A BILL FOR AN ACT

CONCERNING THE MODIFICATION OF MEASURES TO ENSURE LAW ENFORCEMENT ACCOUNTABILITY.

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 permits a civil action for deprivation of rights against a peace officer to be brought against a Colorado state patrol officer or Colorado bureau of investigation agent.

The bill amends certain standards concerning use of force by a peace officer.

The bill defines "intervene", for the purpose of a peace officer's...
duty to intervene. Furthermore, it amends the requirements that constitute a class 1 misdemeanor for failure of the duty to intervene.

The bill requires that any suspension or revocation of a peace officer's certification is not effective until the peace officer has exhausted all internal, contractual, and legal rights to review, challenge, and appeal the underlying finding or decision.

The bill includes agents employed by the Colorado bureau of investigation to the definition of "peace officers" for purposes of body-worn camera requirements.

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

SECTION 1. In Colorado Revised Statutes, 13-21-131, amend (1) as follows:

13-21-131. Civil action for deprivation of rights. (1) A peace officer, as defined in section 24-31-901 (3), employed by a local government who, under color of law, subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of any individual rights that create binding obligations on government actors secured by the bill of rights, article II of the state constitution, is liable to the injured party for legal or equitable relief or any other appropriate relief.

SECTION 2. In Colorado Revised Statutes, 18-1-707, amend (1), (2)(b), and (3)(b) as follows:

18-1-707. Use of force by peace officers - definitions - repeal. (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to another person from using unlawful physical force against the peace officer or
another person.

(2) When physical force is used, a peace officer shall:

(b) Use only a THE MINIMUM degree of force consistent with the minimization of NECESSARY IN ORDER TO MINIMIZE injury to others THE PERSON SUBJECT TO SUCH FORCE;

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

(b) The suspect poses an immediate IMMINENT threat to the peace officer or another person;

SECTION 3. In Colorado Revised Statutes, amend 18-8-801 as follows:

18-8-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "INTERVENE" MEANS A PEACE OFFICER, WHILE ENGAGED IN AN OFFICIAL CAPACITY, ACTS TO PREVENT ANOTHER PEACE OFFICER FROM SUBJECTING A PERSON TO EXCESSIVE FORCE.

(2) "Materially false statement" has the meaning set out in section 18-8-501 (1).

(3) "Peace officer" has the meaning set out in section 16-2.5-101. C.R.S.

SECTION 4. In Colorado Revised Statutes, 18-8-802, amend (1.5)(d) and (1.5)(f) as follows:

18-8-802. Duty to report use of force by peace officers - duty to intervene. (1.5) (d) Any peace officer who OBSERVES THE USE OF UNLAWFUL FORCE, KNOWS THAT THE FORCE ANOTHER PEACE OFFICE IS USING OR IS ABOUT TO USE IS UNLAWFUL, HAS A REASONABLE
OPPORTUNITY TO ACT TO PREVENT THE HARM FROM OCCURRING, AND fails
to intervene to prevent the use of unlawful force as prescribed in this
subsection (1.5) commits a class 1 misdemeanor. Nothing in this
subsection (1.5) shall prohibit or discourage prosecution of any other
criminal offense related to failure to intervene, including a higher charge,
if supported by the evidence.

(f) In addition to any criminal liability and penalty under the law,
when an administrative law judge, hearing officer, or internal
investigation finds that a peace officer failed to intervene as required by
subsection (1.5)(a) of this section in an incident resulting in serious bodily
injury or death to any person, the peace officer's employer shall subject
the peace officer to discipline, up to and including termination, to the
extent permitted by applicable constitutional and statutory personnel laws
and case law, and the P.O.S.T. board shall permanently decertify
the peace officer OFFICER’S CERTIFICATION upon receipt of notice of the
peace officer's discipline. The revocation may only be overturned if the
peace officer is exonerated by a court. THE REVOCATION IS NOT EFFECTIVE
UNTIL THE PEACE OFFICER HAS EXHAUSTED ALL INTERNAL, CONTRACTUAL,
AND LEGAL RIGHTS TO REVIEW, CHALLENGE, AND APPEAL THE
UNDERLYING FINDING OR DECISION DESCRIBED IN THIS SUBSECTION
(1.5)(f).

SECTION 5. In Colorado Revised Statutes, 24-31-303, amend
(1)(q) and (1)(r); and add (1)(s) as follows:

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

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

(q) To develop a recruitment program that creates a diversified
applicant pool for appointments to the P.O.S.T. board and the subject
matter expertise committees; and

(r) (I) Beginning on January 1, 2022, to create and maintain a database containing information related to a peace officer's:

(I) (A) Untruthfulness;

(I) (B) Repeated failure to follow P.O.S.T. board training requirements;

(II) (C) Decertification by the P.O.S.T. board; and

(II) (D) Termination for cause.

(II) FOR PURPOSES OF THIS SUBSECTION (1)(r), "UNTRUTHFULNESS" MEANS A PEACE OFFICER MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS.

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

SECTION 6. In Colorado Revised Statutes, 24-31-309, amend (2), (3.5) introductory portion, and (3.5)(h)(IV) as follows:

24-31-309. Profiling - officer identification - training - definitions. (2) Definitions. For purposes of this section, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CONTACT" MEANS AN INTERACTION WITH AN INDIVIDUAL WHO IS THE SUBJECT OF AN INVESTIGATION OF A POSSIBLE VIOLATION OF THE
LAW, WHETHER OR NOT THE PERSON IS IN A MOTOR VEHICLE. "CONTACT"
is initiated by a peace officer, whether consensual or nonconsensual, for
the purpose of enforcing the law or investigating a possible violation of
the law. "CONTACT" does not include a routine interaction with the public
at the point of entry or exit from a controlled area or a non-investigatory
and consensual interaction with the public.

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

(a) (I) Determining the existence of probable cause to place in
custody or arrest an individual or in constituting a reasonable and
articulable suspicion that an offense has been or is being committed so as
to justify the detention of an individual or the investigatory stop of a
vehicle; or

(b) (II) Determining the scope, substance, or duration of an
investigation or law enforcement activity to which a person will be
subjected.

(3.5) A peace officer shall have a legal basis for making a contact.
whether consensual or nonconsensual, for the purpose of enforcing the
law or investigating possible violations of the law. After making a
contact, a peace officer, as defined in section 24-31-901 (3), shall report
to the peace officer's employing agency:

(h) The actions taken by the peace officer during the contact,
including but not limited to whether:

(IV) A peace officer unholstered a weapon during the
contact; and
SECTION 7. In Colorado Revised Statutes, 24-31-901, amend (1) and (3); and add (2.5) as follows:

24-31-901. Definitions. As used in this part 9, unless the context otherwise requires:

(1) "Contacts" means an interaction with an individual who is the subject of an investigation of a possible violation of the law, whether or not the person is in a motor vehicle. "Contact" is initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating a possible violation of the law. "Contacts" do not include a routine interaction with the public at the point of entry or exit from a controlled area or a non-investigatory and consensual interaction with the public.

(2.5) "Law enforcement agency" means an entity that employs a peace officer as defined in subsection (3) of this section.

(3) "Peace officer" means any person employed by a political subdivision of the state required to be certified by the P.O.S.T. board pursuant to section 16-2.5-102, a Colorado state patrol officer as described in section 16-2.5-114, a Colorado bureau of investigation agent, and any noncertified deputy sheriff as described in section 16-2.5-103 (2).

SECTION 8. In Colorado Revised Statutes, 24-31-902, amend as they will become effective July 1, 2023, (1)(a)(I), (1)(a)(II)(A), (1)(a)(II)(D), (1)(a)(III), (1)(a)(IV)(B), (1)(a)(IV)(C), (1)(b), (2)(a), and (2)(b)(II)(B); and add (1)(a)(II)(B.5) as follows:

24-31-902. Incident recordings - release - tampering - fine.
(1) (a) (I) By July 1, 2023, all local law enforcement agencies in the state and the Colorado state patrol shall provide body-worn cameras for each peace officer of the law enforcement agency who interacts with members of the public. Law enforcement agencies may seek funding pursuant to section 24-33.5-519.

(II) (A) Except as provided in subsection (1)(a)(II)(B), (1)(a)(II)(B.5), or (1)(a)(II)(C) of this section, a peace officer shall wear and activate a body-worn camera or dash camera, if the peace officer's vehicle is equipped with a dash camera, when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.

(B.5) A PEACE OFFICER MAY TURN OFF A BODY-WORN CAMERA IF REQUESTED BY A PERSON WHOM THE PEACE OFFICER REASONABLY BELIEVES IS A VICTIM OR A WITNESS AND IF THE REQUEST IS DOCUMENTED ON THE BODY-WORN CAMERA RECORDING OR ON A STATEMENT SIGNED BY THE REQUESTOR. THE PEACE OFFICER SHALL DOCUMENT THE REASON FOR THE REQUEST FROM THE VICTIM OR WITNESS TO TURN OFF THE BODY-WORN CAMERA IF A REASON IS GIVEN.

(D) The provisions of this subsection (1)(a)(II) do not apply to jail peace officers or staff of a local law enforcement agency if the jail has video cameras; except that this subsection (1)(a)(II) applies to jail peace officers when performing a task that requires an anticipated use of force, including cell extractions and restraint chairs. The provisions of this subsection (1)(a)(II) also do not apply to the civilian or administrative staff of the Colorado state patrol or a local law enforcement agency, the executive detail of the Colorado state patrol, and peace officers working
in a courtroom.

(III) If a peace officer fails to activate a body-worn camera or
 dashboard camera as required by this section or tampers with body-worn or
 dash-camera footage or operation when required to activate the camera,
 there is a permissive inference in any investigation or legal proceeding,
 excluding criminal proceedings against the peace officer, that the missing
 footage would have reflected misconduct by the peace officer. If a peace
 officer INTENTIONALLY fails to activate or reactivate his or her
 THE PEACE
 OFFICER'S body-worn camera as required by this section or tampers with
 body-worn or dash camera footage or operation when required to activate
 the camera, any statements sought to be introduced in a prosecution
 through the peace officer related to the incident that were not recorded
 due to the peace officer's INTENTIONAL failure to activate or reactivate the
 body-worn camera as required by this section or if the statement was not
 recorded by other means creates a rebuttable presumption of
 inadmissibility. Notwithstanding any other provision of law, this
 subsection (1)(a)(III) does not apply if the body-worn camera was not
 activated due TO AN UNFORESEEABLE EMERGENCY OR EXIGENT
 CIRCUMSTANCE THAT WAS NOT CAUSED BY THE PEACE OFFICER, OR to a
 malfunction of the body-worn camera and the peace officer was not
 aware of the malfunction, or was unable to rectify it, prior to the incident,
 provided that the law enforcement agency's documentation shows the
 peace officer checked the functionality of the body-worn camera at the
 beginning of his or her THE PEACE OFFICER'S shift.

(IV)(B) In addition to any criminal liability and penalty under the
 law, if a court, administrative law judge, hearing officer, or a final
 decision in an internal investigation finds that a peace officer intentionally
failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions or obstruct justice, the P.O.S.T. board shall suspend the peace officer's certification for a period of not less than one year. and the suspension may only be lifted within the period of the suspension if the peace officer is exonerated by a court. 

The suspension is not effective until the peace officer has exhausted all internal, contractual, and legal rights to review, challenge, and appeal the underlying finding or decision described in this subsection (1)(a)(IV)(B).

(C) In addition to any criminal liability and penalty under the law, if a court, administrative law judge, hearing officer, or a final decision in an internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera, except as permitted in this section, with the intent to conceal unlawful or inappropriate actions, or obstruct justice, in an incident resulting in a civilian death, the P.O.S.T. board shall permanently revoke the peace officer's certification. and the revocation may only be overturned if the peace officer is exonerated by a court. The revocation is not effective until the peace officer has exhausted all internal, contractual, and legal rights to review, challenge, and appeal the underlying finding or decision described in this subsection (1)(a)(IV)(C).

(b) A local law enforcement agency and the Colorado state patrol shall establish and follow a retention schedule for body-worn camera recordings in compliance with Colorado state archives rules and direction.

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

(b) (II) (B) If redaction or blurring is insufficient to protect the substantial privacy interest, the local law enforcement agency or the Colorado state patrol shall, upon request, release the video to the victim or, if the victim is deceased or incapacitated, to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative within twenty days after receipt of the complaint of misconduct. In cases in which the recording is not released to the public pursuant to this subsection (2)(b)(II)(B), the local law enforcement agency shall notify the person whose privacy interest is implicated, if contact information is known, within twenty days after receipt of the complaint of misconduct, and inform the person of his or her right to waive the privacy interest.

SECTION 9. In Colorado Revised Statutes, 24-31-903, amend (2) introductory portion, (2)(a)(VI), (2)(c)(VIII)(D), (3), and (5) as follows:

24-31-903. Division of criminal justice report. (2) Beginning January 1, 2023, the Colorado state patrol and each local law enforcement agency that employs peace officers shall report to the division of criminal justice:
(a) All use of force by its peace officers that results in death or serious bodily injury, including:

(VI) Whether a peace officer unholstered a weapon FIREARM during the incident;

(c) All data relating to contacts conducted by its peace officers, including:

(VIII) The actions taken by the peace officer during the contact, including but not limited to whether:

(D) A peace officer unholstered a weapon FIREARM during the contact; and

(3) The Colorado state patrol and local law enforcement agencies shall not report the name, address, social security number, or other unique personal identifying information of the subject of the use of force, victim of the official misconduct, or persons contacted, searched, or subjected to a property seizure. Notwithstanding any provision of law to the contrary, the data reported pursuant to this section is available to the public pursuant to subsection (4) of this section.

(5) The Colorado state patrol and any local A law enforcement agency that fails to meet its reporting requirements pursuant to this section is subject to the suspension of its funding by its appropriating authority.

SECTION 10. In Colorado Revised Statutes, amend 24-31-904 as follows:

24-31-904. Revoke peace officer certification after conviction. Notwithstanding any provision of law, if any peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, a crime involving the failure to
intervene in the use of unlawful force, or is found civilly liable for the use
of unlawful physical force, or is found civilly liable for failure to
intervene in the use of unlawful force, the P.O.S.T. board shall
permanently revoke the peace officer's certification. The PERMANENT
REVOCATION IS NOT EFFECTIVE UNTIL THE PEACE OFFICER HAS EXHAUSTED
ALL INTERNAL, CONTRACTUAL, AND LEGAL RIGHTS TO REVIEW,
CHALLENGE, AND APPEAL THE UNDERLYING CONVICTION THAT LEAD TO
THE REVOCATION. The P.O.S.T. board shall not, under any circumstances,
reinstate the peace officer's certification or grant new certification to the
peace officer unless the peace officer is exonerated by a court. The
P.O.S.T. board shall record each decertified peace officer in the database
created pursuant to section 24-31-303 (1)(r).

SECTION 11. Act subject to petition - effective date. Section 7 of this act takes effect on July 1, 2023, and the remainder of this act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly; except
that, if a referendum petition is filed pursuant to section 1 (3) of article V
of the state constitution against this act or an item, section, or part of this
act within such period, then the act, item, section, or part will not take
effect unless approved by the people at the general election to be held in
November 2022 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor; except that
section 7 of this act takes effect on July 1, 2023.