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TESTIMONY IN SUPPORT OF SENATE BILL 400

**An Act amending the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, in general provisions, further providing for definitions; and, in Office of Attorney General, further providing for criminal prosecutions.
March 27, 2017**

Senator Greenleaf and distinguished members of the Senate Judiciary Committee, my name is Elizabeth Randol. I am the legislative director for the American Civil Liberties Union of Pennsylvania, and I am here in support of Senate Bill 400, sponsored by Senator Haywood, and on behalf of the 44,000 members of the ACLU of Pennsylvania.

The ACLU of Pennsylvania greatly appreciates the committee's consideration of this bill relating to investigations of officer-involved deaths. Senate Bill 400 proposes a timely reform and response to recent tragedies that have catapulted cases of fatal use of force by police into the national spotlight.

Over the past several years, state, federal and local lawmakers have responded to these incidents by gathering information, listening to community leaders, and reviewing police practices as they consider reforms. Current trends in community policing focus on several reform elements, including improved data collection, use and practice of body worn cameras, identification of officers under investigation for deadly use of force, provisions for enhanced and specialized training, as well as procedures for independent investigations of deadly use of force cases.¹ The goal of such reforms is to increase transparency, trust, and accountability in law enforcement and to ensure that police practices are fair both to officers and to the public. Senate Bill 400 proposes reforms that would serve to advance those goals.

Rebuilding trust and reestablishing legitimacy is, of course, a difficult job. To meet the expectations of communities served by local law enforcement, we need to understand how people define words like "trust" and "legitimacy." A 2016 study² offered important insight into how Pennsylvanians define police legitimacy. The results are illuminating and instructive. Most respondents defined police legitimacy in one of three ways:

1. Integrity/morality ("being honest", "doing the right thing", "truthful")
2. Legality/lawfulness ("lawful", "legal", "following the law", "they follow the rules")
3. Fairness ("acting without bias", "transparent", "fair")

These characteristics are echoed by law enforcement officials themselves. At a 2015 summit of chiefs of police, participants agreed that strong community-police relationships rest on the foundational elements of communication, partnership, and trust.³ Public

¹ "Law Enforcement Overview." *National Conference of State Legislatures*. N.p., 12 Dec. 2016. Web. 20 Mar. 2017.

² Pennsylvania State Data Center. *Meaning of Police Legitimacy Differs Among Groups* by Jennifer Gibbs, Ph.D. (October 18, 2016).

³ International Association of Chiefs of Police. *National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust*. January, 2015.

administration organizations have also arrived at similar definitions for measuring trust and equity between police departments and their local communities.⁴

The 2016 survey found that “integrity/morality” was the most commonly shared definition of police legitimacy among Pennsylvanians. But there were notable differences. White respondents primarily defined legitimacy as integrity/morality or lawfulness/legality, while non-white respondents most often defined police legitimacy as integrity/morality or fairness. The emphasis on fairness is a significant one, particularly in terms of how communities of color assess the legitimacy of an investigation. Many reforms to police practices, like Senate Bill 400, aim to resolve problems around fairness – both procedural fairness (due process) and distributive fairness (outcomes applied equally to everyone).

Importantly, police primarily defined their legitimacy by measures of effectiveness, a definition not widely shared among other Pennsylvanians. Being aware of this disconnect between police and civilian perceptions of legitimacy is both an instructive and useful tool in making meaningful reform. Local law enforcement success is no longer an exclusive measure that reflects the absence or reduction of crime. Success must also include the presence of legitimacy and trust as perceived by the community members they serve. Indeed, if law enforcement officers do not have the public’s trust, they cannot be effective at doing their jobs.

These divergent perspectives illustrate how challenging it can be for Americans to find common ground on policing issues. But measures like Senate Bill 400 would help identify a common path forward. By requiring the Pennsylvania attorney general to appoint a special prosecutor whenever a civilian is killed by police, SB 400 would foster a more impartial, objective, and *fair* investigation into whether deadly force was justified. Furthermore, a special prosecutor would help investigating authorities remove any *real or perceived* conflicts of interest or other barriers that may arise due to the personal and professional relationships between officers and especially between officers and their local district attorney.

If enacted, Pennsylvania would join a growing number of states that have created procedures to improve transparency in investigations into officer-involved deaths or allegations of police abuse of force: California (Penal Code §§ 917, 919), Colorado (§§ 16-2.5-301, 20-1-114), Connecticut (§ 51-277a), Georgia (§ 15-12-83, §15-12-71), Hawaii (§§ 28-151 through 153), Illinois (50 § 727/ 1–10), New York (Executive Order 147), Utah (§ 76-2-408) and Wisconsin (§175.47). Municipalities have also established similar procedures for independent investigations of police use of deadly force, including cities like Los Angeles and New York, where recent, high-profile cases have significantly eroded the relationship between police departments and the communities they serve.

Pennsylvania should join these states in reforming how deadly force investigations are conducted. We respectfully urge you to vote in favor of Senate Bill 400.

⁴ Svava, James. “Conducting a Local Government Equity Inventory.” National Academy of Public Administration. NAPA provides guidance for local governmental and departmental leaders in conducting equity inventories to assess social equity within organizations like police departments. 2005.