

No. 2007-27

## AN ACT

HB 778

Amending Titles 30 (Fish) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for classification of offenses and penalties, for penalties for threatened and endangered species, for chemical testing to determine amount of alcohol or controlled substances, for operating watercraft under influence of alcohol or controlled substance and for county intermediate punishment programs.

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

Section 1. Sections 923(a)(6) and (7) and (d) and 2305 of Title 30 of the Pennsylvania Consolidated Statutes are amended to read:

§ 923. Classification of offenses and penalties.

(a) General rule.—The following penalties shall be imposed for violations of this title:

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(6) For a misdemeanor of the second degree, a fine of not less than \$500 nor more than [~~\$7,500~~] \$5,000, or imprisonment not exceeding two years, or both.

(7) For a misdemeanor of the first degree, a fine of not less than [~~\$2,500~~] \$1,500 nor more than \$10,000, or imprisonment not exceeding five years, or both.

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(d) Repeat offenders.—[A] *Except as provided in section 5502 (relating to operating watercraft under influence of alcohol or controlled substance), a person who is convicted or acknowledges guilt of a second or subsequent violation of this title or the regulations promulgated under this title within 12 months of a prior offense under this title shall be sentenced as a repeat offender. An extract from commission records maintained in the ordinary course of business showing that the person was convicted or acknowledged guilt of two or more offenses under this title on separate occasions within a 12-month period shall be prima facie evidence that the person is a repeat offender. In addition to the fine set forth in subsection (a), a repeat offender may be sentenced to pay an additional fine as follows:*

(1) \$200 if all the offenses committed within the 12-month period were classified as summary offenses under this title.

(2) \$1,000 if any of the offenses committed within the 12-month period were classified as misdemeanors of the third degree and none were classified as misdemeanors of the first or second degree or felonies.

(3) \$2,500 if any of the offenses committed within the 12-month period were classified as misdemeanors of the first or second degree or felonies.

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§ 2305. Threatened and endangered species.

(a) Establishment and publication of lists.—The executive director shall establish a Pennsylvania Threatened Species List and a Pennsylvania Endangered Species List. The lists, and any revisions thereto, shall be published in the Pennsylvania Bulletin.

(b) Rules, regulations and permits.—The commission may promulgate rules and regulations governing the catching, taking, killing, importation, introduction, transportation, removal, possession, selling, offering for sale or purchasing of threatened and endangered species and, if deemed advisable, may issue permits for catching, taking or possessing any of those species.

(c) Penalty.—Any person *intentionally* violating any rule or regulation promulgated under this section commits a misdemeanor of the third degree. Each fish caught, taken, killed, imported, transported, removed, introduced, possessed, sold, offered for sale or purchased in violation of any rule or regulation promulgated under this section shall constitute a separate offense. Catching a threatened or endangered species shall not constitute a violation if it is immediately released where it was captured in the condition in which it was captured.

Section 2. Section 5125(a) and (c) of Title 30 are amended to read:

§ 5125. Chemical testing to determine amount of alcohol or controlled substance.

(a) General rule.—Any person who operates or is in actual physical control of the movement of a watercraft, upon, in or through the waters of this Commonwealth, shall be deemed to have given consent to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if [a waterways conservation officer has reasonable grounds to believe the person has been operating or in actual physical control of the movement of a watercraft:

(1) in violation of section 5502 (relating to operating watercraft under influence of alcohol or controlled substance); or

(2) which was involved in an accident in which the operator, passenger or any other person required treatment at a medical facility or was killed.] *one of the following applies:*

(1) *a waterways conservation officer has reasonable grounds to believe the person operated or was in actual physical control of the movement of a watercraft in violation of section 5502 (relating to operating watercraft under influence of alcohol or controlled substance); or*

(2) *the person operated or was in actual physical control of the movement of a watercraft which was involved in an accident in which*

*the operator, passenger or any other person required treatment at a medical facility or was killed.*

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(c) Test results admissible in evidence.—In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 5502 or any other violation of this title arising out of the same action, the amount of alcohol or controlled substance in the defendant's blood, as shown by chemical testing of the person's breath, blood or urine by tests 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 Department of Health and the Department of Transportation. Devices shall have been tested for accuracy within a period of time and in a manner specified by regulations of the Department of Health and the Department of Transportation. For purposes of breath testing, a qualified person means a person who has fulfilled the training requirement in the use of the equipment in a training program approved by the Department of Health and the Department of Transportation. A certificate or log showing that a device was tested for accuracy and that the device was accurate shall be presumptive evidence of those facts in every proceeding in which a violation of this title is charged.

(2) (i) Chemical tests of blood or urine shall be performed by a clinical laboratory licensed and approved by the Department of Health for this purpose using procedures and equipment prescribed by the Department of Health *or by a Pennsylvania State Police criminal laboratory*. For purposes of blood and urine testing, a qualified person means an individual who is authorized to perform those chemical tests under the act of September 26, 1951 (P.L.1539, No.389), known as The Clinical Laboratory Act.

(ii) For purposes of blood and urine testing to determine blood alcohol or controlled substance content levels, the procedures and equipment prescribed by the Department of Health shall be reviewed [within 120 days of the effective date of this subparagraph and at least every two years thereafter to ensure that consideration is given to scientific and technological advances so that testing conducted in accordance with the prescribed procedures utilizing the prescribed equipment will be as accurate and reliable as science and technology permit.] *as provided for by 75 Pa.C.S. § 1547(c)(2)(ii) (relating to chemical testing to determine amount of alcohol or controlled substance).*

(3) Chemical [test] tests of blood or urine, if conducted by a facility located outside this Commonwealth, shall be performed:

(i) by a facility licensed and approved by the Department of Health for this purpose; or

(ii) by a facility licensed to conduct the tests by the state in which the facility is located and licensed pursuant to the Clinical Laboratory Improvement Amendments of 1988 (Public Law 100-578, 102 Stat: 2903).

(4) For purposes of blood testing to determine the amount of a Schedule I or nonprescribed Schedule II or III controlled substance or a metabolite of such a substance, the **[Department of Health shall prescribe]** minimum levels of these substances which must be present in a person's blood in order for the test results to be admissible in a prosecution for a violation of section 5502 or any other violation of this title arising out of the same action *shall be the same as prescribed by the department under 75 Pa.C.S. § 1547(c)(4)*.

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Section 3. Section 5502(a.5) and (c) of Title 30 are amended and the section is amended by adding a subsection to read:

§ 5502. Operating watercraft under influence of alcohol or controlled substance.

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(a.5) Exception to two-hour rule.—Notwithstanding the provisions of subsection (a), (a.1), (a.2) or (a.4) where alcohol or controlled substance concentration in an individual's blood or breath is an element of the offense, evidence of such alcohol or controlled substance concentration more than two hours after the individual has operated or been in actual physical control of the movement of the watercraft is sufficient to establish that element of the offense under the following circumstances:

(1) where the Commonwealth shows good cause explaining why the chemical test *sample* could not be **[performed]** *obtained* within two hours; and

(2) where the Commonwealth establishes that the individual did not imbibe any alcohol or utilize a controlled substance between the time the individual was arrested and the time the sample was obtained.

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**[(c) Grading and penalties.—**

(1) Except as set forth in paragraph (2) or (3), an individual who violates subsection (a) shall be sentenced as follows:

(i) For a first offense, to undergo a mandatory minimum term of six months' probation and to pay a fine of \$300 and successfully complete an approved boating safety course.

(ii) For a second offense, to undergo imprisonment for not less than five days and to pay a fine of not less than \$300 nor more than \$2,500 and successfully complete an approved boating safety course.

(iii) For a third or subsequent offense, to undergo imprisonment for not less than ten days and to pay a fine of not

less than \$500 nor more than \$5,000 and successfully complete an approved boating safety course.

(2) Except as set forth in paragraph (3), an individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a watercraft or other property or who violates subsection (a.1) or (a.4) shall be sentenced as follows:

(i) For a first offense, to undergo imprisonment for not less than 48 consecutive hours and to pay a fine of not less than \$500 nor more than \$5,000 and successfully complete an approved boating safety course.

(ii) For a second offense, to undergo imprisonment for not less than 30 days and to pay a fine of not less than \$750 nor more than \$5,000 and successfully complete an approved boating safety course.

(iii) For a third offense, to undergo imprisonment for not less than 90 days and to pay a fine of not less than \$1,500 nor more than \$10,000 and successfully complete an approved boating safety course.

(iv) For a fourth or subsequent offense, to undergo imprisonment for not less than one year and to pay a fine of not less than \$1,500 nor more than \$10,000 and successfully complete an approved boating safety course.

(3) An individual who violates subsection (a)(1) and refused testing of blood or breath or an individual who violates subsection (a.2) or (a.3) shall be sentenced as follows:

(i) For a first offense, to undergo imprisonment for not less than 72 consecutive hours and to pay a fine of not less than \$1,000 nor more than \$5,000 and successfully complete an approved boating safety course.

(ii) For a second offense, to undergo imprisonment for not less than 90 days and to pay a fine of not less than \$1,500 and successfully complete an approved boating safety course.

(iii) For a third or subsequent offense, to undergo imprisonment for not less than one year and to pay a fine of not less than \$2,500 and successfully complete an approved boating safety course.]

(c) *Grading.*—

(1) *Notwithstanding the provisions of paragraph (2):*

(i) *An individual who violates subsection (a) and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).*

(ii) *An individual who violates subsection (a) and who has more than one prior offense commits a misdemeanor of the second degree.*

(2) (i) *An individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a watercraft or other property and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).*

(ii) *An individual who violates subsection (a.1) or (a.4) and who has no more than one prior offense commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).*

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

(iv) *An individual who violates subsection (a.2) or (a.3) and who has no prior offenses commits a misdemeanor for which the individual may be sentenced to a term of imprisonment for not more than six months and to pay a fine under subsection (c.1).*

(v) *An individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to a watercraft or other property and who has more than one prior offense commits a misdemeanor of the first degree.*

(vi) *An individual who violates subsection (a.1) or (a.4) and who has more than one prior offense commits a misdemeanor of the first degree.*

(vii) *An individual who violates subsection (a)(1) where the individual refused testing of blood or breath and who has one or more prior offenses commits a misdemeanor of the first degree.*

(viii) *An individual who violates subsection (a.2) or (a.3) and who has one or more prior offenses commits a misdemeanor of the first degree.*

**(c.1) Penalties.—**

(1) *Except as set forth in paragraph (2), (3) or (4), an individual who violates subsection (a) shall be sentenced as follows:*

(i) *For a first offense, to undergo a mandatory minimum term of six months' probation and to pay a fine of \$300 and successfully complete an approved boating safety course.*

(ii) *For a second offense, to undergo imprisonment for not less than five days and to pay a fine of not less than \$300 nor more than \$2,500 and successfully complete an approved boating safety course.*

(iii) *For a third or subsequent offense, to undergo imprisonment for not less than ten days and to pay a fine of not less than \$500 nor*

*more than \$5,000 and successfully complete an approved boating safety course.*

*(2) Except as set forth in paragraph (3) or (4), an individual who violates subsection (a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a watercraft or other property or who violates subsection (a.1) or (a.4) shall be sentenced as follows:*

*(i) For a first offense, to undergo imprisonment for not less than 48 consecutive hours and to pay a fine of not less than \$500 nor more than \$5,000 and successfully complete an approved boating safety course.*

*(ii) For a second offense, to undergo imprisonment for not less than 30 days and to pay a fine of not less than \$750 nor more than \$5,000 and successfully complete an approved boating safety course.*

*(iii) For a third offense, to undergo imprisonment for not less than 90 days and to pay a fine of not less than \$1,500 nor more than \$10,000 and successfully complete an approved boating safety course.*

*(iv) For a fourth or subsequent offense, to undergo imprisonment for not less than one year and to pay a fine of not less than \$1,500 nor more than \$10,000 and successfully complete an approved boating safety course.*

*(3) Except as set forth in paragraph (4), an individual who violates subsection (a)(1) and refused testing of blood or breath or an individual who violates subsection (a.2) or (a.3) shall be sentenced as follows:*

*(i) For a first offense, to undergo imprisonment for not less than 72 consecutive hours and to pay a fine of not less than \$1,000 nor more than \$5,000 and successfully complete an approved boating safety course.*

*(ii) For a second offense, to undergo imprisonment for not less than 90 days and to pay a fine of not less than \$1,500 and successfully complete an approved boating safety course.*

*(iii) For a third or subsequent offense, to undergo imprisonment for not less than one year and to pay a fine of not less than \$2,500 and successfully complete an approved boating safety course.*

*(4) Notwithstanding the provisions of this subsection relating to mandatory minimum sentences, if the court makes a finding that the county jail population exceeds its capacity, the court may allow an individual who violated this section and is serving a mandatory minimum term of imprisonment to be released on parole to serve some or all of the individual's term of imprisonment on house arrest with electronic surveillance. This shall not apply to an individual who violates subsection (a)(1) where there was an accident resulting in serious bodily injury or the death of any person.*

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Section 4. Section 9804(b)(4)(iii) and (5) of Title 42, amended November 19, 2004 (P.L.855, No.112), are amended to read:  
§ 9804. County intermediate punishment programs.

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(b) Eligibility.—

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(iii) If the defendant is determined not to be in need of drug and alcohol treatment *or if the defendant receives a penalty imposed under 30 Pa.C.S. § 5502(c.1) (relating to operating watercraft under influence of alcohol or controlled substance)*, the defendant may only be sentenced to a county intermediate punishment program in:

(A) house arrest with electronic surveillance;

(B) partial confinement programs such as work release, work camps and halfway facilities; or

(C) any combination of the programs set forth in this paragraph.

(5) A defendant subject to 75 Pa.C.S. § 3804 (relating to penalties) *or 30 Pa.C.S. § 5502(c.1)* may only be sentenced to county intermediate punishment for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) *or 30 Pa.C.S. § 5502*.

Section 5. This act shall take effect immediately.

APPROVED—The 8th day of July, A.D. 2007.

EDWARD G. RENDELL