



MEMORANDUM

TO: The Pennsylvania House of Representatives

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: September 11, 2022

RE: OPPOSITION TO HB 1093 P.N. 1126 (KAUFFMAN)

Bill summary: [HB 1093](#) (PN 1126) would amend [18 Pa. C.S. § 6712](#) (e) to increase the penalty for removing any container, defined as a “bakery basket, bakery tray, dairy case, egg basket, poultry box or any other container used to transport, store or carry any product,” from the premises of a retailer, delivery vehicle, or store from a summary offense—punishable by up to \$300 in fines or 90 days imprisonment—to a misdemeanor of the third degree—punishable by up to 1 year in prison and a fine of up to \$2,500.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1093.

HB 1093 would disproportionately affect people experiencing homelessness, including women fleeing domestic violence, children and young people, people with mental health challenges, and veterans.

HB 1093 would have the likely effect of further criminalizing poverty. On any given night in Pennsylvania in 2020, [over 13,000](#) people were homeless, and PA’s unsheltered population over the last 13 years has increased by 26%. Nationally, [80%](#) of all homeless women with children have experienced domestic violence; [60%](#) of homeless families consist of women and children under 18; and over [37,085 veterans](#) are homeless.

HB 1093 would needlessly enhance penalties for an offense that is already criminalized.

Title 18 already covers the behavior addressed in HB 1093 under [18 Pa.C.S. § 3921](#)—theft by unlawful taking, which prohibits taking the movable property of another. Any container is presumably the movable property of another person. Moreover, [§ 3903](#) currently sets forth grading for all theft offenses based upon the value of the items stolen:

- Theft of property valued over \$2,000 is graded as a third-degree felony;
- Theft of property valued over \$200 is graded as a first-degree misdemeanor;
- Theft of property valued between \$50–\$200 is graded as a second-degree misdemeanor; and
- Theft of property valued under \$50 is graded as a third-degree misdemeanor—***the same grading that HB 1093 seeks for removing a container.***

HB 1093 would add to these current penalties the ability to ***separately charge someone*** for each individual container taken from a store with a third-degree misdemeanor. So for example, if someone takes two containers—one worth \$20 and the other worth \$75—HB 1093 would allow prosecutors to charge the person with two separate M3 offenses under §6712. **In addition**, they could be charged with *another M3* for theft by unlawful taking under §3921 for the \$20 container AND an *M2* for the \$75 container. ***This amounts to THREE third-degree misdemeanors and one second-degree misdemeanor charge, totaling up to 3 years in prison and up to \$10,000 in fines for taking two containers worth \$90.***

HB 1093 creates an unnecessary and duplicative penalty enhancement that would have a disproportionate punitive effect on those who are already most vulnerable and at risk in order to imprison them for taking a container from a store.

For these reasons, we urge you to oppose House Bill 1093.