

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

REENGROSSED

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

LLS NO. 21-0315.02 Alana Rosen x2606

SENATE BILL 21-174

SENATE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING ADOPTION OF WRITTEN POLICIES BY LAW ENFORCEMENT**
102 **AGENCIES FOR CONSTITUTIONALLY REQUIRED PEACE OFFICER**
103 **CREDIBILITY DISCLOSURE NOTIFICATIONS, AND, IN CONNECTION**
104 **THEREWITH, MAKING AN APPROPRIATION.**

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 requires a law enforcement agency to provide a credibility disclosure notification to a district attorney's office if a peace officer's credibility is called into question by an internal investigation, an

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.*

SENATE
3rd Reading Unamended
May 19, 2021

SENATE
Amended 2nd Reading
May 18, 2021

allegation, or a sustained finding. The bill outlines conduct that a law enforcement agency shall report to a district attorney's office. The law enforcement agency shall also provide the credibility disclosure notification to the involved peace officer at least 7 calendar days prior to sending the credibility disclosure notification to the district attorney's office, except under specific circumstances.

The bill requires a district attorney's office to adopt written policies and procedures for receiving and maintaining credibility disclosure notification records (records) concerning peace officers. A district attorney's office shall determine whether a record must be created based on a law enforcement agency's credibility disclosure notification. The policies and procedures must include a process to notify defense attorneys or defendants of a record pursuant to rule 16 of the Colorado rules of criminal procedure, as well as a process to remove a record found to be inaccurate or false by the court or the relevant law enforcement agency.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article
3 2.5 of title 16 as follows:

4 PART 5

5 PEACE OFFICER CREDIBILITY

6 DISCLOSURE NOTIFICATIONS

7 **16-2.5-501. Definitions.** AS USED IN THIS SECTION, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CREDIBILITY DISCLOSURE NOTIFICATION" MEANS THE
10 NOTIFICATION DESCRIBED IN SECTION 16-2.5-502 (2)(c).

11 (2) "LAW ENFORCEMENT AGENCY" MEANS A STATE OR LOCAL
12 AGENCY THAT EMPLOYS PEACE OFFICERS.

13 (3) "PEACE OFFICER" MEANS A PEACE OFFICER AS DEFINED IN
14 SECTION 24-31-901 (3) AND INCLUDES AN OFFICER, RESERVE, VOLUNTEER,
15 OR EMPLOYEE WHO PERFORMS A LAW ENFORCEMENT FUNCTION.

16 **16-2.5-502. Peace officer credibility disclosures - policies and**
17 **procedures.** (1) ON OR BEFORE JANUARY 1, 2022, EACH LAW

1 ENFORCEMENT AGENCY AND DISTRICT ATTORNEY'S OFFICE SHALL ADOPT
2 AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES CONSISTENT WITH
3 THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE
4 NOTIFICATIONS CREATED AND RECOMMENDED BY THE PEACE OFFICER
5 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE ESTABLISHED IN
6 SUBSECTION (2)(a) OF THIS SECTION.

7 (2) (a) THERE IS HEREBY CREATED THE PEACE OFFICER
8 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE. THE PEACE OFFICER
9 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE MUST BE COMPRISED
10 OF THE FOLLOWING MEMBERS AS APPOINTED BY THEIR RESPECTIVE
11 ORGANIZATIONS:

12 (I) A REPRESENTATIVE OF THE COLORADO DISTRICT ATTORNEYS'
13 COUNCIL;

14 (II) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
15 POLICE OFFICERS;

16 (III) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
17 THE CHIEFS OF POLICE;

18 (IV) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
19 THE COUNTY SHERIFFS;

20 (V) A COUNTY ATTORNEY DESIGNATED BY AN ORGANIZATION
21 REPRESENTING COUNTIES; AND

22 (VI) A CITY ATTORNEY DESIGNATED BY AN ORGANIZATION
23 REPRESENTING MUNICIPALITIES.

24 (b) THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION
25 COMMITTEE MUST BE CO-CHAIRD BY THE REPRESENTATIVE FROM THE
26 COLORADO DISTRICT ATTORNEYS' COUNCIL AND THE REPRESENTATIVE
27 FROM THE ORGANIZATION REPRESENTING PEACE OFFICERS. THE CO-CHAIRS

1 OF THE COMMITTEE SHALL SET THE DATES, TIMES, AND PROCEDURES FOR
2 THE COMMITTEE MEETINGS AS DEEMED NECESSARY TO MEET THE
3 REQUIREMENTS OF THIS SECTION. THE PEACE OFFICER CREDIBILITY
4 DISCLOSURE NOTIFICATION COMMITTEE SHALL CREATE A STATEWIDE
5 MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS BY
6 DECEMBER 1, 2021.

7 (c) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
8 DISCLOSURE NOTIFICATION POLICIES AND PROCEDURES MUST INCLUDE,
9 BUT NEED NOT BE LIMITED TO:

10 (I) A PROMPT NOTIFICATION FROM A LAW ENFORCEMENT AGENCY
11 TO THE DISTRICT ATTORNEY OF ANY SUSTAINED FINDING THAT A PEACE
12 OFFICER HAS:

13 (A) KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING
14 A MATERIAL FACT, KNOWINGLY OMITTED A MATERIAL FACT IN AN OFFICIAL
15 CRIMINAL JUSTICE RECORD, OR KNOWINGLY OMITTED A MATERIAL FACT
16 WHILE TESTIFYING UNDER OATH OR DURING AN INTERNAL AFFAIRS
17 INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY
18 PROCESS;

19 (B) DEMONSTRATED A PATTERN OF BIAS BASED ON RACE,
20 RELIGION, ETHNICITY, GENDER, SEXUAL ORIENTATION, AGE, DISABILITY,
21 NATIONAL ORIGIN, OR ANY OTHER PROTECTED CLASS;

22 (C) BEEN CONVICTED OF ANY FELONY, ANY CRIME INVOLVING
23 DISHONESTY, OR BEEN CHARGED IN A CRIMINAL PROCEEDING WITH ANY
24 FELONY OR ANY CRIME INVOLVING DISHONESTY OR VIOLATED ANY POLICY
25 OF THE LAW ENFORCEMENT AGENCY REGARDING DISHONESTY;

26 (D) VIOLATED THE CONSTITUTIONAL OR STATUTORY RIGHTS OF
27 ANY OTHER PERSON; OR

1 (E) TAMPERED WITH OR FABRICATED EVIDENCE. ==

2 (II) A LAW ENFORCEMENT AGENCY'S OBLIGATION TO NOTIFY THE
3 DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S
4 JURISDICTION WHEN:

5 (A) A PEACE OFFICER IS A POTENTIAL WITNESS IN A PENDING
6 CRIMINAL PROSECUTION IN WHICH A CRIMINAL DEFENDANT HAS BEEN
7 FORMALLY CHARGED;

8 (B) THE PEACE OFFICER IS UNDER A CONCURRENT CRIMINAL OR
9 ADMINISTRATIVE INVESTIGATION REGARDING AN ALLEGATION RELATED
10 TO THE PEACE OFFICER'S INVOLVEMENT IN THE DEFENDANT'S PENDING
11 CRIMINAL CASE; AND

12 (C) THE RESULT OF THE CONCURRENT CRIMINAL OR
13 ADMINISTRATIVE INVESTIGATION, IF SUSTAINED, WOULD REQUIRE
14 DISCLOSURE.

15 (III) A PROCESS FOR A LAW ENFORCEMENT AGENCY TO PROMPTLY
16 NOTIFY THE DISTRICT ATTORNEY OF SUCH A FINDING; AND

17 (IV) A PROCESS TO REMOVE A PEACE OFFICER'S CREDIBILITY
18 DISCLOSURE NOTIFICATION FROM THE DISTRICT ATTORNEY'S CREDIBILITY
19 DISCLOSURE NOTIFICATION RECORD IF APPROPRIATE AND LAWFUL.

20 == ==

21 (d) (I) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
22 DISCLOSURE NOTIFICATIONS ESTABLISHED IN SUBSECTION (2)(c) OF THIS
23 SECTION MUST REQUIRE THAT A LAW ENFORCEMENT AGENCY SHALL
24 INCLUDE IN THE CREDIBILITY DISCLOSURE NOTIFICATION:

25 (A) THE NAME OF THE PEACE OFFICER;

26 (B) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS
27 OR EMPLOYED THE PEACE OFFICER AT THE TIME OF THE INVESTIGATION OR

1 SUSTAINED FINDING DESCRIBED IN SUBSECTION (2)(c)(I) OF THIS SECTION
2 OR AN INVESTIGATION DESCRIBED IN SUBSECTION (2)(c)(II) OF THIS
3 SECTION;

4 (C) THE FOLLOWING STATEMENT: "THIS NOTIFICATION IS TO
5 INFORM YOU THAT THERE IS INFORMATION IN THE LAW ENFORCEMENT
6 AGENCY'S POSSESSION REGARDING [NAME OF PEACE OFFICER] THAT MAY
7 AFFECT THE PEACE OFFICER'S CREDIBILITY IN COURT."

8 (D) THE APPLICABLE STATUTORY PROVISION IDENTIFYING THE
9 BASIS FOR THE CREDIBILITY DISCLOSURE NOTIFICATION AS SET FORTH IN
10 SUBSECTIONS (2)(c)(I)(A) THROUGH (2)(c)(I)(E) OF THIS SECTION.

11 (E) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
12 DISCLOSURE NOTIFICATIONS MUST PROVIDE A PROCESS TO NOTIFY THE
13 INVOLVED PEACE OFFICER AT LEAST SEVEN CALENDAR DAYS PRIOR TO
14 SENDING THE CREDIBILITY DISCLOSURE NOTIFICATION TO THE DISTRICT
15 ATTORNEY'S OFFICE, IF PRACTICABLE. _____

16 (3) _____ ON OR BEFORE FEBRUARY 1, 2022, EACH DISTRICT
17 ATTORNEY SHALL MAKE AVAILABLE TO THE PUBLIC THE POLICIES AND
18 PROCEDURES CREATED AND IMPLEMENTED PURSUANT TO SUBSECTION (2)
19 OF THIS SECTION. THE POLICIES AND PROCEDURES MUST INCLUDE, BUT
20 NEED NOT BE LIMITED TO, A PROCESS FOR A DISTRICT ATTORNEY TO:

21 (a) RECEIVE CREDIBILITY DISCLOSURE NOTIFICATIONS;

22 (b) MAINTAIN A CURRENT RECORD OF ALL CREDIBILITY
23 DISCLOSURE NOTIFICATIONS, DISTINGUISHING BETWEEN THE CREDIBILITY
24 DISCLOSURE NOTIFICATIONS IN SUBSECTIONS (2)(c)(I) AND (2)(c)(II) OF
25 THIS SECTION;

26 (c) DESCRIBE HOW MEMBERS OF THE PUBLIC CAN ACCESS THE
27 DATABASE CREATED BY THE P.O.S.T. BOARD PURSUANT TO SECTION

1 24-31-303 (1)(r) CONCERNING PEACE OFFICERS WHO ARE SUBJECT TO
2 CREDIBILITY DISCLOSURE NOTIFICATIONS. THE PROCEDURES MUST BE
3 POSTED ON THE DISTRICT ATTORNEY'S OR COUNTY'S WEBSITE.

4 (d) ESTABLISH A PROCESS TO TIMELY NOTIFY A DEFENSE
5 ATTORNEY OR DEFENDANT OF CREDIBILITY DISCLOSURE NOTIFICATION
6 RECORDS PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL
7 PROCEDURE; AND

8 (e) REMOVE ANY CREDIBILITY DISCLOSURE NOTIFICATION
9 RECORDS WHEN APPROPRIATE AND LAWFUL. ==

10 (4) EACH DISTRICT ATTORNEY SHALL REVIEW THE POLICIES AND
11 PROCEDURES ADOPTED AND IMPLEMENTED PURSUANT TO SUBSECTION (3)
12 OF THIS SECTION AT LEAST EVERY FOUR YEARS TO ENSURE COMPLIANCE
13 WITH CONTROLLING FEDERAL AND STATE CASE LAW INTERPRETING *BRADY*
14 *V. MARYLAND*, 373 U.S. 83 (1963); *GIGLIO V. UNITED STATES*, 405 U.S. 150
15 (1972); *KYLES V. WHITLEY*, 514 U.S. 419 (1995), AND ITS PROGENY; AS
16 WELL AS THE COLORADO RULES OF CRIMINAL PROCEDURE.

17 **SECTION 2.** In Colorado Revised Statutes, 24-31-303, **amend**
18 **(1)(r) introductory portion, (1)(r)(III), and (1)(r)(IV); and add (1)(r)(V)**
19 **as follows:**

20 **24-31-303. Duties - powers of the P.O.S.T. board.** (1) The
21 **P.O.S.T. board has the following duties:**

22 (r) **Beginning on January 1, 2022, to create and maintain a**
23 **database, IN A SEARCHABLE FORMAT TO BE PUBLISHED ON ITS WEBSITE,**
24 **containing information related to a peace officer's:**

25 **(III) Decertification by the P.O.S.T. board; and**

26 **(IV) Termination for cause; AND**

27 **(V) ACTIONS AS DESCRIBED BY THE APPLICABLE STATUTORY**

1 PROVISION IDENTIFYING THE BASIS FOR THE CREDIBILITY DISCLOSURE
2 NOTIFICATION AS SET FORTH IN SECTION 16-2.5-502 (2)(c)(I).

3 **SECTION 3. Appropriation.** (1) For the 2021-22 state fiscal
4 year, \$31,147 is appropriated to the department of public safety for use
5 by the Colorado state patrol. This appropriation is from the Highway
6 Users Tax Fund created in section 43-4-201 (1)(a), C.R.S., and
7 appropriated pursuant to section 43-4-201 (3)(a)(I)(C), C.R.S. To
8 implement this act, the division may use this appropriation as follows:

9 (a) \$24,272 for civilians, which amount is based on an assumption
10 that the department will require an additional 0.5 FTE; and

11 (b) \$6,875 for operating expenses.

12 **SECTION 4. Act subject to petition - effective date.** This act
13 takes effect at 12:01 a.m. on the day following the expiration of the
14 ninety-day period after final adjournment of the general assembly; except
15 that, if a referendum petition is filed pursuant to section 1 (3) of article V
16 of the state constitution against this act or an item, section, or part of this
17 act within such period, then the act, item, section, or part will not take
18 effect unless approved by the people at the general election to be held in
19 November 2022 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.