

The background of the entire page is a stylized, high-contrast image of a person in a suit, likely a judge or legislator, with a scale of justice superimposed over them. The image is rendered in a blue and white halftone or dithered style. The person's face is partially visible on the right side, and their hands are positioned near the scales. The scales are a classic balance scale, with one pan hanging lower than the other.

More Law

Less Justice

2017-2018 Legislative Session

ACLU
Pennsylvania

MORE LAW

LESS JUSTICE

Law enforcement already has all of the tools necessary to protect public safety, but Pennsylvania lawmakers needlessly add more criminal offenses every year. It's time to stop overcomplicating our criminal code and increasing our prison population by adding redundant offenses, criminalizing ordinary behavior, and endlessly increasing penalties.

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Executive Summary

The United States leads the world in incarceration. In Pennsylvania, with more than 85,000 people in our prisons and jails, we incarcerate more people than any other northeastern state.¹ Moreover, with nearly 300,000 people on correctional supervision - probation and parole - Pennsylvania ranks third in the number of people under state supervision, behind only Texas and California.²

How did we get here? For the past four decades, our legislature has been a bipartisan offense factory, as members of both political parties churn out hundreds of new crimes and penalties that unnecessarily expand our crimes code.

This legislative hyperactivity that contributes to our state's mass incarceration crisis also undermines basic concepts of fairness for people caught up in the criminal legal system in three ways:

- **First, the vast majority of “new” offenses cover the same behavior already captured by offenses that existed in 1972.**
- **Second, our legislators add offenses that include behavior most Pennsylvanians do not deem worthy of criminal punishment.**
- **Finally, our legislature steadily increases the penalties for offenses, so charges carry more severe sentences.**

Endlessly expanding the number of criminal offenses in state law isn't just unnecessary; it has real-world consequences. The prosecutor or police officer's initial charging decision holds extraordinary power. Pennsylvania criminal law permits convictions of multiple offenses for a single act— even if one offense includes the other. For a single act, a person may be found guilty of all offenses charged, no matter how similar or duplicative those offenses appear. Moreover, overlapping offenses do not generally merge at sentencing.³ Thus, for a single act, someone faces not only conviction, but also consecutive sentences of incarceration for the multiple offenses charged.

Indeed, as late legal scholar William Stuntz explains, prosecutors benefit “whenever overlapping criminal prohibitions cover a single chain of events.”⁴ When facing multiple charges, the potential maximum sentence rises dramatically, allowing prosecutors to easily coerce guilty pleas. Prosecutors use the “higher threatened sentence as a bargaining chip, an inducement to plead guilty.”⁵ Someone charged with a single offense for a single act is more likely to reject a plea offer and choose a trial than someone who faces dozens of criminal charges and a decades-long sentence. Pennsylvania's 1500+ criminal offenses give prosecutors extraordinary leverage when it comes to coercing guilty pleas.

Introduction

In 1972, Pennsylvania enacted the modern crimes code, succinctly categorizing all criminal behavior into 282 offenses and suboffenses (i.e. actions that fit the definition of an offense but also include an additional variable, thus creating a suboffense).⁶ The 1972 code included a careful grading scheme for all charges.

¹ Pennsylvania Profile, Prison Policy Initiative, available at www.prisonpolicy.org/profiles/PA.html.

² Bureau of Justice Statistics, *Probation and Parole in the United States, 2016*, 11-12.

³ Offenses only merge at sentencing, if all the elements of one offense are included in the elements of the greater offense, and the greater offense has a least one additional element. See *Commonwealth v. Johnson*, 874 A.2d 66, 70 (Pa. Super. 2005); *Commonwealth v. Williams*, 559 A.2d 25, 29 (Pa. 1989) (abolishing the merger doctrine and holding that, unless one of the crimes is a lesser included offense of the other, the crimes will not merge for sentencing purposes); 42 Pa.C.S. § 9765.

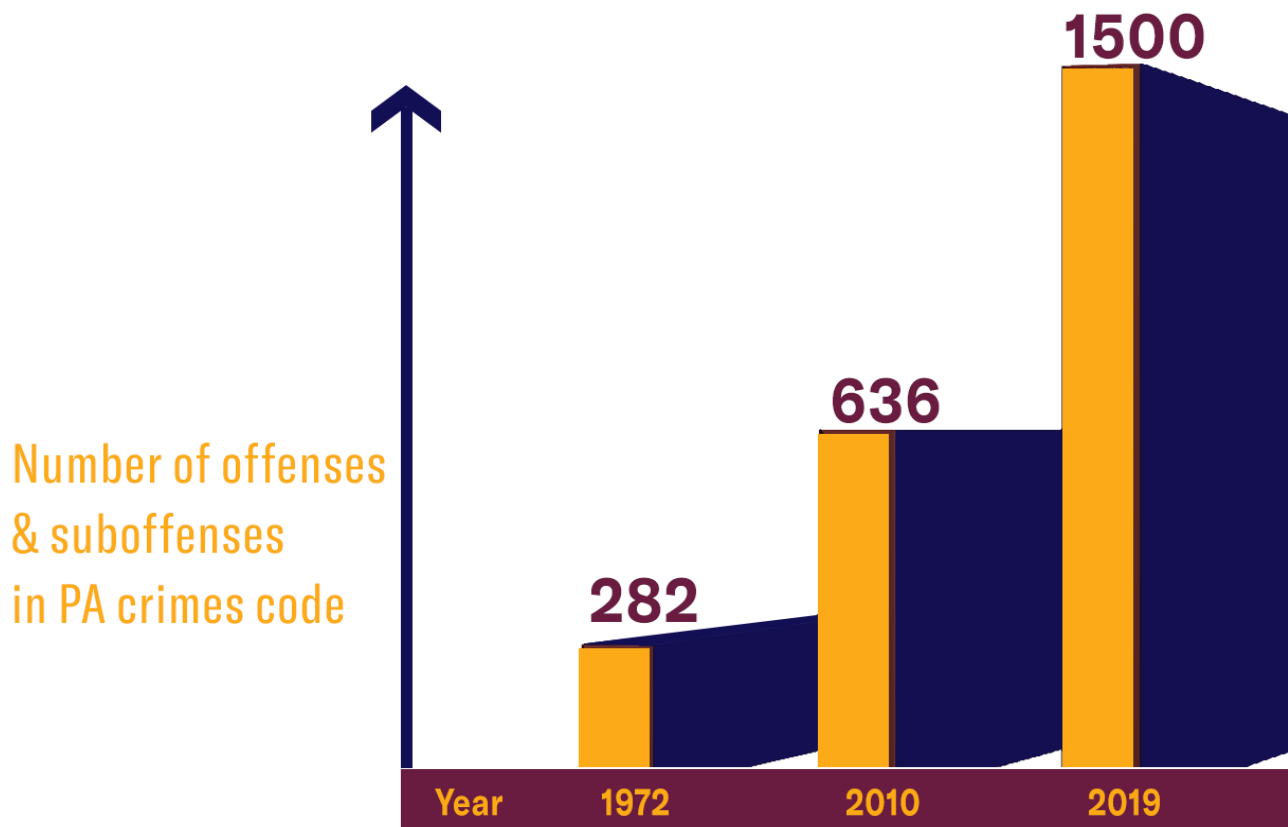
⁴ William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 Michigan Law Review 18 (2001) available at SSRN:<http://ssrn.com/abstract=286398>.

⁵ *Id.*

⁶ See Paul H. Robinson and the University of Pennsylvania Criminal Law Research Group, *report on offenses grading in Pennsylvania*, December 2009, U of Penn Law School, Public Law Research Paper No. 10-01. Available at SSRN:

Since that time, the legislature has made countless unnecessary changes and additions. By 2010, the criminal code contained 636 offenses and suboffenses.⁷

Today, there are more than 1,500.⁸



Our criminal code has become an expansive and irrational web of overlapping offenses. Moreover, our legislature has ratcheted criminal penalties ever upwards, increasing sentences. This unrelenting expansion effectively diverts power away from judges into the hands of prosecutors and police, contributing to ever-greater incarceration of hundreds of thousands of Pennsylvanians.

Each year, our legislators draft hundreds of redundant crime bills that duplicate existing law or add unnecessarily harsh new penalties. Paul Robinson, a professor at the University of Pennsylvania who extensively studies crimes code trends, calculated that in Pennsylvania since 1972 there has been “an average of 22 per year [new crimes added] to the [Pennsylvania] Crimes Code and an additional 41 annual new crimes [added outside the crimes code].”⁹

Despite our incarceration rate, despite our prisons and jails bursting at the seams, despite elderly men and women dying behind bars, our state senators and representatives have a one-track focus – more punishment and harsher penalties. Unfortunately, in Pennsylvania, more law is less justice.

Summary of Recommendations

These problems are not unique to Pennsylvania; state and federal criminal codes have also expanded. Across the country, according to Professor Robinson, we have seen a “steady degradation of American

<https://ssrn.com/abstract=1527149>.

⁷ Id. at 2.

⁸ 204 Pa.C.S. §303.15 Offense Listing for Crimes Code Offenses contained within Title 18. Available at <https://www.pacode.com/secure/data/204/chapter303/s303.15.html>.

⁹ Robinson, *supra* note 6 at 14 (2009).

[crime] codes brought on by a relentless and accelerating rate of criminal law amendments.”¹⁰ If we truly want to address our mass incarceration crisis, our legislature must deal with this problem of an ever-expanding crimes code.

If state lawmakers want to improve our criminal legal system while stemming the tide of mass incarceration, the ACLU of Pennsylvania offers the following recommendations:¹¹

- **Stop passing legislation that adds criminal offenses.** The first step is for lawmakers to simply put down their pens. With rare exceptions, we don’t need any additional criminal offenses. Our current crimes code has more than enough tools for law enforcement to protect public safety. We don’t need new crimes, new offenses, new suboffenses, or new penalties.
- **Require an existing crimes comparison statement.** Lawmakers are already required to include a “fiscal note” on all legislation to calculate the cost to taxpayers. Any proposed expansion of the crimes code should be accompanied by an “existing crimes comparison statement” - a description of all related offenses in existing law and a showing that those preexisting offenses do not already criminalize the conduct in the proposed criminal legislation.¹²
- **Recodify the crimes code.** The General Assembly should consider a major overhaul of the current crimes code. The legislature should create a dedicated task force to review the current code, drop all unnecessary and duplicative offenses, and reset the grades of all offenses in a way that truly reflects the appropriate seriousness of the crime.

Together, these recommendations would be a start to repairing the damage done when legislators’ thirst for more criminal offenses leads to more people in Pennsylvania trapped under the weight of a massive criminal legal system.

Duplicative Offenses

The 1972 crimes code gives law enforcement all the tools necessary to protect public safety. Most of our statutes are written broadly enough to allow them to be applied to a variety of different situations. Except for marital rape and the addition of a few drugs to the controlled substances list, almost all relevant criminal behavior has been criminalized for centuries. Pennsylvania has no need for more assault, theft, trespass, or fraud laws. Most “new” crimes address behavior long covered by existing laws.

Duplicative offenses mean that someone can be convicted of multiple, overlapping offenses arising out of a single act, and punished with consecutive sentences for each offense. The threat of extensive punishment for a single act allows prosecutors to coerce defendants into pleading guilty without a trial.

For example, one law passed in 2017 created a “new” suboffense,¹³ “misrepresentation of military service,”¹⁴ whereby a person who misrepresents himself as a veteran to obtain money or other benefits commits a misdemeanor of the third degree. The legislation ignores the following long-standing crimes:

¹⁰ Paul H. Robinson, Thomas Gaeta, Matthew Majarian, Megan Schultz & Douglas Weck, *The Modern Irrationalities of American Criminal Codes: An Empirical Study of Offense Grading*, 100 *The Journal of Criminal Law* 709 (2010).

¹¹ Professor Paul Robinson has written extensively about these recommendations, see *supra* notes 4 and 7.

¹² Robinson, *supra* note 4 at 17.

¹³ We use the term “suboffense” to define different conduct, or course of conduct, with a different offense grade delineated within the larger offense definition. For example, robbery, 18 Pa. C.S. § 3701, has three suboffenses within it: robbery as a felony of the first, second, and third degree. Retail theft, 18 Pa. C.S. § 3929, contains four suboffenses: retail theft as a summary, retail theft as a misdemeanor of the first and second degree, and retail theft as a felony of the third degree. See Robinson, *Report on Offense Grading*, *supra* note 6, at 19, n.3.

¹⁴ 18 Pa.C.S. § 6701.

theft by unlawful taking,¹⁵ theft by deception,¹⁶ tampering with records or identification,¹⁷ and identity theft,¹⁸ which completely cover theft by anyone posing as a veteran.

Similarly, the legislature added the offense of strangulation in 2016 also a duplicative offense.¹⁹ The behavior encompassed by strangulation, “intentionally impeding the breathing or circulation of the blood of another person,” has long been covered by existing crimes. The crimes aggravated assault (causing or attempting to cause serious bodily injury to another),²⁰ simple assault (attempting or causing bodily injury to another),²¹ attempted murder,²² and recklessly endangering another person²³ all cover this same behavior as any attempt to strangle another will cause or be an attempt to cause bodily injury, serious bodily injury, or death.

The table below contains a list of examples of bills introduced in the last legislative session by Pennsylvania lawmakers from both sides of the aisle. Every single one of these offenses is already covered by other parts of the current crimes code. While these bills did not pass the legislature or become law, they illustrate the never-ending stream of duplicative legislation introduced every session.

Bill Number	Description of New Offense	Punishment	Already Existing Offense
Senate Bill 1042 ²⁴	Setting fire to one’s own home	Felony of the second degree, up to 10 years’ incarceration	Arson and related offenses ²⁵ specifically defines arson to include “whether on his own property or that of another”
Senate Bill 779 ²⁶	Harming a service guide dog	Misdemeanor of the first degree, up to 5 years’ incarceration	Attack of service, guide, or support dog ²⁷
Senate Bill 838 ²⁸	Evading arrest or detention by foot	Ranging from misdemeanor of the second degree to, up to 2 years’ incarceration to a felony of the first degree, up to 20 years’ incarceration (if another person suffers death) felony of the first degree (if another person suffers death)	Flight to avoid apprehension, trial or punishment ²⁹ and resisting arrest ³⁰

¹⁵ 18 Pa.C.S. § 3921.

¹⁶ 18 Pa.C.S. § 3922.

¹⁷ 18 Pa.C.S. § 4104.

¹⁸ 18 Pa.C.S. § 4120.

¹⁹ 18 Pa.C.S. § 2718.

²⁰ 18 Pa.C.S. § 2702.

²¹ 18 Pa.C.S. § 2701.

²² 18 Pa.C.S. § 2502; 18 Pa.C.S. § 901.

²³ 18 Pa.C.S. § 2705.

²⁴ S.B. 1042, 2017/2018 Leg. Sess. (Pa. 2018).

²⁵ 18 Pa.C.S. § 3301.

²⁶ S.B. 779, 2017/2018 Leg. Sess. (Pa. 2017).

²⁷ 18 Pa.C.S. § 5535.

²⁸ S.B. 838, 2017/2018 Leg. Sess. (Pa. 2017).

²⁹ 18 Pa. C.S. § 5126.

³⁰ 18 Pa. C.S. § 5104.

Bill Number	Description of New Offense	Punishment	Already Existing Offense
Senate Bill 355 ³¹	Leaving a child under the age of 13 in a car without adult supervision	Felony of the third degree, up to 7 years' incarceration	Recklessly endangering another person, ³² endangering the welfare of children, ³³ etc.
House Bill 66 ³⁴	Sale and distribution of novelty lighters	Summary offense, up to 90 days' incarceration	There are civil penalties for this kind of behavior. If the lighters are truly dangerous, the retailers can be charged with risking a catastrophe. ³⁵
Senate Bill 1134 ³⁶	Sexual extortion	Misdemeanor of the first degree, up to 5 years' incarceration, or felony of the third degree, up to 7 years' incarceration, if certain conditions apply	Rape, ³⁷ which prohibits sexual intercourse by "forcible coercion"
Senate Bill 1165 ³⁸	Threat to commit violence against a school	Felony of the second degree, up to 10 years' incarceration	Terroristic threats ³⁹ which criminalizes a threat to commit any crime of violence with intent to terrorize another
Senate Bill 1203 ⁴⁰	Theft of weapons of mass destruction	Felony of the first degree, up to 20 years' incarceration	Weapons of mass destruction ⁴¹
Senate Bill 1228 ⁴²	Computer extortion by use of ransomware	Felony of the third degree, up to 7 years' incarceration	Unlawful use of computer and other computer crimes ⁴³

³¹ S.B. 355, 2017/2018 Leg. Sess. (Pa. 2017).

³² 18 Pa. C.S. §2705.

³³ 18 Pa. C.S. §4304.

³⁴ H.B. 66, 2017/2018 Leg. Sess. (Pa. 2017).

³⁵ 18 Pa.C.S. §3302.

³⁶ S.B. 1134, 2017/2018 Leg. Sess. (Pa. 2018).

³⁷ 18 Pa. C.S. §3121.

³⁸ S.B. 1165, 2017/2018 Leg. Sess. (Pa. 2018).

³⁹ 18 Pa. C.S. §2706.

⁴⁰ S.B. 1203, 2017/2018 Leg. Sess. (Pa. 2018).

⁴¹ 18 Pa. C.S. §2716.

⁴² S.B. 1228, 2017/2018 Leg. Sess. (Pa. 2018).

⁴³ 18 Pa. C.S. §7611.

Bill Number	Description of New Offense	Punishment	Already Existing Offense
Senate Bill 548 ⁴⁴	Prohibited distribution of a private image	Misdemeanor of the third degree, up to 1 year incarceration	Invasion of privacy ⁴⁵
Senate Bill 510 ⁴⁶	Threat against law enforcement officer or sheriff	Felony of the third degree, up to 7 years' incarceration	Terrorist threats, ⁴⁷ resisting arrest or other law enforcement ⁴⁸
Senate Bill 480 ⁴⁹	Pet cruelty in domestic violence situations	Felony of the third degree, up to 7 years' incarceration	Cruelty to animal ⁵⁰
Senate Bill 357 ⁵¹	Aggravated assault by person in custody	Felony of the third degree, up to 7 years' incarceration	Assault of law enforcement officer, ⁵² assault by prisoner ⁵³

Clearly, law enforcement officials in Pennsylvania already have all the tools necessary to protect public safety in the current crimes code. But legislators keep trying to pass bills that add unnecessary or redundant offenses. It's time for lawmakers in Harrisburg to stop making our crimes code unnecessarily complex by adding offenses that are already covered by existing law.

Unnecessary Offenses

The second way legislators unnecessarily bloat the criminal code is by passing legislation that criminalizes behavior most Pennsylvanians do not deem worthy of criminal prosecution. A survey conducted by the University of Pennsylvania found that large majorities of the public in our state do not believe Pennsylvania needs more or harsher criminal laws.⁵⁴

⁴⁴ S.B. 548, 2017/2018 Leg. Sess. (Pa. 2017).

⁴⁵ 18 Pa. C.S. §7507.1.

⁴⁶ S.B. 510, 2017/2018 Leg. Sess. (Pa. 2017).

⁴⁷ 18 Pa. C.S. §2706.

⁴⁸ 18 Pa. C.S. §5104.

⁴⁹ S.B. 480, 2017/2018 Leg. Sess. (Pa. 2017).

⁵⁰ 18 Pa. C.S. §5533.

⁵¹ S.B. 357, 2017/2018 Leg. Sess. (Pa. 2017)

⁵² 18 Pa. C.S. §2702.1

⁵³ 18 Pa. C.S. §2703

⁵⁴ Robinson, *Report on Offense Grading in Pennsylvania*, supra note 6 at 8.

Here are a few examples of new criminal laws the legislature has passed in recent years:

- Taunting a police animal—a felony of the third degree punishable by seven years of incarceration.⁵⁵
- Pretending you need a service animal, when you don't actually need one—a misdemeanor of the third degree punishable by up to one year of incarceration.⁵⁶
- Pretending to be a veteran or the recipient of a military decoration to obtain any sort of benefit—a misdemeanor of the third degree, punishable by up to one year in prison.⁵⁷
- Allowing a minor to get access to Nyquil—a summary offense, punishable by up to 90 days in prison and a fine between \$250-\$500.⁵⁸
- Taking a photograph or recording audio on your phone during a court proceeding without prior judicial approval—a misdemeanor of the second degree punishable by up to two years in prison for the first offense and a first degree misdemeanor degree punishable by five years' incarceration for the second offense.⁵⁹
- Demonstrating during a funeral—a misdemeanor of the third degree punishable by up to one year in prison.⁶⁰
- Damaging a land marker—a misdemeanor of the second degree punishable by up to two years' incarceration.⁶¹
- Duplicating a computer program and giving the program to your friend—a felony of the second degree punishable by up to ten years' incarceration.⁶²

As Professor Robinson writes, these additional crimes are “neither unimportant nor harmless” but lead to an “increasing level of criminalization.” Each year we move “ever closer to a world in which the law on the books makes everyone a felon.”⁶³

Expanding Penalties for Offenses

In addition to new crimes, our legislature passes and the governor signs bills that impose new and more serious penalties every year—continually ratcheting up punishments. Most crimes, from involuntary manslaughter⁶⁴ and aggravated assault,⁶⁵ to theft⁶⁶ and trespass,⁶⁷ now carry far harsher penalties than in 1972.

⁵⁵ 18 Pa. C.S. § 5548. Effective August 28, 2017; Act 2017-10 (H.B. 1238).

⁵⁶ Misrepresentation of entitlement to assistance animal or service animal, 68 P.S. § 405.5; Act 2018-118 (H.B. 2049).

⁵⁷ Wearing of uniforms and insignia and misrepresentation of military service or honors, 18 Pa. C.S. § 6701; Act 2017-9 (H.B. 168).

⁵⁸ Access of minors to dextromethorphan, 18 Pa. C.S. § 6322; Act 2018-116 (H.B. 1951).

⁵⁹ Unlawful use of audio or video device in court, 18 Pa. C. S. § 5103.1; Act 2018-94 (H.B. 149).

⁶⁰ Commemorative service demonstration activities, 18 Pa. C.S. § 7517; Act 2006-63 (S.B. 1150).

⁶¹ Destruction of a survey monument, 18 Pa. C.S. § 3312; Act 2006-72 (H.B. 496).

⁶² Unlawful duplication, 18 Pa. C.S. § 7614; Act 2002-226 (S.B. 1402).

⁶³ Paul H. Robinson & Michael T. Cahill, *The Accelerating Degradation of American Criminal Codes*, 56 *Hastings Law Journal* 633, 638 (2005)(citing William Stuntz).

⁶⁴ 18 Pa. C.S. § 2504.

⁶⁵ 18 Pa. C.S. § 2702.

⁶⁶ 18 Pa. C.S. § 3902.

⁶⁷ 18 Pa. C.S. § 3503.

In 2018, the legislature passed and the governor signed 12 acts that created **30 new criminal penalties and 12 new criminal offenses or suboffenses**.⁶⁸ Here are a few examples of those increased penalties:

- Increased penalties for delivering food stamps to the wrong person, so now it is a felony of the second degree, punishable by ten years' incarceration, if one delivers more than \$2,500 worth of SNAP benefits (or food stamps) to the wrong person.⁶⁹
- A new mandatory sentence of three years' probation, consecutive to any other sentence imposed by the court, for all sex offenses.⁷⁰
- Nine new penalties for DUI-related charges, including: driving with a suspended license, driving while intoxicated, aggravated assault by vehicle, and refusal to submit to blood or breath testing among others.⁷¹
- Two new criminal offenses and penalties⁷² related to service animals: 1) misrepresentation of entitlement to assistance animal or service animal,⁷³ a misdemeanor of the third degree punishable by up to one year in prison, and 2) misrepresentation of animal as assistance or service animal,⁷⁴ a summary punishable by up to 90 days incarceration.

Expanding penalties, especially during a time when crime has dropped to historic lows, is a misguided approach to criminal justice policy. Lawmakers need to hit the brakes and stop passing legislation that does nothing for public safety and only adds to our growing mass incarceration crisis.

Why This Matters: Real World Case Studies

As noted above, the steady addition of new and expanded offenses in the crimes code has real world consequences. Prosecutors use duplicative offenses to overcharge defendants, coercing them into giving up their right to a public trial. Prosecutors use this leverage to force defendants to accept plea bargains in the vast majority of all criminal cases.

⁶⁸ See Appendix A at end.

⁶⁹ Buying or exchanging Federal Supplemental Nutrition Assistance Program benefit coupons, stamps, authorization cards or access devices, 18 Pa. C.S. § 7313; Act 2018-160 (S.B. 1127).

⁷⁰ Mandatory period of probation for certain sexual offenders, 42 Pa.C.S. 9718.5; Act 2018-10 (H.B. 631).

⁷¹ Act 2018-153 (S.B. 961) creates the following new penalties: 1) Driving while operating privilege is suspended or revoked, 75 Pa.C.S. 1543(b)(ii)(makes a second violation a summary offense punishable by 90 days' incarceration); 2) 75 Pa.C.S. 1543(b)(iii)(makes a third offense a misdemeanor of the third degree, punishable by a year in prison); 3) Homicide by vehicle while driving under influence; 75 Pa.C.S. 3735 (a)(1)(II)(makes the unintentional death of another person while under the influence of alcohol a felony of the first degree if previously guilty of another DUI and implements consecutive mandatory minimum sentences of three, five, and seven years depending on prior offenses); 4) Aggravated assault by vehicle while driving under the influence, 75 Pa.C.S. 3735.1(a.1)(creates mandatory minimum of two years confinement); 5) Accidents involving death or personal injury while not properly licensed, 75 Pa.C.S. 3742.1 (created a new suboffense by expanding the definition from anyone who caused an accident that resulted in injury or death to anyone who acted with negligence that contributed to causing an accident that resulted in injury or death, and added two new penalties to this new suboffense— a misdemeanor of the third degree punishable by one year of incarceration if injury results and a misdemeanor of the second degree, punishable by two years incarceration if death results); 6) Grading, 75 Pa.C.S. 3803(a)(3) (making it a felony of the third degree punishable by seven years incarceration for anyone who violates section 3802 and has previously been convicted of homicide by vehicle); 7) Grading, 75 Pa.C.S. 3803(b)(4.1)(making refusal to submit to a breathalyzer or blood test a felony of the third degree punishable by seven years, if the individual has two or more prior offenses under this statute); 8) 75 Pa.C. S. 3803(b)(5)(adding an additional penalty, increasing the penalty from a misdemeanor of the first degree to a felony of the third degree, punishable by seven years incarceration, if an individual violates this statute, has a minor in the vehicle, and has two or more prior offenses).

⁷² Act 2018-118 (H.B. 2049).

⁷³ 68 P.S. § 405.5.

⁷⁴ 68 P.S. § 405.6.

CASE STUDY 1

C.T.'S STORY

C.T. is arrested after a bar fight. When the police arrive, the man C.T. fought with told the police that C.T. punched him, kicked him, put her hands around his throat, and tried to choke him.

C.T. is charged with simple assault, aggravated assault, and attempted murder. These are very serious charges and all have been included in the crimes code for many years. But C.T. is also charged with strangulation under a relatively new law, 18 Pa.C.S. § 2718. In this situation, strangulation is a misdemeanor of the second degree.

C.T. has a constitutional right to a trial, where she could have been found innocent on all charges. But C.T. is offered a plea deal that would drop the attempted murder charge while keeping the aggravated assault and strangulation charges. She is told that she could face life in prison if she does not accept the deal. C.T. accepts the deal and is sentenced to a prison term and years of probation.



CASE STUDY 2

D.J.'S STORY

D.J. is arrested outside a hardware store after store clerks notice he is concealing something under his jacket. When police initially approach D.J., he denies that he has anything under his jacket. After searching him, police find copper pipes from the hardware store inside of D.J.'s jacket.

The district attorney charges D.J. with theft unlawful taking, retail theft, and theft by deception. These are all offenses that have been included in the Pennsylvania crimes code for many years. But the district attorney also charges D.J. with the theft of secondary metals, only possible because of a relatively new law, 18 Pa.C.S. 3935.

Passed in 2017, the law makes D.J. eligible to be charged with an additional felony of the third degree. Then, the charges of theft, retail theft, and theft by deception, are stacked on top of each other — D.J. could face years in prison if he is convicted of all charges, which the DA assures him is likely if he doesn't accept a plea deal.

D.J., under immense pressure to take a plea deal due to being charged with multiple felonies, ultimately accepts the plea deal and is convicted of theft of secondary metal and retail theft. He is sentenced to a short prison term and years of probation. He will be in the criminal justice system for years due to the felony charge brought by the theft of secondary metal charge.

Conclusion

Lawmakers in Harrisburg may not agree on much, but legislators from both parties should stand united against the unnecessary expansion of the crimes code. The General Assembly churns out new criminal offenses and stiffer penalties for existing crimes every year. This happens despite the fact that crime in Pennsylvania is at historic lows.

While legislators may introduce, sponsor, and pass these new laws for political gain, the expansion of criminal offenses has real-world, negative consequences. The duplicative nature of many of these offenses allows prosecutors to overcharge defendants, hitting them with lengthy jail time for what most would consider a fairly minor incident. After being overcharged, defendants often give up their constitutional right to a fair trial and plead guilty to some combination of lesser charges. It's no surprise that one of the biggest supporters of adding new offenses and expanding penalties is the Pennsylvania District Attorneys Association, the powerful lobbying arm for Pennsylvania prosecutors.

The American Civil Liberties Union of Pennsylvania urges lawmakers to think carefully before they add any new or expanded offenses to the crimes code. Law enforcement in Pennsylvania already has enough tools to protect public safety. Serially expanding the crimes code creates a punitive ripple effect throughout our criminal legal system. More law, in fact, creates less justice.



Appendix A: Acts Passed in 2018 Creating 30 New Criminal Offenses or Suboffenses

ACT	Offense Citation	Description	New Penalties	New Offenses
Act 2018-10	18 Pa.C.S. § 4915.2	Failure of sex offenders to comply with state-ordered counseling and registration requirements	4	1
Act 2018-53	18 Pa.C.S. § 2713.1	Endangering the welfare of a care-dependent	4	2
Act 2018-60	18 Pa.C.S. § 4121	Possession and use of unlawful device to conduct fraud	2	1
Act 2018-78	18 Pa.C.S. § 3505	Unlawful use of unmanned aircraft	2	1
Act 2018-79	18 Pa.C.S. § 6105.2	Relinquishment of firearms and firearms license by convicted person	1	1
Act 2018-80	18 Pa.C.S. § 2802	Hazing	3	2
Act 2018-94	18 Pa.C.S. § 5103.1	Unlawful use of an audio or video device in court	2	1
Act 2018-118	68 P.S. § 405.5	Misrepresentation of entitlement to assistance or service animal	2	2
Act 2018-153	75 Pa.C.S. § 3735.1	Driving While Under Influence (DUI)	9	1
Act 2018-160	18 Pa.C.S. § 7313	Fraud related to food stamps	1	
		Total new penalties	30	
		Total new offenses		12

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