



More Law

Less Justice

Pennsylvania's Statehouse-to-Prison Pipeline

2021-2022
Legislative Session

ACLU
Pennsylvania

MORE LAW, LESS JUSTICE

Pennsylvania's Statehouse-to-Prison Pipeline

2021-2022 Legislative Session

© April 2023

ACLU of Pennsylvania

aclupa.org/more-law-less-justice

Contents

Introduction	2
The Problem: The Carceral State of PA	3
How We Got Here: Legislative Overcriminalization	4
Why Overcriminalization Matters: Systemic Ripple Effects	6
2021-2022 Session Analysis	8
Pipeline Methodology	9
Pipeline Expansion: Legislative Session Comparison	10
2021-2022 Pipeline Analysis	11
2021-2022 Pipeline Focus	12
2021-2022 Stakeholder Focus	13
2021-2022 Pipeline Bills Enacted	14
2021-2022 Wins & Missed Opportunities	15
Recommendations for Legislators	16
Recommendations for Advocates	17
Terminology	18
Endnotes	19
Credits	20

Introduction

The statehouse-to-prison pipeline is the practice of introducing bills that create new crimes, enhance existing penalties, and/or expand current laws that result in more people going to prison or jail.

Mass incarceration begins in the Pennsylvania General Assembly.

Our [More Law, Less Justice](#) reports highlight the role and responsibility of the Pennsylvania General Assembly in fueling mass incarceration in our commonwealth.

Law enforcement and prosecutors already have all of the tools necessary to protect public safety. But over the last four decades, the Pennsylvania General Assembly has become a bipartisan offense factory, churning out hundreds of new bills each legislative session that seek to add new and duplicative offenses and increased penalties to our already bloated criminal code. This is the statehouse-to-prison pipeline.

This unrelenting expansion diverts power away from judges and into the hands of police and prosecutors, contributing an ever-escalating incarceration of hundreds of thousands of Pennsylvanians. Despite the multi-billion dollar price tag to fund our mass incarceration system, legislators on both sides of the aisle feverishly file and support bills that mete out harsher penalties and more punishment.

Too many legislators fail to grasp their direct role in imprisoning tens of thousands of Pennsylvanians and the damage it wreaks on our communities, our families, and our economy. When pressed, legislators who introduce, sponsor, or vote for punitive legislation will often argue that their support for a particular bill was justified because it responded to a recent tragedy. Others might simply dismiss its carceral effects.

But the problem is never one bill alone—it is the compound effect that all these bills have together over time. It's mass incarceration by a thousand cuts. Legislators must stop the continuous pipeline of unnecessary and duplicative bills that continue to put more and more people behind bars.

None of these bills make us safer.

Unfortunately, in Pennsylvania, more law is less justice.

The problem:

The carceral state of Pennsylvania

Even as crime rates in Pennsylvania plummet year after year,¹ Pennsylvania continues to outpace other states in its rates of incarceration and criminal supervision. Incarceration devastates individuals, families, and communities in Pennsylvania. Even a few days behind bars can cost someone their employment, housing, medical care, or custody of their children.²

#1

The U.S. has the highest rate of incarceration in the world, and Pennsylvania has the highest rate of incarceration in the Northeast.³

#2

Pennsylvania has the second highest rate of people under criminal supervision (probation and parole) in the United States.⁴

\$3B

Annually, the state spends nearly \$3 billion on corrections to keep Pennsylvanians in prison and under criminal supervision.⁵

46%

Black adults are 11 percent of PA's population, but comprise 46 percent of our prison population –that's 1 in 66 Black adults incarcerated in PA.⁶

66%

66 percent of PA's female prison population need mental health treatment.⁷

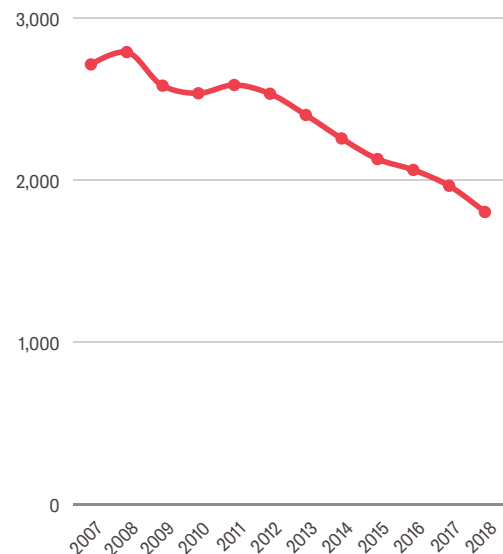
67%

67 percent of people incarcerated in PA prisons are in need of drug or alcohol treatment.⁸

96%

96 percent of all criminal cases in Pennsylvania are resolved through plea deals. Only 1 percent get jury trials.⁹

TOTAL INDEX OFFENSE RATE BY YEAR IN PA (PER 100,000)



Source: [PA Crime Trend Data Dashboard](#)
PA Commission on Crime and Delinquency

How we got here:

Legislative overcriminalization

Overcriminalization is woven into the fabric of Pennsylvania’s mass incarceration crisis. This problem has united the political spectrum. Organizations like the [ACLU](#) and the [National Association of Criminal Defense Lawyers](#) have aligned with conservative groups like the [Heritage Foundation](#) and the [CATO Institute](#) in sounding the alarm about this dangerous and destructive compulsion.

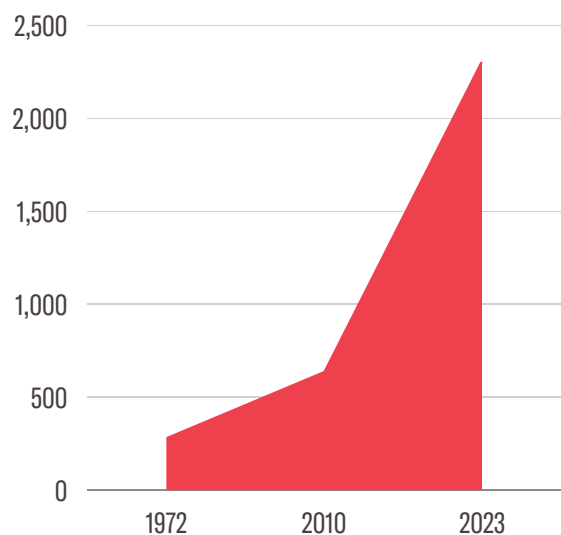
Rapid expansion of the crimes code:

A brief history

In 1972, Pennsylvania enacted the modern crimes code, succinctly categorizing all criminal behavior into **282** offenses and suboffenses, with a careful grading scheme for all charges. Since that time, legislators have made countless unnecessary changes and additions.¹⁰

By 2010, the crimes code contained **636** offenses and suboffenses.¹¹

Today, there are more than 2,300 offenses and suboffenses—a 256% increase over 10 years.¹²



Title 18 (Crimes & Offenses) alone contains over **1,600** criminal offenses,¹³ but offenses are scattered throughout other statutes,¹⁴ including in Titles 3 (Agriculture), 23 (Domestic Relations), 25 (Elections), 34 (Game), 35 (Health & Safety), 42 (Judiciary), 61 (Prisons & Parole), and 75 (Vehicles), not to mention offenses in the [Unconsolidated Statutes](#).¹⁵

And if you include all summary offenses (which carry a minimum of 90 days incarceration), and all offenses and suboffenses in the Unconsolidated Statutes, the total number skyrockets to **8,000** total criminal offenses and suboffenses in Pennsylvania.¹⁶

We have all been told that ignorance of the law is no excuse. But if you want to find a list, either in print or online, of all the criminal offenses in Pennsylvania, you're out of luck. No such resource exists, which is not only inexcusable, it also undermines any argument that creating new or harsher penalties could ever serve as a deterrent against crime.

If we truly want to address our mass incarceration crisis, legislators must stop their ceaseless expansion of the criminal code.

How we got here:

Legislative overcriminalization

The Pennsylvania legislature: A bipartisan criminal offense factory

Our criminal code has become an expansive and irrational web of overlapping offenses. Over the last four decades, members of both political parties have churned out hundreds of redundant crime bills that duplicate existing law or add unnecessarily harsh new criminal penalties. This legislative hyperactivity contributes to our mass incarceration crisis in three ways:

#1 DUPLICATIVE OFFENSES

Legislators create duplicative offenses, covering the same behavior already criminalized by law. This allows prosecutors to stack multiple charges for the same action, which maximizes time behind bars and puts more pressure on defendants to accept a plea deal.

#2 INCREASED PENALTIES

Legislators steadily increase the penalties for offenses, so charges carry more severe sentences.

#3 EXPANDED DEFINITIONS

Legislators expand criminal offense definitions by adding more actors or actions, which snares more people in the criminal legal system.

Other contributing stakeholders

Responsibility for this crisis does not solely rest on state legislators. Other stakeholders have advocated for creating new crimes and increasing criminal penalties, including judges, police unions, attorneys general, and the governors who enact these bills.

But those most complicit in widening the carceral net are county district attorneys, represented by the [Pennsylvania District Attorneys Association](#) (PDAA), one of the most powerful interest groups in Harrisburg. Any effort to counter this trend will require support from these stakeholders or, at the very least, will require their neutrality.

Visit our [KnowYourDAinPA.org](https://www.knowyourdainpa.org) website
to learn more about your county district attorney!

LEARN MORE

Why overcriminalization matters: Systemic ripple effects



Serially expanding the criminal code creates a punitive ripple effect throughout our criminal legal system.

The unrelenting expansion of our criminal code impacts every stage of the criminal legal system. The steady addition of offenses isn't just unnecessary, it has real world consequences.

Legislative overcriminalization gives police more power to stop and arrest people for an ever-widening variety of behaviors. Mandatory sentences divert power away from judges and into the hands of prosecutors and police. Duplicative criminal offenses give prosecutors greater power to coerce guilty pleas. Guilty pleas erode our Sixth Amendment right to trial. Harsher penalties and sentencing enhancements increase incarceration terms, keeping hundreds of thousands of Pennsylvanians behind bars longer. And post-conviction, people face hundreds of civil penalties (aka collateral consequences) that restrict access to employment, education, housing, and more. And at each stage of this process, the economic and racial disparities are glaring and systemic.

Exacerbates racial and economic disparities



Legislative overcriminalization does not exist in a vacuum. Racial and economic disparities exist at every stage of the criminal legal system. Any punitive changes to the criminal law will have a compounding effect on these existing disparities.

Expands police power



Police have vast power to stop and arrest people for a wide variety of behaviors. Legislative overcriminalization arms police with an endless supply of offenses to enforce. And these offenses are often enforced selectively and disproportionately against Black people.²⁰

Why overcriminalization matters: Systemic ripple effects

Expands prosecutorial power



Prosecutors' charging decisions are unreviewable and plea offers are not part of the public record. District attorneys decide if, when, and whom to charge. Legislative overcriminalization offers prosecutors a seemingly endless supply of offenses with which to charge defendants. And because Pennsylvania criminal law permits charging multiple offenses for a single act, not only can someone be convicted of multiple offenses for one act, they can then be sentenced to consecutive terms of incarceration for the multiple offenses charged.

Fuels mass incarceration



As lawmakers expand the number, scope of, and penalties for criminalized behavior, sentences grow longer and more punitive. Legislative overcriminalization increases offense grading and penalties, putting more people behind bars with longer sentences.

Encourages coercive plea deals that erode the right to trial



Pennsylvania's array of criminal offenses gives prosecutors extraordinary leverage when it comes to securing guilty pleas. Legislative overcriminalization creates duplicative offenses, which allows prosecutors to stack charges against defendants. By stacking enough charges, prosecutors increase the threat value of trial and use that threat as leverage to induce defendants to accept plea deals.²¹ Accepting a plea deal forfeits your Sixth Amendment right to trial, even though giving up that right is often the safest choice.

Compounds collateral consequences



The General Assembly's punitive impact doesn't end when incarceration does. The effects of legislative overcriminalization linger, as people face a wide variety of civil penalties, or collateral consequences, following a conviction. In Pennsylvania, there are [879 collateral consequences](#) for criminal convictions.²² If you include federal consequences, the number jumps to 1,928.²³

Consequences for felony convictions are particularly severe, since they can restrict access to benefits, such as college financial aid, housing, and employment, and can prohibit someone from sitting on a jury or running for public office. 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 people in reentry to succeed and easier for them to reoffend.

2021-2022 Legislative Session Pipeline Analysis



“
You say you want change, but you keep passing the same bills...either through the creation of new criminal offenses or lengthening the sentences for existing crimes.

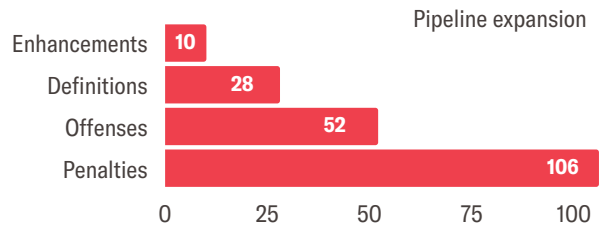
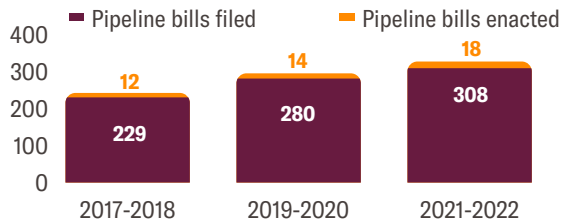
No one bill [is to blame], but the small impact of multiple bills combine to a formidable threat...It's death by a thousand paper cuts.

”

John Wetzel
Former PA Secretary of Corrections
2014 House Appropriations budget hearing

Legislative session comparison

This is our third More Law, Less Justice legislative session report. Since we began analyzing session activity in 2017, legislators have steadily increased the number of pipeline bills filed and enacted, adding 10 new sentencing enhancements, 28 expanded offense definitions, 52 new offenses or suboffenses, and 106 new criminal penalties to Pennsylvania law.



During the 2017-2108 legislative session:

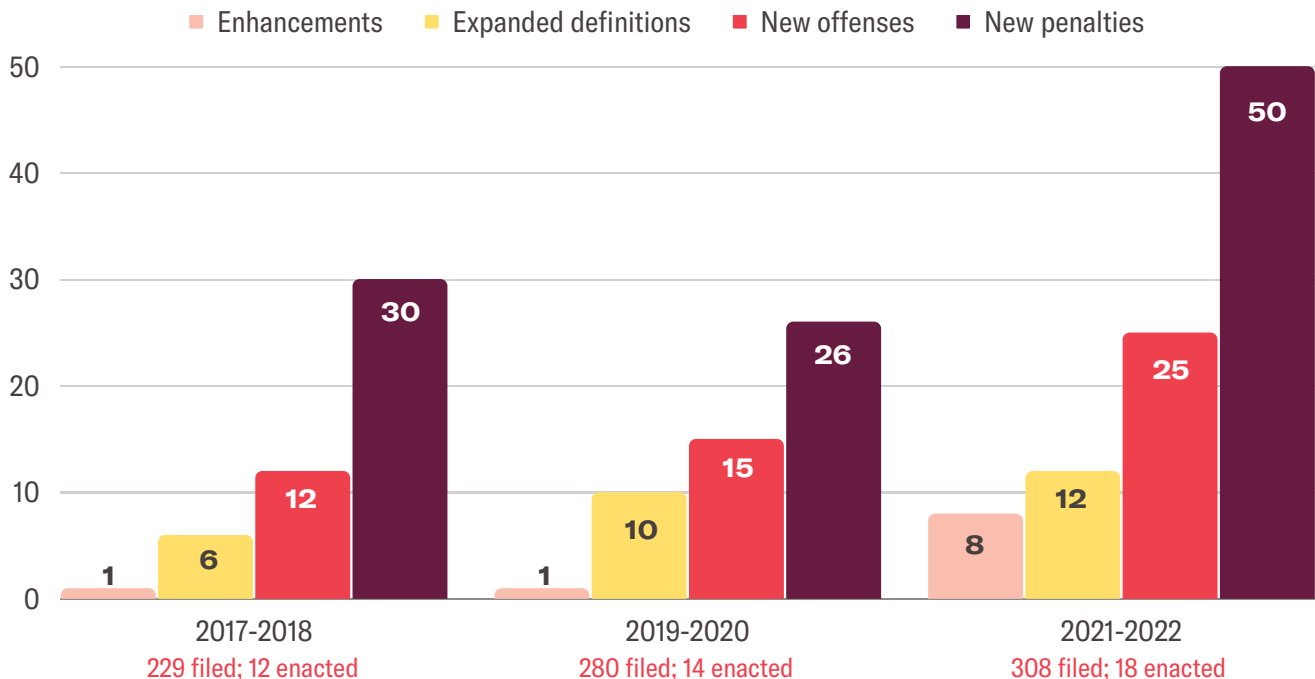
229 pipeline bills were filed to expand the criminal code. Of those, 12 were enacted, which added 1 new enhancement, expanded 6 offense definitions, and created 12 new offenses or suboffenses, and 30 new criminal penalties. [More Law, Less Justice: 2017-2018](#)

During the 2019-2020 legislative session:

280 pipeline bills were filed to expand the criminal code. Of those, 14 were enacted, which added 1 new enhancement, expanded 10 offense definitions, and created 15 new offenses or suboffenses, and 26 new criminal penalties. [More Law, Less Justice: 2019-2020](#)

During the 2021-2022 legislative session:

308 pipeline bills were filed to expand the criminal code. Of those, 18 were enacted, which added 8 new enhancements, expanded 12 offense definitions, and created 25 new offenses or suboffenses, and 50 new criminal penalties.



2021-2022 Pipeline methodology

Methodology

ACLU-PA legislative staff and attorneys reviewed bills filed during the 2021-2022 legislative session. Bills were analyzed for their carceral effect, i.e., whether the provisions in the legislation would likely increase or decrease incarceration. In other words, we sorted legislation according to (1) whether the bill would put more people in jail or prison or keep them there longer ("pipeline" bills), or (2) whether the bill would put fewer people in jail or prison, reduce the length of time they are incarcerated, or release them earlier ("decarceral" bills). We did not include legislation that did not have an effect on incarceration, such as bills that proposed changes to prison conditions or post-conviction civil penalties.

Definitions & distinctions

"Pipeline bills" propose to do one or more of the following:

- Create a new and/or duplicative offense
- Create a new suboffense
- Expand the definition of an offense
- Increase the grading of an offense
- Increase the penalties for repeat offenses
- Create a sentencing enhancement
- Create a mandatory minimum sentence
- Require a mandatory consecutive sentence

"Decarceral bills" propose to do one or more of the following:

- Repeal an offense
- Decriminalize an offense
- Narrow the definition of an offense
- Decrease the grading of an offense
- Remove a repeat offense provision
- Remove a sentencing enhancement, mandatory minimum, and/or a requirement to impose sentences consecutively

All bills were divided into two categories:

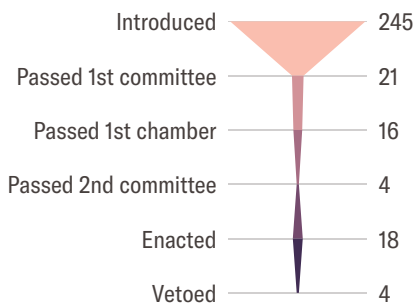
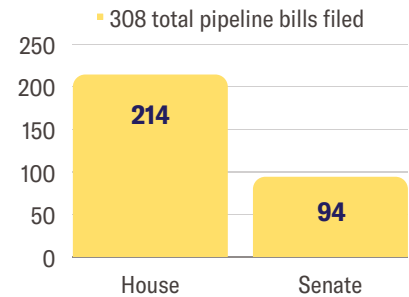
1. Bills that were introduced (filed and referred to a standing committee)* and may have received a vote in committee and/or on the floor; and
2. Bills that were enacted (passed by both chambers and signed into law by the governor).

**We did not count co-sponsorship memos that were circulated but did not result in a bill being filed.*

2021-2022 Pipeline analysis

During the 2021-2022 legislative session, a total of **308 pipeline bills** were introduced.

Of those, a total of **18 pipeline bills** were enacted—all with bipartisan support.



Of the 308 pipeline bills introduced, **63** received consideration, including:

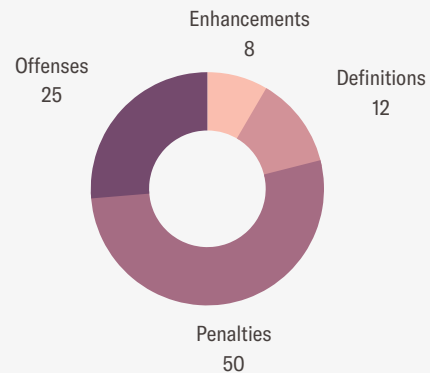
- 21 reported out of committee in the first chamber
- 16 that passed one chamber
- 4 reported out of committee in the other chamber
- 18 passing both chambers and enacted
- And 4 vetoed by the governor

In other words, **20%** of all pipeline bills were considered this session

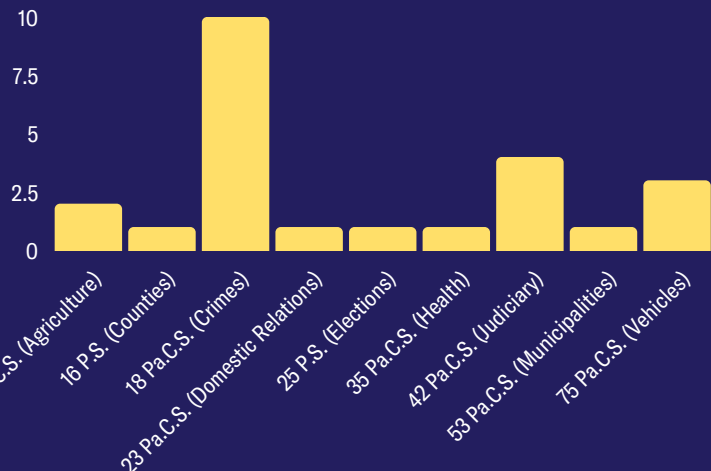


The **18 enacted pipeline bills** expanded PA criminal law by:

- Adding 8 new sentencing enhancements
- Expanding 12 offense definitions
- Creating 25 new criminal offenses or suboffenses
- And creating 50 new criminal penalties



The 18 enacted pipeline bills added or increased criminal offenses in **9 different statutes**, further scattering offenses across the Consolidated—and Unconsolidated—Statutes.



*Pa.C.S. are titles in the PA Consolidated Statutes.
P.S. are titles in the PA Unconsolidated Statutes.*

2021-2022 Pipeline focus: Hard cases make bad law

One of a legislator's most important duties is to represent and respond to their constituents. Sometimes they do this by recognizing constituents' achievements in ceremonies on the floor of the chamber or naming a bridge or passing a resolution to commemorate a constituent. And in tragic cases, where a constituent has been injured or killed, legislators frequently introduce criminal offense bills that bear the victim's name.

In such cases, legislators are rightfully outraged and understandably look to amend current law to prevent similar tragedies from happening again. But, as the legal adage warns, hard cases make bad law. These "hard cases" are uniquely tragic and often result from several points of failure in multiple systems. Rarely is the problem a failure of existing criminal law. Punishing those convicted of horrific crimes has never been hindered by too few offenses on the books.

Legislators make bad law when they attempt to prevent these tragic cases from recurring. The cases are noteworthy precisely because they are outliers. And as outliers, the only way to address them is to distort the law—to make the law so broad that it captures far more people, behaviors, and/or circumstances than presumably intended. These ad hoc bills create new, unnecessary, and duplicative offenses; ratchet up criminal penalties; broadly expand offense definitions; and/or impose a litany of new sentencing enhancements.

Every session we see several of these "named bills" introduced. But in the 2021-2022 session, six such bills got to the governor's desk—five were enacted and one was vetoed. **In total, they created 3 new offenses, 14 new penalties, 6 new enhancements, and 2 expanded definitions.**

Shawn's Law	Titan's Law	Deana's Law
<u>Act 71 of 2021</u> Created 1 new penalty and 2 new enhancements.	<u>Act 60 of 2022</u> Created 1 new offense, 3 new penalties, 2 new enhancements, and 1 expanded definition.	<u>Act 59 of 2022</u> Created 3 new penalties and 1 new enhancement.
<u>HB 184</u> created new, second-degree felony penalties for causing or aiding suicide if the person who died was under 18 years old or had an intellectual disability.	<u>HB 940</u> created new penalties that eliminated the mens rea (intent) requirement necessary to convict a person of injuring or killing a police animal or actions leading to the animal's death or injury.	<u>HB 773</u> imposed mandatory consecutive sentences for DUI offenses and created a second-degree felony enhancement for refusing a breath or chemical test.
Lindsey's Law	Wilding's Law	Markie's Law
<u>Act 75 of 2022</u> Created 1 new penalty, 1 new enhancement, and 1 expanded definition.	<u>Act 95 of 2022</u> Created 2 new offenses and 6 new penalties.	<u>Veto 10 of 2022</u> Would have created 2 new mandatory penalties.
<u>HB 2271</u> imposed new penalties for those convicted of sexual extortion if the victim attempted or died by suicide within 90 days of the extortion.	<u>SB 814</u> created two new duplicative felony offenses to punish someone who evaded arrest on foot and who harmed a police animal while evading or resisting arrest.	<u>HB 146</u> would have kept people needlessly incarcerated by delaying parole by adding a mandatory 12-24 months to the minimum date of release, depending on the offense.

2021-2022 Stakeholder focus: PA Commission on Sentencing

Decarceration is one of the ACLU-PA's priority strategic goals. As such, we spend a lot of time trying to understand and influence what happens at the beginning and end of the criminal legal process. A critical, but often overlooked, stakeholder in this process is the Pennsylvania Sentencing Commission.

Created in 1978 by the Pennsylvania General Assembly, the principal charge of the [Pennsylvania Commission on Sentencing](#) is to create and maintain statewide sentencing guidelines in order to promote more uniform sentencing practices throughout the commonwealth. Although the commission's work is primarily directed by the legislature, it exercises four types of discretionary power that affect how judges determine the length or severity of a criminal sentence:

01

The commission creates and revises the [sentencing guidelines](#), including guidelines for probation resentencing and state parole recommitment ranges.¹⁷

Why it matters:

When deciding how severely to punish a defendant, judges use the sentence recommendation provided by the guidelines. Although the guidelines are advisory, judges follow recommendations in 91% of all cases.¹⁸

02

The commission creates sentencing enhancements and risk assessment tools in response to legislative mandates. It can also create enhancements without a mandate.

Why it matters:

Enhancements and risk assessments can compound the severity of punishment. Sentencing enhancements essentially function as mandatory minimums based on factors identified in a bill.¹⁹

03

The commission recommends offense gravity scores (OGS) for commission members to approve.

Why it matters:

When a new offense is created, legislators set the maximum penalties for the offense. But the Commission sets the offense gravity score, which ultimately determines how long a judge sentences a person to prison and/or under supervision.

04

When legislation is enacted that changes the grading of an offense, the commission adjusts the offense gravity score (OGS).

Why it matters:

Any increase in the grade of an offense limits judicial discretion, prolongs incarceration, and adds collateral consequences.

2021-2022 Pipeline bills enacted

Below is a summary of the pipeline bills enacted during the 2021-2022 session.

Visit our [bill analysis database](#) to view more detailed information on all pipeline bills.

Bill	Description	Offenses	Penalties	Definitions	Enhancements
HB 103	Creates new felony offenses for causing (or attempting to cause) a police officer to come into contact with bodily fluids, including by "expelling saliva."	2	2	2	0
HB 184	Enhances criminal penalties for causing/aiding suicide if the person was under 18 or had an intellectual disability or autism disorder. (Shawn's Law)	0	1	0	2
HB 773	Enhances the refusal to take a DUI breath or chemical test to a felony and imposes mandatory consecutive sentences for DUI offenses. (Deana's Law)	0	3	0	1
HB 940	Creates new, duplicative offenses for harming police animals by eliminating the requirement for criminal intent. (Titan's Law)	1	3	1	2
HB 975	Creates a felony offense for an employee to have any kind of sexual contact, including consensual sex, with a person who receives care at a facility.	1	1	1	0
HB 1429	Creates a new, duplicative offense prohibiting the financial exploitation of an older adult or care-dependent person.	4	4	0	0
HB 1431	Creates a new criminal offense for using any audio/video/image of a care-dependent person that "ridicules or demeans" them.	1	1	1	0
HB 1546	Creates a new offense and penalties for communicating the personal information of a public safety official.	2	2	0	0
HB 2157	Creates new and increased fines for fireworks offenses.	4	8	0	0
HB 2271	Creates a new sentencing enhancement for sexual extortion if the victim attempts or dies by suicide within 90 days. (Lindsey's Law)	0	1	1	1
HB 2398	Creates new offenses and penalties for catalytic converter theft and for violating highly automated vehicle (HAV) regulations.	2	8	0	0
SB 87	Increases the criminal penalties for child pornography.	0	2	0	2
SB 118	Expands the list of offenses that require registration under Megan's Law.	0	0	2	0
SB 251	Expands fertilizer regulations and adds new criminal enforcement penalties.	3	3	3	0
SB 550	Criminalizes the removal of a Memorial Day flag from a grave.	1	1	1	0
SB 814	Prohibits evading police arrest or detention on foot. (Wilding's Law)	2	6	0	0
SB 982	Criminalizes the solicitation of, application for, or receipt of non-public funding for the purpose of administering elections.	1	1	0	0
SB 1183	Criminalizes riding dirt bikes & off-road vehicles in cities and permits police forfeiture of those vehicles.	1	3	0	0
TOTAL	Total new offenses/suboffenses, penalties, enhancements, and expanded definitions	25	50	12	8

Wins & missed opportunities

There were some legislative bright spots this session. Four decarceral bills were signed into law. And seven bills we supported—and hoped would be considered—were notable missed opportunities.

Wins

HB 1393

Legalizes the use of fentanyl test strips

Prime sponsor: Rep. James Struzzi (R-Indiana)

ENACTED

HB 1929

Removes automatic knives from offensive weapons definition

Prime sponsor: Rep. Martin Causer (R-McKean)

ENACTED

HB 2527

Decriminalizes the use of all opioid antagonists

Prime sponsor: Rep. Chris Quinn (R-Delaware)

ENACTED

SB 1208

Permits courts to reduce or waive fines for indigent defendants

Prime sponsor: Sen. Pat Browne (R-Lehigh)

ENACTED

Missed opportunities

HB 91

Eliminates the three-strike felony rule for retail theft

Prime sponsor: Rep. Dan Miller (D-Allegheny)

HB 248

Provides uniform standards for collecting court fines and costs

Prime sponsor: Rep. Dan Miller (D-Allegheny)

HR 223

Creates a task force to review the PA Crimes Code

Prime sponsor: Rep. Mike Zabel (D-Delaware)

SB 79 & HB 1888

Provides for racial impact statements for criminal offense bills

Prime sponsor: Sen. Vincent Hughes (D-Philadelphia) | Rep. Chris Rabb (D-Philadelphia)

SB 135

Establishes parole eligibility for life sentences

Prime sponsor: Sen. Sharif Street (D-Philadelphia)

SB 835

Updates medical parole and establishes geriatric parole eligibility

Prime sponsor: Sen. Sharif Street (D-Philadelphia)

Recommendations

FOR LEGISLATORS

Ending Pennsylvania's public policy of mass incarceration begins with the state legislature. If legislators want to improve our criminal legal system while stemming the tide of mass incarceration, the ACLU of Pennsylvania offers the following recommendations:

1

VOTE NO

Vote no on bills that include:

- Duplicative criminal offenses
- New or increased criminal penalties
- Expanded criminal offense definitions
- New or increased enhancements
- Mandatory minimum or consecutive sentences

2

ASK A PUBLIC DEFENDER

When analyzing a criminal offense bill, many legislators seek advice from their local DA or the Pennsylvania District Attorneys Association. But that only provides half the story. Solicit feedback from your county public defender on the potential effects of a proposed bill.

3

REQUIRE A CRIMES COMPARISON

Criminal offense bills should require an existing crimes comparison statement that describes all existing related offenses with evidence that current law does not already criminalize the conduct proposed in the legislation.²⁴

4

REQUIRE IMPACT STATEMENTS

Proposed criminal offense bills should include an impact statement to evaluate potential racial and economic disparities prior to final passage.²⁵

5

DECRIMINALIZE/LEGALIZE

Decriminalize or legalize non-violent, consensual behavior, such as sex work and marijuana use.

6

REDUCE/REPEAL

Reduce excessive grading and fines; repeal outdated or frivolous offenses; and eliminate collateral consequences of conviction.

7

RECODIFY THE CRIMES CODE

Create a commission to review current law to consolidate all offenses into Title 18, eliminate duplicative offenses, and reset offense grading to ensure similar crimes are graded similarly.

8

CREATE A CODE COMMENTARY

Rather than file "crime du jour" bills, create an official and regularly updated commentary to the criminal code, which would allow legislators to propose amendments to the commentary to clarify what is covered under an offense.²⁶

Recommendations

FOR ADVOCATES

For advocates who want to help us sound the alarm about the dangers of legislative overcriminalization, the ACLU of Pennsylvania offers the following recommendations:

1

CONTACT YOUR LEGISLATORS

Write, call, or visit your legislators and ask them to put down their pens and instead support meaningful reforms to reduce mass incarceration in Pennsylvania.

2

GET CANDIDATES ON THE RECORD

Research positions held by candidates running for seats in the General Assembly (or even district attorney) on criminal legal reform and ask them to commit to opposing any expansion of the criminal code in Pennsylvania.

3

CHECK OUR SCORECARD

Keep track of whether your state senator and representative voted to support or oppose expanding Pennsylvania's criminal code by checking their votes on the [ACLU-PA legislative scorecard](#).

4

SHARE THIS REPORT

Share this report with family members, friends, fellow advocates, your state legislators, and other elected officials in your community.

5

FOLLOW, SIGN-UP, AND JOIN

- Follow us on social media.
- Sign up to get our [action alerts](#).
- Join our [Advocate Academy](#) and learn how to sharpen your constituent lobbying skills.
- Become a [card-carrying member](#)!



/aclupa



@aclupa



@aclupa

Terminology

Term	Definition
Pipeline bill	Pipeline (or carceral) bills create new criminal offenses, enhance existing punishments, expand current law to include new actions and actors, or otherwise put more people in prisons and jails and/or keep them incarcerated longer.
Decarceral bill	Decarceral bills aim to reduce Pennsylvania’s prison and/or jail populations.
Crimes code	“Crimes code” is properly defined as any offense listed under Title 18 in the PA Consolidated Statutes. In this report, we use “crimes code” or “criminal code” to refer broadly to all criminal offenses under Pennsylvania law.
Duplicative offense	An offense that criminalizes behavior that is already punishable under existing law. Most of our statutes are written broadly enough to allow them to be applied to a variety of different situations. With rare exceptions, almost all “new” offenses created by the legislature are actually redundant or duplicative.
Suboffense	Conduct with an offense grade different from that of other conduct defined in the same code section, usually based on an additional variable. For example, PA has three suboffenses of robbery, reflecting the three different grades of the offense.
Repeat offense	An identical offense committed more than one time by the same person.
Penalties	A common way to refer to the length of incarceration and fines imposed for a criminal offense.
Offense grading	In PA, all crimes are <u>graded</u> as a summary (S), misdemeanor (M), or a felony (F) offense, each assigned minimum/maximum ranges for incarceration and fines. ²⁷
Consecutive sentence	A sentence that is imposed directly after another sentence and must be served one after the other (i.e., back-to-back).
Expanded definition	Amending current law to add more actors or actions to a criminal offense definition, snaring more people and/or behaviors in the criminal legal system.
Sentencing enhancement	<u>Sentencing enhancements</u> increase the initial sentencing recommendation when one or more factors were present during the commission of a crime, like the use of a deadly weapon. ²⁸ Enhancements may be mandated by statute or set by the Sentencing Commission. They cannot be waived or negotiated, and as such, they essentially function as mandatory minimums.
Charge stacking	A common practice among prosecutors is charge stacking, the practice of charging defendants with as many offenses for a single incident as possible, which increases their leverage to secure a plea deal.
Collateral consequence	<u>Collateral consequences</u> are civil, legal, and regulatory sanctions that limit or prohibit people with criminal convictions from accessing public benefits and/or exercising certain rights. ²⁹

Endnotes

- ¹ PA Commission on Crime and Delinquency. (2018). PA Crime Trend Data Dashboard, [Criminal Justice Crime Trends: Total Index](#). Retrieved 03-03-2023.
- ² Heaton, P., Mayson, S., and Stevenson, M. (2017). [The Downstream Consequences of Misdemeanor Pretrial Detention](#), 69 Stan. L. Rev. 711, 713. See also Eaglin, J; Solomon, D. (2015). [Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice](#), 19. Brennan Center for Justice (discussing negative effects of incarceration).
- ³ Carson, E. A. (2022). [Prisoners in 2021—Statistical tables](#), 8. Bureau of Justice Statistics.
- ⁴ Kaeble, D. (2021). [Probation and Parole in the United States, 2020](#), 14-15. Bureau of Justice Statistics.
- ⁵ The PA Department of Corrections requested \$2,902,339 for FY 2022-2023. [Budget Request for FY 2022-2023](#), 5.
- ⁶ Nellis, A. (2021). [The Color of Justice: Racial and Ethnic Disparity in State Prisons](#), 7. The Sentencing Project.
- ⁷ Pennsylvania Department of Corrections. [Inmate Profile Year-End 2021](#).
- ⁸ Pennsylvania Department of Corrections. [Inmate Profile Year-End 2021](#).
- ⁹ Pennsylvania Commission on Sentencing. [Annual Report 2019](#), 56.
- ¹⁰ These problems are not unique to Pennsylvania; state and federal criminal codes have also expanded. Across the country, there has been a “steady degradation of American [crime] codes brought on by a relentless and accelerating rate of criminal law amendments.” Robinson, P., et.al. (2010). [“The Modern Irrationalities of American Criminal Codes: An Empirical Study of Offense Grading,”](#) 100. Faculty Scholarship at Penn Carey Law. 298.
- ¹¹ Robinson, P. and Criminal Law Research Group. (2009). [“Report on Offense Grading in Pennsylvania,”](#) 2. Faculty Scholarship at Penn Carey Law. 295.
- ¹² Pennsylvania Commission on Sentencing. [303.15 Offense List \(comprehensive\)](#). 7th Edition Sentencing Guidelines, Amendment 6. (January 1, 2021).
- ¹³ [204 Pa. Code §303.15](#). Offense Listing for Crimes Code Offenses contained within Title 18.
- ¹⁴ 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].” Robinson, P. and Criminal Law Research Group. (2009). [“Report on Offense Grading in Pennsylvania,”](#) 14. Faculty Scholarship at Penn Carey Law. 295.
- ¹⁵ Pennsylvania does not have one “official” publication that includes all current Pennsylvania laws. Since 1970, Pennsylvania has been in the process of recodifying its statutes. Recodified titles are part of the Consolidated Statutes (cited as Pa.C.S.). The uncodified titles are acts, listed in chronological order, in the Unconsolidated Statutes (cited as P.S.). See [Pennsylvania Statutes](#), Jenkins Law Library. Retrieved 03-03-2023.
- ¹⁶ Administrative Office of Pennsylvania Courts. AOPC statute list (12-01-2022). [Minor Courts](#), Pennsylvania Statutes. Retrieved 03-03-2023.
- ¹⁷ Pennsylvania Commission on Sentencing. [Guidelines & Statutes](#).
- ¹⁸ Pennsylvania Commission on Sentencing. [Annual Report 2019](#), 82.
- ¹⁹ [204 Pa Code § 303.10](#). Guideline sentence recommendations: enhancements.
- ²⁰ Hinton, E., Henderson, L. and Reed, C. (2018). [An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System](#), 5-8. Vera Institute of Justice.
- ²¹ Stuntz, W. (2001). [The Pathological Politics of Criminal Law](#), 520. Michigan Law Review, vol. 100.
- ²² [Collateral Consequences Inventory](#), National Inventory of Collateral Consequences of Conviction. (Select “Pennsylvania” for jurisdiction.) Retrieved 03-03-2023.
- ²³ [Collateral Consequences Inventory](#), National Inventory of Collateral Consequences of Conviction. (Select “Pennsylvania” for jurisdiction; then check “Include Federal Consequences”.) Retrieved 03-03-2023.
- ²⁴ Robinson, P. and Criminal Law Research Group. (2009). [“Report on Offense Grading in Pennsylvania,”](#) 17. Faculty Scholarship at Penn Carey Law. 295.
- ²⁵ Portner, N. (2021). [Racial Impact Statements](#). The Sentencing Project. Retrieved 03-03-2023.
- ²⁶ Robinson, P. and Criminal Law Research Group. (2009). [“Report on Offense Grading in Pennsylvania,”](#) 18. Faculty Scholarship at Penn Carey Law. 295.
- ²⁷ [18 Pa.C.S. § 106](#). Classes of offenses.
- ²⁸ [204 Pa. Code § 303.10](#). Guideline sentence recommendations: enhancements.
- ²⁹ [What are collateral consequences?](#) National Inventory of Collateral Consequences of Conviction.

Credits

AUTHOR

Elizabeth Randol, Legislative Director, ACLU-PA

EDITORS & REVIEWERS

Rebecca Cusumano-Seidel, Policy & Engagement Associate, ACLU-PA

Alex Domingos, Advocacy and Policy Strategist, ACLU-PA

Andy Hoover, Director of Communications, ACLU-PA

Jessica Li, Criminal Justice Policy Associate, ACLU-PA

Jaya Montague, Digital Communications Strategist, ACLU-PA

Sara Mullen, Associate Director/Advocacy & Policy Director, ACLU-PA

Ian Pajer-Rogers, Communications Strategist, ACLU-PA

Danitra Sherman, Deputy Director of Advocacy & Policy, ACLU-PA

Marianne Stein, Senior Legislative Associate, ACLU-PA

GRAPHICS & DESIGN

Elizabeth Randol, Legislative Director, ACLU-PA

Special thanks to Nyssa Taylor.

About the ACLU of Pennsylvania

The American Civil Liberties Union of Pennsylvania is a nonprofit, nonpartisan, membership organization that serves as an enduring guardian of justice, fairness, and freedom, working to protect civil liberties and advance equity for all. Integrating litigation, legislative and policy advocacy, organizing, and communications, ACLU-PA's staff and volunteers work both independently and in coalition with those most affected by the issues we address to ensure that threats to liberty and the civil rights of all persons in Pennsylvania are met with stark resistance as we progress toward a more genuine multiracial, multicultural democracy.

ACLU
Pennsylvania

aclupa.org/more-law-less-justice