

BACE LAW REPORT

LEGAL NEWSLETTER

VOLUME 2, NO. 12 - DECEMBER 2008

Operating Under the Influence (OUI) in Massachusetts

From a non-legal perspective, there are a multitude of logical reasons to avoid driving while under the influence of alcohol or any other intoxicating substance. Such action endangers not only oneself and one's passengers, but also puts at risk the lives of other responsible, prudent, and most importantly - *innocent* children and families. Alcohol and automobiles are a destructive mixture, and words cannot accurately describe the pain and suffering that those personally affected by the mix have been forced to endure. But, as the holidays approach, and New Year's celebrations are planned, the legal ramifications of driving under the influence may also provide one more reason not to drive drunk. Below is a basic review of the penalties for OUI, some general defense issues, and an outline of the impact of the recent changes in OUI laws in the Commonwealth.

Potential Penalties & Repercussions

The penalties for driving under the influence in the Commonwealth are serious, and have become increasingly stiff since the advent of "Melanie's Law," signed into law by Governor Mitt Romney in October of 2005. The law was named for 13 year-old Melanie Powell of Marshfield, who was killed by a repeat OUI offender while innocently crossing the street in July of 2003. The *minimum* penalty for a first offense OUI, which is generally available only after a plea of guilty or Continuance without a Finding (CWOFF) are as follows:

- **License suspension** for 45-90 days, or 210 days for drivers under the age of 21.
- **Court fees and fines** (usually over \$2000)
- **Probation** for one (1) year.
- **Participation** in a 16-hour drug education program (mandatory).

The above is generally available for first offenders, provided they enter a guilty plea or CWOFF. Should the defendant choose to defend the charge, and force a trial, the maximum

penalties available to the State for a first offense include two and a half years imprisonment in a House of Correction, up to a \$5,000 fine, and license suspension for one full year. Clearly, even the minimum penalties for a first offense OUI conviction are serious.

Melanie's Law increased the penalties for repeat offenders, and added additional crimes that can be brought in conjunction with an OUI. The minimum penalties for second & third offenses increase exponentially. A second offense includes at a minimum a license suspension for *two years, two years of probation*, a 14-day confined alcohol abuse treatment program, and *the installation of an Interlock Device* on the offender's car for two years as a condition of any reinstatement of a driver's license.

The Interlock Device is a hand-held breath tester, which is directly wired to an offender's vehicle's ignition. The device does not allow the car to start if the Blood Alcohol Content of the user is above .02. Drivers with the device are subject to random rolling retests. Further, every 30 days, the driver must return to the vendor who uploads the data collected by the device and forwards it to the Registry of Motor Vehicles for analysis and review.

Any third, or consecutive OUI conviction includes a *mandatory minimum jail sentence of 5 months*. OUI is not one's only exposure to criminal charges while driving intoxicated.

Melanie's Law created a number of new offenses that can be brought in conjunction with OUI including: OUI on a suspended license, employing an individual as a motor vehicle operator with a suspended license, child endangerment while OUI, and manslaughter while OUI. Further, Melanie's Law makes it a crime to loan a vehicle to an unlicensed individual, or to an individual who requires an Interlock device.

Defending an OUI Charge

If you have been charged with a crime, you are not a criminal; to the contrary, you are an accused. The preservation of Constitutional rights to a defense is a notion this office holds in high esteem.

Most are familiar with the standard sobriety tests that are conducted on the side of the road. The tests generally include standing on one leg for a period of time, or a nine step "walk and turn" test.

What if the subject suffers from an injured knee? What if the subject has chronic back pain? What if the subject takes medication

that can affect balance? These issues, although not excuses for drunk driving, can complicate matters, and provide a defense to an otherwise wrongful conviction. It is possible that a failed field sobriety test was not due to intoxication, but rather to some issue with the administration of the test, nerves, or the particular physical characteristics of the subject.

It is important to note, that refusal to take a Breathalyzer test in the Commonwealth, generally results in *license suspension for a minimum of 180 days for a first offense OUI automatically*. Generally, this suspension takes place regardless of whether or not the offender is convicted. At the extreme end of the spectrum, refusal to take a Breathalyzer on a fourth offense, results in lifetime suspension of a driver's license.

The Impact of Melanie's Law

Since its inception, there has been some debate as to the effectiveness of the strengthened penalties. Data released recently by the Commonwealth's Registrar suggests that the law has effectuated a 20% increase in OUI arrests, and a decline in Breathalyzer refusals.

	2005	2008
Total OUI Arrests	13,335	16,199
Breath Test Refusals	7,103	6,926
(% of Total Arrests)	53 %	43 %
Arrests of Multiple Offenders	615	442
(% of Total Arrests)	4.6 %	2.7 %

Drivers who have had a license suspension, can apply for a "hardship" license or reinstatement through the Registry of Motor Vehicles. However, the RMV, in its interpretation of Melanie's law, has changed its eligibility for hardship licenses. The RMV now requires repeat offenders to present proof they do not have access to public transportation to get to work or school.

If you have been charged with operating under the influence, consult your attorney immediately. Criminal charges are a serious matter, and only an attorney licensed in the Commonwealth can issue you legal advice after a careful and thorough review of the circumstances of your particular matter. Happy Holidays, and drive safely.

ADVERTISING: This newsletter is a form of advertising, and does NOT create an attorney-client relationship of any kind. The information in this newsletter should NOT be relied upon, and should NOT be considered legal advice. Legal advice can only be issued after a careful review of the facts of your particular matter.

©2008 Michael J. Bace, esq.