

HOUSE No. 1590

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	2nd Suffolk
Massachusetts Bar Association	
Gale D. Candaras	First Hampden and Hampshire
Boston Bar Association	
Peter J. Koutoujian	10th Middlesex

[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.

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

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

Disposition: A conviction, guilty plea, 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: 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

4 SECTION 2.

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

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

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

- 13 (3) No person shall allow another to operate a motor vehicle with a suspended
14 certificate of registration unless the registration has been restored or a new
15 registration has been issued.
- 16 (4) No person with intent to conceal his identity shall, upon request, present to an
17 officer authorized to make arrests a license issued to another person.
- 18 (a) A person convicted under subsection (1), (2), (3) or (4) of this section shall
19 be punished as follows:
- 20 (1) First offense: The defendant shall be imprisoned in a jail or house
21 of correction for not more than 10 days, or fined not less than \$500
22 but not more than \$1000, or both.
- 23 (2) Subsequent offense: The defendant shall be imprisoned in a jail or
24 house of correction for not less than 60 days but not more than 1
25 year.
- 26 (b) Upon a conviction under subsection (1), (2), (3), or (4), of this section the
27 registrar shall extend said suspension of the license or right to operate for
28 an additional 60 days.
- 29 (5) No person shall attach or permit to be attached to a motor vehicle or trailer a
30 number plate assigned to another motor vehicle or trailer with the intent to
31 conceal the identity of the motor vehicle or trailer.
- 32 (6) No person shall obscure or permit to be obscured the figures on any number
33 plate attached to a motor vehicle or trailer with the intent to conceal the identity
34 of the motor vehicle or trailer.
- 35 (7) No person shall fail to display a number plate and registration number duly
36 assigned to a motor vehicle or trailer with the intent to conceal the identity of
37 such motor vehicle or trailer.
- 38 (a) A person convicted under subsection (5), (6), or (7) of this section shall be
39 imprisoned in a jail or house of correction for not more than 10 days, or
40 fined not more than \$100, or both.
- 41 (b) Upon a conviction under subsection (5), (6), or (7) of this section the
42 registrar shall extend said suspension of the license or right to operate for
43 an additional 60 days.
- 44 (8) No person shall operate a motor vehicle with a suspended license or right to
45 operate due to being a habitual traffic offender pursuant to section 22F of
46 chapter 90 after being notified by the Registry of Motor Vehicles of such
47 suspension.

- 48 (a) A person convicted under this subsection shall be imprisoned in a jail or
49 house of correction for not more than 2 years or fined not less than \$500
50 but not more than \$5000, or both.
- 51 (b) Upon a conviction under this subsection the registrar shall extend said
52 suspension of the license or right to operate for an additional 60 days.
- 53 (9) No person shall operate a motor vehicle with a suspended license or right to
54 operate due to a prior operating under the influence offense under chapter 90,
55 90B, 90F, or 265, or after being notified by the Registry of Motor Vehicles of
56 such suspension.
- 57 (a) A person convicted under this subsection shall be imprisoned in a jail or
58 house of correction for a minimum mandatory term of 60 days but not
59 more than 2 ½ years and fined not less than \$1,000 but not more than
60 \$10,000. No case commenced under this subsection shall be continued
61 without a finding or placed on file, or subject to the provisions of section 87
62 of chapter 276.
- 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 1 year.
- 65 (10) No person shall operate a motor vehicle under the influence with a suspended
66 license or right to operate due to a prior operating under the influence offense
67 or after being notified by the Registry of Motor Vehicles of such suspension.
- 68 (a) A person convicted under this subsection shall be imprisoned in a jail or
69 house of correction for a minimum mandatory term of 1 year but not more
70 than 2 ½ years and fined not less than \$2,500 but not more than \$10,000.
71 No case commenced under this subsection shall be continued without a
72 finding, or placed on file, or subject to the provisions of section 87 of
73 chapter 276.
- 74 (b) Upon a conviction under this subsection the registrar shall extend said
75 suspension of the license or right to operate for an additional 1 year.
- 76 (c) A sentence imposed under this subsection shall be served consecutively
77 to and not concurrently with any other sentence or penalty.
- 78 (11) A certificate of the registrar or his authorized agent indicating that: (1) a
79 license or right to operate has not been restored; or (2) a certificate of
80 registration has not been restored; or (3) a new license to operate has not been
81 issued; or (4) a new certificate of registration has not been issued shall be
82 admissible as evidence in any court of the commonwealth to prove the facts
83 certified to therein.

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

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

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

94 SECTION 3.

95 Section 24, 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L, 24M, 24N, 24O, 24P, 24Q,
96 24R, 24S, 24T, 24U, 24V, 24W, and 24X of Chapter 90 of the General Laws, is hereby amended by
97 deleting each section and replacing it with the following:

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

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

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

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

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

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

122 (a) A person convicted under subsection (1), (2), (3), (4), or (5) of this section
123 shall be imprisoned in a jail or house of correction for not more than 2
124 years or state prison for not more than 5 years or fined not more than
125 \$500.

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

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

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

136 (8) No person shall loan or knowingly permit his learner's permit or license to
137 operate a motor vehicle to another.

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

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

145 (1) First offense: 60 days

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

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

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

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

156 (1) No person shall possess an open container of alcoholic beverage in the
157 passenger area of any motor vehicle while on a public way.

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

160 (3) These words, as used in this section, have the following meaning:

161 (a) Open container – any bottle, can or other receptacle used to contain liquid
162 that has been opened or has a broken seal, or the contents of which have
163 been partially removed or consumed provided; however, that a bottle
164 resealed pursuant to section 12 of chapter 138 shall not be considered an
165 open container.

166 (b) Passenger area – the area designed to seat the driver and the passengers
167 while the motor vehicle is in operation and any area that is readily
168 accessible to the driver or a passenger while in a seated position
169 including, but not limited to, the glove compartment. But in a motor
170 vehicle that is not equipped with a trunk, the passenger area shall not
171 include a locked glove compartment, the area behind the last upright seat,
172 or an area not normally occupied by the driver or a passenger.

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

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

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

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

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

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

188 (a) First offense: 60 days

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

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

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

199 (5) Upon a disposition under this section the court shall assess a \$250 fee to the
200 person. The court shall deposit \$125 of the \$250 collected under this
201 assessment into the Head Injury Treatment Services Trust Fund. The
202 remaining \$125 shall be deposited into the General Fund. The fee may be
203 reduced or waived if the court makes written findings that payment would cause
204 the person severe financial hardship. If the court sentences the person to a
205 correctional facility the outstanding assessment shall be noted on the mittimus.

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

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

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

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

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

220 (1) First offense: 60 days

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

222 No appeal or motion for a new trial shall stay the suspension of the license
223 or right to operate provided; however, if the charges against the person
224 are dismissed, or the person is found not guilty, the person may
225 immediately file a motion before the judge that heard the case, for the
226 purpose of seeking restoration of the license or right to operate. At said
227 hearing, if the court finds that the charges were resolved in favor of the
228 defendant, that there are no alcohol related charges pending in this or any
229 other court, and that there is no evidence before the court based on a
230 preponderance of the evidence that reinstatement of the license or right to
231 operate would endanger the public, there shall be a presumption that the
232 court shall order that this particular suspension be terminated.

- 233 (c) Upon a conviction of this section, if it appears by the records of the
234 registrar that the person convicted is the owner of a motor vehicle or has
235 exclusive control of any motor vehicle as a manufacturer or dealer or
236 otherwise, the registrar may suspend the certificate of registration of any
237 or all motor vehicles owned or exclusively controlled by the person.
- 238 (d) A summons may be issued instead of a warrant for arrest upon a
239 complaint for a violation of this subsection if there is reason to believe the
240 defendant will appear before the court.

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

- 242 (2) No person operating a motor vehicle on a public way shall knowingly collide
243 with or otherwise cause injury to any person, not resulting in the death of
244 another person, without stopping and making known his name, residence and
245 the registration number of his motor vehicle.
- 246 (a) A person convicted of this subsection shall be imprisoned in a jail or house
247 of correction for not less than 6 months but not more than 2 years and
248 fined not less than \$500 but not more than \$1,000. No case commenced
249 under this subsection shall be continued without a finding or placed on file.
- 250 (b) Upon a conviction of this subsection the registrar shall, unless the court or
251 magistrate recommend otherwise, suspend the license or right to operate
252 as follows:
- 253 (1) First offense: 1 year
- 254 (2) Subsequent offense: 2 years
- 255 No appeal or motion for a new trial shall stay the suspension of the license
256 or right to operate provided; however, if the charges against the person
257 are dismissed, or the person is found not guilty, the person may
258 immediately file a motion before the judge that heard the case, for the
259 purpose of seeking restoration of the license or right to operate. At said
260 hearing, if the court finds that the charges were resolved in favor of the
261 defendant, that there are no alcohol related charges pending in this or any
262 other court, and that there is no evidence before the court based on a
263 preponderance of the evidence that reinstatement of the license or right to
264 operate would endanger the public, there shall be a presumption that the
265 court shall order that this particular suspension be terminated.
- 266 (c) Upon a conviction of this section, if it appears by the records of the
267 registrar that the person convicted is the owner of a motor vehicle or has
268 exclusive control of any motor vehicle as a manufacturer or dealer or
269 otherwise, the registrar may suspend the certificate of registration of any
270 or all motor vehicles owned or exclusively controlled by the person.

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

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

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

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

285 (1) First offense: 3 years

286 (2) Subsequent offense: 10 years

287 No appeal or motion for a new trial shall stay the suspension of the license
288 or right to operate provided; however, if the charges against the person
289 are dismissed, or the person is found not guilty, the person may
290 immediately file a motion before the judge that heard the case, for the
291 purpose of seeking restoration of the license or right to operate. At said
292 hearing, if the court finds that the charges were resolved in favor of the
293 defendant, that there are no alcohol related charges pending in this or any
294 other court, and that there is no evidence before the court based on a
295 preponderance of the evidence that reinstatement of the license or right to
296 operate would endanger the public, there shall be a presumption that the
297 court shall order that this particular suspension be terminated.

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

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

305 (1) No person shall operate a motor vehicle on a public way while under the
306 influence of intoxicating liquor, drugs, or other substances as defined in section
307 1 of chapter 90.

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

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

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

318 (c) Third Offense: If there are 2 prior operating under the influence offenses,
319 the defendant shall be imprisoned in a jail or house of correction for not
320 less than 150 days but not more than 2 ½ years, or state prison for not
321 less than 2 ½ years but not more than 5 years with a minimum mandatory
322 term of 150 days and fined not less than \$1,000 but not more than
323 \$15,000.

324 (d) Fourth Offense: If there are 3 prior operating under the influence
325 offenses, the defendant shall be imprisoned in a jail or house of correction
326 for not less than 2 years but not more than 2 ½ years, or state prison for
327 not less than 2 ½ years but not more than 5 years with a minimum
328 mandatory term of 1 year and fined not less than \$1,500 but not more than
329 \$25,000.

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

336 (f) Upon a disposition under this section the court shall assess a \$250 fee to
337 the person. The court shall transmit \$125 of the \$250 collected under this
338 assessment to the state treasurer to be deposited into the Head Injury
339 Treatment Services Trust Fund. The remaining \$125 shall be deposited
340 into the General Fund. The assessment may be reduced or waived if the
341 court makes written findings that payment would cause the person severe
342 financial hardship. If the court sentences the person to a correctional
343 facility the outstanding assessment shall be noted on the mittimus.

344 (g) Upon a disposition under this section the court shall assess a \$50 fee to
345 the person. The court shall transmit the \$50 to the state treasurer to be
346 deposited into the Victims of Drunk Driving Trust Fund. The assessment
347 shall not be subject to waiver by the court for any reason. If the court

348 sentences the person to a correctional facility the outstanding assessment
349 shall be noted on the mittimus.

350 (h) In any prosecution commenced pursuant to this section, introduction into
351 evidence of a prior conviction or a prior finding of sufficient facts by either
352 certified attested copies of original court papers, or certified attested
353 copies of the defendant's biographical and informational data from records
354 of the department of probation, any jail or house of correction, the
355 department of correction, or the registry of motor vehicles, shall be prima
356 facie evidence that the defendant before the court has been convicted
357 previously or assigned to an alcohol or controlled substance education,
358 treatment, or rehabilitation program by a court of the commonwealth or of
359 a like offense from any other jurisdiction. Such documentation shall be
360 self-authenticating and admissible, after the commonwealth has
361 established the defendant's guilt on the primary offense, as evidence in
362 any court of the commonwealth to prove the defendant's commission of
363 any prior convictions or assignments to alcohol or controlled substance
364 education, treatment, or rehabilitation programs described therein. The
365 commonwealth shall not be required to introduce any additional
366 corroborative evidence, nor live witness testimony to establish the validity
367 of such prior offenses.

368 (i) No prosecutions under this section shall be continued without a finding
369 except for cases disposed of pursuant to the provisions of subdivision (a)
370 of subsection (3) of this section. No prosecutions under this section shall
371 be placed on file, or subject to the provisions of section 87 of chapter 276.
372 At any time before the commencement of a trial or acceptance of a plea
373 on a complaint alleging a violation of this section, the prosecutor may
374 apply for the issuance of a new complaint pursuant to section 35A of
375 chapter 218 alleging a violation of this section and 1 or more prior
376 operating under the influence offenses. If such application is made, upon
377 motion of the prosecutor, the court shall stay further proceedings on the
378 original complaint pending the determination of the application for the new
379 complaint. If a new complaint is issued, the court shall dismiss the original
380 complaint and order that further proceedings on the new complaint be
381 postponed until the defendant has had sufficient time to prepare a
382 defense. Upon any conviction or continuation without a finding under this
383 section, the court shall order that any license issued by the commonwealth
384 be surrendered to the probation department, and disposed of in a manner
385 prescribed by the registrar. The clerk of courts shall notify the registrar
386 forthwith of the disposition.

387 (j) Upon a disposition for an operating under the influence offense as defined
388 in section (1) of this chapter the probation department, in the court in
389 which the finding was entered, shall provide the defendant a copy of the
390 statutory provisions that apply to any further operating under the influence

391 offense. The statement of statutory provisions shall be prepared by the
392 secretary of public safety.

393 (k) Upon a disposition for an operating under the influence offense as defined
394 in section (1) of this chapter the court shall ask the defendant whether he
395 was served alcohol prior to his violation at an establishment licensed to
396 serve alcohol. If the defendant answers in the affirmative, the defendant
397 shall provide the name and address of the establishment. The clerk's
398 office shall provide in writing to the Alcohol Beverage Control Commission
399 the name of the establishment and date of offense given by the defendant.
400 The Alcohol Beverage Control Commission shall inform the named
401 establishment of this incident forthwith. The trial court shall, in conjunction
402 with the Alcohol Beverage Control Commission, promulgate a standard
403 form for reporting and collecting said information. The Alcohol Beverage
404 Control Commission shall provide an annual report including the collected
405 data to the attorney general, each district attorney, and the local liquor
406 licensing authorities.

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

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

413 (3) Alternative Dispositions

414 (a) First Offense: If there is no evidence of a prior operating under the
415 influence offense, a person may consent to being placed on probation for
416 not more than 2 years instead of the disposition specified in subdivision
417 (a) of subsection (2) of this section. Offenders with a single prior operating
418 under the influence offense more than 10 years preceding the date of the
419 most recent offense may also be eligible for a disposition under this
420 subdivision. As a condition of this probation, the person shall be ordered
421 to complete an out patient alcohol, drug, or substance abuse program as
422 specified by the court. Offenders who reside out of state, or are a full time
423 student out of state, may at the court's discretion complete a licensed first
424 offender's program in that other state, as approved by the Department of
425 Public Health.

426 If a person is sentenced to an alternative disposition, notwithstanding the
427 provisions of subsection (5) of this section, the court shall impose a
428 suspension of the defendant's license or right to operate for not less than
429 45 days nor more than 90 days if said person was over the age of 21 at
430 the time of the offense, or 210 days if said person was under the age of 21
431 at the time of offense. A person may immediately apply for a hardship

432 license following disposition and enrollment into the treatment program
433 required by this subsection. In all cases where a hardship license is
434 sought, the probation office where the offender is or was on probation will,
435 upon request, furnish the registrar with documentation verifying the
436 person's status with probation. Hardship licenses under this subsection
437 shall be issued under such terms and conditions as the registrar may
438 prescribe, after the registry is convinced that the issues that this offense(s)
439 arose from have been dealt with by the operator and brought under
440 control. Said hardship license shall be issued, subject to the agency's
441 discretion, upon a showing of hardship for work, education, or other
442 purpose the registrar deems valid and significant, and shall be for an
443 identical 12 hour period, 7 days a week. Notwithstanding the above, if the
444 records of the registrar contain additional information regarding operating
445 under the influence offenses, the registrar shall suspend the license in
446 accordance with subsection (5) of this section. A person shall be
447 presumed to be a suitable candidate for this disposition after trial unless
448 otherwise prohibited by this section. In cases where an eligible person is
449 not granted such a disposition should he or she seek it, the court shall
450 make written findings supporting its decision.

451 (b) Second Offense: Notwithstanding the provisions of subsection (2) of this
452 section, in cases where a defendant has only one prior operating under
453 the influence offense, the court, in its discretion, may order the defendant
454 to enter and complete a 14 day in patient program in lieu of the required
455 30 day minimum mandatory term.

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

459 Each person placed in such a program shall pay a program fee as
460 determined by the department of public health. The program fee shall not
461 exceed the cost per client to run the program. The department of public
462 health shall compile a schedule of uniform fees for these programs, which
463 shall be changed only after notice and public hearing. The department
464 shall promulgate rules and regulations regarding the process and
465 methodology of setting these fees. No person shall be denied entry into a
466 program where the court, after review and investigation by the probation
467 department, determines that the defendant is indigent, and has filed such
468 an affidavit with the court. The court may then waive or reduce said fee
469 on a case by case basis. Subject to appropriation, the department of
470 public health shall reimburse each program for the costs of services
471 provided to persons for whom payment of a fee has been waived or
472 reduced on the grounds of indigency.

473 In addition to the program fee, the court shall assess a \$250 fee to each
474 person placed in such a program. The court shall transmit the \$250 to the
475 state treasurer for the support of programs operated by the commissioner

476 of public health for the investigation, enforcement, treatment and
477 rehabilitation of persons charged with or convicted of operating under the
478 influence. The assessment may be reduced or waived if the court makes
479 written findings that payment would cause the person severe financial
480 hardship.

481 The alternative disposition programs utilized under this subsection shall be
482 established, administered or approved by the department of public health,
483 who shall have authority to promulgate such regulations as is necessary to
484 govern the content, conduct, operation or approval of these programs.

485 The department of public health shall prepare and publish annually a list of
486 all accepted alcohol treatment and rehabilitation programs, make this list
487 available upon request to members of the public, and annually furnish the
488 commissioner of probation, the registrar, and the secretary of public safety
489 with a copy of said list.

490 The commissioner of probation shall annually report to the department of
491 public health the number of persons who receive an alternative disposition
492 and the number of persons who have been required by the court to
493 participate in alcohol or controlled substance abuse treatment or
494 rehabilitation programs. In addition, the commissioner of probation, and
495 the chief justice of the district courts and the Boston Municipal Court shall
496 annually report to the department of public health the resources available
497 for alcohol and controlled substance abuse treatment and rehabilitation of
498 alcohol-impaired or controlled substance abuse-impaired drivers. The
499 report shall evaluate the existing resources and shall make
500 recommendations as to any additional resources. The department of
501 public health shall take such reports into consideration in the
502 development, implementation, and review of the state's alcoholism or
503 controlled substance abuse plan and in the preparation of the division's
504 annual budget in a manner consistent with the Alcoholism Treatment and
505 Rehabilitation Law.

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

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

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

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

- 519 (5) Upon conviction the registrar shall suspend the license or right to operate,
520 based on the number of offenses on the agency's records, as follows:
- 521 (a) First offense: 1 year except for persons that have properly received
522 dispositions pursuant to subsection 3 of section 24D of this chapter. The
523 operator may apply for a hardship license 90 days from the date of
524 conviction, absent any other suspensions.
- 525 (b) Second offense: 2 years except for persons that have properly received
526 dispositions pursuant to subsection 3 of section 24D of this chapter. The
527 operator may apply for a hardship license 1 year from the date of
528 conviction, absent any other suspensions.
- 529 (c) Third offense: 8 years. The operator may apply for a hardship license 2
530 years from the date of conviction, absent any other suspensions.
- 531 (d) Fourth offense: 10 years. The operator may apply for a hardship license 5
532 years from the date of conviction, absent any other suspensions.
- 533 (e) Fifth or subsequent offense: Lifetime.
- 534 (f) Notwithstanding subdivisions (a) through (e) of this subsection, the
535 registrar shall suspend for life a person's license or right to operate upon
536 an operating under the influence offense if the person has been previously
537 convicted of motor vehicle homicide while under the influence or
538 manslaughter by motor vehicle.
- 539 (g) Hardship licenses under this subsection shall be issued under such terms
540 and conditions as the registrar may prescribe, after the registry is
541 convinced that the issues that this offense(s) arose from have been dealt
542 with by the operator and brought under control. Said hardship license
543 shall be issued, subject to the agency's discretion, upon a showing of
544 hardship for work, education, or other purpose the registrar deems valid
545 and significant, and shall be for an identical 12 hour period, 7 days a
546 week.
- 547 (h) If there are 2 prior operating under the influence offenses, the registrar
548 may suspend the registration of a motor vehicle owned by a person for the
549 duration of the suspension of the license or right to operate. No new
550 registration shall be issued to said person during the suspension period.

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

- 552 (1) Whoever operates a motor vehicle on a public way shall be deemed to have
553 consented to a test of his breath or blood in the event he is arrested with
554 operating a motor vehicle while under the influence of intoxicating liquor. A
555 person brought to a police station or place of detention is deemed to have
556 consented to a test of his breath. A valid breath test under this section shall be

557 one adequate breath sample analysis, followed by one calibration standard
558 analysis, and then by a second adequate breath sample analysis. A person is
559 deemed to have consented to a test of his blood only if he has been brought to
560 a medical facility licensed pursuant to the provisions of section 51 of chapter
561 111, and the blood is drawn by a physician, registered nurse or certified
562 medical technician; provided further that no person inflicted with hemophilia or
563 any other condition requiring the use of anticoagulants shall be deemed to have
564 consented to the withdrawal of blood. Such test shall be administered by or at
565 the direction of a police officer as defined in section 1 of chapter 90C, having
566 reasonable grounds to believe that the defendant was operating under the
567 influence.

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

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

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

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

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

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

597 (2) Upon any refusal by the person arrested of a test required by this section,
598 after the person has been informed that his license or right to operate a motor

599 vehicle shall be suspended for the refusal, the registrar shall immediately
600 suspend the person's license or right to operate as follows:

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

604 (b) If the person has 1 prior operating under the influence conviction, or was
605 under age 21 at the time of offense and has no more than 1 prior
606 operating under the influence conviction, the suspension shall be for 3
607 years.

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

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

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

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

618 (g) No hardship licenses on suspensions for test refusals shall be granted,
619 except for candidates that have properly received dispositions pursuant to
620 subsection 3 of section 24D of this chapter. Any suspensions under this
621 section shall be consecutive with any suspension or suspension for the
622 underlying operation under the influence offense. Notwithstanding that, if
623 the charges against the person are dismissed, or the person is found not
624 guilty, the person may immediately file a motion before the judge that
625 heard the case, for the purpose of seeking restoration of the license or
626 right to operate. At said hearing, if the court finds that the charges were
627 resolved in favor of the defendant, that there are no alcohol related
628 charges pending in this or any other court, and that there is no evidence
629 before the court based on a preponderance of the evidence that
630 reinstatement of the license or right to operate would endanger the public,
631 there shall be a presumption that the court shall order that this particular
632 suspension be terminated.

633 (h) Any person refusing a test under this section shall have a right, at his
634 request, to a hearing before the registrar to determine if grounds exist for
635 the suspension. Any hearing request shall be made within 15 days of the
636 incident giving rise to this suspension. The hearing shall be limited to the
637 issues of whether reasonable grounds exist for the officer's belief that the
638 person was operating under the influence at the time of the incident,

639 whether the person was advised of the consequences of the refusal, and
640 did the person refuse or fail to consent to such test. The registrar, upon
641 accepting an appeal, shall have a reasonable period of time to request
642 and gather such evidence as the hearings officer needs in order to rule on
643 the issues raised by the appellant. The registrar shall compile a record of
644 the hearing. If the ruling is in the person's favor, absent any other reason
645 for suspension, the registrar shall restore the person's license or right to
646 operate. The registrar may promulgate such rules and regulations as is
647 necessary regarding the conduct of these hearings.

648 (i) If the registrar rules that the suspension for refusal was proper, the
649 appellant may file a petition for judicial review in the district court having
650 jurisdiction over the underlying operation under the influence charge within
651 30 days of the registrar's decision. The court must then schedule a
652 hearing within 30 days of the appellant's application, unless the appellant
653 has waived this time requirement. The petition shall be filed in the nature
654 of a civil action challenging the action of an administrative agency, and
655 shall be an administrative review limited to the record, including the
656 evidence and arguments, compiled at the hearing. Along with the
657 submission of the record, the registrar shall prepare written findings
658 supporting the reasons for denying the petition for the court to review. If
659 the court rules in the appellant's favor, the court shall prepare specific
660 findings indicating the reasons for reversing the registrar's determination,
661 and send the findings to the registrar forthwith. The registrar shall restore
662 the license, absent any other reasons for suspension. In cases where
663 other suspensions exist, the registrar shall then terminate this suspension
664 for refusal, but maintain any other valid suspensions.

665 If a test indicates that a person was operating with a blood alcohol content of
666 .08% or above, the registrar shall immediately suspend the person's license or
667 right to operate for 30 days, or until the conclusion of the court case, whichever is
668 shorter.

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

676 If the charges against the person are dismissed, or the person is found not guilty,
677 the person may immediately file a motion before the judge that heard the case,
678 for the purpose of seeking restoration of the license or right to operate. At said
679 hearing, if the court finds that the charges were resolved in favor of the
680 defendant, that there are no alcohol related charges pending in this or any other
681 court, and that there is no evidence before the court based on a preponderance

682 of the evidence that reinstatement of the license or right to operate would
683 endanger the public, there shall be a presumption that the court shall order that
684 this particular suspension be terminated.

685 (3) Chemical analysis of the breath of a person charged with a violation of this
686 chapter shall not be considered valid under the provisions of this chapter,
687 unless such analysis has been performed by a certified operator, using infrared
688 breath-testing devices according to methods approved by the secretary of
689 public safety. The secretary of public safety shall promulgate rules and
690 regulations regarding satisfactory methods, techniques and criteria for the
691 conduct of such tests, and shall establish a statewide training and certification
692 program for all operators of such devices and a periodic certification program
693 for such breath testing devices; provided, however, that the secretary may
694 terminate or suspend such certification at his discretion.

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

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

699 (1) one adequate breath sample analysis

700 (2) one calibration standard analysis

701 (3) a second adequate breath sample analysis

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

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

706 The secretary of public safety shall prescribe uniform formats, electronic or
707 otherwise, for reports of such chemical analysis to be used by law enforcement
708 officers and others acting in accordance with the provisions of this chapter. The
709 reports generated in these formats shall be sequentially numbered. Each chief of
710 police or other officer or official having charge or control of a law enforcement
711 agency shall be responsible for the proper availability of these formats. Each
712 party so responsible shall prepare or cause to be prepared such records and
713 reports relating to such uniform formats and their disposition in such manner and
714 at such times as the secretary of public safety shall prescribe.

715 Upon any failed or refused test under this section the police shall confiscate any
716 license or permit issued by the commonwealth in the possession of the
717 defendant, serve the defendant with a notice of suspension on behalf of the
718 registrar, and impound the operator's vehicle for a 12 hour period following the
719 incident. The operator shall be responsible for all costs associated with towing,

720 storage and maintenance of the vehicle. In addition, in each case, the police
721 shall prepare a report to the registrar, indicating the following:

- 722 (1) the grounds the arresting officer had to believe that the defendant
723 was operating under the influence;
- 724 (2) the defendant was advised of the consequences of refusing the
725 test;
- 726 (3) the results of any failed test;
- 727 (4) whether or not the operator refused or failed to consent to the test;
- 728 (5) the identity of the officer who advised the defendant of his rights;
- 729 (6) the identity and certification of the officer who conducted the breath
730 test;
- 731 (7) the identity of any witness to the test or refusal;
- 732 (8) that the test was administered in accordance with the regulations
733 and standards promulgated by the secretary of safety; and
- 734 (9) the equipment used was regularly serviced and maintained and
735 believed to be in proper working order.

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

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

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

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

755 If a person has not been previously arrested for or charged with operating
756 under the influence, such person shall, if he consents, be assigned to a
757 program specifically designed by the department of public health for the
758 treatment of underage drinking drivers. Upon entry into a program,
759 authorized by this subsection, or a program required by section 24D of this
760 chapter, the suspension of a license or right to operate as required by this
761 subsection shall be waived by the registrar for a person under 21 years of
762 age and over 18 years of age. The suspension shall be reduced to 180
763 days for a person who was under the age of 18 at the time of such
764 offense. Upon the failure of a person who, at the time of offense was
765 under the age of 21, to successfully complete such program, the registrar
766 shall forthwith suspend such license or permit to operate for 180 days, or
767 for 1 year if the person was under age 18 at the time of offense.

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

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

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

785 (1) the defendant was given a test;

786

787 (2) the person administering the test was trained and certified in the
788 administration of the test;

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

791

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

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

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

796 Upon a showing of the above facts, the judge shall take immediate physical possession of
797 the license or permit and shall direct the prosecuting officer to immediately notify the

798 criminal history systems board and the registrar of such suspension. The defendant's
799 license or right to operate shall be suspended for a period not to exceed 30 days; or

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

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

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

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

815 (c) No license shall be restored under any circumstances and no restricted or
816 hardship permits shall be issued during the suspension period imposed by
817 this paragraph. If the charges against the person are dismissed, or the
818 person is found not guilty, the person may immediately file a motion before
819 the judge that heard the case, for the purpose of seeking restoration of the
820 license or right to operate. At said hearing, if the court finds that the
821 charges were resolved in favor of the defendant, that there are no alcohol
822 related charges pending in this or any other court, and that there is no
823 evidence before the court based on a preponderance of the evidence that
824 reinstatement of the license or right to operate would endanger the public,
825 there shall be a presumption that the court shall order that this particular
826 suspension be terminated.

827 (1) Any person refusing a test under this section shall have a right, at
828 his request, to a hearing before the registrar to determine if grounds
829 exist for the suspension. Any hearing request shall be made within
830 10 days of the incident giving rise to this suspension. The hearing
831 shall be limited to the issues of whether or not a blood test
832 administered pursuant to section 24E of this chapter, within a
833 reasonable period of time after a test of his breath, shows that that
834 the blood alcohol content was less than .08% or less than .02% if
835 the person was under the age of 21 at the time of the offense.

836 If, after a hearing, the court finds the defendant's blood alcohol
837 content was less than .08% or less than .02% if the person was
838 under the age of 21 at the time of offense, the court shall restore

839 the defendant's license or right to operate and shall direct the
840 prosecuting officer to immediately notify the criminal history
841 systems board and the registrar of such restoration.

842 (2) Any person whose license or right to operate has been suspended
843 because the person refused to submit to a test of his breath or
844 blood under this section shall have the right, at his request, to a
845 hearing before the court in which the underlying charges are
846 pending to determine if grounds exist for the suspension. Any
847 hearing request shall be made within 10 days of the hearing giving
848 rise to this suspension. The hearing shall be limited to the following
849 issues:

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

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

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

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

860 **Chapter 90, § 24F – Ignition Interlock Devices**

861 (1) Any person whose license or right to operate is suspended for 2 or more
862 operating under the influence offenses, or who is operating on a restricted
863 license for such offenses, shall be required to have an ignition interlock device
864 installed on each vehicle that he may own, lease, or operate as a mandatory
865 condition of issuance of a new license or right to operate. The restriction shall
866 remain on the license during the hardship license period and an additional 2
867 years upon the full restoration of the license. In cases where the person has not
868 been granted a hardship license, the ignition interlock requirement shall be for a
869 2 year period following the reinstatement of the license or right to operate.

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

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

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

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

881 if the licensee has:

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

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

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

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

894 (a) A person convicted under this subsection shall be imprisoned in a jail or
895 house of correction for not less than 6 months but not more than 2 ½
896 years, or the state prison for not less than 2 ½ years but not more than 5
897 years with a minimum mandatory term of 6 months and fined not less than
898 \$1,000 but not more than \$15,000.

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

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

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

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

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

913 (1) First offense: The defendant shall be imprisoned in a jail or house
914 of correction for not less than 6 months but not more than 2 ½

915 years or punished by a fine of not less than \$1,000 but not more
916 than \$5,000.

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

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

923 **Chapter 90, § 24G – Motor Vehicle Forfeitures**

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

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

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

953 (3) At a hearing under this section, the court shall hear evidence and make findings
954 of fact and conclusions of law, and shall issue a final order. The parties shall
955 have a right of appeal as from a decree in equity. No forfeiture under this

956 section shall extinguish a perfected security interest held by a creditor in the
957 property at the time of the filing of the forfeiture action. In all actions where a
958 proceeding results in forfeiture, the final order shall provide for disposition of the
959 property by the commonwealth in any manner not prohibited by law, including
960 official use by an authorized law enforcement or other agency, or at sale at
961 public auction or by competitive bidding, with such sale being conducted by the
962 office of the district attorney or the attorney general that obtained the final order
963 of forfeiture.

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

974 (5) There shall be established within the office of the state treasurer a separate
975 Operating Under the Influence Deterrent Trust Fund for each district attorney
976 and for the attorney general. All monies and proceeds received by a
977 prosecuting district attorney or attorney general pursuant to this section shall be
978 deposited in the fund and shall be expended without further appropriation to
979 defray the costs of investigations, to provide additional technical equipment or
980 expertise, to provide matching funds to obtain federal grants, or for such other
981 law enforcement purposes as the district attorney or attorney general deems
982 appropriate. Any program seeking to be an eligible recipient of the funds shall
983 file an annual audit report with the local district attorney and attorney general.
984 Such report shall include, but not be limited to, a listing of the assets, liabilities,
985 itemized expenditures and board of directors of the program. Within 90 days of
986 the close of the fiscal year, each district attorney and the attorney general shall
987 file an annual report with the house and senate committees on ways and
988 means on the use of the monies in the trust fund for the purposes of deterring
989 operating under the influence programs.

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

999 (1) Any person aged 17 to 21 years, inclusive, who commits an operating under
1000 the influence offense, and who has a blood alcohol content of .20% or above,
1001 shall also be guilty of aggravated operating under the influence, and in addition
1002 to the penalties mandated in section 24D of this chapter, shall also be required
1003 to enter and complete a 14 day residential treatment program as described in
1004 subdivision (b) of subsection (3) of that section. In cases where the person is
1005 otherwise qualified for a disposition under subdivision (a) of subsection (3), the
1006 person shall be required to complete the 14 day residential program in lieu of
1007 the outpatient program specified therein.

1008 **Chapter 90, § 24I - Child Endangerment**

1009 (1) No person shall operate a motor vehicle on a public way while under the
1010 influence of intoxicating liquor, drugs, or other substance with a child 14 years
1011 of age or younger in the vehicle.

1012 (a) A person convicted under this section shall be punished as follows:

1013 (1) First offense: The defendant shall be imprisoned in a jail or house
1014 of correction for not less than 90 days but not more than 2 ½ years
1015 and fined not less than \$1,000 but not more than \$5,000.

1016 (2) Subsequent offense: If there is a prior conviction for a violation of
1017 this subsection or a like offense in another jurisdiction the
1018 defendant shall be imprisoned in a jail or house of correction for a
1019 minimum mandatory term of 6 months but not more than 2 ½ years,
1020 or state prison for not less than 3 years but not more than 5 years
1021 with a minimum mandatory term of 6 months and fined not less
1022 than \$5,000 but not more than \$10,000.

1023 (b) Upon a conviction under this section the registrar shall suspend the
1024 license or right to operate for an additional period as follows:

1025 (1) First offense: 1 year

1026 (2) Subsequent offense: 3 years

1027 No appeal or motion for a new trial shall stay the suspension of the license or
1028 right to operate.

1029 (c) A sentence imposed under this subsection shall be served consecutively
1030 to and not concurrently with the underlying operating under the influence
1031 offense. No case commenced under this section shall be continued
1032 without a finding, or placed on file, or subject to the provisions of section
1033 87 of chapter 276.

1034 **Chapter 90, § 24J - Operating under the influence causing serious bodily injury**

- 1035 (1) No person shall operate a motor vehicle on a public way while under the
1036 influence of intoxicating liquor, drugs, or other substances and by such
1037 operation cause serious bodily injury to another person.
- 1038 (a) A person convicted under this subsection shall be imprisoned in a jail or
1039 house of correction for not more than 2 ½ years or fined not more than
1040 \$3,000, or both.
- 1041 (2) No person shall operate a motor vehicle on a public way negligently or
1042 recklessly so that the lives or safety of the public might be endangered while
1043 under the influence of intoxicating liquor, drugs, or other substances and by
1044 such operation cause serious bodily injury to another person.
- 1045 (a) A person convicted under this subsection shall be imprisoned in a jail or
1046 house of correction for a minimum mandatory term of 6 months but not
1047 more than 2 ½ years, or state prison for not less than 2 ½ years but not
1048 more than 10 years with a minimum mandatory term of 6 months and
1049 fined not more than \$5,000. No case commenced under this section shall
1050 be continued without a finding, or placed on file, or subject to the
1051 provisions of section 87 of chapter 276.
- 1052 (3) Upon a conviction under this section the registrar shall suspend the license or
1053 right to operate for 2 years after the date of conviction. No appeal or motion
1054 for a new trial shall stay the suspension of the license or right to operate,
1055 provided; however, if the charges against the person are dismissed, or the
1056 person is found not guilty, the person may immediately file a motion before the
1057 judge that heard the case, for the purpose of seeking restoration of the license
1058 or right to operate. At said hearing, if the court finds that the charges were
1059 resolved in favor of the defendant, that there are no alcohol related charges
1060 pending in this or any other court, and that there is no evidence before the court
1061 based on a preponderance of the evidence that reinstatement of the license or
1062 right to operate would endanger the public, there shall be a presumption that
1063 the court shall order that this particular suspension be terminated.
- 1064 (4) Upon a disposition under this section the court shall assess a \$50 fee to the
1065 person. The court shall transmit the \$50 to the state treasurer to be deposited
1066 into the Victims of Drunk Driving Trust Fund. The assessment shall not be
1067 subject to waiver by the court for any reason. If the court sentences the person
1068 to a correctional facility the outstanding assessment shall be noted on the
1069 mittimus.
- 1070 (5) For purposes of this section “serious bodily injury” shall mean bodily injury
1071 which creates a substantial risk of death or involves either total disability or the
1072 loss or substantial impairment of some bodily function for a substantial period of
1073 time.

1075 (1) No person shall operate a motor vehicle on a public way negligently or
1076 recklessly so that the lives or safety of the public might be endangered and by
1077 such operation cause the death of another person.

1078 (a) A person convicted under this subsection shall be imprisoned in a jail or
1079 house of correction for not less than 30 days but not more than 2 ½ years
1080 or fined not less than \$300 but not more than \$3,000, or both. No case
1081 commenced under this subsection shall be continued without a finding or
1082 placed on file.

1083 (b) Upon a conviction under this subsection the registrar shall suspend the
1084 license or right to operate as follows:

1085 (1) First offense: 15 years after the date of conviction

1086 (2) Subsequent offense: Lifetime

1087 Notwithstanding the provisions of subdivision (b) above, if a person is
1088 convicted under this subsection and has a prior operating under the influence
1089 offense, the registrar shall suspend his license or right to operate for life.

1090 No appeal or motion for a new trial shall stay the suspension of the
1091 license or right to operate, provided; however, if the charges against the
1092 person are dismissed, or the person is found not guilty, the person may
1093 immediately file a motion before the judge that heard the case, for the purpose
1094 of seeking restoration of the license or right to operate. At said hearing, if
1095 the court finds that the charges were resolved in favor of the defendant, that
1096 there are no alcohol related charges pending in this or any other court, and that
1097 there is no evidence before the court based on a preponderance of the
1098 evidence that reinstatement of the license or right to operate would endanger the
1099 public, there shall be a presumption that the court shall order that this
1100 particular suspension be terminated.

1101 (c) Upon a disposition under this section the court shall assess a \$50 fee to
1102 the person. The court shall transmit the \$50 to the state treasurer to be
1103 deposited into the Victim's of Drunk Driving Trust Fund. The assessment
1104 shall not be subjected to waiver by the court for any reason. If the court
1105 sentences the person to a correctional facility the outstanding assessment
1106 shall be noted on the mittimus.

1107 **Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence**

1108 (2) No person shall operate a motor vehicle on a public way under the influence
1109 of intoxicating liquor, drugs, or other substances and by such operation cause
1110 the death of another person.

1111 (a) A person convicted under this subsection shall be imprisoned in the jail or
1112 house of correction for not less than 30 days but not more than 2 ½ years

1113 or fined not less than \$300 but not more than \$3,000, or both. No case
1114 commenced under this subsection shall be continued without a finding or
1115 placed on file.

1116 (b) Upon a conviction under this subsection the registrar shall suspend the
1117 license or right to operate as follows:

1118 (1) First offense: 15 years after the date of conviction

1119 (2) Subsequent offense: Lifetime

1120 Notwithstanding the provisions of subdivision (b) above, if a person is
1121 convicted under this subsection and has a prior operating under the influence
1122 offense, the registrar shall suspend his license or right to operate for life.

1123 No appeal or motion for a new trial shall stay the suspension of the
1124 license or right to operate, provided; however, if the charges against the
1125 person are dismissed, or the person is found not guilty, the person may
1126 immediately file a motion before the judge that heard the case, for the purpose
1127 of seeking restoration of the license or right to operate. At said hearing, if
1128 the court finds that the charges were resolved in favor of the defendant, that
1129 there are no alcohol related charges pending in this or any other court, and that
1130 there is no evidence before the court based on a preponderance of the
1131 evidence that reinstatement of the license or right to operate would endanger the
1132 public, there shall be a presumption that the court shall order that this
1133 particular suspension be terminated.

1134 (c) Upon a disposition under this section the court shall assess a \$50 fee to
1135 the person. The court shall transmit the \$50 to the state treasurer to be
1136 deposited into the Victims of Drunk Driving Trust Fund. The assessment
1137 shall not be subject to waiver by the court for any reason. If the court
1138 sentences the person to a correctional facility the outstanding assessment
1139 shall be noted on the mittimus.

1140 **Chapter 90, § 24K (3) – Felony motor vehicle homicide**

1141 (3) No person shall operate a motor vehicle negligently or recklessly on a public
1142 way so that the lives or safety of the public might be endangered while under
1143 the influence of intoxicating liquor, drugs, or other substances and by such
1144 operation cause the death of another person.

1145 (a) A person convicted under this subsection shall be imprisoned in a jail or
1146 house of correction for a minimum mandatory term of 1 year but not more
1147 than 2 ½ years, or state prison for not less than 2 ½ years but not more
1148 than 15 years with a minimum mandatory term of 1 year and fined not
1149 more than \$5,000. No case commenced under this subsection shall be
1150 continued without a finding or placed on file.

1151 (b) Upon a conviction under this subsection the registrar shall suspend the
1152 license or right to operate as follows:

1153 (1) First offense: 15 years after the date of conviction

1154 (2) Subsequent offense: Lifetime

1155 Notwithstanding the provisions of subdivision (b) above, if a person is
1156 convicted under this subsection and has a prior operating under the
1157 influence offense, the registrar shall suspend his license or right to operate
1158 for life.

1159 No appeal or motion for a new trial shall stay the suspension of the license
1160 or right to operate, provided; however, if the charges against the person
1161 are dismissed, or the person is found not guilty, the person may
1162 immediately file a motion before the judge that heard the case, for the
1163 purpose of seeking restoration of the license or right to operate. At said
1164 hearing, if the court finds that the charges were resolved in favor of the
1165 defendant, that there are no alcohol related charges pending in this or any
1166 other court, and that there is no evidence before the court based on a
1167 preponderance of the evidence that reinstatement of the license or right to
1168 operate would endanger the public, there shall be a presumption that the
1169 court shall order that this particular suspension be terminated.

1170 (c) Upon a disposition under this section the court shall assess a \$50 fee to
1171 the person. The court shall transmit the \$50 to the state treasurer to be
1172 deposited into the Victims of Drunk Driving Trust Fund. The assessment
1173 shall not be subject to waiver by the court for any reason. If the court
1174 sentences the person to a correctional facility the outstanding assessment
1175 shall be noted on the mittimus.

1176 **Chapter 90, § 24L - Manslaughter by motor vehicle**

1177 (1) No person shall operate a motor vehicle wantonly and recklessly on a public
1178 way while under the influence of intoxicating liquor, drugs, or other substances
1179 and by such operation cause the death of another person.

1180 (a) A person convicted under this section shall be imprisoned in state prison
1181 for a minimum mandatory term of 5 years but not more than 20 years and
1182 fined not more than \$25,000.

1183 (b) Upon a conviction of this section the registrar shall suspend the
1184 license or right to operate for 15 years to life. Any person aggrieved by
1185 the registrar's decision may file an appeal in the superior court. If the court
1186 determines that the registrar abused his discretion, the court may vacate and
1187 reduce the suspension of the license or the right to operate as ordered by
1188 the registrar. In no case shall the suspension period be less than 15 years.

1189 No appeal or motion for a new trial shall stay the suspension of the license
1190 or right to operate, provided; however, if the charges against the person
1191 are dismissed, or the person is found not guilty, the person may
1192 immediately file a motion before the judge that heard the case, for the
1193 purpose of seeking restoration of the license or right to operate. At said
1194 hearing, if the court finds that the charges were resolved in favor of the
1195 defendant, that there are no alcohol related charges pending in this or any
1196 other court, and that there is no evidence before the court based on a
1197 preponderance of the evidence that reinstatement of the license or right to
1198 operate would endanger the public, there shall be a presumption that the
1199 court shall order that this particular suspension be terminated.

1200 (c) Notwithstanding the provisions of paragraph (b) above, if a person
1201 convicted under this section has a prior operating under the influence
1202 offense, the registrar shall suspend his license or right to operate for life.

1203 (d) Upon a disposition under this section the court shall assess a \$50 fee to
1204 the person. The court shall transmit the \$50 to the state treasurer to be
1205 deposited into the Victims of Drunk Driving Trust Fund. The assessment
1206 shall not be subject to waiver by the court for any reason. If the court
1207 sentences the person to a correctional facility the outstanding assessment
1208 shall be noted on the mittimus.

1209 **Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials**
1210 **and agencies**

1211 The officials and agencies designated in this section are hereby directed to perform the duties in this
1212 section and any other action within their authority in order to ensure effective enforcement of chapter 90
1213 section 24 to 24M, inclusive.

1214 (1) The municipal police training committee established in section 116 of chapter
1215 6 shall provide training, including but not limited to, education concerning the
1216 aforesaid sections to all law enforcement personnel throughout the
1217 commonwealth.

1218 (2) The chief administrative justice of the trial court department shall provide
1219 training, including but not limited to education concerning the aforesaid sections
1220 to all appropriate court personnel throughout the commonwealth, including but
1221 not limited to, judges, district attorneys and probation officers.

1222 (3) The courts of the Commonwealth shall give priority to the speedy and
1223 effective disposition of all matters under the aforesaid sections.

1224 (4) The executive office of public safety shall establish and implement an alcohol
1225 sensitive selective traffic enforcement program.

1226 SECTION 4

1227 Chapter 90B of the General Laws is hereby amended by adding the following:

1228 **Section 8B ½ -**

1229 (5) No person shall operate a vessel on the waters of the commonwealth
1230 wantonly and recklessly while under the influence of intoxicating liquor, drugs,
1231 or other substances and by such operation cause the death of another person.

1232 (a) A person convicted under this section shall be imprisoned in state
1233 prison for a minimum mandatory term of 5 years but not more than 20
1234 years and fined not more than \$25,000.

1235 (b) Upon a conviction of this section the registrar shall suspend the
1236 person's license or right to operate for 15 years to life. Any person
1237 aggrieved by the registrar's decision may file an appeal in the superior
1238 court. If the court determines that the registrar abused his discretion,
1239 the court may vacate and reduce the suspension of the license or
1240 suspension of the right to operate as ordered by the registrar. In no
1241 case shall the suspension or suspension period be less than 15 years.

1242 No appeal or motion for a new trial shall stay the suspension of the
1243 license or right to operate, provided; however, if the charges against
1244 the person are dismissed, or the person is found not guilty, the person
1245 may immediately file a motion before the judge that heard the case, for
1246 the purpose of seeking restoration of the license or right to operate.
1247 At said hearing, if the court finds that the charges were resolved in
1248 favor of the defendant, that there are no alcohol related charges
1249 pending in this or any other court, and that there is no evidence before
1250 the court based on a preponderance of the evidence that reinstatement
1251 of the license or right to operate would endanger the public, there shall
1252 be a presumption that the court shall order that this particular
1253 suspension be terminated.

1254 (c) Notwithstanding the provisions of paragraph (b) above, if a person
1255 convicted under this section has a prior operating under the influence
1256 offense, the registrar shall suspend his license or right to operate for
1257 life

1258 **SECTION 5.**

1259 Section 13 ½ of Chapter 265 of the General Laws is hereby repealed.

1260 **SECTION 6.**

1261 Section 28 of Chapter 266 is hereby amended by inserting at the end:

1262 (d) Whoever knowingly uses a motor vehicle without authority shall be
1263 punished as follows:

1264 (1) First offense: The defendant shall be imprisoned in the jail or
1265 house of correction for not less than 30 days but not more than
1266 2 years, or fined not less than \$50 but not more than \$500 or
1267 both.

1268 (2) Second offense: The defendant shall be imprisoned in jail or
1269 house of correction for not less than 30 days but not more than
1270 2 ½ years, or state prison for not more than 5 years, or fined not
1271 less than \$1000, or both.

1272 (3) Third offense within 5 years: The defendant shall be imprisoned
1273 in jail or house of correction for not less than 6 months but not
1274 more than 2 ½ years, or state prison for not less than 2 ½ years
1275 but not more than 5 years, or a fine of not less than \$200 but not
1276 more than \$1,000, or both.

1277 Upon a conviction of this subsection the registrar shall, unless the court or
1278 magistrate recommends otherwise, suspend the license or right to operate
1279 as follows:

1280 (a) First offense: 1 year

1281 (b) Subsequent offense: 3 years

1282 No appeal or motion for a new trial shall stay the suspension of the
1283 license or right to operate, provided; however, that if the
1284 prosecution against such person has terminated in his favor, the
1285 registrar shall immediately reinstate his license or right to operate
1286 provided; however, if the charges against the person are dismissed,
1287 or the person is found not guilty, the person may immediately file a
1288 motion before the judge that heard the case, for the purpose of
1289 seeking restoration of the license or right to operate. At said
1290 hearing, if the court finds that the charges were resolved in favor of
1291 the defendant, that there are no alcohol related charges pending in
1292 this or any other court, and that there is no evidence before the
1293 court based on a preponderance of the evidence that reinstatement
1294 of the license or right to operate would endanger the public, there
1295 shall be a presumption that the court shall order that this particular
1296 suspension be terminated.

1297 (4) Upon a conviction of this section, if it appears from the records
1298 of the registrar that the person convicted is the owner of the
1299 motor vehicle or has exclusive control of any motor vehicle as a
1300 manufacturer or dealer or otherwise, the registrar may suspend
1301 the certificate of registration of any or all motor vehicles owned
1302 or exclusively controlled by the person.

1303 (5) A summons may be issued instead of a warrant for arrest upon
1304 a complaint for a violation of this section if there is reason to
1305 believe the defendant will appear before the court.

1306 If a motor vehicle is used in connection with the commission of a felony, of
1307 any larceny, or of any offense punishable under any provision of sections
1308 22, 113 to 117, inclusive, and 120 of chapter 266, or sections 13 of 269, of
1309 which a person is convicted, the material facts relative to such use,
1310 including the registration number of the vehicle, so far as disclosed in the
1311 proceedings, shall be reported forthwith to the registrar by the clerk of the
1312 court in which the underlying conviction occurs.

1313 SECTION 7.

1314 Section 28(a) of Chapter 266 is hereby amended by inserting subsection (e) as
1315 follows:

1316 (e) Persons convicted of using a motor vehicle without authority under the
1317 provisions of paragraph (d) of section 28 shall be liable in a civil action
1318 to the owner of such vehicle, if it is recovered, for all towing and
1319 storage charges necessitated and all property damage caused to said
1320 vehicle by such use without authority.

1321 SECTION 8.

1322 Section 24(2) (a) of Chapter 90 is hereby amended by striking from lines 742,
1323 743, 744, and 745 the following:

1324 or upon a bet or wager or in a race, or whoever operates a motor vehicle for the
1325 purpose of making a record and thereby violates any provision of section seventeen or
1326 any regulation under section eighteen

1327 SECTION 9.

1328 Section 17B of Chapter 90 is hereby amended by inserting in line 8 after the
1329 word "and" the following:

1330 by imprisonment for not less than 2 weeks but not more than 2 years.

1331 SECTION 10.

1332 Section 17B of Chapter 90 is hereby amended by inserting in line 11 after the
1333 word "and" the following:

1334 by imprisonment in a jail or house of correction for not less than 30 days but not more
1335 than 2 ½ years, or state prison for not more than 5 years.

1336 SECTION 11.

1337 Section 22(c) of Chapter 90 is hereby amended by striking the words, "state or
1338 country" in line 51 and inserting the following:

1339 Jurisdiction

1340 SECTION 12.

1341 Chapter 266 of the General Laws is hereby amended by adding the following:

1342 Section 29A -

1343 (6) No person shall remove an abandoned or stolen motor vehicle on a public
1344 way as defined in section 1 of chapter 90 without the express consent of the
1345 owner of such vehicle or without the written permission of the police
1346 department. The owner or operator of a motor vehicle that is designed to carry
1347 or tow another vehicle shall be licensed for that specific purpose or as a towing
1348 service.

1349 The owner of any machine that is designed to crush, mutilate or destroy a
1350 motor vehicle, whether the machine be mobile or affixed permanently, shall
1351 have that machine listed with the registry of motor vehicles.

1352 If the owner or agent of a salvage or junk yard transports crushed or mutilated
1353 vehicles without the commonwealth for purposes of resale, the operator of the
1354 transporting vehicle shall carry a list of the vehicles being transported, and a
1355 copy of such list shall be forwarded to said registrar.

1356 (c) Any person convicted under this section shall be imprisoned for not less
1357 than 2 years, a fine of not less than \$1,000, or both.

1358 Any person convicted under this section shall forfeit, to the registrar, any license issued which is related
1359 to such violation.