



## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

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

**DATE:** December 10, 2023

**RE: OPPOSITION TO HB 1700 P.N. 2231 (ISAACSON)**

**Bill summary:** [HB 1700](#) (PN 2231) would amend [18 Pa.C.S. § 2719](#) (endangering a public official) to make this offense applicable to federal judicial officers, defined as:

1. An active, retired, or senior judge of the United States Court of Appeals for the Third Circuit who is a Pennsylvania resident.
2. An active, retired, or senior judge of a Federal district court for the Eastern, Middle or Western District of Pennsylvania.
3. An active, retired or senior bankruptcy judge or tax court judge of the United States Bankruptcy Courts or United States Tax Courts for the Eastern, Middle or Western District of Pennsylvania.
4. An active or senior judge or full-time magistrate of the District Courts of the United States for the Eastern, Middle or Western District of Pennsylvania.

18 § 2719<sup>1</sup> prohibits 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 either reckless disregard or intent 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. A “family or household member” is 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.”

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 federal judicial officer 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 1700.**

**HB 1700 is unnecessary and duplicative, as federal judges are already protected under federal law.**

Federal judicial officers, as defined under HB 1700, are already protected under federal law, including under:

- [18 U.S.C. § 119](#) (Protection of individuals performing certain official duties), nearly identical to § 2719
- [18 U.S.C. § 115](#) (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member)
- [18 U.S.C. § 111](#) (Assaulting, resisting, or impeding certain officers or employees)
- Protected federal employees are defined under [18 U.S.C. § 1114](#) (Protection of officers and employees of the United States).

---

<sup>1</sup> This offense was created just last session with the enactment of [HB 1546](#) (2021-2022). The ACLU-PA vigorously opposed HB 1546 as a dangerously broad and sweeping bill that risks criminalizing First Amendment protected speech by individuals, journalists, and 501c4 organizations (among others) and would hold people criminally liable for perceived future harm committed by someone else. See [ACLU-PA Opposition to HB 1546](#).

Of course, Pennsylvania judges “of any court in the unified judicial system” and magisterial district judges are currently covered as protected employees—among 37 other job classifications—under aggravated assault ([18 Pa.C.S. § 2702\(c\)](#))<sup>2</sup> and is referenced under endangerment of a public official ([18 Pa.C.S. § 2719](#)), which makes that offense applicable to Pennsylvania judges and MDJs.

By adding federal officials to Pennsylvania statute, HB 1700 would mark a significant departure under state law. While it’s true that 2702(c) covers federal law enforcement officers, this outlier inclusion of a federal officer is likely responsive to investigations that are multi-jurisdictional, where federal, state, and local law enforcement are working together on a Pennsylvania case. There are no analogous situations where federal and state judges would be presiding over the same case. If enacted, HB 1700 would open the door to protecting any kind of federal employee under PA statute, which is unnecessary and duplicative considering those individuals are currently protected under federal law.

### **HB 1700 would allow the same conduct to be charged under both federal and state law.**

Under the [dual sovereignty doctrine](#), HB 1700 would enable prosecution of the **same conduct** under both state and federal law. The [double jeopardy clause](#) under the Fifth Amendment provides that no person may be “twice put in jeopardy” for the same offense. But per the dual sovereignty doctrine, the U.S. Supreme Court has long held that a crime under one sovereign’s laws is not the same offense as a crime under the laws of another sovereign. This interpretation was recently reaffirmed in a 7-2 vote by the U.S. Supreme Court in [Gamble v. United States](#) (2019), where Justice Alito noted that the double jeopardy clause protects jeopardy for the *same offense*, *not for the same conduct or actions*, because offenses are defined by a law, and each law is defined by a sovereign. **As a result, HB 1700 would enable, if not invite, dual prosecution for the same act against a federal judge.**

There is no question that judges at every level are experiencing increased threats and dangers to their lives. But HB 1700 will do nothing to protect judges and their family members from those threats. Both state and federal law refer to these offenses as “protections,” when, in fact, they only offer punishment imposed **after** a public official has been threatened or injured. Furthermore, if federal judges believe that the current penalties against their alleged assailants are too low, those changes should be made through congressional legislation. Duplicating protections for federal judges under state law will only lead to excessive punishment and even more unnecessary and redundant laws.

**For these reasons, we urge you to oppose House Bill 1700.**

---

<sup>2</sup> The ACLU-PA has repeatedly opposed bills that seek to add positions to 2702(c). Pennsylvania’s aggravated assault statute has been serially expanded to impose tougher penalties for cases of simple assault when the assault was committed against special classes of employment. Originally, these protected classes were limited to police officers, firefighters, and parole officers. Since then, the list has ballooned to **39 different types of employees**. It now includes judges, members of the General Assembly, the Governor and other elected officials. But it also includes private detectives, waterways conservation officers, wildlife conservation officers, parking enforcement officers, psychiatric aides, health care practitioners or technicians, liquor control enforcement agents, public utility employees, and employees of the Department of Environmental Protection, among others.

Adding categories of protected classes of employment to this subsection undermines the fundamental distinctions between types of assault, distinctions that are intended to determine the reasonableness and severity of the punishment imposed. Bills that add new positions to the definition of “public safety official” propose arbitrary and overly punitive penalties for offenses that if committed against anyone else, are punished far less severely. In other words, anyone who commits a *simple assault* against a person listed as a “public safety official” is automatically charged with *aggravated assault*—increasing the penalty from a maximum of 2 years incarceration for a second-degree misdemeanor to up to 10 years in prison for a second-degree felony—**an additional 8 years in prison**. Serially expanding the aggravated assault statute renders the offense of simple assault meaningless. It metes out greater punishment based not on the intent or severity of the assault, but rather on the *employment status of the victim*.