

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0695.01 Michael Dohr x4347

HOUSE BILL 19-1119

HOUSE SPONSORSHIP

Coleman, Herod, Exum, Benavidez, Gonzales-Gutierrez, Lontine

SENATE SPONSORSHIP

Foote,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PUBLIC DISCLOSURE OF A COMPLETED PEACE OFFICER**
102 **INTERNAL INVESTIGATION FILE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes an internal investigation file (file) of a peace officer for in-uniform or on-duty conduct that involves a member of the public subject to an open records request. The bill requires some information to be redacted before complying with the open records request. The bill allows the custodian of the file to first provide a summary of the file to the requester and then allows the requester access

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
February 25, 2019

to the file after the requester has reviewed the summary. Under the bill, a custodian of a file in which there is an ongoing criminal case can deny inspection of the file. The file becomes open for inspection after all the charges are dismissed or the defendant is sentenced.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-303, **add** (4)
3 and (5) as follows:

4 **24-72-303. Records of official actions required - open to**
5 **inspection - applicability.** (4) (a) UPON COMPLETION OF AN INTERNAL
6 INVESTIGATION, INCLUDING ANY APPEALS PROCESS, THAT EXAMINES THE
7 IN-UNIFORM OR ON-DUTY CONDUCT OF A PEACE OFFICER, AS DESCRIBED IN
8 PART 1 OF ARTICLE 2.5 OF TITLE 16, RELATED TO A SPECIFIC, IDENTIFIABLE
9 INCIDENT OF ALLEGED MISCONDUCT INVOLVING A MEMBER OF THE PUBLIC,
10 THE ENTIRE INVESTIGATION FILE, INCLUDING THE WITNESS INTERVIEWS,
11 VIDEO AND AUDIO RECORDINGS, TRANSCRIPTS, DOCUMENTARY EVIDENCE,
12 INVESTIGATIVE NOTES, AND FINAL DEPARTMENTAL DECISION IS OPEN FOR
13 PUBLIC INSPECTION UPON REQUEST; EXCEPT THAT THE CUSTODIAN MAY
14 FIRST PROVIDE THE REQUESTER WITH A SUMMARY OF THE INVESTIGATION
15 FILE AND IF, AFTER REVIEWING THE SUMMARY, THE REQUESTER REQUESTS
16 ACCESS TO THE INVESTIGATION FILE, THE CUSTODIAN SHALL PROVIDE
17 ACCESS TO THE ENTIRE INVESTIGATION FILE SUBJECT TO THE PROVISIONS
18 OF SUBSECTIONS (4)(b), (4)(c), AND (4)(d) OF THIS SECTION.

19 (b) PRIOR TO PROVIDING ACCESS TO THE INTERNAL INVESTIGATION
20 FILE PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE CUSTODIAN
21 SHALL REDACT OR REMOVE THE FOLLOWING INFORMATION FROM THE
22 DISCLOSED RECORDS:

23 (I) ANY PERSONAL IDENTIFYING INFORMATION AS DEFINED BY

1 SECTION 6-1-713 (2)(b);

2 (II) ANY IDENTIFYING OR CONTACT INFORMATION RELATED TO
3 CONFIDENTIAL INFORMANTS, WITNESSES, OR VICTIMS;

4 (III) THE HOME ADDRESS, PERSONAL PHONE NUMBER, AND
5 PERSONAL E-MAIL ADDRESS OF A PEACE OFFICER;

6 (IV) ANY INFORMATION PROHIBITED FOR PUBLIC RELEASE BY
7 STATE OR FEDERAL LAW; EXCEPT THAT INTERNAL INVESTIGATION
8 RECORDS EXAMINING IN-UNIFORM OR ON-DUTY CONDUCT OF A PEACE
9 OFFICER DURING AN ALLEGED INCIDENT OF OFFICE MISCONDUCT WHILE
10 INTERACTING WITH A MEMBER OF THE PUBLIC DOES NOT FALL WITHIN THE
11 DEFINITION OF "PERSONNEL FILES" IN SECTION 24-72-202 (4.5);

12 (V) ANY MEDICAL OR MENTAL HEALTH INFORMATION;

13 (VI) ANY IDENTIFYING INFORMATION RELATED TO A JUVENILE;

14 AND

15 (VII) ANY NONFINAL DISCIPLINARY RECOMMENDATIONS.

16 (c) (I) IN ADDITION TO THE INFORMATION REQUIRED TO BE
17 REDACTED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION, PRIOR TO
18 PROVIDING ACCESS TO THE INTERNAL INVESTIGATION FILE PURSUANT TO
19 SUBSECTION (4)(a) OF THIS SECTION, THE CUSTODIAN MAY ALSO REDACT
20 ONLY THE FOLLOWING FROM DISCLOSED RECORDS:

21 (A) ANY COMPELLED STATEMENTS MADE BY PEACE OFFICERS WHO
22 ARE THE SUBJECT OF A CRIMINAL INVESTIGATION OR A FILED CRIMINAL
23 CASE DIRECTLY RELATED TO CONDUCT UNDERLYING THE INTERNAL
24 INVESTIGATION;

25 (B) ANY VIDEO INTERVIEWS IF AN OFFICIAL TRANSCRIPT OF THE
26 INTERVIEW IS PRODUCED, UNLESS, AFTER RECEIVING THE TRANSCRIPT, THE
27 REQUESTER REQUESTS THE VIDEO;

1 (C) ANY VIDEO OR PHOTOGRAPH THAT RAISES SUBSTANTIAL
2 PRIVACY CONCERNS FOR CRIMINAL DEFENDANTS, VICTIMS, WITNESSES, OR
3 INFORMANTS, INCLUDING VIDEO REFLECTING NUDITY, A MEDICAL
4 EMERGENCY, A MENTAL HEALTH CRISIS, A VICTIM INTERVIEW, OR THE
5 INTERIOR OF A HOME OR TREATMENT FACILITY. WHENEVER POSSIBLE, THE
6 VIDEO SHOULD BE REDACTED OR BLURRED TO PROTECT THE PRIVACY
7 INTEREST WHILE STILL ALLOWING PUBLIC RELEASE.

8 (D) THE IDENTITY OF OFFICERS WHO VOLUNTEERED INFORMATION
9 RELATED TO THE INTERNAL INVESTIGATION BUT WHO ARE NOT A SUBJECT
10 OF THE INTERNAL INVESTIGATION; AND

11 (E) SPECIFIC INFORMATION THAT WOULD REVEAL CONFIDENTIAL
12 INTELLIGENCE INFORMATION, CONFIDENTIAL SECURITY PROCEDURES OF A
13 LAW ENFORCEMENT AGENCY OR THAT, IF DISCLOSED, WOULD COMPROMISE
14 THE SAFETY OF A PEACE OFFICER, WITNESS, OR INFORMANT. HOWEVER,
15 NOTHING IN THIS SUBSECTION (4)(c)(I)(E) JUSTIFIES OR PERMITS THE
16 REDACTION OR WITHHOLDING OF INFORMATION DESCRIBING OR DEPICTING
17 USE OF FORCE BY A PEACE OFFICER ON A MEMBER OF THE PUBLIC.

18 (II) IF A RECORD CONTAINS INFORMATION REDACTED PURSUANT
19 TO THIS SUBSECTION (4)(c), THE APPLICANT MAY REQUEST A WRITTEN
20 EXPLANATION OF THE REASONS FOR THE REDACTION.

21 (d) A WITNESS, VICTIM, OR CRIMINAL DEFENDANT MAY WAIVE IN
22 WRITING THE INDIVIDUAL PRIVACY INTEREST THAT MAY BE IMPLICATED BY
23 PUBLIC RELEASE. UPON RECEIPT OF SUCH A WRITTEN WAIVER,
24 ACCOMPANIED BY A REQUEST FOR RELEASE OF THE RECORDS, THE
25 CUSTODIAN SHALL NOT REDACT, REMOVE, OR WITHHOLD RECORDS TO
26 PROTECT THE WAIVED PRIVACY INTEREST.

27 (e) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (4)(a) OF

1 THIS SECTION, THE CUSTODIAN OF AN INTERNAL INVESTIGATION FILE AS
2 DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION MAY DENY INSPECTION
3 OF THE FILE IF THERE IS AN ONGOING CRIMINAL INVESTIGATION OR
4 CRIMINAL CASE AGAINST A PEACE OFFICER RELATED TO THE SUBJECT OF
5 THE INTERNAL INVESTIGATION. THE INVESTIGATION FILE MUST BE OPEN
6 FOR PUBLIC INSPECTION UPON THE DISMISSAL OF ALL CHARGES OR UPON
7 A SENTENCE FOR A CONVICTION.

8 (f) ANY PERSON WHO HAS BEEN DENIED ACCESS TO ANY
9 INFORMATION IN A COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE
10 MAY FILE AN APPLICATION IN THE DISTRICT COURT IN THE COUNTY WHERE
11 THE RECORDS ARE LOCATED FOR AN ORDER DIRECTING THE CUSTODIAN
12 THEREOF TO SHOW CAUSE WHY THE WITHHELD OR REDACTED
13 INFORMATION SHOULD NOT BE MADE AVAILABLE TO THE APPLICANT. THE
14 COURT SHALL SET THE HEARING ON THE ORDER TO SHOW CAUSE AT THE
15 EARLIEST PRACTICAL TIME. IF THE COURT DETERMINES, BASED ON ITS
16 INDEPENDENT JUDGMENT, APPLYING DE NOVO REVIEW, THAT ANY PORTION
17 OR PORTIONS OF THE COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE
18 WERE IMPROPERLY WITHHELD PURSUANT TO THIS SECTION, THE COURT
19 SHALL ORDER THE CUSTODIAN TO PROVIDE THE APPLICANT WITH A COPY
20 OF THOSE PORTIONS THAT WERE IMPROPERLY WITHHELD.

21 (g) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (4)(a)
22 AND (4)(e) OF THIS SECTION, THE CUSTODIAN OF AN INTERNAL
23 INVESTIGATION FILE AS DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION
24 MAY DENY INSPECTION OF THE FILE IF THE INSPECTION IS PROHIBITED BY
25 RULES PROMULGATED BY THE COLORADO SUPREME COURT OR BY A COURT
26 ORDER.

27 (h) THIS SUBSECTION (4) APPLIES TO INTERNAL INVESTIGATIONS

1 INITIATED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4).

2 (5) ANY COMPELLED STATEMENT BY A PEACE OFFICER, OR
3 EVIDENCE DERIVED FROM THAT COMPELLED STATEMENT, MAY NOT BE
4 USED AGAINST THAT OFFICER IN A CRIMINAL PROSECUTION.

5 **SECTION 2.** In Colorado Revised Statutes, 24-72-305, **amend**
6 (5) as follows:

7 **24-72-305. Allowance or denial of inspection - grounds -**
8 **procedure - appeal.** (5) On the ground that disclosure would be contrary
9 to the public interest, and unless otherwise provided by law, INCLUDING
10 AS REQUIRED BY SECTION 24-72-303 (4), the custodian may deny access
11 to records of investigations conducted by or of intelligence information
12 or security procedures of any sheriff, district attorney, or police
13 department or any criminal justice investigatory files compiled for any
14 other law enforcement purpose.

15 **SECTION 3. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.