



MEMORANDUM

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TO: House Judiciary Committee

FROM: Andy Hoover, Communications Director, ACLU of Pennsylvania

DATE: February 6, 2017

RE: OPPOSITION TO HOUSE BILL 27 (WHITE)

On Tuesday, the House Judiciary Committee is scheduled to consider House Bill 27. This legislation prohibits public agencies and employees from identifying a police officer who has discharged his firearm or used force for 30 days after the incident. A public official who violates this gag order can be charged criminally with a misdemeanor of the second-degree. On behalf of the 28,000 members of the American Civil Liberties Union of Pennsylvania, I respectfully urge you to vote “no” on HB 27.

As a commonwealth and as a country, we are in a moment in which communities that have been adversely impacted by police misconduct are rightly demanding an end to this unfair treatment. This movement is demanding greater accountability and transparency from police departments and their local governments.

HB 27 would withhold important information about the function of government from the public and inherently implies that police officers have something to hide when they use force. It debases government transparency and negates the ability of local officials to make decisions based on circumstances in their communities. This decision is best left to local officials who can assess the circumstances of an individual case and in their communities to reach the most informed position possible. HB 27 actually risks heightening tensions between the police and the community by withholding critical information from the people. It is not a decision to be made from the state capitol.

The ACLU of Pennsylvania recognizes the important role that police officers play in our local communities and in our commonwealth. We also understand that their work may sometimes place them in danger. Fortunately, current law provides local officials with the option of protecting officers, if necessary, in the rare instances in which an officer’s use of force has led to credible threats. And law enforcement agencies have protocols for protecting public officials who may be in danger. HB 27 is wholly unnecessary.

Unfortunately, the supporters of HB 27 fail to recognize or to respect the very real concerns raised by communities concerned about unfairness in policing. Our police officers are public employees with a great deal of power, including the power to use force. This power must be coupled with the responsibility to be transparent and accountable to the public.

HB 27 goes in the opposite direction of the trend in policing. The trend is to be more transparent, as highlighted by the Philadelphia Police Department's (PPD) policy to identify a police officer involved in shooting someone within 72 hours of the incident, barring circumstances that necessitate keeping the information private. The department's decision came on the heels of both a high-profile shooting in which information was withheld from the public and of a report from the Department of Justice about the PPD's operations. The DOJ report recommended the 72-hour policy and suggested that the department "should share basic facts and circumstances of the incident known at the time(.)"

This policy was implemented by PPD's previous commissioner and has been retained by its current commissioner.

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, according to the *Los Angeles Times*. 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.

The call for more transparency is coming not only from civil rights groups but also from open government advocates. According to the *Pittsburgh Post Gazette*, Terry Mutchler, the former head of the Office of Open Records, said of the bill:

I think legislation like this can be dangerous. A snapshot of the nation right now -- whether Baltimore, Ferguson or Cleveland -- demonstrates that accountability in our police departments and in our government in general is paramount. The Supreme Court in Pennsylvania said loud and clear the right to know is designed to prohibit secrets, scrutinize actions of public officials and hold public officials accountable for their actions.

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.

If police departments expect to maintain positive relationships with the communities they patrol, transparency must be part of the departments' operations. HB 27 diminishes transparency at times when it is needed most.

Policymakers have an important role to play in addressing the concerns raised by Pennsylvanians impacted by police misconduct. At the least, state law should not exacerbate the division between the police and communities. House Bill 27 does exactly that. Please vote "no" on HB 27.