

CHAPTER 420

CRIMINAL LAW AND PROCEDURE

SENATE BILL 21-174

BY SENATOR(S) Cooke and Ginal, Coram, Gardner, Jaquez Lewis, Kolker, Lee, Liston, Lundeen, Moreno, Priola, Rankin, Smallwood, Zenzinger, Garcia;
also REPRESENTATIVE(S) Bird and Carver, Bockenfeld, Duran, Hooton, McCluskie, McCormick, Mullica, Pelton, Pico, Roberts, Young.

AN ACT

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

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

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

PART 5
PEACE OFFICER CREDIBILITY
DISCLOSURE NOTIFICATIONS

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

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

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

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

16-2.5-502. Peace officer credibility disclosures - policies and procedures.

(1) ON OR BEFORE JANUARY 1, 2022, EACH LAW ENFORCEMENT AGENCY AND

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DISTRICT ATTORNEY'S OFFICE SHALL ADOPT AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES CONSISTENT WITH THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS CREATED AND RECOMMENDED BY THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE ESTABLISHED IN SUBSECTION (2)(a) OF THIS SECTION.

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

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

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

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

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

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

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

(b) THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE MUST BE CO-CHAIRLED BY THE REPRESENTATIVE FROM THE COLORADO DISTRICT ATTORNEYS' COUNCIL AND THE REPRESENTATIVE FROM THE ORGANIZATION REPRESENTING PEACE OFFICERS. THE CO-CHAIRS OF THE COMMITTEE SHALL SET THE DATES, TIMES, AND PROCEDURES FOR THE COMMITTEE MEETINGS AS DEEMED NECESSARY TO MEET THE REQUIREMENTS OF THIS SECTION. THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE SHALL CREATE A STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS BY DECEMBER 1, 2021.

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

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

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

(B) DEMONSTRATED A BIAS BASED ON RACE, RELIGION, ETHNICITY, GENDER,

SEXUAL ORIENTATION, AGE, DISABILITY, NATIONAL ORIGIN, OR ANY OTHER PROTECTED CLASS;

(C) TAMPERED WITH OR FABRICATED EVIDENCE; OR

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

(II) A LAW ENFORCEMENT AGENCY'S OBLIGATION TO NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S JURISDICTION WHEN:

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

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

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

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

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

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

(A) THE NAME OF THE PEACE OFFICER;

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

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

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

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

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

(a) RECEIVE CREDIBILITY DISCLOSURE NOTIFICATIONS;

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

(c) DESCRIBE HOW MEMBERS OF THE PUBLIC CAN ACCESS THE DATABASE CREATED BY THE P.O.S.T. BOARD PURSUANT TO SECTION 24-31-303 (1)(r) CONCERNING PEACE OFFICERS WHO ARE SUBJECT TO CREDIBILITY DISCLOSURE NOTIFICATIONS. THE PROCEDURES MUST BE POSTED ON THE DISTRICT ATTORNEY'S OR COUNTY'S WEBSITE.

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

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

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

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

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

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

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

(IV) Termination for cause; AND

(V) ACTIONS AS DESCRIBED BY THE APPLICABLE STATUTORY PROVISION IDENTIFYING THE BASIS FOR THE CREDIBILITY DISCLOSURE NOTIFICATION AS SET FORTH IN SECTION 16-2.5-502 (2)(c)(I).

SECTION 3. Act subject to petition - effective date. 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.

Approved: July 2, 2021