

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0315.02 Alana Rosen x2606

SENATE BILL 21-174

SENATE SPONSORSHIP

Cooke and Ginal,

HOUSE SPONSORSHIP

Bird and Carver,

Senate Committees

Judiciary
Appropriations

House Committees

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.

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 (1)(a).

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 - report.** (1) (a) A LAW ENFORCEMENT AGENCY SHALL
18 NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT

1 AGENCY'S JURISDICTION WHEN THE LAW ENFORCEMENT AGENCY HAS
2 DETERMINED THERE IS A SUSTAINED FINDING THAT A PEACE OFFICER HAS:

3 (I) KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING
4 A MATERIAL FACT, OR KNOWINGLY OMITTED A MATERIAL FACT IN AN
5 OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH OR
6 DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE
7 INVESTIGATION AND DISCIPLINARY PROCESS;

8 (II) DEMONSTRATED A PATTERN OF BIAS BASED ON RACE,
9 RELIGION, ETHNICITY, GENDER, SEXUAL ORIENTATION, AGE, DISABILITY,
10 NATIONAL ORIGIN, OR ANY OTHER PROTECTED CLASS;

11 (III) COMMITTED A FELONY, A CRIME INVOLVING DISHONESTY, OR
12 HAS BEEN CHARGED IN A CRIMINAL PROCEEDING WITH A FELONY OR A
13 CRIME INVOLVING DISHONESTY;

14 (IV) INTENTIONALLY VIOLATED THE CONSTITUTIONAL OR
15 STATUTORY RIGHTS OF OTHERS; OR

16 (V) TAMPERED WITH OR FABRICATED EVIDENCE.

17 (b)(I) IN ADDITION TO THE DISCLOSURES REQUIRED IN SUBSECTION
18 (1)(a) OF THIS SECTION, A LAW ENFORCEMENT AGENCY SHALL NOTIFY THE
19 DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S
20 JURISDICTION WHEN:

21 (A) A PEACE OFFICER IS A POTENTIAL WITNESS IN A PENDING
22 CRIMINAL PROSECUTION IN WHICH A CRIMINAL DEFENDANT HAS BEEN
23 FORMALLY CHARGED;

24 (B) THE PEACE OFFICER IS UNDER A CONCURRENT CRIMINAL OR
25 ADMINISTRATIVE INVESTIGATION REGARDING AN ALLEGATION RELATED
26 TO THE PEACE OFFICER'S INVOLVEMENT IN THE DEFENDANT'S PENDING
27 CRIMINAL CASE; AND

1 (C) THE RESULT OF THE CONCURRENT CRIMINAL OR
2 ADMINISTRATIVE INVESTIGATION, IF SUSTAINED, WOULD REQUIRE
3 DISCLOSURE PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION.

4 (II) IF THE ALLEGATION IS SUBSEQUENTLY FOUND NOT SUSTAINED
5 OR IF THE PEACE OFFICER IS EXONERATED, THE LAW ENFORCEMENT
6 AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW
7 ENFORCEMENT AGENCY'S JURISDICTION OF THE FINDING AND THE
8 CREDIBILITY DISCLOSURE NOTIFICATION BASED ON THE ALLEGATION MUST
9 BE REMOVED FROM THE RELEVANT DISTRICT ATTORNEY'S CREDIBILITY
10 DISCLOSURE NOTIFICATION RECORD. ==

11 (c) (I) THE LAW ENFORCEMENT AGENCY SHALL INCLUDE IN THE
12 CREDIBILITY DISCLOSURE NOTIFICATION:

- 13 (A) THE NAME OF THE PEACE OFFICER;
- 14 (B) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS
15 OR EMPLOYED THE PEACE OFFICER AT THE TIME OF THE INVESTIGATION OR
16 SUSTAINED FINDING DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION;
- 17 AND

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

22 (II) THE LAW ENFORCEMENT AGENCY SHALL NOT PROVIDE
23 MATERIALS FROM THE PEACE OFFICER'S PERSONNEL FILE TO THE DISTRICT
24 ATTORNEY'S OFFICE AT THE TIME THE CREDIBILITY NOTIFICATION IS MADE
25 TO THE DISTRICT ATTORNEY'S OFFICE.

26 (III) AFTER THE CREDIBILITY DISCLOSURE NOTIFICATION IS MADE,
27 IF THE LAW ENFORCEMENT AGENCY LEARNS OF ADDITIONAL INFORMATION

1 SUBJECT TO DISCLOSURE REGARDING THE PEACE OFFICER, THE LAW
2 ENFORCEMENT AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY'S OFFICE
3 OF THE ADDITIONAL INFORMATION.

4 (IV) THE LAW ENFORCEMENT AGENCY SHALL ALSO PROVIDE THE
5 CREDIBILITY DISCLOSURE NOTIFICATION TO THE INVOLVED PEACE OFFICER
6 AT LEAST SEVEN CALENDAR DAYS PRIOR TO SENDING THE CREDIBILITY
7 DISCLOSURE NOTIFICATION TO THE DISTRICT ATTORNEY'S OFFICE. THE
8 CREDIBILITY DISCLOSURE NOTIFICATION MAY BE MADE IMMEDIATELY IF A
9 HEARING IN A PENDING CRIMINAL CASE IS IMMINENT OR IT IS DETERMINED
10 TO BE IN THE INTEREST OF JUSTICE. IN SUCH CASES, THE CREDIBILITY
11 DISCLOSURE NOTIFICATION MUST BE PROVIDED TO THE PEACE OFFICER
12 WITHIN TWO CALENDAR DAYS OF THE IMMEDIATE DISCLOSURE, UNLESS
13 NOTIFYING THE PEACE OFFICER OF THE CREDIBILITY DISCLOSURE
14 NOTIFICATION WOULD COMPROMISE AN ONGOING CRIMINAL, INTERNAL, OR
15 ADMINISTRATIVE INVESTIGATION.

16 (2) ON OR BEFORE JANUARY 1, 2022, A LAW ENFORCEMENT
17 AGENCY SHALL IMPLEMENT POLICIES AND PROCEDURES FOR PROMPT
18 CREDIBILITY DISCLOSURE NOTIFICATIONS, AS REQUIRED IN SUBSECTION
19 (1)(a) OF THIS SECTION.

20 (3)(a) ON OR BEFORE JANUARY 1, 2022, EACH DISTRICT ATTORNEY
21 SHALL ADOPT WRITTEN POLICIES AND PROCEDURES FOR:

22 (I) RECEIVING CREDIBILITY DISCLOSURE NOTIFICATIONS;

23 (II) MAINTAINING A CURRENT RECORD OF ALL CREDIBILITY
24 DISCLOSURE NOTIFICATIONS, DISTINGUISHING BETWEEN ALLEGATIONS AND
25 SUSTAINED FINDINGS;

26 (III) ESTABLISHING A PROCESS TO NOTIFY A DEFENSE ATTORNEY
27 OR DEFENDANT OF CREDIBILITY DISCLOSURE NOTIFICATION RECORDS

1 PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL
2 PROCEDURE; AND

3 (IV) REMOVING ANY CREDIBILITY DISCLOSURE NOTIFICATION
4 RECORDS FOUND TO BE INACCURATE OR FALSE BY THE COURT OR THE
5 RELEVANT LAW ENFORCEMENT AGENCY.

6 (b) IF A PEACE OFFICER'S NAME IS REMOVED FROM THE DATABASE
7 CREATED PURSUANT TO SECTION 24-31-303 (1)(r), ANY DISTRICT
8 ATTORNEY MAY REMOVE THE PEACE OFFICER'S NAME FROM THE RELEVANT
9 DISTRICT ATTORNEY'S CREDIBILITY DISCLOSURE NOTIFICATION RECORD
10 UPON REQUEST OF THE PEACE OFFICER.

11 (4) EACH DISTRICT ATTORNEY SHALL REVIEW THE POLICIES AND
12 PROCEDURES ADOPTED AND IMPLEMENTED PURSUANT TO SUBSECTION (3)
13 OF THIS SECTION AT LEAST EVERY FIVE YEARS TO ENSURE COMPLIANCE
14 WITH APPLICABLE FEDERAL AND STATE CASE LAW INTERPRETING *BRADY V.*
15 *MARYLAND*, 373 U.S. 83 (1963); *GIGLIO V. UNITED STATES*, 405 U.S. 150
16 (1972); *KYLES V. WHITLEY*, 514 U.S. 419 (1995), AND ITS PROGENY; AS
17 WELL AS THE COLORADO RULES OF CRIMINAL PROCEDURE.

18 **SECTION 2. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2022 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.