



MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: October 15, 2022

RE: OPPOSITION TO HOUSE BILL 185 P.N. 3501 (STRUZZI)—“Cody’s Law”

Bill summary: [HB 185](#) (PN 3501) would amend [18 Pa.C.S. § 2702 \(a\)](#) to classify any attempt to cause, or intentionally or knowingly cause, bodily injury to a person on the autism spectrum or with a physical or intellectual disability as an aggravated assault, graded as a felony of the second degree and punishable by up to 10 years incarceration and \$25,000 in fines.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, we respectfully urge you to oppose House Bill 185.

HB 185 would broadly expand the definition of aggravated assault by eliminating the requirement to cause serious bodily injury to people with certain disabilities to trigger a felony charge.

An astonishingly broad set of conditions can trigger a felony charge under HB 185, including offenses against anyone on the [autism spectrum](#),¹ anyone with an intellectual disability, and most expansively, anyone with a physical disability, which, under the bill’s definition, could apply to people with conditions as common as arthritis, carpal tunnel syndrome, or hearing loss.

HB 185 would add these definitions to the [aggravated assault](#) statute to provide that any individual who causes “bodily injury” to a person on the autism spectrum or with a physical or intellectual disability commits a second-degree felony, punishable by up to 10 years in prison.

Aggravated assault offenses are designed to impose tougher penalties for actions that cause greater harm, injury, or risk of death. Pennsylvania law primarily distinguishes simple assault from aggravated assault based on intent and severity of the injury—a distinction intended to ensure that the punishment fits the crime:

- **Simple assault**² is [intentionally, knowingly, or recklessly](#)³ inflicting [bodily injury](#)⁴ on another person. Bodily injury is any physical impairment, including physical pain, and typically results in minor, non-permanent injuries like bruises or scratches. Simple assault is a second-degree misdemeanor, punishable by up to 2 years incarceration and \$5,000 in fines.
- **Aggravated assault**⁵ is [intentionally, knowingly, or recklessly causing](#)—or attempting to cause—[serious bodily injury](#) to another person that causes serious, permanent disfigurement, protracted loss or impairment of a bodily function, or creates a substantial risk of death. An aggravated assault that causes, or attempts to cause, **serious bodily injury** is graded as a first-degree felony, punishable by up to 20 years in prison and \$25,000 in fines. In special cases, aggravated assault that **does not involve** serious bodily injury is a second-degree felony, punishable by up to 10 years in prison and \$25,000 in fines.

¹ [42 Pa.C.S. § 5992. Definitions.](#)

² [18 Pa.C.S. § 2701. Simple assault.](#)

³ [18 Pa.C.S. § 302. General requirements of culpability.](#)

⁴ [18 Pa.C.S. § 2301. Definitions.](#)

⁵ [18 Pa.C.S. § 2702. Aggravated assault.](#)

Pennsylvania's aggravated assault statute has been repeatedly 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 nearly all classes of law enforcement as well as judges, members of the General Assembly, the Governor and other elected officials. It also includes private detectives, waterways conservation officers, psychiatric aides, parking enforcement officers, liquor control enforcement agents, public utility employees, and employees of the Department of Environmental Protection, among others.

HB 185 would define certain disabilities like these protected job categories to treat a simple assault as aggravated, 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.**

HB 185 would dangerously widen the scope of and penalties for assault offenses.

HB 185 would add to the legislature's [relentless expansion](#) of the criminal code, casting the carceral net as widely as possible. The steady addition of new and expanded offenses feeds prosecutors' penchant for overcharging. By way of example, each of the teenagers involved in Cody Overdorff's case (for whom the bill is named) were each charged with six offenses:

1. Stalking (M1—up to 5 years incarceration)
2. False imprisonment (M2—up to 2 years incarceration)
3. Simple assault (M2—up to 2 years incarceration)
4. False report (M3—up to 1 year incarceration)
5. Disorderly conduct (M3—up to 1 year incarceration)
6. Harassment (S—up to 90 days in jail)

All three defendants ([Cory Blystone](#),⁶ [Jordan Kinney](#)⁷, and [Dakota Patterson](#)⁸) pleaded guilty to stalking, false imprisonment, and simple assault; one also pleaded guilty to false reporting. Pleading guilty to one first-degree misdemeanor and two second-degree misdemeanors could result in a combined possible sentence of almost ten years—the maximum time allowed for a second-degree felony charge.

Rather than creating an entirely new crime, these concerns are better addressed at sentencing. It is far more appropriate for judges to consider the specific facts of a case before sentencing—in this case, whether the alleged victim's physical, intellectual, and/or developmental disability was known and should be considered 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 secure 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. Furthermore, serially expanding the aggravated assault statute undermines the fundamental distinctions between types of assault, distinctions intended to determine the severity and reasonableness of the punishment imposed.

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

⁶<https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0000964-2019&dnh=YKPITPS27aUurNCcoYazhw%3d%3d>

⁷<https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0001031-2019&dnh=cR%2bKlIfAAtRwVwiulATYbCQ%3d%3d>

⁸<https://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0000966-2019&dnh=BnO0uOd0KMYzIRp7GuFdLw%3d%3d>