

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Crim.P. 312 and 319**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pennsylvania Rules of Criminal Procedure 312 and 319 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Deletions to the text are bolded and bracketed; Additions to the text are designated as such.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to the:

**Criminal Procedural Rules Committees  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: (717) 231-9521  
[criminalrules@pacourts.us](mailto:criminalrules@pacourts.us)**

All communications in reference to the proposal should be received by December 30, 2026. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee,

David R. Crowley, Esq., Chair

## **Rule 312. Hearing, Explanation of Program.**

Hearing on a motion for accelerated rehabilitative disposition shall be in open court in the presence of the defendant, the defendant's attorney, the attorney for the Commonwealth, and any victims who attend. At such hearing, it shall be ascertained on the record whether the defendant understands **[that]**:

- (a) the nature and elements of the charged offenses;**
- (b) that the defendant has the right to counsel;**
- (c) that the defendant has the right to a trial;**
- (d) that the defendant is presumed innocent and can only be convicted if proven guilty beyond a reasonable doubt;**
- [(1)](e) acceptance into and satisfactory completion of the accelerated rehabilitative disposition program offers the defendant an opportunity to earn a dismissal of the pending charges **without a trial**;**
- (f) that, upon satisfactory completion of the program, the defendant can obtain a dismissal of the charges by filing a motion pursuant to Rule 319 or by other established local practice;**
- (g) if the defendant is charged with an offense under 75 Pa.C.S. § 3802, successful completion of the program may be used to increase any penalties imposed as a result of a subsequent offense under 75 Pa.C.S. § 3802; and**
- [(2)](h) should the defendant fail to complete the program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable Federal or State constitutional provisions, statutes or rules of court during the period of enrollment in the program.**

**Comment:** [Although acceptance into an ARD program is not intended to constitute a conviction under these rules, it may be statutorily construed as a conviction for purposes of computing sentences on subsequent convictions. See, e.g., 75 Pa.C.S. § 3806(a).]

**Nothing in this rule is intended to preclude the court from utilizing a written colloquy to conduct the required inquiry if the written colloquy is made part of the record and, during the hearing, the court confirms that the defendant has read and understands everything contained therein.**

In addition to requesting that the defendant waive Rule 600 for the period of enrollment in the ARD program, the attorney for the Commonwealth may request that the defendant waive Rule 600 for the period of time spent in processing and considering the defendant's inclusion into the ARD program. See **[Rule] Pa.R.Crim.P. 311.**

**[Official Note: Rule 178 approved May 24, 1972; effective immediately; amended February 15, 1974, effective immediately; amended April 10, 1989, effective July 1, 1989; renumbered Rule 312 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised October 1, 2012, effective July 1, 2013.]**

***Committee Explanatory Reports:*** Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000). Final Report explaining the October 1, 2012 Comment revision concerning waiver of Rule 600 published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).]

**Rule 319. Procedure for Obtaining Order for Dismissal Upon Successful Completion of the Program.**

**(a) Motion for Dismissal.**

- (1)** [When] After the defendant [shall have] has satisfactorily completed [satisfactorily] the program [prescribed and complied with its conditions], the defendant may move [the court] for an order dismissing the charges.
- (2)** This motion shall be supported by affidavit of the defendant and by certification of the agency or person charged with supervising the defendant's program, if any.
- (3)** A copy of the motion shall be served on the attorney for the Commonwealth [who shall within 30 days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the 30-day period, the judge shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the judge shall proceed as set forth in Rule 318].

**(b) Commonwealth Objections.**

- (1)** Upon being served with the defendant's motion for dismissal, the Commonwealth shall have 30 days to file objections.
- (2)** The Commonwealth shall serve the judge and the defendant with a copy of such objections.
- (3)** If the Commonwealth files objections with regard to the dismissal of charges, the judge shall proceed as set forth in Rule 318.

**(c) Order for Dismissal.** If the Commonwealth does not file objections within 30 days, the judge shall issue an order finding that the defendant has satisfactorily completed the program and dismissing the charges.

**Comment:** In some counties, court agencies or the district attorney's office have procedures for initiating the dismissal of the charges upon the defendant's successful

completion of the program. See **Pa.R.Crim.P. 312(f)**. This rule is not intended to preclude these procedures.

For the procedures for expungement when there is a dismissal, see Rule 320.

**[Official Note: Rule 185 approved May 24, 1972, effective immediately; amended April 10, 1989, effective July 1, 1989; renumbered Rule 319 and amended March 1, 2000, effective April 1, 2001.]**

***Committee Explanatory Reports:* Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).]**

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Crim.P. 312 and 319**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rules of Criminal Procedure 312 and 319 which govern procedures for hearings on motions for accelerated rehabilitative disposition (ARD) and motions for dismissal following successful completion of ARD.

Currently, Pa.R.Crim.P. 312 establishes that a hearing in open court is required before a defendant may be admitted into ARD. At the hearing, the court must ascertain whether the defendant understands that: (1) ARD is an opportunity to earn a dismissal of the charges; and (2) the defendant waives any applicable statute of limitations or speedy trial rights in the event he or she fails to successfully complete the program.

The Committee began evaluating the need to amend Pa.R.Crim.P. 312 following the passage of the Act of December 22, 2025, P.L. 363, No. 58 (Act 58). Act 58 amended, *inter alia*, various provisions of Title 75, Ch. 38, which governs offenses for driving under the influence of alcohol or controlled substances (DUI offenses).

Regarding ARD procedures, Act 58 added the following provision to 75 Pa.C.S. § 3807:

(a.1) Conditions of acceptance.— Before a defendant may accept Accelerated Rehabilitative Disposition for a charge brought under section 3802, the court shall conduct an inquiry on the record to ensure that the defendant's acceptance in Accelerated Rehabilitative Disposition and waiver of applicable rights is made knowingly, voluntarily and intelligently.

75 Pa.C.S. § 3807(a.1). Act 58 also directed the Committee to “promulgate rules as necessary to assist in the implementation of the addition of 75 Pa.C.S. § 3807(a.1).” Act 58, § 9.

The Committee now proposes to expand the court's inquiry at the hearing mandated by Pa.R.Crim.P. 312 to both implement § 3807(a.1) and ensure that the defendant is voluntarily, intelligently, and knowingly choosing to enter the ARD program. Accordingly, in addition to the topics included in the existing rule, the proposal would also require that the defendant understand the nature and elements of the charged offenses, the right to counsel, the right to a trial, and the presumption of innocence. See Pa.R.Crim.P. 312(a)-(d) (proposed).

The Committee also believed that defendants should be made aware of how to obtain a dismissal upon successfully completing ARD. That process may not be obvious or apparent – especially to the many self-represented defendants who are admitted into the program. Accordingly, proposed Pa.R.Crim.P. 312(f) requires that defendants understand that they “can obtain a dismissal of the charges by filing a motion pursuant to Rule 319 or by other established local practice.” The reference to “established local practice” is consistent with the existing Comment to Pa.R.Crim.P. 319 which states that “[i]n some counties, court agencies or the district attorney’s office have procedures for initiating the dismissal of the charges upon the defendant’s successful completion of the program. This rule is not intended to preclude these procedures.”

With respect to DUI cases in particular, the Committee concluded that defendants should be made aware that, even if the charges are dismissed, their successful completion of ARD might still result in increased penalties if they are convicted of a subsequent DUI offense. See 75 Pa.C.S. §§ 3802-3804. Thus, the Committee is proposing Pa.R.Crim.P. 312(g) to include this topic in the ARD hearing.

Next, the existing Comment to Pa.R.Crim.P. 312 includes the following:

Although acceptance into an ARD program is not intended to constitute a conviction under these rules, it may be statutorily construed as a conviction for purposes of computing sentences on subsequent convictions. See, e.g., 75 Pa.C.S. § 3806.

Pa.R.Crim.P. 312, cmt. ¶ 1. The Committee believed there may be tension between this commentary and the holding in *Commonwealth v. Shifflett*, 335 A.3d 1158 (Pa. 2025) (holding that a defendant’s prior acceptance into ARD is not the equivalent of a conviction or guilty plea, and therefore, pursuant to the Sixth Amendment, it is a fact that cannot be used to enhance a sentence unless it is proven beyond a reasonable doubt at trial). Accordingly, the Committee proposes to delete the commentary.

The Committee recognized that some judicial districts utilize written colloquies to facilitate or expedite ARD hearings. The Committee does not intend to disrupt this practice. However, proposed commentary to Pa.R.Crim.P. 312 would make clear that any written colloquy must be made part of the record, and the court must confirm that the defendant read and understood it.

With respect to Pa.R.Crim.P. 319, the Committee proposes to reorganize the existing rule into subdivisions (a)-(c). This reorganization is intended to improve readability. In addition, when judges dismiss charges, proposed subdivision (c) would expressly require judges to indicate in an order that they are doing so upon finding that the defendant has satisfactorily completed the ARD program. This requirement is

intended to implement 75 Pa.C.S. § 3807(f) (“Upon the defendant’s successful completion of the program provided for in this section, the court shall issue an order evidencing the completion.” 75 Pa.C.S. 3807(f)(1). The clerk is then required to retain that order for twelve years in order for use in future prosecutions under 75 Pa.C.S. 3802(h) (driving under the influence of alcohol or controlled substance following diversion). See *Id.* at § 3807(f)(2).

\* \* \*

All comments, concerns, and suggestions concerning this rule proposal are welcome.