

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 19, 2019

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB19-1119 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

24 (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;
28 (C) ANY VIDEO OR PHOTOGRAPH THAT RAISES SUBSTANTIAL
29 PRIVACY CONCERNS FOR CRIMINAL DEFENDANTS, VICTIMS, WITNESSES, OR
30 INFORMANTS, INCLUDING VIDEO REFLECTING NUDITY, A MEDICAL
31 EMERGENCY, A MENTAL HEALTH CRISIS, A VICTIM INTERVIEW, OR THE
32 INTERIOR OF A HOME OR TREATMENT FACILITY. WHENEVER POSSIBLE, THE
33 VIDEO SHOULD BE REDACTED OR BLURRED TO PROTECT THE PRIVACY
34 INTEREST WHILE STILL ALLOWING PUBLIC RELEASE.
35 (D) THE IDENTITY OF OFFICERS WHO VOLUNTEERED INFORMATION
36 RELATED TO THE INTERNAL INVESTIGATION BUT WHO ARE NOT A SUBJECT
37 OF THE INTERNAL INVESTIGATION; AND
38 (E) SPECIFIC INFORMATION THAT WOULD REVEAL CONFIDENTIAL
39 INTELLIGENCE INFORMATION, CONFIDENTIAL SECURITY PROCEDURES OF A
40 LAW ENFORCEMENT AGENCY OR THAT, IF DISCLOSED, WOULD COMPROMISE
41 THE SAFETY OF A PEACE OFFICER, WITNESS, OR INFORMANT. HOWEVER,

1 NOTHING IN THIS SUBSECTION (4)(c)(I)(E) JUSTIFIES OR PERMITS THE
2 REDACTION OR WITHHOLDING OF INFORMATION DESCRIBING OR DEPICTING
3 USE OF FORCE BY A PEACE OFFICER ON A MEMBER OF THE PUBLIC.

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

7 (d) A WITNESS, VICTIM, OR CRIMINAL DEFENDANT MAY WAIVE IN
8 WRITING THE INDIVIDUAL PRIVACY INTEREST THAT MAY BE IMPLICATED BY
9 PUBLIC RELEASE. UPON RECEIPT OF SUCH A WRITTEN WAIVER,
10 ACCOMPANIED BY A REQUEST FOR RELEASE OF THE RECORDS, THE
11 CUSTODIAN SHALL NOT REDACT, REMOVE, OR WITHHOLD RECORDS TO
12 PROTECT THE WAIVED PRIVACY INTEREST.

13 (e) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (4)(a) OF
14 THIS SECTION, THE CUSTODIAN OF AN INTERNAL INVESTIGATION FILE AS
15 DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION MAY DENY INSPECTION
16 OF THE FILE IF THERE IS AN ONGOING CRIMINAL INVESTIGATION OR
17 CRIMINAL CASE AGAINST A PEACE OFFICER RELATED TO THE SUBJECT OF
18 THE INTERNAL INVESTIGATION. THE INVESTIGATION FILE MUST BE OPEN
19 FOR PUBLIC INSPECTION UPON THE DISMISSAL OF ALL CHARGES OR UPON
20 A SENTENCE FOR A CONVICTION.

21 (f) ANY PERSON WHO HAS BEEN DENIED ACCESS TO ANY
22 INFORMATION IN A COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE
23 MAY FILE AN APPLICATION IN THE DISTRICT COURT IN THE COUNTY WHERE
24 THE RECORDS ARE LOCATED FOR AN ORDER DIRECTING THE CUSTODIAN
25 THEREOF TO SHOW CAUSE WHY THE WITHHELD OR REDACTED
26 INFORMATION SHOULD NOT BE MADE AVAILABLE TO THE APPLICANT. THE
27 COURT SHALL SET THE HEARING ON THE ORDER TO SHOW CAUSE AT THE
28 EARLIEST PRACTICAL TIME. IF THE COURT DETERMINES, BASED ON ITS
29 INDEPENDENT JUDGMENT, APPLYING DE NOVO REVIEW, THAT ANY PORTION
30 OR PORTIONS OF THE COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE
31 WERE IMPROPERLY WITHHELD PURSUANT TO THIS SECTION, THE COURT
32 SHALL ORDER THE CUSTODIAN TO PROVIDE THE APPLICANT WITH A COPY
33 OF THOSE PORTIONS THAT WERE IMPROPERLY WITHHELD.

34 (g) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (4)(a)
35 AND (4)(e) OF THIS SECTION, THE CUSTODIAN OF AN INTERNAL
36 INVESTIGATION FILE AS DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION
37 MAY DENY INSPECTION OF THE FILE IF THE INSPECTION IS PROHIBITED BY
38 RULES PROMULGATED BY THE COLORADO SUPREME COURT OR BY A COURT
39 ORDER.

40 (h) THIS SUBSECTION (4) APPLIES TO INTERNAL INVESTIGATIONS
41 INITIATED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4).

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

3 **24-72-305. Allowance or denial of inspection - grounds -**
4 **procedure - appeal.** (5) On the ground that disclosure would be contrary
5 to the public interest, and unless otherwise provided by law, INCLUDING
6 AS REQUIRED BY SECTION 24-72-303 (4), the custodian may deny access
7 to records of investigations conducted by or of intelligence information
8 or security procedures of any sheriff, district attorney, or police
9 department or any criminal justice investigatory files compiled for any
10 other law enforcement purpose.

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

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