

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, ZUG,
DeLUCA AND CURRY, JUNE 30, 2003

AS REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, JULY 1, 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

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

* * *

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

* * *

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

§ 7508.1. Substance Abuse Education and Demand Reduction Fund.

* * *

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

(c) Additional assessment.--In addition to the assessment required by subsection (b), a person convicted of or adjudicated 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(c) (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 8. SECTION 9763(C) OF TITLE 42 IS AMENDED TO READ: <—

10 § 9763. SENTENCE OF INTERMEDIATE PUNISHMENT.

11 * * *

12 (C) RESTRICTION.--

13 (1) A DEFENDANT [CONVICTED UNDER] SUBJECT TO 75 PA.C.S.
14 § [3731(E) (RELATING TO DRIVING UNDER INFLUENCE OF ALCOHOL OR
15 CONTROLLED SUBSTANCE)] 3804 (RELATING TO PENALTIES) MAY ONLY
16 BE SENTENCED TO INTERMEDIATE PUNISHMENT:

17 [(1) IN A RESIDENTIAL INPATIENT PROGRAM OR IN A
18 RESIDENTIAL REHABILITATIVE CENTER; OR

19 (2) BY HOUSE ARREST OR ELECTRONIC SURVEILLANCE COMBINED
20 WITH DRUG AND ALCOHOL TREATMENT.]

21 (I) FOR A FIRST, SECOND OR THIRD OFFENSE UNDER 75
22 PA.C.S CH. 38 (RELATING TO DRIVING WHILE IMPAIRED); AND

23 (II) AFTER UNDERGOING AN ASSESSMENT UNDER 75 PA.C.S.
24 § 3814 (RELATING TO DRUG AND ALCOHOL ASSESSMENTS).

25 (2) IF THE DEFENDANT IS DETERMINED TO BE IN NEED OF DRUG
26 AND ALCOHOL TREATMENT, THE DEFENDANT MAY ONLY BE SENTENCED TO
27 INTERMEDIATE PUNISHMENT WHICH INCLUDES PARTICIPATION IN DRUG
28 AND ALCOHOL TREATMENT UNDER 75 PA.C.S. § 3815(C) (RELATING TO
29 MANDATORY SENTENCING). SUCH TREATMENT MAY BE COMBINED WITH
30 HOUSE ARREST WITH ELECTRONIC SURVEILLANCE OR A PARTIAL

1 CONFINEMENT PROGRAM, SUCH AS WORK RELEASE, A WORK CAMP OR A
2 HALFWAY FACILITY.

3 (3) IF THE DEFENDANT IS DETERMINED NOT TO BE IN NEED OF
4 DRUG AND ALCOHOL TREATMENT, THE DEFENDANT MAY ONLY BE
5 SENTENCED TO INTERMEDIATE PUNISHMENT:

6 (I) BY HOUSE ARREST OR ELECTRONIC SURVEILLANCE;

7 (II) PARTIAL CONFINEMENT PROGRAMS, SUCH AS WORK
8 RELEASE, WORK CAMPS AND HALFWAY FACILITIES; OR

9 (III) ANY COMBINATION OF THE PROGRAMS SET FORTH IN
10 THIS SUBSECTION.

11 * * *

12 SECTION 8.1. SECTION 9804(B)(3) OF TITLE 42 IS AMENDED AND
13 THE SUBSECTION IS AMENDED BY ADDING PARAGRAPHS TO READ:

14 § 9804. COUNTY INTERMEDIATE PUNISHMENT PROGRAMS.

15 * * *

16 (B) ELIGIBILITY.--

17 * * *

18 [(3) ANY PERSON RECEIVING A PENALTY IMPOSED PURSUANT TO
19 75 PA.C.S. § 1543(B) (RELATING TO DRIVING WHILE OPERATING
20 PRIVILEGE IS SUSPENDED OR REVOKED) OR 3731(E) (RELATING TO
21 DRIVING UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE)
22 MAY ONLY BE SENTENCED TO INTERMEDIATE PUNISHMENT PROGRAM IN:

23 (I) A RESIDENTIAL INPATIENT PROGRAM OR A RESIDENTIAL
24 REHABILITATIVE CENTER;

25 (II) HOUSE ARREST AND ELECTRONIC SURVEILLANCE
26 COMBINED WITH DRUG AND ALCOHOL TREATMENT; OR

27 (III) PARTIAL CONFINEMENT PROGRAMS, SUCH AS WORK
28 RELEASE, WORK CAMPS AND HALFWAY FACILITIES, COMBINED WITH
29 DRUG AND ALCOHOL TREATMENT.]

30 (4) (I) ANY PERSON RECEIVING A PENALTY IMPOSED PURSUANT

1 TO 75 PA.C.S. § 1543(B) (RELATING TO DRIVING WHILE
2 OPERATING PRIVILEGE IS SUSPENDED OR REVOKED) OR 3804
3 (RELATING TO PENALTIES) SHALL UNDERGO AN ASSESSMENT UNDER
4 75 PA.C.S. § 3814 (RELATING TO DRUG AND ALCOHOL
5 ASSESSMENTS).

6 (II) IF THE DEFENDANT IS DETERMINED TO BE IN NEED OF
7 DRUG AND ALCOHOL TREATMENT, A SENTENCE TO INTERMEDIATE
8 PUNISHMENT SHALL INCLUDE PARTICIPATION IN DRUG AND
9 ALCOHOL TREATMENT UNDER 75 PA.C.S. § 3815(C) (RELATING TO
10 MANDATORY SENTENCING). SUCH TREATMENT MAY BE COMBINED
11 WITH HOUSE ARREST WITH ELECTRONIC SURVEILLANCE OR A
12 PARTIAL CONFINEMENT PROGRAM, SUCH AS WORK RELEASE, A WORK
13 CAMP OR A HALFWAY FACILITY.

14 (III) IF THE DEFENDANT IS DETERMINED NOT TO BE IN
15 NEED OF DRUG AND ALCOHOL TREATMENT, THE DEFENDANT MAY
16 ONLY BE SENTENCED TO INTERMEDIATE PUNISHMENT PROGRAM IN:

17 (A) HOUSE ARREST AND ELECTRONIC SURVEILLANCE;

18 (B) PARTIAL CONFINEMENT PROGRAMS, SUCH AS WORK
19 RELEASE, WORK CAMPS AND HALFWAY FACILITIES; OR

20 (C) ANY COMBINATION OF THE PROGRAMS SET FORTH IN
21 THIS PARAGRAPH.

22 (5) A DEFENDANT SUBJECT TO 75 PA.C.S § 3804 (RELATING TO
23 PENALTIES) MAY ONLY BE SENTENCED TO INTERMEDIATE PUNISHMENT
24 FOR A FIRST, SECOND OR THIRD OFFENSE UNDER 75 PA.C.S. CH. 38
25 (RELATING TO DRIVING WHILE IMPAIRED).

26 Section 9. Sections 1516(c) and (d) and 1532(b)(3) of Title
27 75 are amended to read:

28 § 1516. Department records.

29 * * *

30 (c) Dismissal of charges for violations.--If a charge for

1 violation of any of the provisions of this title against any
2 person is dismissed where there have been no prior convictions
3 by any court of competent jurisdiction, no record of the charge
4 and dismissal shall be included in the driving record of the
5 person. If the person has been previously convicted of the
6 charge and suspension was imposed by the department, which
7 suspension was either partially or fully served, the department
8 may keep a record of the offense for the purpose of showing the
9 suspension was imposed against the person[.], but the offense
10 shall not be used for the purpose of calculating the requisite
11 number of offenses under section 1542 (relating to revocation of
12 habitual offender's license). In addition, the department may
13 keep records of charges that have been filed with the courts in
14 order to determine a person's eligibility for a probationary
15 license under the provisions of section 1554(b)(3) (relating to
16 probationary license). All records maintained pursuant to this
17 subsection shall be maintained for administrative and law
18 enforcement use only and shall not be released for any other
19 purpose.

20 (d) Updating driving record.--Drivers wishing to have their
21 record reviewed by the department may make such a request in
22 order that the record be brought up to date. In updating
23 records, the department shall include recalculation of
24 suspension or revocation segments and the assignment and
25 crediting of any suspension or revocation time previously
26 assigned or credited toward a suspension or revocation which
27 resulted from a conviction which has been vacated, overturned,
28 dismissed or withdrawn. Any fully or partially served suspension
29 or revocation time may only be reassigned or credited toward a
30 suspension or revocation segment processed on the driver's

record as of the actual commencement date of the fully or
partially served suspension or revocation time.

§ 1532. Suspension of operating privilege.

* * *

(b) Suspension.--

* * *

(3) The department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction of section [3731 (relating to driving under influence of alcohol or controlled substance) or] 3733 (relating to fleeing or attempting to elude police officer)[,] or a substantially similar [offenses] offense reported to the department under Article III of section 1581 (relating to Driver's License Compact), or an adjudication of delinquency based on section [3731 or] 3733. The department shall suspend the operating privilege of any driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section [3731 or] 3733.

* * *

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

§ 1534. Notice of acceptance of Accelerated Rehabilitative
Disposition.

* * *

(b) Exception.--If a person is arrested for any offense enumerated in section [3731] 3802 (relating to driving under influence of alcohol or controlled substance) and is offered and accepts Accelerated Rehabilitative Disposition under general rules, the court shall promptly notify the department. The

1 department shall maintain a record of the acceptance of
2 Accelerated Rehabilitative Disposition for a period of [seven]
3 ten years from the date of notification. This record shall not
4 be expunged [by order of court.] prior to the expiration of the
5 ten-year period.

6 (c) Expungement.--Immediately following the expiration of
7 the ten-year period, the department shall expunge the record of
8 the acceptance of Accelerated Rehabilitative Disposition. The
9 Department shall not require an order of court to expunge the
10 record.

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

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

17 (2) the person was a commercial driver at the time of
18 the violation causing the disposition.

19 Section 11. Sections 1541(a.1) and (d), 1542(b), 1543(b) and
20 1547(b)(1), (c), (d), (e) and (i) of Title 75 are amended to
21 read:

22 § 1541. Period of disqualification, revocation or suspension of
23 operating privilege.

24 * * *

25 (a.1) Credit toward serving period of suspension for certain
26 violations.--Credit toward serving the period of suspension or
27 revocation imposed for sections [3731 (relating to driving under
28 influence of alcohol or controlled substance),] 3732 (relating
29 to homicide by vehicle), 3735 (relating to homicide by vehicle
30 while driving under the influence) [and], 3735.1 (relating to

1 aggravated assault by vehicle while driving under the influence)
2 and 3802 (relating to driving under influence of alcohol or
3 controlled substance) shall not commence until the date of the
4 person's release from prison.

5 * * *

6 (d) Continued suspension of operating privilege.--A
7 defendant ordered by the court under section [1548] 3816
8 (relating to requirements for driving under influence
9 offenders), as the result of a conviction or Accelerated
10 Rehabilitative Disposition of a violation of section [3731
11 (relating to driving under influence of alcohol or controlled
12 substance)] 3802, to attend a treatment program for alcohol or
13 drug addiction must successfully complete all requirements of
14 the treatment program ordered by the court before the
15 defendant's operating privilege may be restored. Successful
16 completion of a treatment program includes the payment of all
17 court-imposed fines and costs, as well as fees to be paid to the
18 treatment program by the defendant. If a defendant fails to
19 successfully complete the requirements of a treatment program,
20 the suspension shall remain in effect until the defendant
21 completes the program and is otherwise eligible for restoration
22 of his operating privilege. The treatment agency shall
23 immediately notify the court of successful completion of the
24 treatment program. The final decision as to whether a defendant
25 has successfully completed the treatment program rests with the
26 court.

27 § 1542. Revocation of habitual offender's license.

28 * * *

29 (b) Offenses enumerated.--Three convictions arising from
30 separate acts of any one or more of the following offenses

committed by any person shall result in such person being
designated as a habitual offender:

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

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

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

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

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

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

* * *

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

* * *

(b) Certain offenses.--

(1) A person who drives a motor vehicle on a highway or
trafficway of this Commonwealth at a time when the person's
operating privilege is suspended or revoked as a condition of
acceptance of Accelerated Rehabilitative Disposition for a
violation of section [3731] 3802 (relating to driving under
influence of alcohol or controlled substance) or because of a
violation of section 1547(b)(1) (relating to suspension for
refusal) or [3731] 3802 or is suspended under section 1581
(relating to Driver's License Compact) for an offense
substantially similar to a violation of section [3731] 3802

1 shall, upon conviction, be guilty of a summary offense and
2 shall be sentenced to pay a fine of [\$1,000] \$500 and to
3 undergo imprisonment for a period of not less than [90] 60
4 days.

5 (1.1) (i) A person who has an amount of alcohol by
6 weight in his blood that is equal to or greater than .02%
7 or [is under the influence of a controlled substance as
8 defined in section 1603 (relating to definitions)] who
9 has any amount of a Schedule I, II or III controlled
10 substance, as defined in the act of April 14, 1972
11 (P.L.233, No.64), known as The Controlled Substance,
12 Drug, Device and Cosmetic Act, or its metabolite, which
13 has not been medically prescribed for the individual and
14 who drives a motor vehicle on any highway or trafficway
15 of this Commonwealth at a time when the person's
16 operating privilege is suspended or revoked as a
17 condition of acceptance of Accelerated Rehabilitative
18 Disposition for a violation of section [3731] 3802 or
19 because of a violation of section 1547(b)(1) or [3731]
20 3802 or is suspended under section 1581 for an offense
21 substantially similar to a violation of section [3731]
22 3802 shall, upon a first conviction, be guilty of a
23 summary offense and shall be sentenced to pay a fine of
24 \$1,000 and to undergo imprisonment for a period of not
25 less than 90 days.

26 (ii) A second violation of this paragraph shall
27 constitute a misdemeanor of the third degree, and upon
28 conviction thereof the person shall be sentenced to pay a
29 fine of \$2,500 and to undergo imprisonment for not less
30 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 section [3731] 3802 for which a revocation is imposed under section 1581.

* * *

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

* * *

(b) Suspension for refusal.--

(1) If any person placed under arrest for a violation of section [3731] 3802 (relating to driving under influence of alcohol or controlled substance) is requested to submit to chemical testing and refuses to do so, the testing shall not be conducted but upon notice by the police officer, the department shall suspend the operating privilege of the

1 person [for a period of 12 months.] as follows:

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

4 (ii) For a period of 24 months if any of the
5 following apply:

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

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

10 (I) an offense under former section 3731;

11 (II) an offense under section 3802 (relating
12 to driving under influence of alcohol or
13 controlled substance);

14 (III) an offense equivalent to an offense
15 under subclause (I) or (II); or

16 (IV) a combination of the offenses set forth
17 in this clause.

18 * * *

19 (c) Test results admissible in evidence.--In any summary
20 proceeding or criminal proceeding in which the defendant is
21 charged with a violation of section [3731] 3802 or any other
22 violation of this title arising out of the same action, the
23 amount of alcohol or controlled substance in the defendant's
24 blood, as shown by chemical testing of the person's breath,
25 blood or urine, which tests were conducted by qualified persons
26 using approved equipment, shall be admissible in evidence.

27 (1) Chemical tests of breath shall be performed on
28 devices approved by the Department of Health using procedures
29 prescribed jointly by regulations of the Departments of
30 Health and Transportation. Devices shall have been calibrated

1 and tested for accuracy within a period of time and in a
2 manner specified by regulations of the Departments of Health
3 and Transportation. For purposes of breath testing, a
4 qualified person means a person who has fulfilled the
5 training requirement in the use of the equipment in a
6 training program approved by the Departments of Health and
7 Transportation. A certificate or log showing that a device
8 was calibrated and tested for accuracy and that the device
9 was accurate shall be presumptive evidence of those facts in
10 every proceeding in which a violation of this title is
11 charged.

12 (2) Chemical tests of blood or urine, if conducted by a
13 facility located in this Commonwealth, shall be performed by
14 a clinical laboratory licensed and approved by the Department
15 of Health for this purpose using procedures and equipment
16 prescribed by the Department of Health or by a Pennsylvania
17 State Police criminal laboratory. For purposes of blood and
18 urine testing, qualified person means an individual who is
19 authorized to perform those chemical tests under the act of
20 September 26, 1951 (P.L.1539, No.389), known as The Clinical
21 Laboratory Act.

22 (3) Chemical tests of blood or urine, if conducted by a
23 facility located outside this Commonwealth, shall be
24 performed:

25 (i) by a facility licensed by the Department of
26 Health; or

27 (ii) by a facility licensed to conduct the tests by
28 the state in which the facility is located and licensed
29 pursuant to the Clinical Laboratory Improvement
30 Amendments of 1988 (Public Law 100-578, 102 Stat. 2903).

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

3 (1) That the amount of alcohol by weight in the blood of
4 an adult is 0.05% or less, it shall be presumed that the
5 adult was not under the influence of alcohol and the adult
6 shall not be charged with any violation under section
7 3731(a)(1), (4) or (5) (relating to driving under influence
8 of alcohol or controlled substance), or, if the adult was so
9 charged prior to the test, the charge shall be void ab
10 initio. This fact shall not give rise to any presumption
11 concerning a violation of section 3731(a)(2) or (3) or (i).

12 (2) That the amount of alcohol by weight in the blood of
13 an adult is in excess of 0.05% but less than 0.10%, this fact
14 shall not give rise to any presumption that the adult was or
15 was not under the influence of alcohol, but this fact may be
16 considered with other competent evidence in determining
17 whether the adult was or was not under the influence of
18 alcohol. This provision shall not negate the provisions of
19 section 3731(i).

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

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

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

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

26 (e) Refusal admissible in evidence.--In any summary
27 proceeding or criminal proceeding in which the defendant is
28 charged with a violation of section [3731] 3802 or any other
29 violation of this title arising out of the same action, the fact
30 that the defendant refused to submit to chemical testing as

1 required by subsection (a) may be introduced in evidence along
2 with other testimony concerning the circumstances of the
3 refusal. No presumptions shall arise from this evidence but it
4 may be considered along with other factors concerning the
5 charge.

6 * * *

7 (i) Request by driver for test.--Any person involved in an
8 accident or placed under arrest for a violation of section
9 [3731] 3802 may request a chemical test of his breath, blood or
10 urine. Such requests shall be honored when it is reasonably
11 practicable to do so.

12 * * *

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

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

15 § 1552. Accelerated Rehabilitative Disposition.

16 The court of common pleas in each judicial district and the
17 Municipal Court of Philadelphia shall establish and implement a
18 program for Accelerated Rehabilitative Disposition for persons
19 charged with a violation of section [3731] 3802 (relating to
20 driving under influence of alcohol or controlled substance) in
21 accordance with the provisions of this chapter and rules adopted
22 by the Supreme Court.

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

26 § 1553. Occupational limited license.

27 * * *

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

30 * * *

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

6 * * *

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

13 * * *

14 (16) [Any] Except as set forth in subsection (d.3), any
15 person whose operating privilege has been suspended under an
16 interjurisdictional agreement as provided for in section 6146
17 as the result of a conviction or adjudication if the
18 conviction or adjudication for an equivalent offense in this
19 Commonwealth would have prohibited the issuance of an
20 occupational limited license.

21 * * *

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

29 (d.2) Suspension eligibility.--

30 (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).

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

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

1 (e) Offenses committed during a period for which an
2 occupational limited license has been issued.--Any driver who
3 has been issued an occupational limited license and as to whom
4 the department receives a report of conviction of an offense for
5 which the penalty is a cancellation, disqualification, recall,
6 suspension or revocation of operating privileges or a report
7 under section 3815(c)(4) (relating to mandatory sentencing)
8 shall have the occupational limited license recalled, and the
9 driver shall surrender the limited license to the department or
10 its agents designated under the authority of section 1540.

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

13 (1) The driver shall operate a designated vehicle only
14 [between]:

15 (i) Between the driver's place of residence and
16 place of employment or study and as necessary in the
17 course of employment or conducting a business or pursuing
18 a course of study where the operation of a motor vehicle
19 is a requirement of employment or of conducting a
20 business or of pursuing a course of study.

21 (ii) To and from a place for scheduled or emergency
22 medical examination or treatment. This subparagraph
23 includes treatment required under Chapter 38 (relating to
24 driving while impaired).

25 * * *

26 Section 15. Sections 1554(f)(8), 1575(b), 1586, 1611(a)(1),
27 3101(b), 3326(c), 3327(e) and 3716(a) are amended to read:
28 § 1554. Probationary license.

29 * * *

30 (f) Unauthorized issuance.--The department shall not issue a

1 probationary license to:

2 * * *

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

7 * * *

8 § 1575. Permitting violation of title.

9 * * *

10 (b) Penalty.--Any person violating the provisions of
11 subsection (a) is guilty of a summary offense and is subject to
12 the same fine as the driver of the vehicle. If the driver is
13 convicted under section [3731 (relating to driving under
14 influence of alcohol or controlled substance) or] 3735 (relating
15 to homicide by vehicle while driving under influence) or 3802
16 (relating to driving under influence of alcohol or controlled
17 substance), the person violating subsection (a) shall also be
18 subject to suspension or revocation, as applicable, under
19 sections [1532 (relating to revocation or suspension of
20 operating privilege)] 3804(e) (relating to penalties) and 1542
21 (relating to revocation of habitual offender's license).

22 * * *

23 § 1586. Duties of department.

24 The department shall, for purposes of imposing a suspension
25 or revocation under Article IV of the compact, treat reports of
26 convictions received from party states that relate to driving,
27 operating or being in actual physical control of a vehicle while
28 impaired by or under the influence of alcohol, intoxicating
29 liquor, drugs, narcotics, controlled substances or other
30 impairing or intoxicating substance as being substantially

1 similar to section [3731] 3802 (relating to driving under the
2 influence of alcohol or controlled substance). The fact that the
3 offense reported to the department by a party state may require
4 a different degree of impairment of a person's ability to
5 operate, drive or control a vehicle than that required to
6 support a conviction for a violation of section [3731] 3802
7 shall not be a basis for determining that the party state's
8 offense is not substantially similar to section [3731] 3802 for
9 purposes of Article IV of the compact.

10 § 1611. Disqualification.

11 (a) Disqualification for first violation of certain
12 offenses.--Upon receipt of a certified copy of conviction, the
13 department shall, in addition to any other penalties imposed
14 under this title, disqualify any person from driving a
15 commercial motor vehicle or school vehicle for a period of one
16 year for the first violation of:

17 (1) section [3731] 3802 (relating to driving under the
18 influence of alcohol or controlled substance), where the
19 violation occurred while the person was operating a
20 commercial motor vehicle or school vehicle;

21 * * *

22 § 3101. Application of part.

23 * * *

24 (b) Serious traffic offenses.--The provisions of section
25 3345 (relating to meeting or overtaking school bus) [and],
26 Subchapter B of Chapter 37 (relating to serious traffic
27 offenses) and Chapter 38 (relating to driving while impaired)
28 shall apply upon highways and trafficways throughout this
29 Commonwealth.

30 § 3326. Duty of driver in construction and maintenance areas or

1 on highway safety corridors.

2 * * *

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

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

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

13 Section 3112 (relating to traffic-control signals).

14 Section 3114 (relating to flashing signals).

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

17 Section 3303 (relating to overtaking vehicle on the
18 left).

19 Section 3304 (relating to overtaking vehicle on the
20 right).

21 Section 3305 (relating to limitations on overtaking
22 on the left).

23 Section 3306 (relating to limitations on driving on
24 left side of roadway).

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

26 Section 3309 (relating to driving on roadways laned
27 for traffic).

28 Section 3310 (relating to following too closely).

29 Section 3323 (relating to stop signs and yield
30 signs).

1 Section 3326 (relating to duty of driver in
2 construction and maintenance areas).
3 Section 3361 (relating to driving vehicle at safe
4 speed).
5 Section 3362 (relating to maximum speed limits).
6 Section 3702 (relating to limitations on backing).
7 Section 3714 (relating to careless driving).
8 Section 3715 (relating to restriction on alcoholic
9 beverages).
10 [Section 3731 (relating to driving under influence of
11 alcohol or controlled substance).]
12 Section 3736 (relating to reckless driving).
13 Section 3802 (relating to driving under influence of
14 alcohol or controlled substance).

15 * * *

16 § 3327. Duty of driver in emergency response areas.

17 * * *

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

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

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

27 Section 3114 (relating to flashing signals).

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

30 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 on
5 the left).

6 Section 3306 (relating to limitations on driving on left
7 side of roadway).

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

9 Section 3310 (relating to following too closely).

10 Section 3312 (relating to limited access highway
11 entrances and exits).

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

13 Section 3325 (relating to duty of driver on approach of
14 emergency vehicle).

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

16 Section 3707 (relating to driving or stopping close to
17 fire apparatus).

18 Section 3710 (relating to stopping at intersection or
19 crossing to prevent obstruction).

20 Section 3714 (relating to careless driving).

21 Section 3715.1 (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 § 3716. Accidents involving overturned vehicles.

30 (a) Speeding, careless driving, etc.--If a commercial motor

1 vehicle overturns in an accident resulting from a violation of
2 section 3361 (relating to driving vehicle at safe speed), 3362
3 (relating to maximum speed limits), 3714 (relating to careless
4 driving) or [3731] 3802 (relating to driving under influence of
5 alcohol or controlled substance), the operator of the vehicle
6 shall, upon conviction of any of the aforementioned offenses, be
7 sentenced to pay a fine of \$2,000, in addition to any other
8 penalty authorized by law.

9 * * *

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

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

13 § 3732. Homicide by vehicle.

14 (a) Offense.--Any person who recklessly or with gross
15 negligence causes the death of another person while engaged in
16 the violation of any law of this Commonwealth or municipal
17 ordinance applying to the operation or use of a vehicle or to
18 the regulation of traffic except section [3731] 3802 (relating
19 to driving under influence of alcohol or controlled substance)
20 is guilty of homicide by vehicle, a felony of the third degree,
21 when the violation is the cause of death.

22 * * *

23 § 3735. Homicide by vehicle while driving under influence.

24 (a) Offense defined.--Any person who unintentionally causes
25 the death of another person as the result of a violation of
26 section [3731] 3802 (relating to driving under influence of
27 alcohol or controlled substance) and who is convicted of
28 violating section [3731] 3802 is guilty of a felony of the
29 second degree when the violation is the cause of death and the
30 sentencing court shall order the person to serve a minimum term

1 of imprisonment of not less than three years. A consecutive
2 three-year term of imprisonment shall be imposed for each victim
3 whose death is the result of the violation of section [3731]
4 3802.

5 * * *

6 § 3735.1. Aggravated assault by vehicle while driving under the
7 influence.

8 (a) Offense defined.--Any person who negligently causes
9 serious bodily injury to another person as the result of a
10 violation of section [3731] 3802 (relating to driving under
11 influence of alcohol or controlled substance) and who is
12 convicted of violating section [3731] 3802 commits a felony of
13 the second degree when the violation is the cause of the injury.

14 * * *

15 § 3755. Reports by emergency room personnel.

16 (a) General rule.--If, as a result of a motor vehicle
17 accident, the person who drove, operated or was in actual
18 physical control of the movement of any involved motor vehicle
19 requires medical treatment in an emergency room of a hospital
20 and if probable cause exists to believe a violation of section
21 [3731] 3802 (relating to driving under influence of alcohol or
22 controlled substance) was involved, the emergency room physician
23 or his designee shall promptly take blood samples from those
24 persons and transmit them within 24 hours for testing to the
25 Department of Health or a clinical laboratory licensed and
26 approved by the Department of Health and specifically designated
27 for this purpose. This section shall be applicable to all
28 injured occupants who were capable of motor vehicle operation if
29 the operator or person in actual physical control of the
30 movement of the motor vehicle cannot be determined. Test results

shall be released upon request of the person tested, his attorney, his physician or governmental officials or agencies.

* * *

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

CHAPTER 38

DRIVING WHILE IMPAIRED

Sec.

3801. Definitions.

3802. Driving under influence of alcohol or controlled substance.

3803. Grading.

3804. Penalties.

3805. Ignition interlock.

3806. Prior offenses.

3807. Accelerated rehabilitative disposition.

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

3809. Restriction on alcoholic beverages.

3810. Authorized use not a defense.

3811. Certain arrests authorized.

3812. Preliminary hearing or arraignment.

3813. Work release.

3814. Drug and alcohol assessments.

3815. Mandatory sentencing.

3816. Requirements for driving under influence offenders.

3817. Reporting requirements for offenses.

§ 3801. Definitions.

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

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

2 "Ignition interlock system." A system approved by the
3 department which prevents a vehicle from being started or
4 operated unless the operator first provides a breath sample
5 indicating that the operator has an alcohol level less than
6 .025%.

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

8 § 3802. Driving under influence of alcohol or controlled
9 substance.

10 (a) General impairment.--

11 (1) An individual may not drive, operate or be in actual
12 physical control of the movement of a vehicle after imbibing
13 a sufficient amount of alcohol such that the individual was
14 incapable of safely driving, operating or being in actual
15 physical control of the movement of the vehicle.

16 (2) An individual may not drive, operate or be in actual
17 physical control of the movement of a vehicle after imbibing
18 a sufficient amount of alcohol such that the alcohol
19 concentration in the individual's blood or breath is at least
20 .08% but less than .10% within three hours after the
21 individual has driven, operated or been in actual physical
22 control of the movement of the vehicle.

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

30 (c) Highest rate of alcohol.--An individual may not drive,

1 operate or be in actual physical control of the movement of a
2 vehicle after imbibing a sufficient amount of alcohol such that
3 the alcohol concentration in the individual's blood or breath is
4 .16% or higher within three hours after the individual has
5 driven, operated or been in actual physical control of the
6 movement of the vehicle.

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

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

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

14 (ii) Schedule II or Schedule III controlled
15 substance, as defined in The Controlled Substance, Drug,
16 Device and Cosmetic Act, which has not been medically
17 prescribed for the individual; or

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

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

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

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

1 noxious substances).

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

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

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

15 (i) .04% or greater within three hours after the
16 individual has driven, operated or been in actual
17 physical control of the movement of a commercial vehicle
18 other than a school bus or a school vehicle.

19 (ii) .02% or greater within three hours after the
20 individual has driven, operated or been in actual
21 physical control of the movement of a school bus or a
22 school vehicle.

23 (2) After the individual has imbibed a sufficient amount
24 of alcohol such that the individual was incapable of safely
25 driving, operating or being in actual physical control of the
26 movement of a commercial vehicle.

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

30 (4) While the individual is under the combined influence

of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.

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

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

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

§ 3803. Grading.

(a) Basic offenses.--

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

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

(b) Other offenses.--

(1) An individual who violates section 3802(b), (e) or (f) and who has no more than one prior offense commits a

1 misdemeanor for which the individual may be sentenced to a
2 term of imprisonment of not more than six months and to pay a
3 fine under section 3804.

4 (2) An individual who violates section 3802(c) or (d)
5 and who has no prior offenses commits a misdemeanor for which
6 the individual may be sentenced to a term of imprisonment of
7 not more than six months and to pay a fine under section
8 3804.

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

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

15 § 3804. Penalties.

16 (a) General impairment.--An individual who violates section
17 3802(a) (relating to driving under influence of alcohol or
18 controlled substance) shall be sentenced as follows:

19 (1) For a first offense, to:

20 (i) undergo a period of probation not to exceed six
21 months;

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

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

25 (iv) comply with all drug and alcohol treatment
26 requirements imposed under section 3814 (relating to drug
27 and alcohol assessments) and section 3815 (relating to
28 mandatory sentencing).

29 (2) For a second offense, to:

30 (i) undergo imprisonment for not less than five days

nor more than six months;

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

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

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

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

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

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

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

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

(1) For a first offense, to:

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

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

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

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

1 (2) For a second offense, to:

2 (i) undergo imprisonment of not less than 30 days

3 nor more than six months;

4 (ii) pay a fine of not less than \$750 nor more than

5 \$5,000;

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 sections 3814 and 3815.

10 (3) For a third offense, to:

11 (i) undergo imprisonment of not less than 120 days

12 nor more than five years;

13 (ii) pay a fine of not less than \$1,500 nor more

14 than \$10,000; and

15 (iii) comply with all drug and alcohol treatment

16 requirements imposed under sections 3814 and 3815.

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

18 (i) undergo imprisonment of not less than one year

19 nor more than five years;

20 (ii) pay a fine of not less than \$1,500 nor more

21 than \$10,000; and

22 (iii) comply with all drug and alcohol treatment

23 requirements imposed under sections 3814 and 3815.

24 (c) Incapacity; highest blood alcohol; controlled

25 substances.--An individual convicted of violating section

26 3802(a)(1) after having refused testing of blood or breath or of

27 violating section 3802(c) or (d) shall be sentenced as follows:

28 (1) For a first offense, to:

29 (i) undergo imprisonment of not less than ~~seven~~ FIVE <—

30 consecutive days nor more than six months;

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

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

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

(2) For a second offense, to:

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

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

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

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

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

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

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

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

(d) Extended supervision of court.--Where a person is sentenced pursuant to this chapter and following the initial assessment required by section 3814(1), the person is determined to be in need of additional treatment pursuant to section 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum.

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

(1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a

1 certified record of the individual's conviction of or an
2 adjudication of delinquency for:

3 (i) an offense under section 3802; or

4 (ii) a substantially similar offense reported to the
5 department under Article III of the compact in section
6 1581 (relating to Driver's License Compact).

7 (2) Suspension under paragraph (1)(i) shall be in
8 accordance with the following:

9 (i) Except as provided for in subparagraph (iii), 12
10 months for an ungraded misdemeanor or misdemeanor of the
11 second degree under this chapter.

12 (ii) 24 months for a misdemeanor of the first degree
13 under this chapter.

14 (iii) There shall be no suspension for an ungraded
15 misdemeanor under section 3802(a) where the person has no
16 prior offense.

17 (3) Suspension imposed under paragraph (1)(ii) shall be
18 in accordance with the following:

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

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

24 (iii) Notwithstanding any provision of law or
25 enforcement agreement to the contrary, a suspension
26 imposed pursuant to paragraph (1)(ii) shall date from and
27 run concurrently to any suspension imposed by the
28 reporting party state.

29 (f) Community service assignments.--In addition to the
30 penalties set forth in this section, the sentencing judge may

1 impose up to 150 hours of community service. Where the
2 individual has been ordered to drug and alcohol treatment
3 pursuant to sections 3814 and 3815, the community service shall
4 be certified by the drug and alcohol treatment program as
5 consistent with any drug and alcohol treatment requirements
6 imposed under sections 3814 and 3815.

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

11 (h) Sentencing guidelines.--The sentencing guidelines
12 promulgated by the Pennsylvania Commission on Sentencing shall
13 not supersede the mandatory penalties of this section.

14 (i) Appeal.--The Commonwealth has the right to appeal
15 directly to the Superior Court any order of court which imposes
16 a sentence for violation of this section which does not meet the
17 requirements of this section. The Superior Court shall remand
18 the case to the sentencing court for imposition of a sentence in
19 accordance with the provisions of this section.

20 (j) First class cities.--Notwithstanding the provision for
21 direct appeal to the Superior Court, if, in a city of the first
22 class, a person appeals from a judgment of sentence under this
23 section from the municipal court to the common pleas court for a
24 trial de novo, the Commonwealth shall have the right to appeal
25 directly to the Superior Court from the order of the common
26 pleas court if the sentence imposed is in violation of this
27 section. If, in a city of the first class, a person appeals to
28 the court of common pleas after conviction of a violation of
29 this section in the municipal court and thereafter withdraws his
30 appeal to the common pleas court, thereby reinstating the

1 judgment of sentence of the municipal court, the Commonwealth
2 shall have 30 days from the date of the withdrawal to appeal to
3 the Superior Court if the sentence is in violation of this
4 section.

5 § 3805. Ignition interlock.

6 (a) General rule.--Where a person violates section 3802
7 (relating to driving under influence of alcohol or controlled
8 substance) and has a prior offense as defined in section 3806(a)
9 (relating to prior offenses) and the person seeks a restoration
10 of operating privileges, the department shall require as a
11 condition of issuing a restricted license pursuant to this
12 section that any of the following occur:

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

17 (2) If there are no vehicles owned by the person or
18 registered to the person that the person so certify to the
19 department. A person so certifying shall be deemed to have
20 satisfied the requirement that all vehicles owned by the
21 person or registered to the person be equipped with an
22 ignition interlock system as required by this subsection.

23 (b) Application for a restricted license.--A person subject
24 to this section shall apply to the department for an ignition
25 interlock restricted license under section 1951 (relating to
26 driver's license and learner's permit), which shall be clearly
27 marked to restrict the person to operating only motor vehicles
28 equipped with an approved ignition interlock system. Upon
29 issuance of an ignition interlock restricted license to any
30 person, the department shall notify the person that until the

1 person obtains an unrestricted license the person may not own,
2 register or operate any vehicle which is not equipped with an
3 approved ignition interlock system.

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

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

13 (e) Economic hardship exemption.--A person subject to the
14 requirements of subsection (a) may apply to the department for a
15 hardship exemption to the requirement that an ignition interlock
16 system must be installed in each of the person's motor vehicles.
17 Where the department determines that the applicant establishes
18 that such a requirement would result in undue financial
19 hardship, the department may permit the applicant to install an
20 ignition interlock system on only one of the applicant's
21 vehicles. However, the applicant in accordance with section 3808
22 (relating to illegally operating a motor vehicle not equipped
23 with ignition interlock) shall be prohibited from driving any
24 vehicle, including any of the applicant's vehicles, without an
25 ignition interlock system.

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

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

1 operate that motor vehicle in the course and scope of
2 employment without installation of an ignition interlock
3 system if:

4 (i) the employer has been notified that the employee
5 is restricted; and

6 (ii) the employee has proof of the notification in
7 the employee's possession while operating the employer's
8 motor vehicle.

9 (2) Paragraph (1) does not apply in any of the following
10 circumstances:

11 (i) To the extent that an employer-owned motor
12 vehicle is made available to the employee for personal
13 use.

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

17 § 3806. Prior offenses.

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

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

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

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

30 (4) any combination of the offenses set forth in

paragraphs (1), (2) or (3).

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

(1) an offense under former section 3731;

(2) an offense under section 3802;

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

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

§ 3807. Accelerated Rehabilitative Disposition.

(a) Eligibility.--

(1) Except as set forth in paragraph (2), a defendant charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) may be considered by the attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county if the program includes the minimum requirements contained in this section.

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

(i) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under section 3802 within ten years of the date of the current offense unless the charge was for an

1 ungraded misdemeanor under section 3802(a)(2) and was the
2 defendant's first offense under section 3802.

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

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

9 (b) Evaluation and treatment.--

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

15 (i) The defendant must attend and successfully
16 complete an alcohol highway safety school established
17 under section 1549 (relating to establishment of
18 schools). A participating defendant shall be given both
19 oral and written notice of the provisions of section
20 1543(b) (relating to driving while operating privilege is
21 suspended or revoked).

22 (ii) Prior to receiving Accelerated Rehabilitative
23 Disposition or other preliminary disposition, the
24 defendant must be evaluated under section 3816(a)
25 (relating to requirements for driving under influence
26 offenders) to determine the extent of the defendant's
27 involvement with alcohol or other drug and to assist the
28 court in determining what conditions of Accelerated
29 Rehabilitative Disposition would benefit the defendant
30 and the public. If the evaluation indicates there is a

1 need for counseling or treatment, the defendant shall be
2 subject to a full assessment for alcohol and drug
3 addiction in accordance with the provisions of section
4 3814(3) and (4) (relating to drug and alcohol
5 assessments).

6 (iii) If the defendant is assessed under
7 subparagraph (ii) to be in need of treatment, the
8 defendant must participate and cooperate with a licensed
9 alcohol or drug addiction treatment program. The level
10 and duration of treatment shall be in accordance with the
11 recommendations with the full assessment. Nothing in this
12 subparagraph shall prevent a treatment program from
13 refusing to accept a defendant if the program
14 administrator deems the defendant to be inappropriate for
15 admission to the program. A treatment program shall
16 retain the right to immediately discharge into the
17 custody of the probation officer an offender who fails to
18 comply with program rules and treatment expectations or
19 refuses to constructively engage in the treatment
20 process.

21 (iv) The defendant must remain subject to court
22 supervision for six months.

23 (v) The defendant must make restitution to any
24 person that incurred determinable financial loss as a
25 result of the defendant's actions which resulted in the
26 offense. Restitution must be subject to court
27 supervision.

28 (vi) The defendant must pay the reasonable costs of
29 a municipal corporation in connection with the offense.

30 Fees imposed under this subparagraph shall be distributed

1 to the affected municipal corporation.

2 (vii) The defendant must pay any other fee,
3 surcharge or cost required by law. Except as set forth in
4 subparagraph (vi) or (viii), a fee or financial condition
5 imposed by a judge as a condition of Accelerated
6 Rehabilitative Disposition or any other preliminary
7 disposition of any charge under this chapter shall be
8 distributed as provided for in 42 Pa.C.S. §§ 3571
9 (relating to Commonwealth portion of fines, etc.) and
10 3573 (relating to municipal corporation portion of fines,
11 etc.).

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

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

16 (i) The evaluation under paragraph (1)(ii) indicates
17 a likelihood that the defendant is addicted to alcohol or
18 other drugs.

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

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

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

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

26 (iii) The clinical personnel of a facility licensed
27 by the Department of Health for the conduct of drug and
28 alcohol addiction treatment programs.

29 (4) The assessment under paragraph (2) shall consider
30 issues of public safety and shall include recommendations for

1 all of the following:

2 (i) Length of stay.

3 (ii) Levels of care.

4 (iii) Follow-up care and monitoring.

5 (c) Insurance.--If an individual who is a subscriber to a
6 health insurance, health maintenance organization or other
7 health plan that is doing business in this Commonwealth, the
8 individual may not be deprived of alcohol and other drug abuse
9 and addiction treatment or coverage within the scope of that
10 plan due to the identification of an alcohol or other drug
11 problem which occurs as a result of an assessment under this
12 section.

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

17 (1) There shall be no license suspension if the
18 defendant's blood alcohol concentration at the time of
19 testing was less than .10%.

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

23 (3) For 60 days, if:

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

26 (ii) the defendant's blood alcohol concentration is
27 not known; or

28 (iii) an accident which resulted in bodily injury or
29 in damage to a vehicle or other property occurred in
30 connection with the events surrounding the current

1 offense.

2 (e) Failure to comply.--

3 (1) A defendant who fails to complete any of the
4 conditions of participation contained in this section shall
5 be deemed to have unsuccessfully participated in an
6 Accelerated Rehabilitative Disposition program, and the
7 criminal record underlying participation in the program shall
8 not be expunged.

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

12 (i) fails to meet any of the requirements of this
13 section;

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

16 (iii) violates any other condition imposed by the
17 court.

18 § 3808. Illegally operating a motor vehicle not equipped with
19 ignition interlock.

20 (a) Offense defined.--

21 (1) An individual required to operate only a motor
22 vehicle equipped with an approved ignition interlock system
23 under section 1553(d.2) (relating to occupational limited
24 license) or 3805 (relating to ignition interlock) who
25 operates a motor vehicle on a highway of this Commonwealth
26 without such a system commits a summary offense and shall,
27 upon conviction, be sentenced to pay a fine of not less than
28 \$300 and not more than \$1,000 and to imprisonment for not
29 more than 90 days.

30 (2) An individual required to operate only a motor

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

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

23 (1) means of using another individual to provide a
24 breath sample; or

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

27 (c) Revocation of operating privilege.--Upon receiving a
28 certified record of the conviction of an individual under this
29 section, the department shall revoke the individual's operating
30 privilege for a period of one year.

1 § 3809. Restriction on alcoholic beverages.

2 (a) General rule.--Except as set forth in subsection (b), an
3 individual who is an operator or an occupant in a motor vehicle
4 may not be in possession of an open alcoholic beverage container
5 or consume a controlled substance as defined in the act of April
6 14, 1972 (P.L.233, No.64), known as The Controlled Substance,
7 Drug, Device and Cosmetic Act, or an alcoholic beverage in a
8 motor vehicle while the motor vehicle is located on a highway in
9 this Commonwealth.

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

12 (1) A passenger in the passenger area of a motor vehicle
13 designed, maintained or used primarily for the lawful
14 transportation of persons for compensation. This paragraph
15 includes buses, taxis and limousines.

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

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

20 § 3810. Authorized use not a defense.

21 The fact that a person charged with violating this chapter is
22 or has been legally entitled to use alcohol or controlled
23 substances is not a defense to a charge of violating this
24 chapter.

25 § 3811. Certain arrests authorized.

26 (a) Warrant not required.--In addition to any other powers
27 of arrest, a police officer is authorized to arrest an
28 individual without a warrant if the officer has probable cause
29 to believe that the individual has violated section 3802
30 (relating to driving under influence of alcohol or controlled

1 substance), regardless of whether the alleged violation was
2 committed in the presence of the police officer.

3 (b) Territory.--The authority under subsection (a) extends
4 to any hospital or other medical treatment facility located
5 beyond the territorial limits of the police officer's political
6 subdivision at which an individual to be arrested is found or
7 was taken or removed for purposes of emergency treatment,
8 examination or evaluation as long as there is probable cause to
9 believe that the violation of section 3802 occurred within the
10 police officer's political subdivision.

11 § 3812. Preliminary hearing or arraignment.

12 The presiding judicial officer at the preliminary hearing or
13 preliminary arraignment relating to a charge of a violation of
14 section 3802 (relating to driving under influence of alcohol or
15 controlled substance) shall not reduce or modify the original
16 charges without the consent of the attorney for the
17 Commonwealth.

18 § 3813. Work release.

19 In any case in which an individual is sentenced to a period
20 of imprisonment as a result of a conviction for violating a
21 provision of this chapter, the judicial officer imposing the
22 sentence shall consider assigning that individual to a daytime
23 work release program. Any work release program permitted under
24 this section shall be certified by the Drug and Alcohol
25 Treatment program administration as being consistent with any
26 drug and alcohol treatment requirements imposed under section
27 3814 (relating to drug and alcohol assessments).

28 § 3814. Drug and alcohol assessments.

29 If a defendant is convicted or pleads guilty or no contest to
30 a violation of section 3802 (relating to driving under influence

1 of alcohol or controlled substance), the following apply prior
2 to sentencing:

3 (1) The defendant shall be evaluated under section
4 3816(a) (relating to requirements for driving under influence
5 offenders) and any other additional evaluation techniques
6 deemed appropriate by the court to determine the extent of
7 the defendant's involvement with alcohol or other drug and to
8 assist the court in determining what type of sentence would
9 benefit the defendant and the public.

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

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

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

18 (B) section 3802; or

19 (C) an equivalent offense in another
20 jurisdiction.

21 (ii) Either:

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

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

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

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

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

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

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

(i) Length of stay.

(ii) Levels of care.

(iii) Follow-up care and monitoring.

§ 3815. Mandatory sentencing.

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

(b) Parole.--

(1) An offender who is determined pursuant to section 3814 (relating to drug and alcohol assessments) to be in need of drug and alcohol treatment shall be eligible for parole in accordance with the terms and conditions prescribed in this section following the expiration of ~~one-half~~ of the offender's mandatory minimum term of imprisonment.

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(2) The following shall be conditions of parole:

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

(A) the use of illegal controlled substances;

and

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

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

(A) Refrain from:

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

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

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

(c) Treatment.--

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

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

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

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

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

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

(4) Upon notification under paragraph (3), the parole officer shall report the offender's actions to the parole authority and to the department for compliance with section

1 1553(e) (relating to occupational limited license). The
2 parole authority shall schedule a revocation hearing to
3 consider recommendations of the parole officer and the
4 treatment program.

5 (5) Nothing in this subsection shall prevent a treatment
6 program from refusing to accept an offender if the program
7 administrator deems the offender to be inappropriate for
8 admission to the program. A treatment program shall retain
9 the right to immediately discharge into the custody of the
10 assigned parole officer an offender who fails to comply with
11 program rules and treatment expectations or refuses to
12 constructively engage in the treatment process.

13 (d) Enforcement.--

14 (1) This subsection applies to an offender ordered to
15 participate in a treatment program under subsection
16 (b)(2)(ii) who:

17 (i) fails to comply with program rules and treatment
18 expectations;

19 (ii) refuses to constructively engage in the
20 treatment process; or

21 (iii) terminates participation in the treatment
22 program without authorization.

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

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

27 (ii) The offender shall be ineligible for parole,
28 prerelease, work release or any other release from the
29 correctional facility prior to the expiration of the
30 offender's maximum term unless the offender is permitted

1 to be readmitted to a treatment program.

2 (3) Nothing in this subsection shall be construed to
3 grant a legal right to parole to an offender previously
4 ineligible for parole, on the grounds that the offender is
5 currently prepared to participate in, comply with and
6 constructively engage in the treatment process. Under such
7 circumstances, parole or reparole of the offender shall be at
8 the parole authority's discretion.

9 (e) Follow-up.--After an offender has completed the
10 treatment program under subsection (c), the parole officer shall
11 take reasonable steps to ensure that the offender does not abuse
12 alcohol, use illegal controlled substances or abuse prescription
13 drugs, over-the-counter drugs or any other such substances.
14 These reasonable steps include requiring chemical testing and
15 periodic reassessment of the offender by the treatment program.

16 (f) Fees.--

17 (1) Except as set forth in paragraph (2), the parole
18 authority shall impose upon an offender subject to this
19 section reasonable fees to cover the cost of any of the
20 following:

21 (i) Chemical testing of the offender required under
22 this section.

23 (ii) An assessment of the offender required under
24 this section.

25 (iii) Drug or alcohol treatment provided in
26 accordance with the assessment.

27 (2) If the parole authority finds the offender to be
28 unable to pay the full amount of the fees required by
29 paragraph (1) and section 1541(d) (relating to period of
30 disqualification, revocation or suspension of operating

1 privilege), it shall require the offender to pay as much of
2 the fee as is consistent with the offender's ability to pay
3 and shall direct the assigned parole officer to establish a
4 reasonable payment schedule for the offender to pay as much
5 of the remaining fees as is consistent with the offender's
6 ability to pay.

7 (g) Insurance.--If an individual who is a subscriber to a
8 health insurance, health maintenance organization or other
9 health plan that is doing business in this Commonwealth, the
10 individual may not be deprived of alcohol and other drug abuse
11 and addiction treatment or coverage within the scope of that
12 plan due to the identification of an alcohol or other drug
13 problem which occurs as a result of an assessment under this
14 section.

15 (h) Additional funding.--In order to support and augment the
16 diagnostic assessment and treatment services provided under this
17 section, the Department of Health, the department and the
18 Pennsylvania Commission on Crime and Delinquency shall seek all
19 available Federal funding, including funds available through the
20 United States National Highway Traffic Safety Administration and
21 the Department of Health and Human Services.

22 § 3816. Requirements for driving under influence offenders.

23 (a) Evaluation using Court Reporting Network.--In addition
24 to any other requirements of the court, every person convicted
25 of a violation of section 3802 (relating to driving under
26 influence of alcohol or controlled substance) and every person
27 offered accelerated rehabilitative disposition as a result of a
28 charge of a violation of section 3802 shall, prior to sentencing
29 or receiving accelerated rehabilitative disposition or other
30 preliminary disposition, be evaluated using Court Reporting

1 Network instruments issued by the department and any other
2 additional evaluation techniques deemed appropriate by the court
3 to determine the extent of the person's involvement with alcohol
4 or controlled substances and to assist the court in determining
5 what sentencing, probation or conditions of Accelerated
6 Rehabilitative Disposition would benefit the person or the
7 public.

8 (b) Court-ordered intervention or treatment.--A record shall
9 be submitted to the department as to whether the court did or
10 did not order a defendant to attend drug and alcohol treatment
11 pursuant to the requirements of sections 3804 (relating to
12 penalties), 3814 (relating to drug and alcohol assessments) and
13 3815 (relating to mandatory sentencing). If the court orders
14 treatment, a report shall be forwarded to the department as to
15 whether the defendant successfully completed the program. If a
16 defendant fails to successfully complete a program of treatment
17 as ordered by the court, the suspension shall remain in effect
18 until the department is notified by the court that the defendant
19 has successfully completed treatment and the defendant is
20 otherwise eligible for restoration of his operating privilege.
21 In order to implement the recordkeeping requirements of this
22 section, the department and the court shall work together to
23 exchange pertinent information about a defendant's case,
24 including attendance and completion of treatment or failure to
25 complete treatment.

26 § 3817. Reporting requirements for offenses.

27 (a) Requirement.--The department shall make an annual report
28 on the administration of this chapter. The department, the
29 courts and the Pennsylvania Sentencing Commission shall work
30 together to exchange pertinent information necessary to complete

1 this report.

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

3 (1) The number of offenders.

4 (2) The number of offenders subject to section 3815
5 (relating to mandatory sentencing).

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

8 (4) The names of the treatment facilities providing
9 treatment and the level of care and length of stay in
10 treatment.

11 (5) The number of offenders successfully completing
12 treatment.

13 (6) The number of suspended licenses returned after
14 completion of treatment.

15 (7) The number of first, second, third and subsequent
16 offenders.

17 (c) Recipients.--The annual report shall be submitted to the
18 Judiciary Committee, Public Health and Welfare Committee and
19 Transportation Committee of the Senate; the Health and Human
20 Services Committee, Judiciary Committee and Transportation
21 Committee of the House of Representatives; and the Bureau of
22 Drug and Alcohol Programs. The report shall be made available to
23 the public.

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

26 § 6308. Investigation by police officers.

27 * * *

28 (b) Authority of police officer.--Whenever a police officer
29 is engaged in a systematic program of checking vehicles or
30 drivers or has articulable and reasonable grounds to suspect a

1 violation of this title,] reasonable suspicion that a violation
2 of this title is occurring or has occurred, he may stop a
3 vehicle, upon request or signal, for the purpose of checking the
4 vehicle's registration, proof of financial responsibility,
5 vehicle identification number or engine number or the driver's
6 license, or to secure such other information as the officer may
7 reasonably believe to be necessary to enforce the provisions of
8 this title.

9 * * *

10 § 6506. Surcharge.

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

15 * * *

16 (7) Upon conviction of offenses under section [3731]
17 3802 (relating to driving under influence of alcohol or
18 controlled substance), or upon admission to programs for
19 Accelerated Rehabilitative Disposition for offenses
20 enumerated in section [3731] 3802, a surcharge, respectively,
21 of:

- 22 (i) \$50 for the first offense.
23 (ii) \$100 for the second offense.
24 (iii) \$200 for the third offense.
25 (iv) \$300 for the fourth and subsequent offenses.

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

30 Section 20. The addition of 75 Pa.C.S. §§ 3814 and 3815

1 shall apply as follows:

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

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

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

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

10 (1) In order to implement the addition of 75 Pa.C.S. §
11 3805, the following shall apply:

12 (i) The department shall adopt and use guidelines,
13 which shall be published in the Pennsylvania Bulletin.
14 The guidelines shall not be subject to review under
15 section 205 of the act of July 31, 1968 (P.L.769,
16 No.240), referred to as the Commonwealth Documents Law,
17 and the act of June 25, 1982 (P.L.633, No.181), known as
18 the Regulatory Review Act.

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

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

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

25 (B) expire on the earlier of:

26 (I) the effective date of regulations under
27 subparagraph (ii); or

28 (II) September 30, 2005.

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

1 Section 22. The addition of 75 Pa.C.S Ch. 38 is a
2 continuation of former 75 Pa.C.S. § 3731. The repeal of 75
3 Pa.C.S. § 3731 shall not affect offenses committed NOR CIVIL AND <—
4 ADMINISTRATIVE PENALTIES IMPOSED prior to the effective date of
5 this section.

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

7 (1) The following provisions shall take effect
8 immediately:

9 (i) Section 21 of this act.

10 (ii) This section.

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