



MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: September 28, 2021

RE: OPPOSITION TO HB 1836 P.N. 2080 (Ryan)

Bill summary: [HB 1836](#) (PN 2080) would create a new offense of child torture (children under 18), applicable to persons who have custody or physical control of the child. The offense is defined by 12 courses of conduct that are already heavily criminalized under current statute. If the offense of child torture does not result in bodily injury, it is graded as a third-degree felony, punishable by up to 7 years imprisonment and \$15,000 in fines. If the offense does result in bodily injury, it is graded as a first-degree felony, punishable by up to 20 years imprisonment and \$25,000 in fines.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1836.

HB 1836 creates a new, duplicative offense, defined by actions that are already heavily criminalized.

HB 1836 contributes to a broader trend of legislation that expands and enhances the crimes code, a trend we specifically addressed in our report, [More Law, Less Justice](#).¹ This report traces how, over the past four decades, the Pennsylvania legislature has become a bipartisan offense factory, as members of both political parties draft hundreds of redundant crime bills that duplicate existing law or add unnecessarily punitive new penalties. This unrelenting expansion effectively diverts power away from judges into the hands of prosecutors and police—police are given more potential offenses to investigate and prosecutors are armed with duplicative offenses used to overcharge defendants as leverage to force plea bargains to circumvent jury trials.

HB 1836 is a staggering example of legislative overcriminalization. Under HB 1836, child torture would be defined by 12 courses of conduct, each of which could be charged (depending on the specific circumstances of the crime) with a number of different, already existing offenses, including, but not limited to:

(1) Breaking, severing or severely impairing a limb of the child.

- [18 § 2702 \(a\)\(9\) Aggravated assault against a child](#)

(2) Inflicting severe and prolonged pain from striking, burning or cutting the child.

- [18 § 2702 \(a\)\(9\) Aggravated assault against a child](#)

(3) Causing or allowing a grossly unreasonable period of time where the child is deprived of food or water.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(4) Knowingly restraining the child so as to interfere substantially with the child's liberty in a grossly unreasonable manner that serves no legitimate parental purpose.

- [18 § 2902. Unlawful restraint](#)
- [18 § 2903. False imprisonment](#)

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

(5) Forcing the child to remain in an area that is not suitable for habitation, such as areas where urine or feces are actively present.

- [18 § 2902. Unlawful restraint](#)
- [18 § 2903. False imprisonment](#)
- [18 § 4304. Endangering welfare of children](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(6) Subjecting the child to extreme temperatures without adequate clothing.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(7) Forcing excessive and unnecessary time periods of exercise or other physical acts as a form of punishment against the child.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(8) Engaging in the sexual abuse or exploitation of the child or allowing or participating in the sexual abuse or exploitation of the child by another person.

- [18 § 3121. Rape](#)
- [18 § 3122.1. Statutory sexual assault](#)
- [18 § 3123\(b\). Involuntary deviate sexual intercourse with a child](#)
- [18 § 3123\(c\). Involuntary deviate sexual intercourse with a child with serious bodily injury](#)
- [18 § 3124.1. Sexual assault](#)
- [18 § 3125\(b\). Aggravated indecent assault of a child](#)
- [18 § 3126. Indecent assault](#)
- [18 § 4302. Incest](#)
- [18 § 6312. Sexual abuse of children](#)
- [18 § 6320. Sexual exploitation of children](#)
- [18 § 6318. Unlawful contact with minor](#)

(9) Repeatedly intimidating or humiliating the child for the purpose of causing significant emotional distress.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)
- [18 § 2709. Harassment](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(10) Terrorizing or threatening death or harm to the child, a loved one of the child, or a pet or loved object of the child for the purpose of causing significant emotional distress.

- [18 § 2709. Harassment](#)
- [18 § 2706. Terroristic threats](#)
- [18 § 2701\(b\). Simple assault against a child](#)

(11) Restricting basic and necessary bodily functions needed for the personal hygiene of the child.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)

(12) Engaging in conduct that places the child at risk of serious bodily injury.

- [18 § 4304. Endangering welfare of children](#)
- [18 § 2705. Recklessly endangering another person](#)
- [18 § 2701\(b\). Simple assault against a child](#)
- [18 § 2702 \(a\)\(9\) Aggravated assault against a child](#)

Even the alleged crime that inspired HB 1836 resulted in an array of criminal charges, undermining any argument that behavior amounting to child torture is not properly criminalized under current law.

The bill’s [co-sponsorship memo](#)² references a grievous case of child abuse in Schuylkill County for which three people were charged: [Todd Matthew Richter](#), [Wendy Marie Yost](#), and [Jennifer Ashlin Yost](#). To underscore the duplicative nature of the offense created under HB 1836, look no further than Jennifer Yost’s [docket sheet](#). For the felonies alone, Yost is facing 220 years of incarceration. We don’t need another crime to cover these actions—they’re already covered, numerous times over. Here is what the Commonwealth is currently charging her with:

v. Jennifer Ashlin Yost						
CHARGES						
<u>Seq.</u>	<u>Orig Seq.</u>	<u>Grade</u>	<u>Statute</u>	<u>Statute Description</u>	<u>Offense Dt.</u>	<u>OTN</u>
1	1	F1	18 § 2702 §§ A1	Aggravated Assault - Attempts to cause SBI or causes injury with extreme indifference	03/01/2019	R 133633-3
2	3	F1	18 § 2702 §§ A1	Aggravated Assault - Attempts to cause SBI or causes injury with extreme indifference	03/01/2019	R 133633-3
3	39	F1	18 § 2702 §§ A1	Aggravated Assault - Attempts to cause SBI or causes injury with extreme indifference	03/01/2019	R 133633-3
4	5	F1	18 § 2702 §§ A9	Aggravated Assault - Victim Less Than 13 and Defendant 18 or older	03/01/2019	R 133633-3
5	7	F1	18 § 2702 §§ A9	Aggravated Assault - Victim Less Than 13 and Defendant 18 or older	03/01/2019	R 133633-3
6	8	F1	18 § 2702 §§ A9	Aggravated Assault - Victim Less Than 13 and Defendant 18 or older	03/01/2019	R 133633-3
7	4	F2	18 § 2702 §§ A4	Aggravated Assault - Attempts to cause or causes BI with deadly weapon	03/01/2019	R 133633-3
8	28	F2	18 § 2902 §§ B1	Unlawful Restraint of Minor/Not Parent - Risk of Bodily Injury	03/01/2019	R 133633-3
9	29	F2	18 § 2902 §§ B1	Unlawful Restraint of Minor/Not Parent - Risk of Bodily Injury	03/01/2019	R 133633-3
10	30	F2	18 § 2902 §§ B1	Unlawful Restraint of Minor/Not Parent - Risk of Bodily Injury	03/01/2019	R 133633-3
11	31	F2	18 § 2903 §§ B	False Imprisonment of Minor/Not Parent	03/01/2019	R 133633-3
12	32	F2	18 § 2903 §§ B	False Imprisonment of Minor/Not Parent	03/01/2019	R 133633-3
13	33	F2	18 § 2903 §§ B	False Imprisonment of Minor/Not Parent	03/01/2019	R 133633-3
14	34	F2	18 § 4304 §§ A1	Endangering Welfare of Children - Parent/Guardian/Other Commits Offense	03/01/2019	R 133633-3
15	35	F2	18 § 4304 §§ A1	Endangering Welfare of Children - Parent/Guardian/Other Commits Offense	03/01/2019	R 133633-3
16	36	F2	18 § 4304 §§ A1	Endangering Welfare of Children - Parent/Guardian/Other Commits Offense	03/01/2019	R 133633-3
17	10	M2	18 § 2718 §§ A1	Strangulation - Applying Pressure to Throat or Neck	03/01/2019	R 133633-3
18	11	M2	18 § 2718 §§ A1	Strangulation - Applying Pressure to Throat or Neck	03/01/2019	R 133633-3
19	46	M2	18 § 2718 §§ A1	Strangulation - Applying Pressure to Throat or Neck	03/01/2019	R 133633-3
20	12	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3
21	13	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3
22	14	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3
23	15	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3

² Representative Frank Ryan, [Memorandum: Amend Title 18 \(Crimes Code\) to Create the Offense of Child Torture](#), August 23, 2021.

Jennifer Ashlin Yost

CHARGES							
Seq.	Orig Seq.	Grade	Statute	Statute Description	Offense Dt.	OTN	
24	16	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
25	17	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
26	18	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
27	19	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
28	20	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
29	21	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
30	45	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
31	42	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
32	44	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
33	40	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
34	43	M1	18 § 2701 §§ A1	Simple Assault	03/01/2019	R 133633-3	
35	25	M2	18 § 2705	Recklessly Endangering Another Person	03/01/2019	R 133633-3	
36	26	M2	18 § 2705	Recklessly Endangering Another Person	03/01/2019	R 133633-3	
37	27	M2	18 § 2705	Recklessly Endangering Another Person	03/01/2019	R 133633-3	
99,999	22	M1	18 § 2701 §§ A3	Simple Assault	03/01/2019	R 133633-3	
99,999	23	M1	18 § 2701 §§ A3	Simple Assault	03/01/2019	R 133633-3	
99,999	24	M1	18 § 2701 §§ A3	Simple Assault	03/01/2019	R 133633-3	
99,999	2	F1	18 § 2702 §§ A1	Aggravated Assault - Attempts to cause SBI or causes injury with extreme indifference	03/01/2019	R 133633-3	
99,999	37	S	18 § 2709 §§ A1	Harassment - Subject Other to Physical Contact	03/01/2019	R 133633-3	
99,999	38	S	18 § 2709 §§ A1	Harassment - Subject Other to Physical Contact	03/01/2019	R 133633-3	
99,999	41	S	18 § 2709 §§ A1	Harassment - Subject Other to Physical Contact	03/01/2019	R 133633-3	
99,999	6	F1	18 § 2702 §§ A9	Aggravated Assault - Victim Less Than 13 and Defendant 18 or older	03/01/2019	R 133633-3	

Several elements of “torture” as defined under HB 1836 are dangerously broad and vague.

The bill’s definition of torture is troublingly broad and could hypercriminalize instances of bad parenting. Worse, depending on the discretion of police and/or prosecutors, HB 1836 could easily target families living in poverty, charging them with child torture for actions that rely on subjective determinations of, for example, “adequate clothing” or “areas suitable for habitation.”

Additionally, under HB 1836, two elements of child torture are defined, in part, by causing emotional distress in the child, which is defined as “a temporary or permanent state of mental anguish.”³ Such an expansive and subjective definition could threaten parents dealing with conflict with their teenagers or charging parents who threaten to take away a child’s favorite stuffed animal with child torture if it results in “significant emotional distress.”

HB 1836 creates an unnecessarily duplicative and dangerously vague new offense. Not only are the actions that comprise the offense of “child torture” easily chargeable under numerous existing criminal statutes, judges have the discretion to apply enhancements to a defendant’s sentence when warranted. This bill only serves to cast a wider carceral net that invites selective enforcement by police and serial overcharging by prosecutors.

For these reasons, we urge you to oppose House Bill 1836.

³ HB 1836 uses the definition of “emotional distress” as defined under [18 Pa.C.S. § 2709.1. Stalking](#) to define elements of child torture.