



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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Conference Committee Report Overhauling DUI Laws Adopted by General Assembly

■ Senate Bill 8 Printer's No. 1173

The Conference Committee report replaces existing driving under the influence laws with Chapter 38 that includes a .08% blood alcohol content for an offense under the Vehicle Code. Under the new chapter, alcohol limits, penalties and suspension are provided in three tiers beginning at .08% BAC and increasing to .16% BAC. The bill eliminates the "relation back" evidentiary requirement. Under the proposal, the prosecution must prove that the person drove after drinking a sufficient amount of alcohol so that the person's BAC exceeded the legal limit at the time of testing conducted within three hours after the person drove the vehicle. A "good cause" exception to the three-hour rule is provided if the Commonwealth tests are not performed within three hours.

The bill outlines a new process forcing DUI offenders to comply with treatment as a condition of their sentence. All first-time offenders are required to be evaluated using Court Reporting Network (CRN) instruments to determine if the person may be addicted to drugs and/or alcohol. If it appears likely that the offender is in need of treatment, then he or she must undergo a full drug and alcohol assessment. After a full assessment, if the offender is determined to be in need of treatment, the person shall be sentenced to remain under the court's supervision for the maximum

statutory period permitted by law. If the offender complies with and completes treatment, he is eligible for parole following the expiration of the mandatory minimum term of imprisonment. Failure to comply with the treatment program's rules and treatment expectations results in possible resentencing to the statutory maximum term of imprisonment corresponding to the level of offense. An offender whose BAC was .16% or higher must undergo a full drug and alcohol assessment regardless of what the CRN evaluation states.

Additionally, the bill provides new conditions for Accelerated Rehabilitative Disposition (ARD). ARD is not available if the offender has had a prior offense in the past 10 years; an accident occurred in connection with the events surrounding the current offense; or if a child under the age of 14 was in the vehicle during the offense. ARD may be offered to repeat offenders, but only if the first offense was a violation of the .08/Incapable of safe driving standard.

Prior to receiving ARD, the offender must also be evaluated to determine if a possibility exists that a person may be addicted to drugs and/or alcohol. The person may be required to remain under the supervision of the court for six months and it is a mandatory condition of ARD that the individual participate in and cooperate with a licensed alcohol or drug addiction treatment program at the level and duration called for in the full assessment.

(cont. on back)

Judiciary Committee Hearings Focus on Damage Caps

The Senate Judiciary Committee conducted two public hearings on the issue of medical malpractice and the cost of medical liability insurance. The hearings, conducted on September 15 and September 22 included a variety of witnesses including judicial officers, victims of medical malpractice, insurance company representatives, public interest groups, doctors and trial lawyers. The primary focus of the malpractice hearings centered on the issue of damage caps for non-economic damages as a means of reducing the costs of malpractice insurance.

On June 10, 2003, the House of Representatives adopted House Bill 1326 that has been referred to the Senate Judiciary Committee. House Bill 1326 is a joint resolution proposing an amendment to Article III, Section 18 of the Constitution of Pennsylvania. The amendment would prohibit the General Assembly from limiting the recovery of economic damages for injuries resulting in death or injuries to persons or property, but would allow the General Assembly to limit, by statute, the recovery of non-economic damages for injuries resulting in death or injuries to persons or property.

The proposed amendment to the constitution contained in House Bill 1326 would be applicable in all tort actions including product liability.

(cont. from front)

If the offender fails to comply or refuses to constructively engage in the treatment process, then ARD must be revoked and the offender's case set for trial. If applicable the offender's occupational limited license would be revoked and his regular license would remain suspended until he successfully completes the treatment. All defendants admitted to ARD with a BAC of .16% and above must be given a full drug and alcohol assessment.

If an offender is accepted into ARD, the following driver license suspensions will apply:

- No license suspension if the person's BAC is less than .10%
- 30 day suspension if the person's BAC is .10% to .16%
- 60 day suspension if the person's BAC is .16% and higher; if the BAC is unknown; or if an accident occurred in connections with the events surrounding the current offense.

Administrative Provisions:

- The ignition interlock provisions are moved to the Vehicle Code and require that an ignition interlock be installed on all vehicles owned by a DUI offender prior to the restoration of driving privileges when ordered by the court after a first offense or after a second or subsequent offense.
- No license suspension for a first conviction with .08 to .099 BAC and/or Incapable of Safe Driving offense.
- 1-year license suspension for all other ungraded misdemeanor offenses.
- 2-year license suspension for all first-degree misdemeanor offenses.
- Occupational Limited Licenses would be permitted for all first offenders.

- Occupational limited licenses would be permitted in the second year of a 24-month license suspension provided that the offender agrees to have an ignition interlock installed on the vehicle(s) in which they will operate.
- 12 month license suspension for refusing to submit to chemical testing.
- 24 month license suspension for refusing to submit to chemical testing if the person has already been suspended for a prior refusal or if they had been previously convicted of a DUI.
- Amends the section relating to driving while under an alcohol-related suspension to prohibit any use of controlled substances. Also, reduces the fine from \$1,000 to \$500 and jail time from 90 to 60 days for driving while under an alcohol-related suspension if no alcohol or controlled substances are found in the person's system.
- Requires all first and second offenders to attend the Alcohol Highway Safety School under regulations promulgated by PENNDOT.
- Provides that PENNDOT cannot use a driving record where a suspension was partially served and the offense leading to the suspension was overturned or dismissed by the court for the purposes of calculating habitual offender status. Also, such information can only be used for administrative and law enforcement use and not released for any other purpose and requires PENNDOT to expunge the record of ARD upon the expiration of the 10-year period except records of a CDL driver where the offender was a CDL driver at the time of the offense.

Current Status: Governor's Desk

Bills Previously Reported in the Judiciary Review.

■ **Senate Bill 89
Printer's No. 108**

The bill amends section 2102 of Title 20 (Decedents, Estates and Fiduciaries) to provide that any compensation awarded pursuant to the victim compensation fund established under the Air Transportation Safety and System Stabilization Act as a result of the person's death caused by the September 11, 2001 terrorists attacks, is not subject to division if there is a surviving parent of the victim/ decedent. Rather, the full amount of this compensation award would be directed to the surviving spouse.

*Current Status—Governor's Desk
Previously Reported—June 2003*



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