



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 12, 2021

RE: OPPOSITION TO HB 146 P.N. 112 (BERNSTINE) — “Markie’s Law”

Summary: For each conviction of a violent offense while incarcerated, [HB 146](#) (PN 112) delays consideration of parole by adding a mandatory 24 months to the minimum date of release. For convictions related to escape, smuggling of contraband, or witnesses retaliation or intimidation while incarcerated, the bill delays consideration of parole by adding a mandatory 12 months to the minimum date of release.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 146.

HB 146 effectively establishes *two separate mandatory sentencing enhancements*:

1. For each conviction of a violent offense while incarcerated, the bill delays consideration of parole by adding a mandatory 24 months to the minimum date of release.
2. For convictions related to escape, smuggling of contraband, or witnesses retaliation or intimidation while incarcerated, delays consideration of parole by adding a mandatory 12 months to the minimum date of release.

This would essentially turn every sentence for "violent offense" into a sentence two years longer than it currently is and one year longer for certain "obstruction of justice" offenses. The bill adds these additional years simply because an offense happened to occur in prison or that a person served their time for a new conviction while incarcerated. This is an arbitrary distinction at best.

But of critical concern is **how** the bill proposes to impose these mandatory sentences. HB 146 may be construed as a **re-sentencing** — it adds additional years to a minimum after a judge has already sentenced the person. It is unclear where the legislature derives this authority and may create grounds for a constitutional challenge for violating the *ex-post facto* clauses of the PA and US constitutions.

HB 146 needlessly expands the crimes code by establishing mandatory sentences to cast the carceral net as broadly as possible. This escalating trend in the Pennsylvania legislature was specifically addressed in our October 2019 report, [More Law, Less Justice](#).¹

And at the risk of repeating ourselves — decades of research has shown that mandatory minimums do not increase public safety, they do not reduce recidivism, they exacerbate racial disparities, and they circumvent judicial discretion by giving prosecutors unreviewable and unaccountable power. And mandatory minimums come at a huge price to Pennsylvania taxpayers. HB 146 is yet another attempt to keep the commonwealth in a never ending cycle of expensive, excessively punitive, and demonstrably ineffective sentencing policies.

For these reasons, we urge you to oppose House Bill 146.

¹ ACLU of Pennsylvania, *More Law, Less Justice*, October 2019, <https://www.aclupa.org/en/publications/more-law-less-justice>.