
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1026 Session of
1997

INTRODUCED BY O'PAKE, FUMO, STAPLETON, KUKOVICH, LAVALLE,
BRIGHTBILL, HELFRICK, KASUNIC, LEMMOND, COSTA, GERLACH,
ULIANA, AFFLERBACH, MUSTO, SCHWARTZ, DELP AND HUGHES,
JUNE 16, 1997

REFERRED TO JUDICIARY, JUNE 16, 1997

AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania
2 Consolidated Statutes, adding offenses relating to the
3 operation of aircraft.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 61 of Title 74 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER F

9 AVIATION OFFENSES

10 Sec.

11 6181. Definitions.

12 6182. Operating aircraft under influence of alcohol
13 or controlled substance.

14 6183. Homicide while operating aircraft under
15 influence.

16 6184. Aggravated assault while operating aircraft
17 under influence.

1 6185. Homicide while operating aircraft.

2 6186. Reckless operation.

3 6187. Owner responsibilities.

4 6188. Implied consent.

5 6189. Penalties.

6 6190. Reports.

7 § 6181. Definitions.

8 The following words and phrases when used in this subchapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Aircraft." The term shall include all and any type of
12 vehicle used for or capable of transporting a person into or
13 through the air, whether self-propelled, towed or wind-borne,
14 and including such devices as parachutes, hang-gliders and
15 balloons.

16 § 6182. Operating aircraft under influence of alcohol or
17 controlled substance.

18 (a) Offense defined.--A person shall not operate or be in
19 actual physical control of the movement of any aircraft in any
20 of the following circumstances:

21 (1) While under the influence of alcohol to a degree
22 that renders the person incapable of safely operating
23 aircraft.

24 (2) While under the influence of any controlled
25 substance, as defined in the act of April 14, 1972 (P.L.233,
26 No.64), known as The Controlled Substance, Drug, Device and
27 Cosmetic Act, to a degree that renders the person incapable
28 of safely operating the aircraft.

29 (3) While under the combined influence of alcohol and
30 any controlled substance to a degree that renders the person

1 incapable of safely operating the aircraft.

2 (4) While the amount of alcohol by weight in the blood
3 of:

4 (i) an adult is 0.04% or greater; and

5 (ii) a minor is 0.02% or greater.

6 (b) Prima facie evidence.--

7 (1) It is prima facie evidence that:

8 (i) An adult had 0.04% or more by weight of alcohol
9 in his blood at the time of operating or being in actual
10 physical control of the movement of the aircraft if the
11 amount of alcohol by weight in his blood is equal to or
12 greater than 0.04% at the time a chemical test is
13 performed on a breath, blood or urine sample.

14 (ii) A minor had 0.02% or more by weight of alcohol
15 in his blood at the time of operating or being in actual
16 physical control of the movement of the aircraft if the
17 amount of alcohol by weight in his blood is equal to or
18 greater than 0.02% at the time a chemical test is
19 performed on a breath, blood or urine sample.

20 (2) For the purposes of this section, the chemical test
21 of the person's breath, blood or urine shall be obtained from
22 a sample obtained within three hours after the person
23 operated or was in actual physical control of the aircraft.

24 (c) Authorized use not a defense.--Legal entitlement to use
25 alcohol or controlled substances is not a defense to a charge of
26 violating this section.

27 (d) Certain arrests authorized.--In addition to any other
28 powers of arrest, a police officer having probable cause of a
29 violation of this section may arrest a person without warrant
30 whether the incident happened in or outside the officer's

1 presence. This authority extends to a hospital or other medical
2 treatment facility outside the municipal jurisdiction of the
3 officer if the person was taken or went there for emergency
4 treatment, examination or evaluation as a result of the incident
5 and if there is probable cause to believe the violation occurred
6 within the officer's municipal jurisdiction.

7 (e) Certain dispositions prohibited.--The attorney for the
8 Commonwealth shall not submit a charge under this section for
9 Accelerated Rehabilitated Disposition (ARD) if:

10 (1) The defendant has been found guilty of or accepted
11 ARD of a charge under this section or similar provisions of
12 law of any state or of 75 Pa.C.S. § 3731 (relating to driving
13 under influence of alcohol or controlled substance), 3735
14 (relating to homicide by vehicle while driving under
15 influence) or 3735.1 (relating to aggravated assault by
16 vehicle while driving under the influence) within seven years
17 of the date of the current offense.

18 (2) An accident occurred in connection with the events
19 surrounding the current offense and any person was killed or
20 seriously injured as a result of the accident.

21 (f) Penalty.--

22 (1) A violation of this section is a misdemeanor of the
23 second degree; a second or subsequent violation is a
24 misdemeanor of the first degree. The sentencing court shall
25 impose a fine not less than \$300 and a minimum term of
26 imprisonment:

27 (i) Not less than 48 consecutive hours.

28 (ii) Not less than 30 days if the person previously
29 accepted ARD or any form of preliminary disposition or
30 had been convicted of, adjudicated delinquent or granted

1 a consent decree under 42 Pa.C.S. Ch. 63 (relating to
2 juvenile matters) based on an offense under this section
3 or similar provisions of the law of any state or of 75
4 Pa.C.S. § 3731, 3735 or 3735.1 within the previous seven
5 years.

6 (iii) Not less than 90 days if the person has twice
7 previously been convicted of, adjudicated delinquent or
8 granted a consent decree under 42 Pa.C.S. Ch. 63 based on
9 an offense under this section or similar provisions of
10 the law of any state or of 75 Pa.C.S. § 3731, 3735 or
11 3735.1 within the previous seven years.

12 (iv) Not less than one year if the person has three
13 times previously been convicted of, adjudicated
14 delinquent or granted a consent decree under 42 Pa.C.S.
15 Ch. 63 based on an offense under this section or similar
16 provisions of the law of any state or of 75 Pa.C.S. §
17 3731, 3735 or 3735.1 within the previous seven years.

18 § 6183. Homicide while operating aircraft under influence.

19 (a) Offense defined.--Any person who unintentionally causes
20 the death of another in circumstances constituting a violation
21 of section 6182 (relating to operating aircraft under influence
22 of alcohol or controlled substance) and who is convicted of
23 violating section 6182 commits a felony of the second degree.
24 The sentencing court shall order separate terms of imprisonment
25 of not less than three years for each death that directly
26 results from the violation of section 6182.

27 (b) Applicability of sentencing guidelines.--The sentencing
28 guidelines promulgated by the Pennsylvania Commission on
29 Sentencing shall not supersede the mandatory penalty of this
30 section.

1 § 6184. Aggravated assault while operating aircraft under
2 influence.

3 (a) Offense defined.--Any person who negligently causes
4 serious bodily injury to another person in circumstances
5 constituting a violation of section 6182 (relating to operating
6 aircraft under influence of alcohol or controlled substance) and
7 who is convicted of violating section 6182 commits a felony of
8 the second degree.

9 (b) Definition.--As used in this section, the term "serious
10 bodily injury" means any bodily injury that creates a
11 substantial risk of death or which causes serious, permanent
12 disfigurement or protracted loss or impairment of the function
13 of any bodily member or organ.

14 § 6185. Homicide while operating aircraft.

15 Any person who unintentionally causes the death of another
16 while operating an aircraft in violation of any law of this
17 Commonwealth or Federal aviation law commits homicide while
18 operating an aircraft, a misdemeanor of the first degree.

19 § 6186. Reckless operation.

20 (a) General rule.--Any person who operates an aircraft in
21 willful or wanton disregard for the safety of other persons or
22 property commits reckless operation.

23 (b) Penalty.--Any person who violates this section commits a
24 summary offense and shall, upon conviction, be sentenced to pay
25 a fine of \$200.

26 § 6187. Owner responsibilities.

27 An owner or other person in charge or control of an aircraft
28 commits a misdemeanor of the second degree if he knowingly
29 permits it to be operated in violation of this subchapter.

30 § 6188. Implied consent.

1 (a) General rule.--Any person who operates or is in actual
2 physical control of an aircraft within this Commonwealth, its
3 airspace or its waterways is deemed to consent to tests of his
4 breath, blood or urine to determine blood-alcohol or drug levels
5 upon request by a law enforcement officer with reasonable and
6 articulable cause to believe the person operated or was in
7 actual physical control of an aircraft while under the
8 influence. There shall be no right to have an attorney present
9 during the test.

10 (b) Notification.--The person to be tested shall be notified
11 that a refusal to comply with a request so founded may result in
12 his prohibition from operating an aircraft within, through, from
13 or to the boundaries of this Commonwealth for a period of one
14 year. A person who is incapable of making a refusal is deemed
15 not to have withdrawn his consent, and tests may be administered
16 without regard to the notification provisions.

17 (c) Effect of refusal.--If the person refuses to submit to
18 testing, his consent shall be deemed to be withdrawn and no test
19 shall be given. The fact of refusal shall be admissible in any
20 prosecution for violating this subchapter and shall be reported
21 by the investigating agency to the Federal Aviation
22 Administration together with the underlying circumstances.

23 (d) Immunity for tests.--A qualified technician or other
24 person who withdraws blood or takes a urine specimen at the
25 request of a law enforcement agency under this section, and any
26 hospital, laboratory or clinic employing him shall be immune
27 from civil liability except in the instance of gross negligence.
28 § 6189. Penalties.

29 In addition to other penalties provided by the law of the
30 Federal Government, this Commonwealth or any other state, a

1 person who operates or is in actual physical control of an
2 aircraft within, through, to or from this Commonwealth while
3 illegally under the influence of alcohol or drugs may be barred
4 from further operations for a period of one year. A violation of
5 such prohibition may be treated as a separate offense under this
6 section or as a contempt of court.

7 § 6190. Reports.

8 (a) General rule.--The operator of any aircraft involved in
9 an accident involving injury to or the death of any person,
10 damage in excess of \$1,000 to any property or the obstruction of
11 vehicular traffic shall by the quickest means of communication
12 reasonable notify the police of the accident and shall
13 thereafter remain at or return to the scene of the accident, or
14 as close thereto as reasonable, to provide identifying
15 information that may be required by investigators and to render
16 such reasonable assistance as is required.

17 (b) Police reports.--Police investigating any aircraft
18 accident shall forthwith notify the Federal Aviation Agency when
19 blood tests have been requested of the operator, as well as the
20 results thereof or any refusal to submit to such testing.

21 Section 2. This act shall take effect in 60 days.