



## MEMORANDUM

**TO:** The Pennsylvania House Judiciary Committee

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

**DATE:** January 22, 2021

**RE: OPPOSITION TO HOUSE BILL 185 P.N. 153 (STRUZZI) — “Cody’s Law”**

[HB 185](#) (PN 153) would amend [18 Pa.C.S.A. § 2702](#) to classify any attempt to cause or intentionally or knowingly cause bodily injury to an individual with a physical disability or intellectual disability as an aggravated assault and graded as a felony of the second degree.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, we respectfully urge you to oppose House Bill 185 for the following reasons:**

### **HB 185 eliminates the requirement to cause “serious bodily injury”**

Pennsylvania law primarily distinguishes simple assault from aggravated assault based on intent and severity of injury. As a general rule, the felony crime of aggravated assault ([18 Pa.C.S.A. § 2702](#)), requires “serious bodily injury,” whereas the misdemeanor crime of simple assault ([18 Pa.C.S.A. § 2701](#)), requires only “bodily injury.” HB 185 proposes to amend Section 2702 to provide that any individual who intentionally causes “bodily injury” to a person with a physical or intellectual disability commits a second-degree felony. In other words, it treats a simple assault as aggravated, increasing the penalties from up to 2 years in prison for a second-degree misdemeanor to up to 10 years for a second-degree felony.

### **HB 185 does not require knowledge of the person’s physical or intellectual disability**

HB 185 lacks a knowledge requirement — a defendant need not have any specific knowledge of the victim’s intellectual or physical disability. However, it is critical and necessary for the defendant to have such knowledge in order for this new crime to apply. Due process mandates that a defendant have adequate notice that his/her actions have criminal consequences. However, many disabilities are not apparent simply by looking at an individual, and it is unfair — if not unconstitutional — to enhance the grading of an offense (which, in turn, increases the punishment) based essentially on the invisible characteristics of the victim. Given that these two criteria are the basis upon which an otherwise misdemeanor assault would be charged as a felony and would impose an additional 8 years in prison, knowledge of a person’s disability should be required for a felony conviction under this provision.

### **HB 185 needlessly expands and enhances criminal penalties**

HB 185 contributes to a broader trend of legislation that expands and enhances the crimes code, casting the carceral net as broadly as possible. This escalating trend in the legislature was specifically addressed in our October 2019 report, [More Law, Less Justice](#).<sup>1</sup> In this report, we trace 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 harsh new penalties. This unrelenting expansion effectively diverts power away from judges into the hands of prosecutors and police, contributing to ever-greater incarceration of hundreds of thousands of Pennsylvanians.

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<sup>1</sup> ACLU of Pennsylvania, *More Law, Less Justice*, October 2019, at <https://www.aclupa.org/en/publications/more-law-less-justice>

The steady addition of new and expanded offenses in the crimes code has real world consequences. Prosecutors use duplicative offenses to overcharge defendants and use it as leverage to force defendants to accept plea bargains in the vast majority of all criminal cases. By way of example, each of the teenagers who assaulted Cody Overdorff (for whom the bill is named) were each charged with 6 offenses: stalking (M1), false imprisonment (M2), simple assault (M2), false report (M3), disorderly conduct (M3), and harassment (S). All three ([Cory Blystone](#),<sup>2</sup> [Jordan Kinney](#),<sup>3</sup> and [Dakota Patterson](#)<sup>4</sup>) pleaded guilty to stalking, false imprisonment, and simple assault and one also pleaded guilty to false reporting. Pleading guilty to one first-degree misdemeanor and two second-degree misdemeanors results in a combined possible sentence of almost ten years — the maximum number of years allowed for a second-degree felony.

Rather than creating an entirely new crime, these concerns are better addressed at sentencing. Given the numerous due process concerns that are readily apparent, it is far more appropriate to address these situations at sentencing, where the victim's physical, intellectual and/or developmental disability can be assessed as an aggravating factor.

Clearly there are plenty of offenses and enhancements readily available to prosecutors; they can stack these charges for maximum punitive effect in order to exact guilty pleas. While good intentioned, HB 185 will add to the choked reservoir of criminal offenses and enhancements that result in excessive punishment and longer terms of incarceration.

**For these reasons, we urge you to oppose House Bill 185.**

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<sup>2</sup><https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0000964-2019&dnh=YKPITPS27aUurNCcoYazhw%3d%3d>

<sup>3</sup><https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0001031-2019&dnh=cR%2bKlFAAtRwVwiuIATYbCQ%3d%3d>

<sup>4</sup><https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0000966-2019&dnh=BnO0uOd0KM YzIRp7GuFdLw%3d%3d>