Testimony of Becky Straus, Legislative Director
In Support of SB 779, SB 780, and SB 781
Senate Committee on Judiciary
March 27, 2013

Chair Prozanski and Members of the Committee:

Thank you for the opportunity to testify this morning in support of three bills relating to police officer involved shootings. Police practices issues implicate several core civil liberties principles and so advocacy on these issues is priority in ACLU's work across the state. With law enforcement agencies across Oregon, including but not limited to Eugene, Ashland, Medford, and Portland, we have built strong relationships and work for improved policies and practices to guide the way officers serve each community. We appreciate the time to share our perspective on the bills before you today.

As you well know, police officers hold unique positions of responsibility and authority in our communities, each often sacrificing his or her own safety for the protection of the public. In rare instances and in the course of this duty, officers may be involved in shootings that may result in death. It is essential for public trust in these officers and the ultimate functioning of the public safety system that our laws foster transparency and accountability in the instance of any use of deadly force.

SB 779, SB 780, and SB 781 each take modest steps in that direction and the ACLU is in support of all three.

SB 779

SB 779 directs the Attorney General to appoint an attorney to lead an investigation when an officer is involved in an incident of deadly force. Under current law, it is required that an officer from an outside jurisdiction participate in the investigation of an officer involved shooting.[1] The purpose of this current law is to foster objectivity in the investigation – to seek out the most factual account and avoid barriers that might come up due to personal relationships or professional history amongst officers.

SB 779 is proposed with a similar objective. Just as officers in the same bureau have developed relationships that may pose a conflict when only officers from that bureau are directed to investigate the actions of another, so too might officers and district attorneys from the same area. Even if there is no actual conflict, the public perception that the local DA may be "on the same side" as the officer under investigation is harmful to the maintenance of community trust in its

[1] ORS 181.789(5)(a)

officers.

SB 780

SB 780 requires grand jury proceedings involving use of deadly force by police officers to be recorded, transcribed and made available to public. The interest in making available a record of the grand jury proceeding is to foster public trust in the system. When deadly force cases, which can be so devastating for a community, are followed by an investigation and court proceedings all held in secret, members of the public are not able to see for themselves the way that the system responds to keep others safe and to hold accountable any officers that abused their position.

Instead, the public often only learns later that where they may have lost a member of their community, or family to a deadly force incident, the officer involved was not held to be criminally liable. In the absence of grand jury records, misinformation or no information may circulate and members of the community do not have a way of knowing whether it was the right decision not to charge the officer. The risk in this scenario is that the public might grow to mistrust officers who are there to keep them safe, a reaction which would have significant consequences for public safety in that community.

SB 781

SB 781 aims to change the standard by which use of deadly force by an officer is authorized. In some situations, officers testify to a grand jury that, at the time of the shooting and based on their training and experience, they were fearful of serious bodily harm to themselves or others. And because of that fear they shot.

It seems that SB 781 is an attempt to clarify that courts must consider whether that fear is objectively reasonable, as opposed to simply whether the officer is being truthful in the assertion of the fear. Because of the unique nature of their duties, officers are afforded a great deal of deference as courts conduct these reviews. "In many circumstances," notes Lewis & Clark Law Professor Susan Mandiberg, "the Court affords the reasonable police officer more room for imperfection in her perceptions, knowledge, emotions, and behaviors; comparatively, the reasonable lay person is far more frequently expected to check her identity and experiences at the door."[2]

So officers maintain the more deferential standard that comes with the training and experience of their position, but their fear of imminent harm must still be objectively reasonable before they are authorized to shoot. And this objective standard is wholly consistent with federal Fourth Amendment standards, articulated in the seminal case *Graham v. Connor*.[3]

Where SB 781 may be seen as clarifying the federal standard in Oregon law, the ACLU believes that law enforcement agencies in Oregon should reach even further to make a commitment to

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[2] Mandiberg, Susan. "Who is the Reasonable Person?" 14 Lewis & Clark L. Rev. 1481, Winter 2010
[3] 490 U.S. 386 (1989)

tolerate even less force. Our laws should make very clear that although it is never permissible for an officer to use more force on a subject than the Constitution allows, agencies in our state should follow standards that are more restrictive than what is constitutionally permissible and instead require officers to use the least amount of force *necessary* in each instance.

SB 781 is a helpful proposal to start a conversation about appropriate use of force by police officers. For bringing the bill forward and initiating that discussion, we thank the proponents.

Thank you for the opportunity to provide comments on each of these three bills. Please feel free to be in touch with me at any time with any questions you may have.