

CHAPTER 38  
DRIVING AFTER IMBIBING ALCOHOL OR UTILIZING DRUGS

Enactment. Chapter 38 was added September 30, 2003, P.L.120, No.24, effective February 1, 2004.

Special Provisions in Appendix. See sections 19, 20 and 21 of Act 24 of 2003 in the appendix to this title for special provisions relating to initial contracts by department, duties of department and applicability.

Cross References. Chapter 38 is referred to in sections 1542, 1545, 1553, 3101 of this title; sections 9763, 9804 of Title 42 (Judiciary and Judicial Procedure).

§ 3801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Adult.” An individual who is at least 21 years of age.

“Ignition interlock system.” A system approved by the department which prevents a vehicle from being started or operated unless the operator first provides a breath sample indicating that the operator has an alcohol level less than 0.025%.

“Minor.” An individual who is under 21 years of age.

Cross References. Section 3801 is referred to in section 1553 of this title.

§ 3802. Driving under influence of alcohol or controlled substance.

(a) General impairment.—

(1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(b) High rate of alcohol.—An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol.—An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(d) Controlled substances.—An individual may not drive, operate or be in actual physical control of the movement of a vehicle under any of the following circumstances:

(1) There is in the individual’s blood any amount of a:

(i) Schedule I controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or

(iii) metabolite of a substance under subparagraph (i) or (ii).

(2) The individual is under the influence of a drug or combination of drugs to a degree which impairs the individual’s ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(3) The individual is under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual’s ability to safely drive, operate or be in actual physical control of the movement of the vehicle.

(4) The individual is under the influence of a solvent or noxious substance in violation of 18 Pa.C.S. § 7303 (relating to sale or illegal use of certain solvents and noxious substances).

(e) Minors.—A minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle.

(f) Commercial or school vehicles.—An individual may not drive, operate or be in actual physical control of the movement of a commercial vehicle, school bus or school vehicle in any of the following circumstances:

(1) After the individual has imbibed a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is:

(i) 0.04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle other than a school bus or a school vehicle.

(ii) 0.02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.

(2) After the individual has imbibed a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(3) While the individual is under the influence of a controlled substance or combination of controlled substances, as defined in section 1603 (relating to definitions).

(4) While the individual is under the combined influence of alcohol and a controlled substance or combination of controlled substances, as defined in section 1603.

(g) Exception to two-hour rule.—Notwithstanding the provisions of subsection (a), (b), (c), (e) or (f), 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 driven, operated or been in actual physical control of the movement of the vehicle 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 could not be performed 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.

**Cross References.** Section 3802 is referred to in sections 1534, 1539, 1541, 1543, 1547, 1552, 1553, 1554, 1575, 1586, 1611, 3326, 3327, 3716, 3732, 3735, 3735.1, 3755, 3803, 3804, 3805, 3806, 3807, 3811, 3812, 3814, 3815, 3816, 3817, 6506 of this title; sections 6105, 7508.1 of Title 18 (Crimes and Offenses); sections 933, 1515, 1725.3, 3571, 3573 of Title 42 (Judiciary and Judicial Procedure).

#### § 3803. Grading.

##### (a) Basic offenses.—

(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), (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) 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), (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) or (d) and who has one or more prior offenses commits a misdemeanor of the first degree.

Cross References. Section 3803 is referred to in section 3815 of this title.

§ 3804. Penalties.

(a) General impairment.—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;  
(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.
- (d) Extended supervision of court.—If a person is sentenced pursuant to this chapter and, after the initial assessment required by section 3814(1), the person is determined to be in need of additional treatment pursuant to section 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison, notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).
- (e) Suspension of operating privileges upon conviction.—
  - (1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a certified record of the individual's conviction of or an adjudication of delinquency for:
    - (i) an offense under section 3802; or
    - (ii) an offense which is substantially similar to an offense enumerated in section 3802 reported to the department under Article III of the compact in section 1581 (relating to Driver's License Compact).
  - (2) Suspension under paragraph (1) shall be in accordance with the following:
    - (i) Except as provided for in subparagraph (iii), 12 months for an ungraded misdemeanor or misdemeanor of the second degree under this chapter.
    - (ii) 18 months for a misdemeanor of the first degree under this chapter.
    - (iii) There shall be no suspension for an ungraded misdemeanor under section 3802(a) where the person is subject to the penalties provided in subsection (a) and the person has no prior offense.
    - (iv) For suspensions imposed under paragraph (1)(ii), notwithstanding any provision of law or enforcement agreement to the contrary, all of the following apply:
      - (A) Suspensions shall be in accordance with Subchapter D of Chapter 15 (relating to the Driver's License Compact).
      - (B) In calculating the term of a suspension for an offense that is substantially similar to an offense enumerated in section 3802, the department shall presume that if the conduct reported had occurred in this Commonwealth then the person would have been convicted under section 3802(a)(2).
    - (v) Notwithstanding any other provision of law or enforcement agreement to the contrary, the department shall suspend the operating privilege of a driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3802.
- (f) Community service assignments.—In addition to the penalties set forth in this section, the sentencing judge may impose up to 150 hours of community service. Where the individual has been ordered to drug

and alcohol treatment pursuant to sections 3814 and 3815, the community service shall be certified by the drug and alcohol treatment program as consistent with any drug and alcohol treatment requirements imposed under sections 3814 and 3815.

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

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

(i) First class cities.—Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person appeals from a judgment of sentence under this section from the municipal court to the common pleas court for a trial de novo, the Commonwealth shall have the right to appeal directly to the Superior Court from the order of the common pleas court if the sentence imposed is in violation of this section. If, in a city of the first class, a person appeals to the court of common pleas after conviction of a violation of this section in the municipal court and thereafter withdraws his appeal to the common pleas court, thereby reinstating the judgment of sentence of the municipal court, the Commonwealth shall have 30 days from the date of the withdrawal to appeal to the Superior Court if the sentence is in violation of this section.

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

Cross References. Section 3804 is referred to in sections 1547, 1548, 1553, 1575, 3803, 3806, 3815, 3816 of this title; sections 9763, 9804 of Title 42 (Judiciary and Judicial Procedure).

#### § 3805. Ignition interlock.

(a) General rule.—If a person violates section 3802 (relating to driving under influence of alcohol or controlled substance) and has a prior offense as defined in section 3806(a) (relating to prior offenses) or if a person has had their operating privileges suspended pursuant to section 1547(b.1) (relating to chemical testing to determine amount of alcohol or controlled substance) or 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and the person seeks a restoration of operating privileges, the department shall require as a condition of issuing a restricted license pursuant to this section that the following occur:

(1) Each motor vehicle owned by the person or registered to the person has been equipped with an ignition interlock system and remains so for the duration of the restricted license period.

(2) If there are no motor vehicles owned by the person or registered to the person that the person so certify to the department. A person so certifying shall be deemed to have satisfied the requirement that all motor vehicles owned by the person or registered to the person be equipped with an ignition interlock system as required by this subsection.

(b) Application for a restricted license.—A person subject to this section shall apply to the department for an ignition interlock restricted license under section 1951 (relating to driver's license and learner's permit), which shall be clearly marked to restrict the person to only driving, operating or being in actual physical control of the movement of motor vehicles equipped with an ignition interlock system. Upon issuance of an ignition interlock restricted license to any person, the department shall notify the person that until the person obtains an unrestricted license the person may not own, register, drive, operate or be in actual physical control of the movement of any motor vehicle which is not equipped with an ignition interlock system.

(c) Issuance of unrestricted license.—One year from the date of issuance of an ignition interlock restricted license under this section, if otherwise eligible, a person may be issued a replacement license under section 1951(d) that does not contain the ignition interlock system restriction.

(d) Prohibition.—Except as set forth in subsections (e) and (f), until the person obtains an unrestricted license, the person may not own, register, drive, operate or be in actual physical control of the movement of any motor vehicle within this Commonwealth unless the motor vehicle is equipped with an ignition interlock system.

(e) Economic hardship exemption.—A person subject to the requirements of subsection (a) may apply to the department for a hardship exemption to the requirement that an ignition interlock system must be

installed in each of the person's motor vehicles. Where the department determines that the applicant establishes that such a requirement would result in undue financial hardship, the department may permit the applicant to install an ignition interlock system on only one of the applicant's motor vehicles. However, the applicant in accordance with section 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall be prohibited from driving, operating or being in actual physical control of the movement of any motor vehicle, including any of the applicant's motor vehicles, which is not equipped with an ignition interlock system.

(f) Employment exemption.—If a person with a restricted license is required in the course and scope of employment to drive, operate or be in actual physical control of the movement of a motor vehicle owned by the person's employer, the following apply:

(1) Except as set forth in paragraph (2), the person may drive, operate or be in actual physical control of the movement of that motor vehicle in the course and scope of employment without installation of an ignition interlock system if:

- (i) the employer has been notified that the employee is restricted; and
- (ii) the employee has proof of the notification in the employee's possession while driving, operating or being in actual physical control of the movement of the employer's motor vehicle. Proof of the notification may be established only by the notarized signature of the employer acknowledging notification on a form which shall be provided by the department for this purpose and shall include a contact telephone number of the employer.

(2) Paragraph (1) does not apply in any of the following circumstances:

- (i) To the extent that an employer-owned motor vehicle is made available to the employee for personal use.
- (ii) If the employer-owned motor vehicle is owned by an entity which is wholly or partially owned by the person subject to this section.
- (iii) If the employer-owned motor vehicle is a school bus; a school vehicle; or a vehicle designed to transport more than 15 passengers, including the driver.

(g) Prohibition of authorization.—This section shall not give the department authorization to impose an ignition interlock requirement on a person that has committed an offense under former section 3731 prior to October 1, 2003, without the issuance of a court order.

(h) Department approval.—An ignition interlock system required to be installed under this title must be a system which has been approved by the department. The department's approval of ignition interlock systems shall be published in the Pennsylvania Bulletin. Systems approved for use under former 42 Pa.C.S. § 7002(d) (relating to ignition interlock systems for driving under the influence) and any contracts for the installation, maintenance and inspection of the systems in effect as of the effective date of this section shall continue to be approved and in effect until the department again publishes approval of ignition interlock systems in the Pennsylvania Bulletin and enters into new contracts in support of the systems.

(i) Offenses committed during a period for which an ignition interlock restricted license has been issued.—Except as provided in sections 1547(b.1) and 3808(c) (relating to illegally operating a motor vehicle not equipped with ignition interlock), any driver who has been issued an ignition interlock restricted license and as to whom the department receives a certified record of a conviction of an offense for which the penalty is a cancellation, disqualification, recall, suspension or revocation of operating privileges shall have the ignition interlock restricted license recalled, and the driver shall surrender the ignition interlock restricted license to the department or its agents designated under the authority of section 1540 (relating to surrender of license). Following the completion of the cancellation, disqualification, recall, suspension or revocation which resulted in the recall of the ignition interlock restricted license, the department shall require that the person complete the balance of the ignition interlock restricted license period previously imposed prior to the issuance of a replacement license under section 1951(d) that does not contain an ignition interlock restriction.

Special Provisions in Appendix. See section 20(1) of Act 24 of 2003 in the appendix to this title for special provisions relating to duties of department.

Cross References. Section 3805 is referred to in sections 1547, 1553, 3808 of this title.

## § 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 (1) or (2) in another jurisdiction; or
- (4) any combination of the offenses set forth in paragraphs (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) 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).

Cross References. Section 3806 is referred to in sections 1553, 3805 of this title.

## § 3807. Accelerated Rehabilitative Disposition.

(a) Eligibility.—

(1) Except as set forth in paragraph (2), a defendant charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) may be considered by the attorney for the Commonwealth for participation in an Accelerated Rehabilitative Disposition program in a county if the program includes the minimum requirements contained in this section.

(2) The attorney for the Commonwealth shall not submit a charge brought under this chapter for Accelerated Rehabilitative Disposition if any of the following apply:

- (i) The defendant has been found guilty of or accepted Accelerated Rehabilitative Disposition of a charge brought under section 3802 within ten years of the date of the current offense unless the charge was for an ungraded misdemeanor under section 3802(a)(2) and was the defendant’s first offense under section 3802.
- (ii) An accident occurred in connection with the events surrounding the current offense and an individual other than the defendant was killed or suffered serious bodily injury as a result of the accident.
- (iii) There was a passenger under 14 years of age in the motor vehicle the defendant was operating.

(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:

(i) The defendant must attend and successfully complete an alcohol highway safety school established under section 1549 (relating to establishment of schools). A participating defendant shall be given both oral and written notice of the provisions of section 1543(b) (relating to driving while operating privilege is suspended or revoked).

(ii) Prior to receiving Accelerated Rehabilitative Disposition or other preliminary disposition, the defendant must be evaluated under section 3816(a) (relating to requirements for driving under influence offenders) to determine the extent of the defendant’s involvement with alcohol or other drug and to assist the court in determining what conditions of Accelerated Rehabilitative Disposition would benefit the defendant and the public. If the evaluation indicates there is a need for counseling or

treatment, the defendant shall be subject to a full assessment for alcohol and drug addiction in accordance with the provisions of section 3814(3) and (4) (relating to drug and alcohol assessments).

(iii) If the defendant is assessed under subparagraph (ii) to be in need of treatment, the defendant must participate and cooperate with a licensed alcohol or drug addiction treatment program. The level and duration of treatment shall be in accordance with the recommendations of the full assessment. Nothing in this subparagraph shall prevent a treatment program from refusing to accept a defendant if the program administrator deems the defendant to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the probation officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.

(iv) The defendant must remain subject to court supervision for six months.

(v) The defendant must make restitution to any person that incurred determinable financial loss as a result of the defendant's actions which resulted in the offense. Restitution must be subject to court supervision.

(vi) The defendant must pay the reasonable costs of a municipal corporation in connection with the offense. Fees imposed under this subparagraph shall be distributed to the affected municipal corporation.

(vii) The defendant must pay any other fee, surcharge or cost required by law. Except as set forth in subparagraph (vi) or (viii), a fee or financial condition imposed by a judge as a condition of Accelerated Rehabilitative Disposition or any other preliminary disposition of any charge under this chapter shall be distributed as provided for in 42 Pa.C.S. §§ 3571 (relating to Commonwealth portion of fines, etc.) and 3573 (relating to municipal corporation portion of fines, etc.).

(viii) The defendant must pay the costs of compliance with subparagraphs (i), (ii) and (iii).

(2) The defendant shall be subject to a full assessment for alcohol and drug addiction if any of the following apply:

(i) The evaluation under paragraph (1)(ii) indicates a likelihood that the defendant is addicted to alcohol or other drugs.

(ii) The defendant's blood alcohol content at the time of the offense was at least 0.16%.

(3) The assessment under paragraph (2) shall be conducted by one of the following:

(i) The Department of Health or its designee.

(ii) The county agency with responsibility for county drug and alcohol programs or its designee.

(iii) The clinical personnel of a facility licensed by the Department of Health for the conduct of drug and alcohol addiction treatment programs.

(4) The assessment under paragraph (2) shall consider issues of public safety and shall include recommendations for all of the following:

(i) Length of stay.

(ii) Levels of care.

(iii) Follow-up care and monitoring.

(c) Insurance.—

(1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

(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.
- (e) Failure to comply.—
- (1) A defendant who fails to complete any of the conditions of participation contained in this section shall be deemed to have unsuccessfully participated in an Accelerated Rehabilitative Disposition program, and the criminal record underlying participation in the program shall not be expunged.
- (2) The court shall direct the attorney for the Commonwealth to proceed on the charges as prescribed in the Rules of Criminal Procedure if the defendant:
- (i) fails to meet any of the requirements of this section;
  - (ii) is charged with or commits an offense under 18 Pa.C.S. (relating to crimes and offenses); or
  - (iii) violates any other condition imposed by the court.

Cross References. Section 3807 is referred to in section 3817 of this title.

§ 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 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.

(2) 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) or 3805 who drives, operates or is in actual physical control of the movement of a motor vehicle within this Commonwealth without such a system and who has an amount of alcohol by weight in his blood that is equal to or greater than 0.025% at the time of testing or who has in his blood any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less 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.

(c) Suspension of operating privilege.—Notwithstanding section 3805(c) and (i):

(1) If a person who is required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system violates this section, upon receipt of a certified record of the conviction, the department shall not issue a replacement license to the person under section 1951(d) (relating to driver's license and learner's permit) that does not contain an ignition interlock restriction for a period of one year from the date of conviction.

(2) Upon receipt of a certified record of a second conviction of a violation of this section committed by a person who is required to only drive, operate or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system which occurred during the same ignition interlock restricted license period, the department shall suspend the person's operating privileges for a period of one year and recall the ignition interlock restricted license, and the person shall surrender the ignition interlock restricted license to the department or its agents designated under the authority of section 1540 (relating to surrender of license). Following completion of the suspension period, the department shall require that the person comply with the requirements of section 3805 prior to being eligible to receive a replacement license under section 1951(d) that does not contain an ignition interlock restriction.

(d) Applicability.—Notwithstanding section 3101 (relating to application of part), this section shall apply in all areas throughout this Commonwealth; however, it shall not apply to persons installing, maintaining or inspecting ignition interlock devices in the course and scope of their employment.

Cross References. Section 3808 is referred to in sections 1541, 1542, 1547, 3805, 3811, 3812, 6506 of this title; sections 1725.3, 9804 of Title 42 (Judiciary and Judicial Procedure).

§ 3809. Restriction on alcoholic beverages.

(a) General rule.—Except as set forth in subsection (b), an individual who is an operator or an occupant in a motor vehicle may not be in possession of an open alcoholic beverage container or consume a controlled substance as defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an alcoholic beverage in a motor vehicle while the motor vehicle is located on a highway in this Commonwealth.

(b) Exception.—This section does not prohibit possession or consumption by any of the following:

(1) A passenger in the passenger area of a motor vehicle designed, maintained or used primarily for the lawful transportation of persons for compensation. This paragraph includes buses, taxis and limousines.

(2) An individual in the living quarters of a house coach or house trailer.

(c) Penalty.—An individual who violates this section commits a summary offense.

Cross References. Section 3809 is referred to in section 1542 of this title.

§ 3810. Authorized use not a defense.

The fact that a person charged with violating this chapter is or has been legally entitled to use alcohol or controlled substances is not a defense to a charge of violating this chapter.

§ 3811. Certain arrests authorized.

(a) Warrant not required.—In addition to any other powers of arrest, a police officer is authorized to arrest an individual without a warrant if the officer has probable cause to believe that the individual has violated section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock), regardless of whether the alleged violation was committed in the presence of the police officer.

(b) Territory.—The authority under subsection (a) extends to any hospital or other medical treatment facility located beyond the territorial limits of the police officer's political subdivision at which an individual to be arrested is found or was taken or removed for purposes of emergency treatment, examination or evaluation as long as there is probable cause to believe that the violation of section 1543(b)(1.1), 3802 or 3808(a)(2) occurred within the police officer's political subdivision.

§ 3812. Preliminary hearing or arraignment.

The presiding judicial officer at the preliminary hearing or preliminary arraignment relating to a charge of a violation of section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall not reduce or modify the original charges without the consent of the attorney for the Commonwealth.

§ 3813. Work release.

In any case in which an individual is sentenced to a period of imprisonment as a result of a conviction for violating a provision of this chapter, the judicial officer imposing the sentence shall consider assigning that individual to a daytime work release program. Any work release program permitted under this section shall

be certified by the Drug and Alcohol Treatment program administration as being consistent with any drug and alcohol treatment requirements imposed under section 3814 (relating to drug and alcohol assessments).

§ 3814. Drug and alcohol assessments.

If a defendant is convicted or pleads guilty or no contest to a violation of section 3802 (relating to driving under influence of alcohol or controlled substance), the following apply prior to sentencing:

(1) The defendant shall be evaluated under section 3816(a) (relating to requirements for driving under influence offenders) and any other additional evaluation techniques deemed appropriate by the court to determine the extent of the defendant's involvement with alcohol or other drug and to assist the court in determining what type of sentence would benefit the defendant and the public.

(2) The defendant shall be subject to a full assessment for alcohol and drug addiction if any of the following subparagraphs apply:

(i) The defendant, within ten years prior to the offense for which sentence is being imposed, has been sentenced for an offense under:

- (A) section 3802;
- (B) former section 3731; or
- (C) an equivalent offense in another jurisdiction.

(ii) Either:

- (A) the evaluation under paragraph (1) indicates there is a need for counseling or treatment; or
- (B) the defendant's blood alcohol content at the time of the offense was at least 0.16%.

(3) The assessment under paragraph (2) shall be conducted by one of the following:

- (i) The Department of Health or its designee.
- (ii) The county agency with responsibility for county drug and alcohol programs or its designee.

(iii) The clinical personnel of a facility licensed by the Department of Health for the conduct of drug and alcohol addiction treatment programs.

(4) The assessment under paragraph (2) shall consider issues of public safety and shall include recommendations for all of the following:

- (i) Length of stay.
- (ii) Levels of care.
- (iii) Follow-up care and monitoring.

Special Provisions in Appendix. See section 18 of Act 24 of 2003 in the appendix to this title for special provisions relating to applicability of sections 3814 and 3815.

Cross References. Section 3814 is referred to in sections 3804, 3807, 3813, 3815, 3816 of this title; sections 9763, 9804 of Title 42 (Judiciary and Judicial Procedure).

§ 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).

(b) Parole.—

(1) An offender who is determined pursuant to section 3814 (relating to drug and alcohol assessments) to be in need of drug and alcohol treatment shall be eligible for parole in accordance with the terms and conditions prescribed in this section following the expiration of the offender's mandatory minimum term of imprisonment.

(2) The following shall be conditions of parole:

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

- (A) the use of illegal controlled substances; and
- (B) the abuse of prescription drugs, over-the-counter drugs or any other

substances.

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

- (A) Refrain from:
  - (I) the use of alcohol or illegal controlled substances; and
  - (II) the abuse of prescription drugs, over-the-counter drugs or any other

substances.

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

(c) Treatment.—

(1) Treatment must conform to assessment recommendations made under section 3814.

(2) Treatment must be conducted by a drug and alcohol addiction treatment program licensed by the Department of Health.

(3) The treatment program shall report periodically to the assigned parole officer on the offender's progress in the treatment program. The treatment program shall promptly notify the parole officer if the offender:

- (i) fails to comply with program rules and treatment expectations;
- (ii) refuses to constructively engage in the treatment process; or
- (iii) without authorization terminates participation in the treatment program.

(4) Upon notification under paragraph (3), the parole officer shall report the offender's actions to the parole authority and to the department for compliance with section 1553(e) (relating to occupational limited license). The parole authority shall schedule a revocation hearing to consider recommendations of the parole officer and the treatment program.

(5) Nothing in this subsection shall prevent a treatment program from refusing to accept an offender if the program administrator deems the offender to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the assigned parole officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.

(d) Enforcement.—

(1) This subsection applies to an offender ordered to participate in a treatment program under subsection (b)(2)(ii) who:

- (i) fails to comply with program rules and treatment expectations;
- (ii) refuses to constructively engage in the treatment process; or
- (iii) terminates participation in the treatment program without authorization.

(2) Notwithstanding any other provision of law, all of the following apply to an offender under paragraph (1):

(i) The offender's parole, prerelease, work release or any other release status shall be revoked.

(ii) The offender shall be ineligible for parole, prerelease, work release or any other release from the correctional facility prior to the expiration of the offender's maximum term unless the offender is permitted to be readmitted to a treatment program.

(3) Nothing in this subsection shall be construed to grant a legal right to parole to an offender previously ineligible for parole, on the grounds that the offender is currently prepared to participate in, comply with and constructively engage in the treatment process. Under such circumstances, parole or reparole of the offender shall be at the parole authority's discretion.

(e) Follow-up.—After an offender has completed the treatment program under subsection (c), the parole officer shall take reasonable steps to ensure that the offender does not abuse alcohol, use illegal controlled substances or abuse prescription drugs, over-the-counter drugs or any other such substances. These reasonable steps include requiring chemical testing and periodic reassessment of the offender by the treatment program.

## (f) Fees.—

(1) Except as set forth in paragraph (2), the parole authority shall impose upon an offender subject to this section reasonable fees to cover the cost of any of the following:

- (i) Chemical testing of the offender required under this section.
- (ii) An assessment of the offender required under this section.
- (iii) Drug or alcohol treatment provided in accordance with the assessment.

(2) If the parole authority finds the offender to be unable to pay the full amount of the fees required by paragraph (1) and section 1541(d) (relating to period of disqualification, revocation or suspension of operating privilege), it shall require the offender to pay as much of the fee as is consistent with the offender's ability to pay and shall direct the assigned parole officer to establish a reasonable payment schedule for the offender to pay as much of the remaining fees as is consistent with the offender's ability to pay.

## (g) Insurance.—

(1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921.

(2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

(h) Additional funding.—In order to support and augment the diagnostic assessment and treatment services provided under this section, the Department of Health, the department and the Pennsylvania Commission on Crime and Delinquency shall seek all available Federal funding, including funds available through the United States National Highway Traffic Safety Administration and the Department of Health and Human Services.

Special Provisions in Appendix. See section 18 of Act 24 of 2003 in the appendix to this title for special provisions relating to applicability of sections 3814 and 3815.

Cross References. Section 3815 is referred to in sections 1553, 3804, 3816, 3817 of this title; sections 9763, 9804 of Title 42 (Judiciary and Judicial Procedure).

## § 3816. Requirements for driving under influence offenders.

(a) Evaluation using Court Reporting Network.—In addition to any other requirements of the court, every person convicted of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and every person offered Accelerated Rehabilitative Disposition as a result of a charge of a violation of section 3802 shall, prior to sentencing or receiving Accelerated Rehabilitative Disposition or other preliminary disposition, be evaluated using Court Reporting Network instruments issued by the department and any other additional evaluation techniques deemed appropriate by the court to determine the extent of the person's involvement with alcohol or controlled substances and to assist the court in determining what sentencing, probation or conditions of Accelerated Rehabilitative Disposition would benefit the person or the public.

(b) Court-ordered intervention or treatment.—A record shall be submitted to the department as to whether the court did or did not order a defendant to attend drug and alcohol treatment pursuant to the requirements of sections 3804 (relating to penalties), 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing). If the court orders treatment, a report shall be forwarded to the department as to whether the defendant successfully completed the program. If a defendant fails to successfully complete a program of treatment as ordered by the court, the suspension shall remain in effect until the department is notified by the court that the defendant has successfully completed treatment and the defendant is otherwise eligible for restoration of his operating privilege. In order to implement the recordkeeping requirements of this section, the department and the court shall work together to exchange pertinent information about a defendant's case, including attendance and completion of treatment or failure to complete treatment.

Cross References. Section 3816 is referred to in sections 1541, 3807, 3814 of this title.

§ 3817. Reporting requirements for offenses.

(a) Requirement.—The department shall make an annual report on the administration of this chapter. The department, the Administrative Office of Pennsylvania Courts and the Pennsylvania Sentencing Commission shall work together to exchange pertinent information necessary to complete this report.

(b) Contents.—The report shall include the following information by county:

(1) The number of offenders charged with a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) sorted by the subsection under which the offender was charged.

(2) The number of offenders convicted of violating section 3802 sorted by the subsection under which the offender was convicted.

(3) The number of offenders admitted to an Accelerated Rehabilitative Disposition program for violating section 3802 sorted by the subsection under which the offender was charged.

(4) The number of offenders completing an Accelerated Rehabilitative Disposition program for a violation of section 3802 sorted by the subsection under which the offender was charged.

(5) The number of persons refusing a chemical test sorted by the number of prior offenses.

(6) The number of offenders subject to treatment under section 3807 (relating to Accelerated Rehabilitative Disposition) sorted by the subsection of section 3802 under which the offender was charged.

(7) The number of offenders subject to section 3815 (relating to mandatory sentencing) sorted by the subsection of section 3802 under which the offender was convicted.

(8) The number of offenders sent to treatment for alcohol and drug problems and addiction.

(9) The names of the treatment facilities providing treatment and the level of care and length of stay in treatment.

(10) The number of offenders successfully completing treatment.

(11) The number of first, second, third and subsequent offenders sorted by the subsection of section 3802 under which the offender was charged.

(12) The number of first, second, third and subsequent offenders sorted by the subsection of section 3802 under which the offender was convicted.

(13) The number of offenders who violated section 3802 for whom costs for assessment and treatment were waived by the court.

(14) The number of offenders who violated section 3802 for whom fines and costs were waived by the court.

(c) Recipients.—The annual report shall be submitted to the Judiciary Committee, Public Health and Welfare Committee and Transportation Committee of the Senate; the Health and Human Services Committee, Judiciary Committee and Transportation Committee of the House of Representatives; and the Department of Health Bureau of Drug and Alcohol Programs, who shall utilize the data for program planning purposes. The Bureau of Drug and Alcohol Programs shall consider increases in county drug and alcohol program costs that result from the implementation of this chapter when proposing annual appropriations requests. The report shall be made available to the public.