

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

April 21, 2021

Committee on Judiciary.

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

HB21-1250 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend page 13, after line 6 insert:

2 "(4) THE P.O.S.T. BOARD HAS THE AUTHORITY TO PERMANENTLY
3 REVOKE OR SUSPEND THE CERTIFICATION OF ANY PEACE OFFICER WHO
4 ENTERS INTO A DEFERRED JUDGEMENT, DEFERRED PROSECUTION, OR
5 DIVERSION AGREEMENT FOR A CRIME INVOLVING THE UNLAWFUL USE OF
6 PHYSICAL FORCE OR A CRIME INVOLVING THE FAILURE TO INTERVENE IN
7 THE UNLAWFUL USE OF FORCE.

8 **SECTION 5.** In Colorado Revised Statutes, **add** 24-31-906 as
9 follows:

10 **24-31-906. Retaliation against whistleblower officers**
11 **prohibited.** (1) A PEACE OFFICER'S EMPLOYER SHALL NOT DISCHARGE;
12 DISCIPLINE; DEMOTE; DENY A PROMOTION, TRANSFER, OR REASSIGNMENT;
13 DISCRIMINATE AGAINST; OR THREATEN A PEACE OFFICER'S EMPLOYMENT
14 BECAUSE THE PEACE OFFICER:

15 (a) DISCLOSED INFORMATION THAT SHOWS:
16 (I) MISMANAGEMENT;
17 (II) A WASTE OF GOVERNMENT RESOURCES;
18 (III) A DANGER TO PUBLIC HEALTH OR SAFETY; OR
19 (IV) A VIOLATION OF LAW OR POLICY COMMITTED BY ANOTHER
20 PEACE OFFICER; OR

21 (b) LAWFULLY EXERCISED A CONSTITUTIONAL RIGHT.
22 (2) A PEACE OFFICER HAS THE RIGHT TO BRING A CIVIL ACTION
23 ARISING OUT OF THE PEACE OFFICER'S OFFICIAL DUTIES."

- 1 Renumber succeeding sections accordingly.
- 2 Page 15, lines 10 and 11, strike "firearm, USE OF FORCE OR OTHER
3 ACTION," and substitute "firearm".
- 4 Page 15, line 11, strike "death." and substitute "death, OR THE USE OF
5 FORCE OR OTHER WEAPON BY A PEACE OFFICER THAT RESULTED IN
6 SERIOUS BODILY INJURY OR DEATH.".
- 7 Page 16, line 3, strike "PERSON." and substitute "PERSON AND ONLY FOR
8 AS LONG AS NECESSARY TO ACCOMPLISH THE OFFICER'S LEGITIMATE LAW
9 ENFORCEMENT OBJECTIVE.".
- 10 Page 16, line 10, strike "FORCE" and substitute "FORCE:".
- 11 Page 16, strike line 11 and substitute:
12 "(I) AS SOON AS THE PERSON ON WHOM THE FORCE IS USED IS
13 UNDER THE OFFICER'S CONTROL;
14 (II) AS SOON AS THE PERSON ON WHOM THE FORCE IS USED IS NO
15 LONGER AN IMMINENT THREAT OF SERIOUS PHYSICAL INJURY OR DEATH TO
16 THE OFFICER OR ANOTHER PERSON; OR
17 (III) WHEN THE OFFICER DETERMINES THAT THE FORCE WILL NO
18 LONGER ACCOMPLISH, OR IS NO LONGER REASONABLE AND PROPORTIONAL
19 TO ACCOMPLISH, THE OFFICER'S LEGITIMATE LAW ENFORCEMENT
20 OBJECTIVE.".
- 21 Page 18, after line 23 insert:
22 "(d) (I) "IMMINENT THREAT" MEANS, WHEN BASED ON THE
23 TOTALITY OF THE CIRCUMSTANCES, A REASONABLE LAW ENFORCEMENT
24 OFFICER WITH EXPERIENCE AND TRAINING IN THE USE OF FORCE OR
25 DEADLY FORCE IN THE SAME SITUATION WOULD BELIEVE THAT A PERSON
26 HAS THE PRESENT ABILITY, OPPORTUNITY, AND APPARENT INTENT TO
27 CAUSE IMMEDIATE DEATH OR PHYSICAL INJURY TO THE OFFICER OR
28 ANOTHER PERSON, AND FROM APPEARANCES, THE THREAT MUST BE
29 INSTANTLY CONFRONTED AND ADDRESSED TO PREVENT THE DEATH OF OR
30 PHYSICAL INJURY TO THE OFFICER OR ANOTHER PERSON.
31 (II) "IMMINENT THREAT" DOES NOT MEAN THE MERE FEAR OF
32 FUTURE HARM, NO MATTER HOW GREAT THE FEAR AND NO MATTER HOW
33 GREAT THE LIKELIHOOD OF THE THREAT.".

1 Reletter succeeding paragraphs accordingly.

2 Page 19, after line 2, insert:

3 "(g) TOTALITY OF THE CIRCUMSTANCES" MEANS ALL CREDIBLE
4 FACTS KNOWN TO A PEACE OFFICER OR THAT COULD HAVE BEEN
5 ASCERTAINED BY THE OFFICER THROUGH VISUAL OBSERVATION, TOUCH,
6 OR AUDIBLE MECHANISMS UNDER THE CIRCUMSTANCES CONFRONTING THE
7 OFFICER LEADING UP TO AND AT THE TIME OF THE USE OF FORCE,
8 INCLUDING:

9 (I) ACTIONS OF AND RISK TO A PERSON AGAINST WHOM A LAW
10 ENFORCEMENT OFFICER USES FORCE;

11 (II) ACTIONS OF A LAW ENFORCEMENT OFFICER; AND

12 (III) RISK TO OTHER PERSONS."

13 Page 23, line 17, strike "(1)(r)" and substitute "(1)(r); and **add** (1)(s)".

14 Page 24, after line 15 insert:

15 "(s) BY JANUARY 1, 2022, TO ADOPT PROCEDURES TO ALLOW A
16 PEACE OFFICER TO SEEK REVIEW OF THE PEACE OFFICER'S STATUS IN THE
17 DATABASE CREATED PURSUANT TO SUBSECTION (1)(r) OF THIS SECTION
18 BASED ON THE PEACE OFFICER'S PRESENTATION OF NEW EVIDENCE OR
19 CIRCUMSTANCES NOT PREVIOUSLY PROVIDED TO SHOW THE PEACE
20 OFFICER'S RECORD MAY BE REMOVED FROM THE DATABASE."

21 Page 25, line 19, after "**amend**" insert "(2), (3.5) introductory portion,".

22 Page 25, strike lines 21 through 26 and substitute:

23 "**24-31-309. Profiling - officer identification - training.**

24 (2) **Definitions.** For purposes of this section:

25 (a) "LEGAL BASIS" MEANS ANY BASIS AUTHORIZED BY STATUTE OR
26 THAT THE COLORADO SUPREME COURT OR UNITED STATES SUPREME
27 COURT HAS DETERMINED IS LAWFUL PURSUANT TO SECTION 7 OF ARTICLE
28 II OF THE STATE CONSTITUTION OR THE FOURTH AMENDMENT TO THE
29 UNITED STATES CONSTITUTION.

30 (b) "Profiling" means the practice of relying solely on race,
31 ethnicity, gender, national origin, language, religion, sexual orientation,
32 gender identity, age, or disability in:

33 (a) (I) Determining the existence of probable cause to place in
34 custody or arrest an individual or in constituting a reasonable and



1 articulable suspicion that an offense has been or is being committed so as
2 to justify the detention of an individual or the investigatory stop of a
3 vehicle; or
4 (b) (II) Determining the scope, substance, or duration of an
5 investigation or law enforcement activity to which a person will be
6 subjected.
7 (3.5) A peace officer, AS DEFINED IN SECTION 24-31-901 (3), shall
8 have a legal basis for making a contact, ~~whether consensual or~~
9 ~~nonconsensual, for the purpose of enforcing the law or investigating~~
10 ~~possible violations of the law. After making a contact, a peace officer, as~~
11 ~~defined in section 24-31-901 (3), AS DEFINED IN SECTION 24-31-901 (1),~~
12 AND shall report to the peace officer's employing agency:".

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