

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 773

PRINTER NO. 1468

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

August 28, 2019

PRIME SPONSOR

Senator Killion

DESCRIPTION

Senate Bill 773 amends Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes to create "Deana's Law," increasing penalties for repeat DUI offenders.

This legislation defines "continuous alcohol monitoring device," or "CAM device," as a monitoring device or instrument that:

- 1) Is attached to the person;
- 2) Is designed to automatically test the alcohol content in a person by contact with the skin of the person at least once per one-half hour regardless of the location on the person;
- 3) Detects the presence of alcohol; and
- 4) Detects an attempt to tamper with, obstruct or remove the device or instrument.

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 of Transportation's (department) approval of the petition. The ignition device vendor must provide proof of installation.

Section 3803 (relating to grading) is amended as follows:

- Increases the grading from a misdemeanor of the second degree to a felony of the third degree for an individual who has two prior offenses with a blood alcohol content (BAC) of .08 percent to less than .10 percent;
- Increases the grading from a misdemeanor of the first degree to a felony of the third degree for an individual who has two prior offenses with a BAC of .10 percent to less than .16 percent;
- Increases the grading from a felony of the third degree to a felony of the second degree for an individual who has three prior offenses with a BAC of .08 percent or higher; and
- Increases the grading from a felony of the third degree to a felony of the first degree for an individual who has four or more prior offenses with a BAC of .08 percent or higher.

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.

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Section 3805 (relating to ignition interlock) is amended to require that an individual with a third or subsequent offense install an ignition interlock device for two years instead of one year. Additionally, an ignition interlock vendor shall notify the department if an individual violates the terms of an ignition interlock installed in a vehicle. The legislation requires the department to notify the individual of the violation. Ignition interlock device usage shall continue until no violations have occurred within a 60-day period.

Section 3815 (relating to mandatory sentencing) provides that, at the court's discretion and consistent with Section 3818 (relating to 24/7 Sobriety Monitoring Program), an individual serving a sentence for DUI and with two or more prior offenses may be fitted with a CAM device for one year or for the duration of the period of probation or parole, whichever is less.

The bill adds a new Section 3818 (relating to 24/7 Sobriety Monitoring Program) to require participation in one or more of the following for no less than 90 days as a condition of bail for a DUI for an individual who has two or more prior offenses:

- 1) A CAM device or any other similar alcohol monitoring technology or device as determined by the court; and
- 2) Random drug testing or any other controlled substance monitoring technology or device as determined by the court.

The individual shall pay for all costs associated with the program. The court may authorize the county to finance the costs if it determines the individual lacks the financial ability to pay all or part of the costs.

An individual required to participate in a 24/7 Sobriety Monitoring Program is prohibited from all of the following for the duration of participation in the program:

- 1) Imbibing alcohol, using controlled substances or both as determined by the court;
- 2) Tampering with devices or technologies associated with the 24/7 Sobriety Monitoring Program; and
- 3) Failing to comply with any other requirements ordered by the court as part of the 24/7 Sobriety Monitoring Program.

The legislation requires the department, in consultation with the Pennsylvania State Police and the Administrative Office of Pennsylvania Courts, to evaluate the effectiveness of DUI courts in this Commonwealth and to submit a report with findings and recommendations to the Transportation Committees of the Senate and House of Representatives within six months of the effective date.

This act shall take effect in 120 days.

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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.

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.