

**SB 217 “FIX” BILLS – HB 1250 VS. SB 183**

Issue	SB20- 217 (Sponsors Rep. Herod, Gonzalez-Gutierrez and Sens. Field and Garcia)	HB21- 1250 (Sponsors Rep. Herod/Gonzales-Gutierrez)	SB21- 183 (Sponsor Sen. Lundeen/Cooke/Gardner)
General	Law enforcement accountability bill	House Democrat supported cleanup bill	Senate Republican supported cleanup bill
Civil Liability	<p>Only included officers employed by a local government in new civil liability for a violation of the State constitution.</p> <p>Narrowly defines “peace officer” to mean a person employed by a subdivision of the State required to be P.O.S.T. certified, a State Patrol officer and any noncertified deputy sheriff.</p>	<p>Strikes language re: “employed by a local government,” which will result in Colorado State Patrol being included in civil liability.</p>	<p>Includes exact same provision.</p>
Indemnification	<p>A local government must indemnify their officers for any liability the officer incurs and for any judgement or settlement entered against the officers.</p> <p>If local government finds officer did not act in good faith, then officer to pay a maximum of \$25,000 for any claim or settlement unless insolvent. No duty for local government to indemnify if officer convicted crime underlying incident that is subject if civil lawsuit.</p>	<p>Requires good faith determination to be on a “case by case basis.”</p> <p>Expands requirements re: “employer” finding a peace officer acted in good faith to include “documented investigation conducted by the employer” and complaint process if person believes an employer violated this requirement.</p> <p>Expands indemnification obligations of employer to include when a peace officer was criminally convicted if the employer was a “causal factor” in the constitutional violation, through its action or inaction.</p> <p>Adds a definition re: “employer.”</p>	<p>Does not address indemnification.</p>
Contacts & Data Collection	<p>Requires a “legal basis” for law enforcement “contacts,” which are defined as any interaction, initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law, but not including routine</p>	<p>Adds “in person” to definition of “contact” (in CRS 24-31-901)</p> <p>Adds welfare checks to definition of “contact” (in CRS 24-31-901)</p>	<p>Adds “who is the subject of an investigation of a possible violation of law” to contact definition (in CRS 24-31-901)</p> <p>Clarifies “contact” does not include non-investigatory &amp; consensual interaction with the public.</p>

	<p>interactions with the public at the point of entry/exit from a controlled area.</p> <p>Mandates internal reporting by individual officers to their own employing agency, each report must include the following:</p> <ul style="list-style-type: none"> <li>• Demographics and other information in all use of force cases involving death or serious bodily injury.</li> <li>• Any resignation occurring while officer was being investigated for a violation.</li> <li>• Any instance of unannounced entry into a residence without a warrant.</li> <li>• Demographic and other information related to any officer-initiated contacts with a member of the public.</li> </ul> <p>Local law enforcement agencies are to send data collected from these reports to Division of Criminal Justice (DCJ). Reporting is to begin January 1, 2023.</p>	<p>Changes the reporting requirements to DCJ to start Jan. 1, 2022, rather than Jan. 1, 2023.</p> <p>Expands and amends certain reporting requirements including:</p> <ul style="list-style-type: none"> <li>- Strikes “firearm” and defines weapon to mean “firearm, long gun, taser, baton, nun chucks or projectile.”</li> <li>- Reporting of all UOFs that results in death, SBI or adds “that involves the use of a weapon.”</li> <li>- Reporting re: whether officer unholstered or brandished weapon and if so, the type of weapon</li> <li>- Reporting re whether an ambulance was called to scene, person transported, etc.</li> <li>- Whether person contacted exhibited a “weapon” during interaction leading up to injury or death and type of weapon</li> <li>- Reporting of “all entries into a residence,” including – but importantly not limited to -- forcible entry.</li> <li>- Reporting of whether vehicle searched</li> <li>- Reporting of “number of officers involved civilian deaths.”</li> </ul>	<p>Would amend any reference in reporting requirements related to “weapon” (undefined) to “firearm” only.</p>
<p>Use of Force &amp; Duty to Intervene</p>	<p>Makes numerous changes to Title 18 justifications related to peace officer uses of force, including that physical force may only be used if nonviolent means would be ineffective in an arrest, when trying to prevent an escape, or when trying to prevent an imminent threat of serious bodily injury or death.</p> <p>Changes standards related to justifications for deadly force and prohibits a peace officer from using a “chokehold” unless deadly force is justified.</p>	<p>Strikes language in CRS 18-1-707(1) that required the use of “nonviolent means” prior to the use of physical force and replaces with requirement that peace officers avoid the use of physical force when possible &amp; that officers not use physical force upon another unless the officer has “exhausted all reasonable de-escalation tactics and techniques, and based on the totality of the circumstances, such force is proportionate and necessary to effect an arrest, prevent an escape, or prevent and imminent threat of harm to the peace officer or another person.”</p> <p>Clarifies requirement re: minimization of injury to reference to “a person subject to the use of force”</p>	<p>Amends language in CRS 18-1-707(1) to strike “imminent threat of SBI or death” to state “another person from using unlawful physical force against” a peace officer or another.</p> <p>Amends to state “minimum degree of force necessary to minimize injury to the person subject to such force”</p>

	<p>Officers must make sure that assistance and medical aide are rendered to any injured or affected persons as soon as practicable.</p> <p>Officers have a duty to intervene to prevent or stop another officer from using unlawful force.</p> <p>Mandatory use of force training, to begin on September 1, 2020.</p>	<p>Requires officer to modulate use of physical force as the threat diminishes and cease force as soon as justification for force dissipates</p> <p>Requires officer not use deadly force unless it is used as a last resort and the officer has “exhausted all reasonable de-escalation tactics and techniques, and based on the totality of the circumstances, such force is necessary to prevent imminent death or SBI to another and the amount of force is proportional to the threat.</p> <p>Amends 18-1-707(3) to address when suspect poses an “imminent” (as opposed to immediate) threat of death or SBI.</p> <p>Specifies deadly force is not justified when a person poses a danger only to the person’s self or where only suspected of a minor or nonviolent offense. J</p> <p>Reorganizes definitions and adds definitions for “de-escalation tactics”, “detention facility”, “necessary” and “proportional”.</p>	<p>Amends 18-1-707(3) to state “imminent” instead of “immediate”</p> <p>Would add a definition for “intervene” to mean when a peace officer, while engaged in an official capacity, acts to prevent another peace officer from subjecting a person to excessive force.”</p> <p>Amends duty to intervene to state any peace officer “who observes the use of unlawful force, knows that the force another peace officer is using or is about to use is unlawful, has a reasonable opportunity to act to prevent the harm from occurring” and fails to intervene, etc.</p>
<p>POST Revocation</p>	<p>It is mandatory that peace officer’s P.O.S.T. certification be permanently revoked without reinstatement if the officer is convicted of a crime or found civilly liable for an unlawful force or failure to intervene unless exonerated.</p>	<p>Adds definition of “exonerated” to mean a not guilty verdict or finding of no civil liability or finding or no culpability or no liability in an admin proceeding or cleared in an IA.</p>	<p>Would add various provisions stating that revocation (or suspension) is not effective until the peace officer has exhausted all internal, contractual, and legal rights to review, challenge, and appeal the underlying finding or decision.</p>

	<p>It is mandatory that a peace officer's P.O.S.T certification be suspended for one year if they intentionally failed to activate or tampered with their body camera with an intent to conceal unlawful actions or obstruct justice, but permanent revocation required where incident resulted in civilian death.</p> <p>If an officer does not meet the mandatory training guidelines for use of force, the officer will receive notice and 30 days to comply before their certification is revoked.</p>	<p>Limits permanent revocation to incidents involving criminal or civil liability resulting in SBI or death.</p> <p>Creates temporary suspension for incidents involving criminal or civil liability that do not result in SBI or death of "at least a year"</p> <p>Limits suspension or revocation based solely on an IA decision until an ALJ has performed a de novo review.</p>	
<p>Body Worn Cameras (BWC)</p>	<p>By July 1, 2023, all local law enforcement agencies shall provide body-worn cameras to all peace officers.</p> <p>Certain circumstances of when a peace officer may turn off their cameras, such as to avoid recording personal information and in administrative, tactical and management discussions, and application to jail peace officers if the jail has video cameras (except when performing a task requiring an anticipated use of force)</p> <p>Undercover officers are not mandated to wear a BWC.</p> <p>If a peace officers fails to activate or tampers with a BWC or dash camera and is missing footage, this would be punishable and considered misconduct. Except as specifically allowed, failure to activate BWC results in civil permissive inference and rebuttable presumption in criminal case that officer cannot testify to statements not recorded.</p> <p>For incidents in which there is a complaint of peace officer misconduct by another officer, a civilian, or a nonprofit organization, the peace officers agency must release all unedited video and audio recordings to the public with in 21 days from the complaint. Requires redactions or</p>	<p>Would make BWC recording, release &amp; evidentiary penalties applicable upon adoption of this bill to officers who already have BWCs but preserve the July 1, 2023 date for agencies to issue BWCs if they haven't already.</p> <p>Expands requirement to record to include whenever entering into a premise, regardless of the reason, but clarifies that does not need to be on when en route to a call for service.</p> <p>Narrows exception related to BWCs and jails, to not be required when an officer is "working in any place in the jail that has functioning video cameras", which would mean they are required to have BWCs in areas where there are no cameras, such as in inmate cells, etc., as well as when there is an "anticipated use of force" including cell extractions or restraint chairs.</p> <p>Expands evidentiary penalties in criminal cases to presume an officer cannot testify to "any statements or conduct" sought to be introduced by the prosecution based on a failure to record.</p> <p>Expands punishment related to an intentional failure to activate or tampering with BWC from only situations involving a civilian death to also include resulting in SBI to a civilian as requiring permanent revocation by P.O.S.T.</p>	<p>Adds a provision permitting officers to turn off BWCs if requested by a person whom the officer reasonably believes is a victim or witness and if the request is documented on the recording or in a statement signed by the requestor</p> <p>Would narrow evidentiary penalty to only apply when the peace officer "intentionally" fails to activate or reactivate a BWC and would add an exception where the penalties would not apply if the BWC was not activated due to "an unforeseeable emergency or exigent circumstance that was not caused by the peace officer".</p>

	<p>blurring of all video that raises a substantial privacy concern.</p>	<p>Limits mandatory release of BWC video when a complaint of officer misconduct is made to only apply in situations where the video is actually requested as opposed to always.</p> <p>Changes provision previously allowing for redaction or blurring of video in order to protect a “substantial privacy interest” only allow for blurring of vide and specifying that the it does not permit the removal of any portion of the video.</p>	
<p>Outside Agency Investigations</p>	<p>Did not address.</p>	<p>Expands existing requirement that police and sheriffs, along with DAs, develop protocols to investigate and review incidents involving the discharge of a firearm, to now include any “use of force or other action” by a peace officer that resulted in injury or death.</p>	<p>Not addressed.</p>
<p>Misc</p>		<p>Requires when an agency hires a new employee, appoints a new employee or transfers a person to a position requiring P.O.S.T. certification, that the agency determine if the person has a record contained in the database created by P.O.S.T. under SB 217.</p> <p>Reorganizes Attorney General’s authority but does not appear to change or expand authority with the exception of expressly adding subpoena authority and changing criminal liability mens rea.</p> <p>Clarifies database requirements for P.O.S.T. and defines “untruthfulness”</p> <p>Authorizes P.O.S.T. to appoint an ALJ</p>	<p>Defines “untruthfulness”</p> <p>Adds a requirement that P.O.S.T. adopt procedures through which an officer could seek review of the officer’s status in the database required under SB 217 based on the presentation of new evidence or circumstances not previously provided.</p>