



# MORE LAW LESS JUSTICE

2019-2020 Legislative Session

**ACLU**  
Pennsylvania



Two things are certain every legislative session in the Pennsylvania General Assembly: 1) legislators expressing surprise and dismay at the nearly 3 billion dollars the commonwealth spends each year on prisons, probation, and parole and 2) legislators feverishly introducing and supporting bills that send more people to prison and keep them there longer.

Despite spending billions of taxpayer dollars on mass incarceration and an already bloated and duplicative criminal code, Pennsylvania lawmakers continue adding harmful and unnecessary criminal offenses every year. The ACLU of Pennsylvania released the original

More Law Less Justice report in October 2019, but our legislature continues to operate as a bipartisan offense factory. Between 2019 and 2020, legislators introduced hundreds of criminal bills and ultimately passed fourteen pieces of legislation that together added fifteen new criminal offenses or suboffenses with twenty-six corresponding new penalties. It is time to stop adding to our criminal code and increasing our prison population with redundant offenses and unnecessary criminal penalties. Our General Assembly should instead support meaningful solutions that address the underlying causes of hardship, harm, and violence.

# Table of Contents

**Executive Summary** ..... 3

**Introduction: The State of Mass Incarceration in Pennsylvania** ..... 3

**The Pennsylvania Legislature: A Bipartisan Criminal Offense Factory and its Impact** ..... 4

**Carceral Bills and Acts 2019-2020** ..... 6

    Assault, Theft, Trespass, Fraud ..... 6

    Offenses Related to Gendered & Sexual Violence ..... 9

**Reform Legislation** ..... 10

**Recommendations** ..... 11

**Conclusion** ..... 12

**Credits** ..... 13

**2019-2020 Carceral Acts** ..... 14

# Executive Summary

The United States leads the world in incarceration. Pennsylvania has one of the highest incarceration rates in the Northeast— with 96,000 people behind bars at any given time and at least 170,000 people admitted to local jails each year.<sup>1</sup> Moreover, with nearly 300,000 people on probation and parole, Pennsylvania ranks second in the United States for the proportion of its residents under state supervision, behind only Georgia.<sup>2</sup>

How did we get here? As explained in our 2019 [More Law Less Justice Report](#), for the last four decades, the Pennsylvania Legislature has acted as a bipartisan offense factory, churning out hundreds of new bills each legislative session that seek to add new crimes and penalties to our already expansive criminal code.

Each session, legislators pass enough of those bills that a steady stream of new and unnecessary criminal offenses and penalties become law. As legislators expand the scope of criminalized behavior in Pennsylvania, this gives police more power to stop and arrest people for an ever-widening variety of behaviors. Duplicative criminal offenses give prosecutors greater power to coerce guilty pleas. Harsher penalties and sentencing enhancements increase sentences, keeping people behind bars for longer.

This update to the initial More Law Less Justice Report analyzes legislation passed during the 2019-2020 session. During the two-year session, members of the General Assembly introduced more than 280 bills to expand criminal offenses and punishments, passing 15 new offenses and suboffenses, with 26 new penalties — all with bipartisan support. This update also highlights legislators' particular affinity for generating unnecessary aggravated assault offenses and offenses related to gendered and sexual violence without actually providing meaningful solutions to harm.

While Pennsylvanians have experienced significant change since our last report, published in 2019, our primary recommendation to legislators remains the same: stop introducing and passing legislation that contains new criminal offenses and penalties.

<sup>1</sup> [State-by-State Data, State Imprisonment Rate](#), The Sentencing Project (last visited Apr. 14, 2021); [Pennsylvania Profile](#), Prison Policy Initiative (last visited Apr. 14, 2021).

<sup>2</sup> Bureau of Justice Statistics, [Probation and Parole in the United States, 2017-2018](#) 14-15 (2020) (Pennsylvania ranks second in the United States for the proportion of its residents under state supervision, behind only Georgia.).

# Introduction: The State of Mass Incarceration in Pennsylvania

Little has changed about how Pennsylvania legislators operate since we published the original [More Law Less Justice](#) report in October of 2019. Incarceration continues to devastate individuals, families, and communities in Pennsylvania. Even a few days can cost someone their employment, housing, medical care, or custody of their children.<sup>3</sup> During the COVID-19 pandemic, the public health threat posed by jails and prisons only became more acute, as crowded carceral facilities became viral hotspots. As of September 2020, confirmed COVID-19 case rates in state and federal prisons were four times higher than rates in the general population and the death rate for incarcerated people was twice that of the general population.<sup>4</sup> As of January 2021, one person was dying of COVID-19 every day in Pennsylvania state prisons.<sup>5</sup> During the pandemic, time behind bars has carried a grave threat of severe illness and death. Yet, Pennsylvania has failed to meaningfully decarcerate or protect the health and safety of incarcerated people over the past year.<sup>6</sup>

<sup>3</sup> Paul Heaton, Sandra Mayson & Megan Stevenson, [The Downstream Consequences of Misdemeanor Pretrial Detention](#), 69 Stan. L. Rev. 711, 713 (2017) (internal citations omitted); See also Jessica Eaglin & Danyelle Solomon, Brennan Center for Justice, [Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice](#) 19 (2015) (internal citations omitted) (discussing negative impacts of incarceration).

<sup>4</sup> Kevin T. Schnepel, Council on Criminal Justice, Nat'l Comm'n on COVID-19 and Criminal Justice, [COVID-19 in U.S. State and Federal Prisons](#) 3 (2020).

<sup>5</sup> The Inquirer Editorial Board, [Coronavirus Death Counts Exceed One Per Day in Pa. State Prisons](#), The Phila. Inquirer (Jan. 22, 2021) (last visited Apr. 14, 2021).

<sup>6</sup> Emily Widra & Dylan Hayre, [Failing Grades: States' Responses to COVID-19](#), Prison Policy Initiative (June 5, 2020) (last visited Apr. 14, 2021) (assigning Pennsylvania a grade of "F+" for its response to COVID-19 in jails and prisons); Samantha Melamed, [With 13,000 Infected, 100 Dead of COVID-19 in Pa. Prisons, Advocates Urge Faster Releases](#), The Phila. Inquirer (Feb. 3, 2021) (last visited Apr. 14, 2021) (reporting an infection rate three times higher in Pennsylvania state prisons than in the state population as a whole, as well as delays in parole and commutation processes).

Meanwhile, Pennsylvania legislators continued to expand Pennsylvania’s already sweeping criminal code. This created more opportunities for police and prosecutors to arrest, fine, and incarcerate people — all in the midst of a deadly pandemic and recession. Moreover, this comes at a time when widespread protests against racist policing and police violence have underscored the need to reduce contact between police and communities and dramatically scale back our current system of mass incarceration. Ending Pennsylvania’s public policy of mass incarceration begins with the Legislature.

## The Pennsylvania Legislature: A Bipartisan Criminal Offense Factory and its Impact

As the original [More Law Less Justice](#) report explained, Pennsylvania’s modern crimes code, enacted in 1972, consisted of just 282 offenses and suboffenses, as well as a careful grading scheme.<sup>7</sup> Since then, the crimes code has ballooned to contain more than 1,500 offenses and suboffenses<sup>8</sup> — and the bipartisan offense factory in the legislature continues adding more. The vast majority of “new” offenses created by the legislature cover behaviors already captured by laws that existed in 1972.

The continued expansion of our criminal code impacts every stage of the criminal legal system. Armed by the legislature with so many criminal offenses, police have vast power to stop and arrest community members for a wide variety of behaviors — a power that is exercised disproportionately against people of color.<sup>9</sup> Prosecutors can then charge individuals with multiple duplicative offenses all arising from the same alleged

<sup>7</sup> See Paul H. Robinson & the Univ. of Pa. Criminal Law Research Group, [Report on Offenses Grading in Pennsylvania](#) 13 (Univ. of Pa. Law Sch., Public Research Paper No. 10-01, 2009).

<sup>8</sup> 204 Pa. Code § 303.15 ([Offense Listing for Crimes Code Offenses contained within Title 18](#)) (last visited Apr. 14, 2021).

<sup>9</sup> Elizabeth Hinton, LeShae Henderson & Cindy Reed, Vera Institute of Justice, [An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System](#) 5-8 (2018).

act. This practice means that individuals, if convicted, can be punished with consecutive sentences for each individual offense. And legislators continue to increase penalties so that the same acts carry ever lengthier sentences. The threat of such extensive punishment for a single alleged act enables prosecutors to coerce individuals into pleading guilty without a trial — eroding any pretense that our criminal legal system in Pennsylvania is primarily concerned with meting out justice.

As lawmakers increase the scope of criminalized behavior, upgrade offenses from misdemeanors to felonies, adopt mandatory minimum sentences, and implement new sentencing enhancements, sentences grow longer and more punitive. Those convicted of duplicative offenses remain behind bars while these sentences run consecutively.

But the General Assembly’s punitive impact doesn’t end when incarceration does. Once released, formerly incarcerated individuals face a wide variety of collateral consequences. In Pennsylvania, there are 879 collateral consequences for criminal convictions.<sup>10</sup> Consequences for felony convictions are particularly severe, since they can restrict access to government benefits, college financial aid, housing, employment, and prohibit someone from sitting on a jury, or running for public office.<sup>11</sup> Every time the legislature creates a new offense or ratchets up an offense’s grading from a misdemeanor to a felony, it triggers new or additional collateral consequences that make it more difficult for individuals and communities to thrive.

<sup>10</sup> [Collateral Consequences Inventory](#), National Inventory of Collateral Consequences of Conviction (last visited Apr. 2021) (select Pennsylvania for jurisdiction; then select “include federal consequences”).

<sup>11</sup> *Id.* (select “any felony” for offense type).



Retrictions to  
government benefits



Retrictions to  
college financial aid



Retrictions to  
housing access



***879 collateral consequences  
for criminal convictions***

**LEGISLATURE CREATES NEW OFFENSE  
OR RATCHETS UP AN OFFENSE'S GRADING**

***879 collateral consequences  
for criminal convictions***



Retrictions to  
employment access



Cannot sit on a jury or run for  
office public office



# Carceral Bills and Acts 2019-2020

During the 2019-2020 session, Pennsylvania legislators introduced more than 280 bills to modify or add to Pennsylvania's crimes code. In a year of an unprecedented public health crisis, the introduction of criminal bills still far outpaced the legislature's attempts to address the COVID-19 pandemic.<sup>12</sup> Ultimately, the Pennsylvania Legislature passed into law at least 14 new pieces of legislation that created new criminal offenses and suboffenses, added criminal penalties, and expanded the scope of criminalized behavior in Pennsylvania.

While legislators introduced 280 bills that sought to modify Title 18 (Crimes and Offenses) alone, Title 18 is not the only section of Pennsylvania's code where legislators seek to add new criminal offenses and penalties. In fact, criminal offenses and penalties are scattered throughout Pennsylvania's statutes, including in Title 23 (Domestic Relations), Title 34 (Game), Title 35 (Health and Safety), Title 42 (Judiciary and Judicial Procedure), Title 61 (Prisons and Parole), and Title 75 (Vehicle Code). For example, House Bills 1850, 1851, 1852, and 726 would have reinstated mandatory minimum sentences for a variety of offenses via Title 42.<sup>13</sup> Due to the scattershot way legislators introduce criminal offenses throughout Pennsylvania's entire code,

<sup>12</sup> The legislature introduced over 150 bills related to COVID-19 and ultimately enacted six.

<sup>13</sup> See [Opposition to House Bills 1850, 1851, 1852 \(Stephens\) and HB 726 \(Deluca\)](#), ACLU PA (Jan. 13, 2020).

quantifying the total number of carceral bills proposed by legislators each year is a difficult task and beyond the scope of this report.<sup>14</sup>

The ACLU of Pennsylvania has identified 14 pieces of legislation passed into law during the 2019-2020 session that added 15 new criminal offenses or suboffenses and 26 new penalties.<sup>15</sup> This covers legislation that amended Title 18 (Crimes and Offenses), Title 34 (Game), Title 42 (Judiciary and Judicial Procedure), and Title 75 (Vehicle Code).

## Assault, Theft, Trespass, Fraud

Assault, theft, trespass, and fraud have been illegal for centuries, but that does not stop legislators on either side of the aisle from introducing bills to add more of these offenses to our code; indeed this appears to be a favorite pastime of the Pennsylvania Legislature.

### Assault and Aggravated Assault

In 2019-2020, a variety of bills would have created new assault offenses or suboffenses. See for example: [House Bill 652](#) (offense of assault by knocking out another); [House Bill 2016](#) (harassment of law enforcement officer); [Senate Bill 423](#) (hate crimes against law enforcement officers and first responders); and [Senate Bill 834](#) (assault on media professional).

<sup>14</sup> See Paul H. Robinson, [The Modern Irrationalities of American Criminal Codes: An Empirical Study of Offense Grading](#), 100 J. Crim. L. & Criminology 709, 712 (2010) (Finding that as a result of "serious offenses scattered through chapters outside the code" criminal codes no longer provide a clear statement of criminal conduct; this creates a degradation in our laws.)

<sup>15</sup> See *infra* 2019-2020 Carceral Acts pp. 14-19.

## 2019-2020 Assault Bills

Bill No.	Description	Year	Sponsor
<a href="#">HB 423</a>	In assault, providing for the offense of hate crime against law enforcement officers and first responders	2019	Langerholc, Wayne (R)
<a href="#">HB 652</a>	In assault, providing for the offense of assault by knocking out another	2019	Moul, Dan (R)
<a href="#">HB 2016</a>	In assault, providing for the offense of harassment of law enforcement officer	2019	Schmitt, Louis (R)
<a href="#">SB 834</a>	In assault, providing for the offense of assault on media professional	2019	Farnese, Lawrence (D)



Aggravated assault, a felony of the first degree, is defined as causing, or attempting to cause, “serious bodily injury”<sup>16</sup> (or the kind of “injury that creates a substantial risk of death or serious permanent disfigurement.”)<sup>17</sup> Conviction for this offense is punishable by up to 20 years of incarceration.<sup>18</sup> On the other hand, the code defines simple assault as causing “bodily injury.”<sup>19</sup> Conviction for simple assault is a misdemeanor punishable by up to two years of incarceration.<sup>20</sup>

In Pennsylvania, a subsection of the aggravated assault statute, § 2702(c), gives certain people a special status based upon their employment. A simple assault committed against these people while on the job automatically ratchets up to an aggravated assault, as a felony of the second degree punishable by ten years of incarceration. In 1990, this list enumerated only police,

<sup>16</sup> 18 Pa. C.S.A. § 2702.

<sup>17</sup> 18 Pa. C.S.A. § 2602.

<sup>18</sup> 18 Pa. C.S.A. § 1103 Sentence of imprisonment for felony.

<sup>19</sup> 18 Pa. C.S.A. § 2701(b).

<sup>20</sup> 18 Pa. C.S.A. § 1104 Sentence of imprisonment for misdemeanors.

firefighters, and teachers — over the years, through legislative hyperactivity, this list has ballooned to 39 different types of employees. It now includes parking enforcement officers, psychiatric aides, judges, public defenders, elected officials, private detectives, waterways conservation officers, liquor control enforcement agents, public utility employees, and employees of the Department of Environmental Protection, among others. In other words, if you attempt bodily injury against an individual engaged in any of these jobs, you face felony charges and ten years of incarceration — even though the same behavior committed against anyone else would be a misdemeanor punishable by a maximum of two years.

In 2019-2020 alone, legislators from both sides of the aisle introduced no fewer than 15 bills that sought to add or expand aggravated assault. Many of these bills sought to further expand the list of enumerated professions under § 2702(c) to add, for example, people employed as youth shelter workers, code enforcement officers, and school crossing guards, among others. (House Bills [47](#), [88](#), [372](#), [545](#), [948](#), [1301](#), [1879](#), [2056](#), [2220](#), and [2266](#), and Senate Bills [107](#), [351](#), [632](#), [685](#), and [686](#)). See below:

## 2019-2020 Aggravated Assault Bills

Bill No.	Description	Year	Sponsor
<a href="#">HB 47</a>	In assault, further providing for the offense of aggravated assault against a local code enforcement official	2019	White, Martina (R)
<a href="#">HB 88</a>	In assault, further providing for the offense of aggravated assault against any municipal, county, or state employee or elected or appointed official	2019	Donatucci, Maria (D)
<a href="#">HB 372</a>	In assault, further providing for the offense of aggravated assault against a municipal code official	2019	Murt, Thomas (R)
<a href="#">HB 545</a>	In assault, further providing for the offense of aggravated assault against a local code enforcement official	2019	Neilson, Ed (D)
<a href="#">HB 948</a>	In assault, further providing for the offense of aggravated assault against a public transportation employee	2019	Schweyer, Peter (D)
<a href="#">HB 1301</a>	Adding an entirely new subsection that makes it an aggravated assault against police officers, firefighters, and emergency medical services personnel if you introduce a foreign object into food intended for their consumption	2019	Farry, Frank (R)



## 2019-2020 Aggravated Assault Bills

<a href="#">HB 1879</a>	In assault, further providing for the offense of aggravated assault against a health care practitioner, public recreation center or park manager, or local code enforcement official	2019	Gillespie, Keith (R)
<a href="#">HB 2056</a>	In assault, further providing for the offense of aggravated assault against anyone with a physical disability or intellectual disability	2019	Struzzi, James (R)
<a href="#">SB 107</a>	In assault, further providing for the offense of aggravated assault against employee of a facility where “juveniles are ordered by the court”	2019	Martin, Scott (R)
<a href="#">SB 351</a>	In assault, further providing for the offense of aggravated assault against a healthcare practitioner or technician	2019	Ward, Judy (R)
<a href="#">SB 632</a>	In assault, further providing for the offense of aggravated assault against a public transportation employee	2019	Tartaglione, Christine (D)
<a href="#">SB 685</a>	In assault, further providing for the offense of aggravated assault against a school crossing guard	2019	Sabatina, John (D)
<a href="#">SB 686</a>	In assault, further providing for the offense of aggravated assault against a local code enforcement official	2019	Sabatina, John (D)
<a href="#">HB 2220</a>	Expanding the definition of assault and further providing for offense of aggravated assault against anyone who is blind, pregnant, over age 60, or has a physical or intellectual disability	2020	DeLuca, Anthony (D)
<a href="#">HB 2266</a>	In assault, further providing for the offense of aggravated assault against a school crossing guard	2020	Neilson, Ed (D)

### *Theft, Trespass, and Fraud*

In addition, multiple bills proposed new theft offenses or additions to preexisting theft offenses. See for example: [House Bill 399](#) (further providing for the offense of financial exploitation of an elderly or care-dependent person); [Senate Bill 547](#) (further providing for theft of services and theft of leased property); [House Bill 82](#) (further providing for the offense of theft by failure to make required disposition of funds received); and [House Bill 2595](#) (providing for the offense of theft of mail). [Senate Bill 887](#) would have added to the offense of

criminal trespass and [House Bill 1071](#) would have added sentencing enhancements to burglary and criminal trespass. Various bills proposed new fraud offenses, including: [House Bill 485](#) (false caller identification information display), [House Bill 789](#) (benefit transfer device fraud), [House Bill 1018](#) (patient brokering), and [Senate Bill 713](#) (also patient brokering).

### *New Legislation*

Ultimately, five assault and trespass bills were enacted into law during the 2019-2020 session:



## Assault Offenses

**House Bill 256**, enacted into law as [Act 63](#), further expanded the offense of assault by prisoner. This act made it a second-degree felony for an incarcerated person to commit an assault on “a detention facility or correctional facility employee with a deadly weapon or instrument, or by any means or force likely to produce bodily injury.” 18 Pa. C.S.A. § 2703(a)(1)(ii).

- But this exact same behavior was already a second-degree felony under the offense of aggravated assault. 18 Pa. C.S.A. § 2702(a)(3).

The preexisting “assault by prisoner” offense had already made it a separate second-degree felony for an incarcerated person to assault “another with a deadly weapon or instrument, or by any means or force likely to produce serious bodily injury.” 18 Pa. C.S.A. § 2703(a)(1)(i)

- [Act 63](#) made this a first-degree felony.
- But this exact same behavior was already a first-degree felony under the offense of aggravated assault. 18 Pa. C.S.A. § 2702(a)(1) and (a)(2).

**Senate Bill 275**, enacted into law as [Act 32](#), further provided for the offense of stalking.

**Senate Bill 351**, enacted into law as [Act 51](#), further provided for the offense of aggravated assault.

## Trespass Offenses

**House Bill 1772**, enacted into law as [Act 103](#), further expanded the preexisting offense of criminal trespass.

**Senate Bill 147**, enacted into law as [Act 107](#), amended Title 34 (Game) to further provide for trespass offenses related to hunting.

Overall, it appears Pennsylvania legislators are more interested in prioritizing political agendas over the commonsense principle that Pennsylvania’s bloated criminal code needs no further expansion.

## Offenses Related to Gendered & Sexual Violence

Four of the acts passed into law in 2019 and 2020 focused on gendered and sexual violence.<sup>21</sup> Some legislators may be motivated by a genuine desire to keep people safe in light of new understandings about consent, rape culture, and the way coercion can be a precursor to more violent behavior.<sup>22</sup> Regardless of intent, the reality is that these new offenses are still duplicative and unnecessary — and so add to the arsenal

<sup>21</sup> [Act 1](#) (human trafficking); [Act 21](#) (female mutilation); [Act 100](#) (sexual extortion); [Act 63](#) (institutional sexual assault).

<sup>22</sup> See, e.g., Melena Ryzik & Katie Benner, *What Defines Domestic Abuse? Survivors Say It’s More Than Assault*, NY Times (Jan. 26, 2021) (last visited Apr. 14, 2021).

of offenses at the disposal of police and prosecutors operating within our racist system of mass incarceration without meaningfully addressing harm.

For example, [Act 100](#) creates the offense of “sexual extortion,”<sup>23</sup> which covers much of the same conduct that is already criminalized as rape.<sup>24</sup> Despite the fact that rape has been criminalized for decades, estimates indicate that only about 20% of incidents are reported to police, 6% of incidents lead to an arrest, and fewer than 1% of incidents result in incarceration.<sup>25</sup> Adding more rape charges does not change the reality that sexual violence is most often not addressed through

<sup>23</sup> Enacted into law at 18 Pa. C.S.A. § 3133 (criminalizing, among other things, coercing or causing someone to engage in sexual conduct through means including harm or the threat of harm).

<sup>24</sup> 18 Pa. C.S.A. § 3121(a) (already criminalizes the use of forcible compulsion or the threat of forcible compulsion to cause someone to engage in sexual intercourse).

<sup>25</sup> *The Criminal Justice System: Statistics*, RAINN (last visited Apr. 14, 2021).



the criminal legal system.

Simply adding criminal charges to the crimes code also fails to address the reality that police themselves can be agents of gendered and sexual violence, particularly against women of color, queer and transgender people, and others who are vulnerable to abuse by the criminal legal system.<sup>26</sup> Legislators' actions also ignore the reality that jails and prisons are themselves sites of devastating sexual violence.<sup>27</sup> Finally, survivors of gendered and sexual violence, especially survivors of color, are frequently incarcerated for the behaviors that have enabled them to survive. For example, "[t]he most common crimes for which girls are arrested — including running away, substance abuse, and truancy — are also the most common symptoms of abuse."<sup>28</sup> The enforcement of these and similar laws creates a system that routes victims of sexual violence and abuse into juvenile facilities and jails because of their victimization.<sup>29</sup>

Moreover, these new laws that seek to criminalize all coercive behavior are often unclear, vague, and overbroad — creating a real risk of selective enforcement. In addition to duplicating preexisting offenses, [Act 100](#) vastly expands the definition of sexual assault. The offense of sexual extortion encapsulates not only causing someone to engage in sexual conduct

<sup>26</sup> See Dara E. Purvis & Melissa Blanco, [Police Sexual Violence: Police Brutality, #MeToo, and Masculinities](#), Ca. L. Rev., Oct. 2020 (discussing the prevalence of police sexual violence and the targeting of women of color); Jaime M. Grant, Lisa A. Mottet & Justin Tanis with Jack Harrison, Jody L. Herman & Mara Keisling, The National Gay and Lesbian Task Force and the National Center for Transgender Equality, [Injustice at Every Turn: A Report of the National Transgender Discrimination Survey](#) 158-161 (2011) (discussing police harassment and physical and sexual assault against transgender people, particularly transgender people of color).

<sup>27</sup> Dep't of Justice, Proposed Rule, [National Standards to Prevent, Detect, and Respond to Prison Rape](#) (June 20, 2012) (In 2008, over 200,000 people were subjected to sexual abuse in jails, prisons, and juvenile facilities). LGBTQ people are particularly at risk of sexual violence behind bars. Alexi Jones, [Visualizing the Unequal Treatment of LGBTQ People in the Criminal Justice System](#), Prison Policy Initiative (Mar. 2, 2021) (citing [Bureau of Justice Statistics](#)); National Center for Transgender Equality, [LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights](#) 6 (2018).

<sup>28</sup> See, Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, Ms. Foundation for Women, [The Sexual Abuse to Prison Pipeline: The Girls' Story](#) 9 (2015).

<sup>29</sup> Id. at 5.

by harm or threat of harm, but also by threatening to withhold "any thing of value" or by "threatening to expose any piece of information that would tend to expose [that person] to embarrassment."<sup>30</sup> Vague and overbroad criminal offenses have historically been used to target marginalized groups in the U.S.; enforcement of such laws will almost necessarily be left to the discretion of police and prosecutors, and the use of such discretion perpetuates the already severe racial disparities in our criminal legal system.<sup>31</sup>

Again, such laws do little to address the root causes of coercion, harm, and violence, many of which have been exacerbated by the COVID-19 pandemic.<sup>32</sup> Instead of adding more offenses to an already expansive crimes code, legislators should be seeking out the expertise of individuals who have been impacted both by gendered and sexual violence and by our present system of mass incarceration in order to craft meaningful solutions.

## Reform Legislation

There were, however, a few minor bright spots last session; specifically, two reform bills that passed unanimously in both chambers — occupational licensure reform and Clean Slate expansion:

- [Act 53](#)<sup>33</sup> (2020) made reforms to the occupational licensing process and ensured that individuals with prior convictions are not automatically excluded from earning an occupational license simply because of their criminal record.
- [Act 83](#)<sup>34</sup> (2020) provides that if a person has been fully acquitted of all charges (i.e., cases with not guilty verdicts), those charges will be automatically expunged. If a person has received a pardon, the record related to the charge for which they have been pardoned would be automatically sealed. This bill also expanded Pennsylvania's Clean Slate law by removing the obligation to pay outstanding court-ordered

<sup>30</sup> Enacted into law at 18 Pa. C.S.A. § 3133.

<sup>31</sup> See Shon Hopwood, Clarity in Criminal Law, 54 Am. Crim. L. Rev. 695 (2017) (discussing similar issues in the context of federal law).

<sup>32</sup> See, e.g. Rachel B. Levin, [A Misguided Crackdown: How "Law and Order" Rhetoric Hurts Communities Reeling from COVID-Related Spike in Violence](#), KCET (March 19, 2021) (last visited Apr. 21, 2021).

<sup>33</sup> Enacted into law at 18 Pa. C.S.A. § 9124, 63 Pa. C.S.A. §§ 3101-3118.

<sup>34</sup> Enacted into law at 18 Pa. C.S.A. §§ 9122-9122.5, 42 Pa. C.S.A. § 4132.

financial obligations before eligible cases can be sealed.

We applaud the enactment of legislation that reduces the collateral consequences of conviction and increases the number of people who can have their records sealed or expunged. We encourage the General Assembly to work in a bipartisan manner to advance bigger and bolder reform bills aimed specifically at decriminalization, decarceration, and eliminating collateral consequences of convictions. Unfortunately, even when incremental reforms do take effect, they are quickly drowned out by the tsunami of carceral bills introduced each session.

## Recommendations

Lawmakers should immediately start taking concrete steps to begin chipping away at — rather than endlessly expanding — Pennsylvania’s system of mass incarceration.






**First, legislators should stop introducing and/or supporting any proposed legislation that adds new criminal offenses, penalties, or sentencing enhancements.** Lawmakers should neither introduce nor co-sponsor bills with these provisions, and they should scrutinize legislation proposed by other members to ensure these elements are not included.

**Second, legislators should begin repealing the laws and offenses contributing to our mass incarceration crisis.** A bloated criminal code that enables police to stop community members for a wide variety of behaviors and enables prosecutors to coerce individuals into guilty pleas does not keep us safe. And that bloated criminal code subjects community members to surveillance, incarceration, and burdensome collateral consequences. Lawmakers must start actively choosing decriminalization and decarceration.







**Finally, legislators should recodify the crimes code.** As it stands, Title 18 (Crimes and Offenses) itself contains over 1,500 criminal offenses—but criminal offenses and penalties are scattered throughout other statutes as well, including Title 23 (Domestic Relations), Title 34 (Game), Title 35 (Health and Safety), Title 42 (Judiciary and Judicial Procedure), Title 61 (Prisons and Parole), and Title 75 (Vehicle Code). This makes it difficult for the public to assess just how sprawling our criminal law really is and to hold legislators accountable for their choices. The General Assembly should initiate a major overhaul of the current code, consolidating all criminal offenses and penalties into Title 18, eliminating unnecessary and duplicative offenses and resetting the grades of all offenses to 1972 levels.

Together, these changes would allow legislators to begin chipping away at the system of mass incarceration that they themselves have created and allowed to flourish at the expense of the public.

### Legislators should reject a bill out of hand if it includes any of the following:

-  New criminal offenses
-  New/increased criminal penalties or sentencing enhancements
-  New/increased penalties for repeat offenses
-  Mandatory minimum sentences
-  Mandatory consecutive sentences

### Concrete next steps could include:

-  Repealing mandatory minimum sentences, consecutive sentences, and sentencing enhancements, including repeat offense provisions
-  Reducing/decreasing criminal penalties
-  Repealing outdated or frivolous offenses
-  Decriminalizing sex work
-  Legalizing marijuana
-  Eliminating collateral consequences of conviction



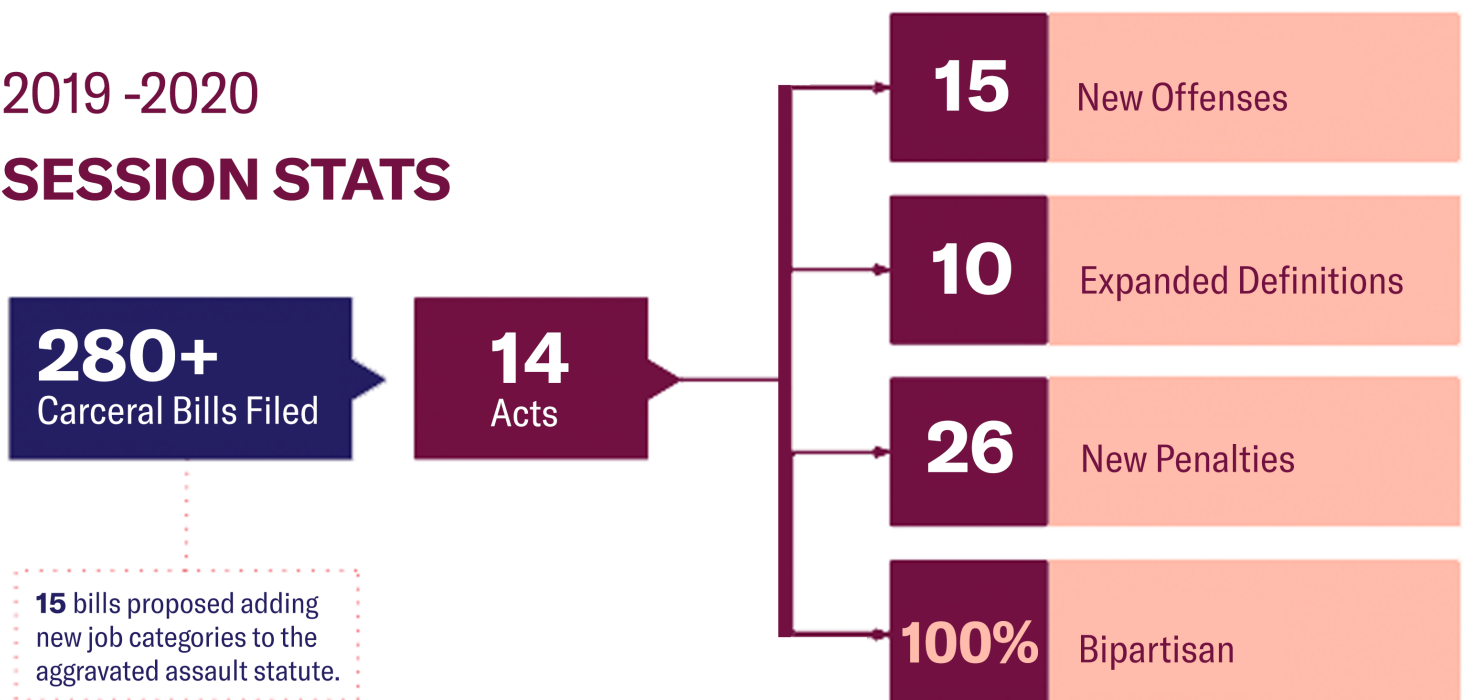
# Conclusion

The state of mass incarceration in Pennsylvania is dire. Almost 100,000 of our community members are behind bars on any given day, and Black and brown communities are hardest hit. Even as the racism inherent in the criminal legal system is at the forefront of national consciousness, even as the COVID-19 pandemic has highlighted jails and prisons as public health crises, mass incarceration is a policy choice that Pennsylvania legislators keep making. In 2019-2020, this meant passing at least fourteen carceral acts - acts

that together created fifteen new criminal offenses and sub-offenses and twenty-six new criminal penalties. The 2019-2020 Carceral Acts chart below identifies these bills, describes their content, and notes the pre-existing criminal offenses that they duplicate. If lawmakers want to turn the tide, the first step is to simply stop introducing and passing legislation that adds new criminal offenses and penalties. In the case of our criminal code, more law still means less justice.

2019 -2020

## SESSION STATS



# Credits

## PRIMARY AUTHORS

### **Haley Pritchard**

Langer, Grogan, & Diver Social Justice Legal Fellow, ACLU-PA

### **Elizabeth Randol**

Legislative Director, ACLU-PA

## EDITORS AND REVIEWERS

### **Alex Domingos**

Senior Organizer, Campaign for Smart Justice, ACLU-PA

### **Andy Hoover**

Director of Communications, ACLU-PA

### **Sara Mullen**

Associate Director/Advocacy & Policy Director, ACLU-PA

### **Ian Pajer-Rogers**

Communications Strategist, Campaign for Smart Justice, ACLU-PA

### **Marianne Stein**

Legislative Associate, ACLU-PA

### **Nyssa Taylor**

Criminal Justice Policy Counsel, ACLU-PA

### **Julie Zaebst**

Senior Policy Advocate, ACLU-PA

## GRAPHICS AND DESIGN

### **Cambriae W. Lee**

Marketing and Brand Manager, ACLU-PA



# 2019-2020 Carceral Acts

Act	Description	Additions/Expansions	
<a href="#">Act 21</a> <sup>1</sup> 2019	Female mutilation	This act creates a new offense of female mutilation.	
<a href="#">Act 22</a> <sup>6</sup> 2019	In licensing of drivers, further providing for classes of licenses	This act makes failure to abide by a preexisting requirement that no person shall drive a motor vehicle without the correct kind of license a criminal offense.	
<a href="#">Act 93</a> <sup>7</sup> 2019	Expands the offense of sale of tobacco and use of tobacco in schools	This act expands the definition of “tobacco product” and expands the offense of use of tobacco in schools to include non-pupils.	
<a href="#">Act 100</a> <sup>8</sup> 2019	Sexual extortion	This act creates the new offense of sexual extortion and expands the definition of sexual assault.	
<a href="#">Act 103</a> <sup>12</sup> 2019	Expands the offense of criminal trespassing	It was already an offense for someone to “enter[] or remain[] in any place as to which notice against trespass is given,” “knowing that he is not licensed or privileged to do so.” This act adds an additional kind of “notice against trespass” that can lead to criminal liability.	

<sup>1</sup> Enacted into law at 18 Pa. C.S.A. § 3132

<sup>2</sup> 18 Pa. C.S.A. § 2701(a)(1), “attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another.”

<sup>3</sup> 18 Pa. C.S.A. § 2701(b).

<sup>4</sup> 18 Pa. C.S.A. § 2702(a)(8), “attempts to cause or intentionally, knowingly or recklessly causes bodily injury to a child less than thirteen years of age, by a person 18 years of age or older, who knowingly or recklessly causes serious bodily injury to a child less than thirteen years of age, by a person 18 years of age or older.”

<sup>5</sup> 18 Pa. C.S.A. § 2702(b).

<sup>6</sup> Enacted into law at 75 Pa. C.S.A. § 1504.

<sup>7</sup> Enacted into law at 18 Pa. C.S.A. § 6305, § 6306.1.

<sup>8</sup> Enacted into law at 18 Pa. C.S.A. § 3133.

<sup>9</sup> 18 Pa. C.S.A. § 3131(a), “a person commits the offense of unlawful dissemination of intimate image if, with intent to harass or intimidate, a person disseminates or causes to be disseminated an intimate image of a person, or of a former sexual or intimate partner in a state of nudity or engaged in sexual conduct.”

<sup>10</sup> 18 Pa. C.S.A. § 3131(c).

<sup>11</sup> 18 Pa. C.S.A. § 3121(a), “A person commits a felony of the first degree when the person engages in sexual intercourse with another person without the consent of the other person. (2) Who is unconscious or where the person knows that the complainant is unaware that the sexual conduct is being performed by administering or employing, without the knowledge of the complainant, drugs, intoxicants, or other means for the purpose of obtaining the complainant’s consent.”

<sup>12</sup> Enacted into law at 18 Pa. C.S.A. § 3503. Expansion at 18 Pa. C.S.A. § 3503(b)(1)(vi).

	Penalty	Already Existing Offenses and Penalties	Number of New Offenses/ Suboffenses	Number of Expanded Definitions	Number of New Penalties	Vote on final passage House/Senate
	First-degree felony	Simple assault, <sup>2</sup> first- or second-degree misdemeanor <sup>3</sup> ; aggravated assault <sup>4</sup> , first- or second-degree felony <sup>5</sup>	1		1	H: <a href="#">196-1</a> S: <a href="#">50-0</a>
	Summary offense		1		1	H: <a href="#">193-0</a> S: <a href="#">50-0</a>
	Summary offense		1	3	1	H: <a href="#">185-0</a> S: <a href="#">48-1</a>
	First-degree misdemeanor or third-degree felony	Unlawful dissemination of intimate image <sup>9</sup> , first- or second-degree misdemeanor <sup>10</sup> ; rape, first-degree felony <sup>11</sup>	1		3	H: <a href="#">187-0</a> S: <a href="#">48-0</a>
	Third-degree misdemeanor			1		H: <a href="#">199-0</a> S: <a href="#">49-0</a>

than six years of age, by a person 18 years of age or older”; 18 Pa. C.S.A. § 2702(a)9, “attempts to cause or intentionally, older.”

, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or

a complainant: (1) By forcible compulsion. (2) By threat of forcible compulsion that would prevent resistance by a person of intercourse is occurring. (4) Where the person has substantially impaired the complainant’s power to appraise or control his or for the purpose of preventing resistance. (5) Who suffers from a mental disability which renders the complainant incapable of



Act	Description	Additions/Expansions	
<a href="#"><u>Act 107</u></a> <sup>13</sup> 2019	Expands the offense of trespass on private property while hunting	This act creates new offenses related to trespassing while engaged in hunting/furtaking and hunting on a Sunday without written permission.	
<a href="#"><u>Act 111</u></a> <sup>16</sup> 2019	Expands the offense of sale of tobacco and use of tobacco in schools	This act duplicates much of what is contained in Act 93 and raises the age of “minors” to 21.	
<a href="#"><u>Act 115</u></a> <sup>17</sup> 2019	Mandatory year of parole	This act adds an additional year of state supervision for people who are sentenced to four or more years.	
<a href="#"><u>Act 1</u></a> <sup>18</sup> 2020	Expands the offense of trafficking and patronizing a victim of sexual servitude	This act increases second-degree felonies to first-degree felonies, expands “trafficking” to include “advertising” an individual, creates a new statutory maximum for felonies, increasing the maximum incarceration term from 20 years to 40 years for offenses involving minors, and increases financial penalties up to \$50,000.	
<a href="#"><u>Act 32</u></a> <sup>19</sup> 2020	Expands the offense of stalking	This act expands the definition of “crime of violence” to include strangulation and trafficking.	
<a href="#"><u>Act 51</u></a> <sup>20</sup> 2020	Expands the offense of aggravated assault	This act adds “health care practitioner or technician” to the “officers, employees, etc.” that get treated differently under the aggravated assault statute.	

<sup>13</sup> Enacted into law at 34 Pa. C.S.A. § 2314 and § 2315.

<sup>14</sup> 18 Pa. C.S.A. § 3503(b), “A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given,” by, for example, “actual communication to the actor” or “posting in a manner prescribed by law or reasonably likely to come to the attention of intruders.”

<sup>15</sup> 18 Pa. C.S.A. § 3503(b)(2).

<sup>16</sup> Enacted into law at 18 Pa. C.S.A. § 6305, § 6306.1.

<sup>17</sup> Impacts a variety of statutory provisions, but the mandatory year of parole can be found at 61 Pa. C.S.A. § 6137.2.

<sup>18</sup> Enacted into law at 18 Pa. C.S.A. § 3011, § 3013.

<sup>19</sup> Enacted into law at 18 Pa. C.S.A. § 2709.1, § 5702; 23 Pa. C.S.A. § 5329, § 6711; 42 Pa. C.S.A. § 9714.

<sup>20</sup> Enacted into law at 18 Pa. C.S.A. § 2702(c)(39).

<sup>21</sup> 18 Pa. C.S.A. § 2702(a), “A person is guilty of aggravated assault if he: (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life” (regardless of profession of the person he injures).

<sup>22</sup> 18 Pa. C.S.A. § 2702(b).

	Penalty	Already Existing Offenses and Penalties	Number of New Offenses/ Suboffenses	Number of Expanded Definitions	Number of New Penalties	Vote on final passage House/Senate
	Third-degree summary offense or misdemeanor	Criminal trespass, <sup>14</sup> summary offense or third-degree misdemeanor <sup>15</sup>	2		3	H: <a href="#">144-54</a> S: <a href="#">38-11</a>
	Summary offense			1		H: <a href="#">135-49</a> S: <a href="#">44-5</a>
	Year of parole				1	H: <a href="#">167-29</a> S: <a href="#">38-11</a>
	First-degree felony		4	2	9	H: <a href="#">183-4</a> S: <a href="#">49-0</a>
				1		H: <a href="#">202-0</a> S: <a href="#">48-0</a>
	First- or second-degree felony	Aggravated assault <sup>21</sup> , first-degree felony <sup>22</sup>		1		H: <a href="#">180-21</a> S: <a href="#">49-0</a>



Act	Description	Additions/Expansions	
<a href="#">Act 63</a> <sup>23</sup> 2020	Further providing for duty of drivers and further providing for the offenses of homicide by vehicle and aggravated assault by vehicle	This act makes failure to move over or sufficiently slow down when passing a disabled vehicle a criminal offense and authorizes periods of incarceration when a violation is paired with other offenses.	
<a href="#">Act 105</a> <sup>26</sup> 2020	Further providing for duty of drivers and further providing for the offenses of homicide by vehicle and aggravated assault by vehicle	This act makes failure to move over or sufficiently slow down when passing a disabled vehicle a criminal offense and authorizes periods of incarceration when a violation is paired with other offenses.	
<a href="#">Act 131</a> <sup>27</sup> 2020	Further providing for notification requirement for drivers	This act makes a failure of a commercial driver to notify their employer about a citation, arrest, or charge of violation of a law or ordinance related to motor vehicle traffic control a criminal offense.	
<b>Total:</b> 14 Acts			

<sup>23</sup> Enacted into law at 18 Pa. C.S.A. § 2703 and § 3124.

<sup>24</sup> “A person is guilty of aggravated assault if he: (1) attempts to cause serious bodily injury to another, or causes such injury attempts to cause or intentionally or knowingly causes serious bodily injury to any of the officers, agents, employees or other “(3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other per Pa. C.S.A. § 2702(a), (c)(9).

<sup>25</sup> 18 Pa. C.S.A. § 2702(b).

<sup>26</sup> Enacted into law at 75 Pa. C.S.A. §§ 3327, 3732.

<sup>27</sup> Enacted into law at 75 Pa. C.S.A. § 1604.

	Penalty	Already Existing Offenses and Penalties	Number of New Offenses/ Suboffenses	Number of Expanded Definitions	Number of New Penalties	Vote on final passage House/Senate
	First-degree felony or third-degree felony	Aggravated assault <sup>24</sup> , first or second-degree felony <sup>25</sup>	3	1	3	H: <a href="#">146-51</a> S: <a href="#">50-0</a>
	Summary offense		1		3	H: <a href="#">201-0</a> S: <a href="#">49-0</a>
	Summary offense		1		1	H: <a href="#">201-0</a> S: <a href="#">47-0</a>
			15 Offenses and Suboffenses	10 Expansions	26 Penalties	100% Bipartisan

intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; (2) persons enumerated in subsection (c), in the performance of duty,” including “officer or employee of a correctional institution”; sons enumerated in subsection (c), in the performance of duty,” including “officer or employee of a correctional institution.” 18

