

No. 2004-177

AN ACT

SB 133

Amending Titles 42 (Judiciary and Judicial Procedure) and 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for jurisdiction and venue, for chemical testing to determine amount of alcohol or controlled substance, for Accelerated Rehabilitative Disposition, for grading, for penalties, for prior offenses, for illegally operating a motor vehicle not equipped with ignition interlock, for mandatory sentencing and for rights and liabilities of minors.

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

Section 1. Section 1515(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph 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:

* * *

(5.1) Offenses under 75 Pa.C.S. § 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock).

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Section 2. Sections 1547(b)(2), 1552 and 3803 of Title 75 are amended to read:

§ 1547. Chemical testing to determine amount of alcohol or controlled substance.

* * *

(b) Suspension for refusal.—

* * *

(2) It shall be the duty of the police officer to inform the person that:

(i) the person’s operating privilege will be suspended upon refusal to submit to chemical testing; and

(ii) ***if the person refuses to submit to chemical testing***, upon conviction[, ***plea or adjudication of delinquency***] ***or plea*** for violating section [3802(a)] ***3802(a)(1)***, the person will be subject to the penalties provided in section 3804(c) (relating to penalties).

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§ 1552. Accelerated Rehabilitative Disposition.

The court of common pleas in each judicial district and the Municipal Court of Philadelphia shall establish and implement a program for Accelerated Rehabilitative Disposition for persons charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) in accordance with the provisions of this chapter, ***Chapter 38***

(relating to driving after imbibing alcohol or utilizing drugs) and rules adopted by the Supreme Court.

§ 3803. Grading.

(a) Basic offenses.—*Notwithstanding the provisions of subsection (b):*

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

(2) An individual who violates section 3802(a) and has more than one prior offense commits a misdemeanor of the second degree.

(b) Other offenses.—

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

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

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

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

Section 3. Section 3804(a), (b) and (c) of Title 75 are amended and the section is amended by adding a subsection to read:

§ 3804. Penalties.

(a) General impairment.—[An] *Except as set forth in subsection (b) or (c), an* individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) shall be sentenced as follows:

(1) For a first offense, to:

(i) undergo a [period of probation not to exceed six months] *mandatory minimum term of six months' probation;*

(ii) pay a fine of \$300;

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

(iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing).

(2) For a second offense, to:

(i) undergo imprisonment for not less than five days [**nor more than six months**];

(ii) pay a fine of not less than \$300 nor more than \$2,500;

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

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

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

(i) undergo imprisonment of not less than ten days [**nor more than two years**];

(ii) pay a fine of not less than \$500 nor more than \$5,000; and

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

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

(1) For a first offense, to:

(i) undergo imprisonment of not less than 48 consecutive hours [**nor more than six months**];

(ii) pay a fine of not less than \$500 nor more than \$5,000;

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

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

(2) For a second offense, to:

(i) undergo imprisonment of not less than 30 days [**nor more than six months**];

(ii) pay a fine of not less than \$750 nor more than \$5,000;

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

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

(3) For a third offense, to:

(i) undergo imprisonment of not less than 90 days [**nor more than five years**];

(ii) pay a fine of not less than \$1,500 nor more than \$10,000; and

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

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

(i) undergo imprisonment of not less than one year [**nor more than five years**];

(ii) pay a fine of not less than \$1,500 nor more than \$10,000; and

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

(c) Incapacity; highest blood alcohol; controlled substances.—An individual who violates section 3802(a)(1) and refused testing of blood or breath or an individual who violates section 3802(c) or (d) shall be sentenced as follows:

(1) For a first offense, to:

(i) undergo imprisonment of not less than 72 consecutive hours [**nor more than six months**];

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

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

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

(2) For a second offense, to:

(i) undergo imprisonment of not less than 90 days [**nor more than five years**];

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

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

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

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

(i) undergo imprisonment of not less than one year [**nor more than five years**];

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

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

* * *

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

Section 4. Sections 3806, 3807(b)(1)(iv) and (d), 3808(a)(1) and (b) and 3815(a) of Title 75 are amended to read:

§ 3806. Prior offenses.

(a) General rule.—Except as set forth in subsection (b), the term “prior offense” as used in this chapter shall mean a conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for any of the following:

- (1) an offense under section 3802 (relating to driving under influence of alcohol or controlled substance);
- (2) an offense under former section 3731;
- (3) an offense substantially similar to an offense under **[paragraphs]** *paragraph* (1) or (2) in another jurisdiction; or
- (4) any combination of the offenses set forth in **[paragraphs]** *paragraph* (1), (2) or (3).

(b) Repeat offenses within ten years.—The calculation of prior offenses for purposes of sections 1553(d.2) (relating to occupational limited license), **3803 (relating to grading)** and 3804 (relating to penalties) shall include any conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition within the ten years before the present violation occurred for any of the following:

- (1) an offense under section 3802;
- (2) an offense under former section 3731;
- (3) an offense substantially similar to an offense under paragraph (1) or (2) in another jurisdiction; or
- (4) any combination of the offenses set forth in paragraph (1), (2) or (3).

§ 3807. Accelerated Rehabilitative Disposition.

(b) Evaluation and treatment.—

(1) A defendant offered Accelerated Rehabilitative Disposition for a violation of section 3802 is, as a condition of participation in the program, subject to the following requirements in addition to any other conditions of participation imposed by the court:

(iv) The defendant must remain subject to court supervision for ***at least six months, but not more than 12 months.***

(d) Mandatory suspension of operating privileges.—As a condition of participation in an Accelerated Rehabilitative Disposition program, the court shall order the defendant’s license suspended as follows:

- (1) There shall be no license suspension if the defendant’s blood alcohol concentration at the time of testing was less than 0.10%.
- (2) For 30 days if the defendant’s blood alcohol concentration at the time of testing was at least 0.10% but less than 0.16%.
- (3) For 60 days if:
 - (i) the defendant’s blood alcohol concentration at the time of testing was 0.16% or higher;
 - (ii) the defendant’s blood alcohol concentration is not known; **[or]**
 - (iii) an accident which resulted in bodily injury or in damage to a vehicle or other property occurred in connection with the events surrounding the current offense[.]; **or**

(iv) *the defendant was charged pursuant to section 3802(d).*

(4) *For 90 days if the defendant was a minor at the time of the offense.*

* * *

§ 3808. Illegally operating a motor vehicle not equipped with ignition interlock.

(a) Offense defined.—

(1) An individual required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system under section 1553(d.2) (relating to occupational limited license) or 3805 (relating to ignition interlock) who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system commits a [summary offense] *misdemeanor* and shall, upon conviction, be sentenced to pay a fine of not less than \$300 and not more than \$1,000 and to imprisonment for not more than 90 days.

* * *

(b) Tampering with an ignition interlock system.—A person that tampers with an ignition interlock system required by law commits a misdemeanor [of the third degree] and shall, upon conviction, be sentenced to pay a fine of not less than \$300 nor more than \$1,000 and to undergo imprisonment for not more than 90 days. The term “tampering,” in addition to any physical act which is intended to alter or interfere with the proper functioning of an ignition interlock system required by law, shall include attempting to circumvent or bypass or circumventing or bypassing an ignition interlock system by:

(1) means of using another individual to provide a breath sample; or

(2) providing a breath sample for the purpose of bypassing an ignition interlock system required by law.

* * *

§ 3815. Mandatory sentencing.

(a) County supervision.—Notwithstanding the length of any maximum term of imprisonment imposed pursuant to sections 3803 (relating to grading) and 3804 (relating to penalties), and notwithstanding the provisions of section 17 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, the sentencing judge may grant parole under the supervision of the county parole system to any offender serving a sentence for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and, if applicable, serving any concurrent sentence of imprisonment for any misdemeanor offense arising from the same criminal episode as the violation of section 3802. The power of the sentencing judge to grant parole shall apply only to those offenders whose sentences are being served in a county prison pursuant to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) or section 3804(d). *The sentencing judge shall declare his*

intention to retain parole authority and supervision at the time of sentencing in cases in which he would not otherwise have parole authority and supervision.

* * *

Section 5. Section 6303 of Title 75 is amended to read:

§ 6303. Rights and liabilities of minors.

[Any] (a) *General rule.—Except as provided in subsection (b), any person over the age of 16 years charged with the violation of any provisions of this title constituting a summary offense shall have all the rights of an adult and may be prosecuted under the provisions of this title in the same manner as an adult.*

(b) *Exception.—No person shall be sentenced to a term of imprisonment for a violation of any provisions of this title constituting a summary offense committed while the person was under the age of 18 years.*

Section 6. The amendment of the following provisions shall apply to sentences imposed on or after the effective date of this section:

- (1) 75 Pa.C.S. § 3806;
- (2) 75 Pa.C.S. § 3815(a); and
- (3) 75 Pa.C.S. § 6303.

Section 7. This act shall take effect immediately.

APPROVED—The 29th day of November, A.D. 2004.

EDWARD G. RENDELL