



October 27th, 2022

Governor Tom Wolf
508 Main Capitol Building
Harrisburg, PA 17120

RE: Opposition to HB 103 P.N. 3500 (SCHMITT)

We, the undersigned 67 organizations and 180 individuals concerned about the health and wellbeing of Black, Latinx, Indigenous, and all people of color, gay, lesbian and bisexual people, trans and gender diverse people, people living with HIV and other communicable diseases in Pennsylvania strongly urge you, Governor Wolf, to veto House Bill 103.

HB 103 would create two new, unnecessary, and broadly applicable felony offenses and subject people with communicable diseases, such as HIV, all forms of hepatitis, influenza, chickenpox and COVID-19, to harsher penalties under the law. The bill was amended modestly in September 2022, but remains contrary to public policy and public health.

As amended, HB 103 (PN 3500) proposes two new felony offenses, now under § 2702.1 (assault of law enforcement officer):

1. A third-degree felony offense for the intentional or attempted act of throwing, tossing, spitting, or expelling saliva, blood, seminal fluid, urine, or feces at a police officer, punishable by up to 7 years in prison and \$15,000 in fines
2. A second-degree felony offense if (1) a person knows, should have known, or believed that the fluid or material was infected by a "reportable communicable disease"¹; and (2) that the communicable disease was transmissible by the saliva or other bodily fluid that was used—or attempted to be used—against the officer, punishable by up to 10 years in prison and \$25,000 in fines

We are deeply troubled that, even as amended, HB 103 retains its problematic communicable disease provision. The amended version of HB 103 allows any "reportable communicable disease," including HIV, to trigger a second-degree felony charge. Pennsylvania already criminalizes its citizens who are living with HIV and other communicable diseases. The use of criminal law to address public health concerns is stigmatizing, discriminatory, and ultimately targets people based on health status for acts that would not otherwise be so harshly penalized.

The communicable disease provision of HB 103 remains problematic because it:

- *Allows any "reportable communicable disease" to trigger the felony charge:* HB 103 uses the list of reportable diseases by regulation to define the second-degree felony offense. There are 75 reportable diseases on this list, including HIV, all forms of hepatitis, influenza, chickenpox, whooping cough, and COVID-19, creating a dangerous expansion of police pretext to arrest.
- *Does not require substantial risk of transmission:* As it is written, the second-degree felony provision could apply even if the action has a scientifically negligible risk of transmitting the communicable disease.
- *Does not require proof of transmission:* The second-degree felony provision does not require proof that the defendant is living with a reportable communicable disease, nor proof that the bodily fluid or material at issue actually contain any traces of the reportable communicable disease.

¹ As amended, the second degree felony offense in HB 103 applies if the person knew, had reason to know, should have known or believed the bodily fluid contained "a communicable disease declared reportable by regulation authorized by the Act of April 23, 1965 (1955 P.L.1510, NO.500), known as the Disease Prevention and Control Law of 1955."

- *Does not require actual transmission:* The offense does not require that transmission has occurred. Arrests could be made and felony charges filed solely on an unsubstantiated, falsely perceived, or negligible risk of harm
- *Does not require actual contact:* HB 103 defines the second-degree felony charge to include even attempted contact with a police officer; no actual contact with saliva or bodily fluids is necessary.

Ultimately, this legislation has the trappings of antiquated, harmful, and stigmatizing HIV criminalization laws while being more broadly applicable to any "reportable communicable disease." By punishing people living with a "reportable communicable disease" with more severe penalties under the law, HB 103 is discriminatory and stigmatizing. This carceral approach to health conditions only harms our state's public health response and further alienates people living with communicable diseases, such as HIV.

Like other parts of the criminal legal system, the criminalization of HIV and other communicable diseases is deeply rooted in racial biases. Several studies by The Williams Institute have found that HIV criminalization laws are disproportionately enforced against women of color, women who do sex work, and women of trans experience. Black, brown, and low-income communities – communities which are already vulnerable to over-policing, police brutality, and police surveillance – are especially harmed by policies, like HB 103, that criminalize health conditions.

We are opposed to HB 103 because of its regressive and harmful approach to public health. We are also opposed to the bill as a whole.

HB 103 would expand police power to arrest and prosecutorial power to stack charges against defendants. Any time a "new" crime is created, it gives prosecutors the power to "stack" charges for the same act. For one action, prosecutors will charge every possible applicable offense, each with a separate term of incarceration. This gives prosecutors extraordinary, sometimes coercive, leverage to secure a plea deal.

It is likely, for example, that someone would be charged under *both* § 2702.1 (assault of a law enforcement officer, which HB 103 would create) and § 2702 (aggravated assault, which already exists) for the same action. In other words, they would be charged with a second-degree aggravated assault *and* with HB103's new third-degree assault of a law enforcement officer.

Offenses against police officers already carry serious penalties, and the penalties proposed in HB 103 are wildly disproportionate to the actions it would criminalize. As written, someone could face up to 7 years in prison for simply spitting in the direction of a police officer; if the person "knew, had reason to know, should have known or believed" they had a reportable communicable disease, that penalty could jump up to 10 years in prison, and this is before "stacking" occurs.

Governor Wolf, you must act quickly to ensure that HB 103 does not dangerously and recklessly expand special protections already afforded to police officers. If HB 103 is not stopped, the consequences will be severe, especially for Black women, women who do sex work, women of trans experience, and people living with communicable diseases, such as HIV. We urge you to veto HB 103 and ensure Pennsylvanians, particularly Pennsylvanians of color are not further subject to over-policing, surveillance, and brutality at the hands of law enforcement.

We would be happy to provide you with additional data, research, and information about the harms of criminalizing public health issues. For more information or should you be interested in speaking more, please contact:

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Organizations

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ADL Philadelphia
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AIDS Foundation Chicago
AIDS Law Project of Pennsylvania
All Under One Roof LGBT Advocates of Southeastern Idaho
Allies for Health + Wellbeing
ALPHA Pittsburgh, Inc.
Amistad Law Project
Black and Pink Massachusetts
Bradbury-Sullivan LGBT Community Center
Center for Asian Health, Lewis Katz School of Medicine, Temple University
Center for Coalfield Justice
Colorado Organizations Responding to HIV/AIDS - CORA
Community Care Management
Community Liver Alliance
Desiree Alliance
Elevyst
Equality Ohio
Free the Ballot
GIRL U CAN DO IT, INC.
Greater Philadelphia Health Action
Hacking//Hustling
Hep B United Philadelphia
Hepatitis B Foundation
Hepatitis C Allies of Philadelphia (HepCAP)
HIV Justice Network
HIV Modernization Movement-Indiana
Housing Works
Hugh Lane Wellness Foundation
Human Rights Campaign
Hyacinth AIDS Foundation
Lambda Legal Defense and Education Fund, Inc.
Lancaster LGBTQ+ Coalition
LGBT Center of Greater Reading
LGBT Elder Initiative at William Way Community Center
Mazzoni Center
Mississippi Positive Network
National Working Positive Coalition
New Voices for Reproductive Justice
Northeast Philadelphia Chinese Association (NEPCA)
Ohio Health Modernization Movement
PA Budget and Policy Center

Pennsylvania HIV Justice Alliance
Pennsylvania Youth Congress
Philadelphia Mayor's Office of LGBT Affairs
Positive Women's Network-PA
Positive Women's Network-USA
Positively Trans
PrEP4All
Project Safe Philadelphia
Rainbow Rose Center
Reframe Health and Justice
RISE IMPACT
Tennessee HIV Modernization Coalition
The Elizabeth Taylor AIDS Foundation
The Pennsylvania HIV Justice Alliance
The Reunion Project
The Sero Project
The Social Justice Center
The Well Project
Treatment Action Group
Vivent Health
Western North Carolina Aids Project
Woodhull Freedom Foundation

Concerned Pennsylvania Residents

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