
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 4

Session of
2003

INTRODUCED BY GEIST, O'BRIEN, McCALL, BLAUM, GANNON, HARPER,
TURZAI, WATSON, GORDNER, DALLY, EGOLF, ADOLPH, BAKER,
BALDWIN, BARD, BEBKO-JONES, BOYD, BROWNE, CAPPELLI, CORNELL,
CRAHALLA, CREIGHTON, DALEY, D. EVANS, FEESE, FICHTER,
FRANKEL, GERGELY, GINGRICH, GRUCELA, HARHAI, HENNESSEY,
HERSHEY, HESS, HICKERNELL, JAMES, LaGROTTA, LEACH, LEWIS,
MAHER, MAITLAND, MARSICO, MCGILL, McNAUGHTON, S. MILLER,
PAYNE, PETRARCA, PETRI, PHILLIPS, PICKETT, REED, REICHLEY,
ROONEY, ROSS, RUBLEY, SATHER, SAYLOR, SCAVELLO, SCHRODER,
E. Z. TAYLOR, J. TAYLOR, TIGUE, TRUE, WALKO, YOUNGBLOOD AND
ZUG, JUNE 30, 2003

REFERRED TO COMMITTEE ON TRANSPORTATION, JUNE 30, 2003

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 30 (Fish), 34 (Game),
2 42 (Judiciary and Judicial Procedure) and 75 (Vehicles) of
3 the Pennsylvania Consolidated Statutes, further providing for
4 impairment due to alcohol or controlled substances, for
5 Department of Transportation records and for investigation by
6 police officers; and making editorial changes.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 6105(c)(3) of Title 18 of the
10 Pennsylvania Consolidated Statutes is amended to read:

11 § 6105. Persons not to possess, use, manufacture, control, sell
12 or transfer firearms.

13 * * *

14 (c) Other persons.--In addition to any person who has been
15 convicted of any offense listed under subsection (b), the

1 following persons shall be subject to the prohibition of
2 subsection (a):

3 * * *

4 (3) A person who has been convicted of driving under the
5 influence of alcohol or controlled substance as provided in
6 75 Pa.C.S. § [3731] 3802 (relating to driving under influence
7 of alcohol or controlled substance) on three or more separate
8 occasions within a five-year period. For the purposes of this
9 paragraph only, the prohibition of subsection (a) shall only
10 apply to transfers or purchases of firearms after the third
11 conviction.

12 * * *

13 Section 2. Section 7508.1(b) and (c) of Title 18 are amended
14 to read:

15 § 7508.1. Substance Abuse Education and Demand Reduction Fund.

16 * * *

17 (b) Imposition.--Unless the court finds that undue hardship
18 would result, a mandatory cost of \$100, which shall be in
19 addition to any other costs imposed pursuant to statutory
20 authority, shall automatically be assessed on any individual
21 convicted, adjudicated delinquent or granted Accelerated
22 Rehabilitative Disposition or any individual who pleads guilty
23 or nolo contendere for a violation of the act of April 14, 1972
24 (P.L.233, No.64), known as The Controlled Substance, Drug,
25 Device and Cosmetic Act, or a violation of 75 Pa.C.S. § [3731]
26 3802 (relating to driving under influence of alcohol or
27 controlled substance).

28 (c) Additional assessment.--In addition to the assessment
29 required by subsection (b), a person convicted of or adjudicated
30 delinquent for a violation of 75 Pa.C.S. § [3731] 3802 shall be

1 assessed \$200 where the amount of alcohol by weight in the blood
2 of the person is equal to or greater than [.15%] .16% at the
3 time a chemical test is performed on a sample of the person's
4 breath, blood or urine. For the purposes of this subsection, the
5 sample of the person's blood, breath or urine shall be taken
6 within [two] three hours after the person is placed under
7 arrest.

8 * * *

9 Section 3. Section 7514 of Title 18 is repealed.

10 Section 4. Section 5502(a)(4) and (a.1)(1) of Title 30 are
11 amended to read:

12 § 5502. Operating watercraft under influence of alcohol or
13 controlled substance.

14 (a) General rule.--No person shall operate or be in actual
15 physical control of the movement of a watercraft upon, in or
16 through the waters of this Commonwealth:

17 * * *

18 (4) while the amount of alcohol by weight in the blood
19 of:

20 (i) an adult is [0.10%] 0.08% or greater; or

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

22 (a.1) Prima facie evidence.--

23 (1) It is prima facie evidence that:

24 (i) an adult had [0.10%] 0.08% or more by weight of
25 alcohol in his or her blood at the time of operating or
26 being in actual physical control of the movement of a
27 watercraft if the amount of alcohol by weight in the
28 blood of the person is equal to or greater than [0.10%]
29 0.08% at the time a chemical test is performed on a
30 sample of the person's breath, blood or urine; and

(ii) a minor had 0.02% or more by weight of alcohol in his or her blood at the time of operating or being in actual physical control of the movement of a watercraft if the amount of alcohol by weight in the blood of the minor is equal to or greater than 0.02% at the time a chemical test is performed on a sample of the person's breath, blood or urine.

* * *

Section 5. Sections 2501(a)(4) and (a.1)(1)(i) and (b) and 2502(d)(2) and (3) of Title 34 are amended to read:

§ 2501. Hunting or furtaking prohibited while under influence of alcohol or controlled substance.

(a) General rule.--It is unlawful to hunt or take game, furbearers or wildlife or aid, abet, assist or conspire to hunt or take game, furbearers or wildlife anywhere in this Commonwealth while in possession of a firearm of any kind or a bow and arrow if:

* * *

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

(i) an adult is [0.10%] 0.08% or greater; or

(ii) a minor is 0.02% or greater.

(a.1) Prima facie evidence.--

(1) It is prima facie evidence that:

(i) an adult had [0.10%] 0.08% or more by weight of alcohol in his or her blood at the time of hunting or taking of game, furbearers or wildlife or the aiding, abetting, assisting or conspiring to hunt or take game, furbearers or wildlife if the amount of alcohol by weight in the blood of the person is equal to or greater than [0.10%] 0.08% at the time a chemical test is performed on

1 a sample of the person's breath, blood or urine; or

2 * * *

3 (b) Penalty.--

4 (1) A violation of the provisions of this section shall
5 be a summary offense if the amount of alcohol by weight in
6 the blood of the individual is at least 0.08% but less than
7 0.10%.

8 (2) A violation of the provisions of this section shall
9 be a misdemeanor of the third degree if the amount of alcohol
10 by weight in the blood of the individual is at least 0.10%.

11 (3) In addition to any penalty, the violator shall be
12 denied the right to hunt or trap in this Commonwealth, with
13 or without a license, for a period of one year.

14 * * *

15 § 2502. Chemical test to determine amount of alcohol.

16 * * *

17 (d) Presumptions from amount of alcohol.--If chemical
18 analysis of a person's breath, blood or urine shows:

19 * * *

20 (2) That the amount of alcohol by weight in the blood of
21 the person tested is in excess of 0.05% but less than [0.10%]
22 0.08%, this fact shall not give rise to any presumption that
23 the person tested was or was not under the influence of
24 alcohol, but this fact may be considered with other competent
25 evidence in determining whether the person was or was not
26 under the influence of alcohol.

27 (3) That the amount of alcohol by weight in the blood of
28 the person tested is [0.10%] 0.08% or more, it shall be
29 presumed that the defendant was under the influence of
30 alcohol.

1 * * *

2 Section 6. Sections 933(a)(1)(ii), 1515(a)(5), 1725.3(a),
3 3571(b)(4) and 3573(b)(3) of Title 42 are amended to read:

4 § 933. Appeals from government agencies.

5 (a) General rule.--Except as otherwise prescribed by any
6 general rule adopted pursuant to section 503 (relating to
7 reassignment of matters), each court of common pleas shall have
8 jurisdiction of appeals from final orders of government agencies
9 in the following cases:

10 (1) Appeals from Commonwealth agencies in the following
11 cases:

12 * * *

13 (ii) Determinations of the Department of
14 Transportation appealable under the following provisions
15 of Title 75 (relating to vehicles):

16 Section 1377 (relating to judicial review).

17 Section 1550 (relating to judicial review).

18 Section 4724(b) (relating to judicial review).

19 Section 7303(b) (relating to judicial review).

20 Section 7503(b) (relating to judicial review).

21 Except as otherwise prescribed by general rules, the
22 venue shall be in the county of the principal place of
23 business of any salvor or messenger service, the location
24 of any inspection station involved, the county where the
25 arrest for a violation of 75 Pa.C.S. § [3731] 3802
26 (relating to driving under influence of alcohol or
27 controlled substance) was made in appeals involving the
28 suspension of operating privileges under 75 Pa.C.S. §
29 1547 (relating to chemical testing to determine amount of
30 alcohol or controlled substance) or the residence of any

1 individual appellant where the venue is not otherwise
2 fixed by this sentence. In the case of a nonresident
3 individual venue, except as otherwise prescribed by
4 general rules, shall be in the county in which the
5 offense giving rise to the recall, cancellation,
6 suspension or revocation of operating privileges
7 occurred.

8 * * *

9 § 1515. Jurisdiction and venue.

10 (a) Jurisdiction.--Except as otherwise prescribed by general
11 rule adopted pursuant to section 503 (relating to reassignment
12 of matters), district justices shall, under procedures
13 prescribed by general rule, have jurisdiction of all of the
14 following matters:

15 * * *

16 (5) Offenses under 75 Pa.C.S. § [3731] 3802 (relating to
17 driving under influence of alcohol or controlled substance),
18 if the following criteria are met:

19 (i) The offense is the first offense by the
20 defendant under such provision in this Commonwealth.

21 (ii) No personal injury (other than to the defendant
22 [or the immediate family of the defendant]) resulted from
23 the offense.

24 (iii) The defendant pleads guilty.

25 (iv) No property damage in excess of \$500 other than
26 to the defendant's property resulted from the violation.

27 (v) The defendant is not subject to the provisions
28 of Chapter 63 (relating to juvenile matters).

29 (vi) The arresting authority shall cause to be
30 transmitted a copy of the charge of any violation of 75

1 Pa.C.S. § [3731] 3802 to the office of the clerk of the
2 court of common pleas within five days after the
3 preliminary arraignment.

4 In determining that the above criteria are met the district
5 justice shall rely on the certification of the arresting
6 authority. Certification that the criteria are met need not
7 be in writing. Within ten days after the disposition, the
8 district justice shall certify the disposition to the office
9 of the clerk of the court of common pleas in writing.

10 * * *

11 § 1725.3. Criminal laboratory user fee.

12 (a) Imposition.--A person who is placed on probation without
13 verdict pursuant to section 17 of the act of April 14, 1972
14 (P.L.233, No.64), known as The Controlled Substance, Drug,
15 Device and Cosmetic Act, or who receives Accelerated
16 Rehabilitative Disposition or who pleads guilty to or nolo
17 contendere to or who is convicted of a crime as defined in 18
18 Pa.C.S. § 106 (relating to classes of offenses) or 75 Pa.C.S. §
19 [3731] 3802 (relating to driving under influence of alcohol or
20 controlled substance) or 3735 (relating to homicide by vehicle
21 while driving under influence) or a violation of The Controlled
22 Substance, Drug, Device and Cosmetic Act shall, in addition to
23 any fines, penalties or costs, in every case where laboratory
24 services were required to prosecute the crime or violation, be
25 sentenced to pay a criminal laboratory user fee which shall
26 include, but not be limited to, the cost of sending a laboratory
27 technician to court proceedings.

28 * * *

29 § 3571. Commonwealth portion of fines, etc.

30 * * *

(b) Vehicle offenses.--

* * *

(4) When prosecution under 75 Pa.C.S. § [3731] 3802 (relating to driving under influence of alcohol or controlled substance) is the result of State Police action, 50% of all fines, forfeited recognizances and other forfeitures imposed, lost or forfeited shall be payable to the Commonwealth, for credit to the Motor License Fund, and 50% shall be payable to the county which shall be further divided as follows:

(i) Fifty percent of the moneys received shall be allocated to the appropriate county authority which implements the county drug and alcohol program to be used solely for the purposes of aiding programs promoting drug abuse and alcoholism prevention, education, treatment and research. Programs under this subparagraph include Project DARE (Drug and Alcohol Resistance Education) and Mothers Against Drunk Driving Victim Impact Panels.

(ii) Fifty percent of the moneys received shall be used for expenditures incurred for county jails, prisons, workhouses and detention centers.

* * *

§ 3573. Municipal corporation portion of fines, etc.

* * *

(b) Vehicle offenses.--

* * *

(3) When prosecution under 75 Pa.C.S. § [3731] 3802 (relating to driving under influence of alcohol or controlled substance) is the result of local police action, 50% of all fines, forfeited recognizances and other forfeitures imposed, lost or forfeited shall be payable to the municipal

1 corporation under which the local police are organized, and
2 50% shall be payable to the county which shall be further
3 divided as follows:

4 (i) Fifty percent of the moneys received shall be
5 allocated to the appropriate county authority which
6 implements the county drug and alcohol program to be used
7 solely for the purposes of aiding programs promoting drug
8 abuse and alcoholism prevention, education, treatment and
9 research. Programs under this subparagraph include
10 Project DARE (Drug and Alcohol Resistance Education).

11 (ii) Fifty percent of the moneys received shall be
12 used for expenditures incurred for county jails, prisons,
13 workhouses and detention centers.

14 * * *

15 Section 7. Chapter 70 of Title 42 is repealed.

16 Section 8. Sections 9763(c) and 9804(b)(3) of Title 42 are
17 amended to read:

18 § 9763. Sentence of intermediate punishment.

19 * * *

20 (c) Restriction.--A defendant [convicted under] subject to
21 75 Pa.C.S. § [3731(e) (relating to driving under influence of
22 alcohol or controlled substance)] 3804 (relating to penalties)
23 may only be sentenced to intermediate punishment[:] after
24 undergoing an assessment under 75 Pa.C.S. § 3814 (relating to
25 drug and alcohol assessments). If the defendant is determined to
26 be in need of drug and alcohol treatment, the defendant may only
27 be sentenced to intermediate punishment which includes
28 participation in drug and alcohol treatment under 75 Pa.C.S. §
29 3815(c) (relating to mandatory sentencing). Such treatment may
30 be combined with house arrest with electronic surveillance or a

partial confinement program, such as work release, a work camp or a halfway facility. If the defendant is determined not to be in need of drug and alcohol treatment, the defendant may only be sentenced to intermediate punishment:

(1) in a residential inpatient program or in a residential rehabilitative center; or

(2) by house arrest or electronic surveillance [combined with drug and alcohol treatment].

* * *

§ 9804. County intermediate punishment programs.

* * *

(b) Eligibility.--

* * *

(3) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked) or [3731(e) (relating to driving under influence of alcohol or controlled substance)] 3804 (relating to penalties) shall undergo an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments). If the defendant is determined to be in need of drug and alcohol treatment, a sentence to intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). Such treatment may be combined with house arrest with electronic surveillance or a partial confinement program, such as work release, a work camp or a halfway facility. If the defendant is determined not to be in need of drug and alcohol treatment, the defendant may only be sentenced to intermediate punishment [program] in:

(i) a residential inpatient program or a residential

1 rehabilitative center;

2 (ii) house arrest and electronic surveillance
3 combined with drug and alcohol treatment; [or]

4 (iii) partial confinement programs, such as work
5 release, work camps and halfway facilities[, combined
6 with drug and alcohol treatment.]; or

7 (iv) any combination of the programs set forth in
8 this paragraph.

9 Section 9. Sections 1516(c) and (d) and 1532(b)(3) of Title
10 75 are amended to read:

11 § 1516. Department records.

12 * * *

13 (c) Dismissal of charges for violations.--If a charge for
14 violation of any of the provisions of this title against any
15 person is dismissed where there have been no prior convictions
16 by any court of competent jurisdiction, no record of the charge
17 and dismissal shall be included in the driving record of the
18 person. If the person has been previously convicted of the
19 charge and suspension was imposed by the department, which
20 suspension was either partially or fully served, the department
21 may keep a record of the offense for the purpose of showing the
22 suspension was imposed against the person[.], but the offense
23 shall not be used for the purpose of calculating the requisite
24 number of offenses under section 1542 (relating to revocation of
25 habitual offender's license). In addition, the department may
26 keep records of charges that have been filed with the courts in
27 order to determine a person's eligibility for a probationary
28 license under the provisions of section 1554(b)(3) (relating to
29 probationary license). All records maintained pursuant to this
30 subsection shall be maintained for administrative and law

1 enforcement use only and shall not be released for any other
2 purpose.

3 (d) Updating driving record.--Drivers wishing to have their
4 record reviewed by the department may make such a request in
5 order that the record be brought up to date. In updating
6 records, the department shall include recalculation of
7 suspension or revocation segments and the assignment and
8 crediting of any suspension or revocation time previously
9 assigned or credited toward a suspension or revocation which
10 resulted from a conviction which has been vacated, overturned,
11 dismissed or withdrawn. Any fully or partially served suspension
12 or revocation time may only be reassigned or credited toward a
13 suspension or revocation segment processed on the driver's
14 record as of the actual commencement date of the fully or
15 partially served suspension or revocation time.

16 § 1532. Suspension of operating privilege.

17 * * *

18 (b) Suspension.--

19 * * *

20 (3) The department shall suspend the operating privilege
21 of any driver for 12 months upon receiving a certified record
22 of the driver's conviction of section [3731 (relating to
23 driving under influence of alcohol or controlled substance)
24 or] 3733 (relating to fleeing or attempting to elude police
25 officer)[,] or a substantially similar [offenses] offense
26 reported to the department under Article III of section 1581
27 (relating to Driver's License Compact), or an adjudication of
28 delinquency based on section [3731 or] 3733. The department
29 shall suspend the operating privilege of any driver for six
30 months upon receiving a certified record of a consent decree

1 granted under 42 Pa.C.S. Ch. 63 (relating to juvenile
2 matters) based on section [3731 or] 3733.

3 * * *

4 Section 10. Section 1534(b) of Title 75 is amended and the
5 section is amended by adding subsections to read:

6 § 1534. Notice of acceptance of Accelerated Rehabilitative
7 Disposition.

8 * * *

9 (b) Exception.--If a person is arrested for any offense
10 enumerated in section [3731] 3802 (relating to driving under
11 influence of alcohol or controlled substance) and is offered and
12 accepts Accelerated Rehabilitative Disposition under general
13 rules, the court shall promptly notify the department. The
14 department shall maintain a record of the acceptance of
15 Accelerated Rehabilitative Disposition for a period of [seven]
16 ten years from the date of notification. This record shall not
17 be expunged [by order of court.] prior to the expiration of the
18 ten-year period.

19 (c) Expungement.--Immediately following the expiration of
20 the ten-year period, the department shall expunge the record of
21 the acceptance of Accelerated Rehabilitative Disposition. The
22 Department shall not require an order of court to expunge the
23 record.

24 (d) Exceptions to expungement.--The department shall not be
25 required to expunge the record of acceptance of Accelerated
26 Rehabilitative Disposition if:

27 (1) during the ten-year period, the department revokes
28 the operating privileges of a person pursuant to section 1542
29 (relating to revocation of habitual offender's license); or

30 (2) the person was a commercial driver at the time of

1 the violation causing the disposition.

2 Section 11. Sections 1541(a.1) and (d), 1542(b), 1543(b) and
3 1547(b)(1), (c), (d), (e) and (i) of Title 75 are amended to
4 read:

5 § 1541. Period of disqualification, revocation or suspension of
6 operating privilege.

7 * * *

8 (a.1) Credit toward serving period of suspension for certain
9 violations.--Credit toward serving the period of suspension or
10 revocation imposed for sections [3731 (relating to driving under
11 influence of alcohol or controlled substance),] 3732 (relating
12 to homicide by vehicle), 3735 (relating to homicide by vehicle
13 while driving under the influence) [and], 3735.1 (relating to
14 aggravated assault by vehicle while driving under the influence)
15 and 3802 (relating to driving under influence of alcohol or
16 controlled substance) shall not commence until the date of the
17 person's release from prison.

18 * * *

19 (d) Continued suspension of operating privilege.--A
20 defendant ordered by the court under section [1548] 3816
21 (relating to requirements for driving under influence
22 offenders), as the result of a conviction or Accelerated
23 Rehabilitative Disposition of a violation of section [3731
24 (relating to driving under influence of alcohol or controlled
25 substance)] 3802, to attend a treatment program for alcohol or
26 drug addiction must successfully complete all requirements of
27 the treatment program ordered by the court before the
28 defendant's operating privilege may be restored. Successful
29 completion of a treatment program includes the payment of all
30 court-imposed fines and costs, as well as fees to be paid to the

1 treatment program by the defendant. If a defendant fails to
2 successfully complete the requirements of a treatment program,
3 the suspension shall remain in effect until the defendant
4 completes the program and is otherwise eligible for restoration
5 of his operating privilege. The treatment agency shall
6 immediately notify the court of successful completion of the
7 treatment program. The final decision as to whether a defendant
8 has successfully completed the treatment program rests with the
9 court.

10 § 1542. Revocation of habitual offender's license.

11 * * *

12 (b) Offenses enumerated.--Three convictions arising from
13 separate acts of any one or more of the following offenses
14 committed by any person shall result in such person being
15 designated as a habitual offender:

16 (1) Any violation of Subchapter B of Chapter 37
17 (relating to serious traffic offenses).

18 (1.1) Any violation of Chapter 38 (relating to driving
19 while impaired).

20 (2) Any violation of section 3367 (relating to racing on
21 highways).

22 (3) Any violation of section 3742 (relating to accidents
23 involving death or personal injury).

24 (3.1) Any violation of section 3742.1 (relating to
25 accidents involving death or personal injury while not
26 properly licensed).

27 (4) Any violation of section 3743 (relating to accidents
28 involving damage to attended vehicle or property).

29 * * *

30 § 1543. Driving while operating privilege is suspended or

1 revoked.

2 * * *

3 (b) Certain offenses.--

4 (1) A person who drives a motor vehicle on a highway or
5 trafficway of this Commonwealth at a time when the person's
6 operating privilege is suspended or revoked as a condition of
7 acceptance of Accelerated Rehabilitative Disposition for a
8 violation of section [3731] 3802 (relating to driving under
9 influence of alcohol or controlled substance) or because of a
10 violation of section 1547(b)(1) (relating to suspension for
11 refusal) or [3731] 3802 or is suspended under section 1581
12 (relating to Driver's License Compact) for an offense
13 substantially similar to a violation of section [3731] 3802
14 shall, upon conviction, be guilty of a summary offense and
15 shall be sentenced to pay a fine of [\$1,000] \$500 and to
16 undergo imprisonment for a period of not less than [90] 60
17 days.

18 (1.1) (i) A person who has an amount of alcohol by
19 weight in his blood that is equal to or greater than .02%
20 or [is under the influence of a controlled substance as
21 defined in section 1603 (relating to definitions)] who
22 has any amount of a Schedule I, II or III controlled
23 substance, as defined in the act of April 14, 1972
24 (P.L.233, No.64), known as The Controlled Substance,
25 Drug, Device and Cosmetic Act, or its metabolite, which
26 has not been medically prescribed for the individual and
27 who drives a motor vehicle on any highway or trafficway
28 of this Commonwealth at a time when the person's
29 operating privilege is suspended or revoked as a
30 condition of acceptance of Accelerated Rehabilitative

Disposition for a violation of section [3731] 3802 or because of a violation of section 1547(b)(1) or [3731] 3802 or is suspended under section 1581 for an offense substantially similar to a violation of section [3731] 3802 shall, upon a first conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.

(ii) A second violation of this paragraph shall constitute a misdemeanor of the third degree, and upon conviction thereof the person shall be sentenced to pay a fine of \$2,500 and to undergo imprisonment for not less than six months.

(iii) A third or subsequent violation of this paragraph shall constitute a misdemeanor of the first degree, and upon conviction thereof the person shall be sentenced to pay a fine of \$5,000 and to undergo imprisonment for not less than two years.

(2) This subsection shall apply to any person against whom one of these suspensions has been imposed whether the person is currently serving this suspension or whether the effective date of suspension has been deferred under any of the provisions of section 1544 (relating to additional period of revocation or suspension). This provision shall also apply until the person has had the operating privilege restored. This subsection shall also apply to any revocation imposed pursuant to section 1542 (relating to revocation of habitual offender's license) if any of the enumerated offenses was for a violation of section [3731] 3802 or for an out-of-State offense that is substantially similar to a violation of

1 section [3731] 3802 for which a revocation is imposed under
2 section 1581.

3 * * *

4 § 1547. Chemical testing to determine amount of alcohol or
5 controlled substance.

6 * * *

7 (b) Suspension for refusal.--

8 (1) If any person placed under arrest for a violation of
9 section [3731] 3802 (relating to driving under influence of
10 alcohol or controlled substance) is requested to submit to
11 chemical testing and refuses to do so, the testing shall not
12 be conducted but upon notice by the police officer, the
13 department shall suspend the operating privilege of the
14 person [for a period of 12 months.] as follows:

15 (i) Except as set forth in subparagraph (ii), for a
16 period of 12 months.

17 (ii) For a period of 24 months if any of the
18 following apply:

19 (A) The person's operating privileges have
20 previously been suspended under this subsection.

21 (B) The person has, prior to the refusal under
22 this paragraph, been sentenced for:

23 (I) an offense under former section 3731;

24 (II) an offense under section 3802 (relating
25 to driving under influence of alcohol or
26 controlled substance);

27 (III) an offense equivalent to an offense
28 under subclause (I) or (II); or

29 (IV) a combination of the offenses set forth
30 in this clause.

1 * * *

2 (c) Test results admissible in evidence.--In any summary
3 proceeding or criminal proceeding in which the defendant is
4 charged with a violation of section [3731] 3802 or any other
5 violation of this title arising out of the same action, the
6 amount of alcohol or controlled substance in the defendant's
7 blood, as shown by chemical testing of the person's breath,
8 blood or urine, which tests were conducted by qualified persons
9 using approved equipment, shall be admissible in evidence.

10 (1) Chemical tests of breath shall be performed on
11 devices approved by the Department of Health using procedures
12 prescribed jointly by regulations of the Departments of
13 Health and Transportation. Devices shall have been calibrated
14 and tested for accuracy within a period of time and in a
15 manner specified by regulations of the Departments of Health
16 and Transportation. For purposes of breath testing, a
17 qualified person means a person who has fulfilled the
18 training requirement in the use of the equipment in a
19 training program approved by the Departments of Health and
20 Transportation. A certificate or log showing that a device
21 was calibrated and tested for accuracy and that the device
22 was accurate shall be presumptive evidence of those facts in
23 every proceeding in which a violation of this title is
24 charged.

25 (2) Chemical tests of blood or urine, if conducted by a
26 facility located in this Commonwealth, shall be performed by
27 a clinical laboratory licensed and approved by the Department
28 of Health for this purpose using procedures and equipment
29 prescribed by the Department of Health or by a Pennsylvania
30 State Police criminal laboratory. For purposes of blood and

1 urine testing, qualified person means an individual who is
2 authorized to perform those chemical tests under the act of
3 September 26, 1951 (P.L.1539, No.389), known as The Clinical
4 Laboratory Act.

5 (3) Chemical tests of blood or urine, if conducted by a
6 facility located outside this Commonwealth, shall be
7 performed:

8 (i) by a facility licensed by the Department of
9 Health; or

10 (ii) by a facility licensed to conduct the tests by
11 the state in which the facility is located and licensed
12 pursuant to the Clinical Laboratory Improvement

13 Amendments of 1988 (Public Law 100-578, 102 Stat. 2903).

14 [(d) Presumptions from amount of alcohol.--If chemical
15 testing of a person's breath, blood or urine shows:

16 (1) That the amount of alcohol by weight in the blood of
17 an adult is 0.05% or less, it shall be presumed that the
18 adult was not under the influence of alcohol and the adult
19 shall not be charged with any violation under section
20 3731(a)(1), (4) or (5) (relating to driving under influence
21 of alcohol or controlled substance), or, if the adult was so
22 charged prior to the test, the charge shall be void ab
23 initio. This fact shall not give rise to any presumption
24 concerning a violation of section 3731(a)(2) or (3) or (i).

25 (2) That the amount of alcohol by weight in the blood of
26 an adult is in excess of 0.05% but less than 0.10%, this fact
27 shall not give rise to any presumption that the adult was or
28 was not under the influence of alcohol, but this fact may be
29 considered with other competent evidence in determining
30 whether the adult was or was not under the influence of

1 alcohol. This provision shall not negate the provisions of
2 section 3731(i).

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

5 (i) an adult is 0.10% or more; or

6 (ii) a minor is 0.02% or more,

7 this fact may be introduced into evidence if the person is
8 charged with violating section 3731.]

9 (e) Refusal admissible in evidence.--In any summary
10 proceeding or criminal proceeding in which the defendant is
11 charged with a violation of section [3731] 3802 or any other
12 violation of this title arising out of the same action, the fact
13 that the defendant refused to submit to chemical testing as
14 required by subsection (a) may be introduced in evidence along
15 with other testimony concerning the circumstances of the
16 refusal. No presumptions shall arise from this evidence but it
17 may be considered along with other factors concerning the
18 charge.

19 * * *

20 (i) Request by driver for test.--Any person involved in an
21 accident or placed under arrest for a violation of section
22 [3731] 3802 may request a chemical test of his breath, blood or
23 urine. Such requests shall be honored when it is reasonably
24 practicable to do so.

25 * * *

26 Section 12. Section 1548 of Title 75 is repealed.

27 Section 13. Section 1552 of Title 75 is amended to read:

28 § 1552. Accelerated Rehabilitative Disposition.

29 The court of common pleas in each judicial district and the
30 Municipal Court of Philadelphia shall establish and implement a

1 program for Accelerated Rehabilitative Disposition for persons
2 charged with a violation of section [3731] 3802 (relating to
3 driving under influence of alcohol or controlled substance) in
4 accordance with the provisions of this chapter and rules adopted
5 by the Supreme Court.

6 Section 14. Section 1553(d), (6), (8) and (16), (e) and
7 (f)(1) are amended and the section is amended by adding
8 subsections to read:

9 § 1553. Occupational limited license.

10 * * *

11 (d) Unauthorized issuance.--The department shall prohibit
12 issuance of an occupational limited license to:

13 * * *

14 (6) [Any] Except as set forth in subsection (d.1) or
15 (d.2) any person who has been adjudicated delinquent or
16 convicted of driving under the influence of alcohol or
17 controlled substance unless the suspension or revocation
18 imposed for that conviction has been fully served.

19 * * *

20 (8) [Any] Except as set forth in subsections (d.1) and
21 (d.2), any person who has been granted a consent decree or
22 Accelerated Rehabilitative Disposition for driving under the
23 influence of alcohol or controlled substance and whose
24 license has been suspended by the department unless the
25 suspension imposed has been fully served.

26 * * *

27 (16) [Any] Except as set forth in subsection (d.3), any
28 person whose operating privilege has been suspended under an
29 interjurisdictional agreement as provided for in section 6146
30 as the result of a conviction or adjudication if the

conviction or adjudication for an equivalent offense in this Commonwealth would have prohibited the issuance of an occupational limited license.

* * *

(d.1) Adjudication eligibility.--An individual who has been adjudicated delinquent, convicted, granted a consent decree or granted Accelerated Rehabilitation Disposition for driving under the influence of alcohol or controlled substance and does not have a prior offense as defined in section 3806(a) (relating to prior offenses) shall be eligible for an occupational limited license.

(d.2) Suspension eligibility.--

(1) An individual whose license has been suspended for a period of 24 months under section 1547(b)(1)(ii) (relating to chemical testing to determine amount of alcohol or controlled substance) or 3804(e)(2)(ii) (relating to penalties) shall not be prohibited from obtaining an occupational limited license under this section if the individual:

(i) is otherwise eligible for restoration;

(ii) has served at least 12 months of the license suspension;

(iii) only operates a motor vehicle equipped with an ignition interlock system as defined in section 3801 (relating to definitions); and

(iv) has certified to the department under paragraph

(3).

(2) A period of ignition interlock accepted under this subsection shall not count towards the one-year mandatory period of ignition interlock imposed under section 3805 (relating to ignition interlock).

1 (3) If an individual seeks an occupational limited
2 license under this subsection, the department shall require
3 that each motor vehicle owned or registered to the person has
4 been equipped with an approved ignition interlock system as a
5 condition of issuing an occupational limited license with an
6 ignition interlock restriction.

7 (d.3) Interjurisdictional suspensions.--An individual whose
8 operating privilege has been suspended pursuant to an
9 interjurisdictional agreement under section 6146 as the result
10 of an adjudication or conviction for driving under the influence
11 of alcohol or controlled substance and does not have a prior
12 offense as defined in section 3806(a) shall be eligible for an
13 occupational limited license.

14 (e) Offenses committed during a period for which an
15 occupational limited license has been issued.--Any driver who
16 has been issued an occupational limited license and as to whom
17 the department receives a report of conviction of an offense for
18 which the penalty is a cancellation, disqualification, recall,
19 suspension or revocation of operating privileges or a report
20 under section 3815(c)(4) (relating to mandatory sentencing)
21 shall have the occupational limited license recalled, and the
22 driver shall surrender the limited license to the department or
23 its agents designated under the authority of section 1540.

24 (f) Restrictions.--A driver who has been issued an
25 occupational limited license shall observe the following:

26 (1) The driver shall operate a designated vehicle only
27 [between]:

28 (i) Between the driver's place of residence and
29 place of employment or study and as necessary in the
30 course of employment or conducting a business or pursuing

1 a course of study where the operation of a motor vehicle
2 is a requirement of employment or of conducting a
3 business or of pursuing a course of study.

4 (ii) To and from a place for scheduled or emergency
5 medical examination or treatment. This subparagraph
6 includes treatment required under Chapter 38 (relating to
7 driving while impaired).

8 * * *

9 Section 15. Sections 1554(f)(8), 1575(b), 1586, 1611(a)(1),
10 3101(b), 3326(c), 3327(e) and 3716(a) are amended to read:

11 § 1554. Probationary license.

12 * * *

13 (f) Unauthorized issuance.--The department shall not issue a
14 probationary license to:

15 * * *

16 (8) A person who has been convicted of a violation of
17 section [3731] 3802 (relating to driving under influence of
18 alcohol or controlled substance) within the preceding seven
19 years.

20 * * *

21 § 1575. Permitting violation of title.

22 * * *

23 (b) Penalty.--Any person violating the provisions of
24 subsection (a) is guilty of a summary offense and is subject to
25 the same fine as the driver of the vehicle. If the driver is
26 convicted under section [3731 (relating to driving under
27 influence of alcohol or controlled substance) or] 3735 (relating
28 to homicide by vehicle while driving under influence) or 3802
29 (relating to driving under influence of alcohol or controlled
30 substance), the person violating subsection (a) shall also be

1 subject to suspension or revocation, as applicable, under
2 sections [1532 (relating to revocation or suspension of
3 operating privilege)] 3804(e) (relating to penalties) and 1542
4 (relating to revocation of habitual offender's license).

5 * * *

6 § 1586. Duties of department.

7 The department shall, for purposes of imposing a suspension
8 or revocation under Article IV of the compact, treat reports of
9 convictions received from party states that relate to driving,
10 operating or being in actual physical control of a vehicle while
11 impaired by or under the influence of alcohol, intoxicating
12 liquor, drugs, narcotics, controlled substances or other
13 impairing or intoxicating substance as being substantially
14 similar to section [3731] 3802 (relating to driving under the
15 influence of alcohol or controlled substance). The fact that the
16 offense reported to the department by a party state may require
17 a different degree of impairment of a person's ability to
18 operate, drive or control a vehicle than that required to
19 support a conviction for a violation of section [3731] 3802
20 shall not be a basis for determining that the party state's
21 offense is not substantially similar to section [3731] 3802 for
22 purposes of Article IV of the compact.

23 § 1611. Disqualification.

24 (a) Disqualification for first violation of certain
25 offenses.--Upon receipt of a certified copy of conviction, the
26 department shall, in addition to any other penalties imposed
27 under this title, disqualify any person from driving a
28 commercial motor vehicle or school vehicle for a period of one
29 year for the first violation of:

30 (1) section [3731] 3802 (relating to driving under the

influence of alcohol or controlled substance), where the violation occurred while the person was operating a commercial motor vehicle or school vehicle;

* * *

§ 3101. Application of part.

* * *

(b) Serious traffic offenses.--The provisions of section 3345 (relating to meeting or overtaking school bus) [and], Subchapter B of Chapter 37 (relating to serious traffic offenses) and Chapter 38 (relating to driving while impaired) shall apply upon highways and trafficways throughout this Commonwealth.

§ 3326. Duty of driver in construction and maintenance areas or on highway safety corridors.

* * *

(c) Fines to be doubled.-- For any of the following violations, when committed in an active work zone manned by workers acting in their official capacity or on a highway safety corridor designated under section 6105.1 (relating to designation of highway safety corridors), the fine shall be double the usual amount:

Section 3102 (relating to obedience to authorized persons directing traffic).

Section 3111 (relating to obedience to traffic-control devices).

Section 3112 (relating to traffic-control signals).

Section 3114 (relating to flashing signals).

Section 3302 (relating to meeting vehicle proceeding in opposite direction).

Section 3303 (relating to overtaking vehicle on the

1 left).

2 Section 3304 (relating to overtaking vehicle on the

3 right).

4 Section 3305 (relating to limitations on overtaking

5 on the left).

6 Section 3306 (relating to limitations on driving on

7 left side of roadway).

8 Section 3307 (relating to no-passing zones).

9 Section 3309 (relating to driving on roadways laned

10 for traffic).

11 Section 3310 (relating to following too closely).

12 Section 3323 (relating to stop signs and yield

13 signs).

14 Section 3326 (relating to duty of driver in

15 construction and maintenance areas).

16 Section 3361 (relating to driving vehicle at safe

17 speed).

18 Section 3362 (relating to maximum speed limits).

19 Section 3702 (relating to limitations on backing).

20 Section 3714 (relating to careless driving).

21 Section 3715 (relating to restriction on alcoholic

22 beverages).

23 [Section 3731 (relating to driving under influence of

24 alcohol or controlled substance).]

25 Section 3736 (relating to reckless driving).

26 Section 3802 (relating to driving under influence of

27 alcohol or controlled substance).

28 * * *

29 § 3327. Duty of driver in emergency response areas.

30 * * *

1 (e) Fines to be doubled.--In addition to any penalty as
2 provided in subsection (b), the fine for any of the following
3 violations when committed in an emergency response area manned
4 by emergency service responders shall be double the usual
5 amount:

6 Section 3102 (relating to obedience to authorized persons
7 directing traffic).

8 Section 3111 (relating to obedience to traffic-control
9 devices).

10 Section 3114 (relating to flashing signals).

11 Section 3302 (relating to meeting vehicle proceeding in
12 opposite direction).

13 Section 3303 (relating to overtaking vehicle on the
14 left).

15 Section 3304 (relating to overtaking vehicle on the
16 right).

17 Section 3305 (relating to limitations on overtaking on
18 the left).

19 Section 3306 (relating to limitations on driving on left
20 side of roadway).

21 Section 3307 (relating to no-passing zones).

22 Section 3310 (relating to following too closely).

23 Section 3312 (relating to limited access highway
24 entrances and exits).

25 Section 3323 (relating to stop signs and yield signs).

26 Section 3325 (relating to duty of driver on approach of
27 emergency vehicle).

28 Section 3361 (relating to driving vehicle at safe speed).

29 Section 3707 (relating to driving or stopping close to
30 fire apparatus).

1 Section 3710 (relating to stopping at intersection or
2 crossing to prevent obstruction).

3 Section 3714 (relating to careless driving).

4 Section 3715.1 (relating to restriction on alcoholic
5 beverages).

6 [Section 3731 (relating to driving under influence of
7 alcohol or controlled substance).]

8 Section 3736 (relating to reckless driving).

9 Section 3802 (relating to driving under influence of
10 alcohol or controlled substance).

11 * * *

12 § 3716. Accidents involving overturned vehicles.

13 (a) Speeding, careless driving, etc.--If a commercial motor
14 vehicle overturns in an accident resulting from a violation of
15 section 3361 (relating to driving vehicle at safe speed), 3362
16 (relating to maximum speed limits), 3714 (relating to careless
17 driving) or [3731] 3802 (relating to driving under influence of
18 alcohol or controlled substance), the operator of the vehicle
19 shall, upon conviction of any of the aforementioned offenses, be
20 sentenced to pay a fine of \$2,000, in addition to any other
21 penalty authorized by law.

22 * * *

23 Section 16. Section 3731 of Title 75 is repealed.

24 Section 17. Sections 3732(a), 3735(a), 3735.1(a) and 3755(a)
25 of Title 75 are amended to read:

26 § 3732. Homicide by vehicle.

27 (a) Offense.--Any person who recklessly or with gross
28 negligence causes the death of another person while engaged in
29 the violation of any law of this Commonwealth or municipal
30 ordinance applying to the operation or use of a vehicle or to

1 the regulation of traffic except section [3731] 3802 (relating
2 to driving under influence of alcohol or controlled substance)
3 is guilty of homicide by vehicle, a felony of the third degree,
4 when the violation is the cause of death.

5 * * *

6 § 3735. Homicide by vehicle while driving under influence.

7 (a) Offense defined.--Any person who unintentionally causes
8 the death of another person as the result of a violation of
9 section [3731] 3802 (relating to driving under influence of
10 alcohol or controlled substance) and who is convicted of
11 violating section [3731] 3802 is guilty of a felony of the
12 second degree when the violation is the cause of death and the
13 sentencing court shall order the person to serve a minimum term
14 of imprisonment of not less than three years. A consecutive
15 three-year term of imprisonment shall be imposed for each victim
16 whose death is the result of the violation of section [3731]
17 3802.

18 * * *

19 § 3735.1. Aggravated assault by vehicle while driving under the
20 influence.

21 (a) Offense defined.--Any person who negligently causes
22 serious bodily injury to another person as the result of a
23 violation of section [3731] 3802 (relating to driving under
24 influence of alcohol or controlled substance) and who is
25 convicted of violating section [3731] 3802 commits a felony of
26 the second degree when the violation is the cause of the injury.

27 * * *

28 § 3755. Reports by emergency room personnel.

29 (a) General rule.--If, as a result of a motor vehicle
30 accident, the person who drove, operated or was in actual

1 physical control of the movement of any involved motor vehicle
2 requires medical treatment in an emergency room of a hospital
3 and if probable cause exists to believe a violation of section
4 [3731] 3802 (relating to driving under influence of alcohol or
5 controlled substance) was involved, the emergency room physician
6 or his designee shall promptly take blood samples from those
7 persons and transmit them within 24 hours for testing to the
8 Department of Health or a clinical laboratory licensed and
9 approved by the Department of Health and specifically designated
10 for this purpose. This section shall be applicable to all
11 injured occupants who were capable of motor vehicle operation if
12 the operator or person in actual physical control of the
13 movement of the motor vehicle cannot be determined. Test results
14 shall be released upon request of the person tested, his
15 attorney, his physician or governmental officials or agencies.

16 * * *

17 Section 18. Title 75 is amended by adding a chapter to read:

18 CHAPTER 38

19 DRIVING WHILE IMPAIRED

20 Sec.

21 3801. Definitions.

22 3802. Driving under influence of alcohol or controlled
23 substance.

24 3803. Grading.

25 3804. Penalties.

26 3805. Ignition interlock.

27 3806. Prior offenses.

28 3807. Accelerated rehabilitative disposition.

29 3808. Illegally operating a motor vehicle not equipped with
30 ignition interlock.

1 3809. Restriction on alcoholic beverages.
2 3810. Authorized use not a defense.
3 3811. Certain arrests authorized.
4 3812. Preliminary hearing or arraignment.
5 3813. Work release.
6 3814. Drug and alcohol assessments.
7 3815. Mandatory sentencing.
8 3816. Requirements for driving under influence offenders.
9 3817. Reporting requirements for offenses.

10 § 3801. Definitions.

11 The following words and phrases when used in this chapter
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Adult." An individual who is at least 21 years of age.

15 "Ignition interlock system." A system approved by the
16 department which prevents a vehicle from being started or
17 operated unless the operator first provides a breath sample
18 indicating that the operator has an alcohol level less than
19 .025%.

20 "Minor." An individual who is under 21 years of age.

21 § 3802. Driving under influence of alcohol or controlled
22 substance.

23 (a) General impairment.--

24 (1) An individual may not drive, operate or be in actual
25 physical control of the movement of a vehicle after imbibing
26 a sufficient amount of alcohol such that the individual was
27 incapable of safely driving, operating or being in actual
28 physical control of the movement of the vehicle.

29 (2) An individual may not drive, operate or be in actual
30 physical control of the movement of a vehicle after imbibing

1 a sufficient amount of alcohol such that the alcohol
2 concentration in the individual's blood or breath is at least
3 .08% but less than .10% within three hours after the
4 individual has driven, operated or been in actual physical
5 control of the movement of the vehicle.

6 (b) High rate of alcohol.--An individual may not drive,
7 operate or be in actual physical control of the movement of a
8 vehicle after imbibing a sufficient amount of alcohol such that
9 the alcohol concentration in the individual's blood or breath is
10 at least .10% but less than .16% within three hours after the
11 individual has driven, operated or been in actual physical
12 control of the movement of the vehicle.

13 (c) Highest rate of alcohol.--An individual may not drive,
14 operate or be in actual physical control of the movement of a
15 vehicle after imbibing a sufficient amount of alcohol such that
16 the alcohol concentration in the individual's blood or breath is
17 .16% or higher within three hours after the individual has
18 driven, operated or been in actual physical control of the
19 movement of the vehicle.

20 (d) Controlled substances.--An individual may not drive,
21 operate or be in actual physical control of the movement of a
22 vehicle under any of the following circumstances:

23 (1) There is in the individual's blood any amount of a:

24 (i) Schedule I controlled substance, as defined in
25 the act of April 14, 1972 (P.L.233, No.64), known as The
26 Controlled Substance, Drug, Device and Cosmetic Act;

27 (ii) Schedule II or Schedule III controlled
28 substance, as defined in The Controlled Substance, Drug,
29 Device and Cosmetic Act, which has not been medically
30 prescribed for the individual; or

(iii) metabolite of a substance under subparagraph
(i) or (ii).

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

(e) Minors.--A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is .02% or higher within three hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

(f) Commercial school vehicles.--An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle or school vehicle in any of the following circumstances:

(1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:

(i) .04% or greater within three hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle

1 other than a school bus or a school vehicle.

2 (ii) .02% or greater within three hours after the
3 individual has driven, operated or been in actual
4 physical control of the movement of a school bus or a
5 school vehicle.

6 (2) After the individual has imbibed a sufficient amount
7 of alcohol such that the individual was incapable of safely
8 driving, operating or being in actual physical control of the
9 movement of a commercial vehicle.

10 (3) While the individual is under the influence of a
11 controlled substance or combination of controlled substances,
12 as defined in section 1603 (relating to definitions).

13 (4) While the individual is under the combined influence
14 of alcohol and a controlled substance or combination of
15 controlled substances, as defined in section 1603.

16 (g) Exception to three-hour rule.--Notwithstanding the
17 provisions of subsection (a), (b), (c), (e) or (f), where
18 alcohol concentration in an individual's blood or breath is an
19 element of the offense, evidence of such alcohol concentration
20 more than three hours after the individual has driven, operated
21 or been in actual physical control of the movement of the
22 vehicle is sufficient to establish that element of the offense
23 under the following circumstances:

24 (1) where the Commonwealth shows good cause explaining
25 why the chemical test could not be performed within three
26 hours; and

27 (2) where the Commonwealth establishes that the
28 individual did not imbibe any alcohol between the time the
29 individual was arrested and the time the test was performed.

30 § 3803. Grading.

1 (a) Basic offenses.--

2 (1) An individual who violates section 3802(a) (relating
3 to driving under influence of alcohol or controlled
4 substance) and has no more than one prior offense commits a
5 misdemeanor for which the individual may be sentenced to a
6 term of imprisonment of not more than six months and to pay a
7 fine under section 3804 (relating to penalties).

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

11 (b) Other offenses.--

12 (1) An individual who violates section 3802(b), (e) or
13 (f) and who has no more than one prior offense commits a
14 misdemeanor for which the individual may be sentenced to a
15 term of imprisonment of not more than six months and to pay a
16 fine under section 3804.

17 (2) An individual who violates section 3802(c) or (d)
18 and who has no prior offenses commits a misdemeanor for which
19 the individual may be sentenced to a term of imprisonment of
20 not more than six months and to pay a fine under section
21 3804.

22 (3) An individual who violates section 3802(b), (e) or
23 (f) and who has more than one prior offense commits a
24 misdemeanor of the first degree.

25 (4) An individual who violates section 3802(c) or (d)
26 and who has one or more prior offenses commits a misdemeanor
27 of the first degree.

28 § 3804. Penalties.

29 (a) General impairment.--An individual who violates section
30 3802(a) (relating to driving under influence of alcohol or

1 controlled substance) shall be sentenced as follows:

2 (1) For a first offense, to:

3 (i) undergo a period of probation not to exceed six
4 months;

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

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

8 (iv) comply with all drug and alcohol treatment
9 requirements imposed under section 3814 (relating to drug
10 and alcohol assessments) and section 3815 (relating to
11 mandatory sentencing).

12 (2) For a second offense, to:

13 (i) undergo imprisonment for not less than five days
14 nor more than six months;

15 (ii) pay a fine of not less than \$300 nor more than
16 \$2,500;

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

22 (i) undergo imprisonment of not less than ten days
23 nor more than two years;

24 (ii) pay a fine of not less than \$500 nor more than
25 \$5,000; and

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

28 (b) High rate of blood alcohol; minors; commercial vehicles
29 and school buses and school vehicles; accidents.--Except as set
30 forth in subsection (c), an individual who violates section

1 3802(a)(1) where there was an accident resulting in bodily
2 injury, serious bodily injury or death of any person or in
3 damage to a vehicle or other property or who violates section
4 3802(b), (e) or (f) shall be sentenced as follows:

5 (1) For a first offense, to:

6 (i) undergo imprisonment of not less than 72
7 consecutive hours nor more than six months;

8 (ii) pay a fine of not less than \$500 nor more than
9 \$5,000;

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

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

14 (2) For a second offense, to:

15 (i) undergo imprisonment of not less than 30 days
16 nor more than six months;

17 (ii) pay a fine of not less than \$750 nor more than
18 \$5,000;

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

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

23 (3) For a third offense, to:

24 (i) undergo imprisonment of not less than 120 days
25 nor more than five years;

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

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

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

1 (i) undergo imprisonment of not less than one year
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 (c) Incapacity; highest blood alcohol; controlled
8 substances.--An individual convicted of violating section
9 3802(a)(1) after having refused testing of blood or breath or of
10 violating section 3802(c) or (d) shall be sentenced as follows:

11 (1) For a first offense, to:

12 (i) undergo imprisonment of not less than seven
13 consecutive days nor more than six months;

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

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

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

20 (2) For a second offense, to:

21 (i) undergo imprisonment of not less than 90 days
22 nor more than five years;

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

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 one year
30 nor more than five years;

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

2 (iii) comply with all drug and alcohol treatment

3 requirements imposed under sections 3814 and 3815.

4 (d) Extended supervision of court.--Where a person is

5 sentenced pursuant to this chapter and following the initial

6 assessment required by section 3814(1), the person is determined

7 to be in need of additional treatment pursuant to section

8 3814(2), the judge shall impose a minimum sentence as provided

9 by law and a maximum sentence equal to the statutorily available

10 maximum.

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

12 (1) The department shall suspend the operating privilege

13 of an individual under paragraph (2) upon receiving a

14 certified record of the individual's conviction of or an

15 adjudication of delinquency for:

16 (i) an offense under section 3802; or

17 (ii) a substantially similar offense reported to the

18 department under Article III of the compact in section

19 1581 (relating to Driver's License Compact).

20 (2) Suspension under paragraph (1)(i) shall be in

21 accordance with the following:

22 (i) Except as provided for in subparagraph (iii), 12

23 months for an ungraded misdemeanor or misdemeanor of the

24 second degree under this chapter.

25 (ii) 24 months for a misdemeanor of the first degree

26 under this chapter.

27 (iii) There shall be no suspension for an ungraded

28 misdemeanor under section 3802(a) where the person has no

29 prior offense.

30 (3) Suspension imposed under paragraph (1)(ii) shall be

1 in accordance with the following:

2 (i) Except as set forth in subparagraph (ii), the
3 period shall be six months.

4 (ii) If the individual has a prior offense as
5 defined by section 3806(a) (relating to prior offenses),
6 the period shall be one year.

7 (iii) Notwithstanding any provision of law or
8 enforcement agreement to the contrary, a suspension
9 imposed pursuant to paragraph (1)(ii) shall date from and
10 run concurrently to any suspension imposed by the
11 reporting party state.

12 (f) Community service assignments.--In addition to the
13 penalties set forth in this section, the sentencing judge may
14 impose up to 150 hours of community service. Where the
15 individual has been ordered to drug and alcohol treatment
16 pursuant to sections 3814 and 3815, the community service shall
17 be certified by the drug and alcohol treatment program as
18 consistent with any drug and alcohol treatment requirements
19 imposed under sections 3814 and 3815.

20 (g) Court-ordered ignition interlock.--If the person has a
21 prior offense as defined in section 3806(a), the court shall
22 order the department to require an ignition interlock system
23 under section 3805 (relating to ignition interlock).

24 (h) Sentencing guidelines.--The sentencing guidelines
25 promulgated by the Pennsylvania Commission on Sentencing shall
26 not supersede the mandatory penalties of this section.

27 (i) Appeal.--The Commonwealth has the right to appeal
28 directly to the Superior Court any order of court which imposes
29 a sentence for violation of this section which does not meet the
30 requirements of this section. The Superior Court shall remand

1 the case to the sentencing court for imposition of a sentence in
2 accordance with the provisions of this section.

3 (j) First class cities.--Notwithstanding the provision for
4 direct appeal to the Superior Court, if, in a city of the first
5 class, a person appeals from a judgment of sentence under this
6 section from the municipal court to the common pleas court for a
7 trial de novo, the Commonwealth shall have the right to appeal
8 directly to the Superior Court from the order of the common
9 pleas court if the sentence imposed is in violation of this
10 section. If, in a city of the first class, a person appeals to
11 the court of common pleas after conviction of a violation of
12 this section in the municipal court and thereafter withdraws his
13 appeal to the common pleas court, thereby reinstating the
14 judgment of sentence of the municipal court, the Commonwealth
15 shall have 30 days from the date of the withdrawal to appeal to
16 the Superior Court if the sentence is in violation of this
17 section.

18 § 3805. Ignition interlock.

19 (a) General rule.--Where a person violates section 3802
20 (relating to driving under influence of alcohol or controlled
21 substance) and has a prior offense as defined in section 3806(a)
22 (relating to prior offenses) and the person seeks a restoration
23 of operating privileges, the department shall require as a
24 condition of issuing a restricted license pursuant to this
25 section that any of the following occur:

26 (1) Each motor vehicle owned by the person or registered
27 to the person has been equipped with an approved ignition
28 interlock system and remains so for the duration of the
29 restricted license period.

30 (2) If there are no vehicles owned by the person or

1 registered to the person that the person so certify to the
2 department. A person so certifying shall be deemed to have
3 satisfied the requirement that all vehicles owned by the
4 person or registered to the person be equipped with an
5 ignition interlock system as required by this subsection.

6 (b) Application for a restricted license.--A person subject
7 to this section shall apply to the department for an ignition
8 interlock restricted license under section 1951 (relating to
9 driver's license and learner's permit), which shall be clearly
10 marked to restrict the person to operating only motor vehicles
11 equipped with an approved ignition interlock system. Upon
12 issuance of an ignition interlock restricted license to any
13 person, the department shall notify the person that until the
14 person obtains an unrestricted license the person may not own,
15 register or operate any vehicle which is not equipped with an
16 approved ignition interlock system.

17 (c) Issuance of unrestricted license.--One year from the
18 date of issuance of an ignition interlock restricted license
19 under this section, if otherwise eligible, a person may apply
20 for a replacement license under section 1951(d) that does not
21 contain the ignition interlock system restriction.

22 (d) Prohibition.--Until the person obtains an unrestricted
23 license, the person may not own, register or operate any motor
24 vehicle on a highway within this Commonwealth unless the motor
25 vehicle is equipped with an approved ignition interlock system.

26 (e) Economic hardship exemption.--A person subject to the
27 requirements of subsection (a) may apply to the department for a
28 hardship exemption to the requirement that an ignition interlock
29 system must be installed in each of the person's motor vehicles.
30 Where the department determines that the applicant establishes

1 that such a requirement would result in undue financial
2 hardship, the department may permit the applicant to install an
3 ignition interlock system on only one of the applicant's
4 vehicles. However, the applicant in accordance with section 3808
5 (relating to illegally operating a motor vehicle not equipped
6 with ignition interlock) shall be prohibited from driving any
7 vehicle, including any of the applicant's vehicles, without an
8 ignition interlock system.

9 (f) Employment exemption.--If a person with a restricted
10 license is required in the course and scope of employment to
11 operate a motor vehicle owned by the person's employer, the
12 following apply:

13 (1) Except as set forth in paragraph (2), the person may
14 operate that motor vehicle in the course and scope of
15 employment without installation of an ignition interlock
16 system if:

17 (i) the employer has been notified that the employee
18 is restricted; and

19 (ii) the employee has proof of the notification in
20 the employee's possession while operating the employer's
21 motor vehicle.

22 (2) Paragraph (1) does not apply in any of the following
23 circumstances:

24 (i) To the extent that an employer-owned motor
25 vehicle is made available to the employee for personal
26 use.

27 (ii) If the employer-owned motor vehicle is owned by
28 an entity which is wholly or partially owned by the
29 person subject to this section.

30 § 3806. Prior offenses.

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

7 (1) an offense under former section 3731 (relating to
8 driving under influence of alcohol or controlled substance);

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

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

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

15 (b) Exceptions.--For purposes of section 3804 (relating to
16 penalties), the calculation of prior and subsequent offenses
17 shall include any conviction, adjudication of delinquency,
18 juvenile consent decree, acceptance of Accelerated
19 Rehabilitative Disposition or other form of preliminary
20 disposition within the ten years before the present violation
21 occurred for any of the following:

22 (1) an offense under former section 3731;

23 (2) an offense under section 3802;

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

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

28 § 3807. Accelerated Rehabilitative Disposition.

29 (a) Eligibility.--

30 (1) Except as set forth in paragraph (2), a defendant

1 charged with a violation of section 3802 (relating to driving
2 under influence of alcohol or controlled substance) may be
3 considered by the attorney for the Commonwealth for
4 participation in an Accelerated Rehabilitative Disposition
5 program in a county if the program includes the minimum
6 requirements contained in this section.

7 (2) The attorney for the Commonwealth shall not submit a
8 charge brought under this chapter for Accelerated
9 Rehabilitative Disposition if any of the following apply:

10 (i) The defendant has been found guilty of or
11 accepted Accelerated Rehabilitative Disposition of a
12 charge brought under section 3802 within ten years of the
13 date of the current offense unless the charge was for an
14 ungraded misdemeanor under section 3802(a)(2) and was the
15 defendant's first offense under section 3802.

16 (ii) An accident occurred in connection with the
17 events surrounding the current offense and an individual
18 other than the defendant was killed or suffered serious
19 bodily injury as a result of the accident.

20 (iii) There was a passenger under 14 years of age in
21 the vehicle the defendant was operating.

22 (b) Evaluation and treatment.--

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

28 (i) The defendant must attend and successfully
29 complete an alcohol highway safety school established
30 under section 1549 (relating to establishment of

1 schools). A participating defendant shall be given both
2 oral and written notice of the provisions of section
3 1543(b) (relating to driving while operating privilege is
4 suspended or revoked).

5 (ii) Prior to receiving Accelerated Rehabilitative
6 Disposition or other preliminary disposition, the
7 defendant must be evaluated under section 3816(a)
8 (relating to requirements for driving under influence
9 offenders) to determine the extent of the defendant's
10 involvement with alcohol or other drug and to assist the
11 court in determining what conditions of Accelerated
12 Rehabilitative Disposition would benefit the defendant
13 and the public. If the evaluation indicates there is a
14 need for counseling or treatment, the defendant shall be
15 subject to a full assessment for alcohol and drug
16 addiction in accordance with the provisions of section
17 3814(3) and (4) (relating to drug and alcohol
18 assessments).

19 (iii) If the defendant is assessed under
20 subparagraph (ii) to be in need of treatment, the
21 defendant must participate and cooperate with a licensed
22 alcohol or drug addiction treatment program. The level
23 and duration of treatment shall be in accordance with the
24 recommendations with the full assessment. Nothing in this
25 subparagraph shall prevent a treatment program from
26 refusing to accept a defendant if the program
27 administrator deems the defendant to be inappropriate for
28 admission to the program. A treatment program shall
29 retain the right to immediately discharge into the
30 custody of the probation officer an offender who fails to

1 comply with program rules and treatment expectations or
2 refuses to constructively engage in the treatment
3 process.

4 (iv) The defendant must remain subject to court
5 supervision for six months.

6 (v) The defendant must make restitution to any
7 person that incurred determinable financial loss as a
8 result of the defendant's actions which resulted in the
9 offense. Restitution must be subject to court
10 supervision.

11 (vi) The defendant must pay the reasonable costs of
12 a municipal corporation in connection with the offense.
13 Fees imposed under this subparagraph shall be distributed
14 to the affected municipal corporation.

15 (vii) The defendant must pay any other fee,
16 surcharge or cost required by law. Except as set forth in
17 subparagraph (vi) or (viii), a fee or financial condition
18 imposed by a judge as a condition of Accelerated
19 Rehabilitative Disposition or any other preliminary
20 disposition of any charge under this chapter shall be
21 distributed as provided for in 42 Pa.C.S. §§ 3571
22 (relating to Commonwealth portion of fines, etc.) and
23 3573 (relating to municipal corporation portion of fines,
24 etc.).

25 (viii) The defendant must pay the costs of
26 compliance with subparagraphs (i), (ii) and (iii).

27 (2) The defendant shall be subject to a full assessment
28 for alcohol and drug addiction if any of the following apply:

29 (i) The evaluation under paragraph (1)(ii) indicates
30 a likelihood that the defendant is addicted to alcohol or

1 other drugs.

2 (ii) The defendant's blood alcohol content at the
3 time of the offense was at least .16%.

4 (3) The assessment under paragraph (2) shall be
5 conducted by one of the following:

6 (i) The Department of Health or its designee.

7 (ii) The county agency with responsibility for
8 county drug and alcohol programs or its designee.

9 (iii) The clinical personnel of a facility licensed
10 by the Department of Health for the conduct of drug and
11 alcohol addiction treatment programs.

12 (4) The assessment under paragraph (2) shall consider
13 issues of public safety and shall include recommendations for
14 all of the following:

15 (i) Length of stay.

16 (ii) Levels of care.

17 (iii) Follow-up care and monitoring.

18 (c) Insurance.--If an individual who is a subscriber to a
19 health insurance, health maintenance organization or other
20 health plan that is doing business in this Commonwealth, the
21 individual may not be deprived of alcohol and other drug abuse
22 and addiction treatment or coverage within the scope of that
23 plan due to the identification of an alcohol or other drug
24 problem which occurs as a result of an assessment under this
25 section.

26 (d) Mandatory suspension of operating privileges.--As a
27 condition of participation in an Accelerated Rehabilitative
28 Disposition program, the court shall order the defendant's
29 license suspended as follows:

30 (1) There shall be no license suspension if the

1 defendant's blood alcohol concentration at the time of
2 testing was less than .10%.

3 (2) For 30 days, if the defendant's blood alcohol
4 concentration at the time of testing was at least .10% but
5 less than .16%.

6 (3) For 60 days, if:

7 (i) the defendant's blood alcohol concentration at
8 the time of testing was .16% or higher;

9 (ii) the defendant's blood alcohol concentration is
10 not known; or

11 (iii) an accident which resulted in bodily injury or
12 in damage to a vehicle or other property occurred in
13 connection with the events surrounding the current
14 offense.

15 (e) Failure to comply.--

16 (1) A defendant who fails to complete any of the
17 conditions of participation contained in this section shall
18 be deemed to have unsuccessfully participated in an
19 Accelerated Rehabilitative Disposition program, and the
20 criminal record underlying participation in the program shall
21 not be expunged.

22 (2) The court shall direct the attorney for the
23 Commonwealth to proceed on the charges as prescribed in the
24 Rules of Criminal Procedure if the defendant:

25 (i) fails to meet any of the requirements of this
26 section;

27 (ii) is charged with or commits an offense under 18
28 Pa.C.S (relating to crimes and offenses); or

29 (iii) violates any other condition imposed by the
30 court.

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

(a) Offense defined.--

(1) An individual required to operate only a motor vehicle equipped with an approved ignition interlock system under section 1553(d.2) (relating to occupational limited license) or 3805 (relating to ignition interlock) who operates a motor vehicle on a highway of this Commonwealth without such a system commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$300 and not more than \$1,000 and to imprisonment for not more than 90 days.

(2) An individual required to operate only a motor vehicle equipped with an ignition interlock system under section 1553(d.2) or 3805 who operates a motor vehicle on a highway of this Commonwealth without such a system and who has an amount of alcohol by weight in his blood that is equal to or greater than .02% or who has any amount of a Schedule I, II or III controlled substance, as defined in the in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite, which has not been medically prescribed for the individual commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.

(b) Tampering with an interlock system.--A person that tampers with an ignition interlock system required by law commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$300 nor more than \$1,000 and to undergo imprisonment for not more than 90 days.

1 The term "tampering" in addition to any physical act which is
2 intended to alter or interfere with the proper functioning of an
3 ignition interlock device required by law shall include
4 attempting to circumvent or bypass or circumventing or bypassing
5 an ignition interlock device by:

6 (1) means of using another individual to provide a
7 breath sample; or

8 (2) providing a breath sample for the purpose of
9 bypassing an ignition interlock device required by law.

10 (c) Revocation of operating privilege.--Upon receiving a
11 certified record of the conviction of an individual under this
12 section, the department shall revoke the individual's operating
13 privilege for a period of one year.

14 § 3809. Restriction on alcoholic beverages.

15 (a) General rule.--Except as set forth in subsection (b), an
16 individual who is an operator or an occupant in a motor vehicle
17 may not be in possession of an open alcoholic beverage container
18 or consume a controlled substance as defined in the act of April
19 14, 1972 (P.L.233, No.64), known as The Controlled Substance,
20 Drug, Device and Cosmetic Act, or an alcoholic beverage in a
21 motor vehicle while the motor vehicle is located on a highway in
22 this Commonwealth.

23 (b) Exception.--This section does not prohibit possession or
24 consumption by any of the following:

25 (1) A passenger in the passenger area of a motor vehicle
26 designed, maintained or used primarily for the lawful
27 transportation of persons for compensation. This paragraph
28 includes buses, taxis and limousines.

29 (2) An individual in the living quarters of a house
30 coach or house trailer.

1 (c) Penalty.--An individual who violates this section
2 commits a summary offense.

3 § 3810. Authorized use not a defense.

4 The fact that a person charged with violating this chapter is
5 or has been legally entitled to use alcohol or controlled
6 substances is not a defense to a charge of violating this
7 chapter.

8 § 3811. Certain arrests authorized.

9 (a) Warrant not required.--In addition to any other powers
10 of arrest, a police officer is authorized to arrest an
11 individual without a warrant if the officer has probable cause
12 to believe that the individual has violated section 3802
13 (relating to driving under influence of alcohol or controlled
14 substance), regardless of whether the alleged violation was
15 committed in the presence of the police officer.

16 (b) Territory.--The authority under subsection (a) extends
17 to any hospital or other medical treatment facility located
18 beyond the territorial limits of the police officer's political
19 subdivision at which an individual to be arrested is found or
20 was taken or removed for purposes of emergency treatment,
21 examination or evaluation as long as there is probable cause to
22 believe that the violation of section 3802 occurred within the
23 police officer's political subdivision.

24 § 3812. Preliminary hearing or arraignment.

25 The presiding judicial officer at the preliminary hearing or
26 preliminary arraignment relating to a charge of a violation of
27 section 3802 (relating to driving under influence of alcohol or
28 controlled substance) shall not reduce or modify the original
29 charges without the consent of the attorney for the
30 Commonwealth.

1 § 3813. Work release.

2 In any case in which an individual is sentenced to a period
3 of imprisonment as a result of a conviction for violating a
4 provision of this chapter, the judicial officer imposing the
5 sentence shall consider assigning that individual to a daytime
6 work release program. Any work release program permitted under
7 this section shall be certified by the Drug and Alcohol
8 Treatment program administration as being consistent with any
9 drug and alcohol treatment requirements imposed under section
10 3814 (relating to drug and alcohol assessments).

11 § 3814. Drug and alcohol assessments.

12 If a defendant is convicted or pleads guilty or no contest to
13 a violation of section 3802 (relating to driving under influence
14 of alcohol or controlled substance), the following apply prior
15 to sentencing:

16 (1) The defendant shall be evaluated under section
17 3816(a) (relating to requirements for driving under influence
18 offenders) and any other additional evaluation techniques
19 deemed appropriate by the court to determine the extent of
20 the defendant's involvement with alcohol or other drug and to
21 assist the court in determining what type of sentence would
22 benefit the defendant and the public.

23 (2) The defendant shall be subject to a full assessment
24 for alcohol and drug addiction if all of the following
25 subparagraphs apply:

26 (i) The defendant, within ten years prior to the
27 offense for which sentence is being imposed, has been
28 sentenced for an offense under:

29 (A) former section 3731 (relating to driving
30 under influence of alcohol or controlled substance);

1 (B) section 3802; or
2 (C) an equivalent offense in another
3 jurisdiction.

4 (ii) Either:

5 (A) the evaluation under paragraph (1) indicates
6 there is a need for counseling or treatment; or

7 (B) the defendant's blood alcohol content at the
8 time of the offense was at least .16%.

9 (3) The assessment under paragraph (2) shall be
10 conducted by one of the following:

11 (i) The Department of Health or its designee.

12 (ii) The county agency with responsibility for
13 county drug and alcohol programs or its designee.

14 (iii) The clinical personnel of a facility licensed
15 by the Department of Health for the conduct of drug and
16 alcohol addiction treatment programs.

17 (4) The assessment under paragraph (2) shall consider
18 issues of public safety and shall include recommendations for
19 all of the following:

20 (i) Length of stay.

21 (ii) Levels of care.

22 (iii) Follow-up care and monitoring.

23 § 3815. Mandatory sentencing.

24 (a) County supervision.--Notwithstanding the length of any
25 maximum term of imprisonment required by section 3804 (relating
26 to penalties), the sentencing judge may subject the offender to
27 the supervision of the county parole system.

28 (b) Parole.--

29 (1) An offender who is determined pursuant to section
30 3814 (relating to drug and alcohol assessments) to be in need

1 of drug and alcohol treatment shall be eligible for parole in
2 accordance with the terms and conditions prescribed in this
3 section following the expiration of one-half of the
4 offender's mandatory minimum term of imprisonment.

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

6 (i) If the offender is not determined under the
7 procedures set forth in section 3814 to be addicted to
8 alcohol or another substance, the offender must refrain
9 from:

10 (A) the use of illegal controlled substances;

11 and

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

14 (ii) If the offender is determined under the
15 procedures set forth in section 3814 to be addicted to
16 alcohol or another substance, the offender must do all of
17 the following:

18 (A) Refrain from:

19 (I) the use of alcohol or illegal controlled
20 substances; and

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

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

25 (c) Treatment.--

26 (1) Treatment must conform to assessment recommendations
27 made under section 3814.

28 (2) Treatment must be conducted by a drug and alcohol
29 addiction treatment program licensed by the Department of
30 Health.

1 (3) The treatment program shall report periodically to
2 the assigned parole officer on the offender's progress in the
3 treatment program. The treatment program shall promptly
4 notify the parole officer if the offender:

5 (i) fails to comply with program rules and treatment
6 expectations;

7 (ii) refuses to constructively engage in the
8 treatment process; or

9 (iii) without authorization terminates participation
10 in the treatment program.

11 (4) Upon notification under paragraph (3), the parole
12 officer shall report the offender's actions to the parole
13 authority and to the department for compliance with section
14 1553(e) (relating to occupational limited license). The
15 parole authority shall schedule a revocation hearing to
16 consider recommendations of the parole officer and the
17 treatment program.

18 (5) Nothing in this subsection shall prevent a treatment
19 program from refusing to accept an offender if the program
20 administrator deems the offender to be inappropriate for
21 admission to the program. A treatment program shall retain
22 the right to immediately discharge into the custody of the
23 assigned parole officer an offender who fails to comply with
24 program rules and treatment expectations or refuses to
25 constructively engage in the treatment process.

26 (d) Enforcement.--

27 (1) This subsection applies to an offender ordered to
28 participate in a treatment program under subsection

29 (b)(2)(ii) who:

30 (i) fails to comply with program rules and treatment

1 expectations;

2 (ii) refuses to constructively engage in the
3 treatment process; or

4 (iii) terminates participation in the treatment
5 program without authorization.

6 (2) Notwithstanding any other provision of law, all of
7 the following apply to an offender under paragraph (1):

8 (i) The offender's parole, prerelease, work release
9 or any other release status shall be revoked.

10 (ii) The offender shall be ineligible for parole,
11 prerelease, work release or any other release from the
12 correctional facility prior to the expiration of the
13 offender's maximum term unless the offender is permitted
14 to be readmitted to a treatment program.

15 (3) Nothing in this subsection shall be construed to
16 grant a legal right to parole to an offender previously
17 ineligible for parole, on the grounds that the offender is
18 currently prepared to participate in, comply with and
19 constructively engage in the treatment process. Under such
20 circumstances, parole or reparole of the offender shall be at
21 the parole authority's discretion.

22 (e) Follow-up.--After an offender has completed the
23 treatment program under subsection (c), the parole officer shall
24 take reasonable steps to ensure that the offender does not abuse
25 alcohol, use illegal controlled substances or abuse prescription
26 drugs, over-the-counter drugs or any other such substances.
27 These reasonable steps include requiring chemical testing and
28 periodic reassessment of the offender by the treatment program.

29 (f) Fees.--

30 (1) Except as set forth in paragraph (2), the parole

1 authority shall impose upon an offender subject to this
2 section reasonable fees to cover the cost of any of the
3 following:

4 (i) Chemical testing of the offender required under
5 this section.

6 (ii) An assessment of the offender required under
7 this section.

8 (iii) Drug or alcohol treatment provided in
9 accordance with the assessment.

10 (2) If the parole authority finds the offender to be
11 unable to pay the full amount of the fees required by
12 paragraph (1) and section 1541(d) (relating to period of
13 disqualification, revocation or suspension of operating
14 privilege), it shall require the offender to pay as much of
15 the fee as is consistent with the offender's ability to pay
16 and shall direct the assigned parole officer to establish a
17 reasonable payment schedule for the offender to pay as much
18 of the remaining fees as is consistent with the offender's
19 ability to pay.

20 (g) Insurance.--If an individual who is a subscriber to a
21 health insurance, health maintenance organization or other
22 health plan that is doing business in this Commonwealth, the
23 individual may not be deprived of alcohol and other drug abuse
24 and addiction treatment or coverage within the scope of that
25 plan due to the identification of an alcohol or other drug
26 problem which occurs as a result of an assessment under this
27 section.

28 (h) Additional funding.--In order to support and augment the
29 diagnostic assessment and treatment services provided under this
30 section, the Department of Health, the department and the

1 Pennsylvania Commission on Crime and Delinquency shall seek all
2 available Federal funding, including funds available through the
3 United States National Highway Traffic Safety Administration and
4 the Department of Health and Human Services.

5 § 3816. Requirements for driving under influence offenders.

6 (a) Evaluation using Court Reporting Network.--In addition
7 to any other requirements of the court, every person convicted
8 of a violation of section 3802 (relating to driving under
9 influence of alcohol or controlled substance) and every person
10 offered accelerated rehabilitative disposition as a result of a
11 charge of a violation of section 3802 shall, prior to sentencing
12 or receiving accelerated rehabilitative disposition or other
13 preliminary disposition, be evaluated using Court Reporting
14 Network instruments issued by the department and any other
15 additional evaluation techniques deemed appropriate by the court
16 to determine the extent of the person's involvement with alcohol
17 or controlled substances and to assist the court in determining
18 what sentencing, probation or conditions of Accelerated
19 Rehabilitative Disposition would benefit the person or the
20 public.

21 (b) Court-ordered intervention or treatment.--A record shall
22 be submitted to the department as to whether the court did or
23 did not order a defendant to attend drug and alcohol treatment
24 pursuant to the requirements of sections 3804 (relating to
25 penalties), 3814 (relating to drug and alcohol assessments) and
26 3815 (relating to mandatory sentencing). If the court orders
27 treatment, a report shall be forwarded to the department as to
28 whether the defendant successfully completed the program. If a
29 defendant fails to successfully complete a program of treatment
30 as ordered by the court, the suspension shall remain in effect

1 until the department is notified by the court that the defendant
2 has successfully completed treatment and the defendant is
3 otherwise eligible for restoration of his operating privilege.
4 In order to implement the recordkeeping requirements of this
5 section, the department and the court shall work together to
6 exchange pertinent information about a defendant's case,
7 including attendance and completion of treatment or failure to
8 complete treatment.

9 § 3817. Reporting requirements for offenses.

10 (a) Requirement.--The department shall make an annual report
11 on the administration of this chapter. The department, the
12 courts and the Pennsylvania Sentencing Commission shall work
13 together to exchange pertinent information necessary to complete
14 this report.

15 (b) Contents.--The report shall include:

16 (1) The number of offenders.

17 (2) The number of offenders subject to section 3815
18 (relating to mandatory sentencing).

19 (3) The number of offenders sent to treatment for
20 alcohol and drug problems and addiction.

21 (4) The names of the treatment facilities providing
22 treatment and the level of care and length of stay in
23 treatment.

24 (5) The number of offenders successfully completing
25 treatment.

26 (6) The number of suspended licenses returned after
27 completion of treatment.

28 (7) The number of first, second, third and subsequent
29 offenders.

30 (c) Recipients.--The annual report shall be submitted to the

1 Judiciary Committee, Public Health and Welfare Committee and
2 Transportation Committee of the Senate; the Health and Human
3 Services Committee, Judiciary Committee and Transportation
4 Committee of the House of Representatives; and the Bureau of
5 Drug and Alcohol Programs. The report shall be made available to
6 the public.

7 Section 19. Sections 6308(b) and 6506(a)(7) of Title 75 are
8 amended to read:

9 § 6308. Investigation by police officers.

10 * * *

11 (b) Authority of police officer.--Whenever a police officer
12 is engaged in a systematic program of checking vehicles or
13 drivers or has [articulable and reasonable grounds to suspect a
14 violation of this title,] reasonable suspicion that a violation
15 of this title is occurring or has occurred, he may stop a
16 vehicle, upon request or signal, for the purpose of checking the
17 vehicle's registration, proof of financial responsibility,
18 vehicle identification number or engine number or the driver's
19 license, or to secure such other information as the officer may
20 reasonably believe to be necessary to enforce the provisions of
21 this title.

22 * * *

23 § 6506. Surcharge.

24 (a) Levy and imposition.--In addition to any fines, fees or
25 penalties levied or imposed as provided by law, under this title
26 or any other statute, a surcharge shall be levied for
27 disposition in accordance with subsection (b) as follows:

28 * * *

29 (7) Upon conviction of offenses under section [3731]
30 3802 (relating to driving under influence of alcohol or

controlled substance), or upon admission to programs for Accelerated Rehabilitative Disposition for offenses enumerated in section [3731] 3802, a surcharge, respectively, of:

(i) \$50 for the first offense.

(ii) \$100 for the second offense.

(iii) \$200 for the third offense.

(iv) \$300 for the fourth and subsequent offenses.

The provisions of this subsection shall not apply to any violation committed by the operator of a motorcycle, motor-driven cycle, pedalcycle, motorized pedalcycle or recreational vehicle not intended for highway use.

Section 20. The addition of 75 Pa.C.S. §§ 3814 and 3815 shall apply as follows:

(1) Except as set forth in paragraph (2) or (3), after June 30, 2009, for an offender sentenced under this chapter.

(2) On and after the effective date of this section, for an offender sentenced for a misdemeanor of the first degree.

(3) After June 30, 2006, for an offender sentenced pursuant to section 3804(a)(3), (b)(2) and (c)(1).

Section 21. The Department of Transportation has the following duties:

(1) In order to implement the addition of 75 Pa.C.S. § 3805, the following shall apply:

(i) The department shall adopt and use guidelines, which shall be published in the Pennsylvania Bulletin.

The guidelines shall not be subject to review under section 205 of the act of July 31, 1968 (P.L.769,

No.240), referred to as the Commonwealth Documents Law,

and the act of June 25, 1982 (P.L.633, No.181), known as

1 the Regulatory Review Act.

2 (ii) By September 30, 2004, the department shall, in
3 accordance with law, promulgate regulations to replace
4 the guidelines under subparagraph (i).

5 (iii) The guidelines under subparagraph (i) shall:

6 (A) take effect September 30, 2003, or
7 immediately, whichever is later; and

8 (B) expire on the earlier of:

9 (I) the effective date of regulations under
10 subparagraph (ii); or

11 (II) September 30, 2005.

12 (2) By October 1, 2004, the department shall promulgate
13 regulations to implement 75 Pa.C.S. § 1549(b).

14 Section 22. The addition of 75 Pa.C.S Ch. 38 is a
15 continuation of former 75 Pa.C.S. § 3731. The repeal of 75
16 Pa.C.S. § 3731 shall not affect offenses committed prior to the
17 effective date of this section.

18 Section 23. This act shall take effect as follows:

19 (1) The following provisions shall take effect
20 immediately:

21 (i) Section 21 of this act.

22 (ii) This section.

23 (2) The remainder of this act shall take effect
24 September 30, 2003, or immediately, whichever is later.