

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 21-0315.02 Alana Rosen x2606

SENATE BILL 21-174

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A BILL FOR AN ACT

101 **CONCERNING ADOPTION OF WRITTEN POLICIES BY LAW ENFORCEMENT**
102 **AGENCIES FOR CONSTITUTIONALLY REQUIRED PEACE OFFICER**
103 **CREDIBILITY DISCLOSURE NOTIFICATIONS.**

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 requires a law enforcement agency to provide a credibility disclosure notification to a district attorney's office if a peace officer's credibility is called into question by an internal investigation, an allegation, or a sustained finding. The bill outlines conduct that a law enforcement agency shall report to a district attorney's office. The law

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 3rd Reading
June 3, 2021

HOUSE
Amended 2nd Reading
June 1, 2021

SENATE
3rd Reading Unamended
May 19, 2021

SENATE
Amended 2nd Reading
May 18, 2021

enforcement agency shall also provide the credibility disclosure notification to the involved peace officer at least 7 calendar days prior to sending the credibility disclosure notification to the district attorney's office, except under specific circumstances.

The bill requires a district attorney's office to adopt written policies and procedures for receiving and maintaining credibility disclosure notification records (records) concerning peace officers. A district attorney's office shall determine whether a record must be created based on a law enforcement agency's credibility disclosure notification. The policies and procedures must include a process to notify defense attorneys or defendants of a record pursuant to rule 16 of the Colorado rules of criminal procedure, as well as a process to remove a record found to be inaccurate or false by the court or the relevant law enforcement agency.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article
3 2.5 of title 16 as follows:

4 PART 5

5 PEACE OFFICER CREDIBILITY

6 DISCLOSURE NOTIFICATIONS

7 **16-2.5-501. Definitions.** AS USED IN THIS SECTION, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CREDIBILITY DISCLOSURE NOTIFICATION" MEANS THE
10 NOTIFICATION DESCRIBED IN SECTION 16-2.5-502 (2)(c).

11 (2) "LAW ENFORCEMENT AGENCY" MEANS A STATE OR LOCAL
12 AGENCY THAT EMPLOYS PEACE OFFICERS.

13 (3) "PEACE OFFICER" MEANS A PEACE OFFICER AS DEFINED IN
14 SECTION 24-31-901 (3) AND INCLUDES AN OFFICER, RESERVE, VOLUNTEER,
15 OR EMPLOYEE WHO PERFORMS A LAW ENFORCEMENT FUNCTION.

16 **16-2.5-502. Peace officer credibility disclosures - policies and**
17 **procedures.** (1) ON OR BEFORE JANUARY 1, 2022, EACH LAW
18 ENFORCEMENT AGENCY AND DISTRICT ATTORNEY'S OFFICE SHALL ADOPT

1 AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES CONSISTENT WITH
2 THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE
3 NOTIFICATIONS CREATED AND RECOMMENDED BY THE PEACE OFFICER
4 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE ESTABLISHED IN
5 SUBSECTION (2)(a) OF THIS SECTION.

6 (2) (a) THERE IS HEREBY CREATED THE PEACE OFFICER
7 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE. THE PEACE OFFICER
8 CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE MUST BE COMPRISED
9 OF THE FOLLOWING MEMBERS AS APPOINTED BY THEIR RESPECTIVE
10 ORGANIZATIONS:

11 (I) A REPRESENTATIVE OF THE COLORADO DISTRICT ATTORNEYS'
12 COUNCIL;

13 (II) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
14 POLICE OFFICERS;

15 (III) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
16 THE CHIEFS OF POLICE;

17 (IV) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING
18 THE COUNTY SHERIFFS;

19 (V) A COUNTY ATTORNEY DESIGNATED BY AN ORGANIZATION
20 REPRESENTING COUNTIES; AND

21 (VI) A CITY ATTORNEY DESIGNATED BY AN ORGANIZATION
22 REPRESENTING MUNICIPALITIES.

23 (b) THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION
24 COMMITTEE MUST BE CO-CHAIRD BY THE REPRESENTATIVE FROM THE
25 COLORADO DISTRICT ATTORNEYS' COUNCIL AND THE REPRESENTATIVE
26 FROM THE ORGANIZATION REPRESENTING PEACE OFFICERS. THE CO-CHAIRS
27 OF THE COMMITTEE SHALL SET THE DATES, TIMES, AND PROCEDURES FOR

1 THE COMMITTEE MEETINGS AS DEEMED NECESSARY TO MEET THE
2 REQUIREMENTS OF THIS SECTION. THE PEACE OFFICER CREDIBILITY
3 DISCLOSURE NOTIFICATION COMMITTEE SHALL CREATE A STATEWIDE
4 MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS BY
5 DECEMBER 1, 2021.

6 (c) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
7 DISCLOSURE NOTIFICATION POLICIES AND PROCEDURES MUST INCLUDE,
8 BUT NEED NOT BE LIMITED TO:

9 (I) A PROMPT NOTIFICATION FROM A LAW ENFORCEMENT AGENCY
10 TO THE DISTRICT ATTORNEY OF ANY SUSTAINED FINDING THAT A PEACE
11 OFFICER HAS:

12 (A) KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING
13 A MATERIAL FACT, KNOWINGLY OMITTED A MATERIAL FACT IN AN OFFICIAL
14 CRIMINAL JUSTICE RECORD, OR KNOWINGLY OMITTED A MATERIAL FACT
15 WHILE TESTIFYING UNDER OATH OR DURING AN INTERNAL AFFAIRS
16 INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY
17 PROCESS;

18 (B) DEMONSTRATED A [REDACTED] BIAS BASED ON RACE, RELIGION,
19 ETHNICITY, GENDER, SEXUAL ORIENTATION, AGE, DISABILITY, NATIONAL
20 ORIGIN, OR ANY OTHER PROTECTED CLASS;

21 [REDACTED]
22 (C) TAMPERED WITH OR FABRICATED EVIDENCE; OR ___

23 (D) BEEN CONVICTED OF ANY CRIME INVOLVING DISHONESTY,
24 BEEN CHARGED IN A CRIMINAL PROCEEDING WITH ANY FELONY OR ANY
25 CRIME INVOLVING DISHONESTY, OR VIOLATED ANY POLICY OF THE LAW
26 ENFORCEMENT AGENCY REGARDING DISHONESTY.

27 (II) A LAW ENFORCEMENT AGENCY'S OBLIGATION TO NOTIFY THE

1 DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S
2 JURISDICTION WHEN:

3 (A) A PEACE OFFICER IS A POTENTIAL WITNESS IN A PENDING
4 CRIMINAL PROSECUTION IN WHICH A CRIMINAL DEFENDANT HAS BEEN
5 FORMALLY CHARGED;

6 (B) THE PEACE OFFICER IS UNDER A CONCURRENT CRIMINAL OR
7 ADMINISTRATIVE INVESTIGATION REGARDING AN ALLEGATION RELATED
8 TO THE PEACE OFFICER'S INVOLVEMENT IN THE DEFENDANT'S PENDING
9 CRIMINAL CASE; AND

10 (C) THE RESULT OF THE CONCURRENT CRIMINAL OR
11 ADMINISTRATIVE INVESTIGATION, IF SUSTAINED, WOULD REQUIRE
12 DISCLOSURE.

13 (III) A PROCESS FOR A LAW ENFORCEMENT AGENCY TO PROMPTLY
14 NOTIFY THE DISTRICT ATTORNEY OF SUCH A FINDING; AND

15 (IV) A PROCESS TO REMOVE A PEACE OFFICER'S CREDIBILITY
16 DISCLOSURE NOTIFICATION FROM THE DISTRICT ATTORNEY'S CREDIBILITY
17 DISCLOSURE NOTIFICATION RECORD IF APPROPRIATE AND LAWFUL.

18 == ==

19 (d) (I) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
20 DISCLOSURE NOTIFICATIONS ESTABLISHED IN SUBSECTION (2)(c) OF THIS
21 SECTION MUST REQUIRE THAT A LAW ENFORCEMENT AGENCY SHALL
22 INCLUDE IN THE CREDIBILITY DISCLOSURE NOTIFICATION:

- 23 (A) THE NAME OF THE PEACE OFFICER;
- 24 (B) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS
25 OR EMPLOYED THE PEACE OFFICER AT THE TIME OF THE INVESTIGATION OR
26 SUSTAINED FINDING DESCRIBED IN SUBSECTION (2)(c)(I) OF THIS SECTION
27 OR AN INVESTIGATION DESCRIBED IN SUBSECTION (2)(c)(II) OF THIS

1 SECTION;

2 (C) THE FOLLOWING STATEMENT: "THIS NOTIFICATION IS TO
3 INFORM YOU THAT THERE IS INFORMATION IN THE LAW ENFORCEMENT
4 AGENCY'S POSSESSION REGARDING [NAME OF PEACE OFFICER] THAT MAY
5 AFFECT THE PEACE OFFICER'S CREDIBILITY IN COURT."

6 (D) THE APPLICABLE STATUTORY PROVISION IDENTIFYING THE
7 BASIS FOR THE CREDIBILITY DISCLOSURE NOTIFICATION AS SET FORTH IN
8 SUBSECTIONS (2)(c)(I)(A) THROUGH (2)(c)(I)(D) OF THIS SECTION.

9 (II) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY
10 DISCLOSURE NOTIFICATIONS MUST PROVIDE A PROCESS TO NOTIFY THE
11 INVOLVED PEACE OFFICER AT LEAST SEVEN CALENDAR DAYS PRIOR TO
12 SENDING THE CREDIBILITY DISCLOSURE NOTIFICATION TO THE DISTRICT
13 ATTORNEY'S OFFICE, IF PRACTICABLE. ___

14 (3) _____ ON OR BEFORE FEBRUARY 1, 2022, EACH DISTRICT
15 ATTORNEY SHALL MAKE AVAILABLE TO THE PUBLIC THE POLICIES AND
16 PROCEDURES CREATED AND IMPLEMENTED PURSUANT TO SUBSECTION (2)
17 OF THIS SECTION. THE POLICIES AND PROCEDURES MUST INCLUDE, BUT
18 NEED NOT BE LIMITED TO, A PROCESS FOR A DISTRICT ATTORNEY TO:

19 (a) RECEIVE CREDIBILITY DISCLOSURE NOTIFICATIONS;

20 (b) MAINTAIN A CURRENT RECORD OF ALL CREDIBILITY
21 DISCLOSURE NOTIFICATIONS, DISTINGUISHING BETWEEN THE CREDIBILITY
22 DISCLOSURE NOTIFICATIONS IN SUBSECTIONS (2)(c)(I) AND (2)(c)(II) OF
23 THIS SECTION;

24 (c) DESCRIBE HOW MEMBERS OF THE PUBLIC CAN ACCESS THE
25 DATABASE CREATED BY THE P.O.S.T. BOARD PURSUANT TO SECTION
26 24-31-303 (1)(r) CONCERNING PEACE OFFICERS WHO ARE SUBJECT TO
27 CREDIBILITY DISCLOSURE NOTIFICATIONS. THE PROCEDURES MUST BE

1 POSTED ON THE DISTRICT ATTORNEY'S OR COUNTY'S WEBSITE.

2 (d) ESTABLISH A PROCESS TO TIMELY NOTIFY A DEFENSE
3 ATTORNEY OR DEFENDANT OF CREDIBILITY DISCLOSURE NOTIFICATION
4 RECORDS PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL
5 PROCEDURE; AND

6 (e) REMOVE ANY CREDIBILITY DISCLOSURE NOTIFICATION
7 RECORDS WHEN APPROPRIATE AND LAWFUL. ==

8 (4) EACH DISTRICT ATTORNEY SHALL REVIEW THE POLICIES AND
9 PROCEDURES ADOPTED AND IMPLEMENTED PURSUANT TO SUBSECTION (3)
10 OF THIS SECTION AT LEAST EVERY FOUR YEARS TO ENSURE COMPLIANCE
11 WITH CONTROLLING FEDERAL AND STATE CASE LAW INTERPRETING *BRADY*
12 *V. MARYLAND*, 373 U.S. 83 (1963); *GIGLIO V. UNITED STATES*, 405 U.S. 150
13 (1972); *KYLES V. WHITLEY*, 514 U.S. 419 (1995), AND ITS PROGENY; AS
14 WELL AS THE COLORADO RULES OF CRIMINAL PROCEDURE.

15 **SECTION 2.** In Colorado Revised Statutes, 24-31-303, **amend**
16 **(1)(r) introductory portion, (1)(r)(III), and (1)(r)(IV); and add (1)(r)(V)**
17 **as follows:**

18 **24-31-303. Duties - powers of the P.O.S.T. board.** (1) The
19 P.O.S.T. board has the following duties:

20 (r) SUBJECT TO AVAILABLE APPROPRIATIONS, beginning on
21 January 1, 2022, to create and maintain a database, IN A SEARCHABLE
22 FORMAT TO BE PUBLISHED ON ITS WEBSITE, containing information related
23 to a peace officer's:

24 (III) Decertification by the P.O.S.T. board; and

25 (IV) Termination for cause; AND

26 (V) ACTIONS AS DESCRIBED BY THE APPLICABLE STATUTORY
27 PROVISION IDENTIFYING THE BASIS FOR THE CREDIBILITY DISCLOSURE

1 NOTIFICATION AS SET FORTH IN SECTION 16-2.5-502 (2)(c)(I).

2

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