

**HOUSE . . . . . No. 4255**

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The Commonwealth of Massachusetts



CHARLES D. BAKER  
GOVERNOR

OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**

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LIEUTENANT GOVERNOR

*November 10, 2021*

To the Honorable 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. At the same time, we were keenly aware of the clear research establishing that the ingestion of THC can and does cause impairment in driving, and the severe consequences of impaired driving cannot be ignored.

The risks of impaired driving are not only borne by those who choose to drive after ingesting intoxicating substances. On March 16, 2016, Massachusetts State Police Trooper Thomas Clardy – for whom this bill is named – was killed while conducting a traffic stop on the Massachusetts Turnpike in Charlton when his parked cruiser was hit by a speeding motorist who swerved across three lanes of traffic. THC, the psychoactive ingredient in marijuana, was detected in the motorist’s blood. Trooper Clardy was 44 years old, an 11 year member of the state police, a United States Marine Corps veteran, and a devoted husband and father to 6 children.

To address the grave danger posed by impaired drivers and to avoid tragic outcomes like Trooper Clardy’s passing, in 2019 I filed legislation proposing statutory language to implement the recommendations of the Special Commission on Operating Under the Influence and Impaired Driving. That Special Commission – created by the same legislation that legalized marijuana – brought together stakeholders and experts from across the public safety spectrum including police, prosecutors, the criminal defense bar, medical and toxicological professionals, and the

civil liberties community. After hearing from these subject matter experts, the Special Commission issued a report that made recommendations (many of them unanimous) for legislative changes to laws that protect the public from impaired drivers. Those changes 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.

It has been more than two years since I first filed this legislation, and impaired drivers continue to pose a threat to the public. Recent data released by the National Highway Traffic Safety Administration (NHTSA) showed that traffic fatalities reached a 15-year high during the first 6 months of 2021, with more than 20,000 total deaths. This alarming trend is attributable in part to an increase in risky behavior, including driving under the influence of drugs and alcohol. Indeed, the NHTSA's ongoing review of five trauma centers, including one in Worcester, revealed a significant increase during the COVID-19 emergency in the prevalence of drugs detected in seriously and fatally injured drivers.

Accordingly, I am re-submitting for your consideration, "An Act Implementing the Recommendations of the Special Commission on Operating under the Influence and Impaired Driving." This bill takes each legislative recommendation from the Special Commission's report and proposes statutory language to implement it. This legislation 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

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

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. This law shall be known as the Trooper Thomas Clardy law.

2           SECTION 2. Chapter 6 of the General Laws is hereby amended by inserting after section  
3 116K the following section:-

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

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

13 SECTION 3. Section 8 of chapter 90 of the General Laws, as appearing in the 2020  
14 Official Edition, is hereby amended by inserting after the word “substances”, in lines 52 to 53,  
15 the following words:- , including alcohol and marijuana,.

16 SECTION 4. Section 8A of said chapter 90, as so appearing, is hereby amended by  
17 striking out, in lines 31 to 35, the words “of marijuana, narcotic drugs, depressants or stimulant  
18 substances, all as defined in section one of said chapter ninety-four C, or from smelling or  
19 inhaling the fumes of any substance having the property of releasing toxic vapors as defined in  
20 section 18 of chapter 270” and inserting in place thereof the following words:- any other  
21 intoxicating substance or combination of substances.

22 SECTION 5. Section 8A½ of said chapter 90, as so appearing, is hereby amended by  
23 striking out, in lines 27 to 31, the words “of marijuana, narcotic drugs, depressants or stimulant  
24 substances, all as defined in section one of said chapter ninety-four C, or from smelling or  
25 inhaling the fumes of any substance having the property of releasing toxic vapors as defined in  
26 section 18 of chapter 270” and inserting in place thereof the following words:- any other  
27 intoxicating substance or combination of substances.

28 SECTION 6. Section 21 of said chapter 90, as so appearing, is hereby amended by  
29 striking out, in lines 20 to 23, the words “upon any way or place to which the public has the right  
30 of access, or upon any way or in any place to which members of the public have access as  
31 invitees, or who,”.

32 SECTION 7. Said section 21 of said chapter 90, as so appearing, is hereby further  
33 amended by striking out, in lines 25 to 31, the words “, marihuana or narcotic drugs, or  
34 depressant or stimulant substances, all as defined in section one of chapter ninety-four C, or

35 while under the influence from smelling or inhaling the fumes of any substance having the  
36 property of releasing toxic vapors as defined in section 18 of chapter 270, carbon tetrachloride,  
37 acetone, ethylene, dichloride, toluene, chloroform, xylene or any combination thereof” and  
38 inserting in place thereof the following words:- or any other intoxicating substance or  
39 combination of substances.

40 SECTION 8. Section 22F of said chapter 90, as so appearing, is hereby amended by  
41 striking out, in line 11, the words “of intoxicating liquor or narcotic drugs”.

42 SECTION 9. Section 24 of said chapter 90, as so appearing, is hereby amended by  
43 striking out, in lines 1 to 4, the words “, upon any way or in any place to which the public has a  
44 right of access, or upon any way or in any place to which members of the public have access as  
45 invitees or licensees,”.

46 SECTION 10. Said section 24, of said chapter 90, as so appearing, is hereby further  
47 amended by striking out, in lines 6 to 8, the words “, or of marijuana, narcotic drugs, depressants  
48 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the  
49 influence from smelling or inhaling the fumes of any substance having the property of releasing  
50 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof the following  
51 words:- or any other intoxicating substance or combination of substances.

52 SECTION 11. Said section 24, of said chapter 90, as so appearing, is hereby further  
53 amended by striking out, in lines 18 to 19, the words “, marijuana, narcotic drugs, depressants or  
54 stimulant substances” and inserting in place thereof the following words:- or any other  
55 intoxicating substance or combination of substances.

56 SECTION 12. Said section 24, of said chapter 90, as so appearing, is hereby further  
57 amended by striking out, in lines 30 to 32, the words “marihuana, narcotic drugs, depressants or  
58 stimulant substances, all as defined by section 1 of chapter 94C” and inserting in place thereof  
59 the following words:- any other intoxicating substance or combination of substances.

60 SECTION 13. Subdivision (1) of said section 24 of said chapter 90, as so appearing, is  
61 hereby further amended by striking out paragraph (e) and inserting in place thereof the following  
62 paragraph:-

63 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by  
64 weight, of alcohol in the defendant's blood at the time of the alleged offense, or of the presence  
65 or concentration of any other intoxicating substance or combination of substances, or metabolites  
66 of any intoxicating substance, as shown by chemical test or analysis of his blood or oral fluid or  
67 as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant  
68 to the determination of the question of whether such defendant was at such time under the  
69 influence of intoxicating liquor, or any other intoxicating substance or combination of  
70 substances; provided, however, that if such test or analysis was made by or at the direction of a  
71 police officer, it was made either with the consent of the defendant or with the authority  
72 conveyed by a search warrant; the results thereof were made available to him upon his request;  
73 and the defendant was afforded a reasonable opportunity, at his request and at his expense, to  
74 have another such test or analysis made by a person or physician selected by him; and provided,  
75 further, that blood shall not be withdrawn from any party for the purpose of such test or analysis  
76 except by a physician, physician's assistant, registered nurse or authorized medical staff of a  
77 health care facility. Evidence that the defendant failed or refused to consent to such test or  
78 analysis shall not be admissible against him in a civil or criminal proceeding unless such refusal

79 constituted a refusal to comply with the terms of a search warrant or court order, but shall be  
80 admissible in any action by the registrar under paragraph (f) or in any proceedings provided for  
81 in section 24N. If such evidence is that such percentage, by weight, of alcohol in the defendant's  
82 blood was five one-hundredths or less, there shall be a permissible inference that such defendant  
83 was not under the influence of intoxicating liquor, and he shall be released from custody  
84 forthwith unless there is probable cause of intoxication caused by the ingestion of some other  
85 substance or combination of substances, but the officer who placed him under arrest shall not be  
86 liable for false arrest if such police officer had reasonable grounds to believe that the person  
87 arrested had been operating a motor vehicle while under the influence of intoxicating liquor, or  
88 any other intoxicating substance or combination of substances; provided, however, that in an  
89 instance where a defendant is under the age of 21 and such evidence is that the percentage, by  
90 weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who  
91 placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend  
92 such defendant's license or permit and take all other actions directed therein, if such evidence is  
93 that such percentage was more than five one-hundredths but less than eight one-hundredths there  
94 shall be no permissible inference of impairment by reason of alcohol.

95         In any prosecution for a violation of paragraph (a) in which the defendant is alleged to be  
96 under the influence of intoxicating liquor; of a central nervous system depressant; of a  
97 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of  
98 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus  
99 test conducted pursuant to a method approved by the National Highway Traffic Safety  
100 Administration, and the detection of one or more of the following indicators: 1) lack of smooth  
101 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum

102 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or  
103 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible  
104 and deemed relevant to the determination of the question of whether such defendant was at such  
105 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a  
106 permissible inference that such defendant was under the influence of intoxicating liquor; of a  
107 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or  
108 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such  
109 indicators were present, there shall be a permissible inference that such defendant was not under  
110 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative  
111 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such  
112 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from  
113 such evidence with regard to whether the defendant was under the influence. In any such  
114 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus  
115 test has been demonstrated to have scientific validity and reliability when administered by  
116 properly trained and certified police officers and when used in conjunction with other evidence,  
117 in detecting impairment by alcohol; by central nervous system depressants; by dissociative  
118 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and  
119 (2) a contemporary publication of the National Highway Traffic Safety Administration with  
120 regard to the proper administration of the horizontal gaze nystagmus test.

121 In any prosecution for a violation of paragraph (a) in which it is alleged that a defendant's  
122 operation of a motor vehicle was impaired by an intoxicating substance other than intoxicating  
123 liquor, evidence of the concentration of such intoxicating substance in a defendant's system shall



124 not be a precondition to the admissibility of evidence of the presence of such intoxicating  
125 substance in the defendant's system.

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

133 SECTION 14. Said section 24 of said chapter 90, as so appearing, is hereby further  
134 amended by striking out, in lines 688 to 690, the words "upon any way or in any place to which  
135 the public has right to access, or upon any way or in any place to which the public has access as  
136 invitees or licensees,".

137 SECTION 15. Said section 24 of said chapter 90, as so appearing, is hereby further  
138 amended by inserting, after the word "liquor", in lines 693 to 694, the following words:- ; and  
139 shall be deemed to have consented to a chemical test or analysis of his blood, or of his oral fluid,  
140 or to comply with all non-testimonial aspects of a Drug Recognition Expert examination in the  
141 event that he is arrested for operating while under the influence of any other intoxicating  
142 substance or combination of substances;

143 SECTION 16. Said section 24 of said chapter 90, as so appearing, is hereby further  
144 amended by striking out, in line 703, the words "upon such way or place".

145 SECTION 17. Said section 24 of said chapter 90, as so appearing, is hereby further  
146 amended by striking out, in lines 704, 715, 736, 756 to 757, and 867 to 868, every time they  
147 appear, the words “of intoxicating liquor”.

148 SECTION 18. Said section 24 of said chapter 90, as so appearing, is hereby further  
149 amended by inserting, after the word “analysis”, in lines 705, 709, 730, 733, 758, 761, and 872,  
150 each time it appears, the following words:- or examination.

151 SECTION 19. Said section 24 of said chapter 90, as so appearing, is hereby further  
152 amended by inserting after the word “made”, in line 709, the following words:- without first  
153 obtaining a search warrant.

154 SECTION 20. Said section 24 of said chapter 90, as so appearing, is hereby further  
155 amended by striking out, in lines 756 and 843, each time they appear, the words “on a way or  
156 place”.

157 SECTION 21. Said section 24 of said chapter 90, as so appearing, is hereby further  
158 amended by striking out, in lines 772 to 773, the words “either a chemical test or analysis of  
159 breath or blood” and inserting in place thereof the following words:- any of a chemical test or  
160 analysis of breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition  
161 Expert examination.

162 SECTION 22. Said section 24 of said chapter 90, as so appearing, is hereby further  
163 amended by inserting after the word “test”, in line 797, the following words:- , analysis or  
164 examination.

165 SECTION 23. Said section 24 of said chapter 90, as so appearing, is hereby further  
166 amended by striking out, in lines 804 to 805, the words “on any way or place”.

167 SECTION 24. Said section 24 of said chapter 90, as so appearing, is hereby further  
168 amended by striking out, in lines 868 to 870, the words “upon any way or in any place to which  
169 members of the public have a right of access or upon any way to which members of the public  
170 have access as invitees or licensees”.

171 SECTION 25. Said section 24 of said chapter 90, as so appearing, is hereby further  
172 amended by striking out, in lines 913 to 917, the words “marihuana, narcotic drugs, depressants  
173 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the  
174 influence from smelling or inhaling the fumes of any substance having the property of releasing  
175 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof the following  
176 words:- any intoxicating substance other than alcohol or a combination of alcohol and another  
177 intoxicating substance.

178 SECTION 26. Section 24½ of said chapter 90, as so appearing, is hereby amended by  
179 striking out, in lines 7 to 8, the words “of intoxicating liquor”.

180 SECTION 27. Section 24D of said chapter 90, as so appearing, is hereby amended by  
181 striking out, in lines 4 to 7, the words “, controlled substance or while under the influence from  
182 smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as  
183 defined in section 18 of chapter 270” and inserting in place thereof, each time they appear, the  
184 following words:- or any other intoxicating substance or combination of substances.

185 SECTION 28. Said section 24D of said chapter 90, as so appearing, is hereby further  
186 amended by striking out, in lines 19 to 22, the words “, controlled substances or while under the

187 influence from smelling or inhaling the fumes of any substance having the property of releasing  
188 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time  
189 they appear, the following words:- or any other intoxicating substance or combination of  
190 substances.

191 SECTION 29. Said section 24D of said chapter 90, as so appearing, is hereby further  
192 amended by inserting after the word “liquor”, in lines 42 and 47, each time it appears, the  
193 following words:- or any other intoxicating substance or combination of substances.

194 SECTION 30. Said section 24D of said chapter 90, as so appearing, is hereby further  
195 amended by striking out, in line 54, the words “of intoxicating liquor” and inserting in place  
196 thereof the following words:- offense.

197 SECTION 31. Said section 24D of said chapter 90, as so appearing, is hereby further  
198 amended by striking out, in line 61, the words “of alcohol”.

199 SECTION 32. Said section 24D of said chapter 90, as so appearing, is hereby further  
200 amended by striking out, in line 206, the word “drugs” and inserting in place thereof the  
201 following words:- any other intoxicating substance or combination of substances.

202 SECTION 33. Section 24G of said chapter 90, as so appearing, is hereby amended by  
203 striking out, in lines 1 to 3, the words “, upon any way or in any place to which the public has a  
204 right of access, or upon any way or in any place to which members of the public have access as  
205 invitees or licensees,”.

206 SECTION 34. Said section 24G of said chapter 90, as so appearing, is hereby further  
207 amended by striking out, in lines 35 to 37 and 50 to 52, each time they appear, the words “, upon

208 any way or in any place to which the public has a right of access or upon any way or in any place  
209 to which members of the public have access as invitees or licensees,”.

210 SECTION 35. Said section 24G of said chapter 90, as so appearing, is hereby amended  
211 by striking out, in lines 5 to 9 and 39 to 43, each time they appear the words “, or of marijuana,  
212 narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or  
213 from smelling or inhaling the fumes of any substance having the property of releasing toxic  
214 vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time they  
215 appear, the following words:- or any other intoxicating substance or combination of substances.

216 SECTION 36. Subsection (a) of section 24I of said chapter 90, as so appearing, is hereby  
217 amended by inserting after the definition of “Open container” the following definition:-

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

224 SECTION 37. Said section 24I of said chapter 90, as so appearing, is hereby further  
225 amended by striking out, in lines 17 to 19, the words “, upon any way or in any place to which  
226 the public has a right of access, or upon any way or in any place to which members of the public  
227 have access as invitees or licenses,”.

228 SECTION 38. Said section 24I of said chapter 90, as so appearing, is hereby further  
229 amended by inserting after the word “beverage”, in lines 20 and 29, each time it appears, the  
230 following words:- or open or loose marijuana.

231 SECTION 39. Section 24L of said chapter 90, as so appearing, is hereby amended by  
232 striking out, in lines 1 to 3, the words “, upon any way or in any place to which the public has a  
233 right of access, or upon any way or in any place to which members of the public have access as  
234 invitees or licensees,”.

235 SECTION 40. Said section 24L of said chapter 90, as so appearing, is hereby further  
236 amended by striking out, in lines 6 to 10, the words “, or marihuana, narcotic drugs, depressants,  
237 or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the  
238 influence from smelling or inhaling the fumes of any substance having the property of releasing  
239 toxic vapors as defined in section 18 of chapter 270” and inserting in place thereof, each time  
240 they appear, the following words:- or any other intoxicating substance or combination of  
241 substances.

242 SECTION 41. Said section 24L of said chapter 90, as so appearing, is hereby further  
243 amended by striking out, in lines 38 to 40, the words “, upon any way or in any place to which  
244 the public has a right of access or upon any way or in any place to which members of the public  
245 have access as invitees or licensees,”.

246 SECTION 42. Said section 24L of said chapter 90, as so appearing, is hereby further  
247 amended by striking out, in lines 43 to 47, the words “, or of marihuana, narcotic drugs,  
248 depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or  
249 while under the influence from smelling or inhaling the fumes of any substance having the

250 property of releasing toxic vapors as defined in section 18 of chapter 270” and inserting in place  
251 thereof, each time they appear, the following words:- or any other intoxicating substance or  
252 combination of substances.

253 SECTION 43. Section 24N of said chapter 90, as so appearing, is hereby amended by  
254 striking out, in lines 40 to 42, the words “on any such way or place while under the influence of  
255 intoxicating liquor, and said defendant refused to submit to a chemical test or analysis of his  
256 breath or blood” and inserting in place thereof the following words:- while under the influence  
257 and said defendant refused to submit to any of a chemical test or analysis of breath, blood or oral  
258 fluid or the non-testimonial aspects of a Drug Recognition Expert examination.

259 SECTION 44. Said section 24N of said chapter 90, as so appearing, is hereby further  
260 amended by striking out, in lines 92 to 93, the words “a chemical test or analysis of his breath or  
261 blood” and inserting in place thereof the following words:- any of a chemical test or analysis of  
262 breath, blood or oral fluid or the non-testimonial aspects of a Drug Recognition Expert  
263 examination.

264 SECTION 45. Said section 24N of said chapter 90, as so appearing, is hereby further  
265 amended by striking out, in lines 99 to 102, the words “of intoxicating liquor upon any way or in  
266 any place to which members of the public have a right of access or upon any way to which  
267 members of the public have a right of access as invitees or licensees”.

268 SECTION 46. Said section 24N of said chapter 90, as so appearing, is hereby further  
269 amended by inserting after the word “analysis”, in line 103, the following words:- or  
270 examination.

271 SECTION 47. Section 24Q of said chapter 90, as so appearing, is hereby amended by  
272 striking out, in line 11, the words “of intoxicating liquor”.

273 SECTION 48. Section 24R of said chapter 90, as so appearing, is hereby amended by  
274 striking out, in line 7, the words “of intoxicating liquor”.

275 SECTION 49. Section 24S of said chapter 90, as so appearing, is hereby amended by  
276 striking out, in lines 1 to 3, the words “, upon any way or place to which the public has a right of  
277 access, or upon any way or place to which members of the public have access as invitees or  
278 licensees,”.

279 SECTION 50. Section 24V of said chapter 90, as so appearing, is hereby amended by  
280 striking out, in lines 4 to 5, the words “of intoxicating liquor”.

281 SECTION 51. Section 24W of said chapter 90, as so appearing, is hereby amended by  
282 striking out, in line 7, the words “of intoxicating liquor”.

283 SECTION 52. Section 24X of said chapter 90, as so appearing, is hereby amended by  
284 striking out, in line 7, the words “of intoxicating liquor”.

285 SECTION 53. Section 25 of said chapter 90, as so appearing, is hereby amended by  
286 inserting after the word “examination”, in line 10, the following words:- , or who refuses to fully  
287 lower his or her window to facilitate an interaction with such officer.

288 SECTION 54. Section 32C of said chapter 90, as so appearing, is hereby amended by  
289 striking out, in line 16, the words “of any drug” and inserting in place thereof the following  
290 words:- any other intoxicating substance or combination of substances.



291 SECTION 55. Section 40 of said chapter 90, as so appearing, is hereby amended by  
292 inserting after the word “liquor”, in lines 59 to 60, the following words:- or any other  
293 intoxicating substance or combination of substances.

294 SECTION 56. Section 44 of said chapter 90, as so appearing, is hereby amended by  
295 inserting after the word “liquor”, in line 9, the following words:- or any other intoxicating  
296 substance or combination of substances.

297 SECTION 57. Section 8 of chapter 90B of the General Laws, as so appearing, is hereby  
298 amended by striking out, in lines 4 to 8, the words “marijuana, narcotic drugs, depressant or  
299 stimulant substances, as defined in chapter ninety-four C, or from smelling or inhaling the fumes  
300 of any substance having the property of releasing toxic vapors as defined in section 18 of chapter  
301 270” and inserting in place thereof the following words:- any other intoxicating substance or  
302 combination of substances.

303 SECTION 58. Paragraph (2) of subsection (a) of said section 8 of said chapter 90B, as so  
304 appearing, is hereby amended by striking out the first 3 subparagraphs and inserting in place  
305 thereof the following 6 subparagraphs:-

306 In any prosecution for a violation of paragraph (1), evidence of the percentage, by  
307 weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by  
308 chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath,  
309 shall be admissible, and such failure or refusal shall be admissible in any action by the registrar  
310 under this section or in any proceedings provided for in section 24N of chapter 90, and deemed  
311 relevant to the determination of the question of whether the defendant was at such time under the  
312 influence of intoxicating liquor, or any other intoxicating substance or combination of

313 substances; provided, however, that if such test or analysis was made by or at the direction of a  
314 law enforcement officer, it was made with the consent of the defendant or pursuant to a search  
315 warrant, the results thereof were made available to the defendant upon his request and the  
316 defendant was afforded a reasonable opportunity, at his request and at his expense, to have  
317 another such test or analysis made by a person or physician selected by him; and provided,  
318 further, that blood shall not be withdrawn from any person for the purpose of such test or  
319 analysis except by a physician, physician's assistant, registered nurse or authorized medical staff  
320 of a health care facility; and, provided further, that a chemical test or analysis of the defendant's  
321 breath shall be by means of equipment which has been calibrated within 30 days of its use.

322 Evidence that the defendant failed or refused to consent to such test or analysis shall not  
323 be admissible against him in a civil or criminal process except in the case of refusal to cooperate  
324 with a search warrant or court order, but any failure of the law enforcement officer to attempt to  
325 administer or have administered such test or analysis, shall be so admissible. If such evidence is  
326 that such percentage was five one-hundredths or less, and there is no evidence that the defendant  
327 has also consumed another intoxicating substance or combination of substances, there shall be a  
328 presumption that such defendant was not under the influence of intoxicating liquor, and he shall  
329 be released from custody forthwith unless there is probable cause of intoxication caused by the  
330 ingestion of some other substance or combination of substances, but the officer who placed him  
331 under arrest shall not be liable for false arrest if such police officer had reasonable grounds to  
332 believe that the person arrested had been operating a vessel while under the influence of  
333 intoxicating liquor, or any other intoxicating substance or combination of substances; if such  
334 evidence is that such percentage was more than five one-hundredths but less than eight one-  
335 hundredths, there shall be no presumption.

336           Whoever operates a vessel on the waters of the commonwealth shall be deemed to have  
337 consented to submit to a chemical test or analysis of his breath or blood in the event that he is  
338 arrested for operating while under the influence of intoxicating liquor; and shall be deemed to  
339 have consented to a chemical test or analysis of his blood, or of his oral fluid, or to comply with  
340 all non-testimonial aspects of a Drug Recognition Expert examination in the event that he is  
341 arrested for operating while under the influence of any other substance or combination of  
342 substances; provided, however, that no person shall be deemed to have consented to a blood test  
343 unless such person has been brought for treatment to a medical facility licensed under the  
344 provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted  
345 with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be  
346 deemed to have consented to a withdrawal of blood. Such test shall be administered at the  
347 direction of a law enforcement officer, having reasonable grounds to believe that the person  
348 arrested has been operating a vessel under the influence.

349           In any prosecution for a violation of paragraph (1) in which the defendant is alleged to be  
350 under the influence of intoxicating liquor; of a central nervous system depressant; of a  
351 dissociative anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of  
352 glue; evidence of impairment, as shown by the administration of a horizontal gaze nystagmus  
353 test conducted pursuant to a method approved by the National Highway Traffic Safety  
354 Administration, and the detection of one or more of the following indicators: 1) lack of smooth  
355 pursuit in left eye; 2) lack of smooth pursuit in right eye; 3) distinct nystagmus at maximum  
356 deviation in left eye; 4) distinct nystagmus at maximum deviation in right eye; 5) onset at or  
357 prior to 45 degrees in left eye; 6) onset at or prior to 45 degrees in right eye; shall be admissible  
358 and deemed relevant to the determination of the question of whether such defendant was at such

359 time impaired. If such evidence is that 4 or more such indicators were present, there shall be a  
360 permissible inference that such defendant was under the influence of intoxicating liquor; of a  
361 central nervous system depressant; of a dissociative anesthetic, such as phencyclidine or  
362 ketamine; or of toxic vapors, such as vapors of glue. If such evidence is that fewer than 2 such  
363 indicators were present, there shall be a permissible inference that such defendant was not under  
364 the influence of intoxicating liquor; of a central nervous system depressant; of a dissociative  
365 anesthetic, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue. If such  
366 evidence is that 2 or 3 such indicators were present, there shall be no permissible inference from  
367 such evidence with regard to whether the defendant was under the influence. In any such  
368 prosecution, a court may take judicial notice of: (1) the fact that the horizontal gaze nystagmus  
369 test has been demonstrated to have scientific validity and reliability when administered by  
370 properly trained and certified police officers and when used in conjunction with other evidence,  
371 in detecting impairment by alcohol; by central nervous system depressants; by dissociative  
372 anesthetics, such as phencyclidine or ketamine; or of toxic vapors, such as vapors of glue; and  
373 (2) a contemporary publication of the National Highway Traffic Safety Administration with  
374 regard to the proper administration of the horizontal gaze nystagmus test.

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

380 In any prosecution for a violation of paragraph (1) in which it is alleged that a  
381 defendant's operation of a vessel was impaired, in whole or in part, by the consumption of

382 marijuana, marijuana products, or other forms of tetrahydrocannabinol (THC), the court may  
383 take judicial notice that the ingestion of THC can cause impairment in operators of vessels; that  
384 it can impair motor function, reaction time, tracking, cognitive attention, decision-making,  
385 judgment, perception, peripheral vision, impulse control, and memory; and that ingestion of THC  
386 does not enhance a person's ability to safely operate a vessel.

387 SECTION 59. Said section 8 of said chapter 90B, as so appearing, is hereby further  
388 amended by striking out, in lines 210, 221, and 245 to 246, each time they appear, the words "of  
389 intoxicating liquor".

390 SECTION 60. Said section 8 of said chapter 90B, as so appearing, is hereby further  
391 amended by inserting after the word "analysis", in lines 210 to 211, 222, and 248, each time it  
392 appears, the following words:- or examination.

393 SECTION 61. Said section 8 of said chapter 90B, as so appearing, is hereby further  
394 amended by inserting after the word "made", in line 214, the following words:- without first  
395 obtaining a search warrant.

396 SECTION 62. Section 8A of said chapter 90B, as so appearing, is hereby amended by  
397 striking out, in lines 4 to 7, the words "marihuana, narcotic drugs, depressants, or stimulant  
398 substances, all as defined in chapter ninety-four C, or from smelling or inhaling the fumes of any  
399 substance having the property of releasing toxic vapors as defined in section 18 of chapter 270"  
400 and inserting in place thereof the following words:- any other intoxicating substance or  
401 combination of substances.

402 SECTION 63. Said section 8A of said chapter 90B, as so appearing, is hereby further  
403 amended by striking out, in lines 37 to 40, the words "marihuana, narcotic drugs, depressants or

404 stimulant substances, all as defined in chapter ninety-four C, or from smelling or inhaling the  
405 fumes of any substance having the property of releasing toxic vapors as defined in section 18 of  
406 chapter 270” and inserting in place thereof the following words:- any other intoxicating  
407 substance or combination of substances.

408 SECTION 64. Section 8B of said chapter 90B, as so appearing, is hereby amended by  
409 striking out, in lines 4 to 7, the words “marihuana, narcotic drugs, depressants, or stimulant  
410 substances, all as defined in chapter ninety-four C, or from smelling or inhaling the fumes of any  
411 substance having the property of releasing toxic vapors as defined in section 18 of chapter 270”  
412 and inserting in place thereof the following words:- any other intoxicating substance or  
413 combination of substances.

414 SECTION 65. Said section 8B of said chapter 90B, as so appearing, is hereby further  
415 amended by striking out, in lines 39 to 42, the words “marihuana, narcotic drugs, depressants or  
416 stimulant substances, all as defined in chapter ninety-four C, or from smelling or inhaling the  
417 fumes of any substance having the property of releasing toxic vapors as defined in section 18 of  
418 chapter 270” and inserting in place thereof the following words:- any other intoxicating  
419 substance or combination of substances.

420 SECTION 66. Section 26A of said chapter 90B, as so appearing, is hereby amended by  
421 striking out, in lines 6 to 10 and 17 to 21, each time they appear, the words “of marijuana,  
422 narcotic drugs, depressants or stimulant substances, as defined in section 1 of chapter 94C, or  
423 from smelling or inhaling the fumes of any substance having the property of releasing toxic  
424 vapors as defined in section 18 of chapter 270” and inserting in place thereof the following  
425 words:- any other intoxicating substance or combination of substances.

426 SECTION 67. Section 1 of chapter 90F of the General Laws, as so appearing, is hereby  
427 amended by striking out, in lines 111 and 118, each time it appears, the word “drugs” and  
428 inserting in place thereof the following words:- any other intoxicating substance or combination  
429 of substances.

430 SECTION 68. Said chapter 90F is hereby further amended by striking out section 11, as  
431 so appearing, and inserting in place thereof the following section:-

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

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

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

445 (D) If the person refuses testing or examination, or submits to a test which discloses an  
446 alcohol concentration of four hundredths or more, the law enforcement officer must submit a  
447 sworn report to the registrar certifying that the test or examination was requested pursuant to

448 paragraph (A) and that the person refused to submit to testing or non-testimonial aspects of the  
449 examination, or submitted to a test which disclosed an alcohol concentration of four hundredths  
450 or more.

451 (E) Upon receipt of the sworn report of a law enforcement officer submitted under  
452 paragraph (D), the registrar shall disqualify the driver from driving a commercial motor vehicle  
453 for a period of 1 year; provided, however, that upon receipt of such report with respect to any  
454 person who refuses to submit to such a test or examination or submits to a test which discloses an  
455 alcohol level of four one-hundredths or more while transporting a hazardous material required to  
456 be placarded, the registrar shall disqualify such person from driving a commercial motor vehicle  
457 for 3 years. The registrar shall disqualify for life any person who refuses to submit to 2 or more  
458 tests or examinations, or submits to two or more tests which disclose an alcohol level of four  
459 one-hundredths or more, or any combination of the 2 or more thereof. Any operator who has  
460 been disqualified shall be entitled to a hearing before the registrar which shall be limited to the  
461 following issues: (1) did the law enforcement officer, who after stopping or detaining the  
462 commercial motor vehicle driver, have probable cause to believe that the driver was driving a  
463 commercial motor vehicle while having alcohol in his system or being under the influence of an  
464 intoxicating substance or combination of substances; and (2) did such person refuse to submit to  
465 such test or examination.

466 SECTION 69. Subsection (a $\frac{1}{2}$ ) of section 4 of chapter 94G of the General Laws, as so  
467 appearing, is hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place  
468 thereof the following 3 clauses:-



469 (xxxiii) requirements that prohibit marijuana product manufacturers from altering or  
470 utilizing commercially-manufactured food products when manufacturing marijuana products  
471 unless the food product was commercially manufactured specifically for use by the marijuana  
472 product manufacturer to infuse with marijuana; provided, however, that a commercially-  
473 manufactured food product may be used as an ingredient in a marijuana product if: (i) it is used  
474 in a way that renders it unrecognizable as the commercial food product in the marijuana product;  
475 and (ii) there is no statement or advertisement indicating that the marijuana product contains the  
476 commercially-manufactured food product;

477 (xxxiv) energy and environmental standards for licensure and licensure renewal of  
478 marijuana establishments licensed as a marijuana cultivator or marijuana product manufacturer;  
479 and

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

484 SECTION 70. Section 13 of said chapter 94G, as so appearing, is hereby amended by  
485 striking out subsection (d).

486 SECTION 71. Chapter 112 of the General Laws is hereby amended by inserting after  
487 section 12A<sup>1/2</sup> the following section:-

488 Section 12A<sup>3/4</sup>. (a) Any physician duly registered under the provisions of section 2, 2A, 9,  
489 9A or 9B, any physician assistant duly registered under the provisions of section 9I or his  
490 employing or supervising physician, and any nurse duly registered or licensed under the

491 provisions of section 74, 74A or 76, and any authorized medical staff of a health care facility  
492 who is a resident of the Commonwealth, shall faithfully assist a law enforcement officer seeking  
493 to execute a valid search warrant or court order requiring the collection of a biological sample.  
494 The assisting party or, during regular work hours, his or her employer, shall be entitled to be paid  
495 a reasonable rate by such law enforcement officer's employer for his or her services . The  
496 Secretary of Health and Human Services may promulgate regulations (i) requiring said  
497 physicians, physician's assistants and authorized medical staff to collect such samples in  
498 accordance with state and national practice standards and (ii) to establish the rate due a party  
499 who assists a law enforcement officer in the collection of a biological sample obtained pursuant  
500 to a search warrant or court order requiring the production of such evidence. Such fees shall be  
501 borne by the law enforcement agency executing the search warrant in question.

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

506 SECTION 72. Chapter 233 of the General Laws is hereby amended by adding the  
507 following section:-

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

513 SECTION 73. Section 5A of chapter 263 of the General Laws, as appearing in the 2020  
514 Official Edition, is hereby amended by inserting after the word “liquor”, in line 3, the following  
515 words:- or any other intoxicating substance or combination of substances.

516 SECTION 74. Section 2A of chapter 276 of the General Laws, as so appearing, is hereby  
517 amended by striking out, in line 1, the word “The” and inserting in place thereof the following  
518 words:- The signature on the warrant may be made by electronic signature. The.

519 SECTION 75. Section 2B of said chapter 276, as so appearing, is hereby amended by  
520 inserting after the word “personally”, in lines 1 and 2, the following words:- or through wire or  
521 electronic means.

522 SECTION 76. Said section 2B of said chapter 276, as so appearing, is hereby further  
523 amended by inserting after the word “form”, in line 13, the following words:- and the signature  
524 therein may be made by electronic signature.

525 SECTION 77. The special commission established by section 50 of chapter 55 of the  
526 acts of 2017 is hereby revived and continued until December 31, 2023. The special commission  
527 shall also study, review, and evaluate the reliability of oral fluid and other testing as evidence in  
528 prosecutions for operating under the influence, as well as the practical availability of experts to  
529 the commonwealth and defendants, and make annual reports of its progress.

530 SECTION 78. Notwithstanding any general or special law to the contrary, the highway  
531 safety division shall, in collaboration with the National Highway Traffic Safety Administration,  
532 the Massachusetts Chiefs of Police Association, and the commonwealth’s statewide drug  
533 recognition expert coordinator, develop educational materials and programming relative to the

534 drug recognition expert program and make such materials and programming available to the  
535 Massachusetts Judges Conference and the trial court.

536 SECTION 79. Notwithstanding any general or special law to the contrary, the municipal  
537 police training committee shall take an annual census of certified drug recognition experts  
538 employed by municipal police departments in the commonwealth and, if the number of such  
539 experts is 350 or fewer, shall make efforts to recruit additional local law enforcement officials to  
540 attend a training program to achieve certification.