

CHAPTER 110

CRIMINAL LAW AND PROCEDURE

SENATE BILL 09-097

BY SENATOR(S) Cadman, Newell, Williams;
also REPRESENTATIVE(S) Pace, King S., Vigil.

AN ACT

CONCERNING CLARIFYING CHANGES TO PROVISIONS PERTAINING TO INSTITUTIONAL PEACE OFFICERS.

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

SECTION 1. 16-2.5-139, Colorado Revised Statutes, is amended to read:

16-2.5-139. Police administrator - police officer employed by the Colorado mental health institute at Pueblo. A police administrator and a police officer employed by the Colorado mental health institute at Pueblo are peace officers whose authority shall include the enforcement of all laws of the state of Colorado pursuant to ~~sections 24-7-101 to 24-7-105~~ ARTICLE 7 OF TITLE 24, C.R.S., and who shall be certified by the P.O.S.T. board. Each police administrator or police officer employed by the Colorado mental health institute at Pueblo shall ~~be required to~~ complete a minimum of forty hours of continuing law enforcement education per calendar year, or such number of hours as may otherwise be required by law.

SECTION 2. 16-2.5-140, Colorado Revised Statutes, is amended to read:

16-2.5-140. Correctional security officer employed by the Colorado mental health institute at Pueblo. A correctional security officer employed by the Colorado mental health institute at Pueblo is a peace officer ~~whose authority shall be pursuant to sections 24-7-101 to 24-7-105~~ WHILE ENGAGED IN THE PERFORMANCE OF HIS OR HER DUTIES AS PROVIDED IN ARTICLE 7 OF TITLE 24, C.R.S., and whose authority shall include the enforcement of all laws of the state of Colorado, and who may be certified by the P.O.S.T. board.

SECTION 3. 16-2.5-141, Colorado Revised Statutes, is amended to read:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

16-2.5-141. Colorado state security guard. A Colorado state security guard is a peace officer while engaged in the performance of his or her duties PURSUANT TO ARTICLE 7 OF TITLE 24, C.R.S., whose authority shall be limited to the scope and authority of his or her assigned duties and who may be certified by the P.O.S.T. board.

SECTION 4. 16-2.5-148, Colorado Revised Statutes, is amended to read:

16-2.5-148. Colorado state higher education police officer. A Colorado state higher education police officer employed by a state institution of higher education pursuant to ~~sections 24-7.5-101 to 24-7.5-105~~ ARTICLE 7.5 OF TITLE 24, C.R.S., is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado and who shall be certified by the P.O.S.T. board.

SECTION 5. Article 7.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-7.5-106. Peace officers standards and training board evaluation and recommendation - legislative authorization of peace officer status required. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, A PERSON OR GROUP OF PERSONS EMPLOYED BY ANY INSTITUTION OF HIGHER EDUCATION SHALL NOT BE DESIGNATED AS POLICE OFFICERS, AFTER JUNE 3, 2004, WITHOUT COMPLETING THE PEACE OFFICERS STANDARDS AND TRAINING BOARD PROCESSES DESCRIBED IN SECTIONS 16-2.5-201 AND 16-2.5-202, C.R.S., AND OBTAINING THE CERTIFICATION DESCRIBED IN SECTION 16-2.5-102, C.R.S.

SECTION 6. 29-5-103, Colorado Revised Statutes, is amended to read:

29-5-103. Assignment of police officers or deputy sheriffs for temporary duty. The chief of police or person performing the functions thereof of any town, city, or city and county or of any state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., or the sheriff of any county may in his or her discretion, upon request of the chief of police or person exercising the functions thereof in any other town, city, or city and county or any other state institution of higher education employing a peace officer in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., or the sheriff of any other county, assign police officers or deputies under his or her control, together with any equipment he or she deems proper, to perform temporary duty within the jurisdiction of the requesting chief of police or sheriff and under the direction and command of the requesting chief of police or sheriff; but the chief of police or sheriff assigning the officers or deputies may provide that the officers or deputies shall be under the immediate command of a superior officer designated by the assigning chief of police or sheriff, which superior officer shall be under the direct supervision and command of the requesting chief of police or sheriff. Nothing contained in this section or sections 29-5-104 to 29-5-110 shall be construed to limit the power of any town, city, city and county, or state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., to prohibit or limit by ordinance the exercise by a chief of police or sheriff of the discretion granted in sections 29-5-103 to 29-5-110.

SECTION 7. 29-5-104 (1), Colorado Revised Statutes, is amended to read:

29-5-104. Request for temporary assignment of police officers or deputy sheriffs - authority. (1) The chief of police, or person performing the functions thereof, of any town, city, or city and county or of a state institution of higher education employing a peace officer in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., and the sheriff of any county may, when in his or her opinion the same is required to quell disturbances or riots or in any other situation wherein he or she deems that an emergency exists within his or her jurisdiction, request the chief of police or person performing the function thereof of any other city, town, or city and county or at another state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., or the sheriff of any other county to assign officers or deputy sheriffs under their respective commands to perform temporary duty within the jurisdiction of the requesting chief of police or sheriff and under the direction and control of the requesting chief of police or sheriff under the terms and conditions as shall be agreed upon between the requesting and assigning chiefs of police or sheriffs. The officers or deputy sheriffs shall, while so assigned and performing duties subject to the direction and control of the requesting chief of police or sheriff, have the same power within the jurisdiction of the requesting chief of police or sheriff as do regular officers or deputies, as the case may be, of the requesting chief of police or sheriff.

SECTION 8. 29-5-108, Colorado Revised Statutes, is amended to read:

29-5-108. Liability of requesting jurisdiction. During the time that a police officer, deputy sheriff, or firefighter of a town, city, city and county, county, or fire protection district or of a state institution of higher education employing a peace officer in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., is assigned to temporary duty within the jurisdiction of another town, city, city and county, county, or fire protection district, or of another state institution of higher education employing a peace officer in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., as provided in sections 29-5-103 to 29-5-107, any liability that accrues under the provisions of article 10 of title 24, C.R.S., on account of the negligent or otherwise tortious act of the police officer, deputy sheriff, or firefighter while performing the duty shall be imposed upon the requesting town, city, city and county, county, fire protection district, or state institution of higher education, and not upon the assigning jurisdiction.

SECTION 9. 29-5-109, Colorado Revised Statutes, is amended to read:

29-5-109. Workers' compensation coverage. The coverage of any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district or of any state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., shall not be affected by reason of the performance of temporary duties in a requesting town, city, city and county, county, fire protection district, or state institution of higher education under the provisions of sections 29-5-103 to 29-5-107, and the police officers, deputy sheriffs, and firefighters shall remain covered by ~~such~~ THE workers' compensation insurance while performing the temporary duty as fully as if they were performing their regular duties within the assigning jurisdiction.

SECTION 10. 29-5-110, Colorado Revised Statutes, is amended to read:

29-5-110. Pension fund payments. If any police officer, deputy sheriff, or firefighter of any town, city, city and county, county, or fire protection district or of any state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., should become disabled or be killed by reason of the performance of temporary duty within the jurisdiction of another town, city, city and county, county, fire protection district, or state institution of higher education, as provided in sections 29-5-103 to 29-5-107, and the disability would entitle him or her or his or her death would entitle his or her survivor to payment from any police or firefighters' or employee pension fund of the town, city, city and county, county, fire protection district, or state institution of higher education assigning him or her to temporary duty in another jurisdiction, had the injury occurred during the performance of his or her duties within the assigning town, city, city and county, county, fire protection district, or state institution of higher education, the police officer, deputy sheriff, or firefighter, or his or her survivor, shall be entitled to the same payment from the pension fund of the assigning town, city, city and county, county, fire protection district, or state institution of higher education, as he or she would have been entitled to receive if the injury or death had occurred within the assigning town, city, city and county, county, fire protection district, or state institution of higher education, and he or she shall not be entitled to receive a payment from any police or firefighters' or employee pension fund of the jurisdiction in which he or she performed the temporary duties.

SECTION 11. 29-5-111 (1), Colorado Revised Statutes, is amended to read:

29-5-111. Liability of peace officers. (1) Notwithstanding the doctrines of sovereign immunity and respondeat superior, a city, town, county, or city and county or other political subdivision of the state or a state institution of higher education employing peace officers in accordance with ~~section 16-2.5-120~~ ARTICLE 7.5 OF TITLE 24, C.R.S., shall indemnify its paid peace officers and reserve officers, as defined in section 16-2.5-110, C.R.S., while the peace officers and reserve officers are on duty for any liability incurred by them and for any judgment, except a judgment for exemplary damages, entered against them for torts committed within the scope of their employment if the person claiming damages serves the political subdivision or state institution of higher education with a copy of the summons within ten days from the date when a copy of the summons is served on the peace officer or reserve officer. In no event shall any ~~such~~ political subdivision or state institution of higher education be required so to indemnify its peace officers in excess of one hundred thousand dollars for one person in any single occurrence or three hundred thousand dollars for two or more persons for any single occurrence; except that, in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars. It is the duty of the city, town, county, city and county, or other political subdivision and of the state institution of higher education to provide the defense handled by the legal staff of the public entity or by other counsel, in the discretion of the public entity, for the peace officer in ~~such~~ THE claim or civil action. However, in the event that the court determines that a reserve officer, as defined in section 16-2.5-110, C.R.S., incurred the liability while acting outside the scope of his or her assigned duties or that the reserve officer acted in a willful and wanton manner in incurring the liability, the court shall order the reserve

officer to reimburse the political subdivision or the state institution of higher education for reasonable costs and reasonable attorney fees expended for the defense of the reserve officer. With the approval of the governing body of the city, town, county, city and county, or other political subdivision or of the state institution of higher education, the claim or civil action may be settled or compromised. A city, town, county, city and county, or other political subdivision or a state institution of higher education may carry liability insurance to insure itself and its peace officers. If the political subdivision or state institution of higher education purchases insurance that provides substantial coverage for the peace officers with a policy limitation of at least one hundred thousand dollars for one person in any single occurrence and three hundred thousand dollars for two or more persons for any single occurrence, except that in such instance no indemnity shall be allowed for any person in excess of one hundred thousand dollars, then the political subdivision or state institution of higher education shall be liable under this section to indemnify the peace officers only to the extent of the limits and for such torts as are covered by the policy and only to the extent of the coverage of the policy. Nothing in this section shall be deemed to condone the conduct of any peace officer who uses excessive force or who violates the statutory or constitutional rights of any person.

SECTION 12. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 9, 2009