



## MEMORANDUM

**TO:** The Pennsylvania Senate

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

**DATE:** June 29, 2020

**RE: OPPOSITION TO HB 256 PN 4021 (METZGAR)**

**Bill summary:** [HB 256](#) (PN 4021) expands the definition of the crime “assault by prisoner” ([Title 18 § 2703](#)) against a prison staff member by against corrections staff by grading a simple assault (a second-degree misdemeanor) as an aggravated assault (a second-degree felony).

The bill also expands Pennsylvania’s definition of institutional sexual assault ([Title 18 § 3124.2](#)) to include law enforcement, probation, and parole officers and any person (including minors and confidential informants) in the officer’s custody. This would prohibit officers from using consent as a defense when they engage in sexual contact with someone in their custody. The offense would be graded as a third-degree felony.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 256.**

There is no question that law enforcement officers should be legally prohibited from using consent as a justification for sexually assaulting someone in their custody. Such a defense ignores the immense power police officers have over people in general, particularly those in their custody. Anyone in police custody implicitly understands this and knows that resisting or refusing a police officer’s advances could have serious adverse consequences. It is this power dynamic that makes consent impossible in this circumstance.

But the trade off for this common sense reform that prohibits officers from assaulting or raping people in their custody, is to lower the legal standard for assault against other law enforcement officers — corrections officers — in order to ensure incarcerated people are excessively punished.

Aggravated assault statutes were designed to impose tougher penalties for actions that cause greater harm, injury, or risk of death. HB 256 ignores that distinction in order to punish a [simple assault](#) against corrections staff as an [aggravated assault](#). For anyone else convicted of hitting or shoving someone, waving a fist in a threatening way, or even just attempting or threatening to strike someone, they would be charged with a second-degree misdemeanor, punishable by up to two years in prison. But if you happen to be incarcerated, those same actions against a corrections officer would now be charged as a second-degree felony under HB 256, punishable by up to ten years in prison. **The ACLU-PA also opposes Amendment 06480**, which would enhance the grading of an aggravated assault against corrections staff from a second-degree to first-degree felony, punishable by up to 20 years in prison.

HB 256 also largely duplicates the enhancement under [§ 2702 \(c\)](#), which grades a simple assault against corrections staff as aggravated. But it introduces a new “element” (i.e., the accused is incarcerated), and therefore creates **two different offenses**, and arms prosecutors with the ability to charge both crimes for the same action — assault against corrections staff AND assault by prisoner against corrections staff.

HB 256 contributes to the legislature’s [ceaseless expansion of Pennsylvania’s crimes code](#),<sup>1</sup> resulting in overly punitive sentences that are disproportionately imposed on people of color and poor people, broader charging powers for prosecutors, and longer terms of incarceration.

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