

SENATE No. 908

The Commonwealth of Massachusetts

PRESENTED BY:

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:	
<i>Viriato M. deMacedo</i>	<i>Plymouth and Barnstable</i>	
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>1/31/2019</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/31/2019</i>

SENATE No. 908

By Mr. deMacedo, a petition (accompanied by bill, Senate, No. 908) of Viriato M. deMacedo, Steven S. Howitt and Mathew J. Muratore for legislation to protect the citizens of the Commonwealth from drunk drivers. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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:

1 SECTION 1. Section 1 of Chapter 90 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by including the following definitions:-

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

7 Disposition: A conviction, guilty plea, plea of nolo contendere, placement on probation,
8 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 an
14 instrument to measure the alcohol content of a deep lung breath sample. If the measured blood
15 alcohol content is at or above a set level, the ignition is locked and the vehicle will not start. For
16 purposes of this chapter, the registrar will certify each model or device approved for use.

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

32 Open Container: A bottle, can or other receptacle used to contain a liquid that has been
33 opened or has a broken seal or the contents of which have been partially removed or consumed;

34 provided, however, that a bottle resealed pursuant to section 12 of chapter 138 shall not be
35 considered an open container.

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

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

47 Prior under the influence offense: Any conviction, nolo contendere plea, or continuation
48 without a finding with an assignment to an alcohol, drug or substance abuse education treatment
49 program for operating under the influence under chapter 90, chapter 90A, chapter 90B, or
50 chapter 265 section 13 ½ , section 13 ½ , or of a like offense of operating under the influence
51 from another jurisdiction, where the findings, judgment, or adjudication date by the court
52 precedes the date of offense for which he is now charged.

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

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

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

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

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

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

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

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

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

75 (c) This paragraph shall not apply to any person who is charged with operating a motor
76 vehicle after his license to operate has been suspended or revoked pursuant to a violation of

77 paragraph (a) of subdivision (1) of section 24, or section 24D, 24E, 24G, 24L or 24N of this
78 chapter, subsection (a) of section 8 or section 8A or 8B of chapter 90B, section 8, 9 or 11 of
79 chapter 90F or after notice of such suspension or revocation of his right to operate a motor
80 vehicle without a license has been issued and received by such person or by his agent or
81 employer, and prior to the restoration of such license or right to operate or the issuance to him of
82 a new license or right to operate because of any such violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

202 (1) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

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

229 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

259 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

288 (a) First offense: 60 days

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

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

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

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

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

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

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

306 (1) No operator of a vehicle or vessel used in public transportation, including a train,
307 passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water
308 shuttle or other equipment used in public transportation owned by, or operated under the
309 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha’s
310 Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
311 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
312 telephone or other mobile electronic device while operating such vehicle or vessel shall operate a
313 motor vehicle while using a mobile phone or any other handheld device capable of accessing the
314 internet, to manually compose, send or receive an electronic message on any public way
315 negligently so that the lives or safety of the public might be endangered and proximately cause
316 injury to any vehicle or property.

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

320 In order for the use of any such device to be made “in the performance of the operator’s
321 official duties,” such use must have been made in conformance with applicable written

322 guidelines issued by a public entity listed in this paragraph relative to circumstances when
323 operators are permitted to use said devices in the performance of their official duties or pursuant
324 to directives from federal authorities having regulatory jurisdiction over such public entity's
325 operations.

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

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

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

339 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

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

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

390 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

429 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

467 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

492 (a) First offense: 60 days

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

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

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

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

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

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

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

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

519 (a) First offense: 1 year

520 (b) Subsequent offense: 2 years

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

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

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

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

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

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

544 (a) First offense: 3 years

545 (b) Subsequent offense: 10 years

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

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

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

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

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

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

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

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

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

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

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

583 Upon a disposition under this section the court shall assess a \$250 fee to the person. The
584 court shall transmit \$187.50 of the \$250 collected under this assessment to the state treasurer to
585 be deposited into the Head Injury Treatment Services Trust Fund. The remaining \$62.50 shall be
586 deposited into the General Fund. The assessment shall not be subject to reduction or waiver by
587 the court for any reason.

588 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
589 court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
590 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If

591 the court sentences the person to a correctional facility the outstanding assessment shall be noted
592 on the mittimus.

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

607 No prosecutions under this section shall be continued without a finding except for cases
608 disposed of pursuant to the provisions of subdivision (a) of subsection (3) of this section. No
609 prosecutions under this section shall be placed on file, or subject to the provisions of section 87
610 of chapter 276. At any time before the commencement of a trial or acceptance of a plea on a
611 complaint alleging a violation of this section, the prosecutor may apply for the issuance of a new
612 complaint pursuant to section 35A of chapter 218 alleging a violation of this section and 1 or
613 more prior operating under the influence offenses. If such application is made, upon motion of

614 the prosecutor, the court shall stay further proceedings on the original complaint pending the
615 determination of the application for the new complaint. If a new complaint is issued, the court
616 shall dismiss the original complaint and order that further proceedings on the new complaint be
617 postponed until the defendant has had sufficient time to prepare a defense. No trial shall be
618 commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be
619 accepted on such complaint, nor shall the prosecution on such complaint be transferred to
620 another division of the district court or to a jury-of-six session, until the court receives a report
621 from the commissioner of probation pertaining to the defendant's record, if any, of prior
622 operating under the influence offenses; provided, however, that the provisions of this paragraph
623 shall not justify the postponement of any such trial or of the acceptance of any such plea for
624 more than five working days after the date of the defendant's arraignment. The commissioner of
625 probation shall give priority to requests for such records. Upon any conviction or continuation
626 without a finding under this section, the court shall order that any license issued by the
627 commonwealth be surrendered to the probation department, and disposed of in a manner
628 prescribed by the registrar. The clerk of courts shall notify the registrar forthwith of the
629 disposition.

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

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

637 violation at an establishment licensed to serve alcohol. If the defendant answers in the
638 affirmative, the defendant shall provide the name and address of the establishment. The clerk's
639 office shall provide in writing to the Alcohol Beverage Control Commission the name of the
640 establishment and date of offense given by the defendant. The Alcohol Beverage Control
641 Commission shall inform the named establishment of this incident forthwith. The trial court
642 shall, in conjunction with the Alcohol Beverage Control Commission, promulgate a standard
643 form for reporting and collecting said information. The Alcohol Beverage Control Commission
644 shall provide an annual report including the collected data to the attorney general, each district
645 attorney, and the local liquor licensing authorities.

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

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

651 (3) Alternative Dispositions

652 First Offense: If there is no evidence of a prior operating under the influence offense, a
653 person charged or convicted may consent to being placed on probation for not more than 2 years
654 instead of the disposition specified in subdivision (a) of subsection (2) of this section. Offenders
655 with a single prior operating under the influence offense more than 10 years preceding the date
656 of the most recent offense shall be eligible for a disposition under this subdivision. As a
657 condition of this probation, the person shall be ordered to complete an out patient alcohol, drug,
658 or substance abuse program as specified by the court. Offenders who reside out of state, or are a

659 full time student out of state, may at the court's discretion complete a licensed first offender's
660 program in that other state, as approved by the Department of Public Health.

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

680 Each person placed in such a program shall pay a program fee as determined by the
681 department of public health. The program fee shall not exceed the cost per client to run the

682 program. The department of public health shall compile a schedule of uniform fees for these
683 programs, which shall be changed only after notice and public hearing. The department shall
684 promulgate rules and regulations regarding the process and methodology of setting these fees.
685 No person shall be denied entry into a program where the court, after review and investigation by
686 the probation department, determines that the defendant is indigent, and has filed such an
687 affidavit with the court. The court may then waive or reduce said fee on a case by case basis.
688 Subject to appropriation, the department of public health shall reimburse each program for the
689 costs of services provided to persons for whom payment of a fee has been waived or reduced on
690 the grounds of indigency.

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

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

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

716 Second Offense: Notwithstanding the provisions of subsection (2) of this section, in cases
717 where a defendant has only one prior operating under the influence offense, the court, in its
718 discretion, may order the defendant to enter and complete a 14 day in patient program and to
719 participate in an outpatient counseling program designed for such offenders in lieu of the
720 required 30 day minimum mandatory term. This program shall be in addition to any probation
721 ordered under section 24D(2)(b).

722 The defendant shall pay for the cost of the services provided by the residential alcohol
723 treatment program; provided, however, that no person shall be excluded from said programs for
724 inability to pay; and provided, further, that such person files with the court, an affidavit of
725 indigency or inability to pay and that investigation by the probation officer confirms such
726 indigency or establishes that payment of such fee would cause a grave and serious hardship to

727 such individual or to the family of such individual, and that the court enters a written finding
728 thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to
729 make partial or installment payments of the cost of said program.

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

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

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

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

738 The assessment shall include at a minimum an evaluation of the level of the offender's
739 addiction to alcohol and/or drugs and the department's recommended course of treatment. Such
740 assessment and recommendation shall be reported to the offender's probation or parole officer.
741 No person shall be excluded from an assessment for inability to pay if the offender files an
742 affidavit of indigency or inability to pay with the court and an investigation by the probation or
743 parole officer confirms such indigency or establishes that such payment would cause a grave and
744 serious hardship to the offender or his family, and the court enters written findings relative
745 thereto. The commissioner of public health may make such rules and regulations as are necessary
746 or proper to carry out this section.

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

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

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

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

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

759 Fifth or subsequent offense: Lifetime.

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

764 Hardship licenses under this subsection shall be issued under such terms and conditions
765 as the registrar may prescribe, after the registry is convinced that the issues that this offense(s)
766 arose from have been dealt with by the operator and brought under control. Said hardship license
767 shall be issued, subject to the agency's discretion, upon a showing of hardship for work,

768 education, or other purpose the registrar deems valid and significant, and shall be for an identical
769 12 hour period, 7 days a week.

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

774 Chapter 90, § 24E – Implied Consent

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

788 In any prosecution for an operating under the influence offense, evidence of a defendant's
789 blood alcohol content at the time of offense, shown by breath or blood, is relevant and admissible

790 to determine whether the defendant was under the influence of intoxicating liquor as defined in
791 section 1 of this chapter, if test was conducted by or at the direction of a police officer, with the
792 consent of the defendant. Upon the defendant's request the results of said test shall be made
793 available to him. In any case where a test is given, the defendant shall have the right to have
794 another test done at his own expense, by a physician of his choosing.

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

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

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

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

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

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

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

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

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

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

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

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

828 No hardship licenses on suspensions for test refusals shall be granted, except for
829 candidates that have properly received dispositions pursuant to subsection 3 of section 24D of
830 this chapter. Any suspensions under this section shall be consecutive with any suspension or
831 suspension for the underlying operation under the influence offense. Notwithstanding that, if the

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

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

849 If the registrar rules that the suspension for refusal was proper, the appellant may file a
850 petition for judicial review in the district court having jurisdiction over the underlying operation
851 under the influence charge within 30 days of the registrar's decision. Review by the court shall
852 be on the record established at the hearing before the registrar. If the court finds that the
853 department exceeded its constitutional or statutory authority, made an erroneous interpretation of

854 the law, acted in an arbitrary and capricious manner, or made a determination which is
855 unsupported by the evidence in the record, the court may reverse the registrar's determination.

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

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

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

871 (3) Chemical analysis of the breath of a person charged with a violation of this
872 chapter shall not be considered valid under the provisions of this chapter, unless such analysis
873 has been performed by a certified operator, using infrared breath-testing devices according to
874 methods approved by the secretary of public safety. The secretary of public safety shall
875 promulgate rules and regulations regarding satisfactory methods, techniques and criteria for the

876 conduct of such tests, and shall establish a statewide training and certification program for all
877 operators of such devices and a periodic certification program for such breath testing devices;
878 provided, however, that the secretary may terminate or suspend such certification at his
879 discretion.

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

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

883 (1) one adequate breath sample analysis

884 (2) one calibration standard analysis

885 (3) a second adequate breath sample analysis

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

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

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

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

- 903 a) the grounds the arresting officer had to believe that the defendant was operating
904 under the influence on a public way;
- 905 b) the defendant was advised of the consequences of refusing the test;
- 906 c) the results of any failed test;
- 907 d) whether or not the operator refused or failed to consent to the test;
- 908 e) the identity of the officer who advised the defendant of his rights;
- 909 f) the identity and certification of the officer who conducted the breath test;
- 910 g) the identity of any witness to the test or refusal;
- 911 h) that the test was administered in accordance with the regulations and standards
912 promulgated by the secretary of safety; and
- 913 i) There was every reason to believe the equipment was functioning properly at the
914 time the test was administered.

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

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

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

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

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

937 the failure of a person who, at the time of offense was under the age of 21, to successfully
938 complete such program, the registrar shall forthwith suspend such license or permit to operate for
939 180 days, or for 1 year if the person was under age 18 at the time of offense.

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

946 (5) When a complaint is issued alleging a person has violated section 24D, 24J, or
947 24K of this chapter, or violated section 8(1) (a), 8A, or 8B of chapter 90B, upon the failure of a
948 police officer to suspend or take custody of the defendant's license or permit, the judge shall
949 immediately suspend and take custody of the defendant's license or right to operate in the
950 following instances:

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

956 (1) the defendant was given a test;

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

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

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

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

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

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

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

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

977 If the person has one prior operating under the influence offense, or was under the age of
978 21 at the time of offense and has no more than 1 prior operating under the influence offenses, the
979 suspension shall be for 1 year.

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

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

991 Any person whose license or right to operate has been suspended under this section shall
992 have a right, at his request, to a hearing before the registrar to determine if grounds exist for the
993 suspension. Any hearing request shall be made within 10 days of the incident giving rise to this
994 suspension. The hearing shall be limited to the issues of whether or not a blood test administered
995 pursuant to section 24E of this chapter, within a reasonable period of time after a test of his
996 breath, shows that that the blood alcohol content was less than .08% or less than .02% if the
997 person was under the age of 21 at the time of the offense.

998 If, after a hearing, the court finds the defendant's blood alcohol content was less than
999 .08% or less than .02% if the person was under the age of 21 at the time of offense, the court
1000 shall restore the defendant's license or right to operate and shall direct the prosecuting officer to

1001 immediately notify the Department of Criminal Justice Information Systems and the registrar of
1002 such restoration.

1003 (6) Any person whose license or right to operate has been suspended because the
1004 person refused to submit to a test of his breath or blood under this section shall have the right, at
1005 his request, to a hearing before the court in which the underlying charges are pending to
1006 determine if grounds exist for the suspension. Any hearing request shall be made within 10 days
1007 of the hearing giving rise to this suspension. The hearing shall be limited to the following issues:

1008 (a) whether or not the police officer had reasonable grounds to believe that the person
1009 had been operating a motor vehicle while under the influence of intoxicating liquor on a public
1010 way;

1011 (b) whether or not the person was placed under arrest; and

1012 (c) whether or not the person refused to submit to a test of his breath or blood.

1013 If, after a hearing, the court finds in the negative on any one of the issues, the court shall
1014 restore the defendant's license or right to operate and shall direct the prosecuting officer to
1015 immediately notify the Department of Criminal Justice Information Systems and the registrar of
1016 such restoration.

1017 Chapter 90, § 24F – Ignition Interlock Devices

1018 (1) Any person whose license or right to operate is suspended for 2 or more operating
1019 under the influence offenses, or who is operating on a restricted license for such offenses, shall
1020 be required to have an ignition interlock device installed on each vehicle that he may own, lease,
1021 or operate as a mandatory condition of issuance of a new license or right to operate. The

1022 restriction shall remain on the license during the hardship license period and an additional 2
1023 years upon the full restoration of the license. In cases where the person has not been granted a
1024 hardship license, the ignition interlock requirement shall be for a 2 year period following the
1025 reinstatement of the license or right to operate.

1026 Each device shall be subject to inspection, maintenance, and monitoring as the registrar
1027 may prescribe. No ignition interlock device utilized under this section shall allow a vehicle to
1028 start if a person's blood alcohol content exceeds .02%. The registrar shall promulgate such rules
1029 and regulations as deemed necessary regarding this section.

1030 The registrar may, after hearing, suspend the license or right to operate of any person
1031 who:

1032 (a) removes an ignition interlock device without the written consent of the registrar;
1033 or

1034 (b) who fails to have it inspected, maintained or monitored on at least 2 occasions
1035 during the requirement period,

1036 if the licensee has:

1037 (a) operated a vehicle with a blood alcohol content that caused the certified ignition
1038 interlock device to prevent the vehicle from starting on at least 2 occasions; or

1039 (b) recorded a blood alcohol content in excess of .02% on at least 2 occasions.

1040 The suspension shall be for an extended period or for life. A person aggrieved by the
1041 decision of the registrar pursuant to this section may file an appeal in the superior court. If the

1042 court determines that the registrar abused his discretion, the court may vacate the suspension or
1043 reduce the period ordered by the registrar.

1044 (2) No person required to have an ignition interlock device shall operate a motor
1045 vehicle without such a device on a public way.

1046 A person convicted under this subsection shall be imprisoned in a jail or house of
1047 correction for not less than 150 days but not more than 2 ½ years, or the state prison for not less
1048 than 2 ½ years but not more than 5 years with a minimum mandatory term of 150 days. A fine of
1049 not less than \$1,000 but not more than \$15,000 shall be imposed.

1050 (3) No person shall interfere with or tamper with an ignition interlock device with the
1051 intent to disable such device.

1052 A person convicted under this subsection shall be punished by imprisonment in a jail or
1053 house of correction for not less than 6 months but not more than 2 ½ years, or state prison for not
1054 less than 3 years but not more than 5 years.

1055 (4) No person shall knowingly breathe into an ignition interlock device, or start a
1056 motor vehicle equipped with an ignition interlock device, for the purpose of providing an
1057 operable motor vehicle to a person under a license restriction requiring an ignition interlock
1058 device.

1059 A person convicted under this subsection shall be punished as follows:

1060 (a) First offense: The defendant shall be imprisoned in a jail or house of correction
1061 for not less than 6 months but not more than 2 ½ years or punished by a fine of not less than
1062 \$1,000 but not more than \$5,000.

1063 (b) Second or subsequent offense: The defendant shall be imprisoned in state prison
1064 for not less than 3 years but not more than 5 years.

1065 (5) A certified copy of a signed acknowledgement of the terms and existence of an
1066 ignition interlock device restriction, executed by a person alleged to have violated this section,
1067 shall be admissible as prima facie evidence to prove the knowledge of the person who executed
1068 the document.

1069 Chapter 90, § 24G – Motor Vehicle Forfeitures

1070 (1) A motor vehicle or vessel owned by a person who has at least 3 prior operating
1071 under the influence offenses, as defined in section 1 of chapter 90, may be forfeited to the
1072 commonwealth.

1073 (2) A district attorney or the attorney general may petition the superior or district
1074 court, in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture
1075 of such motor vehicle or vessel. The petition shall be filed in the court having jurisdiction over
1076 the criminal proceeding brought under this chapter or chapter 90B. The proceeding shall be
1077 deemed a civil suit in equity. In all such actions where the motor vehicle or vessel is jointly
1078 owned by either a parent, spouse, child, grandparent, brother, sister, or parent of the spouse
1079 living in the defendant's household, before the date of the second or subsequent operating under
1080 the influence offense committed by the defendant, the commonwealth shall have the burden of
1081 proving the existence of probable cause to institute the action. The claimant shall have the
1082 burden of proving that the property is not forfeitable because the claimant is dependent on the
1083 motor vehicle or vessel for his livelihood or the maintenance of his family.

1084 The court shall order the commonwealth to give notice, by certified or registered mail, to
1085 the owners of the motor vehicle or vessel and, to such other persons or entities who appear to
1086 have an interest therein. The court shall promptly, but not less than 2 weeks after notice, hold a
1087 hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court
1088 may continue the hearing on the petition pending the outcome of a criminal trial related to a
1089 charge of operating under the influence in violation of this chapter or chapter 90B. During the
1090 pendency of the proceedings, the court may issue, at the request of the commonwealth, ex parte,
1091 any preliminary order or process necessary to seize and secure the property for which forfeiture
1092 is sought. Process for seizure of the property shall issue only upon a showing of probable cause.
1093 The application, issuance, execution, and return thereof shall be subject to the provisions of
1094 chapter 276, as applicable.

1095 (3) At a hearing under this section, the court shall hear evidence and make findings of
1096 fact and conclusions of law, and shall issue a final order. The parties shall have a right of appeal
1097 as from a decree in equity. No forfeiture under this section shall extinguish a perfected security
1098 interest held by a creditor in the property at the time of the filing of the forfeiture action. In all
1099 actions where a proceeding results in forfeiture, the final order shall provide for disposition of
1100 the property by the commonwealth in any manner not prohibited by law, including official use
1101 by an authorized law enforcement or other agency, or at sale at public auction or by competitive
1102 bidding, with such sale being conducted by the office of the district attorney or the attorney
1103 general that obtained the final order of forfeiture.

1104 (4) The final order of the court shall provide that the proceeds of any such sale shall
1105 be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage,
1106 maintenance of custody, advertising and notice, and the balance of any such sale shall be

1107 distributed equally among the prosecuting district attorney or attorney general, the city, town or
1108 state police department involved in the forfeiture and the Victims of Drunk Driving Trust Fund
1109 established in section 66 of chapter 10. If more than 1 department was substantially involved in
1110 the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the
1111 portion for law enforcement equitably among the departments.

1112 (5) There shall be established within the office of the state treasurer a separate
1113 Operating Under the Influence Deterrent Trust Fund for each district attorney and for the
1114 attorney general. All monies and proceeds received by a prosecuting district attorney or attorney
1115 general pursuant to this section shall be deposited in the fund and shall be expended without
1116 further appropriation to defray the costs of investigations, to provide additional technical
1117 equipment or expertise, to provide matching funds to obtain federal grants, or for such other law
1118 enforcement purposes as the district attorney or attorney general deems appropriate. Any
1119 program seeking to be an eligible recipient of the funds shall file an annual audit report with the
1120 local district attorney and attorney general. Such report shall include, but not be limited to, a
1121 listing of the assets, liabilities, itemized expenditures and board of directors of the program.
1122 Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall
1123 file an annual report with the house and senate committees on ways and means on the use of the
1124 monies in the trust fund for the purposes of deterring operating under the influence programs.

1125 (6) All moneys and proceeds received by a police department shall be deposited into
1126 the fund and shall be expended without further appropriation to defray the costs of
1127 investigations, to provide additional technical equipment or expertise, to provide matching funds
1128 to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of

1129 police of such city or town, or the colonel of state police deem appropriate, but such funds shall
1130 not be considered a source of revenue to meet the operating needs of such department.

1131 Chapter 90, § 24H - Aggravated OUI

1132 (1) Any person aged 17 to 21 years, inclusive, who commits an operating under the
1133 influence offense, and who has a blood alcohol content of .20% or above, shall also be guilty of
1134 aggravated operating under the influence, and in addition to the penalties mandated in section
1135 24D of this chapter, shall also be required to enter and complete a 14 day residential treatment
1136 program as described in subdivision (b) of subsection (3) of that section. In cases where the
1137 person is otherwise qualified for a disposition under subdivision (a) of subsection (3), the person
1138 shall be required to complete the 14 day residential program in lieu of the outpatient program
1139 specified therein.

1140 Chapter 90, § 24I - Child Endangerment

1141 (1) No person shall operate a motor vehicle on a public way while under the influence
1142 of intoxicating liquor, drugs, or other substance with a child 14 years of age or younger in the
1143 vehicle.

1144 A person convicted under this section shall be punished as follows:

1145 (a) First offense: The defendant shall be imprisoned in a jail or house of correction
1146 for not less than 90 days but not more than 2 ½ years and fined not less than \$1,000 but not more
1147 than \$5,000.

1148 (b) Subsequent offense: If there is a prior conviction for a violation of this subsection
1149 or a like offense in another jurisdiction the defendant shall be imprisoned in a jail or house of

1150 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1151 prison for not less than 3 years but not more than 5 years with a minimum mandatory term of 6
1152 months and fined not less than \$5,000 but not more than \$10,000.

1153 Upon a conviction under this section the registrar shall suspend the license or right to
1154 operate for an additional period as follows:

1155 (a) First offense: 1 year

1156 (b) Subsequent offense: 3 years

1157 No appeal or motion for a new trial shall stay the suspension of the license or right to
1158 operate.

1159 A sentence imposed under this subsection shall be served consecutively to and not
1160 concurrently with the underlying operating under the influence offense. No case commenced
1161 under this section shall be continued without a finding, or placed on file, or subject to the
1162 provisions of section 87 of chapter 276.

1163 Chapter 90, § 24J - Operating under the influence causing serious bodily injury

1164 (1) No person shall operate a motor vehicle on a public way while under the influence
1165 of intoxicating liquor, drugs, or other substances and by such operation cause serious bodily
1166 injury to another person.

1167 A person convicted under this subsection shall be imprisoned in a jail or house of
1168 correction for not more than 2 ½ years or fined not more than \$3,000, or both.

1169 (2) No person shall operate a motor vehicle while under the influence of intoxicating
1170 liquor, drugs, or other substances on a public way negligently or recklessly so that the lives or
1171 safety of the public might be endangered and by such operation cause serious bodily injury to
1172 another person.

1173 A person convicted under this subsection shall be imprisoned in a jail or house of
1174 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1175 prison for not less than 2 ½ years but not more than 10 years with a minimum mandatory term of
1176 6 months and fined not more than \$5,000. No case commenced under this section shall be
1177 continued without a finding, or placed on file, or subject to the provisions of section 87 of
1178 chapter 276.

1179 (3) Upon a conviction under this section the registrar shall suspend the license or
1180 right to operate for 2 years after the date of conviction. No appeal or motion for a new trial shall
1181 stay the suspension of the license or right to operate, provided; however, if the charges against
1182 the person are dismissed, or the person is found not guilty, the person may immediately file a
1183 motion before the judge that heard the case, for the purpose of seeking restoration of the license
1184 or right to operate. At said hearing, if the court finds that the charges were resolved in favor of
1185 the defendant, that there are no alcohol related charges pending in any court, and that there is no
1186 evidence before the court based on a preponderance of the evidence that reinstatement of the
1187 license or right to operate would endanger the public, there shall be a presumption that the court
1188 shall order that this particular suspension be terminated.

1189 (4) Notwithstanding the provisions of subdivision (3) above, if a person license or
1190 right to operate for life.

1191 (5) Upon a disposition under this section the court shall assess a \$50 fee to the
1192 person. The court shall transmit the \$50 to the state treasurer to be deposited into the Victims of
1193 Drunk Driving Trust Fund. The assessment shall not be subject to waiver by the court for any
1194 reason. If the court sentences the person to a correctional facility the outstanding assessment
1195 shall be noted on the mittimus.

1196 (6) For purposes of this section “serious bodily injury” shall mean bodily injury
1197 which creates a substantial risk of death or involves either total disability or the loss or
1198 substantial impairment of some bodily function for a substantial period of time.

1199 Chapter 90, § 24K (1) – Misdemeanor motor vehicle homicide – negligently or recklessly

1200 (1) No person shall operate a motor vehicle on a public way negligently or recklessly
1201 so that the lives or safety of the public might be endangered and by such operation cause the
1202 death of another person.

1203 A person convicted under this subsection shall be imprisoned in a jail or house of
1204 correction for not less than 30 days but not more than 2 ½ years or fined not less than \$300 but
1205 not more than \$3,000, or both. No case commenced under this subsection shall be continued
1206 without a finding or placed on file.

1207 Upon a conviction under this subsection the registrar shall suspend the license or right to
1208 operate as follows:

1209 (a) First offense: 15 years after the date of conviction

1210 (b) Subsequent offense: Lifetime

1211 No appeal or motion for a new trial shall stay the suspension of the license or right to
1212 operate, provided; however, if the charges against the person are dismissed, or the person is
1213 found not guilty, the person may immediately file a motion before the judge that heard the case,
1214 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1215 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1216 related charges pending in any court, and that there is no evidence before the court based on a
1217 preponderance of the evidence that reinstatement of the license or right to operate would
1218 endanger the public, there shall be a presumption that the court shall order that this particular
1219 suspension be terminated.

1220 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1221 court shall transmit the \$50 to the state treasurer to be deposited into the Victim's of Drunk
1222 Driving Trust Fund. The assessment shall not be subjected to waiver by the court for any reason.
1223 If the court sentences the person to a correctional facility the outstanding assessment shall be
1224 noted on the mittimus.

1225 Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence

1226 (2) No person shall operate a motor vehicle on a public way under the influence of
1227 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1228 person.

1229 A person convicted under this subsection shall be imprisoned in the jail or house of
1230 correction for not less than 30 days but not more than 2 ½ years or fined not less than \$300 but
1231 not more than \$3,000, or both. No case commenced under this subsection shall be continued
1232 without a finding or placed on file.

1233 Upon a conviction under this subsection the registrar shall suspend the license or right to
1234 operate as follows:

1235 (a) First offense: 15 years after the date of conviction

1236 (b) Subsequent offense: Lifetime

1237 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1238 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1239 his license or right to operate for life.

1240 No appeal or motion for a new trial shall stay the suspension of the license or right to
1241 operate, provided; however, if the charges against the person are dismissed, or the person is
1242 found not guilty, the person may immediately file a motion before the judge that heard the case,
1243 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1244 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1245 related charges pending in any court, and that there is no evidence before the court based on a
1246 preponderance of the evidence that reinstatement of the license or right to operate would
1247 endanger the public, there shall be a presumption that the court shall order that this particular
1248 suspension be terminated.

1249 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1250 court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
1251 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If
1252 the court sentences the person to a correctional facility the outstanding assessment shall be noted
1253 on the mittimus.

1254 Chapter 90, § 24K (3) – Felony motor vehicle homicide

1255 (3) No person shall operate a motor vehicle negligently or recklessly on a public way
1256 so that the lives or safety of the public might be endangered while under the influence of
1257 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1258 person.

1259 A person convicted under this subsection shall be imprisoned in a jail or house of
1260 correction for a minimum mandatory term of 1 year but not more than 2 ½ years, or state prison
1261 for not less than 2 ½ years but not more than 15 years with a minimum mandatory term of 1 year
1262 and fined not more than \$5,000. No case commenced under this subsection shall be continued
1263 without a finding or placed on file.

1264 Upon a conviction under this subsection the registrar shall suspend the license or right to
1265 operate as follows:

1266 (a) First offense: 15 years after the date of conviction

1267 (b) Subsequent offense: Lifetime

1268 No appeal or motion for a new trial shall stay the suspension of the license or right to
1269 operate, provided; however, if the charges against the person are dismissed, or the person is
1270 found not guilty, the person may immediately file a motion before the judge that heard the case,
1271 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1272 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1273 related charges pending in any court, and that there is no evidence before the court based on a
1274 preponderance of the evidence that reinstatement of the license or right to operate would

1275 endanger the public, there shall be a presumption that the court shall order that this particular
1276 suspension be terminated.

1277 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1278 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1279 his license or right to operate for life.

1280 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1281 court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
1282 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If
1283 the court sentences the person to a correctional facility the outstanding assessment shall be noted
1284 on the mittimus.

1285 Chapter 90, § 24L - Manslaughter by motor vehicle

1286 (1) No person shall operate a motor vehicle wantonly and recklessly on a public way
1287 while under the influence of intoxicating liquor, drugs, or other substances and by such operation
1288 cause the death of another person.

1289 A person convicted under this section shall be imprisoned in state prison for a minimum
1290 mandatory term of 5 years but not more than 20 years and fined not more than \$25,000.

1291 (b) Upon a conviction of this section the registrar shall suspend the license or right to
1292 operate for 15 years to life. Any person aggrieved by the registrar's decision may file an appeal
1293 in the superior court. If the court determines that the registrar abused his discretion, the court
1294 may vacate and reduce the suspension of the license or the right to operate as ordered by the
1295 registrar. In no case shall the suspension period be less than 15 years.

1296 No appeal or motion for a new trial shall stay the suspension of the license or right to
1297 operate, provided; however, if the charges against the person are dismissed, or the person is
1298 found not guilty, the person may immediately file a motion before the judge that heard the case,
1299 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1300 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1301 related charges pending in any court, and that there is no evidence before the court based on a
1302 preponderance of the evidence that reinstatement of the license or right to operate would
1303 endanger the public, there shall be a presumption that the court shall order that this particular
1304 suspension be terminated.

1305 (c) Notwithstanding the provisions of paragraph (b) above, if a person convicted
1306 under this section has a prior operating under the influence offense, the registrar shall suspend
1307 his license or right to operate for life.

1308 Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials
1309 and agencies

1310 The officials and agencies designated in this section are hereby directed to perform the
1311 duties in this section and any other action within their authority in order to ensure effective
1312 enforcement of chapter 90 section 24 to 24M, inclusive.

1313 (1) The municipal police training committee established in section 116 of chapter 6
1314 shall provide training, including but not limited to, education concerning the aforesaid sections to
1315 all law enforcement personnel throughout the commonwealth.

1316 (2) The chief administrative justice of the trial court department shall provide
1317 training, including but not limited to education concerning the aforesaid sections to all

1318 appropriate court personnel throughout the commonwealth, including but not limited to, judges,
1319 district attorneys and probation officers.

1320 (3) The courts of the Commonwealth shall give priority to the speedy and effective
1321 disposition of all matters under the aforesaid sections.

1322 (4) The executive office of public safety shall establish and implement an alcohol
1323 sensitive selective traffic enforcement program.

1324 SECTION 4. Chapter 90B of the General Laws is hereby amended by adding the
1325 following:-

1326 Section 8B ½ -

1327 (5) No person shall operate a vessel on the waters of the commonwealth wantonly
1328 and recklessly while under the influence of intoxicating liquor, drugs, or other substances and by
1329 such operation cause the death of another person.

1330 A person convicted under this section shall be imprisoned in state prison for a minimum
1331 mandatory term of 5 years but not more than 20 years and fined not more than \$25,000.

1332 Upon a conviction of this section the registrar shall suspend the person's license or right
1333 to operate for 15 years to life. Any person aggrieved by the registrar's decision may file an
1334 appeal in the superior court. If the court determines that the registrar abused his discretion, the
1335 court may vacate and reduce the suspension of the license or suspension of the right to operate as
1336 ordered by the registrar. In no case shall the suspension or suspension period be less than 15
1337 years.

1338 No appeal or motion for a new trial shall stay the suspension of the license or right to
1339 operate, provided; however, if the charges against the person are dismissed, or the person is
1340 found not guilty, the person may immediately file a motion before the judge that heard the case,
1341 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1342 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1343 related charges pending in any court, and that there is no evidence before the court based on a
1344 preponderance of the evidence that reinstatement of the license or right to operate would
1345 endanger the public, there shall be a presumption that the court shall order that this particular
1346 suspension be terminated.

1347 Notwithstanding the provisions of paragraph (b) above, if a person convicted under this
1348 section has a prior operating under the influence offense, the registrar shall suspend his license or
1349 right to operate for life

1350 SECTION 5. Section 13 ½ of chapter 265 of the General Laws is hereby repealed.

1351 SECTION 6. Section 28 of chapter 266 is hereby amended by inserting at the end:-

1352 (a) Whoever knowingly uses a motor vehicle without authority shall be punished as
1353 follows:

1354 (1) First offense: The defendant shall be imprisoned in the jail or house of correction
1355 for not less than 30 days but not more than 2 years, or fined not less than \$50 but not more than
1356 \$500 or both.

1357 (2) Second offense: The defendant shall be imprisoned in jail or house of correction
1358 for not less than 30 days but not more than 2 ½ years, or state prison for not more than 5 years,
1359 or fined not less than \$1000, or both.

1360 (3) Third offense within 5 years: The defendant shall be imprisoned in jail or house of
1361 correction for not less than 6 months but not more than 2 ½ years, or state prison for not less than
1362 2 ½ years but not more than 5 years, or a fine of not less than \$200 but not more than \$1,000, or
1363 both.

1364 Upon a conviction of this subsection the registrar shall, unless the court or magistrate
1365 recommends otherwise, suspend the license or right to operate as follows:

1366 (a) First offense: 1 year

1367 (b) Subsequent offense: 3 years

1368 No appeal or motion for a new trial shall stay the suspension of the license or right to
1369 operate, provided; however, that if the prosecution against such person has terminated in his
1370 favor, the registrar shall immediately reinstate his license or right to operate provided; however,
1371 if the charges against the person are dismissed, or the person is found not guilty, the person may
1372 immediately file a motion before the judge that heard the case, for the purpose of seeking
1373 restoration of the license or right to operate. At said hearing, if the court finds that the charges
1374 were resolved in favor of the defendant, that there are no alcohol related charges pending in any
1375 court, and that there is no evidence before the court based on a preponderance of the evidence
1376 that reinstatement of the license or right to operate would endanger the public, there shall be a
1377 presumption that the court shall order that this particular suspension be terminated.

1378 (4) Upon a conviction of this section, if it appears from the records of the registrar that the
1379 person convicted is the owner of the motor vehicle or has exclusive control of any motor vehicle
1380 as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of registration
1381 of any or all motor vehicles owned or exclusively controlled by the person.

1382 (5) A summons may be issued instead of a warrant for arrest upon a complaint for a
1383 violation of this section if there is reason to believe the defendant will appear before the court.

1384 If a motor vehicle is used in connection with the commission of a felony, of any larceny,
1385 or of any offense punishable under any provision of sections 22, 113 to 117, inclusive, and 120
1386 of chapter 266, or sections 13 of 269, of which a person is convicted, the material facts relative
1387 to such use, including the registration number of the vehicle, so far as disclosed in the
1388 proceedings, shall be reported forthwith to the registrar by the clerk of the court in which the
1389 underlying conviction occurs.

1390 SECTION 7. Section 28(a) of chapter 266 is hereby amended by inserting subsection (d)
1391 as follows:-

1392 (d) Persons convicted of using a motor vehicle without authority under the provisions of
1393 paragraph (a) of section 28 shall be liable in a civil action to the owner of such vehicle, if it is
1394 recovered, for all towing and storage charges necessitated and all property damage caused to said
1395 vehicle by such use without authority.

1396 SECTION 8. Section 24(2) (a) of chapter 90 is hereby amended by striking from lines
1397 720, 721, 722, and 723 the following:- or upon a bet or wager or in a race, or whoever operates a
1398 motor vehicle for the purpose of making a record and thereby violates any provision of section
1399 seventeen or any regulation under section eighteen

1400 SECTION 9. Chapter 90 of the General Laws is hereby amended after section 17B by
1401 adding the following:-

1402 Section 17B ½. No person shall operate a motor vehicle on a public way upon a bet or
1403 wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and
1404 thereby violates any provision of section seventeen or any regulation under section eighteen.
1405 Whoever violates this section shall be punished by imprisonment for not less than 2 weeks but
1406 not more than 2 years or a fine of not less than twenty dollar nor more than two hundred dollars,
1407 or both.

1408 SECTION 10. Chapter 266 of the General Laws is hereby amended by adding the
1409 following:-

1410 Section 29A -

1411 (6) No person shall remove an abandoned or stolen motor vehicle on a public way as
1412 defined in section 1 of chapter 90 without the express consent of the owner of such vehicle or
1413 without the written permission of the police department. The owner or operator of a motor
1414 vehicle that is designed to carry or tow another vehicle shall be licensed for that specific purpose
1415 or as a towing service.

1416 The owner of any machine that is designed to crush, mutilate or destroy a motor vehicle,
1417 whether the machine be mobile or affixed permanently, shall have that machine listed with the
1418 registry of motor vehicles.

1419 If the owner or agent of a salvage or junk yard transports crushed or mutilated vehicles
1420 without the commonwealth for purposes of resale, the operator of the transporting vehicle shall

1421 carry a list of the vehicles being transported, and a copy of such list shall be forwarded to said
1422 registrar.

1423 (c) Any person convicted under this section shall be imprisoned for not less than 2 years,
1424 a fine of not less than \$1,000, or both.

1425 (d) Any person convicted under this section shall forfeit, to the registrar, any license
1426 issued which is related to such violation.