



MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: October 18, 2023

RE: OPPOSITION TO HB 1726 P.N. 2057 (FREEMAN)

Bill summary: [HB 1726](#) (PN 2057) would amend the [Housing Authorities Law](#) to allow cities of the third class to establish public housing police forces.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1726.

“America’s system of mass incarceration is the product of the over-policing of low-income people of color, often for minor offenses. A critical site of entrenched policing takes place in the public housing context. Public housing residents live under a system of surveillance in which they are constantly monitored and policed. Harsh federal public housing policies – built on racist housing prioritization for whites at the expense of Black communities – are compounded by constitutional jurisprudence justifying outsized police intrusion. Together, these policies and practices work to criminalize public housing residents.” Sarah Miller, [Reconceptualizing Public Housing: Not as a Policed Site of Control, but as a System of Support](#), *Georgetown Journal on Poverty Law and Policy*, Volume XXVIII, Number 1, Fall 2020.

HB 1726 would exploit weaker Fourth Amendment protections for public housing residents, giving police more expansive authority to stop, arrest, search and seize residents.

People living in policed public housing communities are disproportionately surveilled and criminalized, largely due to weaker Fourth Amendment protections for public housing residents. The Fourth Amendment offers few safeguards if you are a public housing resident. Protections that typically attach to the home are generally limited in the context of apartment buildings.¹ And courts have typically held that there is no reasonable expectation of privacy in the common spaces of [apartment complexes](#).² For public housing occupants in particular, these protections are further limited based on the constitutionally permissible targeting of public housing residents under Fourth Amendment doctrine.

Three legal doctrines of Fourth Amendment law legalize routine [stops, arrests, and searches](#) of public housing residents (and their visitors).³ **When taken together, these Fourth Amendment doctrines demonstrate that when police label places as problems, they can exercise expansive authority to seize and search the people living there.** HB 1726 would exploit and exacerbate weaker protections for public housing residents under the Fourth Amendment, specifically:

1 | Weaker Fourth Amendment protections against police stops in “high crime areas”

First, the standards for [stops](#) and [high-crime area doctrine](#) function together in the context of public housing to permit stops for virtually any infraction. Under [Terry v. Ohio](#), a person may be stopped if there is reasonable suspicion, based on articulable facts, that an individual is involved in criminal activity.⁴ This standard has been

¹ [Jones v. United States](#), 357 U.S. 493 (1958).

² [Katz v. United States](#), 389 U.S. 347 (1968).

³ Alexis Karteron, [When Stop and Frisk Comes Home: Policing Public and Patrolled Housing](#), 69 Case W. Rsv. L. Rev. 669 (2019).

⁴ [Terry v. Ohio](#), 392 U.S. 1, 21 (1968).

interpreted to allow for a range of factors to contribute to the reasonable suspicion analysis, including whether the stop takes place in a “high crime area.”⁵ What constitutes a “high crime area,” however, is self-fulfilling. Crime data does not necessarily reflect the accurate rate of crime, but rather [how police respond to crime](#) and enforce criminal laws.⁶

Furthermore, the definition of “high crime area” relies heavily on officer testimony as to how that officer making the stop qualifies the term. This means that when police choose to surveil public housing—a decision correlated with perceptions of race and class and its connection to criminality—and therefore inevitably arrest people in that area, it may now be properly categorized as a “high crime area,” [justifying virtually unfettered stops under the Fourth Amendment](#).⁷

Because courts have utterly failed to attach any meaning to the term high crime area, police officers have extraordinary latitude to conduct stops in any locations they define as “high crime.” This broad authority operates with mass criminalization to provide police with especially expansive power to conduct stops of people in and around public housing.

2 | Expanded Fourth Amendment power to arrest / weaker protections against arrest

Second, the [Atwater rule](#) permits arrest for “very minor crimes.” In the case of public housing, this also includes behavior banned or prohibited by public housing rules—in other words, behavior regulated by housing rules rather than criminal law. This rule grants police expansive power to arrest, no matter how trivial the charge.⁸

3 | Expanded Fourth Amendment authority to search / weaker protections against unreasonable searches

Third, the [search incident to arrest doctrine](#) permits widespread exploratory searches once reasonable suspicion is established, regardless of whether an arrest occurs. The permission provided in [Atwater](#) to arrest for virtually any offense can be exploited to facilitate widespread searches, and some police departments invoke the exception to justify searches of people in and around public housing without even making arrests. Appellate courts have refused to suppress evidence in this context, thus implicitly encouraging its use.

The over-policing of public housing residents exploits existing legal doctrine that grants residents fewer privacy protections in their homes, leaves them vulnerable to capricious police searches, and establishes lower thresholds for arrests—all of which [perpetuate the criminalization](#) of communities of color.⁹ Such policies are ineffective as a crime reduction mechanism; they have only a modest effect on property crime and no significant impact on violent crime, yet they contribute to [increased incarceration rates](#) of low-income communities of color.¹⁰

By expanding the ability of cities to create public housing police forces, HB 1726 would expose Pennsylvanians who live in public housing to even more police stops and arrests, compounded by broad search and seizure authority.

For these reasons, we urge you to oppose House Bill 1726.

⁵ [Illinois v. Wardlow](#), 528 U.S. 119 (2000).

⁶ Logan Koepke, [Predictive Policing Isn't About the Future. It's about the past](#), Slate, November 21, 2016.

⁷ Alexis Karteron, [When Stop and Frisk Comes Home: Policing Public and Patrolled Housing](#), 69 Case W. Rsrv. L. Rev. 669 (2019).

⁸ [Atwater v. City of Lago Vista](#), 532 U.S. 318, 322 (2001).

⁹ Erica V. Rodarte Costa, [Reframing the "deserving" tenant: The abolition of a policed public housing](#). University of Pennsylvania Law Review, Vol. 170, No. 3, Feb 2022, 811-851.

¹⁰ Torres J, Apkarian J, Hawdon J. [Banishment in Public Housing: Testing an Evolution of Broken Windows](#). *Social Sciences*. 2016; 5(4):61.