

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 135

Session of
1987

INTRODUCED BY GREENLEAF, SALVATORE, HELFRICK, PECORA, RHOADES
AND KELLEY, JANUARY 15, 1987

REFERRED TO JUDICIARY, JANUARY 15, 1987

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, providing for driving under the influence of
3 nitrous oxide or other intoxicants; and making conforming
4 amendments to Title 42.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 1508(c) of Title 75 of the Pennsylvania
8 Consolidated Statutes, added July 9, 1986 (P.L.544, No.96), is
9 amended to read:

10 § 1508. Examination of applicant for driver's license.

11 * * *

12 (c) Alcohol [and], drug and other intoxicant use
13 information.--The traffic laws examination shall contain at
14 least one question relating to the driver's ability to
15 understand the effects of alcohol [and], drug and other
16 intoxicant use on highway safety or the provisions of section
17 1547 (relating to chemical testing to determine amount of
18 alcohol [or], controlled substance or other intoxicant). The

1 driver's manual shall include a section relating to the effects
2 of alcohol [and], drug and other intoxicant use on highway
3 safety, along with the related penalties.

4 Section 2. Sections 1532(b)(3), 1534(b), 1543(b), 1547
5 heading, (a), (b), (c) and (d), 1548(a) and (d), 1552, 3731
6 heading, (a), (b) and (g), 3732, 3735, 3755(a) and 6323 of Title
7 75 are amended to read:

8 § 1532. Revocation or suspension of operating privilege.

9 * * *

10 (b) Suspension.--

11 * * *

12 (3) The department shall suspend the operating privilege
13 of any driver for 12 months upon receiving a certified record
14 of the driver's conviction of section 3731 (relating to
15 driving under influence of alcohol [or], controlled substance
16 or other intoxicant) or an adjudication of delinquency based
17 on section 3731.

18 * * *

19 § 1534. Notice of acceptance of Accelerated Rehabilitative
20 Disposition.

21 * * *

22 (b) Exception.--If a person is arrested for any offense
23 enumerated in section 3731 (relating to driving under influence
24 of alcohol [or], controlled substance or other intoxicant) and
25 is offered and accepts Accelerated Rehabilitative Disposition
26 under general rules, the court shall promptly notify the
27 department. The department shall maintain a record of the
28 acceptance of Accelerated Rehabilitative Disposition for a
29 period of seven years from the date of notification. This record
30 shall not be expunged by order of court.

1 § 1543. Driving while operating privilege is suspended or
2 revoked.

3 * * *

4 (b) Certain offenses.--Any person who drives a motor vehicle
5 on any highway or trafficway of this Commonwealth at a time when
6 their operating privilege is suspended or revoked as a condition
7 of acceptance of Accelerated Rehabilitative Disposition for a
8 violation of section 3731 (relating to driving under influence
9 of alcohol [or], controlled substance or other intoxicant) or
10 because of a violation of section 1547(b)(1) (relating to
11 suspension for refusal) or 3731 shall, upon conviction, be
12 guilty of a summary offense and shall be sentenced to pay a fine
13 of \$1,000 and to undergo imprisonment for a period of not less
14 than 90 days.

15 * * *

16 § 1547. Chemical testing to determine amount of alcohol [or],
17 controlled substance or other intoxicant.

18 (a) General rule.--Any person who drives, operates or is in
19 actual physical control of the movement of a motor vehicle in
20 this Commonwealth shall be deemed to have given consent to one
21 or more chemical tests of breath, blood or urine for the purpose
22 of determining the alcoholic content of blood or the presence of
23 a controlled substance or other intoxicant if a police officer
24 has reasonable grounds to believe the person to have been
25 driving, operating or in actual physical control of the movement
26 of a motor vehicle:

27 (1) while under the influence of alcohol or a controlled
28 substance or [both] other intoxicant or any combination
29 thereof; or

30 (2) which was involved in an accident in which the

operator or passenger of any vehicle involved or a pedestrian required treatment at a medical facility or was killed.

(b) Suspension for refusal.--

(1) If any person placed under arrest for a violation of section 3731 (relating to driving under influence of alcohol [or], controlled substance or other intoxicant) 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 person for a period of 12 months.

(2) It shall be the duty of the police officer to inform the person that the person's operating privilege will be suspended upon refusal to submit to chemical testing.

(3) Any person whose operating privilege is suspended under the provisions of this section shall have the same right of appeal as provided for in cases of suspension for other reasons.

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

(1) Chemical tests of breath shall be performed on devices approved by the Department of Health using procedures prescribed jointly by regulations of the Departments of 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 shall be performed
13 by a clinical laboratory licensed and approved by the
14 Department of Health for this purpose using procedures and
15 equipment prescribed by the Department of Health. For
16 purposes of blood and urine testing, qualified person means
17 an individual who is authorized to perform those chemical
18 tests under the act of September 26, 1951 (P.L.1539, No.389),
19 known as ["The Clinical Laboratory Act.["]

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

22 (1) That the amount of alcohol by weight in the blood of
23 the person tested is 0.05% or less, it shall be presumed that
24 the person tested was not under influence of alcohol and the
25 person shall not be charged with any violation under section
26 3731(a)(1) or (4) (relating to driving under influence of
27 alcohol [or], controlled substance or other intoxicant), or
28 if the person was so charged prior to the test, the charge
29 shall be void ab initio. This fact shall not give rise to any
30 presumption concerning a violation of section 3731(a)(2) or

1 (3).

2 (2) That the amount of alcohol by weight in the blood of
3 the person tested is in excess of 0.05% but less than 0.10%,
4 this fact shall not give rise to any presumption that the
5 person tested was or was not under the influence of alcohol,
6 but this fact may be considered with other competent evidence
7 in determining whether the person was or was not under the
8 influence of alcohol.

9 (3) That the amount of alcohol by weight in the blood of
10 the person tested is 0.10% or more, this fact may be
11 introduced into evidence if the person is charged with
12 violating section 3731.

13 * * *

14 § 1548. Requirements for driving under influence offenders.

15 (a) Evaluation using Court Reporting Network.--In addition
16 to any other requirements of the court, every person convicted
17 of a violation of section 3731 (relating to driving under
18 influence of alcohol [or], controlled substance or other
19 intoxicant) and every person offered Accelerated Rehabilitative
20 Disposition as a result of a charge of a violation of section
21 3731 shall, prior to sentencing or receiving Accelerated
22 Rehabilitative Disposition or other preliminary disposition, be
23 evaluated using Court Reporting Network instruments issued by
24 the department and any other additional evaluation techniques
25 deemed appropriate by the court to determine the extent of the
26 person's involvement with alcohol [or], controlled substances or
27 other intoxicants and to assist the court in determining what
28 sentencing, probation or conditions of Accelerated
29 Rehabilitative Disposition would benefit the person or the
30 public.

1 * * *

2 (d) Order for alcohol or drug commitment.--If after
3 evaluation and further examination and hearing it is determined
4 that the defendant is an alleged chronic abuser of alcohol [or],
5 controlled substances or other intoxicants or that the person is
6 a severely debilitated controlled substance [or], alcohol or
7 other intoxicant abuser who represents a demonstrated and
8 serious threat and that adequate treatment facilities are
9 available, the court may order the person committed for
10 treatment at a facility or institution approved by the
11 Department of Health:

12 (1) Any person subject to this subsection may be
13 examined by an appropriate physician of the person's choosing
14 and the result of the examination shall be considered by the
15 court.

16 (2) Upon motion duly made by the committed person, an
17 attorney or an attending physician, the court at any time
18 after an order of commitment may review the order. After
19 determining the progress of treatment, the court may order
20 its continuation, the person's release or supervised
21 treatment on an outpatient basis.

22 * * *

23 § 1552. Accelerated Rehabilitative Disposition.

24 The court of common pleas in each judicial district and the
25 Municipal Court of Philadelphia shall establish and implement a
26 program for Accelerated Rehabilitative Disposition for persons
27 charged with a violation of section 3731 (relating to driving
28 under influence of alcohol [or], controlled substance or other
29 intoxicant) in accordance with the provisions of this chapter
30 and rules adopted by the Supreme Court.

1 § 3731. Driving under influence of alcohol [or], controlled
2 substance or other intoxicant.

3 (a) Offense defined.--A person shall not drive, operate or
4 be in actual physical control of the movement of any vehicle
5 while:

6 (1) under the influence of alcohol to a degree which
7 renders the person incapable of safe driving;

8 (2) under the influence of any controlled substance, as
9 defined in the act of April 14, 1972 (P.L.233, No.64), known
10 as ["]The Controlled Substance, Drug, Device and Cosmetic
11 Act,["] to a degree which renders the person incapable of
12 safe driving;

13 (3) under the combined influence of alcohol and any
14 controlled substance or other intoxicant to a degree which
15 renders the person incapable of safe driving; [or]

16 (4) the amount of alcohol by weight in the blood of the
17 person is 0.10% or greater[.]; or

18 (5) under the influence of nitrous oxide or other
19 intoxicant to a degree which renders the person incapable of
20 safe driving.

21 (b) Authorized use not a defense.--The fact that any person
22 charged with violating this section is or has been legally
23 entitled to use alcohol [or], controlled substances or other
24 intoxicants is not a defense to any charge of violating this
25 section.

26 * * *

27 (g) Notice by department.--The department shall prepare a
28 notice which shall contain a clear statement of the penalties
29 prescribed by law for driving under the influence in violation
30 of this section, for homicide by vehicle while driving under

1 influence in violation of section 3735 (relating to homicide by
2 vehicle while driving under influence), for refusal to take a
3 chemical test provided for in section 1547 (relating to chemical
4 testing to determine amount of alcohol [or], controlled
5 substance or other intoxicant) and for consuming alcohol or a
6 controlled substance in a vehicle while the vehicle is in
7 operation on any highway in violation of section 3715 (relating
8 to restriction on alcoholic beverages). The notice shall include
9 a statement that the length of any suspension of operating
10 privileges resulting from a refusal to take a chemical test
11 shall be in addition to the length of any suspension imposed as
12 a result of a conviction for driving under the influence
13 notwithstanding the fact that both suspensions were imposed in
14 connection with the same incident. The notice shall also include
15 a statement advising that it is possible that these penalties
16 could be revised, in whole or in part, by the General Assembly
17 prior to their receipt of a subsequent notice. Failure to
18 receive the notice shall not be a defense in any criminal,
19 license suspension or license revocation proceeding brought
20 pursuant to this title or in any other action whether or not the
21 failure is due to an error or omission on the part of the
22 department. The department shall provide the notice to operators
23 of motor vehicles in the same mailing that it utilizes for the
24 issuance of learners' permits and for the issuance and renewal
25 of drivers' licenses or at the time of issuance of a photo
26 driver's license.

27 * * *

28 § 3732. Homicide by vehicle.

29 Any person who unintentionally causes the death of another
30 person while engaged in the violation of any law of this

1 Commonwealth or municipal ordinance applying to the operation or
2 use of a vehicle or to the regulation of traffic except section
3 3731 (relating to driving under influence of alcohol [or],
4 controlled substance or other intoxicant) is guilty of homicide
5 by vehicle, a misdemeanor of the first degree, when the
6 violation is the cause of death.

7 § 3735. Homicide by vehicle while driving under influence.

8 (a) Offense defined.--Any person who unintentionally causes
9 the death of another person as the direct result of a violation
10 of section 3731 (relating to driving under influence of alcohol
11 [or], controlled substance or other intoxicant) and who is
12 convicted of violating section 3731 is guilty of a felony of the
13 third degree when the violation is the cause of death and the
14 sentencing court shall order the person to serve a minimum term
15 of imprisonment of not less than three years.

16 (b) Applicability of sentencing guidelines.--The sentencing
17 guidelines promulgated by the Pennsylvania Commission on
18 Sentencing shall not supersede the mandatory penalty of this
19 section.

20 § 3755. Reports by emergency room personnel.

21 (a) General rule.--If, as a result of a motor vehicle
22 accident, the person who drove, operated or was in actual
23 physical control of the movement of any involved motor vehicle
24 requires medical treatment in an emergency room of a hospital
25 and if probable cause exists to believe a violation of section
26 3731 (relating to driving under influence of alcohol [or],
27 controlled substance or other intoxicant) was involved, the
28 emergency room physician or his designee shall promptly take
29 blood samples from those persons and transmit them within 24
30 hours for testing to the Department of Health or a clinical

1 laboratory licensed and approved by the Department of Health and
2 specifically designated for this purpose. This section shall be
3 applicable to all injured occupants who were capable of motor
4 vehicle operation if the operator or person in actual physical
5 control of the movement of the motor vehicle cannot be
6 determined. Test results shall be released upon request of the
7 person tested, his attorney, his physician or governmental
8 officials or agencies.

9 * * *

10 § 6323. Reports by courts.

11 Subject to any inconsistent procedures and standards relating
12 to reports and transmission of funds prescribed pursuant to
13 Title 42 (relating to judiciary and judicial procedure):

14 (1) The clerk of any court of this Commonwealth, within
15 ten days after final judgment of conviction or acquittal or
16 other disposition of charges under any of the provisions of
17 this title including an adjudication of delinquency based on
18 section 3731 (relating to driving under influence of alcohol
19 [or], controlled substance or other intoxicant), shall send
20 to the department a record of the judgment of conviction,
21 acquittal or other disposition.

22 (2) A record of the judgment shall also be forwarded to
23 the department upon conviction or acquittal of a person of a
24 felony in the commission of which the judge determines that a
25 motor vehicle was essentially involved.

26 (3) The fines and bail forfeited under any of the
27 provisions of this title payable to the Commonwealth under
28 Subchapter E of Chapter 35 of Title 42 (relating to fines,
29 etc.) shall accompany the record sent to the department.

30 Section 3. Conforming amendments to Title 42.

Sections 1515(a)(5), 3571(b)(4) and 3573(b)(3) of Title 42 are amended to read:

§ 1515. Jurisdiction and venue.

(a) Jurisdiction.--Except as otherwise prescribed by general rule adopted pursuant to section 503 (relating to reassignment of matters), district justices shall, under procedures prescribed by general rule, have jurisdiction of all of the following matters:

* * *

(5) Offenses under 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol [or] controlled substance or other intoxicant), if the following criteria are met:

(i) The offense is the first offense by the defendant under such provision in this Commonwealth.

(ii) No personal injury (other than to the defendant or the immediate family of the defendant) resulted from the offense.

(iii) The defendant pleads guilty.

(iv) No property damage in excess of \$500 other than to the defendant's property resulted from the violation.

(v) The defendant is not subject to the provisions of Chapter 63 (relating to juvenile matters).

(vi) The arresting authority shall cause to be transmitted a copy of the charge of any violation of 75 Pa.C.S. § 3731 to the office of the clerk of the court of common pleas within five days after the preliminary arraignment.

In determining that the above criteria are met the district justice shall rely on the certification of the arresting authority. Certification that the criteria are met need not

1 be in writing. Within ten days after the disposition, the
2 district justice shall certify the disposition to the office
3 of the clerk of the court of common pleas in writing.

4 * * *

5 § 3571. Commonwealth portion of fines, etc.

6 * * *

7 (b) Vehicle offenses.--

8 * * *

9 (4) When prosecution under 75 Pa.C.S. § 3731 (relating
10 to driving under influence of alcohol [or] controlled
11 substance or other intoxicant) is the result of State Police
12 action, 50% of all fines forfeited, recognizances and other
13 forfeitures imposed, lost or forfeited shall be payable to
14 the Commonwealth, for credit to the Motor License Fund, and
15 50% shall be payable to the county which shall be further
16 divided as follows:

17 (i) Fifty percent of the moneys received shall be
18 allocated to the appropriate county authority which
19 implements the county drug and alcohol program to be used
20 solely for the purposes of aiding programs promoting
21 alcoholism prevention, education, treatment and research.

22 (ii) Fifty percent of the moneys received shall be
23 used for expenditures incurred for county jails, prisons,
24 workhouses and detention centers.

25 * * *

26 § 3573. Municipal corporation portion of fines, etc.

27 * * *

28 (b) Vehicle offenses.--

29 * * *

30 (3) When prosecution under 75 Pa.C.S. § 3731 (relating

1 to driving under influence of alcohol [or], controlled
2 substance or other intoxicant) is the result of local police
3 action, 50% of all fines forfeited, recognizances and other
4 forfeitures imposed, lost or forfeited shall be payable to
5 the municipal corporation under which the local police are
6 organized and 50% shall be payable to the county which shall
7 be further divided as follows:

8 (i) Fifty percent of the moneys received shall be
9 allocated to the appropriate county authority which
10 implements the county drug and alcohol program to be used
11 solely for the purposes of aiding programs promoting
12 alcoholism prevention, education, treatment and research.

13 (ii) Fifty percent of the moneys received shall be
14 used for expenditures incurred for county jails, prisons,
15 workhouses and detention centers.

16 * * *

17 Section 4. This act shall take effect in 60 days.