



## MEMORANDUM

**TO:** The Pennsylvania House Transportation Committee

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** March 22, 2021

**RE: OPPOSITION TO HOUSE BILL 773 P.N. 769 (QUINN)**

[HB 773](#) (PN 769), also known as “Deana’s Law,” would impose **mandatory consecutive sentences** for DUI offenses to be served consecutive to any other sentence imposed by the court. It would also enhance the penalty for someone with prior DUI offenses to a second-degree felony, punishable by 5-10 years in prison and up to \$25,000 in fines, simply for **refusing to take a breath or chemical test**.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 773.**

In our 2019 report, [More Law, Less Justice](#), we trace how, over the past four decades, the PA legislature has become a bipartisan offense factory, as members of both political parties churn out hundreds of new crimes and penalties that unnecessarily expand our crimes code.<sup>1</sup> HB 773 would contribute to this unrelenting expansion, effectively diverting power away from judges into the hands of prosecutors and police and contributing to the ever-greater incarceration of hundreds of thousands of Pennsylvanians.

### **HB 773 imposes mandatory consecutive sentences.**

For those with two or more prior offenses, HB 773 (PN 769) would require courts to impose penalties as a **mandatory sentence** to be served consecutive to **any other sentence** imposed by the court. Over three-quarters of the countries in the world regulate consecutive sentencing more stringently than the United States — either they issue sentences concurrently, cap consecutive sentences at a number of years, or merely enhance the sentence for the most serious offense.<sup>2</sup> Requiring that sentences be stacked (served consecutively) diminishes the power of judges to make decisions on a case-by-case basis, while the threat of long prison terms is used by prosecutors to coerce accused defendants into accepting plea bargains.<sup>3</sup> Mandatory sentences are ineffective, costly, and further erode the discretionary power of judges while expanding the power of prosecutors.

### **HB 773 includes a felony enhancement — not for inflicting injury or death — but for *refusing a test*.**

HB 773 also includes grading enhancements for those with prior offenses. But these enhancements are not triggered by inflicting bodily injury or death, but for **refusing a test**. For those with:

- Two prior offenses: the penalty for refusing a test is a third-degree felony;
- Three or more prior offenses: the penalty for refusing a test increases from a third-degree felony to a second-degree felony, punishable for 5-10 years in prison and up to \$25,000 in fines.

**To be clear, the penalty for simply refusing a test would be charged the same as other second-degree felony offenses like statutory sexual assault or involuntary manslaughter of a child under 12 years old.**

<sup>1</sup> ACLU of Pennsylvania, *More Law, Less Justice*, October 2019, <https://www.aclupa.org/en/publications/more-law-less-justice>

<sup>2</sup> University of San Francisco School of Law, Center for Law and Global Justice, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context*, May 2012, at <https://www.usfca.edu/sites/default/files/law/cruel-and-unusual.pdf>.

<sup>3</sup> Center for Prison Reform, *The Unsystematic Issuing of Consecutive Sentences In America*, June 2015, at [https://centerforprisonreform.org/wp-content/uploads/2015/09/Consecutive-Sentences-in-America-2015\\_06\\_09.pdf](https://centerforprisonreform.org/wp-content/uploads/2015/09/Consecutive-Sentences-in-America-2015_06_09.pdf).

**HB 773 would join a raft of new DUI penalties and offenses recently passed and enacted in Pennsylvania.**

Lest anyone argue that the legislature has failed to hyper-penalize DUI offenses, in **2018 ALONE**, the General Assembly created 9 new penalties and 1 new offense for DUI-related charges,<sup>4</sup> including:

- Driving while operating privilege is suspended or revoked, 75 Pa.C.S. 1543 (b)(ii) (makes a second violation a summary offense punishable by 90 days' incarceration);
- Makes a third offense a misdemeanor of the third degree, punishable by a year in prison, 75 Pa.C.S. 1543 (b)(iii);
- Aggravated assault by vehicle while driving under the influence, 75 Pa.C.S. 3735.1 (a.1) (creates a mandatory minimum of two years confinement);
- Homicide by vehicle while driving under the influence, 75 Pa.C.S. 3735 (a)(1)(II) (makes the unintentional death of another person while under the influence of alcohol a felony of the first degree if previously guilty of another DUI and implements consecutive mandatory minimum sentences of three, five, and seven years depending on prior offenses);
- Accidents involving death or personal injury while not properly licensed, 75 Pa.C.S. 3742.1 (creates a new sub-offense by expanding the definition from anyone who caused an accident that resulted in injury or death to anyone who acted with negligence that contributed to causing an accident that resulted in injury or death, and added two new penalties to this new sub-offense — a misdemeanor of the third degree if injury results and a misdemeanor of the second degree if death results);
- Makes it a felony of the third degree punishable by seven years incarceration for anyone who violates section 3802 and has previously been convicted of homicide by vehicle, 75 Pa.C.S. 3803 (a)(3);
- Makes the refusal to submit to a breathalyzer or blood test a felony of the third degree punishable by seven years, if the individual has two or more prior offenses under this statute, 75 Pa.C.S. 3803 (b)(4.1);
- Adds an additional penalty, increasing the penalty from a misdemeanor of the first degree to a felony of the third degree, punishable by seven years incarceration, if an individual violates this statute, has a minor in the vehicle, and has two or more prior offenses, 75 Pa.C. S. 3803 (b)(5).

**For these reasons, we urge you to oppose House Bill 773.**

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<sup>4</sup> [Act 153 of 2018](#)