

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 304 Session of
2007

INTRODUCED BY RAFFERTY, FONTANA, ERICKSON, WONDERLING,
ARMSTRONG, C. WILLIAMS, BRUBAKER, ORIE, COSTA, REGOLA,
PICCOLA, STACK, LOGAN AND RHOADES, MARCH 9, 2007

REFERRED TO TRANSPORTATION, MARCH 9, 2007

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, further providing for grading and penalties for
3 driving under influence of alcohol or controlled substance.

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

6 Section 1. Section 3803(b) of Title 75 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 3803. Grading.

9 * * *

10 (b) Other offenses.--

11 (1) An individual who violates section 3802(a)(1) where
12 there was an accident resulting in bodily injury, serious
13 bodily injury or death of any person or in damage to a
14 vehicle or other property, or who violates section 3802(b),
15 (e) or (f) and who has no more than one prior offense commits
16 a misdemeanor for which the individual may be sentenced to a
17 term of imprisonment of not more than six months and to pay a
18 fine under section 3804.

1 (2) An individual who violates section 3802(a)(1) where
2 the individual refused testing of blood or breath, or who
3 violates section 3802(c) or (d) and who has no prior offenses
4 commits a misdemeanor for which the individual may be
5 sentenced to a term of imprisonment of not more than six
6 months and to pay a fine under section 3804.

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

13 (4) An individual who violates section 3802(a)(1) where
14 the individual refused testing of blood or breath, or who
15 violates section 3802(c) or (d) and who has one or more prior
16 offenses commits a misdemeanor of the first degree.

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

21 Section 2. Section 3804 of Title 75, amended May 11, 2006
22 (P.L.155, No.36), is amended to read:

23 § 3804. Penalties.

24 (a) General impairment.--Except as set forth in subsection
25 (b) or (c), an individual who violates section 3802(a) (relating
26 to driving under influence of alcohol or controlled substance)
27 shall be sentenced as follows:

28 (1) For a first offense, to:

29 (i) undergo a mandatory minimum term of six months'
30 probation;

1 (ii) pay a fine of \$300;
2 (iii) attend an alcohol highway safety school
3 approved by the department; and
4 (iv) comply with all drug and alcohol treatment
5 requirements imposed under sections 3814 (relating to
6 drug and alcohol assessments) and 3815 (relating to
7 mandatory sentencing).

8 (2) For a second offense, to:

9 (i) undergo imprisonment for not less than five
10 days;
11 (ii) pay a fine of not less than \$300 nor more than
12 \$2,500;
13 (iii) attend an alcohol highway safety school
14 approved by the department; and
15 (iv) comply with all drug and alcohol treatment
16 requirements imposed under sections 3814 and 3815.

17 (3) For a third or subsequent offense, to:

18 (i) undergo imprisonment of not less than ten days;
19 (ii) pay a fine of not less than \$500 nor more than
20 \$5,000; and
21 (iii) comply with all drug and alcohol treatment
22 requirements imposed under sections 3814 and 3815.

23 (b) High rate of blood alcohol; minors; commercial vehicles
24 and school buses and school vehicles; accidents.--Except as set
25 forth in subsection (c), an individual who violates section
26 3802(a)(1) where there was an accident resulting in bodily
27 injury, serious bodily injury or death of any person or damage
28 to a vehicle or other property or who violates section 3802(b),
29 (e) or (f) shall be sentenced as follows:

30 (1) For a first offense, to:

- 1 (i) undergo imprisonment of not less than 48
2 consecutive hours;
3 (ii) pay a fine of not less than \$500 nor more than
4 \$5,000;
5 (iii) attend an alcohol highway safety school
6 approved by the department; and
7 (iv) comply with all drug and alcohol treatment
8 requirements imposed under sections 3814 and 3815.

9 (2) For a second offense, to:

- 10 (i) undergo imprisonment of not less than 30 days;
11 (ii) pay a fine of not less than \$750 nor more than
12 \$5,000;
13 (iii) attend an alcohol highway safety school
14 approved by the department; and
15 (iv) comply with all drug and alcohol treatment
16 requirements imposed under sections 3814 and 3815.

17 (3) For a third offense, to:

- 18 (i) undergo imprisonment of not less than 90 days;
19 (ii) pay a fine of not less than \$1,500 nor more
20 than \$10,000; and
21 (iii) comply with all drug and alcohol treatment
22 requirements imposed under sections 3814 and 3815.

23 (4) For a fourth or subsequent offense, to:

- 24 (i) undergo imprisonment of not less than one year;
25 (ii) pay a fine of not less than \$1,500 nor more
26 than \$10,000; and
27 (iii) comply with all drug and alcohol treatment
28 requirements imposed under sections 3814 and 3815.

29 (c) Incapacity; highest blood alcohol; controlled
30 substances.--An individual who violates section 3802(a)(1) and

1 refused testing of blood or breath or an individual who violates
2 section 3802(c) or (d) shall be sentenced as follows:

3 (1) For a first offense, to:

4 (i) undergo imprisonment of not less than 72
5 consecutive hours;

6 (ii) pay a fine of not less than \$1,000 nor more
7 than \$5,000;

8 (iii) attend an alcohol highway safety school
9 approved by the department; and

10 (iv) comply with all drug and alcohol treatment
11 requirements imposed under sections 3814 and 3815.

12 (2) For a second offense, to:

13 (i) undergo imprisonment of not less than 90 days;

14 (ii) pay a fine of not less than \$1,500;

15 (iii) attend an alcohol highway safety school
16 approved by the department; and

17 (iv) comply with all drug and alcohol treatment
18 requirements imposed under sections 3814 and 3815.

19 (3) For a third or subsequent offense, to:

20 (i) undergo imprisonment of not less than one year;

21 (ii) pay a fine of not less than \$2,500; and

22 (iii) comply with all drug and alcohol treatment
23 requirements imposed under sections 3814 and 3815.

24 (c.1) Violation involving minor occupant.--An individual who
25 violates section 3803(b)(5) (relating to grading), in addition
26 to any penalty imposed in this chapter, shall be sentenced as
27 follows:

28 (1) For a first offense, to:

29 (i) pay a fine of not less than \$1,000; and

30 (ii) complete 100 hours of community service.

1 (2) For a second offense, to:

2 (i) pay a fine of not less than \$2,500; and

3 (ii) undergo imprisonment of not less than one month
4 nor more than six months.

5 (3) For a third or subsequent offense, undergo
6 imprisonment of not less than six months nor more than two
7 years.

8 (d) Extended supervision of court.--If a person is sentenced
9 pursuant to this chapter and, after the initial assessment
10 required by section 3814(1), the person is determined to be in
11 need of additional treatment pursuant to section 3814(2), the
12 judge shall impose a minimum sentence as provided by law and a
13 maximum sentence equal to the statutorily available maximum. A
14 sentence to the statutorily available maximum imposed pursuant
15 to this subsection may, in the discretion of the sentencing
16 court, be ordered to be served in a county prison,
17 notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to
18 sentencing proceeding; place of confinement).

19 (e) Suspension of operating privileges upon conviction.--

20 (1) The department shall suspend the operating privilege
21 of an individual under paragraph (2) upon receiving a
22 certified record of the individual's conviction of or an
23 adjudication of delinquency for:

24 (i) an offense under section 3802; or

25 (ii) an offense which is substantially similar to an
26 offense enumerated in section 3802 reported to the
27 department under Article III of the compact in section
28 1581 (relating to Driver's License Compact).

29 (2) Suspension under paragraph (1) shall be in
30 accordance with the following:

1 (i) Except as provided for in subparagraph (iii), 12
2 months for an ungraded misdemeanor or misdemeanor of the
3 second degree under this chapter.

4 (ii) 18 months for a misdemeanor of the first degree
5 under this chapter.

6 (iii) There shall be no suspension for an ungraded
7 misdemeanor under section 3802(a) where the person is
8 subject to the penalties provided in subsection (a) and
9 the person has no prior offense.

10 (iv) For suspensions imposed under paragraph
11 (1)(ii), notwithstanding any provision of law or
12 enforcement agreement to the contrary, all of the
13 following apply:

14 (A) Suspensions shall be in accordance with
15 Subchapter D of Chapter 15 (relating to the Driver's
16 License Compact).

17 (B) In calculating the term of a suspension for
18 an offense that is substantially similar to an
19 offense enumerated in section 3802, the department
20 shall presume that if the conduct reported had
21 occurred in this Commonwealth then the person would
22 have been convicted under section 3802(a)(2).

23 (v) Notwithstanding any other provision of law or
24 enforcement agreement to the contrary, the department
25 shall suspend the operating privilege of a driver for six
26 months upon receiving a certified record of a consent
27 decree granted under 42 Pa.C.S. Ch. 63 (relating to
28 juvenile matters) based on section 3802.

29 (f) Community service assignments.--In addition to the
30 penalties set forth in this section, the sentencing judge may

1 impose up to 150 hours of community service. Where the
2 individual has been ordered to drug and alcohol treatment
3 pursuant to sections 3814 and 3815, the community service shall
4 be certified by the drug and alcohol treatment program as
5 consistent with any drug and alcohol treatment requirements
6 imposed under sections 3814 and 3815.

7 (f.1) Victim impact panels.--

8 (1) In addition to any other penalty imposed under this
9 section, the court may order a person who violates section
10 3802 to attend a victim impact panel program.

11 (2) A victim impact panel program shall provide a
12 nonconfrontational forum for driving under the influence
13 crash victims, their family members, their friends or other
14 pertinent persons to speak to driving under the influence
15 offenders about the impact of the crash on victims' lives and
16 on the lives of families, friends and neighbors.

17 (3) A victim impact panel shall be administrated through
18 the local office of probation and parole or other office as
19 the court shall determine and shall be operated in
20 consultation with the Mothers Against Drunk Driving -
21 Pennsylvania State Organization.

22 (4) A victim impact panel program may assess a
23 reasonable participation fee to achieve program self-
24 sufficiency but may not operate for profit. The department
25 shall establish an acceptable range of fees.

26 (5) The department shall develop standards and
27 incentives to encourage counties to establish victim impact
28 panel programs. In developing these standards, the department
29 shall establish and chair a coordinating committee among
30 pertinent agencies and organizations, including the

1 Department of Health, the Pennsylvania Commission on Crime
2 and Delinquency, the Office of Victim Advocate, the
3 Administrative Office of Pennsylvania Courts, county
4 officials, the Mothers Against Drunk Driving - Pennsylvania
5 State Organization and the Pennsylvania DUI Association. The
6 standards shall address items including all of the following:

7 (i) Prototype design and structure standards for
8 victim impact panels.

9 (ii) Training standards and curricula for
10 presenters, facilitators and administrators.

11 (iii) Operations policy and guidelines manual.

12 (iv) Evaluation standards, design and structure
13 allowing for the tracking and analysis of recidivism
14 data.

15 (v) Standards for counseling and debriefing
16 activities for victim presenters.

17 (vi) Standards for reimbursing reasonable costs to
18 victims for participation in panels.

19 (vii) Assistance to counties through coordinating
20 potential Federal and State funding streams to carry out
21 this subsection and to assist counties as may be needed.

22 (g) Sentencing guidelines.--The sentencing guidelines
23 promulgated by the Pennsylvania Commission on Sentencing shall
24 not supersede the mandatory penalties of this section.

25 (h) Appeal.--The Commonwealth has the right to appeal
26 directly to the Superior Court any order of court which imposes
27 a sentence for violation of this section which does not meet the
28 requirements of this section. The Superior Court shall remand
29 the case to the sentencing court for imposition of a sentence in
30 accordance with the provisions of this section.

1 (i) First class cities.--Notwithstanding the provision for
2 direct appeal to the Superior Court, if, in a city of the first
3 class, a person appeals from a judgment of sentence under this
4 section from the municipal court to the common pleas court for a
5 trial de novo, the Commonwealth shall have the right to appeal
6 directly to the Superior Court from the order of the common
7 pleas court if the sentence imposed is in violation of this
8 section. If, in a city of the first class, a person appeals to
9 the court of common pleas after conviction of a violation of
10 this section in the municipal court and thereafter withdraws his
11 appeal to the common pleas court, thereby reinstating the
12 judgment of sentence of the municipal court, the Commonwealth
13 shall have 30 days from the date of the withdrawal to appeal to
14 the Superior Court if the sentence is in violation of this
15 section.

16 (j) Additional conditions.--In addition to any other penalty
17 imposed under law, the court may sentence a person who violates
18 section 3802 to any other requirement or condition consistent
19 with the treatment needs of the person, the restoration of the
20 victim to preoffense status or the protection of the public.

21 (k) Nonapplicability.--Except for subsection (e), this
22 section shall not apply to dispositions resulting from
23 proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile
24 matters).

25 Section 3. This act shall take effect in 60 days.