

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 731

Printer's No.: 763

Sponsor: Senator Rafferty

Prepared by: Gregg Warner

Synopsis: This bill amends section 3929 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, relating to retail theft, to provide for a definition of a “first offense.”

Summary: For the purposes of retail theft, a definition of “first offense” is added to section 3929 to include “Any conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition before the sentencing on the present violation for an offense under this section or an offense substantially similar to an offense under this section.”

Applicability

The addition of the definition of “first offense” shall apply to sentences imposed on or after the effective date of this act.

Effective date

This act takes effect in 60 days.

Background: Senate Bill 731 responds to a Pennsylvania Superior Court case, Commonwealth v. Graeff, 13 A.3d 516 (Pa. Super. 2011) holding that the retail theft statute did not make participating in an Accelerated Rehabilitative Disposition (ARD) program a first offense when grading a subsequent offense. As a result, if an offender participated in ARD, a second offense would not be considered a subsequent offense but if an offender did not participate in ARD, a second offense would be considered a subsequent offense with the higher grading that applies to subsequent offenses.

According to the sponsor, “In addition to creating a situation where repeat offenders of the retail theft statute are no longer treated equally, the Graeff opinion created a less obvious secondary result. By specifically excluding ARD as a prior offense, district attorneys were then faced with the difficult decision to offer ARD to individuals charged with first offense retail theft violations when they knew that if the defendant reoffended they would once again be treated as a first offense. By including ARD in the list of prior offenses for retail theft, we will actually be encouraging district attorneys to offer ARD to first time offenders and at the same time holding repeat offenders equally accountable.”