

A Brief Synopsis of Provisions of Mass. OHV Law With Emphasis on Enforcement

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The new OHV Law, Chapter 202 of the Acts of 2010 (its legislative title), primarily affects M.G. L. Chapter 90B and related laws, governing off-road recreational and utility vehicles. The law also strengthens M.G.L. Chapter 266, Section 121A, which prohibits the unauthorized use of anything with an internal combustion engine on public or private property. There are other laws which may affect the use of OHV's, summarized in *Off-Highway Vehicle Regulations Enforcement and Management Plan Recommendations*, prepared for the Massachusetts Forest and Park Friends Network in 2011.

The Law: Chapter 90B; Regulations: 323 CMR 3:00

For those of us primarily interested in enforcement, the new OHV law makes the following changes to Chapter 90B:

1. **Section 25. 323 CMR 3:03 2(b)**. It is illegal to operate an OHV on a **public way** (weather it is maintained or unmaintained), except on a marked OHV crossing as part of a marked and designated trail system. (Only a snowmobile may cross on an unmarked crossing.) To cross a public way, the operator must be age 16.5 and licensed or supervised by a person age 18 or older.
2. **Section 26 (e). 323 CMR 3:03 2(b)**. It is illegal to operate an OHV on any **public property** (federal, state, municipal; park, trail, water supply land, etc.), if it is not on a marked and authorized trail.
3. **Section 26 (e). 323 CMR 3:03 (2)(a)**. It is illegal to operate an OHV on **private property** except if:
A) the property is owned by the operator or a member of his family; B) The operator is part of a club or group that has permission to use trails on the property, or; C) The operator has the owner's written permission to ride on the property and this writing is in his possession when riding.
4. **Section 22. 323 CMR 3:03 (12)**. **All OHV's must be registered** (except those used strictly on a farm or business while on private property), and the registration must be displayed on the vehicle.
5. **Section 26(a)(1)&(2). 323 CMR 3:03 (1)(b)(c)(d)**. **No person under the age of 14 may ride an OHV**, except as a participant in a municipally "sanctioned event" and under the supervision of a person age 18 or older. Minors under age 16 must use a properly sized and/or powered OHV. Minors age 10 – 14 participating in or training for a "sanctioned event" may operate under adult supervision. (Exceptions for youngest age of operation: Age 12 for Dirt Bikes; Age 10 for Snowmobiles.)
6. **Section 21. 323 CMR 3:03 (1)(a)**. Operators under the age of 18 must complete a vehicle safety and responsibility course.

7. **Section 26(f). 323 CMR 3:03 (7)(8).** There are specific penalties for **illegal operation of an OHV on certain sensitive lands**, both public and private. Such sensitive areas include reforested and planted areas, DCR and DFG land, wetlands and other waters, priority habitats, public water supply land, and historic or archeological sites. Harassing wildlife and operating within 300 feet of a deer yard are also prohibited. In addition to monetary penalties, damages may be requested and awarded, as part of the criminal proceeding. (Treble damages can be awarded for damage to agricultural land, per M.G.L. Ch. 242, s. 7B.)

8. **323 CMR 3:03 (3).** It is illegal to operate within 150 feet of an occupied residence, without the owner's permission.

9. **Section 26(b). Section 26E. 303 CMR (1)(e)(f).** In the case of **illegal use of an OHV by a minor**, the adult who provides the OHV to the minor is liable for criminal penalties and damages. A person who provides an OHV to an adult shall be liable with the operator for all fines, penalties and damages as a result of the operation of the vehicle.

10. **Section 26C.** An **OHV may be confiscated/forfeited**, in the case of certain very serious offenses, such as vehicular homicide, reckless driving, leaving the scene of an accident causing bodily injury and driving under the influence. An OHV may also be confiscated if the operator has been convicted of multiple lesser offenses.

Chapter 90B: Enforcement.

A. Who can Enforce?

Chapter 90B may be enforced by any law enforcement officer. This includes municipal and state police officers, Environmental Police Officers and certain State Park Rangers if they have appropriate law enforcement training. Presumably, the state OHV law could be enforced on federal land by federal enforcement officers.

B. Jurisdiction

State Environmental Police have authority to enforce environmental laws (including Chapter 90B) on state, municipal and private property. Local law enforcement officers can enforce within the municipality.

C. Local Law Enforcement

On private land, including land owned by NGO conservation organizations, most enforcement will be by the local police. How can we get better enforcement by local police departments?

1. Simplify Explanation of Law's Provisions in Training and Publications

Local police are familiar with Chapter 90A, governing the use of motor vehicles on public ways. Certain sections of Chapter 90B track similar provisions of Chapter 90A (governing operating under the influence, without registration, leaving the scene of an accident, vehicular homicide), but other provisions must be made clear.

For example, under the old Chapter 90B, it was not clear that OHV's could not operate on public ways or on public property. It would be simple to make this very clear. And if local police enforce the law

prohibiting OHV's on public ways and public property, this could lead to less illegal operation on contiguous private property.

2. Use Fines as Incentives

Make sure municipal legislators and police know that their municipality will get the benefit of fines.

3. Emphasize Property Damage

Illegal OHV use is not a victimless crime. Testimonials about the damage caused by OHV use from managers of municipal water supply land, local farmers and forest owners and even sportsmen's clubs should be publicized in pamphlets and used in training materials.

D. State Environmental Police

1. What is the policy regarding enforcement of OHV laws on state land/on municipal and private land?
2. Do municipal police departments cooperate with EPO enforcement efforts?
3. Are limited EPO personnel being used as effectively as possible to enforce the law?

M.G.L. Chapter 266, Section 121A

Motor Vehicle Trespass

This law prohibits the unauthorized use of an internal combustion engine (including a motor vehicle) on public or private land without the owner's written permission in the operator's possession. This is a criminal trespass law. It would cover any situation where an OHV is being operated without permission. Chapter 202 increased the maximum fine for violation to \$500.

Enforcement

1. Role of Local Police

Unlike Chapter 90B, which can only be enforced by a law enforcement officer, **a private citizen can bring a criminal trespass complaint for violation of the motor vehicle trespass law**, M.G.L. Chapter 266, Section 121A. But you must be able to identify the operator. Often, local law enforcement will have to determine the operator's identity, even if you can track the vehicle to the owner's house. The police can apply for a criminal complaint against the operator in the District Court, and this would be preferable. But local police are sometimes not willing to do this, where they consider the offense to be less serious.

2. How a Private Citizen can bring a Criminal Complaint

If you can identify the violator, you can go to the Clerk's Office of your local District Court and request an **Application for a Criminal Complaint**. The alleged violator will be served with notice of the complaint, together with a date for a **Clerk's Hearing**. This hearing is an opportunity for the property owner to present evidence (including photographs of tracks, property damage, and evidence of the operator's identity) sufficient for the clerk to find **probable cause to issue a criminal complaint**. The Clerk has discretion to suggest a **mediation**, which could lead to resolution of the matter, without the issuance of a complaint. You should only agree to this if the result will be that another violation will automatically result in the **issuance of a complaint**. Once issued, the complaint is scheduled for a **judicial hearing**. You will have to discuss the case with the prosecutor. Be sure to emphasize the

damage and headaches caused by this violation of your property rights. Once again, a resolution short of conviction may be suggested (such as continuance with or without a finding), but you should try to insure that a conviction and fine will result if there is another violation. In the case of a **judicial resolution short of a conviction**, the violator will be on a kind of unsupervised probation, so try to get an introduction to the **Probation Office** before you leave the courthouse. You will need to notify the Probation Office if there is another violation. District courts are busy places and you will have to assert yourself to insure that you get the result you want. Then try to publicize it (without including the offender's name if not convicted or a minor).

M.G.L. Ch.131 S. 40

Wetlands Protection Act; Rivers Protection Act

It is illegal to ride an OHV in wetland resource areas or through rivers and streams. This is a frequently occurring violation and one which sellers of ATV's and other OHV's frequently use to illustrate the fun of riding. Damage to these resources can result in a \$25,000 fine and imprisonment.