



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 731

PRINTERS NO. 1649

PRIME SPONSOR: Rafferty

COST / (SAVINGS)

FUND	FY 2013/14	FY 2014/15
General Fund	See "Fiscal Impact" below.	

SUMMARY: Senate Bill 731 amends the Crimes Code concerning retail theft, theft, robbery, and burglary. It would take effect in 60 days.

ANALYSIS: This legislation increases the grading of the offenses of burglary and robbery to felonies of the first degree if the offenses involve the taking of a controlled substance or designer drug.

Senate Bill 731 makes the crime of theft a felony of the second degree if the offense involves an amount of \$100,000 or more but less than \$500,000. The theft would be a felony of the first degree if the amount involved is \$500,000 or more.

This legislation also lowers the threshold over which retail theft can be graded as a felony of the third degree to \$1,000 from \$2,000. Currently, retail theft of any amount over \$150 up to \$2,000 is a first degree misdemeanor, punishable by up to 5 years in prison. Making thefts of over \$1,000 a third degree felony raises that punishment to a maximum of 7 years in prison.

Also related to retail theft, this legislation provides that, in calculating the number of prior offenses, which determines the grading of the offense in some instances, the court shall include any conviction for retail theft or similar offense under the present or previous laws of the Commonwealth or any other jurisdiction, or acceptance in Accelerated Rehabilitative Disposition (ARD) or other form of preliminary disposition that occurred before sentencing for the present offense.

FISCAL IMPACT: It is not possible to determine the potential fiscal impact of increasing the grading of the offenses of burglary and robbery to felonies of the first degree if the offenses involve the taking of a controlled substance. According to the Pennsylvania Commission on Sentencing, the number of individuals convicted of burglary and/or robbery and for which the offense is graded as less than a felony of the first degree, is approximately 1,300 per year, and there is no information available on the nature of the property stolen in each of these cases. However, according to the federal Drug Enforcement Agency, in 2011 in Pennsylvania there were 36 pharmacy robberies in which controlled substances were stolen. In 2012 that number increased to 42. While these robberies are by no means the only offenses to which this increase could apply, this data suggests that the number of cases impacted by this legislation could be relatively small, compared to the overall total.

Reliable data do not exist to determine how often thefts involve amounts greater than \$100,000. Therefore, it is not possible to determine the potential fiscal impact of these changes.

It is not possible to accurately predict the fiscal impact of lowering the threshold over which retail theft can be graded as a felony of the third degree to \$1,000 from \$2,000 because reliable data do not exist to determine how many individuals may have their sentences increased from a first degree misdemeanor to a third degree felony as a result of its passage. However, an analysis of data provided by the Pennsylvania Commission on Sentencing (PCS) can help to characterize the overall magnitude of the impact.

According to PCS data, in 2010 and 2011, an annual average of 1,553 individuals were convicted of a first or second offense of retail theft in which the value of the stolen property was between \$150 and \$2,000, but it is not possible to determine how many of those individuals stole between \$1,000 and \$2,000, and would thus be affected by this legislation. An analysis of current data on the length of sentences for retail theft is more informative.

The 1,553 offenders mentioned above committed crimes graded as first degree misdemeanors under current law. Under current law, retail theft of between \$150 and \$2,000 is only considered a third degree felony on an individual's third or subsequent offense. Comparing 2010 and 2011 sentencing data for retail thefts categorized as first degree misdemeanors as opposed to third degree felonies, average prison sentences at the state and county level are about two to three months longer for the felonies. For those sentenced to probation, average length of probation is about six months longer. Therefore, enactment of this legislation is not expected to have a significant fiscal impact because it will likely only increase prison terms and the length of probation for those stealing between \$1,000 and \$2,000 by two to three months and six months, respectively.

Reliable data do not exist to estimate the potential future cost of including acceptance of ARD as a first offense in sentencing for retail theft. The practical effect of its enactment will be to accelerate the severity of an individual's punishment under the following circumstances: if the thief commits a first offense, is offered ARD, accepts ARD, and then commits an additional theft. This could increase future probation or prison populations. It is more likely costs will fall on the Board of Probation and Parole since 59% of individuals sentenced for second and third offenses of retail theft are given probation, according to data provided by the PA Commission on Sentencing.

The current average cost of incarcerating an offender in state prison is \$35,000 per year and the average cost for state parole supervision is \$3,000 per year. The average cost for incarceration in a county jail is approximately \$70 per day, or \$25,615 per year. The average cost for supervising a county adult offender is \$860 per year.

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.