

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 961 Session of 2017

INTRODUCED BY RAFFERTY, DINNIMAN, MARTIN, SABATINA, TARTAGLIONE, SCAVELLO, AUMENT AND WARD, NOVEMBER 15, 2017

AS AMENDED ON SECOND CONSIDERATION, MARCH 26, 2018

AN ACT

1 Amending ~~Titles 18 (Crimes and Offenses) and~~ TITLE 75 (Vehicles) <--
2 of the Pennsylvania Consolidated Statutes, ~~in culpability,~~ <--
3 ~~further providing for causal relationship between conduct and~~
4 ~~result; in criminal homicide, further providing for the~~
5 ~~offense of murder;~~ IN LICENSING OF DRIVERS, FURTHER PROVIDING <--
6 FOR LEARNER'S PERMITS AND FOR DRIVING WHILE OPERATING
7 PRIVILEGE IS SUSPENDED OR REVOKED; in miscellaneous
8 provisions, further providing for the offenses of homicide by
9 vehicle, aggravated assault by vehicle, homicide by vehicle
10 while driving under influence ~~and,~~ aggravated assault by <--
11 vehicle while driving under the influence AND FOR ACCIDENTS <--
12 INVOLVING DEATH OR PERSONAL INJURY WHILE NOT PROPERLY
13 LICENSED; and, in driving after imbibing alcohol or utilizing
14 drugs, further providing for grading.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 ~~Section 1. Sections 303(c) and 2502(c) of Title 18 of the~~ <--
18 ~~Pennsylvania Consolidated Statutes are amended to read:~~

19 ~~§ 303. Causal relationship between conduct and result.~~

20 * * *

21 ~~(c) Divergence between probable and actual result. When~~
22 ~~recklessly or negligently causing a particular result is an~~
23 ~~element of an offense, the element is not established if the~~
24 ~~actual result is not within the risk of which the actor is aware~~

1 ~~or, in the case of negligence, of which he should be aware~~
2 ~~unless:~~

3 ~~(1) the actual result differs from the probable result~~
4 ~~only in the respect that a different person or different~~
5 ~~property is injured or affected or that the probable injury~~
6 ~~or harm would have been more serious or more extensive than~~
7 ~~that caused; [or]~~

8 ~~(2) the actual result involves the same kind of injury~~
9 ~~or harm as the probable result and is not too remote or~~
10 ~~accidental in its occurrence to have a bearing on the~~
11 ~~liability of the actor or on the gravity of his offense[.];~~
12 ~~or~~

13 ~~(3) the actual result involves the death of a person~~
14 ~~caused by the actor committing an offense under section~~
15 ~~2502(c)(2) (relating to murder), in which case the element of~~
16 ~~recklessly or negligently causing the death of the person~~
17 ~~shall be presumed.~~

18 * * *

19 ~~§ 2502. Murder.~~

20 * * *

21 ~~(c) Murder of the third degree.~~

22 ~~(1) All other kinds of murder shall be murder of the~~
23 ~~third degree. Murder of the third degree is a felony of the~~
24 ~~first degree.~~

25 ~~(2) This subsection applies to murder of an individual~~
26 ~~killed as a result of an offense committed under 75 Pa.C.S. §~~
27 ~~3803(a)(3) (relating to grading).~~

28 * * *

29 Section 2 1. Sections 1505(B), 1543(B)(1), 3732(b),

<--

30 3732.1(b) and 3735(a) of Title 75 OF THE PENNSYLVANIA

<--

1 CONSOLIDATED STATUTES are amended to read:

2 § 1505. LEARNERS' PERMITS. <--

3 * * *

4 (B) LEARNER MUST BE ACCOMPANIED.--A LEARNER'S PERMIT
5 ENTITLES THE PERSON TO WHOM IT WAS ISSUED TO DRIVE VEHICLES AND
6 COMBINATIONS OF VEHICLES OF THE CLASS OR CLASSES SPECIFIED, BUT
7 ONLY WHILE THE HOLDER OF THE LEARNER'S PERMIT IS ACCOMPANIED BY
8 AND UNDER THE IMMEDIATE SUPERVISION OF A PERSON WHO:

9 (1) IS AT LEAST 21 YEARS OF AGE OR, IF THE SPOUSE OF THE
10 LEARNER'S PERMIT HOLDER, IS AT LEAST 18 YEARS OF AGE; OR, IF
11 A PARENT, GUARDIAN OR PERSON IN LOCO PARENTIS OF THE
12 LEARNER'S PERMIT HOLDER, IS AT LEAST 18 YEARS OF AGE;

13 (2) IS LICENSED TO DRIVE VEHICLES OF THE CLASS THEN
14 BEING DRIVEN BY THE HOLDER OF THE LEARNER'S PERMIT; [AND]

15 (3) IS ACTUALLY OCCUPYING A SEAT BESIDE THE HOLDER OF
16 THE LEARNER'S PERMIT UNLESS THE VEHICLE IS A MOTORCYCLE[.];
17 AND

18 (4) IS NOT MANIFESTLY UNDER THE INFLUENCE OF ALCOHOL OR
19 A CONTROLLED SUBSTANCE, EXCEPT A CONTROLLED SUBSTANCE TAKEN
20 PURSUANT TO A LAWFUL ORDER OF A PRACTITIONER, TO THE DEGREE
21 THAT THE PERSON MAY ENDANGER THEMSELVES OR OTHERS.

22 * * *

23 § 1543. DRIVING WHILE OPERATING PRIVILEGE IS SUSPENDED OR
24 REVOKED.

25 * * *

26 (B) CERTAIN OFFENSES.--

27 (1) THE FOLLOWING SHALL APPLY:

28 (I) A PERSON WHO DRIVES A MOTOR VEHICLE ON A HIGHWAY
29 OR TRAFFICWAY OF THIS COMMONWEALTH AT A TIME WHEN THE
30 PERSON'S OPERATING PRIVILEGE IS SUSPENDED OR REVOKED AS A

1 CONDITION OF ACCEPTANCE OF ACCELERATED REHABILITATIVE
2 DISPOSITION FOR A VIOLATION OF SECTION 3802 (RELATING TO
3 DRIVING UNDER INFLUENCE OF ALCOHOL OR CONTROLLED
4 SUBSTANCE) OR THE FORMER SECTION 3731, BECAUSE OF A
5 VIOLATION OF SECTION 1547(B) (1) (RELATING TO SUSPENSION
6 FOR REFUSAL) OR 3802 OR FORMER SECTION 3731 OR IS
7 SUSPENDED UNDER SECTION 1581 (RELATING TO DRIVER'S
8 LICENSE COMPACT) FOR AN OFFENSE SUBSTANTIALLY SIMILAR TO
9 A VIOLATION OF SECTION 3802 OR FORMER SECTION 3731 SHALL,
10 UPON A FIRST CONVICTION, BE GUILTY OF A SUMMARY OFFENSE
11 AND SHALL BE SENTENCED TO PAY A FINE OF \$500 AND TO
12 UNDERGO IMPRISONMENT FOR A PERIOD OF NOT LESS THAN 60
13 DAYS NOR MORE THAN 90 DAYS.

14 (II) A SECOND VIOLATION OF THIS PARAGRAPH SHALL
15 CONSTITUTE A SUMMARY OFFENSE AND, UPON CONVICTION OF THIS
16 PARAGRAPH, A PERSON SHALL BE SENTENCED TO PAY A FINE OF
17 \$1,000 AND TO UNDERGO IMPRISONMENT FOR NOT LESS THAN 90
18 DAYS.

19 (III) A THIRD OR SUBSEQUENT VIOLATION OF THIS
20 PARAGRAPH SHALL CONSTITUTE A MISDEMEANOR OF THE THIRD
21 DEGREE AND, UPON CONVICTION OF THIS PARAGRAPH, A PERSON
22 SHALL BE SENTENCED TO PAY A FINE OF \$2,500 AND TO UNDERGO
23 IMPRISONMENT FOR NOT LESS THAN SIX MONTHS.

24 * * *

25 § 3732. Homicide by vehicle.

26 * * *

27 (b) Sentencing.--

28 (1) In addition to any other penalty provided by law, a
29 person convicted of a violation of subsection (a) may be
30 sentenced to an additional term not to exceed five years'

1 confinement if at trial the prosecution proves beyond a
2 reasonable doubt that the offense occurred in an active work
3 zone.

4 (1.1) In addition to any other penalty provided by law,
5 a person convicted of a violation of subsection (a) [as the
6 result of a violation of section] who is also convicted of a
7 violation of section 1501 (relating to drivers required to be
8 licensed), 1543 (relating to driving while operating
9 privilege is suspended or revoked), 3316 (relating to
10 prohibiting text-based communications), 3325 (relating to
11 duty of driver on approach of emergency vehicle) or 3327
12 (relating to duty of driver in emergency response areas) [and
13 who is convicted of violating section 3316, 3325 or 3327] may
14 be sentenced to an additional term not to exceed five years'
15 confinement [when the violation resulted in death].

16 (2) The prosecution must indicate intent to proceed
17 under this section in the indictment or information which
18 commences the prosecution.

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

26 § 3732.1. Aggravated assault by vehicle.

27 * * *

28 (b) Sentencing.--

29 (1) In addition to any other penalty provided by law, a
30 person convicted of a violation of subsection (a) may be

1 sentenced to an additional term not to exceed two years'
2 confinement if at trial the prosecution proves beyond a
3 reasonable doubt that the offense occurred in an active work
4 zone.

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

18 (3) The prosecution must indicate intent to proceed
19 under this section in the indictment or information which
20 commences the prosecution.

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

28 § 3735. Homicide by vehicle while driving under influence.

29 (a) Offense defined.--[Any person who unintentionally causes
30 the death of another person as the result of a violation of

1 section 3802 (relating to driving under influence of alcohol or
2 controlled substance) and who is convicted of violating section
3 3802 is guilty of a felony of the second degree when the
4 violation is the cause of death and the sentencing court shall
5 order the person to serve a minimum term of imprisonment of not
6 less than three years. A consecutive three-year term of
7 imprisonment shall be imposed for each victim whose death is the
8 result of the violation of section 3802.]

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

13 (i) is guilty of a felony of the second degree; or

14 (ii) is guilty of a felony of the first degree if,
15 before sentencing on the present violation, the person
16 has incurred a conviction, adjudication of delinquency,
17 juvenile consent decree, acceptance of Accelerated
18 Rehabilitative Disposition or other form of preliminary
19 disposition for any of the following:

20 (A) An offense under section 3802.

21 (B) An offense under former section 3731
22 (relating to driving under influence of alcohol or
23 controlled substance).

24 (C) An offense which constitutes a felony under
25 this subchapter.

26 (D) An offense substantially similar to an
27 offense under clause (A), (B) or (C) in another
28 jurisdiction.

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

1 (2) The sentencing court shall order a person convicted
2 under paragraph (1)(i) to serve a minimum term of
3 imprisonment of not less than three years. A consecutive
4 three-year term of imprisonment shall be imposed for each
5 victim whose death is the result of a violation of section
6 3802.

7 (3) The sentencing court shall order a person convicted
8 under paragraph (1)(ii) to serve a minimum term of
9 imprisonment of:

10 (i) Not less than five years if, before sentencing
11 on the present violation, the person has incurred one or <--
12 two convictions, adjudications of delinquency, juvenile
13 consent decrees, acceptances of Accelerated
14 Rehabilitative Disposition or other forms ONE PRIOR <--
15 CONVICTION, ADJUDICATION OF DELINQUENCY, JUVENILE CONSENT
16 DECREE, ACCEPTANCE OF ACCELERATED REHABILITATIVE
17 DISPOSITION OR OTHER FORM of preliminary disposition for
18 any of the offenses listed under paragraph (1)(ii)(A),
19 (B), (C), (D) or (E). A consecutive five-year term of
20 imprisonment shall be imposed for each victim whose death
21 is the result of a violation of section 3802.

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

1 violation of section 3802.

2 * * *

3 Section 3. Section 3735.1 of Title 75 is amended by adding <--
4 a subsection to read:

5 § 3735.1. Aggravated assault by vehicle while driving under the
6 influence.

7 * * *

8 (a.1) Sentencing.--In addition to any other penalty provided
9 by law, a person convicted of a violation of subsection (a) and
10 a violation of section 1501 (relating to drivers required to be
11 licensed) or 1543 (relating to driving while operating privilege
12 is suspended or revoked) when committed at the same time and
13 place may be sentenced to an additional term not to exceed two
14 years' confinement.

15 ~~Section 4. Section 3803 of Title 75 is amended to read: <--~~

16 SECTION 3. SECTIONS 3742.1 AND 3803 OF TITLE 75 ARE AMENDED <--
17 TO READ:

18 § 3742.1. ACCIDENTS INVOLVING DEATH OR PERSONAL INJURY WHILE
19 NOT PROPERLY LICENSED.

20 (A) OFFENSE DEFINED.--A PERSON WHOSE OPERATING PRIVILEGE WAS
21 DISQUALIFIED, CANCELED, RECALLED, REVOKED OR SUSPENDED AND NOT
22 RESTORED OR WHO DOES NOT HOLD A VALID DRIVER'S LICENSE AND
23 APPLICABLE ENDORSEMENTS FOR THE TYPE AND CLASS OF VEHICLE BEING
24 OPERATED COMMITS AN OFFENSE UNDER THIS SECTION IF THE PERSON WAS
25 THE DRIVER OF ANY VEHICLE AND [CAUSED AN ACCIDENT RESULTING IN
26 INJURY OR DEATH OF ANY PERSON.]:

27 (1) CAUSED AN ACCIDENT RESULTING IN INJURY OR DEATH OF A
28 PERSON; OR

29 (2) WAS INVOLVED IN AN ACCIDENT RESULTING IN INJURY OR
30 DEATH OF A PERSON.

1 (B) PENALTIES.--

2 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ANY
3 PERSON VIOLATING SUBSECTION [(A)] (A)(1) COMMITS A
4 MISDEMEANOR OF THE SECOND DEGREE.

5 (2) IF THE VICTIM SUFFERS SERIOUS BODILY INJURY OR DEATH, ANY
6 PERSON VIOLATING SUBSECTION [(A)] (A)(1) COMMITS A FELONY OF THE
7 THIRD DEGREE.

8 (2.1) A PERSON VIOLATING SUBSECTION (A)(2) RESULTING IN
9 THE SERIOUS BODILY INJURY OF A PERSON COMMITS A MISDEMEANOR
10 OF THE THIRD DEGREE.

11 (2.2) A PERSON VIOLATING SUBSECTION (A)(2) RESULTING IN
12 THE DEATH OF A PERSON COMMITS A MISDEMEANOR OF THE SECOND
13 DEGREE.

14 (3) ANY MOTOR VEHICLE, AS DEFINED IN SECTION 102
15 (RELATING TO DEFINITIONS), USED IN THE COMMISSION OF AN
16 OFFENSE UNDER THIS SECTION MAY BE DEEMED CONTRABAND AND
17 FORFEITED IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN 18
18 P.A.C.S. § 6501(D) (RELATING TO SCATTERING RUBBISH).

19 § 3803. Grading.

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

21 (1) An individual who violates section 3802(a) (relating
22 to driving under influence of alcohol or controlled
23 substance) and has [no more than] one prior offense commits a <--
24 misdemeanor for which the individual may be sentenced to a
25 term of imprisonment of not more than six months and to pay a
26 fine under section 3804 (relating to penalties).

27 (2) An individual who violates section 3802(a) and has
28 [more than one prior offense] TWO PRIOR OFFENSES commits a <--
29 misdemeanor of the second degree~~f.], unless paragraph (3)~~ <--
30 applies.

1 ~~(3) An individual who violates section 3802 and has more~~<--
2 ~~than two prior offenses within a 10 year period~~ THREE OR MORE<--
3 PRIOR OFFENSES OR HAS PREVIOUSLY BEEN CONVICTED OF A
4 VIOLATION OF SECTION 3735 (RELATING TO HOMICIDE BY VEHICLE
5 WHILE DRIVING UNDER INFLUENCE) commits a felony of the third
6 degree.

7 (b) Other offenses.--

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

16 (2) An individual who violates section 3802(a)(1) where
17 the individual refused testing of [blood or] breath or
18 chemical testing pursuant to a valid search warrant, court
19 order or any other basis permissible by the Constitution of
20 the United States and the Constitution of Pennsylvania, or
21 who violates section 3802(c) or (d) and who has no prior
22 offenses commits a misdemeanor for which the individual may
23 be sentenced to a term of imprisonment of not more than six
24 months and to pay a fine under section 3804.

25 (3) An individual who violates section 3802(a)(1) where
26 there was an accident resulting in bodily injury, serious
27 bodily injury or death of any person or in damage to a
28 vehicle or other property, or who violates section 3802(b),
29 (e) or (f) and who has **[more than one prior offense]** TWO <--
30 PRIOR OFFENSES commits a misdemeanor of the first degree.

1 (4) An individual who violates section 3802(a)(1) where
2 the individual refused testing of [blood or] breath or
3 chemical testing pursuant to a valid search warrant, court
4 order or any other basis permissible by the Constitution of
5 the United States and the Constitution of Pennsylvania, or
6 who violates section 3802(c) or (d) and who has one [or more]
7 prior [offenses] OFFENSE commits a misdemeanor of the first <--
8 degree.

9 (4.1) An individual who violates section 3802(a)(1)
10 where the individual refused testing of breath or chemical
11 testing pursuant to a valid search warrant, court order or
12 any other basis permissible by the Constitution of the United
13 States and the Constitution of Pennsylvania, or who violates
14 section 3802(c) or (d) and who has ~~more than one prior~~ <--
15 ~~offense~~ TWO OR MORE PRIOR OFFENSES commits a felony of the <--
16 third 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 5 4. This act shall take effect in 60 days. <--