

75 Pa.C.S.A. § 3804



Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated [Currentness](#)

Purdon's Pennsylvania Consolidated Statutes Annotated

Title 75. Vehicles ([Refs & Annos](#))

[Part III](#). Operation of Vehicles

[Chapter 38](#). Driving After **Imbibing** Alcohol or Utilizing Drugs

→ § 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:

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(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;

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- (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\(a\)\(2\)](#).

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(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.

CREDIT(S)

[2003, Sept. 30, P.L. 120, No. 24, § 16](#), effective Feb. 1, 2004.

CROSS REFERENCES

County intermediate punishment programs, eligibility, see [42 Pa.C.S.A. § 9804](#).

Intermediate punishment, restrictions, see [42 Pa.C.S.A. § 9763](#).

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