



## MEMORANDUM

**TO:** The Pennsylvania Senate Judiciary Committee

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

**DATE:** September 19, 2022

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

**Bill summary:** [HB 103](#) (PN 73) would create 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, spitting or expelling 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 would create yet another new, duplicative, and unnecessary offense that expands police and prosecutorial power to arrest and overcharge.**

HB 103 would duplicate an existing offense, [§ 2703 Assault by prisoner](#), which is currently limited to criminalizing contact with bodily fluids only when committed by an incarcerated person against correctional staff. The new offense created under HB 103 uses the same definition, but expands it to apply to **any person** who commits that offense against **any law enforcement officer**. Not only is this a broad expansion of an outdated offense, it is also entirely unnecessary. For example, under PA's aggravated assault statute, [18 § 2702](#), a simple assault committed against a police officer is graded as an aggravated, second-degree felony offense. The behavior criminalized in HB 103 could already be charged, and punished more severely, under current PA law.

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](#)<sup>1</sup> in Pennsylvania. It strains credulity to argue there is a "[loophole](#)"<sup>2</sup> 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, for example, thrown feces at a police officer and walked because a district attorney couldn't find an offense to charge them with? Offenses against police officers already carry serious penalties; creating new ones only expands police power to arrest and prosecutorial power to stack charges against defendants.

**HB 103 is based on unscientific, outdated, and fear-based assumptions about HIV transmission.**

HB 103 would make it a first-degree misdemeanor to cause (or attempt to cause) a law enforcement officer to come into contact with "blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material." HB 103 enhances this offense to a third-degree felony if "the person knew, had reason to know, should have known or believed such fluid or material to have been obtained from an individual, including the person charged under this section, infected by a communicable disease, including, but not limited to, human immunodeficiency virus (HIV) or hepatitis B."

<sup>1</sup> ACLU of Pennsylvania, [More Law, Less Justice](#), June 2021.

<sup>2</sup> Representative Louis Schmitt, Co-Sponsorship Memorandum: [Harassment of Law Enforcement Officer](#), December 9, 2020.

And yet, according to the CDC:

- HIV cannot be transmitted through [saliva](#);<sup>3</sup>
- There is negligible, if any, risk of HIV transmission through [feces or urine](#);<sup>4</sup>
- HIV can be transmitted through [blood and seminal fluid](#), but these fluids “must come in contact with a mucous membrane or damaged tissue or be directly injected into the bloodstream (from a needle or syringe) for transmission to occur. Mucous membranes are found inside the rectum, vagina, penis, and mouth.”<sup>5</sup> And to be transmissible, the fluids must contain a detectable [viral load](#).<sup>6</sup>

In order to be charged with the felony enhancement, HB 103 does not require proof that the defendant tests positive for HIV (or another communicable disease). It does not consider whether or how infectious a person might be. It does not require that transmission occurred. And it fails to consider the risk of harm or the likelihood of transmission. Outdated and fear-based assumptions about HIV inform the criminal penalties in HB 103 rather than any scientific understanding of how HIV is actually transmitted.

### **Provisions in HB 103 could easily be weaponized against civilians, particularly during the pandemic.**

Compounding this bill’s fraught communicable disease provision is the arrival of COVID-19. Because COVID-19 can be transmitted by droplets, merely “expelling” saliva could trigger the felony enhancement. It’s easy to imagine any number of saliva-expelling interactions with police, all of which would heighten the risk of a felony charge, from someone yelling or speaking loudly at—*or near*—an officer, to protestors chanting in front of a police line, to a heated exchange while being questioned, or even maskless rioters confronting police officers inside a building.

Furthermore, given the high rate of asymptomatic transmission of COVID-19, an officer could argue that s/he reasonably believed a defendant could be infected and, for the same reason, argue that the defendant should have known they could be infected. In this context, police could use the communicable disease provision and the specter of COVID-19 broadly—and selectively—to justify use of force, arrest, or as the pretext to shut down First Amendment protected speech, protest, and/or assembly.

In addition to needlessly expanding the crimes code, HB 103 would add yet another offense for police to selectively enforce and for prosecutors to wield when charging a defendant. In our new normal under COVID-19, its communicable disease provision could be weaponized broadly against civilians, including those engaged in First Amendment protected speech, protest, or assembly. And perhaps most troubling, its unscientific assumptions about HIV transmission—rooted in fear, stigma, and ignorance—become grounds to impose unjustifiable and disproportionately severe penalties on people living with HIV.

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

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<sup>3</sup> <https://www.cdc.gov/hiv/basics/hiv-transmission/not-transmitted.html>

<sup>4</sup> <https://stacks.cdc.gov/view/cdc/20711>

<sup>5</sup> <https://www.cdc.gov/hiv/basics/hiv-transmission/body-fluids.html>

<sup>6</sup> <https://www.cdc.gov/hiv/basics/hiv-transmission/increase-hiv-risk.html>