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 adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Katherine M. Clark	*Fifth Middlesex*
Massachusetts District Attorneys Assoc.	*One Bullfinch Place Suite 202 Boston, MA 02114*
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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

In the Year Two Thousand Eleven

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

Operating under the influence offense: Any conviction, nolo contendere plea, continuation without a finding with an assignment to an alcohol, drug or substance abuse

education treatment program for operating under the influence under chapter 90, chapter 90A , chapter 90B, or chapter 265, or of a like offense of operating under the influence from another jurisdiction.

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

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

Under the influence:

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

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

SECTION 2.

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

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

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

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

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

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

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

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

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

(c) Notwithstanding the preceding paragraph or any other general or special law to the contrary, whoever has not been previously found responsible for or convicted of, or against whom a finding of delinquency or a finding of sufficient facts to support a conviction has not been rendered on, a complaint charging a violation of operating a motor vehicle after his license to operate has been suspended or revoked, or after notice of the suspension or revocation of his

right to operate a motor vehicle without a license has been issued by the registrar and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or to the issuance to him of a new license to operate shall be punished by a fine of not more than $500. This paragraph shall not apply to any person who is charged with operating a motor vehicle after his license to operate has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of section 24, or section 24D, 24E, 24G, 24L or 24N of this chapter, subsection (a) of section 8 or section 8A or 8B of chapter 90B, section 8, 9 or 11 of chapter 90F or after notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license or right to operate because of any such violation.

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

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

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

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

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

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

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

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

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

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

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

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

(a) A person convicted under this subsection shall be imprisoned in a jail or house of correction for a minimum mandatory term of 1 year but not more than 2 ½ years and fined not less than $2,500 but not more than $10,000. No case commenced under this subsection shall be continued without a finding, or placed on file, or subject to the provisions of section 87 of chapter 276.

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

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

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

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

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

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

SECTION 3.

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

Chapter 90, § 24 - False statements in an application

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

(2) No person shall procure or assist another to falsely make, steal, alter, forge, or counterfeit, a learner's permit, a license to operate a motor vehicle, an identification card issued

under section 8E of this chapter, a certificate of registration of a motor vehicle or trailer or an inspection sticker.

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

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

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

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

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

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

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

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

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

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

(1) First offense: 60 days

(2) Subsequent offense within 3 years: 1 year

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

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

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

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

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

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

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

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

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

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

Chapter 90, § 24B - Negligent/Reckless operation

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

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

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

(a) First offense: 60 days

(b) Subsequent offense within 3 years: 1 year

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

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

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

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

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

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

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

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

(1) First offense: 60 days

(2) Subsequent offense within 3 years: 1 year

No appeal or motion for a new trial shall stay the suspension of the license or right to operate provided; however, if the charges against the person are dismissed, or the person is found

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

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

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

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

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

(a) A person convicted of this subsection shall be imprisoned in a jail or house of correction for not less than 6 months but not more than 2 years and fined not less than $500 but

not more than $1,000. No case commenced under this subsection shall be continued without a finding or placed on file.

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

(1) First offense: 1 year

(2) Subsequent offense: 2 years

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

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

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

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

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

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

(1) First offense: 3 years

(2) Subsequent offense: 10 years

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

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

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

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

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

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

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

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

(d) Fourth Offense: If there are 3 prior operating under the influence offenses, the defendant shall be imprisoned in a jail or house of correction for not less than 2 years but not

more than 2 ½ years, or state prison for not less than 2 ½ years but not more than 5 years with a minimum mandatory term of 1 year and fined not less than $1,500 but not more than $25,000.

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

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

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

(h) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and

informational data from records of the department of probation, any jail or house of correction, the department of correction, or the registry of motor vehicles, shall be prima facie evidence that the defendant before the court has been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or of a like offense from any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions or assignments to alcohol or controlled substance education, treatment, or rehabilitation programs described therein. The commonwealth shall not be required to introduce any additional corroborative evidence, nor live witness testimony to establish the validity of such prior offenses.

(i) No prosecutions under this section shall be continued without a finding except for cases disposed of pursuant to the provisions of subdivision (a) of subsection (3) of this section. No prosecutions under this section shall be placed on file, or subject to the provisions of section 87 of chapter 276. At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this section, the prosecutor may apply for the issuance of a new complaint pursuant to section 35A of chapter 218 alleging a violation of this section and 1 or more prior operating under the influence offenses. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense. Upon any conviction or continuation without a finding under this section, the court shall order that any license issued

by the commonwealth be surrendered to the probation department, and disposed of in a manner prescribed by the registrar. The clerk of courts shall notify the registrar forthwith of the disposition.

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

(k) Upon a disposition for an operating under the influence offense as defined in section (1) of this chapter the court shall ask the defendant whether he was served alcohol prior to his violation at an establishment licensed to serve alcohol. If the defendant answers in the affirmative, the defendant shall provide the name and address of the establishment. The clerk's office shall provide in writing to the Alcohol Beverage Control Commission the name of the establishment and date of offense given by the defendant. The Alcohol Beverage Control Commission shall inform the named establishment of this incident forthwith. The trial court shall, in conjunction with the Alcohol Beverage Control Commission, promulgate a standard form for reporting and collecting said information. The Alcohol Beverage Control Commission shall provide an annual report including the collected data to the attorney general, each district attorney, and the local liquor licensing authorities.

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

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

(3) Alternative Dispositions

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

If a person is sentenced to an alternative disposition, notwithstanding the provisions of subsection (5) of this section, the court shall impose a suspension of the defendant's license or right to operate for not less than 45 days nor more than 90 days if said person was over the age of 21 at the time of the offense, or 210 days if said person was under the age of 21 at the time of offense. A person may immediately apply for a hardship license following disposition and enrollment into the treatment program required by this subsection. In all cases where a hardship license is sought, the probation office where the offender is or was on probation will, upon request, furnish the registrar with documentation verifying the person's status with probation. Hardship licenses under this subsection shall be issued under such terms and conditions as the

registrar may prescribe, after the registry is convinced that the issues that this offense(s) arose from have been dealt with by the operator and brought under control. Said hardship license shall be issued, subject to the agency's discretion, upon a showing of hardship for work, education, or other purpose the registrar deems valid and significant, and shall be for an identical 12 hour period, 7 days a week. Notwithstanding the above, if the records of the registrar contain additional information regarding operating under the influence offenses, the registrar shall suspend the license in accordance with subsection (5) of this section. A person shall be presumed to be a suitable candidate for this disposition after trial unless otherwise prohibited by this section. In cases where an eligible person is not granted such a disposition should he or she seek it, the court shall make written findings supporting its decision.

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

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

Each person placed in such a program shall pay a program fee as determined by the department of public health. The program fee shall not exceed the cost per client to run the program. The department of public health shall compile a schedule of uniform fees for these programs, which shall be changed only after notice and public hearing. The department shall promulgate rules and regulations regarding the process and methodology of setting these fees. No person shall be denied entry into a program where the court, after review and investigation by

the probation department, determines that the defendant is indigent, and has filed such an affidavit with the court. The court may then waive or reduce said fee on a case by case basis. Subject to appropriation, the department of public health shall reimburse each program for the costs of services provided to persons for whom payment of a fee has been waived or reduced on the grounds of indigency.

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

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

The commissioner of probation shall annually report to the department of public health the number of persons who receive an alternative disposition and the number of persons who have been required by the court to participate in alcohol or controlled substance abuse treatment or rehabilitation programs. In addition, the commissioner of probation, and the chief justice of

the district courts and the Boston Municipal Court shall annually report to the department of public health the resources available for alcohol and controlled substance abuse treatment and rehabilitation of alcohol-impaired or controlled substance abuse-impaired drivers. The report shall evaluate the existing resources and shall make recommendations as to any additional resources. The department of public health shall take such reports into consideration in the development, implementation, and review of the state's alcoholism or controlled substance abuse plan and in the preparation of the division's annual budget in a manner consistent with the Alcoholism Treatment and Rehabilitation Law.

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

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

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

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

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

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

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

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

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

(e) Fifth or subsequent offense: Lifetime.

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

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

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

Chapter 90, § 24E – Implied Consent

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

In any prosecution for an operating under the influence offense, evidence of a defendant's blood alcohol content at the time of offense, shown by breath or blood, is relevant and admissible to determine whether the defendant was under the influence of intoxicating liquor as defined in section 1 of this chapter, if test was conducted by or at the direction of a police officer, with the

consent of the defendant. Upon the defendant's request the results of said test shall be made available to him. In any case where a test is given, the defendant shall have the right to have another test done at his own expense, by a physician of his choosing.

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

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

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

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

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

(2) Upon any refusal by the person arrested of a test required by this section, after the person has been informed that his license or right to operate a motor vehicle shall be suspended

for the refusal, the registrar shall immediately suspend the person's license or right to operate as follows:

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

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

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

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

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

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

(g) No hardship licenses on suspensions for test refusals shall be granted, except for candidates that have properly received dispositions pursuant to subsection 3 of section 24D of this chapter. Any suspensions under this section shall be consecutive with any suspension or suspension for the underlying operation under the influence offense. Notwithstanding that, if the charges against the person are dismissed, or the person is found not guilty, the person may

immediately file a motion before the judge that heard the case, for the purpose of seeking restoration of the license or right to operate. At said hearing, if the court finds that the charges were resolved in favor of the defendant, that there are no alcohol related charges pending in this or any other court, and that there is no evidence before the court based on a preponderance of the evidence that reinstatement of the license or right to operate would endanger the public, there shall be a presumption that the court shall order that this particular suspension be terminated.

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

(i) If the registrar rules that the suspension for refusal was proper, the appellant may file a petition for judicial review in the district court having jurisdiction over the underlying operation under the influence charge within 30 days of the registrar's decision. The court must then schedule a hearing within 30 days of the appellant's application, unless the appellant has waived this time requirement. The petition shall be filed in the nature of a civil action

challenging the action of an administrative agency, and shall be an administrative review limited to the record, including the evidence and arguments, compiled at the hearing. Along with the submission of the record, the registrar shall prepare written findings supporting the reasons for denying the petition for the court to review. If the court rules in the appellant's favor, the court shall prepare specific findings indicating the reasons for reversing the registrar's determination, and send the findings to the registrar forthwith. The registrar shall restore the license, absent any other reasons for suspension. In cases where other suspensions exist, the registrar shall then terminate this suspension for refusal, but maintain any other valid suspensions.

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

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

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

there shall be a presumption that the court shall order that this particular suspension be terminated.

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

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

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

(1) one adequate breath sample analysis

(2) one calibration standard analysis

(3) a second adequate breath sample analysis

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

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

The secretary of public safety shall prescribe uniform formats, electronic or otherwise, for reports of such chemical analysis to be used by law enforcement officers and others acting in accordance with the provisions of this chapter. The reports generated in these formats shall be sequentially numbered. Each chief of police or other officer or official having charge or control of a law enforcement agency shall be responsible for the proper availability of these formats. Each party so responsible shall prepare or cause to be prepared such records and reports relating to such uniform formats and their disposition in such manner and at such times as the secretary of public safety shall prescribe.

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

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

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

(3) the results of any failed test;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the defendant was given a test;

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

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

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

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

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

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

(b) If the prosecutor makes a prima facie showing at arraignment that the defendant was arrested for operating on any such way or place while under the influence of intoxicating liquor and refused a test of his breath or blood, the judge shall take immediate physical

possession of the license or permit and shall direct the prosecuting officer to immediately notify the criminal history systems board and the registrar of such suspension. The defendant's license or right to operate shall be suspended as follows:

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

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

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

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

(1) Any person refusing a test under this section shall have a right, at his request, to a hearing before the registrar to determine if grounds exist for the suspension. Any hearing request shall be made within 10 days of the incident giving rise to this suspension. The hearing shall be

limited to the issues of whether or not a blood test administered pursuant to section 24E of this chapter, within a reasonable period of time after a test of his breath, shows that that the blood alcohol content was less than .08% or less than .02% if the person was under the age of 21 at the time of the offense.

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

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

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

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

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

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

Chapter 90, § 24F – Ignition Interlock Devices

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

Each device shall be subject to inspection, maintenance, and monitoring as the registrar may prescribe. No ignition interlock device utilized under this section shall allow a vehicle to start if a person's blood alcohol content exceeds .02%. The registrar shall promulgate such rules and regulations as deemed necessary regarding this section.

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

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

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

if the licensee has:

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 90, § 24G – Motor Vehicle Forfeitures

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

(2) A district attorney or the attorney general may petition the superior or district court, in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of such motor vehicle or vessel. The petition shall be filed in the court having jurisdiction over the criminal proceeding brought under this chapter or chapter 90B. The proceeding shall be deemed

a civil suit in equity. In all such actions where the motor vehicle or vessel is jointly owned by either a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the defendant's household, before the date of the second or subsequent operating under the influence offense committed by the defendant, the commonwealth shall have the burden of proving the existence of probable cause to institute the action. The claimant shall have the burden of proving that the property is not forfeitable because the claimant is dependent on the motor vehicle or vessel for his livelihood or the maintenance of his family.

The court shall order the commonwealth to give notice, by certified or registered mail, to the owners of the motor vehicle or vessel and, to such other persons or entities who appear to have an interest therein. The court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court may continue the hearing on the petition pending the outcome of a criminal trial related to a charge of operating under the influence in violation of this chapter or chapter 90B. During the pendency of the proceedings, the court may issue, at the request of the commonwealth, ex parte, any preliminary order or process necessary to seize and secure the property for which forfeiture is sought. Process for seizure of the property shall issue only upon a showing of probable cause. The application, issuance, execution, and return thereof shall be subject to the provisions of chapter 276, as applicable.

(3) At a hearing under this section, the court shall hear evidence and make findings of fact and conclusions of law, and shall issue a final order. The parties shall have a right of appeal as from a decree in equity. No forfeiture under this section shall extinguish a perfected security interest held by a creditor in the property at the time of the filing of the forfeiture action. In all actions where a proceeding results in forfeiture, the final order shall provide for disposition of

the property by the commonwealth in any manner not prohibited by law, including official use by an authorized law enforcement or other agency, or at sale at public auction or by competitive bidding, with such sale being conducted by the office of the district attorney or the attorney general that obtained the final order of forfeiture.

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

(5) There shall be established within the office of the state treasurer a separate Operating Under the Influence Deterrent Trust Fund for each district attorney and for the attorney general. All monies and proceeds received by a prosecuting district attorney or attorney general pursuant to this section shall be deposited in the fund and shall be expended without further appropriation to defray the costs of investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or for such other law enforcement purposes as the district attorney or attorney general deems appropriate. Any program seeking to be an eligible recipient of the funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures and board of directors of the program. Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report

with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of deterring operating under the influence programs.

(6) All moneys and proceeds received by a police department shall be deposited into the fund and shall be expended without further appropriation to defray the costs of investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deem appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

Chapter 90, § 24H - Aggravated OUI

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

Chapter 90, § 24I - Child Endangerment

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

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

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

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

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

(1) First offense: 1 year

(2) Subsequent offense: 3 years

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

(c) A sentence imposed under this subsection shall be served consecutively to and not concurrently with the underlying operating under the influence offense. No case commenced under this section shall be continued without a finding, or placed on file, or subject to the provisions of section 87 of chapter 276.

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

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

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

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

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

(3) Upon a conviction under this section the registrar shall suspend the license or right to operate for 2 years after the date of conviction. No appeal or motion for a new trial shall stay the suspension of the license or right to operate, provided; however, if the charges against the person are dismissed, or the person is found not guilty, the person may immediately file a motion before the judge that heard the case, for the purpose of seeking restoration of the license or right to operate. At said hearing, if the court finds that the charges were resolved in favor of the defendant, that there are no alcohol related charges pending in this or any other court, and that

there is no evidence before the court based on a preponderance of the evidence that reinstatement of the license or right to operate would endanger the public, there shall be a presumption that the court shall order that this particular suspension be terminated.

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

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

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

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

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

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

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

(2) Subsequent offense: Lifetime

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

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

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

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

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

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

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

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

(2) Subsequent offense: Lifetime

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

No appeal or motion for a new trial shall stay the suspension of the license or right to operate, provided; however, if the charges against the person are dismissed, or the person is found not guilty, the person may immediately file a motion before the judge that heard the case, for the purpose of seeking restoration of the license or right to operate. At said hearing, if the court finds that the charges were resolved in favor of the defendant, that there are no alcohol related charges pending in this or any other court, and that there is no evidence before the court based on a preponderance of the evidence that reinstatement of the license or right to operate

would endanger the public, there shall be a presumption that the court shall order that this particular suspension be terminated.

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

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

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

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

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

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

(2) Subsequent offense: Lifetime

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

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

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

Chapter 90, § 24L - Manslaughter by motor vehicle

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

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

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

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

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

(d) Upon a disposition under this section the court shall assess a $50 fee to the person. The court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk

Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If the court sentences the person to a correctional facility the outstanding assessment shall be noted on the mittimus.

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

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

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

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

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

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

SECTION 4.

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

Section 8B ½ -

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

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

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

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

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

SECTION 5.

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

SECTION 6.

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

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

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

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

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

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

(a) First offense: 1 year

(b) Subsequent offense: 3 years

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

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

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

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

SECTION 7.

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

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

SECTION 8.

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

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

SECTION 9.

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

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

SECTION 10.

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

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

SECTION 11.

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

Jurisdiction

SECTION 12.

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

Section 29A -

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

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

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

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

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