

**Law Offices of Sweeney & Associates, LLC**  
**Richard J. Sweeney**  
**Sabrina E. Bonanno**  
**225 W. Squantum St.**  
**Suite 100**  
**Quincy, MA 02171**  
**617-328-6900, FAX 617-328-6655**  
**MELANIE'S LAW -- The (2005) Massachusetts OUI Law**

## **OFFENSE ELEMENTS**

- Operation of MV
- On Public Way
- With a Blood Alcohol of .08 or greater, or
- Operating while under influence of alcohol. i.e., the ability to operate safely is diminished by the consumption of alcohol

## **IMPLIED CONSENT TO BREATH TEST**

- All operators are deemed to have consented to a breath test administered by a police officer by virtue of driving
- Applies if you are arrested for OUI
- Refusals to take the breath test will result in license loss of anywhere from 180 days to life
- The duration of license loss for BT refusal depends on prior convictions and age of offender

### **Breath Test Refusal Penalties**

- First Offender 180 days
- Second Offender or Under 21 3 yrs + 180 days (waived if in 24P program)
- Third Offender 5 years
- Fourth Offender 10 Years
- Fifth Offender Life
- Prior offense includes prior OUI, OUI and serious injury and MV homicide
- No hardship license from suspensions imposed for Breath Test refusals, except in the case of a first offender who is enrolled in the OUI program.
- License may be restored after an acquittal

### **Breath Test Failure Consequences**

- Immediate loss of license to police officer for 30 days or until case is disposed of by plea or trial, whichever comes first
- Automobile is impounded for 12 hours
- Breath Test result of .08 or above is admissible in prosecution provided test is administered in accordance with law.
- Represents a “per se” violation of statute

## Penalties for Conviction

### First Offense Over Age 21

- Statutory penalty:
  - Fine of not less than \$500 nor more than \$5,000, or
  - Imprisonment in jail for not more than 2 ½ years in House of Correction, or
  - Both a fine and imprisonment
  - License loss 1 year
- Alternate Disposition for First Offenders under G.L. c. 90, § 24D
  - Two years probation, entry into approved OUI program, pay program costs and assessments, probation supervision fees
  - License loss of 45-90 days
  - Hardship license available after enrollment in program on limited basis
  - Fines and community service may be assessed.

## Penalties for First Conviction

### Under Age 21

- A person under age 21 loses their license for 210 days for first offense conviction for OUI even if they enter G.L. c. 90, § 24D program, but is eligible for 12 hour hardship license upon enrollment in program.
- An additional license loss of 180 days is imposed under G.L. c. 90, § 24P – this may be avoided by attendance at special underage drinking program
- If the Breath Test result for a person between the age of 17 and 21 inclusive, is
- not less than .20, the first offender program is not available and the individual must attend a rehabilitation program known as the **“14 day second offender in-home program.”**

## Penalties for Conviction

### Second Offense

- Fine of not less than \$600 nor more than \$10,000, AND
- Imprisonment for not less than 60 days nor more than 2 ½ years
- Minimum Mandatory Sentence of 30 days
- License loss of two years
- Assessments and fees applicable
- Alternate Second Offender Disposition Available
  - Mandatory in-patient treatment at a residential alcohol treatment facility for 14 days, with aftercare
  - Two years probation
  - Two year license loss
  - Hardship license available after six months with ignition lock
  - Program costs and assessments applicable
- Prior Convictions more than 10 years old may render a person eligible for first offender program once in a lifetime.

## **OUI Programs**

- Persons eligible for any of the programs are presumed to be an appropriate candidate for the program.
- A judge may deny admission of an otherwise eligible defendant to a program, but must make specific written findings that a defendant is not a suitable candidate.
- Defendant not eligible for first offender program if serious bodily injury or death was caused in the events that gave rise to the conviction for OUI.
- Persons who are domiciled out of state may be allowed to attend out of state programs
- Defendants pay the costs associated with the programs
- Probation fee of \$250 in addition to program fees
- Court may impose a minimum of 30 hours of community service

## **Mandatory Alcohol Assessment**

- G.L. c. 90, § 24Q
- Mandatory Alcohol Assessment by Department of Public Health or court approved program
- All repeat offenders
- Any offender with BAC of .20 or above
- Must include assessment of the level of addiction to alcohol or drugs and recommended course of treatment.
- Additional fee will be charged for the assessment

## **Penalties for Conviction**

### **Third Offense**

- Fine of not less than \$1,000 nor more than \$15,000, AND
- Imprisonment for not less than 180 days, nor more than 2 ½ years in House of Correction or,
- Imprisonment of 2 ½ - 5 years in State Prison
- Minimum Mandatory Sentence of 150 days
- License loss of 8 years
- Hardship Available after 2 years with ignition lock

## **Penalties for Conviction**

### **Fourth Offense**

- Fine of not less than \$1,500 nor more than \$25,000, AND
- Imprisonment for not less than 2 – 2 ½ years in the House of Correction or not less than 2 ½ - 5 years in State Prison
- Minimum Mandatory Sentence of 12 months
- License Loss of 10 years
- Hardship available after 5 years with ignition lock

## **Penalties for Conviction**

### **Fifth Offense and Sixth Offense**

- Fine of not less than \$2,000 nor more than \$50,000, AND
- Imprisonment of not less than 2 ½ years to the House of Correction or State Prison, or
- Imprisonment of not more than 5 years in State Prison
- License Loss – Lifetime
- No hardship available

## **Penalties for Conviction**

### **Seventh Offense and Eighth Offense**

- Fine of not less than \$2,000 nor more than \$50,000, AND
- Imprisonment of not less than 3 ½ years nor more than 8 years in State Prison
- License Loss – Lifetime
- No hardship available

## **Penalties for Conviction**

### **Ninth Offense**

- Fine of not less than \$2,000 nor more than \$50,000, AND
- Imprisonment of not less than 4 ½ years nor more than 10 years in State Prison on
- License Loss – Lifetime
- No hardship available

## **Special Penalty Provisions**

- Any person under the age of 21, who takes a breath test with a result of .02 or greater, and who is not charged with OUI, shall have his license suspended for 180 days immediately under G.L. c. 90, § 24 P.
- Lifetime revocation for persons who are convicted of OUI, MV Homicide and who have a prior OUI, OUI Homicide or OUI serious injury. G.L. c. 90, § 24R

## **Hardship Licenses**

- No hardship license from suspensions imposed for Breath Test refusals, except in the case of a first offender who is enrolled in the OUI program.
- Hardship licenses are issued in the discretion of the registrar on such terms and conditions as are deemed appropriate and upon a showing the causes of the past and present violations have been dealt with or brought under control.

## **Hardship Licenses**

- First offenders: 12 hour hardship license is available upon entry into program.
- Second offenders: 12 hour hardship license for education or employment reasons after 12 months, provided person has completed in-patient program. After 18

months may request for a new license. Vehicle must have ignition lock to obtain hardship license

- Third Offense: 12 hour hardship license for education and employment purposes after two years and a new license on a limited basis after 4 years. Vehicle must have ignition lock to obtain hardship license.
- Fourth Offense: 12 hour hardship license for education and employment purposes after five years and a new license in a limited basis after 8 years. Vehicle must have ignition lock to obtain hardship license.
- Fifth offense or more – No hardship license

### **Proof of Prior Convictions**

- Certified or attested copies of original court papers ACCOMPANIED BY 90:24(4)
- Certified or attested copies of defendant's biographical and informational data from records of the department of probation
- Certified copies of any jail or house of corrections, the department of correction, or the registry shall be prima facie evidence that a defendant before the court had been previously convicted.
- The documents are self-authenticating and admissible, after conviction of primary offense. No live witnesses or other corroborating testimony is necessary.

### **Manslaughter by Motor Vehicle**

- New Crime: G.L. c. 265, § 13 ½
- Imprisonment for not less than 5 nor more than 20 years, and
- A fine of not more than \$25,000
- Minimum Mandatory Sentence of 5 years
- Manslaughter not defined in this statute
- License loss of 15 years minimum, but may be up to a lifetime suspension

### **Ignition Interlock Device**

- G.L. c. 90, § 24 ½
- The device prevents the vehicle from operating if the BAC is above .02.
- Device must be installed on each vehicle owned, leased or operated by a person previously convicted of OUI or similar offenses as a condition of the issuance of a new license
- The device is to be installed for a period of two years (presumably from the date the new license is issued).
- Device must be maintained and inspected in accordance with regulations yet to be enacted
- The device will not permit operation of vehicle if BAC is .02 or above
- Registrar may revoke license for up to life for two or more occasions of a failure to maintain or two or more instances of attempted use with .02 or above.
- New Crimes
  - Operation MV in violation of interlock device restriction
  - Fine of \$1000 to \$15,000

- Imprisonment for not less than 180 days nor more than 2 ½ years, or
- Not less than 2 ½ nor more than 5 years in State prison
- Mandatory Minimum of 150 days.
- Tampering with Ignition lock
  - Not less than 6 months nor more than 2 ½ years H/C or
  - Not less than 3 years nor more than 5 years in state prison
- Starting a MV equipped with Ignition lock
  - Fine of not less than \$1000 nor more than \$5000 or
  - Imprisonment for not less than 6 months nor more than 2 ½ years,
  - Second Offense: State Prison 3-5 years

### **Child Endangerment While Operating MV**

- G.L. c. 90, § 24V
- Punishes person who violates G.L. c. 90, § 24(a) or section (a) of 24G operating with a BAC of .08 or more, or
- While operating under the influence of alcohol violates subsection (b) of 24G, or 24L, G.L. c. 265, § 13 ½
- With a child under age 14
- Conviction carries 1 year license loss for first offense, 3 years for second
- Penalty
  - Fine not less than \$1,000 nor more than \$5,000, and
  - Imprisonment in House of Correction for not less than 90 days nor more than 2 ½ years.
  - Consecutive to underlying OUI offense
  - G.L. c. 276, § 87 does not apply, No CWOFF, cannot be placed on file
  - Second offense:
    - Fine of \$5000 - \$10,000
    - MM 6 months
    - 6 months to 2 ½ years HC, or
    - State prison 3-5 years

### **Vehicle Forfeiture**

- For persons with three previous convictions
- If they own the vehicle they are driving the same may be forfeited to the State  
District Attorney brings civil action for forfeiture

### **Cancellation of Registration**

- Requires two or more previous convictions
- Registrar may cancel registration of a motor vehicle owned by such person for the period of any license suspension.

INFORMATION SHEET FOR MGL C.90.S.24D  
FIRST OFFENSE OUI HARDSHIP LICENSE APPLICATIONS  
TO THE REGISTRY OF MOTOR VEHICLES

Following is information regarding the availability of hardship licenses for people whose OUI cases have been disposed of in court pursuant to MGLc.90,s.24D. Please be advised that this information is being provided solely for the purpose of allowing a defendant to better prepare for their hardship hearing before appearing at a Registry, and that the Registry may require other documents or information before rendering a decision. At a minimum, please be aware of the following:

1. Hardship licenses are available on any case where a defendant has been properly granted a disposition under MGL c.90, s24D. The Registrar will not entertain requests in cases where the records of the agency reflect that such a disposition was not available to the defendant.
2. In order to allow for the courts and the Registry to exchange information regarding these dispositions, **hardship applicants must wait 3 business days after** their court date before appearing at the Registry, and **MUST** first have appeared for in-take at their assigned first offender program. **Example:** On a court disposition on Monday, you may not appear at the Registry until Thursday.
3. Hardship applications may only be made at Registry locations that conduct hearings. Presently, those branches are: Boston (630 Washington Street), Brockton, North Attleboro, Lowell, Worcester, Springfield and Lawrence. These locations are subject to change without notice.
4. You may not operate a motor vehicle until such time a hardship license may be granted. Any evidence that you have been drinking since you have been suspended in this matter will be grounds for denial of your application.
5. You must provide the following documentation at the hearing:
  - : Proof of hardship (i.e. employment, education, medical, etc.)
  - : Proof of enrollment in a Massachusetts First Offender Program approved by the Department of Public Health. No out of state programs authorized by MGL c.90, s24D. You must first appear at the first offenders program that you have been assigned to for your initial interview, and have that documented on letterhead from the program.

**IMPORTANT NOTE:** Hardship licenses are not available under this law if you are suspended or revoked for any reason apart from this case, if charges other than OUI in this case cause you to be suspended or revoked, or if these charges combined with other incidents on your driving record result in other suspension or revocation action.

## UNDER THE AGE OF 21

### BLOOD ALCOHOL PERCENTAGE OF .02 or GREATER or REFUSAL TO SUBMIT TO BREATH TEST

Section 24P. (a) Upon evidence that a person under the age of 21, after having been arrested for or charged with a violation had a blood alcohol percentage of two one-hundredths or greater or upon evidence that such person refused to submit to a chemical test or analysis of his breath or blood under section 24, notwithstanding the finding upon any such charge, such person shall have his license or permit to operate a motor vehicle suspended by the registrar for a period of 180 days; provided, however, that any such person who is less than 18 years of age at the time of such violation shall have his license suspended by the registrar for one year. Such suspension by the registrar shall be imposed in addition to any penalty, license suspension or revocation imposed upon such person by the court as required by said section 24, 24G or 24L.

If a person has not been previously arrested for or charged with a violation under said section 24, 24G or 24L, such person shall, if he consents, be assigned to a program specifically designed by the department of public health for the treatment of underage drinking drivers; provided, however, that such assignment shall not be precluded by a finding or disposition upon a charge against such person under said section 24, 24G or 24L. Upon entry into such program, as authorized by this section or as otherwise required under any disposition pursuant to section 24D, the suspension of a license or permit to operate as required by this section shall be waived by the registrar for a person under 21 years of age but over 18 years of age; provided, however, that such suspension shall be for a period of 180 days for such person who was under the age of 18 at the time of such violation. Upon the failure of a person under the age of 21 to successfully complete such program, the registrar shall forthwith suspend such license or permit to operate for 180 days; provided, however, that upon such failure to successfully complete such program by a person who was under the age of 18 at the time of such violation, the registrar shall forthwith suspend the license or permit to operate for one year.

(b) The license or permit to operate of a person convicted of any violation under section 24, 24G, 24I or 24L who was under the age of 18 at the time of such violation and whose license or permit to operate was not suspended under subsection (a) for such violation shall have such license or permit suspended for a period of 180 days for a first offense and for a period of one year for a second or subsequent offense.