28. Said section 24D of said chapter 90, as so appearing, is hereby further
179 amended by striking out, in line 57, the words “of alcohol”.

180 SECTION 29. Said section 24D of said chapter 90, as so appearing, is hereby further
181 amended by striking out, in line 168, the word “drugs” and inserting in place thereof the
182 following words:- any other intoxicating substance or combination of substances.

183 SECTION 30. Section 24G of said chapter 90, as appearing in chapter 69 of the acts of
184 2018, is hereby amended by striking out, in lines 1 to 3, 32 to 34 and 46 to 48, each time they
185 appear, the words “, upon any way or in any place to which the public has a right of access or

186 upon any way or in any place to which members of the public have access as invitees or
187 licensees,”.

188 SECTION 31. Said section 24G of said chapter 90, as so appearing, is hereby amended
189 by striking out, in lines 5 to 9 and 36 to 39, the words “, or of marijuana, narcotic drugs,
190 depressants or stimulant substances, all as defined in section 1 of chapter 94C, or from smelling
191 or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in
192 section 18 of chapter 270” and inserting in place thereof, each time they appear, the following
193 words:- or any other intoxicating substance or combination of substances.

194 SECTION 32. Subsection (a) of section 24I of said chapter 90, as appearing in the 2016
195 Official Edition, is hereby amended by inserting after the definition of “Open container” the
196 following definition:-

197 "Open or loose marijuana," finished marijuana or marijuana products, as defined by
198 chapter 94G, that are not contained in the original unopened packaging provided by a marijuana
199 retailer licensed under said chapter, or edible products prepared with marijuana, as defined under
200 said chapter, or marijuana, as defined in section 1 of chapter 94C; provided, that resealable
201 packages including but not limited to plastic zipper-top bags and screw-top jars shall constitute
202 an open container for purposes of this section.

203 SECTION 33. Said section 24I of said chapter 90, as so appearing, is hereby further
204 amended by striking out, in lines 17 to 18, the words “, upon any way or in any place to which
205 the public has a right of access, or upon any way or in any place to which members of the public
206 have access as invitees or licenses,”.

207 SECTION 34. Said section 24I of said chapter 90, as so appearing, is hereby further
208 amended by inserting after the word “beverage”, in line 20, the following words:- or open or
209 loose marijuana.

210 SECTION 35. Section 24L of said chapter 90, as so appearing, is hereby amended by
211 striking out, in lines 1 to 3 and 36 to 38, each time they appear, the words “, upon any way or in
212 any place to which the public has a right of access or upon any way or in any place to which
213 members of the public have access as invitees or licensees,”.

214 SECTION 36. Said section 24L of said chapter 90, as so appearing, is hereby amended
215 by striking out, in lines 6 to 8 and 41 to 43, the words “, or of marihuana, narcotic drugs,
216 depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or the
217 vapors of glue” and inserting in place thereof, each time they appear, the following words:- or
218 any other intoxicating substance or combination of substances.

219 SECTION 37. Section 24N of said chapter 90, as so appearing, is hereby amended by
220 striking out, in lines 40 to 42, the words “on any such way or place while under the influence of
221 intoxicating liquor and said defendant refused to submit to a chemical test or analysis of his
222 breath or blood” and inserting in place thereof the following words:- while under the influence
223 and said defendant refused to submit to any of a chemical test or analysis of breath, blood or oral
224 fluid or the non-testimonial aspects of a Drug Recognition Expert examination.

225 SECTION 38. Said section 24N of said chapter 90, as so appearing, is hereby further
226 amended by striking out, in lines 92 to 93, the words “a chemical test or analysis of his breath or
227 blood” and inserting in place thereof the following words:- any of a chemical test or analysis of

228 breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition Expert
229 examination.

230 SECTION 39. Said section 24N of said chapter 90, as so appearing, is hereby further
231 amended by striking out, in lines 99 to 102, the words “of intoxicating liquor upon any way or in
232 any place to which members of the public have a right of access or upon any way to which
233 members of the public have a right of access as invitees or licensees”.

234 SECTION 40. Said section 24N of said chapter 90, as so appearing, is hereby further
235 amended by inserting after the word “analysis”, in line 103, the following words:- or
236 examination.

237 SECTION 41. Section 24Q of said chapter 90, as so appearing, is hereby amended by
238 striking out, in line 11, the words “of intoxicating liquor”.

239 SECTION 42. Section 24R of said chapter 90, as so appearing, is hereby amended by
240 striking out, in line 7, the words “of intoxicating liquor”.

241 SECTION 43. Section 24S of said chapter 90, as so appearing, is hereby amended by
242 striking out, in lines 1 to 3, the words “, upon any way or in any place to which the public has a
243 right of access or upon any way or in any place to which members of the public have access as
244 invitees or licensees,”.

245 SECTION 44. Section 24V of said chapter 90, as so appearing, is hereby amended by
246 striking out, in lines 4 to 5, the words “of intoxicating liquor”.

247 SECTION 45. Section 24W of said chapter 90, as so appearing, is hereby amended by
248 striking out, in line 7, the words “of intoxicating liquor”.

249 SECTION 46. Section 24X of said chapter 90, as so appearing, is hereby amended by
250 striking out, in line 7, the words “of intoxicating liquor”.

251 SECTION 47. Section 25 of said chapter 90, as so appearing, is hereby amended by
252 inserting after the word “examination”, in line 10, the following words:- , or who refuses to fully
253 lower his or her window to facilitate an interaction with such officer.

254 SECTION 48. Section 32C of said chapter 90, as so appearing, is hereby amended by
255 striking out, in line 16, the words “of any drug” and inserting in place thereof the following
256 words:- any other intoxicating substance or combination of substances.

257 SECTION 49. Section 40 of said chapter 90, as so appearing, is hereby amended by
258 inserting after the word “liquor”, in lines 59 to 60, the following words:- or any other
259 intoxicating substance or combination of substances.

260 SECTION 50. Section 44 of said chapter 90, as so appearing, is hereby amended by
261 inserting after the word “liquor”, in line 9, the following words:- or any other intoxicating
262 substance or combination of substances.

263 SECTION 51. Section 8 of chapter 90B of the General Laws, as so appearing, is hereby
264 amended by striking out, in lines 4 to 6, the words “marijuana, narcotic drugs, depressant or
265 stimulant substances, as defined in chapter ninety-four C, or the vapors of glue” and inserting in
266 place thereof the following words:- or any other intoxicating substance or combination of
267 substances.

268 SECTION 52. Paragraph (2) of subsection (a) of said section 8 of said chapter 90B, as so
269 appearing, is hereby amended by striking out the first 3 subparagraphs and inserting in place
270 thereof the following 6 subparagraphs:-

271 In any prosecution for a violation of paragraph (1), evidence of the percentage, by
272 weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by
273 chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath,
274 shall be admissible, and such failure or refusal shall be admissible in any action by the registrar
275 under this section or in any proceedings provided for in section 24N of chapter 90, and deemed
276 relevant to the determination of the question of whether the defendant was at such time under the
277 influence of intoxicating liquor, or any other intoxicating substance or combination of
278 substances; provided, however, that if such test or analysis was made by or at the direction of a
279 law enforcement officer, it was made with the consent of the defendant or pursuant to a search
280 warrant, the results thereof were made available to the defendant upon his request and the
281 defendant was afforded a reasonable opportunity, at his request and at his expense, to have
282 another such test or analysis made by a person or physician selected by him; and provided,
283 further, that blood shall not be withdrawn from any person for the purpose of such test or
284 analysis except by a physician, physician's assistant, registered nurse or authorized medical staff
285 of a health care facility; and, provided further, that a chemical test or analysis of the defendant's
286 breath shall be by means of equipment which has been calibrated within 30 days of its use.

287 Evidence that the defendant failed or refused to consent to such test or analysis shall not
288 be admissible against him in a civil or criminal process except in the case of refusal to cooperate
289 with a search warrant or court order, but any failure of the law enforcement officer to attempt to
290 administer or have administered such test or analysis, shall be so admissible. If such evidence is

291 that such percentage was five one-hundredths or less, and there is no evidence that the defendant
292 has also consumed another intoxicating substance or combination of substances, there shall be a
293 presumption that such defendant was not under the influence of intoxicating liquor, and he shall
294 be released from custody forthwith unless there is probable cause of intoxication caused by the
295 ingestion of some other substance or combination of substances, but the officer who placed him
296 under arrest shall not be liable for false arrest if such police officer had reasonable grounds to
297 believe that the person arrested had been operating a vessel while under the influence of
298 intoxicating liquor, or any other intoxicating substance or combination of substances; if such
299 evidence is that such percentage was more than five one-hundredths but less than eight one-
300 hundredths, there shall be no presumption.

301 Whoever operates a vessel on the waters of the commonwealth shall be deemed to have
302 consented to submit to a chemical test or analysis of his breath or blood in the event that he is
303 arrested for operating while under the influence of intoxicating liquor; and shall be deemed to
304 have consented to a chemical test or analysis of his blood, or of his oral fluid, or to comply with
305 all non-testimonial aspects of a Drug Recognition Expert examination in the event that he is
306 arrested for operating while under the influence of any other substance or combination of
307 substances; provided, however, that no person shall be deemed to have consented to a blood test
308 unless such person has been brought for treatment to a medical facility licensed under the
309 provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted
310 with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be
311 deemed to have consented to a withdrawal of blood. Such test shall be administered at the
312 direction of a law enforcement officer, having reasonable grounds to believe that the person
313 arrested has been operating a vessel under the influence.

314 In any prosecution for a violation of paragraph (1) in which the defendant is alleged to be
315 under the influence of intoxicating liquor; of a central nervous system depressant; of a
316 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of
317 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus
318 test conducted pursuant to a method approved by the National Highway Traffic Safety
319 Administration, and the detection of one or more of the following indicators: 1) lack of smooth
320 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum
321 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or
322 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible
323 and deemed relevant to the determination of the question of whether such defendant was at such
324 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a
325 permissible inference that such defendant was under the influence of intoxicating liquor; of a
326 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or
327 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such
328 indicators were present, there shall be a permissible inference that such defendant was not under
329 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative
330 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such
331 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from
332 such evidence with regard to whether the defendant was under the influence. In any such
333 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus
334 test has been demonstrated to have scientific validity and reliability when administered by
335 properly trained and certified police officers and when used in conjunction with other evidence,
336 in detecting impairment by alcohol; by central nervous system depressants; by dissociative

337 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and
338 (2) a contemporary publication of the National Highway Traffic Safety Administration with
339 regard to the proper administration of the horizontal gaze nystagmus test.

340 In any prosecution for a violation of paragraph (1) in which it is alleged that a
341 defendant's operation of a vessel was impaired by an intoxicating substance other than
342 intoxicating liquor, evidence of the concentration of such intoxicating substance in a defendant's
343 system shall not be a precondition to the admissibility of evidence of the presence of such
344 intoxicating substance in the defendant's system.

345 In any prosecution for a violation of paragraph (1) in which it is alleged that a
346 defendant's operation of a vessel was impaired, in whole or in part, by the consumption of
347 marijuana, marijuana products, or other forms of tetrahydrocannabinol (THC), the court may
348 take judicial notice that the ingestion of THC can cause impairment in operators of vessels; that
349 it can impair motor function, reaction time, tracking, cognitive attention, decision-making,
350 judgment, perception, peripheral vision, impulse control, and memory; and that ingestion of THC
351 does not enhance a person's ability to safely operate a vessel.

352 SECTION 53. Said section 8 of said chapter 90B, as so appearing, is hereby further
353 amended by striking out, in lines 208, 219, and 243 to 244, every time they appear, the words "of
354 intoxicating liquor".

355 SECTION 54. Said section 8 of said chapter 90B, as so appearing, is hereby further
356 amended by inserting after the word "analysis", in lines 208 to 209, 220, and 246, each time it
357 appears, the following words:- or examination.

358 SECTION 55. Said section 8 of said chapter 90B, as so appearing, is hereby further
359 amended by inserting after the word “made”, in line 212, the following words:- without first
360 obtaining a search warrant.

361 SECTION 56. Section 8A of said chapter 90B, as so appearing, is hereby amended by
362 striking out, in lines 4 to 6, the words “marihuana, narcotic drugs, depressants, or stimulant
363 substances, all as defined in chapter ninety-four C, or the vapors of glue” and inserting in place
364 thereof the following words:- any other intoxicating substance or combination of substances.

365 SECTION 57. Said section 8A of said chapter 90B, as so appearing, is hereby further
366 amended by striking out, in lines 35 to 36, the words “marihuana, narcotic drugs, depressants or
367 stimulant substances, all as defined in chapter ninety-four C, or the vapors of glue” and inserting
368 in place thereof the following words:- any other intoxicating substance or combination of
369 substances.

370 SECTION 58. Section 8B of said chapter 90B, as so appearing, is hereby amended by
371 striking out, in lines 4 to 6, the words “marihuana, narcotic drugs, depressants, or stimulant
372 substances, all as defined in chapter ninety-four C, or the vapors of glue” and inserting in place
373 thereof the following words:- any other intoxicating substance or combination of substances.

374 SECTION 59. Said section 8B of said chapter 90B, as so appearing, is hereby further
375 amended by striking out, in lines 37 to 39, the words “marihuana, narcotic drugs, depressants or
376 stimulant substances, all as defined in chapter ninety-four C, or the vapors of glue” and inserting
377 in place thereof the following words:- any other intoxicating substance or combination of
378 substances.

379 SECTION 60. Section 26A of said chapter 90B, as so appearing, is hereby amended by
380 striking out, in lines 6 to 8 and 15 to 17, every time they appear, the words “of marijuana,
381 narcotic drugs, depressants or stimulant substances, as defined in section 1 of chapter 94C, or the
382 vapors of glue” and inserting in place thereof the following words:- any other intoxicating
383 substance or combination of substances.

384 SECTION 61. Section 1 of chapter 90F of the General Laws, as so appearing, is hereby
385 amended by striking out, in lines and 118, each time it appears, the word “drugs” and inserting in
386 place thereof the following words:- any other intoxicating substance or combination of
387 substances.

388 SECTION 62. Said chapter 90F is hereby amended by striking out section 11, as so
389 appearing, and inserting in place thereof the following section:-

390 Section 11. (A) Any person who operates a commercial motor vehicle upon the highways
391 of the commonwealth shall be deemed to have given consent, to a test or tests of that person's
392 blood, breath, or urine for the purpose of determining that person's alcohol concentration, or to a
393 test of that person’s blood, or oral fluid, or to all non-testimonial aspects of a drug recognition
394 expert examination for the purpose of determining the presence of other drugs, intoxicating
395 substances or combination of substances.

396 (B) A test or tests or examinations may be administered at the direction of a law
397 enforcement officer, who after stopping or detaining the operator of a commercial motor vehicle,
398 has probable cause to believe that the operator was operating a commercial motor vehicle while
399 having alcohol or any other intoxicating substance or combination of substances in his system.

400 (C) A person requested to submit to a test or examination as provided shall be advised
401 that a refusal to submit to the test or non-testimonial aspects of the examination will result in that
402 person being disqualified from operating a commercial motor vehicle.

403 (D) If the person refuses testing or examination, or submits to a test which discloses an
404 alcohol concentration of four hundredths or more, the law enforcement officer must submit a
405 sworn report to the registrar certifying that the test or examination was requested pursuant to
406 paragraph (A) and that the person refused to submit to testing or non-testimonial aspects of the
407 examination, or submitted to a test which disclosed an alcohol concentration of four hundredths
408 or more.

409 (E) Upon receipt of the sworn report of a law enforcement officer submitted under
410 paragraph (D), the registrar shall disqualify the driver from driving a commercial motor vehicle
411 for a period of 1 year; provided, however, that upon receipt of such report with respect to any
412 person who refuses to submit to such a test or examination or submits to a test which discloses an
413 alcohol level of four one-hundredths or more while transporting a hazardous material required to
414 be placarded, the registrar shall disqualify such person from driving a commercial motor vehicle
415 for 3 years. The registrar shall disqualify for life any person who refuses to submit to 2 or more
416 tests or examinations, or submits to two or more tests which disclose an alcohol level of four
417 one-hundredths or more, or any combination of the 2 or more thereof. Any operator who has
418 been disqualified shall be entitled to a hearing before the registrar which shall be limited to the
419 following issues: (1) did the law enforcement officer, who after stopping or detaining the
420 commercial motor vehicle driver, have probable cause to believe that the driver was driving a
421 commercial motor vehicle while having alcohol in his system or being under the influence of an

422 intoxicating substance or combination of substances; and (2) did such person refuse to submit to
423 such test or examination.

424 SECTION 63. Subsection (a1/2) of section 4 of chapter 94G of the General Laws, as
425 inserted by section 26 of chapter 55 of the acts of 2017, is hereby amended by striking out
426 clauses (xxxiii) and (xxxiv) and inserting in place thereof the following 3 clauses:-

427 (xxxiii) requirements that prohibit marijuana product manufacturers from altering or
428 utilizing commercially-manufactured food products when manufacturing marijuana products
429 unless the food product was commercially manufactured specifically for use by the marijuana
430 product manufacturer to infuse with marijuana; provided, however, that a commercially-
431 manufactured food product may be used as an ingredient in a marijuana product if: (i) it is used
432 in a way that renders it unrecognizable as the commercial food product in the marijuana product;
433 and (ii) there is no statement or advertisement indicating that the marijuana product contains the
434 commercially-manufactured food product;

435 (xxxiv) energy and environmental standards for licensure and licensure renewal of
436 marijuana establishments licensed as a marijuana cultivator or marijuana product manufacturer;
437 and

438 (xxxv) requirements for retailers of marijuana and retailers of marijuana accessories to
439 distribute, with each retail sale of marijuana, marijuana products, or marijuana accessories,
440 educational materials relative to the dangers of operating a motor vehicle under the influence of
441 marijuana or marijuana products, and the penalties associated with such offenses.

442 SECTION 64. Section 13 of said chapter 94G, as appearing in the 2016 Official Edition,
443 is hereby amended by striking out subsection (d).

444 SECTION 65. Chapter 112 of the General Laws is hereby amended by inserting after
445 section 12A ½ the following section:-

446 Section 12A³/₄. (a) Any physician duly registered under the provisions of section 2, 2A, 9,
447 9A or 9B, any physician assistant duly registered under the provisions of section 9I or his
448 employing or supervising physician, and any nurse duly registered or licensed under the
449 provisions of section 74, 74A or 76, and any authorized medical staff of a health care facility
450 who is a resident of the Commonwealth, shall faithfully assist a law enforcement officer seeking
451 to execute a valid search warrant or court order requiring the collection of a biological sample.
452 The assisting party or, during regular work hours, his or her employer, shall be entitled to be paid
453 a reasonable rate by such law enforcement officer's employer for his or her services . The
454 Secretary of Health and Human Services may promulgate regulations (i) requiring said
455 physicians, physician's assistants and authorized medical staff to collect such samples in
456 accordance with state and national practice standards and (ii) to establish the rate due a party
457 who assists a law enforcement officer in the collection of a biological sample obtained pursuant
458 to a search warrant or court order requiring the production of such evidence. Such fees shall be
459 borne by the law enforcement agency executing the search warrant in question.

460 (b) A person assisting a law enforcement officer under subsection (a) and any employer
461 of such person shall not be liable in a civil proceeding for any act or omission taken pursuant to
462 this section if acting in good faith; provided, that this subsection shall not alter the rights,
463 immunities, and liabilities of any public employee or public employer under chapter 258.

464 SECTION 66. Chapter 233 of the General Laws is hereby amended by adding the
465 following section:-

466 Section 84. A witness who has successfully completed a training program for drug
467 recognition experts that meets the National Highway Traffic Safety Administration guidelines
468 for training and certification of drug recognition experts may testify in the form of an opinion or
469 otherwise as to the significance of any symptoms of impairment or intoxication for which
470 evidence has been admitted or on the condition that such evidence be introduced.

471 SECTION 67. Section 5A of chapter 263 of the General Laws, as appearing in the 2016
472 Official Edition, is hereby amended by inserting after the word “liquor”, in line 3, the following
473 words:- or any other intoxicating substance or combination of substances.

474 SECTION 68. Section 2A of chapter 276 of the General Laws, as so appearing, is hereby
475 amended by striking out, in line 1, the word “The” and inserting in place thereof the following
476 words:- The signature on the warrant may be made by electronic signature. The.

477 SECTION 69. Section 2B of said chapter 276, as so appearing, is hereby amended by
478 inserting after the word “personally”, in lines 1 and 2, the following words:- or through wire or
479 electronic means.

480 SECTION 70. Said section 2B of said chapter 276, as so appearing, is hereby further
481 amended by inserting after the word “form”, in line 13, the following words:- and the signature
482 therein may be made by electronic signature.

483 SECTION 71. Sections 28, 29, 30, 32, 34, 38, 38A, 40, 41, 42, 43 and 44 of chapter 69
484 of the acts of 2018 are hereby repealed.

485 SECTION 72. The special commission established by section 50 of chapter 55 of the
486 acts of 2017 is hereby revived and continued until December 31, 2020. The special commission

487 shall also study, review, and evaluate the reliability of oral fluid and other testing as evidence in
488 prosecutions for operating under the influence, as well as the practical availability of experts to
489 the commonwealth and defendants, and make annual reports of its progress.

490 SECTION 73. Notwithstanding any general or special law to the contrary, the highway
491 safety division shall, in collaboration with the National Highway Traffic Safety Administration,
492 the Massachusetts Chiefs of Police Association, and the commonwealth's statewide drug
493 recognition expert coordinator, develop educational materials and programming relative to the
494 drug recognition expert program and make such materials and programming available to the
495 Massachusetts Judges Conference and the trial court.

496 SECTION 74. Notwithstanding any general or special law to the contrary, the municipal
497 police training committee shall take an annual census of certified drug recognition experts
498 employed by municipal police departments in the commonwealth and, if the number of such
499 experts is 350 or fewer, shall make efforts to recruit additional local law enforcement officials to
500 attend a training program to achieve certification.