



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 24, 2021

RE: OPPOSITION TO SB 521 P.N. 541 (MENSCH)

Bill summary: [SB 521](#) (PN 541) would enhance invasion of privacy from a misdemeanor of the third degree to a felony of the third degree for adults or teachers convicted of transferring or transmitting an explicit image or video of someone taken without their knowledge or consent where minors or students are the victims. Grading for a second or subsequent offense would be enhanced from a second-degree misdemeanor to a second-degree felony.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 521.

“Upskirting” – or any invasion of privacy – is already punishable under [18 Pa.C.S. § 7507.1](#). But SB 521 expands the scope of this crime by selectively increasing the grading for adults or teachers convicted of invasion of privacy in the following ways:

- **M3** (Max 1 year incarcerated; \$2,500 in fines)→ **F3** (Max 7 years in prison; \$15,000 in fines)
- 2nd/subsequent: **M2** (Max 2 years incarcerated; \$5,000)→ **F2** (Max 10 years in prison; \$25,000)

Who commits this offense and against whom will result in wildly different penalties. By way of context, as a third-degree misdemeanor, invasion of privacy is currently graded the same as disorderly conduct, loitering, or stealing something worth less than \$50. But under SB 521, if you are an adult or teacher convicted of the same offense, first time offenses are graded as third-degree felonies, the same as arson or institutional sexual assault of a minor. Two or more convictions would be graded as second-degree felonies, the same as involuntary manslaughter of a child or statutory sexual assault. For everyone else with two or more convictions, the offense is graded as a second-degree misdemeanor — the same grading as shoplifting or impersonating a public servant.

This kind of enhancement is, unfortunately, standard fare in the Pennsylvania legislature. SB 521 is just one contribution to the exponential expansion of the PA crimes code 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 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.

For these reasons, we urge you to oppose Senate Bill 521.

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

² Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, *National Inventory of Collateral Consequences of Conviction*, <https://niccc.nationalreentryresourcecenter.org/consequences>.