



MEMORANDUM

TO: The Pennsylvania Senate Law and Justice Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: November 10, 2022

RE: OPPOSITION TO HB 1546 P.N. 3569 (FARRY)

Bill summary: [HB 1546](#) (PN 3569) would create a new assault offense under [Title 18, Chapter 27](#) (§ 2719—endangerment of a public safety official) to prohibit a person from intentionally or knowingly communicating, or posting on social media, the “restricted personal information” of a public official or a family or household member of a public official with: (1) reckless disregard that the restricted personal information will be used to threaten, intimidate or facilitate the commission of a crime against the public safety official or a family or household member; or (2) the intent that the restricted personal information will be used to threaten, intimidate or facilitate the commission of a crime against the public official or a family/household member.

Publicly posting “restricted information” would be graded as a **first-degree misdemeanor**, punishable by up to 5 years in prison. If, as a result of posting such information, *someone else* inflicted bodily injury on a public official or family or household member, the person posting the information would be charged with a **second-degree felony**, punishable by up to 10 years in prison.

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 is wildly expansive in terms of whom it protects, which information it prohibits from being shared, and how such information is shared.

Who is protected—“public safety officials”: For the purposes of this offense, HB 1546 defines a “public safety official” as any one of the 39 protected positions listed in the [aggravated assault statute](#), many of which clearly exceed the definition of public **safety** official, such as parking enforcement officials, psychiatric aides, utility employees, private detectives, and wildlife or waterways conservation officers.¹

Also protected—“family or household members”: The offense also covers “family or household members” of anyone holding one of these 39 positions, defined as “spouses or persons who **have been spouses**, persons living as spouses or who lived as spouses, parents, children, other persons related by consanguinity or affinity, current or **former sexual or intimate partners** or persons who share biological parenthood.”

¹ HB 1546 would apply to all 39 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; parking enforcement officers; magisterial district judges; constables; deputy constables; psychiatric aides; 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; employees of the Department of Environmental Protection; private detectives; employees or agents of a county children and youth social service agency or their legal representatives; public utility employees or employees of an electric cooperative; 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.

Information considered “restricted”: HB 1546 prohibits communicating or posting on social media the following information related to a “public safety official or family or household member”: the person’s **image**, **name**, social security number, home address, home phone or fax number, personal email or mobile number.

Prohibited methods of “communicating”: In addition to prohibiting sharing restricted information on social media, HB 1546 also prohibits “communicating such information,” which is defined as “conveying a message by oral, nonverbal, written or electronic means, including telephone, electronic mail, internet, facsimile, telex, wireless communication or similar transmission.”

Low standard of evidence: HB 1546 would require that the person posting or sharing restricted information of a public official or a member of their family or household did so with intent OR with reckless disregard for the consequences. Reckless disregard is a low threshold to clear, especially when the offense would require an assessment of how likely it is that **someone else** would use that information recklessly.

Punishable actions committed by another person: Finally, HB 1546 would permit criminally charging a person who posts “restricted information” if *another person* uses that information to “**threaten, intimidate or facilitate the commission of a crime**” against the public official or a member of their family or household.

- How are “threaten” and “intimidate” defined? These are not general offenses under current law, unless HB 1546 is referring to specific crimes like “terroristic threats” or “ethnic intimidation.” And presumably “facilitating the commission of a crime” would mean **any criminal offense**.
- Furthermore, HB 1546 does not specify whether the other person has to have been **convicted** of committing a crime against the public official (or family/household member) before charging the person who posted the restricted information.
- A person could be charged with a second-degree felony if posting restricted information “leads to the bodily injury of the public official or their family or household member.” In other words, a person could spend up to 10 years in prison for an injury committed by **someone else**.

The criteria for criminal charges under HB 1546 are so broad and sweeping that it could criminalize First Amendment protected speech by individuals, journalists, 501c4 organizations, and more.

Given the bill’s broadly applicable set of criteria, would people risk being criminally charged in any of the hypothetical situations below, all of which might clear the threshold for posting with “reckless disregard”:

- Organizations or individuals who post the names or images of elected officials who took a controversial position on legislation or a policy, e.g. mask mandates, abortion bans, and the like.
- Investigative journalists or organizations that expose racist posts by police officers, or identify military and/or law enforcement who are members of extremist militia groups.
- Organizations or individuals who post the names of school board members who support or oppose trans-inclusive policies or curricula.
- Organizations or individuals who post a list of elected officials who deny election results.
- Organizations or individuals who name district attorneys who they blame for gun violence.
- Reporters who publish the name and photo of a police officer who shot an unarmed black person.

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

HB 1546 proposes a dangerous, and almost certainly unconstitutional, expansion of protections that apply to a broad list of 39 public officials, most of whom are not public **safety** officials, in addition to their family members, which includes ex-spouses and former sexual or intimate partners. 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**.

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