

EXECUTIVE SUMMARY

What if somebody told you that being a serial graffiti artist could get you a longer prison sentence than being a serial drunk driver; that you could be sentenced to one year in prison for the crime of covering up a public monument, a penalty that was as severe as violating a protective order issued on behalf of a sexual assault victim; that if you want to steal fruits and vegetables, you should take them from a supermarket rather than a farm because you could face a sentence five times as long for doing the latter; that stealing \$250 of those fruits and vegetables would land you a longer prison sentence than stealing \$5,000 of just about anything else; that a felony drug conviction from your teenage past could prevent you from volunteering at your child's school 20 years later; that you could face years in jail for advertising your drug store for a week without having a pharmacist available during business hours; and that if you're worried that somebody might, with impunity, remotely shoot an animal over the Internet, you needn't worry because there's a criminal sentence for that?

This is not Wonderland; rather, it is a glimpse into Rhode Island's lawmaking on criminal justice over the past eighteen years. As part of the ACLU of Rhode Island's longstanding campaign against legislation that punishes too many people for too many crimes for far too long, we decided to examine just how deep-seated the problems of overcriminalization and mass incarceration in the state were by going straight to the source – the legislation that defines criminal activity and establishes the sentencing penalties for that activity. Specifically, we reviewed every public law that the General Assembly has enacted since 2000 to examine the creation of, and revision to, criminal conduct and its statutory consequences. We came up with some eye-opening findings. This report analyzes those findings and offers a number of recommendations for addressing what we call the “statehouse-to-prison pipeline.”

Below is a summary of our key findings:

- Between 2000 and 2017, the Rhode Island General Assembly created more than 170 new crimes, and also increased the criminal sentences for dozens of existing offenses.
- Many of the laws establishing “new” crimes actually make criminal offenses out of conduct that is already prohibited by other laws, but create harsher penalties and lead to more serious consequences.
- Laws like these not only increase the punishment and sentencing range for people who commit certain offenses, they vastly expand the power of police and prosecutors to coerce defendants to waive their right to a jury trial and prod innocent defendants to plead guilty.

- Increasing penalties that turn a crime from a misdemeanor into a felony, or establishing new felony crimes for many non-violent offenses, has serious collateral consequences beyond the length of the prison sentence that an offender faces.
- In the comparatively rare instances when the legislature reduces or repeals criminal penalties, they are generally to address patently archaic laws, not to promote positive substantive sentencing reform.
- The length of prison sentences established by new laws is largely arbitrary, and little consideration is given to the ramifications that flow from setting them.
- Just as the prison sentences imposed by the laws are arbitrary, so are the fines that are set in establishing penalties.
- Some increased penalties are enacted when their greatest impact is almost certain to fall heavily on the young or, occasionally, the mentally ill.
- Sometimes the General Assembly makes crimes out of issues du jour, or of conduct that could be addressed in less drastic ways, but these laws will likely remain on the books for decades.

We offer a number of recommendations for the General Assembly based on these findings:

- Create a commission to recodify the criminal laws with the goal of reducing arbitrary penalties, eliminating duplicative crimes, and decriminalizing some offenses.
- Require prison impact statements with the introduction of sentencing bills so that the fiscal impact of such legislation cannot be ignored.
- Require racial impact statements to help reduce the significant racial disparities in the criminal justice system.
- Reclassify from felonies to misdemeanors any crimes without prison sentences, or with sentences of less than one year.
- Stop passing new duplicative criminal laws and enhanced penalties for various property and other crimes, or at least require a compelling and documented justification for their passage.
- Re-examine and revise statutes that disqualify, automatically or presumptively, people with felony records from employment or professional licensing.
- Change the “get tough on crime” culture to one that is “smart on crime.”