

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 916

PRINTER NO. 4612

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

March 20, 2019

PRIME SPONSOR

Representative Stephens

DESCRIPTION

House Bill 916 amends Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes to create "Deana's Law," increasing penalties for repeat DUI offenders and establishing a suspension relief program.

This legislation adds the following definitions to section 102 of Title 75:

- "Continuous alcohol monitoring device," or "CAM device," as a monitoring device or instrument that:
 - 1) Is attached to an individual;
 - 2) Is designed to automatically and frequently test the presence of alcohol in the individual regardless of the method by which the device is attached to the individual;
 - 3) Detects the presence of alcohol; and
 - 4) Detects an attempt to tamper with, obstruct or remove the device or instrument.
- "Remote breath testing device," as an unsupervised mobile breath testing device that:
 - 1) Is not affixed to a motor vehicle;
 - 2) Has the ability to confirm the identity and location of an individual; and
 - 3) Detects the presence of alcohol.
- "Substance monitoring program," as the court-ordered use of or participation in any one or both of the following as a condition of bail, probation or parole consistent with section 3818 (relating to substance monitoring program):
 - 1) A continuous alcohol monitoring device, remote breath testing device or any other alcohol monitoring technology or device, as determined by the court; or
 - 2) Random drug testing or any other controlled substance monitoring technology or device, as determined by the court.

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Section 1532 (relating to suspension of operating privilege) is amended by requiring the Department of Transportation (department) to update driver records as follows:

- If a driver record shows an active sanction imposed by the department for a conviction of any offense under a federal, state or other state's controlled substance laws, the driver record will be changed to indicate the active departmental sanction has ended;
- If a driver record shows a pending sanction imposed by the department for a conviction of any offense under a federal, state or other state's controlled substance laws, the driver record will be changed to indicate that the pending sanction will not be imposed;
- If a driver record shows an active suspension is imposed, the driver record will be changed to indicate the suspension has ended; and
- If a driver record shows a pending suspension is imposed, the driver record will be changed to indicate the suspension will not be imposed.

Section 1543 (relating to driving while operating privilege is suspended or revoked) is amended by replacing language referencing refusal of testing of blood or breath with language clarifying that the refusal is of the testing of breath pursuant to section 1547 (relating to chemical testing to determine amount of alcohol or controlled substance) or chemical testing of blood pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania.

Section 1556 (relating to ignition interlock limited license) is amended to require the installation of an ignition interlock device in any motor vehicle to be operated by the individual following the department's approval of the petition. The ignition device vendor must provide proof of installation.

The legislation inserts a new Subchapter E in Title 75 establishing a "Relief from Administrative Suspension Program."

Section 1591 (relating to definitions) makes the following definitions:

- Defines "court" as the issuing authority or court of competent jurisdiction which notified the department of an individual's failure to respond that resulted in the indefinite suspension of that individual's operating privilege under section 1533 (relating to suspension of operating privilege for failure to respond to citation); and
- Defines "program" as the Relief from Administrative Suspension Program established under section 1592 (relating to Relief from Administrative Suspension Program).

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Section 1592 (relating to Relief from Administrative Suspension Program) requires the department, in consultation with the Administrative Office of Pennsylvania Courts (AOPC), to establish the Relief from Administrative Suspension Program (program). The program shall exist for 12 months.

The purpose of the program is to permit the department to restore the operating privileges of eligible individuals from suspensions imposed under 1533(a), (b), or (d) (relating to suspension of operating privilege for failure to respond to citation), section 1543 (a) (relating to driving while operating privilege is suspended or revoked) and section 1544 (a) (relating to additional period of revocation or suspension).

The section provides for certain duties of the department, eligibility criteria for participation in the program, prohibitions from receiving relief under the program, provides for driver records to show reinstatements and provides for compliance of the program requirements prior to restoring operating privileges.

Section 1593 (relating to program requirements) requires an individual who seeks to participate in the program to respond to the court pursuant to the instructions in a restoration requirements letter, requires the individual to pay 100% of the original penalty and any other court-ordered obligations imposed under the applicable laws of this Commonwealth. An individual applying for the program shall perform one of the following, in addition to the requirements under Section 1960 (relating to reinstatement of operating privilege or vehicle registration):

- Pay all court-ordered obligations immediately or in a single remittance; or
- If an individual is unable to pay all obligations, the individual shall either pay in installments all court-ordered obligations or comply with 42 Pa.C.S. §1520 (b) (relating to public service programs and other adjudication alternatives).

The department is permitted to require one of the following from the individual participating in the program:

- Proof of financial responsibility; or
- A signed statement certifying that the individual does not own a motor vehicle currently registered in this Commonwealth.

The court shall certify to the department that an individual is eligible for relief under the program because:

- An individual has satisfied the amounts owed to the court; or
- An individual has completed or satisfied all court-ordered public service requirements or other alternative adjudication programs.

Section 1594 (relating to use of revenue) stipulates that all revenue received by the court under the program shall be distributed in accordance with law.

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Section 1595 (relating to proceedings relating to violations barred) provides that participation in the program is conditioned upon the individual's agreement not to protest or pursue an administrative or judicial proceeding against the department for the sanctions it imposed on the individual's operating privilege under section 1533 (relating to suspension of operating privilege for failure to respond to citation), section 1544 (relating to additional period of revocation or suspension) or section 6146 (relating to enforcement agreements) as addressed by the program.

Section 3803 (relating to grading) increases the grading of DUI offenses as follows:

- Increases the grading from a misdemeanor of the first degree to a felony of the third degree for an individual who commits a third DUI within 10 years with a BAC of .10 percent to less than .16 percent; and
- Increases the grading from a felony of third degree to a felony of the second degree for an individual who commits a fourth or subsequent DUI within 10 years with a BAC of .16 or higher, if the individual refuses a chemical or breath test or if the DUI involves a controlled substance.

Section 3804 (relating to penalties) is amended to provide that a sentence imposed upon an individual for a third or subsequent offense of DUI shall be served consecutively to any other sentence.

Additionally, the Pennsylvania Commission on Sentencing shall provide for a sentencing enhancement for a violation of section 3802 (a)(1) where the individual refused testing of breath or chemical testing pursuant to a valid search warrant, court order or any other basis permissible by the Constitution of the United States and the Constitution of Pennsylvania, or for a violation of Section 3802 (c) or (d) and where the individual is on their fifth or subsequent offense.

Section 3805 (relating to ignition interlock) provides that an individual with a third or subsequent DUI offense within 10 years, who was issued an ignition interlock restricted license, may not be issued an unrestricted license for two years, rather than one year, from the date of issuance of the restricted license.

Section 3806 (relating to prior offenses) defines a "prior offense" under current law as a DUI offense under section 3802 or a substantially similar offense in another jurisdiction committed within the previous 10 years or on or after the date of the offense for which the defendant is being sentenced.

Section 3807 (relating to accelerated rehabilitative disposition) stipulates that the attorney for the Commonwealth shall not submit a charge for an Accelerated Rehabilitative Disposition (ARD) unless all of the following apply:

- The defendant admits that the Commonwealth's evidence would prove the elements beyond a reasonable doubt under section 3802;
- The defendant agrees that the defendant's admission may be used as a prior conviction for the purpose of increasing the grading and penalty of any subsequent offense under this Title; and

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- The defendant knowingly and voluntarily waives the defendant's right to challenge the use of the ARD as a prior conviction for the purpose of enhancing the grading and sentencing of any subsequent offense under this Title.

Section 3814 (relating to drug and alcohol assessments) allows for the use of medication-assisted treatment in conjunction with behavioral therapies if the treatment is clinically appropriate.

Section 3815 (relating to mandatory sentencing) allows the court to order an individual to participate in a substance monitoring program under section 3818 (relating to substance monitoring program) if the individual has one or more prior offenses, as a condition of parole or probation.

Section 3818 (relating to substance monitoring program) requires the court to order an evaluation of an individual's entry into the substance monitoring program in all of the following circumstances:

- While adjudication of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) is pending for an individual who has one or more prior offenses;
- While adjudication of two or more violations of section 3802 are concurrently pending for an individual; and
- As a condition of probation or parole where the individual violates section 3802 and has one or more prior offenses.

An individual participating in the substance monitoring program shall pay for costs associated with their participation, including costs associated with any required device or technology.

An individual ordered to participate in a substance monitoring program is prohibited from all of the following:

- Imbibing alcohol, using controlled substances, or both, as determined by the court;
- Tampering with any device or technology associated with the substance monitoring program; and
- Failing to comply with any other requirement ordered by the court as part of the substance monitoring program.

This act shall take effect as follows:

- The amendment of Sections 1543 (b)(1.1)(i) and 3807 (a)(2.1) takes effect immediately;
- The addition of Subchapter E (Sections 1591-1595) takes effect in 10 months;
- The amendment or addition of Section 1532 (b)(6) and (d) takes effect in 60 days;

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- The amendment or addition of Section 3805 (c) and (c.1) takes effect in 90 days;
- The amendment of Sections 1556 (b)(1) and (2) and 3805 (h.3) takes effect in 8 months; and
- The remainder of this act shall take effect in 120 days.

FISCAL IMPACT:

The above mentioned misdemeanors and felonies are classified as follows:

Classification:	Maximum Term of Imprisonment:
Felony of the first degree (F1)	More than ten years
Felony of the second degree (F2)	Not more than ten years
Felony of the third degree (F3)	Not more than seven years
Misdemeanor of the first degree (M1)	Not more than five years
Misdemeanor of the second degree (M2)	Not more than two years

According to 2018 data from the Pennsylvania Commission on Sentencing (commission), the increase in the grading of a third or subsequent violation of § 3802(b) from M1 to F3 would apply to 254 offenses. While the mandatory minimum sentence would not be impacted, the statutory maximum sentence in each case would increase from five years to seven years. This would most likely result in an additional two years of court supervision by the county probation department at an average annual cost per offender of \$2,699, for a total estimated cost of \$1.4 million (\$685,546 annually).

For violations of § 3802(a)(1)(refuse testing), § 3802(c) and (d), a fourth offense increases in grading from an F3 to an F2 and a fifth or subsequent offense increases from an F3 to an F1. From a total of 1,252 violations for third or subsequent offenses reported to the commission, 11% (138 offenses) are fourth offenses and 4% (50 offenses) are fifth or subsequent offenses. While minimum sentences may increase, the maximum sentence and court supervision would increase due to an inclusion of mandatory maximum sentences in cases involving drug and/or alcohol dependent persons. Court supervision would increase from seven years to ten years for the 138 offenders and seven years to twenty years for the other 50 offenders. This would result in additional supervision costs of \$507,412 annually for the first three years and \$134,950 annually for years four through thirteen. These costs would be incurred by the individual counties where the sentencing occurs.

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The new provisions related to consecutive sentencing and for CAM device apply to 2,326 violations that were reported to the commission in 2018. Currently, about 25% of these sentences are committed to a state correctional institution with a minimum sentence of greater than one year. In addition to increases in these cases, there will also be an impact of consecutive county sentences aggregated to become state sentences. Assuming an additional 25% are sentenced to a term of imprisonment in a state correctional institution for one year, this would result in an additional 581 inmates in the state correctional system. According to the Pennsylvania Department of Corrections (DOC), the variable per inmate/per day rate for 300-599 inmates is \$43.60. This would result in the DOC incurring annual costs of \$9.2 million in the first year. Counties would incur similar costs of housing inmates for an extended period of time when an offender has multiple sentences and remains in county jail for a longer period of time.

Additionally, according to the department, enactment of this legislation will require computer system changes to ensure an individual convicted of two or more prior offenses maintains the ignition interlock restricted license for a two-year period before an unrestricted license is issued and to update driver records within the required ten months of the effective date. The department estimates system changes beginning in January 2021 at a first-year cost of \$275,000. The department's costs related to updating fact sheets, information modules and the department's publicly accessible website will be nominal and are capable of being accommodated within the agency's current workload and budget.