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MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: October 29, 2020

SUBJECT: An Overview of Senate Bill 20-217 – Concerning measures to enhance law enforcement integrity, and, in connection therewith, making an appropriation.¹

On June 13, 2020, the Colorado General Assembly enacted Senate Bill 20-217, and it was signed by Governor Polis on June 19, 2020. Following is a summary of the provisions enacted in that act.

Body Camera Requirements: §24-31-902, C.R.S.

Beginning July 1, 2023, all local law enforcement agencies and the Colorado state patrol must issue body-worn cameras to their officers, except for those working in jails, those working as administrative or civilian staff, the executive detail of the state patrol, and those working in court rooms. A peace officer must wear and activate a body-worn camera when responding to a call for service and during interactions with the public initiated by the peace officer when enforcing the law or investigating possible violations of the law. A peace officer may turn off a body-worn camera to avoid recording personal information that is not case related; when working on an unrelated assignment; when there is a long break in the incident or contact that is not related to the initial incident; and during administrative, tactical, and management discussions. A peace officer does not need to wear or activate a body-

¹ OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly.

worn camera if the peace officer is working undercover. There are sanctions for failing to activate or tampering with a body-worn camera.

All recordings of an incident must be released to the public within 21 days after the local law enforcement agency or Colorado state patrol receives a complaint of misconduct. The recording may be redacted before release to the public if there is a specified privacy interest at stake.

Policing Data Reporting: §§24-31-903 and 24-31-309, C.R.S.

Beginning in 2023, each local law enforcement agency and the Colorado state patrol must report to the division of criminal justice in the department of public safety (division):

- All use of force by its peace officers that results in death or serious bodily injury;
- All instances when a peace officer resigned while under investigation for violating department policy;
- All data relating to contacts conducted by its peace officers; and
- All data related to the use of an unannounced entry by a peace officer.

Beginning July 1, 2023, the division will create an annual report of the reported information, aggregated and broken down by state or local agency that employs peace officers, along with the underlying data. The division shall maintain in a searchable format a statewide database of the data collected and publish the database on its website. Any state or local law enforcement agency that fails to meet its reporting requirements is subject to suspension of funding by its appropriating authority.

A peace officer must have a legal basis for making a contact. After making a contact, a peace officer shall report to the peace officer's employing agency the information that the agency is required to report to the division.

Limits on Police Responses to Protests: §24-31-905, C.R.S.

A law enforcement agency and a person acting on behalf of the law enforcement agency, in response to a protest or demonstration, shall not:

- Discharge kinetic impact projectiles or any other non- or less-lethal projectiles in a manner that targets the head, pelvis, or back;
- Discharge kinetic impact projectiles indiscriminately into a crowd; or
- Use chemical agents or irritants, including pepper spray and tear gas, without first issuing an order to disperse in a sufficient manner to ensure the order is heard and allowing sufficient time and space to allow compliance with the order.

Civil Action for Violation of Constitutional Right: §13-21-131, C.R.S.

A person who has a constitutional right secured by the bill of rights of the Colorado Constitution that is infringed upon by a peace officer may bring a civil action for the violation. If the person prevails in the lawsuit, the person is entitled to reasonable attorney fees, and a defendant in an individual suit is entitled to reasonable attorney fees for defending any frivolous claims. Qualified immunity is not a defense to the civil action. The act requires a political subdivision of the state to indemnify its employees for such a claim; except that, if the peace officer's employer determines the officer did not act upon a good faith and reasonable belief that the action was lawful, then the peace officer is personally liable for five percent of the judgment or \$25,000, whichever is less. But if the judgment is uncollectible from the officer, then the officer's employer must pay the entire judgment. A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation based on the conduct that led to the claim.

Police Use of Force and Duty to Intervene: §§18-1-707 and 18-8-802, C.R.S.

The act creates a new use of force standard by limiting the use of physical force and deadly force by peace officers. The use of physical force by a peace officer is authorized only when other means are ineffective. The use of deadly force for minor violations is prohibited. Use of deadly force to make an arrest is only available when all other options are unreasonable, the arrest is for a felony, there is a threat to the officer or public, and action does not endanger anyone else. Finally, use of deadly force by a peace officer is permitted to prevent imminent death or serious bodily injury.

A peace officer is required to intervene when another officer is using unlawful physical force, and the intervening officer must file a report regarding the incident. Failure to intervene is a class 1 misdemeanor. If a peace officer fails to intervene when required, the P.O.S.T. board must decertify the officer.

P.O.S.T Certification and the P.O.S.T. Board: §§24-31-904, 24-31-303 (1)(r), and 24-31-305 (2.7), C.R.S.

If a peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force or the failure to intervene in another officer's use of unlawful force or is found civilly liable in either case, the P.O.S.T. board must permanently revoke the peace officer's certification. 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 a court exonerates the peace officer.

Beginning January 1, 2022, the P.O.S.T. board must create and maintain a database containing information related to a peace officer's:

- Untruthfulness;
- Repeated failure to follow P.O.S.T. board training requirements;
- Decertification; and
- Termination for cause.

The P.O.S.T. board may revoke a peace officer's certification if the officer fails to complete required peace officer training after receiving notice that the officer has 30 days to satisfactorily complete the training.

Patterns and Practices Investigations: §24-31-113, C.R.S.

It is unlawful for a governmental authority to engage in a pattern or practice of conduct by peace officers that deprives persons of rights, privileges, or immunities secured or protected by the constitution or laws of the United States or the state of Colorado. Whenever the attorney general has reasonable cause to believe that a violation of this provision has occurred, the attorney general may bring a civil action to obtain appropriate relief to eliminate the pattern or practice.