



## MEMORANDUM

**TO:** The Pennsylvania Senate Law and Justice Committee

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

**DATE:** October 18, 2022

**RE: OPPOSITION TO HB 1546 P.N. 1785 (FARRY)**

**Bill summary:** [HB 1546](#) (PN 1785) would create a new offense under [Title 18, Chapter 75](#) that prohibits anyone from publicly posting, displaying, or providing to a third party the home address or phone number of any “public safety official” or their spouse or child. The defendant must know the person is a public safety official and that a third party is only seeking information because of their occupation and may cause harm or threaten to harm the official or their spouse or child. The bill also prohibits any person, business, or association from soliciting, selling or trading via the internet the home address or phone number of a public safety official or any person residing at their residence. This offense constitutes a:

- Misdemeanor of the third degree, if there is no bodily injury of the public safety official or the person's spouse or child.
- Misdemeanor of the first degree, if it leads to the bodily injury of the public safety official or the person's spouse or child.

HB 1546 also creates a right to action, which allows a public official to sue and be awarded damages up to three times the actual damages, but not less than \$2,000.

HB 1546 relies on the aggravated assault statute for its definition of “public safety official.” Of the current 39 positions listed under [18 Pa.C.S. § 2702\(c\)](#), HB 1546 would apply to 35 of those public officials, many of which clearly exceed the definition of “public safety official” (emphasis added).<sup>1</sup>

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1546.**

**HB 1546 would hold people criminally liable for perceived future harm committed by someone else.**

The scope of HB 1546 is dangerously broad. Instead of criminalizing threats or injury committed by a person against a public safety official or conspiracy to commit such harm, HB 1546 would hold people criminally liable for ***perceived future harm committed by someone else***.

- In order to be charged with a third-degree misdemeanor, a person would only need to post or share the information (1) knowing that the information includes that of a public official and that it (2) may cause harm or (3) threaten to cause harm to the official or family.
  - Importantly, intent to harm is not required here, nor is there a requirement that the person knows harm will occur. Instead, HB 1546 casts the widest possible net to capture any future harm—“may

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<sup>1</sup> HB 1546 would apply to the following 35 officials under [18 Pa.C.S. § 2702\(c\)](#): police officers; firefighters; county adult probation or parole officers; county juvenile probation or parole officers; agents of the Pennsylvania Board of Probation and Parole; sheriffs; deputy sheriffs; liquor control enforcement agents; officers or employees of a correctional institution, county jail or prison, or juvenile detention center; judges of any court in the unified judicial system; Attorney General; deputy attorneys general; district attorneys; assistant district attorneys; public defenders; assistant public defenders; federal, state, and local law enforcement officials; any persons employed to assist or who assists any federal, state or local law enforcement officials; emergency medical services personnel; magisterial district judges; constables; deputy constables; teaching staff, school board members or other employees, including student employees; the Governor, Lieutenant Governor, Auditor General, and State Treasurer; members of the General Assembly; private detectives; employees or agents of a county children and youth social service agency or their legal representatives; wildlife conservation officers or deputy officers of the Pennsylvania Game Commission; waterways conservation officers or deputy officers of the Pennsylvania Fish and Boat Commission; and health care practitioners or technicians.

cause harm” or “threaten to cause harm.” **Neither of those thresholds are defined in the bill.**

Under HB 1546, an M3 charge doesn’t require actual harm to occur, and worse, it doesn’t require that the person charged intended or knew harm may occur.

- In order to be charged with a first-degree misdemeanor, a person would need to post or share the information (1) knowing that the information includes that of a public official and that it (2) may cause harm, (3) threaten to cause harm to the official or family, and (4) leads to the bodily injury of the official or family.
  - Again, no knowledge of or intent to cause harm is required. And the enhanced M1 grading results from posting information “if it leads to the bodily injury of the public official or the person’s spouse or child”—not injury committed by the person who posts, but by **anyone**.
- HB 1546 would also entirely prohibit the soliciting, selling, or trading the home address or phone number of public officials altogether.

### **The criteria for criminal charges under HB 1546 are so broad and sweeping that it could criminalize routine activities by the press, city and county governments, 501c4 organizations, and more.**

Given the bill’s broadly applicable set of criteria, in the hypothetical situations below, all a defendant would have to do to be criminally charged is (1) know that an official’s home information is included in the data, and (2) that someone, anyone, MAY use it in a way to cause or threaten harm:

- News outlets routinely obtain home addresses and phone numbers to confirm stories and sources. Media may sometimes publish this information when/where relevant. Would reporters (or news outlets) be criminally charged?
- The [city of Scranton requires](#) that all municipal employees reside within the city limits. After reports of several employees violating this requirement, a resident, city councilperson, or The Scranton Times posts this (already publicly available) information to confirm / validate compliance with the city’s residency requirement. Who might get criminally charged?
- Newspapers routinely post the addresses of people with tax liens or delinquencies, which may include public officials. Are newspapers criminally charged for posting this information?
- Home addresses of everyone registered to vote has always been publicly available. Will the Department of State need to redact voter registration records to exclude the home addresses of these officials to avoid criminal liability? What about organizations or campaigns that use / share voter registration data?
- A 501c4 organization is advocating the passage of a law enforcement bill of rights. The best constituents to target for support for such a bill are law enforcement officers. They share a list of those addresses for a get-out-the-vote door knocking campaign. Are they at risk of being criminally charged?
- What happens in any number of other scenarios: Could someone be charged for posting or sharing an official’s address as it relates to court records? Property tax assessments? County deeds?

### **HB 1546 is unnecessary; the harm that the bill seeks to avoid is more properly charged as conspiracy to cause or threaten harm.**

Current law under Pennsylvania’s criminal code already punishes actions committed by a person that would harm anyone, and public officials in particular—either directly or by charging someone who posts or shares this information with the “**intent** of promoting or facilitating” a crime under the criminal conspiracy statute ([18 Pa.C.S. § 903](#)). In other words, the behavior HB 1546 seeks to punish could already be charged directly under one of the following offenses or as **conspiracy to commit one of these offenses** under Title 18:

- [§ 2702\(c\)](#) **Aggravated assault** against a public official. (F1)
- [§ 2702.1](#) **Assault** of a law enforcement officer: When a person attempts to or intentionally causes bodily injury to an officer by discharging a firearm. (F1)

- [§ 2705](#) **Reckless endangerment:** When someone places another person in danger of death or serious bodily injury. (M2)
- [§ 2706](#) **Terroristic threats:** When a person communicates either directly or indirectly, a threat to: (1) commit a crime of violence with intent to terrorize... or (3) otherwise cause serious public inconvenience or cause terror or serious public inconvenience. (M1)
- [§ 2709](#) **Harassment:** When a person (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose, (4) communicates threatening or obscene words or language, (5) communicates repeatedly in an anonymous manner; (6) communicates repeatedly at inconvenient hours; or (7) communicates repeatedly in a manner other than specified above. (Summary or M3)
- [§ 2709.1](#) **Stalking:** When a person engages in a course of conduct, repeatedly commits acts, or repeatedly communicates toward another person... under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or cause substantial emotional distress. (M1 or F3)
- [§ 4703](#) **Retaliation for past official action:** When a person harms a public servant by any unlawful act in retaliation for anything lawfully done by the latter in the capacity of public service. (M2)

HB 1546 proposes a dangerous expansion of protections that apply to a broad list of 35 public officials, most of whom are not *public safety* officials. In order to be criminally charged, HB 1546 does not require that a person directly threaten or cause harm to an official, nor does it require any intent to cause or threaten harm. Instead, HB 1546 would hold people criminally liable for ***perceived future harm committed by someone else***. Furthermore, the harm HB 1546 seeks to punish could already be charged directly under one of many existing offenses under Title 18 or as conspiracy to commit such an offense.

**For these reasons, we urge you to oppose House Bill 1546.**