



MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: January 22, 2021

RE: OPPOSITION TO HB 103 P.N. 73 (SCHMITT)

Bill summary: [HB 103](#) (PN 73) creates a new offense, defined as intentionally or knowingly causing a law enforcement officer to come into contact with saliva or other bodily fluid by throwing, tossing, or spitting the bodily fluid or material. If an individual knew, should have known, or believed such fluid or material came from someone infected by a communicable disease, the offense is graded a felony of the third degree, punishable by 3.5–7 years in prison and up to \$15,000 in fines. In any other instance, the offense is graded as a misdemeanor of the first degree, punishable by incarceration for 2.5–5 years and up to \$10,000 in fines.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 103.

HB 103 creates a new offense for actions that could be charged under current statute.

The creation of new crimes, especially those that criminalize behavior that can already be charged under existing statute, continues the [legislature's relentless churn of overcriminalization](#) in Pennsylvania. It strains credulity to argue there is a "loophole" in our crimes code that fails to protect law enforcement officers from harassment or assault. Are there instances where someone (not incarcerated or being transported) has thrown feces, for example, at a police officer and walked because a district attorney couldn't find an offense to charge them with? Offenses against officers already carry serious penalties; the most obvious include:

- [§ 2702 \(a\)\(2\)](#) Aggravated assault. Felony of the first degree to cause, attempt to cause, or even recklessly cause, an officer serious bodily injury (10– 20 years in prison; up to \$25,000 in fines).
- [§ 2702 \(a\)\(3\)](#) Aggravated assault. Felony of the second degree to cause an officer bodily injury (5–10 years in prison; up to \$25,000 in fines).
- [§ 2703](#) Assault by prisoner (F2) and [§ 2703.1](#) Aggravated harassment by prisoner (F3) still apply.
- (And let's not forget that first-degree murder of a police officer is punishable by death under [§ 1102 \(a\)](#).)

HB 103 expands the range of behavior police officers can allege to justify arrest and/or use of force.

Prosecutors use duplicative offenses like these to stack charges against defendants to use as leverage to force defendants to accept plea bargains. But perhaps more worrisome is the expanded range of behavior police officers could allege to justify arrest and/or use of force. Merely causing an officer to come into contact with blood, perhaps while breaking up a fight, or with saliva while arguing with an officer, is all it would take to get arrested and/or charged for the offense created by HB 103.

Compounding this concern is the communicable disease provision in HB 103, particularly in the context of COVID-19. Because COVID-19 can be transmitted by droplets, "expelling" saliva may trigger the enhancement if someone is yelling or speaking loudly at — or near — an officer. This could range from situations where people are being questioned, protesting, or even rioting, especially when maskless in close proximity to police officers. And because infectious people are often asymptomatic, an officer could argue that s/he reasonably believed the person could be infected with a communicable disease and that the defendant should have known they could be infected, thus triggering the third-degree felony charge instead of the first-degree misdemeanor.

For these reasons, we urge you to oppose House Bill 103.