



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: December 17, 2019

RE: OPPOSITION TO HB 257 P.N. 3053 (METZGAR)

Bill summary: [HB 257](#) (PN 3053) expands the list of offenses under “assault by prisoner” ([Title 18 § 2703](#)) that impose mandatory consecutive sentences if those offenses are committed against prison staff by someone who is incarcerated. 11 new offenses would be added to this list:

1. Section 2501 (relating to criminal homicide)
2. Section 2702 (relating to aggravated assault)
3. Section 2703.1 (relating to aggravated harassment by prisoner)
4. Section 2704 (relating to assault by life prisoner)
5. Section 2706 (relating to terroristic threats)
6. Section 2718 (relating to strangulation)
7. Section 3121 (relating to rape)
8. Section 3123 (relating to involuntary deviate sexual intercourse)
9. Section 3124.1 (relating to sexual assault)
10. Section 3125 (relating to aggravated indecent assault)
11. Section 3126 (relating to indecent assault)

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 257.

[HB 257 contributes to the legislature’s ceaseless expansion of Pennsylvania’s crimes code](#)¹

Expanding the list of offenses that trigger mandatory consecutive terms excessively punitive. Most troubling, however, is HB 257 adds terroristic threats to this list — a broad category of **misdemeanor offenses**, which can include threats to hit someone, steal from someone, burn down a building, and the like. In order to be charged with making a terroristic threat, you don’t even need to have the ability to cause the violence you threaten. So an empty threat by someone behind bars would face mandatory consecutive sentences without causing any injury or harm to another person. Law enforcement already has the tools necessary to address these and other offenses committed while in prison without expanding criminal offenses and imposing ever-increasing draconian sanctions.

[Mandatory sentences undermine judicial discretion and cede unreviewable power to prosecutors](#)

Legislating mandatory sentences takes discretion from judges and hands it to prosecutors. Mandatory sentencing laws give prosecutors control over sentencing because they have the unreviewable authority to decide which charges to pursue. While judges must typically disclose the reasons, on the record, for their sentencing decisions, prosecutors need never disclose their reasons for bringing or dropping a charge. And prosecutors use their charging power to cut deals, secure testimony against other defendants, and force guilty pleas. Mandatory sentences result in overly punitive sentences that are disproportionately imposed on people of color, poor people — and in this case, incarcerated people — while ensuring broader charging powers for prosecutors and longer terms of incarceration.

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