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MEMORANDUM

TO: The Pennsylvania House Judiciary Committee

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: May 5, 2017

RE: OPPOSITION TO HOUSE BILL 149 (KNOWLES)

House Bill 149 criminalizes the use of recording devices inside and in the “environs” of a courtroom without the consent of the court or the presiding judge. This new crime, which is graded as a second-degree misdemeanor, would be triggered regardless of the intent of the actor.

On behalf of the 45,000 members of the ACLU of Pennsylvania, I urge you to vote ‘NO’ on House Bill 149 for the following reasons:

Offers redundant protection: HB 149 seeks to address intimidation of witnesses and as such, its intent is laudable. However, criminal law already includes provisions to protect witnesses from intimidation. Furthermore, court rules already prohibit the use of cameras in a courtroom without authorization from the presiding judge.

Excessively broad prohibition against recordings: The language of HB 149 goes further than targeting those who would intimidate a witness. It establishes that a crime occurs when an electronic device is used “in any manner or for any purpose... to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a hearing room, courtroom or the environs of a hearing room or courtroom.” **There is no requirement of criminal intent**, so members of the press and other interested citizens who report on activities in an open courtroom could be criminally charged. *The new crime in HB 149 occurs not only in the courtroom itself but also in the “environs” of the courtroom.* “Environs” is not defined in the legislation. Thus, a reporter who is standing at the entrance of a courtroom (or even at the courthouse entrance itself) and using a device to communicate on court proceedings could be subject to criminal charges.

Provisions may violate the First Amendment: Due to HB 149’s vague language and overbroad criteria, it risks criminalizing constitutionally protected speech under the First Amendment and in particular, speech related to reporting on court proceedings.¹

Deterring witness intimidation and maintaining courtroom decorum are worthy goals. But HB 149 is a heavy-handed approach that invites First Amendment violations and may needlessly implicate otherwise innocent actors with no intent to do harm.

For these reasons, we urge you to vote “NO” on House Bill 149.

¹ See opinion in *Craig v. Harney* 331 U.S. 367 (1947) “There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor reports of occurrences in judicial proceedings.” Available at <https://supreme.justia.com/cases/federal/us/331/367/>