

CHAPTER 96

GOVERNMENT - STATE

HOUSE BILL 19-1119

BY REPRESENTATIVE(S) Coleman, Herod, Exum, Benavidez, Gonzales-Gutierrez, Lontine, Duran, Galindo, Melton, Sirota, Snyder, Weissman;
also SENATOR(S) Foote, Gonzales, Moreno.

AN ACT**CONCERNING PUBLIC DISCLOSURE OF A COMPLETED PEACE OFFICER INTERNAL INVESTIGATION FILE.**

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

SECTION 1. In Colorado Revised Statutes, 24-72-303, **add** (4) and (5) as follows:

24-72-303. Records of official actions required - open to inspection - applicability. (4) (a) UPON COMPLETION OF AN INTERNAL INVESTIGATION, INCLUDING ANY APPEALS PROCESS, THAT EXAMINES THE IN-UNIFORM OR ON-DUTY CONDUCT OF A PEACE OFFICER, AS DESCRIBED IN PART 1 OF ARTICLE 2.5 OF TITLE 16, RELATED TO A SPECIFIC, IDENTIFIABLE INCIDENT OF ALLEGED MISCONDUCT INVOLVING A MEMBER OF THE PUBLIC, THE ENTIRE INVESTIGATION FILE, INCLUDING THE WITNESS INTERVIEWS, VIDEO AND AUDIO RECORDINGS, TRANSCRIPTS, DOCUMENTARY EVIDENCE, INVESTIGATIVE NOTES, AND FINAL DEPARTMENTAL DECISION IS OPEN FOR PUBLIC INSPECTION UPON REQUEST; EXCEPT THAT THE CUSTODIAN MAY FIRST PROVIDE THE REQUESTER WITH A SUMMARY OF THE INVESTIGATION FILE AND IF, AFTER REVIEWING THE SUMMARY, THE REQUESTER REQUESTS ACCESS TO THE INVESTIGATION FILE, THE CUSTODIAN SHALL PROVIDE ACCESS TO THE ENTIRE INVESTIGATION FILE SUBJECT TO THE PROVISIONS OF SUBSECTIONS (4)(b), (4)(c), AND (4)(d) OF THIS SECTION.

(b) PRIOR TO PROVIDING ACCESS TO THE INTERNAL INVESTIGATION FILE PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE CUSTODIAN SHALL REDACT OR REMOVE THE FOLLOWING INFORMATION FROM THE DISCLOSED RECORDS:

(I) ANY PERSONAL IDENTIFYING INFORMATION AS DEFINED BY SECTION 6-1-713

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.

(2)(b);

(II) ANY IDENTIFYING OR CONTACT INFORMATION RELATED TO CONFIDENTIAL INFORMANTS, WITNESSES, OR VICTIMS;

(III) THE HOME ADDRESS, PERSONAL PHONE NUMBER, AND PERSONAL E-MAIL ADDRESS OF A PEACE OFFICER;

(IV) ANY INFORMATION PROHIBITED FOR PUBLIC RELEASE BY STATE OR FEDERAL LAW; EXCEPT THAT INTERNAL INVESTIGATION RECORDS EXAMINING IN-UNIFORM OR ON-DUTY CONDUCT OF A PEACE OFFICER DURING AN ALLEGED INCIDENT OF OFFICE MISCONDUCT WHILE INTERACTING WITH A MEMBER OF THE PUBLIC DOES NOT FALL WITHIN THE DEFINITION OF "PERSONNEL FILES" IN SECTION 24-72-202 (4.5);

(V) ANY MEDICAL OR MENTAL HEALTH INFORMATION;

(VI) ANY IDENTIFYING INFORMATION RELATED TO A JUVENILE; AND

(VII) ANY NONFINAL DISCIPLINARY RECOMMENDATIONS.

(c)(I) IN ADDITION TO THE INFORMATION REQUIRED TO BE REDACTED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION, PRIOR TO PROVIDING ACCESS TO THE INTERNAL INVESTIGATION FILE PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION, THE CUSTODIAN MAY ALSO REDACT ONLY THE FOLLOWING FROM DISCLOSED RECORDS:

(A) ANY COMPELLED STATEMENTS MADE BY PEACE OFFICERS WHO ARE THE SUBJECT OF A CRIMINAL INVESTIGATION OR A FILED CRIMINAL CASE DIRECTLY RELATED TO CONDUCT UNDERLYING THE INTERNAL INVESTIGATION;

(B) ANY VIDEO INTERVIEWS IF AN OFFICIAL TRANSCRIPT OF THE INTERVIEW IS PRODUCED, UNLESS, AFTER RECEIVING THE TRANSCRIPT, THE REQUESTER REQUESTS THE VIDEO;

(C) ANY VIDEO OR PHOTOGRAPH THAT RAISES SUBSTANTIAL PRIVACY CONCERNS FOR CRIMINAL DEFENDANTS, VICTIMS, WITNESSES, OR INFORMANTS, INCLUDING VIDEO REFLECTING NUDITY, A MEDICAL EMERGENCY, A MENTAL HEALTH CRISIS, A VICTIM INTERVIEW, OR THE INTERIOR OF A HOME OR TREATMENT FACILITY. WHENEVER POSSIBLE, THE VIDEO SHOULD BE REDACTED OR BLURRED TO PROTECT THE PRIVACY INTEREST WHILE STILL ALLOWING PUBLIC RELEASE.

(D) THE IDENTITY OF OFFICERS WHO VOLUNTEERED INFORMATION RELATED TO THE INTERNAL INVESTIGATION BUT WHO ARE NOT A SUBJECT OF THE INTERNAL INVESTIGATION; AND

(E) SPECIFIC INFORMATION THAT WOULD REVEAL CONFIDENTIAL INTELLIGENCE INFORMATION, CONFIDENTIAL SECURITY PROCEDURES OF A LAW ENFORCEMENT AGENCY OR THAT, IF DISCLOSED, WOULD COMPROMISE THE SAFETY OF A PEACE OFFICER, WITNESS, OR INFORMANT. HOWEVER, NOTHING IN THIS SUBSECTION (4)(c)(I)(E) JUSTIFIES OR PERMITS THE REDACTION OR WITHHOLDING OF INFORMATION DESCRIBING OR DEPICTING USE OF FORCE BY A PEACE OFFICER ON A

MEMBER OF THE PUBLIC.

(II) IF A RECORD CONTAINS INFORMATION REDACTED PURSUANT TO THIS SUBSECTION (4)(c), THE APPLICANT MAY REQUEST A WRITTEN EXPLANATION OF THE REASONS FOR THE REDACTION.

(d) A WITNESS, VICTIM, OR CRIMINAL DEFENDANT MAY WAIVE IN WRITING THE INDIVIDUAL PRIVACY INTEREST THAT MAY BE IMPLICATED BY PUBLIC RELEASE. UPON RECEIPT OF SUCH A WRITTEN WAIVER, ACCOMPANIED BY A REQUEST FOR RELEASE OF THE RECORDS, THE CUSTODIAN SHALL NOT REDACT, REMOVE, OR WITHHOLD RECORDS TO PROTECT THE WAIVED PRIVACY INTEREST.

(e) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (4)(a) OF THIS SECTION, THE CUSTODIAN OF AN INTERNAL INVESTIGATION FILE AS DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION MAY DENY INSPECTION OF THE FILE IF THERE IS AN ONGOING CRIMINAL INVESTIGATION OR CRIMINAL CASE AGAINST A PEACE OFFICER RELATED TO THE SUBJECT OF THE INTERNAL INVESTIGATION. THE INVESTIGATION FILE MUST BE OPEN FOR PUBLIC INSPECTION UPON THE DISMISSAL OF ALL CHARGES OR UPON A SENTENCE FOR A CONVICTION.

(f) ANY PERSON WHO HAS BEEN DENIED ACCESS TO ANY INFORMATION IN A COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE MAY FILE AN APPLICATION IN THE DISTRICT COURT IN THE COUNTY WHERE THE RECORDS ARE LOCATED FOR AN ORDER DIRECTING THE CUSTODIAN THEREOF TO SHOW CAUSE WHY THE WITHHELD OR REDACTED INFORMATION SHOULD NOT BE MADE AVAILABLE TO THE APPLICANT. THE COURT SHALL SET THE HEARING ON THE ORDER TO SHOW CAUSE AT THE EARLIEST PRACTICAL TIME. IF THE COURT DETERMINES, BASED ON ITS INDEPENDENT JUDGMENT, APPLYING DE NOVO REVIEW, THAT ANY PORTION OR PORTIONS OF THE COMPLETED INTERNAL AFFAIRS INVESTIGATION FILE WERE IMPROPERLY WITHHELD PURSUANT TO THIS SECTION, THE COURT SHALL ORDER THE CUSTODIAN TO PROVIDE THE APPLICANT WITH A COPY OF THOSE PORTIONS THAT WERE IMPROPERLY WITHHELD.

(g) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (4)(a) AND (4)(e) OF THIS SECTION, THE CUSTODIAN OF AN INTERNAL INVESTIGATION FILE AS DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION MAY DENY INSPECTION OF THE FILE IF THE INSPECTION IS PROHIBITED BY RULES PROMULGATED BY THE COLORADO SUPREME COURT OR BY A COURT ORDER.

(h) THIS SUBSECTION (4) APPLIES TO INTERNAL INVESTIGATIONS INITIATED AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (4).

(5) ANY COMPELLED STATEMENT BY A PEACE OFFICER, OR EVIDENCE DERIVED FROM THAT COMPELLED STATEMENT, MAY NOT BE USED AGAINST THAT OFFICER IN A CRIMINAL PROSECUTION.

SECTION 2. In Colorado Revised Statutes, 24-72-305, **amend** (5) as follows:

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, INCLUDING AS REQUIRED BY SECTION 24-72-303

(4), the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2019