



## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** September 19, 2022

**RE: OPPOSITION TO HB 146 P.N. 3329 (BERNSTINE) — “Markie’s Law”**

**Bill summary:** For each conviction of a violent offense while incarcerated, [HB 146](#) (PN 3329) would delay consideration of parole by adding a mandatory 24 months to the minimum date of release. For convictions related to escape, smuggling of contraband, or witness 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 would effectively establish **two separate mandatory sentencing enhancements**:

1. If, while incarcerated, a person is convicted of any one of the 13 violent offenses identified in HB 146, each conviction will delay consideration of parole by adding a mandatory 24 months to the minimum term of incarceration for their original offense or 24 months following the conviction, whichever is longer.
2. If, while incarcerated, a person is convicted of any one of the 6 obstruction offenses identified in HB 146, each conviction would delay consideration of parole by adding a mandatory 12 months to the minimum term of incarceration for their original offense or 12 months following the conviction, whichever is longer.

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 Pennsylvania and U.S. 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 June 2021 report, [More Law. Less Justice](#).<sup>1</sup>

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.**

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<sup>1</sup> ACLU of Pennsylvania, [More Law. Less Justice](#), June 2021.