

**HOUSE . . . . . No.**

**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Eugene L. O'Flaherty**

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

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

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

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	2nd Suffolk
Massachusetts Bar Association	
Gale D. Candaras	First Hampden and Hampshire

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1664 OF 2007-2008.]

## The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and Nine  
—————

### AN ACT TO PROTECT THE CITIZENS OF THE COMMONWEALTH FROM DRUNK DRIVERS.

*Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make , therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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.

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

5

**Blood alcohol content:**

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

**Disposition:**

A conviction, guilty plea, placement on probation,

continuance without a finding or admission to sufficient facts.

**Drugs or other substance:**

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

**Ignition interlock device:**

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

**Minimum mandatory:**

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

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

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

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

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

**Under the influence:**

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

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SECTION 2.

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

- (1) No person shall operate a motor vehicle with a suspended license or right to operate, or after being notified by the Registry of Motor Vehicles of such suspension.
- (2) No person shall operate a motor vehicle with a suspended certificate of registration unless the registration has been restored or a new registration has been issued.
- (3) No person shall allow another to operate a motor vehicle with a suspended certificate of registration unless the registration has been restored or a new registration has been issued.
- (4) No person with intent to conceal his identity shall, upon request, present to an officer authorized to make arrests a license issued to another person.
  - (a) A person convicted under subsection (1), (2), (3) or (4) of this section shall be punished as follows:
    - (1) First offense: The defendant shall be imprisoned in a jail or house of correction for not more than 10 days, or fined not less than \$500 but not more than \$1000, or both.
    - (2) Subsequent offense: The defendant shall be imprisoned in a jail or house of correction for not less than 60 days but not more than 1 year.

- 38 (b) Upon a conviction under subsection (1), (2), (3), or (4), of this section the  
39 registrar shall extend said suspension of the license or right to operate for  
40 an additional 60 days.
- 41 (5) No person shall attach or permit to be attached to a motor vehicle or trailer a  
42 number plate assigned to another motor vehicle or trailer with the intent to  
43 conceal the identity of the motor vehicle or trailer.
- 44 (6) No person shall obscure or permit to be obscured the figures on any number  
45 plate attached to a motor vehicle or trailer with the intent to conceal the identity  
46 of the motor vehicle or trailer.
- 47 (7) No person shall fail to display a number plate and registration number duly  
48 assigned to a motor vehicle or trailer with the intent to conceal the identity of  
49 such motor vehicle or trailer.
- 50 (a) A person convicted under subsection (5), (6), or (7) of this section shall be  
51 imprisoned in a jail or house of correction for not more than 10 days, or  
52 fined not more than \$100, or both.
- 53 (b) Upon a conviction under subsection (5), (6), or (7) of this section the  
54 registrar shall extend said suspension of the license or right to operate for  
55 an additional 60 days.
- 56 (8) No person shall operate a motor vehicle with a suspended license or right to  
57 operate due to being a habitual traffic offender pursuant to section 22F of  
58 chapter 90 after being notified by the Registry of Motor Vehicles of such  
59 suspension.
- 60 (a) A person convicted under this subsection shall be imprisoned in a jail or  
61 house of correction for not more than 2 years or fined not less than \$500  
62 but not more than \$5000, or both.
- 63 (b) Upon a conviction under this subsection the registrar shall extend said  
64 suspension of the license or right to operate for an additional 60 days.
- 65 (9) No person shall operate a motor vehicle with a suspended license or right to  
66 operate due to a prior operating under the influence offense under chapter 90,  
67 90B, 90F, or 265, or after being notified by the Registry of Motor Vehicles of  
68 such suspension.
- 69 (a) A person convicted under this subsection shall be imprisoned in a jail or  
70 house of correction for a minimum mandatory term of 60 days but not  
71 more than 2 ½ years and fined not less than \$1,000 but not more than  
72 \$10,000. No case commenced under this subsection shall be continued  
73 without a finding or placed on file, or subject to the provisions of section 87  
74 of chapter 276.

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

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

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

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

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

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

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

99 (12) In no case shall a person who fails to pay an administrative reinstatement fee  
100 be prosecuted for operating after suspension of a license.

101 (13) Upon a finding by the registrar that a person with a suspended license or right  
102 to operate, did operate a vehicle registered to another, the registrar shall, after  
103 hearing, suspend the certificate of registration of said motor vehicle for up to 30  
104 days. Immediately, upon suspension, the certificate of registration and the  
105 number plates shall be surrendered to the registrar.  
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107 SECTION 3.

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109 Section 24, 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, 24N, 24O, 24P, 24Q, 24R,  
110 24S, 24T, 24U, 24V, 24W, and 24X of Chapter 90 of the General Laws, is hereby amended by deleting  
111 each section and replacing it with the following:

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113 **Chapter 90, § 24 - False statements in an application**

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

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

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

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

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

137 (a) A person convicted under subsection (1), (2), (3), (4), or (5) of this section  
138 shall be imprisoned in a jail or house of correction for not more than 2  
139 years or state prison for not more than 5 years or fined not more than  
140 \$500.

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



- 147 (6) No person shall make any false statement in an application for a learner's  
148 permit or license to operate a motor vehicle.
- 149 (7) No person shall make any false statement in an application for a registration of  
150 a motor vehicle.
- 151 (8) No person shall loan or knowingly permit his learner's permit or license to  
152 operate a motor vehicle to another.
- 153 (a) A person convicted under subsection (6), (7), or (8) of this section shall be  
154 imprisoned in a jail or house of correction for not less than 2 weeks but not  
155 more than 2 years, or fined not less than \$20 but no more than \$200, or  
156 both.
- 157 (b) Upon a conviction under subsection (6), (7), or (8) of this section the  
158 registrar shall, unless the court or magistrate recommends otherwise,  
159 suspend the license or right to operate as follows:
- 160 (1) First offense: 60 days
- 161 (2) Subsequent offense within 3 years: 1 year
- 162 No appeal or motion for new trial shall stay the suspension of the license  
163 or right to operate provided; however, that if the prosecution against such  
164 person has terminated in his favor, the registrar shall immediately  
165 reinstate his license or right to operate.
- 166 (c) A summons may be issued instead of a warrant for arrest upon a  
167 complaint for a violation if there is reason to believe the defendant will  
168 appear before the court.

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

- 171 (1) No person shall possess an open container of alcoholic beverage in the  
172 passenger area of any motor vehicle while on a public way.
- 173 (2) A person convicted under this section shall be fined not less than \$100 but not  
174 more than \$500.
- 175 (3) These words, as used in this section, have the following meaning:
- 176 (a) Open container – any bottle, can or other receptacle used to contain liquid  
177 that has been opened or has a broken seal, or the contents of which have  
178 been partially removed or consumed provided; however, that a bottle  
179 resealed pursuant to section 12 of chapter 138 shall not be considered an  
180 open container.

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

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

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

194 **Chapter 90, § 24B - Negligent/Reckless operation**

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

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

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

203 (a) First offense: 60 days

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

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

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

214 (5) Upon a disposition under this section the court shall assess a \$250 fee to the  
215 person. The court shall deposit \$125 of the \$250 collected under this  
216 assessment into the Head Injury Treatment Services Trust Fund. The  
217 remaining \$125 shall be deposited into the General Fund. The fee may be

218 reduced or waived if the court makes written findings that payment would cause  
219 the person severe financial hardship. If the court sentences the person to a  
220 correctional facility the outstanding assessment shall be noted on the mittimus.

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

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

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

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

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

235 (1) First offense: 60 days

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

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

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

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

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

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

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

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

268 (1) First offense: 1 year

269 (2) Subsequent offense: 2 years

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

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

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

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

291 (a) A person convicted under this subsection shall be imprisoned in a jail or  
292 house of correction for a minimum mandatory 1 year but not more than 2  
293 ½ years or state prison for not less than 2 ½ but not more than 10 years

294 with a minimum mandatory term of 1 year and fined not less than \$1,000  
295 but not more than \$5,000. No case commenced under this subsection  
296 shall be continued without a finding or placed on file.

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

300 (1) First offense: 3 years

301 (2) Subsequent offense: 10 years

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

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

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

320 (1) No person shall operate a motor vehicle on a public way while under the  
321 influence of intoxicating liquor, drugs, or other substances as defined in section  
322 1 of chapter 90.

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

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

329 (b) Second Offense: If there is 1 prior operating under the influence offense,  
330 the defendant shall be imprisoned in a jail or house of correction for a

331 minimum mandatory term of 30 days but not more than 2 ½ years and  
332 fined not less than \$600 but not more than \$10,000.

333 (c) Third Offense: If there are 2 prior operating under the influence offenses,  
334 the defendant shall be imprisoned in a jail or house of correction for not  
335 less than 150 days but not more than 2 ½ years, or state prison for not  
336 less than 2 ½ years but not more than 5 years with a minimum mandatory  
337 term of 150 days and fined not less than \$1,000 but not more than  
338 \$15,000.

339 (d) Fourth Offense: If there are 3 prior operating under the influence  
340 offenses, the defendant shall be imprisoned in a jail or house of correction  
341 for not less than 2 years but not more than 2 ½ years, or state prison for  
342 not less than 2 ½ years but not more than 5 years with a minimum  
343 mandatory term of 1 year and fined not less than \$1,500 but not more than  
344 \$25,000.

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

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

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

365 (h) In any prosecution commenced pursuant to this section, introduction into  
366 evidence of a prior conviction or a prior finding of sufficient facts by either  
367 certified attested copies of original court papers, or certified attested  
368 copies of the defendant's biographical and informational data from records  
369 of the department of probation, any jail or house of correction, the  
370 department of correction, or the registry of motor vehicles, shall be prima  
371 facie evidence that the defendant before the court has been convicted

372 previously or assigned to an alcohol or controlled substance education,  
373 treatment, or rehabilitation program by a court of the commonwealth or of  
374 a like offense from any other jurisdiction. Such documentation shall be  
375 self-authenticating and admissible, after the commonwealth has  
376 established the defendant's guilt on the primary offense, as evidence in  
377 any court of the commonwealth to prove the defendant's commission of  
378 any prior convictions or assignments to alcohol or controlled substance  
379 education, treatment, or rehabilitation programs described therein. The  
380 commonwealth shall not be required to introduce any additional  
381 corroborative evidence, nor live witness testimony to establish the validity  
382 of such prior offenses.

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

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

408 (k) Upon a disposition for an operating under the influence offense as defined  
409 in section (1) of this chapter the court shall ask the defendant whether he  
410 was served alcohol prior to his violation at an establishment licensed to  
411 serve alcohol. If the defendant answers in the affirmative, the defendant  
412 shall provide the name and address of the establishment. The clerk's  
413 office shall provide in writing to the Alcohol Beverage Control Commission  
414 the name of the establishment and date of offense given by the defendant.  
415 The Alcohol Beverage Control Commission shall inform the named

416 establishment of this incident forthwith. The trial court shall, in conjunction  
417 with the Alcohol Beverage Control Commission, promulgate a standard  
418 form for reporting and collecting said information. The Alcohol Beverage  
419 Control Commission shall provide an annual report including the collected  
420 data to the attorney general, each district attorney, and the local liquor  
421 licensing authorities.

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

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

428 (3) Alternative Dispositions

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

441 If a person is sentenced to an alternative disposition, notwithstanding the  
442 provisions of subsection (5) of this section, the court shall impose a  
443 suspension of the defendant's license or right to operate for not less than  
444 45 days nor more than 90 days if said person was over the age of 21 at  
445 the time of the offense, or 210 days if said person was under the age of 21  
446 at the time of offense. A person may immediately apply for a hardship  
447 license following disposition and enrollment into the treatment program  
448 required by this subsection. In all cases where a hardship license is  
449 sought, the probation office where the offender is or was on probation will,  
450 upon request, furnish the registrar with documentation verifying the  
451 person's status with probation. Hardship licenses under this subsection  
452 shall be issued under such terms and conditions as the registrar may  
453 prescribe, after the registry is convinced that the issues that this offense(s)  
454 arose from have been dealt with by the operator and brought under  
455 control. Said hardship license shall be issued, subject to the agency's  
456 discretion, upon a showing of hardship for work, education, or other  
457 purpose the registrar deems valid and significant, and shall be for an



458 identical 12 hour period, 7 days a week. Notwithstanding the above, if the  
459 records of the registrar contain additional information regarding operating  
460 under the influence offenses, the registrar shall suspend the license in  
461 accordance with subsection (5) of this section. A person shall be  
462 presumed to be a suitable candidate for this disposition after trial unless  
463 otherwise prohibited by this section. In cases where an eligible person is  
464 not granted such a disposition should he or she seek it, the court shall  
465 make written findings supporting its decision.

466 (b) Second Offense: Notwithstanding the provisions of subsection (2) of this  
467 section, in cases where a defendant has only one prior operating under  
468 the influence offense, the court, in its discretion, may order the defendant  
469 to enter and complete a 14 day in patient program in lieu of the required  
470 30 day minimum mandatory term.

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

474 Each person placed in such a program shall pay a program fee as  
475 determined by the department of public health. The program fee shall not  
476 exceed the cost per client to run the program. The department of public  
477 health shall compile a schedule of uniform fees for these programs, which  
478 shall be changed only after notice and public hearing. The department  
479 shall promulgate rules and regulations regarding the process and  
480 methodology of setting these fees. No person shall be denied entry into a  
481 program where the court, after review and investigation by the probation  
482 department, determines that the defendant is indigent, and has filed such  
483 an affidavit with the court. The court may then waive or reduce said fee  
484 on a case by case basis. Subject to appropriation, the department of  
485 public health shall reimburse each program for the costs of services  
486 provided to persons for whom payment of a fee has been waived or  
487 reduced on the grounds of indigency.

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

496 The alternative disposition programs utilized under this subsection shall be  
497 established, administered or approved by the department of public health,  
498 who shall have authority to promulgate such regulations as is necessary to  
499 govern the content, conduct, operation or approval of these programs.  
500 The department of public health shall prepare and publish annually a list of  
501 all accepted alcohol treatment and rehabilitation programs, make this list

502 available upon request to members of the public, and annually furnish the  
503 commissioner of probation, the registrar, and the secretary of public safety  
504 with a copy of said list.

505 The commissioner of probation shall annually report to the department of  
506 public health the number of persons who receive an alternative disposition  
507 and the number of persons who have been required by the court to  
508 participate in alcohol or controlled substance abuse treatment or  
509 rehabilitation programs. In addition, the commissioner of probation, and  
510 the chief justice of the district courts and the Boston Municipal Court shall  
511 annually report to the department of public health the resources available  
512 for alcohol and controlled substance abuse treatment and rehabilitation of  
513 alcohol-impaired or controlled substance abuse-impaired drivers. The  
514 report shall evaluate the existing resources and shall make  
515 recommendations as to any additional resources. The department of  
516 public health shall take such reports into consideration in the  
517 development, implementation, and review of the state's alcoholism or  
518 controlled substance abuse plan and in the preparation of the division's  
519 annual budget in a manner consistent with the Alcoholism Treatment and  
520 Rehabilitation Law.

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

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

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

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

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

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

540 (b) Second offense: 2 years except for persons that have properly received  
541 dispositions pursuant to subsection 3 of section 24D of this chapter. The

- 542 operator may apply for a hardship license 1 year from the date of  
543 conviction, absent any other suspensions.
- 544 (c) Third offense: 8 years. The operator may apply for a hardship license 2  
545 years from the date of conviction, absent any other suspensions.
- 546 (d) Fourth offense: 10 years. The operator may apply for a hardship license 5  
547 years from the date of conviction, absent any other suspensions.
- 548 (e) Fifth or subsequent offense: Lifetime.
- 549 (f) Notwithstanding subdivisions (a) through (e) of this subsection, the  
550 registrar shall suspend for life a person's license or right to operate upon  
551 an operating under the influence offense if the person has been previously  
552 convicted of motor vehicle homicide while under the influence or  
553 manslaughter by motor vehicle.
- 554 (g) Hardship licenses under this subsection shall be issued under such terms  
555 and conditions as the registrar may prescribe, after the registry is  
556 convinced that the issues that this offense(s) arose from have been dealt  
557 with by the operator and brought under control. Said hardship license  
558 shall be issued, subject to the agency's discretion, upon a showing of  
559 hardship for work, education, or other purpose the registrar deems valid  
560 and significant, and shall be for an identical 12 hour period, 7 days a  
561 week.
- 562 (h) If there are 2 prior operating under the influence offenses, the registrar  
563 may suspend the registration of a motor vehicle owned by a person for the  
564 duration of the suspension of the license or right to operate. No new  
565 registration shall be issued to said person during the suspension period.

566 **Chapter 90, § 24E – Implied Consent**

- 567 (1) Whoever operates a motor vehicle on a public way shall be deemed to have  
568 consented to a test of his breath or blood in the event he is arrested with  
569 operating a motor vehicle while under the influence of intoxicating liquor. A  
570 person brought to a police station or place of detention is deemed to have  
571 consented to a test of his breath. A valid breath test under this section shall be  
572 one adequate breath sample analysis, followed by one calibration standard  
573 analysis, and then by a second adequate breath sample analysis. A person is  
574 deemed to have consented to a test of his blood only if he has been brought to  
575 a medical facility licensed pursuant to the provisions of section 51 of chapter  
576 111, and the blood is drawn by a physician, registered nurse or certified  
577 medical technician; provided further that no person inflicted with hemophilia or  
578 any other condition requiring the use of anticoagulants shall be deemed to have  
579 consented to the withdrawal of blood. Such test shall be administered by or at  
580 the direction of a police officer as defined in section 1 of chapter 90C, having

581 reasonable grounds to believe that the defendant was operating under the  
582 influence.

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

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

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

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

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

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

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

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

619 (b) If the person has 1 prior operating under the influence conviction, or was  
620 under age 21 at the time of offense and has no more than 1 prior

621 operating under the influence conviction, the suspension shall be for 3  
622 years.

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

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

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

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

633 (g) No hardship licenses on suspensions for test refusals shall be granted,  
634 except for candidates that have properly received dispositions pursuant to  
635 subsection 3 of section 24D of this chapter. Any suspensions under this  
636 section shall be consecutive with any suspension or suspension for the  
637 underlying operation under the influence offense. Notwithstanding that, if  
638 the charges against the person are dismissed, or the person is found not  
639 guilty, the person may immediately file a motion before the judge that  
640 heard the case, for the purpose of seeking restoration of the license or  
641 right to operate. At said hearing, if the court finds that the charges were  
642 resolved in favor of the defendant, that there are no alcohol related  
643 charges pending in this or any other court, and that there is no evidence  
644 before the court based on a preponderance of the evidence that  
645 reinstatement of the license or right to operate would endanger the public,  
646 there shall be a presumption that the court shall order that this particular  
647 suspension be terminated.

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

661 operate. The registrar may promulgate such rules and regulations as is  
662 necessary regarding the conduct of these hearings.

663 (i) If the registrar rules that the suspension for refusal was proper, the  
664 appellant may file a petition for judicial review in the district court having  
665 jurisdiction over the underlying operation under the influence charge within  
666 30 days of the registrar's decision. The court must then schedule a  
667 hearing within 30 days of the appellant's application, unless the appellant  
668 has waived this time requirement. The petition shall be filed in the nature  
669 of a civil action challenging the action of an administrative agency, and  
670 shall be an administrative review limited to the record, including the  
671 evidence and arguments, compiled at the hearing. Along with the  
672 submission of the record, the registrar shall prepare written findings  
673 supporting the reasons for denying the petition for the court to review. If  
674 the court rules in the appellant's favor, the court shall prepare specific  
675 findings indicating the reasons for reversing the registrar's determination,  
676 and send the findings to the registrar forthwith. The registrar shall restore  
677 the license, absent any other reasons for suspension. In cases where  
678 other suspensions exist, the registrar shall then terminate this suspension  
679 for refusal, but maintain any other valid suspensions.

680 If a test indicates that a person was operating with a blood alcohol content of  
681 .08% or above, the registrar shall immediately suspend the person's license or  
682 right to operate for 30 days, or until the conclusion of the court case, whichever is  
683 shorter.

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

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

700 (3) Chemical analysis of the breath of a person charged with a violation of this  
701 chapter shall not be considered valid under the provisions of this chapter,  
702 unless such analysis has been performed by a certified operator, using infrared

703 breath-testing devices according to methods approved by the secretary of  
704 public safety. The secretary of public safety shall promulgate rules and  
705 regulations regarding satisfactory methods, techniques and criteria for the  
706 conduct of such tests, and shall establish a statewide training and certification  
707 program for all operators of such devices and a periodic certification program  
708 for such breath testing devices; provided, however, that the secretary may  
709 terminate or suspend such certification at his discretion.

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

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

714 (1) one adequate breath sample analysis

715 (2) one calibration standard analysis

716 (3) a second adequate breath sample analysis

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

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

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

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

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

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

- 741 (3) the results of any failed test;
- 742 (4) whether or not the operator refused or failed to consent to the test;
- 743 (5) the identity of the officer who advised the defendant of his rights;
- 744 (6) the identity and certification of the officer who conducted the breath  
745 test;
- 746 (7) the identity of any witness to the test or refusal;
- 747 (8) that the test was administered in accordance with the regulations  
748 and standards promulgated by the secretary of safety; and
- 749 (9) the equipment used was regularly serviced and maintained and  
750 believed to be in proper working order.

751

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

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

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

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

771 If a person has not been previously arrested for or charged with operating  
772 under the influence, such person shall, if he consents, be assigned to a  
773 program specifically designed by the department of public health for the  
774 treatment of underage drinking drivers. Upon entry into a program,  
775 authorized by this subsection, or a program required by section 24D of this  
776 chapter, the suspension of a license or right to operate as required by this  
777 subsection shall be waived by the registrar for a person under 21 years of  
778 age and over 18 years of age. The suspension shall be reduced to 180



779 days for a person who was under the age of 18 at the time of such  
780 offense. Upon the failure of a person who, at the time of offense was  
781 under the age of 21, to successfully complete such program, the registrar  
782 shall forthwith suspend such license or permit to operate for 180 days, or  
783 for 1 year if the person was under age 18 at the time of offense.

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

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

796

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

802

803 (1) the defendant was given a test;

804

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

807

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

810

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

812

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

815

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

817

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

822

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

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

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

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

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

851                   (1)       Any person refusing a test under this section shall have a right, at  
852                   his request, to a hearing before the registrar to determine if grounds  
853                   exist for the suspension. Any hearing request shall be made within  
854                   10 days of the incident giving rise to this suspension. The hearing  
855                   shall be limited to the issues of whether or not a blood test

856 administered pursuant to section 24E of this chapter, within a  
857 reasonable period of time after a test of his breath, shows that that  
858 the blood alcohol content was less than .08% or less than .02% if  
859 the person was under the age of 21 at the time of the offense.

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

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

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

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

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

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

#### 884 **Chapter 90, § 24F – Ignition Interlock Devices**

885 (1) Any person whose license or right to operate is suspended for 2 or more  
886 operating under the influence offenses, or who is operating on a restricted  
887 license for such offenses, shall be required to have an ignition interlock device  
888 installed on each vehicle that he may own, lease, or operate as a mandatory  
889 condition of issuance of a new license or right to operate. The restriction shall  
890 remain on the license during the hardship license period and an additional 2  
891 years upon the full restoration of the license. In cases where the person has not  
892 been granted a hardship license, the ignition interlock requirement shall be for a  
893 2 year period following the reinstatement of the license or right to operate.

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

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

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

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

905 if the licensee has:

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

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

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

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

918 (a) A person convicted under this subsection shall be imprisoned in a jail or  
919 house of correction for not less than 6 months but not more than 2 ½  
920 years, or the state prison for not less than 2 ½ years but not more than 5  
921 years with a minimum mandatory term of 6 months and fined not less than  
922 \$1,000 but not more than \$15,000.

923

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

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

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

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

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

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

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

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

#### 948 **Chapter 90, § 24G – Motor Vehicle Forfeitures**

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

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

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

973 commonwealth, ex parte, any preliminary order or process necessary to seize  
974 and secure the property for which forfeiture is sought. Process for seizure of the  
975 property shall issue only upon a showing of probable cause. The application,  
976 issuance, execution, and return thereof shall be subject to the provisions of  
977 chapter 276, as applicable.

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

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

998 (5) There shall be established within the office of the state treasurer a separate  
999 Operating Under the Influence Deterrent Trust Fund for each district attorney  
1000 and for the attorney general. All monies and proceeds received by a  
1001 prosecuting district attorney or attorney general pursuant to this section shall be  
1002 deposited in the fund and shall be expended without further appropriation to  
1003 defray the costs of investigations, to provide additional technical equipment or  
1004 expertise, to provide matching funds to obtain federal grants, or for such other  
1005 law enforcement purposes as the district attorney or attorney general deems  
1006 appropriate. Any program seeking to be an eligible recipient of the funds shall  
1007 file an annual audit report with the local district attorney and attorney general.  
1008 Such report shall include, but not be limited to, a listing of the assets, liabilities,  
1009 itemized expenditures and board of directors of the program. Within 90 days of  
1010 the close of the fiscal year, each district attorney and the attorney general shall  
1011 file an annual report with the house and senate committees on ways and  
1012 means on the use of the monies in the trust fund for the purposes of deterring  
1013 operating under the influence programs.

1014 (6) All moneys and proceeds received by a police department shall be deposited into  
1015 the fund and shall be expended without further appropriation to defray the costs

1016 of investigations, to provide additional technical equipment or expertise, to  
1017 provide matching funds to obtain federal grants, or to accomplish such other  
1018 law enforcement purposes as the chief of police of such city or town, or the  
1019 colonel of state police deem appropriate, but such funds shall not be  
1020 considered a source of revenue to meet the operating needs of such  
1021 department.

1022 **Chapter 90, § 24H - Aggravated OUI**

1023 (1) Any person aged 17 to 21 years, inclusive, who commits an operating under  
1024 the influence offense, and who has a blood alcohol content of .20% or above,  
1025 shall also be guilty of aggravated operating under the influence, and in addition  
1026 to the penalties mandated in section 24D of this chapter, shall also be required  
1027 to enter and complete a 14 day residential treatment program as described in  
1028 subdivision (b) of subsection (3) of that section. In cases where the person is  
1029 otherwise qualified for a disposition under subdivision (a) of subsection (3), the  
1030 person shall be required to complete the 14 day residential program in lieu of  
1031 the outpatient program specified therein.

1032 **Chapter 90, § 24I - Child Endangerment**

1033 (1) No person shall operate a motor vehicle on a public way while under the  
1034 influence of intoxicating liquor, drugs, or other substance with a child 14 years  
1035 of age or younger in the vehicle.

1036 (a) A person convicted under this section shall be punished as follows:

1037 (1) First offense: The defendant shall be imprisoned in a jail or house  
1038 of correction for not less than 90 days but not more than 2 ½ years  
1039 and fined not less than \$1,000 but not more than \$5,000.

1040 (2) Subsequent offense: If there is a prior conviction for a violation of  
1041 this subsection or a like offense in another jurisdiction the  
1042 defendant shall be imprisoned in a jail or house of correction for a  
1043 minimum mandatory term of 6 months but not more than 2 ½ years,  
1044 or state prison for not less than 3 years but not more than 5 years  
1045 with a minimum mandatory term of 6 months and fined not less  
1046 than \$5,000 but not more than \$10,000.

1047 (b) Upon a conviction under this section the registrar shall suspend the  
1048 license or right to operate for an additional period as follows:

1049 (1) First offense: 1 year

1050 (2) Subsequent offense: 3 years

1051 No appeal or motion for a new trial shall stay the suspension of the license or  
1052 right to operate.

1053 (c) A sentence imposed under this subsection shall be served consecutively  
1054 to and not concurrently with the underlying operating under the influence  
1055 offense. No case commenced under this section shall be continued  
1056 without a finding, or placed on file, or subject to the provisions of section  
1057 87 of chapter 276.

1058 **Chapter 90, § 24J - Operating under the influence causing serious bodily injury**

1059 (1) No person shall operate a motor vehicle on a public way while under the  
1060 influence of intoxicating liquor, drugs, or other substances and by such  
1061 operation cause serious bodily injury to another person.

1062 (a) A person convicted under this subsection shall be imprisoned in a jail or  
1063 house of correction for not more than 2 ½ years or fined not more than  
1064 \$3,000, or both.

1065 (2) No person shall operate a motor vehicle on a public way negligently or recklessly  
1066 so that the lives or safety of the public might be endangered while under the  
1067 influence of intoxicating liquor, drugs, or other substances and by such  
1068 operation cause serious bodily injury to another person.

1069 (a) A person convicted under this subsection shall be imprisoned in a jail or  
1070 house of correction for a minimum mandatory term of 6 months but not  
1071 more than 2 ½ years, or state prison for not less than 2 ½ years but not  
1072 more than 10 years with a minimum mandatory term of 6 months and  
1073 fined not more than \$5,000. No case commenced under this section shall  
1074 be continued without a finding, or placed on file, or subject to the  
1075 provisions of section 87 of chapter 276.

1076 (3) Upon a conviction under this section the registrar shall suspend the license or  
1077 right to operate for 2 years after the date of conviction. No appeal or motion  
1078 for a new trial shall stay the suspension of the license or right to operate,  
1079 provided; however, if the charges against the person are dismissed, or the  
1080 person is found not guilty, the person may immediately file a motion before the  
1081 judge that heard the case, for the purpose of seeking restoration of the license  
1082 or right to operate. At said hearing, if the court finds that the charges were  
1083 resolved in favor of the defendant, that there are no alcohol related charges  
1084 pending in this or any other court, and that there is no evidence before the court  
1085 based on a preponderance of the evidence that reinstatement of the license or  
1086 right to operate would endanger the public, there shall be a presumption that  
1087 the court shall order that this particular suspension be terminated.

1088 (4) Upon a disposition under this section the court shall assess a \$50 fee to the  
1089 person. The court shall transmit the \$50 to the state treasurer to be deposited  
1090 into the Victims of Drunk Driving Trust Fund. The assessment shall not be  
1091 subject to waiver by the court for any reason. If the court sentences the person



1092 to a correctional facility the outstanding assessment shall be noted on the  
1093 mittimus.

1094 (5) For purposes of this section “serious bodily injury” shall mean bodily injury  
1095 which creates a substantial risk of death or involves either total disability or the  
1096 loss or substantial impairment of some bodily function for a substantial period of  
1097 time.

1098 **Chapter 90, § 24K (1) – Misdemeanor motor vehicle homicide – negligently or recklessly**

1099 (1) No person shall operate a motor vehicle on a public way negligently or  
1100 recklessly so that the lives or safety of the public might be endangered and by  
1101 such operation cause the death of another person.

1102 (a) A person convicted under this subsection shall be imprisoned in a jail or  
1103 house of correction for not less than 30 days but not more than 2 ½ years  
1104 or fined not less than \$300 but not more than \$3,000, or both. No case  
1105 commenced under this subsection shall be continued without a finding or  
1106 placed on file.

1107 (b) Upon a conviction under this subsection the registrar shall suspend the  
1108 license or right to operate as follows:

1109 (1) First offense: 15 years after the date of conviction

1110 (2) Subsequent offense: Lifetime

1111 Notwithstanding the provisions of subdivision (b) above, if a person is  
1112 convicted under this subsection and has a prior operating under the influence  
1113 offense, the registrar shall suspend his license or right to operate for life.

1114 No appeal or motion for a new trial shall stay the suspension of the  
1115 license or right to operate, provided; however, if the charges against the  
1116 person are dismissed, or the person is found not guilty, the person may  
1117 immediately file a motion before the judge that heard the case, for the purpose  
1118 of seeking restoration of the license or right to operate. At said hearing, if  
1119 the court finds that the charges were resolved in favor of the defendant, that  
1120 there are no alcohol related charges pending in this or any other court, and that  
1121 there is no evidence before the court based on a preponderance of the  
1122 evidence that reinstatement of the license or right to operate would endanger the  
1123 public, there shall be a presumption that the court shall order that this  
1124 particular suspension be terminated.

1125 (c) Upon a disposition under this section the court shall assess a \$50 fee to  
1126 the person. The court shall transmit the \$50 to the state treasurer to be  
1127 deposited into the Victim's of Drunk Driving Trust Fund. The assessment  
1128 shall not be subjected to waiver by the court for any reason. If the court

1129 sentences the person to a correctional facility the outstanding assessment  
1130 shall be noted on the mittimus.

1131 .

1132 **Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence**

1133 (2) No person shall operate a motor vehicle on a public way under the influence of  
1134 intoxicating liquor, drugs, or other substances and by such operation cause the  
1135 death of another person.

1136 (a) A person convicted under this subsection shall be imprisoned in the jail or  
1137 house of correction for not less than 30 days but not more than 2 ½ years  
1138 or fined not less than \$300 but not more than \$3,000, or both. No case  
1139 commenced under this subsection shall be continued without a finding or  
1140 placed on file.

1141 (b) Upon a conviction under this subsection the registrar shall suspend the  
1142 license or right to operate as follows:

1143 (1) First offense: 15 years after the date of conviction

1144 (2) Subsequent offense: Lifetime

1145 Notwithstanding the provisions of subdivision (b) above, if a person is  
1146 convicted under this subsection and has a prior operating under the influence  
1147 offense, the registrar shall suspend his license or right to operate for life.

1148 No appeal or motion for a new trial shall stay the suspension of the  
1149 license or right to operate, provided; however, if the charges against the  
1150 person are dismissed, or the person is found not guilty, the person may  
1151 immediately file a motion before the judge that heard the case, for the purpose  
1152 of seeking restoration of the license or right to operate. At said hearing, if  
1153 the court finds that the charges were resolved in favor of the defendant, that  
1154 there are no alcohol related charges pending in this or any other court, and that  
1155 there is no evidence before the court based on a preponderance of the  
1156 evidence that reinstatement of the license or right to operate would endanger the  
1157 public, there shall be a presumption that the court shall order that this  
1158 particular suspension be terminated.

1159 (c) Upon a disposition under this section the court shall assess a \$50 fee to  
1160 the person. The court shall transmit the \$50 to the state treasurer to be  
1161 deposited into the Victims of Drunk Driving Trust Fund. The assessment  
1162 shall not be subject to waiver by the court for any reason. If the court  
1163 sentences the person to a correctional facility the outstanding assessment  
1164 shall be noted on the mittimus.

1165

1166 **Chapter 90, § 24K (3) – Felony motor vehicle homicide**

1167 (3) No person shall operate a motor vehicle negligently or recklessly on a public  
1168 way so that the lives or safety of the public might be endangered while under  
1169 the influence of intoxicating liquor, drugs, or other substances and by such  
1170 operation cause the death of another person.

1171 (a) A person convicted under this subsection shall be imprisoned in a jail or  
1172 house of correction for a minimum mandatory term of 1 year but not more  
1173 than 2 ½ years, or state prison for not less than 2 ½ years but not more  
1174 than 15 years with a minimum mandatory term of 1 year and fined not  
1175 more than \$5,000. No case commenced under this subsection shall be  
1176 continued without a finding or placed on file.

1177 (b) Upon a conviction under this subsection the registrar shall suspend the  
1178 license or right to operate as follows:

1179 (1) First offense: 15 years after the date of conviction

1180 (2) Subsequent offense: Lifetime

1181 Notwithstanding the provisions of subdivision (b) above, if a person is  
1182 convicted under this subsection and has a prior operating under the  
1183 influence offense, the registrar shall suspend his license or right to operate  
1184 for life.

1185 No appeal or motion for a new trial shall stay the suspension of the license  
1186 or right to operate, provided; however, if the charges against the person  
1187 are dismissed, or the person is found not guilty, the person may  
1188 immediately file a motion before the judge that heard the case, for the  
1189 purpose of seeking restoration of the license or right to operate. At said  
1190 hearing, if the court finds that the charges were resolved in favor of the  
1191 defendant, that there are no alcohol related charges pending in this or any  
1192 other court, and that there is no evidence before the court based on a  
1193 preponderance of the evidence that reinstatement of the license or right to  
1194 operate would endanger the public, there shall be a presumption that the  
1195 court shall order that this particular suspension be terminated.

1196 (c) Upon a disposition under this section the court shall assess a \$50 fee to  
1197 the person. The court shall transmit the \$50 to the state treasurer to be  
1198 deposited into the Victims of Drunk Driving Trust Fund. The assessment  
1199 shall not be subject to waiver by the court for any reason. If the court  
1200 sentences the person to a correctional facility the outstanding assessment  
1201 shall be noted on the mittimus.

1202

1203 **Chapter 90, § 24L - Manslaughter by motor vehicle**

1204 (1) No person shall operate a motor vehicle wantonly and recklessly on a public way  
1205 while under the influence of intoxicating liquor, drugs, or other substances and  
1206 by such operation cause the death of another person.

1207 (a) A person convicted under this section shall be imprisoned in state prison  
1208 for a minimum mandatory term of 5 years but not more than 20 years and  
1209 fined not more than \$25,000.

1210 (b) Upon a conviction of this section the registrar shall suspend the  
1211 license or right to operate for 15 years to life. Any person aggrieved by  
1212 the registrar's decision may file an appeal in the superior court. If the court  
1213 determines that the registrar abused his discretion, the court may vacate and  
1214 reduce the suspension of the license or the right to operate as ordered by  
1215 the registrar. In no case shall the suspension period be less than 15 years.

1216 No appeal or motion for a new trial shall stay the suspension of the license  
1217 or right to operate, provided; however, if the charges against the person  
1218 are dismissed, or the person is found not guilty, the person may  
1219 immediately file a motion before the judge that heard the case, for the  
1220 purpose of seeking restoration of the license or right to operate. At said  
1221 hearing, if the court finds that the charges were resolved in favor of the  
1222 defendant, that there are no alcohol related charges pending in this or any  
1223 other court, and that there is no evidence before the court based on a  
1224 preponderance of the evidence that reinstatement of the license or right to  
1225 operate would endanger the public, there shall be a presumption that the  
1226 court shall order that this particular suspension be terminated.

1227 (c) Notwithstanding the provisions of paragraph (b) above, if a person  
1228 convicted under this section has a prior operating under the influence  
1229 offense, the registrar shall suspend his license or right to operate for life.

1230 (d) Upon a disposition under this section the court shall assess a \$50 fee to  
1231 the person. The court shall transmit the \$50 to the state treasurer to be  
1232 deposited into the Victims of Drunk Driving Trust Fund. The assessment  
1233 shall not be subject to waiver by the court for any reason. If the court  
1234 sentences the person to a correctional facility the outstanding assessment  
1235 shall be noted on the mittimus.

1236 **Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials**  
1237 **and agencies**

1238 The officials and agencies designated in this section are hereby directed to perform the duties in this  
1239 section and any other action within their authority in order to ensure effective enforcement of chapter  
1240 90 section 24 to 24M, inclusive.

1241 (1) The municipal police training committee established in section 116 of chapter 6  
1242 shall provide training, including but not limited to, education concerning the

1243 aforesaid sections to all law enforcement personnel throughout the  
1244 commonwealth.

1245 (2) The chief administrative justice of the trial court department shall provide  
1246 training, including but not limited to education concerning the aforesaid sections  
1247 to all appropriate court personnel throughout the commonwealth, including but  
1248 not limited to, judges, district attorneys and probation officers.

1249 (3) The courts of the Commonwealth shall give priority to the speedy and effective  
1250 disposition of all matters under the aforesaid sections.

1251 (4) The executive office of public safety shall establish and implement an alcohol  
1252 sensitive selective traffic enforcement program.

1253

1254 SECTION 4

1255 Chapter 90B of the General Laws is hereby amended by adding the following:

1256 **Section 8B ½ -**

1257 (5) No person shall operate a vessel on the waters of the commonwealth wantonly  
1258 and recklessly while under the influence of intoxicating liquor, drugs, or other  
1259 substances and by such operation cause the death of another person.

1260 (a) A person convicted under this section shall be imprisoned in state  
1261 prison for a minimum mandatory term of 5 years but not more than 20  
1262 years and fined not more than \$25,000.

1263 (b) Upon a conviction of this section the registrar shall suspend the  
1264 person's license or right to operate for 15 years to life. Any person  
1265 aggrieved by the registrar's decision may file an appeal in the superior  
1266 court. If the court determines that the registrar abused his discretion,  
1267 the court may vacate and reduce the suspension of the license or  
1268 suspension of the right to operate as ordered by the registrar. In no  
1269 case shall the suspension or suspension period be less than 15 years.

1270 No appeal or motion for a new trial shall stay the suspension of the  
1271 license or right to operate, provided; however, if the charges against  
1272 the person are dismissed, or the person is found not guilty, the person  
1273 may immediately file a motion before the judge that heard the case, for  
1274 the purpose of seeking restoration of the license or right to operate.  
1275 At said hearing, if the court finds that the charges were resolved in  
1276 favor of the defendant, that there are no alcohol related charges  
1277 pending in this or any other court, and that there is no evidence before  
1278 the court based on a preponderance of the evidence that reinstatement  
1279 of the license or right to operate would endanger the public, there shall

1280 be a presumption that the court shall order that this particular  
1281 suspension be terminated.

1282 (c) Notwithstanding the provisions of paragraph (b) above, if a person  
1283 convicted under this section has a prior operating under the influence  
1284 offense, the registrar shall suspend his license or right to operate for  
1285 life

1286 SECTION 5.

1287 Section 13 ½ of Chapter 265 of the General Laws is hereby repealed.

1288 SECTION 6.

1289 Section 28 of Chapter 266 is hereby amended by inserting at the end:

1290 (d) Whoever knowingly uses a motor vehicle without authority shall be  
1291 punished as follows:

1292 (1) First offense: The defendant shall be imprisoned in the jail or  
1293 house of correction for not less than 30 days but not more than  
1294 2 years, or fined not less than \$50 but not more than \$500 or  
1295 both.

1296 (2) Second offense: The defendant shall be imprisoned in jail or  
1297 house of correction for not less than 30 days but not more than  
1298 2 ½ years, or state prison for not more than 5 years, or fined not  
1299 less than \$1000, or both.

1300 (3) Third offense within 5 years: The defendant shall be imprisoned  
1301 in jail or house of correction for not less than 6 months but not  
1302 more than 2 ½ years, or state prison for not less than 2 ½ years  
1303 but not more than 5 years, or a fine of not less than \$200 but not  
1304 more than \$1,000, or both.

1305

1306 Upon a conviction of this subsection the registrar shall, unless the court or  
1307 magistrate recommends otherwise, suspend the license or right to operate  
1308 as follows:

1309 (a) First offense: 1 year

1310 (b) Subsequent offense: 3 years

1311 No appeal or motion for a new trial shall stay the suspension of the  
1312 license or right to operate, provided; however, that if the  
1313 prosecution against such person has terminated in his favor, the  
1314 registrar shall immediately reinstate his license or right to operate

1315 provided; however, if the charges against the person are dismissed,  
1316 or the person is found not guilty, the person may immediately file a  
1317 motion before the judge that heard the case, for the purpose of  
1318 seeking restoration of the license or right to operate. At said  
1319 hearing, if the court finds that the charges were resolved in favor of  
1320 the defendant, that there are no alcohol related charges pending in  
1321 this or any other court, and that there is no evidence before the  
1322 court based on a preponderance of the evidence that reinstatement  
1323 of the license or right to operate would endanger the public, there  
1324 shall be a presumption that the court shall order that this particular  
1325 suspension be terminated.

1326

1327 (4) Upon a conviction of this section, if it appears from the records  
1328 of the registrar that the person convicted is the owner of the  
1329 motor vehicle or has exclusive control of any motor vehicle as a  
1330 manufacturer or dealer or otherwise, the registrar may suspend  
1331 the certificate of registration of any or all motor vehicles owned  
1332 or exclusively controlled by the person.

1333 (5) A summons may be issued instead of a warrant for arrest upon  
1334 a complaint for a violation of this section if there is reason to  
1335 believe the defendant will appear before the court.

1336 If a motor vehicle is used in connection with the commission of a felony, of  
1337 any larceny, or of any offense punishable under any provision of sections  
1338 22, 113 to 117, inclusive, and 120 of chapter 266, or sections 13 of 269, of  
1339 which a person is convicted, the material facts relative to such use,  
1340 including the registration number of the vehicle, so far as disclosed in the  
1341 proceedings, shall be reported forthwith to the registrar by the clerk of the  
1342 court in which the underlying conviction occurs.

1343

1344 SECTION 7.

1345 Section 28(a) of Chapter 266 is hereby amended by inserting subsection (e) as  
1346 follows:

1347 (e) Persons convicted of using a motor vehicle without authority under the  
1348 provisions of paragraph (d) of section 28 shall be liable in a civil action  
1349 to the owner of such vehicle, if it is recovered, for all towing and  
1350 storage charges necessitated and all property damage caused to said  
1351 vehicle by such use without authority.

1352 SECTION 8.

1353

1354 Section 24(2) (a) of Chapter 90 is hereby amended by striking from lines 742,  
1355 743, 744, and 745 the following:

1356 or upon a bet or wager or in a race, or whoever operates a motor vehicle for the  
1357 purpose of making a record and thereby violates any provision of section seventeen or  
1358 any regulation under section eighteen

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1360 SECTION 9.

1361 Section 17B of Chapter 90 is hereby amended by inserting in line 8 after the  
1362 word "and" the following:

1363 by imprisonment for not less than 2 weeks but not more than 2 years.

1364

1365 SECTION 10.

1366 Section 17B of Chapter 90 is hereby amended by inserting in line 11 after the  
1367 word "and" the following:

1368 by imprisonment in a jail or house of correction for not less than 30 days but not more  
1369 than 2 ½ years, or state prison for not more than 5 years.

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1371 SECTION 11.

1372 Section 22(c) of Chapter 90 is hereby amended by striking the words, "state or  
1373 country" in line 51 and inserting the following:

1374 Jurisdiction

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1376 SECTION 12.

1377 Chapter 266 of the General Laws is hereby amended by adding the following:

1378 Section 29A -

1379 (6) No person shall remove an abandoned or stolen motor vehicle on a public way  
1380 as defined in section 1 of chapter 90 without the express consent of the owner  
1381 of such vehicle or without the written permission of the police department. The  
1382 owner or operator of a motor vehicle that is designed to carry or tow another  
1383 vehicle shall be licensed for that specific purpose or as a towing service.

1384 The owner of any machine that is designed to crush, mutilate or destroy a  
1385 motor vehicle, whether the machine be mobile or affixed permanently, shall  
1386 have that machine listed with the registry of motor vehicles.

1387 If the owner or agent of a salvage or junk yard transports crushed or mutilated  
1388 vehicles without the commonwealth for purposes of resale, the operator of the  
1389 transporting vehicle shall carry a list of the vehicles being transported, and a  
1390 copy of such list shall be forwarded to said registrar.



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

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

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