HOUSE DOCKET, NO. 2286 FILED ON: 1/15/2015

HOUSE . . . . . No. 1219

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas J. Calter and Viriato M. deMacedo

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:
Thomas J. Calter	*12th Plymouth*
Viriato M. deMacedo	*Plymouth and Barnstable*
Marcos A. Devers	*16th Essex*
Carlos Gonzalez	*10th Hampden*
Bruce E. Tarr	*First Essex and Middlesex*
Timothy R. Whelan	*1st Barnstable*

HOUSE DOCKET, NO. 2286 FILED ON: 1/15/2015

HOUSE . . . . . No. 1219

By Representative Calter of Kingston and Senator deMacedo, a joint petition (accompanied by bill, House, No. 1219) of Thomas J. Calter, Viriato Manuel deMacedo and others relative to the drunk driving laws. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *655* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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 2010 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, plea of nolo contendere, placement on probation, continuance without a finding or admission to sufficient facts.

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

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

18 Minimum mandatory: The term of a sentence that shall not be reduced or suspended nor
19 shall any person be eligible for probation, parole, furlough, or receive any deduction for good
20 conduct during that term provided; however, that the commissioner of correction may, on the
21 recommendation of the warden, superintendent, or other person in charge of a correctional
22 institution, or the administrator of a county correctional institution, grant to an offender
23 committed a temporary release in the custody of an officer of such institution for the following
24 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain
25 emergency medical or psychiatric services unavailable at said institution; to engage in
26 employment pursuant to a work release program; or for the purposes of an aftercare program
27 designed to support the recovery of an offender who has completed an alcohol or controlled
28 substance education, treatment, or rehabilitation program operated by the department of
29 correction; and provided, further, that the defendant may serve all or party of such minimum
30 mandatory sentence to the extent that resources are available in a correctional facility specifically

31 designed by the department of correction for the incarceration and rehabilitation of drinking
32 drivers.

33 Open Container: A bottle, can or other receptacle used to contain a liquid that has been
34 opened or has a broken seal or the contents of which have been partially removed or consumed;
35 provided, however, that a bottle resealed pursuant to section 12 of chapter 138 shall not be
36 considered an open container.

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

42 Passenger Area: The area designed to seat the driver and passengers while the motor
43 vehicle is in operation and any area that is readily accessible to the driver or a passenger while in
44 a seated position including, but not limited to, the glove compartment; provided, however, that
45 the passenger area shall not include a motor vehicle's trunk or a locked glove compartment or, if
46 a motor vehicle is not equipped with a trunk, the area behind the last upright seat or an area not
47 normally occupied by the driver or passenger.

48 Prior under the influence offense: Any conviction, nolo contendere plea, or continuation
49 without a finding with an assignment to an alcohol, drug or substance abuse education treatment
50 program for operating under the influence under chapter 90, chapter 90A, chapter 90B, or
51 chapter 265 section 13 ½ , section 13 ½ , or of a like offense of operating under the influence

52 from another jurisdiction, where the findings, judgment, or adjudication date by the court
53 precedes the date of offense for which he is now charged.

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

57 Under the Influence: (1) Having ingested enough marijuana, narcotic drugs, depressants
58 or stimulant substances, all as defined in section 1 of chapter 94C, or intoxicating liquor or
59 vapors of glue to diminish one's capacity or ability to drive safely ; or (2) Having a blood alcohol
60 content of .08% or above.

61 Vehicle or vessel used in public transportation: Any train, passenger bus, school bus or
62 other vehicle used to transport pupils, passenger ferry boat, water shuttle or other equipment used
63 in public transportation owned by, or operated under the authority of the Massachusetts Bay
64 Transportation Authority, the Woods Hole, Martha's Vineyard and Nantucket Steamship
65 Authority, Massachusetts Port Authority, or the Massachusetts Department of Transportation.

66 SECTION 2. Section 23 of chapter 90 of the General Laws, as so appearing, is hereby
67 amended by striking lines 1 through 144 and replacing it with the following:-

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

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

71 (1) First offense: The defendant shall be fined not more than $500.

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (a) A person convicted under subsection (5), (6), or (7) of this section shall be
109 imprisoned in a jail or house of correction for not more than 10 days, or fined not more than
110 $100, or both.

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

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

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

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

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

123 (a) A person convicted under this subsection shall be imprisoned in a jail or house of
124 correction for a minimum mandatory term of 60 days but not more than 2 ½ years and fined not
125 less than $1,000 but not more than $10,000. No case commenced under this subsection shall be
126 continued without a finding or placed on file, or subject to the provisions of section 87 of chapter
127 276.

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

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

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

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

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

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

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

150 (12) In no case shall a person who fails to pay an administrative reinstatement fee
151 without the registrar giving written prior notice mandating payment thereof, be prosecuted for
152 operating after suspension of a license.

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

157 SECTION 3. Section 24, 24 ½ , 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L,
158 24M, 24N, 24O, 24P, 24Q, 24R, 24S, 24T, 24U, 24V, 24W, and 24X of chapter 90 of the
159 General Laws, is hereby amended by striking each section and inserting in place thereof the
160 following:-

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

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

166 (2) No person shall procure or assist another to falsely make, steal, alter, forge, or
167 counterfeit, a learner's permit, a license to operate a motor vehicle, an identification card issued
168 under section 8E of this chapter, a special parking identification disability placard, a certificate of
169 registration of a motor vehicle or trailer or an inspection sticker.

170 (3) No person shall forge or use without authority the signature, a facsimile of the
171 signature, or validating signature stamp of the registrar or a deputy registrar upon a genuine,
172 falsely made, stolen, altered, forged, or counterfeited learner's permit, license to operate a motor
173 vehicle, identification card issued under section 8E of this chapter, a special parking

174 identification disability placard, a certificate of registration of a motor vehicle or trailer, or an
175 inspection sticker.

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

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

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

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

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

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

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

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

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

203 (1) First offense: 60 days

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

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

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

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

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

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

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

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

222 Chapter 90, § 24B (1) - Negligent/Reckless operation

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

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

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

230 (a) First offense: 60 days

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

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

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

239 (5) Upon a disposition under this section the court shall assess a $250 fee to the
240 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
241 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
242 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
243 reason.

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

246 Chapter 90, § 24B (2) – Cell phone use while operating causing injury to a vehicle or
247 property

248 (1) No person shall operate a motor vehicle while using a mobile phone or any other
249 handheld device capable of accessing the internet, to manually compose, send or receive an
250 electronic message on any public way negligently so that the lives or safety of the public might
251 be endangered and proximately cause injury to any vehicle or property.

252 For the purposes of this section, an operator shall not be considered to be operating a
253 motor vehicle if the vehicle is stationary and not located in a part of a public way intended for
254 travel.

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

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

260 (a) First offense: 60 days

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

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

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

269 (5) Upon a disposition under this section the court shall assess a $250 fee to the
270 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
271 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the

272 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
273 reason.

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

276 Chapter 90, § 24B (3) – Cell phone use while operating causing injury to another person

277 (1) No person shall operate a motor vehicle while using a mobile phone or any other
278 handheld device capable of accessing the internet, to manually compose, send or receive an
279 electronic message on any public way negligently so that the lives or safety of the public might
280 be endangered and proximately cause injury to any other person.

281 For the purposes of this section, an operator shall not be considered to be operating a
282 motor vehicle if the vehicle is stationary and not located in a part of a public way intended for
283 travel.

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

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

289 (a) First offense: 60 days

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

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

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

298 (5) Upon a disposition under this section the court shall assess a $250 fee to the
299 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
300 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
301 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
302 reason.

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

305 Chapter 90, § 24B (4) – Cell phone by public transportation operator use while operating
306 causing injury to a vehicle or property

307 (1) No operator of a vehicle or vessel used in public transportation, including a train,
308 passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water
309 shuttle or other equipment used in public transportation owned by, or operated under the
310 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's
311 Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
312 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile

313 telephone or other mobile electronic device while operating such vehicle or vessel shall operate a
314 motor vehicle while using a mobile phone or any other handheld device capable of accessing the
315 internet, to manually compose, send or receive an electronic message on any public way
316 negligently so that the lives or safety of the public might be endangered and proximately cause
317 injury to any vehicle or property.

318 This subsection shall not apply to the operator of a vehicle or vessel used in public
319 transportation using a mobile telephone, hands-free mobile telephone or mobile electronic device
320 in the performance of the operator's official duties.

321 In order for the use of any such device to be made "in the performance of the operator's
322 official duties," such use must have been made in conformance with applicable written
323 guidelines issued by a public entity listed in this paragraph relative to circumstances when
324 operators are permitted to use said devices in the performance of their official duties or pursuant
325 to directives from federal authorities having regulatory jurisdiction over such public entity's
326 operations.

327 It shall be an affirmative defense for an operator under this section to produce evidence
328 that the use of a mobile telephone that is the basis of the alleged violation was in the case of an
329 emergency. For the purpose of this paragraph, an emergency shall mean that the operator needed
330 to communicate with another to report any of the following: (1) that the vehicle or vessel was
331 disabled; (2) that medical attention or assistance was required on the vehicle or vessel; (3) that
332 police intervention, fire department or other emergency services was necessary for the personal
333 safety of a passenger or to otherwise ensure the safety of the passengers; or (4) that a disabled
334 vehicle or an accident was present on a roadway.

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

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

340 (a) First offense: 60 days

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

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

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

349 (5) Upon a disposition under this section the court shall assess a $250 fee to the
350 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
351 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
352 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
353 reason.

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

356 Chapter 90, § 24B (5) – Cell phone use by public transportation operator while operating
357 causing injury to another person

358 (1) No operator of a vehicle or vessel used in public transportation, including a train,
359 passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water
360 shuttle or other equipment used in public transportation owned by, or operated under the
361 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's
362 Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
363 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
364 telephone or other mobile electronic device while operating such vehicle or vessel shall operate a
365 motor vehicle while using a mobile phone or any other handheld device capable of accessing the
366 internet, to manually compose, send or receive an electronic message on any public way
367 negligently so that the lives or safety of the public might be endangered and proximately cause
368 injury to any other person.

369 This subsection shall not apply to the operator of a vehicle or vessel used in public
370 transportation using a mobile telephone, hands-free mobile telephone or mobile electronic device
371 in the performance of the operator's official duties.

372 In order for the use of any such device to be made "in the performance of the operator's
373 official duties," such use must have been made in conformance with applicable written
374 guidelines issued by a public entity listed in this paragraph relative to circumstances when
375 operators are permitted to use said devices in the performance of their official duties or pursuant
376 to directives from federal authorities having regulatory jurisdiction over such public entity's
377 operations.

378 It shall be an affirmative defense for an operator under this section to produce evidence
379 that the use of a mobile telephone that is the basis of the alleged violation was in the case of an
380 emergency. For the purpose of this paragraph, an emergency shall mean that the operator needed
381 to communicate with another to report any of the following: (1) that the vehicle or vessel was
382 disabled; (2) that medical attention or assistance was required on the vehicle or vessel; (3) that
383 police intervention, fire department or other emergency services was necessary for the personal
384 safety of a passenger or to otherwise ensure the safety of the passengers; or (4) that a disabled
385 vehicle or an accident was present on a roadway.

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

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

391 (a) First offense: 60 days

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

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

396 (4) Upon a conviction of this subsection, if it appears by the records of the registrar
397 that the person convicted is the owner of a motor vehicle or has exclusive control of any motor

398 vehicle as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of
399 registration of any or all motor vehicles owned or exclusively controlled by the person.

400 (5) Upon a disposition under this section the court shall assess a $250 fee to the
401 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
402 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
403 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
404 reason.

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

407 Chapter 90, § 24B (6) – Cell phone use by a person under 18 years of age while operating
408 causing injury to a vehicle or property

409 (1) No person under 18 years of age shall operate a motor vehicle while using a
410 mobile phone or any other handheld device capable of accessing the internet, to manually
411 compose, send or receive an electronic message on any public way negligently so that the lives
412 or safety of the public might be endangered and proximately cause injury to a vehicle or
413 property.

414 For the purposes of this section, an operator shall not be considered to be operating a
415 motor vehicle if the vehicle is stationary and not located in a part of a public way intended for
416 travel.

417 It shall be an affirmative defense for an operator to produce evidence that the use of a
418 mobile telephone, hands-free mobile telephone or mobile electronic device that is the basis of the

419 alleged violation was for emergency purposes. For the purpose of this section, an emergency
420 shall mean that the junior operator used the hands-free mobile telephone or mobile electronic
421 device to communicate with another to report any of the following: (i) that the motor vehicle was
422 disabled; (ii) that medical attention or assistance was required; (iii) that police intervention, fire
423 department or other emergency service was necessary for the personal safety of the operator or a
424 passenger; or (iv) that a disabled vehicle or an accident was present in the public way.

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

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

430 (a) First offense: 60 days

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

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

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

439 (5) Upon a disposition under this section the court shall assess a $250 fee to the
440 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
441 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
442 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
443 reason.

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

446 Chapter 90, § 24B (7) – Cell phone by a person under 18 years of age use while operating
447 causing injury to another person

448 (1) No person under 18 years of age shall operate a motor vehicle while using a
449 mobile phone or any other handheld device capable of accessing the internet, to manually
450 compose, send or receive an electronic message on any public way negligently so that the lives
451 or safety of the public might be endangered and proximately cause injury to any other person.

452 For the purposes of this section, an operator shall not be considered to be operating a
453 motor vehicle if the vehicle is stationary and not located in a part of a public way intended for
454 travel.

455 It shall be an affirmative defense for a junior operator to produce evidence that the use of
456 a mobile telephone, hands-free mobile telephone or mobile electronic device that is the basis of
457 the alleged violation was for emergency purposes. For the purpose of this section, an emergency
458 shall mean that the junior operator used the hands-free mobile telephone or mobile electronic
459 device to communicate with another to report any of the following: (i) that the motor vehicle was
460 disabled; (ii) that medical attention or assistance was required; (iii) that police intervention, fire

461 department or other emergency service was necessary for the personal safety of the operator or a
462 passenger; or (iv) that a disabled vehicle or an accident was present in the public way.

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

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

468 (a) First offense: 60 days

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

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

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

477 (5) Upon a disposition under this section the court shall assess a $250 fee to the
478 person. The court shall deposit $187.50 of the $250 collected under this assessment into the
479 Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be deposited into the
480 General Fund. The assessment shall not be subject to reduction or waiver by the court for any
481 reason.

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

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

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

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

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

493 (a) First offense: 60 days

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

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

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

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

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

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

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

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

520 (a) First offense: 1 year

521 (b) Subsequent offense: 2 years

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

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

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

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

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

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

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

546 (a) First offense: 3 years

547 (b) Subsequent offense: 10 years

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

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

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

562 (1) No person shall operate a motor vehicle on a public way while under the influence
563 of intoxicating liquor, drugs, or other substances as defined in section 1 of chapter 94C.

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

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

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

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

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

580 Fifth or Subsequent Offense: If there are 4 or more prior operating under the influence
581 offenses, the defendant shall be imprisoned in a jail or house of correction for not less than 2 ½
582 years, or be imprisoned in the state prison for not less than 2 ½ years but not more than 5 years
583 with a minimum mandatory term of 2 years and fined not less than $2,000 but not more than
584 $50,000.

585 Upon a disposition under this section the court shall assess a $250 fee to the person. The
586 court shall transmit $187.50 of the $250 collected under this assessment to the state treasurer to
587 be deposited into the Head Injury Treatment Services Trust Fund. The remaining $62.50 shall be

588 deposited into the General Fund. The assessment shall not be subject to reduction or waiver by
589 the court for any reason.

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

595 In any prosecution commenced pursuant to this section, introduction into evidence of a
596 prior conviction or a prior finding of sufficient facts by either certified attested copies of original
597 court papers, or certified attested copies of the defendant's biographical and informational data
598 from records of the department of probation, any jail or house of correction, the department of
599 correction, or the registry of motor vehicles, shall be prima facie evidence that the defendant
600 before the court has been convicted previously or assigned to an alcohol or controlled substance
601 education, treatment, or rehabilitation program by a court of the commonwealth or of a like
602 offense from any other jurisdiction. Such documentation shall be self-authenticating and
603 admissible, after the commonwealth has established the defendant's guilt on the primary offense,
604 as evidence in any court of the commonwealth to prove the defendant's commission of any prior
605 convictions or assignments to alcohol or controlled substance education, treatment, or
606 rehabilitation programs described therein. The commonwealth shall not be required to introduce
607 any additional corroborative evidence, nor live witness testimony to establish the validity of such
608 prior offenses.

609 No prosecutions under this section shall be continued without a finding except for cases
610 disposed of pursuant to the provisions of subdivision (a) of subsection (3) of this section. No
611 prosecutions under this section shall be placed on file, or subject to the provisions of section 87
612 of chapter 276. At any time before the commencement of a trial or acceptance of a plea on a
613 complaint alleging a violation of this section, the prosecutor may apply for the issuance of a new
614 complaint pursuant to section 35A of chapter 218 alleging a violation of this section and 1 or
615 more prior operating under the influence offenses. If such application is made, upon motion of
616 the prosecutor, the court shall stay further proceedings on the original complaint pending the
617 determination of the application for the new complaint. If a new complaint is issued, the court
618 shall dismiss the original complaint and order that further proceedings on the new complaint be
619 postponed until the defendant has had sufficient time to prepare a defense. No trial shall be
620 commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be
621 accepted on such complaint, nor shall the prosecution on such complaint be transferred to
622 another division of the district court or to a jury-of-six session, until the court receives a report
623 from the commissioner of probation pertaining to the defendant's record, if any, of prior
624 operating under the influence offenses; provided, however, that the provisions of this paragraph
625 shall not justify the postponement of any such trial or of the acceptance of any such plea for
626 more than five working days after the date of the defendant's arraignment. The commissioner of
627 probation shall give priority to requests for such records. Upon any conviction or continuation
628 without a finding under this section, the court shall order that any license issued by the
629 commonwealth be surrendered to the probation department, and disposed of in a manner
630 prescribed by the registrar. The clerk of courts shall notify the registrar forthwith of the
631 disposition.

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

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

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

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

653 (3) Alternative Dispositions

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

663 If a person is sentenced to an alternative disposition, notwithstanding the provisions of
664 subsection (5) of this section, the court shall impose a suspension of the defendant's license or
665 right to operate for not less than 45 days nor more than 90 days if said person was over the age of
666 21 at the time of the offense, or 210 days if said person was under the age of 21 at the time of
667 offense. A person may immediately apply for a hardship license following disposition and
668 enrollment into the treatment program required by this subsection. In all cases where a hardship
669 license is sought, the probation office where the offender is or was on probation will, upon
670 request, furnish the registrar with documentation verifying the person's status with probation.
671 Hardship licenses under this subsection shall be issued under such terms and conditions as the
672 registrar may prescribe, after the registry is convinced that the issues that this offense(s) arose
673 from have been dealt with by the operator and brought under control. Said hardship license shall
674 be issued, subject to the agency's discretion, upon a showing of hardship for work, education, or
675 other purpose the registrar deems valid and significant, and shall be for an identical 12 hour
676 period, 7 days a week. Notwithstanding the above, if the records of the registrar contain

677 additional information regarding operating under the influence offenses, the registrar shall
678 suspend the license in accordance with subsection (5) of this section. A person shall be
679 presumed to be a suitable candidate for this disposition after trial unless otherwise prohibited by
680 this section. In cases where an eligible person is not granted such a disposition should he or she
681 seek it, the court shall make written findings supporting its decision.

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

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

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

706 The commissioner of probation shall annually report to the department of public health
707 the number of persons who receive an alternative disposition and the number of persons who
708 have been required by the court to participate in alcohol or controlled substance abuse treatment
709 or rehabilitation programs. In addition, the commissioner of probation, and the chief justice of
710 the district courts and the Boston Municipal Court shall annually report to the department of
711 public health the resources available for alcohol and controlled substance abuse treatment and
712 rehabilitation of alcohol-impaired or controlled substance abuse-impaired drivers. The report
713 shall evaluate the existing resources and shall make recommendations as to any additional
714 resources. The department of public health shall take such reports into consideration in the
715 development, implementation, and review of the state's alcoholism or controlled substance abuse
716 plan and in the preparation of the division's annual budget in a manner consistent with the
717 Alcoholism Treatment and Rehabilitation Law.

718 Second Offense: Notwithstanding the provisions of subsection (2) of this section, in
719 cases where a defendant has only one prior operating under the influence offense, the court, in its
720 discretion, may order the defendant to enter and complete a 14 day in patient program and to
721 participate in an outpatient counseling program designed for such offenders in lieu of the

722 required 30 day minimum mandatory term. This program shall be in addition to any probation
723 ordered under section 24D(2)(b).

724 The defendant shall pay for the cost of the services provided by the residential alcohol
725 treatment program; provided, however, that no person shall be excluded from said programs for
726 inability to pay; and provided, further, that such person files with the court, an affidavit of
727 indigency or inability to pay and that investigation by the probation officer confirms such
728 indigency or establishes that payment of such fee would cause a grave and serious hardship to
729 such individual or to the family of such individual, and that the court enters a written finding
730 thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to
731 make partial or installment payments of the cost of said program.

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

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

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

739 A person with a second or subsequent operating under the influence offense.

740 The assessment shall include at a minimum an evaluation of the level of the offender's
741 addiction to alcohol and/or drugs and the department's recommended course of treatment. Such
742 assessment and recommendation shall be reported to the offender's probation or parole officer.

743 No person shall be excluded from an assessment for inability to pay if the offender files an
744 affidavit of indigency or inability to pay with the court and an investigation by the probation or
745 parole officer confirms such indigency or establishes that such payment would cause a grave and
746 serious hardship to the offender or his family, and the court enters written findings relative
747 thereto. The commissioner of public health may make such rules and regulations as are necessary
748 or proper to carry out this section.

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

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

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

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

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

761 Fifth or subsequent offense: Lifetime.

762 Notwithstanding subdivisions (a) through (e) of this subsection, the registrar shall
763 suspend for life a person's license or right to operate upon an operating under the influence

764 offense if the person has been previously convicted of motor vehicle homicide while under the
765 influence or manslaughter by motor vehicle.

766 Hardship licenses under this subsection shall be issued under such terms and conditions
767 as the registrar may prescribe, after the registry is convinced that the issues that this offense(s)
768 arose from have been dealt with by the operator and brought under control. Said hardship
769 license shall be issued, subject to the agency's discretion, upon a showing of hardship for work,
770 education, or other purpose the registrar deems valid and significant, and shall be for an identical
771 12 hour period, 7 days a week.

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

776 Chapter 90, § 24E – Implied Consent

777 (1) Whoever operates a motor vehicle on a public way shall be deemed to have
778 consented to a test of his breath or blood in the event he is arrested with operating a motor
779 vehicle while under the influence of intoxicating liquor. A person brought to a police station or
780 place of detention is deemed to have consented to a test of his breath. A valid breath test under
781 this section shall be one adequate breath sample analysis, followed by one calibration standard
782 analysis, and then by a second adequate breath sample analysis. A person is deemed to have
783 consented to a test of his blood only if he has been brought to a medical facility licensed pursuant
784 to the provisions of section 51 of chapter 111, and the blood is drawn by a physician, registered
785 nurse or certified medical technician; provided further that no person inflicted with hemophilia

786 or any other condition requiring the use of anticoagulants shall be deemed to have consented to
787 the withdrawal of blood. Such test shall be administered by or at the direction of a police officer
788 as defined in section 1 of chapter 90C, having reasonable grounds to believe that the defendant
789 was operating under the influence.

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

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

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

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

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

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

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

817 If the person was age 21 or over at the time of offense, and has no prior operating under
818 the influence convictions or been assigned to a program for, the suspension shall be for 180 days.

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

822 If the person has 2 prior operating under the influence convictions, the suspension shall
823 be for 5 years.

824 If the person has 3 or more prior operating under the influence convictions, the
825 suspension shall be for life.

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

828 If the person has a prior operating under the influence conviction pursuant to section 24K
829 of this chapter or a conviction under section 24L of this chapter the suspension shall be for life.

830 No hardship licenses on suspensions for test refusals shall be granted, except for
831 candidates that have properly received dispositions pursuant to subsection 3 of section 24D of
832 this chapter. Any suspensions under this section shall be consecutive with any suspension or
833 suspension for the underlying operation under the influence offense. Notwithstanding that, if the
834 charges against the person are dismissed, or the person is found not guilty, the person may
835 immediately file a motion before the judge that heard the case, for the purpose of seeking
836 restoration of the license or right to operate. At said hearing, if the court finds that the charges
837 were resolved in favor of the defendant, that there are no alcohol related charges pending in any
838 court, and that there is no evidence before the court based on a preponderance of the evidence
839 that reinstatement of the license or right to operate would endanger the public, there shall be a
840 presumption that the court shall order that this particular suspension be terminated.

841 Any person refusing a test under this section shall have a right, at his request, to a hearing
842 before the registrar to determine if grounds exist for the suspension. Any hearing request shall
843 be made within 15 days of the incident giving rise to this suspension. The hearing shall be
844 limited to the issues of whether reasonable grounds exist for the officer's belief that the person
845 placed under arrest was operating under the influence on a public way at the time of the incident,
846 whether the person was advised of the consequences of the refusal, and did the person refuse or
847 fail to consent to such test. The registrar shall compile a record of the hearing. If the ruling is in
848 the person's favor, absent any other reason for suspension, the registrar shall restore the person's
849 license or right to operate. The registrar may promulgate such rules and regulations as is
850 necessary regarding the conduct of these hearings.

851 If the registrar rules that the suspension for refusal was proper, the appellant may file a
852 petition for judicial review in the district court having jurisdiction over the underlying operation
853 under the influence charge within 30 days of the registrar's decision. Review by the court shall
854 be on the record established at the hearing before the registrar. If the court finds that the
855 department exceeded its constitutional or statutory authority, made an erroneous interpretation of
856 the law, acted in an arbitrary and capricious manner, or made a determination which is
857 unsupported by the evidence in the record, the court may reverse the registrar's determination.

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

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

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

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

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

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

885 (1) one adequate breath sample analysis

886 (2) one calibration standard analysis

887 (3) a second adequate breath sample analysis

888 No person shall perform such a test unless certified by the secretary of public safety

889 No breath testing device, mouthpiece or tube shall be cleaned with any substance
890 containing alcohol.

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

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

899 Upon any failed or refused test under this section the police shall confiscate any license
900 or permit issued by the commonwealth in the possession of the defendant, serve the defendant
901 with a notice of suspension on behalf of the registrar, and impound the operator's vehicle for a
902 12 hour period following the incident. The operator shall be responsible for all costs associated
903 with towing, storage and maintenance of the vehicle. In addition, in each case, the police shall
904 prepare a report to the registrar under the pains and penalties of perjury, indicating the following:

905 a) the grounds the arresting officer had to believe that the defendant was operating
906 under the influence on a public way;

907 b) the defendant was advised of the consequences of refusing the test;

908 c) the results of any failed test;

909 d) whether or not the operator refused or failed to consent to the test;

910 e) the identity of the officer who advised the defendant of his rights;

911 f) the identity and certification of the officer who conducted the breath test;

912 g) the identity of any witness to the test or refusal;

913 h) that the test was administered in accordance with the regulations and standards
914 promulgated by the secretary of safety; and

915 i) There was every reason to believe the equipment was functioning properly at the
916 time the test was administered.

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

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

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

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

932 If a person has not been previously arrested for or charged with operating under the
933 influence, such person shall, if he consents, be assigned to a program specifically designed by the

934 department of public health for the treatment of underage drinking drivers. Upon entry into a
935 program, authorized by this subsection, or a program required by section 24D of this chapter, the
936 suspension of a license or right to operate as required by this subsection shall be waived by the
937 registrar for a person under 21 years of age and over 18 years of age. The suspension shall be
938 reduced to 180 days for a person who was under the age of 18 at the time of such offense. Upon
939 the failure of a person who, at the time of offense was under the age of 21, to successfully
940 complete such program, the registrar shall forthwith suspend such license or permit to operate for
941 180 days, or for 1 year if the person was under age 18 at the time of offense.

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

948 (5) When a complaint is issued alleging a person has violated section 24D, 24J, or
949 24K of this chapter, or violated section 8(1) (a), 8A, or 8B of chapter 90B, upon the failure of a
950 police officer to suspend or take custody of the defendant's license or permit, the judge shall
951 immediately suspend and take custody of the defendant's license or right to operate in the
952 following instances:

953 (a) If the prosecutor makes a prima facie showing at arraignment that the defendant
954 was operating a motor vehicle with a blood alcohol content of .08 or greater, or if the defendant
955 is under 21 years of age a blood alcohol content of .02 or greater, as shown by a test of his breath

956 or blood; and the prosecutor presents written certification of oral testimony from the person who
957 administered the test that:

958 (1) the defendant was given a test;

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

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

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

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

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

967 Upon a showing of the above facts, the judge shall take immediate physical possession of
968 the license or permit and shall direct the prosecuting officer to immediately notify the
969 Department of Criminal Justice Information Systems and the registrar of such suspension. The
970 defendant's license or right to operate shall be suspended for a period not to exceed 30 days; or

971 (b) If the prosecutor makes a prima facie showing at arraignment that the defendant
972 was arrested for operating on any such way or place while under the influence of intoxicating
973 liquor and refused a test of his breath or blood, the judge shall take immediate physical
974 possession of the license or permit and shall direct the prosecuting officer to immediately notify
975 the Department of Criminal Justice Information Systems and the registrar of such suspension.
976 The defendant's license or right to operate shall be suspended as follows:

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

979 If the person has one prior operating under the influence offense, or was under the age of
980 21 at the time of offense and has no more than 1 prior operating under the influence offenses, the
981 suspension shall be for 1 year.

982 If the person has 2 prior operating under the influence offenses, the suspension shall be
983 for 18 months.

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

993 Any person whose license or right to operate has been suspended under this section shall
994 have a right, at his request, to a hearing before the registrar to determine if grounds exist for the
995 suspension. Any hearing request shall be made within 10 days of the incident giving rise to this
996 suspension. The hearing shall be limited to the issues of whether or not a blood test administered
997 pursuant to section 24E of this chapter, within a reasonable period of time after a test of his

998 breath, shows that that the blood alcohol content was less than .08% or less than .02% if the
999 person was under the age of 21 at the time of the offense.

1000 If, after a hearing, the court finds the defendant's blood alcohol content was less than
1001 .08% or less than .02% if the person was under the age of 21 at the time of offense, the court
1002 shall restore the defendant's license or right to operate and shall direct the prosecuting officer to
1003 immediately notify the Department of Criminal Justice Information Systems and the registrar of
1004 such restoration.

1005 (6) Any person whose license or right to operate has been suspended because the
1006 person refused to submit to a test of his breath or blood under this section shall have the right, at
1007 his request, to a hearing before the court in which the underlying charges are pending to
1008 determine if grounds exist for the suspension. Any hearing request shall be made within 10 days
1009 of the hearing giving rise to this suspension. The hearing shall be limited to the following issues:

1010 (a) whether or not the police officer had reasonable grounds to believe that the person
1011 had been operating a motor vehicle while under the influence of intoxicating liquor on a public
1012 way;

1013 (b) whether or not the person was placed under arrest; and

1014 (c) whether or not the person refused to submit to a test of his breath or blood.

1015 If, after a hearing, the court finds in the negative on any one of the issues, the court shall
1016 restore the defendant's license or right to operate and shall direct the prosecuting officer to
1017 immediately notify the Department of Criminal Justice Information Systems and the registrar of
1018 such restoration.

1019 Chapter 90, § 24F – Ignition Interlock Devices

1020 (1) Any person whose license or right to operate is suspended for 2 or more operating
1021 under the influence offenses, or who is operating on a restricted license for such offenses, shall
1022 be required to have an ignition interlock device installed on each vehicle that he may own, lease,
1023 or operate as a mandatory condition of issuance of a new license or right to operate. The
1024 restriction shall remain on the license during the hardship license period and an additional 2
1025 years upon the full restoration of the license. In cases where the person has not been granted a
1026 hardship license, the ignition interlock requirement shall be for a 2 year period following the
1027 reinstatement of the license or right to operate.

1028 Each device shall be subject to inspection, maintenance, and monitoring as the registrar
1029 may prescribe. No ignition interlock device utilized under this section shall allow a vehicle to
1030 start if a person's blood alcohol content exceeds .02%. The registrar shall promulgate such rules
1031 and regulations as deemed necessary regarding this section.

1032 The registrar may, after hearing, suspend the license or right to operate of any person
1033 who:

1034 (a) removes an ignition interlock device without the written consent of the registrar;
1035 or

1036 (b) who fails to have it inspected, maintained or monitored on at least 2 occasions
1037 during the requirement period,

1038 if the licensee has:

1039 (a) operated a vehicle with a blood alcohol content that caused the certified ignition
1040 interlock device to prevent the vehicle from starting on at least 2 occasions; or

1041 (b) recorded a blood alcohol content in excess of .02% on at least 2 occasions.

1042 The suspension shall be for an extended period or for life. A person aggrieved by the
1043 decision of the registrar pursuant to this section may file an appeal in the superior court. If the
1044 court determines that the registrar abused his discretion, the court may vacate the suspension or
1045 reduce the period ordered by the registrar.

1046 (2) No person required to have an ignition interlock device shall operate a motor
1047 vehicle without such a device on a public way.

1048 A person convicted under this subsection shall be imprisoned in a jail or house of
1049 correction for not less than 150 days but not more than 2 ½ years, or the state prison for not less
1050 than 2 ½ years but not more than 5 years with a minimum mandatory term of 150 days. A fine of
1051 not less than $1,000 but not more than $15,000 shall be imposed.

1052 (3) No person shall interfere with or tamper with an ignition interlock device with the
1053 intent to disable such device.

1054 A person convicted under this subsection shall be punished by imprisonment in a jail or
1055 house of correction for not less than 6 months but not more than 2 ½ years, or state prison for not
1056 less than 3 years but not more than 5 years.

1057 (4) No person shall knowingly breathe into an ignition interlock device, or start a
1058 motor vehicle equipped with an ignition interlock device, for the purpose of providing an

1059 operable motor vehicle to a person under a license restriction requiring an ignition interlock
1060 device.

1061 A person convicted under this subsection shall be punished as follows:

1062 (a) First offense: The defendant shall be imprisoned in a jail or house of correction
1063 for not less than 6 months but not more than 2 ½ years or punished by a fine of not less than
1064 $1,000 but not more than $5,000.

1065 (b) Second or subsequent offense: The defendant shall be imprisoned in state prison
1066 for not less than 3 years but not more than 5 years.

1067 (5) A certified copy of a signed acknowledgement of the terms and existence of an
1068 ignition interlock device restriction, executed by a person alleged to have violated this section,
1069 shall be admissible as prima facie evidence to prove the knowledge of the person who executed
1070 the document.

1071 Chapter 90, § 24G – Motor Vehicle Forfeitures

1072 (1) A motor vehicle or vessel owned by a person who has at least 3 prior operating
1073 under the influence offenses, as defined in section 1 of chapter 90, may be forfeited to the
1074 commonwealth.

1075 (2) A district attorney or the attorney general may petition the superior or district
1076 court, in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture
1077 of such motor vehicle or vessel. The petition shall be filed in the court having jurisdiction over
1078 the criminal proceeding brought under this chapter or chapter 90B. The proceeding shall be
1079 deemed a civil suit in equity. In all such actions where the motor vehicle or vessel is jointly

1080 owned by either a parent, spouse, child, grandparent, brother, sister, or parent of the spouse
1081 living in the defendant's household, before the date of the second or subsequent operating under
1082 the influence offense committed by the defendant, the commonwealth shall have the burden of
1083 proving the existence of probable cause to institute the action. The claimant shall have the
1084 burden of proving that the property is not forfeitable because the claimant is dependent on the
1085 motor vehicle or vessel for his livelihood or the maintenance of his family.

1086 The court shall order the commonwealth to give notice, by certified or registered mail, to
1087 the owners of the motor vehicle or vessel and, to such other persons or entities who appear to
1088 have an interest therein. The court shall promptly, but not less than 2 weeks after notice, hold a
1089 hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court
1090 may continue the hearing on the petition pending the outcome of a criminal trial related to a
1091 charge of operating under the influence in violation of this chapter or chapter 90B. During the
1092 pendency of the proceedings, the court may issue, at the request of the commonwealth, ex parte,
1093 any preliminary order or process necessary to seize and secure the property for which forfeiture
1094 is sought. Process for seizure of the property shall issue only upon a showing of probable cause.
1095 The application, issuance, execution, and return thereof shall be subject to the provisions of
1096 chapter 276, as applicable.

1097 (3) At a hearing under this section, the court shall hear evidence and make findings of
1098 fact and conclusions of law, and shall issue a final order. The parties shall have a right of appeal
1099 as from a decree in equity. No forfeiture under this section shall extinguish a perfected security
1100 interest held by a creditor in the property at the time of the filing of the forfeiture action. In all
1101 actions where a proceeding results in forfeiture, the final order shall provide for disposition of
1102 the property by the commonwealth in any manner not prohibited by law, including official use

1103 by an authorized law enforcement or other agency, or at sale at public auction or by competitive
1104 bidding, with such sale being conducted by the office of the district attorney or the attorney
1105 general that obtained the final order of forfeiture.

1106 (4) The final order of the court shall provide that the proceeds of any such sale shall
1107 be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage,
1108 maintenance of custody, advertising and notice, and the balance of any such sale shall be
1109 distributed equally among the prosecuting district attorney or attorney general, the city, town or
1110 state police department involved in the forfeiture and the Victims of Drunk Driving Trust Fund
1111 established in section 66 of chapter 10. If more than 1 department was substantially involved in
1112 the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the
1113 portion for law enforcement equitably among the departments.

1114 (5) There shall be established within the office of the state treasurer a separate
1115 Operating Under the Influence Deterrent Trust Fund for each district attorney and for the
1116 attorney general. All monies and proceeds received by a prosecuting district attorney or attorney
1117 general pursuant to this section shall be deposited in the fund and shall be expended without
1118 further appropriation to defray the costs of investigations, to provide additional technical
1119 equipment or expertise, to provide matching funds to obtain federal grants, or for such other law
1120 enforcement purposes as the district attorney or attorney general deems appropriate. Any
1121 program seeking to be an eligible recipient of the funds shall file an annual audit report with the
1122 local district attorney and attorney general. Such report shall include, but not be limited to, a
1123 listing of the assets, liabilities, itemized expenditures and board of directors of the program.
1124 Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall

1125 file an annual report with the house and senate committees on ways and means on the use of the
1126 monies in the trust fund for the purposes of deterring operating under the influence programs.

1127 (6) All moneys and proceeds received by a police department shall be deposited into
1128 the fund and shall be expended without further appropriation to defray the costs of
1129 investigations, to provide additional technical equipment or expertise, to provide matching funds
1130 to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of
1131 police of such city or town, or the colonel of state police deem appropriate, but such funds shall
1132 not be considered a source of revenue to meet the operating needs of such department.

1133 Chapter 90, § 24H - Aggravated OUI

1134 (1) Any person aged 17 to 21 years, inclusive, who commits an operating under the
1135 influence offense, and who has a blood alcohol content of .20% or above, shall also be guilty of
1136 aggravated operating under the influence, and in addition to the penalties mandated in section
1137 24D of this chapter, shall also be required to enter and complete a 14 day residential treatment
1138 program as described in subdivision (b) of subsection (3) of that section. In cases where the
1139 person is otherwise qualified for a disposition under subdivision (a) of subsection (3), the person
1140 shall be required to complete the 14 day residential program in lieu of the outpatient program
1141 specified therein.

1142 Chapter 90, § 24I - Child Endangerment

1143 (1) No person shall operate a motor vehicle on a public way while under the influence
1144 of intoxicating liquor, drugs, or other substance with a child 14 years of age or younger in the
1145 vehicle.

1146 A person convicted under this section shall be punished as follows:

1147 (a) First offense: The defendant shall be imprisoned in a jail or house of correction
1148 for not less than 90 days but not more than 2 ½ years and fined not less than $1,000 but not more
1149 than $5,000.

1150 (b) Subsequent offense: If there is a prior conviction for a violation of this subsection
1151 or a like offense in another jurisdiction the defendant shall be imprisoned in a jail or house of
1152 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1153 prison for not less than 3 years but not more than 5 years with a minimum mandatory term of 6
1154 months and fined not less than $5,000 but not more than $10,000.

1155 Upon a conviction under this section the registrar shall suspend the license or right to
1156 operate for an additional period as follows:

1157 (a) First offense: 1 year

1158 (b) Subsequent offense: 3 years

1159 No appeal or motion for a new trial shall stay the suspension of the license or right to
1160 operate.

1161 A sentence imposed under this subsection shall be served consecutively to and not
1162 concurrently with the underlying operating under the influence offense. No case commenced
1163 under this section shall be continued without a finding, or placed on file, or subject to the
1164 provisions of section 87 of chapter 276.

1165 Chapter 90, § 24J - Operating under the influence causing serious bodily injury

1166 (1) No person shall operate a motor vehicle on a public way while under the influence
1167 of intoxicating liquor, drugs, or other substances and by such operation cause serious bodily
1168 injury to another person.

1169 A person convicted under this subsection shall be imprisoned in a jail or house of
1170 correction for not more than 2 ½ years or fined not more than $3,000, or both.

1171 (2) No person shall operate a motor vehicle while under the influence of intoxicating
1172 liquor, drugs, or other substances on a public way negligently or recklessly so that the lives or
1173 safety of the public might be endangered and by such operation cause serious bodily injury to
1174 another person.

1175 A person convicted under this subsection shall be imprisoned in a jail or house of
1176 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1177 prison for not less than 2 ½ years but not more than 10 years with a minimum mandatory term of
1178 6 months and fined not more than $5,000. No case commenced under this section shall be
1179 continued without a finding, or placed on file, or subject to the provisions of section 87 of
1180 chapter 276.

1181 (3) Upon a conviction under this section the registrar shall suspend the license or
1182 right to operate for 2 years after the date of conviction. No appeal or motion for a new trial shall
1183 stay the suspension of the license or right to operate, provided; however, if the charges against
1184 the person are dismissed, or the person is found not guilty, the person may immediately file a
1185 motion before the judge that heard the case, for the purpose of seeking restoration of the license
1186 or right to operate. At said hearing, if the court finds that the charges were resolved in favor of
1187 the defendant, that there are no alcohol related charges pending in any court, and that there is no

1188 evidence before the court based on a preponderance of the evidence that reinstatement of the
1189 license or right to operate would endanger the public, there shall be a presumption that the court
1190 shall order that this particular suspension be terminated.

1191 (4) Notwithstanding the provisions of subdivision (3) above, if a person license or
1192 right to operate for life.

1193 (5) Upon a disposition under this section the court shall assess a $50 fee to the
1194 person. The court shall transmit the $50 to the state treasurer to be deposited into the Victims of
1195 Drunk Driving Trust Fund. The assessment shall not be subject to waiver by the court for any
1196 reason. If the court sentences the person to a correctional facility the outstanding assessment
1197 shall be noted on the mittimus.

1198 (6) For purposes of this section "serious bodily injury" shall mean bodily injury
1199 which creates a substantial risk of death or involves either total disability or the loss or
1200 substantial impairment of some bodily function for a substantial period of time.

1201 Chapter 90, § 24K (1) – Misdemeanor motor vehicle homicide – negligently or recklessly

1202 (1) No person shall operate a motor vehicle on a public way negligently or recklessly
1203 so that the lives or safety of the public might be endangered and by such operation cause the
1204 death of another person.

1205 A person convicted under this subsection shall be imprisoned in a jail or house of
1206 correction for not less than 30 days but not more than 2 ½ years or fined not less than $300 but
1207 not more than $3,000, or both. No case commenced under this subsection shall be continued
1208 without a finding or placed on file.

1209 Upon a conviction under this subsection the registrar shall suspend the license or right to
1210 operate as follows:

1211 (a) First offense: 15 years after the date of conviction

1212 (b) Subsequent offense: Lifetime

1213 No appeal or motion for a new trial shall stay the suspension of the license or right to
1214 operate, provided; however, if the charges against the person are dismissed, or the person is
1215 found not guilty, the person may immediately file a motion before the judge that heard the case,
1216 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1217 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1218 related charges pending in any court, and that there is no evidence before the court based on a
1219 preponderance of the evidence that reinstatement of the license or right to operate would
1220 endanger the public, there shall be a presumption that the court shall order that this particular
1221 suspension be terminated.

1222 Upon a disposition under this section the court shall assess a $50 fee to the person. The
1223 court shall transmit the $50 to the state treasurer to be deposited into the Victim's of Drunk
1224 Driving Trust Fund. The assessment shall not be subjected to waiver by the court for any reason.
1225 If the court sentences the person to a correctional facility the outstanding assessment shall be
1226 noted on the mittimus.

1227 Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence

1228 (2) No person shall operate a motor vehicle on a public way under the influence of
1229 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1230 person.

1231 A person convicted under this subsection shall be imprisoned in the jail or house of
1232 correction for not less than 30 days but not more than 2 ½ years or fined not less than $300 but
1233 not more than $3,000, or both. No case commenced under this subsection shall be continued
1234 without a finding or placed on file.

1235 Upon a conviction under this subsection the registrar shall suspend the license or right to
1236 operate as follows:

1237 (a) First offense: 15 years after the date of conviction

1238 (b) Subsequent offense: Lifetime

1239 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1240 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1241 his license or right to operate for life.

1242 No appeal or motion for a new trial shall stay the suspension of the license or right to
1243 operate, provided; however, if the charges against the person are dismissed, or the person is
1244 found not guilty, the person may immediately file a motion before the judge that heard the case,
1245 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1246 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1247 related charges pending in any court, and that there is no evidence before the court based on a
1248 preponderance of the evidence that reinstatement of the license or right to operate would

1249 endanger the public, there shall be a presumption that the court shall order that this particular
1250 suspension be terminated.

1251 Upon a disposition under this section the court shall assess a $50 fee to the person. The
1252 court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
1253 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
1254 If the court sentences the person to a correctional facility the outstanding assessment shall be
1255 noted on the mittimus.

1256 Chapter 90, § 24K (3) – Felony motor vehicle homicide

1257 (3) No person shall operate a motor vehicle negligently or recklessly on a public way
1258 so that the lives or safety of the public might be endangered while under the influence of
1259 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1260 person.

1261 A person convicted under this subsection shall be imprisoned in a jail or house of
1262 correction for a minimum mandatory term of 1 year but not more than 2 ½ years, or state prison
1263 for not less than 2 ½ years but not more than 15 years with a minimum mandatory term of 1 year
1264 and fined not more than $5,000. No case commenced under this subsection shall be continued
1265 without a finding or placed on file.

1266 Upon a conviction under this subsection the registrar shall suspend the license or right to
1267 operate as follows:

1268 (a) First offense: 15 years after the date of conviction

1269 (b) Subsequent offense: Lifetime

1270 No appeal or motion for a new trial shall stay the suspension of the licenseor right to
1271 operate, provided; however, if the charges against the person are dismissed, or the person is
1272 found not guilty, the person may immediately file a motion before the judge that heard the case,
1273 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1274 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1275 related charges pending in any court, and that there is no evidence before the court based on a
1276 preponderance of the evidence that reinstatement of the license or right to operate would
1277 endanger the public, there shall be a presumption that the court shall order that this particular
1278 suspension be terminated.

1279 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1280 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1281 his license or right to operate for life.

1282 Upon a disposition under this section the court shall assess a $50 fee to the person. The
1283 court shall transmit the $50 to the state treasurer to be deposited into the Victims of Drunk
1284 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason.
1285 If the court sentences the person to a correctional facility the outstanding assessment shall be
1286 noted on the mittimus.

1287 Chapter 90, § 24L - Manslaughter by motor vehicle

1288 (1) No person shall operate a motor vehicle wantonly and recklessly on a public way
1289 while under the influence of intoxicating liquor, drugs, or other substances and by such operation
1290 cause the death of another person.

1291 A person convicted under this section shall be imprisoned in state prison for a minimum
1292 mandatory term of 5 years but not more than 20 years and fined not more than $25,000.

1293 (b) Upon a conviction of this section the registrar shall suspend the license or right to
1294 operate for 15 years to life. Any person aggrieved by the registrar's decision may file an
1295 appeal in the superior court. If the court determines that the registrar abused his discretion, the
1296 court may vacate and reduce the suspension of the license or the right to operate as ordered by
1297 the registrar. In no case shall the suspension period be less than 15 years.

1298 No appeal or motion for a new trial shall stay the suspension of the license or right to
1299 operate, provided; however, if the charges against the person are dismissed, or the person is
1300 found not guilty, the person may immediately file a motion before the judge that heard the case,
1301 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1302 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1303 related charges pending in any court, and that there is no evidence before the court based on a
1304 preponderance of the evidence that reinstatement of the license or right to operate would
1305 endanger the public, there shall be a presumption that the court shall order that this particular
1306 suspension be terminated.

1307 (c) Notwithstanding the provisions of paragraph (b) above, if a person convicted
1308 under this section has a prior operating under the influence offense, the registrar shall suspend
1309 his license or right to operate for life.

1310 Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials
1311 and agencies

1312 The officials and agencies designated in this section are hereby directed to perform the
1313 duties in this section and any other action within their authority in order to ensure effective
1314 enforcement of chapter 90 section 24 to 24M, inclusive.

1315 (1) The municipal police training committee established in section 116 of chapter 6
1316 shall provide training, including but not limited to, education concerning the aforesaid sections to
1317 all law enforcement personnel throughout the commonwealth.

1318 (2) The chief administrative justice of the trial court department shall provide
1319 training, including but not limited to education concerning the aforesaid sections to all
1320 appropriate court personnel throughout the commonwealth, including but not limited to, judges,
1321 district attorneys and probation officers.

1322 (3) The courts of the Commonwealth shall give priority to the speedy and effective
1323 disposition of all matters under the aforesaid sections.

1324 (4) The executive office of public safety shall establish and implement an alcohol
1325 sensitive selective traffic enforcement program.

1326 SECTION 4. Chapter 90B of the General Laws is hereby amended by adding the
1327 following:-

1328 Section 8B ½ -

1329 (5) No person shall operate a vessel on the waters of the commonwealth wantonly
1330 and recklessly while under the influence of intoxicating liquor, drugs, or other substances and by
1331 such operation cause the death of another person.

1332 A person convicted under this section shall be imprisoned in state prison for a minimum
1333 mandatory term of 5 years but not more than 20 years and fined not more than $25,000.

1334 Upon a conviction of this section the registrar shall suspend the person's license or right
1335 to operate for 15 years to life. Any person aggrieved by the registrar's decision may file an
1336 appeal in the superior court. If the court determines that the registrar abused his discretion, the
1337 court may vacate and reduce the suspension of the license or suspension of the right to operate as
1338 ordered by the registrar. In no case shall the suspension or suspension period be less than 15
1339 years.

1340 No appeal or motion for a new trial shall stay the suspension of the license or right to
1341 operate, provided; however, if the charges against the person are dismissed, or the person is
1342 found not guilty, the person may immediately file a motion before the judge that heard the case,
1343 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1344 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1345 related charges pending in any court, and that there is no evidence before the court based on a
1346 preponderance of the evidence that reinstatement of the license or right to operate would
1347 endanger the public, there shall be a presumption that the court shall order that this particular
1348 suspension be terminated.

1349 Notwithstanding the provisions of paragraph (b) above, if a person convicted under this
1350 section has a prior operating under the influence offense, the registrar shall suspend his license or
1351 right to operate for life

1352 SECTION 5. Section 13 ½ of chapter 265 of the General Laws is hereby repealed.

1353 SECTION 6. Section 28 of chapter 266 is hereby amended by inserting at the end:-

1354 (a) Whoever knowingly uses a motor vehicle without authority shall be punished as
1355 follows:

1356 (1) First offense: The defendant shall be imprisoned in the jail or house of correction
1357 for not less than 30 days but not more than 2 years, or fined not less than $50 but not more than
1358 $500 or both.

1359 (2) Second offense: The defendant shall be imprisoned in jail or house of correction
1360 for not less than 30 days but not more than 2 ½ years, or state prison for not more than 5 years,
1361 or fined not less than $1000, or both.

1362 (3) Third offense within 5 years: The defendant shall be imprisoned in jail or house of
1363 correction for not less than 6 months but not more than 2 ½ years, or state prison for not less than
1364 2 ½ years but not more than 5 years, or a fine of not less than $200 but not more than $1,000, or
1365 both.

1366 Upon a conviction of this subsection the registrar shall, unless the court or magistrate
1367 recommends otherwise, suspend the license or right to operate as follows:

1368 (a) First offense: 1 year

1369 (b) Subsequent offense: 3 years

1370 No appeal or motion for a new trial shall stay the suspension of the license or right to
1371 operate, provided; however, that if the prosecution against such person has terminated in his
1372 favor, the registrar shall immediately reinstate his license or right to operate provided; however,
1373 if the charges against the person are dismissed, or the person is found not guilty, the person may
1374 immediately file a motion before the judge that heard the case, for the purpose of seeking

1375 restoration of the license or right to operate. At said hearing, if the court finds that the charges
1376 were resolved in favor of the defendant, that there are no alcohol related charges pending in any
1377 court, and that there is no evidence before the court based on a preponderance of the evidence
1378 that reinstatement of the license or right to operate would endanger the public, there shall be a
1379 presumption that the court shall order that this particular suspension be terminated.

1380 (4)Upon a conviction of this section, if it appears from the records of the registrar that the
1381 person convicted is the owner of the motor vehicle or has exclusive control of any motor vehicle
1382 as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of registration
1383 of any or all motor vehicles owned or exclusively controlled by the person.

1384 (5) A summons may be issued instead of a warrant for arrest upon a complaint for a
1385 violation of this section if there is reason to believe the defendant will appear before the court.

1386 If a motor vehicle is used in connection with the commission of a felony, of any larceny,
1387 or of any offense punishable under any provision of sections 22, 113 to 117, inclusive, and 120
1388 of chapter 266, or sections 13 of 269, of which a person is convicted, the material facts relative
1389 to such use, including the registration number of the vehicle, so far as disclosed in the
1390 proceedings, shall be reported forthwith to the registrar by the clerk of the court in which the
1391 underlying conviction occurs.

1392 SECTION 7. Section 28(a) of chapter 266 is hereby amended by inserting subsection (d)
1393 as follows:-

1394 (d) Persons convicted of using a motor vehicle without authority under the provisions of
1395 paragraph (a) of section 28 shall be liable in a civil action to the owner of such vehicle, if it is

1396 recovered, for all towing and storage charges necessitated and all property damage caused to said
1397 vehicle by such use without authority.

1398 SECTION 8. Section 24(2) (a) of chapter 90 is hereby amended by striking from lines
1399 720, 721, 722, and 723 the following:- or upon a bet or wager or in a race, or whoever
1400 operates a motor vehicle for the purpose of making a record and thereby violates any provision
1401 of section seventeen or any regulation under section eighteen

1402 SECTION 9. Chapter 90 of the General Laws is hereby amended after section 17B by
1403 adding the following:-

1404 Section 17B ½. No person shall operate a motor vehicle on a public way upon a bet or
1405 wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and
1406 thereby violates any provision of section seventeen or any regulation under section eighteen.
1407 Whoever violates this section shall be punished by imprisonment for not less than 2 weeks but
1408 not more than 2 years or a fine of not less than twenty dollar nor more than two hundred dollars,
1409 or both.

1410 SECTION 10. Chapter 266 of the General Laws is hereby amended by adding the
1411 following:-

1412 Section 29A -

1413 (6) No person shall remove an abandoned or stolen motor vehicle on a public way as
1414 defined in section 1 of chapter 90 without the express consent of the owner of such vehicle or
1415 without the written permission of the police department. The owner or operator of a motor

1416 vehicle that is designed to carry or tow another vehicle shall be licensed for that specific purpose
1417 or as a towing service.

1418 The owner of any machine that is designed to crush, mutilate or destroy a motor vehicle,
1419 whether the machine be mobile or affixed permanently, shall have that machine listed with the
1420 registry of motor vehicles.

1421 If the owner or agent of a salvage or junk yard transports crushed or mutilated vehicles
1422 without the commonwealth for purposes of resale, the operator of the transporting vehicle shall
1423 carry a list of the vehicles being transported, and a copy of such list shall be forwarded to said
1424 registrar.

1425 (c) Any person convicted under this section shall be imprisoned for not less than 2 years,
1426 a fine of not less than $1,000, or both.

1427 (d) Any person convicted under this section shall forfeit, to the registrar, any license
1428 issued which is related to such violation.