



## MEMORANDUM

**TO:** The Pennsylvania Senate Judiciary Committee

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

**DATE:** April 21, 2021

**RE: OPPOSITION TO HOUSE BILL 184 P.N. 964 (KEEFER) — “Shawn’s Law”**

[HB 184](#) (PN 964) would require the Pennsylvania Commission on Sentencing to create a sentencing enhancement for any conviction under [18 Pa.C.S.A. § 2505](#) if the person who died by suicide was under 18 years of age, had an intellectual disability, or was on the autism spectrum.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 184 for the following reasons:**

### **HB 184 would require further enhancements to an offense that is already heavily penalized.**

HB 184 would further contribute to the General Assembly’s [relentless expansion](#)<sup>1</sup> of the crimes code. In Pennsylvania, the crime of [causing or aiding suicide](#) is already heavily penalized. Intentionally causing suicide by force, duress or deception is considered criminal homicide (first-degree murder) and is punishable by death or life without parole. Intentionally aiding or soliciting suicide that causes someone to attempt or die by suicide is graded as a second-degree felony and punishable by up to ten years of incarceration. And intentionally aiding or soliciting suicide that does not result in an attempt or death (e.g., telling someone “I think you should kill yourself”) is graded as a second-degree misdemeanor punishable by 2 years of incarceration.

### **HB 184 does not require knowledge of the person’s age or disability.**

There is nothing in HB 184 that requires a person to know that the person is under 18 years old, has an intellectual disability, or is on the autism spectrum. While § 2505 sets forth increased penalties for those who intentionally “cause” a suicide, it also provides significant penalties for those who “aid” another in suicide regardless of the circumstances — for instance, by providing the implement of death, or by merely providing therapeutic or other support meant to ease the process.

To enhance sentencing regardless of individualized circumstances appears at odds with the purpose of the statute, as well as the case law of Pennsylvania with respect to strict liability (“[t]he legislative policy in this state is against strict liability crimes”).<sup>2</sup> As the Superior Court has explained, where a statute does not expressly impose strict liability, the most important factor to consider “when determining if the legislature intended to eliminate the *mens rea* requirement from a criminal statute is whether the statute imposes serious penalties. The more serious the penalty, such as a lengthy term of imprisonment, the more likely it is that the legislature did not intend to eliminate the *mens rea* requirement[.]”<sup>3</sup> Punishing a person more for the same conduct based on diminutive factual differences (i.e., 17 years old vs. 18 years old) is not justified absent a *mens rea* requirement.<sup>4</sup>

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

<sup>2</sup> *Commonwealth v. Barone*, 419 A.2d 457, 473 (Pa.Super. 1980) (Spaeth, J., concurring).

<sup>3</sup> *Commonwealth v. Pond*, 846 A.2d 699, 707 (Pa.Super. 2004) (citations omitted).

<sup>4</sup> See *Commonwealth v. Price*, 189 A.3d 423, 428 (Pa.Super. 2018), finding 18 Pa.C.S.A. § 3122.1(a)(1)’s requirement that the defendant be four years older than the victim came down to a matter of hours, and, since the defendant was only 3 years, 364 days, and approximately 10 hours older than the victim, the evidence was insufficient as a matter of law.

**HB 184 does not differentiate between aggravating and non-aggravating cases.**

HB 184 incorporates a vast array of conduct, but a sentencing enhancement may not be appropriate in every case. There is a significant difference between encouraging an individual to commit suicide through multiple aggressive text messages, and a situation where a terminally-ill person, in deciding to end her life, receives comfort from family and friends in the person's final days. For instance, a person texting a close friend who is dying "it's okay to let go," or a person trying to help a loved one come to terms with the end of his/her life, could fall under the same sentencing enhancement as someone sending multiple text messages encouraging another to kill himself. By failing to differentiate between aggravating and non-aggravating cases, HB 184 makes the enhancement based solely on the condition of the victim — an enhancement that would be punishable by up to 20 years in prison.

**Enhancements in HB 184 are either excessive or non-applicable.**

Two of the offenses under this statute would not be subject to an enhancement. Enhancing a criminal homicide sentence makes little sense, as it is difficult to punish someone more than executing or incarcerating them for life. And enhancing the misdemeanor offense is not applicable; aiding or soliciting suicide is graded a misdemeanor only if those actions did not result in an attempt or death by suicide. And because the enhancement proposed by HB 184 only applies to actions that lead to death by suicide, the misdemeanor offense is exempt from the enhancement.

The only offense that would be subject to an enhancement would be the second-degree felony. Enhancing aiding or soliciting suicide to a first-degree felony would be excessively punitive. It would carry a prison term of up to 20 years and \$25,000 in fines.

Causing or aiding suicide is already heavily criminalized in Pennsylvania and at its most severe, is punishable by death or life without parole. The enhancement proposed by HB 184 is both unnecessary and unjust. HB 184 would enhance a second-degree felony to a first-degree felony, which carries an additional minimum of 10 years of incarceration. Rather than justifying such a significant escalation of punishment on intent or brutality, HB 184 instead makes it easier to punish people more — the enhancement does not require that someone know the person who died by suicide had a disability, was on the autism spectrum, or was under 18 years old, making this a strict liability crime in Pennsylvania. And because the bill does not differentiate between aggravating and non-aggravating cases, HB 184 would base this enhancement solely on the age or intellectual or developmental ability of the victim.

**For these reasons, we urge you to oppose House Bill 184.**