



MEMORANDUM

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TO: The Senate of Pennsylvania

FROM: Andy Hoover, Legislative Director, ACLU of Pennsylvania

DATE: October 18, 2016

RE: OPPOSITION TO SENATE BILL 976 PN 2165 (GREENLEAF)

The Senate is likely to soon consider Senate Bill 976. Introduced by Senator Greenleaf, this legislation amends the Wiretap Act to facilitate the ability of police officers to use body worn cameras (BWC). Some believe that there is consensus among stakeholders for police officers to wear BWCs. But this assertion requires an important caveat: If these cameras are to be an effective tool in law enforcement practices, their use must be accompanied by policies that promote transparency and accountability and that balance privacy and the public interest. Unfortunately, SB 976 fails that test. The American Civil Liberties Union of Pennsylvania opposes SB 976, and on behalf of the 25,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote “no” on this bill.

In recognition of the work of the primary sponsor, it is certainly true that some footage from BWCs and other police videos should be shielded from public view. Victims of and witnesses to crime need protection. And police video should not become fodder for internet gossip. By exempting this video data as an open record under the Right To Know law, SB 976 provides that privacy.

However, video data that documents incidents that are legitimately in the public interest—such as arrests, use of force by an officer, or disputes between an officer and a resident—will be nearly impossible to obtain, even if the requester is in the video. The legislation creates a byzantine process to request data from police cameras that requires the requester to identify all persons in the video (which the requester has not seen). This process allows agencies to deny such a request if the data requested is part of an investigation, which compounds an existing flaw in the Right to Know law that makes it extremely difficult to obtain information about Pennsylvania’s criminal justice system.

If a request for video data is denied, the requester can appeal to a court of common pleas. But the person must pay a filing fee of \$250, which will price out requesters of limited means. If the requester clears this hurdle, they must then ascertain that they contacted or attempted to contact every person in the video.

At no point in this process is the agency that holds the data or the court required to release the record. According to the language of the bill, a court “may” release a record if it finds by a preponderance of the evidence that the requester has met their burdens. But the bill is quite clear with all of the reasons why an agency, a district attorney, or a court may dismiss a request, including if a request “failed to describe with sufficient particularity the incident or event”- a vague standard- or, of course, if the data is part of an investigation.

In practice, under this bill, the public will rarely, if ever, see video produced by police departments that shows misconduct by officers.

Meanwhile, the bill undermines privacy by eliminating the current provision of law that prohibits police from recording inside a residence. SB 976 does the reverse by allowing law enforcement to record inside a residence at anytime, regardless of circumstances. If police respond to a call about loud music, they can be recording anything or anyone within view of a person’s front door. An earlier version of the legislation allowed recording inside a residence in limited circumstances, but that provision was eliminated by the amendment passed by the Senate on October 18.

Finally, SB 976 is silent on two key best practices in the use of BWCs. First, the bill provides no requirement for when a camera must be turned on. In high profile incidents around the country, police cameras have not been powered on until after police used force against someone, including last month in Charlotte, North Carolina. Cameras should be on anytime an officer encounters the public. But SB 976 has no such requirement.

In addition, the bill does not address how long data should be stored. The massive amounts of data that can be compiled by these cameras will create a large compilation of street activity in a jurisdiction, creating an Orwellian nightmare of government tracking. There must be reasonable timelines set for the destruction of data, but SB 976 does not address this key issue either.

Police body cameras cannot become a tool of manipulation for law enforcement agencies. They should only be used in conjunction with policies that promote transparency, accountability, privacy, and the public interest. SB 976 fails to implement such policies. Please vote “no” on SB 976.