

HOUSE No. 1462

By Ms. Gobi of Spencer, petition of Anne M. Gobi and others relative to the operation of snow or recreational vehicles while under the influence of alcohol or narcotic substances. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Anne M. Gobi	Stephen R. Canessa
Stephen Kulik	Patricia D. Jehlen
Anthony J. Verga	John D. Keenan
Stephen M. Brewer	Christine E. Canavan
Todd M. Smola	Geraldo Alicea
Douglas W. Petersen	Jennifer M. Callahan

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE OPERATION OF A SNOW VEHICLE OR RECREATIONAL VEHICLE UNDER THE INFLUENCE OF ALCOHOLIC OR NARCOTIC SUBSTANCES.

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

- 1 SECTION 1. Chapter 90B of the General Laws is hereby
- 2 amended by inserting after section 26 the following section:—
- 3 Section 26A. (1) (a) (1) Whoever operates a snow or recreational
- 4 vehicle on the lands, waters or ways, whether public or private,
- 5 within the commonwealth while under the influence of intoxicating
- 6 liquor, or of marijuana, narcotic drugs, depressants or stimulant sub-
- 7 stances, all as defined in section one of chapter ninety-four C, or the
- 8 vapors of glue shall be punished by a fine of not less than \$500 nor
- 9 more than \$5,000 or by imprisonment for not more than two and
- 10 one-half years, or both such fine and imprisonment.
- 11 There shall be an assessment of \$125 against a person who, by a
- 12 court of the commonwealth, is convicted of, is placed on probation
- 13 for, or is granted a continuance without a finding for or otherwise
- 14 pleads guilty to or admits to a finding of sufficient facts of operating
- 15 a snow or recreation vehicle while under the influence of intoxi-
- 16 cating liquor, marijuana, narcotic drugs, depressants or stimulant

17 substances pursuant to the provisions of this section; provided, how-
18 ever, that moneys collected pursuant to said assessment shall be
19 deposited by the court with the treasurer into the Head Injury Treat-
20 ment Services Trust Fund established by section 59 of chapter 10. In
21 the discretion of the court, an assessment pursuant to this paragraph
22 may be reduced or waived only upon a written finding of fact that
23 such payment would cause the person against whom the assessment
24 is imposed severe financial hardship. Such a finding shall be made
25 independently of a finding of indigency for purposes of appointing
26 counsel. If the person is sentenced to a correctional facility in the
27 commonwealth and the assessment has not been paid, the court shall
28 note the assessment on the mittimus.

29 If the defendant has been previously convicted or assigned to an
30 alcohol or controlled substance education, treatment, or rehabilita-
31 tion program by a court of the commonwealth or any other jurisdic-
32 tion because of a like violation within ten years preceding the date of
33 the commission of the offense for which he has been convicted, the
34 defendant shall be punished by a fine of not less than six hundred
35 nor more than ten thousand dollars and by imprisonment for not less
36 than sixty days nor more than two and one-half years; provided,
37 however, that the sentence imposed upon such person shall not be
38 reduced to less than thirty days, nor suspended, nor shall any such
39 person be eligible for probation, parole, or furlough or receive any
40 deduction from his sentence for good conduct until such person has
41 served thirty days of such sentence, unless otherwise sentenced to an
42 intermediate sanction as promulgated by the sentencing commission
43 established in chapter four hundred and thirty-two of the acts of
44 nineteen hundred and ninety-three; provided, further, that the com-
45 missioner of correction may, on the recommendation of the warden,
46 superintendent, or other person in charge of a correctional institu-
47 tion, or the administrator of a county correctional institution, grant to
48 an offender committed under this subdivision a temporary release in
49 the custody of an officer of such institution for the following pur-
50 poses only: to attend the funeral of a relative; to visit a critically ill
51 relative; to obtain emergency medical or psychiatric services
52 unavailable at said institution; to engage in employment pursuant to
53 a work release program; or for the purposes of an aftercare program
54 designed to support the recovery of an offender who has completed
55 an alcohol or controlled substance education, treatment or rehabilita-

56 tion program operated by the department of correction; and pro-
57 vided, further, that the defendant may serve all or part of such thirty
58 day sentence to the extent such resources are available in a correc-
59 tional facility specifically designated by the department of correction
60 for the incarceration and rehabilitation of drinking drivers.

61 If the defendant has been previously convicted or assigned to an
62 alcohol or controlled substance education, treatment, or rehabilita-
63 tion program by a court of the commonwealth, or any other jurisdic-
64 tion because of a like offense two times within ten years preceding
65 the date of the commission of the offense for which he has been con-
66 victed, the defendant shall be punished by a fine of not less than one
67 thousand nor more than fifteen thousand dollars and by imprison-
68 ment for not less than one hundred and eighty days nor more than
69 two and one-half years or by a fine of not less than one thousand nor
70 more than fifteen thousand dollars and by imprisonment in the state
71 prison for not less than two and one-half years nor more than five
72 years; provided, however, that the sentence imposed upon such
73 person shall not be reduced to less than one hundred and fifty days,
74 nor suspended, nor shall any such person be eligible for probation,
75 parole, or furlough or receive any deduction from his sentence for
76 good conduct until he shall have served one hundred and fifty days
77 of such sentence, unless otherwise sentenced to an intermediate
78 sanction as promulgated by the sentencing commission established
79 in chapter four hundred and thirty-two of the acts of nineteen hun-
80 dred and ninety-three; provided, further, that the commissioner of
81 correction may, on the recommendation of the warden, superinten-
82 dent, or other person in charge of a correctional institution, or the
83 administrator of a county correctional institution, grant to an
84 offender committed under this subdivision a temporary release in the
85 custody of an officer of such institution for the following purposes
86 only: to attend the funeral of a relative, to visit a critically ill
87 relative; to obtain emergency medical or psychiatric services
88 unavailable at said institution; to engage in employment pursuant to
89 a work release program; or for the purposes of an aftercare program
90 designed to support the recovery of an offender who has completed
91 an alcohol or controlled substance education, treatment or rehabilita-
92 tion program operated by the department of correction; and pro-
93 vided, further, that the defendant may serve all or part of such one
94 hundred and fifty days sentence to the extent such resources are

95 available in a correctional facility specifically designated by the
96 department of correction for the incarceration and rehabilitation of
97 drinking drivers.

98 If the defendant has been previously convicted or assigned to an
99 alcohol or controlled substance education, treatment, or rehabilita-
100 tion program by a court of the commonwealth or any other jurisdic-
101 tion because of a like offense three times within ten years preceding
102 the date of the commission of the offense for which he has been con-
103 victed the defendant shall be punished by a fine of not less than one
104 thousand five hundred nor more than twenty-five thousand dollars
105 and by imprisonment for not less than two years nor more than two
106 and one-half years, or by a fine of not less than one thousand five
107 hundred nor more than twenty-five thousand dollars and by impris-
108 onment in the state prison for not less than two and one-half years
109 nor more than five years; provided, however, that the sentence
110 imposed upon such person shall not be reduced to less than twelve
111 months, nor suspended, nor shall any such person be eligible for pro-
112 bation, parole, or furlough or receive any deduction from his sen-
113 tence for good conduct until such person has served twelve months
114 of such sentence, unless otherwise sentenced to an intermediate
115 sanction as promulgated by the sentencing commission established
116 in chapter four hundred and thirty-two of the acts of nineteen hun-
117 dred and ninety-three; provided, further, that the commissioner of
118 correction may, on the recommendation of the warden, superinten-
119 dent, or other person in charge of a correctional institution, or the
120 administrator of a county correctional institution, grant to an
121 offender committed under this subdivision a temporary release in the
122 custody of an officer of such institution for the following purposes
123 only: to attend the funeral of a relative; to visit a critically ill
124 relative; to obtain emergency medical or psychiatric services
125 unavailable at said institution; to engage in employment pursuant to
126 a work release program; or for the purposes of an aftercare program
127 designed to support the recovery of an offender who has completed
128 an alcohol or controlled substance education, treatment or rehabilita-
129 tion program operated by the department of correction; and pro-
130 vided, further, that the defendant may serve all or part of such twelve
131 months sentence to the extent that resources are available in a cor-
132 rectional facility specifically designated by the department of correc-
133 tion for the incarceration and rehabilitation of drinking drivers.

134 If the defendant has been previously convicted or assigned to an
135 alcohol or controlled substance education, treatment or rehabilitation
136 program by a court of the commonwealth or any other jurisdiction
137 because of a like offense four or more times within ten years pre-
138 ceding the date of the commission of the offense for which he has
139 been convicted, the defendant shall be punished by a fine of not less
140 than two thousand nor more than fifty thousand dollars and by
141 imprisonment for not less than two and one-half years or by a fine of
142 not less than two thousand nor more than fifty thousand dollars and
143 by imprisonment in the state prison for not less than two and one-
144 half years nor more than five years; provided, however, that the sen-
145 tence imposed upon such person shall not be reduced to less than
146 twenty-six months, nor suspended, nor shall any such person be eli-
147 gible for probation, parole, or furlough or receive any deduction
148 from his sentence for good conduct until he shall have served
149 twenty-six months of such sentence, unless otherwise sentenced to
150 an intermediate sanction as promulgated by the sentencing commis-
151 sion established in chapter four hundred and thirty-two of the acts of
152 nineteen hundred and ninety-three; provided, further, that the com-
153 missioner of correction may, on the recommendation of the warden,
154 superintendent, or other person in charge of a correctional institu-
155 tion, or the administrator of a county correctional institution, grant to
156 an offender committed under this subdivision a temporary release in
157 the custody of an officer of such institution for the following pur-
158 poses only: to attend the funeral of a relative; to visit a critically ill
159 relative; to obtain emergency medical or psychiatric services
160 unavailable at said institution; to engage in employment pursuant to
161 a work release program; or for the purposes of an aftercare program
162 designed to support the recovery of an offender who has completed
163 an alcohol or controlled substance education, treatment or rehabilita-
164 tion program operated by the department of correction; and pro-
165 vided, further, that the defendant may serve all or part of such
166 twenty-six months sentence to the extent that resources are available
167 in a correctional facility specifically designated by the department of
168 correction for the incarceration and rehabilitation of drinking dri-
169 vers.

170 A prosecution commenced under the provisions of this subpara-
171 graph shall not be placed on file or continued without a finding
172 except for dispositions under section twenty-six D. No trial shall be

173 commenced on a complaint alleging a violation of this subparagraph,
174 nor shall any plea be accepted on such complaint, nor shall the pros-
175 ecution on such complaint be transferred to another division of the
176 district court or to a jury-of-six session, until the court receives a
177 report from the commissioner of probation pertaining to the defen-
178 dant's record, if any, of prior convictions of such violations or of
179 assignment to an alcohol or controlled substance education, treat-
180 ment, or rehabilitation program because of a like offense; provided,
181 however, that the provisions of this paragraph shall not justify the
182 postponement of any such trial or of the acceptance of any such plea
183 for more than five working days after the date of the defendant's
184 arraignment. The commissioner of probation shall give priority to
185 requests for such records.

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

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

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

210 (3) Notwithstanding the provisions of section six A of chapter two
211 hundred and seventy-nine, the court may order that a defendant con-

212 victed of a violation of subparagraph (1) be imprisoned only on des-
213 ignated weekends, evenings or holidays; provided, however, that the
214 provisions of this subparagraph shall apply only to a defendant who
215 has not been convicted previously of such violation or assigned to an
216 alcohol or controlled substance education, treatment or rehabilitation
217 program within ten years preceding the date of the commission of
218 the offense for which he has been convicted.

219 (4) Notwithstanding the provisions of subparagraphs (1) and (2), a
220 judge, before imposing a sentence on a defendant who pleads guilty
221 to or is found guilty of a violation of subparagraph (1) and who has
222 not been convicted or assigned to an alcohol or controlled substance
223 education, treatment or rehabilitation program by a court of the com-
224 monwealth or any other jurisdiction because of a like offense two or
225 more times within ten years of the date of the commission of the
226 offense for which he has been convicted, shall receive a report from
227 the probation department of a copy of the defendant's driving record,
228 the criminal record of the defendant, if any, and such information as
229 may be available as to the defendant's use of alcohol and may, upon
230 a written finding that appropriate and adequate treatment is available
231 to the defendant and the defendant would benefit from such treat-
232 ment and that the safety of the public would not be endangered, with
233 the defendant's consent place a defendant on probation for two
234 years; provided, however, that a condition for such probation shall
235 be that the defendant be confined for no less than fourteen days in a
236 residential alcohol treatment program and to participate in an outpa-
237 tient counseling program designed for such offenders as provided or
238 sanctioned by the division of alcoholism, pursuant to regulations to
239 be promulgated by said division in consultation with the department
240 of correction and with the approval of the secretary of health and
241 human services or at any other facility so sanctioned or regulated as
242 may be established by the commonwealth or any political subdivi-
243 sion thereof for the purpose of alcohol or drug treatment or rehabili-
244 tation, and comply with all conditions of said residential alcohol
245 treatment program. Such condition of probation shall specify a date
246 before which such residential alcohol treatment program shall be
247 attended and completed.

248 Failure of the defendant to comply with said conditions and any
249 other terms of probation as imposed under this section shall be
250 reported forthwith to the court and proceedings under the provisions

251 of section three of chapter two hundred and seventy-nine shall be
252 commenced. In such proceedings, such defendant shall be taken
253 before the court and if the court finds that he has failed to attend or
254 complete the residential alcohol treatment program before the date
255 specified in the conditions of probation, the court shall forthwith
256 specify a second date before which such defendant shall attend or
257 complete such program, and unless such defendant shows extraordi-
258 nary and compelling reasons for such failure, shall forthwith sen-
259 tence him to imprisonment for not less than two days; provided,
260 however, that such sentence shall not be reduced to less than two
261 days, nor suspended, nor shall such person be eligible for furlough
262 or receive any reduction from his sentence for good conduct until
263 such person has served two days of such sentence; and provided, fur-
264 ther, that the commissioner of correction may, on the recommenda-
265 tion of the warden, superintendent, or other person in charge of a
266 correctional institution, or the administrator of a county correctional
267 institution, grant to an offender committed under this subdivision a
268 temporary release in the custody of an officer of such institution for
269 the following purposes only: to attend the funeral of a relative; to
270 visit a critically ill relative; to obtain emergency medical or psychi-
271 atric services unavailable at said institution; or to engage in employ-
272 ment pursuant to a work release program. If such defendant fails to
273 attend or complete the residential alcohol treatment program before
274 the second date specified by the court, further proceedings pursuant
275 to said section three of said chapter two hundred and seventy-nine
276 shall be commenced, and the court shall forthwith sentence the
277 defendant to imprisonment for not less than thirty days as provided
278 in subparagraph (1) for such a defendant.

279 The defendant shall pay for the cost of the services provided by
280 the residential alcohol treatment program; provided, however, that
281 no person shall be excluded from said programs for inability to pay;
282 and provided, further, that such person files with the court, an affi-
283 davit of indigency or inability to pay and that investigation by the
284 probation officer confirms such indigency or establishes that pay-
285 ment of such fee would cause a grave and serious hardship to such
286 individual or to the family of such individual, and that the court
287 enters a written finding thereof. In lieu of waiver of the entire
288 amount of said fee, the court may direct such individual to make par-
289 tial or installment payments of the cost of said program.

290 (b) A conviction of a violation of subparagraph (1) of paragraph
291 (a) shall revoke the license or right to operate of the person so con-
292 victed unless such person has not been convicted of or assigned to
293 an alcohol or controlled substance education, treatment or rehabilita-
294 tion program because of a like offense by a court of the common-
295 wealth or any other jurisdiction within a period of ten years
296 preceding the date of the commission of the offense for which he has
297 been convicted, and said person qualifies for disposition under
298 section twenty-four D and has consented to probation as provided
299 for in said section twenty-four D; provided, however, that no appeal,
300 motion for new trial or exceptions shall operate to stay the revoca-
301 tion of the license or the right to operate. Such revoked license shall
302 immediately be surrendered to the prosecuting officer who shall for-
303 ward the same to the registrar. The court shall report immediately
304 any revocation, under this section, of a license or right to operate to
305 the registrar and to the police department of the municipality in
306 which the defendant is domiciled. Additionally, upon a conviction of
307 a violation of subparagraph (1) of paragraph (a), the director of envi-
308 ronmental law enforcement may revoke or suspend the registration
309 of the violator's snow or recreation vehicle.

310 (c) (1) Where the license, right to operate, or registration of a
311 snow or recreation vehicle has been revoked under section twenty-
312 six D or twenty-six E, or revoked under paragraph (b) and such
313 person has not been convicted of a like offense or has not been
314 assigned to an alcohol or controlled substance education, treatment
315 or rehabilitation program because of a like offense by a court of the
316 commonwealth or any other jurisdiction within a period of ten years
317 preceding the date of the commission of the offense for which he has
318 been convicted, the registrar shall not restore the license or reinstate
319 the right to operate to such person unless the prosecution of such
320 person has been terminated in favor of the defendant, until one year
321 after the date of conviction; provided, however, that such person
322 may, after the expiration of three months from the date of convic-
323 tion, apply for and shall be granted a hearing before the registrar for
324 the purpose of requesting the issuance of a new license for employ-
325 ment or educational purposes, which license shall be effective for
326 not more than an identical twelve hour period every day on the
327 grounds of hardship and a showing by the person that the causes of
328 the present and past violations have been dealt with or brought under

329 control, and the registrar may, in his discretion, issue such license
330 under such terms and conditions as he deems appropriate and neces-
331 sary; and provided, further, that such person may, after the expiration
332 of six months from the date of conviction, apply for and shall be
333 granted a hearing before the registrar for the purpose of requesting
334 the issuance of a new license on a limited basis on the grounds of
335 hardship and a showing by the person that the causes of the present
336 and past violations have been dealt with or brought under control
337 and the registrar may, in his discretion, issue such a license under
338 such terms and conditions as he deems appropriate and necessary.

339 (2) Where the license or the right to operate of a person has been
340 revoked under paragraph (b) and such person has been previously
341 convicted of or assigned to an alcohol or controlled substance educa-
342 tion, treatment or rehabilitation program by a court of the common-
343 wealth or any other jurisdiction because of a like violation within a
344 period of ten years preceding the date of the commission of the
345 offense for which such person has been convicted, the registrar shall
346 not restore the license or reinstate the right to operate of such person
347 unless the prosecution of such person has been terminated in favor
348 of the defendant, until two years after the date of the conviction; pro-
349 vided, however, that such person may, after the expiration of six
350 months from the date of conviction, apply for and shall be granted a
351 hearing before the registrar for the purpose of requesting the
352 issuance of a new license for employment or education purposes,
353 which license shall be effective for not more than an identical twelve
354 hour period every day on the grounds of hardship and a showing by
355 the person that the causes of the present and past violations have
356 been dealt with or brought under control and that such person shall
357 have successfully completed the residential treatment program in
358 subparagraph (4) of paragraph (a) of subdivision (1), or such treat-
359 ment program mandated by section twenty-six D, and the registrar
360 may, in his discretion, issue such license under such terms and con-
361 ditions as he deems appropriate and necessary; and provided, further,
362 that such person may, after the expiration of one year from the date
363 of conviction, apply for and shall be granted a hearing before the
364 registrar for the purpose of requesting the issuance of a new license
365 on a limited basis on the grounds of hardship and a showing by the
366 person that the causes of the present and past violations have been
367 dealt with or brought under control and the registrar may, in his dis-

368 cretion, issue such a license under such terms and conditions as he
369 deems appropriate and necessary.

370 (3) Where the license or right to operate of any person has been
371 revoked under paragraph (b) and such person has been previously
372 convicted or assigned to an alcohol or controlled substance educa-
373 tion, treatment or rehabilitation program because of a like offense by
374 a court of the commonwealth or any other jurisdiction two times
375 within a period of ten years preceding the date of the commission of
376 the crime for which he has been convicted or where the license or
377 right to operate has been revoked pursuant to section twenty-three
378 due to a violation of said section or due to a prior revocation under
379 paragraph (b) or under section twenty-six D or twenty-six E, the reg-
380 istrar shall not restore the license or reinstate the right to operate to
381 such person, unless the prosecution of such person has terminated in
382 favor of the defendant, until eight years after the date of conviction;
383 provided however, that such person may, after the expiration of two
384 years from the date of the conviction, apply for and shall be granted
385 a hearing before the registrar for the purpose of requesting the
386 issuance of a new license for employment or education purposes,
387 which license shall be effective for not more than an identical twelve
388 hour period every day, on the grounds of hardship and a showing by
389 the person that the causes of the present and past violations have
390 been dealt with or brought under control and the registrar may, in his
391 discretion, issue such license under such terms and conditions as he
392 deems appropriate and necessary; and provided, further, that such
393 person may, after the expiration of four years from the date of con-
394 viction, apply for and shall be granted a hearing before the registrar
395 for the purpose of requesting the issuance of a new license on a lim-
396 ited basis on the grounds of hardship and a showing by the person
397 that the causes of the present and past violations have been dealt
398 with or brought under control and the registrar may, in his discretion,
399 issue such a license under such terms and conditions as he deems
400 appropriate and necessary.

401 (31/2) Where the license or the right to operate of a person has
402 been revoked under paragraph (b) and such person has been previ-
403 ously convicted of or assigned to an alcohol or controlled substance
404 education, treatment or rehabilitation program by a court of the com-
405 monwealth or any other jurisdiction because of a like violation three
406 times within a period of ten years preceding the date of the commis-

407 sion of the offense for which such person has been convicted, the
408 registrar shall not restore the license or reinstate the right to operate
409 of such person unless the prosecution of such person has been termi-
410 nated in favor of the defendant, until ten years after the date of the
411 conviction; provided, however, that such person may, after the expi-
412 ration of five years from the date of the conviction, apply for and
413 shall be granted a hearing before the registrar for the purpose of
414 requesting the issuance of a new license for employment or educa-
415 tion purposes which license shall be effective for an identical twelve
416 hour period every day on the grounds of hardship and a showing by
417 the person that the causes of the present and past violations have
418 been dealt with or brought under control and the registrar may, in his
419 discretion, issue such license under such terms and conditions as he
420 deems appropriate and necessary; and provided, further, that such
421 person may, after the expiration of eight years from the date of con-
422 viction, apply for and shall be granted a hearing before the registrar
423 for the purpose of requesting the issuance of a new license on a lim-
424 ited basis on the grounds of hardship and a showing by the person
425 that the causes of the present and past violations have been dealt
426 with or brought under control and the registrar may, in his discretion,
427 issue such a license under the terms and conditions as he deems
428 appropriate and necessary.

429 (3 3/4) Where the license or the right to operate of a person has
430 been revoked under paragraph (b) and such person has been previ-
431 ously convicted of or assigned to an alcohol or controlled substance
432 education, treatment or rehabilitation program by a court of the com-
433 monwealth or any other jurisdiction because of a like violation four
434 or more times within a period of ten years preceding the date of the
435 commission of the offense for which such person has been con-
436 victed, such person's license or right to operate a snow or recreation
437 vehicle shall be revoked for the life of such person, and such person
438 shall not be granted a hearing before the registrar for the purpose of
439 requesting the issuance of a new license on a limited basis on the
440 grounds of hardship; provided, however, that such license shall be
441 restored or such right to operate shall be reinstated if the prosecution
442 of such person has been terminated in favor of such person. An
443 aggrieved party may appeal, in accordance with the provisions of
444 chapter thirty A, from any order of the registrar of snow or recre-
445 ation vehicles under the provisions of this section.

446 (4) Notwithstanding the foregoing, no new license shall be issued
447 or right to operate be reinstated by the registrar to any person con-
448 victed of a violation of subparagraph (1) of paragraph (a) until ten
449 years after the date of conviction in case the registrar determines
450 upon investigation and after hearing that the action of the person so
451 convicted in committing such offense caused an accident resulting in
452 the death of another, nor at any time after a subsequent conviction of
453 such an offense, whenever committed, in case the registrar deter-
454 mines in the manner aforesaid that the action of such person, in com-
455 mitting the offense of which he was so subsequently convicted,
456 caused an accident resulting in the death of another.

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

467 (e) In any prosecution for a violation of paragraph (a), evidence of
468 the percentage, by weight, of alcohol in the defendant's blood at the
469 time of the alleged offense, as shown by chemical test or analysis of
470 his blood or as indicated by a chemical test or analysis of his breath,
471 shall be admissible and deemed relevant to the determination of the
472 question of whether such defendant was at such time under the influ-
473 ence of intoxicating liquor; provided, however, that if such test or
474 analysis was made by or at the direction of a police officer, it was
475 made with the consent of the defendant, the results thereof were
476 made available to him upon his request and the defendant was
477 afforded a reasonable opportunity, at his request and at his expense,
478 to have another such test or analysis made by a person or physician
479 selected by him; and provided, further, that blood shall not be with-
480 drawn from any party for the purpose of such test or analysis except
481 by a physician, registered nurse or certified medical technician. Evi-
482 dence that the defendant failed or refused to consent to such test or
483 analysis shall not be admissible against him in a civil or criminal
484 proceeding, but shall be admissible in any action by the registrar

485 under paragraph (f) or in any proceedings provided for in section
486 twenty-six N. When there is no evidence presented at a civil or crim-
487 inal proceeding of the percentage, by weight, of alcohol in the defen-
488 dant's blood, the presiding judge at a trial before a jury shall include
489 in his instructions to the jury a statement of an arresting officer's
490 responsibilities upon arrest of a person suspected to be operating a
491 snow or recreation vehicle under the influence of alcohol and a state-
492 ment that a blood alcohol test may only be administered with a per-
493 son's consent; that a person has a legal right to take or not take such
494 a test; that there may be a number of reasons why a person would or
495 would not take such a test; that there may be a number of reasons
496 why such test was not administered; that there shall be no specula-
497 tion as to the reason for the absence of the test and no inference can
498 be drawn from the fact that there was no evidence of a blood alcohol
499 test; and that a finding of guilty or not guilty must be based solely on
500 the evidence that was presented in the case. If such evidence is that
501 such percentage was five one-hundredths or less, there shall be a
502 permissible inference that such defendant was not under the influ-
503 ence of intoxicating liquor, and he shall be released from custody
504 forthwith, but the officer who placed him under arrest shall not be
505 liable for false arrest if such police officer had reasonable grounds to
506 believe that the person arrested had been operating a snow or recre-
507 ation vehicle upon any such way or place while under the influence
508 of intoxicating liquor; provided, however, that in an instance where a
509 defendant is under the age of twenty-one and such evidence is that
510 the percentage, by weight, of alcohol in the defendant's blood is two
511 one-hundredths or greater, the officer who placed him under arrest
512 shall, in accordance with subparagraph (2) of paragraph (f), suspend
513 such defendant's license or permit and take all other actions directed
514 therein, if such evidence is that such percentage was more than five
515 one-hundredths but less than eight one-hundredths there shall be no
516 permissible inference; and if such evidence is that such percentage
517 was eight one-hundredths or more, there shall be a permissible infer-
518 ence that such defendant was under the influence of intoxicating
519 liquor. A certificate, signed and sworn to, by a chemist of the depart-
520 ment of the state police or by a chemist of a laboratory certified by
521 the department of public health, which contains the results of an
522 analysis made by such chemist of the percentage of alcohol in such

523 blood shall be prima facie evidence of the percentage of alcohol in
524 such blood.

525 Whoever operates a snow or recreation vehicle on the lands,
526 waters and or improved, unimproved, public or private ways within
527 the Commonwealth shall be deemed to have consented to submit to
528 a chemical test or analysis of his breath or blood in the event that he
529 is arrested for operating while under the influence of intoxicating
530 liquor; provided, however, that no person shall be deemed to have
531 consented to a blood test unless such person has been brought for
532 treatment to a medical facility licensed under the provisions of
533 section fifty-one of chapter one hundred and eleven; and provided,
534 further, that no person who is afflicted with hemophilia, diabetes or
535 any other condition requiring the use of anticoagulants shall be
536 deemed to have consented to a withdrawal of blood. Such test shall
537 be administered at the direction of a law enforcement officer, having
538 reasonable grounds to believe that the person arrested has been oper-
539 ating a vessel under the influence of intoxicating liquor.

540 (f) If a person arrested for operating a snow or recreation vehicle
541 on the lands, waters and or improved, unimproved, public or private
542 ways within the Commonwealth while under the influence of intoxi-
543 cating liquor refuses to submit to such test or analysis, after having
544 been informed that his license, permit or right to operate motor vehi-
545 cles shall be suspended and any certificate or numbers may be
546 revoked for a period of one hundred and twenty days for such
547 refusal, no such test or analysis shall be made, but the officer before
548 whom such refusal was made shall immediately prepare a written
549 report of such refusal. Each such report shall be made on a form
550 approved by the registrar, and shall be sworn to under the penalties
551 of perjury by the officer before whom such refusal was made. Each
552 such report shall set forth the grounds for the officer's belief that the
553 person arrested had been operating a vessel while under the influ-
554 ence of intoxicating liquor, and shall state that such person had
555 refused to submit to such chemical test or analysis when requested
556 by such officer to do so such refusal having been witnessed by
557 another person other than the defendant. Each such report shall iden-
558 tify which police officer requested said chemical test or analysis, and
559 the other person witnessing said refusal. Each such report shall be
560 sent forthwith to the registrar and to the director along with a copy
561 of the notice of intent to suspend in any form, including electronic or

562 otherwise, that the registrar deems appropriate. Upon receipt of such
563 report, the registrar shall suspend any license or permit to operate
564 motor vehicles issued to such person under chapter ninety or the
565 right of such person to operate motor vehicles in the commonwealth
566 under section ten for a period of one hundred and twenty days, and
567 the director may revoke any and all certificates of number of any
568 snow or recreation vehicle of such person and may refuse to issue
569 any certificate of number to such vessels for a period of one hundred
570 and twenty days. Said report shall constitute prima facie evidence of
571 the facts set forth therein at any administrative hearing regarding any
572 suspension specified in this section.

573 (g) Any person whose license, permit or right to operate motor
574 vehicles has been suspended or whose certificate of number has been
575 revoked under this paragraph shall be entitled to a hearing before the
576 registrar which shall be limited to the following issues: (i) did the
577 officer have reasonable grounds to believe that such person had been
578 operating a snow or recreation vehicle on the lands, waters and or
579 improved, unimproved, public or private ways within the Common-
580 wealth, (ii) was such person placed under arrest and (iii) did such
581 person refuse to submit to such test or analysis. If, after such
582 hearing, the registrar finds on any one of the said issues in the nega-
583 tive, the registrar shall reinstate such license, permit or right to
584 operate motor vehicles of such person and shall notify the director of
585 such reinstatement. Upon receipt of such notification, the director
586 shall reinstate such certificate of number to the vessel of such
587 person.

588 Notwithstanding any of the foregoing, any person whose certifi-
589 cate of number has been revoked under this paragraph may at any
590 time apply for and shall, within fifteen days, be granted a hearing
591 before the director for the purpose of requesting the issuance of a
592 certificate of number on the grounds of hardship and the director
593 may, in his discretion, issue such certificate of number under such
594 terms and conditions as he deems appropriate and necessary.

595 If a person fails to pay a civil administrative penalty assessed pur-
596 suant to this section within ninety days of the time it becomes final,
597 such person shall be liable to the commonwealth for up to three
598 times the amount of such penalty, together with the costs, plus
599 interest from the time the civil administrative penalty became final,
600 including all costs and attorney's fees incurred directly in the collec-

601 tion thereof. The rate of interest shall be the rate set forth in section
602 six C of chapter two hundred and thirty-one. The director shall
603 refuse to issue an original certificate of number or to renew the cer-
604 tificate of number for any snow or recreation vehicle owned by a
605 person who fails to pay such civil administrative penalty and any
606 related penalties or costs, until such payment is made in full.

607 (2) (a) Whoever, on the lands, waters and or improved, unim-
608 proved, public or private ways within the Commonwealth, operates a
609 snow or recreation vehicle recklessly, or operates such a vehicle neg-
610 ligently so that the lives or safety of the public might be endangered,
611 or upon a bet or wager or in a race, or whoever operates a snow or
612 recreation vehicle for the purpose of making a record and thereby
613 violates any provision of section seventeen or any regulation under
614 section eighteen, or whoever without stopping and making known
615 his name, residence and the register number of his snow or recre-
616 ation vehicle goes away after knowingly colliding with or otherwise
617 causing injury to any other vehicle or property, or whoever know-
618 ingly makes any false statement in an application for registration of
619 a snow or recreation vehicle, shall be punished by a fine of not less
620 than twenty dollars nor more than two hundred dollars or by impris-
621 onment for not less than two weeks nor more than two years, or
622 both; and whoever uses a snow or recreation vehicle without
623 authority knowing that such use is unauthorized shall, for the first
624 offense be punished by a fine of not less than fifty dollars nor more
625 than five hundred dollars or by imprisonment for not less than thirty
626 days nor more than two years, or both, and for a second offense by
627 imprisonment in the state prison for not more than five years or in a
628 house of correction for not less than thirty days nor more than two
629 and one-half years, or by a fine of not more than one thousand dol-
630 lars, or by both such fine and imprisonment; and whoever is found
631 guilty of a third or subsequent offense of such use without authority
632 committed within five years of the earliest of his two most recent
633 prior offenses shall be punished by a fine of not less than two hun-
634 dred dollars nor more than one thousand dollars or by imprisonment
635 for not less than six months nor more than two and one-half years in
636 a house of correction or for not less than two and one-half years nor
637 more than five years in the state prison or by both fine and imprison-
638 ment. A summons may be issued instead of a warrant for arrest upon
639 a complaint for a violation of any provision of this paragraph if in

640 the judgment of the court or justice receiving the complaint there is
641 reason to believe that the defendant will appear upon a summons.

642 There shall be an assessment of \$125 against a person who, by a
643 court of the commonwealth, is convicted of, is placed on probation
644 for or is granted a continuance without a finding for or otherwise
645 pleads guilty to or admits to a finding of sufficient facts of operating
646 a snow or recreation vehicle negligently so that the lives or safety of
647 the public might be endangered pursuant to the provisions of this
648 section; provided, however, that moneys collected pursuant to said
649 assessment shall be deposited by the court with the treasurer into the
650 Head Injury Treatment Services Trust Fund established by section
651 59 of chapter 10. At the discretion of the court, an assessment pur-
652 suant to this paragraph may be reduced or waived only upon a
653 written finding of fact that such payment would cause the person
654 against whom the assessment is imposed severe financial hardship.
655 Such a finding shall be made independently of a finding of indigence
656 for purposes of appointing counsel. If the person is sentenced to a
657 correctional facility in the commonwealth and the assessment has
658 not been paid, the court shall note the assessment on the mittimus.

659 (a $\frac{1}{2}$) (1) Whoever operates a snow or recreation vehicle on the
660 lands, waters and or improved, unimproved, public or private ways
661 within the Commonwealth, and without stopping and making known
662 his name, residence and the registration number of his snow or recre-
663 ation vehicle, goes away after knowingly colliding with or otherwise
664 causing injury to any person not resulting in the death of any person,
665 shall be punished by imprisonment for not less than six months nor
666 more than two years and by a fine of not less than five hundred dol-
667 lars nor more than one thousand dollars.

668 (2) Whoever operates a snow or recreation vehicle on the lands,
669 waters and or improved, unimproved, public or private ways within
670 the Commonwealth and without stopping and making known his
671 name, residence and the registration number of his snow or recre-
672 ation vehicle, goes away to avoid prosecution or evade apprehension
673 after knowingly colliding with or otherwise causing injury to any
674 person shall, if the injuries result in the death of a person, be pun-
675 ished by imprisonment in the state prison for not less than two and
676 one-half years nor more than ten years and by a fine of not less than
677 one thousand dollars nor more than five thousand dollars or by
678 imprisonment in a jail or house of correction for not less than one

679 year nor more than two and one-half years and by a fine of not less
680 than one thousand dollars nor more than five thousand dollars. The
681 sentence imposed upon such person shall not be reduced to less than
682 one year, nor suspended, nor shall any person convicted under this
683 paragraph be eligible for probation, parole, or furlough or receive
684 any deduction from his sentence until such person has served at least
685 one year of such sentence; provided, however, that the commissioner
686 of correction may on the recommendation of the warden, superinten-
687 dent or other person in charge of a correctional institution, or the
688 administrator of a county correctional institution, grant to an
689 offender committed under this paragraph, a temporary release in the
690 custody of an officer of such institution for the following purposes
691 only: to attend the funeral of a relative; to visit a critically ill
692 relative; to obtain emergency medical or psychiatric services
693 unavailable at said institution or to engage in employment pursuant
694 to a work release program.

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

697 (b) A conviction of a violation of paragraph (a) or paragraph (a $\frac{1}{2}$)
698 of subdivision (2) of this section shall be reported forthwith by the
699 court or magistrate to the registrar, who may in any event, and shall
700 unless the court or magistrate recommends otherwise, revoke imme-
701 diately the license or right to operate of the person so convicted, and
702 no appeal, motion for new trial or exceptions shall operate to stay
703 the revocation of the license or right to operate. If it appears by the
704 records of the registrar that the person so convicted is the owner of a
705 snow or recreation vehicle or has exclusive control of any snow or
706 recreation vehicle as a manufacturer or dealer or otherwise, the reg-
707 istrar may revoke the certificate of registration of any or all snow or
708 recreation vehicles so owned or exclusively controlled.

709 (c) The registrar, after having revoked the license or right to
710 operate of any person under paragraph (b), in his discretion may
711 issue a new license or reinstate the right to operate to him, if the
712 prosecution has terminated in favor of the defendant. In addition, the
713 registrar may, after an investigation or upon hearing, issue a new
714 license or reinstate the right to operate to a person convicted in any
715 court for a violation of any provision of paragraph (a) or (a $\frac{1}{2}$) of
716 subdivision (2); provided, however, that no new license or right to
717 operate shall be issued by the registrar to: (i) any person convicted of

718 a violation of subparagraph (1) of paragraph (a^{1/2}) until one year after
719 the date of revocation following his conviction if for a first offense,
720 or until two years after the date of revocation following any subse-
721 quent conviction; (ii) any person convicted of a violation of subpara-
722 graph (2) of paragraph (a^{1/2}) until three years after the date of
723 revocation following his conviction if for a first offense or until ten
724 years after the date of revocation following any subsequent convic-
725 tion; (iii) any person convicted, under paragraph (a) of using a snow
726 or recreation vehicle knowing that such use is unauthorized, until
727 one year after the date of revocation following his conviction if for a
728 first offense or until three years after the date of revocation
729 following any subsequent conviction; and (iv) any person convicted
730 of any other provision of paragraph (a) until sixty days after the date
731 of his original conviction if for a first offense or one year after the
732 date of revocation following any subsequent conviction within a
733 period of three years.

734 The registrar, after investigation, may at any time rescind the
735 revocation of a license or right to operate revoked because of a con-
736 viction of operating a snow or recreation vehicle upon any way or in
737 any place to which the public has a right of access or any place to
738 which members of the public have access as invitees or licensees
739 negligently so that the lives or safety of the public might be endan-
740 gered. The provisions of this paragraph shall apply in the same
741 manner to juveniles adjudicated under the provisions of section fifty-
742 eight B of chapter one hundred and nineteen.

743 (3) The prosecution of any person for the violation of any provi-
744 sion of this section, if a subsequent offense, shall not, unless the
745 interests of justice require such disposition, be placed on file or oth-
746 erwise disposed of except by trial, judgment and sentence according
747 to the regular course of criminal proceedings; and such a prosecution
748 shall be otherwise disposed of only on motion in writing stating
749 specifically the reasons therefor and verified by affidavits if facts are
750 relied upon. If the court or magistrate certifies in writing that he is
751 satisfied that the reasons relied upon are sufficient and that the inter-
752 ests of justice require the allowance of the motion, the motion shall
753 be allowed and the certificate shall be filed in the case. A copy of the
754 motion and certificate shall be sent by the court or magistrate forth-
755 with to the registrar.

756 (4) Any officer empowered to enforce this section may arrest
757 without a warrant any person who the officer has probable cause to
758 believe has violated or is violating any provision of this section or
759 any rule or regulation made under authority hereof.

1 SECTION 2. In Paragraph 5 of said section 26, strike from the
2 word “proof” in line 5 through the word “therewith” in line 7,
3 replacing it with the following:—

4 “trail pass membership to the Snowmobile Association of Massa-
5 chusetts (S.A.M.) or other state-wide, recognized organization as
6 determined by the snow mobile law administrator pursuant to the
7 guidelines set for by the Director of the Division of Law Enforce-
8 ment;”

1 SECTION 3. In said paragraph 5 of said section 26 strike from
2 the word “or” in line 7 through the end of line 9.

3 Section 4. In said paragraph 5 of said section 26, insert after the
4 word “on” in line 1 the following:

5 “public or”