

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0315.02 Alana Rosen x2606

SENATE BILL 21-174

SENATE SPONSORSHIP

Cooke and Ginal,

HOUSE SPONSORSHIP

Bird and Carver,

Senate Committees

Judiciary
Appropriations

House Committees

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.

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 (1)(a).

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 - report.** (1) (a) A LAW ENFORCEMENT AGENCY SHALL

1 NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT
2 AGENCY'S JURISDICTION WHEN THE LAW ENFORCEMENT AGENCY HAS
3 DETERMINED THERE IS A SUSTAINED FINDING THAT A PEACE OFFICER HAS:

4 (I) KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING
5 A MATERIAL FACT, OR KNOWINGLY OMITTED A MATERIAL FACT IN AN
6 OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH OR
7 DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE
8 INVESTIGATION AND DISCIPLINARY PROCESS;

9 (II) DEMONSTRATED A PATTERN OF BIAS BASED ON RACE,
10 RELIGION, ETHNICITY, GENDER, SEXUAL ORIENTATION, AGE, DISABILITY,
11 NATIONAL ORIGIN, OR ANY OTHER PROTECTED CLASS;

12 (III) COMMITTED A FELONY, A CRIME INVOLVING DISHONESTY, OR
13 HAS BEEN CHARGED IN A CRIMINAL PROCEEDING WITH A FELONY OR A
14 CRIME INVOLVING DISHONESTY;

15 (IV) INTENTIONALLY VIOLATED THE CONSTITUTIONAL OR
16 STATUTORY RIGHTS OF OTHERS; OR

17 (V) TAMPERED WITH OR FABRICATED EVIDENCE.

18 (b)(I) IN ADDITION TO THE DISCLOSURES REQUIRED IN SUBSECTION
19 (1)(a) OF THIS SECTION, A LAW ENFORCEMENT AGENCY SHALL NOTIFY THE
20 DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S
21 JURISDICTION WHEN:

22 (A) A PEACE OFFICER IS A POTENTIAL WITNESS IN A PENDING
23 CRIMINAL PROSECUTION IN WHICH A CRIMINAL DEFENDANT HAS BEEN
24 FORMALLY CHARGED;

25 (B) THE PEACE OFFICER IS UNDER A CONCURRENT CRIMINAL OR
26 ADMINISTRATIVE INVESTIGATION REGARDING AN ALLEGATION RELATED
27 TO THE PEACE OFFICER'S INVOLVEMENT IN THE DEFENDANT'S PENDING

1 CRIMINAL CASE; AND

2 (C) THE RESULT OF THE CONCURRENT CRIMINAL OR
3 ADMINISTRATIVE INVESTIGATION, IF SUSTAINED, WOULD REQUIRE
4 DISCLOSURE PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION.

5 (II) IF THE ALLEGATION IS SUBSEQUENTLY FOUND NOT SUSTAINED
6 OR IF THE PEACE OFFICER IS EXONERATED, THE LAW ENFORCEMENT
7 AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW
8 ENFORCEMENT AGENCY'S JURISDICTION OF THE FINDING AND THE
9 CREDIBILITY DISCLOSURE NOTIFICATION BASED ON THE ALLEGATION MUST
10 BE REMOVED FROM THE RELEVANT DISTRICT ATTORNEY'S CREDIBILITY
11 DISCLOSURE NOTIFICATION RECORD. _____

12 (c) (I) THE LAW ENFORCEMENT AGENCY SHALL INCLUDE IN THE
13 CREDIBILITY DISCLOSURE NOTIFICATION:

14 (A) THE NAME OF THE PEACE OFFICER;

15 (B) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS
16 OR EMPLOYED THE PEACE OFFICER AT THE TIME OF THE INVESTIGATION OR
17 SUSTAINED FINDING DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION;
18 AND

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

23 (II) THE LAW ENFORCEMENT AGENCY SHALL NOT PROVIDE
24 MATERIALS FROM THE PEACE OFFICER'S PERSONNEL FILE TO THE DISTRICT
25 ATTORNEY'S OFFICE AT THE TIME THE CREDIBILITY NOTIFICATION IS MADE
26 TO THE DISTRICT ATTORNEY'S OFFICE.

27 (III) AFTER THE CREDIBILITY DISCLOSURE NOTIFICATION IS MADE,

1 IF THE LAW ENFORCEMENT AGENCY LEARNS OF ADDITIONAL INFORMATION
2 SUBJECT TO DISCLOSURE REGARDING THE PEACE OFFICER, THE LAW
3 ENFORCEMENT AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY'S OFFICE
4 OF THE ADDITIONAL INFORMATION.

5 (IV) THE LAW ENFORCEMENT AGENCY SHALL ALSO PROVIDE THE
6 CREDIBILITY DISCLOSURE NOTIFICATION TO THE INVOLVED PEACE OFFICER
7 AT LEAST SEVEN CALENDAR DAYS PRIOR TO SENDING THE CREDIBILITY
8 DISCLOSURE NOTIFICATION TO THE DISTRICT ATTORNEY'S OFFICE. THE
9 CREDIBILITY DISCLOSURE NOTIFICATION MAY BE MADE IMMEDIATELY IF A
10 HEARING IN A PENDING CRIMINAL CASE IS IMMINENT OR IT IS DETERMINED
11 TO BE IN THE INTEREST OF JUSTICE. IN SUCH CASES, THE CREDIBILITY
12 DISCLOSURE NOTIFICATION MUST BE PROVIDED TO THE PEACE OFFICER
13 WITHIN TWO CALENDAR DAYS OF THE IMMEDIATE DISCLOSURE, UNLESS
14 NOTIFYING THE PEACE OFFICER OF THE CREDIBILITY DISCLOSURE
15 NOTIFICATION WOULD COMPROMISE AN ONGOING CRIMINAL, INTERNAL, OR
16 ADMINISTRATIVE INVESTIGATION.

17 (2) ON OR BEFORE JANUARY 1, 2022, A LAW ENFORCEMENT
18 AGENCY SHALL IMPLEMENT POLICIES AND PROCEDURES FOR PROMPT
19 CREDIBILITY DISCLOSURE NOTIFICATIONS, AS REQUIRED IN SUBSECTION
20 (1)(a) OF THIS SECTION.

21 (3)(a) ON OR BEFORE JANUARY 1, 2022, EACH DISTRICT ATTORNEY
22 SHALL ADOPT WRITTEN POLICIES AND PROCEDURES FOR:

23 (I) RECEIVING CREDIBILITY DISCLOSURE NOTIFICATIONS;

24 (II) MAINTAINING A CURRENT RECORD OF ALL CREDIBILITY
25 DISCLOSURE NOTIFICATIONS, DISTINGUISHING BETWEEN ALLEGATIONS AND
26 SUSTAINED FINDINGS;

27 (III) ESTABLISHING A PROCESS TO NOTIFY A DEFENSE ATTORNEY

1 OR DEFENDANT OF CREDIBILITY DISCLOSURE NOTIFICATION RECORDS
2 PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL
3 PROCEDURE; AND

4 (IV) REMOVING ANY CREDIBILITY DISCLOSURE NOTIFICATION
5 RECORDS FOUND TO BE INACCURATE OR FALSE BY THE COURT OR THE
6 RELEVANT LAW ENFORCEMENT AGENCY.

7 (b) IF A PEACE OFFICER'S NAME IS REMOVED FROM THE DATABASE
8 CREATED PURSUANT TO SECTION 24-31-303 (1)(r), ANY DISTRICT
9 ATTORNEY MAY REMOVE THE PEACE OFFICER'S NAME FROM THE RELEVANT
10 DISTRICT ATTORNEY'S CREDIBILITY DISCLOSURE NOTIFICATION RECORD
11 UPON REQUEST OF THE PEACE OFFICER.

12 (4) EACH DISTRICT ATTORNEY SHALL REVIEW THE POLICIES AND
13 PROCEDURES ADOPTED AND IMPLEMENTED PURSUANT TO SUBSECTION (3)
14 OF THIS SECTION AT LEAST EVERY FIVE YEARS TO ENSURE COMPLIANCE
15 WITH APPLICABLE FEDERAL AND STATE CASE LAW INTERPRETING *BRADY V.*
16 *MARYLAND*, 373 U.S. 83 (1963); *GIGLIO V. UNITED STATES*, 405 U.S. 150
17 (1972); *KYLES V. WHITLEY*, 514 U.S. 419 (1995), AND ITS PROGENY; AS
18 WELL AS THE COLORADO RULES OF CRIMINAL PROCEDURE.

19 **SECTION 2. Appropriation.** (1) For the 2021-22 state fiscal
20 year, \$31,147 is appropriated to the department of public safety for use
21 by the Colorado state patrol. This appropriation is from the Highway
22 Users Tax Fund created in section 43-4-201 (1)(a), C.R.S., and
23 appropriated pursuant to section 43-4-201 (3)(a)(I)(C), C.R.S. To
24 implement this act, the division may use this appropriation as follows:

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

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

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