



PACDL

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**Testimony of the Pennsylvania Association of Criminal Defense Lawyers
Before the Senate Transportation Committee
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My name is Edward Spreha. I am a criminal defense attorney based in Harrisburg and I am also a member of the Pennsylvania Association of Criminal Defense Lawyers' Advocacy Committee. The Pennsylvania Association of Criminal Defense Lawyers ("PACDL") is a professional association of more than 900 attorneys who are actively engaged in providing criminal defense representation. As such, PACDL presents the perspective of experienced criminal defense attorneys who aim to protect and ensure by rule of law those individual rights guaranteed by the Pennsylvania and United States Constitutions, and work to achieve justice and dignity for defendants. I am here today to address concerns regarding the proposed DUI Offender Reforms, specifically the amendment to the ARD statute in response to the Superior Court's decision of Commonwealth v. Chichkin.

The legislative intent in crafting the current DUI law was to permit sentencing courts to enhance a repeat offender's penalty when the person committed a subsequent DUI offense after entering ARD on a first offense. The Chichkin decision eliminated this as an option. The proposed DUI Offender Reform language is an attempt to restore the original legislative intent and allow future ARD dispositions to be used to enhance sentences for future DUI violations.

The proposed language would add procedural conditions to section 3807 of the Vehicle Code as prerequisites to a defendant entering the ARD program. These procedural conditions would require that admissions be made regarding the defendant's guilt beyond a reasonable doubt with the understanding that the admission would be used against the defendant in future proceedings. The defendant would also be required to waive the future right to challenge the admission in future proceedings. These requirements are in direct contradiction to the Pennsylvania Rules of Criminal Procedure Rule 311 which states that information supplied by the defendant in an ARD application *shall not* be used against the defendant for any purpose in any criminal proceeding except for a prosecution based on the falsity of the information provided.

Article V, Section 10(c) of the Pennsylvania Constitution provides that the Supreme Court shall have the power to prescribe general rules governing practice and procedure of the courts and further providing that all laws inconsistent with rules prescribed shall be suspended. The proposed

amendments to the ARD statute are procedural in nature and are inconsistent with Rule 311. It is anticipated that, once challenged, an appeals court will suspend these amendments as being inconsistent with the Rules of Criminal Procedure.

In 1982, the Supreme Court of Pennsylvania reached a similar conclusion in Commonwealth v. Sorrell that addressed legislation that provided the Commonwealth with the right to choose a jury trial in a criminal case. This legislation was inconsistent with then Rule 1101 which provided the defendant with the exclusive right to waive the right to a jury trial and proceed with a trial by judge. Relying on Article V, Section 10(c), the Supreme Court determined that the conflict between the statute and the rule could not exist. As Rule 1101 was validly adopted pursuant to the Court's Constitutional authority, the conflicting statute was deemed suspended and declared unconstitutional. It is anticipated that future challenges to the proposed language will reach the same result as the amended language is in direct conflict with Rule 311.

While we are mindful of the original intention of the General Assembly in providing enhanced penalties for future DUI offenders who had their initial charges disposed through the ARD program and we understand that it is the intention to restore what was intended, our concern is that the procedures proposed will not withstand Constitutional scrutiny and will require additional amendments. It is suggested that alternative options be explored.

Edward F. Spreha, Jr.

Secretary, PACDL