



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: June 28, 2022

RE: OPPOSITION TO HB 2157 P.N. 3277 (FARRY)

Bill summary: [HB 2157](#) (PN 3277) would repeal the fireworks provisions in the [Tax Reform Code of 1971 \(Article XXIV\)](#) and would add those provisions—with additional changes—to Title 3 (Agriculture). HB 2157 would regulate fireworks by implementing time constraints on when fireworks can be used, offer guidance to local governments on control for sale and use, and provide notices for consumers purchasing fireworks. It would also **increase penalties for violations**, the provisions about which the ACLU-PA is most concerned.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 2157.

HB 2157 would establish mandatory minimum fines and would create new repeat offense provisions that increase the grading for each type of violation.

For each fireworks violation currently enumerated under the Tax Reform Code, HB 2157 would increase penalties by establishing new, mandatory minimum fines. Setting a floor for fines undermines judicial discretion and imposes needlessly punitive penalties.

In addition, HB 2157 would create new repeat offense provisions that (1) increase the grading for any subsequent conviction within three years, **and** (2) establish mandatory minimum fines for each grading increase. So to be clear, not only would the bill impose fines that differ significantly from other similarly graded offenses, it would grade subsequent convictions for illegal sales of consumer fireworks as first-degree misdemeanors, the same as indecent assault or endangering the welfare of a child. And subsequent convictions for selling federally illegal explosives or illegally selling display fireworks would be enhanced to second-degree felonies, graded the same as involuntary manslaughter of a child or statutory sexual assault.

Offense	Current penalty	HB 2157: Increased penalties	New repeat offense provisions
Violation of use of consumer fireworks	Summary: 90 days in jail and a fine of <u>up to</u> \$100.	Summary: 90 days in jail and a fine of <u>not less than</u> \$500.	Subsequent conviction within three years is an M3 : 6 months-1 year in jail and a fine of <u>not less than</u> \$1,000.
Violation of sales of consumer fireworks	M2: 1-2 years incarceration and a fine of <u>up to</u> \$5,000.	M2: 1-2 years incarceration and a fine of <u>not less than</u> \$5,000.	Subsequent conviction within three years is an M1 : 2.5-5 years in prison and a fine of <u>not less than</u> \$10,000.
Violation of sales of display fireworks	F3: 3.5-7 years in prison and a fine of <u>up to</u> \$15,000.	F3: 3.5-7 years in prison and a fine of <u>not less than</u> \$10,000.	Subsequent conviction within three years is an F2 : 5-10 years in prison and a fine of <u>not less than</u> \$15,000.
Sales of federally illegal explosives	F3: 3.5-7 years in prison and a fine of <u>up to</u> \$15,000.	F3: 3.5-7 years in prison and a fine of <u>not less than</u> \$10,000.	Subsequent conviction within three years is an F2 : 5-10 years in prison and a fine of <u>not less than</u> \$15,000.

HB 2157 contributes to Pennsylvania's relentless trend of overcriminalization and the explosion of criminal penalties outside the Crimes Code.

HB 2157 is yet another contribution to the exponential expansion of Pennsylvania's criminal law over the last 40 years, a bipartisan trend we addressed in our report, [More Law. Less Justice](#).¹ Creating new crimes, duplicating existing offenses, and **endlessly enhancing criminal penalties—as HB 2157 does**—directly contribute to mass incarceration, mass supervision, selective policing, and over-charging by prosecutors.

But the damage doesn't end there. According to the National Inventory of Collateral Consequences of Conviction, there are [879](#) state collateral consequences for criminal convictions in Pennsylvania (1,928 if federal consequences are included).² Consequences for felony convictions are particularly severe, since they can restrict access to government benefits (including veteran's benefits), college financial aid, housing, occupational licenses, and other employment. And they can prohibit serving on a jury; voting (while serving time in prison); owning or possessing a firearm, and running for public office. Every time the legislature creates a new offense or enhances grading from a misdemeanor to a felony, it triggers new or additional collateral consequences.

Finally, in addition to the over 1,600 offenses and suboffenses properly consolidated under Title 18,³ there are also over 1,600 sections of Pennsylvania law **outside of the Crimes Code** that define criminal offenses.⁴ Scattering criminal offenses throughout our consolidated and unconsolidated statutes degrades our criminal legal framework and undermines any argument for deterrence, because how can Pennsylvanians possibly know what's a crime if offense definitions are haphazardly strewn throughout so many titles of current law?

HB 2157 would establish mandatory minimum fines for fireworks violations as well as four new suboffenses with enhanced grading and mandatory minimum fines for each type of violation, all under Title 3 (Agriculture) rather than under Title 18 (Crimes and Offenses). This kind of overly punitive response—for violating restrictions on the use or sale of fireworks, no less—undermines judicial discretion, widens Pennsylvania's carceral net, and, at best, offers hollow promises of deterrence.

For these reasons, we urge you to oppose House Bill 2157.

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

² Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, [National Inventory of Collateral Consequences of Conviction](#).

³ [204 Pa. Code § 303.15](#).

⁴ Robinson, Paul H. and Criminal Law Research Group, University of Pennsylvania Law School, "[Report on Offense Grading in Pennsylvania](#)" (2009), pg. 2. Faculty Scholarship at Penn Law. 295.