COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

ESSEX COUNTY **No. SJC-13384**

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

BRADLEY ZUCCHINO,
Appellant

ON APPEAL FROM THE ORDERS OF THE ESSEX SUPERIOR COURET

BRIEF FOR APPELLANT BRADLEY ZUCCHINO

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ISSUE PRESENTED

The Legislature has, over decades, strongly and consistently indicated its intent not to force blood alcohol testing in prosecution of operating a motor vehicle under the influence of alcohol ("OUI") cases. Is the Commonwealth required to demonstrate that the Defendant consented to testing in order to admit his blood testing results in the prosecution of aggravated OUI charges?

STATEMENT OF THE CASE

Bradley Zucchino appeals the denial of his motion to suppress the results of a blood alcohol content ("BAC") test performed by the State Police Crime Laboratory ("Crime Lab").

On December 10, 2020, an Essex County Grand Jury returned indictments against Mr. Zucchino in connection with a fatal accident on January 12, 2020. Superior Court Docket Sheet, R.A. 3, 13-24.[1] Mr. Zucchino filed two motions to suppress the results of BAC testing that the Crime Lab produced. Id., R.A. 8, 10, 25. The first motion contended that the testing constituted a search beyond the scope of the warrant

[1] The Record Appendix is cited herein as "R.A. [page]."

as-issued ("First Motion"). R.A. 8. The trial court (Hon. James F. Lang) issued written findings of fact and rulings of law denying the First Motion on August 24, 2022. R.A. 10.

On September 23, 2022, the Superior Court docketed the Defendant's Amended Motion to Suppress ("Second Motion"). Superior Court Docket Sheet, R.A. 10, 25. The Second Motion also sought to suppress the BAC evidence, but on statutory grounds pursuant to G.L. c. 90, § 24(1)(e) and Commonwealth v. Moreau, 490 Mass. 387 (2022). R.A. 25-34. The Honorable Salim R. Tabit considered and denied the Second Motion on October 4, 2022. Superior Court Docket Sheet, R.A. 11. Finding that his "interlocutory order so affects the merits of the controversy that the matter ought to be determined by the Appeals Court," pursuant to G.L. c. 231, § 111 and Mass. R. Crim. P. 34, Justice Tabit reported the following question: "Is the Commonwealth required to seek a defendant's consent in order to admit his blood testing results in the prosecution of a G.L. c. 90, § 24L offense?" The Appeals Court entered the appeal (2022-P-0988) on October 12, 2022.

Mr. Zucchino filed an application for direct appellate review of the reported question on December

8, 2022. See DAR-29148. The application was allowed on January 18, 2023.

STATEMENT OF FACTS

On January 12, 2020, Bradley Zucchino was involved in a two-car accident. R.A. 26. The driver of the other vehicle died from her injuries and her passenger was seriously hurt. Id. Mr. Zucchino was transported to Lawrence General Hospital as a result of injuries he sustained in the accident. Id. Hospital personnel drew his blood in the ordinary course of treatment. Id.

The next day, North Andover Officer Sousa applied for, obtained, and executed a search warrant at Lawrence General Hospital. Id. The warrant sought Mr. Zucchino's blood samples. Id. The Hospital turned over the requested samples. Id. Officer Sousa submitted the samples to the Crime Lab on January 23, 2020. Id. On January 31, 2020, the Crime Lab conducted testing which revealed the presence of alcohol at .322 and .326 concentrations. Id.

The Commonwealth did not seek or obtain Mr. Zucchino's consent prior to the Crime Lab testing. Id.

On June 8, 2020, the Commonwealth summonsed Mr. Zucchino to the Lawrence District Court to answer criminal charges in connection with the accident. Id.

On December 12, 2020, an Essex County Grand Jury returned the following indictments against Mr. Zucchino:

1) Manslaughter by Motor Vehicle, G.L. c. 265, § 13½;

2) OUI Liquor and being Negligent Causing Serious Bodily Injury, G.L. c. 90, § 24L;

3) Operating a Motor Vehicle while having a BAC of .08% or Greater and being Negligent causing Serious Bodily Injury, G.L. c. 90, § 24L;

4) Assault and Battery by Means of a Dangerous Weapon causing Serious Bodily Injury, G.L. c. 265, § 15A(c)(i);

5) Leaving the Scene of Personal Injury, Death G.L. c. 90, § 24(2)(a½)(2); and

6) Leaving the Scene of Personal Injury, G.L. c. 90, § 24(2)(a½)(1).

R.A. 13-24. The Commonwealth seeks to admit the Crime Lab BAC test results against Mr. Zucchino at trial.

SUMMARY OF ARGUMENT

This appeal concerns a reported question: does G.L. c. 90, § 24(1)(e), which requires consent for blood alcohol testing in "any prosecution for a violation of paragraph (a)," apply in prosecutions for

aggravated OUI, where the Commonwealth must prove both a violation of paragraph (a) and additional elements? The answer for the manslaughter while OUI statute, based on the clear statutory text, must be "yes," as this statute explicitly incorporates the elements of paragraph (a) and contains a direct reference to its provisions. (infra at 16-18).

For other aggravated OUI statutes that do not explicitly cross-reference paragraph (a), the answer is also "yes," but requires a slightly more searching analysis.

The Commonwealth's appellate courts have historically applied § 24(1)(e) to aggravated OUI cases, with Commonwealth v. Bohigian, 486 Mass. 209 (2020), being the first departure from this rule. But where the Legislature was aware of this decades-long precedent and did not modify § 24(1)(e) to exclude the aggravated OUI statutes from its reach, the Legislature indicated its approval of the prior interpretation. (infra at 18-21).

When interpreting the text of a statute, courts are to look to the entire statutory scheme. In doing so, it becomes clear that the Legislature intended the reference to "any prosecution for a violation of

paragraph (a)" to be a shorthand for the elements of OUI, not a limitation of the application of § 24(1)(e) to simple OUI only. This is because any prosecution for aggravated OUI necessarily encompasses a prosecution for simple OUI as a lesser-included offense. (infra at 21-25).

In addition, § 24(1)(e) is a subdivision of one in a series of statutes pertaining to OUI cases, each of which is intended to work together. For instance, the other provisions within § 24(1)(e), beyond the consent provision, address issues common to simple *and* aggravated OUI offenses, undermining the notion that the Legislature intended to exclude aggravated OUIs from § 24(1)(e). (infra at 25-28).

As this Court has remarked, § 24(1)(e) and § 24(1)(f) were intended to work in tandem, and § 24(1)(f) applies to arrestees in both simple and aggravated OUI cases. However, if § 24(1)(e) is applied only to simple OUI cases, instead of working in tandem, a confusing patchwork of consent coverage emerges. The Legislature could not have intended unpredictability in the BAC testing realm, particularly as this evidence is fleeting and correct decisions must be made hastily. (infra at 28-32).

Finally, the legislative history suggests that § 24(1)(e) was intended to apply to enhanced OUI statutes. (infra at 32-36).

Beyond the statutory analysis, § 24(1)(e) must apply to aggravated OUI charges in order to fulfill the Legislature's intent to avoid forced testing and to facilitate the admission of relevant, reliable, and admissible evidence in all OUI cases. (infra at 36-44).

Finally, this Court is not bound by the dicta in Bohigian asserting, for the first time, that if a defendant was charged with aggravated OUI, § 24(1)(e) was rendered inapplicable. This issue was not raised or briefed by the parties to that case, and was not essential to the Court's holding, which relied on an interpretation of § 24(1)(f). This issue must be reconsidered here, with the benefit of full briefing. (infra at 44-50).

ARGUMENT

THE LEGISLATURE HAS CONSISTENTLY INDICATED ITS INTENT NOT TO FORCE BLOOD ALCOHOL TESTING IN OUI CASES. THE COMMONWEALTH IS REQUIRED TO DEMONSTRATE THAT ZUCCHINO CONSENTED TO TESTING IN ORDER TO ADMIT HIS BLOOD TESTING RESULTS AT TRIAL.

I. STANDARD OF REVIEW

The reported question presents a matter of statutory interpretation, which this Court reviews de novo. Moreau, 490 Mass. at 389, citing Commonwealth v. Wimer, 480 Mass. 1, 4 (2018).

II. BASED ON THE CLEAR STATUTORY TEXT, § 24(1)(e) REQUIRES CONSENT BEFORE TESTING CAN BE PERFORMED, AND APPLIES TO G.L. c. 265, § 13½.

As pertinent here, § 24(1)(e) provides:

> In any prosecution for a violation of paragraph (a), [BAC] evidence . . . shall be admissible . . . provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant[.]

One of the statutes under which Zucchino was charged, G.L. c. 265, § 13½, falls directly under the ambit of § 24(1)(e) based on the plain language.

Section 13½ provides, in pertinent part, that, "Whoever commits manslaughter while operating a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24 of chapter 90 or section 8A of chapter 90B, shall be punished . . ." G.L. c. 265,

§ 13½. "General Laws c. 90, § 24(1)(*a*), incorporated by reference in the OUI manslaughter statute, punishes operating a motor vehicle while under the influence of intoxicating alcohol (OUI). Thus, G.L. c. 265, § 13½, consists of the elements of manslaughter plus the elements of OUI." Commonwealth v. Guaman, 90 Mass. App. Ct. 36, 39 (2016).[2]

As noted, the text of § 24(1)(e) begins "In *any* prosecution for a violation of paragraph (a) . . ." (emphasis added). "'The word 'any' is generally used in the sense of 'all' or 'every' and its meaning is most comprehensive.'" Hollum v. Contributory Retirement Appeal Bd., 53 Mass. App. Ct. 220, 223 (2001), citing United States v. Rosenwasser, 323 U.S. 360, 362-363 (1945) ("any" employee means all employees under the Fair Labor Standards Act, unless specifically excluded) (other citations, quotations omitted).

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[2] Here, the indictment alleges that Zucchino "did assault and beat Yahaira Colon, while operating a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24 of chapter 90, and by such operation did cause the death of Yahaira Colon[.]" R.A. 14. The violation of paragraph (a) is a specific, essential component of the charge.

Because a violation of paragraph (a) is an essential component of the manslaughter while OUI charge, a charge under this statute encompasses "*any* prosecution for a violation of paragraph (a)." § 24(1)(e) (emphasis added). The provisions of § 24(1)(e), including the consent for testing provision, apply to prosecutions under this statute.

III. THE PROVISIONS OF § 24(1)(e) HAVE TRADITIONALLY BEEN INTERPRETED TO APPLY TO AGGRAVATED OUI CHARGES, AND TO REFUSE TO APPLY THEM WOULD CONTRADICT THE LEGISLATURE'S INTENT AND WOULD LEAD TO ABSURD RESULTS.

A. The Commonwealth's Appellate Courts Have Historically Interpreted § 24(1)(e) to Apply to all OUI Charges, Including the Aggravated OUI Statutes.

In Bohigian, 486 Mass. at 213-214, this Court suggested for the first time that § 24(1)(e) only applied to simple OUI in violation of G.L. c. 90, § 24(1)(a). Historically, courts have applied § 24(1)(e) to aggravated OUI charges – like the manslaughter while OUI and § 24L charges at issue here - as well.

In Commonwealth v. Ames, 410 Mass. 603, 604, 610 (1991), a case involving a conviction for vehicular homicide while OUI in violation of G.L. c. 90, § 24G, this Court considered whether the judge's instructions

complied with the version of § 24(1)(e) in effect at that time, clearly implying that § 24(1)(e) applies to violations of G.L. c. 90, § 24G.

In Commonwealth v. Arruda, where the defendant was charged with one count of vehicular homicide while OUI and one count of OUI causing serious bodily injury, in violation of G.L. c. 90, §§ 24G and 24L, the Appeals Court found that § 24(1)(e) applied, but did not bar admission of evidence of refusal to allow his blood to be drawn by private parties in the course of medical treatment.[3] 73 Mass. App. Ct. 901, 903-904 (2008). It was undisputed, however, that the prosecution needed to comply with the dictates of § 24(1)(e) in this case.

In Commonwealth v. Carson, the defendant was charged with, among other counts, motor vehicle homicide by OUI, in violation of G.L. c. 90, § 24G. 72 Mass. App. Ct. 368 (2008). The Court held that the motion judge did not err in suppressing her blood

[3] The version of § 24(1)(e) then in effect, St.1994, c. 25, § 5, makes the same reference to "any prosecution for a violation of paragraph (a)" and is included in the Addendum at 95. The version of § 24(1)(a) in effect at the time does not include a reference to the enhanced OUI charges, and is included in the Addendum at 106.

alcohol test results because the defendant had not meaningfully consented to the testing pursuant to §§ 24(1)(e) and (f). Id. at 370-371.

In Commonwealth v. Davidson, the Appeals Court applied §§ 24(1)(e)[4] and (f) where the defendant was charged with two counts of manslaughter and two counts of vehicular homicide. Davidson, 27 Mass. App. Ct. 846, 847-849 (1989), abrogated on other grounds by Commonwealth v. Dennis, 96 Mass. App. Ct. 528 (2019).

For decades, despite this long-standing interpretation applied by the courts, the Legislature, when revising §§ 24(1)(a) and 24(1)(e), took no action to make clear its intent that aggravated OUI charges be excluded from the requirements of § 24(1)(e). This provides strong evidence that the Legislature approved of this interpretation. Sheehan v. Weaver, 467 Mass. 734, 740-741 (2014) ("the principle that legislative approval can be derived from legislative silence carries its greatest force when the Legislature has

[4] The version of § 24(1)(e) then in effect, as amended through St.1980, c. 383, § 1, also began, "In any prosecution for a violation of paragraph (a) of this subdivision. . ." See Addendum at 119.

reenacted or amended a statute without disturbing the judicial construction placed on it").[5]

B. A Logical Reading Of The Entire Statutory Scheme Reveals § 24(1)(e) Was Meant To Apply To Aggravated OUI Charges.

"The text of § 24(1)(e), is not a model of clarity." Arruda, 73 Mass. App. Ct. at 903. Though it refers to "any prosecution for a violation of paragraph (a)" and the aggravated OUI statutes, such as G.L. c. 90, § 24L, are not contained within paragraph (a), the Court should continue to construe § 24(1)(e) as applying to all OUI offenses, as it did pre-Bohigian, because this is the most logical reading bearing the entire statutory scheme in mind.

"Beyond plain language, '[c]ourts must look to the statutory scheme as a whole,' . . . so as 'to produce an internal consistency' within the statute. . . . Even clear statutory language is not read in isolation." Plymouth Retirement Bd. v.

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[5] Relatedly, the Legislature's silence on this topic post-Bohigian may not be viewed as approval of the Court's interpretation in that case, as the Legislature has not amended §§ 24(1)(a) and 24(1)(e) after the decision in that case was issued. See Sheehan, 46 Mass. at 741 ("Given that the Legislature has not revisited § 51 since McAllister, we do not take its silence as tacit approval of our construction of the statute in that case.").

Contributory Retirement Appeal Bd., 483 Mass. 600, 605 (2019) (internal citations omitted). When the animating purpose of an act is identified, any interpretation of that act must harmonize with that purpose. Foster v. United States, 303 U.S. 118, 120-121 (1938). When the entire OUI statutory scheme is considered together, it is clear that § 24(1)(*e*) was intended to apply to all OUI cases.

As described above, § 24(1)(e) applies to "*any* prosecution for a violation of" § 24(1)(a), which paragraph, in turn, sets forth the elements of simple OUI. By using the word "any," the Legislature intended inclusion, not exclusion, from the universe of prosecutions to which § 24(1)(e) applies. Accord, Hollum, 53 Mass. App. Ct. at 225 ("In light of this language, we must construe the section as including employees such as Hollum because they are not expressly excluded, rather than as excluding employees such as Hollum because they are not expressly included. This is the natural meaning of the word 'any.'"). Thus, consistent with the reasoning in Hollum and the cases it cites, in the absence of

express exclusions,[6] a construction of § 24(1)(e) that renders it applicable to aggravated OUI violations is most consistent with the plain language of the statute and the Legislature's goal of inclusion.

In hindsight, and with the aid of the prescience necessary to anticipate the flurry of OUI-related lawmaking which would come in the decades following the passage of § 24(1)(e), it may have been clearer had the Legislature spelled out the elements of simple OUI rather than use an internal reference to "violation of paragraph (a)".[7] Yet a common sense reading of § 24(1)(e) suggests the reference to "paragraph (a)" is just that - shorthand. Sun Oil Co. v. Director of Div. on Necessaries of Life, 340 Mass. 235, 238 (1960), quoting Commonwealth v. Slome, 321 Mass. 713, 716 (1947) ("Every statute, if possible, is to be construed in accordance with sound judgment and

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[6] In other contexts, the Legislature has seen fit to make exclusions explicit in drafting otherwise broad legislation. See, e.g., G.L. c. 272, § 28 (providing that "whoever . . . disseminates . . . any matter harmful to minors" shall be punished, then specifically excluding from its application persons in a parental relationship and certain academic institutions).

[7] This Court has recognized that just because the legislature's drafting is imperfect does not mean that its intent is unclear. Plymouth Ret. Bd., 483 Mass. at 608.

common sense, so as to make it an effectual piece of legislation."). The shorthand describes the offense conduct to which § 24(1)(e) applies, not a limitation on its reach.

Logic makes this clear: because simple OUI and its aggravated forms all share the same core elements, "any" prosecution for an aggravated OUI necessarily includes a "prosecution for a violation of paragraph (a)[.]" Stated otherwise, an aggravated OUI prosecution is still an OUI prosecution. And because simple OUI is a lesser-included offense of the aggravated OUI offenses, where the defendant is charged with the greater offense, he is necessarily charged with simple OUI as well.

More specifically, when prosecuting a violation of § 24(1)(a)(1), the Commonwealth must prove: "(1) operation of a vehicle, (2) on a public way, (3) while under the influence of alcohol." Commonwealth v. Palacios, 90 Mass. App. Ct. 722, 728 (2016). To establish a violation of § 24L, the Commonwealth must prove the defendant: "(1) operated a motor vehicle, (2) upon a public way, (3) while under the influence of intoxicating liquor, (4) operated a motor vehicle recklessly or negligently so that the lives or safety

of the public might be endangered, and (5) by such operation so described caused serious bodily injury." Commonwealth v. Flanagan, 76 Mass. App. Ct. 456, 463 (2010). Because the first three elements are the same, simple OUI is a lesser-included offense of a violation of § 24L.

A prosecution for a greater offense necessarily is a prosecution for the lesser-included offense. Cf. Adams v. Commonwealth, 415 Mass. 360, 362 (1993) (where defendant was convicted of greater offense, he was "unavoidably" found guilty of the lesser included crime). The model jury instructions on § 24L make explicit that a jury may convict the defendant of simple OUI if the Commonwealth has failed to meet its burden on the additional elements. Model Jury Instructions, OUI Causing Serious Bodily Injury (2009 Ed.) (Add. 82-83). As a result, a prosecution for a violation of an aggravated OUI statute, such as § 24L, is necessarily a prosecution for simple OUI.

A holistic reading of the OUI statutory scheme supports the conclusion that § 24(1)(e) was meant to apply to aggravated forms of OUI. Section 24(1)(e) addresses several important concerns beyond ensuring that BAC testing is consensual. It also:

- prohibits admission of refusal evidence at any civil or criminal trial;

- establishes an evidentiary presumption that a person was not intoxicated if his BAC was .05 or less and forbids any presumption if his BAC was more than .05 and less than .08;

- provides for forthwith release from custody of arrestees with a BAC of.05 or less (and protection for officers who reasonably arrested those individuals);

- provides that drivers under age 21 with a BAC over .02 shall have their license suspended; and

- provides that a certificate, signed and sworn by a chemist, shall be prima facie evidence of the BAC result.

Each of these subparts address issues common to simple *and* aggravated OUI offenses, undermining the notion that the Legislature intended to exclude aggravated OUIs from § 24(1)(e).

The history of the provision related to refusal evidence is particularly illuminating. In 1992, when considering a bill that would have amended § 24(1)(e) to permit admission of refusal evidence in criminal trials, the Legislature asked this Court for guidance flowing from its "grave doubt" that such evidence would comport with Article 12 of the Massachusetts Declaration of Rights. Opinion of the Justices, 412 Mass. 1201, 1201 (1992). The Legislature's doubts

regarding constitutionality obviously applied with equal force to both simple OUI charges and aggravated OUI charges. Likewise, because legislation prohibiting refusal evidence in OUI cases would only be effective if applied to *all* OUI cases, the Legislature's decision to place its refusal prohibition in § 24(1)(e) rather than § 24(1)(a) is evidence that it intended that subsection to have universal application in the OUI statutory scheme. "[A] contrary result would violate the rule of statutory construction that a statute should be construed in a fashion which promotes its purpose and renders it an effective piece of legislation in harmony with common sense and sound reason." Commonwealth v. Soldega, 80 Mass. App. Ct. 853, 855 (2011) (cleaned up).

Moreover, the other components of § 24(1)(e) clearly were intended to apply to all OUI prosecutions. The provisions relating to statutory presumptions tied to BAC evidence flow from the Legislature's interest in the accuracy of OUI prosecutions. Given that the Legislature determined BAC evidence is the most reliable indicator of OUI, see *infra* at 36-38, it would make no sense for the

Legislature to deprive jurors of the guidance of those presumptions in cases alleging aggravated OUI offenses, or to make this evidence harder to admit.

Likewise, the command that police release from custody defendants who registered a BAC of .05 or less (as well as the related protection afforded to officers who arrested such individuals) reflects a legislative preference that officers err on the side of arresting individuals who might be driving drunk, while ensuring that arrestees be released when suspicions of impairment are diminished by a low BAC reading. Those preferences apply with equal force in all OUI offenses. In cases involving injury or death, the public has an equal if not greater interest in ensuring that police don't incautiously release potential drunk drivers back onto the road and in protecting an officer's arrest decision in those less obvious cases. The public also has an equal interest in allowing those suspected of serious OUI cases who are later cleared by reliable evidence (breath or blood testing) to be restored to freedom in haste.

In addition, this Court has acknowledged that §§ 24(1)(e) and 24(1)(f) "were intended to work in tandem[.]" Moreau, 490 Mass. at 392. Section (f) both

implies consent for and prohibits non-consensual BAC testing or analysis with respect to individuals charged with *any* OUI offense, but only in the case of arrest. Bohigian, 486 Mass. at 214. It applies to all persons "arrested for operating a motor vehicle while under the influence of intoxicating liquor[.]" G.L. c. 90, § 24(1)(f).[8] However, if § 24(1)(e) is read to apply only to simple OUI, instead of working in tandem with § 24(1)(f), a confusing patchwork of coverage from the interplay between these subsections emerges. If § 24(1)(e) is given a limited construction, in simple OUI cases, consent would be required for blood drawn at the direction of police and for any subsequent state lab analysis (regardless of who drew the blood), unless aggravated OUI charges were included or later added, in which case consent is implied per (f) (but may be withdrawn), but only if the person had been arrested rather than summonsed. In aggravated OUI cases *not* resulting in an arrest, as here, with the limited construction of § 24(1)(e)

[8] This describes simple OUI, but there is no dispute that § 24(1)(f) applies to aggravated OUI offenses. See Bohigian, 486 Mass. at 214.

suggested in Bohigian, the consent provisions of §§ 24(1)(e) and (f) would not apply at all.

In the absence of consent, before a blood test or buccal swab is compelled, if charges have not been filed, due process generally requires the person receive "notice and an opportunity to be heard" at an adversarial hearing. See Commonwealth v. Maxwell, 441 Mass. 773, 778 (2004); Matter of Lavigne, 418 Mass. 831, 836 (1994). In Bohigian, the defendant alternatively argued that prior to a non-consensual blood draw, he was entitled to a Lavigne hearing; however, since he had been arrested, the consent provisions of § 24(1)(f) applied, and this Court determined: "Because consent is required for blood draws in connection with OUI investigations by statute, a Lavigne hearing would not be necessary in such cases. Instead, as discussed supra, no blood draw shall take place." Bohigian, 486 Mass. at 219 n.19. However, this footnote fails to account for aggravated OUI cases in which the defendant has not been arrested.

If § 24(1)(e) is read to only apply to simple OUI offenses and the defendant is not covered by the consent provisions in § 24(1)(f), any blood draw or

analysis would offend due process absent an adversarial hearing, per Lavigne. But this procedure is particularly ill-suited to the blood testing arena in OUI cases, where the evidence is fleeting. Cf. Commonwealth v. Andrade, 389 Mass. 874, 881 (1983) (evidence in OUI case regarding the condition of the defendant "*at the time*" is "available for only a short period of time"). Because the Legislature would have been aware that such a hearing would be required absent consent and such a hearing would be impractical, the only reasonable inference is that it intended the consent provisions in § 24 to apply to *all* OUI cases. It is particularly unlikely that the Legislature intended to create a multi-tiered system of testing and hearings in situations where police need to determine quickly and accurately if they need to obtain the operator's consent for blood alcohol testing, depending on the nature of the charge and if the defendant has been placed under arrest.

If the Court were to hold that § 24(1)(e) applies only to simple OUI offenses, the interplay between that section and other sections, such as § 24(1)(f), would not work in tandem, but instead creates a confusing and arbitrary patchwork of coverage and, in

the context of aggravated OUI cases not involving arrests, a wholly impractical adversarial hearing meeting due process standards.

Beyond the complex interplay between § 24(1)(e) and related statutes, the historical context in which § 24(1)(e) was drafted and the legislative scheme as a whole, see Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989), reveal that the reference to "any prosecution for a violation of paragraph (a)" was simply shorthand for the elements of OUI, not a contrivance to remove § 24(1)(e) from the reach of aggravated forms of the same crime. That is because at the time § 24(1)(e) was signed into law, the Legislature had not yet enacted any aggravated forms of OUI.

The Legislature added § 24(1)(e) to the OUI statute in 1961 in "An Act providing that, in prosecutions for operating a motor vehicle while under the influence of intoxicating liquor, evidence of the percentage of alcohol in the blood of the defendant shall be admissible and create certain 'presumptions.'"[9] Add. 122-23. At that time, there

[9] Although the title of a statute is not part of the law, it may be used as a guide in resolving an

were no other OUI offenses beyond those in § 24(1)(a). Thus, in 1961 when the Legislature chose to use the phrase "any prosecution for a violation of [c. 90, § 24](1)](a)", that reference effectively applied § 24(1)(e) to the full universe of OUI offenses. Therefore, this drafting choice could not have reflected an intent to exclude its application to other statutes which did not yet exist. Cf. Commonwealth v. Madden, 28 Mass. App. Ct. 975, 975 (1990) (where G.L. c. 263, § 5A predated §§ 24(1)(e) and 24N, it is "unconvincing to hold" § 5A "to a specificity of reference to methods of testing for intoxication which did not appear in the statutes when [§ 5A] was originally inserted").

Aggravated OUIs would be enacted years and decades later: G.L. c. 90, § 24G (Homicide by Motor Vehicle; etc.) was enacted in 1976 (Chapter 227 of the Acts of 1976); G.L. c. 90, § 24L (Causing Serious Bodily Injury by Driving While Under Influence of Liquor or Drugs, etc.) was enacted in 1986 (Chapter 620, § 17 of the Acts of 1986); and G.L. c. 265, § 13 ½ (Manslaughter - Driving Under the Influence) was

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ambiguity in the legislation. Breault v. Ford Motor Co., 364 Mass. 352, 353-354, n.2 (1973).

enacted in 2005 (Chapter 122, § 20 of the Acts of 2005). After the enactment of the aggravated OUI statutes, the courts applied the requirements of § 24(1)(e) to them, and so did not alert the Legislature to any need to revise the statute. E.g., Davidson, 27 Mass. App. Ct. at 847-849.

Notably, when drafting G.L. c. 90, § 24G in 1976 and G.L. c. 265, § 13 ½ in 2005, the Legislature used virtually identical shorthand to describe the elements of OUI as contained in § 24(1)(e).[10] In contrast, when it drafted G.L. c. 90, § 24L in 1986 it opted to reproduce in full the elements of OUI.

There appears to be no rhyme or reason underlying the choice to, in 1986, define an aggravated OUI offense by reference to the full elements, but in 1976 and 2005, define aggravated OUI offenses by reference to § 24(1)(a)'s description of those elements.[11] But

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[10] One benefit of describing offense conduct by reference to another statute which sets forth the offense conduct in full is that doing so makes subsequent offense conduct amendments simpler and more efficient. If, for instance, a change to the definition of OUI was required, the Legislature could accomplish that change by simply amending the core OUI statute, which amendment would then apply to all other statutes which incorporated that statutory definition by reference to § 24(1)(a).

[11] Attempts to find meaning behind these drafting styles is further hindered by the fact that in 1982,

from that seemingly arbitrary variation in approach, one helpful observation emerges: given the drafting inconsistency in statutes that all served the same goal – to toughen the drunk driving laws – the Legislature must have viewed the various descriptions of the core elements of simple OUI as interchangeable. The difference is purely semantic in nature. It follows, then, that where the Legislature's reference to violations of § 24(1)(a) in aggravated OUI statutes was merely a shorthand reference to the elements of simple OUI, its earlier use of that same language in § 24(1)(e) was too. Cf. Plymouth Retirement Bd., 483 Mass. at 605 ("Even clear statutory language is not read in isolation."); Utility Air Regulatory Grp. v. E.P.A., 573 U.S. 302, 320 (2014) ("'the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'"), quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000).

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the Legislature amended G.L. c. 90, § 24G to replace the shorthand reference to operation "in violation of [§ 24(1)(a)]" with the full description of the elements of OUI but, in 2005, reverted back to the use of shorthand when drafting G.L. c. 265, § 13 1/2 (manslaughter while operating "in violation of [§ 24(1)(a)]").

If anything, the Legislature's choice to adopt a shorthand reference to the elements of simple OUI in § 24(1)(e) should be viewed as a welcome effort to resist the bloat otherwise characteristic of G.L. c. 90, § 24. The use of shorthand likely reflects nothing more than a preference for economy of words.

C. Section 24(1)(e) Must Apply To Aggravated OUI Charges To Fulfill The Intent Of The Legislature.

"'[I]nartful drafting'" does not permit statutory construction "against clear legislative intent". Plymouth Retirement Bd., 483 Mass. at 608, quoting King v. Burwell, 576 U.S. 473, 491 (2015). Yet consideration of the legislative intent of § 24(1)(e) reveals that a limiting construction of § 24(1)(e) would do just that.

The purpose of G.L. c. 90, § 24 "generally[] is to protect the public" from drunk drivers. Commonwealth v. Colturi, 448 Mass. 809, 812-813 (2007). A central purpose of subsection § 24(1)(e) is to effectuate that goal by increasing the availability of *consensually* obtained BAC evidence in criminal trials. See, e.g., Bohigian, 486 Mass. at 221 (Lowy, J., dissenting) ("Collection and use of blood alcohol content evidence is the statute's principal engine of

enforcement: the Legislature crafted subsections (e) and (f) (1) to fuel that engine by imposing an efficient, consent-based procedure for warrantless, police-directed testing."); Commonwealth v. Durning, 406 Mass. 485, 490 (1990) ("The Legislature . . . ha[s] recognized the reliability of the scientific principles underlying the use of breathalyzer evidence"). Making a reliable BAC test easily admissible in the prosecution of OUI offenses furthers the Legislature's overarching goal to mitigate the "'carnage caused by drunk drivers.'" Commonwealth v. Rodriguez, 430 Mass. 577, 581 (2000), quoting Commonwealth v. Trumble, 396 Mass. 81, 86 (1985).

Section 24(1)(e) accomplishes the Legislature's goal of facilitating enforcement of drunk driving laws by stripping the trial judge of discretion to exclude BAC evidence and deeming that evidence relevant as a matter of law ("evidence of [BAC] . . . shall be admissible and deemed relevant"), and removing evidentiary obstacles by dispensing with the need for live testimony (a state chemist's certificate of analysis "shall be prima facie evidence of [BAC]"). Id.

This public safety lens illustrates that the Legislature, in drafting § 24(1)(e), sought to increase the availability of the most reliable evidence of impairment. Thus, it is unreasonable to suggest that the Legislature intended to limit the admissibility of that evidence in more serious OUI offenses involving injury and death - where the public's interest in effective prosecution is highest. Attorney Gen. v. School Committee of Essex, 387 Mass. 326, 336 (1982) (statutory construction may not lead to "absurd or unreasonable" results). See also State v. DiStefano, 764 A.2d 1156, 1162 (R.I. 2000) ("It is inconceivable that the Legislature would cloak a driver charged with the lesser offense of misdemeanor DUI with the protections afforded by [the consent statute], and not afford those same protections to a motorist accused of the more serious felony offenses.").

Yet that is precisely what the Bohigian dicta would do: the simple OUI limitation of § 24(1)(e) only makes sense if the Legislature intended to facilitate the prosecution of less serious cases by permitting the Commonwealth to prove a BAC result by simply presenting a certificate of analysis instead of live

testimony, creating a statutory presumption that the machine and its solutions were properly calibrated and certified and that the written certificate accurately reflects the BAC, and eliminating any judicial discretion to admit the BAC by "deem[ing" it "relevant" and "admissible" -- while leaving in place those evidentiary hurdles in more serious cases. This construction, in contradiction of the plain language of the statute and in frustration of the Legislature's intent, is both absurd and unreasonable.

But the Legislature's goal in enacting § 24(1)(e) and § 24(1)(f)(1) was not limited to reducing the harm caused by drunk drivers by facilitating the use of reliable evidence in their prosecutions. This Court recognized decades ago that the Legislature also intended "to avoid forced testing". Opinion of the Justices, 412 Mass. at 1208 n.6. "[A] majority of States either place significant restrictions on when police officers may obtain a blood sample despite a suspect's refusal . . . or prohibit nonconsensual blood tests altogether." Bohigian, 486 Mass. at 217, quoting Missouri v. McNeely, 569 U.S. 141, 161 & n.9 (2013). In fact, as this Court noted in Bohigian, "Courts in States with statutes nearly identical to

ours similarly have interpreted them to bar blood draws absent consent, regardless of whether police have obtained a warrant." Id. For example, State v. DiStefano presented a remarkably similar issue. There, "the dispositive question [was] whether the Legislature intended to exclude nonconsensual test results in DUI felony cases by explicitly including the consent requirement for misdemeanor prosecutions and implicitly including the requirement in felony prosecutions." 764 A.2d at 1159. The statute providing that BAC testing is inadmissible unless the person consented contained an explicit textual reference only to misdemeanor DUI and was silent as to felony DUI, comparable to § 24(1)(e)'s internal reference to § 24(1)(a). Id. at 1159 & n.5 The Supreme Court of Rhode Island found that consent was required in both types of offenses. Id.

Requiring actual consent for blood draws is not just a policy preference of the Legislature, as this Court observed in Bohigian; it is also a safety measure. 486 Mass. at 216. Blood draws "involve a variety of risks to the patient," as well as risks to health care workers and the police officers administering nonconsensual testing. Id. at 216-217.

These risks are present whether or not the person has been charged with simple or aggravated OUI.

By requiring police to obtain consent and satisfy other requirements (such as making comparative testing available) before taking or testing blood for BAC, the Legislature balanced the public's interest in effective OUI prosecutions with other, equally important interests: preserving individual privacy and integrity and ensuring test results are accurate. See generally Bohigian, 486 Mass. at 216-217; Moreau, 490 Mass. at 392. The simple OUI limitation to § 24(1)(e) thwarts those goals on an arbitrary axis.

A limiting construction of § 24(1)(e) would also have the unhappy consequence of introducing arbitrary considerations into arrest decisions in cases in which a suspect was hospitalized, which the Legislature could not have intended.[12] Section 24(1)(f) prohibits non-consensual BAC testing or analysis with respect to anyone charged with *any* OUI offense, but only in the case of arrest. See Bohigian, 486 Mass. at 214. If

[12] "That the officer chose to have the defendant transported to a hospital did not preclude [placing him under arrest]." Moreau, 490 Mass. at 396, citing Dennis, 96 Mass. App. Ct. at 529.

this Court were to adopt the simple OUI limitation and refuse to extend § 24(1)(e) to aggravated OUI cases, police would have a strong incentive to forego arrests because doing so would permit them to circumvent the consent requirement of § 24(1)(f), and then obtain a warrant for a blood sample taken in the course of treatment. It is unreasonable to suggest that the Legislature intended this result. Conversely, this construction would create an incentive for defense counsel retained before an arrest decision has been made (as was the case in the instant matter) to advocate for an arrest so that their client could avail themselves of the statutory protections of § 24(1)(f)(1). In the early stages of representation, it would certainly strain the newly formed attorney-client relationship for an attorney to advocate for his own client's arrest, but the limiting construction of § 24(1)(e) suggests that effective advocacy would require defense counsel to do so.

Where the Legislature determined that the important goals of avoiding forced testing and protecting privacy and accuracy were best served by a consent requirement prior to any testing, and specifically, as relevant here, prior to any crime lab

testing for BAC, there is no rational reason to condition that requirement on a defendant's arrest status. Whether a suspect is arrested has no bearing on the safety, privacy, and accuracy concerns underlying the consent requirement – nor could it - given that crime lab testing necessarily occurs days or months after any arrest.

Yet another confounding effect of the simple OUI limitation would be its effect on the trial of all aggravated OUI charges. Whenever a person is charged with an aggravated form of OUI, he is necessarily also charged with simple OUI as a lesser included offense. See supra at 24-25. Therefore, if a defendant obtains a directed verdict on the aggravating elements, and the only remaining charge is simple OUI, the defendant would – mid trial – have grounds to suppress any blood alcohol testing evidence obtained without his consent. Because the jury would have already heard the BAC evidence, a mistrial would almost always be necessary given that BAC evidence is usually the "strongest proof" of intoxication. Bohigian, 486 Mass. at 219.

It is unlikely that the Legislature intended this result.[13]

In sum, § 24(1)(e) must apply to all OUI offenses because the plain language so dictates and because a contrary interpretation would thwart the purpose of the statute.

IV. THE COURT IS NOT BOUND BY THE DICTA IN BOHIGIAN.

In Commonwealth v. Bohigian, 486 Mass. 209 (2020), this Court suggested for the first time that § 24(1)(e) only applies to simple OUI, overruling *sub silentio* a long line of cases correctly applying that statute to both simple and OUI offenses. However, because this language in Bohigian was merely dicta, the Court must, with the benefit of briefing directly addressing this issue, reconsider its prior comments.

In Bohigian, the question before the Court was whether, as a matter of statutory interpretation, a search warrant could override a defendant's objection to a blood draw. Id. at 213. In answering that question in the negative, this Court relied on

[13] It is also unlikely that the Legislature intended the application of § 24(1)(e)'s actual consent provision to hinge on the charging decisions of police or prosecutors given their obvious disincentive to erect statutory hurdles to their own collection of evidence against the accused.

§ 24(1)(f)(1) "[q]uite apart from § 24(1)(e)[.]" Id. at 214. Consequently, its discussion of the hypothetical applicability of § 24(1)(e) was dicta. Cf. Doughty v. Underwriters at Lloyd's, London, 6 F.3d 856, 861 (1st Cir. 1993) ("'Dictum' is a term that judges and lawyers use to describe comments relevant, but not essential, to the disposition of legal questions pending before a court."); Humphrey's Executor v. United States, 295 U.S. 602, 627 (1935) ("dicta . . . are not controlling").

Because the Bohigian Court determined that § 24(1)(f)(1) made consent a necessary condition precedent to blood drawn "at the direction of the police," a determination of whether the defendant was also entitled to relief under § 24(1)(e) was not essential to the disposition of the case. Doughty, 6 F.3d at 861; Bohigian, 486 Mass. at 214, 218.

It is hornbook law that language unnecessary to a decision is not binding: "We have long held that we are not bound by 'language which was unnecessary' in an earlier decision 'and which passed upon an issue not really presented.'" Commonwealth v. Rahim, 441 Mass. 273, 284 (2004), quoting Old Colony Trust Co. v. Comm'r. of Corps. & Taxation, 346 Mass. 667, 676

(1964). "When a court decides an issue that has not been argued by any party, it makes its decision without the benefit of the vigorous advocacy on which the adversary process relies." Id.

The language constraining the application of § 24(1)(e) to simple OUI cases did not arise from the process which customarily accompanies the formulation of a rule of law. Contrast Florida Cent. R. Co. v. Schutte, 103 U.S. 118, 143 (1880) ("Here the precise question was properly presented, fully argued, and elaborately considered in the opinion.").

The question of whether § 24(1)(e) was limited to simple OUI was not "properly presented" to the Bohigian Court. Neither the appellant Bohigian, the Commonwealth, nor amici argued or even suggested in their brief that § 24(1)(e) was limited to simple OUI. Consequently, this Court lacked the guidance which only "powerful statements on both sides of the question" could provide. Rahim, 441 Mass. at 285; State ex rel. Foster v. Naftalin, 74 N.W.2d 249, 266 (Minn. 1956) ("The reason for the rule of obiter dicta is obvious. The questions actually before the court and argued by counsel are thoroughly investigated, deliberately considered with care, and, when so

investigated and considered, a decision on those issues is entitled to respect in future cases.").

Neither do the Court's simple OUI limitation comments reveal "elaborate[] consider[ation]" of the issue. Schutte, 103 U.S. at 143. Notably, they are unsupported by any citation to precedent despite several prior cases applying § 24(1)(e) to aggravated forms of OUI (either directly or by implication), which the Bohigian dicta would contradict without any consideration or explanation. See, e.g., Commonwealth v. Woods, 414 Mass. 343, 345 n.2 (1993) (observing that § 24(1)(e) entitled defendant charged with violations of G.L. c. 90, §§ 24(1)(a) and 24G to a presumption of non-impairment where his BAC was below .05); Commonwealth v. Zevitas, 418 Mass. 677, 678 (1994) (holding that application of § 24(1)(e) in a case charging G.L. c. 90, §§ 24(1)(a), 24L, and 24G(a) was, without limitation, "mandated by the statute," but reversing the defendant's conviction insofar as that version of § 24(1)(e) unconstitutionally required the trial judge, in effect, to instruct the jury that the defendant refused testing); Commonwealth v. McCravy, 430 Mass. 758, 760 (2000) (in prosecution for motor vehicle

homicide and related OUI offenses, observing, without limitation, that pursuant to § 24(1)(e) "[e]vidence that a person's blood alcohol level is 0.08 per cent creates a permissible inference that a person is under the influence of alcohol"); Davidson, 27 Mass. App. Ct. at 849 (§ 24(1)(e) consent provisions applied to manslaughter and motor vehicle homicide prosecutions); Commonwealth v. Rivet, 30 Mass. App. Ct. 973, 975 (1991) (in prosecution of offenses including §§ 24(1)(a), 24G(a), and 24L(1), defendant failed to preserve objection to Commonwealth's alleged failure to prove blood drawn by appropriate medical professional "as required by § 24(1)(e)"); Commonwealth v. Smith, 35 Mass. App. Ct. 655, 662 (1993) (in § 24G(a) prosecution, court considered whether retrograde extrapolation evidence was consistent with § 24(1)(e)).

"Before overturning a long-settled precedent, however, we require 'special justification,' not just an argument that the precedent was wrongly decided." Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 266 (2014), quoting Dickerson v. United States, 530 U.S. 428, 443 (2000). Here, there was no special

justification – indeed, there was no briefing on the issue.

The simple OUI limitation comments are also unsupported by any of the textual analysis typically connected to the evaluation of the purpose or reach of a statute, see Commonwealth v. Dalton, 467 Mass. 555, 558-559 (2014), much less any discussion of any reason the Legislature would seek to limit § 24(1)(e) to simple OUI, which limitation would frustrate the Legislature's dual purpose of ensuring that blood testing be consensual and its results admissible. Cf. Bohigian, 486 Mass. at 221 (Lowy, J., dissenting)).

Had the issue been "properly presented, fully argued, and elaborately considered[,]" this Court would have reached a different conclusion. Schutte, 103 U.S. at 143. In any event, because it was not so presented, argued or considered, the Bohigian simple OUI limitation comments were dicta and the Superior Court erred in relying on them to deny Mr. Zucchino's motion, prior to staying the denial and reporting the question.

Finally, in Bohigian, the defendant was charged with both simple and aggravated forms of OUI. By determining that the case was thus outside the reach

of § 24(1)(e), the Court ignored the clear statutory language providing that consent is required to admit the results of police testing or analysis of blood "[i]n any prosecution for a violation of paragraph (a). . ." Bohigian was charged with a violation of paragraph (a), as well as aggravated OUI. There is no reason, based in the statutory language or legislative intent, to read an exception to § 24(1)(e) where it does not exist – to nullify the consent provisions solely because other crimes were charged in addition to simple OUI. The statutory language "any prosecution" prohibits such a result.

CONCLUSION

For all the foresaid reasons, Mr. Zucchino requests this Court apply the provisions of G.L. c. 90, § 24(1)(e) to aggravated OUI cases.

Respectfully submitted,
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By his Attorney:

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Date: May 12, 2023

CERTIFICATE OF COMPLIANCE

I, Murat Erkan, hereby certify under the penalties of perjury that the Appellant's brief complies with the Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

Rule 11(b) (applications for direct appellate review);

Rule 16(a)(13) (addendum);

Rule 16(e) (references to the record);

Rule 18 (appendix to the briefs);

Rule 20 (form and length of briefs, appendices, and other documents);

Rule 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. App. P. 20 because it is produced in Courier New, 12-point monospace font, and created on MS Word. This brief contains 42 total non-excludable pages.

/s/ Murat Erkan
Murat Erkan

May 12, 2023

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

ESSEX COUNTY No. SJC-13384

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

BRADLEY ZUCCHINO,
Appellant

CERTIFICATE OF SERVICE

I hereby certify under the pains and penalties of perjury that I have today made service on the Commonwealth of the Appellant's Brief and Record Appendix via the Court's electronic filing service to:

Catherine L. Semel & Marina Moriarty
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Date: May 12, 2023

ADDENDUM
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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. 2077CR0375

COMMONWEALTH

vs.

BRADLEY ZUCCHINO

ORDER FOR REPORT PURSUANT TO G. L. c. 231, § 111, AND MASS. R. CRIM. P. 34

Bradley Zucchino ("Zucchino") stands indicted of various serious offenses, including among others, Operating Under the Influence of Intoxicating Liquor and Being Negligent Causing Serious Bodily Injury (G. L. c. 90, § 24L) and Operating a Motor Vehicle While Having a BAC of 08% or Greater and Being Negligent Causing Serious Bodily Injury (G. L. 90, § 24L . On October 4, 2022, the court heard argument on Zucchino's Amended Motion to Suppress, wherein he sought to suppress evidence of blood samples taken from his person and tested without his consent. After hearing, the court (Tabit, J.) denied Zucchino's motion.

In issuing its decision the court (Tabit, J), relying on *Commonwealth* v. *Bohigian*, 486 Mass. 209 (2020), concluded that the Commonwealth was not required to obtain Zucchino's consent to test his blood for the results of the that testing to be admissible in the prosecution of Operating Under the Influence of Intoxicating Liquor and Being Negligent Causing Serious Bodily Injury charge.

Now, it is the opinion of the court that this interlocutory order so affects the merits of the controversy that the matter ought to be determined by the Appeals Court before any further proceedings in the trial court.

Wherefore, it is hereby **ORDERED** that:

1. The court respectfully reports the following questions for decision by the Appeals Court, pursuant to G. L. c. 231, § 111, and Mass. R. Crim. P. 34:

   > Is the Commonwealth required to seek a defendant's consent in order to admit his/blood testing results in the prosecution of a G. L. c. 90, § 24L offense?

2. The court's decision and order on the Zucchino's Amended Motion to Suppress is **STAYED** until further order of the Appeals Court.

SO ORDERED.

Salim Rodriguez Tabit
Justice of the Superior Court

Date: October 4, 2022

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XIV. Public Ways and Works (Ch. 81-92b)
Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24

§ 24. Driving while under influence of intoxicating liquor, etc.; second and subsequent offenses; punishment; treatment programs; reckless and unauthorized driving; failure to stop after collision

Effective: July 1, 2021
Currentness

(1) (a) (1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270 shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment.

There shall be an assessment of $250 against a person who is convicted of, is placed on probation for, or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle while under the influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances under this section; provided, however, that but $187.50 of the amount collected under this assessment shall be deposited monthly by the court with the state treasurer for who shall deposit it into the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment shall be credited to the General Fund. The assessment shall not be subject to reduction or waiver by the court for any reason.

There shall be an assessment of $50 against a person who is convicted, placed on probation or granted a continuance without a finding or who otherwise pleads guilty to or admits to a finding of sufficient facts for operating a motor vehicle while under the influence of intoxicating liquor or under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined by section 1 of chapter 94C, pursuant to this section or section 24D or 24E or subsection (a) or (b) of section 24G or section 24L. The assessment shall not be subject to waiver by the court for any reason. If a person against whom a fine is assessed is sentenced to a correctional facility and the assessment has not been paid, the court shall note the assessment on the mittimus. The monies collected pursuant to the fees established by this paragraph shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to time, into the Victims of Drunk Driving Trust Fund established in section 66 of chapter 10. The monies shall then be administered, pursuant to said section 66 of said chapter 10, by the victim and witness assistance board for the purposes set forth in said section 66. Fees paid by an individual into the Victims of Drunk Driving Trust Fund pursuant to this section shall be in addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any other chapter. The administrative office of the trial court shall file a report detailing the amount of funds imposed and collected pursuant to this section to the house and senate committees on ways and means and to the victim and witness assistance board not later than August 15 of each calendar year.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-half years; provided, however, that the sentence imposed upon such person shall not be reduced to less than thirty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served thirty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction because of a like offense two times preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one hundred and fifty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times preceding the date of the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work

release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 4 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than $2,000 nor more than $50,000 and by imprisonment for not less than 2 and one-half years or by a fine of not less than $2,000 nor more than $50,000 and by imprisonment in the state prison for not less than 2 and one-half years nor more than 5 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 24 months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 24 months of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 24 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 5 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than $2,000 nor more than $50,000 and by imprisonment for not less than 2 and one-half years or by a fine of not less than $2,000 nor more than $50,000 and by imprisonment in the state prison for not less than 2 and one-half years nor more than 5 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 24 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 24 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 24 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 6 times preceding the date of the commission of the offense for which defendant has been convicted, the defendant shall be punished by a fine of not less than $2,000 nor more than $50,000 and by imprisonment in the state prison for not less than 3 and one-half years nor more than 8 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 36 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 36 months of such sentence; provided further, that the commissioner

of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 36 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 7 times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than $2,000 nor more than $50,000 and by imprisonment in the state prison for not less than 3 and one-half years nor more than 8 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 36 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 36 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 36 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense 8 or more times preceding the date of the commission of the offense for which the defendant has been convicted, the defendant shall be punished by a fine of not less than $2,000 nor more than $50,000 and by imprisonment in the state prison for not less than 4 and one-half years nor more than 10 years; provided, however, that the sentence imposed upon such person shall not be reduced to less than 48 months, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his or her sentence for good conduct until he or she shall have served 48 months of such sentence; provided further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided further, that the defendant may serve all or part of such 48 months sentence, to the extent that resources are available, in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

A prosecution commenced under the provisions of this subparagraph shall not be placed on file or continued without a finding except for dispositions under section twenty-four D. No trial shall be commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on such complaint, nor shall the prosecution on such complaint be transferred to another division of the district court or to a jury-of-six session, until the court receives a report from the commissioner of probation pertaining to the defendant's record, if any, of prior convictions of such violations or of assignment to an alcohol

or controlled substance education, treatment, or rehabilitation program because of a like offense; provided, however, that the provisions of this paragraph shall not justify the postponement of any such trial or of the acceptance of any such plea for more than five working days after the date of the defendant's arraignment. The commissioner of probation shall give priority to requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty-five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived his right to a jury trial on all elements of said complaint.

(2) Except as provided in subparagraph (4) the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be imprisoned only on designated weekends, evenings or holidays; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such violation or assigned to an alcohol or controlled substance education, treatment or rehabilitation program preceding the date of the commission of the offense for which he has been convicted.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense two or more times of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation department of a copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years; provided, however, that a condition for such probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program and to participate in an out patient counseling program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of health and human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program. Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced. In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation,

the court shall forthwith specify a second date before which such defendant shall attend or complete such program, and unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such person be eligible for furlough or receive any reduction from his sentence for good conduct until such person has served two days of such sentence; and provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than thirty days as provided in subparagraph (1) for such a defendant.

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

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D; provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Notwithstanding the provisions of section twenty-two, the revocation, reinstatement or issuance of a license or right to operate by reason of a violation of paragraph (a) shall be controlled by the provisions of this section and sections twenty-four D and twenty-four E.

(c) (1) Where the license or right to operate has been revoked under section twenty-four D or twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has been terminated in favor of the defendant, until one year after the date of conviction; provided, however, that such person may, after the expiration of three months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. In all such cases where

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

(2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of 1 year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and that such person shall have successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-four D, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of 18 months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section due to a prior revocation under paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after the expiration of two years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day, on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of four years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3 ½) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a

court of the commonwealth or any other jurisdiction because of a like violation three times preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes which license shall be effective for an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under the terms and conditions as he deems appropriate and necessary. A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

(3 ¾) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation four or more times preceding the date of the commission of the offense for which such person has been convicted, such person's license or right to operate a motor vehicle shall be revoked for the life of such person, and such person shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person has been terminated in favor of such person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section.

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections, the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corrobating[1] evidence, nor live witness testimony to establish the validity of such prior convictions.

(d) For the purposes of subdivision (1) of this section, a person shall be deemed to have been convicted if he pleaded guilty or nolo contendere or admits to a finding of sufficient facts or was found or adjudged guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file, and a license may be revoked under paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise after such a conviction. Where there has been more than one conviction in the same prosecution, the date of the first conviction shall be deemed to be the date of conviction under paragraph (c) hereof.

(e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant

was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any proceedings provided for in section twenty-four N. If such evidence is that such percentage was five one-hundredths or less, there shall be a permissible inference that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor; provided, however, that in an instance where a defendant is under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other actions directed therein, if such evidence is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall be no permissible inference. A certificate, signed and sworn to, by a chemist of the department of the state police or by a chemist of a laboratory certified by the department of public health, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

(f) (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 years or who has been previously convicted of a violation under this section, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B, section 8A or 8B of said chapter 90B, or section 13 ½ of chapter 265 or a like violation by a court of any other jurisdiction or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction for a like offense shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided, further, that any person previously convicted of, or assigned to a program for, 2 such violations shall have the person's license or right to operate suspended forthwith for a period of 5 years for such refusal; and provided, further, that a person previously convicted of, or assigned to a program for, 3 or more such violations shall have the person's license or right to operate suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the restistrar[2] shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, or section 13 ½ of chapter 265, the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

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

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

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

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

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13 ½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

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

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

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

(iii) immediately report action taken under this paragraph to the registrar. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer. Each report shall set forth the grounds for the officer's belief that the person arrested has been operating a motor vehicle on any way or place while under the influence of

intoxicating liquor and that the person's blood alcohol percentage was not less than .08 or that the person was under 21 years of age at the time of the arrest and whose blood alcohol percentage was not less than .02. The report shall indicate that the person was administered a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of the test or analysis, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for the test was regularly serviced and maintained and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend, in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate confiscated under this clause shall be forwarded to the registrar forthwith.

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

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

(g) Any person whose license, permit or right to operate has been suspended under subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall forthwith reinstate such license, permit or right to operate. The registrar shall create and preserve a record at said hearing for judicial review. Within thirty days of the issuance of the final determination by the registrar following a hearing under this paragraph, a person aggrieved by the determination shall have the right to file a petition in the district court for the judicial district in which the offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation or suspension. The filing of a petition for judicial review shall be had as soon as possible following the submission of said request, but not later than thirty days following the submission thereof. Review by the court shall be on the record established at the hearing before the registrar. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the registrar's determination.

Any person whose license or right to operate has been suspended pursuant to subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath may within ten days of such suspension request a hearing and upon such request shall be entitled to a hearing before the court in which the underlying charges are pending or if the individual is under the age of twenty-one and there are no pending charges, in the district court having jurisdiction where the arrest occurred, which hearing shall be limited to the following issue; whether a blood test administered pursuant to paragraph (e) within a reasonable period of time after such chemical analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood was less than eight one-hundredths or, relative to such person under the age of twenty-one was less than two one-hundredths. If the court finds that such a blood test shows that such percentage was less than eight one-hundredths or, relative to such person under the age of twenty-one, that such percentage was less than two one-hundredths, the court shall restore such person's license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the department of criminal justice information services and the registrar of such restoration.

(h) Any person convicted of a violation of subparagraph (1) of paragraph (a) that involves operating a motor vehicle while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, may, as part of the disposition in the case, be ordered to participate in a driver education program or a drug treatment or drug rehabilitation program, or any combination of said programs. The court shall set such financial and other terms for the participation of the defendant as it deems appropriate.

(2) (a) Whoever upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and thereby violates any provision of section seventeen or any regulation under section eighteen, or whoever without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or whoever loans or knowingly permits his license or learner's permit to operate motor vehicles to be used by any person, or whoever makes false statements in an application for such a license or learner's permit, or whoever knowingly makes any false statement in an application for registration of a motor vehicle or whoever while operating a motor vehicle in violation of section 8M, 12A or 13B, such violation proved beyond a reasonable doubt, is the proximate cause of injury to any other person, vehicle or property by operating said motor vehicle negligently so that the lives or safety of the public might be endangered, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a motor vehicle without authority knowing that such use is unauthorized shall, for the first offense be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than two years, or both, and for a second offense by imprisonment in the state prison for not more than five years or in a house of correction for not less than thirty days nor more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; and whoever is found guilty of a third or subsequent offense of such use without authority committed within five years of the earliest of his two most recent prior offenses shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment for not less than six months nor more than two and one half years in a house of correction or for not less than two and one half years nor more than five years in the state prison or by both fine and imprisonment. A summons may be issued instead of a warrant for arrest upon a complaint for a violation of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons.

There shall be an assessment of $250 against a person who, by a court of the commonwealth, is convicted of, is placed on probation for or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle negligently so that the lives or safety of the public might be endangered under this section, but $250 of the $250 collected under this assessment shall be deposited monthly by the court with the state treasurer, who shall

deposit it in the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment shall be credited to the General Fund. The assessment shall not be subject to reduction or waiver by the court for any reason.

(a ½) (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which members of the public shall have access as invitees or licensees, and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away after knowingly colliding with or otherwise causing injury to any person not resulting in the death of any person, shall be punished by imprisonment for not less than six months nor more than two years and by a fine of not less than five hundred dollars nor more than one thousand dollars.

(2) Whoever operates a motor vehicle upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public shall have access as invitees or licensees and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if the injuries result in the death of a person, be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and by a fine of not less than one thousand dollars nor more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this paragraph be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this paragraph, a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution or to engage in employment pursuant to a work release program.

(3) Prosecutions commenced under subparagraph (1) or (2) shall not be continued without a finding nor placed on file.

(b) A conviction of a violation of paragraph (a) or paragraph (a ½) of subdivision (2) of this section shall be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate. If it appears by the records of the registrar that the person so convicted is the owner of a motor vehicle or has exclusive control of any motor vehicle as a manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all motor vehicles so owned or exclusively controlled.

(c) The registrar, after having revoked the license or right to operate of any person under paragraph (b), in his discretion may issue a new license or reinstate the right to operate to him, if the prosecution has terminated in favor of the defendant. In addition, the registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate to a person convicted in any court for a violation of any provision of paragraph (a) or (a ½) of subdivision (2); provided, however, that no new license or right to operate shall be issued by the registrar to: (i) any person convicted of a violation of subparagraph (1) of paragraph (a ½) until one year after the date of revocation following his conviction if for a first offense, or until two years after the date of revocation following any subsequent conviction; (ii) any person convicted of a violation of subparagraph (2) of paragraph (a ½) until three years after the date of revocation following his conviction if for a first offense or until ten years after the date of revocation following any subsequent conviction; (iii) any person convicted, under paragraph (a) of using a motor vehicle knowing that such use is unauthorized, until one year after the date of revocation following his conviction if for a first offense or until three years after the date of revocation following any subsequent conviction; and (iv) any person convicted of any other provision of paragraph (a) until sixty days after the date of his original conviction if for a first offense or

one year after the date of revocation following any subsequent conviction within a period of three years. Notwithstanding the forgoing, a person holding a junior operator's license who is convicted of operating a motor vehicle recklessly or negligently under paragraph (a) shall not be eligible for license reinstatement until 180 days after the date of his original conviction for a first offense or 1 year after the date of revocation following a subsequent conviction within a period of 3 years. The registrar, after investigation, may at any time rescind the revocation of a license or right to operate revoked because of a conviction of operating a motor vehicle upon any way or in any place to which the public has a right of access or any place to which members of the public have access as invitees or licensees negligently so that the lives or safety of the public might be endangered. The provisions of this paragraph shall apply in the same manner to juveniles adjudicated under the provisions of section fifty-eight B of chapter one hundred and nineteen.

(3) The prosecution of any person for the violation of any provision of this section, if a subsequent offence, shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentence according to the regular course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on motion in writing stating specifically the reasons therefor and verified by affidavits if facts are relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons relied upon are sufficient and that the interests of justice require the allowance of the motion, the motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and certificate shall be sent by the court or magistrate forthwith to the registrar.

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or prior finding of sufficient facts by either original court papers or certified attested copy of original court papers, accompanied by a certified attested copy of the biographical and informational data from official probation office records, shall be prima facie evidence that a defendant has been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense by a court of the commonwealth one or more times preceding the date of commission of the offense for which said defendant is being prosecuted.

Credits

Amended by St.1932, c. 26, § 1; St.1935, c. 360; St.1936, c. 182, §§ 1, 2; St.1936, c. 434, § 1; St.1937, c. 117; St.1937, c. 230, § 1; St.1938, c. 145; St.1939, c. 82; St.1955, c. 198, §§ 1 to 3; St.1961, c. 340; St.1961, c. 347; St.1961, c. 422, § 2; St.1962, c. 394, § 2; St.1963, c. 369, § 2; St.1964, c. 200, §§ 1 to 5; St.1966, c. 191, § 1; St.1966, c. 316; St.1967, c. 773; St.1968, c. 259; St.1969, c. 7; St.1969, c. 163; St.1969, c. 202; St.1970, c. 253; St.1971, c. 1007, § 1; St.1971, c. 1071, § 4; St.1972, c. 111; St.1972, c. 376; St.1972, c. 488, §§ 1, 2; St.1973, c. 227; St.1973, c. 243; St.1974, c. 206, § 2; St.1974, c. 418; St.1974, c. 425; St.1974, c. 647, § 2; St.1975, c. 156, § 1; St.1980, c. 383, §§ 1, 2; St.1982, c. 373, §§ 2 to 5; St.1984, c. 189, § 65; St.1986, c. 620, §§ 5 to 13; St.1986, c. 677, § 1; St.1991, c. 138, § 287; St.1991, c. 460, §§ 1 to 4; St.1992, c. 133, §§ 447, 587; St.1992, c. 379, §§ 1B, 1C; St.1993, c. 12, § 1; St.1994, c. 25, §§ 3 to 6; St.1994, c. 60, §§ 101 to 109; St.1995, c. 38, §§ 110 to 116; St.1996, c. 151, § 236; St.1996, c. 450, §§ 137, 138; St.1997, c. 43, §§ 79, 80; St.1998, c. 161, § 317; St.1999, c. 127, §§ 108, 109; St.2002, c. 52, § 2; St.2002, c. 302, §§ 1 to 4; St.2003, c. 26, §§ 228, 229, eff. July 1, 2003; St.2003, c. 28, §§ 1 to 7, eff. June 30, 2003; St.2005, c. 122, §§ 3 to 5, 6A and 9 to 12, eff. Oct. 28, 2005; St.2005, c. 122, §§ 6, 7 and 8, eff. Jan. 1, 2006; St.2006, c. 428, § 13, eff. Jan. 3, 2007; St.2008, c. 182, § 45, eff. July 1, 2008; St.2008, c. 302, §§ 14, 15, eff. July 1, 2008; St.2010, c. 155, § 11, eff. Sept. 30, 2010; St.2010, c. 256, § 63, eff. Nov. 4, 2010; St.2012, c. 139, § 97, eff. Jan. 1, 2013; St.2012, c. 139, §§ 98 to 100, eff. July 1, 2012; St.2013, c. 38, § 80, eff. Mar. 1, 2014; St.2018, c. 69, §§ 32, 33, eff. April 13, 2018; St.2020, c. 227, § 35, eff. July 1, 2021.

Footnotes

1 So in enrolled bill; probably should read “corroborating”.

2 So in enrolled bill; probably should read “registrar”.

M.G.L.A. 90 § 24, MA ST 90 § 24
Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

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Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XIV. Public Ways and Works (Ch. 81-92b)
Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24G

§ 24G. Homicide by motor vehicle; punishment

Effective: October 23, 2018
Currentness

(a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than 2 ½ years nor more than 15 years and a fine of not more than $5,000, or by imprisonment in a jail or house of correction for not less than 1 year nor more than 2 ½ years and a fine of not more than $5,000. The sentence imposed upon such person shall not be reduced to less than 1 year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from a sentence until such person has served at least 1 year of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a relative; (ii) to visit a critically ill relative; (iii) to obtain emergency medical or psychiatric services unavailable at said institution; or (iv) to engage in employment pursuant to a work release program. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file. Section 87 of chapter 276 shall not apply to any person charged with a violation of this subsection.

(b) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of .08 or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, or whoever operates a motor vehicle negligently so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than 30 days nor more than 2 ½ years, or by a fine of not less than $300 nor more than $3,000 dollars, or both.

(c) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly so that the lives or safety of the public might be endangered and by any such operation causes the death of another person, shall be guilty of reckless homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not more than 2 ½ years, or by imprisonment in the state prison for not more than 5 years, or by a fine of not more than $3,000 dollars, or by both such

fine and imprisonment. For the purpose of this section, a person operates recklessly when that person consciously disregards a substantial and unjustifiable risk that the lives or safety of the public might be endangered.

(d) When a motor vehicle is the instrument of the offense, the registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a), (b) or (c), or punished under section 13 of chapter 265, for a period of 15 years after the date of conviction for a first offense. The registrar shall revoke the license or right to operate of a person convicted for a subsequent violation of this section for the life of such person. No appeal, motion for a new trial or exceptions shall operate to stay the revocation of the license or of the right to operate; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

Credits

Added by St.1976, c. 227. Amended by St.1982, c. 373, § 9; St.1982, c. 376, §§ 1, 2; St.1986, c. 620, §§ 15, 16; St.2003, c. 28, §§ 21, 22, eff. June 30, 2003; St.2005, c. 122, § 16, eff. Oct. 28, 2005; St.2018, c. 69, § 37, eff. April 13, 2018; St.2018, c. 273, § 19, eff. Oct. 23, 2018.

M.G.L.A. 90 § 24G, MA ST 90 § 24G

Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

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Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XIV. Public Ways and Works (Ch. 81-92b)
Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

M.G.L.A. 90 § 24L

§ 24L. Serious bodily injury by motor vehicle while under influence of intoxicating substance; penalties

Effective: April 13, 2018
Currentness

(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes serious bodily injury, shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than six months nor more than two and one-half years and by a fine of not more than five thousand dollars.

The sentence imposed upon such person shall not be reduced to less than six months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least six months of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this subdivision shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this subdivision.

(2) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or while under the influence from smelling or inhaling the fumes of any substance having the property of releasing toxic vapors as defined in section 18 of chapter 270, and by any such operation causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years, or by a fine of not less than three thousand dollars, or both.

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

(4) The registrar shall revoke the license or right to operate of a person convicted of a violation of subdivision (1) or (2) for a period of two years after the date of conviction. No appeal, motion for new trial or exception shall operate to stay the revocation of the license or the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

Credits

Added by St.1986, c. 620, § 17. Amended by St.2003, c. 28, §§ 24, 25; St.2018, c. 69, §§ 38, 38A, eff. April 13, 2018.

M.G.L.A. 90 § 24L, MA ST 90 § 24L

Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

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Proposed Legislation

Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title I. Crimes and Punishments (Ch. 263-274)
Chapter 265. Crimes Against the Person (Refs & Annos)

M.G.L.A. 265 § 13 1/2

§ 13 ½ . Punishment for manslaughter while operating a motor vehicle

Effective: October 28, 2005
Currentness

Whoever commits manslaughter while operating a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24 of chapter 90 or section 8A of chapter 90B, shall be punished by imprisonment in the state prison for not less than 5 years and not more than 20 years, and by a fine of not more than $25,000. The sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his sentence for good conduct until he shall have served 5 years of such sentence. The commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this section a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Upon receipt of notice of a conviction under this section, the registrar may suspend the license or right to operate of such person for any extended period up to life, provided that such suspension be at least a 15 year period. A person aggrieved by a decision of the registrar pursuant to this section may file an appeal in the superior court of the trial court department. If the court determines that the registrar abused his discretion, the court may vacate the suspension or revocation of a license or right to operate and reduce the period of suspension or revocation as ordered by the registrar, but in no event may the reduced period of suspension be for less than 15 years.

Credits
Added by St.2005, c. 122, § 20, eff. Oct. 28, 2005.

M.G.L.A. 265 § 13 1/2, MA ST 265 § 13 1/2
Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

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M.G.L.A. 272 § 28

§ 28. Matter harmful to minors, dissemination; possession; defenses

Effective: April 11, 2011
Currentness

Whoever purposefully disseminates to a person he knows or believes to be a minor any matter harmful to minors, as defined in section 31, knowing it to be harmful to minors, or has in his possession any such matter with the intent to disseminate the same to a person he knows or believes to be a minor, shall be punished by imprisonment in the state prison for not more than 5 years or in a jail or house of correction for not more than 2 ½ years, or by a fine of not less than $1000 nor more than $10,000 for the first offense, not less than $5000 nor more than $20,000 for the second offense, or not less than $10,000 nor more than $30,000 for a third or subsequent offenses, or by both such fine and imprisonment. A person who disseminates an electronic communication or possesses an electronic communication with the intent to disseminate it shall not be found to have violated this section unless he specifically intends to direct the communication to a person he knows or believes to be a minor. A prosecution commenced under this section shall not be continued without a finding or placed on file. It shall be a defense in a prosecution under this section that the defendant was in a parental or guardianship relationship with the minor. It shall also be a defense in a prosecution under this section if the evidence proves that the defendant was a bona fide school, museum or library, or was acting in the course of his employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.

Credits
Amended by St.1934, c. 231; St.1943, c. 239; St.1945, c. 278, § 1; St.1948, c. 328; St.1959, c. 492, § 1; St.1966, c. 418, § 1; St.1974, c. 430, § 1; St.1982, c. 603, § 2; St.2011, c. 9, § 19, eff. April 11, 2011.

M.G.L.A. 272 § 28, MA ST 272 § 28
Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

OPERATING UNDER THE INFLUENCE CAUSING SERIOUS INJURY

I. FELONY BRANCH

The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue) and by operating it (recklessly) (negligently so that the lives or safety of the public might be endangered). Section 24L(1) of chapter 90 of our General Laws provides as follows:

"Whoever,

upon any way

***or* in any place to which the public has a right of access,**

***or* upon any way or in any place to which members of the public have access as invitees or licensees,**

operates a motor vehicle while under the influence of

(intoxicating liquor) (marihuana) (narcotic drugs) (certain depressants) (certain stimulant substances) (the vapors of glue) . . .

and **so operates a motor vehicle (recklessly) (negligently so that the lives or safety of the public might be endangered),**

and **by . . . such operation . . . causes serious bodily injury, shall be punished . . . ."**

In order to prove the defendant guilty of this offense, the Commonwealth must prove five things beyond a reasonable doubt:

First: **That the defendant operated a motor vehicle;**

Second: **That he (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees);**

Third: **That while the defendant was operating the vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (a narcotic drug, as defined in our statute) (a depressant, as defined in our statute) (a stimulant substance, as defined in our statute) (the vapors of glue);**

Fourth:

Based on the complaint, use only one *of the following, unless they are charged in the alternative:*

A. *Reckless operation.* **That the defendant operated the vehicle in a manner which is considered "reckless" under the laws of**

our Commonwealth;

B. *Negligent operation.* **That the defendant operated the vehicle in a negligent manner so that the lives and safety of the public might have been endangered;**

and *Fifth:* That the defendant's actions caused serious bodily injury to someone.

At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).

The third thing the Commonwealth must prove is that when the defendant was operating his (her) vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

If applicable, the jury must be instructed at this point on the definition of "Marihuana," "Narcotic Drug," or "Depressant or Stimulant Substance" from G.L. c. 90C, § 1.

If the evidence suggests that the defendant was under the influence of drugs rather than alcohol, the following four paragraphs should be replaced with the equivalent paragraphs from Instruction 5.400 (OUI-Drugs).

What does it mean to be "under the influence" of alcohol? A person

does not have to be drunk or unconscious to be "under the influence" of alcohol. Someone is "under the influence" whenever he has consumed enough alcohol to reduce his ability to operate a motor vehicle safely.

The purpose of the statute is to protect the public from any driver whose alertness, judgment and ability to respond promptly have been lessened by alcohol. This would include someone who is drunk, but it would also include anyone who has consumed enough alcohol to reduce his mental clarity, self-control and reflexes, and thereby left him with a reduced ability to drive safely. The amount of alcohol necessary to do this may vary from person to person.

The Commonwealth is not required to prove that the defendant *actually drove* in an unsafe or erratic manner, but it must prove that the defendant had a diminished *capacity* or *ability* to drive safely.

You are to decide this from all the believable evidence in this case, together with any reasonable inferences that you draw from the evidence. You may rely on your experience and common sense about the effects of alcohol. You should evaluate all the believable evidence about the defendant's appearance, condition and behavior at the time, in order to determine whether the defendant's ability to drive safely was diminished by

alcohol.

Here the jury must be instructed either on "Operating Negligently so as to Endanger" (Instruction 5.240) or "Operating Recklessly" (Instruction 5.260) .

The fifth and final thing which the Commonwealth must prove is that the defendant's actions were the cause of serious bodily injury to someone, that is, they directly and substantially set in motion a chain of events that produced the serious injury in natural and continuous sequence. A bodily injury is "serious" if it had any one of the following four characteristics: (1) it created a substantial risk of death; (2) it involved total disability; (3) it involved the loss of any bodily function for a substantial period of time; or (4) it involved substantial impairment of any bodily function for a substantial period of time.

SUPPLEMENTAL INSTRUCTION

Possible verdicts involving lesser included offenses. **There are four possible verdicts that you may render in this case. Depending on your evaluation of what has been proved, you will find the defendant either guilty as charged, or not guilty, or guilty only of**

one or the other of two lesser included offenses.

If the Commonwealth has proved all five elements of this offense to you beyond a reasonable doubt, you should return a verdict that the defendant is guilty of the offense as charged.

If the Commonwealth has failed to prove that the defendant drove (recklessly) (negligently so that the lives and safety of the public might have been endangered), but has proved the other four elements beyond a reasonable doubt — that the defendant operated a motor vehicle (on a public way) (*[substitute for public way]* **) while under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue), and thereby caused someone serious bodily injury — then you should return a verdict that the defendant is guilty of that lesser offense, as indicated on the verdict slip.**

The third possibility is that the Commonwealth has not proved that the defendant caused serious bodily injury to anyone, but has proved beyond a reasonable doubt that the defendant operated a motor vehicle (on a public way) (*[substitute for public way]* **) while under the influence of (intoxicating liquor)**

(marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue). In that case, you should return a verdict that the defendant is guilty of the lesser offense of operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

Finally, if the Commonwealth has not proved at least three things beyond a reasonable doubt — that the defendant operated a motor vehicle (on a public way) (*[substitute for public way]*) while under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue) — then you must find the defendant not guilty.

Where both lesser included offenses are instructed on, see the appendix to this instruction for a sample jury verdict slip.

See the supplemental instructions, citations and notes under Instruction 5.300 (OUI-Liquor or .08% Blood Alcohol).

II. MISDEMEANOR BRANCH

The defendant is charged with causing serious bodily injury by operating a motor vehicle under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue). Section 24L(2) of chapter 90 of our General Laws provides as follows:

> **"Whoever,**
>
> **upon any way**
>
> **or in any place to which the public has a right of access,**
>
> **or upon any way or in any place to which members of the public have access as invitees or licensees,**
>
> **operates a motor vehicle**
>
> **while under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (certain depressants) (certain stimulant substances) (the vapors of glue) . . .**
>
> ***and* by . . . such operation . . . causes serious bodily injury,**
>
> **shall be punished . . . ."**

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

First: **That the defendant operated a motor vehicle;**

Second: **That he (she) operated it (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees);**

Third: **That while the defendant was operating the vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (a narcotic drug, as defined in our statute) (a depressant, as defined in our statute) (a stimulant substance, as defined in our statute) (the vapors of glue);**

and *Fourth:* That the defendant's actions caused serious bodily injury to someone.

At this point, the jury must be instructed on the definitions of "Operation of a Motor Vehicle" (Instruction 3.200) and "Public Way" (Instruction 3.280).

The third thing the Commonwealth must prove is that when the defendant was operating his (her) vehicle, he (she) was under the influence of (intoxicating liquor) (marihuana) (narcotic drugs) (depressants) (stimulant substances) (the vapors of glue).

If applicable, the jury must be instructed at this point on the definition of "Marihuana," "Narcotic Drug," or "Depressant or Stimulant Substance" from G.L. c. 90C, § 1.

If the evidence suggests that the defendant was under the influence of alcohol, here insert the four paragraphs starting with "What does it mean . . ." on pp. 3-4, supra. If the evidence suggests that

the defendant was under the influence of drugs, here insert the equivalent paragraphs from Instruction 5.400 (OUI-Drugs).

The fourth and final thing which the Commonwealth must prove is that the defendant's actions were the cause of serious bodily injury to someone, that is, they directly and substantially set in motion a chain of events that produced the serious injury in natural and continuous sequence. A bodily injury is "serious" if it had any one of the following four characteristics: (1) it created a substantial risk of death; (2) it involved total disability; (3) it involved the loss of any bodily function for a substantial period of time; or (4) it involved substantial impairment of any bodily function for a substantial period of time.

See the supplemental instructions, citations and notes under Instruction 5.300 (OUI-Liquor or .08% Blood Alcohol).

Chapter 25. AN ACT INCREASING THE PENALTIES FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is, in part, to alleviate a serious public safety problem relative to the operation of motor vehicles under the influence of alcoholic beverages in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 23 of chapter 90 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out, in line 19, the word "ten" and inserting in place thereof the word:- sixty.

SECTION 2. Said first paragraph of said section 23 of said chapter 90, as so appearing, is hereby further amended by adding the following sentence:- In no case shall a person be prosecuted for operating after suspension or revocation of a license upon a failure to pay an administrative reinstatement fee without a prior written notice from the registrar mandating payment thereof.

SECTION 3. Subdivision (1) of section 24 of said chapter 90, as so appearing, is hereby amended by striking out paragraphs (a) and (b) and inserting in place thereof the following two paragraphs:-

(a) (1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment.

There shall be a surcharge of one hundred dollars on a fine assessed against a defendant convicted of operating a motor vehicle while under the influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances; provided, however, that moneys collected pursuant to said surcharge shall be deposited by the court with the treasurer into the Trust Fund for the Head Injury Treatment Services. In cases of multiple offenses, said surcharge shall be assessed each and every time a defendant is convicted of operating a motor vehicle while under the influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation within ten years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-half years; provided,

however, that the sentence imposed upon such person shall not be reduced to less than thirty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served thirty days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction because of a like offense two times within ten years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one hundred and fifty days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve

all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times within ten years preceding the date of the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense four or more times within ten years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment for not less than two and one-half years or by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twenty-four months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served twenty-four months of such sentence, unless otherwise sentenced to an in-

termediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twenty-four months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

A prosecution commenced under the provisions of this subparagraph shall not be placed on file or continued without a finding except for dispositions under section twenty-four D. No trial shall be commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on such complaint, nor shall the prosecution on such complaint be transferred to another division of the district court or to a jury-of-six session, until the court receives a report from the commissioner of probation pertaining to the defendant's record, if any, of prior convictions of such violations or of assignment to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense; provided, however, that the provisions of this paragraph shall not justify the postponement of any such trial or of the acceptance of any such plea for more than five working days after the date of the defendant's arraignment. The commissioner of probation shall give priority to requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty-five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived his right to a jury trial on all elements of said complaint.

(2) Except as provided in subparagraph (4) the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an al-

cohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years immediately preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be imprisoned only on designated weekends, evenings or holidays; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such violation or assigned to an alcohol or controlled substance education, treatment or rehabilitation program within ten years preceding the date of the commission of the offense for which he has been convicted.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense two or more times within ten years of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation department of a copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years; provided, however, that a condition for such probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program and to participate in an out patient counseling program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program. Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced. In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation, the court shall forthwith specify a second date before which such defendant shall attend or complete such program, and unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such per-

son be eligible for furlough or receive any reduction from his sentence for good conduct until such person has served two days of such sentence; and provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than thirty days as provided in subparagraph (1) for such a defendant.

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

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D; provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Notwithstanding the provisions of section twenty-two, the revocation, reinstatement or issuance of a license or right to operate by reason of a violation of paragraph (a) shall be controlled by the provisions of this section and sections twenty-four D and twenty-four E.

SECTION 4. Paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out subparagraphs (1), (2), (3), and (3½), and inserting in place thereof the following five subparagraphs:-

(1) Where the license or right to operate has been revoked under section twenty-

four D or twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has been terminated in favor of the defendant, until one year after the date of conviction; provided, however, that such person may, after the expiration of three months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation within a period of ten years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and that such person shall have successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-four D, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of one year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt

with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times within a period of ten years preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section due to a prior revocation under paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after the expiration of two years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day, on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of four years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3½) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation three times within a period of ten years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes which license shall be effective for an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of

a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under the terms and conditions as he deems appropriate and necessary.

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

SECTION 5. Said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out paragraphs (e), (f) and (g) and inserting in place thereof the following three paragraphs:-

(e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any proceedings provided for in section twenty-four N. When there is no evidence presented at a civil or criminal proceeding of the percentage, by weight, of alcohol in the defendant's blood, the presiding judge at a trial before a jury shall include in his instructions to the jury a statement of an arresting officer's responsibilities upon arrest of a person suspected to be operating a motor vehicle under the influence of alcohol and a statement that a blood alcohol test may only be administered with a person's consent; that a person has a legal right to take or not take such a test; that there may be a number of reasons why a person would or would not take such a test; that there may be a number of reasons why such test was not administered;

that there shall be no speculation as to the reason for the absence of the test and no inference can be drawn from the fact that there was no evidence of a blood alcohol test; and that a finding of guilty or not guilty must be based solely on the evidence that was presented in the case. If such evidence is that such percentage was five one-hundredths or less, there shall be a permissible inference that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor, if such evidence is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall be no permissible inference; and if such evidence is that such percentage was eight one-hundredths or more, there shall be a permissible inference that such defendant was under the influence of intoxicating liquor. A certificate, signed and sworn to, by a chemist of the department of public safety or by a chemist of a laboratory certified by said department, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

(f) (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section fifty-one of chapter one hundred and eleven; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section one of chapter ninety C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for at least a period of one hundred and twenty days, but not more than one year for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of one hundred and twenty days; provided, however, that any person who is under the age of twenty-one or who has been previously convicted of a violation under this section or a like violation by a court of any other jurisdiction within ten years of the date of the charge in question shall have his license or right to operate suspended forthwith for a period of one hundred and eighty days for such refusal; and provided, further, that any person previously convicted two or more times for a violation under this section or a like violation by a court of any other jurisdiction within ten years of the date of the charge in question, shall have his license or right to operate suspended forthwith for a period of one year for such refusal. If a person refuses to

take a test under this section, the police officer shall do all of the following:

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

(ii) provide such person, on behalf of the registrar, with a written notice of intent to suspend, on forms prepared and provided by the registrar;

(iii) issue to such person, on behalf of the registrar, a temporary driving permit, unless: (1) driving privileges of the person were suspended, revoked, or canceled at the time the person was arrested; (2) the person whose license was taken into custody was operating on an invalid license; (3) the person was not entitled to driving privileges at the time of the arrest for any other reason; or (4) the person holds a license or permit granting driving privileges that was issued by another state or jurisdiction.

The police officer before whom such refusal was made shall immediately prepare a written report of such refusal. Such written report of refusal shall be endorsed by a third person who shall have witnessed such refusal. Each such report shall be made on a form approved by the registrar, and shall be sworn to under the penalties of perjury by the police officer before whom such refusal was made. Each such report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on any such way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to such chemical test or analysis when requested by such police officer to do so. Each such report shall be endorsed by the police chief, as defined in section one of chapter ninety C, or by the person authorized by him and shall be sent forthwith to the registrar along with the confiscated license or permit and a copy of the notice of intent to suspend.

The license suspension shall become effective fifteen days after the offender has received the notice of intent to suspend from the police officer. No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section twenty-four G or twenty-four L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

The registrar shall provide police departments and agencies with permits for issuance as required by this subparagraph. The registrar shall establish the form and content of permits described in this section as the registrar determines appropriate, but in a manner consistent with this section. A temporary driving permit described in this section shall become effective twelve hours after the stated time of such issuance and shall remain valid until the fifteenth day after the date of arrest; shall be issued without payment fee; and, except as otherwise provided, such permit shall grant the same driving privileges as those

granted by the person's license taken into possession under this subparagraph.

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

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

(ii) provide such person, on behalf of the registrar, with a written notice of intent to suspend, on forms prepared and provided by the registrar;

(iii) issue to such person, on behalf of the registrar, a temporary driving permit, unless: (1) driving privileges of the person were suspended, revoked, or canceled at the time the person was arrested; (2) the person whose license was taken into custody was operating on an invalid license; (3) the person was not entitled to driving privileges at the time of the arrest for any other reason; or (4) the person holds a license or permit granting driving privileges that was issued by another state or jurisdiction;

(iv) immediately report action taken under this paragraph to the registrar. Each such report shall be made on a form approved by the registrar, and shall be sworn to under the penalties of perjury by the police officer. Each such report shall set forth the grounds for the officer's belief that the person arrested has been operating a motor vehicle on any such way or place while under the influence of intoxicating liquor and that said person's blood alcohol percentage was not less than eight one-hundredths or that said person was under twenty-one years of age at the time of the arrest and whose blood alcohol percentage was not less than two one-hundredths. Said report shall also state that the person was administered such a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of such test, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Each such report shall be endorsed by the police chief, as defined in section one of chapter ninety C, or by the person authorized by him and shall be sent forthwith to the registrar along with the confiscated license or permit and a copy of the notice of intent to suspend.

The license suspension shall become effective fifteen days after the offender has received the notice of intent to suspend from the police officer. The license to operate a motor vehicle shall remain suspended until the disposition of the offense for which the person is being prosecuted, but in no event shall such suspension pursuant to this subparagraph exceed ninety days.

The registrar shall provide police departments and agencies with permits for issuance as required by this subparagraph. The registrar shall establish the form and content of permits described in this section as the registrar determines appropriate, but in a manner consistent with this section. A temporary driving permit described in this section shall become effective twelve hours after the stated time of such issuance and shall remain valid until the fifteenth day after the date of issuance; shall be issued without payment of any fee;

and except as otherwise provided, such permit shall grant the same driving privileges as those granted by the person's license taken into possession under this subparagraph.

(g) Any person whose license, permit or right to operate has been suspended under subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall forthwith reinstate such license, permit or right to operate. The registrar shall create and preserve a record at said hearing for judicial review. Within thirty days of the issuance of the final determination by the registrar following a hearing under this paragraph, a person aggrieved by the determination shall have the right to file a petition in the district court for the judicial district in which the offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation or suspension. The filing of a petition for judicial review shall be had as soon as possible following the submission of said request, but not later than thirty days following the submission thereof. Review by the court shall be on the record established at the hearing before the registrar. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the registrar's determination.

Any person whose license or right to operate has been suspended pursuant to subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath may within ten days of such suspension request a hearing and upon such request shall be entitled to a hearing before the court in which the underlying charges are pending, which hearing shall be limited to the following issue; whether a blood test administered pursuant to paragraph (e) within a reasonable period of time after such chemical analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood was less than eight one-hundredths or, relative to such person under the age of twenty-one was less than two one-hundredths. If the court finds that such a blood test shows that such percentage was less than eight one-hundredths or, relative to such person under the age of twenty-one, that such percentage was less than two one-hundredths, the court shall restore such person's license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such restoration.

SECTION 6. Said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out, in lines 569 to 571, inclusive, the words "alcohol education or rehabilitation program because of a like offense by a court of the commonwealth one or more times within a period of six" and inserting in place thereof the following words:- alcohol or controlled substance education, treatment, or rehabilitation program be-

cause of a like offense by a court of the commonwealth one or more times within a period of ten.

SECTION 7. Section 24D of said chapter 90, as so appearing, is hereby amended by striking out the first three paragraphs and inserting in place thereof the following two paragraphs:-

Any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor, may if such person consents, be placed on probation for not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided herein and, if deemed necessary by the court, to an alcohol treatment or rehabilitation program or to both, and such person's license or right to operate shall be suspended for a period of no less than forty-five nor more than ninety days; provided, however, that if such person was under the age of twenty-one when the offense was committed, the person's license or right to operate shall be suspended for two hundred and ten days, and such person shall be assigned to a program specifically designed by the department of public health for the education and treatment of underage drinking drivers. Such order of probation shall be in addition to any penalties imposed as provided in subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four and shall be in addition to any requirements imposed as a condition for any suspension of sentence. Said person shall cooperate in an investigation conducted by the probation staff of the court for supervision of cases of operating under the influence of intoxicating liquor in such manner as the commissioner of probation shall determine. A defendant not otherwise prohibited by this section, upon conviction after a trial on the merits, shall be presumed to be an appropriate candidate for the above mentioned programs; provided, however, that a judge who deems that the defendant is not a suitable candidate for said programs shall make such findings in writing.

The provisions of this section shall not, except as otherwise provided herein, apply to any person convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the commission of the offense with which he is charged, nor shall the provisions of this section apply to any person who during the events that gave rise to the complaint under paragraph (a) of subdivision (1) of section twenty-four caused serious personal injury to or the death of another person. Any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor, who has been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a single like offense by a court of the commonwealth or any other jurisdiction more than six years, but less than ten years preceding the date of the commission of the offense with which he is charged may, upon a written finding of fact which shall be made part of the record, that appropriate and adequate treatment is available to such person and the person would benefit from such treatment and the safety of the public would not be endangered, with the person's consent, be placed on probation for not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided here-

in, and, if deemed necessary by the court, to an alcohol treatment or education program or both, and the person's drivers license or right to operate a motor vehicle shall be suspended for a period consistent with the provisions of subparagraph (2) of paragraph (c) of subdivision (1) of section twenty-four. Such order of probation shall be in addition to any penalties imposed as provided in subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four and shall be in addition to any requirements imposed as a condition for any suspension of sentence. Said person shall cooperate in an investigation conducted by the probation staff of the court for supervision of cases of operating under the influence of intoxicating liquor in such manner as the commissioner of probation shall determine. The provisions of this section shall not apply to any person convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense two or more times by a court of the commonwealth or any other jurisdiction within ten years preceding the date of the commission of the offense for which such person has been charged.

SECTION 8. Said section 24D of said chapter 90, as so appearing, is hereby further amended by striking out, in line 106, the words "for the apprehension" and inserting in place thereof the following words:- operated by the secretary of public safety, the alcohol beverage control commission, and the department of public health for the investigation, enforcement.

SECTION 9. Said chapter 90 is hereby further amended by striking out section 24J, as so appearing, and inserting in place thereof the following section:-

Section 24J. In every case of a conviction of or a plea of guilty to a violation of subdivision (1) of section twenty-four involving driving under the influence of intoxicating liquors or a disposition under section twenty-four D, the court shall inquire of the defendant, before sentencing, regarding whether he was served alcohol prior to his violation of said section at an establishment licensed to serve alcohol on the premises and the name and location of said establishment.

Any information so acquired by the court shall be transmitted by the clerk's office to the alcohol beverage control commission, the office of the attorney general, the office of the district attorney for the district in which the establishment is located, and such establishment.

SECTION 10. Said chapter 90 is hereby further amended by striking out section 24N, as so appearing, and inserting in place thereof the following section:-

Section 24N. Upon the issuance of a complaint alleging a violation of paragraph (a) of subdivision (1) of section twenty-four or a violation of section twenty-four G or twenty-four L, the judge, in addition to any other terms of bail or recognizance, shall, upon the failure of any police officer to suspend or take custody of the drivers license or permit issued by the commonwealth of any such defendant under paragraph (f) of subdivision (1) of section twenty-four, immediately suspend the defendant's license or right to operate a motor vehicle in the following instances: (i) if the prosecutor makes a prima facie showing at the arraignment that said defendant was operating a motor vehicle while the percentage, by weight, of alcohol in his blood was eight one-hundredths or more, or, relative to any de-

fendant under the age of twenty-one, while the percentage by weight, of alcohol in his blood was two one-hundredths or more, as shown by chemical test or analysis of his blood or breath, and presents written certification of oral testimony from the person administering to the defendant such chemical test or analysis of his blood or breath that the defendant was administered such a test or analysis, that the operator administering the test or analysis of his blood or breath that the defendant was administered such a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of such tests, that the test was performed in accordance with regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Such certification shall be prima facie evidence of the facts so certified. Upon such a showing and presentation, the judge shall take immediate physical possession of such defendant's license or permit issued by the commonwealth to operate a motor vehicle, and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such suspension by the most expeditious means available. The defendant's license or permit to operate a motor vehicle shall remain suspended until the disposition of the offense for which said defendant is being prosecuted, but in no event shall such suspension pursuant to this section exceed ninety days; or (ii) if the prosecutor makes a prima facie showing at arraignment that said defendant was arrested on the charge of driving a motor vehicle on any such way or place while under the influence of intoxicating liquor, and said defendant refused to submit to a chemical test or analysis of his breath or blood. Upon such a showing and presentation, the judge shall take immediate physical possession of such defendant's license or permit issued by the commonwealth to operate a motor vehicle, and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such suspension by the most expeditious means available. The defendant's license or permit to operate a motor vehicle shall remain suspended for a period of one hundred and twenty days; provided, however, that any person who is under the age of twenty-one or who has been previously convicted of a violation under section twenty-four or a like violation by a court of any other jurisdiction within ten years of the date of the charge in question shall have his license or right to operate suspended forthwith for a period of one hundred and eighty days for such refusal; provided, further, that any person previously convicted two or more times of a violation under section twenty-four of a like violation by a court of any other jurisdiction within ten years of the date of the charge in question, shall have his license or right to operate suspended forthwith for a period of one year for such refusal. No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon entry of a not guilty finding or dismissal of all charges under section twenty-four, sections twenty-four G and twenty-four L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be granted a hearing forthwith before the court which shall have entered said finding for the purpose of requesting the restoration of said license. At said

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

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

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

SECTION 11. Said chapter 90 is hereby further amended by striking out section 24 O, as so appearing, and inserting in place thereof the following two sections:-

Section 24 O. Upon conviction of any violation of the provisions of this chapter, the defendant shall be provided by the probation office in the court in which said conviction was entered a statement in writing prepared by the secretary of public safety of the statutory provisions that apply to any further violation of this chapter.

Section 24P. Upon evidence a person under the age of twenty-one, after having been charged with any violation under section twenty-four, twenty-four G or twenty-four L, had a blood alcohol percentage of two one-hundredths or greater, or upon evidence that said person refused to submit to a chemical test or analysis of his breath or blood under section twenty-four, notwithstanding the finding upon any such charges, shall have his license or

permit to operate suspended by the registrar of motor vehicles for a period of one hundred and eighty days. Said suspension by the registrar shall be in addition to any penalty, license suspension or revocation imposed upon such person by the court as required by section twenty-four, twenty-four G or twenty-four L.

If such person has not been previously charged with any violation under section twenty-four, twenty-four G or twenty-four L, such person shall, if he consents, be assigned to a program specifically designed by the department of public health for the education and treatment of underage drinking drivers; provided, however, that said assignment is not prevented by any finding or disposition upon any charges against said person under said section twenty-four, twenty-four G or twenty-four L. Upon the entry into such program, as specified in this section, or as otherwise required under any disposition pursuant to section twenty-four D, the suspension of license or permit to operate as required by this section shall be waived by the registrar. Upon failure of any such person to successfully complete said program, the registrar shall forthwith suspend said license or permit to operate for said one hundred and eighty day period.

SECTION 12. The first paragraph of section 34A of chapter 138 of the General Laws, as so appearing, is hereby amended by adding the following two sentences:- A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court. Upon receipt of such notice the registrar shall thereupon suspend for ninety days the defendant's license or right to operate a motor vehicle.

SECTION 13. Section 34C of said chapter 138, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle.

SECTION 14. The secretary of public safety shall submit a correctional resources impact study to the joint committee on criminal justice, the joint committee on public safety, and the house and senate committees on ways and means, respectively, assessing the effect of this act on current correctional resources. Said secretary shall certify the extent of the impact, if any, and his plans to respond to it, with current correctional resources available to him in the current fiscal year, and for four fiscal years thereafter. The secretary shall certify whether other inmates will be transferred out of jail or prison to absorb the impact of this act. In addition, the secretary shall not make reference, as included in his calculations, estimations or projections to any proposed capital expansion plan contained in any pending legislation. The secretary shall submit said report no later than December thirty-first, nineteen hundred and ninety-four.

SECTION 15. The chief justice for administration and management of the trial court, the Massachusetts sentencing commission and the secretary of public safety are hereby authorized and directed to make an investigation and study relative to evaluating the effectiveness of this act and shall file a report with the clerk of the house of representatives who shall forward the same to the house and senate committees on ways and means, no earlier than twelve months but no later than twenty-four months after the effective date of

this act. Said investigation and study shall include:

(*a*) whether the act shows a quantifiable improvement relative to motor vehicle accidents whose proximate cause is the operator being statutorily under the influence of intoxicating liquor; (*b*) whether a reduction from ten one-hundredths to eight one-hundredths alcohol content to attach the presumption of operating under the influence of intoxicating liquor creates any statistical significance concerning property damage or personal injury motor vehicle accidents on the highways of the commonwealth; (*c*) whether the sanctions imposed on minors operating while generating a two one-hundredths blood alcohol content measurably reduces underage drinking and driving in the commonwealth; (*d*) effectiveness and costs arising from the imposition of mandatory minimum sentencing; (*e*) the effectiveness and costs of alcohol or controlled substance education, treatment or rehabilitation programs to reduce recidivism of driving under the influence; and (*f*) the additional costs, if any, that the lower standard of blood alcohol content level proscribed in this act will have on the law enforcement community with regard to increased use of roadblocks, as well as the additional costs to the judiciary with regard to the prosecution of individuals arrested under the said lower blood alcohol content level.

SECTION 16. Notwithstanding the provisions of paragraph (f) of subdivision (1) of section twenty-four of chapter ninety of the General Laws, inserted by section five of this act, to the contrary, no police officer shall take custody of a person's driver's license or permit, nor provide a written notice of intent to suspend nor issue a temporary driving permit concerning any violation under said section twenty-four which shall occur within thirty days of the effective date of section five of this act; provided, however, that such person's license or permit shall be taken by the court in accordance with section twenty-four N of said chapter ninety at the time of the person's arraignment.

Approved May 27, 1994.

Chapter 26. AN ACT RELATIVE TO THE REPORT OF THE FINANCE COMMITTEE OF THE TOWN OF SAUGUS.

Be it enacted, etc., as follows:

Section 38 of chapter 17 of the acts of 1947, as amended by chapter 141 of the acts of 1984, is hereby further amended by adding the following sentence:- The report of the finance committee together with the annual budget for the subsequent fiscal year shall be transmitted to each member of the town meeting not later than the third Monday of April.

Approved May 27, 1994.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XIV. Public Ways and Works (Ch. 81-92b)
Chapter 90. Motor Vehicles and Aircraft (Refs & Annos)

This section has been updated. Click here for the updated version.

M.G.L.A. 90 § 24

§ 24. Driving while under influence of intoxicating liquor, etc.; second and subsequent offenses; punishment; treatment programs; reckless and unauthorized driving; failure to stop after collision

Effective: July 1, 2003 to October 27, 2005

(1) (a) (1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two and one-half years, or both such fine and imprisonment.

There shall be an assessment of $250 against a person who, by a court of the commonwealth, is convicted of, is placed on probation for, or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle while under the influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances under this section; but $125 of the $250 collected under this assessment shall be deposited by the court with the state treasurer into the Head Injury Treatment Services Trust Fund, and the remaining amount of the assessment shall be credited to the General Fund. In the discretion of the court, an assessment under this paragraph may be reduced or waived only upon a written finding of fact that such payment would cause the person against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a finding of indigency for purposes of appointing counsel. If the person is sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court shall note the assessment on the mittimus.

There shall be an assessment of $50 against a person who is convicted, placed on probation or granted a continuance without a finding or who otherwise pleads guilty to or admits to a finding of sufficient facts for operating a motor vehicle while under the influence of intoxicating liquor or under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined by section 1 of chapter 94C, pursuant to this section or section 24D or 24E or subsection (a) or (b) of section 24G or section 24L. The assessment shall not be subject to waiver by the court for any reason. If a person against whom a fine is assessed is sentenced to a correctional facility and the assessment has not been paid, the court shall note the assessment on the mittimus. The monies collected pursuant to the fees established by this paragraph shall be transmitted monthly by the courts to the state treasurer who shall then deposit, invest and transfer the monies, from time to time, into the Victims of Drunk Driving Trust Fund established in section 66 of chapter 10. The monies shall then be administered, pursuant to said section 66 of said chapter 10, by the victim and witness assistance board for the purposes set forth in said section 66. Fees paid by an individual into the Victims of Drunk Driving Trust Fund pursuant to this section shall be in addition to, and not in lieu of, any other fee imposed by the court pursuant to this chapter or any other chapter. The administrative office of the trial court shall file a report detailing the amount of funds imposed and collected pursuant to this section to the house and senate committees on ways and means and to the victim and witness assistance board not later than August 15 of each calendar year.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not less than sixty days nor more than two and one-half years; provided, however, that the sentence imposed upon such person shall not be reduced to less than thirty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served thirty days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such thirty day sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or any other jurisdiction because of a like offense two times preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment for not less than one hundred and eighty days nor more than two and one-half years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served one hundred and fifty days of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative, to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such one hundred and fifty days sentence to the extent such resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense three times preceding the date of the commission of the offense for which he has been convicted the defendant shall be punished by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment for not less than two years nor more than two and one-half years, or by a fine of not less than one thousand five hundred nor more than twenty-five thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twelve months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until such person has served twelve months of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-

three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twelve months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

If the defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense four or more times preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment for not less than two and one-half years or by a fine of not less than two thousand nor more than fifty thousand dollars and by imprisonment in the state prison for not less than two and one-half years nor more than five years; provided, however, that the sentence imposed upon such person shall not be reduced to less than twenty-four months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served twenty-four months of such sentence, unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the recovery of an offender who has completed an alcohol or controlled substance education, treatment or rehabilitation program operated by the department of correction; and provided, further, that the defendant may serve all or part of such twenty-four months sentence to the extent that resources are available in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

A prosecution commenced under the provisions of this subparagraph shall not be placed on file or continued without a finding except for dispositions under section twenty-four D. No trial shall be commenced on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on such complaint, nor shall the prosecution on such complaint be transferred to another division of the district court or to a jury-of-six session, until the court receives a report from the commissioner of probation pertaining to the defendant's record, if any, of prior convictions of such violations or of assignment to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense; provided, however, that the provisions of this paragraph shall not justify the postponement of any such trial or of the acceptance of any such plea for more than five working days after the date of the defendant's arraignment. The commissioner of probation shall give priority to requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty-five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations. If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived his right to a jury trial on all elements of said complaint.

(2) Except as provided in subparagraph (4) the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be imprisoned only on designated weekends, evenings or holidays; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such violation or assigned to an alcohol or controlled substance education, treatment or rehabilitation program preceding the date of the commission of the offense for which he has been convicted.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like offense two or more times of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation department of a copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years; provided, however, that a condition for such probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program and to participate in an out patient counseling program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of health and human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program. Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced. In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation, the court shall forthwith specify a second date before which such defendant shall attend or complete such program, and unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such person be eligible for furlough or receive any reduction from his sentence for good conduct until such person has served two days of such sentence; and provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than thirty days as provided in subparagraph (1) for such a defendant.

The defendant shall pay for the cost of the services provided by the residential alcohol treatment program; provided, however, that no person shall be excluded from said programs for inability to pay; and provided, further, that such person files with

the court, an affidavit of indigency or inability to pay and that investigation by the probation officer confirms such indigency or establishes that payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of the cost of said program.

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D; provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Notwithstanding the provisions of section twenty-two, the revocation, reinstatement or issuance of a license or right to operate by reason of a violation of paragraph (a) shall be controlled by the provisions of this section and sections twenty-four D and twenty-four E.

(c) (1) Where the license or right to operate has been revoked under section twenty-four D or twenty-four E, or revoked under paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has been terminated in favor of the defendant, until one year after the date of conviction; provided, however, that such person may, after the expiration of three months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of six months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and that such person shall have successfully completed the residential treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program mandated by section twenty-four D, and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of one year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3) Where the license or right to operate of any person has been revoked under paragraph (b) and such person has been previously convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program because of a like offense by a court of the commonwealth or any other jurisdiction two times preceding the date of the commission of the crime for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section due to a prior revocation under paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until eight years after the date of conviction; provided however, that such person may, after the expiration of two years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes, which license shall be effective for not more than an identical twelve hour period every day, on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of four years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3 ½) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation three times preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has been terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of the conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or education purposes which license shall be effective for an identical twelve hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such license under such terms and conditions as he deems appropriate and necessary; and provided, further, that such person may, after the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under the terms and conditions as he deems appropriate and necessary.

(3 ¾) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation four or more times preceding the date of the commission of the offense for which such person has been convicted, such person's license or right to operate a motor vehicle shall be revoked for the life of such person, and such person shall not be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship; provided, however, that such license shall be restored or such right to operate shall be reinstated if the prosecution of such person has been terminated in favor of such person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section.

(4) Notwithstanding the foregoing, no new license shall be issued or right to operate be reinstated by the registrar to any person convicted of a violation of subparagraph (1) of paragraph (a) until ten years after the date of conviction in case the registrar determines upon investigation and after hearing that the action of the person so convicted in committing such offense caused an accident resulting in the death of another, nor at any time after a subsequent conviction of such an offense, whenever committed,

in case the registrar determines in the manner aforesaid that the action of such person, in committing the offense of which he was so subsequently convicted, caused an accident resulting in the death of another.

(d) For the purposes of subdivision (1) of this section, a person shall be deemed to have been convicted if he pleaded guilty or nolo contendere or was found or adjudged guilty by a court of competent jurisdiction, whether or not he was placed on probation without sentence or under a suspended sentence or the case was placed on file, and a license may be revoked under paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise after such a conviction. Where there has been more than one conviction in the same prosecution, the date of the first conviction shall be deemed to be the date of conviction under paragraph (c) hereof.

(e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any proceedings provided for in section twenty-four N. If such evidence is that such percentage was five one-hundredths or less, there shall be a permissible inference that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor; provided, however, that in an instance where a defendant is under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other actions directed therein, if such evidence is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall be no permissible inference. A certificate, signed and sworn to, by a chemist of the department of the state police or by a chemist of a laboratory certified by the department of public health, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

(f) (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section fifty-one of chapter one hundred and eleven; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section one of chapter ninety C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for at least a period of 180 days, but not more than 1 year for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 or who has been previously convicted of a violation under this section or a like violation by a court of any other jurisdiction shall have his license or right to operate suspended forthwith for a period of 1 year for such refusal; and provided further, that any person previously convicted 2 or more times for a violation under this section or a like violation by a court of

any other jurisdiction shall have his license or right to operate suspended forthwith for a period of 18 months for such refusal. If a person refuses to take a test under this section, the police officer shall do the following:

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

(ii) provide each such person who refuses such test, on behalf of the registrar, with a written notice of intent to suspend in a format approved by the registrar;

(iii) issue to each such person who refuses such test, on behalf of the registrar, a temporary driving permit, unless: (1) driving privileges of the person were suspended, revoked, or canceled at the time the person was arrested; (2) the person whose license was taken into custody was operating on an invalid license; (3) the person was not entitled to driving privileges at the time of the arrest for any other reason; or (4) the person holds a license or permit granting driving privileges that was issued by another state or jurisdiction. Police officers, cities, towns, and other public employers shall not be civilly liable for any injury or loss of property or personal injury or death which may result from, or be connected with, any act in issuing any temporary driving permit under this section.

The police officer before whom such refusal was made shall immediately prepare a report of such refusal. Each such report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each such report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on any such way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to such chemical test or analysis when requested by such police officer to do so, such refusal having been witnessed by another person other than the defendant. Each such report shall identify which police officer requested said chemical test or analysis, and the other person witnessing said refusal. Each such report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in any form, including electronic or otherwise, that the registrar deems appropriate. Any driver's license or permit confiscated pursuant to this subparagraph (1) shall be forwarded to the registrar forthwith. Said report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding any suspension specified in this section.

The license suspension shall become effective fifteen days after the offender has received the notice of intent to suspend from the police officer. No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section twenty-four G or twenty-four L, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

The registrar shall provide police departments and agencies with permits for issuance as required by this subparagraph. The registrar shall establish the form and content of permits described in this section as the registrar determines appropriate, but in a manner consistent with this section. A temporary driving permit described in this section shall become effective twelve hours after the stated time of such issuance and shall remain valid until the fifteenth day after the date of arrest; shall be issued without payment fee; and, except as otherwise provided, such permit shall grant the same driving privileges as those granted by the person's license taken into possession under this subparagraph.

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

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

(ii) provide each such person who refuses such test, on behalf of the registrar, with a written notice of intent to suspend, in a format approved by the registrar;

(iii) issue to each such person who refuses such test, on behalf of the registrar, a temporary driving permit, unless: (1) driving privileges of the person were suspended, revoked or canceled at the time the person was arrested; (2) the person whose license was taken into custody was operating on an invalid license; (3) the person was not entitled to driving privileges at the time of the arrest for any other reason; or (4) the person holds a license or permit granting driving privileges that was issued by another state or jurisdiction. Police officers, cities, towns and other public employers shall not be civilly liable for any injury or loss of property or personal injury or death which may result from or be connected with any act in issuing a temporary driving permit under this section.

(iv) immediately report action taken under this paragraph to the registrar. Each such report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by such police officer. Each such report shall set forth the grounds for the officer's belief that the person arrested has been operating a motor vehicle on any such way or place while under the influence of intoxicating liquor and that said person's blood alcohol percentage was not less than eight one-hundredths or that said person was under twenty-one years of age at the time of the arrest and whose blood alcohol percentage was not less than two one-hundredths. Said report shall also indicate that the person was administered such a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of such test, that the test was performed in accordance with the regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Each such report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend, in any form, including electronic or otherwise, that the registrar deems appropriate. Any driver's license or permit confiscated pursuant to this clause (iv) shall be forwarded to the registrar forthwith.

The license suspension shall become effective fifteen days after the offender has received the notice of intent to suspend from the police officer. The license to operate a motor vehicle shall remain suspended until the disposition of the offense for which the person is being prosecuted, but in no event shall such suspension pursuant to this subparagraph exceed 30 days.

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

The registrar shall provide police departments and agencies with permits for issuance as required by this subparagraph. The registrar shall establish the form and content of permits described in this section as the registrar determines appropriate, but in a manner consistent with this section. A temporary driving permit described in this section shall become effective twelve hours after the stated time of such issuance and shall remain valid until the fifteenth day after the date of issuance; shall be issued without payment of any fee; and except as otherwise provided, such permit shall grant the same driving privileges as those granted by the person's license taken into possession under this subparagraph.

(g) Any person whose license, permit or right to operate has been suspended under subparagraph (1) of paragraph (f) shall, within fifteen days of suspension, be entitled to a hearing before the registrar which shall be limited to the following issues: (i) did the police officer have reasonable grounds to believe that such person had been operating a motor vehicle while under the influence of intoxicating liquor upon any way or in any place to which members of the public have a right of access or upon any way to which members of the public have a right of access as invitees or licensees, (ii) was such person placed under arrest, and (iii) did such person refuse to submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said issues in the negative, the registrar shall forthwith reinstate such license, permit or right to operate. The registrar shall create and preserve a record at said hearing for judicial review. Within thirty days of the issuance of the final determination by the registrar following a hearing under this paragraph, a person aggrieved by the determination shall have the right to file a petition in the district court for the judicial district in which the offense occurred for judicial review. The filing of a petition for judicial review shall not stay the revocation or suspension. The filing of a petition for judicial review shall be had as soon as possible following the submission of said request, but not later than thirty days following the submission thereof. Review by the court shall be on the record established at the hearing before the registrar. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the registrar's determination.

Any person whose license or right to operate has been suspended pursuant to subparagraph (2) of paragraph (f) on the basis of chemical analysis of his breath may within ten days of such suspension request a hearing and upon such request shall be entitled to a hearing before the court in which the underlying charges are pending or if the individual is under the age of twenty-one and there are no pending charges, in the district court having jurisdiction where the arrest occurred, which hearing shall be limited to the following issue; whether a blood test administered pursuant to paragraph (e) within a reasonable period of time after such chemical analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood was less than eight one-hundredths or, relative to such person under the age of twenty-one was less than two one-hundredths. If the court finds that such a blood test shows that such percentage was less than eight one-hundredths or, relative to such person under the age of twenty-one, that such percentage was less than two one-hundredths, the court shall restore such person's license, permit or right to operate and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such restoration.

(h) Any person convicted of a violation of subparagraph (1) of paragraph (a) that involves operating a motor vehicle while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, may, as part of the disposition in the case, be ordered to participate in a driver education program or a drug treatment or drug rehabilitation program, or any combination of said programs. The court shall set such financial and other terms for the participation of the defendant as it deems appropriate.

(2) (a) Whoever upon any way or in any place to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, operates a motor vehicle recklessly, or operates such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or whoever operates a motor vehicle for the purpose of making a record and thereby violates any provision of section seventeen or any regulation under section eighteen, or whoever without stopping and making known his name, residence and the register number of his motor vehicle goes away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or whoever loans or knowingly permits his license or learner's permit to operate motor vehicles to be used by any person, or whoever makes false statements in an application for such a license or learner's permit, or whoever knowingly makes any false statement in an

application for registration of a motor vehicle, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a motor vehicle without authority knowing that such use is unauthorized shall, for the first offense be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for not less than thirty days nor more than two years, or both, and for a second offense by imprisonment in the state prison for not more than five years or in a house of correction for not less than thirty days nor more than two and one half years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; and whoever is found guilty of a third or subsequent offense of such use without authority committed within five years of the earliest of his two most recent prior offenses shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by imprisonment for not less than six months nor more than two and one half years in a house of correction or for not less than two and one half years nor more than five years in the state prison or by both fine and imprisonment. A summons may be issued instead of a warrant for arrest upon a complaint for a violation of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons.

There shall be an assessment of $250 against a person who, by a court of the commonwealth, is convicted of, is placed on probation for or is granted a continuance without a finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a motor vehicle negligently so that the lives or safety of the public might be endangered under this section; but $125 of the $250 collected under this assessment shall be deposited by the court with the state treasurer into the Head Injury Treatment Services Trust Fund and the remaining amount of said assessment shall be credited to the General Fund. At the discretion of the court, an assessment under this paragraph may be reduced or waived only upon a written finding of fact that such payment would cause the person against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a finding of indigence for purposes of appointing counsel. If the person is sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court shall note the assessment on the mittimus.

(a ½) (1) Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which members of the public shall have access as invitees or licensees, and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away after knowingly colliding with or otherwise causing injury to any person not resulting in the death of any person, shall be punished by imprisonment for not less than six months nor more than two years and by a fine of not less than five hundred dollars nor more than one thousand dollars.

(2) Whoever operates a motor vehicle upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public shall have access as invitees or licensees and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if the injuries result in the death of a person, be punished by imprisonment in the state prison for not less than two and one-half years nor more than ten years and by a fine of not less than one thousand dollars nor more than five thousand dollars or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and by a fine of not less than one thousand dollars nor more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this paragraph be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this paragraph, a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution or to engage in employment pursuant to a work release program.

(3) Prosecutions commenced under subparagraph (1) or (2) shall not be continued without a finding nor placed on file.

(b) A conviction of a violation of paragraph (a) or paragraph (a ½) of subdivision (2) of this section shall be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or right to operate. If it appears by the records of the registrar that the person so convicted is the owner of a motor vehicle or has exclusive control of any motor vehicle as a manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all motor vehicles so owned or exclusively controlled.

(c) The registrar, after having revoked the license or right to operate of any person under paragraph (b), in his discretion may issue a new license or reinstate the right to operate to him, if the prosecution has terminated in favor of the defendant. In addition, the registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate to a person convicted in any court for a violation of any provision of paragraph (a) or (a ½) of subdivision (2); provided, however, that no new license or right to operate shall be issued by the registrar to: (i) any person convicted of a violation of subparagraph (1) of paragraph (a ½) until one year after the date of revocation following his conviction if for a first offense, or until two years after the date of revocation following any subsequent conviction; (ii) any person convicted of a violation of subparagraph (2) of paragraph (a ½) until three years after the date of revocation following his conviction if for a first offense or until ten years after the date of revocation following any subsequent conviction; (iii) any person convicted, under paragraph (a) of using a motor vehicle knowing that such use is unauthorized, until one year after the date of revocation following his conviction if for a first offense or until three years after the date of revocation following any subsequent conviction; and (iv) any person convicted of any other provision of paragraph (a) until sixty days after the date of his original conviction if for a first offense or one year after the date of revocation following any subsequent conviction within a period of three years. The registrar, after investigation, may at any time rescind the revocation of a license or right to operate revoked because of a conviction of operating a motor vehicle upon any way or in any place to which the public has a right of access or any place to which members of the public have access as invitees or licensees negligently so that the lives or safety of the public might be endangered. The provisions of this paragraph shall apply in the same manner to juveniles adjudicated under the provisions of section fifty-eight B of chapter one hundred and nineteen.

(3) The prosecution of any person for the violation of any provision of this section, if a subsequent offence, shall not, unless the interests of justice require such disposition, be placed on file or otherwise disposed of except by trial, judgment and sentence according to the regular course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on motion in writing stating specifically the reasons therefor and verified by affidavits if facts are relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons relied upon are sufficient and that the interests of justice require the allowance of the motion, the motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and certificate shall be sent by the court or magistrate forthwith to the registrar.

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or prior finding of sufficient facts by either original court papers or certified attested copy of original court papers, accompanied by a certified attested copy of the biographical and informational data from official probation office records, shall be prima facie evidence that a defendant has been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program because of a like offense by a court of the commonwealth one or more times preceding the date of commission of the offense for which said defendant is being prosecuted.

Credits

Amended by St.1932, c. 26, § 1; St.1935, c. 360; St.1936, c. 182, §§ 1, 2; St.1936, c. 434, § 1; St.1937, c. 117; St.1937, c. 230, § 1; St.1938, c. 145; St.1939, c. 82; St.1955, c. 198, §§ 1 to 3; St.1961, c. 340; St.1961, c. 347; St.1961, c. 422, § 2; St.1962, c. 394, § 2; St.1963, c. 369, § 2; St.1964, c. 200, §§ 1 to 5; St.1966, c. 191, § 1; St.1966, c. 316; St.1967, c. 773; St.1968, c. 259; St.1969, c. 7; St.1969, c. 163; St.1969, c. 202; St.1970, c. 253; St.1971, c. 1007, § 1; St.1971, c. 1071, § 4; St.1972, c. 111; St.1972, c. 376; St.1972, c. 488, §§ 1, 2; St.1973, c. 227; St.1973, c. 243; St.1974, c. 206, § 2; St.1974, c. 418; St.1974, c. 425; St.1974, c. 647, § 2; St.1975, c. 156, § 1; St.1980, c. 383, §§ 1, 2; St.1982, c. 373, §§ 2 to 5; St.1984, c. 189, § 65; St.1986, c. 620, §§ 5 to 13; St.1986, c. 677, § 1; St.1991, c. 138, § 287; St.1991, c. 460, §§ 1 to 4; St.1992, c. 133, §§ 447, 587; St.1992, c. 379, §§ 1B, 1C; St.1993, c. 12, § 1; St.1994, c. 25, §§ 3 to 6; St.1994, c. 60, §§ 101 to 109; St.1995, c. 38, §§ 110 to 116; St.1996, c.

151, § 236; St.1996, c. 450, §§ 137, 138; St.1997, c. 43, §§ 79, 80; St.1998, c. 161, § 317; St.1999, c. 127, §§ 108, 109; St.2002, c. 52, § 2; St.2002, c. 302, §§ 1 to 4; St.2003, c. 26, §§ 228, 229, eff. July 1, 2003; St.2003, c. 28, §§1 to 7, eff. June 30, 2003.

M.G.L.A. 90 § 24, MA ST 90 § 24
Current through Chapters 1, 3 and 4 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

End of Document

Leominster shall be designated and known as the Peter J. Levanti Bridge, in honor of Peter Levanti of the city of Fitchburg, a former city councilor, mayor, and state representative from said city. Suitable markers bearing said designation shall be attached thereto by the department of public works in compliance with the standards of said department and as authorized by the Federal Highway Administration.

Approved July 3, 1980.

Chap. 382. AN ACT DESIGNATING A CERTAIN CIRCLE AND INTERSECTION IN THE CITY OF REVERE AS THE TIMOTHY J. MAHONEY MEMORIAL CIRCLE.

Be it enacted, etc., as follows:

The traffic circle and intersection of state highway routes 1A, 16 and 60 at Beach street in the city of Revere shall be designated and known as the Timothy J. Mahoney Memorial Circle. The department of public works shall attach a suitable marker bearing said designation in compliance with the standards of said department and as authorized by the federal highway administration.

Approved July 3, 1980.

Chap. 383. AN ACT FURTHER REGULATING THE TAKING OF BLOOD FOR CHEMICAL TESTS AND ANALYSES DESIGNED TO MEASURE WHETHER PERSONS WERE OPERATING MOTOR VEHICLES WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR.

Be it enacted, etc., as follows:

SECTION 1. Subdivision (1) of section 24 of chapter 90 of the General Laws is hereby amended by striking out paragraph (e), as most recently amended by chapter 425 of the acts of 1974, and inserting in place thereof the following paragraph:-

(e) In any prosecution for a violation of paragraph (a) of this subdivision, evidence of the percentage, by weight, of alcohol in the defendent's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the

results thereof were made available to him upon his request, and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such test or analysis made by a person or physician selected by him; and provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal proceeding, but shall be admissible in any action by the registrar under paragraph (f). If such evidence is that such percentage was five one-hundredths or less, there shall be a presumption that such defendant was not under the influence of intoxicating liquor, and he shall be released from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest, if such police officer had reasonable grounds to believe that the person arrested had been operating a motor vehicle upon any such way or place while under the influence of intoxicating liquor; if such evidence is that such percentage was more than five one-hundredths but less than ten one-hundredths, there shall be no presumption; and if such evidence is that such percentage was ten one-hundredths or more, there shall be a presumption that such defendant was under the influence of intoxicating liquor. A certificate, signed and sworn to, by a chemist of the department of public safety or by a chemist of a laboratory certified by said department, which contains the results of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of the percentage of alcohol in such blood.

SECTION 2. Paragraph (f) of said section 24 of said chapter 90 is hereby amended by striking out the first and second sentences, as appearing in chapter 773 of the acts of 1967, and inserting in place thereof the following two sentences: - Whoever operates a motor vehicle upon any way or in any place to which the public has right of access, or upon any way or in any place to which the public have access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, that no person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section fifty-one of chapter one hundred and eleven; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section one of chapter

ninety C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor.

Approved July 2, 1980.

EMERGENCY LETTER - July 4, 1980 @ 9.00 A.M.

Chap. 384. AN ACT AUTHORIZING CITIES AND TOWNS TO ESTABLISH AN ENERGY RESOURCES COMMISSION.

Be it enacted, etc., as follows:

Chapter 40 of the General Laws is hereby amended by inserting after section 8H the following section:-

Section 8I. A city or town which accepts this section may establish an energy resources commission, hereinafter called the commission, for the promotion and development of the energy resources of said city or town. Such commission shall: (1) develop and administer programs relating to energy conservation, nonrenewable energy supply and resource development, recycling, energy information, emergency heating assistance, and energy emergencies; (2) advise, assist, and cooperate with state, regional, and federal agencies in developing appropriate programs and policies relating to energy planning and regulation in the commonwealth including assistance and advice in the preparation of loan or grant applications with respect to energy programs for local agencies; (3) develop local energy data and information management capabilities to aid energy planning and decision-making; (4) promote the development of sound local energy education programs; (5) with the approval of the city or town, apply for, receive, expend, represent and act on behalf of the city or town in connection with federal grants, grant programs or reimbursements, or private grants, keep accounts, records, personal data, enter into contracts, and adjust claims; (6) accept gifts, grants, bequests, and devises, whether real or personal, from any source, whether public or private, for the purpose of assisting the commission in the discharge of its duties; (7) subject to appropriation, acquire real or personal property; (8) promulgate rules and regulations necessary to carry out their statutory responsibilities; (9) seek to coordinate the activities of governmental or unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work and it shall keep an index of all energy resources within such city or town with the objective of obtaining information pertinent to proper utilization of such resources; (10) it shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The

twelfth, — so as to read as follows: — *Section 33.* The provisions of this chapter shall apply from midnight to midnight on each of the following holidays, except as provided in section thirty-seven, and the public offices shall be closed on all of said days: — January first, May thirtieth, July fourth, First Monday of September, October twelfth, November eleventh, Thanksgiving Day, and Christmas Day.

SECTION 2. Section thirty-four of chapter one hundred and thirty-six, as so inserted, is hereby repealed. *Approved April 7, 1961.*

Chap. 339. AN ACT AUTHORIZING THE TOWN OF WEBSTER TO APPROPRIATE AND PAY A SUM OF MONEY TO LAPLANTE BROS.

Be it enacted, etc., as follows:

SECTION 1. The town of Webster is hereby authorized to appropriate and pay to LaPlante Bros. the sum of two hundred and fifty-one dollars and fifteen cents for materials furnished by it to said town, claim for which materials is legally unenforceable against said town by reason of the failure to conform with a town by-law.

SECTION 2. No bill shall be approved by the town accountant of said town for payment or paid by the treasurer thereof under authority of this act unless and until certificates have been signed and filed with said town accountant, stating under the penalties of perjury that the goods and materials were delivered and actually received by said town.

SECTION 3. Any person who knowingly files a certificate required by section two, which is false, and who thereby receives payment for goods or materials which were not received by said town, shall be punished by imprisonment for not more than one year or by a fine of not more than three hundred dollars, or both.

SECTION 4. This act shall take effect upon its passage.

Approved April 10, 1961.

Chap. 340. AN ACT PROVIDING THAT, IN PROSECUTIONS FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR, EVIDENCE OF THE PERCENTAGE OF ALCOHOL IN THE BLOOD OF THE DEFENDANT SHALL BE ADMISSIBLE AND CREATE CERTAIN PRESUMPTIONS.

Be it enacted, etc., as follows:

Section 24 of chapter 90 of the General Laws is hereby amended by adding after paragraph (1) (*d*) the following paragraph: — (*e*) In any prosecution for a violation of paragraph (1) (*a*) of this section, evidence of the percentage, by weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his blood or as indicated by chemical test or analysis of his breath, shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the influence of intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a police officer, it was made with the consent of the defendant, the results thereof were made available to him upon his request, and the defendant was afforded a reasonable opportunity, at his request and at his expense, to have another such

test or analysis made by a person or physician selected by him. Evidence that the defendant failed or refused to consent to such test or analysis shall not be admissible against him in any civil or criminal proceeding. Blood shall not be withdrawn from any such defendant for the purposes of any such test or analysis except by a physician. If such evidence is that such percentage was five one hundredths or less, there shall be a presumption that such defendant was not under the influence of intoxicating liquor; if such evidence is that such percentage was more than five one hundredths but less than fifteen one hundredths, there shall be no presumption; and if such evidence is that such percentage was fifteen one hundredths or more, there shall be a presumption that such defendant was under the influence of intoxicating liquor.

Approved April 10, 1961.

Chap. 341. AN ACT RELATIVE TO THE DISTRIBUTION OF DIVIDENDS ON INSURANCE POLICIES AND ANNUITY CONTRACTS AND THE DISCONTINUANCE OF THE ISSUANCE OF SUCH POLICIES AND CONTRACTS BY SAVINGS AND INSURANCE BANKS.

Be it enacted, etc., as follows:

SECTION 1. The last sentence of section 21 of chapter 178 of the General Laws, as appearing in section 2 of chapter 285 of the acts of 1936, is hereby amended by adding after the word "seventy-five", in line 7, the following: —, provided, however, that a savings and insurance bank having an insurance department which has been licensed for over five years, whose surplus is less than five per cent of its net insurance reserve, may distribute to its holders of insurance policies and annuity contracts only such amount as dividends as the trustees of the General Insurance Guaranty Fund approve.

SECTION 2. Section 25 of said chapter 178, as appearing in the Tercentenary Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — When a bank which has voted to discontinue said business has so reinsured its outstanding policies and annuity contracts, or fully performed the same, it shall transfer all the assets of the insurance department remaining after paying all its liabilities, including special guaranty fund certificates issued under section four or five, to such reinsuring savings and insurance banks or such purely mutual legal reserve life insurance company.

Approved April 10, 1961.

Chap. 342. AN ACT PROVIDING A PENALTY FOR COMPELLING OR COERCING ANY PERSON TO REFUSE AN APPOINTMENT OR PROMOTION IN THE CLASSIFIED CIVIL SERVICE.

Be it enacted, etc., as follows:

Chapter 268 of the General Laws is hereby amended by inserting after section 8A the following section: — *Section 8B.* Any appointing authority or appointing officer, both as defined in chapter thirty-one, who, by himself or by some other person acting on his behalf, compels, or induces by the use of threats or other form of coercion, any person on an eligible list, as defined in chapter thirty-one, to refuse an appoint-

sion and use as the ERDA may require including a provision that the use of such land and buildings for the purposes of SERI shall not be subject to any law or condition which would impede the full use thereof for said purposes. Any land placed under the control of the executive office of administration and finance by this act which is not conveyed to ERDA, as provided in section two, shall be held by said office subject to disposition by the general court.

In the event that the SERI contract with the manager-operator is terminated in its entirety prior to the exercise of said option, the option shall cease as of the date of such termination, unless the secretary of administration and ERDA agree otherwise.

Approved July 2, 1976.

Chap. 227. AN ACT IMPOSING CERTAIN PENALTIES FOR CAUSING THE DEATH OF PERSONS AS THE RESULT OF CERTAIN IMPROPER OPERATION OF MOTOR VEHICLES.

Be it enacted, etc., as follows:

Chapter 90 of the General Laws is hereby amended by inserting after section 24F, inserted by chapter 218 of the acts of 1975, the following section:-

Section 24G. Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle in violation of paragraph (*a*) of subdivision (1) of section twenty-four of chapter ninety, or so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than thirty days nor more than two and one-half years, or by a fine of not less than three hundred nor more than three thousand dollars, or both.

Approved July 2, 1976.

Chap. 228. AN ACT EXCLUDING FEDERAL PENSIONS OR RETIREMENT BENEFITS IN THE COMPUTATION OF UNEMPLOYMENT COMPENSATION BENEFITS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to prevent the termination of financial assistance to certain former federal employees in July of the current year, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. The term "retirement benefit" as used in

made annually or biennially by an independent auditor to be selected by such regional school districts to conduct such audits. Such audits shall be made in accordance with federal government auditing standards.

Approved December 17, 1986.

Chapter 620. AN ACT RELATIVE TO IMPROVING SAFETY ON THE HIGHWAYS AND ROADS OF THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for an increase in the penalties for operating under the influence, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted, etc., as follows:

SECTION 1. To provide for supplementing certain items in the general appropriation act and for certain other activities and projects, the sums set forth in section two for the several purposes and subject to the provisions of law regulating the disbursement of public funds and the conditions pertaining to appropriations in chapter two hundred and six of the acts of nineteen hundred and eighty-six, for the fiscal year ending June thirtieth, nineteen hundred and eighty-seven or for such period as may be specified, the sums so appropriated to be in addition to any amounts available for the purpose.

SECTION 2.

EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE.

Miscellaneous.

1599-3609 For a reserve to implement the Safe Roads Act,so-called; provided, however, that funds appropriated herein may be transferred to other items of appropriation, including accounts under the control of the chief administrative justice of the trial courts; provided, further, that funds appropriated herein may be used to fund (1) programs in alcohol education and education in the laws relating to alcohol and motor vehicle use, to be administered by the office of the chief administrative justice of the trial court, for judicial and nonjudicial trial court personnel and district attorneys and their staffs, (2) pilot programs in three district courts to implement a uniform presentence reporting system and a direct linkup between said courts and the registry of motor vehicles' computerized record system, (3) the develop-

ment by the department of public health of programs established specifically for the education and treatment of drinking drivers under the age of twenty–one, and (4) the compensation through line item 0611–5000 of seriously injured victims of drivers found to have been operating under the influence of intoxicating liquor; provided, however, that all federal funds available for such purposes have been expended; and provided, further, that expenditures from this item shall be made in accordance with schedules approved by the house and senate committees on ways and means and that a progress report on programs funded from this item shall be submitted to the house and senate committees on post audit and oversight and the house and senate committees on ways and means no later than April thirtieth, nineteen hundred and eighty–seven	$500,000

SECTION 3. Section 23 of chapter 90 of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:–

Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of section twenty–four, or pursuant to section twenty–four D, twenty–four E, twenty–four G, twenty–four L, or twenty–four N, or after notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate shall be punished by a fine of not less than one thousand nor more than ten thousand dollars and by imprisonment in a house of correction for not less than sixty days and not more than two and one–half years; provided, however, that the sentence of imprisonment imposed upon such person shall not be reduced to less than sixty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this paragraph a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. The provisions of section eighty–seven of chapter two hundred and seventy–six shall not apply to any person charged with a violation of this paragraph. Prosecutions commenced under this paragraph shall not be placed

on file or continued without a finding.

SECTION 4. The last paragraph of said section 23 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:– A certificate of a clerk of court that a person's license or right to operate a motor vehicle was suspended for a specified period shall be admissible as prima facie evidence in any court of the commonwealth to prove the facts certified to therein in any prosecution commenced under this section.

SECTION 5. The second paragraph of subparagraph (1) of paragraph (a) of subdivision (1) of section 24 of said chapter 90, as so appearing, is hereby amended by striking out, in lines 15, 17 and 20, the word "seven" and inserting in place thereof, in each instance, the word:– fourteen.

SECTION 6. The third paragraph of said subparagraph (1) of said paragraph (a) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out, in lines 36, 37 and 40, the word "sixty" and inserting in place thereof, in each instance, the word:– ninety,– and by inserting after the word "program", in line 50, the words:– ; provided, further, that the defendant shall serve such ninety day sentence in a correctional facility specifically designated by the department of correction for the incarceration and rehabilitation of drinking drivers.

SECTION 7. Said subparagraph (1) of said paragraph (a) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out the fourth and fifth paragraphs and inserting in place thereof the following three paragraphs:–

If the defendant has been previously convicted or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like offense three or more times within six years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than five hundred nor more than one thousand dollars and by imprisonment for not less than six months nor more than two years; provided, however, that the sentence imposed upon such person shall not be reduced to less than six months nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served six months of such sentence; provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program.

A prosecution commenced under the provisions of subparagraph (1) shall not be placed on file or continued without a finding except for dispositions under section twenty-four D. No trial shall be commenced

on a complaint alleging a violation of this subparagraph, nor shall any plea be accepted on such a complaint, nor shall the prosecution on such a complaint be transferred to another division of the district court or to a jury–of–six session, until the court receives a report from the commissioner of probation pertaining to the defendant's record, if any, of prior convictions of such violations or of assignment to an alcohol education or rehabilitation program because of a like offense; provided, however, that the provisions of this paragraph shall not justify the postponement of any such trial or of the acceptance of any such plea for more than five working days after the date of the defendant's arraignment. The commissioner of probation shall give priority to requests for such records.

At any time before the commencement of a trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may apply for the issuance of a new complaint pursuant to section thirty–five A of chapter two hundred and eighteen alleging a violation of this subparagraph and one or more prior like violations.
If such application is made, upon motion of the prosecutor, the court shall stay further proceedings on the original complaint pending the determination of the application for the new complaint. If a new complaint is issued, the court shall dismiss the original complaint and order that further proceedings on the new complaint be postponed until the defendant has had sufficient time to prepare a defense.

SECTION 8. Subparagraph (3) of said paragraph (a) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by inserting after the word "holidays", in line 77, the words:– ; provided, however, that the provisions of this subparagraph shall apply only to a defendant who has not been convicted previously of such a violation or assigned to an alcohol education program within six years preceding the date of the commission of the offense for which he has been convicted.

SECTION 9. The first paragraph of subparagraph (4) of said paragraph (a) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:– Such condition of probation shall specify a date before which such residential alcohol treatment program shall be attended and completed.

SECTION 9A. The second paragraph of said subparagraph (4) of said paragraph (a) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by adding the following two sentences:– In such proceedings, such defendant shall be taken before the court and if the court finds that he has failed to attend or complete the residential alcohol treatment program before the date specified in the conditions of probation, the court shall forthwith specify a second date before which such defendant shall attend or complete such program and, unless such defendant shows extraordinary and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not less than two days; provided, however, that such sentence shall not be reduced to less than two days, nor suspended, nor shall such person be eligible for furlough or receive any deduction from his sentence for good conduct until he shall have served two days of such sentence; and

provided, further, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under thissubdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. If such defendant fails to attend or complete the residential alcohol treatment program before the second date specified by the court, further proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be commenced, and the court shall forthwith sentence the defendant to imprisonment for not less than fourteen days as provided in subparagraph (1) for such a defendant.

SECTION 10. Subparagraph (3) of paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out, in line 163, the words "or more".

SECTION 10A. Said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by inserting after subparagraph (3) the following subparagraph:-

(3 1/2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such person has been previously convicted of or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like violation three or more times within a period of six years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not restore the license or reinstate the right to operate of such person unless the prosecution of such person has terminated in favor of the defendant, until ten years after the date of the conviction; provided, however, that such person may, after the expiration of five years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

SECTION 11. Paragraph (e) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by inserting after the second sentence the following sentence:- When there is no evidence presented at a civil or criminal proceeding of the percentage, by weight, of alcohol in the defendant's blood, the presiding judge at a trial before a jury shall include in his instructions to the jury a statement of an arresting officer's responsibilities upon arrest of a person suspected to be operating a motor vehicle under the influence of alcohol and a statement: that a blood alcohol test may only be administered with a person's consent; that a person has a legal right to take or not take such a test; that there may be a number of reasons why a person would not take such a test; that there may be a number of reasons why such a test

was not administered; that there shall be no speculation as to the reason for the absence of a test and no inference can be drawn from the fact that there was no evidence of a blood alcohol test; and that a finding of guilty or not guilty must be based solely on the evidence that waspresented in the case.

SECTION 12. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out, in lines 256 and 273, the word "ninety" and inserting in place thereof, in each instance, the words:– one hundred and twenty.

SECTION 13. Said section 24 of said chapter 90, as so appearing, is hereby further amended by adding the following subdivision:–

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or prior finding of sufficient facts by either original court papers or certified attested copy of original court papers, accompanied by a certified attested copy of the biographical and informational data from official probation office records, shall be prima facie evidence that a defendant has been convicted previously or assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth one or more times within a period of six years preceding the date of commission of the offense for which said defendant is being prosecuted.

SECTION 14. Section 24D of said chapter 90, as so appearing, is hereby amended by striking out, in line 7, the words "thirty days" and inserting in place thereof the words:– a period of no less than forty–five nor more than ninety days; provided, however, that if such person was under the age of twenty–one when the offense was committed, the person's license or right to operate shall be suspended for one hundred and eighty days, and such person shall be assigned to a program specifically designed by the department of public health for the education and treatment of underage drinking drivers.

SECTION 15. Subsection (a) of section 24G of said chapter 90, as so appearing, is hereby amended by striking out, in line 12, the word "ten" and inserting in place thereof the word:– fifteen,– and by inserting after the word "sentence", in line 19, the words:– until such person has served at least one year of such sentence.

SECTION 16. Said section 24G of said chapter 90, as so appearing, is hereby further amended by adding the following subsection:–

(c) The registrar shall revoke the license or right to operate of a person convicted of a violation of subsection (a) or (b) for a period of ten years after the date of conviction for a first offense. The registrar shall revoke the license or right to operate of a person convicted for a subsequent violation of this section for the life of such person. No appeal, motion for a new trial or exceptions shall operate to stay the revocation of the license or of the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

SECTION 17. Said chapter 90 is hereby further amended by inserting after section 24J the following five sections:–

Section 24K. Chemical analysis of the breath of a person charged with a violation of this chapter shall not be considered valid under the provisions of this chapter, unless such analysis has been performed by a certified operator, using infrared breath–testing devices according to methods approved by the secretary of public safety. The secretary of public safety shall promulgate rules and regulations regarding satisfactory methods, techniques and criteria for the conduct of such tests, and shall establish a statewide training and certification program for all operators of such devices and a periodic certification program for such breath testing devices; provided, however, that the secretary may terminate or revoke such certification at his discretion.

Said regulations shall include, but shall not be limited to the following: (a) that the chemical analysis of the breath of a person charged be performed by a certified operator using a certified infrared breath–testing device in the following sequence: (1) one adequate breath sample analysis; (2) one calibration standard analysis; (3) a second adequate breath sample analysis; (b) that no person shall perform such a test unless certified by the secretary of public safety; (c) that no breath testing device, mouthpiece or tube shall be cleaned with any substance containing alcohol.

The secretary of public safety shall prescribe a uniform form for reports of such chemical analysis to be used by law enforcement officers and others acting in accordance with the provisions of this chapter. Such forms shall be sequentially numbered. Each chief of police or other officer or official having charge or control of a law enforcement agency shall be responsible for the furnishing and proper disposition of such uniform forms. Each party so responsible shall prepare or cause to be prepared such records and reports relating to such uniform forms and their disposition in such manner and at such times as the secretary of public safety shall prescribe.

Section 24L. (1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety–four C, or the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes serious bodily injury, shall be punished by imprisonment in the state prison for not less than two and one–half years nor more than ten years and by a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than six months nor more than two and one–half years and by a fine of not more than five thousand dollars.

The sentence imposed upon such person shall not be reduced to less than six months, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence until such person has served at least six months of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or of the admin–

istrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this subdivision shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this subdivision.

(2) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or vapors of glue, and by any such operation causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not more than two and one-half years, or by a fine of not less than three thousand dollars, or both.

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

(4) The registrar shall revoke the license or right to operate of a person convicted of a violation of subdivision (1) or (2) for a period of two years after the date of conviction. No appeal, motion for new trial or exception shall operate to stay the revocation of the license or the right to operate; provided, however, such license shall be restored or such right to operate shall be reinstated if the prosecution of such person ultimately terminates in favor of the defendant.

Section 24M. The officials and agencies designated in this section are hereby directed to perform the duties specified in this section and any other action within their authority in order to ensure effective enforcement of sections twenty-four to twenty-four O, inclusive.

(1) The criminal justice training council established in section one hundred and sixteen of chapter six shall provide training, including but not limited to alcohol education and education concerning the aforesaid sections, to all law enforcement personnel throughout the commonwealth.

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

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

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

Section 24N. Upon the issuance of a complaint alleging a violation of paragraph (a) of subdivision (1) of section twenty-four or a violation of section twenty-four G or twenty-four L, the judge, in addition to any other terms of bail or recognizance, shall immediately suspend the

defendant's license or right to operate a motor vehicle if the prosecution makes a prima facie showing at the arraignment that said defendant was operating a motor vehicle while the percentage, by weight, of alcohol in his blood was ten one-hundredths or more, as shown by chemical test or analysis of his blood or breath, and presents written certification or oral testimony from the person administering to the defendant such chemical test or analysis of his blood or breath that the defendant was administered such a test or analysis, that the operator administering the test or analysis was trained and certified in the administration of such tests, that the test was performed in accordance with regulations and standards promulgated by the secretary of public safety, that the equipment used for such test was regularly serviced and maintained, and that the person administering the test had every reason to believe the equipment was functioning properly at the time the test was administered. Such certification shall be prima facie evidence of the facts so certified. Upon such a showing and presentation, the judge shall take immediate physical possession of such defendant's license to operate a motor vehicle, and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such suspension by the most expeditious means available. The defendant's license to operate a motor vehicle shall remain suspended until the disposition of the offense for which said defendant is being prosecuted, but in no event shall such suspension pursuant to this section exceed ninety days.

Any person whose license or right to operate has been suspended pursuant to this section on the basis of chemical analysis of his breath may within ten days of such suspension request a hearing and upon such request shall be entitled to a hearing before the court, which hearing shall be limited to the following issue: whether a blood test administered pursuant to paragraph (f) of subdivision (1) of section twenty-four, within a reasonable period of time after such chemical analysis of his breath, shows that the percentage, by weight, of alcohol in such person's blood was less than ten one-hundredths.

If the court finds that such a blood test shows that such percentage was less than ten one-hundredths, the court shall restore such person's license or right to operate and shall direct the prosecuting officer to forthwith notify the criminal history systems board and the registrar of such restoration.

Section 24 O. Upon conviction of any violation of the provisions of this chapter, the defendant shall be provided a statement in writing, in easy to understand language, of the statutory provisions that apply to any further violation of said chapter.

SECTION 18. The third paragraph of section 2 of chapter 90C of the General Laws, as appearing in the 1984 Official Edition, is hereby amended by adding the following sentence:- The provisions of the first sentence of this paragraph shall not apply to any complaint or indictment charging a violation of section twenty-four, twenty-four G or twenty-four L of chapter ninety, providing such complaint or indictment relates to a violation of automobile law which resulted in one or more deaths.

SECTION 19. The fifth paragraph of said section 2 of said chapter

90C, as so appearing, is hereby amended by adding the following sentence:– A failure to comply with the provisions of the first sentence of this paragraph shall not constitute a defense to any complaint or indictment charging a violation of section twenty–four, twenty–four G or twenty–four L of chapter ninety; provided, however, that such complaint or indictment relates to a violation of automobile law which resulted in one or more deaths.

SECTION 20. Section 1 of chapter 258A of the General Laws, as amended by section 1 of chapter 605 of the acts of 1985, is hereby further amended by striking out the definition of "Crime" and inserting in place thereof the following definition:–

"Crime", an act committed by an adult or a juvenile in the commonwealth which, if committed by a mentally competent, criminally responsible adult, who had no legal exemption or defense, would constitute a crime; provided, however, that such act involves the application of force or violence or the threat of force or violence by the offender upon the victim. The word "crime" shall include any violation of any provision of section twenty–four to twenty–four O, inclusive, of chapter ninety which results in serious personal physical injury to the victim or the death of the victim.

SECTION 21. There is hereby established in three district courts of the commonwealth designated by the chief justice of the district court division of the trial court department a pilot program to increase the efficiency and effectiveness of the issuance of complaints, sentencing, and disposition of cases in which there is a conviction under sections twenty–four to twenty–four O, inclusive, of chapter ninety of the General Laws. Said program shall include establishment of a direct linkage between the said district courts and the registry of motor vehicles computerized record system to enable the justices of said district courts to access through terminals located in the district court all information maintained by said registry pertaining to a person charged with an alcohol related offense under said chapter ninety and to enable appropriate personnel of said district courts to transmit directly from one or more terminals located in said district courts information to the registry regarding any case disposition or other court action which under the provisions of any general or special law requires action by the registrar of motor vehicles or which includes findings or other determinations which are or should become part of the information and record system maintained by said registry. In addition, said program shall include implementation of a uniform presentence reporting system under which there is made available to the sentencing judge prior to the imposition of a sentence or other disposition of a case where a person has been convicted of or has entered a plea of guilty to an alcohol related offense under said chapter ninety a report which is uniform in content and in format and which contains, at a minimum, information pertaining to the offender which is in the records maintained by the central office of probation, by the registry of motor vehicles, and by the motor vehicle insurance merit rating board established pursuant to section one hundred and eighty–three of chapter six of the General Laws.

SECTION 22. The commissioner of probation and the registrar of

motor vehicles shall cooperate and jointly work with the chief administrative justice of the district court department in implementing the provisions of section twenty-one of this act. No later than thirtydays after the effective date of said section twenty-one, the chief justice of the district court department, the commissioner of probation and the registrar of motor vehicles jointly shall file with the clerk of the house of representatives an implementation plan which contains the duties and responsibilities of the respective departments and the time period within which the program established under section twenty-four of this act will be implemented who shall forward the same to the senate and house committees on post audit and oversight. On or before January first, nineteen hundred and eighty-eight the chief justice of the district court division of the trial court department shall submit to said committees on post audit and oversight a report on the operations of said program which report shall contain recommendations regarding the continuation, expansion or modification of the program. Said chief justice may from time to time submit such additional reports to said committees as he deems necessary or desirable.

SECTION 23. The provisions of this act shall apply to violations committed on or after the effective date of this act; provided, however, that the requirement in section twenty-four N of chapter ninety of the General Laws, inserted by section seventeen of this act, that the prosecution show at the arraignment that the chemical test or analysis of a defendant's breath or blood was performed in accordance with regulations and standards of public safety shall not become effective until July first, nineteen hundred and eighty-seven; and provided, further, that the provisions of section twenty-four K of said chapter ninety, inserted by said section seventeen, shall not affect the validity of any chemical analysis of the breath until after July first, nineteen hundred and eighty-seven.

Approved December 18, 1986.

Chapter 621. AN ACT MAKING THE OFFICES OF TREASURER AND COLLECTOR OF TAXES IN THE TOWN OF SHUTESBURY APPOINTIVE.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of section one of chapter forty-one of the General Laws, the offices of treasurer and collector of taxes in the town of Shutesbury shall be appointed by the board of selectmen of said town, at the conclusion of each present term, for terms not to exceed three years as determined by the board of selectmen. Any vacancies in said offices shall be appointed by said board for the unexpired portion of the term.

SECTION 2. This act shall take effect upon its passage.

Approved December 23, 1986.

(d) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to 1 compacting state.

Upon the dissolution of this compact, the compact shall become null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be terminated and any surplus funds shall be distributed in accordance with the by-laws.

Section 151M. (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally constructed to effectuate its purposes.

Section 151N. (a) (1) Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

(2) All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) (1) All lawful actions of the interstate commission, including all rules and by-laws promulgated by the interstate commission, are binding upon the compacting states.

(2) All agreements between the interstate commission and the compacting states are binding in accordance with the terms thereof.

(3) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Emergency Letter: October 27, 2005 @ 3:20 P.M. Approved October 27, 2005.

Chapter 122. AN ACT INCREASING PENALTIES FOR DRUNK DRIVERS IN THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to increase penalties for drunk drivers in the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted, etc., as follows:

SECTION 1. Chapter 90 of the General Laws is hereby amended by striking out section 12, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 12. (a) Whoever knowingly employs for hire as a motor vehicle operator any person not licensed in accordance with this chapter shall be punished by a fine of not more than $500 and, for a second or subsequent violation, by a fine of not more than $1,000 or imprisonment in the house of correction for not more than 1 year, or both.

(b) Whoever knowingly permits a motor vehicle owned by him or under his control to be operated by a person who is unlicensed or whose license has been suspended or revoked shall be punished by 1 year in the house of correction and a fine of not more than $500 for a first offense or, for a second or subsequent offense by a fine of not more than $1,000 or imprisonment in a house of correction for not more than 2½ years, or both.

(c) Whoever knowingly permits a motor vehicle owned by him or under his control, which is not equipped with a functioning ignition interlock device, to be operated by a person who has an ignition interlock restricted license shall be punished by 1 year in the house of correction and a fine of not more than $500 for a first offense or, for a second or subsequent offense by a fine of not more than $1,000 or imprisonment in a house of correction for not more than 2½ years, or both. For the purposes of this section the term "certified ignition interlock device" shall mean an alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration over a preset limit of .02 or 20 mg of alcohol per 100 ml of blood.

(d) The registrar may suspend for not more than 1 year the motor vehicle registration of a vehicle used in the commission of a violation of this section or the license or right to operate of the person who commits a violation of this section, or both.

SECTION 2. Section 23 of said chapter 90, as so appearing, is hereby amended by inserting after the second paragraph the following paragraph:-

Whoever operates a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24, sections 24G or 24L, subsection (a) of section 8 of chapter 90B, sections 8A or 8B of chapter 90B or section 13½ of chapter 265, while his license or right to operate has been suspended or revoked, or after notice of such suspension or revocation of his right to operate a motor vehicle has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license or right to operate, pursuant to paragraph (a) of subdivision (1) of section 24, sections 24G or 24L, subsection (a) of section 8 of chapter 90B,sections 8A or 8B of chapter 90B or section 13½ of chapter 265 shall be punished by a fine of not less than $2,500 nor more than $10,000 and by imprisonment in a house of correction for a mandatory period of not less than 1 year and not more than 2½ years, with said sentence to be served consecutively to and not concurrent with any other sentence or penalty. Such sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served said 1 year of such sentence; provided, however, that the commissioner of correction may, on the

recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this paragraph a temporary release in the custody of an officer of such institution only to obtain emergency medical or psychiatric services unavailable at said institution or to engage in employment pursuant to a work release program. Section 87 of chapter 276 shall not apply to any person charged with a violation of this paragraph. Prosecutions commenced under this paragraph shall not be placed on file or continued without a finding.

SECTION 3. Section 24 of said chapter 90,as so appearing, is hereby amended by striking out, in lines 64 to 67, inclusive, lines 98 to 100, inclusive, lines 132 to 134, inclusive, and in lines 165 to 168, inclusive, the words ", unless otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-three".

SECTION 4. Said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out, in lines 352 and 353, the words "six months" and inserting in place thereof the following words:- 1 year.

SECTION 5. Said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out, in line 364, the words "one year" and inserting in place thereof the following words:- 18 months.

SECTION 6. Subparagraph (2) of paragraph (c) of subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

SECTION 6A. Said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90,as so appearing, is hereby further amended by striking out subparagraph (4) and inserting in place thereof the following subparagraph:-

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

SECTION 7. Subparagraph (3) of said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

SECTION 8. Subparagraph (3-½) of said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by adding the following sentence:- A mandatory restriction on a hardship license granted by the registrar under this subparagraph shall be that such person have an ignition interlock device installed on each vehicle owned, each vehicle leased and each vehicle operated by the licensee for the duration of the hardship license.

SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out the subparagraph (1) and inserting in place thereof the following subparagraph:-

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 51 of chapter 111 ; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section 1 of chapter 90C,having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 years or who has been previously convicted of a violation under this section, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B, section 8A or 8B of said chapter 90B, or section 13½ of chapter 265 or a like violation by a court of any other jurisdiction shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided, further, that any person previously convicted of 2 such violations shall have his license or right to operate suspended forthwith

for a period of 5 years for such refusal; and provided, further, that a person previously convicted of 3 or more such violations shall have his license or right to operate suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the restistrar shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, or section 13½ of chapter 265,the registrar shall revoke his license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

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

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

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

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

No license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not

guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.

SECTION 10. Subparagraph (2) of paragraph (f) of subdivision (1) of said section 24 of said chapter 90,as so appearing, is hereby amended by striking out clauses (ii) to (iv), inclusive, and inserting in place thereof the following 2 clauses:-

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

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

SECTION 11. The second paragraph of said subparagraph (2) of said paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- The license suspension shall become effective immediately upon receipt by the offender of the notice of intent to suspend from a police officer.

SECTION 12. Said subparagraph (2) of said paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out the fourth paragraph.

SECTION 13. Said chapter 90 is hereby further amended by inserting after section 24 the following section:-

Section 24½. No person whose license has been suspended in the commonwealth or

any other jurisdiction by reason of: an assignment to an alcohol or controlled substance education, treatment or rehabilitation program; or a conviction for violating paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, section 13½ of chapter 265,subsection (a) of section 8 of chapter 90B, section 8A or 8B of chapter 90B or, in the case of another jurisdiction, for any like offense, shall be issued a new license or right to operate or have his license or right to operate restored if he has previously been so assigned or convicted, unless a certified ignition interlock device has been installed on each vehicle owned, each vehicle leased and each vehicle operated by that person as a precondition to the issuance of a new license or right to operate or the restoration of such person's license or right to operate. A certified ignition interlock device shall be installed on all vehicles owned, leased and operated by the licensee for a period of 2 years and person restricted by a certified ignition interlock device shall have such device inspected, maintained and monitored in accordance with such regulations as the registrar shall promulgate. The registrar may, after hearing, revoke for an extended period or for life, the license of whoever removes such device or fails to have it inspected, maintained or monitored on at least 2 occasions during the period of the restricted license or right to operate if the licensee has operated or attempted to operate a vehicle with a blood alcohol level that caused the certified ignition interlock device to prohibit a vehicle from starting on at least 2 occasions or that recorded a blood alcohol level in excess of .02 on at least 2 occasions. A person aggrieved by a decision of the registrar pursuant to this section may file an appeal in the superior court of the trial court department. If the court determines that the registrar abused his discretion, the court may vacate the suspension or revocation of a license or right to operate or reduce the period of suspension or revocation as ordered by the registrar.

SECTION 14. Section 24D of said chapter 90, as so appearing, is hereby further amended by inserting after the word "glue", in line 17, the following words:-,except for a person aged 17 to 21, inclusive, whose blood alcohol percentage, by weight, was not less than .20, in which case such person shall be assigned to a driver alcohol treatment and rehabilitation program known as the "14-day second offender in-home program".

SECTION 15. Section 24D of said chapter 90, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

Driver alcohol education programs utilized under the provisions of this section shall be established and administered by the department of public health in consultation with the registrar and the secretary of public safety. The department of public health may adopt rules and regulations to carry out its powers and duties to establish and administer driver alcohol education programs in the commonwealth. Any person who is qualified for a disposition under this section, and who at the time of disposition is legally domiciled out-of-state, or is a full-time student residing out-of-state, may at the discretion of the court, be assigned to an out-of-state driver alcohol education program. The out-of-state program must be licensed by the appropriate state authority in the jurisdiction where the person is legally domiciled or

is a full-time student. If the out-of-state driver alcohol education program contains fewer treatment service hours than is required by the department of public health, additional service treatment hours must be obtained to achieve equivalence with the driver alcohol education program requirement of the commonwealth.

SECTION 15A. Said section 24D of said chapter 90, as so appearing, is hereby further amended by striking out the sixth paragraph and inserting in place thereof the following paragraph:-

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

SECTION 16. Section 24G of said chapter 90, as so appearing, is hereby amended by striking out, in line 50, the word "ten" and inserting in place thereof the following figure:- 15.

SECTION 17. Said chapter 90,is hereby further amended by inserting after section 24P the following 8 sections:-

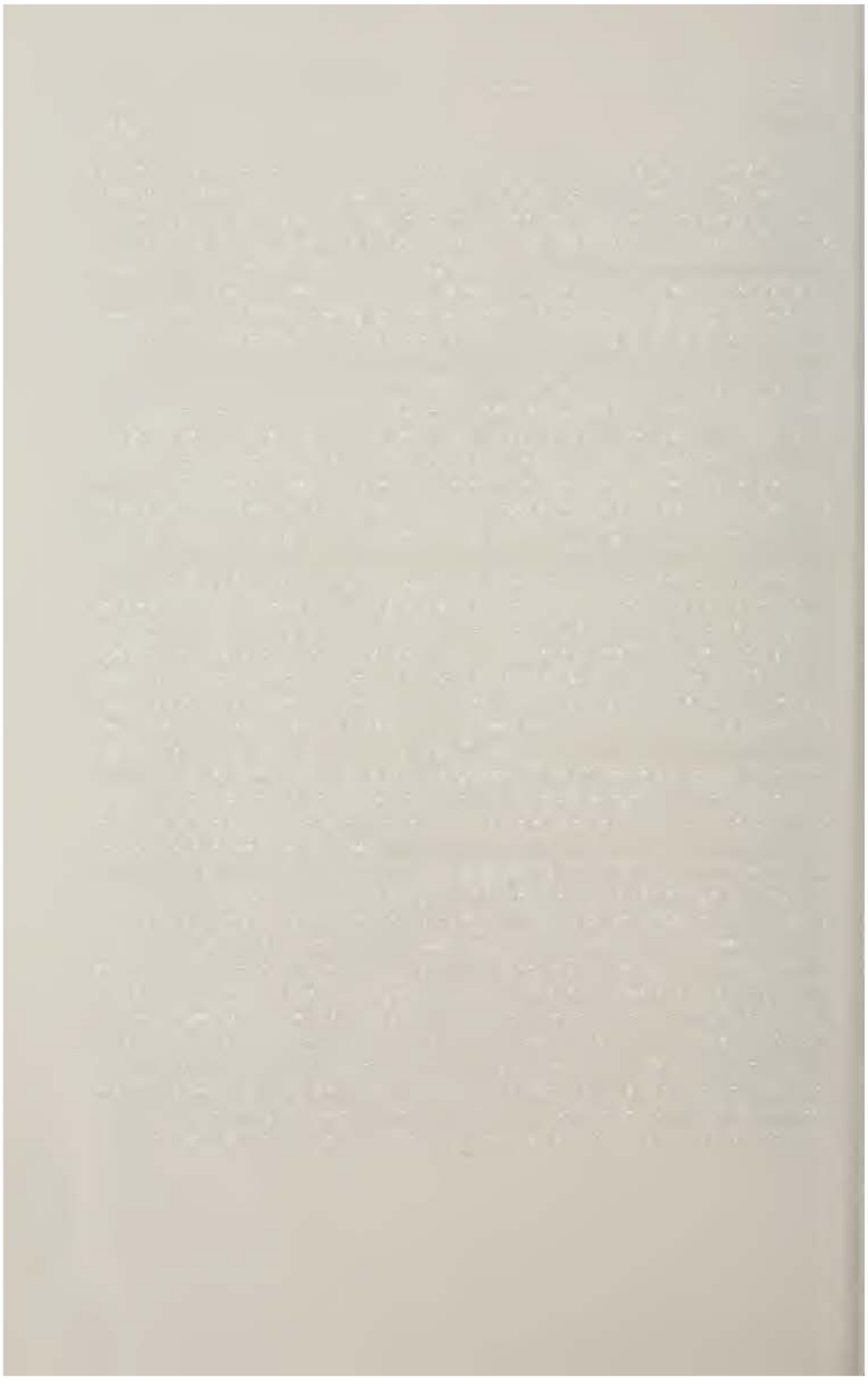
Section 24Q. A mandatory condition of any sentence imposed for: (1) a conviction or an assignment to an alcohol or controlled substance education, treatment or rehabilitation program if evidence in the prosecution of a violation of this chapter or chapter 90B was that a person's blood alcohol percentage, by weight, was not less .20 or (2) an assignment to an alcohol or controlled substance education, treatment or rehabilitation program or a conviction for violating paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, subsection (a) of section 8 of chapter 90B, section 8A or 8B of chapter 90B, or section 13½ of chapter 265 or, in the case of any other jurisdiction, for any like offense, if the person being sentenced has previously been so assigned or convicted of a like offense, shall be that such person complete an alcohol or drug assessment conducted by the department of public health or other court-approved program. The assessment shall include, but not be limited to, an assessment of the level of the offender's addiction to alcohol or drugs, and the department's recommended course of treatment. Such assessment and recommended course of treatment shall be reported to the offender's probation or parole officer. No person shall be excluded from an assessment for

inability to pay if the offender files an affidavit of indigency or inability to pay with the court and an investigation by the probation or parole officer confirms such indigency or establishes that such payment would cause a grave and serious hardship to the offender or his family, and the court enters written findings relative thereto. The commissioner of public health may make such rules and regulations as are necessary or proper to carry out this section.

Section 24R. (a) Notwithstanding section 24 or section 24D, the registrar shall revoke for life the license or right to operate of a person assigned to an alcohol or controlled substance education, treatment, or rehabilitation program or convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, section 8A or 8B of chapter 90B, or section 13½ of chapter 265 who has previously been convicted of a violation of subdivision (a) of section 24 or a like violation in another jurisdiction.

(b) Notwithstanding section 24, the registrar shall revoke for life the license or right to operate of any person convicted of a violation of subdivision (a) of section 24G who has previously been assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth, or convicted of violation of paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, subsection (a) of section 8 of chapter 90B, or section 8A or 8B of chapter 90B, section 13½ of chapter 265 or a like violation in another jurisdiction.

Section 24S. (a) Whoever, upon any way or place to which the public has a right of access, or upon any way or place to which members of the public have access as invitees or licensees, operates a motor vehicle that is not equipped with a certified functioning ignition interlock device while his license or right to operate has been restricted to operating only motor vehicles equipped with such device shall be punished by fine of not less than $1,000 nor more than $15,000 and by imprisonment for not less than 180 days nor more than 2½ years or by a fine of not less than $1,000 nor more than $15,000 and by imprisonment in the state prison for not less than 2½ years nor more than 5 years. The sentence imposed upon such person shall not be reduced to less than 150 days, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive any deduction from his sentence for good conduct until he shall have served 150 days of such sentence. The commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at that institution; to engage in employment pursuant to a work release program; or for the purposes of an aftercare program designed to support the



by imprisonment in the house of correction for not less than 6 months nor more than 2½ years or by imprisonment in state prison for not less than 3 years but not more than 5 years. The sentence of imprisonment imposed upon such person shall not be reduced to less than 6 months, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served at least 6 months of such sentence but the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at the institution; or to engage in employment pursuant to a work release program. A sentence imposed under this subsection shall be served consecutively to and not concurrently with the predicate violation of said paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, subsection (b) of section 24G, section 24L, subsection (a) of section 8 of chapter 90B, or section 8A or 8B of chapter 90B, section 13½ of chapter 265. Section 87 of chapter 276 and sections 1 to 9, inclusive, of chapter 276A shall not apply to a person charged with a violation of this subsection. Prosecutions commenced under this subsection shall not be placed on file or continued without a finding.

(b) The registrar shall suspend the license or right to operate of person who violates this section for a period of 1 year for a first offense, and for a period of 3 years for a second or subsequent violation.

Section 24W. (a) A motor vehicle or vessel owned by a person who has been assigned to an alcohol or controlled substance education, treatment or rehabilitation program or who was convicted of a violation of paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L, subsection (a) of section 8 of chapter 90B, section 8A or 8B of chapter 90B, or section 13½ of chapter 265 or, in the case of another jurisdiction, for any like offense, if owned by such operator, may be forfeited to the commonwealth if such person has been so assigned or so convicted previously at least 3 times.

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

and the claimant shall have the burden of proving to the court's satisfaction that the property is not forfeitable because the claimant is dependent on the motor vehicle or vessel for his livelihood or the maintenance of his family. The court shall order the commonwealth to give notice by certified or registered mail to the owners of the motor vehicle or vessel and to such other persons or entities who appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of an owner of the motor vehicle or vessel, the court may continue the hearing on the petition pending the outcome of a criminal trial related to a charge of operating under the influence in violation of this chapter or chapter 90B. During the pendency of the proceedings, the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of the property shall issue only upon a showing of probable cause, and the application therefore and the issuance, execution and return thereof shall be subject to chapter 276, as applicable.

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

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

(e) There shall be established within the office of the state treasurer a separate Operating Under the Influence Deterrent Trust Fund for each district attorney and for the attorney general. All monies and proceeds received by a prosecuting district attorney or attorney general pursuant to this section shall be deposited in the fund and shall be expended without further appropriation to defray the costs of investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or for such other law enforcement purposes as the district attorney or attorney general deems appropriate. Any program seeking to be an eligible recipient of the funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include,

but not be limited to, a listing of the assets, liabilities, itemized expenditures and board of directors of the program. Within 90 days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of deterring operating under the influence programs.

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

Section 24X. The registration of a motor vehicle owned by a person who is assigned to an alcohol or controlled substance education, treatment or rehabilitation program or who is convicted of a violation of paragraph (a) of subdivision (1) of section 24, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of section 24G, section 24L, subsection (a) of section 8 of chapter 90B, section 13½ of chapter 265, or section 8A or 8B of chapter 90B, or, in the case of another jurisdiction, for any like offense, may be cancelled and the registration plates for such vehicle seized for the period of the suspension or revocation of the license or right to operate due to such assignment or conviction, if the person has been so assigned or so convicted previously at least 2 times. No new registration shall be issued to such person during the period of the suspension or revocation of the license or right to operate.

SECTION 18. Section 139 of chapter 266 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following paragraph:-

Whoever takes and carries away the registration plate that is attached to the vehicle of another or is assigned by the registry of motor vehicles to another shall be punished by a fine of not less than $500 nor more than $1,000 or imprisonment in the house of correction for not more than 2½ years, or both.

SECTION 19. The registrar of motor vehicles shall promulgate regulations consistent with this act which shall include, but not be limited to:-

(1) certification procedures for certified ignition interlock devices for use in the commonwealth;

(2) approval procedures for certified ignition interlock device installers who propose to install functioning ignition interlock devices in conformity with this section and regulations of the registry;

(3) approve ignition interlock device servicing and monitoring entities and require that such entities regularly report ignition interlock device service and monitoring results to the registry of motor vehicles;

(4) develop a warning label that ignition interlock device installers shall prominently affix on all certified ignition interlock devices installed; provided, however, that the warning label shall provide the penalties for tampering or attempting to circumvent operation of the device, and for knowingly breathing into an ignition interlock device for the purpose of making a car operational for use by a ignition interlock device licensee;

(5) require proof of the installation of a functioning certified ignition interlock device by an approved installer on all vehicles owned, leased or operated by any person applying for a hardship license pursuant to section 24 of chapter 90 of the General Laws or by any person seeking the restoration of his license that was suspended due to a conviction of: paragraph (a) of subdivision (1) of section 24; subsection (a) of section 24G; operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G; section 24L; section 8, 8A or 8B of chapter 90B, or section 13½ of chapter 265; provided that any such conviction is a second or subsequent conviction before any such license is issued;

(6) require an ignition interlock device restriction licensee, as a continuing condition of such license, submit proof:-

(a) of inspection of the certified ignition interlock device for accurate operation by an entity approved by the registrar not less than once every 30 days for the duration of any license ignition interlock device restriction.

(b) that the ignition interlock device shall be monitored, maintained and serviced not less than every 30 days by an entity approved by the registrar; and

(c) that the costs to install and maintain the certified ignition interlock device be borne by the operator; and

(7) cause registry records to reflect an ignition interlock device restriction on the records of any such licensee and the duration thereof.

(8) require that any operation in violation of the ignition interlock restriction or any violation of the required inspection, monitoring or reporting requirements shall result in permanent revocation, after hearing, of a hardship license and an additional 10 year license suspension, during which such person shall not be eligible for a hardship license.

(9) require, as a precondition to issuing to any ignition interlock device restricted license, the execution of an acknowledgment signed under penalty of perjury by each other licensed operator residing with a person seeking a hardship license or the restoration of his license and who is required to have ignition interlock devices on all vehicles owned, leased or operated by him that they know and understand that: the person issued an ignition interlock device restricted license may not operate a vehicle that is not equipped with an ignition interlock device and that to breathe into an ignition device or start a motor vehicle for such person in order to provide such person with an operable motor vehicle is punishable by incarceration. Such acknowledgement shall be admissible in any prosecution of section 24U of chapter 90 of the General Laws and shall be prima facie evidence of such knowledge by the person who executed such document.

SECTION 20. Chapter 265 of the General Laws is hereby amended by inserting after section 13 the following section:-

Section 13½. Whoever commits manslaughter while operating a motor vehicle in violation of paragraph (a) of subdivision (1) of section 24 of chapter 90 or section 8A of chapter 90B, shall be punished by imprisonment in the state prison for not less than 5 years and not more than 20 years, and by a fine of not more than $25,000. The sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his sentence for good conduct until he shall have served 5 years of such sentence. The commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution, or of the administrator of a county correctional institution, grant to an offender committed under this section a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Upon receipt of notice of a conviction under this section, the registrar may suspend the license or right to operate of such person for any extended period up to life, provided that such suspension be at least a 15 year period. A person aggrieved by a decision of the registrar pursuant to this section may file an appeal in the superior court of the trial court department. If the court determines that the registrar abused his discretion, the court may vacate the suspension or revocation of a license or right to operate and reduce the period of suspension or revocation as ordered by the registrar, but in no event may the reduced period of suspension be for less than 15 years.

SECTION 21. Any assignment to an alcohol or controlled substance education, treatment or rehabilitation program or conviction rendered before the effective date of this act shall be considered a previous assignment or conviction for the purposes of this act.

SECTION 22. Subsection (c) of section 12 of chapter 90 of the General Laws, as inserted by section 1, sections 6, 7, 8, 13, 14, section 24S, 24T, and 24U of said chapter 90 of the General Laws, as inserted by section 17, and section 19 shall take effect on January 1, 2006. All other provisions shall take effect upon the effective date of this act.

Approved October 28, 2005.

Chapter 123. AN ACT RELATIVE TO THE INSTALLATION OF CARBON MONOXIDE ALARMS AND SMOKE DETECTORS IN RESIDENTIAL BUILDINGS.

Be it enacted, etc., as follows:

SECTION 1. The first paragraph of section 10A of chapter 148 of the General Laws,

thereafter negotiate, a hospital contract that would be applicable to some or all of the hospitals represented by the agent.

Such a negotiating agent that represents more than one hospital shall have the right to propose to a nonprofit hospital service corporation, and thereafter negotiate, a hospital contract which would be applicable to some or all of the hospitals represented by it.

The commission shall not disapprove any contract between a hospital and a nonprofit hospital service corporation on the grounds that a term or terms of the contract are similar or identical to the terms of a proposed or approved contract between any other hospital and such corporation, or that the hospital was represented by a negotiating agent which represented one or more other hospitals.

SECTION 9. Any acute hospital aggrieved by an action of the commission under this act shall have a right of appeal in accordance with the provisions of section thirty-six of chapter six A of the General Laws.

SECTION 10. Section three and section seven A of this act shall take effect upon its passage. All other sections of this act shall become operative only upon approval of the medicare experimental project P-98199/1-01, as amended in accordance with section three of this act and as may be further amended with the consent of the Massachusetts Hospital Association, by the Health Care Financing Administration, United States Department of Health and Human Services. In the event said experimental project is approved, and said experimental project, or any extension thereof or successor thereto, shall subsequently cease to be in effect for a period of six consecutive months, then at the end of such six month period sections one, one A, two, five, five A, six and eight of this act shall become void and shall cease to be in effect. Section seven A shall cease to be operative in the event said medicare experimental project is not approved.

Approved August 10, 1982.

Chap. 373. AN ACT INCREASING THE PENALTIES FOR OPERATING A MOTOR VEHICLE WHILE DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUORS.

Whereas, The deferred operation of this act would tend to

defeat its purpose, which is to provide an immediate increase in the penalties of operating a motor vehicle while under the influence of alcoholic beverages, therefore it is hereby declared to be an emergency law, necessary for the preservation of the public safety.

Be it enacted, etc., as follows:

SECTION 1. Section 23 of chapter 90 of the General Laws, as most recently amended by section 2 of chapter 1033 of the acts of 1971, is hereby further amended by inserting after the first paragraph the following paragraph:-

Any person convicted of operating a motor vehicle after his license to operate has been revoked pursuant to a violation of paragraph (a) of subdivision (1) of sections twenty-four, twenty-four D, twenty-four E and twenty-four G, or after notice of such revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate shall be punished by a fine of not less than two hundred dollars and not more than five thousand dollars and by imprisonment in a house of correction for not less than seven days and not more than two and one-half years, provided that, the sentence of imprisonment imposed upon such person shall not be reduced to less than seven days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served seven days of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this paragraph a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of this paragraph. Prosecutions commenced under this paragraph shall not be placed on file or continued without a finding.

SECTION 2 Subdivision (1) of section 24 of said chapter 90 is hereby amended by striking out paragraph (a), as most recently

amended by section 4 of chapter 1071 of the acts of 1971, and inserting in place thereof the following paragraph:-

(a) (1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment for not more than two years, or both.

If the defendant has been previously convicted or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like violation within six years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than three hundred nor more than one thousand dollars and by imprisonment for not less than seven days nor more than two years, provided that the sentence imposed upon such person shall not be reduced to less than seven days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served seven days of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program.

If the defendant has been previously convicted or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like offense two or more times within six years preceding the date of the commission of the offense for which he has been convicted, the defendant shall be punished by a fine of not less than five hundred nor more than one thousand dollars and by imprisonment for not less than sixty days nor more than two years, provided that the sentence imposed upon such person shall not be reduced to less than sixty days, nor suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have

served sixty days of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional insitution, or the administrator of a county correctional institution, grant to an offender committed under this subdivision a temporary release in the custody of an officer committed under this subsection or a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program.

A prosecution commenced under this paragraph may not be placed on file or continued without a finding except for dispositions under section twenty-four D.

At any time before the commencement of trial or acceptance of a plea on a complaint alleging a violation of this subparagraph, the prosecutor may move for the dismissal of the complaint and the issuance of a new complaint alleging a violation of this subparagraph and one or more prior like violations. After a hearing and a finding of probable cause, the judge may order the issuance of said complaint. If a new complaint is issued, the court shall order that further proceedings on the matter be postponed until the defendant has had sufficient time to prepare a defense.

If a defendant waives right to a jury trial pursuant to section twenty-six A of chapter two hundred and eighteen on a complaint under this subdivision he shall be deemed to have waived right to a jury trial on all elements of said complaint subject to the right to appeal pursuant to section twenty-seven A of said chapter two hundred and eighteen.

(2) Except as provided in subparagraph (4), the provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person charged with a violation of subparagraph (1) and if said person has been convicted of or assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth within a period of six years immediately preceding the commission of the offense with which he is charged.

(3) Notwithstanding the provisions of section six A of chapter two hundred and seventy-nine, the court may order that a defendant convicted of a violation of subparagraph (1) be actually imprisoned only on designated weekends, evenings or holidays.

(4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing sentence on a defendant who

pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been convicted or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like offense two or more times within six years of the date of the commission of the offense for which he has been convicted, shall receive a report from the probation copy of the defendant's driving record, the criminal record of the defendant, if any, and such information as may be available as to the defendant's use of alcohol and may, upon a written finding that appropriate and adequate treatment is available to the defendant and the defendant would benefit from such treatment and that the safety of the public would not be endangered, with the defendant's consent place a defendant on probation for two years provided that a condition of such probation shall be that the defendant be confined for no less than fourteen days in a residential alcohol treatment program as provided or sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said division in consultation with the department of correction and with the approval of the secretary of human services or at any other facility so sanctioned or regulated as may be established by the commonwealth or any political subdivision thereof for the purpose of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol treatment program.

Failure of the defendant to comply with said conditions and any other terms of probation as imposed under this section shall be reported forthwith to the court and proceedings under the provisions of section three of chapter two hundred and seventy-nine shall be commenced.

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

SECTION 3. Said subdivision (1) of said section 24 of said chapter 90 is hereby further amended by striking out paragraph (b), as amended by chapter 200 of the acts of 1964, and inserting in place thereof the following paragraph:-

(b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth within a period of six years preceding the date of the commission of the offense for which he has been convicted, and said person qualifies for disposition under section twenty-four D and has consented to probation as provided for in said section twenty-four D, no appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or the right to operate. Such revoked license shall immediately be surrendered to the prosecuting officer who shall forward the same to the registrar. The court shall report immediately any revocation, under this section, of a license or right to operate to the registrar and to the police department of the municipality in which the defendant is domiciled. Notwithstanding the provisions of section twenty-two, the revocation, reinstatement or issuance of a license or right to operate by reason of a violation of paragraph (a) shall be controlled by the provisions of this section and sections twenty-four D and twenty-four E.

SECTION 4. Said subdivision (1) of said section 24 of said chapter 90 is hereby further amended by striking out paragraph (c), as most recently amended by section 2 of chapter 647 of the acts of 1974, and inserting in place thereof the following paragraph:-

(c) (1) Where the license or right to operate has been revoked under section twenty-four D or twenty-four E or revoked under subparagraph (1) of paragraph (b) and such person has not been convicted of a like offense or has not been assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth within a period of six years preceding the date of the commission of the offense for which he has been convicted, the registrar shall not restore the license or reinstate the right to operate to such person unless the prosecution of such person has terminated in favor of the defendant, until one year after the date of conviction.

(2) Where the license or the right to operate of a person has been revoked under subparagraph (1) of paragraph (b) and such person has been previously convicted of or assigned to an alcohol education or rehabilitation program by a court of the commonwealth because of a like violation within a period of six years preceding the date of the commission of the offense for which such person has been convicted, the registrar shall not

restore the license or reinstate the right to operate of such person unless the prosecution of such person has terminated in favor of the defendant, until two years after the date of the conviction; provided, however, that such person may, after the expiration of one year from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary.

(3) Where the license or right to operate of any person has been revoked under subparagraph (1) of paragraph (b) and such person has been previously convicted or assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth two or more times within a period of six years preceding the date of commission of the offense for which he has been convicted or where the license or right to operate has been revoked pursuant to section twenty-three due to a violation of said section due to a prior revocation under subparagraph (1) of paragraph (b) or under section twenty-four D or twenty-four E, the registrar shall not restore the license or reinstate the right to operate to such person, unless the prosecution of such person has terminated in favor of the defendant, until five years after the date of conviction; provided, however, that such person may, after the expiration of two years from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license under such terms and conditions as he deems appropriate and necessary. An appeal to the superior court may be had, in accordance with the provisions of chapter thirty A, from any order of the registrar of motor vehicles under the provisions of this section.

(4) Notwithstanding the foregoing, no new license shall be issued or right to operate be reinstated by the registrar to any person convicted of a violation of subparagraph (1) of paragraph (a) until ten years after the date of conviction in case the registrar determines upon investigation and after hearing that the action of the person so convicted in committing such offense caused an accident resulting in the death of another, nor at any time after a subsequent conviction of such an offense, whenever

committed, in case the registrar determines in the manner aforesaid that the action of such person, in committing the offense of which he was so subsequently convicted, caused an accident resulting in the death of another.

SECTION 5. Said subdivision (1) of said section 24 of said chapter 90 is hereby further amended by adding the following paragraph:-

(h) Any person convicted of a violation of subparagraph (1) of paragraph (a) that involves operating a motor vehicle while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, may, as part of the disposition in the case, be ordered to participate in a driver education program or a drug treatment or drug rehabilitation program, or any combination of said programs. The court shall set such financial and other terms for the participation of the defendant as it deems appropriate.

SECTION 6. Said chapter 90 is hereby further amended by striking out section 24D, as most recently amended by section 4 of chapter 758 of the acts of 1975, and inserting in place thereof the following section:-

Section 24D. Any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor, may, if he consents, be placed on probation for not more than two years and shall, as a condition of probation, be assigned to a driver alcohol education program as provided herein and, if deemed necessary by the court, to an alcohol treatment or rehabilitation program or to both, and the person's license or right to operate shall be suspended for thirty days. Such order of probation shall be in addition to any penalties imposed as provided in subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four and shall be in addition to any requirements imposed as a condition for any suspension of sentence. Said person shall cooperate in an investigation conducted by the probation staff of the court for supervision of cases of operating under the influence of intoxicating liquor in such manner as the commissioner of probation shall determine.

The provisions of this section shall not apply to any person convicted or assigned to an alcohol education or rehabilitation program because of a like offense by a court of the commonwealth within a period of six years preceding the date of the commission of the offense with which he is charged nor shall the provisions of this section apply to any person who during

the events that gave rise to the complaint under paragraph (a) of subdivision (1) of section twenty-four caused serious personal injury to or the death of another person.

At the time of trial or prior to disposition a report shall be made to the judge. Said report shall be uniform in content and format throughout the commonwealth and shall include but shall not be limited to a copy of said person's driving record and other records obtained from the registrar, or other person designated by him, pertaining to said person's operation of a motor vehicle as well as any recommendation by the registrar as to whether said person should later be eligible for early reinstatement of his license. The court shall report the disposition or finding of any such case to the registrar. Following disposition, the probation officer supervising a person pursuant to the provisions of this section shall maintain a written and current report which shall include but shall not be limited to consideration of said person's participation in any program in which he has been placed as a condition of probation as well as to a consideration of his drinking and driving behavior.

The suspended license or right to operate shall be retained in the probation office of the court for the duration of the suspension period. The court shall immediately report the suspension to the registrar and the police department of the municipality in which the defendant is domiciled.

Driver alcohol education programs utilized under the provisions of this section shall be established and administered by the director of the division of alcoholism in consultation with the registrar and the secretary of public safety, and shall include but shall not be limited to instruction on driver improvement skills as part of the course content.

Alcohol treatment, rehabilitation program or alcohol treatment and rehabilitation programs utilized under the provisions of this section shall include any public or private out-patient clinic, hospital, employer or unionsponsored program, self-help group, or any other organization, facility, service or program which the division of alcoholism has accepted as appropriate for the purposes of this section. The division shall prepare and publish annually a list of all such accepted alcohol treatment, rehabilitation programs and alcohol treatment and rehabilitation programs, shall make this list available upon request to members of the public, and shall from time to time furnish each court in the commonwealth, the registrar, and the secretary of public safety with a current copy of said list.

Each person placed in a program of driver alcohol education and, if deemed necessary by the court, a program of alcohol

treatment, rehabilitation, or alcohol treatment and rehabilitation pursuant to this section shall pay directly to such program a fee in an amount to be determined by the director of the division of alcoholism. The director shall establish and may from time to time revise a schedule of uniform fees to be charged by such programs which shall not exceed the actual cost per client of running said programs after notice and a public hearing, provided that until such time as the director establishes a schedule of such fees pursuant to this section the fee for such programs shall be two hundred dollars. The division shall promulgate regulations relative to the methodology of setting such fees. No person may be excluded from said program for inability to pay the stated fee, provided that such person files an affidavit of indigency or inability to pay with the court within ten days of the date of disposition, that investigation by the probation officer confirms such indigency or establishes that the payment of such fee would cause a grave and serious hardship to such individual or to the family of such individual, and that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of such fee when appropriate. Subject to appropriation, the division shall reimburse each program for the costs of services provided to persons for whom payment of a fee has been waived on the grounds of indigency.

The state treasurer may accept for the commonwealth for the purpose of driver alcohol education, treatment, or rehabilitation any gift or bequest of money or property and any grant, loan, service, payment of property from a governmental authority. Any such money received shall be deposited in the state treasury for expenditure by the division of alcoholism subject to appropriation for the support of said driver alcohol treatment or rehabilitation programs in accordance with the conditions of the gift, grant, or loan. Any federal legislation generating funds for driver alcohol education or treatment or rehabilitation shall be used by the division of alcoholism to the extent possible to support the purposes of this section.

An additional fee of two hundred dollars shall be paid to the chief probation officer of each court by each person placed in a program of driver alcohol education pursuant to this section and all such fees shall be deposited with the state treasurer, subject to appropriation, for the support of programs for the apprehension, treatment and rehabilitation of those persons convicted of or charged with driving under the influence of intoxicating liquor or drugs.

No such fee shall be collected from any person who, after the

filing of an affidavit of indigency or inability to pay with the court within ten days of disposition and investigation by the probation officer confirming such indigency or establishing that the payment of such fee would cause a grave and serious hardship to such individual or to the family thereof, is determined by the court to be indigent, provided that the court enters a written finding thereof. In lieu of waiver of the entire amount of said fee, the court may direct such individual to make partial or installment payments of such fee when appropriate. Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for a finding by the court at a hearing held pursuant to section twenty-four E that the person has failed to satisfactorily comply with the program.

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

When imposing a sentence pursuant to subparagraph (1) of paragraph (a) of section twenty-four or this section, the court may consider requiring the defendant, as a condition of probation, to serve a minimum of thirty hours in public service or in a community work project.

SECTION 7. Section 24E of said chapter 90, as amended by section 2 of chapter 505 of the acts of 1975, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

The provisions of this section shall apply to any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor provided said person is qualified for a disposition under section twenty-four D. The provisions of this section shall not apply where notice from the registrar of intention to suspend or revoke a person's license or

right to operate is pending prior to the date of complaint on the offense before the court.

SECTION 8. Said section 24E of said chapter 90 is hereby further amended by striking out the fifth, sixth and seventh paragraphs and inserting in place thereof the following two paragraphs:-

At said hearing the probation officer shall submit to the courts a written report which shall include but shall not be limited to a written statement by the supervisor of any program of alcohol education and of any program of alcohol education and of any program of alcohol treatment, rehabilitation, or alcohol treatment and rehabilitation to which the court has assigned such person. Such statement shall consider such person's participation and attendance in each such court ordered program. The registrar shall submit a written report to the judge at said hearing regarding any entries made on said person's driving record in the period following placement in the program. If the court finds sufficient basis to conclude that said person has not satisfactorily completed or is not satisfactorily complying with such program, the court may notify the registrar and the registrar shall revoke the person's license or right to operate forthwith. If the judge finds that the person is satisfactorily complying with the conditions of probation, the judge may enter a dismissal of the charges and issue appropriate orders relative to said person's participation in a program or relative to a later hearing, subject to the duration of the term of probation. The court shall cause to be entered and to be maintained upon the probation record of said person notice of a dismissal of charges under this section. The probation officer supervising a person pursuant to the provisions of this section shall make a written report to the court if at any time such person has failed to satisfactorily comply with a court ordered program or if such person's operation of a motor vehicle constitutes a threat to the public safety. Upon receipt of such report the court shall forthwith hold a hearing on the matter. If at such hearing the court determines that said person has failed to satisfactorily comply with such program or that the said operation of a motor vehicle constitutes such a threat, the court may notify the registrar and the registrar shall without further hearing revoke said person's license or right to operate. Such revocation shall be for the remainder of the period from the date of conviction provided in subparagraph (1) of paragraph (c) of subdivision (1) of section twenty-four. Said person shall thereafter be subject to the same conditions for issuance of a new license or right to operate as any person applying for a new license or

right to operate following revocation as provided in subparagraph (1) of paragraph (c) of said subdivision (1).

Where an order of probation has been revoked by the court, the court shall forthwith so notify the registrar in writing and the registrar shall forthwith revoke said person's operator's license or right to operate which was restored under this section and without further hearing.

SECTION 9. Said chapter 90 is hereby further amended by striking out section 24G, inserted by chapter 227 of the acts of 1976, and inserting in place thereof the following section:-

Section 24G. (a) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, and so operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by any such operation so described causes the death of another person, shall be guilty of homicide by a motor vehicle while under the influence of an intoxicating substance, and shall be punished by imprisonment in the state prison for not less than two and one-half years or more than ten years and a fine of not more than five thousand dollars, or by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years and a fine of not more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, or furlough or receive any deduction from his sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, or the administrator of a county correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric services unavailable at said institution; or to engage in employment pursuant to a work release program. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

The provisions of section eighty-seven of chapter two hundred and seventy-six, shall not apply to any person charged with a violation of this subsection.

(b) Whoever, upon any way or in any place to which the public has a right of access or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of intoxicating liquor, or of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue, and whoever operates a motor vehicle recklessly or negligently so that the lives or safety of the public might be endangered by any such operation causes the death of another person, shall be guilty of homicide by a motor vehicle and shall be punished by imprisonment in a jail or house of correction for not less than thirty days nor more than two and one-half years, or by a fine of not less than three hundred nor more than three thousand dollars, or both.

SECTION 10. Said chapter 90 is hereby further amended by inserting after section 24H the following two sections:-

Section 24I. Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while drinking from an open container of any alcoholic beverage shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Section 24J. In every case of a conviction of or a plea of guilty to a violation of subdivision one of section twenty-four involving driving under the influence of intoxicating liquors or a disposition under section twenty-four D, the court shall inquire of the defendant, before sentencing, regarding whether he was served alcohol prior to his violation of said section at an establishment licensed to serve alcohol on the premises and the name and location of said establishment.

Any information so acquired by the court shall be transmitted to the office of the attorney general and the office of the district attorney for the district in which said establishment is located.

SECTION 11. Chapter 138 of the General Laws is hereby amended by inserting after section 34C the following section:-

Section 34D. Any establishment which sells alcoholic beverages to be drunk on the premises, shall post a copy of the penalties set forth in subdivision (1) of section twenty-four of chapter ninety for driving under the influence. Any establishment which sells alcoholic beverages not to be drunk on the premises shall post a copy of the penalties set forth in section twenty-four I of said chapter ninety for operating a motor vehicle while drinking

from an open container of alcohol. Said copies shall be posted conspicuously by the owner or person in charge of the respective establishment, and whoever violates this provision shall be punished by a fine of not more than fifty dollars. Any person unlawfully removing a copy so posted shall be punished by a fine of fifty dollars. Said copies, printed in letters not less in size than eighteen point capitals, boldface, shall be prepared by the commission and distributed to business establishments which sell, serve or otherwise dispense alcohol or alcoholic beverages to the general public.

SECTION 12. Section 16 of chapter 139 of the General Laws, as amended by section 11 of chapter 328 of the acts of 1934, is hereby further amended by inserting after the word "thirty-eight", in line 8, the words:- , or houses a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety.

SECTION 13. Section 16A of said chapter 139, as most recently amended by section 12 of chapter 1114 of the acts of 1973, is hereby further amended by inserting after the word "thirty-eight", in line 8, the words:- , or houses a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety.

SECTION 14. Section 19 of said chapter 139, as amended by section 14 of chapter 328 of the acts of 1934, is hereby further amended by inserting after the word "thirty-eight", in line 8, the words:- , or the housing of a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor

vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety.

SECTION 15. Section 20 of said chapter 139, as most recently amended by chapter 132 of the acts of 1948, is hereby further amended by inserting after the word "thirty-eight", in line 5, the words:- , or the housing of a premises which is licensed under section twelve of said chapter one hundred and thirty-eight and on or in such premises alcoholic beverages are habitually served to persons who are intoxicated or alcoholic beverages are served to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor in violation of subdivision (1) of section twenty-four of chapter ninety.

SECTION 16. Subdivision (H) of section 110 of chapter 175 of the General Laws, inserted by section 2 of chapter 1221 of the acts of 1973, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) In the case of benefits based upon confinement as an in-patient in an accredited or licensed hospital or in any other public or private facility thereof providing services especially for the detoxification or rehabilitation of intoxicated persons or alcoholics and which is licensed by the department of public health for those services, or in a residential alcohol treatment program as referred to in section twenty-four of chapter ninety, such benefits shall be at least thirty days in any calendar year.

SECTION 17. The third paragraph of section 10 of chapter 176A of the General Laws, inserted by section 4 of chapter 1221 of the acts of 1973, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) In the case of benefits based upon confinement as an in-patient in an accredited or licensed hospital or in any other public or private facility thereof providing services especially for the detoxification or rehabilitation of intoxicated persons or alcoholics and which is licensed by the department of public health for those services, or in a residential alcohol treatment program as referred to in section twenty-four of chapter ninety, such benefits shall be at least thirty days in any calendar year.

SECTION 18. Section 4A½ of chapter 176B of the General Laws, inserted by chapter 526 of the acts of 1979, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) In the case of benefits based upon confinement as an in-patient in an accredited or licensed hospital or in any other public or private facility thereof providing services especially for the detoxification or rehabilitation of intoxicated persons or alcoholics and which is licensed by the department of public health for those services, or in a residential alcohol treatment program as referred to in section twenty-four of chapter ninety, such benefits shall be at least thirty days in any calendar year.

SECTION 19. Section 26 of chapter 218 of the General Laws is hereby amended by inserting after the word "in", in line 11, as appearing in chapter 175 of the acts of 1982, the words:- paragraph (a) of section twenty-four G of chapter ninety.

SECTION 20. This act shall take effect as of September first, nineteen hundred and eighty-two.

Approved August 12, 1982.

Chap. 374. AN ACT AUTHORIZING THE TOWN OF LEXINGTON TO SELL AND CONVEY CERTAIN BUILDINGS AND TO LEASE A CERTAIN PARCEL OF PARK LAND IN SAID TOWN.

Be it enacted, etc., as follows:

SECTION 1. The town of Lexington is hereby authorized to sell and convey to Robert J. Lind, with preservation restrictions, two certain buildings located in Buckman park in said town known as the Garrity House and the Carriage House, and to lease to said Robert J. Lind, for private residential purposes, for a term of ninety-nine years a certain parcel of park land in said Buckman park on which said buildings are located, all for such consideration and upon such terms and conditions as shall be determined by the board of selectmen of said town. Said parcel of land being situated on Hancock street in said town, and shown on a plan entitled "Compiled Plan of Land in Lexington, Mass. for Garrity House Conveyance" dated May 10, 1982 and prepared by Walter J. Tonaszuck, Jr., Town Engineer, on file with the town engineer, and being bounded and described according to said plan as follows:

Beginning at a point at the intersection of the easterly sideline of Hancock Street and the southwesterly sideline of land now or formerly of the Boston & Maine Railroad;