

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0945.02 Michael Dohr x4347

HOUSE BILL 24-1460

HOUSE SPONSORSHIP

Herod and Bacon, deGruy Kennedy

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO STRENGTHEN RESPONSES TO LAW
102 ENFORCEMENT MISCONDUCT.

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 (agency) that receives an allegation of misconduct, criminal conduct, or other unprofessional conduct regarding a peace officer employed by the agency to investigate the allegation. If a peace officer receives an allegation of misconduct, criminal conduct, or other unprofessional conduct (misconduct) or is reasonably aware of the misconduct of another peace officer, the peace

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

officer shall report the allegation to the subject of the allegation's employing agency. A peace officer who fails to make the report commits a class 2 misdemeanor. A person who makes an allegation has a private right of action if the allegation is not investigated.

The bill clarifies that patterns and practices investigations may also be related to deprivation of rights by a peace officer against another peace officer.

Current law requires agencies to report certain information regarding officers' misconduct to a database maintained by the P.O.S.T. board. The attorney general may audit the reports made to the database to verify reporting compliance. The bill requires the attorney general to accept reports of non-reporting to the database and requires those reports to be investigated within available resources.

Current law requires unedited video and audio recordings of incidents of alleged misconduct to be released the public upon request. The bill states that a law enforcement agency shall not charge a fee to the requestor related to releasing the recording.

Current law provides a peace officer with whistle-blower protection. The bill allows a peace officer who is subject to whistle-blower discipline a private right of action against the officer's employing agency.

The bill requires each agency to retain all reports regarding allegations of misconduct and all investigation files, notes, and reports related to those reports. The bill also requires the investigating agency to provide a copy of the investigation file to the subject of the investigation after the investigation is completed.

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

2 **SECTION 1.** In Colorado Revised Statutes, 18-8-802, **amend**
3 (1)(c); and **add** (2.5) as follows:

4 **18-8-802. Duty to report use of force by peace officers - duty**
5 **to intervene.** (1) (c) Any peace officer who fails to report such use of
6 force in the manner prescribed in this subsection (1) OR FAILS TO COMPLY
7 WITH SUBSECTION (2.5)(b) of this section commits a class 2 misdemeanor.

8 (2.5) (a) (I) IF A LAW ENFORCEMENT AGENCY RECEIVES AN
9 ALLEGATION OF MISCONDUCT, CRIMINAL CONDUCT, OR OTHER
10 UNPROFESSIONAL CONDUCT REGARDING A PEACE OFFICER EMPLOYED BY

1 THE LAW ENFORCEMENT AGENCY, THE LAW ENFORCEMENT AGENCY SHALL
2 INVESTIGATE THE ALLEGATION AND SHALL COMPLY WITH SECTION
3 24-31-908.

4 (II) IF A PEACE OFFICER RECEIVES AN ALLEGATION OF
5 MISCONDUCT, CRIMINAL CONDUCT, OR OTHER UNPROFESSIONAL CONDUCT
6 OR IS REASONABLY AWARE OF THE MISCONDUCT, CRIMINAL CONDUCT, OR
7 OTHER UNPROFESSIONAL CONDUCT OF ANOTHER PEACE OFFICER, THE
8 PEACE OFFICER SHALL REPORT THE ALLEGATION TO THE SUBJECT OF THE
9 ALLEGATION'S EMPLOYING LAW ENFORCEMENT AGENCY.

10 (b) (I) A PERSON WHO MAKES AN ALLEGATION SUBJECT TO
11 SUBSECTION (2.5)(a) OF THIS SECTION AND THE LAW ENFORCEMENT
12 AGENCY OR PEACE OFFICER DOES NOT COMPLY WITH SUBSECTION (2.5)(a)
13 OF THIS SECTION HAS A PRIVATE RIGHT OF ACTION AGAINST THE LAW
14 ENFORCEMENT AGENCY AND, IF APPLICABLE, THE PEACE OFFICER WHO
15 RECEIVED THE REPORT PURSUANT TO SUBSECTION (2.5)(a) OF THIS
16 SECTION.

17 (II) STATUTORY IMMUNITIES AND STATUTORY LIMITATIONS ON
18 LIABILITY, DAMAGES, OR ATTORNEY FEES DO NOT APPLY TO CLAIMS
19 BROUGHT PURSUANT TO THIS SUBSECTION (2.5)(b). THE "COLORADO
20 GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, DOES NOT
21 APPLY TO CLAIMS BROUGHT PURSUANT TO THIS SUBSECTION (2.5)(b).

22 (III) QUALIFIED IMMUNITY IS NOT A DEFENSE TO LIABILITY
23 PURSUANT TO THIS SUBSECTION (2.5)(b).

24 (IV) IN ANY ACTION BROUGHT PURSUANT TO THIS SUBSECTION
25 (2.5)(b), A COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS
26 TO A PREVAILING PLAINTIFF. IN ACTIONS FOR INJUNCTIVE RELIEF, A COURT
27 SHALL DEEM A PLAINTIFF TO HAVE PREVAILED IF THE PLAINTIFF'S SUIT WAS

1 A SUBSTANTIAL FACTOR OR SIGNIFICANT CATALYST IN OBTAINING THE
2 RESULTS SOUGHT BY THE LITIGATION. WHEN A JUDGMENT IS ENTERED IN
3 FAVOR OF A DEFENDANT, THE COURT MAY AWARD REASONABLE COSTS
4 AND ATTORNEY FEES TO THE DEFENDANT FOR DEFENDING ANY CLAIMS THE
5 COURT FINDS FRIVOLOUS.

6 **SECTION 2.** In Colorado Revised Statutes, **amend** 24-31-113 as
7 follows:

8 **24-31-113. Public integrity - patterns and practices.** It is
9 unlawful for any governmental authority, or any agent thereof, or any
10 person acting on behalf of a governmental authority, to engage in a
11 pattern or practice of conduct by peace officers or by officials or
12 employees of any governmental agency that deprives persons, INCLUDING
13 OTHER PEACE OFFICERS, of rights, privileges, or immunities secured or
14 protected by the constitution or laws of the United States or the state of
15 Colorado. Whenever the attorney general has reasonable cause to believe
16 that a violation of this section has occurred, the attorney general, for or
17 in the name of the state of Colorado, may in a civil action obtain any and
18 all appropriate relief to eliminate the pattern or practice. Before filing
19 suit, the attorney general shall notify the government authority or any
20 agent thereof, and provide it with the factual basis that supports ~~his or her~~
21 THE ATTORNEY GENERAL'S reasonable cause to believe a violation
22 occurred. Upon receipt of the factual basis, the government authority, or
23 any agent thereof, has sixty days to change or eliminate the identified
24 pattern or practice. If the identified pattern or practice is not changed and
25 permanently eliminated after sixty days, the attorney general may file a
26 civil lawsuit. The attorney general may issue subpoenas for any purpose
27 in conducting an investigation ~~under~~ PURSUANT TO this section.

1 **SECTION 3.** In Colorado Revised Statutes, 24-31-303, **amend**
2 (1)(r)(II) as follows:

3 **24-31-303. Duties - powers of the P.O.S.T. board - definition.**

4 (1) The P.O.S.T. board has the following duties:

5 (r) (II) Law enforcement agencies shall report to the P.O.S.T.
6 board the information required in this subsection (1)(r) in a format
7 determined by the P.O.S.T. board. Failure to submit ~~such~~ THE information
8 is subject to a fine set in rule by the P.O.S.T. board. THE ATTORNEY
9 GENERAL MAY AUDIT THE REPORTS MADE PURSUANT TO THIS SUBSECTION
10 (1)(r) TO VERIFY LAW ENFORCEMENT AGENCIES' COMPLIANCE WITH THIS
11 SUBSECTION (1)(r). IN CONDUCTING THE AUDITS, THE ATTORNEY GENERAL
12 MAY ALSO REQUEST INFORMATION FROM LAW ENFORCEMENT AGENCIES TO
13 VERIFY COMPLIANCE WITH THIS SUBSECTION (1)(r). THE ATTORNEY
14 GENERAL MAY ISSUE SUBPOENAS FOR ANY PURPOSE IN CONDUCTING AN
15 AUDIT PURSUANT TO THIS SECTION.

16 **SECTION 4.** In Colorado Revised Statutes, 24-31-902, **amend**
17 (2)(a) as follows:

18 **24-31-902. Incident recordings - release - tampering - fine.**

19 (2) (a) For all incidents in which there is a complaint of peace officer
20 misconduct by another peace officer, a civilian, or nonprofit organization,
21 through notice to the law enforcement agency involved in the alleged
22 misconduct, the local law enforcement agency or the Colorado state patrol
23 shall release, upon request, all unedited video and audio recordings of the
24 incident, including those from body-worn cameras, dash cameras, or
25 otherwise collected through investigation, to the public within twenty-one
26 days after the local law enforcement agency or the Colorado state patrol
27 received the request for release of the video or audio recordings. THE LAW

1 ENFORCEMENT AGENCY SHALL NOT CHARGE A FEE TO THE REQUESTOR
2 RELATED TO RELEASING THE UNEDITED VIDEO AND AUDIO RECORDINGS OF
3 AN INCIDENT.

4 **SECTION 5.** In Colorado Revised Statutes, 24-31-906, **amend**
5 (1) introductory portion and (3); and **add** (4) as follows:

6 **24-31-906. Retaliation against whistle-blower officers**
7 **prohibited.** (1) A peace officer's employer or the employer's agent shall
8 not discharge; discipline; demote; deny a promotion, transfer, or ~~reassign~~
9 REASSIGNMENT; discriminate against; harass; IMPOSE A REQUIREMENT ON
10 AN OFFICER THAT IS NOT APPLICABLE TO SIMILARLY SITUATED OFFICERS
11 IN THE AGENCY OR THAT IS NOT BASED ON PERFORMANCE; or threaten a
12 peace officer's employment because the peace officer disclosed
13 information that shows:

14 (3) An employee or agent of a law enforcement agency that
15 knowingly or intentionally violates subsection (1) of this section shall be
16 disciplined appropriately by the law enforcement agency. THE PEACE
17 OFFICER WHO WAS SUBJECT TO THE RETALIATION MAY USE THE FACT THAT
18 THE PEACE OFFICER WAS SUBJECT TO RETALIATION IN ORDER TO APPEAL
19 OR REMEDIATE ANY DISCHARGE; DISCIPLINE; DEMOTION; DENIAL OF A
20 PROMOTION, TRANSFER, OR REASSIGNMENT; DISCRIMINATION AGAINST;
21 HARASSMENT; OR IMPOSITION OF A REQUIREMENT ON AN OFFICER THAT IS
22 NOT APPLICABLE TO SIMILARLY SITUATED OFFICERS IN THE AGENCY OR
23 THAT IS NOT BASED ON PERFORMANCE THE PEACE OFFICER WAS SUBJECT
24 TO.

25 (4) (a) A PEACE OFFICER WHO IS DISCHARGED; DISCIPLINED;
26 DEMOTED; DENIED A PROMOTION, TRANSFER, OR REASSIGNMENT;
27 DISCRIMINATED AGAINST; HARASSED; HAS RECEIVED A REQUIREMENT

1 THAT IS NOT APPLICABLE TO SIMILARLY SITUATED OFFICERS IN THE
2 AGENCY OR IS NOT BASED ON PERFORMANCE; OR WHOSE EMPLOYMENT
3 WAS THREATENED IN VIOLATION OF SUBSECTION (1) OF THIS SECTION HAS
4 A PRIVATE RIGHT OF ACTION AGAINST THE PEACE OFFICER'S EMPLOYING
5 AGENCY.

6 (b) STATUTORY IMMUNITIES AND STATUTORY LIMITATIONS ON
7 LIABILITY, DAMAGES, OR ATTORNEY FEES DO NOT APPLY TO CLAIMS
8 BROUGHT PURSUANT TO THIS SUBSECTION (4). THE "COLORADO
9 GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF THIS TITLE 24, DOES NOT
10 APPLY TO CLAIMS BROUGHT PURSUANT TO THIS SUBSECTION (4).

11 (c) QUALIFIED IMMUNITY IS NOT A DEFENSE TO LIABILITY
12 PURSUANT TO THIS SUBSECTION (4).

13 (d) IN ANY ACTION BROUGHT PURSUANT TO THIS SUBSECTION (4),
14 A COURT SHALL AWARD REASONABLE ATTORNEY FEES AND COSTS TO A
15 PREVAILING PLAINTIFF. IN ACTIONS FOR INJUNCTIVE RELIEF, A COURT
16 SHALL DEEM A PLAINTIFF TO HAVE PREVAILED IF THE PLAINTIFF'S SUIT WAS
17 A SUBSTANTIAL FACTOR OR SIGNIFICANT CATALYST IN OBTAINING THE
18 RESULTS SOUGHT BY THE LITIGATION. WHEN A JUDGMENT IS ENTERED IN
19 FAVOR OF A DEFENDANT, THE COURT MAY AWARD REASONABLE COSTS
20 AND ATTORNEY FEES TO THE DEFENDANT FOR DEFENDING ANY CLAIMS THE
21 COURT FINDS FRIVOLOUS.

22 **SECTION 6.** In Colorado Revised Statutes, **add** 24-31-907 and
23 24-31-908 as follows:

24 **24-31-907. Reports to the attorney general for noncompliance.**

25 (1) THE ATTORNEY GENERAL SHALL ACCEPT REPORTS OF
26 NONCOMPLIANCE WITH SECTION 24-31-303 (1)(r) AND SHALL INVESTIGATE
27 ALL REPORTS RECEIVED WITHIN AVAILABLE RESOURCES.

1 (2) THE ATTORNEY GENERAL SHALL NOTIFY ALL LAW
2 ENFORCEMENT AGENCIES AND PEACE OFFICERS IN THE STATE OF THE
3 ABILITY TO MAKE A REPORT TO THE ATTORNEY GENERAL PURSUANT TO
4 SUBSECTION (1) OF THIS SECTION ON AN ANNUAL BASIS.

5 **24-31-908. Retention of the law enforcement internal affairs**
6 **investigations.** (1) EACH LAW ENFORCEMENT AGENCY SHALL RETAIN ALL
7 REPORTS REGARDING ALLEGATIONS OF MISCONDUCT, CRIMINAL CONDUCT,
8 OR OTHER UNPROFESSIONAL CONDUCT AND ALL INVESTIGATION FILES,
9 NOTES, AND REPORTS RELATED TO THOSE REPORTS FOR AT LEAST THREE
10 YEARS AFTER THE DATE OF THE INITIAL REPORT.

11 (2) AN INVESTIGATING LAW ENFORCEMENT AGENCY SHALL
12 PROVIDE A COPY OF THE INVESTIGATION FILE TO THE SUBJECT OF AN
13 INVESTIGATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION AFTER THE
14 INVESTIGATION IS COMPLETE.

15 **SECTION 7. Safety clause.** The general assembly finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety or for appropriations for
18 the support and maintenance of the departments of the state and state
19 institutions.