

Bucks County District Attorney's ARD Colloquy Including Chichkin Waiver for DUI/Retail Theft Cases

The District Attorney's Office has agreed to place each of you into the ARD program. ARD is a program for first time offenders who are amenable to rehabilitation and, if you complete the program successfully, allows you to avoid a criminal record.

I'm going to ask you a number of questions about your acceptance into ARD and I need each of you to answer out loud.

1. Do you read, write, speak and understand the English language?

a. If interpreter: For those of you using the services of an interpreter, can you understand what is being said here today with the help of the interpreter?

2. Are you under the influence of any drug or substance that would hamper your ability to understand what you are doing here today?

3. Do you understand that acceptance into and satisfactory completion of the ARD program offers you an opportunity to earn a dismissal of the charges pending against you?

4. Should you fail to complete the ARD program successfully, you will be removed from the ARD program and your case will be listed for trial. Should your case be listed for trial, you will be expected to plead guilty or proceed to trial. Does everyone understand that?

5. By accepting the offer to enter into the ARD program, you are stating under oath that you have never been convicted of a misdemeanor or felony offense, either in Pennsylvania or another state, and you have not previously been placed on a diversionary program. Do you understand that?

6. You have a constitutional right to a speedy trial. Under the law, your case must be brought to trial within 365 days of when charges are filed against you. By entering into the ARD program, you are waiving your right to a speedy trial under the law. Does everyone understand that?

7. By now, everyone should have a signed copy of their ARD agreement. Save that copy. It contains all of the terms and conditions of your agreement and has important contact information on it.

8. Everyone had to make a down payment towards their court costs and restitution prior to court. You will have 10 months from today to pay the remainder of the costs and restitution, or else your case will be violated. You are also responsible for the cost of any classes or treatment programs required by your ARD agreement. Does everyone understand that?

9. You have a continuing obligation to report any contacts you may have had with the criminal justice system since you filed your ARD application. Additionally, you must report any contacts you have with the criminal justice system while you are on ARD. Failure to do so will result in your removal from the ARD program. Does everyone understand that?

10. Community service is required as a condition of all ARD agreements. This must be completed at a nonprofit organization. We ask that you obtain a letter on letterhead from the organization where you completed the required community service hours that includes: 1) the number of hours you completed; 2) your supervisor's name; and 3) their contact information.

11. If you are being placed on ARD for a DUI or Retail Theft offense, please also be aware of the following:

Like with all ARD cases, successful completion of ARD for a DUI or RT case will not count as a conviction. However, IF you are arrested and convicted of a second or subsequent DUI or Retail Theft offense, this ARD will count as a first offense DUI or Retail Theft SOLELY for purposes of subjecting you to increased penalties for a second or subsequent DUI or Retail Theft Conviction.

Specifically, if you are being placed on ARD for DUI and you are arrested for a second DUI offense within 10 years, you will be subjected to enhanced criminal penalties, including longer mandatory jail sentences and fines. You will also be subjected to a longer suspension of your driver's license by PennDOT. Does everyone understand that?

If you are being placed on ARD for Retail Theft and you are arrested and convicted of a second or subsequent Retail Theft at any time in the future, you will be subject to increased grading and possible stricter sentencing. Does everyone understand that?

Anyone who is being placed on ARD for DUI or Retail Theft should have already filled out the Stipulation-Waiver form that you were provided with your ARD agreement. That sets forth in more detail what rights you have under the current law and what rights you are waiving by accepting ARD in this case.

To briefly summarize the effect of that Stipulation-Waiver, please be aware of the following:

Under the current law, if you are convicted of a second or subsequent DUI or Retail Theft, the Commonwealth must prove beyond a reasonable doubt that you actually committed this current DUI or Retail Theft offense, for which you are being placed on ARD, in order to use it as a "prior offense" for purposes of invoking increased grading and penalties for your second or subsequent DUI or Retail Theft conviction.

By accepting ARD today, you are giving up your right to challenge the Commonwealth's use of your acceptance of ARD as a "prior offense" for that purpose. Does everyone understand that?

You are also giving up your right to require the Commonwealth to prove beyond a reasonable doubt that you actually committed the current DUI or Retail Theft offense for which you are accepting ARD upon conviction of a future DUI or Retail Theft. Does everyone understand that?

TO BE CLEAR, THE ONLY REASON THE COMMONWEALTH WILL USE THE STIPULATION-WAIVER YOU SIGNED TODAY IS **IF** YOU GET ARRESTED AND CONVICTED OF A FUTURE DUI OR RETAIL THEFT OFFENSE. IF THAT HAPPENS, ONLY THEN WILL THE COMMONWEALTH BE ABLE TO USE YOUR ACCEPTANCE OF ARD IN THIS CASE AS A PRIOR OFFENSE AND SOLELY FOR PURPOSES OF ENHANCED GRADING AND PENALTIES ON THAT FUTURE CONVICTION.

SHOULD YOU VIOLATE THIS ARD FOR ANY REASON, THE COMMONWEALTH MAY **NOT** USE THE STIPULATION-WAIVER YOU SIGNED TODAY FOR PURPOSES OF CONVICTING YOU OF THIS DUI OR RETAIL THEFT OFFENSE.

Does everyone understand that?

12. Finally, if your contact information changes while you are on ARD, you must provide the Clerk of Courts and the District Attorney's Office with your updated contact information. The contact information for both offices is on your ARD agreement.

13. At this point, do you all understand and agree to abide by the terms and conditions of your ARD agreement?

14. Understanding these terms and conditions, do you wish to be placed on ARD at this time?