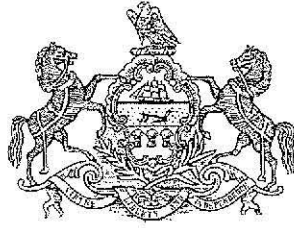


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THE PENNSYLVANIA COMMISSION ON SENTENCING
<http://pasentencing.us>

TESTIMONY BEFORE THE HOUSE TRANSPORTATION COMMITTEE

**Public Hearing on Accidents
Involving Death or Personal Injury**

75 Pa.C.S 3742

HB 197, PN 196
HB 352, PN 383
HB 748, PN 834

Room G-50, Irvis Office Building

April 20, 2009

**Mark H. Bergstrom
Executive Director**

MARK H. BERGSTROM
Executive Director
Pennsylvania Commission on Sentencing

Mark Bergstrom has been Executive Director of the Pennsylvania Commission on Sentencing since April 1998. He serves as the Commission's liaison with the General Assembly, the Administrative Office of Pennsylvania Courts, the Governor's Office, other state and local agencies, and with the various administrative units of The Pennsylvania State University, with which the Commission is affiliated.

Mr. Bergstrom is a Senior Lecturer in Crime, Law and Justice at The Pennsylvania State University, where he teaches undergraduate courses in Sentencing and the Courts; an Adjunct Professor of Law at the Duquesne University School of Law where he teaches an elective course on Sanctions, Sentencing & Corrections; and an Adjunct Faculty at the Villanova University School of Law where he assists with the annual Villanova Sentencing Workshop.

Mr. Bergstrom also serves as a State Sentencing & Corrections Associate with the Vera Institute of Justice, providing technical assistance to jurisdictions on sentencing and corrections reforms. Since 2002, he has participated in engagements in the District of Columbia as well as the states of Alabama, Connecticut, Illinois, Nebraska, New Jersey, New Mexico, Oklahoma, Utah, and Washington.

Mr. Bergstrom previously served as Associate Director of the Commission; as an Intermediate Punishment Specialist, a position jointly funded by the Commission on Sentencing and the Pennsylvania Commission on Crime and Delinquency; and as a Probation Officer and as Director of the Office of Volunteer and Community Services for the Court of Common Pleas of Lancaster County (PA). He received a B.A. degree in Psychology from Millersville University of Pennsylvania and a Master of Public Administration degree from The Pennsylvania State University.

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Good morning Chairman Markosek, Chairman Geist and members of the House Transportation Committee. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing this opportunity to comment briefly on the offense of Accidents involving death or personal injury (75 Pa.C.S, §3742) and the amendments proposed in three bills introduced this session: HB 197 (PN 196), HB 352 (PN 383) and HB 748 (PN 834). For the purposes of this hearing, I thought it would be most useful to provide you with information on sentences imposed for this and the related offense of Accidents involving death or personal injury while not properly licensed (75 Pa.C.S, §3742.1), as well as the projected impact on sentences imposed if the proposed changes are enacted.

As you may be aware, 75 Pa.C.S, §3742 presently includes three levels of penalties that address different harms related to 'hit and run' accidents: (b)(1) classifies an offense as a Misdemeanor of the First Degree (M1; maximum penalty of 5 years, \$10,000) if a victim suffers harm less than serious bodily injury; (b)(2) classifies an offense as a Felony of the Third Degree (F3; maximum penalty of 7 years, \$15,000) and provides a mandatory minimum sentence of 90 days and a mandatory fine of \$1,000 if a victim suffers serious bodily injury; and (b)(3) classifies an offense as a Felony of the Third Degree (F3; maximum penalty of 7 years, \$15,000) and provides a mandatory minimum sentence of one year and a mandatory fine of \$2,500 if a victim dies. The sentencing guidelines (below) generally track these statutory provisions.

OGS	Example Offenses	0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
6 (F3)	Accident involving Death	3-12 BC	6-14 BC	9-16 BC	12-18 BC	15-21 BC	21-27 BC	27-40 BC	NA	+/- 6
5 (F3)	Accident involving SBI	RS-9	1-12 BC	3-14 BC	6-16 BC	9-16 BC	12-18 BC	24-36 BC	NA	+/- 3
3 (M1)	Accident involving Injury	RS-1	RS-6	RS-9	RS-<12	3-14 BC	6-16 BC	12-18 BC	NA	+/- 3

While it does not include the element of leaving the scene of the accident, 75 Pa.C.S. §3742.1 assigns the same grade (F3) to accidents involving death or serious bodily injury while not properly licensed; however, this statute does not include the mandatory sentencing provisions.

I have provided to your staff for distribution a report (12 pages) that summarizes sentences submitted to the Commission for these two offenses during the past three years (2006, 2007 and 2008). For each of the years, there are four separate tables based on different units of analysis: all offenses reported, the most serious offense of a criminal incident, the most serious offense of a judicial proceeding, and the most serious offense per offender. What is common to each of the tables is the break-down of sentences by type of sentence imposed (i.e., state prison, SIP, county jail, CIP, probation and other RS), as well as the average length of the sentence by type. This information serves as a baseline of sentences imposed under existing statute, and can be used with the Commission's projection model to estimate the impact of changes to the statute and/or the sentencing guidelines.

As an example, during 2008 there were 247 sentences reported to the Commission for convictions under 75 Pa.C.S. §3742 (all offenses table), involving 159 unique offenders (most serious per offender table). Of the 200 sentences imposed under subsection (b)(1), 13 (7%) received a state prison sentence with an average minimum sentence of 7.5 months; of the 34 sentences under (b)(2) (SBI), 20 (59%) received a state prison sentence with an average minimum sentence of 12.1 months; and of the 13 sentences imposed under (b)(3)(death), 10 (77%) received a state prison sentence with an average minimum sentence of 16.8 months. Reflecting the mandatory minimum sentencing provisions under (b)(2) and (b)(3), you will note that sentences under (b)(1) include CIP, probation and other RS, while sentences under (b)(2) and (b)(3) only include county jail and state prison sentences.

The Commission also collects information on fines and other economic sanctions imposed by courts of common pleas. While this is somewhat less reliable information, it reflects relatively low amounts of fines being imposed for convictions under 75 Pa.C.S. §3742, even when a mandatory fine is required by statute. During 2006-2007, a fine was imposed in nearly 35% of the sentences under subsection (b)(1), with the average fine imposed being \$331; approximately

55% of the (b)(2) sentences included a fine, with an average of \$978; and a third of those sentenced under (b)(3) received a fine, the average being \$1,543. It should be noted that fines are competing with other economic sanctions, including restitution, costs, fees and forfeitures. Additionally, fines may be waived if there is a determination by the court that the defendant does not have an ability to pay. The Commission is studying fines and other economic sanctions, as well as the role of community service, in response to additional responsibilities assigned to it under Act 37 of 2007.

Each of the three bills noted earlier would impact sentences imposed under 75 Pa.C.S, §3742, due to changes in the grading of offenses, increases in the mandatory minimum sentences required, and/or provisions which mandate the imposition of consecutive sentences in certain circumstances. I will briefly describe the proposed changes contained in each of the three bills, and provide an estimate of the impact of the proposals on the number of offenders and the average minimum sentence served in state prison. This is not intended as support for or criticism of any of the proposals, but rather to inform the committee of the sentences anticipated should the legislation be enacted. No impact estimates are provided for the proposed increases in fines.

I have attached to my testimony another report (5 pages) which provides baseline and impact information for each of the bills. While the tables are based on all sentences reported in 2008, only those sentences which included certain offender identifiers were included in the analysis to improve the accuracy of the projections. As a result, the information provided is a fairly conservative estimate of impact.

House Bill 197 (Printer's Number 196)

HB 197 proposes an increase in the mandatory minimum sentence from one year to five years when a victim dies as a result of an accident (75 Pa.C.S, §3742 (b)(3)). Based on the simulation, the proposed change would increase the number of admissions to state prison from nine to 12, and would increase the average minimum sentence from 16 months to 60 months. The result would be a need for 17,280 additional bed-days (576 months), or approximately 48 additional state prison beds each year.

House Bill 352 (Printer's Number 383)

HB 352 proposes an increase in the grade when a victim suffers serious bodily injury or dies as a result of an accident from an F3 to an F2 (75 Pa.C.S, §3742 (b)(2) and (b)(3)). Based on the simulation, the proposed change to (b)(2) (SBI) would increase the number of admissions to state prison from 13 to 15, and would increase the average minimum sentence from 14.2 months to 21.8 months. The result would be a need for 4,272 additional bed-days (142.4 months), or 12 additional state prison beds each year. Also based on the simulation, the proposed change to (b)(3) (Death) would not change the number of admissions to state prison (it would remain at nine), but would increase the average minimum sentence from 16 months to 19.9 months. The result would be a need for 1,053 additional bed-days (35.1 months), or 3 additional state prison beds each year. The combined impact of these two changes would require approximately 15 additional state prison beds per year.

House Bill 748 (Printer's Number 834)

HB 748 proposes numerous changes, which include: adding a mandatory fine of \$300 under subsection (b)(1); providing for the imposition of an additional fine and term of prison for each victim under subsection (b)(2); and providing for the increase in the grade from an F3 to an F2 and the imposition of an additional fine and term of prison for each victim under subsection (b)(3). The bill also proposes enhanced penalties when a violation under 75 Pa.C.S, §3742 is concurrent with a violation of 75 Pa.C.S, §3802 (DUI), including: providing for an increase from an M1 to an F3 for acts otherwise covered under subsection (b)(1); providing for an increase from an F3 to an F2, increasing the mandatory minimum sentence from 90 days to one year and the mandatory fine from \$1,000 to \$2,500, and providing for the imposition of an additional fine and term of prison for each victim for acts otherwise covered under subsection (b)(2); and providing for an increase from an F3 to an F2, increasing the mandatory minimum sentence from one year to three years and the mandatory fine from \$2,500 to \$5,000, and providing for the imposition of an additional fine and term of prison for each victim for acts otherwise covered under subsection (b)(3). A draft impact analysis of these proposals are found in two tables, with

need for 2,463 additional bed-days (82.1 months), or approximately seven additional state prison beds each year.

The proposed changes under subsection (b)(2), also based on preliminary projections, would not change the number of admissions to DOC (it would remain at 13), but the average minimum sentence when DUI is not present would increase from 14.2 months to 15.2 months and the average minimum sentence with a concurrent DUI violation would increase from 14.2 months to 23.5 months. The result would be a need for 1,386 additional bed-days (46.2 months), or approximately four additional state prison beds each year.

I hope this information is helpful as you consider the legislation before you. As an agency of the General Assembly, the Commission on Sentencing is always available to provide data and information in an effort to promote fairer and more uniform sentencing practices in the Commonwealth.

Thank you again for providing this opportunity to testify.

PA Commission on Sentencing
 Type of Sentence -- Title 75 Section 3742, Pennsylvania, 2008 (with SSN)
 2008 Data
 Baseline
 Tracking Number: 2009_04_007

Title & Section	Subsection	Grade	Grade(Proposed)	OGS	Total Number	State Prison			SIP		County Jail			CIP			Probation		Other RS		
						Num	%	Mean Min	Num	%	Num	%	Mean Min	Num	%	Length of RIP	Num	%	Length of Probation	Num	%
75 3742	(b)(1)	M-1	M-1	3	178	9	5	8.1	-	-	57	32	3.7	5	3	1.4	98	55	24.0	9	5
	(b)(2)	F-3	F-3	5	26	13	50	14.2	-	-	13	50	6.2	-	-	-	-	-	-	-	-
	(b)(3)	F-3	F-3	6	12	9	75	16.0	-	-	3	25	15.7	-	-	-	-	-	-	-	-
Total					216	31	14	13.0	-	-	73	34	4.6	5	2	1.4	98	45	24.0	9	4

Based on information reported on paper and electronic Guideline Sentence Forms to the Commission on Sentencing; therefore the Commission warrants neither the accuracy nor completeness of the data herein provided.

PA Commission on Sentencing

Type of Sentence -- Title 75 Section 3742, Pennsylvania, 2008 (with SSN)

2008 Data -- HB 197 Proposed Changes

(b)(3) remains a F3, but with 5 yr mandatory minimum sentence

Tracking Number: 2009_04_007

Title & Section	Subsection	Grade	Grade(Proposed)	OGS	Total Number	State Prison			SIP		County Jail			CIP			Probation		Other RS		
						Num	%	Mean Min	Num	%	Num	%	Mean Min	Num	%	Length of RIP	Num	%	Length of Probation	Num	%
75 3742	(b)(1)	M-1	M-1	3	178	9	5	8.1	-	-	57	32	3.7	5	3	1.4	98	55	24.0	9	5
	(b)(2)	F-3	F-3	5	26	13	50	14.2	-	-	13	50	6.2	-	-	-	-	-	-	-	-
	(b)(3)	F-3	F-3	6	12	12	100	60.0	-	-	-	-	-	-	-	-	-	-	-	-	-
Total					216	34	16	28.8	-	-	70	32	4.2	5	2	1.4	98	45	24.0	9	4

PA Commission on Sentencing
 Type of Sentence -- Title 75 Section 3742, Pennsylvania, 2008 (with SSN)
 2008 Data -- HB 352 Proposed Changes
 ((b)(2) & b)(3) changed to F2

Tracking Number: 2009_04_007

Title & Section	Subsection	Grade	Grade(Proposed)	OGS	Total Number	State Prison			SIP		County Jail			CIP			Probation		Other RS		
						Num	%	Mean Min	Num	%	Num	%	Mean Min	Num	%	Length of RIP	Num	%	Length of Probation	Num	%
75 3742	(b)(1)	M-1	M-1	3	178	9	5	8.1	-	-	57	32	3.7	5	3	1.4	98	55	24.0	9	5
	(b)(2)	F-3	F-2	7	26	15	58	21.8	-	-	11	42	10.3	-	-	-	-	-	-	-	-
	(b)(3)	F-3	F-2	7	12	9	75	19.9	-	-	3	25	15.8	-	-	-	-	-	-	-	-
Total					216	33	15	17.6	-	-	71	33	5.2	5	2	1.4	98	45	24.0	9	4

Based on information reported on paper and electronic Guideline Sentence Forms to the Commission on Sentencing;
 therefore the Commission warrants neither the accuracy nor completeness of the data herein provided.

PA Commission on Sentencing

Type of Sentence -- Title 75 Section 3742, Pennsylvania, 2008 (with SSN)

2008 Data -- HB 748 Proposed Changes, Step A

(b)(3) changed to F2 / multiple 75-3742 convictions sentenced consecutively for (b)(2) & (b)(3)

Tracking Number: 2009_04_007

Title & Section	Subsection	Grade	Grade(Proposed)	OGS	Total Number	State Prison			SIP		County Jail			CIP			Probation			Other RS	
						Num	%	Mean Min	Num	%	Num	%	Mean Min	Num	%	Length of RIP	Num	%	Length of Probation	Num	%
75 3742	(b)(1)	M-1	M-1	3	178	9	5	8.1	-	-	57	32	3.7	5	3	1.4	98	55	24.0	9	5
	(b)(2)	F-3	F-3	5	26	15	58	8.1	-	-	11	42	10.3	-	-	-	-	-	-	-	-
	(b)(3)	F-3	F-2	7	12	9	75	30.2	-	-	3	25	15.8	-	-	-	-	-	-	-	-
Total					216	33	15		-	-	71	33	5.2	5	2	1.4	98	45	24.0	9	4

PA Commission on Sentencing

Type of Sentence -- Title 75 Section 3742, Pennsylvania, 2008 (with SSN)

2008 Data -- HB 748 Proposed Changes, Step B

If DUI conviction is present: 1yr mand for (b)(2), 3yr mand for (b)(3) AND

grade change for all subcategories / multiple 75-3742 convictions sentenced consecutively for (b)(2) & (b)(3)

Tracking Number: 2009_04_007

Title & Section	Subsection	Grade	Grade(Proposed)	QGS	State Prison			SIP		County Jail		CIP			Probation		Other RS				
					Total Number	Num	%	Mean Min	Num	%	Num	%	Mean Min	Num	%	Length of RIP	Num	%	Length of Probation	Num	%
75 3742	(b)(1)	M-1	F-3	5	72	8	11	14.5	-	-	64	89	5.9	-	-	-	-	-	-	-	
			M-1	3	106	5	5	7.8	-	-	32	30	3.5	3	3	2.3	63	59	25.1	3	3
	(b)(2)	F-3	F-2	7	8	4	50	23.5	-	-	4	50	10.4	-	-	-	-	-	-	-	
			F-3	5	18	9	50	15.2	-	-	9	50	6.3	-	-	-	-	-	-	-	
	(b)(3)	F-3	F-2	7	2	2	100	46.3	-	-	-	-	-	-	-	-	-	-	-	-	
			F-3	6	10	7	70	15.4	-	-	3	30	15.7	-	-	-	-	-	-	-	
Total					216	35	16	16.8	-	-	112	52	5.7	3	1	2.3	63	29	25.1	3	1