

CCI Legislative Presentation

SB 217 Deep Dive

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SB 217 Background & Timing

- **Introduced very late in 2020 CO legislative session & became law VERY quickly**
- **No funding provided for local governments**

Major Provisions

- New civil liability under Colorado constitution
- New requirements for BWCs (effective July 2023)
- New changes to use of force statutes
- New requirements for P.O.S.T. revocation
- New provisions re: law enforcement “contacts”
- New statewide reporting requirements & databases
- New authority for P.O.S.T. Board & CO AG

(**varied implementation dates for these provisions)

SB 217

Civil Liability

Civil Liability Overview

SB 217 created a broad new civil cause of action for violations of Colorado Constitution

- It only extends to peace officers “employed by a local government”
- Eliminates CGIA immunities & qualified immunity
- Prevailing plaintiff is entitled to attorney fees
- Local government “may” get attorneys fees

Civil Liability Overview

New SB 217 claims are not subject to any of the provisions of the CGIA:

- CGIA immunity waived
- No damages cap
- No NOC requirement

Civil Liability Overview

Employer must indemnify peace officer, except:

1. If employer determines “officer did not act upon a good faith and reasonable belief that the action was lawful”
2. Officer is convicted of crime from which claim arises.

Impacts of New Civil Liability

The impact is yet to be determined:

- Insurance costs rising
- Defense costs significant even if no wrongdoing
- Increased pressure to settle claims
- Cost of uncapped claims
- Effects officers conduct

Common Misconceptions re: Civil Liability

Liability under SB 217 is not the same as the liability local governments already face under federal civil rights claims & Section 1983

- Qualified immunity is not absolute immunity from suit & in Colorado, it rarely serves as an outright bar to claims against law enforcement officers

Common Misconceptions re: Civil Liability

What is Qualified Immunity?

- Qualified immunity is a legal defense that recognizes we shouldn't hold public officials (including law enforcement) liable for a constitutional violation unless the official's conduct was unconstitutional & the official was on notice beforehand that the particular conduct was unconstitutional.
- It is really a form of due process for officers & public officials.

SB 217

Body Worn Camera Requirements

BWC Overview

SB 217 establishes broad body worn camera (BWC) requirements as of July 1, 2023:

- All LEAs issue BWCs to each peace officer who “interacts with members of the public”

BWC Overview

SB 217 requires officers to wear & activate a BWC (or dashcam, if used) when:

- (1) Responding to “a call for service”; or
- (2) During “any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law”

** Very limited exceptions permitted - i.e. undercover work, in jails (except huge exceptions to the exception), courts.

BWC Overview

SB 217 creates substantial penalties for any failure to activate/record or tamper with BWC video

- Civil Actions = negative permissive inference
- Criminal Actions = rebuttable presumption

BWC Overview

Additional Penalties Also Included for Findings of Intentional Conduct

Exceptions to penalties if:

- Malfunction
- No exception for rapidly evolving circumstances, BWC legitimately knocked off, or a victim/witness requests to have the BWC turned off.

Impacts of BWC Requirements

The impact of the BWC requirement is much bigger than just the cost of cameras:

- Requires massive data storage
- Criminal penalty not limited to defendant's statements
- Criminal penalty can change prosecutions
- Manipulation of videos – redactions burdensome
- Extensive records management required

Misconceptions about BWC Requirements

Concerns about BWC requirements are not because law enforcement are anti-BWC

- Most law enforcement see the benefit
- Scope & back-end logistics/costs are the rub
- No real world considerations

SB 217

**New Provisions re: Law
Enforcement Contacts**

“Contacts” Overview

SB 217 creates new standard requiring law enforcement to have a “legal basis” to make a “contact”

- SB 217 does not define “legal basis”
- Contacts include consensual encounters

“Contacts” Overview

SB 217 creates new data collection & reporting requirements for all “contacts”

- SB 217 Ambiguities = reporting requirements interpretations are inconsistent

These ambiguities & inconsistencies matter!

- Presumably data is intended to be used to draw future conclusions about law enforcement actions & impacts to minority communities.
- Inconsistent understanding & reporting could lead to over-reporting/under-reporting, or invalid conclusions being drawn from the data that dictate future legislative action & policy.

SB 217

New Use of Force Standards

Use of Force Overview

SB 217 made extensive changes to Title 18 & justifications or limitations on uses of force that can subject an officer to criminal liability

- SB 217 creates new standard to justify use of any physical force
- Ambiguities of standard make it difficult to interpret & apply in terms of teaching officers the rules of engagement

Impact of Physical Force Standard

This matters: officers don't want to get this wrong.

- New standards have created inconsistent interpretations, which may impact inter-agency assistance
- Officers face career-ending decertification if they get it wrong, increasing fears.

Deadly Force Overview

SB 217 also changed the law re: justifications for use of deadly force

- Justified to make an arrest only when “all other means of apprehension are unreasonable”
- Ambiguity may impact an officer’s judgment, and place the officer or others in harms way

Looking Forward?

Stakeholders on all sides continue to discuss these issues & possible legislative solutions:

- Civil liability (CCI priority)
 - Damages caps
 - Limits on scope of civil action to excessive force
- BWCs (CCI priority)
 - Funding
- Cleaning up definitions/ambiguities
 - Re: contacts
 - Re: use of force standards
- Peace Officer Decertification Standards
 - Due process & consistency for officers

Questions?

Thank you!