

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the operation of a snow vehicle or recreational vehicle under the influence of alcoholic or narcotic substances.

PETITION OF:

NAME:

Anne M. Gobi

DISTRICT/ADDRESS:

5th Worcester

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1462 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and 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 section 26
2 the following section:—

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

8 There shall be an assessment of \$125 against a person who, by a court of the commonwealth, is convicted
9 of, is placed on probation for, or is granted a continuance without a finding for or otherwise pleads guilty
10 to or admits to a finding of sufficient facts of operating a snow or recreation vehicle while under the
11 influence of intoxicating liquor, marijuana, narcotic drugs, depressants or stimulant substances pursuant
12 to the provisions of this section; provided, however, that moneys collected pursuant to said assessment
13 shall be deposited by the court with the treasurer into the Head Injury Treatment Services Trust Fund
14 established by section 59 of chapter 10. In the discretion of the court, an assessment pursuant to this
15 paragraph may be reduced or waived only upon a written finding of fact that such payment would cause
16 the person against whom the assessment is imposed severe financial hardship. Such a finding shall be

17 made independently of a finding of indigency for purposes of appointing counsel. If the person is
18 sentenced to a correctional facility in the commonwealth and the assessment has not been paid, the court
19 shall note the assessment on the mittimus.

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

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

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

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

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

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

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

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

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

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

145 (4) Notwithstanding the provisions of subparagraphs (1) and (2), a judge, before imposing a sentence on a
146 defendant who pleads guilty to or is found guilty of a violation of subparagraph (1) and who has not been
147 convicted or assigned to an alcohol or controlled substance education, treatment or rehabilitation program
148 by a court of the commonwealth or any other jurisdiction because of a like offense two or more times
149 within ten years of the date of the commission of the offense for which he has been convicted, shall
150 receive a report from the probation department of a copy of the defendant's driving record, the criminal
151 record of the defendant, if any, and such information as may be available as to the defendant's use of
152 alcohol and may, upon a written finding that appropriate and adequate treatment is available to the
153 defendant and the defendant would benefit from such treatment and that the safety of the public would not
154 be endangered, with the defendant's consent place a defendant on probation for two years; provided,
155 however, that a condition for such probation shall be that the defendant be confined for no less than

156 fourteen days in a residential alcohol treatment program and to participate in an outpatient counseling
157 program designed for such offenders as provided or sanctioned by the division of alcoholism, pursuant to
158 regulations to be promulgated by said division in consultation with the department of correction and with
159 the approval of the secretary of health and human services or at any other facility so sanctioned or
160 regulated as may be established by the commonwealth or any political subdivision thereof for the purpose
161 of alcohol or drug treatment or rehabilitation, and comply with all conditions of said residential alcohol
162 treatment program. Such condition of probation shall specify a date before which such residential alcohol
163 treatment program shall be attended and completed.

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

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

191 (b) A conviction of a violation of subparagraph (1) of paragraph (a) shall revoke the license or right to
192 operate of the person so convicted unless such person has not been convicted of or assigned to an alcohol
193 or controlled substance education, treatment or rehabilitation program because of a like offense by a court
194 of the commonwealth or any other jurisdiction within a period of ten years preceding the date of the
195 commission of the offense for which he has been convicted, and said person qualifies for disposition
196 under section twenty-four D and has consented to probation as provided for in said section twenty-four D;
197 provided, however, that no appeal, motion for new trial or exceptions shall operate to stay the revocation
198 of the license or the right to operate. Such revoked license shall immediately be surrendered to the
199 prosecuting officer who shall forward the same to the registrar. The court shall report immediately any
200 revocation, under this section, of a license or right to operate to the registrar and to the police department
201 of the municipality in which the defendant is domiciled. Additionally, upon a conviction of a violation of
202 subparagraph (1) of paragraph (a), the director of environmental law enforcement may revoke or suspend
203 the registration of the violator's snow or recreation vehicle.

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

223 (2) Where the license or the right to operate of a person has been revoked under paragraph (b) and such
224 person has been previously convicted of or assigned to an alcohol or controlled substance education,
225 treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a

226 like violation within a period of ten years preceding the date of the commission of the offense for which
227 such person has been convicted, the registrar shall not restore the license or reinstate the right to operate
228 of such person unless the prosecution of such person has been terminated in favor of the defendant, until
229 two years after the date of the conviction; provided, however, that such person may, after the expiration of
230 six months from the date of conviction, apply for and shall be granted a hearing before the registrar for
231 the purpose of requesting the issuance of a new license for employment or education purposes, which
232 license shall be effective for not more than an identical twelve hour period every day on the grounds of
233 hardship and a showing by the person that the causes of the present and past violations have been dealt
234 with or brought under control and that such person shall have successfully completed the residential
235 treatment program in subparagraph (4) of paragraph (a) of subdivision (1), or such treatment program
236 mandated by section twenty-six D, and the registrar may, in his discretion, issue such license under such
237 terms and conditions as he deems appropriate and necessary; and provided, further, that such person may,
238 after the expiration of one year from the date of conviction, apply for and shall be granted a hearing
239 before the registrar for the purpose of requesting the issuance of a new license on a limited basis on the
240 grounds of hardship and a showing by the person that the causes of the present and past violations have
241 been dealt with or brought under control and the registrar may, in his discretion, issue such a license
242 under such terms and conditions as he deems appropriate and necessary.

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

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

263 (31/2) Where the license or the right to operate of a person has been revoked under paragraph (b) and
264 such person has been previously convicted of or assigned to an alcohol or controlled substance education,
265 treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a
266 like violation three times within a period of ten years preceding the date of the commission of the offense
267 for which such person has been convicted, the registrar shall not restore the license or reinstate the right to
268 operate of such person unless the prosecution of such person has been terminated in favor of the
269 defendant, until ten years after the date of the conviction; provided, however, that such person may, after
270 the expiration of five years from the date of the conviction, apply for and shall be granted a hearing before
271 the registrar for the purpose of requesting the issuance of a new license for employment or education
272 purposes which license shall be effective for an identical twelve hour period every day on the grounds of
273 hardship and a showing by the person that the causes of the present and past violations have been dealt
274 with or brought under control and the registrar may, in his discretion, issue such license under such terms
275 and conditions as he deems appropriate and necessary; and provided, further, that such person may, after
276 the expiration of eight years from the date of conviction, apply for and shall be granted a hearing before
277 the registrar for the purpose of requesting the issuance of a new license on a limited basis on the grounds
278 of hardship and a showing by the person that the causes of the present and past violations have been dealt
279 with or brought under control and the registrar may, in his discretion, issue such a license under the terms
280 and conditions as he deems appropriate and necessary.

281 (3 3/4) Where the license or the right to operate of a person has been revoked under paragraph (b) and
282 such person has been previously convicted of or assigned to an alcohol or controlled substance education,
283 treatment or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a
284 like violation four or more times within a period of ten years preceding the date of the commission of the
285 offense for which such person has been convicted, such person's license or right to operate a snow or
286 recreation vehicle shall be revoked for the life of such person, and such person shall not be granted a
287 hearing before the registrar for the purpose of requesting the issuance of a new license on a limited basis
288 on the grounds of hardship; provided, however, that such license shall be restored or such right to operate
289 shall be reinstated if the prosecution of such person has been terminated in favor of such person. An
290 aggrieved party may appeal, in accordance with the provisions of chapter thirty A, from any order of the
291 registrar of snow or recreation vehicles under the provisions of this section.

292 (4) Notwithstanding the foregoing, no new license shall be issued or right to operate be reinstated by the
293 registrar to any person convicted of a violation of subparagraph (1) of paragraph (a) until ten years after
294 the date of conviction in case the registrar determines upon investigation and after hearing that the action
295 of the person so convicted in committing such offense caused an accident resulting in the death of

296 another, nor at any time after a subsequent conviction of such an offense, whenever committed, in case
297 the registrar determines in the manner aforesaid that the action of such person, in committing the offense
298 of which he was so subsequently convicted, caused an accident resulting in the death of another.

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

306 (e) In any prosecution for a violation of paragraph (a), evidence of the percentage, by weight, of alcohol
307 in the defendant's blood at the time of the alleged offense, as shown by chemical test or analysis of his
308 blood or as indicated by a chemical test or analysis of his breath, shall be admissible and deemed relevant
309 to the determination of the question of whether such defendant was at such time under the influence of
310 intoxicating liquor; provided, however, that if such test or analysis was made by or at the direction of a
311 police officer, it was made with the consent of the defendant, the results thereof were made available to
312 him upon his request and the defendant was afforded a reasonable opportunity, at his request and at his
313 expense, to have another such test or analysis made by a person or physician selected by him; and
314 provided, further, that blood shall not be withdrawn from any party for the purpose of such test or analysis
315 except by a physician, registered nurse or certified medical technician. Evidence that the defendant failed
316 or refused to consent to such test or analysis shall not be admissible against him in a civil or criminal
317 proceeding, but shall be admissible in any action by the registrar under paragraph (f) or in any
318 proceedings provided for in section twenty-six N. When there is no evidence presented at a civil or
319 criminal proceeding of the percentage, by weight, of alcohol in the defendant's blood, the presiding judge
320 at a trial before a jury shall include in his instructions to the jury a statement of an arresting officer's
321 responsibilities upon arrest of a person suspected to be operating a snow or recreation vehicle under the
322 influence of alcohol and a statement that a blood alcohol test may only be administered with a person's
323 consent; that a person has a legal right to take or not take such a test; that there may be a number of
324 reasons why a person would or would not take such a test; that there may be a number of reasons why
325 such test was not administered; that there shall be no speculation as to the reason for the absence of the
326 test and no inference can be drawn from the fact that there was no evidence of a blood alcohol test; and
327 that a finding of guilty or not guilty must be based solely on the evidence that was presented in the case. If
328 such evidence is that such percentage was five one-hundredths or less, there shall be a permissible
329 inference that such defendant was not under the influence of intoxicating liquor, and he shall be released
330 from custody forthwith, but the officer who placed him under arrest shall not be liable for false arrest if

331 such police officer had reasonable grounds to believe that the person arrested had been operating a snow
332 or recreation vehicle upon any such way or place while under the influence of intoxicating liquor;
333 provided, however, that in an instance where a defendant is under the age of twenty-one and such
334 evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or
335 greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph
336 (f), suspend such defendant's license or permit and take all other actions directed therein, if such evidence
337 is that such percentage was more than five one-hundredths but less than eight one-hundredths there shall
338 be no permissible inference; and if such evidence is that such percentage was eight one-hundredths or
339 more, there shall be a permissible inference that such defendant was under the influence of intoxicating
340 liquor. A certificate, signed and sworn to, by a chemist of the department of the state police or by a
341 chemist of a laboratory certified by the department of public health, which contains the results of an
342 analysis made by such chemist of the percentage of alcohol in such blood shall be prima facie evidence of
343 the percentage of alcohol in such blood.

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

354 (f) If a person arrested for operating a snow or recreation vehicle on the lands, waters and or improved,
355 unimproved, public or private ways within the Commonwealth while under the influence of intoxicating
356 liquor refuses to submit to such test or analysis, after having been informed that his license, permit or
357 right to operate motor vehicles shall be suspended and any certificate or numbers may be revoked for a
358 period of one hundred and twenty days for such refusal, no such test or analysis shall be made, but the
359 officer before whom such refusal was made shall immediately prepare a written report of such refusal.
360 Each such report shall be made on a form approved by the registrar, and shall be sworn to under the
361 penalties of perjury by the officer before whom such refusal was made. Each such report shall set forth
362 the grounds for the officer's belief that the person arrested had been operating a vessel while under the
363 influence of intoxicating liquor, and shall state that such person had refused to submit to such chemical
364 test or analysis when requested by such officer to do so such refusal having been witnessed by another
365 person other than the defendant. Each such report shall identify which police officer requested said

366 chemical test or analysis, and the other person witnessing said refusal. Each such report shall be sent
367 forthwith to the registrar and to the director along with a copy of the notice of intent to suspend in any
368 form, including electronic or otherwise, that the registrar deems appropriate. Upon receipt of such report,
369 the registrar shall suspend any license or permit to operate motor vehicles issued to such person under
370 chapter ninety or the right of such person to operate motor vehicles in the commonwealth under section
371 ten for a period of one hundred and twenty days, and the director may revoke any and all certificates of
372 number of any snow or recreation vehicle of such person and may refuse to issue any certificate of
373 number to such vessels for a period of one hundred and twenty days. Said report shall constitute prima
374 facie evidence of the facts set forth therein at any administrative hearing regarding any suspension
375 specified in this section.

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

386 Notwithstanding any of the foregoing, any person whose certificate of number has been revoked under
387 this paragraph may at any time apply for and shall, within fifteen days, be granted a hearing before the
388 director for the purpose of requesting the issuance of a certificate of number on the grounds of hardship
389 and the director may, in his discretion, issue such certificate of number under such terms and conditions
390 as he deems appropriate and necessary.

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

399 (2) (a) Whoever, on the lands, waters and or improved, unimproved, public or private ways within the
400 Commonwealth, operates a snow or recreation vehicle recklessly, or operates such a vehicle negligently
401 so that the lives or safety of the public might be endangered, or upon a bet or wager or in a race, or
402 whoever operates a snow or recreation vehicle for the purpose of making a record and thereby violates
403 any provision of section seventeen or any regulation under section eighteen, or whoever without stopping
404 and making known his name, residence and the register number of his snow or recreation vehicle goes
405 away after knowingly colliding with or otherwise causing injury to any other vehicle or property, or
406 whoever knowingly makes any false statement in an application for registration of a snow or recreation
407 vehicle, shall be punished by a fine of not less than twenty dollars nor more than two hundred dollars or
408 by imprisonment for not less than two weeks nor more than two years, or both; and whoever uses a snow
409 or recreation vehicle without authority knowing that such use is unauthorized shall, for the first offense be
410 punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for
411 not less than thirty days nor more than two years, or both, and for a second offense by imprisonment in
412 the state prison for not more than five years or in a house of correction for not less than thirty days nor
413 more than two and one-half years, or by a fine of not more than one thousand dollars, or by both such fine
414 and imprisonment; and whoever is found guilty of a third or subsequent offense of such use without
415 authority committed within five years of the earliest of his two most recent prior offenses shall be
416 punished by a fine of not less than two hundred dollars nor more than one thousand dollars or by
417 imprisonment for not less than six months nor more than two and one-half years in a house of correction
418 or for not less than two and one-half years nor more than five years in the state prison or by both fine and
419 imprisonment. A summons may be issued instead of a warrant for arrest upon a complaint for a violation
420 of any provision of this paragraph if in the judgment of the court or justice receiving the complaint there
421 is reason to believe that the defendant will appear upon a summons.

422 There shall be an assessment of \$125 against a person who, by a court of the commonwealth, is convicted
423 of, is placed on probation for or is granted a continuance without a finding for or otherwise pleads guilty
424 to or admits to a finding of sufficient facts of operating a snow or recreation vehicle negligently so that
425 the lives or safety of the public might be endangered pursuant to the provisions of this section; provided,
426 however, that moneys collected pursuant to said assessment shall be deposited by the court with the
427 treasurer into the Head Injury Treatment Services Trust Fund established by section 59 of chapter 10. At
428 the discretion of the court, an assessment pursuant to this paragraph may be reduced or waived only upon
429 a written finding of fact that such payment would cause the person against whom the assessment is
430 imposed severe financial hardship. Such a finding shall be made independently of a finding of indigence
431 for purposes of appointing counsel. If the person is sentenced to a correctional facility in the
432 commonwealth and the assessment has not been paid, the court shall note the assessment on the mittimus.

433 (a½) (1) Whoever operates a snow or recreation vehicle on the lands, waters and or improved,
434 unimproved, public or private ways within the Commonwealth, and without stopping and making known
435 his name, residence and the registration number of his snow or recreation vehicle, goes away after
436 knowingly colliding with or otherwise causing injury to any person not resulting in the death of any
437 person, shall be punished by imprisonment for not less than six months nor more than two years and by a
438 fine of not less than five hundred dollars nor more than one thousand dollars.

439 (2) Whoever operates a snow or recreation vehicle on the lands, waters and or improved, unimproved,
440 public or private ways within the Commonwealth and without stopping and making known his name,
441 residence and the registration number of his snow or recreation vehicle, goes away to avoid prosecution
442 or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if
443 the injuries result in the death of a person, be punished by imprisonment in the state prison for not less
444 than two and one-half years nor more than ten years and by a fine of not less than one thousand dollars
445 nor more than five thousand dollars or by imprisonment in a jail or house of correction for not less than
446 one year nor more than two and one-half years and by a fine of not less than one thousand dollars nor
447 more than five thousand dollars. The sentence imposed upon such person shall not be reduced to less than
448 one year, nor suspended, nor shall any person convicted under this paragraph be eligible for probation,
449 parole, or furlough or receive any deduction from his sentence until such person has served at least one
450 year of such sentence; provided, however, that the commissioner of correction may on the
451 recommendation of the warden, superintendent or other person in charge of a correctional institution, or
452 the administrator of a county correctional institution, grant to an offender committed under this paragraph,
453 a temporary release in the custody of an officer of such institution for the following purposes only: to
454 attend the funeral of a relative; to visit a critically ill relative; to obtain emergency medical or psychiatric
455 services unavailable at said institution or to engage in employment pursuant to a work release program.

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

458 (b) A conviction of a violation of paragraph (a) or paragraph (a½) of subdivision (2) of this section shall
459 be reported forthwith by the court or magistrate to the registrar, who may in any event, and shall unless
460 the court or magistrate recommends otherwise, revoke immediately the license or right to operate of the
461 person so convicted, and no appeal, motion for new trial or exceptions shall operate to stay the revocation
462 of the license or right to operate. If it appears by the records of the registrar that the person so convicted is
463 the owner of a snow or recreation vehicle or has exclusive control of any snow or recreation vehicle as a
464 manufacturer or dealer or otherwise, the registrar may revoke the certificate of registration of any or all
465 snow or recreation vehicles so owned or exclusively controlled.

466 (c) The registrar, after having revoked the license or right to operate of any person under paragraph (b), in
467 his discretion may issue a new license or reinstate the right to operate to him, if the prosecution has
468 terminated in favor of the defendant. In addition, the registrar may, after an investigation or upon hearing,
469 issue a new license or reinstate the right to operate to a person convicted in any court for a violation of
470 any provision of paragraph (a) or (a½) of subdivision (2); provided, however, that no new license or right
471 to operate shall be issued by the registrar to: (i) any person convicted of a violation of subparagraph (1) of
472 paragraph (a½) until one year after the date of revocation following his conviction if for a first offense, or
473 until two years after the date of revocation following any subsequent conviction; (ii) any person convicted
474 of a violation of subparagraph (2) of paragraph (a½) until three years after the date of revocation
475 following his conviction if for a first offense or until ten years after the date of revocation following any
476 subsequent conviction; (iii) any person convicted, under paragraph (a) of using a snow or recreation
477 vehicle knowing that such use is unauthorized, until one year after the date of revocation following his
478 conviction if for a first offense or until three years after the date of revocation following any subsequent
479 conviction; and (iv) any person convicted of any other provision of paragraph (a) until sixty days after the
480 date of his original conviction if for a first offense or one year after the date of revocation following any
481 subsequent conviction within a period of three years.

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

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

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

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

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

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

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

508 “public or”