

HOUSE No. 1667

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher M. Markey

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>1/19/2023</i>

HOUSE No. 1667

By Representative Markey of Dartmouth, a petition (accompanied by bill, House, No. 1667) of Christopher M. Markey relative to operating under the influence. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1924 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

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

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

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

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

7 Disposition: A conviction, guilty plea, plea of nolo contendere, placement on probation,
8 continuance without a finding or admission to sufficient facts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

153 SECTION 3. Section 24, 24 ½ , 24A, 24B, 24D, 24E, 24F, 24G, 24H, 24I, 24J, 24K, 24L,
154 24M, 24N, 24O, 24P, 24Q, 24R, 24S, 24T, 24U, 24V, 24W, and 24X of chapter 90 of the
155 General Laws, is hereby amended by striking each section and inserting in place thereof the
156 following:-

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

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

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

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

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

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

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

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

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

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

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

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

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

199 (1) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

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

226 (a)First offense: 60 days

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

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

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

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

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

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

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

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

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

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

255 (a) First offense: 60 days

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

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

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

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

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

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

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

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

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

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

283 (a)First offense: 60 days

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

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

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

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

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

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

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

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

314 In order for the use of any such device to be made “in the performance of the operator’s
315 official duties,” such use must have been made in conformance with applicable written
316 guidelines issued by a public entity listed in this paragraph relative to circumstances when
317 operators are permitted to use said devices in the performance of their official duties or pursuant

318 to directives from federal authorities having regulatory jurisdiction over such public entity's
319 operations.

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

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

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

333 (a)First offense: 60 days

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

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

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

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

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

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

350 (1) No operator of a vehicle or vessel used in public transportation, including a train,
351 passenger bus, school bus or other vehicle used to transport pupils, passenger ferry boat, water
352 shuttle or other equipment used in public transportation owned by, or operated under the
353 authority of the Massachusetts Bay Transportation Authority, the Woods Hole, Martha's
354 Vineyard and Nantucket Steamship Authority, Massachusetts Port Authority, or the
355 Massachusetts Department of Transportation, shall use a mobile telephone, hands-free mobile
356 telephone or other mobile electronic device while operating such vehicle or vessel shall operate a
357 motor vehicle while using a mobile phone or any other handheld device capable of accessing the
358 internet, to manually compose, send or receive an electronic message on any public way

359 negligently so that the lives or safety of the public might be endangered and proximately cause
360 injury to any other person.

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

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

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

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

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

383 (a) First offense: 60 days

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

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

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

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

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

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

400 (1) No person under 18 years of age shall operate a motor vehicle while using a mobile
401 phone or any other handheld device capable of accessing the internet, to manually compose, send

402 or receive an electronic message on any public way negligently so that the lives or safety of the
403 public might be endangered and proximately cause injury to a vehicle or property.

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

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

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

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

420 (a)First offense: 60 days

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

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

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

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

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

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

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

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

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

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

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

457 (a)First offense: 60 days

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

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

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

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

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

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

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

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

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

481 (a)First offense: 60 days

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

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

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

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

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

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

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

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

507 (a) First offense: 1 year

508 (b) Subsequent offense: 2 years

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

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

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

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

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

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

532 (a) First offense: 3 years

533 (b)Subsequent offense: 10 years

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

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

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

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

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

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

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

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

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

565 Fifth or Subsequent Offense: If there are 4 or more prior operating under the influence
566 offenses, the defendant shall be imprisoned in a jail or house of correction for not less than 2 ½

567 years, or be imprisoned in the state prison for not less than 2 ½ years but not more than 5 years
568 with a minimum mandatory term of 2 years and fined not less than \$2,000 but not more than
569 \$50,000.

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

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

580 In any prosecution commenced pursuant to this section, introduction into evidence of a
581 prior conviction or a prior finding of sufficient facts by either certified attested copies of original
582 court papers, or certified attested copies of the defendant's biographical and informational data
583 from records of the department of probation, any jail or house of correction, the department of
584 correction, or the registry of motor vehicles, shall be prima facie evidence that the defendant
585 before the court has been convicted previously or assigned to an alcohol or controlled substance
586 education, treatment, or rehabilitation program by a court of the commonwealth or of a like
587 offense from any other jurisdiction. Such documentation shall be self-authenticating and
588 admissible, after the commonwealth has established the defendant's guilt on the primary offense,

589 as evidence in any court of the commonwealth to prove the defendant's commission of any prior
590 convictions or assignments to alcohol or controlled substance education, treatment, or
591 rehabilitation programs described therein. The commonwealth shall not be required to introduce
592 any additional corroborative evidence, nor live witness testimony to establish the validity of such
593 prior offenses.

594 No prosecutions under this section shall be continued without a finding except for cases
595 disposed of pursuant to the provisions of subdivision (a) of subsection (3) of this section. No
596 prosecutions under this section shall be placed on file, or subject to the provisions of section 87
597 of chapter 276. At any time before the commencement of a trial or acceptance of a plea on a
598 complaint alleging a violation of this section, the prosecutor may apply for the issuance of a new
599 complaint pursuant to section 35A of chapter 218 alleging a violation of this section and 1 or
600 more prior operating under the influence offenses. If such application is made, upon motion of
601 the prosecutor, the court shall stay further proceedings on the original complaint pending the
602 determination of the application for the new complaint. If a new complaint is issued, the court
603 shall dismiss the original complaint and order that further proceedings on the new complaint be
604 postponed until the defendant has had sufficient time to prepare a defense. No trial shall be
605 commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be
606 accepted on such complaint, nor shall the prosecution on such complaint be transferred to
607 another division of the district court or to a jury-of-six session, until the court receives a report
608 from the commissioner of probation pertaining to the defendant's record, if any, of prior
609 operating under the influence offenses; provided, however, that the provisions of this paragraph
610 shall not justify the postponement of any such trial or of the acceptance of any such plea for
611 more than five working days after the date of the defendant's arraignment. The commissioner of

612 probation shall give priority to requests for such records. Upon any conviction or continuation
613 without a finding under this section, the court shall order that any license issued by the
614 commonwealth be surrendered to the probation department, and disposed of in a manner
615 prescribed by the registrar. The clerk of courts shall notify the registrar forthwith of the
616 disposition.

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

622 Upon a disposition for an operating under the influence offense as defined in section (1)
623 of this chapter the court shall ask the defendant whether he was served alcohol prior to his
624 violation at an establishment licensed to serve alcohol. If the defendant answers in the
625 affirmative, the defendant shall provide the name and address of the establishment. The clerk's
626 office shall provide in writing to the Alcohol Beverage Control Commission the name of the
627 establishment and date of offense given by the defendant. The Alcohol Beverage Control
628 Commission shall inform the named establishment of this incident forthwith. The trial court
629 shall, in conjunction with the Alcohol Beverage Control Commission, promulgate a standard
630 form for reporting and collecting said information. The Alcohol Beverage Control Commission
631 shall provide an annual report including the collected data to the attorney general, each district
632 attorney, and the local liquor licensing authorities.

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

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

638 (3)Alternative Dispositions

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

648 If a person is sentenced to an alternative disposition, notwithstanding the provisions of
649 subsection (5) of this section, the court shall impose a suspension of the defendant's license or
650 right to operate for not less than 45 days nor more than 90 days if said person was over the age of
651 21 at the time of the offense, or 210 days if said person was under the age of 21 at the time of
652 offense. A person may immediately apply for a hardship license following disposition and
653 enrollment into the treatment program required by this subsection. In all cases where a hardship
654 license is sought, the probation office where the offender is or was on probation will, upon

655 request, furnish the registrar with documentation verifying the person's status with probation.
656 Hardship licenses under this subsection shall be issued under such terms and conditions as the
657 registrar may prescribe, after the registry is convinced that the issues that this offense(s) arose
658 from have been dealt with by the operator and brought under control. Said hardship license shall
659 be issued, subject to the agency's discretion, upon a showing of hardship for work, education, or
660 other purpose the registrar deems valid and significant, and shall be for an identical 12 hour
661 period, 7 days a week. In all such cases where the defendant operated a motor vehicle with a
662 percentage, by weight, of alcohol in their blood of fifteen one-hundredths or greater, the registrar
663 may place a restriction on a hardship license granted by the registrar under this section requiring
664 that such person have an ignition interlock device installed on each vehicle owned, each vehicle
665 leased and each vehicle operated by the licensee for the duration of the hardship license.
666 Notwithstanding the above, if the records of the registrar contain additional information
667 regarding operating under the influence offenses, the registrar shall suspend the license in
668 accordance with subsection (5) of this section. A person shall be presumed to be a suitable
669 candidate for this disposition after trial unless otherwise prohibited by this section. In cases
670 where an eligible person is not granted such a disposition should he or she seek it, the court shall
671 make written findings supporting its decision.

672 Each person placed in such a program shall pay a program fee as determined by the
673 department of public health. The program fee shall not exceed the cost per client to run the
674 program. The department of public health shall compile a schedule of uniform fees for these
675 programs, which shall be changed only after notice and public hearing. The department shall
676 promulgate rules and regulations regarding the process and methodology of setting these fees.
677 No person shall be denied entry into a program where the court, after review and investigation by

678 the probation department, determines that the defendant is indigent, and has filed such an
679 affidavit with the court. The court may then waive or reduce said fee on a case by case basis.
680 Subject to appropriation, the department of public health shall reimburse each program for the
681 costs of services provided to persons for whom payment of a fee has been waived or reduced on
682 the grounds of indigency.

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

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

696 The commissioner of probation shall annually report to the department of public health
697 the number of persons who receive an alternative disposition and the number of persons who
698 have been required by the court to participate in alcohol or controlled substance abuse treatment
699 or rehabilitation programs. In addition, the commissioner of probation, and the chief justice of

700 the district courts and the Boston Municipal Court shall annually report to the department of
701 public health the resources available for alcohol and controlled substance abuse treatment and
702 rehabilitation of alcohol-impaired or controlled substance abuse-impaired drivers. The report
703 shall evaluate the existing resources and shall make recommendations as to any additional
704 resources. The department of public health shall take such reports into consideration in the
705 development, implementation, and review of the state's alcoholism or controlled substance abuse
706 plan and in the preparation of the division's annual budget in a manner consistent with the
707 Alcoholism Treatment and Rehabilitation Law.

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

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

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

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

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

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

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

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

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

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

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

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

751 Fifth or subsequent offense: Lifetime.

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

756 Hardship licenses under this subsection shall be issued under such terms and conditions
757 as the registrar may prescribe, after the registry is convinced that the issues that this offense(s)
758 arose from have been dealt with by the operator and brought under control. Said hardship license
759 shall be issued, subject to the agency's discretion, upon a showing of hardship for work,
760 education, or other purpose the registrar deems valid and significant, and shall be for an identical
761 12 hour period, 7 days a week.

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

766 Chapter 90, § 24E – Implied Consent

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

780 In any prosecution for an operating under the influence offense, evidence of a defendant's
781 blood alcohol content at the time of offense, shown by breath or blood, is relevant and admissible
782 to determine whether the defendant was under the influence of intoxicating liquor as defined in
783 section 1 of this chapter, if test was conducted by or at the direction of a police officer, with the

784 consent of the defendant. Upon the defendant's request the results of said test shall be made
785 available to him. In any case where a test is given, the defendant shall have the right to have
786 another test done at his own expense, by a physician of his choosing.

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

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

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

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

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

803 (2)Upon any refusal by the person arrested of a test required by this section, after the
804 person has been informed that his license or right to operate a motor vehicle shall be suspended

805 for the refusal, the registrar shall immediately suspend the person's license or right to operate as
806 follows:

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

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

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

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

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

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

820 No hardship licenses on suspensions for test refusals shall be granted, except for
821 candidates that have properly received dispositions pursuant to subsection 3 of section 24D of
822 this chapter. Any suspensions under this section shall be consecutive with any suspension or
823 suspension for the underlying operation under the influence offense. Notwithstanding that, if the
824 charges against the person are dismissed, or the person is found not guilty, the person may
825 immediately file a motion before the judge that heard the case, for the purpose of seeking

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

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

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

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

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

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

863 (3)Chemical analysis of the breath of a person charged with a violation of this chapter
864 shall not be considered valid under the provisions of this chapter, unless such analysis has been
865 performed by a certified operator, using infrared breath-testing devices according to methods
866 approved by the secretary of public safety. The secretary of public safety shall promulgate rules
867 and regulations regarding satisfactory methods, techniques and criteria for the conduct of such
868 tests, and shall establish a statewide training and certification program for all operators of such

869 devices and a periodic certification program for such breath testing devices; provided, however,
870 that the secretary may terminate or suspend such certification at his discretion.

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

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

874 (1) one adequate breath sample analysis

875 (2) one calibration standard analysis

876 (3) a second adequate breath sample analysis

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

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

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

888 Upon any failed or refused test under this section the police shall confiscate any license
889 or permit issued by the commonwealth in the possession of the defendant, serve the defendant
890 with a notice of suspension on behalf of the registrar, and impound the operator's vehicle for a
891 12 hour period following the incident. The operator shall be responsible for all costs associated
892 with towing, storage and maintenance of the vehicle. In addition, in each case, the police shall
893 prepare a report to the registrar under the pains and penalties of perjury, indicating the following:

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

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

897 c)the results of any failed test;

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

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

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

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

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

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

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

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

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

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

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

928 the failure of a person who, at the time of offense was under the age of 21, to successfully
929 complete such program, the registrar shall forthwith suspend such license or permit to operate for
930 180 days, or for 1 year if the person was under age 18 at the time of offense.

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

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

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

947 (1)the defendant was given a test;

948 (2)the person administering the test was trained and certified in the administration of the
949 test;

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

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

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

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

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

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

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

968 If the person has one prior operating under the influence offense, or was under the age of
969 21 at the time of offense and has no more than 1 prior operating under the influence offenses, the
970 suspension shall be for 1 year.

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

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

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

989 If, after a hearing, the court finds the defendant's blood alcohol content was less than
990 .08% or less than .02% if the person was under the age of 21 at the time of offense, the court
991 shall restore the defendant's license or right to operate and shall direct the prosecuting officer to

992 immediately notify the Department of Criminal Justice Information Systems and the registrar of
993 such restoration.

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

999 (a)whether or not the police officer had reasonable grounds to believe that the person had
1000 been operating a motor vehicle while under the influence of intoxicating liquor on a public way;

1001 (b)whether or not the person was placed under arrest; and

1002 (c)whether or not the person refused to submit to a test of his breath or blood.

1003 If, after a hearing, the court finds in the negative on any one of the issues, the court shall
1004 restore the defendant's license or right to operate and shall direct the prosecuting officer to
1005 immediately notify the Department of Criminal Justice Information Systems and the registrar of
1006 such restoration.

1007 Chapter 90, § 24F – Ignition Interlock Devices

1008 (1)Any person whose license or right to operate is suspended for 2 or more operating
1009 under the influence offenses, or who is operating on a restricted license for such offenses, shall
1010 be required to have an ignition interlock device installed on each vehicle that he may own, lease,
1011 or operate as a mandatory condition of issuance of a new license or right to operate. The
1012 restriction shall remain on the license during the hardship license period and an additional 2

1013 years upon the full restoration of the license. In cases where the person has not been granted a
1014 hardship license, the ignition interlock requirement shall be for a 2 year period following the
1015 reinstatement of the license or right to operate.

1016 Each device shall be subject to inspection, maintenance, and monitoring as the registrar
1017 may prescribe. No ignition interlock device utilized under this section shall allow a vehicle to
1018 start if a person's blood alcohol content exceeds .02%. The registrar shall promulgate such rules
1019 and regulations as deemed necessary regarding this section.

1020 The registrar may, after hearing, suspend the license or right to operate of any person
1021 who:

1022 (a)removes an ignition interlock device without the written consent of the registrar; or

1023 (b)who fails to have it inspected, maintained or monitored on at least 2 occasions during
1024 the requirement period,

1025 if the licensee has:

1026 (a)operated a vehicle with a blood alcohol content that caused the certified ignition
1027 interlock device to prevent the vehicle from starting on at least 2 occasions; or

1028 (b)recorded a blood alcohol content in excess of .02% on at least 2 occasions.

1029 (c) In all such cases where the defendant operated a motor vehicle with a percentage, by
1030 weight, of alcohol in their blood of fifteen one-hundredths or greater, the registrar may place a
1031 restriction on a hardship license granted by the registrar under this subparagraph requiring that
1032 such person have an ignition interlock device installed on each vehicle owned, each vehicle
1033 leased and each vehicle operated by the licensee for the duration of the hardship license.

1034 The suspension shall be for an extended period or for life. A person aggrieved by the
1035 decision of the registrar pursuant to this section may file an appeal in the superior court. If the
1036 court determines that the registrar abused his discretion, the court may vacate the suspension or
1037 reduce the period ordered by the registrar.

1038 (2)No person required to have an ignition interlock device shall operate a motor vehicle
1039 without such a device on a public way.

1040 A person convicted under this subsection shall be imprisoned in a jail or house of
1041 correction for not less than 150 days but not more than 2 ½ years, or the state prison for not less
1042 than 2 ½ years but not more than 5 years with a minimum mandatory term of 150 days. A fine of
1043 not less than \$1,000 but not more than \$15,000 shall be imposed.

1044 (3)No person shall interfere with or tamper with an ignition interlock device with the
1045 intent to disable such device.

1046 A person convicted under this subsection shall be punished by imprisonment in a jail or
1047 house of correction for not less than 6 months but not more than 2 ½ years, or state prison for not
1048 less than 3 years but not more than 5 years.

1049 (4)No person shall knowingly breathe into an ignition interlock device, or start a motor
1050 vehicle equipped with an ignition interlock device, for the purpose of providing an operable
1051 motor vehicle to a person under a license restriction requiring an ignition interlock device.

1052 A person convicted under this subsection shall be punished as follows:

1053 (a)First offense: The defendant shall be imprisoned in a jail or house of correction for not
1054 less than 6 months but not more than 2 ½ years or punished by a fine of not less than \$1,000 but
1055 not more than \$5,000.

1056 (b)Second or subsequent offense: The defendant shall be imprisoned in state prison for
1057 not less than 3 years but not more than 5 years.

1058 (5)A certified copy of a signed acknowledgement of the terms and existence of an
1059 ignition interlock device restriction, executed by a person alleged to have violated this section,
1060 shall be admissible as prima facie evidence to prove the knowledge of the person who executed
1061 the document.

1062 Chapter 90, § 24G – Motor Vehicle Forfeitures

1063 (1)A motor vehicle or vessel owned by a person who has at least 3 prior operating under
1064 the influence offenses, as defined in section 1 of chapter 90, may be forfeited to the
1065 commonwealth.

1066 (2)A district attorney or the attorney general may petition the superior or district court, in
1067 the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of such
1068 motor vehicle or vessel. The petition shall be filed in the court having jurisdiction over the
1069 criminal proceeding brought under this chapter or chapter 90B. The proceeding shall be deemed
1070 a civil suit in equity. In all such actions where the motor vehicle or vessel is jointly owned by
1071 either a parent, spouse, child, grandparent, brother, sister, or parent of the spouse living in the
1072 defendant's household, before the date of the second or subsequent operating under the influence
1073 offense committed by the defendant, the commonwealth shall have the burden of proving the
1074 existence of probable cause to institute the action. The claimant shall have the burden of proving

1075 that the property is not forfeitable because the claimant is dependent on the motor vehicle or
1076 vessel for his livelihood or the maintenance of his family.

1077 The court shall order the commonwealth to give notice, by certified or registered mail, to
1078 the owners of the motor vehicle or vessel and, to such other persons or entities who appear to
1079 have an interest therein. The court shall promptly, but not less than 2 weeks after notice, hold a
1080 hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court
1081 may continue the hearing on the petition pending the outcome of a criminal trial related to a
1082 charge of operating under the influence in violation of this chapter or chapter 90B. During the
1083 pendency of the proceedings, the court may issue, at the request of the commonwealth, ex parte,
1084 any preliminary order or process necessary to seize and secure the property for which forfeiture
1085 is sought. Process for seizure of the property shall issue only upon a showing of probable cause.
1086 The application, issuance, execution, and return thereof shall be subject to the provisions of
1087 chapter 276, as applicable.

1088 (3)At a hearing under this section, the court shall hear evidence and make findings of fact
1089 and conclusions of law, and shall issue a final order. The parties shall have a right of appeal as
1090 from a decree in equity. No forfeiture under this section shall extinguish a perfected security
1091 interest held by a creditor in the property at the time of the filing of the forfeiture action. In all
1092 actions where a proceeding results in forfeiture, the final order shall provide for disposition of
1093 the property by the commonwealth in any manner not prohibited by law, including official use
1094 by an authorized law enforcement or other agency, or at sale at public auction or by competitive
1095 bidding, with such sale being conducted by the office of the district attorney or the attorney
1096 general that obtained the final order of forfeiture.

1097 (4)The final order of the court shall provide that the proceeds of any such sale shall be
1098 used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance
1099 of custody, advertising and notice, and the balance of any such sale shall be distributed equally
1100 among the prosecuting district attorney or attorney general, the city, town or state police
1101 department involved in the forfeiture and the Victims of Drunk Driving Trust Fund established in
1102 section 66 of chapter 10. If more than 1 department was substantially involved in the seizure, the
1103 court having jurisdiction over the forfeiture proceeding shall distribute the portion for law
1104 enforcement equitably among the departments.

1105 (5)There shall be established within the office of the state treasurer a separate Operating
1106 Under the Influence Deterrent Trust Fund for each district attorney and for the attorney general.
1107 All monies and proceeds received by a prosecuting district attorney or attorney general pursuant
1108 to this section shall be deposited in the fund and shall be expended without further appropriation
1109 to defray the costs of investigations, to provide additional technical equipment or expertise, to
1110 provide matching funds to obtain federal grants, or for such other law enforcement purposes as
1111 the district attorney or attorney general deems appropriate. Any program seeking to be an
1112 eligible recipient of the funds shall file an annual audit report with the local district attorney and
1113 attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities,
1114 itemized expenditures and board of directors of the program. Within 90 days of the close of the
1115 fiscal year, each district attorney and the attorney general shall file an annual report with the
1116 house and senate committees on ways and means on the use of the monies in the trust fund for
1117 the purposes of deterring operating under the influence programs.

1118 (6)All moneys and proceeds received by a police department shall be deposited into the
1119 fund and shall be expended without further appropriation to defray the costs of investigations, to

1120 provide additional technical equipment or expertise, to provide matching funds to obtain federal
1121 grants, or to accomplish such other law enforcement purposes as the chief of police of such city
1122 or town, or the colonel of state police deem appropriate, but such funds shall not be considered a
1123 source of revenue to meet the operating needs of such department.

1124 Chapter 90, § 24H - Aggravated OUI

1125 (1)Any person aged 17 to 21 years, inclusive, who commits an operating under the
1126 influence offense, and who has a blood alcohol content of .20% or above, shall also be guilty of
1127 aggravated operating under the influence, and in addition to the penalties mandated in section
1128 24D of this chapter, shall also be required to enter and complete a 14 day residential treatment
1129 program as described in subdivision (b) of subsection (3) of that section. In cases where the
1130 person is otherwise qualified for a disposition under subdivision (a) of subsection (3), the person
1131 shall be required to complete the 14 day residential program in lieu of the outpatient program
1132 specified therein.

1133 Chapter 90, § 24I - Child Endangerment

1134 (1)No person shall operate a motor vehicle on a public way while under the influence of
1135 intoxicating liquor, drugs, or other substance with a child 14 years of age or younger in the
1136 vehicle.

1137 A person convicted under this section shall be punished as follows:

1138 (a)First offense: The defendant shall be imprisoned in a jail or house of correction for not
1139 less than 90 days but not more than 2 ½ years and fined not less than \$1,000 but not more than
1140 \$5,000.

1141 (b)Subsequent offense: If there is a prior conviction for a violation of this subsection or a
1142 like offense in another jurisdiction the defendant shall be imprisoned in a jail or house of
1143 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1144 prison for not less than 3 years but not more than 5 years with a minimum mandatory term of 6
1145 months and fined not less than \$5,000 but not more than \$10,000.

1146 Upon a conviction under this section the registrar shall suspend the license or right to
1147 operate for an additional period as follows:

1148 (a)First offense: 1 year

1149 (b)Subsequent offense: 3 years

1150 No appeal or motion for a new trial shall stay the suspension of the license or right to
1151 operate.

1152 A sentence imposed under this subsection shall be served consecutively to and not
1153 concurrently with the underlying operating under the influence offense. No case commenced
1154 under this section shall be continued without a finding, or placed on file, or subject to the
1155 provisions of section 87 of chapter 276.

1156 Chapter 90, § 24J - Operating under the influence causing serious bodily injury

1157 (1)No person shall operate a motor vehicle on a public way while under the influence of
1158 intoxicating liquor, drugs, or other substances and by such operation cause serious bodily injury
1159 to another person.

1160 A person convicted under this subsection shall be imprisoned in a jail or house of
1161 correction for not more than 2 ½ years or fined not more than \$3,000, or both.

1162 (2)No person shall operate a motor vehicle while under the influence of intoxicating
1163 liquor, drugs, or other substances on a public way negligently or recklessly so that the lives or
1164 safety of the public might be endangered and by such operation cause serious bodily injury to
1165 another person.

1166 A person convicted under this subsection shall be imprisoned in a jail or house of
1167 correction for a minimum mandatory term of 6 months but not more than 2 ½ years, or state
1168 prison for not less than 2 ½ years but not more than 10 years with a minimum mandatory term of
1169 6 months and fined not more than \$5,000. No case commenced under this section shall be
1170 continued without a finding, or placed on file, or subject to the provisions of section 87 of
1171 chapter 276.

1172 (3)Upon a conviction under this section the registrar shall suspend the license or right to
1173 operate for 2 years after the date of conviction. No appeal or motion for a new trial shall stay the
1174 suspension of the license or right to operate, provided; however, if the charges against the person
1175 are dismissed, or the person is found not guilty, the person may immediately file a motion before
1176 the judge that heard the case, for the purpose of seeking restoration of the license or right to
1177 operate. At said hearing, if the court finds that the charges were resolved in favor of the
1178 defendant, that there are no alcohol related charges pending in any court, and that there is no
1179 evidence before the court based on a preponderance of the evidence that reinstatement of the
1180 license or right to operate would endanger the public, there shall be a presumption that the court
1181 shall order that this particular suspension be terminated.

1182 (4)Notwithstanding the provisions of subdivision (3) above, if a person license or right to
1183 operate for life.

1184 (5) Upon a disposition under this section the court shall assess a \$50 fee to the person.
1185 The court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
1186 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If
1187 the court sentences the person to a correctional facility the outstanding assessment shall be noted
1188 on the mittimus.

1189 (6) For purposes of this section “serious bodily injury” shall mean bodily injury which
1190 creates a substantial risk of death or involves either total disability or the loss or substantial
1191 impairment of some bodily function for a substantial period of time.

1192 Chapter 90, § 24K (1) – Misdemeanor motor vehicle homicide – negligently or recklessly

1193 (1) No person shall operate a motor vehicle on a public way negligently or recklessly so
1194 that the lives or safety of the public might be endangered and by such operation cause the death
1195 of another person.

1196 A person convicted under this subsection shall be imprisoned in a jail or house of
1197 correction for not less than 30 days but not more than 2 ½ years or fined not less than \$300 but
1198 not more than \$3,000, or both. No case commenced under this subsection shall be continued
1199 without a finding or placed on file.

1200 Upon a conviction under this subsection the registrar shall suspend the license or right to
1201 operate as follows:

1202 (a) First offense: 15 years after the date of conviction

1203 (b) Subsequent offense: Lifetime

1204 No appeal or motion for a new trial shall stay the suspension of the license or right to
1205 operate, provided; however, if the charges against the person are dismissed, or the person is
1206 found not guilty, the person may immediately file a motion before the judge that heard the case,
1207 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1208 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1209 related charges pending in any court, and that there is no evidence before the court based on a
1210 preponderance of the evidence that reinstatement of the license or right to operate would
1211 endanger the public, there shall be a presumption that the court shall order that this particular
1212 suspension be terminated.

1213 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1214 court shall transmit the \$50 to the state treasurer to be deposited into the Victim's of Drunk
1215 Driving Trust Fund. The assessment shall not be subjected to waiver by the court for any reason.
1216 If the court sentences the person to a correctional facility the outstanding assessment shall be
1217 noted on the mittimus.

1218 Chapter 90, § 24K (2) – Misdemeanor motor vehicle homicide - under the influence

1219 (2)No person shall operate a motor vehicle on a public way under the influence of
1220 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1221 person.

1222 A person convicted under this subsection shall be imprisoned in the jail or house of
1223 correction for not less than 30 days but not more than 2 ½ years or fined not less than \$300 but
1224 not more than \$3,000, or both. No case commenced under this subsection shall be continued
1225 without a finding or placed on file.

1226 Upon a conviction under this subsection the registrar shall suspend the license or right to
1227 operate as follows:

1228 (a)First offense: 15 years after the date of conviction

1229 (b)Subsequent offense: Lifetime

1230 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1231 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1232 his license or right to operate for life.

1233 No appeal or motion for a new trial shall stay the suspension of the license or right to
1234 operate, provided; however, if the charges against the person are dismissed, or the person is
1235 found not guilty, the person may immediately file a motion before the judge that heard the case,
1236 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1237 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1238 related charges pending in any court, and that there is no evidence before the court based on a
1239 preponderance of the evidence that reinstatement of the license or right to operate would
1240 endanger the public, there shall be a presumption that the court shall order that this particular
1241 suspension be terminated.

1242 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1243 court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
1244 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If
1245 the court sentences the person to a correctional facility the outstanding assessment shall be noted
1246 on the mittimus.

1247 Chapter 90, § 24K (3) – Felony motor vehicle homicide

1248 (3)No person shall operate a motor vehicle negligently or recklessly on a public way so
1249 that the lives or safety of the public might be endangered while under the influence of
1250 intoxicating liquor, drugs, or other substances and by such operation cause the death of another
1251 person.

1252 A person convicted under this subsection shall be imprisoned in a jail or house of
1253 correction for a minimum mandatory term of 1 year but not more than 2 ½ years, or state prison
1254 for not less than 2 ½ years but not more than 15 years with a minimum mandatory term of 1 year
1255 and fined not more than \$5,000. No case commenced under this subsection shall be continued
1256 without a finding or placed on file.

1257 Upon a conviction under this subsection the registrar shall suspend the license or right to
1258 operate as follows:

1259 (a)First offense: 15 years after the date of conviction

1260 (b)Subsequent offense: Lifetime

1261 No appeal or motion for a new trial shall stay the suspension of the license or right to
1262 operate, provided; however, if the charges against the person are dismissed, or the person is
1263 found not guilty, the person may immediately file a motion before the judge that heard the case,
1264 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1265 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1266 related charges pending in any court, and that there is no evidence before the court based on a
1267 preponderance of the evidence that reinstatement of the license or right to operate would

1268 endanger the public, there shall be a presumption that the court shall order that this particular
1269 suspension be terminated.

1270 Notwithstanding the provisions of subdivision (b) above, if a person is convicted under
1271 this subsection and has a prior operating under the influence offense, the registrar shall suspend
1272 his license or right to operate for life.

1273 Upon a disposition under this section the court shall assess a \$50 fee to the person. The
1274 court shall transmit the \$50 to the state treasurer to be deposited into the Victims of Drunk
1275 Driving Trust Fund. The assessment shall not be subject to waiver by the court for any reason. If
1276 the court sentences the person to a correctional facility the outstanding assessment shall be noted
1277 on the mittimus.

1278 Chapter 90, § 24L - Manslaughter by motor vehicle

1279 (1)No person shall operate a motor vehicle wantonly and recklessly on a public way
1280 while under the influence of intoxicating liquor, drugs, or other substances and by such operation
1281 cause the death of another person.

1282 A person convicted under this section shall be imprisoned in state prison for a minimum
1283 mandatory term of 5 years but not more than 20 years and fined not more than \$25,000.

1284 (b)Upon a conviction of this section the registrar shall suspend the license or right to
1285 operate for 15 years to life. Any person aggrieved by the registrar's decision may file an appeal
1286 in the superior court. If the court determines that the registrar abused his discretion, the court
1287 may vacate and reduce the suspension of the license or the right to operate as ordered by the
1288 registrar. In no case shall the suspension period be less than 15 years.

1289 No appeal or motion for a new trial shall stay the suspension of the license or right to
1290 operate, provided; however, if the charges against the person are dismissed, or the person is
1291 found not guilty, the person may immediately file a motion before the judge that heard the case,
1292 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1293 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1294 related charges pending in any court, and that there is no evidence before the court based on a
1295 preponderance of the evidence that reinstatement of the license or right to operate would
1296 endanger the public, there shall be a presumption that the court shall order that this particular
1297 suspension be terminated.

1298 (c)Notwithstanding the provisions of paragraph (b) above, if a person convicted under
1299 this section has a prior operating under the influence offense, the registrar shall suspend his
1300 license or right to operate for life.

1301 Chapter 90, § 24M - Alcohol education for law enforcement personnel; duties of officials
1302 and agencies

1303 The officials and agencies designated in this section are hereby directed to perform the
1304 duties in this section and any other action within their authority in order to ensure effective
1305 enforcement of chapter 90 section 24 to 24M, inclusive.

1306 (1)The municipal police training committee established in section 116 of chapter 6 shall
1307 provide training, including but not limited to, education concerning the aforesaid sections to all
1308 law enforcement personnel throughout the commonwealth.

1309 (2)The chief administrative justice of the trial court department shall provide training,
1310 including but not limited to education concerning the aforesaid sections to all appropriate court

1311 personnel throughout the commonwealth, including but not limited to, judges, district attorneys
1312 and probation officers.

1313 (3)The courts of the Commonwealth shall give priority to the speedy and effective
1314 disposition of all matters under the aforesaid sections.

1315 (4)The executive office of public safety shall establish and implement an alcohol
1316 sensitive selective traffic enforcement program.

1317 SECTION 4. Chapter 90B of the General Laws is hereby amended by adding the
1318 following:-

1319 Section 8B ½ -

1320 (5)No person shall operate a vessel on the waters of the commonwealth wantonly and
1321 recklessly while under the influence of intoxicating liquor, drugs, or other substances and by
1322 such operation cause the death of another person.

1323 A person convicted under this section shall be imprisoned in state prison for a minimum
1324 mandatory term of 5 years but not more than 20 years and fined not more than \$25,000.

1325 Upon a conviction of this section the registrar shall suspend the person's license or right
1326 to operate for 15 years to life. Any person aggrieved by the registrar's decision may file an
1327 appeal in the superior court. If the court determines that the registrar abused his discretion, the
1328 court may vacate and reduce the suspension of the license or suspension of the right to operate as
1329 ordered by the registrar. In no case shall the suspension or suspension period be less than 15
1330 years.

1331 No appeal or motion for a new trial shall stay the suspension of the license or right to
1332 operate, provided; however, if the charges against the person are dismissed, or the person is
1333 found not guilty, the person may immediately file a motion before the judge that heard the case,
1334 for the purpose of seeking restoration of the license or right to operate. At said hearing, if the
1335 court finds that the charges were resolved in favor of the defendant, that there are no alcohol
1336 related charges pending in any court, and that there is no evidence before the court based on a
1337 preponderance of the evidence that reinstatement of the license or right to operate would
1338 endanger the public, there shall be a presumption that the court shall order that this particular
1339 suspension be terminated.

1340 Notwithstanding the provisions of paragraph (b) above, if a person convicted under this
1341 section has a prior operating under the influence offense, the registrar shall suspend his license or
1342 right to operate for life

1343 SECTION 5. Section 13 ½ of chapter 265 of the General Laws is hereby repealed.

1344 SECTION 6. Section 28 of chapter 266 is hereby amended by inserting at the end:-

1345 (a)Whoever knowingly uses a motor vehicle without authority shall be punished as
1346 follows:

1347 (1)First offense: The defendant shall be imprisoned in the jail or house of correction for
1348 not less than 30 days but not more than 2 years, or fined not less than \$50 but not more than \$500
1349 or both.

1350 (2)Second offense: The defendant shall be imprisoned in jail or house of correction for
1351 not less than 30 days but not more than 2 ½ years, or state prison for not more than 5 years, or
1352 fined not less than \$1000, or both.

1353 (3)Third offense within 5 years: The defendant shall be imprisoned in jail or house of
1354 correction for not less than 6 months but not more than 2 ½ years, or state prison for not less than
1355 2 ½ years but not more than 5 years, or a fine of not less than \$200 but not more than \$1,000, or
1356 both.

1357 Upon a conviction of this subsection the registrar shall, unless the court or magistrate
1358 recommends otherwise, suspend the license or right to operate as follows:

1359 (a)First offense: 1 year

1360 (b)Subsequent offense: 3 years

1361 No appeal or motion for a new trial shall stay the suspension of the license or right to
1362 operate, provided; however, that if the prosecution against such person has terminated in his
1363 favor, the registrar shall immediately reinstate his license or right to operate provided; however,
1364 if the charges against the person are dismissed, or the person is found not guilty, the person may
1365 immediately file a motion before the judge that heard the case, for the purpose of seeking
1366 restoration of the license or right to operate. At said hearing, if the court finds that the charges
1367 were resolved in favor of the defendant, that there are no alcohol related charges pending in any
1368 court, and that there is no evidence before the court based on a preponderance of the evidence
1369 that reinstatement of the license or right to operate would endanger the public, there shall be a
1370 presumption that the court shall order that this particular suspension be terminated.

1371 (4) Upon a conviction of this section, if it appears from the records of the registrar that the
1372 person convicted is the owner of the motor vehicle or has exclusive control of any motor vehicle
1373 as a manufacturer or dealer or otherwise, the registrar may suspend the certificate of registration
1374 of any or all motor vehicles owned or exclusively controlled by the person.

1375 (5) A summons may be issued instead of a warrant for arrest upon a complaint for a
1376 violation of this section if there is reason to believe the defendant will appear before the court.

1377 If a motor vehicle is used in connection with the commission of a felony, of any larceny,
1378 or of any offense punishable under any provision of sections 22, 113 to 117, inclusive, and 120
1379 of chapter 266, or sections 13 of 269, of which a person is convicted, the material facts relative
1380 to such use, including the registration number of the vehicle, so far as disclosed in the
1381 proceedings, shall be reported forthwith to the registrar by the clerk of the court in which the
1382 underlying conviction occurs.

1383 SECTION 7. Section 28(a) of chapter 266 is hereby amended by inserting subsection (d)
1384 as follows:-

1385 (d) Persons convicted of using a motor vehicle without authority under the provisions of
1386 paragraph (a) of section 28 shall be liable in a civil action to the owner of such vehicle, if it is
1387 recovered, for all towing and storage charges necessitated and all property damage caused to said
1388 vehicle by such use without authority.

1389 SECTION 8. Section 24(2) (a) of chapter 90 is hereby amended by striking from lines
1390 720, 721, 722, and 723 the following:- or upon a bet or wager or in a race, or whoever operates a
1391 motor vehicle for the purpose of making a record and thereby violates any provision of section
1392 seventeen or any regulation under section eighteen

1393 SECTION 9. Chapter 90 of the General Laws is hereby amended after section 17B by
1394 adding the following:-

1395 Section 17B ½. No person shall operate a motor vehicle on a public way upon a bet or
1396 wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and
1397 thereby violates any provision of section seventeen or any regulation under section eighteen.
1398 Whoever violates this section shall be punished by imprisonment for not less than 2 weeks but
1399 not more than 2 years or a fine of not less than twenty dollar nor more than two hundred dollars,
1400 or both.

1401 SECTION 10. Chapter 266 of the General Laws is hereby amended by adding the
1402 following:-

1403 Section 29A -

1404 (6) No person shall remove an abandoned or stolen motor vehicle on a public way as
1405 defined in section 1 of chapter 90 without the express consent of the owner of such vehicle or
1406 without the written permission of the police department. The owner or operator of a motor
1407 vehicle that is designed to carry or tow another vehicle shall be licensed for that specific purpose
1408 or as a towing service.

1409 The owner of any machine that is designed to crush, mutilate or destroy a motor vehicle,
1410 whether the machine be mobile or affixed permanently, shall have that machine listed with the
1411 registry of motor vehicles.

1412 If the owner or agent of a salvage or junk yard transports crushed or mutilated vehicles
1413 without the commonwealth for purposes of resale, the operator of the transporting vehicle shall

1414 carry a list of the vehicles being transported, and a copy of such list shall be forwarded to said
1415 registrar.

1416 (c) Any person convicted under this section shall be imprisoned for not less than 2 years,
1417 a fine of not less than \$1,000, or both.

1418 (d) Any person convicted under this section shall forfeit, to the registrar, any license
1419 issued which is related to such violation.