

WHAT IS THE ARD PROGRAM AND HOW DO I KNOW IF I AM ELIGIBLE?

For first time offenders, the Pennsylvania ARD Program offers a second chance - Accelerated Rehabilitative Disposition.

ARD is considered a diversionary or "first time offender" program, designed to divert first time offenders from entering the criminal justice system. When a first time offender is accepted into the ARD program, the Commonwealth suspends the charges against the offender, but requires that certain court-ordered conditions are followed. Such conditions may include drug and alcohol counseling, community service, restitution, etc. Similar to a probationary program, the ARD program requires a period of supervision.

Once the program is completed successfully, the original criminal charges are dismissed, and the offender may, 30 days after completion of the program, request the court to expunge the offender's arrest record and ARD participation. Bear in mind that the ARD records will always be in the office of the District Attorney.

In Pennsylvania, admission into ARD is controlled by the District Attorney, who has broad discretion as to whom to allow into the program. Typically, your attorney will assist you in the process of admission into the ARD program, but your counsel should caution you that there are no guarantees.

Benefits of the ARD Program

You will not be "convicted" of a crime if you enter the ARD program. Furthermore the loss of your operating privileges will be for a short period of time, rather than the full year for a first time DUI conviction. For example, if your blood alcohol is between a .10 and .159, your driving privileges most likely will only be suspended for one month (depending on summary offenses and other variables). If your blood alcohol level is above a .16, then your suspension period will most likely be for two months. The maximum period for ARD is two years, but for most DUIs the period is one year. Some counties even shorten this period to six months if you have completed all of your requirements.

Another advantage is that completing the ARD program allows you to answer "no" on job applications that ask if you have ever been convicted of a crime. (You can also safely answer "no" to any question about whether you have ever been in an ARD program - employer's don't have the right to ask this, and they don't have access to the court records - they are sealed in the office of the District Attorney).

Additionally, 30 days after completion of the program, you can go to court to get the arrest record and ARD record expunged- cleaned up completely and removed from your past. Only

the District Attorney will know, and it will not come back to haunt you, unless you are subsequently arrested for DUI or another crime (in which case you will be treated a second time offender unless ten years have elapsed). Be aware, however, that it takes longer to clean up your record with the Department of Transportation.

Disadvantages of the ARD Program

While acceptance into the ARD program is not a "conviction" - it will count against you as a conviction if you are ever arrested and convicted for a crime later on. This means that when the court sentences you, your sentence will be harsher, because the court will take into account your prior "conviction" under the ARD program. And if you should be unfortunate enough to be convicted for a DUI, the court will consider this a "second strike" and will sentence you to a mandatory 30 to 90 days imprisonment, usually in the county jail.

How do I know if I am eligible for the ARD Program?

Admission into the ARD program is almost completely at the discretion of the District Attorney. While 75 Pa.C.S.A. § 1552 requires that each county in Pennsylvania have an ARD program for people accused of DUI, a defendant can be kept out of the program under Pa.C.S.A. § 3807(a)(2) if one of the following has occurred:

1. The defendant has been found guilty of, or accepted ARD of, a charge brought under Section 3802 within ten (10) years of the date of the current offense. This limitation doesn't apply, though, if the charge was for an ungraded misdemeanor under Section 3802(a)(2) and was the accused's first offense under Section 3802.
2. The current DUI involved an accident and an individual other than the accused was killed or suffered serious bodily injury as a result.
3. There was a passenger under 14 years of age in the motor vehicle the defendant was driving.

The ARD program changed in some important ways when Pennsylvania's DUI law was amended on February 11, 2004. For one thing, the "look back" period, which governs how far back in time a court can look for prior DUI convictions or ARDs, changed from seven to ten years. Another important change in the law is that a DUI defendant cannot go into ARD if he or she had a passenger in the vehicle who was under 14 years of age. Under the new law, though, a defendant is no longer disqualified from participating in an ARD if he or she violated any of the offenses set forth in 75 Pa.C.S.A. § 1542 (relating to habitual offenders).

Just because the defendant isn't actually prohibited from ARD consideration under 75 Pa.C.S.A. § 3807(a)(2) doesn't mean she is entitled to participate. The prohibitions set forth in

Section 3807(a)(2) are only the minimum criteria, and a district attorney is free to establish more stringent criteria for recommending DUI defendants for ARD.

Should you seek ARD on a DUI charge?

In most cases, Yes. However, just because you meet the eligibility requirements for the ARD program in a particular county does not mean that you should automatically seek ARD. A number of factors should be considered by both the you and your lawyer when determining whether to seek admission into an ARD program. Some of those factors include: (1) the strength of the Commonwealth's case; (2) the weaknesses of your case; (3) the particular circumstances of your violation and DUI arrest; (4) the importance of avoiding jail; (5) your prior record; and (6) your personal circumstances and situation. The decision whether to seek admission into an ARD program is ultimately yours, and that decision should only be made after your lawyer has fully informed you of the options available and the consequences of each.

What happens to someone who accepts ARD?

Participating in ARD has some important consequences. If you are ever convicted of a DUI in the future, your sentence may be enhanced because you will be considered a "habitual offender." You may also be subject to mandatory license suspensions, and you may be ineligible for OLL and PL (sometimes called "bread and butter" licenses).

Can you be removed from ARD?

Yes. The district attorney may file a motion with the court seeking to remove you from the ARD program if you violate a condition of ARD. Examples of grounds for removal include:

1. A commission of another offense set forth in either the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, or in 75 Pa.C.S.A. § 1542;
2. Failure to make required restitution;
3. Failure to complete the mandated highway safety school program;
4. Failure to complete any other program mandated as a condition of ARD; or
5. Violation of the terms and conditions of ARD in any other way.

If the district attorney wants to remove you from the program, he can file a motion with the court, and a hearing will then be held. If the court finds that you violated any conditions of ARD, the court may remove you from ARD. At that point, the underlying DUI prosecution is reinstated and the case proceeds as if it had never been diverted to the ARD program.