



## The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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Hon. Jay Costa  
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Hon. Lawrence Farnese, Jr.  
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### **RE: Pending Police Conduct Reform Legislation, SB 459, 1205**

Dear Senator Costa, Senator Farnese, and Senator Street,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness ("Commission"), we write to bring to your attention our concerns with two legislative bills addressing police conduct reform, SB 459 and SB 1205, which have not yet been voted upon or passed by the Legislature.

Several weeks ago, our Commission learned belatedly of the passage of two of four particular bills addressing police conduct reforms, HB 1841 and HB 1910. We understand that the bills were on a fast track as part of a well-intentioned response to the murder of George Floyd on May 25. Unfortunately, the swift movement of the bills prevented our Commission from being able to comment on them in time.

As you might expect, a number of our members specialize in the practice of civil rights' law and consequently, have been involved in numerous lawsuits on behalf of individuals who have been subjected to police misconduct. They have a significant interest in and knowledge about the use of force by police, and would have been very willing to apply that experience to the review of the legislative efforts to address recent instances of police misconduct.

In light of the fact that the two Senate bills, 459 and 1205, remain under consideration, our Commission would like to take the opportunity to bring our concerns about aspects of those bills to your attention. We are requesting that you and your colleagues on the Judiciary Committee consider certain amendments to each of the bills before they are voted upon.

Our concerns and recommendations regarding each bill are set forth below.

**I. Concerns Regarding Police Conduct Reform Legislation:**

**A. SB 459**

Although SB 459 would require law enforcement agencies to begin collecting data on officers' use of force, the bill limits data collection to only those incidents that result in serious bodily injury or death. SB 459 does not require law enforcement agencies to document all incidents where force is used. Failure to require law enforcement agencies to report and record all use of force incidents prevents municipal and state government officials from identifying and correcting problematic practices and officers *before* patterns of use of force resulting harm or death emerge. Additionally, only requiring law enforcement agencies to report use of force resulting in seriously bodily injury or death permits law enforcement agencies to shield officers who routinely use unnecessary force from being held accountable for their actions. In essence, the bill ineffectively thwarts incidents of excessive use of force from occurring in the first place, and allows officers to engage in unnecessary but non-lethal use of force tactics, such as punching, kicking, or using chemical weapons, in the routine performance of their job duties.

SB 459 also fails to require law enforcement agencies to include essential data in their use of force reports. Specifically, SB 459 does not require law enforcement agencies to collect or report any demographic data attributable to people subjected to officers' use of force, any identifying or personal information attributable to the officer who used force, or the results of any investigation stemming from the use of force. Exclusion of this data prevents law enforcement agencies and government officials from detecting whether officers use force against certain groups of people, particularly people of color, at higher rates than members of other groups. It may also inadvertently aid individual officers and police departments in evading accountability for inappropriately using force or failing to appropriately respond to incidents of use of force.

Furthermore, specifically requiring law enforcement agencies to include information related to a suspect's statutory violations or apprehension status of the suspect in use of force reports may allow officers and their police departments to imbed or invent post-hoc justifications for using force. It is well-known that police have used charges of "resisting arrest" as a way to try to justify employing use of force measures after the fact.



Finally, SB 459's requirement that Pennsylvania State Police ("PSP") compile all law enforcement agencies' use of force records and create a report providing aggregate data on the number of use of force incidents that occur across the state will do nothing to inform policymakers of additional reform efforts needed to redress police misconduct. Providing a simple tally of the number of use of force incidents that have occurred throughout the state and what percentage of the incidents resulted in death may not sufficiently inform policymakers on how to decrease the number of incidents that occur or provide any insight on why these incidents occur. Additionally, SB 459 does not require that PSP make the report available to the public. Failure to require PSP to make their annual reports widely accessible may further erode certain members of the public's confidence in Pennsylvania's justice system, not restore it.

## **B. SB 1205**

SB 1205 lacks effectiveness as a reform measure because it does not include mechanisms to uniformly prohibit police officers' excessive use of force. Instead, the bill merely requires that all Commonwealth law enforcement agencies adopt and publish use of force policies. Requiring law enforcement agencies to develop use of force policies is redundant in most cases, as many police departments already have use of force policies in place that are more prohibitive than the language of this bill requires. The main problem, which has recently been repeatedly highlighted in news stories across the country, is that police officers do not adhere to their departmental use of force policies in the field, even when the law enforcement agencies they work for have a written policy in place. One way to potentially resolve this issue is to require law enforcement agencies to specify how use of force policy violations will be addressed and what repercussions officers may face for violating the policy. SB 1205 does not require law enforcement agencies to include such provisions in their use of force policies. Having a use of force policy that clearly outlines how policy violations will be addressed and what adverse actions may be taken against law enforcement officers is essential in holding officers accountable for their actions and restoring the public's trust in the justice system.

Additionally, SB 1205 does not require law enforcement officers to use de-escalation or harm reduction techniques to diffuse highly-charged encounters with the public before resorting to use of force. The bill also fails to require law enforcement agencies to train officers on the use of de-escalation or harm reduction techniques. Failure to mandate that law enforcement officers engage in de-escalation or harm reduction techniques, or be trained in using such techniques, does nothing to prevent officers from committing excessive use of force against members of the public. Rather, it may have the inadvertent effect of condoning excessive use of force committed by officers.

Finally, the statute, while limiting when they may be used, still ultimately permits law enforcement officers to use choke holds. Permitting officers to use choke holds runs counter to any meaningful reform efforts because use of this technique is not necessary

to maintain order in most scenarios, and will result in allowing officers to evade culpability for employing this deadly and largely unnecessary technique.

## **II. Recommended Amendments:**

Based upon the concerns enumerated above, we recommend that the following amendments be made to each of the bills.

### **A. SB 459**

- Change the definition of “force” in the bill as follows: “Force.’ Efforts used by a law enforcement officer that may result in bodily injury or death...”
- Include the following definition for the term “bodily injury”: “‘Bodily Injury.’ Impairment of physical condition or substantial pain.”<sup>1</sup>
- Require all law enforcement agencies to report **all** use of force incidents that occur, including those that cause minor bodily injury.
- Require that all use of force reports contain the following information:
  - The gender, race, age, and any physical or mental disabilities of those against whom force is used;
  - The name and badge number of the law enforcement officer who used force;
  - The specific tactics used by the law enforcement officer to employ force;
  - Whether or not the law enforcement officer has previously used force in other incidents;
  - The reference numbers of other reports that detail the law enforcement officer’s prior use of force, if any;
  - The name of the law enforcement agency for which the law enforcement officer works; and
  - The results of any use of force investigation conducted by the employing law enforcement agency, if any.
- Strike the following language from Section 2133(c)(5): “Suspect information, including statute violations and[.]”
- Require the annual PSP report to include data on:
  - The number of use of force reports generated by individual law enforcement agencies;
  - Whether any individual law enforcement agencies have reports of specific officers using force multiple times in that reporting year; and
  - A breakdown of the demographic information of those against whom force was used according to race, gender, age, and disability.
- Require the annual PSP report to be posted to its webpage, making the report accessible to the public.

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<sup>1</sup> This definition of “bodily injury” is identical to the definition found in 18 Pa.C.S.A. § 2301.



## B. SB 1205

- Change the definition of “force” in the bill as follows: “‘Force.’ Efforts used by a law enforcement officer that may result in bodily injury or death...”<sup>2</sup>
- Include the following definition for the term “bodily injury”: “‘Bodily Injury.’ Impairment of physical condition or substantial pain.”<sup>3</sup>
- Require all law enforcement agencies to include the following provisions in their written use of force policies:
  - Provisions governing how use of force policy violations will be dealt with; and
  - Provisions outlining all potential adverse actions that may be taken against officers who violate the use of force policy.
- Strike the following language from Section 2143(e)(3): “A law enforcement officer is not required to first attempt using types and degrees of force that reasonably appear to be inadequate to accomplish the intended objective.”
- Require all law enforcement officers to undergo annual training on de-escalation and reduction of harm techniques.
- Modify the definition of “choke hold” as follows: “‘Choke hold.’ A physical maneuver that restricts an individual’s ability to breathe[.]”<sup>4</sup>
- Ban the use of choke holds by law enforcement officers in all circumstances, including those scenarios in which deadly force is authorized.

Incorporating these amendments into the existing bills will help ensure that Pennsylvania’s government is adopting police conduct reform that will result in an actual reduction in the excessive use of force by police officers in Pennsylvania. To be clear, the Commission is not requesting that you or your colleagues on the Judiciary Committee oppose the bills in their entirety. We are instead seeking your support for amendments to the bills to increase their effectiveness in protecting the public from police misconduct.

We have been advised that these bills are only the first step in the legislature’s efforts to address this problem, but we do not believe that it is wise to rely on those assertions, especially in light of the recent and increasingly virulent backlash to the black lives matter movement. Consequently, this may well be the only opportunity we will have to

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<sup>2</sup> Making this change will require all law enforcement agencies to have use of force policies governing all use of force incidents, not only those that cause death or serious bodily injury.

<sup>3</sup> This definition of “bodily injury” is identical to the definition found in 18 Pa.C.S.A. § 2301.

<sup>4</sup> Removing “for the purposes of incapacitation” from this statutory definition ensures that law enforcement officers will be held accountable for placing individuals in choke holds, as it would limit officers’ ability to claim that they did not intend to incapacitate an individual when placing someone in a hold that restricts their airways or ability to breathe.

legislatively address the excessive use of force by law enforcement officers for a long period of time, and we believe that the public deserves our best and most effective efforts.

Thank you for your time and consideration. We are available to discuss these matter with you or your staff as soon as your schedules permit.

Respectfully,



Lisette "Mimi" McCormick, Esq.  
Executive Director



Lenny Rivera, Esq.  
Commission Co-Chair



Rhonda Hill Wilson, Esq.  
Commission Co-Chair

cc: PA Interbranch Commission Members  
Members of Interbranch Commission's Criminal Justice Committee  
Ron Jumper