



MEMORANDUM

TO: Pennsylvania Senate Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: June 6, 2023

RE: OPPOSITION TO SENATE BILL 527 P.N. 844 (FARRY)

[HB 527](#) (PN 844) would create a new offense, § 3936, for theft of mail under [Title 18, Chapter 39](#) (Theft) and would treat acceptance of ARD as a prior conviction. Grading of the offense is as follows:

- Summary for a first offense and the value of the merchandise is less than \$150.
- Second-degree misdemeanor for a second offense and the value of the merchandise is less than \$150.
- First-degree misdemeanor for a first or second offense and the value of the merchandise is \$150 or more.
- Third-degree felony for a third or subsequent offense, regardless of the value of the merchandise.
- Third-degree felony if the amount involved exceeds \$1,000.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 527.

SB 527 would create a new, separate offense that could already be charged under current law.

Theft is already criminalized under [18 § 3921. Theft by unlawful taking](#). Rather than amend this offense to clarify that it covers theft of mail, HB 527 creates a new, separate offense that could be stacked alongside a charge under § 3921. In our biennial [More Law, Less Justice](#) reports, the ACLU-PA repeatedly implores legislators to resist creating new offenses, as this practice leads to inconsistent ad hoc grading schemes and the explosion of duplicative offenses used to stack charges against defendants in order to secure plea deals.

SB 527 would treat acceptance of ARD as an adjudication of guilt to trigger penalty enhancements, likely violating constitutional guarantees of due process and the presumption of innocence.

Accelerated Rehabilitative Disposition (ARD) in Pennsylvania is a type of pretrial intervention that offers first-time offenders the ability to expunge that charge from their record upon successful completion of rehabilitation and supervision.¹

Importantly, acceptance of ARD does not constitute a conviction. In fact, those who successfully complete ARD can answer “no” on job applications to questions that ask whether they have been convicted of a crime. ARD is a pretrial disposition of certain cases—an agreement to complete a rehabilitation program in lieu of criminal charges. As such, *ARD does not require an admission of guilt by the defendant and does not require the Commonwealth to prove beyond a reasonable doubt that the defendant is guilty.* There are numerous reasons why someone would accept ARD—even an innocent person—if only because completing ARD means that the case goes away without any risk of punishment. And currently, if/when someone is charged with a similar offense before completing ARD, the underlying charge will become active again, at which point the burden remains on the state to prove its case or to secure a guilty plea. For these reasons, the **ACLU-PA firmly opposes any attempt to treat ARD as a prior offense.**

For these reasons, we urge you to oppose Senate Bill 527.

¹ The primary purpose of ARD is rehabilitative; the secondary purpose “is the prompt disposition of charges, eliminating the need for costly and time-consuming trials or other court proceedings.” [234 Pa. Code, Chapter 3](#).