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Last Transmittal No. to:

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FIRST JUSTICES: *Please distribute copies (enclosed) of this memorandum to the clerk-magistrate and chief probation officer of the court. Other judges will receive their copies directly from this office.*

MEMORANDUM

TO: District Court Judges, Clerk-Magistrates and Chief Probation Officers
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: April 5, 2006
SUBJECT: **Chapter 122 of the Acts of 2005: “Melanie’s Law”**

The enclosed memorandum is intended to help focus and clarify the many issues resulting from the passage of Statute 2005, c. 122, Melanie’s Law. In some respects, it will raise more questions than it answers. I hope that the day-long course offered by the Judicial Institute on April 7, 2006 and April 28, 2006 will provide an opportunity for in-depth discussion of this new law and suggestions for modifications or additions to this transmittal.

In meeting the challenges posed by Melanie’s Law, we are fortunate to have the talents of the Administrative Office legal staff, led by Ellen Shapiro, John Connors, and Philip McCue.

To paraphrase Mark Twain: if we had had more time we’d have written a shorter memo.

Chapter 122 of the Acts of 2005: “Melanie’s Law”

As you know, "*Melanie’s Law*" refers to Chapter 122 of The Acts of 2005, "*An Act Increasing Penalties for Drunk Drivers in the Commonwealth.*" This formal title captures only a small part of the new law’s reach. While changes in the criminal penalties for specific OUI-related crimes¹ are few in number, the law makes important changes in procedural and evidentiary law, adds some entirely new procedural events, creates a number of new crimes (some of which are not directly related to OUI crimes) and dramatically expands administrative penalties that may or must be imposed by the Registry of Motor Vehicles (RMV) for these offenses.

All of the changes in Melanie’s Law went into effect on October 28, 2005, except (1) those involving a new program requirement for certain youthful offenders and (2) those involving ignition interlock devices, which went into effect on January 1, 2006.

The purpose of this memorandum is to analyze the many provisions in Melanie’s Law, particularly as they relate to District Court jurisdiction and procedure, and to provide assistance in the proper application of the law’s new requirements. As other issues emerge we will attempt to address them as well. It would be helpful if you would forward any comments and issues of concern to this office to the attention of John Connors, Deputy Court Administrator.

OVERVIEW OF CHANGES MADE BY MELANIE’S LAW

The statutory changes made by Melanie’s Law can be grouped into the following six categories. These changes are discussed in detail in the separate sections that follow this overview.

1. Changes in existing criminal penalties.

Melanie’s Law does not change many of the existing criminal penalties for specific OUI crimes. One specific penalty change, however, is that for certain motor vehicle homicide charges, the required period of license suspension has been increased from 10 years to 15 years. See Section I.

Another important change in existing criminal penalties is that now, by statute, the license suspension resulting from the disposition of an OUI crime will not go into effect until the completion of any pending suspension for breath test refusal. In other words, a license suspension resulting from an OUI disposition is now "on and after" any existing test refusal suspension. See Section III.

Many of the penalties in Melanie’s Law involve new provisions that apply to OUI crimes generally if certain conditions are met. For example, a mandatory "addiction assessment" must be included in the sentence for certain OUI crimes, if the defendant had a particular level of blood alcohol content or a certain OUI criminal history. See Section VI.

¹Except where otherwise stated, the terms “OUI related crimes” and “OUI crimes” are used in this memorandum to refer generally to criminal offenses which include among the elements of the crime operating a motor vehicle or boat while under the influence of alcohol, drugs or glue, or while in violation of a *per se* limit for blood alcohol content.

Another change in sentencing for OUI related crimes involves the court's use of out-of-state alcohol education programs in "24D" dispositions. Defendants' eligibility for such programs has been narrowed and such programs must meet certain new requirements. See Section V. A.

Melanie's Law also requires a new disposition for defendants "aged 17 to 21, inclusive, whose blood alcohol percentage, by weight, was not less than .20." Such defendants must be assigned to a "14-day second offender in-home program." See Section V. B.

2. New crimes

Melanie's Law creates several new crimes (and one new civil motor vehicle infraction), all but one of which are within District Court final jurisdiction. These new offenses are listed at Appendix A and are discussed in Section II.

3. Changes involving breath testing and breath test refusal.

Melanie's Law eliminates the issuance of both temporary and hardship licenses following suspension for breath test failure or test refusal.² Now such suspensions go into effect immediately and the law provides for vehicle impoundment.

The length of license suspension for test refusal now varies based on the defendant's OUI criminal record with significant periods of suspension for repeat offenders. Also, certain changes have been made in the procedures to be followed by the police in administering the test and in reporting test results. See Section III A.

A new "license restoration hearing" is created by Melanie's Law, whereby a defendant upon being acquitted of an OUI charge or having it dismissed may request termination of the license suspension that resulted from a test refusal. See Section III B.

4. New evidentiary requirements for proving prior convictions

Melanie's Law has amended the statutory requirements the prosecution must meet in proving prior OUI convictions. These changes involve the separate topics of admissibility and prima facie effect, and raise questions about their meaning and application. See Section IV.

5. New procedural events

Two new District Court procedural events are created by Melanie's Law. One is the license "restoration hearing" following a test refusal suspension referred to above. The other is a "forfeiture hearing" which can result in a court order for the forfeiture of the motor vehicle or boat of a multiple offender, if the District Attorney meets a certain statutory test. See Section VII.

² A hardship license is possible in some instances after conviction of an OUI crime (after the period of suspension for breath test refusal has run). See Section IV.

6. New Registry of Motor Vehicle sanctions

Among the most significant new penalties provided in Melanie's Law are those that must, or may, be imposed by the Registry of Motor Vehicles (RMV) as distinguished from those imposed by the court. These include the imposition, as a license requirement, of an "ignition interlock device" and its installation, maintenance and proper use in specific circumstances. See Section VIII.

Other RMV sanctions under Melanie's Law involve increased license suspension for test refusal based on OUI criminal history (mentioned above), new restrictions on hardship license availability (including the addition of ignition interlock device requirements to some hardship licenses), lifetime revocation for certain OUI repeat offenders, and cancellation of the vehicle registration of certain OUI repeat offenders. See Section IX.

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I. CHANGES IN SPECIFIC OUI CRIMINAL PENALTIES

Melanie's Law changes only one criminal penalty provision in a pre-existing OUI crime. In G.L. c. 90, § 24G(c), the period of license suspension for a first offense conviction for motor vehicle homicide under G.L. c. 90, § 24G(a) or (b) has been increased from 10 to 15 years. See Appendix D, WMS Code Numbers 90/24G/A through 90/24G/H.

A second or subsequent conviction continues to require lifetime revocation.

As mentioned previously, the primary impact of Melanie's Law on OUI offenses involves the creation of new OUI crimes, new sentencing provisions that apply to OUI crimes generally and new administrative sanctions to be imposed by the RMV.

II. NEW CRIMES AND THEIR PENALTIES

Melanie's Law creates 15 new crimes listed below, not all of which relate directly to OUI. These new crimes and their penalties are also listed in Appendix A.

The complaint language and penalty provisions for these new crimes have been entered into the WMS and BasCOT data bases and are included in the charging language for all crimes that are affected by Melanie's Law. See Appendix D. This charging language and related penalty provisions for each of these new crimes has its own code number. These code numbers are provided below.

The new offenses and some of their important features are as follows:

Civil Motor Vehicle Infraction

- **G.L. c. 90, § 12(a).** Knowingly employing an unlicensed person to operate a motor vehicle. **WMS Code No. 90/12/A.** This offense previously had no stated penalty. It now provides for a fine. Since it is a Chapter 90 offense with no provision for incarceration, it is a civil motor vehicle infraction.

Criminal Offenses

- **G.L. c. 90, § 12(a).** Knowingly employing an unlicensed person to operate a motor vehicle, subsequent offense. **WMS Code No. 90/12/B.** The penalty for this crime includes possible incarceration; therefore, it is a criminal charge.
- **G.L. c. 90, § 12(b).** Knowingly permitting an unlicensed person or person whose license is suspended or revoked to operate a motor vehicle. **WMS Code No. 90/12/C.**
- **G.L. c. 90, § 12(b).** Knowingly permitting an unlicensed person or person whose license is suspended or revoked to operate a motor vehicle, subsequent offense. **WMS Code No. 90/12/D.**

- **G.L. c. 90, § 12(c).** Knowingly permitting a person with an interlock restricted license to operate a motor vehicle not equipped with such a device. **WMS Code No. 90/12/E.**
- **G.L. c. 90, § 12(c).** Knowingly permitting a person with an interlock restricted license to operate a motor vehicle not equipped with such a device, subsequent offense. **WMS Code No. 90/12/F.**
- **G.L. c. 90, § 23, third par.** Operating a motor vehicle "in violation" of certain OUI laws (listed in Appendix B) while having a license or right to operate suspended or revoked³ pursuant to any of these same laws. **WMS Code No. 90/23/J.** In this new criminal charge, the alleged new violation and the allegation that the operator's license was suspended or revoked at the time of this new violation are both elements, and, therefore, must be alleged and proved by the prosecution. This crime does *not* include an operator who violates one of the OUI crimes listed in Appendix B, while his Massachusetts license or right to operate was suspended or revoked as a result of a "like violation" in another jurisdiction. This crime has a *mandatory minimum sentence of one year* which must be served consecutively to and not concurrent with "any other sentence or penalty."
- **G.L. c. 90, § 24S(a).** Operating a motor vehicle without an interlock device with a license requiring such a device. **WMS Code No. 90/24V/B.**
- **G.L. c. 90, § 24T(a).** Tampering with an interlock device. **WMS Code No. 90/24T.**
- **G.L. c. 90, § 24U(a)(1).** Breathing into an interlock device for another. **WMS Code No. 90/24U/A.**
- **G.L. c. 90, § 24U(a)(1).** Breathing into an interlock device for another, subsequent offense. **WMS Code No. 90/24U/B.**
- **G.L. c. 90, § 24V.** Child endangerment while operating under the influence. **WMS Code No. 90/24V/A.**
- **G.L. c. 90, § 24V.** Child endangerment while operating under the influence, subsequent offense. **WMS Code No. 90/24V/B.** This crime provides for an "enhanced penalty," if the child endangerment element is proved, of a mandatory minimum term of incarceration of six months in the House of Correction, which must be "served consecutively to and not concurrently with the predicate violation."
- **G.L. c. 265, § 13 ½.** Manslaughter by motor vehicle while OUI or with *per se* blood alcohol content. **WMS Code No. 265/1312.** This is a new "20-year" felony (vehicular manslaughter) and, as such, is not within District Court final jurisdiction. However, it may be the subject of a District Court bind-over hearing. It has a five-year mandatory

³ “. . . or after notice of such suspension or revocation of the right to operate a motor vehicle has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license or right to operate.”

minimum sentence with a minimum 15-year loss of license. The statute does not provide a definition of "manslaughter," so the common law definition will apply. This new crime does not have a separate "subsequent offense" charge.

- **G.L. c. 266, § 139.** Taking a license plate. **WMS Code No. 266/139/E.**

III. PROVISIONS INVOLVING BREATH TESTING AND TEST REFUSAL

Melanie's Law makes several important changes in procedures that take place following the arrest of a motor vehicle operator for an OUI offense. These involve breath testing administered by the police to determine blood alcohol content; the consequences for test refusal (including license suspension and vehicle impoundment) and "restoration" of the license *by the court* if the defendant is acquitted or obtains a dismissal of the charges before the test refusal suspension ends.

A. DURATION OF SUSPENSION FOR TEST REFUSAL

1. What provisions have been changed regarding breath test procedures following arrest?

The legal basis for breath testing has *not* changed: Any person operating a motor vehicle in the Commonwealth is deemed to have consented to submit to the test if he or she is arrested for OUI-related crimes; the police must have reasonable grounds to believe the person arrested has been operating under the influence of intoxicating liquor; and the person must be informed that his or her license, permit or right to operate will be suspended, "for a period of at least 180 days to a lifetime loss," if the person refuses to take the test. G.L. c. 90, § 24(1)(f)(1).

The only change in these requirements involves the duration of license suspension (180 days to lifetime) that must be included in the police warning to the operator on the consequences of test refusal.

2. Does the court have any involvement in determining the length of test refusal suspension?

The duration of test refusal suspensions is to be determined by the RMV, which must grapple with any problems in determining the proper length of such suspensions under the new law. See par.3 below. Appeal of the suspension to the RMV, and District Court review of the RMV decision, is still available within certain time limits under G.L. c. 90, § 24(1)(g).

The statute refers only to prior "convictions" and makes no reference to prior program assignments as the basis for determining the length of suspension. A prior dismissal of an OUI charge following a "24D" program assignment on a continuance without a finding may not qualify as a "conviction" for purposes of this law. This will require an RMV determination.

3. What are the changes in the duration of license suspension for test refusal?

For adult defendants with no prior OUI convictions, the test refusal suspension remains at 180 days. However, suspensions for other defendants are as follows:

- (a) **The suspension period is *three years*** if the person refusing the test is:
- under the age of 21, or⁴
 - has been "previously convicted" of certain OUI crimes (see list of OUI crimes at Appendix B) or any "like violation by a court of any other jurisdiction."
- (b) **The suspension period is *five years*** if the person has been "previously convicted of 2 such violations".
- (c) **The suspension is *for life*** if the person has been "previously convicted of 3 or more such violations".
- (d) **The suspension is for *ten years*** if the person has been previously convicted of a violation of G.L. c. 90, § 24L (causing serious bodily injury while OUIL/drugs or per se and reckless or negligent).⁵
- (e) **The suspension is *for life*** if the person previously has been convicted of a violation of G.L. c. 90, § 24G(a) (motor vehicle homicide while OUI alcohol or drugs or per se and reckless or negligent), 24G(b) (motor vehicle homicide while OUI alcohol or per se) or G.L. c. 265, § 13 ½. (motor vehicle manslaughter while OUI alcohol or drugs or per se).⁶

Under an amendment to G.L. c. 90, § 24(1)(f)(1), fourth par., the operator's license or right to operate, when suspended for test refusal, "shall [not] be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period," except by means of a "restoration hearing." See discussion of restoration hearings on pages 10 - 12, below.

A chart summarizing the test refusal suspensions is attached at Appendix C.

4. **What other consequences for test refusal are provided under the new law?**

The new law also provides that the license suspension for test refusal "shall become effective immediately upon receipt of the notification of suspension from the police officer." G.L. c. 90 § 24(1)(f)(1), third par. The previous 15-day "temporary license" prior to suspension has been eliminated.

⁴ A person who is under 21 *and* has one or more prior convictions for any of the listed offenses would appear to be subject to suspension based on such prior convictions.

⁵ This appears to be in conflict with the suspension periods also provided in the law for one or more previous violations of G.L. c. 90, § 24L. See above. Also, suspension under this provision is not triggered by a prior conviction for a "like violation" by a court in another jurisdiction.

⁶ This lifetime suspension for test refusal by a person having any of these prior convictions appears to be in conflict with the suspension periods also provided in the law for one or more previous violations of these laws. See above. Also, this provision does not include a prior conviction for any "like violation" by a court in another jurisdiction.

The notification of suspension must be in writing and the law clearly implies (though does not expressly state) that it must be given to the person at the time of the test refusal. The law requires that the officer take custody of the person's "license or right to operate issued by the Commonwealth" immediately upon the test refusal. The license or right to operate must be forwarded to the RMV "forthwith."

Also, the police are required to *impound* the automobile involved and arrange for that impoundment to last for 12 hours after the test refusal, with the cost of the towing, storage and maintenance being the responsibility of the operator. G.L. c. 90, § 24(1)(f)(1), first par. (iii). This is a new requirement.

The officer "before whom the refusal was made" must prepare a written report within 24 hours (formerly "immediately") after the refusal. The report must be made under the pains and penalties of perjury and must:

- "set forth" the grounds for the officer's belief that the person arrested had been operating a motor vehicle "on any way or place" while under the influence of intoxicating liquor,
- state that the person had refused to submit to a chemical test or an analysis when requested by the officer to do so, and that the refusal was witnessed "by another person other than the defendant,"
- include the name of the officer who made the request and the other person who witnessed the refusal, and
- be sent forthwith to the RMV along with a copy of the "notice of intent to suspend, in a form, including electronic or otherwise, that the Registrar deems appropriate."⁷

The statute does not require that the report include a reference to the officer having properly informed the operator of the suspension that will result upon test refusal and its possible duration. The form of the report approved by the RMV may address this point.

These requirements may be relevant if the operator appeals the test refusal suspension to the RMV and then seeks further review in the District Court. Given the possible length of these suspensions, the number of such review proceedings may increase.

5. Are there any consequences of test refusal that directly affect the court?

There are at least two other areas in which test refusal suspensions are likely to have an impact on court proceedings.

First, the new law provides that a suspension for test refusal "shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each

⁷ The phrase "intent to suspend" appears to be an inadvertent carry-over from the previous law under which the suspension did not occur immediately. Elsewhere in the new law reference is made to "notification of suspension," since the suspension goes into effect immediately upon issuance of the notice.

other."⁸ G.L. c. 90, § 24(1)(f)(1), third par. Thus, a license suspension resulting from the disposition on the new charge must begin "on and after" completion of a test refusal suspension. (This could affect plea bargaining on the new offense, as well as result in attempts to challenge the legitimacy of a test refusal suspension or its duration, as mentioned above.)

The expansion of the suspension periods for those who refuse the test and have previous OUI convictions, and the fact that these suspensions must run to completion before any dispositional suspension begins, may result in an increase in arrests for operating after such suspensions. A conviction for operating after suspension or revocation based on a prior OUI *disposition* now requires a one-year mandatory minimum sentence, but operating after a *test refusal* suspension appears to have no such mandatory minimum sentence.⁹

B. NEW LICENSE RESTORATION HEARINGS

1. What happens if the defendant "wins" the OUI case before the period of the test refusal suspension is completed?

The new law provides that "upon entry of a not guilty finding or dismissal of all charges under this section [§ 24], section 24G [motor vehicle homicide while under the influence], Section 24L [causing serious bodily injury while under the influence] or section 13 ½ of chapter 265 [motor vehicle manslaughter], and *in the absence of any other alcohol related charges pending against said defendant* [emphasis added]. . .," the defendant may immediately "apply for and be immediately granted a hearing before the court that took final action on the charges." The purpose of the hearing is to determine whether the defendant's license will be "restored," that is, whether the test refusal suspension will be terminated.¹⁰

The statute provides that the defendant may immediately apply for a restoration hearing "upon entry of a not guilty finding or dismissal" of one of the four listed charges, and that the hearing must be provided by the court that took "final action." Such a hearing and the potential restoration of the defendant's license is not available if the new charge was disposed by means of a continuance without a finding *until the expiration of the continuance period*, that is, when the dismissal or other "final action" in the case occurs.

2. How does this license "restoration" hearing proceed?

The law creates a rebuttable presumption that the license be restored, which can be overcome, if

⁸ The phrase "to each other" apparently refers to the situation where a second test refusal suspension occurs while a previous one is still in effect.

⁹ G.L. c. 90, § 23, third par. For the statutory language and penalty provisions of this new crime, see WMS Code No. 90/23/J, Appendix D.

¹⁰ G.L. c. 90, § 24(1)(f), fourth par.

the prosecution establishes "by a fair preponderance of the evidence" that such restoration "would endanger the public safety."

The law expressly requires that the court "in all such instances" issue written findings of fact with its decision. It is not clear whether this refers only to instances where the court rules in favor of the Commonwealth, or whether written findings are required whether the court rules in favor of the Commonwealth or in favor of the defendant.

Since the defendant's right to a license restoration hearing is predicated on "the absence of any other alcohol related charges pending," the court may wish to initially require a proffer by the defendant that no such charges are pending, inquire of the probation department on the record whether there are any such pending cases, and ask the prosecuting attorney if he or she wishes to be heard. The court must decide whether a charge is pending,¹¹ and whether a pending charge against the defendant is alcohol-related.¹² The law is not expressly limited to pending Massachusetts cases. Presumably a defendant who has an OUI or other alcohol-related charge pending in another state is not eligible for a license restoration hearing under Melanie's Law.

One way to address any doubt as to whether there are any alcohol-related pending charges against the defendant in Massachusetts or any other state is to proceed with the hearing and require the parties to present evidence on these issues. At the hearing the prosecution will have the burden of presenting evidence relating to the public safety determination. While any *pending* "alcohol related charges" will make the defendant ineligible for a hearing, any record of convictions or program assignments for *previous* OUI crimes and any evidence of an alcohol addiction problem or alcohol-related offenses may be relevant to the court's "public safety" determination, if the hearing proceeds.

C. LICENSE SUSPENSION FOR TEST FAILURE

1. What, if any, changes are required of the police if the defendant decides to take the test?

In keeping with prior law, if the arrested person takes the test and the blood alcohol content is .08 per cent or above (or, if the person is under 21 years of age and the blood alcohol content is .02 per cent or above), the police must take custody of the person's license or right to operate immediately. Thus, the new law requires that the officer give the person a "notification of suspension" rather than a "notice of intent to suspend,"¹³ and that the suspension take place "immediately."¹⁴ Just as with the test refusal

¹¹ A matter in which the court has accepted an admission to sufficient facts and ordered a continuance without a finding is pending until the period of continuance expires.

¹² The statute does not require that the pending charge be one in which the use of alcohol is *an element* that must be alleged and proved, i.e., an OUI crime.

¹³ G.L. c.90, § 24(1)(f)(2), first par., clause (ii). The new law perpetuates the following mistake in the previous law:

The first paragraph in § 24(1)(f)(2) first par., provides that when the arrested person *takes the*

suspension, the previous 15-day temporary permit has been eliminated for test failure.

The provision in the law regarding the report that the officer must send to the RMV, when the test is administered and indicates an impermissible blood alcohol content, has been changed in minor ways. However, the law still requires that:¹⁵

- the report be in a format approved by the Registrar
- the report be made under the pains and penalties of perjury
- the report set forth the grounds for the officer's belief that
 - the person arrested had been operating a motor vehicle "in a way or place" while under the influence of intoxicating liquor
 - that the person's blood alcohol percentage was not less than .08
 - "or that the person was under 21 at the time of the arrest and whose blood alcohol percentage was not less than .02."
- the report must also indicate that the person "was administered a test or analysis"
- that the test was performed in accordance with the regulations and standards promulgated by the Secretary of Public Safety
- that the equipment used for the test was regularly serviced and maintained
- that the person administering the test "had every reason to believe" the equipment was functioning properly at the time the test was administered

The report must be sent to the RMV along with a copy of the "notice of intent to suspend."¹⁶ The confiscated license or right to operate must also be forwarded to the RMV "forthwith."

2. What is the duration of license suspension if the defendant takes the test and "fails"?

The law continues to require that suspension following an impermissible test result remains in effect "until the disposition of the offense for which the person is being prosecuted." It also continues to include the provision that "in no event shall such suspension pursuant to this subparagraph exceed 30 days."¹⁷ Thus, the breath test suspension will terminate 30 days from the date of the notice of suspension (i.e., the date of arrest) or upon acquittal or dismissal, whichever occurs first. If the defendant is convicted or assigned to a program, the suspension or revocation required under that disposition begins

test and the resulting blood alcohol content is an impermissible amount "the police officer shall do the following:" It then provides four subparagraphs, (I) through (iv), two of which, (ii) and (iii), instruct the officer to take certain action "when the person refuses such test." Obviously, this was intended to mean "when the person takes such test with the above-described results" or some similar language.

¹⁴ G.L. c. 90, § 24(1)(f)(2), second par.

¹⁵ These requirements are set forth in § 24(1)(f)(2) first par., clause (iii). These provisions were formerly in clause (iv). They have been moved "up" to clause (iii) because the contents of the latter (regarding temporary permits) have been repealed.

¹⁶ Again, this appears to be intended to refer to the "notification of suspension."

¹⁷ Sec. 24 (1)(f)(2), second par.

and the suspension for test failure terminates, unless it has already terminated because of the 30-day limit.¹⁸

The law continues to provide for a District Court hearing where the operator can request restoration of the license based on blood test results, notwithstanding the breath test results.¹⁹

IV. CHANGES REGARDING EVIDENCE OF PRIOR OFFENSES

A. NEW STATUTORY PROVISIONS

1. What about the new law regarding proof of a prior offense?

A particularly important procedural change in the new law involves the introduction by the prosecution of evidence of a "prior offense."

This new law, as set forth in G.L. c. 90, §24 (1)(c)(4), provides as follows:

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections [sic], the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions [sic] described therein. The commonwealth shall not be required to introduce any additional corroborating [sic] evidence, nor live witness testimony to establish the validity of such prior convictions.²⁰

¹⁸ G.L. c. 90, § 24 (1)(f)(1), fourth par., now provides that "[n]o license or right to operate shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph. . . ." Under the statutory nomenclature, "this paragraph" refers to G.L. c. 90, § 24 (1)(f), including both subparagraphs (1) and (2). Therefore, this provision prohibits the issuance of a restricted or hardship permit during a *test result* suspension as well as a *test refusal* suspension.

¹⁹ G.L. c. 90, § 24(1)(g), second par.

²⁰ G.L. c. 90, § 24 (1)(c)(4), as amended by St. 2005, c. 122, § 6A. Unfortunately, this amendment appears to have been made to the wrong subdivision of G.L. c. 90, § 24. The pre-existing provision on evidence of prior convictions is in G.L. c. 90, § 24(4). That subdivision has *not* been amended by Melanie's Law. Instead, the new law "amended" § 24 (1)(c)(4) by adding the new provision there and inadvertently repealing prior contents (which provided restrictions on the issuance of a new license to one convicted of drunk driving if he or she "caused an accident resulting in the death of

As illustrated below,²¹ the changes in this law are as follows:

In the first sentence, a change has been made providing that "certified attested copies of" original court papers shall be prima facie evidence of a prior § 24 conviction or program assignment of the defendant now before the court, with no requirement that such records be "accompanied by a certified attested copy of the biographical and informational data from official probation office records." In other words, records that might contain identifying data no longer have to accompany court records in order for the latter to have a prima facie effect.

The second change in the first sentence is that the list of *other* records that shall be prima facie evidence "that the defendant before the court has a prior conviction or program assignment" now includes certified attested copies of the defendant's "biographical and informational data from records from":

- the Department of Probation (formerly "official probation office records")

another").

As a result the new provision, quoted above, exists along with the provision it was intended to replace. Rules of statutory construction provide a basis for concluding that the new provision must take precedence over the pre-existing one, even though the latter has not been expressly repealed or amended. Specifically, the principle of implied repeal supports this result. See *Comm. v. Graham*, 388 Mass. 115, 125, 445 N.E.2d 1043 (1983), and cases cited therein.

²¹ The following quotation shows the changes in this law (new language is underlined; deleted language is stricken):

In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copyies of the original court papers, accompanied by a certified attested copy of the ~~defendant's~~ biographical and informational data from ~~official probation office records of the department of probation, any jail or house of corrections, the department of correction, or the registry,~~ shall be prima facie evidence that a ~~the~~ defendant before the court ~~has had~~ 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 or any other jurisdiction.~~ Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence [sic] in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating [sic] evidence, nor live witness testimony to establish the validity of such prior convictions.

There is no question that "prior offenses" under the new law include program assignments and convictions "rendered" prior to the effective date of the new law. See St. 2005, c. 122, §21, which was not codified in the General Laws. Melanie's Law does not change any of the "look-back" provisions under the pre-existing law.

- any jail or house of correction (new)
- the Department of Corrections (new)
- the Registry of Motor Vehicles (new)

The third change in the first sentence is that the conviction or program assignment of which a qualifying record is prima facie evidence may be a conviction or assignment by a court of the Commonwealth "or any other jurisdiction." Thus, for example, a certified attested copy of an RMV record showing a conviction (of a like offense²²) by a New Hampshire court, is prima facie evidence of that New Hampshire conviction.

The second and third sentences in the statute are completely new. The second sentence provides that the records listed in the first sentence "shall be self-authenticating and admissible . . . as evidence in any court in the Commonwealth to prove the defendant's commission of any prior conviction described therein." It is noteworthy that this sentence makes no reference to admissibility of the record as evidence of any *prior program assignment*. (See discussion below.)

The new third sentence precludes the court (or any otherwise applicable rule of evidence) from requiring the Commonwealth to introduce any additional corroborating evidence or live witnesses to prove a prior conviction when a qualifying record is submitted as evidence.

2. What issues can arise under the law regarding evidence of prior convictions or program assignments?

The expanded RMV sanctions for OUI multiple offenders under the new law will likely result in more frequent challenges to evidence of prior offenses. Accordingly, the statute that specifically provides for admissibility and a prima facie effect for certain records in this regard warrants some further analysis.

One issue involves the limits on the *prima facie* effect set forth in the first sentence. That sentence states that in order to constitute prima facie evidence of a prior conviction or program assignment, any of the listed types of documents must be records of a conviction or a finding of sufficient facts. If, for example, "a certified attested copy of an original court record" shows the assignment to a program under a "24D" continuance without a finding, *but does not include a record of a finding of sufficient facts*, then it will not qualify as prima facie evidence that the defendant before the court had a prior program assignment. Even if thus deprived of its prima facie status, a qualifying record showing a prior program assignment will be evidence of that allegation.

The second sentence of the statute has a different restriction. It provides that each of the specified documents will be "self-authenticating and admissible . . . as evidence to prove any prior convictions therein." (Emphasis added.) The statute's third sentence also refers to "self-authentication" applying only to records of prior convictions. Since the legislature makes no reference to prior program

²² A prior offense or program assignment that may serve as the basis for an OUI multiple offense charge may be "by a court of this Commonwealth or some other jurisdiction because of a like offense." See, e.g., G.L. c. 90, § 24 (1)(a)(1), driving under the influence or with *per se* blood alcohol content, second offense.

assignments, it appears that a document that shows only the latter disposition (with or without a recorded finding of sufficient facts) may not be considered "self-authenticating and admissible" under the statute. Thus, the admissibility of a record that shows a program assignment rather than a conviction may require authentication, even if it would be prima facie evidence if it were admitted.

Since the third sentence of the statute also is limited to convictions, it does not appear to relieve the Commonwealth of the burden of introducing corroborating evidence or live testimony to authenticate a record of a prior program assignment. Thus, where the document contains only a record of a program assignment (with or without a finding of sufficient facts), but no record of conviction, the requirements for authentication would appear to apply.

Another issue involves identity. It would appear that where the proffered record, even if among those listed in the first sentence of the statute, provides *no* basis on which to conclude that the "John Jones" before the court is the same "John Jones" who was assigned to an alcohol program six years ago, the prima facie value (or *any* evidentiary value) of that record on the issue of identity could be challenged. In other words, even if such record shows that "John Jones" was previously convicted or had a finding of sufficient facts entered against him, that record may be devoid of any evidence that it involves the same "John Jones" currently before the court.²³ A statute giving such a record evidentiary value on the issue of identity arguably raises constitutional issues.

B. EXPERT TESTIMONY FOR THE ADMISSION OF TEST EVIDENCE

1. **Have there been any changes regarding the presentation of evidence of *new* OUI charges?**

There have been no specific statutory changes regarding the presentation of evidence to prove *new* OUI charges. However, an emerging issue relates to challenges to breath test results as evidence of the defendant's blood alcohol content at the time of operation, when the offense is based on the *per se* charge. The issue arises from the possible fluctuation in blood alcohol content between the time of the offense and the time of the test. The question is whether expert testimonial evidence by the prosecution is a prerequisite to the admissibility of the test results, and whether without such testimony the trier of fact has a rational basis on which to conclude that a test result obtained after the arrest has any probative value as to what the blood alcohol content was at the time of operation. This issue, generally referred to as "retrograde extrapolation," is an open question in Massachusetts.

General Laws c. 90, § 24(1)(e), which has not been amended, states that evidence of alcohol content in the operator's blood "*at the time of the alleged offense . . . shall be admissible and deemed relevant to the determination of the question of whether such defendant was at such time under the*

²³ As mentioned above, the first sentence in the previous version of this law *did* require court records to be accompanied by biographical information from probation records in order to be prima facie evidence of identity as well as prima facie evidence of a prior offense. The new first sentence does not require any evidence of identity in a court record, yet still purports to render such a record prima facie evidence of identity. This is not to say that other records might not be available as evidence that the defendant before the court *is* the one who committed the alleged prior offense (e.g., same social security number, same address, RMV records, DOC records, etc.).

influence of intoxicating liquor," if certain requirements are met (defendant's consent and opportunity to get his own test, etc.). It states that evidence of blood alcohol content *at the time of the offense* is admissible to prove operating under the influence. It does *not* state that evidence of blood alcohol content at the *time of the test*, without more, *is* such evidence of blood alcohol content at the time of the offense. Moreover, this provision by its terms is expressly limited to the driving-under-the-influence crime; it makes no reference to the *per se* crime.

General Laws c. 90, §24(1)(e) provides that "[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." However, this provision (which was not amended by Melanie's Law) may be interpreted to mean that such test results are prima facie evidence of the amount of alcohol in the blood *at the time of the test*, not necessarily at the time of operation.

Under traditional evidentiary principles, the matter may be viewed as a question of the weight to be given the breath test evidence, with the fact finder free to draw any reasonable inferences from the breath test results in light of all the relevant factors introduced into evidence, which might include, without limitation, the time between operation and administration of the test as well as the test results and their relation to the *per se* limit set by the Legislature.²⁴

V. CHANGES IN "24D" DISPOSITIONS

A. USE OF OUT-OF-STATE ALCOHOL EDUCATION PROGRAMS

1. What driver alcohol education programs can the court use for §24D dispositions?

Section 24D continues to provide that "[d]river 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."²⁵ The new law restricts DPH authority to adopt rules and regulations to those programs that are "in the commonwealth." G.L. c. 90, § 24D, fifth par.²⁶

2. When can the court use an out-of-state education program for a § 24D disposition? What out-of-state programs can be used? What restrictions are there?

²⁴ See, e.g., *State of Texas v. Melcher*, 153 S.W. 3rd 435, 2005 Tex. Crim. App. LEXIS 5, and cases cited therein.

²⁵ G.L. c. 90, §24D, fifth par. A previous requirement that the programs include "instruction on driver improvement" has been deleted.

²⁶ Such regulations are set forth in 105 CMR 162.

Under the new law, the court may, as a matter of its discretion, use an out-of-state education program for a § 24D disposition if the defendant is otherwise qualified for the § 24D disposition *and at the time of the disposition is legally domiciled out-of-state, or is a full-time student residing out-of-state.*

There are two additional requirements:

- the out-of-state program must be "licensed by the appropriate state authority in the jurisdiction where the person is legally domiciled or is a full-time student," and
- if the out-of-state program has fewer "treatment service hours" than required by DPH for Massachusetts programs, additional hours "must be obtained" to reach "equivalence" with programs in Massachusetts.²⁷

Presumably, if the court determines that the defendant is eligible for, and the court consents to the use of, an out-of-state education program, it will be the probation department's responsibility to determine if that program has been properly licensed and has sufficient hours and, if necessary, whether additional hours will be added by the program to achieve "equivalence" with the Massachusetts program requirements.

No substantive requirements are imposed on out-of-state education programs to be used in § 24D dispositions, other than that they be "licensed" by the other state and have sufficient hours.

Since the out-of-state option is available only if the defendant is domiciled or a full-time student there "at the time of the disposition," this option apparently is *not* available if the defendant moves or becomes a full-time student after the disposition is imposed.

Another requisite for use of out-of-state education programs involves their cost. The statute provides that every defendant placed in a program must pay a fee determined by DPH unless that fee is waived.²⁸ DPH does not set the fees for out-of-state programs, and it is not clear how the court may waive them, at least without the programs' consent.

A list of approved alcohol or controlled substance abuse *treatment and/or rehabilitation* programs is published and prepared annually by DPH. Melanie's Law specifies that the required list is limited to programs in Massachusetts and, therefore, will not include out-of-state education programs. However, the new law adds the requirement that this list of approved Massachusetts treatment and/or rehabilitation programs also include "the single state authority contacts for other states that operate driver alcohol *education* programs."²⁹ Using this list, probation departments should be able to contact such education programs and confirm how many hours they provide and whether they have been licensed by their states. A "current" copy of the list must be furnished to the courts "from time to time

²⁷ G.L. c. 90, § 24D, fifth par.

²⁸ G.L. c. 90, § 24D, seventh par.

²⁹ G.L. c. 90, § 24D, sixth par.

by DPH."³⁰

B. SPECIAL "24D" PROGRAM FOR CERTAIN YOUTHFUL OFFENDERS

1. Are there any other changes in § 24D regarding program assignments?

There is a new requirement in § 24D for defendants aged 17 - 21 years of age with a blood alcohol level of .20 per cent or more. The new law provides that these offenders must be "assigned to a driver alcohol treatment and rehabilitation program *known as the 14-day second offender in-home program.*" [Emphasis added.]

The new provision appears to refer to the existing "second-offender" programs under G.L. c. 90, § 24(1)(a)(4), despite the fact that no reference is made to that statute and the second-offender programs under that statute are not provided "in-home."

Although this new program requirement is mandatory for the defendants who fall within its scope, eligibility is apparently also controlled by the same requirements that apply to "regular" § 24D programs regarding prior OUI convictions and program assignments. Thus, even though it involves assignment to a "second offender" program, this new disposition is required for defendants with no prior OUI dispositions, but it will not be applicable if the defendant has an OUI criminal record that exceeds the prior offense limits of § 24D eligibility.

Finally, the wording of this new provision and the point at which it was inserted into the law appear to require its application to defendants who were aged 17 to 21, inclusive, *when the offense was committed.* The length of license suspension for this defendant remains 210 days.

In reading the statute as a whole, it is not clear whether this new § 24D disposition, like "regular" § 24D dispositions, may be imposed only if the defendant consents. Nor is it clear whether, if the new § 24D disposition is imposed with a conviction, the statutory provision allowing the court to find the defendant to be "not a suitable candidate" applies. Despite these two provisions, the law appears to *require* the new § 24D disposition to be imposed if the defendant meets the criteria, whether disposition is the result of a conviction or a program assignment.

VI. NEW REQUIREMENT FOR ORDERING "ADDICTION ASSESSMENTS"

1. What is the new special alcohol or drug assessment that the court must include in certain sentences for OUI crimes?

Melanie's Law adds a new § 24Q to Chapter 90, which requires the court to impose a new

³⁰ G.L. c. 90, § 24D, sixth par.

"mandatory condition" in certain OUI sentences. That condition is that the defendant complete a specific assessment to be conducted by the DPH (or by another "court approved program"). This assessment is to determine "the level of the offender's addiction to drugs or alcohol."

The mandatory condition requiring an "addiction assessment" *must be included in any sentence imposed* (1) for a conviction or assignment to an alcohol or controlled substance education, treatment or rehabilitation program "if evidence in the prosecution of a violation of this chapter [c. 90] or chapter 90B was that a person's blood alcohol percentage, by weight, was not less than .20 per cent³¹ or (2) for a conviction or assignment to an alcohol or controlled substance education, treatment or rehabilitation program for certain OUI crimes³² if the defendant has been previously so convicted or assigned for "a like offense."

The requirement that the assessment must be ordered if the defendant has previously been so assigned or convicted of a "like offense" is ambiguous. Read literally, the statute may be interpreted to mean that the addiction assessment must be ordered as part of the sentence for a conviction or program assignment for any of the listed crimes, only if the defendant has one or more prior convictions or program assignments *for that same offense*. The other interpretation is that the prior offense triggering the addiction assessment can be for *any crime on the list*. In light of the statute's stated purpose to increase penalties for "drunk drivers," the more reasonable interpretation is the latter, but a defendant may argue that the ambiguity must be resolved in his or her favor.³³

2. If this assessment must be ordered in a sentence which may itself include a program assignment, how will it relate to the assessment that will occur as part of that program?

Apparently the law intends that in a sentence that requires this new assessment but that also includes a *program assignment* (e.g., the sentence includes a "second-offender" program under G.L. c. 90, § 24 (1)(a)(4)), the new assessment will involve an additional clinical determination regarding alcohol or drug addiction. In any event, the new addiction assessment has specific requirements, as discussed below, that are not necessarily included in § 24D or second-offender programs.

3. How is the addiction assessment ordered and completed in those cases where the sentence does not include program assignment?

³¹ If the required addiction assessment is considered an increase in the maximum criminal penalty, then the predicate BAC of .20 per cent or more may have to be alleged and proved beyond a reasonable doubt in order for the sanction to apply. See *Apprendi v. New Jersey*, 530 US 466, 476, 120 S. Ct. 2348 (2000) (it is a constitutional requirement that a fact, . . . that increases the maximum penalty for a crime must be charged, submitted to a jury, and proven beyond a reasonable doubt).

³² See list of OUI crimes at Appendix B.

³³ If legislation can plausibly be found to be ambiguous, the court should give the defendant the benefit of the ambiguity. *Commonwealth v. Connor, C.*, 432 Mass. 635, 738 N.E. 2d 731 (2000).

In cases where the sentence does not (or cannot) include a program assignment, but rather, for example, mandates incarceration, it apparently is the responsibility of the Department of Public Health to arrange for the assessment to be available. Probation may also have to play a role in such cases. In any event, while the law requires the court to order the defendant to "complete" the assessment following a qualifying conviction, it does not provide a time limit or require a stay of incarceration pending the completion of the assessment or pending receipt by the court of the assessment results. In most cases the court may want to proceed with sentencing and then consider a later revision of the terms of probation if the result of the assessment so warrants.

4. What happens when the assessment is completed?

The law requires that the assessment include "*an assessment of the level of the offender's addiction to alcohol or drugs,*" and a "recommended course of treatment." The assessment and recommended course of treatment must be reported by the program to the defendant's probation officer. This assumes that in every case wherein the assessment order must be made, the defendant will be placed on probation.

The law is silent on what the probation officer must do with the program's assessment result and recommendation, but presumably he or she will promptly bring it to the attention of the court, and the judge will want to schedule a review date for the case at the time of sentencing.

The law is also silent as to what the court does in response to receiving the assessment of the defendant's addiction and the "recommended course of treatment." Where the defendant is already in (or waiting to begin) an assigned program, that program may provide any enhanced treatment that may be appropriate. The court may have to order such enhanced treatment as a modification of the order of probation. The DPH "recommended course of treatment" may provide the court with a specific treatment option.

5. What about the cost of the addiction assessment?

The new law expressly provides that:

[n]o person shall be excluded from an assessment for inability to pay if the offender files an affidavit of indigency or inability to pay with the court and an investigation by the probation or parole officer confirms such indigency or establishes that such payment would cause a grave and serious hardship to the offender or his family, *and the court enters written findings relative thereto.* [Emphasis added.]

The law also provides that DPH may make rules and regulations as are necessary or proper to carry out these new provisions in § 24Q.³⁴

³⁴ As of the date of this memorandum, no such rules or regulations have been promulgated.

6. What about the cost of any treatment that the court decides to impose as a result of the addiction assessment and the DPH recommended course of treatment?

While the law addresses the cost of the *assessment* (and possible waiver of that cost), it is silent regarding the cost of any *treatment* the court may determine is appropriate in response to the addiction assessment and recommended course of treatment.

7. How will the addiction assessment, its cost, and the possibility of additional treatment imposed as a probation condition, and *its* cost, be addressed in the context of a tender of a plea or admission?

When a defendant is charged with a crime, the sentence for which requires an addiction assessment and a possible treatment program order, separate from and in addition to any other sentence or CWOFF component, the tender and an acceptance of a plea or admission may be difficult.

A defendant should be informed as part of the colloquy (and beforehand through counsel in consultation with probation), that the sentence must, by law, include an addiction assessment and the possibility of a treatment order based on the result of the assessment. The addiction assessment is required by operation of law if there is evidence of blood alcohol content of .20 per cent or more, or the required prior offense.³⁵

The defendant in such a case may want to know the cost of the assessment, whether that cost will be waived and the possible terms and cost of any treatment that may be ordered as a result of the assessment. While the court may be able to inform the defendant of the cost of the assessment and whether it might be waived, he or she likely will not be able to know at the time of the plea or admission what the assessment will reveal and whether a treatment order will result.

Under these circumstances, the court may simply tell the defendant that he or she must decide whether to plead or admit without this information. The court could permit the defendant to tender a plea or admission contingent on the assessment and its results and any sentencing consequences. The colloquy would then be completed, the plea or admission accepted, the sentence imposed, the assessment completed, treatment orders considered by the court, and then the defendant permitted to withdraw the plea or admission, if the cost or terms of the treatment order are unacceptable.

VII. NEW MOTOR VEHICLE FORFEITURE PROCEEDINGS

³⁵ As previously stated, since the addiction assessment probably must be considered a mandatory sentence enhancement, the predicate .20 per cent blood alcohol content or prior offense must be alleged and proved.

1. Does the District Court have new jurisdiction for motor vehicle forfeiture proceedings?

The District Court has been given jurisdiction to conduct forfeiture proceedings involving motor vehicles and boats owned by persons with multiple OUI-related convictions or program assignments.³⁶

The statute, G.L. c. 90, § 24W, provides that this new forfeiture proceeding is "in the nature of a proceeding in rem" and shall be "deemed a civil suit in equity."

A motor vehicle or boat is subject to this forfeiture proceeding if the owner "has been assigned to an alcohol or controlled substance education, treatment or rehabilitation program or who . . . was convicted of a violation" of certain OUI crimes, *and* if such person "has been so assigned or convicted previously at least 3 times."³⁷

For a list of these OUI crimes, see Appendix B. The list also includes "any like offense" in another jurisdiction.

The plaintiff in the forfeiture action is the District Attorney who files a petition. The petition must be filed in the court having jurisdiction "over the criminal proceedings" brought under "this section."³⁸

A special probable cause requirement must be met by the prosecution if the vehicle or boat was jointly owned by the defendant and one or more certain family members living in the defendant's household "before the date of the second or subsequent operation under the influence offense committed by the defendant." In such cases the joint owner "claimant" may attempt to prove that the property is "not forfeitable" because that claimant needs the vehicle for his or her "livelihood or the maintenance of his family."

The court must order the Commonwealth to give notice by certified or registered mail to the owners of the vehicle or boat and "such other persons or entities who appear to have an interest therein." The latter would appear to include those with a security interest.

The court must hold a hearing on the petition "not less than 2 weeks after notice," subject to

³⁶ Superior Court also has jurisdiction, but since these actions must be brought in the court that had jurisdiction over the underlying criminal case, most of these actions likely will occur in the District Court.

³⁷ It is not clear whether this means three or more prior convictions or assignments for the *same crime* for which the defendant has been newly convicted or assigned to a program, *or* whether it means three or more prior convictions or program assignments for *any of the crimes on the list* (including any conviction or assignment for a crime in another jurisdiction that is a "like offense").

³⁸ Since no criminal proceedings are "brought under this section" (§ 24W), this provision apparently was intended to mean that the petition must be filed in the court in which the new OUI offense is disposed (if the defendant has at least three prior convictions or program assignments for OUI crimes).

continuance by motion of an owner until the "outcome of a criminal trial related to a charge" under Chapter 90 or 90B.

The court may issue *ex parte* preliminary orders to seize the vehicle or boat during the proceedings.

The court, after hearing evidence, must make findings of fact and conclusions of law. Appeal shall be as provided "from a decree in equity." The statute provides details for the disposition of the seized vehicle or boat, including sale.

The final court order must provide for the use of the proceeds of the sale. The funds must be used to pay for all costs reasonably associated with the forfeiture proceeding, with the balance of the proceeds to be divided equally between the law enforcement agency or department involved in the forfeiture and the Victims of Drunk Driving Trust Fund, established pursuant to G.L. c. 10, § 66.

VIII. THE IGNITION INTERLOCK DEVICE

1. What is the "ignition interlock device"?

Melanie's Law introduces the ignition interlock device as a new component of the Commonwealth's response to OUI. This device is designed to prohibit an automobile from being started if the person who blows into the device has an impermissible blood alcohol content. The interlock device – its imposition as a license restriction, requirements for its use and maintenance, and sanctions for its misuse – is the responsibility of the RMV.

Under St. 2005, c. 122, § 19 (which is not codified in the General Laws) the RMV must promulgate regulations governing interlock devices, including:

- certification of the device
- approval of servicing companies that must report to the RMV
- development of warning labels for these devices, including the criminal penalties for tampering and improper use (see next question)
- proof of proper installation by any person applying for a hardship license or license restoration after a second-offense license suspension
- requiring a person who has an interlock device license restriction to submit proof of periodic inspection, monitoring and servicing, and payment of installation and maintenance
- recording interlock license restrictions on RMV records
- requiring a *permanent revocation of any hardship license* and a *10-year extension of the suspension without the possibility of a hardship license* for operation in violation of an interlock device restriction or for non-compliance with inspecting, monitoring or reporting requirements,
- requiring the execution of an acknowledgment by each other licensed person residing with a person having an interlock restriction that such other person understands the criminal penalty for breathing into device or starting an

automobile for the person with the interlock device restriction

These regulations have been promulgated by the RMV as 540 CMR 25.00.

2. How does the law impose the requirement of the ignition interlock device?

The requirements for the interlock device are set forth in a new section, G.L. c. 90, § 24 ½. This new law requires that when a person's license is suspended as a result of a conviction or program assignment for certain OUI crimes, and that person "has previously been so assigned or convicted," the license shall not be restored by the RMV,³⁹ or a new license issued by the RMV after the suspension unless a certified ignition interlock device is installed in each vehicle the person owns, leases or operates.

The OUI crimes for which conviction or program assignment triggers the interlock device requirement, if the person has "previously been so assigned or convicted," are listed at Appendix B. They include any "like offense" in another jurisdiction.

The interlock device must be installed for two years, and the person must have it "inspected, maintained and monitored" in accordance with RMV regulations. The RMV, after a hearing, may revoke the license "for an extended period or for life" if the person fails to have the device inspected at least twice during the period of registration, or removes it, "if the licensee has operated or attempted to operate a vehicle with a blood alcohol level that caused the certified ignition device to prohibit a vehicle from starting on at least 2 occasions or that recorded a blood alcohol level in excess .02 [per cent] on at least 2 occasions."

The law provides for an appeal of the RMV decision to the Superior Court.

The other circumstances in which the RMV may or must require the interlock device are discussed in Section IX, below.

3. How does the interlock device affect the District Court?

The District Court is directly affected by the interlock device by means of *four new crimes*:

1. **G.L. c. 90, § 24S(a).** Operation of a motor vehicle without an interlock device. **WMS Code No. 90/24S.**
2. **G.L. c. 90, § 24T(a).** Tampering with an interlock device. **WMS Code No. 90/24T.**
3. **G.L. c. 90, § 24U(a).** Breathing into an interlock device or starting a motor vehicle for a

³⁹ The interlock device is required when a license is restored after suspensions that result from *convictions or program assignments*. Thus, the interlock device is not required at the time of (1) license restoration by the court following a suspension for breath test refusal or (2) license restoration following suspension for impermissible test results.

person who has an interlock device license restriction. **WMS Code No. 90/24U/A.**
(Subsequent offense, **WMS Code No. 90/24U/B**).

4. **G.L. c. 90, § 12(c).** Knowingly permitting a person who has an interlock restricted license to operate a motor vehicle not equipped with such a device. **WMS Code No. 90/12/E.** (Subsequent offense, **WMS Code No. 90/12/F**).

These crimes and their penalties are set forth in Appendix A.

4. Must the prior Massachusetts (or out-of-state) OUI crime be alleged and proved in court along with the new charge in order for the RMV to impose the interlock device requirement when the resulting suspension ends?

No, as an administrative sanction, the interlock device requirement applies if RMV records reveal a qualifying prior offense or program assignment. The interlock device is not a mandatory enhanced criminal penalty.

This has implications for the court. If no prior offense has been alleged and proved, the court may not be able to inform the defendant at the time of sentencing whether the new conviction or program assignment will trigger imposition of the interlock device requirement following the license suspension that results from the disposition.

IX. OTHER NEW RMV SANCTIONS

Melanie's Law provides or amends a number of other sanctions to be imposed by the RMV, distinct from the penalties imposed by the court at the disposition of a criminal OUI charge. These include the following:

- **G.L. c. 90, § 24.** License suspension at the time of arrest for breath test refusal and for impermissible breath test results. (The changes in these provisions are discussed in Section III.)
- **G.L. c. 90, § 12(d).** Under this new provision, the RMV may suspend for up to one year (1) the *registration* of a vehicle used to commit a violation of G.L. c. 90, §§ 12(a) or (b) (permitting operation by an unlicensed operator) or (c) (permitting operation without interlock device), or (2) the *license* of a person who commits such an offense.
- **G.L. c. 90, § 24(1)(c)(2).** The time period before which a person whose license was revoked under § 24(1)(b) for a an OUI conviction with a prior offense can request an *employment or education* hardship license has been increased from six months to one year.
- **G.L. c. 90, § 24(1)(c)(2).** The time period before which a person whose license was revoked under § 24 (1)(b) for an OUI conviction with a prior offense can request a

hardship license has been increased from one year to 18 months.

- **G.L. c. 90, § 24(1)(c)(2).** A hardship license granted under this section (i.e., following a revocation for an OUI conviction with one prior offense) must include an interlock device requirement.
- **G.L. c. 90, § 24(1)(c)(3).** A hardship license granted under this section (i.e., following revocation for an OUI conviction with two prior offenses or revocation for violation of G.L. c. 90, § 23) must include an interlock device requirement.
- **G.L. c. 90, § 24(1)(c)(3 ½).** A hardship license granted under this section (i.e., following revocation for an OUI conviction with three prior offenses) must include an interlock device requirement.
- **G.L. c. 90, § 24R(a).** Under this new provision, the RMV must revoke a person's license or right to operate *for life* if that person is convicted or assigned to a program for a violation of certain OUI crimes involving serious injury or death, if that person has been previously convicted of a violation of G.L. c. 90, § 24(a) (OUI of alcohol or drugs) "or a like violation in another jurisdiction." For a list of these OUI crimes, see Appendix B. This provision makes no reference to having been previously *assigned to a program* for a violation of G.L. c. 90, § 24(a) as a basis for the lifetime revocation.
- **G.L. c. 90, § 24R (b).** Under this new provision, the RMV must revoke a person's license or right to operate *for life* if that person is convicted of a violation of G.L. c. 90, § 24G (a) (motor vehicle homicide), if that person has previously been convicted of or assigned to a program for a violation of certain OUI crimes. See Appendix B for a list of these crimes, which include a "like violation" in another jurisdiction.
- **G.L. c. 90, § 24V(b).** The RMV must suspend the license of a person "who violates this section" (the new crime of child endangerment while driving drunk) for a period of one year for a first offense and three years for a second or subsequent offense.
- **G.L. c. 90, § 24X.** Under this new section, the RMV may cancel the registration and seize the registration plates of a motor vehicle owned by a person who is convicted of or assigned to a program for a violation of any OUI crime, if the person has been "so assigned or convicted previously at least 2 times." The cancellation or seizure under § 24X will last for the period of the suspension or revocation resulting for the conviction or program assignment. The RMV is prohibited from issuing a new registration during the period of the suspension or revocation.

APPENDIX A

NEW CRIMES AND THEIR PENALTIES UNDER MELANIE'S LAW

NEW CRIME & WMS CODE NO.	STATUTE	PENALTY
EMPLOYING AN UNLIC. OPERATOR 90/12/A	c. 90, § 12(a)	CIVIL ASSESSMENT: \$500
EMPLOYING AN UNLIC. OPERATOR, SUBSQ. OFF. 90/12/B	c. 90, § 12(a)	HOUSE OF CORRECTION NOT MORE THAN 1 YEAR; OR NOT MORE THAN \$1000 FINE; OR BOTH.
PERMITTING OPERATION BY UNLIC, SUSP. OR REVOKED OPERATOR 90/12/C	c. 90, § 12(b)	HOUSE OF CORRECTION FOR 1 YEAR; AND NOT MORE THAN \$500 FINE.
PERMITTING OPERATION BY UNLIC, SUSP. OR REVOKED OPERATOR, SUBSQ. OFF. 90/12/D	c. 90, § 12(b)	HOUSE OF CORRECTION NOT MORE THAN 2 ½ YEARS; OR NOT MORE THAN \$1000 FINE; OR BOTH.
KNOWINGLY PERMITTING A PERSON WHO HAS AN INTERLOCK RESTRICTED LICENSE TO OPERATE MV NOT EQUIPPED WITH SUCH A DEVICE 90/12/E	c. 90, § 12(c)	1 YEAR IN THE HOUSE OF CORRECTION AND A FINE OF NOT MORE THAN \$500. RMV MAY SUSPEND LICENSE OR REGISTRATION OR BOTH FOR NOT MORE THAN 1 YEAR.
KNOWINGLY PERMITTING A PERSON WHO HAS AN INTERLOCK RESTRICTED LICENSE TO OPERATE MV NOT EQUIPPED WITH SUCH A DEVICE, SUBSQ. OFF 90/12/F	c. 90, § 12(c)	HOUSE OF CORRECTION NOT MORE THAN 2 ½ YEARS OR FINE NOT MORE THAN \$1,000, OR BOTH. RMV MAY SUSPEND LICENSE OR REGISTRATION OR BOTH FOR NOT MORE THAN 1 YEAR.
OPERATING MV IN VIOLATION OF CERTAIN OUI CRIMES WHILE UNDER LIC. SUSP. FOR ANY OF THESE SAME CRIMES. 90/23/J	c. 90, § 23, third par.	MANDATORY MINIMUM OF NOT LESS THAN 1 YEAR, NOT MORE THAN 2 ½ YEARS, IN HOUSE OF CORRECTION; AND FINE OR NOT LESS THAN \$2500, NOR MORE THAN \$10,000; SENTENCE TO BE SERVED CONSECUTIVELY CANNOT BE CONTINUED WITHOUT A FINDING OR FILED; NO REDUCED OR SUSPENDED SENTENCE, PROBATION, PAROLE, FURLOUGH OR SENTENCE DEDUCTIONS UNTIL 1 YEAR SERVED, EXCEPT FOR EMERGENCY MEDICAL OR PSYCHIATRIC CARE OR EMPLOYMENT WORK RELEASE PROGRAM; G.L. C. 276, § 87 "SHALL NOT APPLY" TO DEFENDANT.
OPERATION OF MOTOR VEHICLE WITHOUT AN INTERLOCK DEVICE 90/24S	c. 90, § 24S(a)	STATE PRISON NOT LESS THAN 2 ½ YEARS, NOT MORE THAN 5 YEARS, OR IMPRISONMENT NOT LESS THAN 180 DAYS, NOT MORE THAN 2 ½ YEARS, AND FINE OF NOT LESS THAN \$1,000, NOT MORE THAN \$15,000. SENTENCE MAY NOT BE SUSPENDED OR REDUCED TO LESS THAN 150 DAYS; NO PROBATION, PAROLE, FURLOUGH, OR GOOD CONDUCT CREDITS UNTIL 150 DAYS SERVED. ALL OR PART OF SENTENCE MAY BE SERVED IN

		CORRECTIONAL FACILITY DESIGNATED BY DOC FOR DRINKING DRIVERS IF AVAILABLE
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TAMPERING WITH AN INTERLOCK DEVICE WITH INTENT TO DISABLE IT 90/24T	c. 90, § 24T(a)	HOUSE OF CORRECTION NOT LESS THAN 6 MONTHS, NOT MORE THAN 2 ½ YEARS; STATE PRISON NOT LESS THAN 3 YEARS, NOT MORE THAN 5 YEARS.
BREATHING INTO AN INTERLOCK DEVICE OR STARTING MV FOR A PERSON WHO HAS AN INTERLOCK DEVICE LIC. RESTRICTION 90/24U/A	c. 90, § 24U(a)(1)	IMPRISONMENT IN A HOUSE OF CORRECTION FOR NOT LESS THAN 6 MONTHS AND NOT MORE THAN 2 ½ YEARS OR FINE OF NOT LESS THAN \$1,000 AND NOT MORE THAN \$5,000.
BREATHING INTO AN INTERLOCK DEVICE OR STARTING MV FOR A PERSON WHO HAS AN INTERLOCK DEVICE LIC. RESTRICTION, SUBSQ. OFF 90/24U/B	c. 90, § 24U(a)(1)	STATE PRISON NOT LESS THAN 3 YEARS, NOT MORE THAN 5 YEARS, AND FINE NOT LESS THAN \$1,000, NOT MORE THAN \$5,000.
CHILD ENDANGERMENT WHILE OUI 90/24V/A	c. 90, § 24V	"ENHANCED PENALTY" OF HOUSE OF CORRECTION NOT LESS THAN 90 DAYS, NOT MORE THAN 2 ½ YEARS "SHALL BE SERVED CONSECUTIVELY TO AND NOT CONCURRENTLY WITH THE PREDICATE VIOLATION"; PLUS FINE NOT LESS THAN \$1000, NOT MORE THAN \$5000; MAY NOT BE FILED OR CONTINUED WITHOUT A FINDING; G.L. c.276, § 87 AND G.L. c.276A, §§ 1-9 ARE INAPPLICABLE; RMV SHALL SUSPEND LICENSE FOR 1 YEAR.
CHILD ENDANGERMENT WHILE OUI, SUBSQ. OFF. 90/24V/B	c. 90, § 24V	MANDATORY MINIMUM SENTENCE OF HOUSE OF CORRECTION NOT LESS THAN 6 MONTHS, NOT MORE THAN 2 ½ YEARS; AND FINE NOT LESS THAN \$5000, NOT MORE THAN \$10,000 OR "ENHANCED PENALTY" OF STATE PRISON, NOT LESS THAN 3 YEARS, NOT MORE THAN 5 YEARS. SENTENCE "SHALL BE SERVED CONSECUTIVELY TO AND NOT CONCURRENTLY WITH THE PREDICATE VIOLATION"; MAY NOT BE FILED OR CONTINUED WITHOUT A FINDING; G.L. c.276, § 87 AND G.L. c.276A, §§ 1-9 ARE INAPPLICABLE; NO REDUCTION IN SENTENCE, SUSPENDED SENTENCE, PROBATION, PAROLE, FURLOUGH OR SENTENCE DEDUCTION UNTIL 6 MONTHS SERVED; RMV SHALL SUSPEND LICENSE FOR 3 YEARS.
MANSLAUGHTER WHILE OUI 265/1312	c. 265, § 13 ½	(NO DISTRICT COURT FINAL JURISDICTION IN ADULT SESSION.)

TAKING A LICENSE
PLATE,
266/139/E

c. 266, § 139

HOUSE OF CORRECTION NOT MORE THAN 2 ½ YEARS; OR FINE NOT LESS THAN \$500, NOT MORE THAN \$1000; OR BOTH. CLERK MUST REPORT CONVICTION TO REGISTRAR OF MOTOR VEHICLES, WHO SHALL REVOKE LICENSE FOR 60 DAYS ON FIRST OFFENSE, AND FOR 1 YEAR ON SUBSEQUENT OFFENSE; C. 276, § 92A: MANDATORY RESTITUTION

APPENDIX B

OUI CRIMES REFERENCED IN MELANIE'S LAW

- **G.L. c. 90, § 24(1)(a)**, operating under the influence of alcohol or drugs, or with *per se* blood alcohol content.
- **G.L. c. 90, § 24G (a)**, motor vehicle homicide while operating under the influence of alcohol or drugs, or with *per se* blood alcohol content, and recklessly or negligently.
- **G.L. c. 90, § 24G (b)**, motor vehicle homicide while operating under the influence of alcohol, or with *per se* blood alcohol content.⁴⁰
- **G.L. c. 90, § 24L (1)**, causing serious bodily injury while operating a motor vehicle under the influence of alcohol or drugs, or with *per se* blood alcohol content, and recklessly or negligently.
- **G.L. c. 90, § 24L (2)**, causing serious bodily injury while operating a motor vehicle under the influence of alcohol or drugs, or with *per se* blood alcohol content.
- **G.L. c. 90B, § 8 (a)**, operating a vessel under the influence of alcohol or drugs, or with *per se* blood alcohol content.
- **G.L. c. 90B, § 8A (1)**, operating a vessel under the influence of alcohol or drugs, or with *per se* blood alcohol content, and recklessly or negligently, causing serious bodily injury.
- **G.L. c. 90B, § 8A (2)**, operating a vessel under the influence of alcohol or drugs, or with *per se* blood alcohol content and causing serious bodily injury.
- **G.L. c. 90B, § 8B (1)**, operating a vessel under the influence of alcohol or drugs, or with *per se* blood alcohol content and recklessly or negligently, causing death.
- **G.L. c. 90B, § 8B (2)**, operating a vessel under the influence of alcohol or drugs, or with *per se* blood alcohol content, or recklessly or negligently, causing death.
- **G.L. c. 265, § 13 ½**, manslaughter by motor vehicle while operating under the influence of alcohol or drugs, or with *per se* blood alcohol content.

⁴⁰ This does *not* include a prior conviction under G.L. c. 90, § 24G (b) of motor vehicle homicide by reckless or negligent operation, which is not an OUI crime. Nor does it include a prior offense of motor vehicle homicide while under the influence of *drugs*.

APPENDIX C

**REGISTRY/ADMINISTRATIVE PENALTIES
PENALTIES FOR BREATH TEST REFUSAL (LENGTH OF SUSPENSION)**

180 DAYS	3 YEARS	5 YEARS	10 YEARS	LIFETIME	Other Consequences Relevant to All Suspensions
First time adult offenders over 21	Persons under 21 With no other OUI history				NO RESTRICTED OR HARDSHIP LICENCE AVAILABLE Suspension runs consecutively and not concurrently, with any additional suspension periods
	One previous conviction* of OUI Crimes** or any like offense in another jurisdiction	Two previous convictions* of OUI Crimes** or any like offense in another jurisdiction		Three previous convictions* of OUI Crimes** or any like offense in another jurisdiction	Temporary license is not available Vehicle must be impounded for at least 12 hours
			Prior conviction of G.L. c. 90, § 24 L (Ser. bodily inj.)***		Suspension occurs immediately
				Previous conviction for G.L. c. 90, §§ 24G(a) or ((b) Motor vehicle homicide or G.L. c. 265, § 13 ½, manslaughter***	Massachusetts license is taken by officer and forwarded to RMV immediately

* The extended periods of suspension require a previous conviction; a program assignment, as a prior drunk driving disposition, will not trigger extended test refusal suspension.

** Prior conviction of **OUI Crimes** refers to the specific crimes listed on Appendix B.

*** Because G.L. c. 90, § 24L, OUI with serious injury, G.L. c. 90, §§ 24G(a), 24G(b), OUI motor vehicle homicide and G.L. c. 265, § 13 ½, OUI motor vehicle manslaughter are each one of the **OUI Crimes** listed on Appendix B, a test refuser is arguably subject to the term of suspension dictated by this section or the term of suspension required for one, two or three prior convictions of an **OUI Crime**. Initially this will be a Registry determination. See discussion in Memorandum, p. 8, notes 5 and 6.

Appeal of the suspension is available to the District Court pursuant to G.L. c. 90, § 24(1)(g).

IMPERMISSIBLE TEST RESULT (LENGTH OF SUSPENSION)		
TEST RESULT	PENALTY	OTHER CONSEQUENCES
.08 OR ABOVE FOR PERSONS 21 AND OVER	30 DAYS OR UNTIL ACQUITTAL, DISMISSAL or DISPOSITION, WHICHEVER COMES FIRST	NO RESTRICTED OR HARDSHIP LICENCE AVAILABLE Temporary license is not available Vehicle must be impounded for at least 12 hours. Suspension occurs immediately, Massachusetts license is taken by officer and forwarded to RMV
.02 OR ABOVE FOR PERSONS UNDER 21 YEARS.		

APPENDIX D



CRIMINAL COMPLAINT LANGUAGE

AND

PENALTY PROVISIONS

FOR ALL OUI CRIMES

**AFFECTED OR ADDED BY MELANIE'S LAW
St. 2005, c. 122**

AS SET FORTH IN THE

WMS AND BasCOT CRIMINAL

CHARGING LANGUAGE

DATA BASES

NEW AND REVISED COMPLAINT LANGUAGE FOR CRIMES
UNDER MELANIE'S LAW

90/12/A **UNLICENSED OPERATOR, EMPLOY** c90 §12(a) (Effective 10/28/05)

NOTE: THIS IS A CIVIL MV INFRACTION, SET FORTH HERE FOR PROCEDURAL PURPOSES ONLY.

on **[DATE OF OFFENSE:]** did knowingly employ for hire as a motor vehicle operator a person who was not licensed in accordance with G.L. c. 90, in violation of G.L. c.90, §12(a). (CIVIL ASSESSMENT: \$500).

90/12/B **UNLICENSED OPERATOR, EMPLOY, SUBSQ. OFF.** c90 §12(a) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did knowingly employ for hire as a motor vehicle operator a person who was not licensed in accordance with G.L. c. 90, the defendant having previously committed such an offense, in violation of G.L. c.90, §12(a). (PENALTY: house of correction not more than 1 year; or not more than \$1000 fine; or both.)

90/12/C **UNLICENSED/SUSPENDED OPERATION OF MV, PERMIT** c90 §12(b) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a person who was unlicensed or whose license had been suspended or revoked, in violation of G.L. c.90, §12(b). (PENALTY: house of correction for 1 year; and not more than \$500 fine.)

90/12/D **UNLICENSED/SUSPENDED OPERATION OF MV, PERMIT, SUBSQ. OFF.** c90 §12(b) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did knowingly permit a motor vehicle owned by him or her or under his or her control to be operated by a person who was unlicensed or whose license had been suspended or revoked, the defendant having previously been convicted of such an offense, in violation of G.L. c.90, §12(b). (PENALTY: house of correction not more than 2½ years; or not more than \$1000 fine; or both.)

90/12/E **IGNITION INTERLOCK, PERMIT OPERATION WITHOUT** c90 §12©) (Effective 1/1/06)

on **[DATE OF OFFENSE:]** did knowingly permit a motor vehicle owned by him or her or under his or her control, which was not equipped with a functioning ignition interlock device, as defined in G.L. c. 90, § 12©), to be operated by a person who had an ignition interlock restricted license, in violation of G.L. c. 90, § 12©). (PENALTY: 1 year in house of correction; and not more than \$500 fine. §12[d]: RMV may suspend license or registration or both for not more than 1 year.)

90/12/F **IGNITION INTERLOCK, PERMIT OPERATION WITHOUT, SUBSQ.OFF.** c90 §12©) (Effective 1/1/06)

on **[DATE OF OFFENSE:]** did knowingly permit a motor vehicle owned by him or her or under his or her control, which was not equipped with a functioning ignition interlock device, as defined in G.L. c. 90, § 12©), to be operated by a person who had an ignition interlock restricted license, the defendant having previously been convicted of such an offense, in violation of G.L. c. 90, § 12©). (PENALTY: house of correction not more than 2½ years; and not more than \$1000 fine; or both. §12[d]: RMV may suspend license or registration or both for not more than 1 year.)

90/23/J **LICENSE SUSPENDED FOR OUI, OUI WHILE** c90 §23 (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle in violation of G.L. c.90, §§ 24(1)(a), 24G or 24L, or G.L. c.90B, §§ 8(a), 8A or 8B, or G.L. c.265, § 13½ while his or her license or right to operate had been suspended or revoked, or after notice of such suspension or revocation of his or her right to operate a motor vehicle had been issued and received by him or her or by his or her agent or employer, and prior to the restoration of such license or right to operate or the issuance to him or her of a new license or right to operate, pursuant to G.L. c.90, §§ 24(1)(a), 24G or 24L, or G.L. c.90B, §§ 8(a), 8A or 8B, or G.L. c.265, § 13½, in violation of G.L. c.90, §23. (PENALTY: mandatory minimum of not less than 1 year, not more than 2½ years, in house of correction; and fine of not less than \$2500, not more than \$10,000; "with said sentence to be served consecutively to and not concurrent with any other sentence or penalty"; cannot be continued without a finding or filed; no reduced or suspended sentence, probation, parole, furlough or sentence deductions until 1 year served, except for emergency medical or psychiatric care or employment work release program; G.L. c.276, §87 "shall not apply" to defendant.)

90/24/F **OUI—DRUGS** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: imprisonment not more than 2½ years; or not less than \$500, not more than \$5000 fine; plus \$250 Head Injury Assessment; or both imprisonment and fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; and license revoked for 1 year. §24D alternative disposition: If defendant eligible, judge may allow as alternative: probation not more than 2 years, plus driver alcohol or controlled substance abuse education program, or alcohol or controlled substance treatment or rehabilitation program, or both, plus its program fee, plus \$250 assessment for apprehension, treatment and rehabilitation programs, plus \$50 Victims of Drunk Driving Assessment, plus \$250 Head Injury Assessment, plus license suspended for not less than 45 days, not more than 90 days (or for 210 days, if defendant under age 21 on offense date).)

90/24/G **OUI—DRUGS, 2ND OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, having previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: imprisonment not less than 60 days, not more than 2½ years; and not less than \$600, not more than \$10,000 fine; plus \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 30 days served; and license revoked for 2 years.)

90/24/H **OUI—DRUGS, 3RD OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, having previously been twice convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of the Commonwealth or some other jurisdiction because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 180 days, not more than 2½ years; and not less than \$1000, not more than \$15,000 fine; plus \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 150 days served; and license revoked for 8 years.)

90/24/I **OUI—DRUGS, 4TH OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, having previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction because of a like offense, as defined in G.L. c.90, §1, three times prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 2 years, not more than 2½ years; and not less than \$1500, not more than \$25,000 fine, plus \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 12 months served; and license revoked for 10 years.)

90/24/J **OUI—LIQUOR OR .08% c90 §24(1)(a)(1)** (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: imprisonment for not more than 2½ years; or not less than \$500, not more than \$5000 fine; or both imprisonment and fine; plus \$50 Victims of Drunk Driving Assessment; plus (if OUI) \$250 Head Injury Assessment; no filing or continuance without a finding; and license revoked for 1 year. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program. §24D alternative disposition: If defendant eligible, judge may allow as alternative: probation not more than 2 years, plus driver alcohol or controlled substance abuse education program, or alcohol or controlled substance abuse treatment or rehabilitation program, or both, plus its program fee, plus \$250 assessment for apprehension, treatment and rehabilitation programs, plus \$50 Victims of Drunk Driving Assessment, plus (if OUI) \$250 Head Injury Assessment, plus license suspended for not less than 45 days, not more than 90 days (or for 210 days, if defendant under age 21 on offense date). Defendants aged 17-21 with a blood alcohol level of .20% or more must attend a "14-day second offender in-home program.")

90/24/K **OUI—LIQUOR OR .08%, 2ND OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, having previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: imprisonment for not less than 60 days, not more than 2½ years; and not less than \$600, not more than \$10,000 fine; plus (if OUI) \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 30 days served; and license revoked for 2 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program. First alternative disposition (§24D): If defendant eligible, judge may allow as alternative: probation not more than 2 years, plus driver alcohol or controlled substance abuse education program, or alcohol or controlled substance abuse treatment or rehabilitation program, or both, plus its program fee, plus \$250 assessment for apprehension, treatment and rehabilitation programs, plus (if OUI) \$250 Head Injury Assessment, plus \$50 Victims of Drunk Driving Assessment, plus license revoked for 2 years. Second alternative disposition (§24(1)(a)(4)): If defendant eligible, judge may allow as alternative: probation for 2 years with not less than 14 days in residential alcohol treatment program, plus participation in outpatient counseling program, plus (if OUI) \$250 Head Injury Assessment, plus \$50 Victims of Drunk Driving Assessment, plus license revoked for 2 years.

90/24/L **OUI—LIQUOR OR .08%, 3RD OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, having previously been twice convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 180 days, not more than 2½ years; and not less than \$1000, not more than \$15,000 fine, plus (if OUI) \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 150 days served; and license revoked for 8 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program.)

90/24/M **OUI—LIQUOR OR .08%, 4TH OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, having previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction three times because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 2 years, not more than 2½ years; and not less than \$1500, not more than \$25,000 fine, plus (if OUI) \$250 Head Injury Assessment; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 12 months served; and license revoked for 10 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program.)

90/24/V **OUI—LIQUOR OR .08%, 5TH OFFENSE** c90 §24(1)(a)(1) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, having previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court of this Commonwealth or some other jurisdiction four or more times because of a like offense, as defined in G.L. c.90, §1, prior to the commission of this offense, in violation of G.L. c.90, §24(1)(a)(1). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 2½ years; and not less than \$2000, not more than \$50,000 fine, plus (if OUI) \$250 Head Injury Treatment Services Fund surcharge; plus \$50 Victims of Drunk Driving Assessment; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 24 months served; and license revoked for life. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program.)

90/24G/A **MOTOR VEH HOMICIDE BY NEGLIGENT OP** c90 §24G(b) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, and did so operate such motor vehicle negligently so that the lives or safety of the public might be endangered, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(b). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000; or both; no filing or continuance without a finding; RMV shall revoke license for 15 years, or after subsequent conviction for life. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24G/B **MOTOR VEH HOMICIDE BY RECKLESS OP** c90 §24G(b) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, and did operate such motor vehicle recklessly, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(b). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000; or both; no filing or continuance without a finding; RMV shall revoke license for 15 years, or on subsequent conviction for life. §24Q: Defendants with a blood alcohol level of or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24G/C **MOTOR VEH HOMICIDE OUI—DRUGS** c90 §24G(b) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(b). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24G/D **MOTOR VEH HOMICIDE OUI—DRUGS & NEGLIG** c90 §24G(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and did so operate such motor vehicle negligently so that the lives or safety of the public might be endangered, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(a). (PENALTY: state prison for not less than 2½ years, not more than 15 years; or jail or house of correction for not less than 1 year, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 1 year served; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior violation of G.L. c.90, §§ 24(1)(a), 24G(a), 24G(b) involving OUI, or 24L; G.L. c. 90B, §§ 8(a), 8A or 8B; or G.L. c. 265, § 13½. District Court has final jurisdiction under G.L. c.218, §26. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24G/E **MOTOR VEH HOMICIDE OUI—DRUGS & RECKLESS** c90 §24G(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and did operate such vehicle recklessly, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(a). (PENALTY: state prison for not less than 2½ years, not more than 15 years; or jail or house of correction for not less than 1 year, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 1 year served; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior violation of G.L. c.90, §§ 24(1)(a), 24G(a), 24G(b) involving OUI, or 24L; G.L. c. 90B, §§ 8(a), 8A or 8B; or G.L. c. 265, § 13½. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24G/F **MOTOR VEH HOMICIDE OUI—LIQUOR OR .08%** c90 §24G(b) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(b). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24G/G **MOTOR VEH HOMICIDE OUI—LIQUOR OR .08% & NEGLIGENT** c90 §24G(a) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and did so operate such vehicle negligently so that the lives or safety of the public might be endangered, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(a). (PENALTY: state prison for not less than 2½ years, not more than 15 years; or jail or house of correction for not less than 1 year, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 1 year served; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior violation of G.L. c.90, §§ 24(1)(a), 24G(a), 24G(B) involving OUI, or 24L; G.L. c. 90B, §§ 8(a), 8A or 8B; or G.L. c. 265, § 13½. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24G/H **MOTOR VEH HOMICIDE OUI—LIQUOR OR .08% & RECKLESS** c90 §24G(a) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and did operate such motor vehicle recklessly, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24G(a). (PENALTY: state prison for not less than 2½ years, not more than 15 years; or jail or house of correction for not less than 1 year, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 1 year served; RMV shall revoke license for 15 years, or for life on subsequent conviction or after prior violation of G.L. c.90, §§ 24(1)(a), 24G(a), 24G(b) involving OUI, or 24L; G.L. c. 90B, §§ 8(a), 8A or 8B; or G.L. c. 265, § 13½. District Court has final jurisdiction under G.L. c.218, §26. §24Q: Defendants with a blood alcohol level of .20% or more must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24L/A **OUI—DRUGS & SERIOUS INJURY** c90 §24L(2) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(2). (PENALTY: jail or house of correction for not more than 2½ years; or not less than \$3000 fine; or both; plus \$50 Victims of Drunk Driving Assessment; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24L/B **OUI—DRUGS & SERIOUS INJURY & NEGLIGENT** c90 §24L(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and did so operate such motor vehicle negligently so that the lives or safety of the public might be endangered, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(1). (PENALTY: state prison for not less than 2½ years, not more than 10 years; or jail or house of correction for not less than 6 months, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 6 months served; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24L/C **OUI—DRUGS & SERIOUS INJURY & RECKLESS** c90 §24L(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, §1, or the vapors of glue, and did operate such motor vehicle recklessly, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(1). (PENALTY: state prison for not less than 2½ years, not more than 10 years; or jail or house of correction for not less than 6 months, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 6 months served; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24L/D **OUI—LIQUOR OR .08% & SERIOUS INJURY** c90 §24L(2) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(2). (PENALTY: jail or house of correction for not more than 2½ years; or not less than \$3000 fine; or both; plus \$50 Victims of Drunk Driving Assessment; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program.)

90/24L/E **OUI—LIQUOR OR .08% & SERIOUS INJURY & NEGLIGENT** c90 §24L(1) (Effective 10/28/05)

on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and did so operate such motor vehicle negligently so that the lives or safety of the public might be endangered, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(1). (PENALTY: state prison for not less than 2½ years, not more than 10 years; or jail or house of correction for not less than 6 months, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving

Assessment; no filing or continuance without a finding; no suspended sentence or probation until 6 months served; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24L/F **OUI—LIQUOR OR .08% & SERIOUS INJURY & RECKLESS** c90 §24L(1) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a motor vehicle upon a way, as defined in G.L. c.90, §1, or in a place to which the public has a right of access, or upon a way or in a place to which members of the public have access as invitees or licensees, with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and did operate such motor vehicle recklessly, and by such operation did cause serious bodily injury to a person, **[NAME OF VICTIM:]**, in violation of G.L. c.90, §24L(1). (PENALTY: state prison for not less than 2½ years, not more than 10 years; or jail or house of correction for not less than 6 months, not more than 2½ years; and not more than \$5000 fine; plus \$50 Victims of Drunk Driving Assessment; no filing or continuance without a finding; no suspended sentence or probation until 6 months served; RMV shall revoke license for 2 years, or for life after prior OUI. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program. District Court has final jurisdiction under G.L. c.218, §26.)

90/24S **IGNITION INTERLOCK, OPERATE WITHOUT** c90 §24S(a) (Effective 1/1/06)
on **[DATE OF OFFENSE:]**, upon a way or place to which the public had a right of access, or upon a way or place to which members of the public had access as invitees or licensees, did operate a motor vehicle that was not equipped with a certified functioning ignition interlock device, as defined in G.L. c. 90, § 24S(b), while his or her license or right to operate was restricted to operating only motor vehicles equipped with such device, in violation of G.L. c. 90, § 24S(a). (PENALTY: state prison not less than 2½ years, not more than 5 years; or imprisonment not less than 180 days, not more than 2½ years; and fine of not less than \$1,000, not more than \$15,000; sentence may not be suspended or reduced to less than 150 days; no probation, parole, furlough, or good conduct credits until 150 days served. All or part of sentence may be served in a correctional facility designated by DOC for drinking drivers, if available.)

90/24T **IGNITION INTERLOCK, TAMPER WITH** c90 § 24T(a) (Effective 1/1/06)
on **[DATE OF OFFENSE:]** did interfere with or tamper with a certified ignition interlock device, as defined in G.L. c. 90, § 24T(b), with the intent to disable such device, in violation of G.L. c. 90, § 24T(a). (PENALTY: state prison not less than 3 years, not more than 5 years; or house of correction not less than 6 months, not more than 2½ years.)

90/24U/A **IGNITION INTERLOCK FOR ANOTHER, BYPASS** c90 §24U(a)(1) (Effective 1/1/06)
on **[DATE OF OFFENSE:]** did knowingly breathe into a certified ignition interlock device, as defined in G.L. c. 90, § 24T, or start a motor vehicle equipped with such a device, for the purpose of providing an operable motor vehicle to a person whose license or right to operate a vehicle was restricted to the operation of vehicles equipped with a certified ignition interlock device, in violation of G.L. c. 90, § 24U(a)(1). (PENALTY: house of correction not less than 6 months, not more than 2½ years; or fine not less than \$1000, not more than \$5000.)

90/24U/B **IGNITION INTERLOCK FOR ANOTHER, BYPASS, SUBSQ.OFF.** c90 §24U(a)(1) (Effective 1/1/06)
on **[DATE OF OFFENSE:]** did knowingly breathe into a certified ignition interlock device, as defined in G.L. c. 90, § 24T, or start a motor vehicle equipped with such a device, for the purpose of providing an operable motor vehicle to a person whose license or right to operate a vehicle was restricted to the operation of vehicles equipped with a certified ignition interlock device, the defendant having previously been convicted of such an offense, in violation of G.L. c. 90, § 24U(a)(1). (NO FINAL DISTRICT COURT JURISDICTION IN ADULT SESSION.)

90/24V/A **CHILD ENDANGERMENT WHILE OUI** c90 §24V (Effective 10/28/05)
on **[DATE OF OFFENSE:]** was guilty of child endangerment while operating a motor vehicle or vessel under the influence, in that he or she did violate G.L. c.90, §§ 24(1)(a), 24G(a) or 24L, or G.L. c.90B, §§ 8(a), 8A or 8B, or G.L. c.265, §13½, or did operate a motor vehicle with a percentage by weight of blood alcohol of .08% or greater or while under the influence of intoxicating liquor in violation of G.L. c.90, §24G(b), with a child 14 years of age or younger in the motor vehicle or vessel, in violation of G.L. c.90, §24V. (PENALTY: "enhanced penalty" of house of correction not less than 90 days, not more than 2½ years "shall be served consecutively to and not concurrently with the predicate violation"; plus fine not less than \$1000, not more than \$5000; may not be filed or continued without a finding; G.L. c.276, §87 and G.L. c.276A, §§1-9 are inapplicable; RMV shall suspend license for 1 year.)

90/24V/B **CHILD ENDANGERMENT WHILE OUI, SUBSQ.OFF.** c90 §24V (Effective 10/28/05)
on **[DATE OF OFFENSE:]** was guilty of child endangerment while operating a motor vehicle or vessel under the influence, in that he or she did violate G.L. c.90, §§ 24(1)(a), 24G(a) or 24L, or G.L. c.90B, §§ 8(a), 8A or 8B, or G.L. c.265, §13½, or did operate a motor vehicle with a percentage by weight of blood alcohol of .08% or greater or while under the influence of intoxicating liquor in violation of G.L. c.90, §24G(b), with a child 14 years of age or younger in the motor vehicle or vessel, the defendant having previously violated this subsection or committed a like offense in another jurisdiction preceding the date of the commission of this offense, in violation of G.L. c.90, §24V. (PENALTY: "enhanced penalty" of state prison not less than 3 years, not more than 5 years; or mandatory minimum sentence of house of correction not less than 6 months, not more than 2½ years; and fine not less than \$5000, not more than \$10,000; sentence "shall be served consecutively to and not concurrently with the predicate violation"; may not be filed or continued without a finding; G.L. c.276, §87 and G.L. c.276A, §§1-9 are inapplicable; no reduction in sentence, suspended sentence, probation, parole, furlough or sentence deduction until 6 months served; RMV shall suspend license for 3 years.)

90B/8/C **BOAT OUI—LIQUOR OR .08%** c90B §8(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90B, §8(a). (PENALTY: imprisonment not more than 2½ years; or not less than \$100, not more than \$1000 fine; or both; no filing or continuance without a finding; if prior violation of G.L. c.90B, §8(a)(1) or c.90, §2424(1)(a)(1) within 6 years, no weekend sentence or pretrial probation; plus 1 year loss of motor vehicle license and possible 1 year loss of vessel certificate of number. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program. If no prior violation of G.L. c.90B, §8(a)(1) or c.90, §24(1)(a)(1), judge may allow alternative in addition to any imprisonment or fine: probation for not more than 2 years conditioned on boating safety education course and, if judge deems necessary, alcohol education or rehabilitation program; plus loss of motor vehicle license for 45

days (if death caused, for 10 years) and possible loss of vessel number certificate for 45 days. CLERK-MAGISTRATE MUST REPORT CONVICTION TO THE REGISTRY OF MOTOR VEHICLES AND TO THE POLICE DEPARTMENT OF THE DEFENDANT'S DOMICILE.)

90B/8/CA **BOAT OUI—LIQUOR OR .08%, 2ND OFFENSE** c90B §8(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90B, §8(a), having previously been convicted or assigned to an alcohol education or rehabilitation program by a court of the Commonwealth because of a like offense, as defined in G.L. c.90B, §1, within 6 years prior to the commission of this offense, in violation of G.L. c.90B, §8(a). (PENALTY: imprisonment not less than 14 days, not more than 2½ years; and not less than \$300, not more than \$1,000 fine; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 14 days served; plus loss of motor vehicle license for 2 years (if death caused, for life) and possible loss of vessel number certificate for 2 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program. CLERK-MAGISTRATE MUST REPORT CONVICTION TO THE REGISTRY OF MOTOR VEHICLES AND TO THE POLICE DEPARTMENT OF THE DEFENDANT'S DOMICILE.)

90B/8/CB **BOAT OUI—LIQUOR OR .08%, 3RD OFFENSE** c90B §8(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90B, §8(a), having twice previously been convicted or assigned to an alcohol education or rehabilitation program by a court of the Commonwealth because of a like offense, as defined in G.L. c.90B, §1, within 6 years prior to the commission of this offense, in violation of G.L. c.90B, §8(a). (PENALTY: imprisonment not less than 6 months, not more than 2½ years; and not less than \$500, not more than \$1,000 fine; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 6 months served; plus loss of motor vehicle license for 5 years (if death caused, for life) and possible loss of vessel number certificate for 5 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program. CLERK-MAGISTRATE MUST REPORT CONVICTION TO THE REGISTRY OF MOTOR VEHICLES AND TO THE POLICE DEPARTMENT OF THE DEFENDANT'S DOMICILE.)

90B/8/CC **BOAT OUI—LIQUOR OR .08%, 4TH OFFENSE** c90B §8(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90B, §8(a), having three times previously been convicted or assigned to an alcohol education or rehabilitation program by a court of the Commonwealth because of a like offense, as defined in G.L. c.90B, §1, within 10 years prior to the commission of this offense, in violation of G.L. c.90B, §8(a). (PENALTY: state prison not less than 2½ years, not more than 10 years; or jail or house of correction not less than 1 year, not more than 2½ years; and not less than \$500, not more than \$1,000 fine; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 1 year served; plus loss of motor vehicle license for 10 years (if death caused, for life) and possible loss of vessel number certificate for 10 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program. CLERK-MAGISTRATE MUST REPORT CONVICTION TO THE REGISTRY OF MOTOR VEHICLES AND TO THE POLICE DEPARTMENT OF THE DEFENDANT'S DOMICILE.)

90B/8/CD **BOAT OUI—LIQUOR OR .08%, 5TH OFFENSE** c90B §8(a) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, in violation of G.L. c.90B, §8(a), having four or more times previously been convicted or assigned to an alcohol education or rehabilitation program by a court of the Commonwealth because of a like offense, as defined in G.L. c.90B, §1, within 10 years prior to the commission of this offense, in violation of G.L. c.90B, §8(a). (PENALTY: state prison not less than 2½ years, not more than 10 years; or jail or house of correction not less than 2 years, not more than 2½ years; and not less than \$1,000, not more than \$1,500 fine; no filing, continuance without a finding, or weekend sentence; no suspended sentence or probation until 2 years served; plus loss of motor vehicle license for 15 years (if death caused, for life) and possible loss of vessel number certificate for 15 years. §24Q: Defendant must also attend an alcohol or drug assessment by DPH or other court-approved program. CLERK-MAGISTRATE MUST REPORT CONVICTION TO THE REGISTRY OF MOTOR VEHICLES AND TO THE POLICE DEPARTMENT OF THE DEFENDANT'S DOMICILE.)

90B/8/A **BOAT OUI—DRUGS & SERIOUS INJURY** c90B §8A(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth while under the influence of marihuana, narcotic drugs, depressants, or stimulant substances, all as defined in G.L. c.94C, or the vapors of glue, and by such operation did cause serious bodily injury, as defined in G.L. c.90B, §8A(3), to a person, **[NAME OF VICTIM:]**, in violation of G.L. c. 90B, §8A(2). (PENALTY: jail or house of correction not less than 30 days, not more than 2½ years; or not less than \$3000 fine; or both; no pretrial probation; RMV shall revoke motor vehicle license for 2 years, or for life after prior OUI; OELE shall revoke vessel number certificate for 2 years.)

90B/8A/D **BOAT OUI—LIQUOR OR .08% & SERIOUS INJURY** c90B §8A(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and by such operation did cause serious bodily injury, as defined in G.L. c.90B, §8A(3), to a person, **[NAME OF VICTIM:]**, in violation of G.L. c. 90B, §8A(2). (PENALTY: jail or house of correction not less than 30 days, not more than 2½ years; or not less than \$3000 fine; or both; no pretrial probation; RMV shall revoke motor vehicle license for 2 years, or for life after prior OUI; OELE shall revoke vessel number certificate for 2 years. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program)

90B/8B/A **BOAT HOMICIDE BY NEGLIGENT OP** c90B §8B(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel negligently so that the lives or safety of the public might be endangered, and by such operation did cause the death of another person, **[NAME OF VICTIM:]**, in violation of G.L. c.90B, §8B(2). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; RMV shall revoke motor vehicle license for 10 years, or for life on subsequent conviction or after prior OUI; OELE shall revoke vessel number certificate for 10 years, or on subsequent conviction for life.)

90B/8B/B **BOAT HOMICIDE BY RECKLESS OP** c90B §8B(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:]** did operate a vessel recklessly, and by such operation did cause the death of another person, **[NAME OF**

VICTIM:]; in violation of G.L. c.90B, §8B(2). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; RMV shall revoke motor vehicle license for 10 years, or for life after prior OUI or on subsequent conviction; OELE shall revoke vessel number certificate for 10 years, or on subsequent conviction for life.)

90B/8B/B **BOAT HOMICIDE BY RECKLESS OP** c90B §8B(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:];** did operate a vessel recklessly, and by such operation did cause the death of another person, **[NAME OF VICTIM:];** in violation of G.L. c.90B, §8B(2). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; RMV shall revoke motor vehicle license for 10 years, or for life after prior OUI or on subsequent conviction; OELE shall revoke vessel number certificate for 10 years, or on subsequent conviction for life.)

90B/8B/C **BOAT HOMICIDE OUI—DRUGS** c90B §8B(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:];** did operate a vessel on the waters of the Commonwealth while under the influence of marihuana, narcotic drugs, depressants or stimulant substances, all as defined in G.L. c.94C, or the vapors of glue, and by such operation did cause the death of another person, **[NAME OF VICTIM:];** in violation of G.L. c.90B, §8B(2). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; RMV shall revoke motor vehicle license for 10 years, or for life after prior OUI or on subsequent conviction; OELE shall revoke vessel number certificate for 10 years, or on subsequent conviction for life.)

90B/8B/F **BOAT HOMICIDE OUI—LIQUOR OR .08%** c90B §8B(2) (Effective 10/28/05)
on **[DATE OF OFFENSE:];** did operate a vessel on the waters of the Commonwealth with a percentage, by weight, of alcohol in his or her blood of eight one-hundredths or greater, or while under the influence of intoxicating liquor, and by such operation did cause the death of another person, **[NAME OF VICTIM:];** in violation of G.L. c.90B, §8B(2). (PENALTY: jail or house of correction for not less than 30 days, not more than 2½ years; or not less than \$300, not more than \$3000 fine; or both; RMV shall revoke motor vehicle license for 10 years, or for life after prior OUI or on subsequent conviction; OELE shall revoke vessel number certificate for 10 years, or on subsequent conviction for life. §24Q: Defendants with a blood alcohol level of .20% or more, or who have previously been convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program, must also attend alcohol or drug assessment by DPH or other court-approved program.)

265/1312 **MANSLAUGHTER WHILE OUI** c265 §13½ (Effective 10/28/05)
on **[DATE OF OFFENSE:];** did commit manslaughter while operating a motor vehicle in violation of G.L. c. 90, § 24(1)(a) or G.L. c.90B, § 8A, in violation of G.L. c. 265, § 13½. (NO DISTRICT COURT FINAL JURISDICTION IN ADULT SESSION.)

266/139/E **LICENSE PLATE, TAKE** c266 §139 (Effective 10/28/05)
on **[DATE OF OFFENSE:];** did take and carry away the registration plate that was attached to the vehicle of another or was assigned by the Registry of Motor Vehicles to another, in violation of G.L. c.266, §139. (PENALTY: house of correction not more than 2½ years; or fine not less than \$500, not more than \$1000; or both; CLERK-MAGISTRATE MUST REPORT CONVICTION TO REGISTRAR OF MOTOR VEHICLES, who shall revoke license for 60 days on first offense, and for 1 year on subsequent offense; c.276, §92A: plus mandatory restitution.)

