



December 29, 2025

MEMORANDUM

Review of 2025 Act 58 (Dec. 22, 2025)

Introduction

Act 58 amends Title 75 (Vehicle Code) and Title 42 (Judiciary) to address changes in the law regarding classification of prior acceptance of ARD and the constitutionality of mandatory sentences for driving under suspension, DUI related. *See generally Commonwealth v. Shifflet*, 335 A.3d 1158 (Pa. 2025) (ARD not prior conviction) and *Commonwealth v. Eid*, 249 A.3d 1030 (Pa. 2021) (certain DUS mandatories unconstitutionally vague).

This Review will cover the implications of Act 58 for practitioners as it relates to advising clients of the new implications of DUS sentences and ARD DUI offenses.

Shortly in the future, a separate memo will discuss possible constitutional challenges to the new ARD = prior offense scheme.

Summary

Reviewing Act 58, and discussing its implications with colleagues, the takeaway for Allegheny County practitioners is that the Act is a net negative for individuals charged in Allegheny County. But for most other jurisdictions, where ARD programs were limited or eliminated post-*Chichkin/Shifflet*, Act 58 will benefit **first time DUI offenders**. For anyone who reoffends within 10 years after ARD, the Act entirely reverses *Chichkin/Shifflet*. The Act provides the following stated purpose:

The intent of this act is to restore procedures by which defendants who are charged with an offense under 75 Pa.C.S. § 3802 may secure rehabilitative treatment and a clean record, while ensuring the public that repeat offenders will face appropriate consequences as set by the general assembly if they commit subsequent offenses despite the rehabilitative opportunity. It is the intent of the general assembly to address the Pennsylvania Supreme Court's decision in *Commonwealth v. Shifflett*, 335 a.3d 1158 (Pa. 2025).

Implications

1. New Offense DUI following Diversion

- a. 75 Pa.C.S § 3802(h) provides for enhanced penalties where an individual (1) committed an offense under one of the subsections at 75 Pa.C.S. § 3802(a)-(f) AND (2) did so within 10 years of completing ARD or a similar DUI diversion program

2. Determinate Sentencing for Title 75 Summaries

- a. *Eid* has been legislatively over-ruled
- b. A sentence of total confinement under Title 75, for a summary offense, that does not exceed 90 days need not comply with the general requirement of a minimum and a maximum term. *See* 42 Pa.C.S. § 9756(C.2)
- c. This returns us to the law pre *Eid*

3. ARD Acceptance to be Maintained by DOT for 10 years

- a. Despite expungement provisions that remove an ARD acceptance case from UJS and from the PSP/local police/court records databases/files, ARD acceptance/completion record will be maintained by the DOT and shall not be expunged for a period of 10 years. *See* 42 Pa.C.S. § 1534(b).

4. ARD/Consent Decree enhancement under 75 Pa.C.S. § 3735

- a. Under the homicide by vehicle while DUI statute, prior ARD and consent decrees are now enumerated as bases upon

which the grading of a homicide by vehicle while DUI is enhanced from a felony of the second degree to a felony of the first degree. *See* 42 Pa.C.S. § 3735 (various penalties and mandatories enhanced here).

- b. One prior DUI/ARD/CD = mandatory 5 for each death
- c. Two prior DUI/ARD/CD = mandatory 7 for each death

5. Record of ARD completion maintained by Court Records

- a. A record of ARD completion will be maintained by the department of court records for a period of 12 years following completion

- b. That record WILL NOT be available for public inspection or duplication and will be maintained solely for future prosecutions
- c. Expungement of that order will occur AUTOMATICALLY after 12 years

Open Questions Remaining

1. How will local DAs handle grading questions for ARD completions before the enactment of Act 58

- a. As this legislation is prospective, it does not contain any provisions that are required to be retroactive
- b. It is unlikely that any prosecuting authorities will interpret this legislation as applying to only ARD acceptance and/or completion AFTER 12/22/25.

2. Is this legislative scheme for ARD = prior offense constitutional

- a. There are a number of angles to approach this question, and they will be covered in short order by a separate memorandum for litigation strategy/advising clients

Advising Clients

1. Current/future clients

- a. ARD acceptance will result in expungement, but carries a serious risk of significant second offense penalties if the client were to reoffend in the future

2. Former clients

- a. I will personally be sending letters and phone calls to my previous clients who face new/different exposure under the new statutory scheme—these changes significantly alter the status quo, and our former clients deserve to be aware

Questions

If you have questions about specific circumstances or are seeking assistance in navigating a DUI case that has now abruptly become a second offense case, please do not hesitate to add to the discussion in the listserv or reach out directly with questions. I can be reached at (412)596-6699 or jnaylorlaw@gmail.com