

AMENDMENTS TO SENATE BILL NO. 773

Sponsor: REPRESENTATIVE HENNESSEY

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1 Amend Bill, page 1, lines 1 through 10, by striking out all
2 of said lines and inserting
3 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
4 Statutes, in general provisions, further providing for
5 definitions; in licensing of drivers, further providing for
6 the offense of driving while operating privilege is suspended
7 or revoked; in driving after imbibing alcohol or utilizing
8 drugs, further providing for grading, for penalties, for
9 ignition interlock, for prior offenses, for Accelerated
10 Rehabilitative Disposition and for mandatory sentencing and
11 providing for 24/7 sobriety monitoring program; and providing
12 for a study of driving under the influence courts.
13 This act may be referred to as Deana's Law.

14 Amend Bill, page 1, lines 13 through 20; pages 2 through 8,
15 lines 1 through 30; page 9, lines 1 through 28; by striking out
16 all of said lines on said pages and inserting

17 Section 1. Section 102 of Title 75 of the Pennsylvania
18 Consolidated Statutes is amended by adding definitions to read:
19 § 102. Definitions.

20 Subject to additional definitions contained in subsequent
21 provisions of this title which are applicable to specific
22 provisions of this title, the following words and phrases when
23 used in this title shall have, unless the context clearly
24 indicates otherwise, the meanings given to them in this section:

25 * * *

26 "Continuous alcohol monitoring device." A monitoring device
27 or instrument that:

28 (1) is attached to an individual;

29 (2) is designed to automatically and frequently test the
30 presence of alcohol in the individual regardless of the
31 method by which the device or instrument is attached to the
32 individual;

33 (3) detects the presence of alcohol; and

34 (4) detects an attempt to tamper with, obstruct or
35 remove the device or instrument.

1 * * *

2 "Remote breath testing device." An unsupervised mobile
3 breath testing device that:

4 (1) is not affixed to a motor vehicle;

5 (2) has the ability to confirm the identity and location
6 of an individual; and

7 (3) detects the presence of alcohol.

8 * * *

9 "Substance monitoring program." The court-ordered use of or
10 participation in any one or more of the following as a condition
11 of bail, probation or parole consistent with section 3818
12 (relating to substance monitoring program):

13 (1) A continuous alcohol monitoring device.

14 (2) A remote breath testing device.

15 (3) Random drug testing or any other controlled
16 substance monitoring technology or device as determined by
17 the court.

18 * * *

19 Section 2. Section 1543(b) (1.1) (i) of Title 75 is amended to
20 read:

21 § 1543. Driving while operating privilege is suspended or
22 revoked.

23 * * *

24 (b) Certain offenses.--

25 * * *

26 (1.1) (i) A person who has an amount of alcohol by
27 weight in his blood that is equal to or greater than .02%
28 at the time of testing or who at the time of testing has
29 in his blood any amount of a Schedule I or nonprescribed
30 Schedule II or III controlled substance, as defined in
31 the act of April 14, 1972 (P.L.233, No.64), known as The
32 Controlled Substance, Drug, Device and Cosmetic Act, or
33 its metabolite or [who refuses testing of blood or
34 breath] who refuses testing of breath under section 1547
35 (relating to chemical testing to determine amount of
36 alcohol or controlled substance) or chemical testing of
37 blood pursuant to a valid search warrant, court order or
38 any other basis permissible by the Constitution of the
39 United States and the Constitution of Pennsylvania, and
40 who drives a motor vehicle on any highway or trafficway
41 of this Commonwealth at a time when the person's
42 operating privilege is suspended or revoked as a
43 condition of acceptance of Accelerated Rehabilitative
44 Disposition for a violation of section 3802 or former
45 section 3731 or because of a violation of section 1547(b)
46 (1) or 3802 or former section 3731 or is suspended under
47 section 1581 for an offense substantially similar to a
48 violation of section 3802 or former section 3731 shall,
49 upon a first conviction, be guilty of a summary offense
50 and shall be sentenced to pay a fine of \$1,000 and to
51 undergo imprisonment for a period of not less than 90

1 days.

2 * * *

3 Section 3. Section 3803(b)(3) and (4.1) of Title 75 are
4 amended to read:

5 § 3803. Grading.

6 * * *

7 (b) Other offenses.--

8 * * *

9 (3) An individual who violates section 3802(a)(1) where
10 there was an accident resulting in bodily injury, serious
11 bodily injury or death of any person or in damage to a
12 vehicle or other property, or who violates section 3802(b),
13 (e) or (f) and who has two prior offenses commits a
14 [misdemeanor of the first] felony of the third degree.

15 * * *

16 (4.1) An individual who violates section 3802(a)(1)
17 where the individual refused testing of breath or chemical
18 testing pursuant to a valid search warrant, court order or
19 any other basis permissible by the Constitution of the United
20 States and the Constitution of Pennsylvania, or who violates
21 section 3802(c) or (d) [and who] commits:

22 (i) A felony of the third degree if the individual
23 has two [or more] prior offenses [commits a felony of the
24 third degree].

25 (ii) A felony of the second degree if the individual
26 has three prior offenses.

27 (iii) A felony of the first degree if the individual
28 has four or more prior offenses.

29 * * *

30 Section 4. Section 3804(e)(2) of Title 75 is amended and the
31 section is amended by adding a subsection to read:

32 § 3804. Penalties.

33 * * *

34 (c.2) Consecutive sentence.--A sentence imposed upon an
35 individual under this section who has two or more prior offenses
36 shall be served consecutively to any other sentence the
37 individual is serving and to any other sentence being then
38 imposed by the court.

39 * * *

40 (e) Suspension of operating privileges upon conviction.--

41 * * *

42 (2) Suspension under paragraph (1) shall be in
43 accordance with the following:

44 * * *

45 (ii) 18 months for a misdemeanor of the first degree
46 or felony [of the third degree] under this chapter.

47 * * *

48 Section 5. Section 3805(c) and (h.2) of Title 75 are amended
49 and the section is amended by adding a subsection to read:

50 § 3805. Ignition interlock.

51 * * *

1 (c) Issuance of unrestricted license.--[One year from the
2 date of issuance of an ignition interlock restricted license
3 under this section, if] If otherwise eligible, a person may be
4 issued a replacement license under section 1951(d) that does not
5 contain the ignition interlock system restriction. The
6 department shall not issue an unrestricted license until a
7 person has presented all of the following:

8 (1) Proof that the person has completed the ignition
9 interlock restricted license period under [this section]
10 subsection (c.1).

11 (2) Certification by the vendor that provided the
12 ignition interlock device that the person has complied with
13 subsection (h.2).

14 (c.1) Restricted license period.--An individual may be
15 issued an unrestricted license under subsection (c) after a
16 period of time as follows:

17 (1) Except as provided under paragraph (2), one year
18 from the date of issuance of the ignition interlock
19 restricted license.

20 (2) Two years from the date of issuance of the ignition
21 interlock restricted license in the case of an individual
22 convicted of an offense under section 3802 who has two or
23 more prior offenses.

24 * * *

25 (h.2) Declaration of compliance.--Restrictions imposed under
26 section 1556 [(relating to ignition interlock limited license)]
27 shall remain in effect until the department receives a
28 declaration from the person's ignition interlock device vendor,
29 in a form provided or approved by the department, certifying
30 that the following incidents have not occurred in the two
31 consecutive months prior to the date entered on the certificate,
32 and for the purposes of a suspension imposed under section
33 3807(d) (2), the person's ignition interlock device vendor shall
34 certify the following incidents have not occurred in the prior
35 30 days entered on the certificate:

36 (1) An attempt to start the vehicle with a breath
37 alcohol concentration of 0.08% or more, not followed within
38 10 minutes by a subsequent attempt with a breath alcohol
39 concentration lower than 0.08%.

40 (2) Failure to take or pass any required retest.

41 (3) Failure of the person to appear at the ignition
42 interlock system vendor when required for maintenance,
43 repair, calibration, monitoring, inspection or replacement of
44 the device such that the ignition interlock system no longer
45 functions as required under subsection (h).

46 * * *

47 Section 6. Section 3806(b) (1) of Title 75 is amended to
48 read:

49 § 3806. Prior offenses.

50 * * *

51 (b) Timing.--

1 (1) For purposes of sections 1553(d.2) (relating to
2 occupational limited license), 1556 (relating to ignition
3 interlock limited license), 3803 (relating to grading), 3804
4 (relating to penalties) [and], 3805 (relating to ignition
5 interlock), 3815 (relating to mandatory sentencing) and 3818
6 (relating to substance monitoring program), the prior offense
7 must have occurred:

8 (i) within 10 years prior to the date of the offense
9 for which the defendant is being sentenced; or

10 (ii) on or after the date of the offense for which
11 the defendant is being sentenced.

12 * * *

13 Section 7. Section 3807(a) of Title 75 is amended by adding
14 a paragraph to read:

15 § 3807. Accelerated Rehabilitative Disposition.

16 (a) Eligibility.--

17 * * *

18 (2.1) Notwithstanding the procedures for Accelerated
19 Rehabilitative Disposition for other crimes, the attorney for
20 the Commonwealth shall not submit a charge brought under this
21 chapter for Accelerated Rehabilitative Disposition unless
22 all of the following apply:

23 (i) The defendant admits that the Commonwealth's
24 evidence would prove the elements beyond a reasonable
25 doubt under section 3802.

26 (ii) The defendant agrees that the defendant's
27 admission may be used as a prior conviction for the
28 purpose of increasing the grading and penalty of any
29 subsequent offense under this title.

30 (iii) The defendant knowingly and voluntarily waives
31 the defendant's right to challenge the use of the
32 Accelerated Rehabilitative Disposition as a prior
33 conviction for the purpose of enhancing the grading and
34 sentencing of any subsequent offense under this title.

35 Section 8. Section 3815(b) (2) of Title 75 is amended and the
36 section is amended by adding a subsection to read:

37 § 3815. Mandatory sentencing.

38 * * *

39 (b) Parole.--

40 * * *

41 (2) The following shall be conditions of parole:

42 (i) If the offender is not determined under the
43 procedures set forth in section 3814 to be addicted to
44 alcohol or another substance, the offender must refrain
45 from:

46 (A) the use of illegal controlled substances;

47 and

48 (B) the abuse of prescription drugs, over-the-
49 counter drugs or any other substances.

50 (ii) If the offender is determined under the
51 procedures set forth in section 3814 to be addicted to

1 alcohol or another substance, the offender must do all of
2 the following:

3 (A) Refrain from:

4 (I) the use of alcohol or illegal controlled
5 substances; and

6 (II) the abuse of prescription drugs, over-
7 the-counter drugs or any other substances.

8 (B) Participate in and cooperate with drug and
9 alcohol addiction treatment under subsection (c).

10 (iii) In addition to any other condition or
11 restriction imposed, an individual who violates section
12 3802(a)(1) where the individual refused testing or breath
13 or chemical testing pursuant to a valid search warrant,
14 court order or any other basis permissible by the
15 Constitution of the United States and the Constitution of
16 Pennsylvania or who violates section 3802(c) or (d) and
17 who has two or more prior offenses shall be ordered by
18 the court to participate in a substance monitoring
19 program under section 3818.

20 (b.1) Probation.--In addition to any other condition or
21 restriction imposed, an individual who violates section 3802(a)
22 (1) where the individual refused testing of breath or chemical
23 testing pursuant to a valid search warrant, court order or any
24 other basis permissible by the Constitution of the United States
25 and the Constitution of Pennsylvania or who violates section
26 3802(c) or (d) and who has two or more prior offenses shall be
27 ordered by the court to participate in a substance monitoring
28 program as a condition of probation under section 3818.

29 * * *

30 Section 9. Title 75 is amended by adding a section to read:
31 § 3818. Substance monitoring program.

32 (a) Mandatory participation.--A court shall require an
33 individual to participate in a substance monitoring program as
34 follows:

35 (1) As a condition of probation or parole, in addition
36 to any other condition or restriction imposed, a court shall
37 order an individual to participate in a substance monitoring
38 program for one year or for the duration of the probation or
39 parole, whichever is less, in all of the following
40 circumstances where the individual has two or more prior
41 offenses:

42 (i) The individual violates section 3802(c) or (d)
43 (relating to driving under influence of alcohol or
44 controlled substance).

45 (ii) The individual violates section 3802(a)(1) and
46 the individual refused testing of breath or chemical
47 testing pursuant to a valid search warrant, court order
48 or any other basis permissible by the Constitution of the
49 United States and the Constitution of Pennsylvania.

50 (2) As a condition of bail, in addition to any other
51 condition or restriction imposed, a court shall order an

1 individual to participate in a substance monitoring program
2 for no less than 90 days in all of the following
3 circumstances:

4 (i) The individual is pending adjudication for a
5 violation of section 3802 and has three or more prior
6 offenses.

7 (ii) The individual is pending adjudication for a
8 violation of section 3802 and has a combination of prior
9 offenses and pending adjudications for a violation of
10 section 3802 equal to three or more.

11 (b) Evaluation required.--In addition to any other condition
12 or restriction imposed, an individual who is not required to
13 participate in a substance monitoring program under subsection
14 (a) shall be evaluated by a court to determine whether, at the
15 court's discretion, the individual may be ordered to participate
16 in a substance monitoring program as follows:

17 (1) As a condition of probation or parole where the
18 individual violates section 3802 and has one or more prior
19 offenses.

20 (2) As a condition of bail where the individual is
21 pending adjudication for a violation of section 3802 and has
22 one or more prior offenses.

23 (3) As a condition of bail where the individual is
24 pending adjudication concurrently for two or more violations
25 of section 3802.

26 (c) Program requirements.--

27 (1) Except as provided in paragraph (2), when
28 determining the monitoring devices, technologies or testing
29 requirements to be required as part of a substance monitoring
30 program, the court shall have the discretion to determine the
31 devices, technologies and testing requirements to be used
32 based upon the individual's:

33 (i) prior offenses;

34 (ii) most recent violation of section 3802;

35 (iii) any pending adjudication for a violation of
36 section 3802; and

37 (iv) any other factor deemed appropriate by the
38 court.

39 (2) The court shall require the use of a continuous
40 alcohol monitoring device as part of a substance monitoring
41 program for an individual participating in a substance
42 monitoring program under subsection (a) as follows:

43 (i) if the individual violated section 3802(c);

44 (ii) if the individual has a pending adjudication
45 for a violation of section 3802(c);

46 (iii) if the individual has a prior offense for a
47 violation of section 3802(b) or (c);

48 (iv) if the individual violated section 3802(a)(1)
49 and refused testing of breath or chemical testing
50 pursuant to a valid search warrant, court order or any
51 other basis permissible by the Constitution of the United

1 States and the Constitution of Pennsylvania; or

2 (v) if the individual is pending adjudication for a
3 violation of section 3802(a)(1) and refused testing for
4 breath or chemical testing pursuant to a valid search
5 warrant, court order or any other basis permissible by
6 the Constitution of the United States and the
7 Constitution of Pennsylvania.

8 (3) The court shall require a remote breath testing
9 device in lieu of a continuous alcohol monitoring device
10 required under paragraph (2) if the individual is unable to
11 use a continuous alcohol monitoring device due to a physical
12 limitation or medical condition as determined by the court.

13 (d) Determination and costs to be paid.--

14 (1) If the court orders an individual to participate in
15 a substance monitoring program, the individual shall pay for
16 costs associated with the individual's participation in the
17 substance monitoring program, including costs associated with
18 any required device or technology.

19 (2) The court may order the county to finance costs
20 associated with the substance monitoring program if the
21 court, at any time, determines the individual lacks the
22 financial ability to pay costs associated with the
23 individual's participation in a substance monitoring program.

24 (e) Financial inquiry.--

25 (1) A court determination under subsection (d) shall be
26 based on an appropriate inquiry into the financial
27 circumstances of the individual required to participate in a
28 substance monitoring program and an affidavit or certificate,
29 signed by that individual, demonstrating financial inability
30 to pay all or part of the costs associated with the substance
31 monitoring program.

32 (2) A court may reassess the individual's ability to pay
33 at any time during the duration of the substance monitoring
34 program and make subsequent appropriate inquiries into the
35 financial circumstances of the individual.

36 (f) Prohibitions.--An individual ordered to participate in a
37 substance monitoring program is prohibited from all of the
38 following for the duration of the substance monitoring program:

39 (1) Imbibing alcohol, using controlled substances, or
40 both, as determined by the court.

41 (2) Tampering with any device or technology associated
42 with the substance monitoring program.

43 (3) Failing to comply with any other requirement ordered
44 by the court as part of the substance monitoring program.

45 (g) Construction.--Nothing in this section shall be
46 construed to prohibit a court from:

47 (1) Ordering an individual pending adjudication for a
48 single violation of section 3802 with no prior offenses to
49 participate in a substance monitoring program as a condition
50 of bail.

51 (2) Ordering an individual convicted of a violation of

1 section 3802 who has no prior offenses to participate in a
2 substance monitoring program as a condition of probation or
3 parole.
4 Section 10. This act shall take effect in 120 days.