

## AMENDMENTS TO SENATE BILL NO. 961

Sponsor: SENATOR RAFFERTY

Printer's No. 1337

1 Amend Bill, page 1, lines 1 through 4, by striking out all of  
2 said lines and inserting

3 Amending Titles 18 (Crimes and Offenses) and 75 (Vehicles) of  
4 the Pennsylvania Consolidated Statutes, in culpability,  
5 further providing for causal relationship between conduct and  
6 result; in criminal homicide, further providing for the  
7 offense of murder; in miscellaneous provisions, further  
8 providing for the offenses of homicide by vehicle, aggravated  
9 assault by vehicle, homicide by vehicle while driving under  
10 influence and aggravated assault by vehicle while driving  
11 under the influence; and, in driving after imbibing alcohol  
12 or utilizing drugs, further providing for grading.

13 Amend Bill, page 1, lines 7 through 19; page 2, lines 1  
14 through 30; page 3, lines 1 through 23; by striking out all of  
15 said lines on said pages and inserting

16 Section 1. Sections 303(c) and 2502(c) of Title 18 of the  
17 Pennsylvania Consolidated Statutes are amended to read:  
18 § 303. Causal relationship between conduct and result.

19 \* \* \*

20 (c) Divergence between probable and actual result.--When  
21 recklessly or negligently causing a particular result is an  
22 element of an offense, the element is not established if the  
23 actual result is not within the risk of which the actor is aware  
24 or, in the case of negligence, of which he should be aware  
25 unless:

26 (1) the actual result differs from the probable result  
27 only in the respect that a different person or different  
28 property is injured or affected or that the probable injury  
29 or harm would have been more serious or more extensive than  
30 that caused; [or]

31 (2) the actual result involves the same kind of injury  
32 or harm as the probable result and is not too remote or  
33 accidental in its occurrence to have a bearing on the  
34 liability of the actor or on the gravity of his offense[.];

35 or

1           (3) the actual result involves the death of a person  
2 caused by the actor committing an offense under section  
3 2502(c)(2) (relating to murder), in which case the element of  
4 recklessly or negligently causing the death of the person  
5 shall be presumed.

6 \* \* \*

7 § 2502. Murder.

8 \* \* \*

9 (c) Murder of the third degree.--

10           (1) All other kinds of murder shall be murder of the  
11 third degree. Murder of the third degree is a felony of the  
12 first degree.

13           (2) This subsection applies to murder of an individual  
14 killed as a result of an offense committed under 75 Pa.C.S. §  
15 3803(a)(3) (relating to grading).

16 \* \* \*

17 Section 2. Sections 3732(b), 3732.1(b) and 3735(a) of Title  
18 75 are amended to read:

19 § 3732. Homicide by vehicle.

20 \* \* \*

21 (b) Sentencing.--

22           (1) In addition to any other penalty provided by law, a  
23 person convicted of a violation of subsection (a) may be  
24 sentenced to an additional term not to exceed five years'  
25 confinement if at trial the prosecution proves beyond a  
26 reasonable doubt that the offense occurred in an active work  
27 zone.

28           (1.1) In addition to any other penalty provided by law,  
29 a person convicted of a violation of subsection (a) [as the  
30 result of a violation of section] who is also convicted of a  
31 violation of section 1501 (relating to drivers required to be  
32 licensed), 1543 (relating to driving while operating  
33 privilege is suspended or revoked), 3316 (relating to  
34 prohibiting text-based communications), 3325 (relating to  
35 duty of driver on approach of emergency vehicle) or 3327  
36 (relating to duty of driver in emergency response areas) [and  
37 who is convicted of violating section 3316, 3325 or 3327] may  
38 be sentenced to an additional term not to exceed five years'  
39 confinement [when the violation resulted in death].

40           (2) The prosecution must indicate intent to proceed  
41 under this section in the indictment or information which  
42 commences the prosecution.

43           (3) The Pennsylvania Commission on Sentencing, pursuant  
44 to 42 Pa.C.S. § 2154 (relating to adoption of guidelines for  
45 sentencing), shall provide for a sentencing enhancement for  
46 an offense under this section when the violation occurred in  
47 an active work zone or [was the result of a violation of  
48 section] the individual was also convicted of a violation of  
49 section 1501, 1543, 3316, 3325 or 3327.

50 § 3732.1. Aggravated assault by vehicle.

51 \* \* \*

1 (b) Sentencing.--

2 (1) In addition to any other penalty provided by law, a  
3 person convicted of a violation of subsection (a) may be  
4 sentenced to an additional term not to exceed two years'  
5 confinement if at trial the prosecution proves beyond a  
6 reasonable doubt that the offense occurred in an active work  
7 zone.

8 (2) In addition to any other penalty provided by law, a  
9 person convicted of a violation of subsection (a) [as the  
10 result of a violation of section] who is also convicted of a  
11 violation of section 1501 (relating to drivers required to be  
12 licensed), 1543 (relating to driving while operating  
13 privilege is suspended or revoked), 3316 (relating to  
14 prohibiting text-based communications), 3325 (relating to  
15 duty of driver on approach of emergency vehicle) or 3327  
16 (relating to duty of driver in emergency response areas) [and  
17 who is convicted of violating section 3316, 3325 or 3327] may  
18 be sentenced to an additional term not to exceed two years'  
19 confinement [when the violation resulted in serious bodily  
20 injury].

21 (3) The prosecution must indicate intent to proceed  
22 under this section in the indictment or information which  
23 commences the prosecution.

24 (4) The Pennsylvania Commission on Sentencing, under 42  
25 Pa.C.S. § 2154 (relating to adoption of guidelines for  
26 sentencing), shall provide for a sentencing enhancement for  
27 an offense under this section when the violation occurred in  
28 an active work zone or [was the result of a violation of  
29 section] the individual was also convicted of a violation of  
30 section 1501, 1543, 3316, 3325 or 3327.

31 § 3735. Homicide by vehicle while driving under influence.

32 (a) Offense defined.--[Any person who unintentionally causes  
33 the death of another person as the result of a violation of  
34 section 3802 (relating to driving under influence of alcohol or  
35 controlled substance) and who is convicted of violating section  
36 3802 is guilty of a felony of the second degree when the  
37 violation is the cause of death and the sentencing court shall  
38 order the person to serve a minimum term of imprisonment of not  
39 less than three years. A consecutive three-year term of  
40 imprisonment shall be imposed for each victim whose death is the  
41 result of the violation of section 3802.]

42 (1) A person who unintentionally causes the death of  
43 another person as the result of a violation of section 3802  
44 (relating to driving under influence of alcohol or controlled  
45 substance) and who is convicted of violating section 3802:

- 46 (i) is guilty of a felony of the second degree; or  
47 (ii) is guilty of a felony of the first degree if,  
48 before sentencing on the present violation, the person  
49 has incurred a conviction, adjudication of delinquency,  
50 juvenile consent decree, acceptance of Accelerated  
51 Rehabilitative Disposition or other form of preliminary

1 disposition for any of the following:

2 (A) An offense under section 3802.

3 (B) An offense under former section 3731  
4 (relating to driving under influence of alcohol or  
5 controlled substance).

6 (C) An offense which constitutes a felony under  
7 this subchapter.

8 (D) An offense substantially similar to an  
9 offense under clause (A), (B) or (C) in another  
10 jurisdiction.

11 (E) Any combination of the offenses under clause  
12 (A), (B), (C) or (D).

13 (2) The sentencing court shall order a person convicted  
14 under paragraph (1)(i) to serve a minimum term of  
15 imprisonment of not less than three years. A consecutive  
16 three-year term of imprisonment shall be imposed for each  
17 victim whose death is the result of a violation of section  
18 3802.

19 (3) The sentencing court shall order a person convicted  
20 under paragraph (1)(ii) to serve a minimum term of  
21 imprisonment of:

22 (i) Not less than five years if, before sentencing  
23 on the present violation, the person has incurred one or  
24 two convictions, adjudications of delinquency, juvenile  
25 consent decrees, acceptances of Accelerated  
26 Rehabilitative Disposition or other forms of preliminary  
27 disposition for any of the offenses listed under  
28 paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive  
29 five-year term of imprisonment shall be imposed for each  
30 victim whose death is the result of a violation of  
31 section 3802.

32 (ii) Not less than seven years if, before sentencing  
33 on the present violation, the person has incurred at  
34 least three convictions, adjudications of delinquency,  
35 juvenile consent decrees, acceptances of Accelerated  
36 Rehabilitative Disposition or other forms of preliminary  
37 disposition for any of the offenses listed under  
38 paragraph (1)(ii)(A), (B), (C), (D) or (E). A consecutive  
39 seven-year term of imprisonment shall be imposed for each  
40 victim whose death is the result of a violation of  
41 section 3802.

42 \* \* \*

43 Section 3. Section 3735.1 of Title 75 is amended by adding a  
44 subsection to read:

45 § 3735.1. Aggravated assault by vehicle while driving under the  
46 influence.

47 \* \* \*

48 (a.1) Sentencing.--In addition to any other penalty provided  
49 by law, a person convicted of a violation of subsection (a) and  
50 a violation of section 1501 (relating to drivers required to be  
51 licensed) or 1543 (relating to driving while operating privilege

1 is suspended or revoked) when committed at the same time and  
2 place may be sentenced to an additional term not to exceed two  
3 years' confinement.

4 Section 4. Section 3803(a) and (b) of Title 75 are amended  
5 to read:

6 § 3803. Grading.

7 (a) Basic offenses.--Except as provided in subsection (b):

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

14 (2) An individual who violates section 3802(a) and has  
15 more than one prior offense commits a misdemeanor of the  
16 second degree[.], unless paragraph (3) applies.

17 (3) An individual who violates section 3802 and has more  
18 than two prior offenses within a 10-year period commits a  
19 felony of the third degree.

20 (b) Other offenses.--

21 (1) An individual who violates section 3802(a)(1) where  
22 there was an accident resulting in bodily injury, serious  
23 bodily injury or death of any person or in damage to a  
24 vehicle or other property, or who violates section 3802(b),  
25 (e) or (f) and who has no more than one prior offense commits  
26 a misdemeanor for which the individual may be sentenced to a  
27 term of imprisonment of not more than six months and to pay a  
28 fine under section 3804.

29 (2) An individual who violates section 3802(a)(1) where  
30 the individual refused testing of [blood or] breath or  
31 chemical testing pursuant to a valid search warrant, court  
32 order or any other basis permissible by the Constitution of  
33 the United States and the Constitution of Pennsylvania, or  
34 who violates section 3802(c) or (d) and who has no prior  
35 offenses commits a misdemeanor for which the individual may  
36 be sentenced to a term of imprisonment of not more than six  
37 months and to pay a fine under section 3804.

38 (3) An individual who violates section 3802(a)(1) where  
39 there was an accident resulting in bodily injury, serious  
40 bodily injury or death of any person or in damage to a  
41 vehicle or other property, or who violates section 3802(b),  
42 (e) or (f) and who has more than one prior offense commits a  
43 misdemeanor of the first degree.

44 (4) An individual who violates section 3802(a)(1) where  
45 the individual refused testing of [blood or] breath or  
46 chemical testing pursuant to a valid search warrant, court  
47 order or any other basis permissible by the Constitution of  
48 the United States and the Constitution of Pennsylvania, or  
49 who violates section 3802(c) or (d) and who has one [or more]  
50 prior offenses commits a misdemeanor of the first degree.

51 (4.1) An individual who violates section 3802(a)(1)

1 where the individual refused testing of breath or chemical  
2 testing pursuant to a valid search warrant, court order or  
3 any other basis permissible by the Constitution of the United  
4 States and the Constitution of Pennsylvania, or who violates  
5 section 3802(c) or (d) and who has more than one prior  
6 offense commits a felony of the third degree.

7 (5) An individual who violates section 3802 where a  
8 minor under 18 years of age was an occupant in the vehicle  
9 when the violation occurred commits a misdemeanor of the  
10 first degree.

11 Section 5. This act shall take effect in 60 days.