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MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 4, 2020

RE: OPPOSITION TO HOUSE BILL 2056 P.N. 2969 (STRUZZI)

Known as “Cody’s Law,”¹ [HB 2056](#) (PN 2969) would amend [Title 18 § 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 2056 for the following reasons:

HB 2056 eliminates the requirement to cause “serious bodily injury”

Pennsylvania law primarily distinguishes simple assault from aggravated assault based on intent and severity of injury. Simple assault ([Title 18 § 2701](#)) is charged when someone inflicts bodily injury on another due to intentional or reckless conduct, negligence in the use of a deadly weapon, or attempts to inflict such injury or by physical menace make a person fear that they will suffer imminent injury. Aggravated assault ([Title 18 § 2702](#)) is charged when someone causes or attempts to cause *serious* bodily injury to another person and shows an extreme indifference to human life.

HB 2056 would eliminate the requirement to cause or attempt to cause “serious bodily injury” and allow prosecutors to charge an assault as aggravated whenever a simple assault is committed against a person with a physical or intellectual disability. 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 2056 does not require knowledge of the person’s physical or intellectual disability

There is no provision in HB 2056 that requires someone to know (or reasonably know) that a person has a physical or intellectual disability. Given that these two criteria are the basis upon which an otherwise misdemeanor assault would be charged as a felony which would impose an additional 8 years in prison, reasonable knowledge of a person’s disability should, at a minimum, be required for a felony conviction under this provision.

HB 2056 needlessly expands and enhances criminal penalties

HB 2056 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](#).² 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.

¹ Representative Struzzi, House Co-Sponsorship Memorandum, *Cody’s Law to Protect Those That Cannot Protect Themselves* (November 14, 2019), at

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&cosponId=30652>

² 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](#),³ [Jordan Kinney](#)⁴, and [Dakota Patterson](#)⁵) 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.

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 2056 will add to the choked reservoir of criminal offenses and enhancements that result in excessive punishment and longer terms of incarceration.

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

⁴<https://ujportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0001031-2019&dnh=cR%2bKlFAAtRwVwiuIATYbCQ%3d%3d>

⁵<https://ujportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-32-CR-0000966-2019&dnh=BnO0uOd0KM YzIRp7GuFdLw%3d%3d>