

**SUBSTITUTE FOR
HOUSE BILL NO. 4445**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81101, 81134, 81136, 81137, 81140, 81141, and
81144 (MCL 324.81101, 324.81134, 324.81136, 324.81137, 324.81140,
324.81141, and 324.81144), section 81101 as amended by 2013 PA 249,
section 81134 as amended by 2001 PA 12, sections 81136 and 81141 as
amended by 1996 PA 175, and sections 81137, 81140, and 81144 as
added by 1995 PA 58, and by adding section 81140b; and to repeal
acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81101. As used in this part:

2 (A) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
3 1D OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1D.

4 (B) ~~(a)~~"ATV" means a vehicle with 3 or more wheels that is
5 designed for off-road use, has low-pressure tires, has a seat

1 designed to be straddled by the rider, and is powered by a 50cc to
2 1,000cc gasoline engine or an engine of comparable size using other
3 fuels.

4 (C) ~~(b)~~-"Code" means the Michigan vehicle code, 1949 PA 300,
5 MCL 257.1 to 257.923.

6 (D) ~~(e)~~-"County road" means a county primary road or county
7 local road as described in section 5 of 1951 PA 51, MCL 247.655, or
8 a segment thereof.

9 (E) ~~(d)~~-"Dealer" means a person engaged in the sale, lease, or
10 rental of an ORV as a regular business or, for purposes of selling
11 licenses under section 81116, any other person authorized by the
12 department to sell licenses or permits, or both, under this act.

13 (F) ~~(e)~~-"Designated", unless the context implies otherwise,
14 means posted by the department, with appropriate signs, as open for
15 ORV use.

16 (G) ~~(f)~~-"Farm vehicle" means either of the following:

17 (i) An implement of husbandry as defined in section 21 of the
18 Michigan vehicle code, 1949 PA 300, MCL 257.21.

19 (ii) A vehicle used in connection with a farm operation as
20 defined in section 2 of the Michigan right to farm act, 1981 PA 93,
21 MCL 286.472.

22 (H) ~~(g)~~-"Forest road" means a hard surfaced road, gravel or
23 dirt road, or other route capable of travel by a 2-wheel drive, 4-
24 wheel conventional vehicle designed for road use. Forest road does
25 not include a street, county road, or highway.

26 (I) ~~(h)~~-"Forest trail" means a designated path or way that is
27 not a route.

1 (J) ~~(i)~~—"Highway" means a state trunk line highway or a
2 segment of a state trunk line highway.

3 (K) ~~(j)~~—"Highly restricted personal information" means an
4 individual's photograph or image, social security number, digitized
5 signature, and medical and disability information.

6 (L) ~~(k)~~—"Late model ORV" means an ORV manufactured in the
7 current model year or the 5 model years immediately preceding the
8 current model year.

9 (M) "LAW OF ANOTHER STATE" MEANS A LAW OR ORDINANCE ENACTED BY
10 ANY OF THE FOLLOWING:

11 (i) ANOTHER STATE.

12 (ii) A LOCAL UNIT OF GOVERNMENT IN ANOTHER STATE.

13 (iii) CANADA OR A PROVINCE OR TERRITORY OF CANADA.

14 (iv) A LOCAL UNIT OF GOVERNMENT IN A PROVINCE OR TERRITORY OF
15 CANADA.

16 (N) ~~(l)~~—"Local unit of government" means a county, township, or
17 municipality.

18 (O) ~~(m)~~—"Maintained portion" means the roadway and any
19 shoulder of a street, county road, or highway.

20 (P) ~~(n)~~—"Manufacturer" means a person, partnership,
21 corporation, or association engaged in the production and
22 manufacture of ORVs as a regular business.

23 (Q) ~~(o)~~—"Municipality" means a city or village.

24 (R) ~~(p)~~—"Off-road vehicle account" means the off-road vehicle
25 account of the Michigan conservation and recreation legacy fund
26 established in section 2015.

27 (S) ~~(q)~~—"Operate" means to ride in or on, and be in actual

1 physical control of, the operation of an ORV.

2 (T) ~~(r)~~—"Operator" means an individual who operates or is in
3 actual physical control of the operation of an ORV.

4 (U) ~~(s)~~—"ORV" or, unless the context implies a different
5 meaning, "vehicle" means a motor-driven off-road recreation vehicle
6 capable of cross-country travel without benefit of a road or trail,
7 on or immediately over land, snow, ice, marsh, swampland, or other
8 natural terrain. A multitrack or multiwheel drive vehicle, a
9 motorcycle or related 2-wheel vehicle, a vehicle with 3 or more
10 wheels, an amphibious machine, a ground effect air cushion vehicle,
11 or other means of transportation may be an ORV. An ATV is an ORV.
12 ORV or vehicle does not include a registered snowmobile, a farm
13 vehicle being used for farming, a vehicle used for military, fire,
14 emergency, or law enforcement purposes, a vehicle owned and
15 operated by a utility company or an oil or gas company when
16 performing maintenance on its facilities or on property over which
17 it has an easement, a construction or logging vehicle used in
18 performance of its common function, or a registered aircraft.

19 (V) ~~(t)~~—"ORV safety certificate" means an ORV safety
20 certificate issued under section 81130 or, except as used in
21 section 81130, a comparable safety certificate issued under the
22 authority of another state or province of Canada.

23 (W) ~~(u)~~—"Owner" means any of the following:

24 (i) A vendee or lessee of an ORV that is the subject of an
25 agreement for the conditional sale or lease of the ORV, with the
26 right of purchase upon performance of the conditions stated in the
27 agreement, and with an immediate right of possession vested in the

1 conditional vendee or lessee.

2 (ii) A person renting an ORV, or having the exclusive use of an
3 ORV, for more than 30 days.

4 (iii) A person who holds legal ownership of an ORV.

5 (X) ~~(v)~~—"Person with a disability" means an individual who has
6 1 or more of the following physical characteristics:

7 (i) Blindness.

8 (ii) Inability, during some time of the year, to ambulate more
9 than 200 feet without having to stop and rest.

10 (iii) Loss of use of 1 or both legs or feet.

11 (iv) Inability to ambulate without the prolonged use of a
12 wheelchair, walker, crutches, braces, or other device required to
13 aid mobility.

14 (v) A lung disease from which the individual's expiratory
15 volume for 1 second, when measured by spirometry, is less than 1
16 liter, or from which the individual's arterial oxygen tension is
17 less than 60 mm/hg of room air at rest.

18 (vi) A cardiovascular disease that causes the individual to
19 measure between 3 and 4 on the New York heart classification scale,
20 or that results in a marked limitation of physical activity by
21 causing fatigue, palpitation, dyspnea, or anginal pain.

22 (vii) Other diagnosed disease or disorder including, but not
23 limited to, severe arthritis or a neurological or orthopedic
24 impairment that creates a severe mobility limitation.

25 (Y) ~~(w)~~—"Personal information" means information that
26 identifies an individual, including an individual's driver
27 identification number, name, address not including zip code, and

1 telephone number, but does not include information on ORV operation
2 or equipment-related violations or civil infractions, operator or
3 vehicle registration status, accidents, or other behaviorally
4 related information.

5 (Z) "PRIOR CONVICTION" MEANS A CONVICTION FOR ANY OF THE
6 FOLLOWING, WHETHER UNDER A LAW OF THIS STATE, A LOCAL ORDINANCE
7 SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE, A LAW OF THE
8 UNITED STATES SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE,
9 OR A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A LAW OF
10 THIS STATE:

11 (i) A VIOLATION OR AN ATTEMPTED VIOLATION OF SECTION 81134(1),
12 (3), (4), (5), (6), OR (7), EXCEPT THAT ONLY 1 VIOLATION OR
13 ATTEMPTED VIOLATION OF SECTION 81134(6), A LOCAL ORDINANCE
14 SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6), A LAW OF ANOTHER
15 STATE SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6), OR A LAW OF
16 THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO SECTION 81134(6)
17 MAY BE USED AS A PRIOR CONVICTION OTHER THAN FOR ENHANCEMENT
18 PURPOSES AS PROVIDED IN SECTION 81134(11)(B).

19 (ii) NEGLIGENT HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING FROM
20 THE OPERATION OF AN ORV, OR AN ATTEMPT TO COMMIT ANY OF THOSE
21 CRIMES.

22 (iii) FORMER SECTION 81135.

23 (AA) ~~(x)~~ "Public agency" means the department or a local or
24 federal unit of government.

25 (BB) ~~(y)~~ "Roadway" means the portion of a street, county road,
26 or highway improved, designed, or ordinarily used for travel by
27 vehicles registered under the code. Roadway does not include the

1 shoulder.

2 (CC) ~~(z)~~ "Route" means a forest road or other road that is
3 designated for purposes of this part by the department.

4 (DD) ~~(aa)~~ "Safety chief instructor" means an individual who
5 has been certified by a nationally recognized ORV organization to
6 certify instructors and to do on-sight evaluations of instructors.

7 (EE) ~~(bb)~~ "Shoulder" means that portion of a street, county
8 road, or highway contiguous to the roadway and generally extending
9 the contour of the roadway, not designed for vehicular travel but
10 maintained for the temporary accommodation of disabled or stopped
11 motor vehicles otherwise permitted on the roadway.

12 (FF) ~~(cc)~~ "Southern county" means Muskegon, Kent, Ionia,
13 Clinton, Shiawassee, Genesee, Lapeer, or Macomb county, or a county
14 lying south of the territory constituted by these counties.

15 (GG) ~~(dd)~~ "Street" means a city or village major street or
16 city or village local street as described in section 9 of 1951 PA
17 51, MCL 247.659, or a segment thereof.

18 (HH) ~~(ee)~~ "Traffic lane" means a clearly marked lane on a
19 roadway.

20 (II) ~~(ff)~~ "Unmaintained portion" means the portion of a
21 street, county road, or highway that is not the maintained portion.

22 (JJ) ~~(gg)~~ "Visual supervision" means the direct observation of
23 the operator with the unaided or normally corrected eye, where the
24 observer is able to come to the immediate aid of the operator.

25 Sec. 81134. (1) A person ~~who~~ **SHALL NOT OPERATE AN ORV IF ANY**
26 **OF THE FOLLOWING APPLY:**

27 (A) **THE PERSON** is under the influence of ~~intoxicating~~

1 ALCOHOLIC liquor or a controlled substance, as defined by section
 2 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a
 3 combination of intoxicating liquor and a controlled substance.
 4 ~~shall not operate an ORV.~~

5 (B) ~~(2) A~~ THE person ~~who~~ has an alcohol content of ~~0.10~~ 0.08
 6 grams or more per 100 milliliters of blood, per 210 liters of
 7 breath, or per 67 milliliters of urine. ~~shall not operate an ORV.~~

8 (C) THE PERSON HAS IN HIS OR HER BODY ANY AMOUNT OF A
 9 CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER SECTION 7212 OF THE
 10 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212, OR A RULE
 11 PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED SUBSTANCE
 12 DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH CODE, 1978 PA
 13 368, MCL 333.7214.

14 (2) ~~(3)~~ The owner or person in charge or in control of an ORV
 15 shall not authorize or knowingly permit the ORV to be operated by a
 16 person ~~who~~ IF ANY OF THE FOLLOWING APPLY:

17 (A) THE PERSON is under the influence of ~~intoxicating~~
 18 ALCOHOLIC liquor or a controlled substance or a combination of
 19 ~~intoxicating~~ ALCOHOLIC liquor and a controlled substance.

20 (B) THE PERSON HAS AN ALCOHOL CONTENT OF 0.08 GRAMS OR MORE
 21 PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
 22 MILLILITERS OF URINE.

23 (C) THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY IMPAIRED
 24 DUE TO THE CONSUMPTION OF AN ALCOHOLIC LIQUOR, A CONTROLLED
 25 SUBSTANCE, OR A COMBINATION OF AN ALCOHOLIC LIQUOR AND A CONTROLLED
 26 SUBSTANCE.

27 ~~— (4) Except as otherwise provided in this section, a person who~~

~~1 is convicted of a violation of subsection (1), (2), or (3) is
2 guilty of a misdemeanor, punishable by imprisonment for not more
3 than 93 days, or a fine of not less than \$100.00 or more than
4 \$500.00, or both, together with costs of the prosecution. As part
5 of the sentence for a violation of subsection (1) or (2), the court
6 shall order the person convicted not to operate an ORV for a period
7 of not less than 6 months or more than 2 years.~~

~~8 ——— (5) On a second conviction under subsection (1) or (2) or a
9 local ordinance substantially corresponding to subsection (1) or
10 (2) within a period of 7 years, a person is guilty of a
11 misdemeanor, punishable by imprisonment for not more than 1 year,
12 or a fine of not more than \$1,000.00, or both. As part of the
13 sentence, the court shall order the person convicted not to operate
14 an ORV for a period of not less than 1 year or more than 2 years.~~

~~15 ——— (6) On a third or subsequent conviction within a period of 10
16 years under subsection (1) or (2) or a local ordinance
17 substantially corresponding to subsection (1) or (2), a person is
18 guilty of a felony and shall be sentenced to imprisonment for not
19 less than 1 year or more than 5 years, or a fine of not less than
20 \$500.00 or more than \$5,000, or both. As part of the sentence, the
21 court shall order the person convicted not to operate an ORV for a
22 period of not less than 1 year or more than 2 years.~~

**23 (3) A PERSON SHALL NOT OPERATE AN ORV IF, DUE TO THE
24 CONSUMPTION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, AS DEFINED
25 BY SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
26 333.7104, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A CONTROLLED
27 SUBSTANCE, THE PERSON'S ABILITY TO OPERATE AN ORV IS VISIBLY**

1 IMPAIRED. IF A PERSON IS CHARGED WITH VIOLATING SUBSECTION (1), A
2 FINDING OF GUILTY IS PERMISSIBLE UNDER THIS SUBSECTION.

3 (4) ~~(7)~~—A person who operates an ORV in violation of
4 subsection (1) or ~~(2) or section 81135~~ (3) and by the operation of
5 that ORV causes the death of another person is guilty of a felony
6 punishable by imprisonment for not more than 15 years or a fine of
7 not less than \$2,500.00 or more than \$10,000.00, or both.

8 (5) ~~(8)~~—A person who operates an ORV within this state in
9 violation of subsection (1) or ~~(2) or section 81135~~ (3) and by the
10 operation of that ORV causes a serious impairment of a body
11 function of another person is guilty of a felony punishable by
12 imprisonment for not more than 5 years or a fine of not less than
13 \$1,000.00 or more than \$5,000.00, or both. As used in this
14 subsection, "serious impairment of a body function" ~~includes, but~~
15 ~~is not limited to, 1 or more of the following:~~ **MEANS THAT TERM AS**
16 **DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
17 **MCL 257.58C.**

18 ~~—— (a) Loss of a limb or use of a limb.~~

19 ~~—— (b) Loss of a hand, foot, finger, or thumb or use of a hand,~~
20 ~~foot, finger, or thumb.~~

21 ~~—— (c) Loss of an eye or ear or use of an eye or ear.~~

22 ~~—— (d) Loss or substantial impairment of a bodily function.~~

23 ~~—— (e) Serious visible disfigurement.~~

24 ~~—— (f) A comatose state that lasts for more than 3 days.~~

25 ~~—— (g) Measurable brain damage or mental impairment.~~

26 ~~—— (h) A skull fracture or other serious bone fracture.~~

27 ~~—— (i) Subdural hemorrhage or subdural hematoma.~~

1 ~~—— (9) As part of the sentence for a violation of subsection (1)~~
2 ~~or (2), or a local ordinance substantially corresponding to~~
3 ~~subsection (1) or (2), the court may order the person to perform~~
4 ~~service to the community, as designated by the court, without~~
5 ~~compensation, for a period not to exceed 12 days. The person shall~~
6 ~~reimburse the state or appropriate local unit of government for the~~
7 ~~cost of insurance incurred by the state or local unit of government~~
8 ~~as a result of the person's activities under this subsection.~~

9 (6) A PERSON WHO IS LESS THAN 21 YEARS OF AGE, WHETHER
10 LICENSED OR NOT, SHALL NOT OPERATE AN ORV IF THE PERSON HAS ANY
11 BODILY ALCOHOL CONTENT. AS USED IN THIS SUBSECTION, "ANY BODILY
12 ALCOHOL CONTENT" MEANS EITHER OF THE FOLLOWING:

13 (A) AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN
14 0.08 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,
15 OR PER 67 MILLILITERS OF URINE, OR, BEGINNING OCTOBER 1, 2018, AN
16 ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN 0.10 GRAMS PER
17 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
18 MILLILITERS OF URINE.

19 (B) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULTING
20 FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMPTION OF
21 ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED RELIGIOUS
22 SERVICE OR CEREMONY.

23 (7) A PERSON SHALL NOT OPERATE AN ORV IN VIOLATION OF
24 SUBSECTION (1), (3), (4), (5), OR (6) WHILE ANOTHER PERSON WHO IS
25 LESS THAN 16 YEARS OF AGE IS OCCUPYING THE ORV.

26 (8) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (1) (A) OR
27 (B), ALL OF THE FOLLOWING APPLY:

1 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),
2 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF
3 THE FOLLOWING:

4 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

5 (ii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

6 (iii) A FINE OF NOT LESS THAN \$100.00 OR MORE THAN \$500.00.

7 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
8 CONVICTION, THE PERSON SHALL BE SENTENCED TO PAY A FINE OF NOT LESS
9 THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR MORE OF THE
10 FOLLOWING:

11 (i) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
12 NOT LESS THAN 48 HOURS OF THE TERM OF IMPRISONMENT IMPOSED UNDER
13 THIS SUBPARAGRAPH SHALL BE SERVED CONSECUTIVELY.

14 (ii) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
15 90 DAYS.

16 (C) IF THE VIOLATION OCCURS AFTER 2 OR MORE PRIOR CONVICTIONS,
17 REGARDLESS OF THE NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR
18 CONVICTION, THE PERSON IS GUILTY OF A FELONY AND SHALL BE SENTENCED
19 TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE THAN \$5,000.00 AND
20 TO EITHER OF THE FOLLOWING:

21 (i) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF
22 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

23 (ii) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT
24 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT
25 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF
26 THE IMPRISONMENT IMPOSED UNDER THIS SUBPARAGRAPH SHALL BE SERVED
27 CONSECUTIVELY.

1 (D) A TERM OF IMPRISONMENT IMPOSED UNDER SUBDIVISION (B) OR
2 (C) SHALL NOT BE SUSPENDED.

3 (9) A PERSON WHO IS CONVICTED OF VIOLATING SUBSECTION (2) IS
4 GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
5 THAN 93 DAYS OR A FINE OF NOT LESS THAN \$100.00 OR MORE THAN
6 \$500.00, OR BOTH.

7 (10) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (3), ALL
8 OF THE FOLLOWING APPLY:

9 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (B) AND (C),
10 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF
11 THE FOLLOWING:

12 (i) COMMUNITY SERVICE FOR NOT MORE THAN 45 DAYS.

13 (ii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

14 (iii) A FINE OF NOT MORE THAN \$300.00.

15 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 PRIOR
16 CONVICTION, THE PERSON SHALL BE SENTENCED TO BOTH A FINE OF NOT
17 LESS THAN \$200.00 OR MORE THAN \$1,000.00, AND EITHER OF THE
18 FOLLOWING:

19 (i) COMMUNITY SERVICE FOR NOT LESS THAN 10 DAYS OR MORE THAN 90
20 DAYS, AND MAY BE SENTENCED TO IMPRISONMENT FOR NOT MORE THAN 1
21 YEAR.

22 (ii) IMPRISONMENT FOR NOT MORE THAN 1 YEAR, AND MAY BE
23 SENTENCED TO COMMUNITY SERVICE FOR NOT MORE THAN 90 DAYS.

24 (C) IF THE VIOLATION OCCURS AFTER 2 OR MORE PRIOR CONVICTIONS
25 REGARDLESS OF THE NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR
26 CONVICTION, THE PERSON SHALL BE SENTENCED TO BOTH A FINE OF NOT
27 LESS THAN \$200.00 OR MORE THAN \$1,000.00, AND EITHER OF THE

1 FOLLOWING:

2 (i) COMMUNITY SERVICE FOR A PERIOD OF NOT LESS THAN 10 DAYS OR
3 MORE THAN 90 DAYS, AND MAY BE SENTENCED TO IMPRISONMENT FOR NOT
4 MORE THAN 1 YEAR.

5 (ii) IMPRISONMENT FOR NOT MORE THAN 1 YEAR, AND MAY BE
6 SENTENCED TO COMMUNITY SERVICE FOR NOT MORE THAN 90 DAYS.

7 (11) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (6), ALL
8 OF THE FOLLOWING APPLY:

9 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (B), THE
10 PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR BOTH OF THE
11 FOLLOWING:

12 (i) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

13 (ii) A FINE OF NOT MORE THAN \$250.00.

14 (B) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF 1 OR MORE PRIOR
15 CONVICTIONS, THE PERSON MAY BE SENTENCED TO 1 OR MORE OF THE
16 FOLLOWING:

17 (i) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

18 (ii) A FINE OF NOT MORE THAN \$500.00.

19 (iii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

20 (12) A PERSON WHO VIOLATES SUBSECTION (7) IS GUILTY OF A CRIME
21 AS FOLLOWS:

22 (A) A PERSON WHO OPERATES AN ORV IN VIOLATION OF SUBSECTION
23 (1), (3), (4), OR (5) WHILE ANOTHER PERSON WHO IS LESS THAN 16
24 YEARS OF AGE IS OCCUPYING THE ORV IS GUILTY OF A CRIME AS FOLLOWS:

25 (i) EXCEPT AS PROVIDED IN SUBDIVISION (B), A PERSON WHO
26 VIOLATES THIS SUBDIVISION IS GUILTY OF A MISDEMEANOR AND SHALL BE
27 SENTENCED TO PAY A FINE OF NOT LESS THAN \$200.00 OR MORE THAN

1 \$1,000.00 AND TO 1 OR MORE OF THE FOLLOWING:

2 (A) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
3 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
4 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

5 (B) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
6 90 DAYS.

7 (ii) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
8 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
9 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A
10 PERSON WHO VIOLATES THIS SUBDIVISION IS GUILTY OF A FELONY AND
11 SHALL BE SENTENCED TO PAY A FINE OF NOT LESS THAN \$500.00 OR MORE
12 THAN \$5,000.00 AND TO EITHER OF THE FOLLOWING:

13 (A) IMPRISONMENT UNDER THE JURISDICTION OF THE DEPARTMENT OF
14 CORRECTIONS FOR NOT LESS THAN 1 YEAR OR MORE THAN 5 YEARS.

15 (B) PROBATION WITH IMPRISONMENT IN THE COUNTY JAIL FOR NOT
16 LESS THAN 30 DAYS OR MORE THAN 1 YEAR AND COMMUNITY SERVICE FOR NOT
17 LESS THAN 60 DAYS OR MORE THAN 180 DAYS. NOT LESS THAN 48 HOURS OF
18 THIS IMPRISONMENT SHALL BE SERVED CONSECUTIVELY. THIS TERM OF
19 IMPRISONMENT SHALL NOT BE SUSPENDED.

20 (B) A PERSON WHO OPERATES AN ORV IN VIOLATION OF SUBSECTION
21 (6) WHILE ANOTHER PERSON WHO IS LESS THAN 16 YEARS OF AGE IS
22 OCCUPYING THE ORV IS GUILTY OF A MISDEMEANOR PUNISHABLE AS FOLLOWS:

23 (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (ii), A PERSON WHO
24 VIOLATES THIS SUBDIVISION MAY BE SENTENCED TO 1 OR MORE OF THE
25 FOLLOWING:

26 (A) COMMUNITY SERVICE FOR NOT MORE THAN 60 DAYS.

27 (B) A FINE OF NOT MORE THAN \$500.00.

1 (C) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

2 (ii) IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR
3 CONVICTION OR AFTER 2 OR MORE PRIOR CONVICTIONS, REGARDLESS OF THE
4 NUMBER OF YEARS THAT HAVE ELAPSED SINCE ANY PRIOR CONVICTION, A
5 PERSON WHO VIOLATES THIS SUBDIVISION SHALL BE SENTENCED TO PAY A
6 FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$1,000.00 AND TO 1 OR
7 MORE OF THE FOLLOWING:

8 (A) IMPRISONMENT FOR NOT LESS THAN 5 DAYS OR MORE THAN 1 YEAR.
9 NOT LESS THAN 48 HOURS OF THIS IMPRISONMENT SHALL BE SERVED
10 CONSECUTIVELY. THIS TERM OF IMPRISONMENT SHALL NOT BE SUSPENDED.

11 (B) COMMUNITY SERVICE FOR NOT LESS THAN 30 DAYS OR MORE THAN
12 90 DAYS.

13 (13) FOR A CONVICTION UNDER SUBSECTION (4) OR (5), THE COURT
14 SHALL ORDER, WITHOUT AN EXPIRATION DATE, THAT THE PERSON NOT
15 OPERATE AN ORV.

16 (14) AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION (1)
17 OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SUBSECTION (1),
18 THE COURT SHALL DO THE FOLLOWING:

19 (A) IF THE COURT FINDS THAT THE PERSON HAS NO PRIOR
20 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON
21 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6 MONTHS OR MORE
22 THAN 2 YEARS.

23 (B) IF THE COURT FINDS THAT THE PERSON HAS 1 OR MORE PRIOR
24 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON
25 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR OR MORE
26 THAN 2 YEARS.

27 (C) IF THE COURT FINDS THAT THE PERSON HAS 2 OR MORE PRIOR

1 CONVICTIONS WITHIN A PERIOD OF 10 YEARS, THE COURT SHALL ORDER THAT
2 THE PERSON NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR
3 OR MORE THAN 2 YEARS.

4 (15) AS PART OF THE SENTENCE FOR A VIOLATION OF SUBSECTION (3)
5 OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO SUBSECTION (3),
6 THE COURT SHALL DO THE FOLLOWING:

7 (A) IF THE COURT FINDS THAT THE PERSON HAS NO PRIOR
8 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON
9 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 90 DAYS OR MORE
10 THAN 1 YEAR.

11 (B) IF THE COURT FINDS THAT THE PERSON HAS 1 OR MORE PRIOR
12 CONVICTIONS WITHIN 7 YEARS, THE COURT SHALL ORDER THAT THE PERSON
13 NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 6 MONTHS OR MORE
14 THAN 18 MONTHS.

15 (C) IF THE COURT FINDS THAT THE PERSON HAS 2 OR MORE PRIOR
16 CONVICTIONS WITHIN A PERIOD OF 10 YEARS, THE COURT SHALL ORDER THAT
17 THE PERSON NOT OPERATE AN ORV FOR A PERIOD OF NOT LESS THAN 1 YEAR
18 OR MORE THAN 2 YEARS.

19 (16) IN ADDITION TO IMPOSING THE SANCTIONS PRESCRIBED UNDER
20 THIS SECTION, THE COURT MAY ORDER THE PERSON TO PAY THE COSTS OF
21 THE PROSECUTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175,
22 MCL 760.1 TO 777.69.

23 (17) A PERSON SENTENCED TO PERFORM COMMUNITY SERVICE UNDER
24 THIS SECTION SHALL NOT RECEIVE COMPENSATION AND SHALL REIMBURSE THE
25 STATE OR APPROPRIATE LOCAL UNIT OF GOVERNMENT FOR THE COST OF
26 SUPERVISION INCURRED BY THE STATE OR LOCAL UNIT OF GOVERNMENT AS A
27 RESULT OF THE PERSON'S ACTIVITIES IN THAT SERVICE.

1 **(18)** ~~(10)~~ Before imposing sentence for a violation of
2 subsection (1), ~~or (2) (3), (6), OR (7)~~ or a local ordinance
3 substantially corresponding to subsection (1), ~~or (2) (3), OR (6)~~,
4 the court shall order the person to undergo screening and
5 assessment by a person or agency designated by the office of
6 substance abuse services, to determine whether the person is likely
7 to benefit from rehabilitative services, including alcohol or drug
8 education and alcohol or drug treatment programs. As part of the
9 sentence, the court may order the person to participate in and
10 successfully complete 1 or more appropriate rehabilitative
11 programs. The person shall pay for the costs of the screening,
12 assessment, and rehabilitative services.

13 **(19)** ~~(11)~~ Before accepting a plea of guilty under this
14 section, the court shall advise the accused of the statutory
15 consequences possible as the result of a plea of guilty in respect
16 to suspension of the person's right to operate an ORV and the
17 penalty imposed for violation of this section.

18 **(20)** ~~(12)~~ Each municipal judge and each clerk of a court of
19 record shall keep a full record of every case in which a person is
20 charged with a violation of this section. The municipal judge or
21 clerk of the court of record shall prepare and immediately forward
22 to the secretary of state an abstract of the court of record for
23 each case charging a violation of this section.

24 Sec. 81136. (1) In a criminal prosecution for violating
25 section 81134 ~~or 81135~~ or a local ordinance substantially
26 corresponding to section ~~81134 or 81135~~, **81134 (1), (3), OR (6)** or
27 in a criminal prosecution for negligent homicide, ~~or manslaughter~~,

1 **OR MURDER** resulting from the operation of an ORV while the operator
2 is alleged to have been impaired by or under the influence of
3 ~~intoxicating~~**ALCOHOLIC** liquor or a controlled substance or a
4 combination of ~~intoxicating~~**ALCOHOLIC** liquor and a controlled
5 substance, or to have had a blood alcohol content of ~~0.10~~**0.08**
6 grams or more per 100 milliliters of blood, per 210 liters of
7 breath, or per 67 milliliters of urine, **OR TO HAVE HAD IN HIS OR**
8 **HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1**
9 **UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
10 **333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A**
11 **CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC**
12 **HEALTH CODE, 1978 PA 368, MCL 333.7214, the amount of alcohol OR**
13 **CONTROLLED SUBSTANCE** in the operator's blood at the time alleged as
14 shown by chemical analysis of the operator's blood, urine, or
15 breath ~~shall be~~**IS** admissible into evidence.

16 (2) If a chemical test of an operator's blood, urine, or
17 breath is given, the results of the test shall be made available to
18 the person charged with an offense enumerated in subsection (1) or
19 the person's attorney upon written request to the prosecution, with
20 a copy of the request filed with the court. The prosecution shall
21 furnish the report at least 2 days before the day of the trial and
22 the results shall be offered as evidence by the prosecution in a
23 criminal proceeding. Failure to fully comply with the request shall
24 bar the admission of the results into evidence by the prosecution.

25 ~~—— (3) Except in a prosecution relating solely to a violation of~~
26 ~~section 81134(2), the amount of alcohol in the operator's blood at~~
27 ~~the time alleged as shown by chemical analysis of the operator's~~

1 ~~blood, urine, or breath shall give rise to the following~~
2 ~~presumptions:~~

3 ~~—— (a) If at the time the operator had an alcohol content of 0.07~~
4 ~~grams or less per 100 milliliters of blood, per 210 liters of~~
5 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~
6 ~~the operator was not under the influence of intoxicating liquor.~~

7 ~~—— (b) If at the time the operator had an alcohol content of more~~
8 ~~than 0.07 grams but less than 0.10 grams per 100 milliliters of~~
9 ~~blood, per 210 liters of breath, or per 67 milliliters of urine, it~~
10 ~~shall be presumed that the operator's ability to operate an ORV was~~
11 ~~impaired within the provisions of section 81135 due to the~~
12 ~~consumption of intoxicating liquor.~~

13 ~~—— (c) If at the time the operator had an alcohol content of 0.10~~
14 ~~grams or more per 100 milliliters of blood, per 210 liters of~~
15 ~~breath, or per 67 milliliters of urine, it shall be presumed that~~
16 ~~the operator was under the influence of intoxicating liquor.~~

17 (3) ~~(4)~~A sample or specimen of urine or breath shall be taken
18 and collected in a reasonable manner. Only a licensed physician, or
19 a licensed nurse or medical technician under the direction of a
20 licensed physician and qualified to withdraw blood acting in a
21 medical environment, at the request of a peace officer, may
22 withdraw blood for the purpose of determining the alcoholic content
23 of the blood under this part. Liability for a crime or civil
24 damages predicated on the act of withdrawing blood and related
25 procedures shall not attach to a qualified person who withdraws
26 blood or assists in the withdrawal in accordance with this part
27 unless the withdrawal is performed in a negligent manner.

1 (4) ~~(5)~~—A person arrested for a crime enumerated in subsection
2 (1) who takes a chemical test administered at the request of a
3 peace officer ~~—~~as provided in this part ~~—~~shall be given a
4 reasonable opportunity to have a person of his or her own choosing
5 administer 1 of the chemical tests described in this section within
6 a reasonable time after his or her detention, and the results of
7 the test shall be admissible and shall be considered with other
8 competent evidence in determining the defendant's innocence or
9 guilt of a crime enumerated in subsection (1). If the person
10 arrested is administered a chemical test by a person of his or her
11 own choosing, the person arrested shall be responsible for
12 obtaining a chemical analysis of the test sample. The person shall
13 be informed that he or she has the right to demand that a person of
14 his or her choosing administer 1 of the chemical tests described in
15 this section, that the results of the test shall be admissible and
16 shall be considered with other competent evidence in determining
17 the innocence or guilt of the defendant, and that the person
18 arrested shall be responsible for obtaining a chemical analysis of
19 the test sample.

20 (5) ~~(6)~~—A person arrested shall be advised that if the person
21 refuses the request of a peace officer to take a test described in
22 this section, a test shall not be given without a court order. The
23 person arrested shall also be advised that the person's refusal of
24 the request of a peace officer to take a test described in this
25 section shall result in the suspension of the person's right to
26 operate an ORV.

27 (6) ~~(7)~~—This section shall not be construed as limiting the

1 introduction of any other competent evidence bearing upon the
2 question of whether or not the defendant was impaired by or under
3 the influence of ~~intoxicating~~ **ALCOHOLIC** liquor or a controlled
4 substance, or a combination of ~~intoxicating~~ **ALCOHOLIC** liquor and a
5 controlled substance, or whether the person had a blood alcohol
6 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of blood,
7 per 210 liters of breath, or per 67 milliliters of urine **OR HAD IN**
8 **HIS OR HER BODY ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN**
9 **SCHEDULE 1 UNDER SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA**
10 **368, MCL 333.7212, OR A RULE PROMULGATED UNDER THAT SECTION, OR OF**
11 **A CONTROLLED SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE**
12 **PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7214.**

13 (7) ~~(8)~~—If a jury instruction regarding a defendant's refusal
14 to submit to a chemical test under this section is requested by the
15 prosecution or the defendant, the jury instruction shall be given
16 as follows:

17 "Evidence was admitted in this case which, if believed by the
18 jury, could prove that the defendant had exercised his or her right
19 to refuse a chemical test. You are instructed that such a refusal
20 is within the statutory rights of the defendant and is not evidence
21 of the defendant's guilt. You are not to consider such a refusal in
22 determining the guilt or innocence of the defendant."

23 (8) ~~(9)~~—If after an accident the operator of an ORV involved
24 in the accident is transported to a medical facility and a sample
25 of the operator's blood is withdrawn at that time for the purpose
26 of medical treatment, the results of a chemical analysis of that
27 sample shall be admissible in a criminal prosecution for a crime

1 described in subsection (1) to show the amount of alcohol or
2 presence of a controlled substance, or both, in the person's blood
3 at the time alleged, regardless of whether the person had been
4 offered or had refused a chemical test. The medical facility or
5 person performing the chemical analysis shall disclose the results
6 of the analysis to a prosecuting attorney who requests the results
7 for use in a criminal prosecution as provided in this subsection. A
8 medical facility or person disclosing information in compliance
9 with this subsection shall not be civilly or criminally liable for
10 making the disclosure.

11 (9) ~~(10)~~—If after an accident the operator of an ORV involved
12 in the accident is deceased, a sample of the decedent's blood shall
13 be withdrawn in a manner directed by the medical examiner for the
14 purpose of determining blood alcohol content or presence of a
15 controlled substance, or both. The medical examiner shall give the
16 results of the chemical analysis to the law enforcement agency
17 investigating the accident, and that agency shall forward the
18 results to the department of state police.

19 Sec. 81137. (1) Except as provided in subsection (2), a person
20 who operates an ORV is considered to have given consent to chemical
21 tests of his or her blood, breath, or urine for the purpose of
22 determining the amount of alcohol or presence of a controlled
23 substance or both in his or her blood, and may be requested by a
24 peace officer to submit to chemical tests of his or her blood,
25 breath, or urine for the purpose of determining the amount of
26 alcohol or presence of a controlled substance or both in his or her
27 blood if:

1 (a) The person is arrested for a violation of section
 2 81134(1), ~~or (2) or 81135 (3), (4), (5), (6), OR (7)~~ or a local
 3 ordinance substantially corresponding to section 81134(1), ~~or (2)~~
 4 ~~or 81135 (3), OR (6)~~.

5 (b) The person is arrested for negligent homicide, ~~or~~
 6 manslaughter, **OR MURDER** resulting from the operation of an ORV, and
 7 the peace officer has reasonable grounds to believe that the person
 8 was operating the ORV ~~while impaired by or under the influence of~~
 9 ~~intoxicating liquor, a controlled substance, or a combination of~~
 10 ~~intoxicating liquor and a controlled substance.~~ **IN VIOLATION OF**
 11 **SECTION 81134.**

12 (2) A person who is afflicted with hemophilia, diabetes, or a
 13 condition requiring the use of an anticoagulant under the direction
 14 of a physician shall not be considered to have given consent to the
 15 withdrawal of blood.

16 Sec. 81140. (1) If a person who refuses to submit to a
 17 chemical test ~~pursuant to~~ **UNDER** section 81138 does not request an
 18 administrative hearing within 14 days after the date of notice
 19 ~~pursuant to~~ **UNDER** section 81139, the secretary of state shall
 20 suspend the person's right to operate an ORV for a period of ~~6~~
 21 ~~months~~ **1 YEAR**, or for a second or subsequent refusal within a
 22 period of 7 years, for ~~1 year~~ **2 YEARS**.

23 (2) If an administrative hearing is requested, the secretary
 24 of state shall appoint a hearing officer to conduct the hearing.
 25 Not less than 10 days' notice of the hearing shall be provided by
 26 mail to the person submitting the request, to the peace officer who
 27 filed the report under section 81138, and, if a prosecuting

1 attorney requests receipt of the notice, to the prosecuting
2 attorney of the county where the arrest was made. The hearing
3 officer may administer oaths and issue subpoenas for the attendance
4 of necessary witnesses, and may grant a reasonable request for an
5 adjournment. The hearing shall cover only the following issues:

6 (a) Whether the peace officer had reasonable grounds to
7 believe that the person committed a crime described in section
8 81137(1).

9 (b) Whether the person was placed under arrest for a crime
10 described in section 81137(1).

11 (c) Whether the person reasonably refused to submit to a
12 chemical test upon request of the officer.

13 (d) Whether the person was advised of his or her rights under
14 section 81136.

15 (3) An administrative hearing conducted under this section is
16 not a contested case for the purposes of chapter 4 of the
17 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
18 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~
19 ~~Compiled Laws 1969 PA 306, MCL 24.271 TO 24.287~~. The hearing shall
20 be conducted in an impartial manner. A final decision or order of a
21 hearing officer shall be made in writing or stated in the record,
22 and shall include findings of fact based exclusively on the
23 evidence presented and matters officially noticed, and shall
24 specify any sanction to be imposed against the person involved. A
25 copy of the final decision or order shall be delivered or mailed
26 immediately to the person and the peace officer.

27 (4) After the administrative hearing, if the person is found

1 to have unreasonably refused to submit to a chemical test, the
2 secretary of state shall suspend the person's right to operate an
3 ORV for a period of ~~6 months~~ **1 YEAR**, or for a second or subsequent
4 refusal within a period of 7 years, for ~~1 year~~ **2 YEARS**. Within 60
5 days after the final decision or order is issued by the hearing
6 officer, the person may file a petition in the circuit court of the
7 county in which the arrest was made to review the suspension. **IF**
8 **AFTER THE HEARING THE PERSON WHO REQUESTED THE HEARING PREVAILS,**
9 **THE PEACE OFFICER WHO FILED THE REPORT UNDER SECTION 81138 MAY,**
10 **WITH THE CONSENT OF THE PROSECUTING ATTORNEY, FILE A PETITION IN**
11 **THE CIRCUIT COURT OF THE COUNTY IN WHICH THE ARREST WAS MADE TO**
12 **REVIEW THE DETERMINATION OF THE HEARING OFFICER AS PROVIDED IN**
13 **SECTION 81140B.** The scope of the court's review shall be limited to
14 the issues provided in section 106 of ~~Act No. 306 of the Public~~
15 ~~Acts of 1969, being section 24.306 of the Michigan Compiled~~
16 ~~Laws.~~ **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL**
17 **24.306.**

18 (5) The circuit court shall enter an order setting the cause
19 for hearing for a date certain that is not more than 60 days after
20 the date of the order. The order, a copy of the petition, which
21 shall include the person's full name, current address, birth date,
22 and driver's license number, and all supporting affidavits shall be
23 served on the secretary of state's office in Lansing not less than
24 50 days before the date set for the hearing. The department shall
25 cause a record to be made of the proceedings held ~~pursuant to~~ **UNDER**
26 subsection (2). The record shall be prepared and transcribed in
27 accordance with section 86 of ~~Act No. 306 of the Public Acts of~~

1 ~~1969, being section 24.286 of the Michigan Compiled Laws THE~~
2 ~~ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.286.~~
3 Upon notification of the filing of a petition for judicial review,
4 the department shall transmit to the court in which the petition
5 was filed, not less than 10 days before the matter is set for
6 review, the original or a certified copy of the official record of
7 the proceedings.

8 SEC. 81140B. (1) A PERSON WHO IS AGGRIEVED BY A FINAL
9 DETERMINATION OF THE SECRETARY OF STATE UNDER THIS PART MAY
10 PETITION FOR A REVIEW OF THE DETERMINATION IN THE CIRCUIT COURT IN
11 THE COUNTY WHERE THE PERSON WAS ARRESTED. THE PETITION SHALL BE
12 FILED WITHIN 63 DAYS AFTER THE DETERMINATION IS MADE EXCEPT THAT,
13 FOR GOOD CAUSE SHOWN, THE COURT MAY ALLOW THE PETITION TO BE FILED
14 WITHIN 182 DAYS AFTER THE DETERMINATION IS MADE. AS PROVIDED IN
15 SECTION 81140, A PEACE OFFICER WHO IS AGGRIEVED BY A DETERMINATION
16 OF A HEARING OFFICER IN FAVOR OF A PERSON WHO REQUESTED A HEARING
17 UNDER SECTION 81140 MAY, WITH THE CONSENT OF THE PROSECUTING
18 ATTORNEY, PETITION FOR REVIEW OF THE DETERMINATION IN THE CIRCUIT
19 COURT IN THE COUNTY WHERE THE ARREST WAS MADE. THE PETITION SHALL
20 BE FILED WITHIN 63 DAYS AFTER THE DETERMINATION IS MADE EXCEPT
21 THAT, FOR GOOD CAUSE SHOWN, THE COURT MAY ALLOW THE PETITION TO BE
22 FILED WITHIN 182 DAYS AFTER THE DETERMINATION IS MADE.

23 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE CIRCUIT
24 COURT SHALL ENTER AN ORDER SETTING THE CAUSE FOR HEARING FOR A DAY
25 CERTAIN THAT IS NOT MORE THAN 63 DAYS AFTER THE DATE OF THE ORDER.
26 THE ORDER, A COPY OF THE PETITION THAT INCLUDES THE PERSON'S FULL
27 NAME, CURRENT ADDRESS, BIRTH DATE, AND DRIVER LICENSE NUMBER, AND

1 ALL SUPPORTING AFFIDAVITS SHALL BE SERVED ON THE SECRETARY OF
2 STATE'S OFFICE IN LANSING NOT LESS THAN 20 DAYS BEFORE THE DATE SET
3 FOR THE HEARING. IF THE PERSON IS SEEKING A REVIEW OF THE RECORD
4 PREPARED UNDER SECTION 81140, THE SERVICE UPON THE SECRETARY OF
5 STATE SHALL BE MADE NOT LESS THAN 50 DAYS BEFORE THE DATE SET FOR
6 THE HEARING.

7 (3) THE COURT MAY TAKE TESTIMONY AND EXAMINE ALL THE FACTS AND
8 CIRCUMSTANCES INCIDENT TO THE ORDER THAT THE PERSON NOT OPERATE AN
9 ORV IN THIS STATE. THE COURT MAY AFFIRM, MODIFY, OR SET ASIDE THE
10 ORDER. THE ORDER OF THE COURT SHALL BE DULY ENTERED, AND THE
11 PETITIONER SHALL FILE A CERTIFIED COPY OF THE ORDER WITH THE
12 SECRETARY OF STATE'S OFFICE IN LANSING WITHIN 7 DAYS AFTER ENTRY OF
13 THE ORDER.

14 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN REVIEWING
15 A DETERMINATION UNDER SECTION 81140, THE COURT SHALL CONFINE ITS
16 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
17 81140 TO DETERMINE WHETHER THE HEARING OFFICER PROPERLY DETERMINED
18 THE ISSUES ENUMERATED IN SECTION 81140.

19 (5) IN REVIEWING A DETERMINATION RESULTING IN ISSUANCE OF AN
20 ORDER UNDER SECTION 81134, THE COURT SHALL CONFINE ITS
21 CONSIDERATION TO A REVIEW OF THE RECORD PREPARED UNDER SECTION
22 81140. THE COURT SHALL SET ASIDE THE DETERMINATION OF THE SECRETARY
23 OF STATE ONLY IF SUBSTANTIAL RIGHTS OF THE PETITIONER HAVE BEEN
24 PREJUDICED BECAUSE THE DETERMINATION IS ANY OF THE FOLLOWING:

25 (A) IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, THE
26 STATE CONSTITUTION OF 1963, OR A STATUTE.

27 (B) IN EXCESS OF THE SECRETARY OF STATE'S STATUTORY AUTHORITY

1 OR JURISDICTION.

2 (C) MADE UPON UNLAWFUL PROCEDURE RESULTING IN MATERIAL
3 PREJUDICE TO THE PETITIONER.

4 (D) NOT SUPPORTED BY COMPETENT, MATERIAL, AND SUBSTANTIAL
5 EVIDENCE ON THE WHOLE RECORD.

6 (E) ARBITRARY, CAPRICIOUS, OR CLEARLY AN ABUSE OR UNWARRANTED
7 EXERCISE OF DISCRETION.

8 (F) AFFECTED BY OTHER SUBSTANTIAL AND MATERIAL ERROR OF LAW.

9 Sec. 81141. (1) A peace officer who has reasonable cause to
10 believe that a person was operating an ORV and that the person by
11 the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor may have affected
12 his or her ability to operate the ORV, may require the person to
13 submit to a preliminary chemical breath analysis.

14 (2) A peace officer may arrest a person based in whole or in
15 part upon the results of a preliminary chemical breath analysis.

16 (3) The results of a preliminary chemical breath analysis
17 shall be admissible in a criminal prosecution for a crime
18 enumerated in section 81136(1) or in an administrative hearing held
19 under section 81140, solely to assist the court or hearing officer
20 in determining a challenge to the validity of an arrest. This
21 subsection does not limit the introduction of other competent
22 evidence offered to establish the validity of an arrest.

23 (4) A person who submits to a preliminary chemical breath
24 analysis ~~shall remain~~ **REMAINS** subject to the requirements of
25 sections 81136, 81137, 81138, 81139, and 81140 for the purposes of
26 chemical tests described in those sections.

27 (5) A person who refuses to submit to a preliminary chemical

1 breath analysis upon a lawful request by a peace officer is
2 responsible for a state civil infraction and may be ordered to pay
3 a civil fine of not more than ~~\$100.00~~ **\$500.00**.

4 Sec. 81144. If a peace officer has reasonable cause to believe
5 that a person was, at the time of an accident, the operator of an
6 ORV involved in the accident and was operating the ORV while under
7 the influence of an ~~intoxicating~~ **ALCOHOLIC** liquor, a controlled
8 substance as defined in section 7104 of the public health code, ~~Act~~
9 ~~No. 368 of the Public Acts of 1978, being section 333.7104 of the~~
10 ~~Michigan Compiled Laws 1978 PA 368, MCL 333.7104~~, or a combination
11 of ~~intoxicating~~ **ALCOHOLIC** liquor and a controlled substance, or was
12 operating the ORV while his or her ability to operate an ORV was
13 impaired due to the consumption of ~~intoxicating~~ **ALCOHOLIC** liquor, a
14 controlled substance, or a combination of ~~intoxicating~~ **ALCOHOLIC**
15 liquor and a controlled substance, the peace officer may arrest the
16 alleged operator of the ORV without a warrant.

17 Enacting section 1. Section 81135 of the natural resources and
18 environmental protection act, 1994 PA 451, MCL 324.81135, is
19 repealed.