

State DUI Laws: Massachusetts

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: No

Felony Conviction for Repeat Offenses: Yes

Annotated Law of Massachusetts

Ch. 90 § 22. Suspension or Revocation of Certificates of Registration or License; Grounds; Procedures.

(a) The registrar may suspend or revoke without a hearing any certificate of registration or any license issued under this chapter whenever the holder thereof has committed a violation of the motor vehicle laws of a nature which would give the registrar reason to believe that continuing operation by such holder is and will be so seriously improper as to constitute an immediate threat to the public safety. Upon such suspension or revocation, the registrar shall forthwith send written notice thereof to the licensee or registrant, as the case may be. Such notice shall specify the time and place of the violation. The registrar may order the license of such operator or the registration certificate and number plates to be delivered to him; and neither the certificate of registration nor the license shall be reissued unless, upon examination or investigation, or after a hearing, the registrar determines that the operator shall again be permitted to operate. Said operator shall be entitled to a hearing within thirty days of the suspension or revocation, and the registrar shall so advise him in his notice of suspension or revocation. The registrar, under the same conditions and for the same cause, may also suspend the right of any person to operate motor vehicles in the commonwealth under section ten until he shall have received a license from the registrar or until his right to operate has been restored by the registrar.

(b) The registrar may, after due hearing, suspend or revoke any certificate of registration or any license issued under this chapter, when he has reason to believe the holder thereof is an incompetent person to operate motor vehicles, or is operating a motor vehicle improperly. The registrar may also, after due hearing, suspend or revoke any certificate of registration issued under this chapter, when a certificate of title issued by him under chapter ninety D has been suspended or revoked. At least fourteen days prior to any such suspension or revocation, the registrar shall notify the operator in writing of his intention to suspend or revoke his license as of a specified date. Said notice shall specify the reasons for the intended suspension or revocation and shall inform the operator of his right to request in writing a hearing within fourteen days after the date of such notice on the question of whether there is just cause for such suspension or revocation. If, after such hearing, the registrar determines that there is just cause for suspension or revocation, he may suspend or revoke the license but, except as provided by law, or except when he finds that the operator is physically or mentally incapable of operating a motor vehicle, no suspension under this subsection shall be for a period in excess of thirty days. Failure on the part of the operator to request a hearing as aforesaid shall constitute a waiver of his right to a hearing and the registrar may thereafter suspend or revoke the license or certificate on the date originally specified.

(c) If the registrar receives official notice, in any form which the registrar deems appropriate, including electronic transmissions, that a resident of the commonwealth or any person licensed to operate a motor vehicle under the

provisions of this chapter has been convicted in another state or country of a motor vehicle violation, the registrar shall give the same effect to said conviction for the purposes of suspension, revocation, limitation or reinstatement of the right to operate a motor vehicle, as if said violation had occurred in the commonwealth.

As used in this section "motor vehicle violation" shall mean a violation of law, regulation, by-law, or ordinance, except a violation related to parking, the nature of which would have been reported to the registrar pursuant to chapters eighty-nine, ninety, ninety C, or one hundred and seventy-five, if said violation had occurred in the commonwealth.

If the registrar receives official notice, in any form which the registrar deems appropriate, including electronic transmissions, that a resident of the commonwealth, or any person licensed to operate a motor vehicle under the provisions of chapter ninety, or any applicant therefor has had a license or right to operate suspended or revoked in another state or country, the registrar shall not issue a license to said person, and if a license has already been issued the registrar shall immediately revoke said license, without a prior hearing. However, if said license or right to operate is subsequently reinstated by such other state or country, the person may apply to the registrar for reinstatement of said license in the commonwealth.

(d) Notice to any person whose license or registration certificate or right to operate is suspended or revoked under this section or notice to any person of intention to revoke or suspend his license or registration certificate under this section shall be in writing, shall be mailed by the registrar or any person authorized by him to the last address as appearing on the registrar's records or to his last and usual place of abode and a certificate of the registrar that such notice has been mailed in accordance with this section shall be deemed prima facie evidence and shall be admissible in any court of the commonwealth as to the facts contained therein.

If during the period of any such suspension or revocation and prior to its termination by the registrar a new or duplicate learner's permit, license or certificate of registration, or any renewal thereof, is issued, such learner's permit, license or certificate of registration shall be void and of no effect.

(e) The registrar may, suspend the license or right to operate and the certificate of registrations of any person for up to six months, whenever the registrar, after a hearing, has reason to believe that said person has violated the provisions of section thirty-four B of chapter one hundred and thirty-eight.

Upon a conviction of said section thirty-four B, the court shall notify the registrar, who shall immediately revoke the license, right to operate or registration for one year.

(f) The registrar shall suspend, without hearing, the license or right to operate of a person who is convicted of a violation of any provision of chapter ninety-four C or adjudged a delinquent child by reason of having violated any provision of chapter ninety-four C; provided, however, that the period of such suspension shall not exceed five years; provided further, that any person so convicted who is under the age of eighteen years or who is adjudged a delinquent child by reason of having violated any provision of chapter ninety-four C, and is not licensed to operate a motor vehicle shall, at the discretion of the presiding judge, not be so licensed for a period no later than when such person reaches the age of twenty-one years.

(g) Upon receipt of notice, as specified by the registrar, from the department of revenue that a final determination of child support delinquency [sufficient] to suspend or prohibit issuance or renewal of a license has been issued against a resident of the commonwealth or an individual licensed to operate a motor vehicle under this chapter, after a hearing or an opportunity therefor pursuant to section 16 of chapter 119A, the registrar, without opportunity for further hearing,

shall suspend or prohibit issuance or renewal of such license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration held by such individual and forward any notice required by paragraph (d) to such individual. Notwithstanding any other provisions of this chapter, the opportunity for a hearing provided by the department of revenue pursuant to section 16 of chapter 119A shall constitute the exclusive administrative remedy to contest the existence of a child support arrearage which is the basis for action by the department of revenue to effect the suspension, nonissuance or nonrenewal of a license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration. The registrar shall reinstate, issue or renew such license, learner's permit or right to operate a motor vehicle or allow the registration of a motor vehicle if the department of revenue provides to the registrar a notice, as specified by the registrar, stating that the resident or other individual is in compliance with a subpoena, warrant, summons or judgment or order for child support, including any agreement with or regulation issued by the department of revenue governing payment of arrears or upon order by the reviewing court, if the individual is otherwise entitled thereto. Notices between the department of revenue and the registrar under this subsection may be made in any form, including electronic transmission. Upon exhaustion of administrative remedies provided in section 16 of chapter 119A, an individual aggrieved by a final determination of the department of revenue, as adopted or acted upon by the registrar, may seek judicial review of the final determination issued by the department of revenue in the court where the child support order was issued, which has jurisdiction to register the order, or which issued the subpoena, warrant or summons, within 45 days of the date of the registrar's notice to such individual that his license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration is subject to suspension, nonissuance or nonrenewal; provided, however, that a request for judicial review shall be by action against the department of revenue and not the registrar and shall be accompanied by a copy of the department of revenue's final determination. Such review shall constitute the exclusive remedy for individuals aggrieved by a final determination as adopted or acted upon by the registrar under section 16 of chapter 119A; provided, however, that such review shall not limit an individual's appellate remedies. The provisions of section 28 shall not apply.

(h) The registrar shall not issue, renew or reinstate a license to operate of any person against whom a default or arrest warrant issued by any court in the commonwealth is outstanding. Evidence of the outstanding warrant appearing in the warrant management system, established by section twenty-three A of chapter two hundred and seventy-six, shall be sufficient grounds for such action by the registrar.

(i) The registrar shall suspend the license to operate motor vehicles of a person against whom an arrest or default warrant issued by any court in the commonwealth is outstanding. Evidence of the outstanding warrant appearing in the warrant management system shall be sufficient grounds for such action by the registrar. The person shall receive notice that his license shall be suspended in 90 days due to an outstanding warrant unless such person furnishes proof to the registrar that such warrant has been recalled or does not exist. A person whose license has been suspended due to an outstanding warrant may petition for reinstatement of such license at any time if he can furnish sufficient proof as determined by the registrar that such warrant has been recalled. The registrar shall promulgate regulations to implement this section, which shall include the opportunity for a hearing to challenge the existence of the outstanding warrant. If a hearing is requested, the law enforcement agency responsible for the warrant shall be notified of the time, place, date of hearing and the subject of the warrant. An affidavit from the law enforcement agency responsible for the warrant or from the colonel of the state police may be introduced as prima facie evidence of the existence of a warrant without the need for members of that law enforcement agency to attend any hearings held under this section.

(j) Upon receipt of notice, as specified by the registrar, from the sex offender registry board, that a sex offender has failed to comply with the registration requirements of sections 178C to 178P, inclusive, of chapter 6, the registrar shall suspend or prohibit issuance or renewal of a license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration held by such sex offender. The sex offender shall receive notice that the registrar shall suspend

or prohibit renewal of such a license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration in 90 days due to his failure to comply with the registration requirements of said sections 178C to 178P, inclusive, of said chapter 6, unless the sex offender furnishes proof to the registrar that he has complied with his sex offender registration requirements. A sex offender whose license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration has been suspended due to his failure to comply with the registration requirements of said sections 178C to 178P, inclusive of said chapter 6 may petition for reinstatement of his license, learner's permit, right to operate a motor vehicle or certificate of motor vehicle registration at any time if he produces sufficient proof, as determined by the registrar, that he is in compliance with his sex offender registration requirements. The registrar shall promulgate regulations to implement this subsection, which shall include the opportunity for a hearing to challenge the lack of sex offender registration compliance. If a hearing is requested, the sex offender registry board shall be notified of the time, place, date of hearing and the identity of the sex offender. An affidavit from the sex offender registry board may be introduced as prima facie evidence of the lack of sex offender registration compliance and members or employees of the sex offender registry board need not attend any hearings held under this subsection.

The registrar shall reinstate, issue or renew such license, learner's permit or right to operate a motor vehicle or the registration of a motor vehicle if the sex offender registry board provides to the registrar a notice, as specified by the registrar, stating that the sex offender is in compliance with the registration requirements of said sections 178C to 178P, inclusive, of said chapter 6 and such sex offender shall be assessed a \$ 100 sex offender registry reinstatement fee which shall be transmitted by the registrar to the treasurer for deposit into the general fund. Notices between the sex offender registry board and the registrar under this subsection may be made in any form, including electronic transmission.

Ch. 90 § 23. Operating Vehicle After License Suspended or Revoked; Concealment of Identity of Vehicle.

Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked, or after notice of the suspension or revocation of his right to operate a motor vehicle without a license has been issued by the registrar and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or to the issuance to him of a new license to operate, and any person convicted of operating or causing or permitting any other person to operate a motor vehicle after the certificate of registration for such vehicle has been suspended or revoked and prior to the restoration of such registration or to the issuance of a new certificate of registration for such vehicle, or whoever exhibits to an officer authorized to make arrests, when requested by said officer to show his license, a license issued to another person with intent to conceal his identity, shall, except as provided by section twenty-eight of chapter two hundred and sixty-six, be punished for a first offence by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment for not more than ten days, or both, and for any subsequent offence by imprisonment for not less than sixty days nor more than one year, and any person who attaches or permits to be attached to a motor vehicle or trailer a number plate assigned to another motor vehicle or trailer, or who obscures or permits to be obscured the figures on any number plate attached to any motor vehicle or trailer, or who fails to display on a motor vehicle or trailer the number plate and the register number duly issued therefor, with intent to conceal the identity of such motor vehicle or trailer, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ten days, or both. Any person convicted of operating a motor vehicle after his license to operate has been revoked by reason of his having been found to be an habitual traffic offender, as provided in section twenty-two F, or after notice of such revocation of his right to operate a motor vehicle without a license has been issued by the registrar 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 five hundred nor more than five thousand dollars or by imprisonment for not more than two years, or both. 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.

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 of this chapter, or pursuant to subsection (a) of section eight, or pursuant to a violation of section eight A or section eight B of chapter ninety B, 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.

A certificate of the registrar or his authorized agent that a license or right to operate motor vehicles or a certificate of registration of a motor vehicle has not been restored or that the registrar has not issued a new license so to operate to the defendant or a new certificate of registration for a motor vehicle the registration whereof has been revoked, shall be admissible as evidence in any court of the commonwealth to prove the facts certified to therein, in any prosecution hereunder wherein such facts are material. 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.

Upon a conviction of operating after suspension or revocation of license or right to operate under the first paragraph, the registrar shall extend said suspension or revocation for an additional sixty days. Upon a conviction of operating after suspension or revocation of license or right to operate under the second paragraph, the registrar shall extend said suspension or revocation for an additional year.

If a person operating a motor vehicle after suspension or revocation of a license to operate or the right to operate a motor vehicle under the first or second paragraphs of this section, is found by the registrar to have operated a vehicle registered to another in violation of said suspension or revocation, the registrar shall, after hearing, revoke the certificate of registration of said motor vehicle for up to thirty days. Pursuant to said hearing, the certificate of registration and the number plates shall be immediately surrendered to the registrar.

Ch. 90, § 24 Driving Under the Influence of Intoxicating Liquor or Controlled Substance; Repeat Offenders; Education and Rehabilitation Programs; Reckless or Unauthorized Driving; Fraud in Connection with License; Failure to Stop After Collision; Prosecution for Second Offense; Penalties.

(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.

(31/2) 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 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.

(33/4) 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.

(a1/2) (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 (a1/2) 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 (a1/2) 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 (a1/2) 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 (a1/2) 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.

ch. 90, § 24D. Probation, Driver Alcohol Education, Treatment and Rehabilitation Programs for Drivers Convicted of Operating Motor Vehicle Under the Influence of Intoxicating Liquors or Controlled Substances; Fees; Reports.

Any person convicted of or charged with operating 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, controlled substance or the vapors of glue, 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 or controlled substance abuse 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 drivers who operates a motor vehicle after or while consuming alcohol, controlled substances or the vapors of glue. 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 and operating with a blood alcohol percentage of eight one-hundredths or greater, or 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.

This section shall apply to any person who has never been convicted of operating a motor vehicle while under the influence of intoxicating liquor 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. This section shall also apply to any person convicted of or charged with operating a motor vehicle while under the influence of intoxicating liquor who has been convicted of such offense 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 10 years or more before the date of the commission of the offense for which he is to be sentenced, once in his lifetime. If, after receiving a sentence for a second disposition pursuant to this paragraph, a person is convicted of an additional operating under the influence of intoxicating liquor all prior convictions or assignments to an alcohol or controlled substances program by a court of the commonwealth or any other jurisdiction shall be counted for purposes of sentencing under subdivision (1) of section 24.

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

Upon each disposition under this section, the defendant will surrender any Massachusetts drivers license or permit in his possession to the probation department of that court. The probation department will dispose of the license, and the court shall report the disposition in the case in a manner as determined by the registrar. Notwithstanding the provisions of subparagraph (1) of paragraph (c) of subdivision (2) of section 24, subparagraph (1) of paragraph (f) of subdivision (1) of section 24, and section 24P, a defendant may immediately upon entering a program pursuant to this section apply to the registrar for consideration of a limited license for hardship purposes. The registrar, at his discretion, may issue such license under such terms and conditions as he may prescribe. Any such license shall be valid for an identical 12 hour period, 7 days a week. This provision shall also apply to any other suspensions due to the same incident that may be in effect pursuant to said subparagraph (1) of paragraph (c) of subdivision (2) of section 24, said subparagraph (1) of paragraph (f) of subdivision (1) of said section 24 and section 24P of this chapter. Nothing in this section shall be construed to authorize hardship eligibility if the person is suspended or revoked, or to be suspended or revoked, under

any other statute not referenced in this section, or due to any other incident. Failure of the operator to complete his obligations to the program, or remain in compliance with court probation, shall be cause for immediate revocation of the hardship license. In these and all cases where a hardship license is sought by an operator, the probation office for the court where the offender is on probation will, upon request, furnish the registry with documentation verifying the person's status with probation.

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, and shall include but shall not be limited to instruction on driver improvement skills as part of the course content.

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, 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 or controlled substance abuse education and, if deemed necessary by the court, a program of alcohol or controlled substance abuse treatment, rehabilitation, or alcohol or controlled substance abuse treatment and rehabilitation pursuant to this section shall pay directly to such program a fee in an amount to be determined by the department of public health. The department of public health 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 department of public health establishes a schedule of such fees pursuant to this section the fee for such programs shall be two hundred dollars. The department of public health 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 department of public health 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 or controlled substance abuse 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 department of public health subject to appropriation for the support of said driver alcohol or controlled substance abuse treatment or rehabilitation programs in accordance with the conditions of the gift, grant, or loan. Any federal legislation generating funds for driver alcohol or controlled substance abuse education or treatment or rehabilitation shall be used by the department of public health to the extent possible to support the purposes of this section.

An additional fee of two hundred and fifty dollars shall be paid to the chief probation officer of each court by each person placed in a program of driver alcohol or controlled substance abuse education pursuant to this section and all such fees shall be deposited with the state treasurer, subject to appropriation, for the support of programs operated by the

secretary of public safety, the alcohol beverage control commission, and the department of public health for the investigation, enforcement, 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 department of public health 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 or controlled substance abuse 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 department of public health on the resources available for alcohol or controlled substance abuse treatment or rehabilitation, or alcohol or controlled substance abuse treatment and rehabilitation, of alcohol-impaired or controlled substance abuse-impaired drivers, which report shall evaluate the existing resources and shall make recommendation as to additional necessary resources. Said shall take such reports into consideration in the development, implementation, and review of the state's alcoholism or controlled substance abuse 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.

Ch. 90, § 24E. Disposition of Person Convicted of Driving Under the Influence Under Alternative Plan; Eligibility; Dismissal of Charges; Conditions; Reports.

The provisions of this section shall apply to any person convicted of or charged with operating 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 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.

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

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

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

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.

Ch. 90, § 24G. Homicide by Motor Vehicle; Penalty.

(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 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 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 fifteen 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 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 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 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 the vapors of glue, or whoever operates a motor vehicle recklessly or 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 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.

(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.

Ch. 90, § 24I. Operation of Motor Vehicle While Drinking Alcoholic Beverage From Open Container.

(a) As used in this section, the following words shall have the following meanings:

"Open container", any bottle, can or other receptacle used to contain a liquid that has been opened or has a broken seal, or the contents of which have been partially removed or consumed.

"Passenger area", the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in a seated position including, but not limited to, the glove compartment. But in a motor vehicle that is not equipped with a trunk, the passenger area shall not include a locked glove compartment, the area behind the last upright seat, or an area not normally occupied by the driver or a passenger.

(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, possesses an open container of alcoholic beverage in the passenger area of any motor vehicle shall be punished by a fine of not less than \$ 100 nor more than \$ 500.

(c) This section shall not apply to (1) the passengers of a motor vehicle designed, maintained and used for the transportation of persons for compensation, or (2) the living quarters of a house coach or house trailer.

(d) Notwithstanding this section, the driver of any motor vehicle, including but not limited to a house coach or house trailer, shall not possess an open container of alcoholic beverage.

Ch. 90, § 24K. Chemical Analysis of Breath; Rules and Regulations Regarding Testing Procedures; Uniform Form for Reports.

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.

ALM GL ch. 90, § 24L (2004)

ch. 90, § 24L. Causing Serious Bodily Injury by Driving While Under Influence of Liquor or Drugs; Imprisonment and Fine; Minimum Sentence; Definition of "Serious Bodily Injury"; Revocation of License.

(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 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 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 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.

Ch. 90, § 24N. Suspension of License Upon Prima Facie Showing at Arraignment That Defendant's Blood-Alcohol Level was Above Legal Limit or That Defendant Refused Test; Hearing.

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 of this chapter, or a violation of paragraph (1) of subsection (a) of section eight, or a violation of section eight A or section eight B of chapter ninety B, 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 or vessel while the percentage, by weight, of alcohol in his blood was eight one-hundredths or more, or, relative to any defendant 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 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 30 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 180 days; provided, however, that any person who is under the age of 21 or who has been previously convicted of a violation under section 24 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; provided, further, that any person previously convicted 2 or more times of a violation under section 24 of 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. No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by the 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.

Ch. 90, § 24P. Suspension of License or Permit of Underage Person Charged With Violation; Assignment of Non-Repeat Offender to Treatment Program.

(a) Upon evidence that a person under the age of 21, after having been arrested for or charged with a violation under section 24, 24G or 24L, had a blood alcohol percentage of two one-hundredths or greater or upon evidence that such person refused to submit to a chemical test or analysis of his breath or blood under section 24, notwithstanding the finding upon any such charge, such person shall have his license or permit to operate a motor vehicle suspended by the registrar for a period of 180 days; provided, however, that any such person who is less than 18 years of age at the time of such violation shall have his license suspended by the registrar for one year. Such suspension by the registrar shall be imposed in addition to any penalty, license suspension or revocation imposed upon such person by the court as required by said section 24, 24G or 24L.

If a person has not been previously arrested for or charged with a violation under said section 24, 24G or 24L, such person shall, if he consents, be assigned to a program specifically designed by the department of public health for the treatment of underage drinking drivers; provided, however, that such assignment shall not be precluded by a finding or disposition upon a charge against such person under said section 24, 24G or 24L. Upon entry into such program, as authorized by this section or as otherwise required under any disposition pursuant to section 24D, the suspension of a license or permit to operate as required by this section shall be waived by the registrar for a person under 21 years of age but over 18 years of age; provided, however, that such suspension shall be for a period of 180 days for such person who was under the age of 18 at the time of such violation. Upon the failure of a person under the age of 21 to successfully complete such program, the registrar shall forthwith suspend such license or permit to operate for 180 days; provided, however, that upon such failure to successfully complete such program by a person who was under the age of 18 at the time of such violation, the registrar shall forthwith suspend the license or permit to operate for one year.

(b) The license or permit to operate of a person convicted of any violation under section 24, 24G, 24I or 24L who was under the age of 18 at the time of such violation and whose license or permit to operate was not suspended under subsection (a) for such violation shall have such license or permit suspended for a period of 180 days for a first offense and for a period of one year for a second or subsequent offense.

Ch. 263, § 5A. Right to Immediate Medical Examination of Persons in Custody for Operating Motor Vehicle While Under the Influence of Intoxicating Liquor.

A person held in custody at a police station or other place of detention, charged with operating a motor vehicle while under the influence of intoxicating liquor, shall have the right, at his request and at his expense, to be examined immediately by a physician selected by him. The police official in charge of such station or place of detention, or his designee, shall inform him of such right immediately upon being booked, and shall afford him a reasonable opportunity to exercise it. Such person shall, immediately upon being booked, be given a copy of this section unless such a copy is posted in the police station or other place of detention in a conspicuous place to which such person has access.

