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MEMORANDUM

TO: The Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: June 5, 2017

RE: OPPOSITION TO HOUSE BILL 27 (WHITE)

House Bill 27 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, including the use of 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 role that police officers play in local communities and understand that their work may sometimes place them in danger. But this legislation does nothing to address those concerns; in fact, the mandated secrecy imposed by HB 27 will likely escalate tensions and arouse suspicions, contributing to the problem this bill ostensibly intends to address.

On behalf of the 53,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote ‘no’ on House Bill 27 for the following reasons:

Offers redundant and unnecessary 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 a use of force investigation of an officer-involved shooting.¹ In response to these rare incidents, HB 27 offers no new protection for police – instead, it mandates that public officials obey a gag order under threat of criminal prosecution.

Risks an indefinite blackout: At no point in the process does HB 27 ever require public officials to reveal the identity of an officer. And given the threat of criminal charges if an officer’s identity is improperly disclosed, the bill practically guarantees that a public official will err on the side of secrecy. The prohibition against disclosure compounded by the threat of criminal charges could result in an extended or even indefinite blackout of information.

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. This is a ‘one-size fits all’ response to complex and often emotionally charged situations. These decisions are best made locally where circumstances can be assessed on a case-by-case basis.

Diminishes accountability and transparency: Police officers are public employees with a great deal of power, including the power to use deadly force. But that power is only legitimate when the public trusts that its use is transparent and accountable.

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 [Department of Justice’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, of course, not alone in this approach. The Los Angeles Police Department, well-known for its history of deeply troubled and conflicted relationships with the communities it serves, [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

Damages community relations: HB 27 risks heightening tensions between the police and the community by withholding critical information from the public. Automatically concealing the identity of an officer involved in a use of force incident implies that police officers have something to hide. And in the absence of identifying information, the public is left to suspect that any/all officers could be the one(s) involved. These assumptions only serve to invite and exacerbate public suspicion and mistrust of local law enforcement, whether warranted or not.

Policies like those adopted by the Las Vegas Police Department have been credited with deescalating community tensions after use of force incidents. “Except in rare cases, Las Vegas publicly releases police footage of controversial or deadly altercations involving officers, distinguishing the city from others that cite ongoing investigations or family privacy as reasons to keep videos shielded.”⁶ This policy was tested again last month when a [white police officer killed an unarmed black man](#). Despite video of the incident, eyewitnesses, and plenty of media coverage, no protests ensued, reflecting the community’s growing trust in the Las Vegas police force.

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

For these reasons, we urge you to vote ‘NO’ on House Bill 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 Montero, D., & Kaleem, J. (2017, May 19). A white police officer kills an unarmed black man, and, in Las Vegas, there are no protests. Retrieved from <http://www.latimes.com/nation/la-na-vegas-police-chokehold-20170519-story.html>