

# A Synopsis of Senate Bill 20-217 – Enhance Law Enforcement Integrity Act

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## SENATE BILL 20-217

### ENHANCE LAW ENFORCEMENT INTEGRITY ACT

#### Incident recordings:

- **Mandate:** By no later than July 1, 2023, all local law enforcement agencies and the CSP shall provide body-worn cameras (BWC) for each peace officer<sup>1</sup> “who interacts with members of the public”.
- Funding may be sought from state.
- Peace officer shall wear and activate BWC or dash camera “when responding to a call for service or during any interaction with the public initiated by the peace officer, whether consensual or non-consensual, for the purpose of enforcing the law or investigating possible violations of the law.”
- **Scope:** Peace officer may turn off BWC:
  - To avoid recording personal information that is not case related;
  - When working on an unrelated assignment;
  - When there is a long break in the incident or contact that is not related to the initial incident;
  - In administrative, tactical, and management discussions.
- Peace officer need not wear or activate BWC if working undercover.
- The BWC provisions do not apply to peace officers working in jail if jail has video cameras, except:
  - When performing a task that requires an anticipated use of force, including cell extractions and restraint chairs.
- The BWC provisions do not apply to:
  - Civilian or administrative staff;
  - Executive detail of the CSP;
  - Peace officers working in a courtroom.
- **Failure to activate or tampering:** If peace officer fails to activate BWC, or tampers<sup>2</sup> with BWC footage or operation, there is a “permissive inference” in any investigation or legal proceeding (excluding criminal proceedings against the officer) that “the missing footage would have reflected misconduct by the peace officer”.
- If peace officer fails to activate or reactivate BWC, or tampers with the BWC or footage, any statements sought to be introduced in a prosecution, if not recorded by other means, “creates a rebuttable presumption of inadmissibility.”
  - But doesn’t apply to malfunction so long as:

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<sup>1</sup> “Peace officer” means any person employed by a political subdivision of the state required to be certified by the POST Board pursuant to section 16-2.5-102, a Colorado State Patrol officer as described in section 16-2.5-114, and any noncertified deputy sheriff as described in section 16-2.5-103(2).

<sup>2</sup> “Tamper” means to intentionally damage, disable, dislodge, or obstruct the sight or sound or otherwise impair functionality of the body-worn camera or to intentionally damage, delete, or fail to upload some or all portions of the video or audio.

- Peace officer not aware of the malfunction; or
  - Unable to rectify malfunction; and
  - Documentation shows peace officer checked function at beginning of shift.
- To extent that any court, ALJ, hearing officer, or final IA investigation decision finds that peace officer intentionally failed to activate or tampered with a BWC, the peace officer's employer shall impose discipline up to and including termination.
  - If it is found that such failure to activate or tampering was done with intent to conceal unlawful or inappropriate actions or obstruct justice, then the POST Board shall suspend the peace officer for not less than one year.
    - If this occurs in an incident resulting in a civilian death, the POST Board shall permanently revoke the officer's certification.
    - Such suspension or revocation shall not be lifted unless the peace officer is exonerated by a court.
- **Retention and release of recordings:** All local law enforcement agencies and the CSP shall establish and follow a retention schedule for BWC recordings in compliance with Colorado State Archives rules and direction.
- In any case where a complaint is made of officer misconduct through notice to the law enforcement agency, the local law enforcement agency or the CSP shall release all unedited video and audio recordings of the incident to the public within 21 days of receiving the complaint.
  - All recordings depicting a death must be provided upon request to the victim's spouse, family, significant other, or lawful representative at least 72 hours prior to public disclosure.
    - And must advise family of this right.
- Recordings must be redacted or blurred out to eliminate images of a wide variety of privacy concerns, medical, personal or financial information, nudity, sexual assaults, and gruesome injuries (unless caused by a peace officer).
  - Unredacted footage containing such matters shall not be released publicly without written authorization of the victim or family.
  - If redacting or blurring is insufficient to protect the privacy interest, then shall only release to victim or family upon request.
    - If do not release to public, then shall notify person whose privacy interest is implicated and advise of right to waive.
    - If person in interest waives in writing, then shall not redact or withhold recordings in disclosing to the public.
- If release of a recording would substantially interfere with or jeopardize an active or ongoing investigation, then may withhold from the public; except that must release no later than 45 days from the allegation of misconduct.
  - If delay release, then the prosecuting attorney shall prepare a written explanation of the interference or jeopardy contemporaneous with the refusal.
    - Upon release of recording, prosecuting attorney shall also release the written explanation.

- If criminal charges are filed against party involved in the incident, that party must file any constitutional objection to release before the 21-day period expires.
  - The court shall hold a hearing on the objection within seven days after it is filed and shall rule on the objection no later than three days after the hearing.

**Annual reports:**

- **Division of Public Safety:** The Division of Criminal Justice in the Department of Public Safety (Division) shall create an annual report to be submitted to the Division reporting law enforcement data.
- **Reports:** Beginning on July 1, 2023, the CSP and each local law enforcement agency that employs peace officers shall report annually to the Division the following information:
  - **Use of force:** All use of force by its peace officers that results in death or serious bodily injury, including:
    - Date, time and location;
    - Perceived demographic information<sup>3</sup> of the person contacted;
    - Names of peace officers who were at the scene whether or not involved in the use of force; except that officers not directly involved in the use of force shall be identified only by their identification number issued by POST (unless that officer has been charged criminally or is a defendant in a civil suit);
    - Type of force used, severity and nature of injury, whether the officer suffered physical injury, and the severity of the officer’s injury;
    - Whether on duty at the time of the use of force;
    - Whether discharged a firearm during the incident;
    - Whether the incident resulted in an internal investigation and the result of that investigation;
    - Whether the incident resulted in a citizen complaint and the resolution of that complaint.
  - **Resignations:** All instances when a peace officer resigned while under investigation for violating department policy;
  - **Contacts:** All data relating to contacts<sup>4</sup> conducted by its peace officers, including:
    - The perceived demographic information of the person contacted;
    - Whether a traffic stop;
    - Time, date and location;
    - Duration;
    - Reason;
    - Suspected crime;

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<sup>3</sup> “Demographic information” means race, ethnicity, sex, and approximate age.

<sup>4</sup> “Contacts” means an interaction with an individual whether or not the individual is in a motor vehicle, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. “Contacts” do not include routine interactions with the public at the point of entry or exit from a controlled area.

- Result, such as:
  - No action, warning, citation, property seizure, or arrest;
  - If warning or citation, the warning provided, or the violation cited;
  - If arrest, the offense charged;
  - If traffic stop, the information collected (limited to the driver);
- Actions taken by the peace officer during the contact, including but not limited to whether:
  - Asked consent to search and if so, whether consent provided;
  - Searched person or property and if so, the basis for the search and the type of contraband or evidence discovered;
  - Any seized property and if so, the type of property and basis for seizing;
  - Unholstered a weapon; and
  - Discharged a firearm.
- **Entries without a warrant:** All instances in which there was an unannounced entry into a residence without a warrant, including:
  - Date, time and location;
  - Perceived demographic information of the subject;
  - Whether unholstered a weapon;
  - Whether discharged a firearm;
- **Identity of subject, victim, or person contacted:** The CSP and local law enforcement agencies shall not report name, address, social security number or other unique identifying information of the subject of the use of force, the victim of official misconduct, or the person contacted, searched, or subjected to a property seizure.
- **Public access:** The data reported shall be published on the Division’s website in a searchable format.
- **Suspension of funding:** If the CSP or local law enforcement agency fails to report as required, then that agency is subject to suspension of its funding by its appropriating authority.

**Revocation of peace officer certification:**

- If a peace officer:
  - Is convicted of or pleads guilty or nolo contendere to:
    - a crime involving the unlawful or threatened use of force; or
    - a crime involving the failure to intervene in the use of unlawful force; or
  - Is found civilly liable for:
    - the use of unlawful physical force; or
    - a failure to intervene in the use of unlawful force;
- Then the POST Board shall permanently revoke the peace officer’s certification.

- The POST Board “shall not, under any circumstances, reinstate the peace officer’s certification or grant a new certification to then peace officer unless the peace officer is exonerated by a court.”
- The POST Board shall record each decertified peace officer on its database.

**Prohibited action in response to protests:**

- In response to a protest or a demonstration, a law enforcement agency shall not:
  - Discharge **kinetic impact projectiles** or other non-lethal/less-lethal projectiles in any manner that targets the head, pelvis, or back;
  - Discharge **kinetic impact projectiles** in a crowd;
  - Use **chemical agents or irritants**, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure that the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.

**Civil action for deprivation of rights:**

- **Cause of action:** A peace officer who (a) under color of law, (b) subjects or causes to be subjected, including by failing to intervene, (c) a person to be deprived of any individual right “that provide binding obligations on government actors secured by the bill of rights, Article II of the state constitution”, (d) is liable to the injured party for legal or equitable relief or any other appropriate relief.
- **Statutory immunities and limitations:** Any statutory immunities and limitations on liability, damages, or attorney fees do not apply to this cause of action.
  - In particular, the Colorado Governmental Immunity Act does not apply to this cause of action.
- **Qualified immunity:** “Qualified immunity is not a defense to liability pursuant to this this section.”
- **Attorney fees:** In an action brought pursuant to this section, the court shall award reasonable attorney fees as follows:
  - To a prevailing plaintiff;
  - In actions for injunctive relief, a plaintiff is deemed to have prevailed if the plaintiff’s suit was a substantial factor or catalyst in obtaining results sought by the litigation;
  - To a defendant, if the court finds the claim to be frivolous, then the court “may” award fees.
- **Indemnification:** A peace officer’s employer shall indemnify the peace officer for any judgment or settlement entered against him/her for liability under this section except as follows:
  - If the employer determines that the officer did not act upon a good faith a reasonable belief that the action was lawful, then the peace officer is not

indemnified for and is instead personally liable for five percent of the judgment or settlement or \$25,000, whichever is less;

- If the peace officer's portion of the judgment is uncollectable, the employer or its insurer shall satisfy the full amount of the judgment or settlement; and
- If the peace officer is convicted of a criminal violation for the conduct, then the employer does not have to indemnify the peace officer.
- **Period of limitations:** A civil action brought pursuant to this section must be commenced within two years after the cause of action accrues.

### Use of force by peace officers:

- **Limitations on use of force:** In carrying out their duties, peace officers shall apply nonviolent means "when possible" before resorting to the use of physical force<sup>5</sup>.
  - Peace officer may use physical force only if nonviolent means would be ineffective in:
    - Effecting an arrest;
    - Preventing an escape; or
    - preventing an imminent threat of serious bodily injury or death to the peace officer or another person.
  - When using physical force, a peace officer shall:
    - Not use deadly physical force to apprehend a person who is suspected of "only a minor or nonviolent offense";
    - Use only the degree of force consistent with the minimization of injury to others;
    - Ensure that assistance and medical aid are rendered to any injured or affected person as soon as practicable;
    - Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.
- **Chokeholds:** Peace officers are prohibited from using a chokehold on any person.
  - "Chokehold" is defined as:
    - A method by which a person applies sufficient pressure to another person to make breathing difficult or impossible;
      - Including but not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air; and
    - Applying pressure to a person's neck on either side of the windpipe, but not the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.
- **Deadly force:** A peace officer is justified in using deadly physical force "to make an arrest" only when:

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<sup>5</sup> "Physical force" means the application of physical techniques or tactics, chemical agents, or weapons to another person.

- All other means of apprehension are unreasonable given the circumstances; and
- All of the following:
  - The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
  - The suspect poses an immediate threat to the peace officer or another person;
  - The force employed does not create a substantial risk of injury to other persons.
- **Warning of deadly force:** A peace officer shall (a) identify himself/herself and (b) “give a clear verbal warning” of intent to use firearms or other deadly physical force, (c) “with sufficient time for the warning to be observed”, (d) unless to do so would unduly place a peace officer at risk of injury, or would create a risk of death or injury to other persons.
- **The notwithstanding justification:** Notwithstanding any other provision of this section, a peace officer is justified in using deadly force if (a) the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate, and (b) the peace officer has objectively reasonable grounds to believe, and (c) he or she does believe, that (d) he/she or another person is in imminent danger of being killed or of receiving serious bodily injury<sup>6</sup>.

**Use of physical force – special relationships – jail, prison, or correctional institution:**

- Use of physical force that would otherwise constitute an offense is justifiable and not criminal under the following circumstances:
  - A superintendent or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use “objectively reasonable and appropriate physical force”;
  - When and to the extent that he or she “reasonably believes it is necessary to maintain order and discipline”;
  - But he or she may use deadly physical force “only when he or she objectively reasonably believes the inmate poses an immediate threat to the person using deadly force or another person.”

**Duty to report use or force and duty to intervene:**

- **Duty to intervene:** A peace officer shall intervene to prevent or stop another peace officer from using physical force that exceeds that degree of force permitted by CRS 18-1-707.
- **Duty to report:** A peace officer who intervenes as required by this section shall report the intervention to his/her immediate supervisor.
  - At a minimum, the report must include: the date, time and place of the occurrence; the identity and description of the participants; description of the intervention action taken.

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<sup>6</sup> “Serious bodily injury” has the same meaning as in section 18-9-901(3)(p).



- This report shall be made in writing within ten days of the occurrence and shall be appended to all other reports of the incident.
- **Protection:** No discipline or retaliation shall be taken against a peace officer for (a) intervening as required by this section, or (b) reporting the intervention, or (c) failing to follow any directive that the officer reasonably believes is an unconstitutional directive.
- **Criminal liability:** Any peace officer who fails to intervene as required by this section commits a class 1 misdemeanor.
  - Nothing in this provision shall prohibit or discourage the prosecution of other criminal charges for the failure to intervene, including a higher charge if supported by the evidence.
  - When an administrative law judge or internal investigation finds that a peace officer failed to intervene as required by this section, this finding must be presented to the district attorney so that he/she can determine whether charges should be filed.
- **Discipline and de-certification:** In addition to any criminal liability, if an administrative law judge or an internal investigation finds that a peace officer failed to intervene as required by this section “in an incident resulting in serious bodily injury or death”:
  - The peace officer’s employer shall subject the peace officer to discipline, up to and including termination; and
  - The POST Board shall permanently decertify the peace officer upon receipt of notice of the discipline;
    - This revocation may only be overturned if the peace officer is exonerated by a court.
- **Basis for decision not to charge failure to intervene:** In any case where a peace officer is charged with offenses related to and based on the use of excessive force but the prosecution does not bring charges for failure to intervene against other peace officers who were on the scene, the district attorney shall:
  - Prepare a written report explaining the basis for the decision not to charge any other peace officer with criminal conduct;
  - Publicly disclose the report;
    - Except that where such disclosure would substantially interfere with or jeopardize an ongoing criminal investigation, the district attorney may delay public disclosure for up to 45 days;
  - The report shall be posted on the district attorney’s website.

**Training re use of physical force in making an arrest or preventing an escape:**

- **Required training:** Each law enforcement agency in this state shall train its peace officers on the following provisions:
  - CRS 18-1-707(1) – (4.5) [use of force by peace officers];
  - CRS 18-1-703(1)(b) [use of force and deadly force involving an inmate];
  - CRS 18-8-802(1.5) [duty to report and duty to intervene].
- **Deadline:** Such training must be provided prior to September 1, 2020.

### **Peace officer-involved death investigations:**

- **Grand jury:** If the district attorney refers a matter to the grand jury, he/she shall release a statement at the time of referral disclosing the general purpose of the grand jury's investigation.
  - If no true bill is returned, the grand jury shall issue and publish a report.
- **Attorney General:** The attorney general may bring a civil action to enforce the provisions of:
  - CRS 24-31-111 [pattern and practice of depriving persons of rights, privileges, or immunities];
  - CRS 24-31-307(2) [undertaking duties of peace officer in violation of the act];
- And, attorney general may bring a criminal action to enforce CRS 24-31-307(3) [willful and wanton violations of the act].

### **POST Board database:**

- **Database:** Commencing on January 1, 2022, the POST Board shall create and maintain a database containing the following information concerning peace officers:
  - Untruthfulness;
  - Repeated failures to follow POST Board training requirements;
  - Decertification by the POST Board; and
  - Termination for cause.

### **Public integrity patterns and practices:**

- **Prohibition:** It is unlawful for any governmental authority, an agent thereof, or any person acting on its behalf, to engage in a pattern and practice of conduct by peace officers or by officials or by employees of any governmental agency "that deprives persons of rights, privileges, or immunities secured by the constitution or laws of the United States or the State of Colorado."
- **Civil lawsuit:** Whenever the Attorney General has "reasonable cause to believe" that a violation of this section has occurred, the Attorney General, for and in the name of the state, may in a civil action obtain any and all relief to eliminate the pattern or practice.
- **Notification:** Before filing suit, the Attorney General shall notify the government authority, or any agent thereof, and provide it with the factual basis that supports the reasonable cause to believe that a violation has occurred.
  - Upon receipt of such notice, the government authority, or agent thereof, has 60 days to change or eliminate the identified pattern or practice.
  - If the identified pattern or practice has not been changed or eliminated after 60 days, then the Attorney General may file a civil lawsuit.

### **Revocation of certification due to failure to complete training:**

- **Revocation:** The POST Board may revoke the certification of a peace officer who fails to satisfactorily complete peace officer training required by the POST Board.
- **Notification:** Prior to revoking a peace officer's certification, the POST Board shall notify the peace officer of his or her failure and give the peace officer 30 calendar days to satisfactorily complete the training.

### **Enforcement action by Attorney General:**

- **Enforcement action:** The provisions of CRS 24-31-301, et seq. [Peace Officers Standards and Training provisions] may be enforced by the Attorney General through an action in district court for injunctive and other appropriate relief against:
  - Any peace officer or reserve peace officer;
  - Any agency employing such officer or reserve officer.
- **Criminal charges or fines:** The Attorney General may bring criminal charges for violation of CRS 24-31-301 et seq., if the violation is willful and wanton, or impose fines as set by the POST Board for failures to comply with these sections.
- **Attorney fees:** The Attorney General shall be entitled to recover reasonable attorney fees and costs against any defendant in any such enforcement action if the Attorney General prevails.

### **Profiling, officer identification, and training:**

- **Legal basis:** A peace officer shall have a legal basis for making a contact, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.
- **Reporting:** After making any contact, a peace officer shall report the following information to his or her employing agency concerning the contact:
  - The perceived demographic information of the person contacted, provided that the identification of these characteristics is based on the observation and perception of the peace officer making the contact and other available information;
  - Whether was a traffic stop;
  - Time, date, and location;
  - Duration;
  - Reason;
  - Suspected crime;
  - Result, such as:
    - No action, warning, citation, property seizure, or arrest;

- If a warning or citation was issued, the warning provided, or violation cited;
    - If an arrest was made, the offense charged;
    - If traffic stop, the information collected, which is limited to the driver;
  - Actions taken by the peace officer during the contact, including but limited to whether:
    - The peace officer asked for consent to search the person, vehicle, or other property, and if so, whether consent was provided;
    - The peace officer searched the person or any property, and if so, the basis for the search and the type of contraband or evidence discovered;
    - The peace officer seized any property, and if so, the basis for seizing the property;
    - The peace officer unholstered a weapon;
    - The peace officer discharged a firearm.
- **Identification:** Without being asked, a peace officer shall provide his or her business card to any person whom the peace officer has detained for a traffic stop but not cited or arrested. The business card must include:
  - Identifying information about the peace officer, including but not limited to name, division, precinct, and badge or other identification number;
  - The telephone number that may be used to report any comments, positive or negative, regarding the traffic stop;
  - Information about how to file a complaint related to the contact.
- **Complaints:** The identity of the reporting person and the report of any such comments that constitute a complaint must initially be kept confidential to the extent permitted by law.
  - The receiving law enforcement agency shall be permitted to obtain some identifying information regarding the complaint to allow for initial processing.
  - If it becomes necessary for the further processing of the complaint for the complainant to disclose his or her identity, the complainant shall do so or, at the option of the receiving law enforcement agency, the complaint may be dismissed.

**Effective dates:**

- This act takes effect upon passage except that:
  - CRS 24-31-902 [provisions relating to the release of, tampering with, and related fines concerning incident recordings] takes effect July 1, 2023;
  - CRS 18-1-703 [regarding use of physical force against inmates] takes effect on September 1, 2020;
  - CRS 18-1-707 [regarding use of force by peace officers] takes effect on September 1, 2020, except CRS 18-1-707 (2.5) and (3) (regarding the use of chokeholds and use of deadly force in effectuating an arrest) take effect upon passage.

**Passage date:**

- The bill was signed into law by the governor on June 19, 2020 at 9:53 am.

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**SGR, LLC** is a Denver-based law firm that provides defense litigation and legal compliance advisory services to public entities throughout the State of Colorado. Established in 1974, the firm has decades of experience and a long track record of success. Mr. Rice was a founding member of SGR and now serves as of counsel to the firm. Mr. Ziporin is one of the firm's equity and managing partners. For further information we invite you to visit the firm's website at [www.sgrllc.com](http://www.sgrllc.com).

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