



## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** October 18, 2023

**RE: NEUTRAL ON HB 462 P.N. 2164 (KINSEY)**

**Bill summary:** [HB 462](#) (PN 2164) would amend [Title 44](#) (Law and Justice) to create a new section prohibiting the use of chokehold restraints by law enforcement officers. SB 462 was amended in committee to add a new subchapter under [Title 53](#) (Municipalities Generally) to require law enforcement agencies to collect and report on use of force incidents.

**The ACLU of Pennsylvania previously supported HB 462 (PN 430)—banning police use of chokeholds. But without improvements to strengthen the use of force reporting requirements, the ACLU-PA is neutral on HB 462 (PN 2164).**

### **HB 462 would prohibit police use of chokeholds and positional asphyxia in certain situations.**

Despite concerns about the [effectiveness](#) of chokehold bans,<sup>1</sup> they remain an important limitation on police use of force. HB 462 would prohibit police from using the following types of restraints:

- When making an arrest, a Pennsylvania State Police officer or municipal police officer may not:
  - Apply the use of a chokehold;
  - Apply any pressure to the diaphragm, airways or any compression that inhibits breath or the flow of blood to the brain of the person; or
  - Hold the person in prone restraint or face down while restrained for a period of time exceeding three minutes or as practical as to avoid positional asphyxia.
- Officers may not keep the person in prone restraint or a face down position once the person is restrained.
- *These prohibitions do not apply when the use of deadly force is permitted under law.*

### **HB 462 would establish use of force reporting requirements. But the reports would yield little, if any, actionable information.**

SB 462 would require that all police departments maintain records of use of force incidents resulting in serious bodily injury or death and forward those records to the Pennsylvania State Police. The State Police would then compile the records into an annual, aggregated report for distribution to the Attorney General, the House and Senate Judiciary committees, and the Senate Law and Justice committee.

#### **Use of force records**

- Each law enforcement agency (LEA) must maintain records of use of force incidents and forward those reports to the Pennsylvania State Police (PSP).
  - Only requires reporting of incidents that may result in serious bodily injury or death (as opposed to all uses of force or incidents resulting in any injury), which sets an extremely high threshold for reporting a use of force injury.
- A record must include:
  1. Reason for the use of force
  2. Personal injuries, if any

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<sup>1</sup> Evstatieva, Monika and Tim Mak, [How Decades Of Bans On Police Chokeholds Have Fallen Short](#), NPR, June 16, 2020.

3. Property damage (if any)
4. Deaths (if any)
5. Suspect information, including statute violations and apprehension status of the suspect
  - Does not require collection of any demographics of the subject (e.g., race, gender, age), the type of force used, date/time/location of the incident, information about the officer(s) involved or their departments.
  - But it does require each report to include the criminal history of the suspect subjected to force.

### **Annual report**

- On an annual basis, PSP will compile the records from all LEAs to create a report that contains:
  1. Statewide aggregations of information collected under section 2133(c) (relating to recordkeeping);
  2. The total number and percentage of incidents involving the use of force;
  3. The total number and percentage of incidents involving the use of force resulting in serious bodily injury; and
  4. The total number and percentage of incidents involving the use of force resulting in death.
- The report will be distributed to the Attorney General, the House Judiciary committee, Senate Judiciary committee, and the Senate Law and Justice committee.
  - There is no provision that requires public disclosure of the annual report.

While it may be argued that SB 462 takes a step in the right direction because it requires *some* data collection on use of force (currently there is no requirement to collect or report police use of force incidents), its provisions are tantamount to meaningless. Use of force incidents are ideally tracked in order to (1) identify problem officers in order to intervene before a pattern of excessive force results in harm and/or death, and (2) to identify trends in how force is being used and against whom. But the data collection requirements in SB 462 are so weak and non-descript that the data will yield almost nothing of value. What actions or changes could residents, legislators, mayors, chiefs of police, or officers possibly recommend based on simple, annual tallies of the total number of use of force incidents and those resulting in serious bodily injury or death? The report will yield no data about the officers responsible, which departments they work for, and who was subjected to the use of force. Moreover, there is no provision requiring that even these tallies are made publicly available.

Unfortunately, the use of force reporting requirements under SB 462 offer neither transparency nor accountability. **As a result—and by any metric—it fails as a reform measure.**

**For these reasons, the ACLU-PA is neutral House Bill 462.**

### **RECOMMENDATIONS FOR USE OF FORCE REPORTING**

There are many examples of model use of force policies. Below is [model language](#) for collecting and reporting on use of force incidents drafted by the [Policing Project at NYU School of Law](#).<sup>2</sup>

#### **Definitions**

1. For the purposes of this Section and the next Section:
  - a. “Physical force” means the use of physical effort or the application of a tool, technique, or weapon intended to induce a person’s compliance or overcome a person’s resistance. “Physical force” does not include physical contact used solely for facilitating custody of a fully compliant person, such as the application of handcuffs on a cooperative arrestee.

<sup>2</sup> Policing Project, NYU School of Law, [Model Data Collection and Transparency Statute](#), pp 8-10.

- b. “Deadly force” means physical force that, under the circumstances as they reasonably appear, is substantially likely to result in serious bodily harm or death to the person against whom it is used.
- c. “Serious bodily injury” means bodily injury that results in a permanent disfigurement, extreme physical pain, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

**Use of Force Data**

- 2. Each law enforcement agency shall annually furnish a report of all instances when a law enforcement officer employed by that agency:
  - a. Uses physical force against a person that results in death, serious bodily injury, or any other injury requiring medical treatment or evaluation; [Alternative: Uses physical force against a person that results in bodily injury.]
  - b. Discharges a firearm at or in the direction of another person, whether or not injury occurs;
  - c. Uses a weapon (i.e., any apprehension or restraint tool, including electronic control weapons, tear gas, chemical spray, and batons) against a person;
  - d. Deploys a canine against a person; or Is injured as a result of an incident involving the use of force against the officer.
- 3. For each incident described in Subsection 2, the agency shall provide:
  - a. The date, time, and location of the incident;
  - b. The unique identification number of the officer(s) who used force;
  - c. The number of law enforcement officers involved in the incident;
  - d. The number of non-law enforcement persons involved in the incident;
  - e. The type and severity of the injuries sustained, if any;
  - f. The perceived gender, race or ethnicity, and age of each person at whom force was directed;
  - g. Whether the officer perceived the person against whom force was directed to be armed, and if so, the type of weapon, as well as whether the person was in fact armed, and if so, the type of weapon.
- 4. The agency shall make this information public on the agency website, in machine-readable format, classified by law enforcement agency.

**Public Access to Use of Force Records**

- 5. For any incident in which a law enforcement officer uses force against a person that results in death or serious bodily injury, the following records shall be made available for public inspection under [State Public Records Law] upon the conclusion or termination of any internal investigation, including the appeals process, examining the law enforcement officer’s conduct, or [2 years] after the incident, whichever is sooner:
  - a. Records created or obtained related to the incident, including the name of the officer(s) who used force, and all the items listed in Section VII(d)(ii-xi) below [*“related investigatory materials” for complaint records*].
- 6. Before disclosing any records identified in subsection 5, the agency that holds the records must follow the redaction procedures set forth in subsections VII(7), (8), (9), and (10) [*complaint section redaction procedures*].
- 7. The records identified subsection 5 shall be retained so long as the officer who used force is employed by the agency, or for a period of 20 years, whichever is longer.