§ 25.24 Operating a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while under the influence of alcohol or drugs. 1. Offenses; criminal penalties. (a) No person shall operate a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while his or her ability to operate such snowmobile is impaired by the consumption of alcohol. A violation of this subdivision shall be an offense and shall be punishable by a fine of not less than two hundred fifty dollars nor more than three hundred fifty dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates a snowmobile in violation of this subdivision after being convicted of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

(b) No such person shall operate a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while he or she has .08 of one per centum or more by weight of alcohol in his or her blood, breath, urine, or saliva, as determined by the chemical test made pursuant to the provisions of subdivision six of this section.

(c) No person shall operate a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while he or she is in an intoxicated condition.

(d) No person shall operate a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while his or her ability to operate such snowmobile is impaired by the use of a drug as defined by section one hundred fourteen-a of the vehicle and traffic law.

(e) A violation of paragraph (b), (c), or (d) of this subdivision shall be a misdemeanor and shall be punishable by imprisonment in a penitentiary or county jail for not more than ninety days, or by a fine of not less than three hundred fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. A person who operates a snowmobile in violation of paragraph (b), (c), or (d) of this subdivision after having been convicted of a violation of paragraph (b),

(c), or (d) of this subdivision, or of operating a snowmobile while intoxicated or while under the influence of drugs, within the preceding ten years, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year, or by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by both such fine and imprisonment. A person who operates a snowmobile in violation of paragraph (b), (c), or (d) of this subdivision after having been twice convicted of a violation of paragraph (b), (c), or (d) of this subdivision, or of operating a snowmobile while intoxicated or under the influence of drugs, within the preceding ten years, shall be guilty of a class E felony and shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

2. Privilege to operate a snowmobile; suspensions. (a) The court shall suspend a person's privilege to operate a snowmobile and may suspend a snowmobile registration for:

(1) a period of six months where an operator is convicted of a violation of paragraph (a) of subdivision one of this section;

(2) a period of twelve months where an operator is convicted of a violation of paragraph (b), (c), or (d) of subdivision one of this section;

(3) a period of twenty-four months where a person is convicted of a violation of paragraph (b), (c), or (d) of subdivision one of this section after having been convicted of a violation of paragraph (b), (c), or (d) of subdivision one of this section or of operating a snowmobile while intoxicated or under the influence of drugs within the preceding ten years.

(b) The court shall report each conviction recorded pursuant to this section to the commissioner of motor vehicles and the commissioner on forms provided by the department of motor vehicles. Such reports shall include the length of any suspension imposed on the privilege to operate a snowmobile and any suspension imposed against a snowmobile registration. The department of motor vehicles shall maintain a record of all convictions and suspensions in order to effectuate the provisions of this section.

3. Operation of snowmobile while operating privileges have been suspended. (a) No person shall operate a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another while operating privileges have been suspended pursuant to this section. A violation of the provisions of this paragraph shall be a violation and shall be punishable by a fine of not less than three hundred fifty dollars nor more than seven hundred fifty dollars or by imprisonment for a period of not more than ninety days, or by both such fine and imprisonment.

(b) A person who is in violation of the provisions of paragraph (a) of this subdivision, and in addition is in violation of the provisions of any paragraph of subdivision one of this section arising out of the same incident, shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment for a period of not more than one year or by both such fine and imprisonment.

4. Sentencing limitations. Notwithstanding any provision of the penal law, no judge or magistrate shall impose a sentence of unconditional discharge for a violation of paragraph (b), (c), or (d) of subdivision one of this section nor shall he or she impose a sentence of conditional discharge unless such conditional discharge is accompanied by a sentence of a fine as provided in this section.

5. Arrest and testing. (a) Arrest. Notwithstanding the provisions of section 140.10 of the criminal procedure law, a police officer may, without a warrant, arrest a person, in case of a violation of any paragraph of subdivision one of this section, if such violation is coupled with an accident or collision in which such person is involved, which in fact had been committed, though not in the police officer's presence, when he or she has reasonable cause to believe that the violation was committed by such person. For the purposes of this subdivision police officer shall also include a peace officer authorized to enforce the provisions of this chapter when the alleged violation constitutes a crime.

(b) Breath test for operators of a snowmobile. Every person operating

a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another which has been involved in an accident or which is operated in violation of any of the provisions of this chapter which regulate the manner in which a snowmobile is to be properly operated shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that such operator has consumed alcohol, the police officer may request such operator to submit to a chemical test in the manner set forth in subdivision six of this section.

6. Chemical tests. (a) Any person who operates a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another shall be requested to consent to a chemical test of one or more of the following: breath, blood, urine or saliva for the purpose of determining the alcoholic or drug content of his or her blood, provided that such test is administered at the direction of a police officer: (1) having reasonable cause to believe such person to have been operating in violation of this subdivision or paragraph (a), (b), (c), or (d) of subdivision one of this section and within two hours after such person has been placed under arrest for any such violation or (2) within two hours after a breath test as provided in paragraph (b) of subdivision five of this section indicates that alcohol has been consumed by such person and in accordance with the rules and regulations established by the police force of which the officer is a member.

(b) If such person having been placed under arrest or after a breath test indicates the presence of alcohol in the person's system and having thereafter been requested to submit to such chemical test and having been informed that the person's privilege to operate a snowmobile shall be immediately suspended for refusal to submit to such chemical test or any portion thereof, whether or not the person is found guilty of the charge for which such person is arrested, refuses to submit to such chemical test or any portion thereof, unless a court order has been granted pursuant to subdivision seven of this section, the test shall not be given and a written report of such refusal shall be immediately made by the police officer before whom such refusal was made. Such report may be verified by having the report sworn to, or by affixing to such report a form notice that false statements made therein are

punishable as a class A misdemeanor pursuant to section 210.45 of the penal law and such form notice together with the subscription of the deponent shall constitute a verification of the report. The report of the police officer shall set forth reasonable grounds to believe such arrested person to have been operating a snowmobile in violation of any paragraph of subdivision one of this section, that such person had refused to submit to such chemical test, and that no chemical test was administered pursuant to the requirements of subdivision seven of this section. The report shall be presented to the court upon the arraignment of the arrested person. The privilege to operate a snowmobile shall, upon the basis of such written report, be temporarily suspended by the court without notice pending the determination of a hearing as provided herein. Copies of such report must be transmitted by the court to the commissioner and the commissioner of motor vehicles and such transmittal may not be waived even with the consent of all the parties. Such report shall be forwarded to the commissioner and the commissioner of motor vehicles within forty-eight hours of such arraignment. The court shall provide such person with a hearing date schedule, a waiver form, and such other information as may be required by the commissioner of motor vehicles. If a hearing, as provided for in paragraph (c) of this subdivision, is waived by such person, the commissioner of motor vehicles shall immediately suspend the privilege to operate a snowmobile, as of the date of receipt of such waiver in accordance with the provisions of paragraph (d) of this subdivision.

(c) Any person whose privilege to operate a snowmobile has been suspended pursuant to paragraph (b) of this subdivision is entitled to a hearing in accordance with a hearing schedule to be promulgated by the commissioner of motor vehicles. If the department of motor vehicles fails to provide for such hearing fifteen days after the date of the arraignment of the arrested person, the privilege to operate a snowmobile of such person shall be reinstated pending a hearing pursuant to this section. The hearing shall be limited to the following issues: (1) did the police officer have reasonable cause to believe that such person had been operating a snowmobile in violation of any paragraph of subdivision one of this section; (2) did the police officer make a lawful arrest of such person; (3) was such person given sufficient warning, in clear and unequivocal language, prior to such refusal that

such refusal to submit to such chemical test or any portion thereof, would result in the immediate suspension of such person's privilege to operate a snowmobile whether or not such person is found guilty of the charge for which the arrest was made; and (4) did such person refuse to submit to such chemical test or any portion thereof. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles, finds on any one of said issues in the negative, the hearing officer shall immediately terminate any suspension arising from such refusal. If, after such hearing, the hearing officer, acting on behalf of the commissioner of motor vehicles finds all of the issues in the affirmative, such officer shall immediately suspend the privilege to operate a snowmobile in accordance with the provisions of paragraph (d) of this subdivision. A person who has had the privilege to operate a snowmobile suspended pursuant to this subdivision may appeal the findings of the hearing officer in accordance with the provisions of article three-A of the vehicle and traffic law. Any person may waive the right to a hearing under this section. Failure by such person to appear for the scheduled hearing shall constitute a waiver of such hearing, provided, however, that such person may petition the commissioner of motor vehicles for a new hearing which shall be held as soon as practicable.

(d) (1) Any privilege to operate a snowmobile which has been suspended pursuant to paragraph (c) of this subdivision shall not be restored for six months after such suspension. However, no such privilege shall be restored for at least one year after such suspension in any case where the person has had a prior suspension resulting from refusal to submit to a chemical test pursuant to this subdivision, or has been convicted of a violation of any paragraph of subdivision one of this section not arising out of the same incident, within the five years immediately preceding the date of such suspension.

(2) Any person whose privilege to operate a snowmobile is suspended pursuant to the provisions of this subdivision shall also be liable for a civil penalty in the amount of two hundred dollars except that if such suspension is a second or subsequent suspension pursuant to this subdivision issued within a five year period, or such person has been convicted of a violation of any paragraph of subdivision one of this section within the past five years not arising out of the same incident,

the civil penalty shall be in the amount of five hundred dollars. The privilege to operate a snowmobile shall not be restored to such person unless such penalty has been paid. The first one hundred dollars of each penalty collected by the department of motor vehicles pursuant to the provisions of this subdivision shall be paid to the commissioner of motor vehicles for deposit to the general fund and the remainder of all such penalties shall be paid to the commissioner for deposit in the snowmobile trail development and maintenance fund established pursuant to section ninety-two-n of the state finance law.

(e) The commissioner of motor vehicles in consultation with the commissioner shall promulgate such rules and regulations as may be necessary to effectuate the provisions of this subdivision.

(f) Evidence of a refusal to submit to such chemical test shall be admissible in any trial, proceeding or hearing based upon a violation of the provisions of this section, but only upon a showing that the person was given sufficient warning, in clear and unequivocal language, of the effect of such refusal and that the person persisted in his or her refusal.

(g) Upon the request of the person tested, the results of such test shall be made available to him or her.

7. Compulsory chemical tests. (a) Notwithstanding the provisions of subdivision six of this section, no person who operates a snowmobile upon a street, highway, public trails, lands, bodies of water, or private property of another may refuse to submit to a chemical test of one or more of the following: breath, blood, urine or saliva, for the purpose of determining the alcoholic and/or drug content of the blood when a court order for such chemical test has been issued in accordance with the provisions of this subdivision.

(b) Upon refusal by any person to submit to a chemical test or any portion thereof as described in paragraph (a) of this subdivision, the test shall not be given unless a police officer or a district attorney, as defined in subdivision thirty-two of section 1.20 of the criminal procedure law, requests and obtains a court order to compel a person to submit to a chemical test to determine the alcoholic or drug content of the person's blood upon a finding of reasonable cause to believe that:

(1) such person was the operator of a snowmobile and in the course of

such operation a person other than the operator was killed or suffered serious physical injury as defined in section 10.00 of the penal law; and

(2) (i) either such person operated the snowmobile in violation of any paragraph of subdivision one of this section, or

(ii) a breath test administered by a police officer in accordance with subdivision five of this section indicates that alcohol has been consumed by such person; and

(3) such person has been placed under lawful arrest; and

(4) such person has refused to submit to a chemical test or any portion thereof, requested in accordance with the provisions of subdivision six of this section or is unable to give consent to such a test.

(c) For the purpose of this subdivision "reasonable cause" shall be determined by viewing the totality of circumstances surrounding the incident which, when taken together, indicate that the operator was operating a snowmobile in violation of any paragraph of subdivision one of this section. Such circumstances may include, but are not limited to: evidence that the operator was operating a snowmobile in violation of any provision of this chapter which regulates the manner in which a snowmobile is to be properly operated at the time of the incident; any visible indication of alcohol or drug consumption or impairment by the operator; any other evidence surrounding the circumstances of the incident which indicates that the operator has been operating a snowmobile while impaired by the consumption of alcohol or drugs or was intoxicated at the time of the incident.

(d) (1) An application for a court order to compel submission to a chemical test or any portion thereof, may be made to any supreme court justice, county court judge or district court judge in the judicial district in which the incident occurred, or if the incident occurred in the city of New York before any supreme court justice or judge of the criminal court of the city of New York. Such application may be communicated by telephone, radio or other means of electronic communication, or in person.

(2) The applicant must provide identification by name and title and must state the purpose of the communication. Upon being advised that an application for a court order to compel submission to a chemical test is

being made, the court shall place under oath the applicant and any other person providing information in support of the application as provided in subparagraph three of this paragraph. After being sworn the applicant must state that the person from whom the chemical test was requested was the operator of a snowmobile and in the course of such operation a person, other than the operator, has been killed or seriously injured and, based upon the totality of circumstances, there is reasonable cause to believe that such person was operating a snowmobile in violation of any paragraph of subdivision one of this section and, after being placed under lawful arrest such person refused to submit to a chemical test or any portion thereof, in accordance with the provisions of this section or is unable to give consent to such a test or any portion thereof. The applicant must make specific allegations of fact to support such statement. Any other person properly identified may present sworn allegations of fact in support of the applicant's statement.

(3) Upon being advised that an oral application for a court order to compel a person to submit to a chemical test is being made, a judge or justice shall place under oath the applicant and any other person providing information in support of the application. Such oath or oaths and all of the remaining communication must be recorded, either by means of a voice recording device or verbatim stenographic or verbatim longhand notes. If a voice recording device is used or a stenographic record made, the judge must have the record transcribed, certify to the accuracy of the transcription and file the original record and transcription with the court within seventy-two hours of the issuance of the court order. If the longhand notes are taken, the judge shall subscribe a copy and file it with the court within twenty-four hours of the issuance of the order.

(4) If the court is satisfied that the requirements for the issuance of a court order pursuant to the provisions of paragraph (b) of this subdivision have been met, it may grant the application and issue an order requiring the accused to submit to a chemical test to determine the alcoholic and/or drug content of his or her blood and ordering the withdrawal of a blood sample in accordance with the provisions of subdivision eight of this section. When a judge or justice determines to issue an order to compel submission to a chemical test based on an oral application, the applicant therefor shall prepare the order in

accordance with the instructions of the judge or justice. In all cases the order shall include the name of the issuing judge or justice, the name of the applicant, and the date and time it was issued. It must be signed by the judge or justice if issued in person, or by the applicant if issued orally.

(5) Any false statement by an applicant or any other person in support of an application for a court order shall subject such person to the offenses for perjury set forth in article two hundred ten of the penal law.

(e) An order issued pursuant to the provisions of this subdivision shall require that a chemical test to determine the alcoholic and/or drug content of the operator's blood must be administered. The provisions of paragraphs (a), (b) and (c) of subdivision eight of this section shall be applicable to any chemical test administered pursuant to this section.

(f) A defendant who has been compelled to submit to a chemical test pursuant to the provisions of this subdivision may move for the suppression of such evidence in accordance with article seven hundred ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of this subdivision or any other applicable law.

8. Testing procedures. (a) At the request of a police officer, the following persons may withdraw blood for the purpose of determining the alcohol or drug content therein: (1) a physician, a registered professional nurse or a registered physician's assistant; or (2) under the supervision and at the direction of a physician: a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health, or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the public health law. This limitation shall not apply to the taking of a urine, saliva or breath specimen.

(b) No person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person and no other employer of such person shall be sued or held liable for any act done or omitted

in the course of withdrawing blood at the request of a police officer or peace officer acting pursuant to his or her special duties pursuant to this subdivision.

(c) Any person who may have a cause of action arising from the withdrawal of blood as aforesaid, for which no personal liability exists under paragraph (b) of this subdivision, may maintain such action against the state if the person entitled to withdraw blood pursuant to paragraph (a) of this subdivision acted at the request of a police officer or peace officer acting pursuant to his or her special duties, employed by the state, or against the appropriate political subdivision of the state if the person acted at the request of a police officer or peace officer acting pursuant to his or her special duties, employed by a political subdivision of the state. No action shall be maintained pursuant to this paragraph unless notice of claim is duly filed or served in compliance with law.

(d) Notwithstanding the foregoing provisions of this subdivision, an action may be maintained by the state or a political subdivision thereof against a person entitled to withdraw blood pursuant to paragraph (a) of this subdivision or hospital employing such person for whose act or omission the state or the political subdivision has been held liable under this subdivision to recover damages, not exceeding the amount awarded to the claimant, that may have been sustained by the state or the political subdivision by reason of gross negligence on the part of such person entitled to withdraw blood.

(e) The testimony of any person, other than a physician, entitled to draw blood pursuant to paragraph (a) of this subdivision in respect to any such withdrawal of blood made by him or her may be received in evidence with the same weight, force and effect as if such withdrawal of blood were made by a physician.

(f) The provisions of paragraphs (b), (c) and (d) of this subdivision shall also apply with regard to any person employed by a hospital as security personnel for any act done or omitted in the course of withdrawing blood at the request of a police officer pursuant to a court order in accordance with this subdivision.

(g) The person tested shall be permitted to choose a physician to administer a chemical test in addition to the one administered at the direction of the police officer.

9. Chemical test evidence. (a) Upon the trial of any such action or proceeding arising out of actions alleged to have been committed by any person arrested for a violation of any paragraph of subdivision one of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision six or seven of this section.

(b) The following effect shall be given to evidence of blood alcohol content, as determined by such tests, of a person arrested for a violation of any paragraph of subdivision one of this section and who was operating a snowmobile:

(1) evidence that there was .05 of one per centum or less by weight of alcohol in such person's blood shall be prima facie evidence that the ability of such person to operate a snowmobile was not impaired by the consumption of alcohol, and that such person was not in an intoxicated condition.

(2) evidence that there was more than .05 of one per centum but less than .07 of one per centum of weight in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be relevant evidence but not be given prima facie effect, in determining whether the ability of such person to operate a snowmobile was impaired by the consumption of alcohol.

(3) evidence that there was .07 of one per centum or more but less than .08 of one per centum by weight of alcohol in such person's blood shall be prima facie evidence that such person was not in an intoxicated condition, but such evidence shall be given prima facie effect in determining whether the ability of such person to operate a snowmobile was impaired by the consumption of alcohol.

(c) Evidence of a refusal to submit to a chemical test or any portion thereof shall be admissible in any trial or hearing provided the request to submit to such a test was made in accordance with the provisions of subdivision six of this section.

10. Limitations. (a) A snowmobile operator may be convicted of a violation of paragraph (a), (b), (c), or (d) of subdivision one of this section, notwithstanding that the charge laid before the court alleged a violation of paragraph (b), (c), or (d) of subdivision one of this

section, and regardless of whether or not such conviction is based on a plea of guilty.

(b) In any case wherein the charge laid before the court alleges a violation of paragraph (b), (c), or (d) of subdivision one of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the paragraphs of such subdivision one and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of subdivision one of this section is not warranted, he or she may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge.

11. Suspension pending prosecution. (a) Without notice, pending any prosecution, the court may suspend the right to operate a snowmobile where the snowmobile operator has been charged with vehicular assault in the second degree or vehicular manslaughter in the second degree as defined, respectively, in sections 120.03 and 125.12 of the penal law.

(b) A suspension under this subdivision shall occur no later than twenty days after the snowmobile operator's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment, whichever comes first. In order for the court to impose such suspension it must find that the accusatory instrument conforms to the requirements of section 100.40 of the criminal procedure law and there exists reasonable cause to believe that the accused operated a snowmobile in violation of section 120.03 or 125.12 of the penal law. At such time the operator shall be entitled to an opportunity to make a statement regarding the enumerated issues and to present evidence tending to rebut the court's findings. Where such suspension is imposed upon such pending charge and the operator has requested a hearing pursuant to article one hundred eighty of the criminal procedure law, the court shall conduct such hearing. If upon completion of the hearing, the court fails to find that there is reasonable cause to believe that the operator committed a felony under section 120.03 or 125.12 of the penal law the court shall promptly direct restoration of such operating privileges to the operator unless such operating

privileges are suspended or revoked pursuant to any other provision of this chapter.

12. Snowmobile safety course. Upon the conviction of any subdivision of this section, the court shall, in addition to any other penalties invoked under this section, require the convicted person, as a condition of the sentence, to complete a snowmobile safety course approved by the commissioner and show proof of successful completion of such course to the court or its designee.