



## MEMORANDUM

**TO:** The Pennsylvania Senate Health and Human Services Committee

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

**DATE:** October 17, 2022

**RE: OPPOSITION TO SB 1136 P.N. 1482 (MENSCH)**

**Bill summary:** [SB 1136](#) (PN 1482) would amend the [Vital Statistics Law of 1953](#) to **require** that the PA Department of Health (DOH) turn over information or data from vital statistics records to specialized legislative service agencies upon request, if those agencies claim that it will be used for research in the conduct of their official duties.

**On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose Senate Bill 1136.**

### **SB 1136 poses a serious threat to the confidentiality and security of Pennsylvanians' vital records information—some of the most highly protected information held by state government.**

The Department of Health (DOH) is already permitted to disclose vital statistics information to other federal, state, or municipal agencies of government, or to a research entity “subject to strict supervision by the department.” However, this kind of third-party disclosure is only allowed under very specific circumstances under the [Vital Statistics Law](#), since these records can include:

- Birth records, including birthplace and SSN of parent(s)
- Death records, including causes of death
- Adoption records
- Marital status
- Records of fetal deaths

The carefully constructed circumstances under which DOH is allowed to disclose vital statistics records is intended to balance the need to keep Pennsylvanians' personal information private and secure against the transparency and research interests of government agencies.

SB 1136 would instead **require** the Department of Health to turn over information or data from vital statistics records to specialized legislative service agencies upon request.<sup>1</sup> SB 1136 includes **no language to protect the confidentiality** of this information if released to one of these agencies, **nor does it prohibit its release** by those agencies to other entities. Without discretion to withhold vital statistics data, DOH could be required to release records to a government agency that is or has been unable to protect this data.

This would trample on the privacy rights of Pennsylvanians in order to grant government agencies wide access to their personal data.

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<sup>1</sup> Legislative service agencies typically conduct research at the direction of the legislative majority, and could include, but are not limited to: the Pennsylvania Commission on Sentencing; Legislative Budget and Finance Committee; Legislative Data Processing Center; Local Government Commission; Center for Rural Pennsylvania; Capitol Preservation Committee; **or any other legislative service agency created by statute after the effective date of the bill.**

## **Politically-driven investigations could easily exploit the changes made by SB 1136 to weaponize personal data.**

Eliminating the discretion to disclose vital records information to government agencies could invite politically-driven investigations to request certain kinds of personal information. The possibilities are endless, but one can imagine several scenarios under which this kind of data could be shared—without the knowledge or consent of the individuals concerned—and weaponized in politically targeted ways:

- Death records used to justify removing additional people from the voter rolls without proper due diligence or to conduct research outside of the regular list maintenance process;
- Death records used to stigmatize causes of death, such as suicide, overdose, HIV/AIDS, certain cancers;
- Birth records used to target the trans community;
- Fetal death records used to harass, threaten, or open criminal investigations.

Furthermore, knowing that their data could be utilized this way will certainly discourage people from sharing or reporting voluntary information for fear of disclosure and may frustrate efforts to collect vital statistics information necessary to protect public health.

## **Mandated disclosure under SB 1136 would create a security threat that puts Pennsylvanians' personal information at risk for identity theft and compromises PA's ability to protect against fraud.**

Every state has a system to collect vital statistics information from its residents, but dismantling discretionary disclosure would make Pennsylvania an outlier protecting vital statistics records.<sup>2</sup> Since 9/11, vital records offices across the country have been on heightened alert of the risks associated with compromised vital records systems and have moved toward further protections for vital statistics records rather than relaxing those protections.<sup>3</sup> It is particularly important that vital statistics disclosure be carefully contained and limited in order to protect against fraud. Birth certificates can be used to create, change, and steal identities and death certificates can be used to commit fraud against insurance companies, pension funds, or escape arrest warrants or convictions.

SB 1136 would strip away the Department of Health's ability to protect the commonwealth and its residents from these threats.

By replacing discretion with a mandate to disclose, SB 1136 creates a dangerous security threat to our vital statistics information. SB 1136 will grant a wide range of government agencies access to Pennsylvanians' most sensitive, personally identifiable information with no ability to keep that data secure, nor any restrictions on sharing it outside the agency. And in so doing, it will not only upset the balance between protecting Pennsylvanians' personal data privacy and the transparency and research interests of government agencies, it will eliminate it entirely.

**For these reasons, we urge you to oppose Senate Bill 1136.**

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<sup>2</sup> Most states have equivalent or stricter disclosure laws than Pennsylvania's current law, including the provisions relating to access to government agencies. See 16 Del.C. § 3110; N.J.S.A. 26:8-62; NY PUB HEALTH § 4174; VA Code Ann. § 32.1-271. Ohio Admin. Code 3701-5-12; Md. Code Regs. 10.03.01.08; W. Va. Code R. § 64-32-14.

<sup>3</sup> [The U.S. Vital Statistics System: The Role of State and Local Health Departments](#), National Research Council (US) Committee on National Statistics. Vital Statistics: Summary of a Workshop. Washington (DC): National Academies Press (US); 2009.