

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 521 Session of 2021

INTRODUCED BY STEPHENS, HILL-EVANS, THOMAS, NEILSON, MILLARD, HENNESSEY, BERNSTINE AND FREEMAN, FEBRUARY 11, 2021

AS REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 23, 2021

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, in general provisions, further providing for
3 definitions; in licensing of drivers, further providing for
4 the offense of driving while operating privilege is suspended
5 or revoked; and, in driving after imbibing alcohol or
6 utilizing drugs, further providing for PRIOR OFFENSES, FOR <--
7 Accelerated Rehabilitative Disposition and for mandatory
8 sentencing and providing for substance monitoring program.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 102 of Title 75 of the Pennsylvania
12 Consolidated Statutes is amended by adding definitions to read:
13 § 102. Definitions.

14 Subject to additional definitions contained in subsequent
15 provisions of this title which are applicable to specific
16 provisions of this title, the following words and phrases when
17 used in this title shall have, unless the context clearly
18 indicates otherwise, the meanings given to them in this section:

19 * * *

20 "Continuous alcohol monitoring device." A monitoring device

1 or instrument that:

2 (1) is attached to an individual;

3 (2) is designed to automatically and frequently test the
4 presence of alcohol in the individual regardless of the
5 method by which the device or instrument is attached to the
6 individual;

7 (3) detects the presence of alcohol; and

8 (4) detects an attempt to tamper with, obstruct or
9 remove the device or instrument.

10 * * *

11 "Remote breath testing device." An unsupervised mobile
12 breath testing device that:

13 (1) is not affixed to a motor vehicle;

14 (2) has the ability to confirm the identity and location
15 of an individual; and

16 (3) detects the presence of alcohol.

17 * * *

18 "Substance monitoring program." The court-ordered use of or
19 participation in any one or both of the following as a condition
20 of bail, probation or parole consistent with section 3818
21 (relating to substance monitoring program):

22 (1) A continuous alcohol monitoring device, remote
23 breath testing device or any other alcohol monitoring
24 technology or device, as determined by the court.

25 (2) Random drug testing or any other controlled
26 substance monitoring technology or device, as determined by
27 the court.

28 * * *

29 Section 2. ~~Section~~ SECTIONS 1543(b) (1.1) (i) AND 3806(B) (1) <--
30 of Title 75 ~~is~~ ARE amended to read: <--

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

3 * * *

4 (b) Certain offenses.--

5 * * *

6 (1.1) (i) A person who has an amount of alcohol by
7 weight in his blood that is equal to or greater than .02%
8 at the time of testing or who at the time of testing has
9 in his blood any amount of a Schedule I or nonprescribed
10 Schedule II or III controlled substance, as defined in
11 the act of April 14, 1972 (P.L.233, No.64), known as The
12 Controlled Substance, Drug, Device and Cosmetic Act, or
13 its metabolite or [who refuses testing of blood or
14 breath] who refuses testing of breath under section 1547
15 (relating to chemical testing to determine amount of
16 alcohol or controlled substance) or chemical testing of
17 blood pursuant to a valid search warrant, court order or
18 any other basis permissible by the Constitution of the
19 United States and the Constitution of Pennsylvania, and
20 who drives a motor vehicle on any highway or trafficway
21 of this Commonwealth at a time when the person's
22 operating privilege is suspended or revoked as a
23 condition of acceptance of Accelerated Rehabilitative
24 Disposition for a violation of section 3802 or former
25 section 3731 or because of a violation of section 1547(b)
26 (1) or 3802 or former section 3731 or is suspended under
27 section 1581 for an offense substantially similar to a
28 violation of section 3802 or former section 3731 shall,
29 upon a first conviction, be guilty of a summary offense
30 and shall be sentenced to pay a fine of \$1,000 and to

1 undergo imprisonment for a period of not less than 90
2 days.

3 * * *

4 § 3806. PRIOR OFFENSES. <--

5 * * *

6 (B) TIMING.--

7 (1) FOR PURPOSES OF SECTIONS 1553(D.2) (RELATING TO
8 OCCUPATIONAL LIMITED LICENSE), 1556 (RELATING TO IGNITION
9 INTERLOCK LIMITED LICENSE), 3803 (RELATING TO GRADING), 3804
10 (RELATING TO PENALTIES) [AND], 3805 (RELATING TO IGNITION
11 INTERLOCK), 3815 (RELATING TO MANDATORY SENTENCING) AND 3818
12 (RELATING TO SUBSTANCE MONITORING PROGRAM), THE PRIOR OFFENSE
13 MUST HAVE OCCURRED:

14 (I) WITHIN 10 YEARS PRIOR TO THE DATE OF THE OFFENSE
15 FOR WHICH THE DEFENDANT IS BEING SENTENCED; OR

16 (II) ON OR AFTER THE DATE OF THE OFFENSE FOR WHICH
17 THE DEFENDANT IS BEING SENTENCED.

18 * * *

19 Section 3. Section 3807(a) of Title 75 is amended by adding
20 a paragraph to read:

21 § 3807. Accelerated Rehabilitative Disposition.

22 (a) Eligibility.--

23 * * *

24 (3) Notwithstanding the procedures for Accelerated
25 Rehabilitative Disposition for other crimes, the attorney for
26 the Commonwealth shall not submit a charge brought under this
27 chapter for Accelerated Rehabilitative Disposition unless
28 all of the following apply:

29 (i) The defendant admits that the Commonwealth's
30 evidence would prove the elements beyond a reasonable

1 doubt under section 3802.

2 (ii) The defendant agrees that the defendant's
3 admission may be used as a prior conviction for the
4 purpose of increasing the grading and penalty of any
5 subsequent offense under this title.

6 (iii) The defendant knowingly and voluntarily waives
7 the defendant's right to challenge the use of the
8 Accelerated Rehabilitative Disposition as a prior
9 conviction for the purpose of enhancing the grading and
10 sentencing of any subsequent offense under this title.

11 * * *

12 Section 4. Section 3815(b)(2) of Title 75 is amended and the
13 section is amended by adding a subsection to read:

14 § 3815. Mandatory sentencing.

15 * * *

16 (b) Parole.--

17 * * *

18 (2) The following shall be conditions of parole:

19 (i) If the offender is not determined under the
20 procedures set forth in section 3814 to be addicted to
21 alcohol or another substance, the offender must refrain
22 from:

23 (A) the use of illegal controlled substances;

24 and

25 (B) the abuse of prescription drugs, over-the-
26 counter drugs or any other substances.

27 (ii) If the offender is determined under the
28 procedures set forth in section 3814 to be addicted to
29 alcohol or another substance, the offender must do all of
30 the following:

1 (A) Refrain from:
2 (I) the use of alcohol or illegal controlled
3 substances; and

4 (II) the abuse of prescription drugs, over-
5 the-counter drugs or any other substances.

6 (B) Participate in and cooperate with drug and
7 alcohol addiction treatment under subsection (c).

8 (iii) In addition to any other condition or
9 restriction imposed, an individual who violates section
10 3802 and who has one or more prior offenses may be
11 ordered by the court to participate in a substance
12 monitoring program under section 3818 (relating to
13 substance monitoring program).

14 (b.1) Probation.--In addition to any other condition or
15 restriction imposed, an individual who violates section 3802 and
16 who has one or more prior offenses may be ordered by the court
17 to participate in a substance monitoring program as a condition
18 of probation under section 3818.

19 * * *

20 Section 5. Title 75 is amended by adding a section to read:
21 § 3818. Substance monitoring program.

22 (a) Evaluation required.--

23 (1) In all of the following circumstances, in addition
24 to any other condition or restriction imposed, an individual
25 shall be evaluated by a court to determine whether, at the
26 court's discretion, the individual may be ordered to
27 participate in a substance monitoring program:

28 (i) While adjudication of a violation of section
29 3802 (relating to driving under influence of alcohol or
30 controlled substance) is pending for an individual who

1 has one or more prior offenses.

2 (ii) While adjudication of two or more violations of
3 section 3802 are concurrently pending for an individual.

4 (iii) As a condition of probation or parole where
5 the individual violates section 3802 and has one or more
6 prior offenses.

7 (2) The court may use the assessment from section 3814
8 (relating to drug and alcohol assessments) to satisfy the
9 requirement under paragraph (1).

10 (b) Monitoring devices and technologies.--

11 (1) A substance monitoring program shall include a
12 requirement that the individual use or participate in one or
13 both of the following, as determined by the court:

14 (i) A continuous alcohol monitoring device, remote
15 breath testing device or any other similar alcohol
16 monitoring technology or device, other than an ignition
17 interlock system, as determined by the court.

18 (ii) Random drug testing or any other controlled
19 substance monitoring technology or device as determined
20 by the court.

21 (2) When determining the devices or technologies to be
22 used under paragraph (1), the court shall consider:

23 (i) the individual's prior offenses;

24 (ii) the individual's most recent violation of
25 section 3802;

26 (iii) any pending adjudication of the individual for
27 a violation of section 3802;

28 (iv) in consultation with the county, the monitoring
29 devices and technologies available to or utilized by the
30 county; and

1 (v) any other factor deemed appropriate by the
2 court.

3 (c) Determination and costs to be paid.--If the court orders
4 an individual to participate in a substance monitoring program,
5 the individual shall pay for costs associated with the
6 individual's participation in the substance monitoring program,
7 including costs associated with any required device or
8 technology.

9 (d) Prohibitions.--An individual ordered to participate in a
10 substance monitoring program is prohibited from all of the
11 following for the duration of the substance monitoring program:

12 (1) Imbibing alcohol or using controlled substances, or
13 both, as determined by the court.

14 (2) Tampering with any device or technology associated
15 with the substance monitoring program.

16 (3) Failing to comply with any other requirement ordered
17 by the court as part of the substance monitoring program.

18 (e) Construction.--Nothing in this section shall be
19 construed to prohibit a court from ordering:

20 (1) An individual pending adjudication for a single
21 violation of section 3802 with no prior offenses to
22 participate in a substance monitoring program as a condition
23 of bail.

24 (2) An individual convicted of a violation of section
25 3802 who has no prior offenses to participate in a substance
26 monitoring program as a condition of probation or parole.

27 Section 6. This act shall take effect as follows:

28 (1) The following provisions shall take effect
29 immediately:

30 (i) The addition of 75 Pa.C.S. § 3807(a)(3).

1 (ii) This section.

2 (2) The remainder of this act shall take effect in 120
3 days.