



## MEMORANDUM

**TO:** The Pennsylvania House Judiciary Committee

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

**DATE:** May 23, 2022

**RE: OPPOSITION TO HB 1093 P.N. 1126 (KAUFFMAN)**

**Bill summary:** [HB 1093](#) (PN 1126) would amend [18 Pa. C.S. § 6712](#) (e) to increase the penalty for removing any container, defined as a “bakery basket, bakery tray, dairy case, egg basket, poultry box or any other container used to transport, store or carry any product,” from the premises of a retailer, delivery vehicle, or store from a summary offense—punishable by up to \$300 in fines or 90 days imprisonment—to a misdemeanor of the third degree—punishable by up to 1 year in prison and a fine of up to \$2,500.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1093.**

**HB 1093 would disproportionately affect people experiencing homelessness, including women fleeing domestic violence, children and young people, people with mental health challenges, and veterans.**

HB 1093 would have the likely effect of further criminalizing poverty. On any given night in Pennsylvania in 2020, [over 13,000](#) people were homeless, and PA’s unsheltered population over the last 13 years has increased by 26%. Nationally, [80%](#) of all homeless women with children have experienced domestic violence; [60%](#) of homeless families consist of women and children under 18; and over [37,085 veterans](#) are homeless.

**HB 1093 would needlessly enhance penalties for an offense that is already criminalized under our Crimes Code.**

Title 18 already covers the behavior addressed in HB 1093 under [18 Pa.C.S. § 3921](#)—Theft by unlawful taking, which prohibits taking the movable property of another. Any container is presumably the movable property of another person. Moreover, [§ 3903](#) currently sets forth grading for all theft offenses based upon the value of the items stolen:

- Theft of property valued over \$2,000 is graded as a third-degree felony;
- Theft of property valued over \$200 is graded as a first-degree misdemeanor;
- Theft of property valued between \$50–\$200 is graded as a second-degree misdemeanor; and
- Theft of property valued under \$50 is graded as a third-degree misdemeanor—***the same grading that HB 1093 seeks for removing a container.***

HB 1093 would add to these current penalties the ability to ***separately charge someone*** for each individual container taken from a store with a third-degree misdemeanor. So for example, if someone takes two containers—one worth \$20 and the other worth \$75—HB 1093 would allow prosecutors to charge the person with two separate M3 offenses under §6712, ***In addition***, they could be charged with *another M3* for theft by unlawful taking under §3921 for the \$20 container ***AND an M2*** for the \$75 container. This amounts to THREE third-degree misdemeanors and one second-degree misdemeanor charge, totaling up to 3 years in prison and up to \$10,000 in fines for taking two containers worth \$90.

HB 1093 creates an unnecessary and duplicative penalty enhancement that would have a disproportionate punitive effect on those who are already most vulnerable and at risk in order to imprison them for taking a container from a store. **For these reasons, we urge you to oppose House Bill 1093.**