SENATE DOCKET, NO. 1365 FILED ON: 1/21/2011

SENATE . . . . . No. 678

The Commonwealth of Massachusetts

PRESENTED BY:

Katherine M. Clark

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to protect the citizens of the Commonwealth from drunk drivers..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Katherine M. Clark	*Middlesex and Essex*
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SENATE . . . . . No. 678

By Ms. Clark, petition (accompanied by bill, Senate, No. 678) of Clark for legislation to protect the citizens of the Commonwealth from drunk drivers [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

An Act to protect the citizens of the Commonwealth from drunk drivers..

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

SECTION 1.

Section 1 of Chapter 90 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by including the following definitions:

Blood alcohol content: The number of grams of alcohol per 100 milliliters of blood; or the number of grams of alcohol per 210 liters of breath; or the number of grams of alcohol per 67 milliliters of urine. Blood alcohol content is also known as: blood alcohol level, blood alcohol concentration, and BAC.

Disposition: A conviction, guilty plea, placement on probation, continuance without a finding or admission to sufficient facts.

Drugs or other substance: Marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or vapors of glue.

Ignition interlock device: A breath alcohol sensing instrument designed to be mounted in an automobile and connected to the ignition key switching system in a way that prevents the vehicle from starting unless the driver first provides a breath sample. These devices contain an instrument to measure the alcohol content of a deep lung breath sample. If the measured blood alcohol content is at or above a set level, the ignition is locked and the vehicle will not start. For purposes of this chapter, the registrar will certify each model or device approved for use.

Minimum mandatory: The term of a sentence that shall not be reduced or suspended nor shall any person be eligible for probation, parole, furlough, or receive any deduction for good conduct during that term provided; however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender

23 committed a temporary release in the custody of an officer of such institution for the following
24 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain
25 emergency medical or psychiatric services unavailable at said institution; to engage in
26 employment pursuant to a work release program; or for the purposes of an aftercare program
27 designed to support the recovery of an offender who has completed an alcohol or controlled
28 substance education, treatment, or rehabilitation program operated by the department of
29 correction; and provided, further, that the defendant may serve all or party of such minimum
30 mandatory sentence to the extent that resources are available in a correctional facility specifically
31 designed by the department of correction for the incarceration and rehabilitation of drinking
32 drivers.

33 Operating under the influence offense: Any conviction, nolo contendere plea,
34 continuation without a finding with an assignment to an alcohol, drug or substance abuse
35 education treatment program for operating under the influence under chapter 90, chapter 90A ,
36 chapter 90B, or chapter 265, or of a like offense of operating under the influence from another
37 jurisdiction.

38 Prior under the influence offense: Any conviction, nolo contendere plea, or continuation
39 without a finding with an assignment to an alcohol, drug or substance abuse education treatment
40 program for operating under the influence under chapter 90, chapter 90A, chapter 90B, or
41 chapter 265, or of a like offense of operating under the influence from another jurisdiction,
42 where the findings, judgment, or adjudication date by the court precedes the date of offense for
43 which he is now charged.

44 Public way: Any street or highway that is open to the public and is controlled and
45 maintained by some level of government, or in a place to which the public has a right of access,
46 or in a place to which members of the public have access as invitees or licensees.

47 Under the influence:

48 (1) Having ingested enough marijuana, narcotic drugs, depressants or stimulant
49 substances, all as defined in section 1 of chapter 94C, or intoxicating liquor or vapors of glue to
50 diminish one's capacity or ability to drive safely ; or

51 (2) Having a blood alcohol content of .08% or above.

52 SECTION 2.

53 Section 23 of Chapter 90 of the General Laws, as appearing in the 2004 Official Edition,
54 is hereby amended by striking lines 1 through 94 and replacing it with the following:

55 (1) No person shall operate a motor vehicle with a suspended license or right to operate,
56 or after being notified by the Registry of Motor Vehicles of such suspension.

57 (2) No person shall operate a motor vehicle with a suspended certificate of registration
58 unless the registration has been restored or a new registration has been issued.

59 (3) No person shall allow another to operate a motor vehicle with a suspended certificate
60 of registration unless the registration has been restored or a new registration has been issued.

61 (4) No person with intent to conceal his identity shall, upon request, present to an officer
62 authorized to make arrests a license issued to another person.

63 (a) A person convicted under subsection (1), (2), (3) or (4) of this section shall be
64 punished as follows:

65 (1) First offense: The defendant shall be imprisoned in a jail or house of correction for
66 not more than 10 days, or fined not less than $500 but not more than $1000, or both.

67 (2) Subsequent offense: The defendant shall be imprisoned in a jail or house of
68 correction for not less than 60 days but not more than 1 year.

69 (b) Upon a conviction under subsection (1), (2), (3), or (4), of this section the registrar
70 shall extend said suspension of the license or right to operate for an additional 60 days.

71 (c) Notwithstanding the preceding paragraph or any other general or special law to
72 the contrary, whoever has not been previously found responsible for or convicted of, or against
73 whom a finding of delinquency or a finding of sufficient facts to support a conviction has not
74 been rendered on, a complaint charging a violation of operating a motor vehicle after his license
75 to operate has been suspended or revoked, or after notice of the suspension or revocation of his
76 right to operate a motor vehicle without a license has been issued by the registrar and received by
77 such person or by his agent or employer, and prior to the restoration of such license or right to
78 operate or to the issuance to him of a new license to operate shall be punished by a fine of not
79 more than $500. This paragraph shall not apply to any person who is charged with operating a
80 motor vehicle after his license to operate has been suspended or revoked pursuant to a violation
81 of paragraph (a) of subdivision (1) of section 24, or section 24D, 24E, 24G, 24L or 24N of this
82 chapter, subsection (a) of section 8 or section 8A or 8B of chapter 90B, section 8, 9 or 11 of
83 chapter 90F or after notice of such suspension or revocation of his right to operate a motor
84 vehicle without a license has been issued and received by such person or by his agent or
85 employer, and prior to the restoration of such license or right to operate or the issuance to him of
86 a new license or right to operate because of any such violation.

87 (5) No person shall attach or permit to be attached to a motor vehicle or trailer a number
88 plate assigned to another motor vehicle or trailer with the intent to conceal the identity of the
89 motor vehicle or trailer.

90 (6) No person shall obscure or permit to be obscured the figures on any number plate
91 attached to a motor vehicle or trailer with the intent to conceal the identity of the motor vehicle
92 or trailer.

93 (7) No person shall fail to display a number plate and registration number duly assigned
94 to a motor vehicle or trailer with the intent to conceal the identity of such motor vehicle or
95 trailer.

96 (a) A person convicted under subsection (5), (6), or (7) of this section shall be
97 imprisoned in a jail or house of correction for not more than 10 days, or fined not more than
98 $100, or both.

99 (b) Upon a conviction under subsection (5), (6), or (7) of this section the registrar
100 shall extend said suspension of the license or right to operate for an additional 60 days.

101 (8) No person shall operate a motor vehicle with a suspended license or right to operate
102 due to being a habitual traffic offender pursuant to section 22F of chapter 90 after being notified
103 by the Registry of Motor Vehicles of such suspension.

104 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
105 correction for not more than 2 years or fined not less than $500 but not more than $5000, or both.

106 (b) Upon a conviction under this subsection the registrar shall extend said suspension
107 of the license or right to operate for an additional 60 days.

108 (9) No person shall operate a motor vehicle with a suspended license or right to operate
109 due to a prior operating under the influence offense under chapter 90, 90B, 90F, or 265, or after
110 being notified by the Registry of Motor Vehicles of such suspension.

111 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
112 correction for a minimum mandatory term of 60 days but not more than 2 ½ years and fined not
113 less than $1,000 but not more than $10,000. No case commenced under this subsection shall be
114 continued without a finding or placed on file, or subject to the provisions of section 87 of
115 chapter 276.

116 (b) Upon a conviction under this subsection the registrar shall extend said suspension
117 of the license or right to operate for an additional 1 year.

118 (10) No person shall operate a motor vehicle under the influence with a suspended license
119 or right to operate due to a prior operating under the influence offense or after being notified by
120 the Registry of Motor Vehicles of such suspension.

121 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
122 correction for a minimum mandatory term of 1 year but not more than 2 ½ years and fined not
123 less than $2,500 but not more than $10,000. No case commenced under this subsection shall be

124 continued without a finding, or placed on file, or subject to the provisions of section 87 of
125 chapter 276.

126 (b) Upon a conviction under this subsection the registrar shall extend said suspension
127 of the license or right to operate for an additional 1 year.

128 (c) A sentence imposed under this subsection shall be served consecutively to and not
129 concurrently with any other sentence or penalty.

130 (11) A certificate of the registrar or his authorized agent indicating that: (1) a license or
131 right to operate has not been restored; or (2) a certificate of registration has not been restored; or
132 (3) a new license to operate has not been issued; or (4) a new certificate of registration has not
133 been issued shall be admissible as evidence in any court of the commonwealth to prove the facts
134 certified to therein.

135 A certificate of a clerk of court that a person's license or right to operate a motor vehicle
136 was suspended for a period of time shall be admissible as prima facie evidence in any court of
137 the commonwealth to prove the facts certified to therein.

138 (12) In no case shall a person who fails to pay an administrative reinstatement fee after
139 the registrar has given written prior notice mandating payment thereof, be prosecuted for
140 operating after suspension of a license.

141 (13) Upon a finding by the registrar that a person with a suspended license or right to
142 operate, did operate a vehicle registered to another, the registrar shall, after hearing, suspend the
143 certificate of registration of said motor vehicle for up to 30 days. Immediately, upon suspension,
144 the certificate of registration and the number plates shall be surrendered to the registrar.

145 SECTION 3.

146 Section 24, 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, 24N, 24O,
147 24P, 24Q, 24R, 24S, 24T, 24U, 24V, 24W, and 24X of Chapter 90 of the General Laws, is
148 hereby amended by deleting each section and replacing it with the following:

149 Chapter 90, § 24 - False statements in an application

150 (1) No person shall falsely make, steal, alter, forge, or counterfeit, a learner's permit, a
151 license to operate a motor vehicle, an identification card issued under section 8E of this chapter,
152 a certificate of registration of a motor vehicle or trailer or an inspection sticker.

153 (2) No person shall procure or assist another to falsely make, steal, alter, forge, or
154 counterfeit, a learner's permit, a license to operate a motor vehicle, an identification card issued
155 under section 8E of this chapter, a certificate of registration of a motor vehicle or trailer or an
156 inspection sticker.

157 (3) No person shall forge or use without authority the signature, a facsimile of the
158 signature, or validating signature stamp of the registrar or a deputy registrar upon a genuine,
159 falsely made, stolen, altered, forged, or counterfeited learner's permit, license to operate a motor
160 vehicle, identification card issued under section 8E of this chapter, certificate of registration of a
161 motor vehicle or trailer, or an inspection sticker.

162 (4) No person shall have in his possession, utter, publish as true, or in any way make use
163 of a falsely made, stolen, altered, forged, or counterfeited learner's permit, license to operate a
164 motor vehicle, identification card issued under section 8E of this chapter, certificate of
165 registration of a motor vehicle or trailer or an inspection sticker.

166 (5) No person shall have in his possession, utter, publish as true, or in any way make use
167 of a falsely made, stolen, altered, forged, or counterfeited signature, facsimile of the signature, or
168 validating signature stamp of the registrar or a deputy registrar.

169 (a) A person convicted under subsection (1), (2), (3), (4), or (5) of this section shall be
170 imprisoned in a jail or house of correction for not more than 2 years or state prison for not more
171 than 5 years or fined not more than $500.

172 (b) Upon a conviction under this section the registrar shall suspend the license or right
173 to operate for 1 year. No appeal or motion for a new trial shall stay the suspension of the license
174 or right to operate provided; however, that if the prosecution against such person has terminated
175 in his favor, the registrar shall immediately reinstate his license or right to operate.

176 (6) No person shall make any false statement in an application for a learner's permit or
177 license to operate a motor vehicle.

178 (7) No person shall make any false statement in an application for a registration of a
179 motor vehicle.

180 (8) No person shall loan or knowingly permit his learner's permit or license to operate a
181 motor vehicle to another.

182 (a) A person convicted under subsection (6), (7), or (8) of this section shall be
183 imprisoned in a jail or house of correction for not less than 2 weeks but not more than 2 years, or
184 fined not less than $20 but no more than $200, or both.

185 (b) Upon a conviction under subsection (6), (7), or (8) of this section the registrar
186 shall, unless the court or magistrate recommends otherwise, suspend the license or right to
187 operate as follows:

188 (1) First offense: 60 days

189 (2) Subsequent offense within 3 years: 1 year

190 No appeal or motion for new trial shall stay the suspension of the license or right to
191 operate provided; however, that if the prosecution against such person has terminated in his
192 favor, the registrar shall immediately reinstate his license or right to operate.

193 (c) A summons may be issued instead of a warrant for arrest upon a complaint for a
194 violation if there is reason to believe the defendant will appear before the court.

195 Chapter 90, § 24A - Operation of a motor vehicle while drinking alcoholic beverage from
196 open container

197 (1) No person shall possess an open container of alcoholic beverage in the passenger area
198 of any motor vehicle while on a public way.

199 (2) A person convicted under this section shall be fined not less than $100 but not more
200 than $500.

201 (3) These words, as used in this section, have the following meaning:

202 (a) Open container – any bottle, can or other receptacle used to contain liquid that has
203 been opened or has a broken seal, or the contents of which have been partially removed or
204 consumed provided; however, that a bottle resealed pursuant to section 12 of chapter 138 shall
205 not be considered an open container.

206 (b) Passenger area – the area designed to seat the driver and the passengers while the
207 motor vehicle is in operation and any area that is readily accessible to the driver or a passenger
208 while in a seated position including, but not limited to, the glove compartment. But in a motor
209 vehicle that is not equipped with a trunk, the passenger area shall not include a locked glove
210 compartment, the area behind the last upright seat, or an area not normally occupied by the driver
211 or a passenger.

212 (4) This section shall not apply to passengers of a motor vehicle designed, maintained
213 and used for the transportation of persons for compensation, or the living quarters of a house
214 coach or house trailer.

215 (5) Notwithstanding the provisions of this section, the driver of any motor vehicle,
216 including a house coach or house trailer, shall not possess an open container of alcoholic
217 beverage.

218 Chapter 90, § 24B - Negligent/Reckless operation

219 (1) No person shall operate a motor vehicle on a public way negligently or recklessly so
220 that the lives or safety of the public might be endangered.

221 (2) A person convicted under this section shall be imprisoned in a jail or house of
222 correction for not less than 2 weeks but not more than 2 years or fined not less than $20 but not
223 more than $200 dollars, or both.

224 (3) Upon a conviction under this section the registrar shall, unless the court or magistrate
225 recommends otherwise, suspend the license or right to operate as follows:

226 (a) First offense: 60 days

227 (b) Subsequent offense within 3 years: 1 year

228 No appeal or motion for a new trial shall stay the suspension of the license or right to
229 operate provided; however, that if the prosecution against such person has terminated in his
230 favor, the registrar shall immediately reinstate his license or right to operate.

231 (4) Upon a conviction of this subsection, if it appears by the records of the registrar that
232 the person convicted is the owner of a motor vehicle or has exclusive control of any motor
233 vehicle as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of
234 registration of any or all motor vehicles owned or exclusively controlled by the person.

235 (5) Upon a disposition under this section the court shall assess a $250 fee to the person.
236 The court shall deposit $125 of the $250 collected under this assessment into the Head Injury
237 Treatment Services Trust Fund. The remaining $125 shall be deposited into the General Fund.
238 The fee may be reduced or waived if the court makes written findings that payment would cause
239 the person severe financial hardship. If the court sentences the person to a correctional facility
240 the outstanding assessment shall be noted on the mittimus.

241 (6) A summons may be issued instead of a warrant for arrest upon a complaint for a
242 violation of this section if there is reason to believe the defendant will appear before the court.

243 Chapter 90, § 24C (1) - Leaving the scene after causing property damage

244 (1) No person operating a motor vehicle on a public way shall knowingly collide with or
245 otherwise cause injury to any other vehicle or property without stopping and making known his
246 name, residence and the registration number of his motor vehicle.

247 (a) A person convicted of this subsection shall be imprisoned in a jail or house of
248 correction for not less than 2 weeks but not more than 2 years or fined not less than $20 but not
249 more than $200, or both.

250 (b) Upon a conviction under this subsection the registrar shall, unless the court or
251 magistrate recommends otherwise, suspend the license or right to operate as follows:

252 (1) First offense: 60 days

253 (2) Subsequent offense within 3 years: 1 year

254 No appeal or motion for a new trial shall stay the suspension of the license or right to
255 operate provided; however, if the charges against the person are dismissed, or the person is found
256 not guilty, the person may immediately file a motion before the judge that heard the case, for the
257 purpose of seeking restoration of the license or right to operate. At said hearing, if the court
258 finds that the charges were resolved in favor of the defendant, that there are no alcohol related
259 charges pending in this or any other court, and that there is no evidence before the court based on
260 a preponderance of the evidence that reinstatement of the license or right to operate would
261 endanger the public, there shall be a presumption that the court shall order that this particular
262 suspension be terminated.

263 (c) Upon a conviction of this section, if it appears by the records of the registrar that the
264 person convicted is the owner of a motor vehicle or has exclusive control of any motor vehicle as
265 a manufacturer or dealer or otherwise, the registrar may suspend the certificate of registration of
266 any or all motor vehicles owned or exclusively controlled by the person.

267 (d) A summons may be issued instead of a warrant for arrest upon a complaint for a
268 violation of this subsection if there is reason to believe the defendant will appear before the
269 court.

270 Chapter 90, § 24C (2) - Leaving the scene after causing personal injury

271 (2) No person operating a motor vehicle on a public way shall knowingly collide with or
272 otherwise cause injury to any person, not resulting in the death of another person, without
273 stopping and making known his name, residence and the registration number of his motor
274 vehicle.

275 (a) A person convicted of this subsection shall be imprisoned in a jail or house of
276 correction for not less than 6 months but not more than 2 years and fined not less than $500 but
277 not more than $1,000. No case commenced under this subsection shall be continued without a
278 finding or placed on file.

279 (b) Upon a conviction of this subsection the registrar shall, unless the court or
280 magistrate recommend otherwise, suspend the license or right to operate as follows:

281 (1) First offense: 1 year

282 (2) Subsequent offense: 2 years

283 No appeal or motion for a new trial shall stay the suspension of the license or right to
284 operate provided; however, if the charges against the person are dismissed, or the person is found
285 not guilty, the person may immediately file a motion before the judge that heard the case, for the
286 purpose of seeking restoration of the license or right to operate. At said hearing, if the court

287 finds that the charges were resolved in favor of the defendant, that there are no alcohol related
288 charges pending in this or any other court, and that there is no evidence before the court based on
289 a preponderance of the evidence that reinstatement of the license or right to operate would
290 endanger the public, there shall be a presumption that the court shall order that this particular
291 suspension be terminated.

292 (c) Upon a conviction of this section, if it appears by the records of the registrar that
293 the person convicted is the owner of a motor vehicle or has exclusive control of any motor
294 vehicle as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of
295 registration of any or all motor vehicles owned or exclusively controlled by the person.

296 Chapter 90, § 24C (3) - Leaving the scene after causing death

297 (3) No person operating a motor vehicle on a public way shall knowingly collide with or
298 otherwise cause injury to any person, resulting in death, without stopping and making known his
299 name, residence and the registration number of his motor vehicle.

300 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
301 correction for a minimum mandatory 1 year but not more than 2 ½ years or state prison for not
302 less than 2 ½ but not more than 10 years with a minimum mandatory term of 1 year and fined not
303 less than $1,000 but not more than $5,000. No case commenced under this subsection shall be
304 continued without a finding or placed on file.

305 (b) Upon a conviction of this subsection the registrar shall, unless the court or
306 magistrate recommends otherwise, suspend the license or right to operate as follows:

307 (1) First offense: 3 years

308 (2) Subsequent offense: 10 years

309 No appeal or motion for a new trial shall stay the suspension of the license or right to
310 operate provided; however, if the charges against the person are dismissed, or the person is found
311 not guilty, the person may immediately file a motion before the judge that heard the case, for the
312 purpose of seeking restoration of the license or right to operate. At said hearing, if the court
313 finds that the charges were resolved in favor of the defendant, that there are no alcohol related
314 charges pending in this or any other court, and that there is no evidence before the court based on
315 a preponderance of the evidence that reinstatement of the license or right to operate would
316 endanger the public, there shall be a presumption that the court shall order that this particular
317 suspension be terminated.

318 (c) Upon a conviction of this section, if it appears by the records of the registrar that
319 the person convicted is the owner of a motor vehicle or has exclusive control of any motor
320 vehicle as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of
321 registration of any or all motor vehicles owned or exclusively controlled by the person.

322 Chapter 90, § 24D- Operating under the influence of intoxicating liquor or other
323 substances

324 (1) No person shall operate a motor vehicle on a public way while under the influence of
325 intoxicating liquor, drugs, or other substances as defined in section 1 of chapter 90.

326 (2) A person convicted under subsection (1) of this section shall be punished as follows:

327 (a) First Offense: If there is no prior operating under the influence offense, the
328 defendant shall be imprisoned in a jail or house of correction for not more than 2 ½ years or
329 fined not less than $500 but not more than $5,000, or both.

330 (b) Second Offense: If there is 1 prior operating under the influence offense, the
331 defendant shall be imprisoned in a jail or house of correction for a minimum mandatory term of
332 30 days but not more than 2 ½ years and fined not less than $600 but not more than $10,000.

333 (c) Third Offense: If there are 2 prior operating under the influence offenses, the
334 defendant shall be imprisoned in a jail or house of correction for not less than 150 days but not
335 more than 2 ½ years, or state prison for not less than 2 ½ years but not more than 5 years with a
336 minimum mandatory term of 150 days and fined not less than $1,000 but not more than $15,000.

337 (d) Fourth Offense: If there are 3 prior operating under the influence offenses, the
338 defendant shall be imprisoned in a jail or house of correction for not less than 2 years but not
339 more than 2 ½ years, or state prison for not less than 2 ½ years but not more than 5 years with a
340 minimum mandatory term of 1 year and fined not less than $1,500 but not more than $25,000.

341 (e) Fifth or Subsequent Offense: If there are 4 or more prior operating under the
342 influence offenses, the defendant shall be imprisoned in a jail or house of correction for not less
343 than 2 ½ years, or be imprisoned in the state prison for not less than 2 ½ years but not more than
344 5 years with a minimum mandatory term of 2 years and fined not less than $2,000 but not more
345 than $50,000.

346 (f) Upon a disposition under this section the court shall assess a $250 fee to the
347 person. The court shall transmit $125 of the $250 collected under this assessment to the state
348 treasurer to be deposited into the Head Injury Treatment Services Trust Fund. The remaining
349 $125 shall be deposited into the General Fund. The assessment may be reduced or waived if the
350 court makes written findings that payment would cause the person severe financial hardship. If
351 the court sentences the person to a correctional facility the outstanding assessment shall be noted
352 on the mittimus.

353 (g) Upon a disposition under this section the court shall assess a $50 fee to the person.
354 The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
355 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.

356 If the court sentences the person to a correctional facility the outstanding assessment shall be
357 noted on the mittimus.

358 (h) In any prosecution commenced pursuant to this section, introduction into evidence
359 of a prior conviction or a prior finding of sufficient facts by either certified attested copies of
360 original court papers, or certified attested copies of the defendant's biographical and
361 informational data from records of the department of probation, any jail or house of correction,
362 the department of correction, or the registry of motor vehicles, shall be prima facie evidence that
363 the defendant before the court has been convicted previously or assigned to an alcohol or
364 controlled substance education, treatment, or rehabilitation program by a court of the
365 commonwealth or of a like offense from any other jurisdiction. Such documentation shall be
366 self-authenticating and admissible, after the commonwealth has established the defendant's guilt
367 on the primary offense, as evidence in any court of the commonwealth to prove the defendant's
368 commission of any prior convictions or assignments to alcohol or controlled substance
369 education, treatment, or rehabilitation programs described therein. The commonwealth shall not
370 be required to introduce any additional corroborative evidence, nor live witness testimony to
371 establish the validity of such prior offenses.

372 (i) No prosecutions under this section shall be continued without a finding except for
373 cases disposed of pursuant to the provisions of subdivision (a) of subsection (3) of this section.
374 No prosecutions under this section shall be placed on file, or subject to the provisions of section
375 87 of chapter 276. At any time before the commencement of a trial or acceptance of a plea on a
376 complaint alleging a violation of this section, the prosecutor may apply for the issuance of a new
377 complaint pursuant to section 35A of chapter 218 alleging a violation of this section and 1 or
378 more prior operating under the influence offenses. If such application is made, upon motion of
379 the prosecutor, the court shall stay further proceedings on the original complaint pending the
380 determination of the application for the new complaint. If a new complaint is issued, the court
381 shall dismiss the original complaint and order that further proceedings on the new complaint be
382 postponed until the defendant has had sufficient time to prepare a defense. Upon any conviction
383 or continuation without a finding under this section, the court shall order that any license issued
384 by the commonwealth be surrendered to the probation department, and disposed of in a manner
385 prescribed by the registrar. The clerk of courts shall notify the registrar forthwith of the
386 disposition.

387 (j) Upon a disposition for an operating under the influence offense as defined in
388 section (1) of this chapter the probation department, in the court in which the finding was
389 entered, shall provide the defendant a copy of the statutory provisions that apply to any further
390 operating under the influence offense. The statement of statutory provisions shall be prepared by
391 the secretary of public safety.

392 (k) Upon a disposition for an operating under the influence offense as defined in
393 section (1) of this chapter the court shall ask the defendant whether he was served alcohol prior

394 to his violation at an establishment licensed to serve alcohol. If the defendant answers in the
395 affirmative, the defendant shall provide the name and address of the establishment. The clerk's
396 office shall provide in writing to the Alcohol Beverage Control Commission the name of the
397 establishment and date of offense given by the defendant. The Alcohol Beverage Control
398 Commission shall inform the named establishment of this incident forthwith. The trial court
399 shall, in conjunction with the Alcohol Beverage Control Commission, promulgate a standard
400 form for reporting and collecting said information. The Alcohol Beverage Control Commission
401 shall provide an annual report including the collected data to the attorney general, each district
402 attorney, and the local liquor licensing authorities.

403 (l) The provisions of section 6A of chapter 279 shall not apply to a person with a
404 prior operating under the influence offense as defined in section 1 of chapter 90.

405 (m) If a defendant waives his right to a jury trial pursuant to section 26A of chapter
406 218 on a complaint under this section he shall be deemed to have waived his right to a jury trial
407 on all elements of the complaint.

408 (3) Alternative Dispositions

409 (a) First Offense: If there is no evidence of a prior operating under the influence
410 offense, a person may consent to being placed on probation for not more than 2 years instead of
411 the disposition specified in subdivision (a) of subsection (2) of this section. Offenders with a
412 single prior operating under the influence offense more than 10 years preceding the date of the
413 most recent offense may also be eligible for a disposition under this subdivision. As a condition
414 of this probation, the person shall be ordered to complete an out patient alcohol, drug, or
415 substance abuse program as specified by the court. Offenders who reside out of state, or are a
416 full time student out of state, may at the court's discretion complete a licensed first offender's
417 program in that other state, as approved by the Department of Public Health.

418 If a person is sentenced to an alternative disposition, notwithstanding the provisions of
419 subsection (5) of this section, the court shall impose a suspension of the defendant's license or
420 right to operate for not less than 45 days nor more than 90 days if said person was over the age of
421 21 at the time of the offense, or 210 days if said person was under the age of 21 at the time of
422 offense. A person may immediately apply for a hardship license following disposition and
423 enrollment into the treatment program required by this subsection. In all cases where a hardship
424 license is sought, the probation office where the offender is or was on probation will, upon
425 request, furnish the registrar with documentation verifying the person's status with probation.
426 Hardship licenses under this subsection shall be issued under such terms and conditions as the
427 registrar may prescribe, after the registry is convinced that the issues that this offense(s) arose
428 from have been dealt with by the operator and brought under control. Said hardship license shall
429 be issued, subject to the agency's discretion, upon a showing of hardship for work, education, or
430 other purpose the registrar deems valid and significant, and shall be for an identical 12 hour

431 period, 7 days a week. Notwithstanding the above, if the records of the registrar contain
432 additional information regarding operating under the influence offenses, the registrar shall
433 suspend the license in accordance with subsection (5) of this section. A person shall be
434 presumed to be a suitable candidate for this disposition after trial unless otherwise prohibited by
435 this section. In cases where an eligible person is not granted such a disposition should he or she
436 seek it, the court shall make written findings supporting its decision.

437 (b) Second Offense: Notwithstanding the provisions of subsection (2) of this section,
438 in cases where a defendant has only one prior operating under the influence offense, the court, in
439 its discretion, may order the defendant to enter and complete a 14 day in patient program in lieu
440 of the required 30 day minimum mandatory term.

441 The provisions of this subsection shall not apply to any person who causes serious bodily
442 injury or death to another person during the events that gave rise to the complaint or indictment.

443 Each person placed in such a program shall pay a program fee as determined by the
444 department of public health. The program fee shall not exceed the cost per client to run the
445 program. The department of public health shall compile a schedule of uniform fees for these
446 programs, which shall be changed only after notice and public hearing. The department shall
447 promulgate rules and regulations regarding the process and methodology of setting these fees.
448 No person shall be denied entry into a program where the court, after review and investigation by
449 the probation department, determines that the defendant is indigent, and has filed such an
450 affidavit with the court. The court may then waive or reduce said fee on a case by case basis.
451 Subject to appropriation, the department of public health shall reimburse each program for the
452 costs of services provided to persons for whom payment of a fee has been waived or reduced on
453 the grounds of indigency.

454 In addition to the program fee, the court shall assess a $250 fee to each person placed in
455 such a program. The court shall transmit the $250 to the state treasurer for the support of
456 programs operated by the commissioner of public health for the investigation, enforcement,
457 treatment and rehabilitation of persons charged with or convicted of operating under the
458 influence. The assessment may be reduced or waived if the court makes written findings that
459 payment would cause the person severe financial hardship.

460 The alternative disposition programs utilized under this subsection shall be established,
461 administered or approved by the department of public health, who shall have authority to
462 promulgate such regulations as is necessary to govern the content, conduct, operation or approval
463 of these programs. The department of public health shall prepare and publish annually a list of
464 all accepted alcohol treatment and rehabilitation programs, make this list available upon request
465 to members of the public, and annually furnish the commissioner of probation, the registrar, and
466 the secretary of public safety with a copy of said list.

467 The commissioner of probation shall annually report to the department of public health
468 the number of persons who receive an alternative disposition and the number of persons who
469 have been required by the court to participate in alcohol or controlled substance abuse treatment
470 or rehabilitation programs. In addition, the commissioner of probation, and the chief justice of
471 the district courts and the Boston Municipal Court shall annually report to the department of
472 public health the resources available for alcohol and controlled substance abuse treatment and
473 rehabilitation of alcohol-impaired or controlled substance abuse-impaired drivers. The report
474 shall evaluate the existing resources and shall make recommendations as to any additional
475 resources. The department of public health shall take such reports into consideration in the
476 development, implementation, and review of the state's alcoholism or controlled substance abuse
477 plan and in the preparation of the division's annual budget in a manner consistent with the
478 Alcoholism Treatment and Rehabilitation Law.

479 (4) The following persons shall complete an alcohol and drug assessment conducted by
480 the department of public health or other court approved program as a mandatory condition of any
481 sentence imposed:

482 (a) A person having a percentage, by weight, of alcohol in his blood of .20% or above
483 during an operating under the influence offense; or

484 (b) A person with a second or subsequent operating under the influence offense.

485 The assessment shall include at a minimum an evaluation of the level of the offender's
486 addiction to alcohol and/or drugs and the department's recommended course of treatment. Such
487 assessment and recommendation shall be reported to the offender's probation or parole officer.
488 The commissioner of public health may make such rules and regulations as are necessary to
489 carry out this section.

490 (5) Upon conviction the registrar shall suspend the license or right to operate, based on
491 the number of offenses on the agency's records, as follows:

492 (a) First offense: 1 year except for persons that have properly received dispositions
493 pursuant to subsection 3 of section 24D of this chapter. The operator may apply for a hardship
494 license 90 days from the date of conviction, absent any other suspensions.

495 (b) Second offense: 2 years except for persons that have properly received
496 dispositions pursuant to subsection 3 of section 24D of this chapter. The operator may apply for
497 a hardship license 1 year from the date of conviction, absent any other suspensions.

498 (c) Third offense: 8 years. The operator may apply for a hardship license 2 years
499 from the date of conviction, absent any other suspensions.

500 (d) Fourth offense: 10 years. The operator may apply for a hardship license 5 years
501 from the date of conviction, absent any other suspensions.

502 (e) Fifth or subsequent offense: Lifetime.

503 (f) Notwithstanding subdivisions (a) through (e) of this subsection, the registrar shall
504 suspend for life a person's license or right to operate upon an operating under the influence
505 offense if the person has been previously convicted of motor vehicle homicide while under the
506 influence or manslaughter by motor vehicle.

507 (g) Hardship licenses under this subsection shall be issued under such terms and
508 conditions as the registrar may prescribe, after the registry is convinced that the issues that this
509 offense(s) arose from have been dealt with by the operator and brought under control. Said
510 hardship license shall be issued, subject to the agency's discretion, upon a showing of hardship
511 for work, education, or other purpose the registrar deems valid and significant, and shall be for
512 an identical 12 hour period, 7 days a week.

513 (h) If there are 2 prior operating under the influence offenses, the registrar may
514 suspend the registration of a motor vehicle owned by a person for the duration of the suspension
515 of the license or right to operate. No new registration shall be issued to said person during the
516 suspension period.

517 Chapter 90, § 24E – Implied Consent

518 (1) Whoever operates a motor vehicle on a public way shall be deemed to have consented
519 to a test of his breath or blood in the event he is arrested with operating a motor vehicle while
520 under the influence of intoxicating liquor. A person brought to a police station or place of
521 detention is deemed to have consented to a test of his breath. A valid breath test under this
522 section shall be one adequate breath sample analysis, followed by one calibration standard
523 analysis, and then by a second adequate breath sample analysis. A person is deemed to have
524 consented to a test of his blood only if he has been brought to a medical facility licensed pursuant
525 to the provisions of section 51 of chapter 111, and the blood is drawn by a physician, registered
526 nurse or certified medical technician; provided further that no person inflicted with hemophilia
527 or any other condition requiring the use of anticoagulants shall be deemed to have consented to
528 the withdrawal of blood. Such test shall be administered by or at the direction of a police officer
529 as defined in section 1 of chapter 90C, having reasonable grounds to believe that the defendant
530 was operating under the influence.

531 In any prosecution for an operating under the influence offense, evidence of a defendant's
532 blood alcohol content at the time of offense, shown by breath or blood, is relevant and admissible
533 to determine whether the defendant was under the influence of intoxicating liquor as defined in
534 section 1 of this chapter, if test was conducted by or at the direction of a police officer, with the
535 consent of the defendant. Upon the defendant's request the results of said test shall be made
536 available to him. In any case where a test is given, the defendant shall have the right to have
537 another test done at his own expense, by a physician of his choosing.

538 Evidence that the defendant refused such test shall not be admissible in a criminal or civil
539 proceeding, but shall be admissible in any action by the registrar in any proceeding provided for
540 in under this section. For purposes of this section, a refusal is either a verbal or written refusal to
541 take a test, or a failure to consent to a test required by this section.

542 If such evidence is that the blood alcohol content was .05% or less, there shall be a
543 permissible inference that the defendant was not under the influence of intoxicating liquor, and
544 he shall be released from custody forthwith, absent any other arrestable charges. The officer(s)
545 who placed the defendant in custody shall not be liable for false arrest if there were reasonable
546 grounds to believe that he was operating under the influence.

547 If the evidence is that such blood alcohol content was more than .05% but less than
548 .08%, there shall be no permissible inference.

549 If the evidence is that such blood alcohol content was .08% or more, the defendant is
550 deemed to be under the influence as defined in section 1 of this chapter.

551 A certificate, signed and sworn to, by a chemist of the department of the state police or a
552 laboratory certified by the department of public health, which contains the results of an analysis
553 made by such chemist of the blood alcohol content shall be prima facie evidence.

554 (2) Upon any refusal by the person arrested of a test required by this section, after the
555 person has been informed that his license or right to operate a motor vehicle shall be suspended
556 for the refusal, the registrar shall immediately suspend the person's license or right to operate as
557 follows:

558 (a) If the person was age 21 or over at the time of offense, and has no prior operating
559 under the influence convictions, the suspension shall be for 180 days.

560 (b) If the person has 1 prior operating under the influence conviction, or was under
561 age 21 at the time of offense and has no more than 1 prior operating under the influence
562 conviction, the suspension shall be for 3 years.

563 (c) If the person has 2 prior operating under the influence convictions, the suspension
564 shall be for 5 years.

565 (d) If the person has 3 or more prior operating under the influence convictions, the
566 suspension shall be for life.

567 (e) If the person has a prior conviction under sections 24L or 24J of this chapter, the
568 suspension shall be for 10 years.

569 (f) If the person has a prior operating under the influence conviction pursuant to
570 section 24G or 24K of this chapter or a conviction under section 24L of this chapter or section 13
571 ½ of chapter 265, the suspension shall be for life.

572 (g) No hardship licenses on suspensions for test refusals shall be granted, except for
573 candidates that have properly received dispositions pursuant to subsection 3 of section 24D of
574 this chapter. Any suspensions under this section shall be consecutive with any suspension or
575 suspension for the underlying operation under the influence offense. Notwithstanding that, if
576 the charges against the person are dismissed, or the person is found not guilty, the person may
577 immediately file a motion before the judge that heard the case, for the purpose of seeking
578 restoration of the license or right to operate. At said hearing, if the court finds that the charges
579 were resolved in favor of the defendant, that there are no alcohol related charges pending in this
580 or any other court, and that there is no evidence before the court based on a preponderance of the
581 evidence that reinstatement of the license or right to operate would endanger the public, there
582 shall be a presumption that the court shall order that this particular suspension be terminated.

583 (h) Any person refusing a test under this section shall have a right, at his request, to a
584 hearing before the registrar to determine if grounds exist for the suspension. Any hearing request
585 shall be made within 15 days of the incident giving rise to this suspension. The hearing shall be
586 limited to the issues of whether reasonable grounds exist for the officer's belief that the person
587 was operating under the influence at the time of the incident, whether the person was advised of
588 the consequences of the refusal, and did the person refuse or fail to consent to such test. The
589 registrar, upon accepting an appeal, shall have a reasonable period of time to request and gather
590 such evidence as the hearings officer needs in order to rule on the issues raised by the appellant.
591 The registrar shall compile a record of the hearing. If the ruling is in the person's favor, absent
592 any other reason for suspension, the registrar shall restore the person's license or right to operate.
593 The registrar may promulgate such rules and regulations as is necessary regarding the conduct of
594 these hearings.

595 (i) If the registrar rules that the suspension for refusal was proper, the appellant may
596 file a petition for judicial review in the district court having jurisdiction over the underlying
597 operation under the influence charge within 30 days of the registrar's decision. The court must
598 then schedule a hearing within 30 days of the appellant's application, unless the appellant has
599 waived this time requirement. The petition shall be filed in the nature of a civil action
600 challenging the action of an administrative agency, and shall be an administrative review limited
601 to the record, including the evidence and arguments, compiled at the hearing. Along with the
602 submission of the record, the registrar shall prepare written findings supporting the reasons for
603 denying the petition for the court to review. If the court rules in the appellant's favor, the court
604 shall prepare specific findings indicating the reasons for reversing the registrar's determination,
605 and send the findings to the registrar forthwith. The registrar shall restore the license, absent
606 any other reasons for suspension. In cases where other suspensions exist, the registrar shall then
607 terminate this suspension for refusal, but maintain any other valid suspensions.

608 If a test indicates that a person was operating with a blood alcohol content of .08% or
609 above, the registrar shall immediately suspend the person's license or right to operate for 30
610 days, or until the conclusion of the court case, whichever is shorter.

611 (j) A person whose license or right to operate is suspended under this subsection may
612 appeal the suspension within 10 days of the arraignment to the court where the charges are
613 pending. The appeal shall be limited to the issues of whether a blood test, taken within a
614 reasonable period of time after the arrest, shows a result of less than .08%, or that the test results
615 were not consistent with the requirements of subsection (1) of this section.

616 If the charges against the person are dismissed, or the person is found not guilty, the
617 person may immediately file a motion before the judge that heard the case, for the purpose of
618 seeking restoration of the license or right to operate. At said hearing, if the court finds that the
619 charges were resolved in favor of the defendant, that there are no alcohol related charges pending
620 in this or any other court, and that there is no evidence before the court based on a preponderance
621 of the evidence that reinstatement of the license or right to operate would endanger the public,
622 there shall be a presumption that the court shall order that this particular suspension be
623 terminated.

624 (3) Chemical analysis of the breath of a person charged with a violation of this chapter
625 shall not be considered valid under the provisions of this chapter, unless such analysis has been
626 performed by a certified operator, using infrared breath-testing devices according to methods
627 approved by the secretary of public safety. The secretary of public safety shall promulgate rules
628 and regulations regarding satisfactory methods, techniques and criteria for the conduct of such
629 tests, and shall establish a statewide training and certification program for all operators of such
630 devices and a periodic certification program for such breath testing devices; provided, however,
631 that the secretary may terminate or suspend such certification at his discretion.

632 Said regulations shall include, but shall not be limited to the following:

633 (a) The chemical analysis of the breath of a person charged be performed by a
634 certified operator using a certified infrared breath-testing device in the following sequence:

635 (1) one adequate breath sample analysis

636 (2) one calibration standard analysis

637 (3) a second adequate breath sample analysis

638 (b) No person shall perform such a test unless certified by the secretary of public
639 safety

640 (c) No breath testing device, mouthpiece or tube shall be cleaned with any substance
641 containing alcohol.

642 The secretary of public safety shall prescribe uniform formats, electronic or otherwise,
643 for reports of such chemical analysis to be used by law enforcement officers and others acting in
644 accordance with the provisions of this chapter. The reports generated in these formats shall be

645 sequentially numbered. Each chief of police or other officer or official having charge or control
646 of a law enforcement agency shall be responsible for the proper availability of these formats.
647 Each party so responsible shall prepare or cause to be prepared such records and reports relating
648 to such uniform formats and their disposition in such manner and at such times as the secretary
649 of public safety shall prescribe.

650 Upon any failed or refused test under this section the police shall confiscate any license
651 or permit issued by the commonwealth in the possession of the defendant, serve the defendant
652 with a notice of suspension on behalf of the registrar, and impound the operator's vehicle for a
653 12 hour period following the incident. The operator shall be responsible for all costs associated
654 with towing, storage and maintenance of the vehicle. In addition, in each case, the police shall
655 prepare a report to the registrar, indicating the following:

656 (1) the grounds the arresting officer had to believe that the defendant was operating under
657 the influence;

658 (2) the defendant was advised of the consequences of refusing the test;

659 (3) the results of any failed test;

660 (4) whether or not the operator refused or failed to consent to the test;

661 (5) the identity of the officer who advised the defendant of his rights;

662 (6) the identity and certification of the officer who conducted the breath test;

663 (7) the identity of any witness to the test or refusal;

664 (8) that the test was administered in accordance with the regulations and standards
665 promulgated by the secretary of safety; and

666 (9) the equipment used was regularly serviced and maintained and believed to be in
667 proper working order.

668 The reports specified in this subsection shall be reported to the registrar forthwith in order
669 to expedite the suspension of the license or right to operate, and shall be admissible as prima
670 facie evidence in any administrative action before the registrar.

671 If a test is an analysis of blood rather than breath, in cases where a test indicates a blood
672 alcohol content of .08% or above, or .02% or above if the operator is under age 21 at the time of
673 offense, the police shall report said result to the registrar, who shall suspend the license
674 consistent with the provisions of this section.

675 (4) Notwithstanding the findings of any charge, the following additional provisions shall
676 apply to persons under age 21 after having been arrested for an operating under the influence
677 offense:

678 (a) Upon evidence that a person under the age of 21 had a blood alcohol content of
679 .02% or above or refused to submit to a chemical test or analysis of his breath or blood under this
680 section, shall have his license or right to operate a motor vehicle suspended by the registrar for a
681 period of an additional 180 days. Any person who is less than 18 years of age at the time of such
682 offense shall have his license suspended by the registrar for an additional 1 year.

683 If a person has not been previously arrested for or charged with operating under the
684 influence, such person shall, if he consents, be assigned to a program specifically designed by the
685 department of public health for the treatment of underage drinking drivers. Upon entry into a
686 program, authorized by this subsection, or a program required by section 24D of this chapter, the
687 suspension of a license or right to operate as required by this subsection shall be waived by the
688 registrar for a person under 21 years of age and over 18 years of age. The suspension shall be
689 reduced to 180 days for a person who was under the age of 18 at the time of such offense. Upon
690 the failure of a person who, at the time of offense was under the age of 21, to successfully
691 complete such program, the registrar shall forthwith suspend such license or permit to operate for
692 180 days, or for 1 year if the person was under age 18 at the time of offense.

693 (b) The license, permit, or right to operate of a person convicted of any violation
694 under section 24, 24A, 24B, 24C, 24I or 24J of this chapter, who was under the age of 18 at the
695 time of such violation and whose license or permit to operate was not already suspended under
696 this section for failing or refusing a test, shall have such license or right to operate suspended for
697 an additional period of 180 days for a first offense and for a period of 1 year for a second or
698 subsequent offense.

699 (5) When a complaint is issued alleging a person has violated section 24D, 24J, or 24K of
700 this chapter, or violated section 8(1) (a), 8A, or 8B of chapter 90B, upon the failure of a police
701 officer to suspend or take custody of the defendant's license or permit, the judge shall
702 immediately suspend and take custody of the defendant's license or right to operate in the
703 following instances:

704 (a) If the prosecutor makes a prima facie showing at arraignment that the defendant
705 was operating a motor vehicle with a blood alcohol content of .08 or greater, or if the defendant
706 is under 21 years of age a blood alcohol content of .02 or greater, as shown by a test of his breath
707 or blood; and the prosecutor presents written certification of oral testimony from the person who
708 administered the test that:

709 (1) the defendant was given a test;

710 (2) the person administering the test was trained and certified in the administration of the
711 test;

712 (3) the test was performed in accordance with regulations and standards promulgated by
713 the secretary of public safety;

714 (4) the equipment used for the test was regularly serviced and maintained; and

715 (5) the person administering the test had every reason to believe the equipment was
716 functioning properly at the time the test was administered.

717 The written certification shall be prima facie evidence of the facts contained therein.

718 Upon a showing of the above facts, the judge shall take immediate physical possession of
719 the license or permit and shall direct the prosecuting officer to immediately notify the criminal
720 history systems board and the registrar of such suspension. The defendant's license or right to
721 operate shall be suspended for a period not to exceed 30 days; or

722 (b) If the prosecutor makes a prima facie showing at arraignment that the defendant
723 was arrested for operating on any such way or place while under the influence of intoxicating
724 liquor and refused a test of his breath or blood, the judge shall take immediate physical
725 possession of the license or permit and shall direct the prosecuting officer to immediately notify
726 the criminal history systems board and the registrar of such suspension. The defendant's license
727 or right to operate shall be suspended as follows:

728 (1) If the person was age 21 or over at the time of offense, and has no prior operating
729 under the influence offenses, the suspension shall be for 180 days.

730 (2) If the person has one prior operating under the influence offense, or was under the age
731 of 21 at the time of offense and has no more than 1 prior operating under the influence offenses,
732 the suspension shall be for 1 year.

733 (3) If the person has 2 prior operating under the influence offenses, the suspension shall
734 be for 18 months.

735 (c) No license shall be restored under any circumstances and no restricted or hardship
736 permits shall be issued during the suspension period imposed by this paragraph. If the charges
737 against the person are dismissed, or the person is found not guilty, the person may immediately
738 file a motion before the judge that heard the case, for the purpose of seeking restoration of the
739 license or right to operate. At said hearing, if the court finds that the charges were resolved in
740 favor of the defendant, that there are no alcohol related charges pending in this or any other
741 court, and that there is no evidence before the court based on a preponderance of the evidence
742 that reinstatement of the license or right to operate would endanger the public, there shall be a
743 presumption that the court shall order that this particular suspension be terminated.

744 (1) Any person refusing a test under this section shall have a right, at his request, to a
745 hearing before the registrar to determine if grounds exist for the suspension. Any hearing request
746 shall be made within 10 days of the incident giving rise to this suspension. The hearing shall be
747 limited to the issues of whether or not a blood test administered pursuant to section 24E of this
748 chapter, within a reasonable period of time after a test of his breath, shows that that the blood
749 alcohol content was less than .08% or less than .02% if the person was under the age of 21 at the
750 time of the offense.

751 If, after a hearing, the court finds the defendant's blood alcohol content was less than
752 .08% or less than .02% if the person was under the age of 21 at the time of offense, the court
753 shall restore the defendant's license or right to operate and shall direct the prosecuting officer to
754 immediately notify the criminal history systems board and the registrar of such restoration.

755 (2) Any person whose license or right to operate has been suspended because the person
756 refused to submit to a test of his breath or blood under this section shall have the right, at his
757 request, to a hearing before the court in which the underlying charges are pending to determine if
758 grounds exist for the suspension. Any hearing request shall be made within 10 days of the
759 hearing giving rise to this suspension. The hearing shall be limited to the following issues:

760 (a) whether or not the police officer had reasonable grounds to believe that the person
761 had been operating a motor vehicle while under the influence of intoxicating liquor on a public
762 way;

763 (b) whether or not the person was placed under arrest; and

764 (c) whether or not the person refused to submit to a test of his breath or blood.

765 If, after a hearing, the court finds in the negative on any one of the issues, the court shall
766 restore the defendant's license or right to operate and shall direct the prosecuting officer to
767 immediately notify the criminal history systems board and the registrar of such restoration.

768 Chapter 90, § 24F – Ignition Interlock Devices

769 (1) Any person whose license or right to operate is suspended for 2 or more operating
770 under the influence offenses, or who is operating on a restricted license for such offenses, shall
771 be required to have an ignition interlock device installed on each vehicle that he may own, lease,
772 or operate as a mandatory condition of issuance of a new license or right to operate. The
773 restriction shall remain on the license during the hardship license period and an additional 2
774 years upon the full restoration of the license. In cases where the person has not been granted a
775 hardship license, the ignition interlock requirement shall be for a 2 year period following the
776 reinstatement of the license or right to operate.

777 Each device shall be subject to inspection, maintenance, and monitoring as the registrar
778 may prescribe. No ignition interlock device utilized under this section shall allow a vehicle to

779 start if a person's blood alcohol content exceeds .02%. The registrar shall promulgate such rules
780 and regulations as deemed necessary regarding this section.

781 The registrar may, after hearing, suspend the license or right to operate of any person
782 who:

783 (a) removes an ignition interlock device without the written consent of the registrar;
784 or

785 (b) who fails to have it inspected, maintained or monitored on at least 2 occasions
786 during the requirement period,

787 if the licensee has:

788 (a) operated a vehicle with a blood alcohol content that caused the certified ignition
789 interlock device to prevent the vehicle from starting on at least 2 occasions; or

790 (b) recorded a blood alcohol content in excess of .02% on at least 2 occasions.

791 The suspension shall be for an extended period or for life. A person aggrieved by the
792 decision of the registrar pursuant to this section may file an appeal in the superior court. If the
793 court determines that the registrar abused his discretion, the court may vacate the suspension or
794 reduce the period ordered by the registrar.

795 (2) No person required to have an ignition interlock device shall operate a motor vehicle
796 without such a device on a public way.

797 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
798 correction for not less than 6 months but not more than 2 ½ years, or the state prison for not less
799 than 2 ½ years but not more than 5 years with a minimum mandatory term of 6 months and fined
800 not less than $1,000 but not more than $15,000.

801 The provisions of this subsection shall not apply when the person is operating a vehicle
802 with a police officer or employee or agent of the registrar present for the sole purpose of
803 conducting a road test as a condition of license reinstatement.

804 (3) No person shall interfere with or tamper with an ignition interlock device with the
805 intent to disable such device.

806 (a) A person convicted under this subsection shall be punished by imprisonment in a
807 jail or house of correction for not less than 6 months but not more than 2 ½ years, or state prison
808 for not less than 3 years but not more than 5 years.

809 (4) No person shall knowingly breathe into an ignition interlock device, or start a motor
810 vehicle equipped with an ignition interlock device, for the purpose of providing an operable
811 motor vehicle to a person under a license restriction requiring an ignition interlock device.

812 (a) A person convicted under this subsection shall be punished as follows:

813 (1) First offense: The defendant shall be imprisoned in a jail or house of correction for
814 not less than 6 months but not more than 2 ½ years or punished by a fine of not less than $1,000
815 but not more than $5,000.

816 (2) Second or subsequent offense: The defendant shall be imprisoned in state prison for
817 not less than 3 years but not more than 5 years.

818 (5) A certified copy of a signed acknowledgement of the terms and existence of an
819 ignition interlock device restriction, executed by a person alleged to have violated this section,
820 shall be admissible as prima facie evidence to prove the knowledge of the person who executed
821 the document.

822 Chapter 90, § 24G – Motor Vehicle Forfeitures

823 (1) A motor vehicle or vessel owned by a person who has at least 3 prior operating under
824 the influence offenses, as defined in section 1 of chapter 90, may be forfeited to the
825 commonwealth.

826 (2) A district attorney or the attorney general may petition the superior or district court, in
827 the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of such
828 motor vehicle or vessel. The petition shall be filed in the court having jurisdiction over the
829 criminal proceeding brought under this chapter or chapter 90B. The proceeding shall be deemed
830 a civil suit in equity. In all such actions where the motor vehicle or vessel is jointly owned by
831 either a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the
832 defendant's household, before the date of the second or subsequent operating under the influence
833 offense committed by the defendant, the commonwealth shall have the burden of proving the
834 existence of probable cause to institute the action. The claimant shall have the burden of proving
835 that the property is not forfeitable because the claimant is dependent on the motor vehicle or
836 vessel for his livelihood or the maintenance of his family.

837 The court shall order the commonwealth to give notice, by certified or registered mail, to
838 the owners of the motor vehicle or vessel and, to such other persons or entities who appear to
839 have an interest therein. The court shall promptly, but not less than 2 weeks after notice, hold a
840 hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court
841 may continue the hearing on the petition pending the outcome of a criminal trial related to a
842 charge of operating under the influence in violation of this chapter or chapter 90B. During the
843 pendency of the proceedings, the court may issue, at the request of the commonwealth, ex parte,

844 any preliminary order or process necessary to seize and secure the property for which forfeiture
845 is sought. Process for seizure of the property shall issue only upon a showing of probable cause.
846 The application, issuance, execution, and return thereof shall be subject to the provisions of
847 chapter 276, as applicable.

848 (3) At a hearing under this section, the court shall hear evidence and make findings of
849 fact and conclusions of law, and shall issue a final order. The parties shall have a right of appeal
850 as from a decree in equity. No forfeiture under this section shall extinguish a perfected security
851 interest held by a creditor in the property at the time of the filing of the forfeiture action. In all
852 actions where a proceeding results in forfeiture, the final order shall provide for disposition of
853 the property by the commonwealth in any manner not prohibited by law, including official use
854 by an authorized law enforcement or other agency, or at sale at public auction or by competitive
855 bidding, with such sale being conducted by the office of the district attorney or the attorney
856 general that obtained the final order of forfeiture.

857 (4) The final order of the court shall provide that the proceeds of any such sale shall be
858 used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance
859 of custody, advertising and notice, and the balance of any such sale shall be distributed equally
860 among the prosecuting district attorney or attorney general, the city, town or state police
861 department involved in the forfeiture and the Victims of Drunk Driving Trust Fund established in
862 section 66 of chapter 10. If more than 1 department was substantially involved in the seizure, the
863 court having jurisdiction over the forfeiture proceeding shall distribute the portion for law
864 enforcement equitably among the departments.

865 (5) There shall be established within the office of the state treasurer a separate Operating
866 Under the Influence Deterrent Trust Fund for each district attorney and for the attorney general.
867 All monies and proceeds received by a prosecuting district attorney or attorney general pursuant
868 to this section shall be deposited in the fund and shall be expended without further appropriation
869 to defray the costs of investigations, to provide additional technical equipment or expertise, to
870 provide matching funds to obtain federal grants, or for such other law enforcement purposes as
871 the district attorney or attorney general deems appropriate. Any program seeking to be an
872 eligible recipient of the funds shall file an annual audit report with the local district attorney and
873 attorney general. Such report shall include, but not be limited to, a listing of the assets,
874 liabilities, itemized expenditures and board of directors of the program. Within 90 days of the
875 close of the fiscal year, each district attorney and the attorney general shall file an annual report
876 with the house and senate committees on ways and means on the use of the monies in the trust
877 fund for the purposes of deterring operating under the influence programs.

878 (6) All moneys and proceeds received by a police department shall be deposited into the
879 fund and shall be expended without further appropriation to defray the costs of investigations, to
880 provide additional technical equipment or expertise, to provide matching funds to obtain federal
881 grants, or to accomplish such other law enforcement purposes as the chief of police of such city

882 or town, or the colonel of state police deem appropriate, but such funds shall not be considered a
883 source of revenue to meet the operating needs of such department.

884 Chapter 90, § 24H - Aggravated OUI

885 (1) Any person aged 17 to 21 years, inclusive, who commits an operating under the
886 influence offense, and who has a blood alcohol content of .20% or above, shall also be guilty of
887 aggravated operating under the influence, and in addition to the penalties mandated in section
888 24D of this chapter, shall also be required to enter and complete a 14 day residential treatment
889 program as described in subdivision (b) of subsection (3) of that section. In cases where the
890 person is otherwise qualified for a disposition under subdivision (a) of subsection (3), the person
891 shall be required to complete the 14 day residential program in lieu of the outpatient program
892 specified therein.

893 Chapter 90, § 24I - Child Endangerment

894 (1) No person shall operate a motor vehicle on a public way while under the influence of
895 intoxicating liquor, drugs, or other substance with a child 14 years of age or younger in the
896 vehicle.

897 (a) A person convicted under this section shall be punished as follows:

898 (1) First offense: The defendant shall be imprisoned in a jail or house of correction for
899 not less than 90 days but not more than 2 ½ years and fined not less than $1,000 but not more
900 than $5,000.

901 (2) Subsequent offense: If there is a prior conviction for a violation of this subsection or
902 a like offense in another jurisdiction the defendant shall be imprisoned in a jail or house of
903 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
904 prison for not less than 3 years but not more than 5 years with a minimum mandatory term of 6
905 months and fined not less than $5,000 but not more than $10,000.

906 (b) Upon a conviction under this section the registrar shall suspend the license or right
907 to operate for an additional period as follows:

908 (1) First offense: 1 year

909 (2) Subsequent offense: 3 years

910 No appeal or motion for a new trial shall stay the suspension of the license or right to
911 operate.

912 (c) A sentence imposed under this subsection shall be served consecutively to and not
913 concurrently with the underlying operating under the influence offense. No case commenced

914 under this section shall be continued without a finding, or placed on file, or subject to the
915 provisions of section 87 of chapter 276.

916 Chapter 90, § 24J - Operating under the influence causing serious bodily injury

917 (1) No person shall operate a motor vehicle on a public way while under the influence of
918 intoxicating liquor, drugs, or other substances and by such operation cause serious bodily injury
919 to another person.

920 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
921 correction for not more than 2 ½ years or fined not more than $3,000, or both.

922 (2) No person shall operate a motor vehicle on a public way negligently or recklessly so
923 that the lives or safety of the public might be endangered while under the influence of
924 intoxicating liquor, drugs, or other substances and by such operation cause serious bodily injury
925 to another person.

926 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
927 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
928 prison for not less than 2 ½ years but not more than 10 years with a minimum mandatory term of
929 6 months and fined not more than $5,000. No case commenced under this section shall be
930 continued without a finding, or placed on file, or subject to the provisions of section 87 of
931 chapter 276.

932 (3) Upon a conviction under this section the registrar shall suspend the license or right to
933 operate for 2 years after the date of conviction. No appeal or motion for a new trial shall stay
934 the suspension of the license or right to operate, provided; however, if the charges against the
935 person are dismissed, or the person is found not guilty, the person may immediately file a motion
936 before the judge that heard the case, for the purpose of seeking restoration of the license or right
937 to operate. At said hearing, if the court finds that the charges were resolved in favor of the
938 defendant, that there are no alcohol related charges pending in this or any other court, and that
939 there is no evidence before the court based on a preponderance of the evidence that reinstatement
940 of the license or right to operate would endanger the public, there shall be a presumption that the
941 court shall order that this particular suspension be terminated.

942 (4) Upon a disposition under this section the court shall assess a $50 fee to the person.
943 The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
944 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
945 If the court sentences the person to a correctional facility the outstanding assessment shall be
946 noted on the mittimus.

947 (5) For purposes of this section "serious bodily injury" shall mean bodily injury which
948 creates a substantial risk of death or involves either total disability or the loss or substantial
949 impairment of some bodily function for a substantial period of time.

950 Chapter 90, § 24K (1) – Misdemeanor motor vehicle homicide – negligently or recklessly

951 (1) No person shall operate a motor vehicle on a public way negligently or recklessly so
952 that the lives or safety of the public might be endangered and by such operation cause the death
953 of another person.

954 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
955 correction for not less than 30 days but not more than 2 ½ years or fined not less than $300 but
956 not more than $3,000, or both. No case commenced under this subsection shall be continued
957 without a finding or placed on file.

958 (b) Upon a conviction under this subsection the registrar shall suspend the license or
959 right to operate as follows:

960 (1) First offense: 15 years after the date of conviction

961 (2) Subsequent offense: Lifetime

962 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
963 this subsection and has a prior operating under the influence offense, the registrar shall suspend
964 his license or right to operate for life.

965 No appeal or motion for a new trial shall stay the suspension of the license or right to
966 operate, provided; however, if the charges against the person are dismissed, or the person is
967 found not guilty, the person may immediately file a motion before the judge that heard the case,
968 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
969 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
970 related charges pending in this or any other court, and that there is no evidence before the court
971 based on a preponderance of the evidence that reinstatement of the license or right to operate
972 would endanger the public, there shall be a presumption that the court shall order that this
973 particular suspension be terminated.

974 (c) Upon a disposition under this section the court shall assess a $50 fee to the person.
975 The court shall transmit the $50 to the state treasurer to be deposited into the Victim's of Drunk
976 Driving Trust Fund. The assessment shall not be subjected to waiver by the court for any reason.
977 If the court sentences the person to a correctional facility the outstanding assessment shall be
978 noted on the mittimus.

979 Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence

980 (2) No person shall operate a motor vehicle on a public way under the influence of
981 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
982 person.

983 (a) A person convicted under this subsection shall be imprisoned in the jail or house
984 of correction for not less than 30 days but not more than 2 ½ years or fined not less than $300 but
985 not more than $3,000, or both. No case commenced under this subsection shall be continued
986 without a finding or placed on file.

987 (b) Upon a conviction under this subsection the registrar shall suspend the license or
988 right to operate as follows:

989 (1) First offense: 15 years after the date of conviction

990 (2) Subsequent offense: Lifetime

991 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
992 this subsection and has a prior operating under the influence offense, the registrar shall suspend
993 his license or right to operate for life.

994 No appeal or motion for a new trial shall stay the suspension of the license or right to
995 operate, provided; however, if the charges against the person are dismissed, or the person is
996 found not guilty, the person may immediately file a motion before the judge that heard the case,
997 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
998 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
999 related charges pending in this or any other court, and that there is no evidence before the court
1000 based on a preponderance of the evidence that reinstatement of the license or right to operate
1001 would endanger the public, there shall be a presumption that the court shall order that this
1002 particular suspension be terminated.

1003 (c) Upon a disposition under this section the court shall assess a $50 fee to the person.
1004 The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
1005 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
1006 If the court sentences the person to a correctional facility the outstanding assessment shall be
1007 noted on the mittimus.

1008 Chapter 90, § 24K (3) – Felony motor vehicle homicide

1009 (3) No person shall operate a motor vehicle negligently or recklessly on a public way so
1010 that the lives or safety of the public might be endangered while under the influence of
1011 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1012 person.

1013 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
1014 correction for a minimum mandatory term of 1 year but not more than 2 ½ years, or state prison
1015 for not less than 2 ½ years but not more than 15 years with a minimum mandatory term of 1 year
1016 and fined not more than $5,000. No case commenced under this subsection shall be continued
1017 without a finding or placed on file.

1018 (b) Upon a conviction under this subsection the registrar shall suspend the license or
1019 right to operate as follows:

1020 (1) First offense: 15 years after the date of conviction

1021 (2) Subsequent offense: Lifetime

1022 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1023 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1024 his license or right to operate for life.

1025 No appeal or motion for a new trial shall stay the suspension of the license or right to
1026 operate, provided; however, if the charges against the person are dismissed, or the person is
1027 found not guilty, the person may immediately file a motion before the judge that heard the case,
1028 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1029 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1030 related charges pending in this or any other court, and that there is no evidence before the court
1031 based on a preponderance of the evidence that reinstatement of the license or right to operate
1032 would endanger the public, there shall be a presumption that the court shall order that this
1033 particular suspension be terminated.

1034 (c) Upon a disposition under this section the court shall assess a $50 fee to the person.
1035 The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
1036 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
1037 If the court sentences the person to a correctional facility the outstanding assessment shall be
1038 noted on the mittimus.

1039 Chapter 90, § 24L - Manslaughter by motor vehicle

1040 (1) No person shall operate a motor vehicle wantonly and recklessly on a public way
1041 while under the influence of intoxicating liquor, drugs, or other substances and by such operation
1042 cause the death of another person.

1043 (a) A person convicted under this section shall be imprisoned in state prison for a
1044 minimum mandatory term of 5 years but not more than 20 years and fined not more than
1045 $25,000.

1046 (b) Upon a conviction of this section the registrar shall suspend the license or right to
1047 operate for 15 years to life. Any person aggrieved by the registrar's decision may file an appeal
1048 in the superior court. If the court determines that the registrar abused his discretion, the court
1049 may vacate and reduce the suspension of the license or the right to operate as ordered by the
1050 registrar. In no case shall the suspension period be less than 15 years.

1051 No appeal or motion for a new trial shall stay the suspension of the license or right to
1052 operate, provided; however, if the charges against the person are dismissed, or the person is
1053 found not guilty, the person may immediately file a motion before the judge that heard the case,
1054 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1055 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1056 related charges pending in this or any other court, and that there is no evidence before the court
1057 based on a preponderance of the evidence that reinstatement of the license or right to operate
1058 would endanger the public, there shall be a presumption that the court shall order that this
1059 particular suspension be terminated.

1060 (c) Notwithstanding the provisions of paragraph (b) above, if a person convicted
1061 under this section has a prior operating under the influence offense, the registrar shall suspend
1062 his license or right to operate for life.

1063 (d) Upon a disposition under this section the court shall assess a $50 fee to the person.
1064 The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
1065 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
1066 If the court sentences the person to a correctional facility the outstanding assessment shall be
1067 noted on the mittimus.

1068 Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials
1069 and agencies

1070 The officials and agencies designated in this section are hereby directed to perform the
1071 duties in this section and any other action within their authority in order to ensure effective
1072 enforcement of chapter 90 section 24 to 24M, inclusive.

1073 (1) The municipal police training committee established in section 116 of chapter 6 shall
1074 provide training, including but not limited to, education concerning the aforesaid sections to all
1075 law enforcement personnel throughout the commonwealth.

1076 (2) The chief administrative justice of the trial court department shall provide training,
1077 including but not limited to education concerning the aforesaid sections to all appropriate court
1078 personnel throughout the commonwealth, including but not limited to, judges, district attorneys
1079 and probation officers.

1080 (3) The courts of the Commonwealth shall give priority to the speedy and effective
1081 disposition of all matters under the aforesaid sections.

1082 (4) The executive office of public safety shall establish and implement an alcohol
1083 sensitive selective traffic enforcement program.

1084 SECTION 4.

1085 Chapter 90B of the General Laws is hereby amended by adding the following:

1086 Section 8B ½ -

1087 (5) No person shall operate a vessel on the waters of the commonwealth wantonly and
1088 recklessly while under the influence of intoxicating liquor, drugs, or other substances and by
1089 such operation cause the death of another person.

1090 (a) A person convicted under this section shall be imprisoned in state prison for a
1091 minimum mandatory term of 5 years but not more than 20 years and fined not more than
1092 $25,000.

1093 (b) Upon a conviction of this section the registrar shall suspend the person's license
1094 or right to operate for 15 years to life. Any person aggrieved by the registrar's decision may file
1095 an appeal in the superior court. If the court determines that the registrar abused his discretion,
1096 the court may vacate and reduce the suspension of the license or suspension of the right to
1097 operate as ordered by the registrar. In no case shall the suspension or suspension period be less
1098 than 15 years.

1099 No appeal or motion for a new trial shall stay the suspension of the license or right to
1100 operate, provided; however, if the charges against the person are dismissed, or the person is
1101 found not guilty, the person may immediately file a motion before the judge that heard the case,
1102 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1103 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1104 related charges pending in this or any other court, and that there is no evidence before the court
1105 based on a preponderance of the evidence that reinstatement of the license or right to operate
1106 would endanger the public, there shall be a presumption that the court shall order that this
1107 particular suspension be terminated.

1108 (c) Notwithstanding the provisions of paragraph (b) above, if a person convicted under
1109 this section has a prior operating under the influence offense, the registrar shall suspend his
1110 license or right to operate for life

1111 SECTION 5.

1112 Section 13 ½ of Chapter 265 of the General Laws is hereby repealed.

1113 SECTION 6.

1114 Section 28 of Chapter 266 is hereby amended by inserting at the end:

1115 (d) Whoever knowingly uses a motor vehicle without authority shall be punished as
1116 follows:

1117 (1) First offense: The defendant shall be imprisoned in the jail or house of correction for
1118 not less than 30 days but not more than 2 years, or fined not less than $50 but not more than $500
1119 or both.

1120 (2) Second offense: The defendant shall be imprisoned in jail or house of correction for
1121 not less than 30 days but not more than 2 ½ years, or state prison for not more than 5 years, or
1122 fined not less than $1000, or both.

1123 (3) Third offense within 5 years: The defendant shall be imprisoned in jail or house of
1124 correction for not less than 6 months but not more than 2 ½ years, or state prison for not less than
1125 2 ½ years but not more than 5 years, or a fine of not less than $200 but not more than $1,000, or
1126 both.

1127 Upon a conviction of this subsection the registrar shall, unless the court or magistrate
1128 recommends otherwise, suspend the license or right to operate as follows:

1129 (a) First offense: 1 year

1130 (b) Subsequent offense: 3 years

1131 No appeal or motion for a new trial shall stay the suspension of the license or right to
1132 operate, provided; however, that if the prosecution against such person has terminated in his
1133 favor, the registrar shall immediately reinstate his license or right to operate provided; however,
1134 if the charges against the person are dismissed, or the person is found not guilty, the person may
1135 immediately file a motion before the judge that heard the case, for the purpose of seeking
1136 restoration of the license or right to operate. At said hearing, if the court finds that the charges
1137 were resolved in favor of the defendant, that there are no alcohol related charges pending in this
1138 or any other court, and that there is no evidence before the court based on a preponderance of the
1139 evidence that reinstatement of the license or right to operate would endanger the public, there
1140 shall be a presumption that the court shall order that this particular suspension be terminated.

1141 (4) Upon a conviction of this section, if it appears from the records of the registrar that
1142 the person convicted is the owner of the motor vehicle or has exclusive control of any motor
1143 vehicle as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of
1144 registration of any or all motor vehicles owned or exclusively controlled by the person.

1145 (5) A summons may be issued instead of a warrant for arrest upon a complaint for a
1146 violation of this section if there is reason to believe the defendant will appear before the court.

1147 If a motor vehicle is used in connection with the commission of a felony, of any larceny,
1148 or of any offense punishable under any provision of sections 22, 113 to 117, inclusive, and 120
1149 of chapter 266, or sections 13 of 269, of which a person is convicted, the material facts relative
1150 to such use, including the registration number of the vehicle, so far as disclosed in the
1151 proceedings, shall be reported forthwith to the registrar by the clerk of the court in which the
1152 underlying conviction occurs.

1153 SECTION 7.

1154 Section 28(a) of Chapter 266 is hereby amended by inserting subsection (e) as follows:

1155 (e) Persons convicted of using a motor vehicle without authority under the provisions
1156 of paragraph (d) of section 28 shall be liable in a civil action to the owner of such vehicle, if it is
1157 recovered, for all towing and storage charges necessitated and all property damage caused to said
1158 vehicle by such use without authority.

1159 SECTION 8.

1160 Section 24(2) (a) of Chapter 90 is hereby amended by striking from lines 742, 743, 744,
1161 and 745 the following:

1162 or upon a bet or wager or in a race, or whoever operates a motor vehicle for the purpose
1163 of making a record and thereby violates any provision of section seventeen or any regulation
1164 under section eighteen

1165 SECTION 9.

1166 Section 17B of Chapter 90 is hereby amended by inserting in line 8 after the word “and”
1167 the following:

1168 by imprisonment for not less than 2 weeks but not more than 2 years.

1169 SECTION 10.

1170 Section 17B of Chapter 90 is hereby amended by inserting in line 11 after the word “and”
1171 the following:

1172 by imprisonment in a jail or house of correction for not less than 30 days but not more
1173 than 2 ½ years, or state prison for not more than 5 years.

1174 SECTION 11.

1175 Section 22(c) of Chapter 90 is hereby amended by striking the words, “state or country”
1176 in line 51 and inserting the following:

1177 Jurisdiction

1178 SECTION 12.

1179 Chapter 266 of the General Laws is hereby amended by adding the following:

1180 Section 29A -

1181 (6) No person shall remove an abandoned or stolen motor vehicle on a public way as
1182 defined in section 1 of chapter 90 without the express consent of the owner of such vehicle or
1183 without the written permission of the police department. The owner or operator of a motor
1184 vehicle that is designed to carry or tow another vehicle shall be licensed for that specific purpose
1185 or as a towing service.

1186 The owner of any machine that is designed to crush, mutilate or destroy a motor vehicle,
1187 whether the machine be mobile or affixed permanently, shall have that machine listed with the
1188 registry of motor vehicles.

1189 If the owner or agent of a salvage or junk yard transports crushed or mutilated vehicles
1190 without the commonwealth for purposes of resale, the operator of the transporting vehicle shall
1191 carry a list of the vehicles being transported, and a copy of such list shall be forwarded to said
1192 registrar.

1193 (c) Any person convicted under this section shall be imprisoned for not less than 2
1194 years, a fine of not less than $1,000, or both.

1195 (d) Any person convicted under this section shall forfeit, to the registrar, any license
1196 issued which is related to such violation.