

**ACT 24 OF 2003:  
DRIVING AFTER IMBIBING  
ALCOHOL OR USING DRUGS**

**New DUI Law Emphasizes Treatment**

On September 30, Governor Ed Rendell signed Act 24 of 2003. This Act amends the Crimes, Judiciary and Vehicle Codes.

One major provision, decreasing the illegal per se level for DUI from .10 to .08%, took effect on September 30, 2003. A provision that became effective on October 1 authorized PENNDOT to require ignition interlock on a second offender DUI even if the court failed to order ignition interlock.

The other major provisions of the Act take effect on February 1, 2004. At that time, the old DUI law will be replaced with Chapter 38, a new chapter of the Vehicle Code consolidating most DUI-related laws into one chapter. Much of the attention on passage of the new law has focused on .08; however, this Act is a comprehensive overhauling of Pennsylvania's DUI law. Major provisions emphasize treatment, create a three-tiered penalty system for most adult offenders based on BAC and prior offenses and provide for occupational limited licenses in conjunction with ignition

interlock. Provisions of other sections of the Crimes, Judiciary and Vehicle Codes that applied to violations of §3731 that are not described below will apply to the new law, §3802, when it becomes effective in February.

***Per Se Levels***

**75 PA.C.S. §3731 (Driving under influence of alcohol or controlled substance).** Effective October 1, 2003, the illegal per se level for DUI is .08%, replacing the previous level of .10%.

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**75 PA. C.S. §3802 (Driving under influence of alcohol or controlled substance).** Effective February 1, 2004, §3731 will be replaced by §3802. This new section establishes graduated grading of offenses and penalties for most adult DUI offenders based upon BAC and number of prior offenses: 1) general impairment (.08-.099%), 2) high rate of alcohol (.10-.159%) and 3) highest rate of alcohol (.16% and above). Beyond the three tiers for most drivers, there are specifications for minors, commercial drivers and school bus drivers. Offenders under the influence of controlled substances and drivers who refuse a chemical test are treated like the highest BAC offenders.

**Chart 1: General impairment penalties**

<b>General Impairment: .08-.099% (§3802(a)) (no injury/property damage)</b>	1 <sup>st</sup> offense	ungraded misdemeanor
		no license suspension up to 6 mos. probation \$300 fine alcohol hwy. safety school treatment when ordered no ignition interlock
	2 <sup>nd</sup> offense	ungraded misdemeanor
		12 mos. license suspension 5 days to 6 mos. prison \$300-\$2,500 fine alcohol hwy. safety school treatment when ordered 1 yr. ignition interlock
	3 <sup>rd</sup> or subseq. offense	2 <sup>nd</sup> degree misdemeanor
		12 mos. license suspension 10 days to 2 yrs. prison \$500-\$5,000 fine treatment when ordered 1 yr. ignition interlock

**75 PA.C.S. §3802(a) (General impairment).** Drivers with enough alcohol to render them incapable of safe driving and drivers with BACs of .08 to .099% within two hours may not drive, operate or be in actual physical control of a vehicle. First and second violations are ungraded misdemeanors. Third and subsequent offenses are misdemeanors of the second

degree. From September 30, 2003 until January 31, 2004, §1547(d)(2) specifies that a BAC of .051% to 0.079% may be considered with other evidence in determining whether an adult was or was not under the influence. On February 1, 2004, §1547(d) will be repealed.

**Chart 2: High BAC penalties**

<b>High Rate of Alcohol: .10-.159% (§3802(b))</b>	1 <sup>st</sup> offense	ungraded misdemeanor
		12 mos. license suspension OLL after 60-day suspension 48 cons. hrs. to 6 mos. prison \$500-\$5,000 fine alcohol hwy. safety school treatment when ordered ARD eligible
	2 <sup>nd</sup> offense	ungraded misdemeanor
		12 mos. license suspension 30 days to 6 mos. prison \$750-\$5,000 fine alcohol hwy. safety school treatment when ordered 1 yr. ignition interlock
	3 <sup>rd</sup> offense	1 <sup>st</sup> degree misdemeanor
		18 mos. license suspension 90 days to 5 yrs. prison \$1,500-\$10,000 fine treatment when ordered 1 yr. ignition interlock
	4 <sup>th</sup> or subseq. offense	1 <sup>st</sup> degree misdemeanor
		18 mos. license suspension 1 to 5 yrs. prison \$1,500-\$10,000 fine treatment when ordered 1 yr. ignition interlock

**75 PA.C.S. §3802(b) (High rate of alcohol).** Drivers with BACs of .10 to .159% within two hours may not drive, operate or be in actual physical control of a vehicle. First and second violations are ungraded misdemeanors. Third and subsequent offenses are misdemeanors of the first degree. §3804(b) (High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents) specifies that drivers with BACs lower than

.10% who are involved in a crash that results in bodily injury, death or property damage are subject to the penalties for high rate of alcohol rather than general impairment.

**Chart 3: Highest BAC penalties**

<b>Highest Rate of Alcohol: .16% &amp; above (§3802(c))</b>	1 <sup>st</sup> offense	ungraded misdemeanor
		12 mos. license suspension OLL after 60-day suspension 72 cons. hrs. to 6 mos. prison \$1,000-\$5,000 fine alcohol hwy. safety school treatment when ordered ARD eligible
	2 <sup>nd</sup> offense	1 <sup>st</sup> degree misdemeanor
		18 mos. license suspension 90 days to 5 yrs. prison minimum \$1,500 fine alcohol hwy. safety school treatment when ordered 1 yr. ignition interlock
	3 <sup>rd</sup> or subsq. offense	1 <sup>st</sup> degree misdemeanor
		18 mos. license suspension 1 to 5 yrs. prison minimum \$2,500 fine treatment when ordered 1 yr. ignition interlock

**75 PA.C.S. §3802(c) (Highest rate of alcohol).**

The Act creates a new highest BAC tier with increased penalties and mandatory assessment for drug and alcohol treatment. Drivers with BACs of .16% and above within two hours may not drive, operate or be in actual physical control of a vehicle. A first violation is an ungraded misdemeanor. Second and subsequent offenses are misdemeanors of the first degree. Drivers refusing a chemical test face the same penalties as drivers with the highest rate of alcohol.

**75 PA.C.S. §3802(d) (Controlled substances).**

Pennsylvania is the ninth state to adopt a per se DUI law for drug related offenses. Drivers with any amount of a Schedule I, II or III controlled

substance that has not been medically prescribed (or their metabolites) may not drive, operate or be in actual physical control of a vehicle. There is no need to establish the inability to drive safely. Other drugs, combinations of drugs, the combination of another drug and alcohol, substances such as inhalants and prescribed drugs that render the driver incapable of safe driving are included. First violations are ungraded misdemeanors. Second and subsequent offenses are misdemeanors of the first degree. The license suspension, prison time, fines and specifications for alcohol highway safety school and treatment are the same as for violations of subsection (c), highest rate of alcohol.

**75 PA.C.S. §3802(e) (Minors).** Minors with BACs of .02% and above within two hours may not drive, operate or be in actual physical control of a vehicle. First and second violations are ungraded misdemeanors. Third and subsequent offenses are misdemeanors of the first degree. For BACs of .02 to .159%, the license suspension, prison time, fines and specifications for alcohol highway safety school and treatment are the same as for violations of subsection (b), high rate of alcohol. For higher BACs, the penalties are the same as violations of subsection (c), highest rate of alcohol.

**75 PA.C.S. §3802(f) (Commercial or school vehicles).** School bus drivers with BACs of .02% and above and commercial drivers with BACs of .04% and above within two hours may not drive, operate or be in actual physical control of a vehicle. First and second violations are ungraded misdemeanors. Third and subsequent offenses are misdemeanors of the first degree. For BACs up to .16%, the license suspension, prison time, fines and specifications for alcohol highway safety school and treatment are the same as for violations of subsection (b), high rate of alcohol. For BACs of .16% or greater, the penalties are the same as violations of subsection (c), highest rate of alcohol.

## **Two-hour Rule**

The new law redefines the way offenders are determined to be DUI and simplifies prosecution. 75 PA.C.S. §3731 focused on a BAC at the time of driving with a presumption that a BAC taken within three hours could establish a *prima facie* case. Many DUI cases ended up as a battle of experts paid for by the county at a cost of approximately \$2,500 per DUI trial. §3802 establishes that an offense of DUI occurs when a driver's BAC is above the per se level during a two-hour period after driving, operating or being in actual physical control of the movement of the vehicle. A person is DUI if a test taken within two hours of driving indicates a BAC in violation of one of the subsections of the law.

There is an exception to the two-hour rule if the Commonwealth can show why the chemical test could not be performed within two hours and that the individual did not imbibe any alcohol or use a controlled substance between the driving and the testing. In these exceptional cases, there may be a need for relation-back experts.

## **Ungraded Misdemeanors**

All first offense DUIs and second offenses of general impairment and high rate of alcohol are now ungraded misdemeanors with maximum probation or prison time not to exceed six months. Therefore, defendants contesting such cases will not be entitled to jury trials. This will dramatically reduce the costs associated with the vast majority of DUI cases, which are first and second offenses. Magistrates have the authority to accept guilty pleas for first offenses as long as there are no injuries (other than to the offender) and no property damage exceeding \$500 (other than to the offender's vehicle).

## **Treatment**

The primary focus of the new law is the treatment of DUI offenders. All offenders are

required to receive a CRN (Court Reporting Network) evaluation to determine if the offender may be addicted to alcohol. If the CRN Profile recommends counseling or treatment, the offender must undergo a full drug and alcohol assessment. If treatment is recommended, participation in treatment becomes a condition of sentencing and the court must impose the statutory maximum sentence.

The court may order drug and alcohol treatment for any offender. It must order treatment for anyone whose full assessment indicated a need for treatment and for anyone convicted of a second or subsequent offense.

**42 PA.C.S. §9763 (Sentence of intermediate punishment).** A sentence of intermediate punishment must include any drug and alcohol treatment imposed. Subsection (c) specifies that a defendant may only be sentenced to intermediate penalties under 75 PA.C.S. §3804 for 1) a first, second or third offense of Chapter 38 and 2) after undergoing a drug and alcohol assessment. A defendant in need of drug and alcohol treatment may only be sentenced to intermediate punishment that includes participation in a drug and alcohol treatment program. Treatment may be combined with house arrest with electronic surveillance or a partial confinement, such as work release, work camp or a halfway facility. If a defendant is not in need of drug and alcohol treatment, the defendant may only be sentenced to intermediate punishment by house arrest or electronic surveillance, partial confinement programs or any combination of these programs.

42 PA.C.S. §9804 (County intermediate punishment programs) establishes similar provisions for DUI and for violating 75 PA.C.S. §1543(b) or §3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock).

**75 PA.C.S. §3804(f) (Community service assignments).** In addition to other penalties, the

judge may impose up to 150 hours of community service if it does not conflict with any treatment requirements. Subsection (j) specifies that the court may sentence a person who violates §3802 to any other requirement or condition consistent with the person's treatment needs, restoration of the victim to pre-offense status or the protection of the public.

**75 PA.C.S. §3814 (Drug and alcohol assessments).** All DUI offenders still need to have a CRN evaluation. Offenders must have a full-scale drug and alcohol assessment if 1) the CRN recommends treatment or counseling, 2) the offender's BAC was .16% or greater or 3) it is a second or subsequent offense in the last ten years. The assessment would consider public safety, length of care, level of care and follow-up care and monitoring. The assessment itself will need to be completed by a program licensed by the Department of Health.

Act 24 phases in mandatory assessment and treatment for all offenders. (Where necessary, Act 122 remains in effect until Act 24 is fully implemented.) Effective February 1, 2004, all first-degree misdemeanor DUIs are required to have a mandatory assessment and to undergo treatment if recommended. Third offenders with BACs under .10%, second offenders with BACs from .10% to .159% and second offenders with BACs of .16% or greater shall be subject to a full drug and alcohol assessment beginning on June 30, 2006. All offenders will be subject to a full assessment beginning on June 30, 2009.

**75 PA.C.S. §3815 (Mandatory sentencing).** The sentencing judge may grant parole to certain offenders serving sentences in county prison for any misdemeanor offense that occurred at the same time as the §3802 violation. If the offender is not determined to be addicted to alcohol or another substance, the offender must as a condition of parole refrain from using illegal controlled substances and from abusing prescription drugs, over-the-counter drugs or any other substances. If the

offender is determined to be addicted to alcohol or another substance, the offender must as a condition of parole refrain from the above and also cooperate with the drug and alcohol treatment program. An offender who fails to comply is subject to revocation of parole and incarceration. A report to PENNDOT is required, and offenders with occupational limited licenses will have them recalled.

### ***Occupational Limited License***

Occupational limited licenses are permitted for all first convictions, provided the offender first serves a 60-day license suspension. Occupational limited licenses are permitted for some second offenders if they have served 12 months of their 18-month license suspension. These drivers can only operate an ignition interlock vehicle. However, the time the driver has an occupational limited license with an ignition interlock does not count towards the one-year mandatory period of ignition interlock imposed under §3805.

**75 PA.C.S. §1553 (Occupational limited license).** Subsection (b)(1) adds getting to treatment as one of the circumstances under which a driver may use an occupational limited license. The driver's petition must now identify not only the employer but also the educational institution or treatment facility.

Subsection (d)(6) specifies that anyone who has been adjudicated delinquent, granted a consent decree or granted ARD for DUI may not be issued an occupational limited license unless the suspension or revocation for that conviction has been fully served.

This provision also allows occupational limited licenses for those whose licenses have been suspended for a first violation of 18 PA.C.S. §6308.

Subsection (d)(8) specifies that anyone convicted of DUI must serve the entire

suspension or revocation before being eligible for an occupational limited license. However, a person convicted under §3802 who does not have a prior offense as defined in §3806(a) shall be eligible for an occupational limited license after serving 60 days of the suspension according to subsection (d.1). A person convicted under §1547(b)(1)(ii) or §3804(e)(2)(ii), relating to an 18-month suspension for a first-degree misdemeanor, shall be eligible for an occupational limited license if the individual 1) is otherwise eligible for restoration; 2) has served 12 months of the suspension; 3) has no more than one prior offense as defined in §3806(b); 4) only operates a vehicle with an ignition interlock system and 5) has certified that each vehicle owned by or registered to the person has been equipped with an ignition interlock system. A period of ignition interlock accepted under subsection (d.2) shall not count towards the one-year mandatory period of ignition interlock imposed under §3805.

Subsection (f) specifies that an occupational limited license can only be used between the driver's residence and place of employment or study or in the course of employment or study where the operation of a vehicle is required. The occupational limited license can also be used to and from a scheduled or emergency medical examination or treatment, including treatment required under Chapter 38. The operating privilege of a driver with an occupational limited license remains under suspension or revocation except when the driver is within the conditions of the limited license. A driver must have a completed occupational limited license affidavit at all times while operating a vehicle, except when operating a vehicle to a location for emergency medical treatment.

Subsection (f)(2) specifies that a driver with an occupational limited license may not operate a school bus.

Subsection (c) raises the fee for applying for an occupational limited license from \$25 to \$50. Subsection (f)(3) establishes a summary offense

and a \$200 fine for violating the conditions of the occupational limited license.

### ***Ignition Interlock***

The Act makes ignition interlock mandatory for all second offenders (within ten years), putting Pennsylvania into compliance with federal requirements. It also creates a new offense for driving without an ignition interlock system with alcohol in one's system and strengthens the law regarding tampering with or bypassing an ignition interlock.

**42 PA.C.S. §7002 (Ignition interlock systems for driving under the influence).** An ignition interlock system would still be required for all repeat offenders. Subsection (b) specifies that PENNDOT may require an individual who commits a second or subsequent violation of 75 PA.C.S. §3731 after September 30, 2003 to install an ignition interlock device even if the court fails to order compliance with this subsection. It also requires all second or subsequent offenders to hold an ignition interlock license for one year before they are eligible for a regular license. An individual can no longer opt to serve the second year as a hard suspension.

**75 PA.C.S. §1541 (Period of disqualification, revocation or suspension of operating privilege).** Subsection (a.1) states that credit for serving a license suspension or revocation for DUI or for illegally operating a vehicle not equipped with ignition interlock shall not commence until the date of the person's release from prison. Subsection (d) establishes that successful completion of a treatment program includes payment of all fines and costs, including treatment costs.

**75 PA.C.S. §3805 (Ignition interlock).** The court shall order ignition interlock on all vehicles owned by or registered to second and

subsequent offenders of §3802. Violations of §1547(b.1) and §3808(c) will be used to determine previous violations. §3805(b) specifies that the person must apply for an ignition interlock license and must drive under the restrictions of that license until notified by PENNDOT of reinstatement of an unrestricted license. If otherwise eligible, a person may be issued an unrestricted license after having an ignition interlock license for one year. If a second or subsequent offense occurs after September 30, 2003, a court's failure to order the ignition interlock shall not prevent PENNDOT from requiring it. There is no loophole in the law. The license of an offender who does not have ignition interlock will remain suspended indefinitely.

Subsection (a)(2) allows offenders who don't own vehicles to certify this to PENNDOT. Under subsection (e), an offender may apply for an economic hardship exemption allowing for installation of ignition interlock on only one vehicle. However, the offender may not drive any vehicles without ignition interlock. Under subsection (f), an offender with an ignition interlock license may drive a vehicle without ignition interlock in the scope of employment if 1) the employer has been notified of the employee's restricted license and 2) the employee has proof of the notification while driving. The employee may not drive an employer's vehicle 1) for personal use; 2) if the offender is whole or part owner of the business or 3) if the vehicle is a school bus, school vehicle or a vehicle designed to transport more than 15 passengers, including the driver.

Subsection (g) states that PENNDOT does not have the authority to require an ignition interlock system for a person who committed an offense under former §3731 prior to October 1, 2003 without the issuance of a court order.

**75 PA.C.S. §3808 (Illegally operating a motor vehicle not equipped with ignition interlock).** Violating the provisions of an ignition interlock license is a summary offense with a \$300 to

\$1,000 fine, up to 90 days in prison and a one-year license suspension. There is a new offense for operating a vehicle without an ignition interlock while using controlled substances or with a BAC of .025% or greater. It is a third-degree misdemeanor with a fine of \$1,000 and a minimum of 90 days in prison. Tampering with an ignition interlock system is also a new offense. It is a third-degree misdemeanor with a \$300 to \$1,000 fine, up to 90 days in prison and a one-year license suspension. Under §3505(i), if a suspension occurs while on an ignition interlock license, the license will be recalled. Prior to issuance of an unrestricted license, the balance of the time on the ignition interlock license must be completed.

### ***Accelerated Rehabilitative Disposition***

#### **75 PA.C.S. §1534 (Notice of acceptance of Accelerated Rehabilitative Disposition).**

Subsection (b) specifies that PENNDOT keep a record of acceptance of ARD for ten years. This record cannot be expunged by order of the court prior to the expiration of the ten-year period. At the expiration of the ten-year period, PENNDOT does not need a court order to expunge the record according to subsection (c). Subsection (d) establishes that PENNDOT does not need to expunge an ARD record if the individual's license was revoked under §1542 (relating to revocation of habitual offender's license) during the ten-year period or if the person was a commercial driver at the time of the violation.

#### **75 PA.C.S. §1539 (Suspension of operating privilege on accumulation of points).**

Acceptance into ARD for violating §3802 shall be considered a suspension for the purpose of determining whether a suspension is a second or subsequent suspension.

**75 PA.C.S. §3807 (Accelerated Rehabilitative Disposition).** Under subsection (a), ARD may not apply if 1) the person was accepted into ARD within ten years unless it was for a first-

offense, ungraded misdemeanor under §3802; 2) there was a crash with the current offense that resulted in death or serious injury to someone other than the defendant or 3) there was a passenger under 14.

Under subsections (b) and (d), defendants accepted into ARD must 1) complete and pay for alcohol highway safety school; 2) participate in and pay for drug and alcohol treatment if recommended; 3) submit to court supervision for six months; 4) make restitution for financial loss; 5) pay municipal costs and fees and any other fees required by law and 6) complete a 30-day license suspension for BACs of .10 to .16% or a 60-day license suspension for BACS of .16% and above, if the BAC is unknown or if involved in a crash that resulted in bodily injury or property damage.

Under subsection (c), a health insurance company may not deprive any subscriber entitled to drug or alcohol treatment or coverage because it was determined as the result of an assessment mandated as part of this Act.

Under subsection (e), a defendant fails to comply if he or she 1) fails to meet the ARD requirements, 2) is charged with violating the Crimes Code or 3) violates any conditions imposed by the court.

### ***Probable Cause***

**75 PA.C.S. §6308 (Investigation by police officers).** The police once again have the authority to conduct a traffic stop where they reasonably suspect a DUI. Subsection (b) establishes that whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred, he may stop a vehicle for the purpose of checking the registration, proof of financial responsibility, vehicle identification number or driver's license or to secure other information the officer may reasonably believe necessary to enforce the Vehicle Code.

**75 PA.C.S. §3811 (Certain arrests authorized).** Police officers are now permitted to arrest any person without a warrant if they have probable cause to believe that there has been a violation of §3802, §1543(b)(1.1) (driving under suspension with a BAC of .02% or greater or a controlled substance) or §3808. This will provide the police the opportunity to request a chemical test from the offender even if they don't think the offender is in violation of §3802. This authority extends to any medical facility located beyond the territorial limits of the police officer's jurisdiction if the offense occurred within the officer's jurisdiction.

### ***Points, Costs & Fine Distribution***

**18 PA.C.S. §7508.1 (Substance Abuse Education and Demand Reduction Fund).** Subsection (b) assesses all offenders, except those convicted of the highest rate of alcohol violation, \$100 for the Substance Abuse Education and Demand Reduction Fund. Those convicted of the highest rate of alcohol violation (.16% and above, controlled substances and refusal of chemical test) will be assessed \$200 according to §7508.1(c).

**42 PA.C.S. §1725.3 (Criminal laboratory user fee).** Subsection (a) holds offenders responsible for laboratory fees and the cost of sending a technician to court.

**42 PA.C.S. §3571 (Commonwealth portion of fines, etc.).** The distribution of fines, forfeited recognizance and other forfeitures remains the same under the new law except that Project DARE (Drug and Alcohol Resistance Education) is no longer specified as a drug and alcohol education program.

**75 PA.C.S. §1545 (Restoration of operating privileges).** Any suspension that results from a violation of Chapter 38 will cause five points to be assessed to the offender's license.



**75 PA.C.S. §3326 (Duty of driver in construction and maintenance areas or on highway safety corridors).** Fines for violation of §3802 are doubled if the violation occurs in an active work zone or on a highway safety corridor. §3327(e) (duty of driver in emergency response areas) specifies a doubling of the fine for being DUI in an area manned by emergency service responders.

**75 PA.C.S. §3716 (Accidents involving overturned vehicles).** Subsection (a) specifies an additional \$2,000 fine if a commercial vehicle overturns as a result of a crash by a commercial driver violating §3802.

**75 PA.C.S. §6506 (Surcharge).** Upon conviction under §1543(b)(1.1), §3802 or §3808(a)2) or admission into ARD, there is a \$50 surcharge for the first offense, a \$100 surcharge for the second offense, a \$200 surcharge for the third offense and a \$300 surcharge for fourth and subsequent offenses. This surcharge does not apply to motorcycles.

### ***Chemical Testing***

**75 PA.C.S. §1547 (Chemical testing to determine amount of alcohol or controlled substance).** The consent to a chemical test has been modified to include violators driving while under suspension. Subsection (a)(1) specifies that an individual has given consent for a chemical test if a police officer has reasonable grounds to believe the person has violated §1543(b)(1.1), §3802 or §3808(a)(2). In addition, the person has given consent if involved in a crash in which the operator or passenger of any vehicle or a pedestrian required treatment at a medical facility or was killed. DUI testing centers can draw blood from drivers following an arrest for violations of §1543(b)(1.1) and §3808 in the same manner as has traditionally been done for DUI arrests.

Subsection (b)(1) establishes that PENNDOT will suspend the license of a person under arrest for violating §3802 who refuses a request for a chemical test. The suspension shall be for 12 months except that it shall be for 18 months if any of the following apply: 1) the person's operating privileges have been previously suspended under §3802 or 2) the person has previously been sentenced for violating §3731, §3802 or the equivalent. The police officer must inform the person that refusal of the chemical test will lead to a license suspension and that the person will be subject to the other penalties reserved for the highest rate of alcohol offenders in §3804(c). Subsection (i) specifies that any person involved in a crash or arrested for violating §1543(b)(1.1), §3802 or §3808(a)(2) may request a chemical test.

Subsection (b.1)(1) establishes that PENNDOT will suspend the license of a person under arrest for violating §1543(b)(1.1) or §3808(a)(2) who refuses a chemical test. The suspension shall be for six months. Subsection (b.1)(3) establishes that PENNDOT will suspend the license of a person with an ignition interlock restriction who refuses a chemical test.

Chemical tests may be performed outside of Pennsylvania if the facility is approved by the Department of Health for this purpose or if the facility is licensed (pursuant to the Clinical Laboratory Improvement Amendments) to conduct these tests in the state in which it is located. The Department of Health shall prescribe the minimum levels of Schedule I and nonprescribed Schedule II and III controlled substances or their metabolites that must be present for the test results to be admissible.

### ***Other Changes***

**42 PA.C.S. §1515 (Jurisdiction and venue).** This subsection authorizes district magistrates to sentence DUI offenders under the following circumstances: 1) it is the first offense in the Commonwealth, 2) no personal injury, other than to the defendant resulted from the offense,

3) the defendant pleads guilty, 4) there was no property damage in excess of \$500 other than to the defendant's property, 5) the defendant is not subject to the provisions of Chapter 63 (relating to juvenile matters) and 6) the arresting authority transmits a copy of the charge to the clerk of the court of common pleas within five days after the preliminary arraignment.

**75 PA.C.S. §1542 (Revocation of habitual offender's license).** Violations of Chapter 38 are among the offenses to be used for designating a person to be a habitual offender. Exceptions to this are violations of §3808(a)(1) and (b) (relating to illegally operating a motor vehicle not equipped with ignition interlock) and §3809 (relating to restriction on alcoholic beverages). Violations of §1543(b)(1.1) are also now included in counting offenses toward habitual offender status.

**75 PA.C.S. §1543 (Driving while operating privilege is suspended or revoked).** In subsection (b)(1), the fine for driving under suspension has been reduced from \$1,000 to \$500; the imprisonment has been changed from 90 days to 60 to 90 days. However, in subsection (b)(1.1)(i), a person driving under suspension with a BAC of .02% or greater or any of a Schedule I or nonprescribed Schedule II or III controlled substance is subject to the former penalty of \$1,000 fine and a minimum of 90 days in prison for the first offense. The second offense is a third-degree misdemeanor with a \$2,500 fine and a minimum of six months in prison. The third and subsequent offenses are first-degree misdemeanors with a \$5,000 fine and a minimum of two years in prison.

**75 PA.C.S. §1549 (Establishment of schools).** First and second offenders are required to complete alcohol highway safety school. This section directs these schools to accommodate the work schedules of offenders, including weekend and evening times.

**75 PA.C.S. §1586 (Duties of the Department).** For the purposes of imposing a suspension or revocation under Article IV of the compact, PENNDOT shall treat reports of DUI convictions from party states as being substantially similar to §3802. The fact that a party state has a different degree of impairment to support a conviction shall not be a basis for determining that the party state's offense is dissimilar.

**75 PA.C.S. §3806 (Prior offenses).** For the purposes of determining penalties and eligibility for an occupational limited license, prior offenses are now defined as conviction, adjudication of delinquency, juvenile consent decree, acceptance of ARD or other form of preliminary disposition for DUI within the ten years before the present violation occurred, replacing the old seven-year rule.

**75 PA.C.S. §3812 (Preliminary hearing or arraignment).** The presiding officer at a preliminary hearing or arraignment may not reduce the charges without the consent of the Commonwealth's attorney.

## **Key to Code Sections**

- 18 PA.C.S. §6308 (Purchase, consumption, possession or transportation of liquor or malt or brewed beverages)
- 75 PA.C.S. §1542 (Revocation of habitual offenders license)
- 75 PA.C.S. §1543 (Driving while operating privilege is suspended or revoked)
- 75 PA.C.S. §1547 (Chemical testing to determine amount of alcohol or controlled substance)
- 75 PA.C.S. §3731 (Driving under influence of alcohol or controlled substance): Repealed 1/31/04
- 75 PA.C.S. §3802 (Driving under influence of alcohol or controlled substance): Effective 2/1/04
- 75 PA.C.S. §3804 (Penalties)
- 75 PA.C.S. §3805 (Ignition interlock)
- 75 PA.C.S. §3807 (Accelerated Rehabilitative Disposition)
- 75 PA.C.S. §3808 (Illegally operating a motor vehicle not equipped with ignition interlock)
- 75 PA.C.S. §3811 (Certain arrests authorized)
- 75 PA.C.S. §3814 (Drug and alcohol assessments)
- 75 PA.C.S. §6308 (Investigation by police officers)
-