

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0408.01 Richard Sweetman x4333

HOUSE BILL 18-1061

HOUSE SPONSORSHIP

Van Winkle,

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING DISPATCH RADIO COMMUNICATIONS BY GOVERNMENT
102 ENTITIES.

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 states that each entity of the state government and each entity of the government of each city, county, and city and county (government entity) shall broadcast its dispatch radio communications without encryption such that the communications may be monitored by commercially available radio receivers and scanners; except that:

! A government entity may encrypt tactical radio

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.

communications or investigative radio communications so long as the encryption is necessary to preserve the tactical integrity of an operation, protect the safety of law enforcement officers or other emergency responders, or prevent the destruction of property; and

! An investigative unit of a government entity engaged in the investigation of criminal conduct or potential criminal conduct may encrypt its radio communications.

Any government entity that encrypts any of its dispatch radio communications shall disclose on its public website and make available for public inspection a list of its radio communication channels, a description of the functions allocated to those channels, and an indication of which of the channels are always encrypted or sometimes encrypted. In describing the functions of the channels, the government entity shall indicate whether each channel is used for tactical radio communications or investigative radio communications.

Any person has standing to bring an action for injunctive relief in district court against any sheriff, chief of police, fire chief, or other administrative head of any government entity for an allegedly unlawful encryption of dispatch radio communications.

Any person who monitors dispatch radio communications of a government entity for the purpose of perpetrating or attempting to perpetrate criminal activity or assisting another person in the furtherance of criminal activity commits a class 3 misdemeanor.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Colorado has adopted a public policy of transparency in
5 government operations, as shown by the "Colorado Sunshine Act of
6 1972", article 6 of title 24, and the "Colorado Open Records Act", part 2
7 of article 72 of title 24; and

8 (b) Colorado residents have a right to monitor the functions of
9 their government.

10 (2) The general assembly also finds that:

11 (a) Many agencies of state and local government utilize radio

1 communication to dispatch public safety and public works personnel in
2 response to calls for services;

3 (b) Historically, such dispatch radio communications have been
4 broadcast on frequencies that may be received by the public;

5 (c) The news media, in particular, rely upon the ability to monitor
6 dispatch radio communications to provide a source of leads for news
7 reporting; and

8 (d) A segment of the public also monitors dispatch radio
9 communications, either as a hobby or as a tool for remaining aware of
10 events that occur within their communities.

11 (3) The general assembly also finds that:

12 (a) Advancements in digital radio technology have made
13 encryption of radio communications much easier and more cost effective;
14 and

15 (b) Many Colorado public safety agencies have implemented
16 dispatch radio communications systems that are capable of encryption,
17 and several of these public safety agencies are already encrypting their
18 dispatch radio communications.

19 (4) Therefore, the general assembly declares that:

20 (a) There is a legitimate public policy interest in government
21 transparency, and, as a rule, the operations of state and local governments
22 should be conducted in an open and transparent fashion; and

23 (b) Although public safety agencies may have a legitimate need
24 to conceal tactical or investigative communications, these needs must be
25 balanced against the public's right to monitor the functions of its
26 government agencies.

27 **SECTION 2.** In Colorado Revised Statutes, **add** part 5 to article

1 6 of title 24 as follows:

2

PART 5

3

ENCRYPTION OF DISPATCH RADIO COMMUNICATIONS

4

BY GOVERNMENT ENTITIES

5

24-6-501. Definitions. AS USED IN THIS PART 5, UNLESS THE

6

CONTEXT OTHERWISE REQUIRES:

7

(1) "CHANNEL" MEANS A RADIO FREQUENCY CARRIER, DIGITAL

8

TIME SLOT, OR TALK GROUP USED TO ALLOCATE OR DIVIDE THE RADIO

9

SPECTRUM SO THAT COMMUNICATION TRAFFIC MAY BE MANAGED AND

10

DIRECTED TO SPECIFIC RADIOS, PERSONNEL, DEPARTMENTS, OR AGENCIES

11

WITHIN OR BETWEEN STATE AND LOCAL GOVERNMENT ENTITIES.

12

(2) "DISPATCH RADIO COMMUNICATIONS" MEANS ANY

13

COMMUNICATION BY WAY OF TRANSMISSION OF A RADIO FREQUENCY

14

CARRIER TO BASE, MOBILE, OR PORTABLE RADIO TRANSCEIVERS BY EITHER

15

ANALOG OR DIGITAL MODULATION FOR THE PURPOSE OF DIRECTING THE

16

ROUTINE OPERATION OF A STATE OR LOCAL GOVERNMENT ENTITY.

17

(3) "ENCRYPTION" MEANS THE ENCODING OF VOICE

18

COMMUNICATION ON AN ANALOG OR DIGITALLY MODULATED RADIO

19

CARRIER, WHICH ENCODING RENDERS THE COMMUNICATION DIFFICULT OR

20

IMPOSSIBLE TO BE MONITORED BY COMMERCIALY AVAILABLE RADIO

21

RECEIVERS OR SCANNERS.

22

(4) "INVESTIGATIVE RADIO COMMUNICATIONS" MEANS ANY

23

COMMUNICATION BY WAY OF TRANSMISSION OF A RADIO FREQUENCY

24

CARRIER TO BASE, MOBILE, OR PORTABLE RADIO TRANSCEIVERS BY EITHER

25

ANALOG OR DIGITAL MODULATION AS PART OF A LAW ENFORCEMENT

26

INVESTIGATION OF POSSIBLE CRIMINAL ACTIVITY, THE DISCLOSURE OF

27

WHICH COULD JEOPARDIZE THE CONFIDENTIALITY OF THE INVESTIGATION

1 OR ENDANGER PERSONS ENGAGED IN THE INVESTIGATION, INCLUDING BUT
2 NOT LIMITED TO LAW ENFORCEMENT PERSONNEL AND INFORMANTS.

3 (5) "SCANNER" MEANS A RADIO RECEIVER DESIGNED FOR THE
4 PURPOSE OF MONITORING MULTIPLE RADIO CARRIERS SIMULTANEOUSLY.

5 (6) "TACTICAL RADIO COMMUNICATIONS" MEANS ANY
6 COMMUNICATION BY WAY OF TRANSMISSION OF A RADIO FREQUENCY
7 CARRIER TO BASE, MOBILE, OR PORTABLE RADIO TRANSCEIVERS BY EITHER
8 ANALOG OR DIGITAL MODULATION FOR THE PURPOSE OF DIRECTING THE
9 TACTICAL RESPONSE TO A SPECIFIC INCIDENT OR EVENT REQUIRING THE
10 COORDINATION OF PERSONNEL IN RESPONSE TO A CALL FOR SERVICE OR
11 OTHER EMERGENCY.

12 **24-6-502. Public broadcast of governmental dispatch radio**
13 **communications required - encryption prohibited - exceptions.**

14 (1) EACH ENTITY OF THE STATE GOVERNMENT AND EACH ENTITY OF THE
15 GOVERNMENT OF EACH CITY, COUNTY, AND CITY AND COUNTY SHALL
16 BROADCAST ITS DISPATCH RADIO COMMUNICATIONS WITHOUT
17 ENCRYPTION SUCH THAT THE COMMUNICATIONS MAY BE MONITORED BY
18 COMMERCIALY AVAILABLE RADIO RECEIVERS AND SCANNERS.

19 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION:

20 (a) AN ENTITY OF THE STATE GOVERNMENT AND EACH ENTITY OF
21 THE GOVERNMENT OF EACH CITY, COUNTY, AND CITY AND COUNTY MAY
22 ENCRYPT TACTICAL RADIO COMMUNICATIONS OR INVESTIGATIVE RADIO
23 COMMUNICATIONS SO LONG AS THE ENCRYPTION IS NECESSARY TO
24 PRESERVE THE TACTICAL INTEGRITY OF AN OPERATION, PROTECT THE
25 SAFETY OF LAW ENFORCEMENT OFFICERS OR OTHER EMERGENCY
26 RESPONDERS, OR PREVENT THE DESTRUCTION OF PROPERTY;

27 (b) AN INVESTIGATIVE UNIT OF A STATE OR LOCAL GOVERNMENT

1 LAW ENFORCEMENT AGENCY ENGAGED IN THE INVESTIGATION OF
2 CRIMINAL CONDUCT OR POTENTIAL CRIMINAL CONDUCT MAY ENCRYPT ITS
3 INVESTIGATIVE RADIO COMMUNICATIONS.

4 (3) ANY STATE OR LOCAL GOVERNMENT ENTITY THAT ENCRYPTS
5 ANY OF ITS DISPATCH RADIO COMMUNICATIONS AS PERMITTED BY THIS
6 SECTION SHALL DISCLOSE ON ITS PUBLIC WEBSITE OR OTHERWISE MAKE
7 AVAILABLE FOR PUBLIC INSPECTION A LIST OF ITS RADIO COMMUNICATION
8 CHANNELS, A DESCRIPTION OF THE FUNCTIONS ALLOCATED TO THOSE
9 CHANNELS, AND AN INDICATION OF WHICH OF THE CHANNELS ARE ALWAYS
10 ENCRYPTED OR SOMETIMES ENCRYPTED. IN DESCRIBING THE FUNCTIONS
11 OF THE CHANNELS, THE ENTITY SHALL INDICATE WHETHER EACH CHANNEL
12 IS USED FOR TACTICAL RADIO COMMUNICATIONS OR INVESTIGATIVE RADIO
13 COMMUNICATIONS.

14 **24-6-503. Civil actions - standing.** ANY PERSON HAS STANDING
15 TO BRING AN ACTION FOR INJUNCTIVE RELIEF IN DISTRICT COURT AGAINST
16 ANY SHERIFF, CHIEF OF POLICE, FIRE CHIEF, OR OTHER ADMINISTRATIVE
17 HEAD OF ANY STATE OR LOCAL GOVERNMENT AGENCY FOR AN ALLEGED
18 VIOLATION OF SECTION 24-6-502.

19 **24-6-504. Legislative intent - applicability.** (1) THE GENERAL
20 ASSEMBLY INTENDS THAT THIS PART 5 BE LIBERALLY CONSTRUED TO
21 PROMOTE TRANSPARENCY IN GOVERNMENT OPERATIONS BUT SHOULD
22 ALSO BE BALANCED AGAINST THE NEED TO PROTECT THE SAFETY OF
23 EMERGENCY RESPONDERS. AS A PRACTICE, THE ENCRYPTION OF DISPATCH
24 RADIO COMMUNICATIONS BY STATE AND LOCAL GOVERNMENT ENTITIES
25 SHOULD BE EXCEPTIONAL RATHER THAN ROUTINE.

26 (2) THIS PART 5 APPLIES TO EACH ENTITY OF THE STATE
27 GOVERNMENT AND TO EACH ENTITY OF EACH LOCAL GOVERNMENT,

1 INCLUDING SPECIAL DISTRICTS.

2 (3) NOTHING IN THIS PART 5 APPLIES TO THE USE OF CELLULAR OR
3 OTHER COMMON-CARRIER TELEPHONIC COMMUNICATION BY A STATE OR
4 LOCAL GOVERNMENT ENTITY.

5 **SECTION 3.** In Colorado Revised Statutes, **add** 18-13-131 as
6 follows:

7 **18-13-131. Criminal monitoring of dispatch radio**
8 **communications - penalties.** (1) ANY PERSON WHO IS NOT AUTHORIZED
9 BY THE SENDER AND WHO INTERCEPTS ANY DISPATCH RADIO
10 COMMUNICATIONS, AS DEFINED IN SECTION 24-6-501 (2), BY USE OF A
11 SCANNER OR ANY OTHER MEANS, FOR THE PURPOSE OF USING THAT
12 COMMUNICATION TO ASSIST IN THE COMMISSION OF A CRIMINAL OFFENSE
13 OR TO AVOID OR ESCAPE ARREST, TRIAL, CONVICTION, OR PUNISHMENT, OR
14 WHO DIVULGES TO ANY PERSON HE OR SHE KNOWS TO BE A SUSPECT IN THE
15 COMMISSION OF ANY CRIMINAL OFFENSE THE EXISTENCE, CONTENTS,
16 SUBSTANCE, PURPORT, EFFECT, OR MEANING OF THAT COMMUNICATION
17 CONCERNING THE OFFENSE WITH THE INTENT THAT THE SUSPECT MAY
18 AVOID OR ESCAPE FROM ARREST, TRIAL, CONVICTION, OR PUNISHMENT
19 COMMITS CRIMINAL MONITORING OF DISPATCH RADIO COMMUNICATIONS.

20 (2) CRIMINAL MONITORING OF DISPATCH RADIO COMMUNICATIONS
21 IS A CLASS 3 MISDEMEANOR.

22 **SECTION 4. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 8, 2018, if adjournment sine die is on May 9,
26 2018); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2018 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) This act applies to dispatch radio communications of each
6 state and local government entity on and after the applicable effective
7 date of this act.