

HOUSE No. 1278

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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

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

An Act relative to ignition interlock licensing.

PETITION OF:

NAME:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 1278

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

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to ignition interlock licensing.

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

1 SECTION 1. Subsection (1)(c) of section 24 of chapter 90 of the General Laws, as so
2 appearing in the 2010 Official Edition, is hereby amended by striking the text in its entirety and
3 replacing with the following:-
4 (c)(1) Where the license or right to operate has been revoked under section twenty-four D or
5 twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a like
6 offense or has not been assigned to an alcohol or controlled substance education, treatment or
7 rehabilitation program because of a like offense by a court of the commonwealth or any other
8 jurisdiction preceding the date of the commission of the offense for which he has been convicted,
9 the registrar shall not restore the license or reinstate the right to operate to such person unless the
10 prosecution of such person has been terminated in favor of the defendant, until one year after the
11 date of conviction; provided, however, that such person may apply after receiving notice of the
12 revocation from the registry for the issuance of an ignition interlock license. Mandatory
13 restrictions on an ignition interlock license granted by the registrar under this subparagraph shall
14 be that such person provides proof in a format acceptable to the registrar that a functioning
15 ignition interlock device is installed and will be maintained on any and all vehicles to be
16 operated by the person for the duration of the ignition interlock license; and that such person
17 provides proof to the registrar of compliance with the terms and conditions of probation. Failure
18 of the operator to remain in compliance with court probation may be cause for immediate
19 revocation of the ignition interlock license.
20 (2) Where the license or the right to operate of a person has been revoked under paragraph (b)
21 and such person has been previously convicted of or assigned to an alcohol or controlled
22 substance education, treatment or rehabilitation program by a court of the commonwealth or any

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

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

57 □ (3½) Where the license or the right to operate of a person has been revoked under paragraph
58 (b) and such person has been previously convicted of or assigned to an alcohol or controlled
59 substance education, treatment or rehabilitation program by a court of the commonwealth or any
60 other jurisdiction because of a like violation three times preceding the date of the commission of
61 the offense for which such person has been convicted, the registrar shall not restore the license or
62 reinstate the right to operate of such person unless the prosecution of such person has been

63 terminated in favor of the defendant; provided, however, that such person may, after the
64 completion of the incarcerated portion of the sentence, apply for the issuance of an ignition
65 interlock license. Such ignition interlock license shall not be removed for the life of such person,
66 provided however, the person may petition the registrar for removal not less than 10 years after
67 the issuance of such license and not less than every 5 years thereafter. Mandatory restrictions on
68 ignition interlock license granted by the registrar under this subparagraph shall be that such
69 person provides proof in a format acceptable to the registrar that a functioning ignition interlock
70 device is installed and will be maintained on any and all vehicles to be operated by the licensee
71 for the duration of the ignition interlock license; and that such person provides proof to the
72 registrar of compliance with any terms and conditions of probation. Failure of the operator to
73 remain in compliance with probation, may be cause for immediate revocation of the ignition
74 interlock license

75 (3^{3/4}) Where the license or the right to operate of a person has been revoked under paragraph
76 (b) and such person has been previously convicted of or assigned to an alcohol or controlled
77 substance education, treatment or rehabilitation program by a court of the commonwealth or any
78 other jurisdiction because of a like violation four or more times preceding the date of the
79 commission of the offense for which such person has been convicted, such person's license or
80 right to operate a motor vehicle shall be revoked for the life of such person, and such person
81 shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a
82 new license on a limited basis on the grounds of hardship; provided, however, that such license
83 shall be restored or such right to operate shall be reinstated if the prosecution of such person has
84 been terminated in favor of such person. An aggrieved party may appeal, in accordance with the
85 provisions of chapter thirty A, from any order of the registrar of motor vehicles under the
86 provisions of this section.

87 An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from
88 any order of the registrar of motor vehicles under the provisions of this section, however a
89 person who applies for an ignition interlock license waives his or her right to such appeal.
90

91 (4) In any prosecution commenced pursuant to this section, introduction into evidence of a
92 prior conviction or a prior finding of sufficient facts by either certified attested copies of original
93 court papers, or certified attested copies of the defendant's biographical and informational data
94 from records of the department of probation, any jail or house of corrections, the department of
95 correction, or the registry, shall be prima facie evidence that the defendant before the court had
96 been convicted previously or assigned to an alcohol or controlled substance education, treatment,
97 or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such
98 documentation shall be self-authenticating and admissible, after the commonwealth has
99 established the defendant's guilt on the primary offense, as evidence in any court of the
100 commonwealth to prove the defendant's commission of any prior convictions described therein.
101 The commonwealth shall not be required to introduce any additional corroborating evidence, nor
102 live witness testimony to establish the validity of such prior convictions.

103 □

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

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

142 □ (i) immediately, on behalf of the registrar, take custody of such person's license or right to

143 operate issued by the commonwealth;

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

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

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

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

167 A person who refused to submit to such test or analysis may apply, on or after the disposition
168 date or completion of the incarcerated portion of the sentence in accordance with sections
169 24(1)(c)(1), 24(1)(c)(2), 24(1)(c)(3), 24(1)(c)(31/2), 24D, 24L, and 24M of chapter 90 the
170 General Laws, for the issuance of an ignition interlock license for the balance of the revocation
171 period listed in this subsection.

172 Mandatory restrictions on an ignition interlock license granted by the registrar under this
173 subparagraph shall be that such person provides proof in a format acceptable to the registrar that
174 a functioning ignition interlock device is installed and will be maintained on any and all to be
175 operated by the licensee for the duration of the ignition interlock license; and that such person
176 provides proof to the registrar of compliance with the terms and conditions of probation. Failure
177 of the operator to remain in compliance with court probation, may be cause for immediate
178 revocation of the ignition interlock license..

179 The defendant may immediately, upon the entry of a not guilty finding or dismissal of all
180 charges under this section, section 24G, section 24L, or section 131/2 of chapter 265, and in the
181 absence of any other alcohol related charges pending against said defendant, apply for and be
182 immediately granted a hearing before the court which took final action on the charges for the

183 purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable
184 presumption that said license be restored, unless the commonwealth shall establish, by a fair
185 preponderance of the evidence, that restoration of said license would likely endanger the public
186 safety. In all such instances, the court shall issue written findings of fact with its decision.

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

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

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

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

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

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

219 In any instance where a defendant is under the age of twenty-one years and such evidence is
220 that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or
221 greater and upon the failure of any police officer pursuant to this subparagraph, to suspend or
222 take custody of the driver's license or permit issued by the commonwealth, and, in the absence of

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

243 □

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

246 □ Section 24 ½ . No person whose license has been suspended in the commonwealth or any
247 other jurisdiction by reason of: an assignment to an alcohol or controlled substance education,
248 treatment or rehabilitation program; or a conviction for violating paragraph (a) of subdivision (1)
249 of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by
250 weight of blood alcohol of eight one-hundredths or greater, or while under the influence of
251 intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, section 13 1/2
252 of chapter 265, subsection (a) of section 8 of chapter 90B, section 8A or 8B of chapter 90B or, in
253 the case of another jurisdiction, for any like offense, shall be issued a new license or right to
254 operate or have his license or right to operate restored if he has previously been so assigned or
255 convicted, unless such person provides proof in a format acceptable to the registrar that such
256 person has a functioning ignition interlock device installed on any and all vehicles to be operated
257 by that person as a precondition to the issuance of a new license or right to operate or the
258 restoration of such person's license or right to operate.

259 □Any person whose license or right to operate is restricted to operating vehicles equipped with a
260 functioning ignition interlock device shall have such device inspected, maintained and monitored
261 in accordance with such regulations as the registrar shall promulgate. The registrar may extend,
262 for up to two years, the period of the ignition interlock restriction on the license of a licensee

263 who removes, tampers with or circumvents the proper operation of such device or who fails
264 on two or more occasions during the period of the restricted license or right to operate, to have it
265 inspected, maintained or monitored within ten days of the end of each inspection, maintenance,
266 or monitoring period as required by such regulations as the registrar shall promulgate, or if
267 during the period of the restricted license or right to operate, the licensee has recorded in such
268 device on at least two occasions, a two or more blood alcohol tests in excess of .02 within any
269 fifteen minute period of time.

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

274 □

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

277 □ Section 24D. Any person convicted of or charged with operating a motor vehicle with a
278 percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while
279 under the influence of intoxicating liquor, controlled substance or the vapors of glue, may if such
280 person consents, be placed on probation for not more than two years and shall, as a condition of
281 probation, be assigned to a driver alcohol education program as provided herein and, if deemed
282 necessary by the court, to an alcohol or controlled substance abuse treatment or rehabilitation
283 program or to both, and such person's license or right to operate shall be suspended for a period
284 of no less than forty-five nor more than ninety days; provided, however, that if such person was
285 under the age of twenty-one when the offense was committed, the person's license or right to
286 operate shall be suspended for two hundred and ten days, and such person shall be assigned to a
287 program specifically designed by the department of public health for the education and treatment
288 of drivers who operates a motor vehicle after or while consuming alcohol, controlled substances
289 or the vapors of glue, except for a person aged 17 to 21, inclusive, whose blood alcohol
290 percentage, by weight, was not less than .20, in which case such person shall be assigned to a
291 driver alcohol treatment and rehabilitation program known as the "14-day second offender in-
292 home program". Such order of probation shall be in addition to any penalties imposed as
293 provided in subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four and shall
294 be in addition to any requirements imposed as a condition for any suspension of sentence. Said
295 person shall cooperate in an investigation conducted by the probation staff of the court for
296 supervision of cases of operating under the influence and operating with a blood alcohol
297 percentage of eight one-hundredths or greater, or in such manner as the commissioner of
298 probation shall determine. A defendant not otherwise prohibited by this section, upon conviction
299 after a trial on the merits, shall be presumed to be an appropriate candidate for the above
300 mentioned programs; provided, however, that a judge who deems that the defendant is not a
301 suitable candidate for said programs shall make such findings in writing.

302 □ This section shall apply to any person who has never been convicted of operating a motor

303 vehicle while under the influence of intoxicating liquor or assigned to an alcohol or controlled
304 substance education, treatment or rehabilitation program because of a like offense by a court of
305 the commonwealth or any other jurisdiction. This section shall also apply to any person
306 convicted of or charged with operating a motor vehicle while under the influence of intoxicating
307 liquor who has been convicted of such offense or assigned to an alcohol or controlled substance
308 education, treatment or rehabilitation program because of a single like offense by a court of the
309 commonwealth or any other jurisdiction 10 years or more before the date of the commission of
310 the offense for which he is to be sentenced, once in his lifetime. If, after receiving a sentence for
311 a second disposition pursuant to this paragraph, a person is convicted of an additional operating
312 under the influence of intoxicating liquor all prior convictions or assignments to an alcohol or
313 controlled substances program by a court of the commonwealth or any other jurisdiction shall be
314 counted for purposes of sentencing under subdivision (1) of section 24.

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

318 Upon each disposition under this section, the defendant will surrender any Massachusetts
319 drivers license or permit in his possession to the probation department of that court. The
320 probation department will dispose of the license, and the court shall report the disposition in the
321 case in a manner as determined by the registrar. Notwithstanding the provisions of subparagraph
322 (1) of paragraph (c) of subdivision (2) of section 24, subparagraph (1) of paragraph (f) of
323 subdivision (1) of section 24, and section 24P, a defendant shall immediately upon entering a
324 program pursuant to this section apply to the registrar for issuance of an ignition interlock license
325 for a minimum of one year or for the period of probation, whichever is longer. A mandatory
326 restriction on an ignition interlock license granted by the registrar under this subparagraph shall
327 be that such person provides proof in a format acceptable to the registrar that a functioning
328 ignition interlock device has been installed and will be maintained on any and all vehicle to be
329 operated by the licensee for the duration of the ignition interlock license. This provision shall
330 also apply to any other suspensions due to the same incident that may be in effect pursuant to
331 said subparagraph (1) of paragraph (c) of subdivision (2) of section 24, said subparagraph (1) of
332 paragraph (f) of subdivision (1) of said section 24 and section 24P of this chapter. Nothing in this
333 section shall be construed to authorize ignition interlock license eligibility if the person is
334 suspended or revoked, or to be suspended or revoked, under any other statute not referenced in
335 this section, or due to any other incident. Failure of the operator to complete his obligations to
336 the program, or remain in compliance with court probation, shall be cause for immediate
337 revocation of the ignition interlock license. In these and all cases where an ignition interlock
338 license is sought by an operator, the probation office for the court where the offender is on
339 probation will, upon request, furnish the registry with documentation verifying the person's
340 status with probation.

341 Driver alcohol education programs utilized under the provisions of this section shall be
342 established and administered by the department of public health in consultation with the registrar

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

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

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

383 whom payment of a fee has been waived on the grounds of indigency.

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

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

400 No such fee shall be collected from any person who, after the filing of an affidavit of indigency
401 or inability to pay with the court within ten days of disposition and investigation by the probation
402 officer confirming such indigency or establishing that the payment of such fee would cause a
403 grave and serious hardship to such individual or to the family thereof, is determined by the court
404 to be indigent, provided that the court enters a written finding thereof. In lieu of waiver of the
405 entire amount of said fee, the court may direct such individual to make partial or installment
406 payments of such fee when appropriate. Failure to pay the fees required under this section shall,
407 unless excused, constitute sufficient basis for a finding by the court at a hearing held pursuant to
408 section twenty-four E that the person has failed to satisfactorily comply with the program.

409 The commissioner of probation shall report in writing at least once annually to the department
410 of public health on the total number of persons who have received disposition hereunder and on
411 the number of such persons who have been determined by the court to require alcohol or
412 controlled substance abuse treatment or rehabilitation, or both. Said commissioner and the chief
413 justices of the district courts and the Boston municipal court shall make further written report at
414 least once annually to said department of public health on the resources available for alcohol or
415 controlled substance abuse treatment or rehabilitation, or alcohol or controlled substance abuse
416 treatment and rehabilitation, of alcohol-impaired or controlled substance abuse-impaired drivers,
417 which report shall evaluate the existing resources and shall make recommendation as to
418 additional necessary resources. Said department of public health shall take such reports into
419 consideration in the development, implementation, and review of the state's alcoholism or
420 controlled substance abuse plan and in the preparation of the division's annual budget in a
421 manner consistent with the Alcoholism Treatment and Rehabilitation Law.

422 When imposing a sentence pursuant to subparagraph (1) of paragraph (a) of section twenty-

423 four or this section, the court may consider requiring the defendant, as a condition of probation,
424 to serve a minimum of thirty hours in public service or in a community work project.

425

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

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

435 In order to qualify for a disposition under this section such person shall, in the judgment of the
436 court, have cooperated fully with the investigation as described in section twenty-four D and
437 shall be and have been in full compliance with such order as the court may have made for a one
438 year term of probation as provided therein, including participation in such driver alcohol
439 education programs, alcohol treatment or alcohol treatment and rehabilitation programs as the
440 court may have ordered.

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

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

451 At said hearing the probation officer shall submit to the courts a written report which shall
452 include but shall not be limited to a written statement by the supervisor of any program of
453 alcohol education and of any program of alcohol education and of any program of alcohol
454 treatment, rehabilitation, or alcohol treatment and rehabilitation to which the court has assigned
455 such person. Such statement shall consider such person's participation and attendance in each
456 such court ordered program. The registrar shall submit a written report to the judge at said
457 hearing regarding any entries made on said person's driving record in the period following
458 placement in the program, and may include a written statement by the supervisor of the ignition
459 interlock provider used by such person detailing the person's compliance with his or her ignition
460 interlock requirement. If the court finds sufficient basis to conclude that said person has not
461 satisfactorily completed or is not satisfactorily complying with such program, the court may
462 notify the registrar and the registrar shall revoke the person's license or right to operate

463 forthwith. If the judge finds that the person is satisfactorily complying with the conditions of
464 probation, the judge may enter a dismissal of the charges and issue appropriate orders relative to
465 said person's participation in a program or relative to a later hearing, subject to the duration of
466 the term of probation. The court shall cause to be entered and to be maintained upon the
467 probation record of said person notice of a dismissal of charges under this section. The probation
468 officer supervising a person pursuant to the provisions of this section shall make a written report
469 to the court if at any time such person has failed to satisfactorily comply with a court ordered
470 program or if such person's operation of a motor vehicle constitutes a threat to the public safety.
471 Upon receipt of such report the court shall forthwith hold a hearing on the matter. If at such
472 hearing the court determines that said person has failed to satisfactorily comply with such
473 program or that the said operation of a motor vehicle constitutes such a threat, the court may
474 notify the registrar and the registrar shall without further hearing revoke said person's license or
475 right to operate. Such revocation shall be for the remainder of the period from the date of
476 conviction provided in subparagraph (1) of paragraph (c) of subdivision (1) of section twenty-
477 four. Said person shall thereafter be subject to the same conditions for issuance of a new license
478 or right to operate or an ignition interlock license as any person applying for a new license or
479 right to operate or an ignition interlock license following revocation as provided in subparagraph
480 (1) of paragraph (c) of said subdivision (1). Where an order of probation has been revoked by
481 the court, the court shall forthwith so notify the registrar in writing and the registrar shall
482 forthwith revoke said person's operator's license or right to operate which was restored under
483 this section and without further hearing.

484 □

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

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

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

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

502 □ (5) Upon completion of the period of imprisonment prescribed in either (1) or (2) of this

503 Section 24L, the person may apply to the registrar for the issuance of an ignition interlock
504 license for the remainder of the revocation period designated in (4) of this Section 24L.

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

515 □

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

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

527 □(i) if the prosecutor makes a prima facie showing at the arraignment that said defendant was
528 operating a motor vehicle while the percentage, by weight, of alcohol in his blood was eight one-
529 hundredths or more, or, relative to any defendant under the age of twenty-one, while the
530 percentage by weight, of alcohol in his blood was two one-hundredths or more, as shown by
531 chemical test or analysis of his blood or breath, and presents written certification of oral
532 testimony from the person administering to the defendant such chemical test or analysis of his
533 blood or breath that the defendant was administered such a test or analysis, that the operator
534 administering the test or analysis of his blood or breath was trained and certified in the
535 administration of such tests, that the test was performed in accordance with regulations and
536 standards promulgated by the secretary of public safety, that the equipment used for such test
537 was regularly serviced and maintained, and that the person administering the test had every
538 reason to believe the equipment was functioning properly at the time the test was administered.
539 Such certification shall be prima facie evidence of the facts so certified. Upon such a showing
540 and presentation, the judge shall take immediate physical possession of such defendant's license
541 or permit issued by the commonwealth to operate a motor vehicle, and shall direct the
542 prosecuting officer to forthwith notify the department of criminal justice information services

543 and the registrar of such suspension by the most expeditious means available. The defendant's
544 license or permit to operate a motor vehicle shall remain suspended until the disposition of the
545 offense for which said defendant is being prosecuted, but in no event shall such suspension
546 pursuant to this section exceed 30 days

547

548 (ii) if the prosecutor makes a prima facie showing at arraignment that said defendant was
549 arrested on the charge of driving a motor vehicle on any such way or place while under the
550 influence of intoxicating liquor, and said defendant refused to submit to a chemical test or
551 analysis of his breath or blood. Upon such a showing and presentation, the judge shall take
552 immediate physical possession of such defendant's license or permit issued by the
553 commonwealth to operate a motor vehicle, and shall direct the prosecuting officer to forthwith
554 notify the department of criminal justice information services and the registrar of such
555 suspension by the most expeditious means available. The defendant's license or permit to operate
556 a motor vehicle shall remain suspended for a period of 180 days; provided, however, that any
557 person who is under the age of 21 or who has been previously convicted of a violation under
558 section 24 or a like violation by a court of any other jurisdiction shall have his license or right to
559 operate suspended forthwith for a period of 1 year for such refusal; provided, further, that any
560 person previously convicted 2 or more times of a violation under section 24 of a like violation by
561 a court of any other jurisdiction shall have his license or right to operate suspended forthwith for
562 a period of 18 months for such refusal.

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

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

583 and the registrar of such restoration.

584 Any person whose right to operate has been suspended pursuant to this section on the basis of
585 the failure of such person to submit to a chemical test or analysis of his breath or blood may
586 within ten days of his suspension request a hearing and upon such request shall be entitled to a
587 hearing before the court in which the underlying charges are pending, which hearing shall be
588 limited to the following issues: (1) did the police officer have reasonable grounds to believe that
589 such person had been operating a motor vehicle while under the influence of intoxicating liquor
590 upon any way or in any place to which members of the public have a right of access or upon any
591 way to which members of the public have a right of access as invitees or licensees, (2) was such
592 person placed under arrest, and (3) did such person refuse to submit to such test or analysis. If,
593 after such hearing, the court finds on any one of the said issues in the negative, the court shall
594 restore such person's license or right to operate and shall direct the prosecuting officer to
595 forthwith notify the criminal history systems board and the registrar of such restoration.

596

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

599 (a) Whoever, upon any way or place to which the public has a right of access, or upon any way
600 or place to which members of the public have access as invitees or licensees, operates a motor
601 vehicle that is not equipped with a certified functioning ignition interlock device while his
602 license or right to operate has been restricted to operating only motor vehicles equipped with
603 such device shall be punished by fine of not less than \$1,000 nor more than \$15,000 and by
604 imprisonment for not less than 180 days nor more than 2 ½ years or by a fine of not less than
605 \$1,000 nor more than \$15,000 and by imprisonment in the state prison for not less than 3 years
606 nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than
607 150 days, nor suspended, nor shall any such person be eligible for probation, parole or furlough
608 or receive any deduction from his sentence for good conduct until he shall have served 30 days
609 of such sentence. The commissioner of correction may, on the recommendation of the warden,
610 superintendent, or other person in charge of a correctional institution, or the administrator of a
611 county correctional institution, grant to an offender committed under this subsection a temporary
612 release in the custody of an officer of such institution for the following purposes only: to attend
613 the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or
614 psychiatric services unavailable at that institution; to engage in employment pursuant to a work
615 release program; or for the purposes of an aftercare program designed to support the recovery of
616 an offender who has completed an alcohol or controlled substance education, treatment or
617 rehabilitation program operated by the department of correction. The defendant may serve all or
618 part of such 30 -day sentence, to the extent such resources are available, in a correctional facility
619 specifically designated by the department of correction for the incarceration and rehabilitation of
620 drinking drivers.

621

622 (b) For the purposes of this section the term “certified ignition interlock device” shall mean an

623 alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol
624 concentration over a preset limit of .02 or 20 mg of alcohol per 100 ml of blood.

625 □

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

628 □(a) Whoever interferes with or tampers with a certified ignition interlock device, with the intent
629 to disable such device, shall be punished by a fine of not less than \$1,000 nor more than \$15,000
630 or imprisonment in the house of correction for not less than 180 days nor more than 2 ½ years or
631 by a fine of not less than \$1,000 nor more than \$15,000 and by imprisonment in the state prison
632 for not less than 3 years nor more than 5 years. . The sentence imposed upon such person shall
633 not be reduced to less than 150 days, nor suspended, nor shall any such person be eligible for
634 probation, parole or furlough or receive any deduction from his sentence for good conduct until
635 he shall have served 30 days of such sentence. The commissioner of correction may, on the
636 recommendation of the warden, superintendent, or other person in charge of a correctional
637 institution, or the administrator of a county correctional institution, grant to an offender
638 committed under this subsection a temporary release in the custody of an officer of such
639 institution for the following purposes only: to attend the funeral of a relative; to visit a critically
640 ill relative; to obtain emergency medical or psychiatric services unavailable at that institution; to
641 engage in employment pursuant to a work release program; or for the purposes of an aftercare
642 program designed to support the recovery of an offender who has completed an alcohol or
643 controlled substance education, treatment or rehabilitation program operated by the department
644 of correction. The defendant may serve all or part of such 30 -day sentence, to the extent such
645 resources are available, in a correctional facility specifically designated by the department of
646 correction for the incarceration and rehabilitation of drinking drivers.

647 □

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

652 □

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

655 □ (a)(1) Whoever knowingly breathes into, or assists in interfering with or tampering with a
656 certified ignition interlock device as defined in section 24T or starts a motor vehicle equipped
657 with such a device for the purpose of providing an operable motor vehicle to a person whose
658 license or right to operate a vehicle is restricted to the operation of vehicles equipped with a
659 certified ignition interlock device shall be punished by a fine not less than \$1,000 nor more than
660 \$5,000 or imprisonment in a house of correction for not less than 6 months nor more than 2 1/2
661 years and, for a second or subsequent conviction, by imprisonment in a state prison for not less
662 than 3 nor more than 5 years.

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

667 [There is no subsection (b).]

668