

HOUSE No. 1404

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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 amended by inserting after
2 section 26 the following section:—

3 Section 26A. (1) (a) (1) Whoever operates a snow or recreational vehicle on the lands,
4 waters or ways, whether public or private, within the commonwealth while under the influence
5 of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, all as
6 defined in section one of chapter ninety-four C, or the vapors of glue shall be punished by a fine
7 of not less than \$500 nor more than \$5,000 or by imprisonment for not more than two and one-
8 half years, or both such fine and imprisonment.

9 There shall be an assessment of \$125 against a person who, by a court of the
10 commonwealth, is convicted of, is placed on probation for, or is granted a continuance without a
11 finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a
12 snow or recreation vehicle while under the influence of intoxicating liquor, marijuana, narcotic
13 drugs, depressants or stimulant substances pursuant to the provisions of this section; provided,

14 however, that moneys collected pursuant to said assessment shall be deposited by the court with
15 the treasurer into the Head Injury Treatment Services Trust Fund established by section 59 of
16 chapter 10. In the discretion of the court, an assessment pursuant to this paragraph may be
17 reduced or waived only upon a written finding of fact that such payment would cause the person
18 against whom the assessment is imposed severe financial hardship. Such a finding shall be made
19 independently of a finding of indigency for purposes of appointing counsel. If the person is
20 sentenced to a correctional facility in the commonwealth and the assessment has not been paid,
21 the court shall note the assessment on the mittimus.

22 If the defendant has been previously convicted or assigned to an alcohol or controlled
23 substance education, treatment, or rehabilitation program by a court of the commonwealth or any
24 other jurisdiction because of a like violation within ten years preceding the date of the
25 commission of the offense for which he has been convicted, the defendant shall be punished by a
26 fine of not less than six hundred nor more than ten thousand dollars and by imprisonment for not
27 less than sixty days nor more than two and one-half years; provided, however, that the sentence
28 imposed upon such person shall not be reduced to less than thirty days, nor suspended, nor shall
29 any such person be eligible for probation, parole, or furlough or receive any deduction from his
30 sentence for good conduct until such person has served thirty days of such sentence, unless
31 otherwise sentenced to an intermediate sanction as promulgated by the sentencing commission
32 established in chapter four hundred and thirty-two of the acts of nineteen hundred and ninety-
33 three; provided, further, that the commissioner of correction may, on the recommendation of the
34 warden, superintendent, or other person in charge of a correctional institution, or the
35 administrator of a county correctional institution, grant to an offender committed under this
36 subdivision a temporary release in the custody of an officer of such institution for the following

37 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain
38 emergency medical or psychiatric services unavailable at said institution; to engage in
39 employment pursuant to a work release program; or for the purposes of an aftercare program
40 designed to support the recovery of an offender who has completed an alcohol or controlled
41 substance education, treatment or rehabilitation program operated by the department of
42 correction; and provided, further, that the defendant may serve all or part of such thirty day
43 sentence to the extent such resources are available in a correctional facility specifically
44 designated by the department of correction for the incarceration and rehabilitation of drinking
45 drivers.

46 If the defendant has been previously convicted or assigned to an alcohol or controlled
47 substance education, treatment, or rehabilitation program by a court of the commonwealth, or
48 any other jurisdiction because of a like offense two times within ten years preceding the date of
49 the commission of the offense for which he has been convicted, the defendant shall be punished
50 by a fine of not less than one thousand nor more than fifteen thousand dollars and by
51 imprisonment for not less than one hundred and eighty days nor more than two and one-half
52 years or by a fine of not less than one thousand nor more than fifteen thousand dollars and by
53 imprisonment in the state prison for not less than two and one-half years nor more than five
54 years; provided, however, that the sentence imposed upon such person shall not be reduced to
55 less than one hundred and fifty days, nor suspended, nor shall any such person be eligible for
56 probation, parole, or furlough or receive any deduction from his sentence for good conduct until
57 he shall have served one hundred and fifty days of such sentence, unless otherwise sentenced to
58 an intermediate sanction as promulgated by the sentencing commission established in chapter
59 four hundred and thirty-two of the acts of nineteen hundred and ninety-three; provided, further,

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

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

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

98 If the defendant has been previously convicted or assigned to an alcohol or controlled
99 substance education, treatment or rehabilitation program by a court of the commonwealth or any
100 other jurisdiction because of a like offense four or more times within ten years preceding the date
101 of the commission of the offense for which he has been convicted, the defendant shall be
102 punished by a fine of not less than two thousand nor more than fifty thousand dollars and by
103 imprisonment for not less than two and one-half years or by a fine of not less than two thousand
104 nor more than fifty thousand dollars and by imprisonment in the state prison for not less than two
105 and one-half years nor more than five years; provided, however, that the sentence imposed upon

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

124 A prosecution commenced under the provisions of this subparagraph shall not be placed
125 on file or continued without a finding except for dispositions under section twenty-six D. No trial
126 shall be commenced on a complaint alleging a violation of this subparagraph, nor shall any plea
127 be accepted on such complaint, nor shall the prosecution on such complaint be transferred to
128 another division of the district court or to a jury-of-six session, until the court receives a report

129 from the commissioner of probation pertaining to the defendant's record, if any, of prior
130 convictions of such violations or of assignment to an alcohol or controlled substance education,
131 treatment, or rehabilitation program because of a like offense; provided, however, that the
132 provisions of this paragraph shall not justify the postponement of any such trial or of the
133 acceptance of any such plea for more than five working days after the date of the defendant's
134 arraignment. The commissioner of probation shall give priority to requests for such records.

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

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

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

150 the commonwealth or any other jurisdiction within a period of ten years immediately preceding
151 the commission of the offense with which he is charged.

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

159 (4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before
160 imposing a sentence on a defendant who pleads guilty to or is found guilty of a violation of
161 subparagraph (1) and who has not been convicted or assigned to an alcohol or controlled
162 substance education, treatment or rehabilitation program by a court of the commonwealth or any
163 other jurisdiction because of a like offense two or more times within ten years of the date of the
164 commission of the offense for which he has been convicted, shall receive a report from the
165 probation department of a copy of the defendant's driving record, the criminal record of the
166 defendant, if any, and such information as may be available as to the defendant's use of alcohol
167 and may, upon a written finding that appropriate and adequate treatment is available to the
168 defendant and the defendant would benefit from such treatment and that the safety of the public
169 would not be endangered, with the defendant's consent place a defendant on probation for two
170 years; provided, however, that a condition for such probation shall be that the defendant be
171 confined for no less than fourteen days in a residential alcohol treatment program and to
172 participate in an outpatient counseling program designed for such offenders as provided or

173 sanctioned by the division of alcoholism, pursuant to regulations to be promulgated by said
174 division in consultation with the department of correction and with the approval of the secretary
175 of health and human services or at any other facility so sanctioned or regulated as may be
176 established by the commonwealth or any political subdivision thereof for the purpose of alcohol
177 or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol
178 treatment program. Such condition of probation shall specify a date before which such residential
179 alcohol treatment program shall be attended and completed.

180 Failure of the defendant to comply with said conditions and any other terms of probation
181 as imposed under this section shall be reported forthwith to the court and proceedings under the
182 provisions of section three of chapter two hundred and seventy-nine shall be commenced. In
183 such proceedings, such defendant shall be taken before the court and if the court finds that he has
184 failed to attend or complete the residential alcohol treatment program before the date specified in
185 the conditions of probation, the court shall forthwith specify a second date before which such
186 defendant shall attend or complete such program, and unless such defendant shows extraordinary
187 and compelling reasons for such failure, shall forthwith sentence him to imprisonment for not
188 less than two days; provided, however, that such sentence shall not be reduced to less than two
189 days, nor suspended, nor shall such person be eligible for furlough or receive any reduction from
190 his sentence for good conduct until such person has served two days of such sentence; and
191 provided, further, that the commissioner of correction may, on the recommendation of the
192 warden, superintendent, or other person in charge of a correctional institution, or the
193 administrator of a county correctional institution, grant to an offender committed under this
194 subdivision a temporary release in the custody of an officer of such institution for the following
195 purposes only: to attend the funeral of a relative; to visit a critically ill relative; to obtain

196 emergency medical or psychiatric services unavailable at said institution; or to engage in
197 employment pursuant to a work release program. If such defendant fails to attend or complete the
198 residential alcohol treatment program before the second date specified by the court, further
199 proceedings pursuant to said section three of said chapter two hundred and seventy-nine shall be
200 commenced, and the court shall forthwith sentence the defendant to imprisonment for not less
201 than thirty days as provided in subparagraph (1) for such a defendant.

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

210 (b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the
211 license or right to operate of the person so convicted unless such person has not been convicted
212 of or assigned to an alcohol or controlled substance education, treatment or rehabilitation
213 program because of a like offense by a court of the commonwealth or any other jurisdiction
214 within a period of ten years preceding the date of the commission of the offense for which he has
215 been convicted, and said person qualifies for disposition under section twenty-four D and has
216 consented to probation as provided for in said section twenty-four D; provided, however, that no
217 appeal, motion for new trial or exceptions shall operate to stay the revocation of the license or
218 the right to operate. Such revoked license shall immediately be surrendered to the prosecuting

219 officer who shall forward the same to the registrar. The court shall report immediately any
220 revocation, under this section, of a license or right to operate to the registrar and to the police
221 department of the municipality in which the defendant is domiciled. Additionally, upon a
222 conviction of a violation of subparagraph (1) of paragraph (a), the director of environmental law
223 enforcement may revoke or suspend the registration of the violator's snow or recreation vehicle.

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

242 causes of the present and past violations have been dealt with or brought under control and the
243 registrar may, in his discretion, issue such a license under such terms and conditions as he deems
244 appropriate and necessary.

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

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

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

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

289 (31/2) Where the license or the right to operate of a person has been revoked under
290 paragraph (b) and such person has been previously convicted of or assigned to an alcohol or
291 controlled substance education, treatment or rehabilitation program by a court of the
292 commonwealth or any other jurisdiction because of a like violation three times within a period
293 often years preceding the date of the commission of the offense for which such person has been
294 convicted, the registrar shall not restore the license or reinstate the right to operate of such person
295 unless the prosecution of such person has been terminated in favor of the defendant, until ten
296 years after the date of the conviction; provided, however, that such person may, after the
297 expiration of five years from the date of the conviction, apply for and shall be granted a hearing
298 before the registrar for the purpose of requesting the issuance of a new license for employment or
299 education purposes which license shall be effective for an identical twelve hour period every day
300 on the grounds of hardship and a showing by the person that the causes of the present and past
301 violations have been dealt with or brought under control and the registrar may, in his discretion,
302 issue such license under such terms and conditions as he deems appropriate and necessary; and
303 provided, further, that such person may, after the expiration of eight years from the date of
304 conviction, apply for and shall be granted a hearing before the registrar for the purpose of
305 requesting the issuance of a new license on a limited basis on the grounds of hardship and a
306 showing by the person that the causes of the present and past violations have been dealt with or
307 brought under control and the registrar may, in his discretion, issue such a license under the
308 terms and conditions as he deems appropriate and necessary.

309 (3 3/4) Where the license or the right to operate of a person has been revoked under
310 paragraph (b) and such person has been previously convicted of or assigned to an alcohol or
311 controlled substance education, treatment or rehabilitation program by a court of the
312 commonwealth or any other jurisdiction because of a like violation four or more times within a
313 period of ten years preceding the date of the commission of the offense for which such person
314 has been convicted, such person's license or right to operate a snow or recreation vehicle shall be
315 revoked for the life of such person, and such person shall not be granted a hearing before the
316 registrar for the purpose of requesting the issuance of a new license on a limited basis on the
317 grounds of hardship; provided, however, that such license shall be restored or such right to
318 operate shall be reinstated if the prosecution of such person has been terminated in favor of such
319 person. An aggrieved party may appeal, in accordance with the provisions of chapter thirty A,
320 from any order of the registrar of snow or recreation vehicles under the provisions of this section.

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

329 (d) For the purposes of subdivision (1) of this section, a person shall be deemed to have
330 been convicted if he pleaded guilty or nolo contendere or was found or adjudged guilty by a
331 court of competent jurisdiction, whether or not he was placed on probation without sentence or

332 under a suspended sentence or the case was placed on file, and a license may be revoked under
333 paragraph (b) hereof notwithstanding the pendency of a prosecution upon appeal or otherwise
334 after such a conviction. Where there has been more than one conviction in the same prosecution,
335 the date of the first conviction shall be deemed to be the date of conviction under paragraph (c)
336 hereof.

337 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by
338 weight, of alcohol in the defendant's blood at the time of the alleged offense, as shown by
339 chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath,
340 shall be admissible and deemed relevant to the determination of the question of whether such
341 defendant was at such time under the influence of intoxicating liquor; provided, however, that if
342 such test or analysis was made by or at the direction of a police officer, it was made with the
343 consent of the defendant, the results thereof were made available to him upon his request and the
344 defendant was afforded a reasonable opportunity, at his request and at his expense, to have
345 another such test or analysis made by a person or physician selected by him; and provided,
346 further, that blood shall not be withdrawn from any party for the purpose of such test or analysis
347 except by a physician, registered nurse or certified medical technician. Evidence that the
348 defendant failed or refused to consent to such test or analysis shall not be admissible against him
349 in a civil or criminal proceeding, but shall be admissible in any action by the registrar under
350 paragraph (f) or in any proceedings provided for in section twenty-six N. When there is no
351 evidence presented at a civil or criminal proceeding of the percentage, by weight, of alcohol in
352 the defendant's blood, the presiding judge at a trial before a jury shall include in his instructions
353 to the jury a statement of an arresting officer's responsibilities upon arrest of a person suspected
354 to be operating a snow or recreation vehicle under the influence of alcohol and a statement that a

355 blood alcohol test may only be administered with a person's consent; that a person has a legal
356 right to take or not take such a test; that there may be a number of reasons why a person would or
357 would not take such a test; that there may be a number of reasons why such test was not
358 administered; that there shall be no speculation as to the reason for the absence of the test and no
359 inference can be drawn from the fact that there was no evidence of a blood alcohol test; and that
360 a finding of guilty or not guilty must be based solely on the evidence that was presented in the
361 case. If such evidence is that such percentage was five one-hundredths or less, there shall be a
362 permissible inference that such defendant was not under the influence of intoxicating liquor, and
363 he shall be released from custody forthwith, but the officer who placed him under arrest shall not
364 be liable for false arrest if such police officer had reasonable grounds to believe that the person
365 arrested had been operating a snow or recreation vehicle upon any such way or place while under
366 the influence of intoxicating liquor; provided, however, that in an instance where a defendant is
367 under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in
368 the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest
369 shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or
370 permit and take all other actions directed therein, if such evidence is that such percentage was
371 more than five one-hundredths but less than eight one-hundredths there shall be no permissible
372 inference; and if such evidence is that such percentage was eight one-hundredths or more, there
373 shall be a permissible inference that such defendant was under the influence of intoxicating
374 liquor. A certificate, signed and sworn to, by a chemist of the department of the state police or by
375 a chemist of a laboratory certified by the department of public health, which contains the results
376 of an analysis made by such chemist of the percentage of alcohol in such blood shall be prima
377 facie evidence of the percentage of alcohol in such blood.

378 Whoever operates a snow or recreation vehicle on the lands, waters and or improved,
379 unimproved, public or private ways within the Commonwealth shall be deemed to have
380 consented to submit to a chemical test or analysis of his breath or blood in the event that he is
381 arrested for operating while under the influence of intoxicating liquor; provided, however, that
382 no person shall be deemed to have consented to a blood test unless such person has been brought
383 for treatment to a medical facility licensed under the provisions of section fifty-one of chapter
384 one hundred and eleven; and provided, further, that no person who is afflicted with hemophilia,
385 diabetes or any other condition requiring the use of anticoagulants shall be deemed to have
386 consented to a withdrawal of blood. Such test shall be administered at the direction of a law
387 enforcement officer, having reasonable grounds to believe that the person arrested has been
388 operating a vessel under the influence of intoxicating liquor.

389 (f) If a person arrested for operating a snow or recreation vehicle on the lands, waters and
390 or improved, unimproved, public or private ways within the Commonwealth while under the
391 influence of intoxicating liquor refuses to submit to such test or analysis, after having been
392 informed that his license, permit or right to operate motor vehicles shall be suspended and any
393 certificate or numbers may be revoked for a period of one hundred and twenty days for such
394 refusal, no such test or analysis shall be made, but the officer before whom such refusal was
395 made shall immediately prepare a written report of such refusal. Each such report shall be made
396 on a form approved by the registrar, and shall be sworn to under the penalties of perjury by the
397 officer before whom such refusal was made. Each such report shall set forth the grounds for the
398 officer's belief that the person arrested had been operating a vessel while under the influence of
399 intoxicating liquor, and shall state that such person had refused to submit to such chemical test or
400 analysis when requested by such officer to do so such refusal having been witnessed by another

401 person other than the defendant. Each such report shall identify which police officer requested
402 said chemical test or analysis, and the other person witnessing said refusal. Each such report
403 shall be sent forthwith to the registrar and to the director along with a copy of the notice of intent
404 to suspend in any form, including electronic or otherwise, that the registrar deems appropriate.
405 Upon receipt of such report, the registrar shall suspend any license or permit to operate motor
406 vehicles issued to such person under chapter ninety or the right of such person to operate motor
407 vehicles in the commonwealth under section ten for a period of one hundred and twenty days,
408 and the director may revoke any and all certificates of number of any snow or recreation vehicle
409 of such person and may refuse to issue any certificate of number to such vessels for a period of
410 one hundred and twenty days. Said report shall constitute prima facie evidence of the facts set
411 forth therein at any administrative hearing regarding any suspension specified in this section.

412 (g) Any person whose license, permit or right to operate motor vehicles has been
413 suspended or whose certificate of number has been revoked under this paragraph shall be entitled
414 to a hearing before the registrar which shall be limited to the following issues: (i) did the officer
415 have reasonable grounds to believe that such person had been operating a snow or recreation
416 vehicle on the lands, waters and or improved, unimproved, public or private ways within the
417 Commonwealth, (ii) was such person placed under arrest and (iii) did such person refuse to
418 submit to such test or analysis. If, after such hearing, the registrar finds on any one of the said
419 issues in the negative, the registrar shall reinstate such license, permit or right to operate motor
420 vehicles of such person and shall notify the director of such reinstatement. Upon receipt of such
421 notification, the director shall reinstate such certificate of number to the vessel of such person.

422 Notwithstanding any of the foregoing, any person whose certificate of number has been
423 revoked under this paragraph may at any time apply for and shall, within fifteen days, be granted

424 a hearing before the director for the purpose of requesting the issuance of a certificate of number
425 on the grounds of hardship and the director may, in his discretion, issue such certificate of
426 number under such terms and conditions as he deems appropriate and necessary.

427 If a person fails to pay a civil administrative penalty assessed pursuant to this section
428 within ninety days of the time it becomes final, such person shall be liable to the commonwealth
429 for up to three times the amount of such penalty, together with the costs, plus interest from the
430 time the civil administrative penalty became final, including all costs and attorney's fees incurred
431 directly in the collection thereof. The rate of interest shall be the rate set forth in section six C of
432 chapter two hundred and thirty-one. The director shall refuse to issue an original certificate of
433 number or to renew the certificate of number for any snow or recreation vehicle owned by a
434 person who fails to pay such civil administrative penalty and any related penalties or costs, until
435 such payment is made in full.

436 (2) (a) Whoever, on the lands, waters and or improved, unimproved, public or private
437 ways within the Commonwealth, operates a snow or recreation vehicle recklessly, or operates
438 such a vehicle negligently so that the lives or safety of the public might be endangered, or upon a
439 bet or wager or in a race, or whoever operates a snow or recreation vehicle for the purpose of
440 making a record and thereby violates any provision of section seventeen or any regulation under
441 section eighteen, or whoever without stopping and making known his name, residence and the
442 register number of his snow or recreation vehicle goes away after knowingly colliding with or
443 otherwise causing injury to any other vehicle or property, or whoever knowingly makes any false
444 statement in an application for registration of a snow or recreation vehicle, shall be punished by a
445 fine of not less than twenty dollars nor more than two hundred dollars or by imprisonment for
446 not less than two weeks nor more than two years, or both; and whoever uses a snow or recreation

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

461 There shall be an assessment of \$125 against a person who, by a court of the
462 commonwealth, is convicted of, is placed on probation for or is granted a continuance without a
463 finding for or otherwise pleads guilty to or admits to a finding of sufficient facts of operating a
464 snow or recreation vehicle negligently so that the lives or safety of the public might be
465 endangered pursuant to the provisions of this section; provided, however, that moneys collected
466 pursuant to said assessment shall be deposited by the court with the treasurer into the Head
467 Injury Treatment Services Trust Fund established by section 59 of chapter 10. At the discretion
468 of the court, an assessment pursuant to this paragraph may be reduced or waived only upon a
469 written finding of fact that such payment would cause the person against whom the assessment is

470 imposed severe financial hardship. Such a finding shall be made independently of a finding of
471 indigence for purposes of appointing counsel. If the person is sentenced to a correctional facility
472 in the commonwealth and the assessment has not been paid, the court shall note the assessment
473 on the mittimus.

474 (a^{1/2}) (1) Whoever operates a snow or recreation vehicle on the lands, waters and or
475 improved, unimproved, public or private ways within the Commonwealth, and without stopping
476 and making known his name, residence and the registration number of his snow or recreation
477 vehicle, goes away after knowingly colliding with or otherwise causing injury to any person not
478 resulting in the death of any person, shall be punished by imprisonment for not less than six
479 months nor more than two years and by a fine of not less than five hundred dollars nor more than
480 one thousand dollars.

481 (2) Whoever operates a snow or recreation vehicle on the lands, waters and or improved,
482 unimproved, public or private ways within the Commonwealth and without stopping and making
483 known his name, residence and the registration number of his snow or recreation vehicle, goes
484 away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise
485 causing injury to any person shall, if the injuries result in the death of a person, be punished by
486 imprisonment in the state prison for not less than two and one-half years nor more than ten years
487 and by a fine of not less than one thousand dollars nor more than five thousand dollars or by
488 imprisonment in a jail or house of correction for not less than one year nor more than two and
489 one-half years and by a fine of not less than one thousand dollars nor more than five thousand
490 dollars. The sentence imposed upon such person shall not be reduced to less than one year, nor
491 suspended, nor shall any person convicted under this paragraph be eligible for probation, parole,
492 or furlough or receive any deduction from his sentence until such person has served at least one

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

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

502 (b) A conviction of a violation of paragraph (a) or paragraph (a^{1/2}) of subdivision (2) of
503 this section shall be reported forthwith by the court or magistrate to the registrar, who may in any
504 event, and shall unless the court or magistrate recommends otherwise, revoke immediately the
505 license or right to operate of the person so convicted, and no appeal, motion for new trial or
506 exceptions shall operate to stay the revocation of the license or right to operate. If it appears by
507 the records of the registrar that the person so convicted is the owner of a snow or recreation
508 vehicle or has exclusive control of any snow or recreation vehicle as a manufacturer or dealer or
509 otherwise, the registrar may revoke the certificate of registration of any or all snow or recreation
510 vehicles so owned or exclusively controlled.

511 (c) The registrar, after having revoked the license or right to operate of any person under
512 paragraph (b), in his discretion may issue a new license or reinstate the right to operate to him, if
513 the prosecution has terminated in favor of the defendant. In addition, the registrar may, after an
514 investigation or upon hearing, issue a new license or reinstate the right to operate to a person

515 convicted in any court for a violation of any provision of paragraph (a) or (a^{1/2}) of subdivision
516 (2); provided, however, that no new license or right to operate shall be issued by the registrar to:
517 (i) any person convicted of a violation of subparagraph (1) of paragraph (a^{1/2}) until one year after
518 the date of revocation following his conviction if for a first offense, or until two years after the
519 date of revocation following any subsequent conviction; (ii) any person convicted of a violation
520 of subparagraph (2) of paragraph (a^{1/2}) until three years after the date of revocation following his
521 conviction if for a first offense or until ten years after the date of revocation following any
522 subsequent conviction; (iii) any person convicted, under paragraph (a) of using a snow or
523 recreation vehicle knowing that such use is unauthorized, until one year after the date of
524 revocation following his conviction if for a first offense or until three years after the date of
525 revocation following any subsequent conviction; and (iv) any person convicted of any other
526 provision of paragraph (a) until sixty days after the date of his original conviction if for a first
527 offense or one year after the date of revocation following any subsequent conviction within a
528 period of three years.

529 The registrar, after investigation, may at any time rescind the revocation of a license or
530 right to operate revoked because of a conviction of operating a snow or recreation vehicle upon
531 any way or in any place to which the public has a right of access or any place to which members
532 of the public have access as invitees or licensees negligently so that the lives or safety of the
533 public might be endangered. The provisions of this paragraph shall apply in the same manner to
534 juveniles adjudicated under the provisions of section fifty-eight B of chapter one hundred and
535 nineteen.

536 (3) The prosecution of any person for the violation of any provision of this section, if a
537 subsequent offense, shall not, unless the interests of justice require such disposition, be placed on

538 file or otherwise disposed of except by trial, judgment and sentence according to the regular
539 course of criminal proceedings; and such a prosecution shall be otherwise disposed of only on
540 motion in writing stating specifically the reasons therefor and verified by affidavits if facts are
541 relied upon. If the court or magistrate certifies in writing that he is satisfied that the reasons
542 relied upon are sufficient and that the interests of justice require the allowance of the motion, the
543 motion shall be allowed and the certificate shall be filed in the case. A copy of the motion and
544 certificate shall be sent by the court or magistrate forthwith to the registrar.

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

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

550 “trail pass membership to the Snowmobile Association of Massachusetts (S.A.M.) or
551 other state-wide, recognized organization as determined by the snow mobile law administrator
552 pursuant to the guidelines set for by the Director of the Division of Law Enforcement;”

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

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

557 “public or”