Vote No on SB 184/HB 75

Making it Harder to Hold "Bad Apple" Officers Accountable for Excessive Use of Force and Criminalizing Bystanders

Position: Oppose

Bill at Issue: SB 184 (Sen. Avila)/ HB 75 (Rep. Rizo), disingenuously titled, "Impeding, Threatening, or Harassing First Responders"

What the bill does: SB 184 makes it unlawful for an individual to approach or remain within 20 feet (14 feet in HB 75) of law enforcement, firefighters, or emergency medical technicians (EMTs) after receiving a warning. It criminalizes bystanders and Good Samaritans and, if enacted, would make it much more difficult to hold "bad apples" in law enforcement accountable for their excessive use of force. While HB 75 includes a carveout to allow people to peacefully record or observe, SB 184 does not.

If the Senate version of the bill had been in effect in Minnesota at the time of George Floyd's murder, Darnella Frazier, who recorded law enforcement's unlawful killing of George Floyd, would never have been able to record that footage which was essential evidence to hold the officer accountable for his actions. Instead, she and every other bystander who was pleading with the officer to stop suffocating George Floyd, would been arrested for remaining within 20 feet of the officer, charged with a 1st Degree misdemeanor and subject to up to 1 year in jail, a $1000 file, and, under HB 1 legislation passed in 2021, they would have had to stay in jail, potentially overnight, until their first appearance. They would not have been able to bear witness to the tragedy that occurred that day. And without their video evidence, there would be very little to challenge the initial Minneapolis Police Department press release that merely stated Mr. Floyd died after suffering from "medical distress."

SB 184 would grant police the unchecked power to prevent the public, including the media, from being able to be close enough to observe and record instances of law enforcement excessive use of force. The bill includes no exceptions for media or bystanders engaged in the non-confrontational recording of law enforcement, verbal attempts to deescalate an officer's excessive use of force in order to save lives, or attempts to render aid and medical assistance to an already defenseless injured individual from further unnecessary violent actions by law enforcement. This bill would make it harder to hold police accountable for their actions, would shield police from public scrutiny, and would criminalize individuals for bearing witness.

With regard to HB 75, we very much appreciate that the House version explicitly provides that "peaceful" audio and video recording or observing does not constitute harassment. We respectfully request that this carveout apply to the entire section and not just to the definition of harassment, as the current version of the bill only applies the carveout to the definition of harassment, and thus it is unclear whether such conduct could constitute "impeding" or "threatening," as those terms are undefined in the bill. Additionally, because it would be understandable that someone recording excessive use of force may also be engaging in verbal attempts to deescalate an officer's excessive use of force in order to save lives, it's important to clarify that "peaceful" does not mean silent and that constitutionally protected speech and verbal efforts in an attempt to stop excessive use of force are not criminalized. Nor should anyone be criminalized for attempting to render aid and medical assistance to an already defenseless injured individual from further unnecessary violent actions by law enforcement.

Why these bills are harmful to the public and costly to the state: SB 184 has nothing to do with what its title suggests. This bill is all about preventing bystanders from being able to observe with their own eyes an officer's excessive use of force and record those images – with their cell phone or other device – for the public to see. The purpose and effect of this bill is to decrease police transparency and accountability by ensuring that there are no eyewitnesses or recorded evidence of any excessive use of force.

If enacted, this bill would give essentially unlimited power to police to shield themselves from the public by preventing bystanders and Good Samaritans from being able to observe their actions. All they need to do is to provide a warning, and then they can arrest any individual they choose within a 20 foot radius. The arrest may not later hold up in court if intent cannot be shown, but by that time, they would have accomplished their goal of preventing the public from being able to observe and record their actions: the person would have been prevented from witnessing and recording law enforcement's conduct, and there would be no reliable third-party evidence of any police misconduct.

Recent instances of police brutality and excessive use of force have understandably led to increased distrust of law enforcement and a widespread call for greater transparency and accountability. However, this bill does the opposite – it authorizes and further enables law enforcement to shield their actions from the public. This is the exact opposite of what is needed to ensure greater trust in law enforcement.

This bill is the most recent in a string of legislation to silence dissent. Like HB 1 (2021), this bill will make reasonable and law-abiding Americans think twice before joining protests, rallies, and demonstrations.

Communities of color will most likely bear the brunt of this unconstitutional bill. As we've seen, police are far more likely to target Black and brown people for harsh treatment. The bill's blanket authority for police to unilaterally decide who can stand close to them will lead to costly lawsuits that waste taxpayer dollars and the government's time. Additionally, compliance with the bill will lead to fewer witnesses of unlawful police brutality and thus less accountability for

"bad apples" in law enforcement. This will endanger public safety and lead to further distrust of law enforcement as a whole.

- ***Case Study: Miami Beach Similar Local Ordinance Led to Arrests for Filming Police.***

On June 23, 2021, Miami Beach passed a similar local ordinance that stated, "it is a crime to stand within 20 feet of officers with the intent to impede, provoke or harass" officers after a warning. Before passing the ordinance, Rafael Paz, the acting city attorney, assured City Commissioners it would not make the recording of officers an arrestable offense. However, that was not how it was implemented. Only one month after implementing this law in Miami Beach, Chief Richard Clements ordered the law be suspended (July 26, 2021) because during that one-month period while it was being enforced, according to arrest data, 13 people were arrested, and 8 of those arrested were filming officers. All 13 of the individuals arrested were Black men or women. Five officers were charged with battery after arresting two individuals under this ordinance. In the one-month period while the ordinance was enforced, significant harm came to the community with large litigation costs.

In one case, an individual started recording police after he saw officers kicking a separate handcuffed person at a hotel. The officers then began to punch the man who was filming and arrested him for interfering. The officers went on further to arrest another man for filming the officers as they moved the two beaten detainees to their squad car. Upon review, all of the civilians' charges were dropped, and five of the arresting officers were suspended from duty and charged with criminal battery. One officer entered a guilty plea and retired, one officer was found guilty by a jury, and one officer is still awaiting trial.

In a separate Miami Beach case, a tourist from New York was filming a traffic stop when officers told her to stop filming. They then immediately moved to pepper-spray and arrest her. Her charges were also dropped, and she is suing eight officers involved with her arrest.

This is especially concerning when considering applying this type of ordinance to the State as a whole. If the concept described in SB 184/HB 75 could not be applied correctly in one city in Florida, it raises significant concerns with regard to how it will work in practice with regard to the entire State. Even after being directed not to arrest individuals for video recording, there were 8 such arrests in Miami Beach. Each arrest costs the State as it exerts manpower for detention and supervision, in-facility resources, and legal review before the cases are dismissed. There will be astronomical costs associated with this bill, considering the incorrect arrests officers will inevitably make when they are given vague language to base their arrests on and the costs associated with training officers across the state what they can and cannot do under the broad language of the bill.

Why this bill is unconstitutional: The broadly worded bill raises constitutional concerns with regard to potentially criminalizing protected speech and thus makes it difficult for bystanders to be able to govern their activities in order to comply. Criticizing police officers for their excessive use of force is protected under the First Amendment rights to freedom of speech and peaceable assembly. Similarly, filming on-duty police officer conduct in a public setting is also protected by the First Amendment. The Eleventh Circuit has broadly held that "[t]he First Amendment

protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest," and it has held specifically in the law-enforcement context that there is "a First Amendment right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct." *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000). A 20-foot ban is not a "reasonable" restriction on the right to record police – it is a nullification of it. Denying citizens the right to oversee and scrutinize the work of public officials is an attempt to silence and criminalize those who speak up for what they believe is right, which is a core aspect of our democracy. The bill's language is vague and overly broad and will lead to arbitrary enforcement and it is unclear what additional conduct is being prohibited under this bill that is not already prohibited under other Florida Statutes. Additionally, it is unclear what is meant by a "warning" and whether it requires that the officer put the specific individual on notice that the individual will be subject to arrest if they don't retreat beyond the 20 or 14 feet, or whether a generalized "stand back" to the crowd at-large will constitute notice under the bill.

Why this bill is unnecessary: Florida statutes already prohibit harassment and interference with law enforcement. Chapter 836,[1] Chapter 843[2] and Chapter 784 of Florida Statutes comprehensively criminalize threats, harassment, resisting, obstructing, and opposing lawful duties, and increase penalties when committed against law enforcement and first responders. Thus, this bill is entirely unnecessary to deter and punish "impeding, threatening, or harassing" law enforcement, which is another reason why the title of the bill is deceiving. The bill goes far beyond what its title suggests and raises concerns that it could lead to arbitrary and discretionary enforcement against bystanders standing within 20 feet (SB 184) or 14 feet (HB 75) of law enforcement regardless of whether the individual is simply bearing witness to the officer's actions or recording those actions on their cell phone. Our legislature should be enacting legislation to protect and encourage individuals like Darnella Frazier for putting herself in harm's way to hold "bad apples" accountable for their unjust actions. Instead, these bills seek to criminalize her bravery and prevent transparency, accountability, and justice.

Please contact Kara Gross, Legislative Director and Senior Policy Counsel, at kgross@aclufl.org if you have any questions or would like any additional information.

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[1] See, e.g., Section 836.12 (3) Any person who knowingly and willfully harasses a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, a clerk of court, clerk personnel, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

[2] See, e.g., Section 843.02 Resisting officer without violence to his or her person.—Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.