
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 133 Session of
2003

INTRODUCED BY PRIME SPONSOR WITHDREW, COSTA, LAVALLE, DENT AND
LOGAN, FEBRUARY 10, 2003

SENATE AMENDMENTS TO HOUSE AMENDMENTS, NOVEMBER 18, 2004

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 75
2 (Vehicles) of the Pennsylvania Consolidated Statutes, further
3 providing for jurisdiction and venue, ~~for sentence of~~ <—
4 ~~intermediate punishment, for county intermediate punishment~~
5 ~~programs~~, for chemical testing to determine amount of alcohol
6 or controlled substance, for Accelerated Rehabilitative
7 Disposition, for grading, for penalties, for prior offenses,
8 for illegally operating a motor vehicle not equipped with
9 ignition interlock, for mandatory sentencing and for rights
10 and liabilities of minors.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 1515(a) of Title 42 of the Pennsylvania
14 Consolidated Statutes is amended by adding a paragraph to read:

15 § 1515. Jurisdiction and venue.

16 (a) Jurisdiction.--Except as otherwise prescribed by general
17 rule adopted pursuant to section 503 (relating to reassignment
18 of matters), district justices shall, under procedures
19 prescribed by general rule, have jurisdiction of all of the
20 following matters:

21 * * *

1 (5.1) Offenses under 75 Pa.C.S. § 3808 (relating to
2 illegally operating a motor vehicle not equipped with
3 ignition interlock).

4 * * *

5 ~~Section 2. Sections 9763 heading, (a) and (c) and 9804(b) of~~ <—
6 ~~Title 42, amended September 30, 2003 (P.L.120, No.24), are~~
7 ~~amended to read:~~

8 ~~§ 9763. Sentence of county intermediate punishment.~~

9 ~~(a) General rule. In imposing a sentence of county~~
10 ~~intermediate punishment, the court shall specify at the time of~~
11 ~~sentencing the length of the term for which the defendant is to~~
12 ~~be in [an] a county intermediate punishment program established~~
13 ~~under Chapter 98 (relating to county intermediate punishment) or~~
14 ~~a combination of intermediate punishment programs. The term may~~
15 ~~not exceed the maximum term for which the defendant could be~~
16 ~~confined and the program to which the defendant is sentenced.~~
17 ~~The court may order a defendant to serve a portion of the~~
18 ~~sentence under section 9755 (relating to sentence of partial~~
19 ~~confinement) or 9756 (relating to sentence of total confinement)~~
20 ~~and to serve a portion in [an] a county intermediate punishment~~
21 ~~program or a combination of county intermediate punishment~~
22 ~~programs.~~

23 * * *

24 ~~(c) Restriction.—~~

25 ~~(1) [A defendant subject to] Any person receiving a~~
26 ~~penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to~~
27 ~~driving while operating privilege is suspended or revoked),~~
28 ~~former 75 Pa.C.S. § 3731 (relating to driving under the~~
29 ~~influence of alcohol or controlled substance) or 75 Pa.C.S. §~~
30 ~~3804 (relating to penalties) for a first, second or third~~

1 ~~offense may only be sentenced to intermediate punishment[:~~

2 ~~(i) for a first, second or third offense under 75~~
3 ~~Pa.C.S. Ch. 38 (relating to driving after imbibing~~
4 ~~alcohol or utilizing drugs); and~~

5 ~~(ii)] after undergoing an assessment under 75~~
6 ~~Pa.C.S. § 3814 (relating to drug and alcohol~~
7 ~~assessments).~~

8 ~~(2) If the defendant is determined to be in need of drug~~
9 ~~and alcohol treatment, the defendant may only be sentenced to~~
10 ~~county intermediate punishment which includes participation~~
11 ~~in drug and alcohol treatment under 75 Pa.C.S. § 3815(c)~~
12 ~~(relating to mandatory sentencing). [Such treatment may be~~
13 ~~combined with house arrest with electronic surveillance or a~~
14 ~~partial confinement program such as work release, a work camp~~
15 ~~or a halfway facility.] The defendant may only be sentenced~~
16 ~~to county intermediate punishment in:~~

17 ~~(i) a residential inpatient program or a residential~~
18 ~~rehabilitative center;~~

19 ~~(ii) house arrest and electronic surveillance;~~

20 ~~(iii) partial confinement programs, such as work~~
21 ~~release, work camps and halfway facilities; or~~

22 ~~(iv) any combination of the programs set forth in~~
23 ~~this subsection.~~

24 ~~(3) If the defendant is determined not to be in need of~~
25 ~~drug and alcohol treatment, the defendant may only be~~
26 ~~sentenced to county intermediate punishment [by] in:~~

27 ~~(i) house arrest [or] and electronic surveillance;~~

28 ~~(ii) partial confinement programs such as work~~
29 ~~release, work camps and halfway facilities; or~~

30 ~~(iii) any combination of the programs set forth in~~

1 ~~this subsection.~~

2 ~~* * *~~

3 ~~§ 9804. County intermediate punishment programs.~~

4 ~~* * *~~

5 ~~(b) Eligibility.—~~

6 ~~(1) No person other than the eligible offender shall be~~
7 ~~sentenced to a county intermediate punishment program.~~

8 ~~(2) The Pennsylvania Commission on Sentencing shall~~
9 ~~employ the term "eligible offender" to further identify~~
10 ~~offenders who would be appropriate for participation in~~
11 ~~county intermediate punishment programs. In developing the~~
12 ~~guidelines, the commission shall give primary consideration~~
13 ~~to protection of the public safety.~~

14 ~~(4) (i) Any person receiving a penalty imposed pursuant~~
15 ~~to 75 Pa.C.S. § 1543(b) (relating to driving while~~
16 ~~operating privilege is suspended or revoked), 3804~~
17 ~~(relating to penalties) or 3808(a)(2) (relating to~~
18 ~~illegally operating a motor vehicle not equipped with~~
19 ~~ignition interlock) shall undergo an assessment under 75~~
20 ~~Pa.C.S. § 3814 (relating to drug and alcohol~~
21 ~~assessments).~~

22 ~~(ii) If the defendant is determined to be in need of~~
23 ~~drug and alcohol treatment, a sentence to county~~
24 ~~intermediate punishment shall include participation in~~
25 ~~drug and alcohol treatment under 75 Pa.C.S. § 3815(c)~~
26 ~~(relating to mandatory sentencing). [Such treatment may~~
27 ~~be combined with house arrest with electronic~~
28 ~~surveillance or a partial confinement program such as~~
29 ~~work release, a work camp or a halfway facility.] The~~
30 ~~defendant may only be sentenced to county intermediate~~

~~punishment in:~~

~~(A) a residential inpatient program or a
residential rehabilitative center;~~

~~(B) house arrest and electronic surveillance;~~

~~(C) partial confinement programs such as work
release, work camps and halfway facilities; or~~

~~(D) any combination of the programs set forth in
this subparagraph.~~

~~(iii) If the defendant is determined not to be in
need of drug and alcohol treatment, the defendant may
only be sentenced to county intermediate punishment
program in:~~

~~(A) house arrest and electronic surveillance;~~

~~(B) partial confinement programs such as work
release, work camps and halfway facilities; or~~

~~(C) any combination of the programs set forth in
this [paragraph] subparagraph.~~

~~(5) A defendant subject to 75 Pa.C.S. § 3804 (relating to
penalties) may only be sentenced to county intermediate
punishment for a first, second or third offense under 75
Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or
utilizing drugs).~~

~~Section 3. Sections 1547(b)(2), 1552 and 3803 of Title 75,
amended or added September 30, 2003 (P.L.120, No.24), are
amended to read:~~

SECTION 2. SECTIONS 1547(B)(2), 1552 AND 3803 OF TITLE 75
ARE AMENDED TO READ:

§ 1547. Chemical testing to determine amount of alcohol or
controlled substance.

* * *

1 (b) Suspension for refusal.--

2 * * *

3 (2) It shall be the duty of the police officer to inform
4 the person that:

5 (i) the person's operating privilege will be
6 suspended upon refusal to submit to chemical testing; and

7 (ii) if the person refuses to submit to chemical
8 testing, upon conviction[, plea or adjudication of
9 delinquency] or plea for violating section [3802(a)]
10 3802(a)(1), the person will be subject to the penalties
11 provided in section 3804(c) (relating to penalties).

12 * * *

13 § 1552. Accelerated Rehabilitative Disposition.

14 The court of common pleas in each judicial district and the
15 Municipal Court of Philadelphia shall establish and implement a
16 program for Accelerated Rehabilitative Disposition for persons
17 charged with a violation of section 3802 (relating to driving
18 under influence of alcohol or controlled substance) in
19 accordance with the provisions of this chapter, Chapter 38
20 (relating to driving after imbibing alcohol or utilizing drugs)
21 and rules adopted by the Supreme Court.

22 § 3803. Grading.

23 (a) Basic offenses.--Notwithstanding the provisions of
24 subsection (b):

25 (1) An individual who violates section 3802(a) (relating
26 to driving under influence of alcohol or controlled
27 substance) and has no more than one prior offense commits a
28 misdemeanor for which the individual may be sentenced to a
29 term of imprisonment of not more than six months and to pay a
30 fine under section 3804 (relating to penalties).

1 (2) An individual who violates section 3802(a) and has
2 more than one prior offense commits a misdemeanor of the
3 second degree.

4 (b) Other offenses.--

5 (1) An individual who violates section [3802(b)]
6 3802(a)(1) where there was an accident resulting in bodily
7 injury, serious bodily injury or death of any person or in
8 damage to a vehicle or other property, or who violates
9 section 3802(b), (e) or (f) and who has no more than one
10 prior offense commits a misdemeanor for which the individual
11 may be sentenced to a term of imprisonment of not more than
12 six months and to pay a fine under section 3804.

13 (2) An individual who violates section [3802(c)]
14 3802(a)(1) where the individual refused testing of blood or
15 breath, or who violates section 3802(c) or (d) and who has no
16 prior offenses commits a misdemeanor for which the individual
17 may be sentenced to a term of imprisonment of not more than
18 six months and to pay a fine under section 3804.

19 (3) An individual who violates section [3802(b)]
20 3802(a)(1) where there was an accident resulting in bodily
21 injury, serious bodily injury or death of any person or in
22 damage to a vehicle or other property, or who violates
23 section 3802(b), (e) or (f) and who has more than one prior
24 offense commits a misdemeanor of the first degree.

25 (4) An individual who violates section [3802(c)]
26 3802(a)(1) where the individual refused testing of blood or
27 breath, or who violates section 3802(c) or (d) and who has
28 one or more prior offenses commits a misdemeanor of the first
29 degree.

30 Section 4 3. Section 3804(a), (b) and (c) of Title 75, ~~added~~ <—

1 ~~September 30, 2003 (P.L.120, No.24)~~, are amended and the section
2 is amended by adding a subsection to read:

3 § 3804. Penalties.

4 (a) General impairment.--[An] Except as set forth in
5 subsection (b) or (c), an individual who violates section
6 3802(a) (relating to driving under influence of alcohol or
7 controlled substance) shall be sentenced as follows:

8 (1) For a first offense, to:

9 (i) undergo a [period of ~~supervision, limited to~~ <—
10 probation not to exceed six months] MANDATORY MINIMUM <—
11 TERM OF SIX MONTHS' PROBATION;

12 (ii) pay a fine of \$300;

13 (iii) attend an alcohol highway safety school
14 approved by the department; and

15 (iv) comply with all drug and alcohol treatment
16 requirements imposed under sections 3814 (relating to
17 drug and alcohol assessments) and 3815 (relating to
18 mandatory sentencing).

19 (2) For a second offense, to:

20 (i) undergo imprisonment for not less than five days
21 [nor more than six months];

22 (ii) pay a fine of not less than \$300 nor more than
23 \$2,500;

24 (iii) attend an alcohol highway safety school
25 approved by the department; and

26 (iv) comply with all drug and alcohol treatment
27 requirements imposed under sections 3814 and 3815.

28 (3) For a third or subsequent offense, to:

29 (i) undergo imprisonment of not less than ten days
30 [nor more than two years];

1 (ii) pay a fine of not less than \$500 nor more than
2 \$5,000; and

3 (iii) comply with all drug and alcohol treatment
4 requirements imposed under sections 3814 and 3815.

5 (b) High rate of blood alcohol; minors; commercial vehicles
6 and school buses and school vehicles; accidents.--Except as set
7 forth in subsection (c), an individual who violates section
8 3802(a)(1) where there was an accident resulting in bodily
9 injury, serious bodily injury or death of any person or damage
10 to a vehicle or other property or who violates section 3802(b),
11 (e) or (f) shall be sentenced as follows:

12 (1) For a first offense, to:

13 (i) undergo imprisonment of not less than 48
14 consecutive hours [nor more than six months];

15 (ii) pay a fine of not less than \$500 nor more than
16 \$5,000;

17 (iii) attend an alcohol highway safety school
18 approved by the department; and

19 (iv) comply with all drug and alcohol treatment
20 requirements imposed under sections 3814 and 3815.

21 (2) For a second offense, to:

22 (i) undergo imprisonment of not less than 30 days
23 [nor more than six months];

24 (ii) pay a fine of not less than \$750 nor more than
25 \$5,000;

26 (iii) attend an alcohol highway safety school
27 approved by the department; and

28 (iv) comply with all drug and alcohol treatment
29 requirements imposed under sections 3814 and 3815.

30 (3) For a third offense, to:

1 (i) undergo imprisonment of not less than 90 days
2 [nor more than five years];

3 (ii) pay a fine of not less than \$1,500 nor more
4 than \$10,000; and

5 (iii) comply with all drug and alcohol treatment
6 requirements imposed under sections 3814 and 3815.

7 (4) For a fourth or subsequent offense, to:

8 (i) undergo imprisonment of not less than one year
9 [nor more than five years];

10 (ii) pay a fine of not less than \$1,500 nor more
11 than \$10,000; and

12 (iii) comply with all drug and alcohol treatment
13 requirements imposed under sections 3814 and 3815.

14 (c) Incapacity; highest blood alcohol; controlled
15 substances.--An individual who violates section 3802(a)(1) and
16 refused testing of blood or breath or an individual who violates
17 section 3802(c) or (d) shall be sentenced as follows:

18 (1) For a first offense, to:

19 (i) undergo imprisonment of not less than 72
20 consecutive hours [nor more than six months];

21 (ii) pay a fine of not less than \$1,000 nor more
22 than \$5,000;

23 (iii) attend an alcohol highway safety school
24 approved by the department; and

25 (iv) comply with all drug and alcohol treatment
26 requirements imposed under sections 3814 and 3815.

27 (2) For a second offense, to:

28 (i) undergo imprisonment of not less than 90 days
29 [nor more than five years];

30 (ii) pay a fine of not less than \$1,500;

(iii) attend an alcohol highway safety school
approved by the department; and

(iv) comply with all drug and alcohol treatment
requirements imposed under sections 3814 and 3815.

(3) For a third or subsequent offense, to:

(i) undergo imprisonment of not less than one year
[nor more than five years];

(ii) pay a fine of not less than \$2,500; and

(iii) comply with all drug and alcohol treatment
requirements imposed under sections 3814 and 3815.

* * *

(k) Nonapplicability.--Except for subsection (e), this
section shall not apply to dispositions resulting from
proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile
matters).

Section ~~5~~ 4. Sections 3806, 3807(b)(1)(iv) and (d),
3808(a)(1) and (b) and 3815(a) of Title 75, ~~added September 30,~~
~~2003 (P.L.120, No.24),~~ are amended to read:

§ 3806. Prior offenses.

(a) General rule.--Except as set forth in subsection (b),
the term "prior offense" as used in this chapter shall mean a
conviction, adjudication of delinquency, juvenile consent
decree, acceptance of Accelerated Rehabilitative Disposition or
other form of preliminary disposition before the sentencing on
the present violation for any of the following:

(1) an offense under section 3802 (relating to driving
under influence of alcohol or controlled substance);

(2) an offense under former section 3731;

(3) an offense substantially similar to an offense under
[paragraphs] paragraph (1) or (2) in another jurisdiction; or

(4) any combination of the offenses set forth in
[paragraphs] paragraph (1), (2) or (3).

(b) Repeat offenses within ten years.--The calculation of
prior offenses for purposes of sections 1553(d.2) (relating to
occupational limited license), section 3803 (relating to
grading) and 3804 (relating to penalties) shall include any
conviction, adjudication of delinquency, juvenile consent
decree, acceptance of Accelerated Rehabilitative Disposition or
other form of preliminary disposition within the ten years
before the present violation occurred for any of the following:

(1) an offense under section 3802;

(2) an offense under former section 3731;

(3) an offense substantially similar to an offense under
paragraph (1) or (2) in another jurisdiction; or

(4) any combination of the offenses set forth in
paragraph (1), (2) or (3).

§ 3807. Accelerated Rehabilitative Disposition.

* * *

(b) Evaluation and treatment.--

(1) A defendant offered Accelerated Rehabilitative
Disposition for a violation of section 3802 is, as a
condition of participation in the program, subject to the
following requirements in addition to any other conditions of
participation imposed by the court:

* * *

(iv) The defendant must remain subject to court
supervision for at least six months, but not more than 12
months.

* * *

(d) Mandatory suspension of operating privileges.--As a

condition of participation in an Accelerated Rehabilitative
Disposition program, the court shall order the defendant's
license suspended as follows:

(1) There shall be no license suspension if the
defendant's blood alcohol concentration at the time of
testing was less than 0.10%.

(2) For 30 days if the defendant's blood alcohol
concentration at the time of testing was at least 0.10% but
less than 0.16%.

(3) For 60 days if:

(i) the defendant's blood alcohol concentration at
the time of testing was 0.16% or higher;

(ii) the defendant's blood alcohol concentration is
not known; [or]

(iii) an accident which resulted in bodily injury or
in damage to a vehicle or other property occurred in
connection with the events surrounding the current
offense[.]; or

(iv) the defendant was charged pursuant to section
3802(d).

(4) For 90 days if the defendant was a minor at the time
of the offense.

* * *

§ 3808. Illegally operating a motor vehicle not equipped with
ignition interlock.

(a) Offense defined.--

(1) An individual required to only drive, operate or be
in actual physical control of the movement of a motor vehicle
equipped with an ignition interlock system under section
1553(d.2) (relating to occupational limited license) or 3805

1 (relating to ignition interlock) who drives, operates or is
2 in actual physical control of the movement of a motor vehicle
3 within this Commonwealth without such a system commits a
4 [summary offense] misdemeanor and shall, upon conviction, be
5 sentenced to pay a fine of not less than \$300 and not more
6 than \$1,000 and to imprisonment for not more than 90 days.

7 * * *

8 (b) Tampering with an ignition interlock system.--A person
9 that tampers with an ignition interlock system required by law
10 commits a misdemeanor [of the third degree] and shall, upon
11 conviction, be sentenced to pay a fine of not less than \$300 nor
12 more than \$1,000 and to undergo imprisonment for not more than
13 90 days. The term "tampering," in addition to any physical act
14 which is intended to alter or interfere with the proper
15 functioning of an ignition interlock system required by law,
16 shall include attempting to circumvent or bypass or
17 circumventing or bypassing an ignition interlock system by:

18 (1) means of using another individual to provide a
19 breath sample; or

20 (2) providing a breath sample for the purpose of
21 bypassing an ignition interlock system required by law.

22 * * *

23 § 3815. Mandatory sentencing.

24 (a) County supervision.--Notwithstanding the length of any
25 maximum term of imprisonment imposed pursuant to sections 3803
26 (relating to grading) and 3804 (relating to penalties), and
27 notwithstanding the provisions of section 17 of the act of
28 August 6, 1941 (P.L.861, No.323), referred to as the
29 Pennsylvania Board of Probation and Parole Law, the sentencing
30 judge may grant parole under the supervision of the county

1 parole system to any offender serving a sentence for a violation
2 of section 3802 (relating to driving under influence of alcohol
3 or controlled substance) and, if applicable, serving any
4 concurrent sentence of imprisonment for any misdemeanor offense
5 arising from the same criminal episode as the violation of
6 section 3802. The power of the sentencing judge to grant parole
7 shall apply only to those offenders whose sentences are being
8 served in a county prison pursuant to 42 Pa.C.S. § 9762
9 (relating to sentencing proceeding; place of confinement) or
10 section 3804(d). The sentencing judge shall declare his
11 intention to retain parole authority and supervision at the time
12 of sentencing in cases in which he would not otherwise have
13 parole authority and supervision.

14 * * *

15 Section ~~6~~ 5. Section 6303 of Title 75 is amended to read: <—
16 § 6303. Rights and liabilities of minors.

17 [Any] (a) General rule.--Except as provided in subsection
18 (b), any person over the age of 16 years charged with the
19 violation of any provisions of this title constituting a summary
20 offense shall have all the rights of an adult and may be
21 prosecuted under the provisions of this title in the same manner
22 as an adult.

23 (b) Exception.--No person shall be sentenced to a term of
24 imprisonment for a violation of any provisions of this title
25 constituting a summary offense committed while the person was
26 under the age of 18 years.

27 ~~Section 7. The following provisions shall apply to sentences~~ <—
28 ~~imposed on or after the effective date of this section:~~

29 ~~(1) The amendment of:~~

30 ~~(i) 42 Pa.C.S. § 9763 heading, (a) and (c); and~~

1 ~~(ii) 42 Pa.C.S. § 9804(b).~~

2 ~~(2) The amendment of:~~

3 ~~(i) 75 Pa.C.S. § 3806;~~

4 ~~(ii) 75 Pa.C.S. § 3815(a); and~~

5 ~~(iii) 75 Pa.C.S. § 6303.~~

6 SECTION 6. THE AMENDMENT OF THE FOLLOWING PROVISIONS SHALL <—
7 APPLY TO SENTENCES IMPOSED ON OR AFTER THE EFFECTIVE DATE OF
8 THIS SECTION:

9 (1) 75 PA.C.S. § 3806;

10 (2) 75 PA.C.S. § 3815(A); AND

11 (3) 75 PA.C.S. § 6303.

12 Section & 7. This act shall take effect immediately. <—