

HOUSE No. 1278

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 relative to ignition interlock licensing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael A. Costello</i>	<i>1st Essex</i>	<i>1/18/2013</i>

HOUSE No. 1278

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 1278) of Michael A. Costello relative to the use of ignition interlock devices by certain persons who have had their license or right to operate motor vehicles revoked. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to ignition interlock licensing.

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

1 SECTION 1. Subsection (1)(c) of section 24 of chapter 90 of the General Laws, as so
2 appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and
3 replacing with the following:-

4 (c)(1) Where the license or right to operate has been revoked under section twenty-four
5 D or twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a
6 like offense or has not been assigned to an alcohol or controlled substance education, treatment
7 or rehabilitation program because of a like offense by a court of the commonwealth or any other
8 jurisdiction preceding the date of the commission of the offense for which he has been convicted,
9 the registrar shall not restore the license or reinstate the right to operate to such person unless the
10 prosecution of such person has been terminated in favor of the defendant, until one year after the
11 date of conviction; provided, however, that such person may apply after receiving notice of the
12 revocation from the registry for the issuance of an ignition interlock license. Mandatory
13 restrictions on an ignition interlock license granted by the registrar under this subparagraph shall
14 be that such person provides proof in a format acceptable to the registrar that a functioning
15 ignition interlock device is installed and will be maintained on any and all vehicles to be
16 operated by the person for the duration of the ignition interlock license; and that such person
17 provides proof to the registrar of compliance with the terms and conditions of probation. Failure
18 of the operator to remain in compliance with court probation may be cause for immediate
19 revocation of the ignition interlock license.

20 (2) Where the license or the right to operate of a person has been revoked under
21 paragraph (b) and such person has been previously convicted of or assigned to an alcohol or

controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until four years after the date of the conviction; provided, however, that such person may, after receiving notice of the revocation from the registry, apply for the issuance of an ignition interlock license. Such person shall provide proof in a format acceptable to the registrar that the person has enrolled in, and has successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-four D, or has completed the incarcerated portion of the sentence. Mandatory restrictions on an ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device is installed and will be maintained on any and all vehicles to be operated by the licensee for the duration of the ignition interlock license; and that such person provides proof to the registrar of compliance with the terms and conditions of probation Failure of the operator to remain in compliance with court probation may be cause for immediate revocation of the ignition interlock license

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section due to a prior revocation under paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after completion of the incarcerated portion of the sentence, apply for an ignition interlock license for the balance of the eight year revocation period. Mandatory restrictions on an ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device is installed and will be maintained on any and all vehicles to be operated by the licensee for the duration of the ignition interlock license; and that such person provides proof to the registrar of compliance with the terms and conditions of probation Failure of the operator to complete his obligations to the program, or remain in compliance with court probation, may be cause for immediate revocation of the ignition interlock license.

(3½) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the

commonwealth or any other jurisdiction because of a like violation three times preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant; provided, however, that such person may, after the completion of the incarcerated portion of the sentence, apply for the issuance of an ignition interlock license. Such ignition interlock license shall not be removed for the life of such person, provided however, the person may petition the registrar for removal not less than 10 years after the issuance of such license and not less than every 5 years thereafter. Mandatory restrictions on ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device is installed and will be maintained on any and all vehicles to be operated by the licensee for the duration of the ignition interlock license; and that such person provides proof to the registrar of compliance with any terms and conditions of probation. Failure of the operator to remain in compliance with probation, may be cause for immediate revocation of the ignition interlock license

(3¾) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation four or more times preceding the date of the commission of the offense for which such person has been convicted, such person's license or right to operate a motor vehicle shall be revoked for the life of such person, and such person shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person has been terminated in favor of such person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section.

An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section, however a person who applies for an ignition interlock license waives his or her right to such appeal.

(4) 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 corrections, the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or 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

100 court of the commonwealth to prove the defendant's commission of any prior convictions
101 described therein. The commonwealth shall not be required to introduce any additional
102 corroborating evidence, nor live witness testimony to establish the validity of such prior
103 convictions.

104 SECTION 2. Subsection (f) of section 24 of chapter 90 of the General Laws, as so
105 appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and
106 replacing with the following:-

107 (f) (1) Whoever operates a motor vehicle upon any way or in any place to which the
108 public has right to access, or upon any way or in any place to which the public has access as
109 invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis
110 of his breath or blood in the event that he is arrested for operating a motor vehicle while under
111 the influence of intoxicating liquor; provided, however, that no such person shall be deemed to
112 have consented to a blood test unless such person has been brought for treatment to a medical
113 facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no
114 person who is afflicted with hemophilia, diabetes or any other condition requiring the use of
115 anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be
116 administered at the direction of a police officer, as defined in section 1 of chapter 90C, having
117 reasonable grounds to believe that the person arrested has been operating a motor vehicle upon
118 such way or place while under the influence of intoxicating liquor. If the person arrested refuses
119 to submit to such test or analysis, after having been informed that his license or permit to operate
120 motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a
121 period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall
122 be made and he shall have his license or right to operate suspended in accordance with this
123 paragraph for a period of 180 days; provided, however, that any person who is under the age of
124 21 years or who has been previously convicted of a violation under this section, subsection (a) of
125 section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight
126 one-hundredths or greater, or while under the influence of intoxicating liquor in violation of
127 subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B,
128 section 8A or 8B of said chapter 90B, or section 131/2 of chapter 265 or a like violation by a
129 court of any other jurisdiction shall have his license or right to operate suspended forthwith for a
130 period of 3 years for such refusal; provided, further, that any person previously convicted of 2
131 such violations shall have his license or right to operate suspended forthwith for a period of 5
132 years for such refusal; and provided, further, that a person previously convicted of 3 or more
133 such violations shall have his license or right to operate suspended forthwith for life based upon
134 such refusal. If a person refuses to submit to any such test or analysis after having been convicted
135 of a violation of section 24L, the registrar shall suspend his license or right to operate for 10
136 years. If a person refuses to submit to any such test or analysis after having been convicted of a
137 violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight
138 of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating

liquor in violation of subsection (b) of said section 24G, or section 131/2 of chapter 265, the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

(ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and

(iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

A person who refused to submit to such test or analysis may apply, on or after the disposition date or completion of the incarcerated portion of the sentence in accordance with sections 24(1)(c)(1), 24(1)(c)(2), 24(1)(c)(3), 24(1)(c)(31/2), 24D, 24L, and 24M of chapter 90 the General Laws, for the issuance of an ignition interlock license for the balance of the revocation period listed in this subsection.

Mandatory restrictions on an ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that

a functioning ignition interlock device is installed and will be maintained on any and all to be operated by the licensee for the duration of the ignition interlock license; and that such person provides proof to the registrar of compliance with the terms and conditions of probation. Failure of the operator to remain in compliance with court probation, may be cause for immediate revocation of the ignition interlock license..

The defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 131/2 of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

(2) If a person's blood alcohol percentage is not less than eight one-hundredths or the person is under twenty-one years of age and his blood alcohol percentage is not less than two one-hundredths, such police officer shall do the following:

(i) immediately and on behalf of the registrar take custody of such person's drivers license or permit issued by the commonwealth;

(ii) provide to each person who refuses the test, on behalf of the registrar, a written notification of suspension, in a format approved by the registrar; and

(iii) immediately report action taken under this paragraph to the registrar. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer. Each report shall set forth the grounds for the officer's belief that the person arrested has been operating a motor vehicle on any way or place while under the influence of intoxicating liquor and that the person's blood alcohol percentage was not less than .08 or that the person was under 21 years of age at the time of the arrest and whose blood alcohol percentage was not less than .02. The report shall indicate that the person was administered a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of the test or analysis, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for the test was regularly serviced and maintained and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend, in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate confiscated under this clause shall be forwarded to the registrar forthwith.

211 The license suspension shall become effective immediately upon receipt by the
212 offender of the notice of intent to suspend from a police officer. The license to operate a motor
213 vehicle shall remain suspended until the disposition of the offense for which the person is being
214 prosecuted, but in no event shall such suspension pursuant to this subparagraph exceed 30 days.

215 A suspension for failure of a chemical test or analysis of breath or blood shall run
216 consecutively, both as to any additional suspension periods arising from the same incident, and
217 as to each other. A person issued an ignition interlock license under this subsection shall receive
218 day for day credit against any additional ignition interlock requirement arising from the same
219 incident.

220 In any instance where a defendant is under the age of twenty-one years and such evidence
221 is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or
222 greater and upon the failure of any police officer pursuant to this subparagraph, to suspend or
223 take custody of the driver's license or permit issued by the commonwealth, and, in the absence of
224 a complaint alleging a violation of paragraph (a) of subdivision (1) or a violation of section
225 twenty-four G or twenty-four L, the registrar shall administratively suspend the defendant's
226 license or right to operate a motor vehicle upon receipt of a report from the police officer who
227 administered such chemical test or analysis of the defendant's blood pursuant to subparagraph
228 (1). Each such report shall be made on a form approved by the registrar and shall be sworn to
229 under the penalties of perjury by such police officer. Each such report shall set forth the grounds
230 for the officer's belief that the person arrested had been operating a motor vehicle on a way or
231 place while under the influence of intoxicating liquor and that such person was under twenty-one
232 years of age at the time of the arrest and whose blood alcohol percentage was two one-
233 hundredths or greater. Such report shall also state that the person was administered such a test or
234 analysis, that the operator administering the test or analysis was trained and certified in the
235 administration of such test, that the test was performed in accordance with the regulations and
236 standards promulgated by the secretary of public safety, that the equipment used for such test
237 was regularly serviced and maintained, and that the person administering the test had every
238 reason to believe that the equipment was functioning properly at the time the test was
239 administered. Each such report shall be endorsed by the police chief as defined in section one of
240 chapter ninety C, or by the person authorized by him, and shall be sent to the registrar along with
241 the confiscated license or permit not later than ten days from the date that such chemical test or
242 analysis of the defendant's blood was administered. The license to operate a motor vehicle shall
243 thereupon be suspended in accordance with section twenty-four P.

244 SECTION 3. Section 24 ½ of chapter 90, as so appearing in the 2010 Official Edition,
245 is hereby amended by striking the text in its entirety and replacing with the following:-

246 Section 24 ½ . No person whose license has been suspended in the commonwealth or
247 any other jurisdiction by reason of: an assignment to an alcohol or controlled substance
248 education, treatment or rehabilitation program; or a conviction for violating paragraph (a) of

subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, section 13 1/2 of chapter 265, subsection (a) of section 8 of chapter 90B, section 8A or 8B of chapter 90B or, in the case of another jurisdiction, for any like offense, shall be issued a new license or right to operate or have his license or right to operate restored if he has previously been so assigned or convicted, unless such person provides proof in a format acceptable to the registrar that such person has a functioning ignition interlock device installed on any and all vehicles to be operated by that person as a precondition to the issuance of a new license or right to operate or the restoration of such person's license or right to operate.

Any person whose license or right to operate is restricted to operating vehicles equipped with a functioning ignition interlock device shall have such device inspected, maintained and monitored in accordance with such regulations as the registrar shall promulgate. The registrar may extend, for up to two years, the period of the ignition interlock restriction on the license of a licensee who removes, tampers with or circumvents the proper operation of such device or who fails on two or more occasions during the period of the restricted license or right to operate, to have it inspected, maintained or monitored within ten days of the end of each inspection, maintenance, or monitoring period as required by such regulations as the registrar shall promulgate, or if during the period of the restricted license or right to operate, the licensee has recorded in such device on at least two occasions, a two or more blood alcohol tests in excess of .02 within any fifteen minute period of time.

A person aggrieved by a decision of the registrar pursuant to this section may file an appeal in the superior court of the trial court department. If the court determines that the registrar abused his discretion, the court may vacate the extension of an ignition interlock restriction on a person's license or right to operate ordered by the registrar.

SECTION 4. Section 24D of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

Section 24D. Any person convicted of or charged with operating a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, controlled substance or the vapors of glue, may if such person consents, be placed on probation for not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided herein and, if deemed necessary by the court, to an alcohol or controlled substance abuse treatment or rehabilitation program or to both, and such person's license or right to operate shall be suspended for a period of no less than forty-five nor more than ninety days; provided, however, that if such person was under the age of twenty-one when the offense was committed, the person's license or right to operate shall be suspended for two hundred and ten days, and such person shall be assigned to a program specifically designed by the department of public health for the education and treatment

of drivers who operates a motor vehicle after or while consuming alcohol, controlled substances or the vapors of glue, except for a person aged 17 to 21, inclusive, whose blood alcohol percentage, by weight, was not less than .20, in which case such person shall be assigned to a driver alcohol treatment and rehabilitation program known as the "14-day second offender in-home program". Such order of probation shall be in addition to any penalties imposed as provided in subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four and shall be in addition to any requirements imposed as a condition for any suspension of sentence. Said person shall cooperate in an investigation conducted by the probation staff of the court for supervision of cases of operating under the influence and operating with a blood alcohol percentage of eight one-hundredths or greater, or in such manner as the commissioner of probation shall determine. A defendant not otherwise prohibited by this section, upon conviction after a trial on the merits, shall be presumed to be an appropriate candidate for the above mentioned programs; provided, however, that a judge who deems that the defendant is not a suitable candidate for said programs shall make such findings in writing.

This section shall apply to any person who has never been convicted of operating a motor vehicle while under the influence of intoxicating liquor or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction. This section shall also apply to any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor who has been convicted of such offense or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a single like offense by a court of the commonwealth or any other jurisdiction 10 years or more before the date of the commission of the offense for which he is to be sentenced, once in his lifetime. If, after receiving a sentence for a second disposition pursuant to this paragraph, a person is convicted of an additional operating under the influence of intoxicating liquor all prior convictions or assignments to an alcohol or controlled substances program by a court of the commonwealth or any other jurisdiction shall be counted for purposes of sentencing under subdivision (1) of section 24.

This section shall not apply to any person who caused serious personal injury to or the death of another person during the events that gave rise to the complaint or indictment for operating under the influence of alcohol.

Upon each disposition under this section, the defendant will surrender any Massachusetts drivers license or permit in his possession to the probation department of that court. The probation department will dispose of the license, and the court shall report the disposition in the case in a manner as determined by the registrar. Notwithstanding the provisions of subparagraph (1) of paragraph (c) of subdivision (2) of section 24, subparagraph (1) of paragraph (f) of subdivision (1) of section 24, and section 24P, a defendant shall immediately upon entering a program pursuant to this section apply to the registrar for issuance of an ignition interlock license for a minimum of one year or for the period of probation, whichever is longer. A mandatory restriction on an ignition interlock license granted by the registrar under this subparagraph shall

be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device has been installed and will be maintained on any and all vehicle to be operated by the licensee for the duration of the ignition interlock license. This provision shall also apply to any other suspensions due to the same incident that may be in effect pursuant to said subparagraph (1) of paragraph (c) of subdivision (2) of section 24, said subparagraph (1) of paragraph (f) of subdivision (1) of said section 24 and section 24P of this chapter. Nothing in this section shall be construed to authorize ignition interlock license eligibility if the person is suspended or revoked, or to be suspended or revoked, under any other statute not referenced in this section, or due to any other incident. Failure of the operator to complete his obligations to the program, or remain in compliance with court probation, shall be cause for immediate revocation of the ignition interlock license. In these and all cases where an ignition interlock license is sought by an operator, the probation office for the court where the offender is on probation will, upon request, furnish the registry with documentation verifying the person's status with probation.

Driver alcohol education programs utilized under the provisions of this section shall be established and administered by the department of public health in consultation with the registrar and the secretary of public safety. The department of public health may adopt rules and regulations to carry out its powers and duties to establish and administer driver alcohol education programs in the commonwealth. Any person who is qualified for a disposition under this section, and who at the time of disposition is legally domiciled out-of-state, or is a full-time student residing out-of-state, may at the discretion of the court, be assigned to an out-of-state driver alcohol education program. The out-of-state program must be licensed by the appropriate state authority in the jurisdiction where the person is legally domiciled or is a full-time student. If the out-of-state driver alcohol education program contains fewer treatment service hours than is required by the department of public health, additional service treatment hours must be obtained to achieve equivalence with the driver alcohol education program requirement of the commonwealth.

Alcohol or controlled substance abuse treatment, rehabilitation program or alcohol or controlled substance abuse treatment and rehabilitation programs utilized under the provisions of this section shall include any public or private out-patient clinic, hospital, employer or union-sponsored program, self-help group, or any other organization, facility, service or program which the department of public health has accepted as appropriate for the purposes of this section. The department of public health shall prepare and publish annually a list of all such accepted alcohol treatment, rehabilitation programs and alcohol treatment and rehabilitation programs in the commonwealth, shall make this list available upon request to members of the public, and shall from time to time furnish each court in the commonwealth, the registrar, and the secretary of public safety with a current copy of such list. The list shall also include the single state authority contacts for other states that operate driver alcohol education programs.

Each person placed in a program of driver alcohol or controlled substance abuse education and, if deemed necessary by the court, a program of alcohol or controlled substance abuse treatment, rehabilitation, or alcohol or controlled substance abuse treatment and rehabilitation pursuant to this section shall pay directly to such program a fee in an amount to be determined by the department of public health. The department of public health shall establish and may from time to time revise a schedule of uniform fees to be charged by such programs which shall not exceed the actual cost per client of running said programs after notice and a public hearing, provided that until such time as the department of public health establishes a schedule of such fees pursuant to this section the fee for such programs shall be two hundred dollars. The department of public health shall promulgate regulations relative to the methodology of setting such fees. No person may be excluded from said program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of such fee when appropriate. 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 on the grounds of indigency.

The state treasurer may accept for the commonwealth for the purpose of driver alcohol or controlled substance abuse education, treatment, or rehabilitation any gift or bequest of money or property and any grant, loan, service, payment of property from a governmental authority. Any such money received shall be deposited in the state treasury for expenditure by the department of public health subject to appropriation for the support of said driver alcohol or controlled substance abuse treatment or rehabilitation programs in accordance with the conditions of the gift, grant, or loan. Any federal legislation generating funds for driver alcohol or controlled substance abuse education or treatment or rehabilitation shall be used by the department of public health to the extent possible to support the purposes of this section.

An additional fee of two hundred and fifty dollars shall be paid to the chief probation officer of each court by each person placed in a program of driver alcohol or controlled substance abuse education pursuant to this section and all such fees shall be deposited with the state treasurer, subject to appropriation, for the support of programs operated by the secretary of public safety, the alcohol beverage control commission, and the department of public health for the investigation, enforcement, treatment and rehabilitation of those persons convicted of or charged with driving under the influence of intoxicating liquor or drugs.

No such fee shall be collected from any person who, after the filing of an affidavit of indigency or inability to pay with the court within ten days of disposition and investigation by the probation officer confirming such indigency or establishing that the payment of such fee

would cause a grave and serious hardship to such individual or to the family thereof, is determined by the court to be indigent, provided that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of such fee when appropriate. Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for a finding by the court at a hearing held pursuant to section twenty-four E that the person has failed to satisfactorily comply with the program.

The commissioner of probation shall report in writing at least once annually to the department of public health on the total number of persons who have received disposition hereunder and on the number of such persons who have been determined by the court to require alcohol or controlled substance abuse treatment or rehabilitation, or both. Said commissioner and the chief justices of the district courts and the Boston municipal court shall make further written report at least once annually to said department of public health on the resources available for alcohol or controlled substance abuse treatment or rehabilitation, or alcohol or controlled substance abuse treatment and rehabilitation, of alcohol-impaired or controlled substance abuse-impaired drivers, which report shall evaluate the existing resources and shall make recommendation as to additional necessary resources. Said 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.

When imposing a sentence pursuant to subparagraph (1) of paragraph (a) of section twenty-four or this section, the court may consider requiring the defendant, as a condition of probation, to serve a minimum of thirty hours in public service or in a community work project.

SECTION 5. Section 24E of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

Section 24E. The provisions of this section shall apply to any person convicted of or charged with operating a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor provided said person is qualified for a disposition under section twenty-four D. The provisions of this section shall not apply where notice from the registrar of intention to suspend or revoke a person's license or right to operate is pending prior to the date of complaint on the offense before the court.

In order to qualify for a disposition under this section such person shall, in the judgment of the court, have cooperated fully with the investigation as described in section twenty-four D and shall be and have been in full compliance with such order as the court may have made for a one year term of probation as provided therein, including participation in such driver alcohol

education programs, alcohol treatment or alcohol treatment and rehabilitation programs as the court may have ordered.

Nothing in this section shall be construed to prevent the exercise by a court of its authority under law to make any other disposition of a case of operating under the influence of intoxicating liquor.

Where a person has been charged with operating a motor vehicle under the influence of intoxicating liquor, and where the case has been continued without a finding and such person has been placed on probation with his consent and where such person is qualified for disposition under this section, a hearing shall be held by the court at any time after sixty days but not later than ninety days from the date where the case has been continued without a finding to review such person's compliance with the program ordered as a condition of probation and to determine whether dismissal of the charge is warranted.

At said hearing the probation officer shall submit to the courts a written report which shall include but shall not be limited to a written statement by the supervisor of any program of alcohol education and of any program of alcohol education and of any program of alcohol treatment, rehabilitation, or alcohol treatment and rehabilitation to which the court has assigned such person. Such statement shall consider such person's participation and attendance in each such court ordered program. The registrar shall submit a written report to the judge at said hearing regarding any entries made on said person's driving record in the period following placement in the program, and may include a written statement by the supervisor of the ignition interlock provider used by such person detailing the person's compliance with his or her ignition interlock requirement. If the court finds sufficient basis to conclude that said person has not satisfactorily completed or is not satisfactorily complying with such program, the court may notify the registrar and the registrar shall revoke the person's license or right to operate forthwith. If the judge finds that the person is satisfactorily complying with the conditions of probation, the judge may enter a dismissal of the charges and issue appropriate orders relative to said person's participation in a program or relative to a later hearing, subject to the duration of the term of probation. The court shall cause to be entered and to be maintained upon the probation record of said person notice of a dismissal of charges under this section. The probation officer supervising a person pursuant to the provisions of this section shall make a written report to the court if at any time such person has failed to satisfactorily comply with a court ordered program or if such person's operation of a motor vehicle constitutes a threat to the public safety. Upon receipt of such report the court shall forthwith hold a hearing on the matter. If at such hearing the court determines that said person has failed to satisfactorily comply with such program or that the said operation of a motor vehicle constitutes such a threat, the court may notify the registrar and the registrar shall without further hearing revoke said person's license or right to operate. Such revocation shall be for the remainder of the period from the date of conviction provided in subparagraph (1) of paragraph (c) of subdivision (1) of section twenty-four. Said person shall thereafter be subject to the same conditions for issuance of a new license

or right to operate or an ignition interlock license as any person applying for a new license or right to operate or an ignition interlock license following revocation as provided in subparagraph (1) of paragraph (c) of said subdivision (1). Where an order of probation has been revoked by the court, the court shall forthwith so notify the registrar in writing and the registrar shall forthwith revoke said person's operator's license or right to operate which was restored under this section and without further hearing.

SECTION 6. Section 24G of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by adding at the end thereof the following new section:-

(d) Upon completion of the period of imprisonment prescribed in either (a) or (b) of this Section 24G, the person may apply to the registrar for the issuance of an ignition interlock license for the remainder of the revocation period designated in (c) of this Section 24G. The registrar may, in his or her discretion, issue such license under such terms and conditions as he or she deems appropriate and necessary for the balance of the revocation period listed in this subsection.

Mandatory restrictions on an ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device has been installed and will be maintained on any and all vehicles to be operated by the licensee for the duration of the ignition interlock license; and that such person provides proof to the registrar of compliance with the terms and conditions of the sentence and probation. Failure of the operator to remain in compliance with the sentence or court probation may be cause for immediate revocation of the ignition interlock license.

SECTION 7. Section 24L of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by adding at the end thereof the following new section:

(5) Upon completion of the period of imprisonment prescribed in either (1) or (2) of this Section 24L, the person may apply to the registrar for the issuance of an ignition interlock license for the remainder of the revocation period designated in (4) of this Section 24L.

The registrar may, in his or her discretion, issue such license under such terms and conditions as he or she deems appropriate and necessary for the balance of the revocation period listed in this subsection. Mandatory restrictions on an ignition interlock license granted by the registrar under this subparagraph shall be that such person provides proof in a format acceptable to the registrar that a functioning ignition interlock device is installed and will be maintained on and and all to be operated by the licensee for the duration of the ignition interlock license; and that such person provides and that such person provides proof to the registrar of compliance with the terms and conditions of the sentence and probation. Failure of the operator to remain in compliance with the sentence or court probation may be cause for immediate revocation of the ignition interlock license.

SECTION 8. Section 24N of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

Upon the issuance of a complaint alleging a violation of paragraph (a) of subdivision (1) of section twenty-four or a violation of section twenty-four G or twenty-four L of this chapter, or a violation of paragraph (1) of subsection (a) of section eight, or a violation of section eight A or section eight B of chapter ninety B, the judge, in addition to any other terms of bail or recognizance, shall, upon the failure of any police officer to suspend or take custody of the drivers license or permit issued by the commonwealth of any such defendant under paragraph (f) of subdivision (1) of section twenty-four, immediately suspend the defendant's license or right to operate a motor vehicle or vessel in the following instances:

(i) if the prosecutor makes a prima facie showing at the arraignment that said defendant was operating a motor vehicle while the percentage, by weight, of alcohol in his blood was eight one-hundredths or more, or, relative to any defendant under the age of twenty-one, while the percentage by weight, of alcohol in his blood was two one-hundredths or more, as shown by chemical test or analysis of his blood or breath, and presents written certification of oral testimony from the person administering to the defendant such chemical test or analysis of his blood or breath that the defendant was administered such a test or analysis, that the operator administering the test or analysis of his blood or breath was trained and certified in the administration of such tests, that the test was performed in accordance with regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Such certification shall be prima facie evidence of the facts so certified. Upon such a showing and presentation, the judge shall take immediate physical possession of such defendant's license or permit issued by the commonwealth to operate a motor vehicle, and shall direct the prosecuting officer to forthwith notify the department of criminal justice information services and the registrar of such suspension by the most expeditious means available. The defendant's license or permit to operate a motor vehicle shall remain suspended until the disposition of the offense for which said defendant is being prosecuted, but in no event shall such suspension pursuant to this section exceed 30 days

(ii) if the prosecutor makes a prima facie showing at arraignment that said defendant was arrested on the charge of driving a motor vehicle on any such way or place while under the influence of intoxicating liquor, and said defendant refused to submit to a chemical test or analysis of his breath or blood. Upon such a showing and presentation, the judge shall take immediate physical possession of such defendant's license or permit issued by the commonwealth to operate a motor vehicle, and shall direct the prosecuting officer to forthwith

552 notify the department of criminal justice information services and the registrar of such
553 suspension by the most expeditious means available. The defendant's license or permit to operate
554 a motor vehicle shall remain suspended for a period of 180 days; provided, however, that any
555 person who is under the age of 21 or who has been previously convicted of a violation under
556 section 24 or a like violation by a court of any other jurisdiction shall have his license or right to
557 operate suspended forthwith for a period of 1 year for such refusal; provided, further, that any
558 person previously convicted 2 or more times of a violation under section 24 of a like violation by
559 a court of any other jurisdiction shall have his license or right to operate suspended forthwith for
560 a period of 18 months for such refusal.

561 The defendant may immediately, upon entry of a not guilty finding or dismissal of all
562 charges under section twenty-four, sections twenty-four G and twenty-four L, and in the absence
563 of any other alcohol related charges pending against said defendant, apply for and be granted a
564 hearing forthwith before the court which shall have entered said finding for the purpose of
565 requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption
566 that said license be restored, unless the commonwealth shall establish, by a fair preponderance of
567 the evidence that restoration of said license would likely endanger the public safety. In all such
568 instances, the court shall issue written findings of fact with its decision.

569 Any person whose license or right to operate has been suspended pursuant to this section
570 on the basis of chemical analysis of his breath may within ten days of such suspension request a
571 hearing and upon such request shall be entitled to a hearing before the court in which the
572 underlying charge is pending, which hearing shall be limited to the following issue: whether a
573 blood test administered pursuant to paragraph (e) of subdivision (1) of section twenty-four,
574 within a reasonable period of time after such chemical analysis of his breath, shows that the
575 percentage, by weight, of alcohol in such person's blood was less than eight one-hundredths, or,
576 relative to such person under the age of twenty-one was less than two one-hundredths. If the
577 court finds that such a blood test shows that such percentage was less than eight one-hundredths,
578 or, relative to such person under the age of twenty-one, that such percentage was less than two
579 one-hundredths, the court shall restore such person's license or right to operate and shall direct
580 the prosecuting officer to forthwith notify the department of criminal justice information services
581 and the registrar of such restoration.

582 Any person whose right to operate has been suspended pursuant to this section on the
583 basis of the failure of such person to submit to a chemical test or analysis of his breath or blood
584 may within ten days of his suspension request a hearing and upon such request shall be entitled
585 to a hearing before the court in which the underlying charges are pending, which hearing shall be
586 limited to the following issues: (1) did the police officer have reasonable grounds to believe that
587 such person had been operating a motor vehicle while under the influence of intoxicating liquor
588 upon any way or in any place to which members of the public have a right of access or upon any
589 way to which members of the public have a right of access as invitees or licensees, (2) was such
590 person placed under arrest, and (3) did such person refuse to submit to such test or analysis. If,

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

SECTION 9. Section 24S of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

(a) Whoever, upon any way or place to which the public has a right of access, or upon any way or place to which members of the public have access as invitees or licensees, operates a motor vehicle that is not equipped with a certified functioning ignition interlock device while his license or right to operate has been restricted to operating only motor vehicles equipped with such device shall be punished by fine of not less than \$1,000 nor more than \$15,000 and by imprisonment for not less than 180 days nor more than 2 ½ years or by a fine of not less than \$1,000 nor more than \$15,000 and by imprisonment in the state prison for not less than 3 years nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than 150 days, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct until he shall have served 30 days of such sentence. 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 under this subsection 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 that 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. The defendant may serve all or part of such 30 -day sentence, to the extent such resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

(b) For the purposes of this section the term “certified ignition interlock device” shall mean an alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration over a preset limit of .02 or 20 mg of alcohol per 100 ml of blood.

SECTION 10. Section 24T of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

(a) Whoever interferes with or tampers with a certified ignition interlock device, with the intent to disable such device, shall be punished by a fine of not less than \$1,000 nor more than \$15,000 or imprisonment in the house of correction for not less than 180 days nor more than 2 ½ years or by a fine of not less than \$1,000 nor more than \$15,000 and by imprisonment in the state prison for not less than 3 years nor more than 5 years. . The sentence imposed upon such person

shall not be reduced to less than 150 days, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct until he shall have served 30 days of such sentence. 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 under this subsection 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 that 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. The defendant may serve all or part of such 30 -day sentence, to the extent such resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

(b) For the purposes of this section the term “certified ignition interlock device” or “ignition interlock device” shall mean an alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration over a preset limit of .02 or 20 mg of alcohol per 100 ml of blood.

SECTION 11. Section 24U of chapter 90, as so appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and replacing with the following:-

(a)(1) Whoever knowingly breathes into, or assists in interfering with or tampering with a certified ignition interlock device as defined in section 24T or starts a motor vehicle equipped with such a device for the purpose of providing an operable motor vehicle to a person whose license or right to operate a vehicle is restricted to the operation of vehicles equipped with a certified ignition interlock device shall be punished by a fine not less than \$1,000 nor more than \$5,000 or imprisonment in a house of correction for not less than 6 months nor more than 2 1/2 years and, for a second or subsequent conviction, by imprisonment in a state prison for not less than 3 nor more than 5 years.

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

[There is no subsection (b).]