



MEMORANDUM

Eastern Region Office
PO Box 60173
Philadelphia, PA 19102
215-592-1513 T
215-592-1343 F

Central Region Office
PO Box 11761
Harrisburg, PA 17108
717-238-2258 T
717-236-6895 F

Western Region Office
247 Fort Pitt Blvd
Pittsburgh, PA 15222
412-681-7736 T
412-681-8707 F

TO: The House of Representatives of Pennsylvania

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: March 13, 2017

RE: OPPOSITION TO HOUSE BILL 27 (WHITE)

This week the House may consider House Bill 27. This legislation imposes a 30-day public blackout of information that identifies an officer under investigation for the discharge of a weapon or the use of force, up to and including deadly force. A public official who violates this gag order can be criminally charged with a misdemeanor of the second-degree. The ACLU of Pennsylvania recognizes the important role that police officers play in our local communities. We also understand that their work may sometimes place them in danger. But House Bill 27 does nothing to address those concerns – it is a solution in need of a problem.

On behalf of the 43,000 members of the American Civil Liberties Union of Pennsylvania, I respectfully urge you to vote “no” on HB 27 for the following reasons:

Unnecessary/redundant protection: Current law allows agencies to withhold the name of an officer when there are credible threats of harm to the officer or the officer’s family. Threats of this nature, however, are rare. When pressed for examples, leaders from the Fraternal Order of Police in Pittsburgh and Philadelphia could not name a single incident in Pennsylvania in which an officer or family member was harmed or threatened during an investigation of a shooting or incident involving force.¹ House Bill 27 mandates redundant protections while imposing greater restrictions on how and when those protections are used.

Indefinite timeframe: HB 27 does not include any requirements to disclose an officer’s identity. As a result, the prohibition against disclosure, compounded by the threat of criminal charges for violating the prohibition, could result in an indefinite blackout, far exceeding the 30-day timeframe.

¹ Jonathan D. Silver / Pittsburgh Post-Gazette. "Pittsburgh FOP head backs proposal to keep cops anonymous during investigations." Pittsburgh Post-Gazette. N.p., 18 Sept. 2015. Web. 13 Mar. 2017.

Impedes local decision-making: HB 27 overrides the judgment of local officials, preventing them from responding to the unique needs and dynamics of their communities. Worse, this bill criminalizes actions that diverge from its pre-determined protocols. These decisions are best made autonomously and locally, where individual circumstances can be assessed on a case-by-case basis. They are not decisions to be made from the state capitol.

Diminishes accountability and transparency: Our police officers are public employees with a great deal of power, including the power to use force. But that power is only legitimate when the public trusts that its use is transparent and accountable. By withholding important information from the public at times when openness is most critical, HB 27 inherently implies that law enforcement has something to hide.

Current trends in policing focus on greater transparency, not less. HB 27 would work against policies and practices adopted in Pennsylvania and across the United States. In keeping with the DOJ's recommendation to "share basic facts and circumstances of the incident known at the time,"² the Philadelphia Police Department has retained its policy to identify a police officer involved in shooting someone within 72 hours of the incident, barring circumstances that necessitate keeping the information private.³ Philadelphia is not alone in this approach. The Los Angeles Police Department, one of the most maligned departments in modern history, regularly releases the names of officers involved in on-duty shootings.⁴ The Las Vegas Metropolitan Police Department goes further by holding a press briefing within a week of a shooting and releases video, photographs, 911 calls, and details about officer-involved shootings.⁵

The call for more transparency also comes from open government advocates. Terry Mutchler, the former head of the Office of Open Records, warned that, "legislation like this can be dangerous...This type of legislation, while very well intended, which I understand coming from a long family of cops, collides with open government. Government must be open and transparent no matter how difficult that may seem at times."⁶

If police departments expect to maintain positive relationships with the communities they patrol, transparency and accountability must be part of the departments' operations. HB 27 undermines transparency in policing at moments when it is needed the most.

Damages community relations: HB 27 risks heightening tensions between the police and the community by withholding critical information from the public. Policymakers have an important role to play in addressing the public's sustained concerns regarding police practices in general and police misconduct in particular. At the very least, state law should not exacerbate tensions between the police and communities. House Bill 27 does exactly that.

Please vote "no" on HB 27.

² United States. Department of Justice. Community Oriented Policing Services. (2015). *Collaborative Reform Initiative: An Assessment of Deadly Force in the Philadelphia Police Department* by George Fachner and Steven Carter. Washington D.C.: Office of Community Oriented Policing Services. (6).

³ City of Philadelphia. Philadelphia Police Department. (September, 2015). *Directive 10.1: Use of Force – Involving the Discharge of Firearms*. (19).

⁴ City of Los Angeles. Los Angeles Police Department. (2015). *Use of Force: Year-End Review Executive Summary*. (30).

⁵ City of Las Vegas. Las Vegas Metropolitan Police Department. (June, 2015). *Directive GO-008-15: Use of Force*.

⁶ Jonathan D. Silver / Pittsburgh Post-Gazette. "Pittsburgh FOP head backs proposal to keep cops anonymous during investigations." Pittsburgh Post-Gazette. N.p., 18 Sept. 2015. Web. 13 Mar. 2017.