



MEMORANDUM

TO: Pennsylvania Senate Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: October 6, 2020

RE: OPPOSITION TO SB 1085 PN 1586 (BLAKE)

Bill summary: [SB 1085](#) (PN 1586) would amend [18 Pa.C.S.A. § 5104](#) to create a new offense prohibiting evading arrest or detention on foot. If a person suffers serious bodily injury as a direct result of violating this section of the statute, the offense is graded as a felony of the third degree. If a person dies as a result, the grading is increased to a felony of the first degree. All other offenses under this section are graded as second-degree misdemeanors.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose SB 1085 for the following reasons:

SB 1085 creates a duplicate and unnecessary offense

SB 1085 needlessly expands the crimes code by creating a duplicative and unnecessary offense, an escalating trend in the Pennsylvania legislature that we specifically addressed in our October 2019 report: [More Law, Less Justice](#).¹ “Evading arrest or detention on foot” could currently be charged as resisting arrest, which *already* makes it a crime to prevent a lawful arrest and is currently graded as a misdemeanor of the second degree ([18 Pa.C.S.A. §5104](#)). Or if a person avoids apprehension, trial, or punishment, they could be charged with a third-degree felony or second-degree misdemeanor ([18 Pa.C.S.A. §5126](#)). And, of course, Pennsylvania permits use of force (including deadly force) to prevent the escape of a person who has been arrested ([18 Pa.C.S.A. §508](#)). Prosecutors use duplicative offenses like these to stack charges against defendants to use as leverage to force defendants to accept plea bargains.

SB 1085 is dangerously ill-defined

SB 1085 also appears to be an extension of an existing offense, fleeing or attempting to elude a police officer under [75 Pa.C.S.A §3733](#), which at least provides more specific requirements to charge someone who attempts to flee or elude police in a vehicle. SB 1085, however, includes elements that do a lot of heavy lifting in order to charge someone with this offense. SB 1085 defines evading arrest or detention on foot as when a “... person intentionally flees on foot from a person he knows is a public servant attempting to lawfully arrest or detain him.” What the bill doesn’t define are the following elements:

- “Intentionally”: How is intentionality determined? What elements establish intention?
- “He knows is a public servant”: How is a person expected to know the officer is a “public servant”? Under similar offenses, officers are required to be on duty and in uniform or in a marked vehicle in order to establish themselves as law enforcement. Officers are also required to issue a command, order, or signal. No such provisions are included in SB 1085. Additionally, it is unclear why “public servant,” rather than “peace officer” is used here. Does this include a school security guard? A principal? Or some other “public servant” claiming to be making a citizen’ arrest?

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

- “Attempting to lawfully arrest or detain him”: This provision is the most worrisome; not only does it presume a person knows that their arrest or detention is lawful, it predetermines — as part of the statute — that the arrest or detention is lawful, an assumption that has not been established or proven.
- “Direct result”: Felony charges under SB 1085 are established when serious bodily injury or death occurs as a “direct result of a violation of this section.” How is the “direct result” established? To be clear, a person cannot be prosecuted for behavior by a different person that is not a foreseeable result of their actions. What if the officer begins wildly shooting into crowds to stop the person fleeing? Is that action the responsibility of the officer? Or would SB 1085 hold the person fleeing responsible for the officer’s actions, claiming they were a “direct result” of fleeing? By way of contrast, enhanced felony grading under [§ 3733](#) is permitted when a driver “endangers a law enforcement officer or member of the general public due to the driver engaging in a high-speed chase.” SB 1085 includes no such clarity of definition in its provisions.

SB 1085 may invite unintended — and potentially unconstitutional — consequences

While the bill sponsor’s co-sponsorship [memo](#) indicates that this legislation is intended as a response to the death of a police officer in pursuit of a suspect, this offense could easily be targeted directly at people protesting. This offense could make every protestor who flees from the police subject to criminal charges. And in light of the poorly defined elements of this offense, it may be deployed to unconstitutionally punish protestors who are exercising their lawful First Amendment rights.

SB 1085 creates a duplicative and unnecessary crime that will add to the already choked reservoir of criminal offenses that permit prosecutors to stack charges against defendants, resulting in excessive punishment and longer terms of incarceration. In addition, its ill-defined provisions create a toxic recipe for spurious charges that may be unintentionally and unconstitutionally applied.

For these reasons, we urge you to oppose SB 1085.