

**SB 217 “FIX” BILLS – SB20-217 VS. HB21-1250**

<b>Issue</b>	<b>SB20- 217 (Sponsors Rep. Herod, Gonzalez-Gutierrez and Sens. Field and Garcia)</b>	<b>HB21- 1250 (Sponsors Rep. Herod/Gonzales-Gutierrez)</b>
General	2020 law enforcement accountability bill.	Cleans up portion of SB20-217 and expands law enforcement accountability/reform in other areas.
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>	Strikes language re: “employed by a local government,” which will result in Colorado State Patrol being included in civil liability (but still does not apply to other state actors such as DOC employees).
Indemnification/ Liability	<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>Contacts &amp; Data Collection</p>	<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 interactions with the public at the point of entry/exit from a controlled area.</p> <p>Requires internal reporting by individual officers to the agency they are employed b, each report much include the following:</p> <ul style="list-style-type: none"> <li>• Demographics and other information in all use of force (UOFs) 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>Requires local law enforcement agencies to send data collected from these reports to Division of Criminal Justice (DCJ) beginning January 1, 2023.</p>	<p>Amends “contact” definition to limit to “in person contacts and to clarify “contacts” also do not include (i) non-investigatory and consensual interactions with a member of the public, initiated by a member of the public, unless or until the interaction progresses into an investigation of possible violations of the law, (ii) a motorist assist, (iii) undercover interactions, or (iv) routine interactions with persons detained in a jail or detention facility.</p> <p>Adds a broad definition of “legal basis” to mean “any basis authorized by statute or that the Colorado Supreme Court or United States Supreme Court has determined is lawful pursuant to Section 7 of Article II of the State Constitution or the Fourth Amendment to the United States Constitution.”</p> <p>Expands and amends certain reporting requirements including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Expanding use of force reporting requirements</li> <li>• Requiring reporting about entries into residences including forcible entry</li> <li>• Reporting on number of officer-involved civilian deaths</li> </ul> <p>Moves up the compliance deadline for agencies to report data to DCJ to April 1, 2022.</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 the standards related to justifications for deadly force and prohibits a peace officer from using a “chokehold” unless deadly force is justified.</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>Amends C.R.S. 18-1-707 to expand allowance for physical force by striking certain words as follows:</p> <p>(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A 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 <del>serious bodily injury or death</del> to the peace officer or another person.</p> <p>Amends C.R.S. 18-1-707 re: justifications for deadly force as follows:</p> <p>(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:</p> <p>(b) The suspect poses an immediate threat OF DEATH OR SERIOUS BODILY INJURY to the peace officer or another person;</p> <p>Amends C.R.S. 18-8-802 re: duty to intervene to only apply when an officer is on-duty and other clarifications to language.</p>

<p>Peace Officer Standards and Training (P.O.S.T) 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>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 P.O.S.T. certification is revoked.</p>	<p>Adds definition of "exonerated" to dismissal of charges by a court or a not guilty verdict, a finding of no liability in a civil action, a finding of no culpability or no liability or similar determination in an administrative proceeding or a finding of not sustained in an internal investigation, with certain exceptions.</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>Adds due process procedures and requirements prior to decertifying an officer based on final decision of an internal investigation, which can include a request for a hearing before an administrative law judge.</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 within 21 days from the complaint. Requires redactions or blurring of all video that raises a substantial privacy concern.</p>	<p>Makes BWC records release and prohibitions and penalties for tampering effective immediately for any officer who has already been issued a BWC.</p> <p>Amends recording release provisions to only allow/require blurring and no longer allows for redaction of any kind and changes time frame to start upon request for the video.</p> <p>Moves up implementation dates for other BWC evidentiary and other penalties to July 1, 2022 for any officer who has been issued a BWC as of that date. But, maintains the ultimate deadline that agencies are required to issue BWCs at July 1, 2023.</p> <p>Expands recording requirements to include when entering a premise for the purposes of enforcing the law or in response to a call for service during a welfare check, except for a motorist assist.</p> <p>Clarifies cameras do not need to be on when en route to a call for service, but should be on shortly before the vehicle approaches the scene.</p> <p>Narrows exception related to BWCs and jails so that requirements do not apply to officers/staff "working in any place in the jail that has functioning video cameras..."</p> <p>Expands evidentiary penalties in criminal cases to presume an officer cannot testify to "any statements <u>or conduct</u>" sought to be introduced by the prosecution based on a failure to record.</p> <p>Other clarifying amendments to language.</p>

Outside Agency Investigations	Did not address.	Expands existing requirement under C.R.S. 16-2.5-301, that police and sheriffs, along with District Attorneys (DAs), develop protocols to investigate and review incidents involving the discharge of a firearm, to now include “any other use of force by a peace officer that resulted in death.”
P.O.S.T. Authority/Data	Beginning January 1, 2022, requires P.O.S.T. to create and maintain a database containing information related to a peace officer’s: Untruthfulness; Repeated failure to follow P.O.S.T. training requirements; Decertification by P.O.S.T.; and Termination for cause	Amends and expands database requirements to maintained by P.O.S.T. to include resignation or retirement while under investigation or within 6 months if an investigation is opened and being subject to a criminal investigation for a crime that could result in revocation or suspension.  Also add a process by which an officer can seek review of the officer’s status in the database.
A.G. Authority & Patterns/Practice Investigations	Authorizes state A.G. to enforce provisions of Part 3 through civil action or criminal action if violation is willful or wanton, or to impose fines.  Created new authority for the State A.G. to investigate allegations that a government authority or any agent thereof has engaged in a pattern or practice of conduct by a peace officer or by officials or employees of any governmental agency that deprives a person of rights, privileges, or immunities secured or protected by the constitution or law of the U.S. or Colorado.  Authorizes A.G. to bring a civil action to obtain any and all appropriate relief to eliminate the pattern or practice.  Requires A.G. to give an agency notice and 60 days to change or eliminate the practice prior to filing suit.	Amends mens rea for criminal violations from willful or wanton to “knowingly or intentional”.  Amends A.G. authority language to fall under C.R.S. 24-31-101.  Amends patterns and practice provision to expressly permit the A.G. to issue subpoenas for any purpose in investigating.
Misc.	Did not address.	<u>Re: Hiring:</u> 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.  <u>Re: Radio Encryption:</u> Requires a law enforcement agency that encrypts all its radio communications create a communications access policy that includes an agreement governing access for the media to primary dispatch channels or talk groups.

		<p><u>Re: No-knock &amp; forced entry:</u> Requires A.G. convene a study group on or before Sept. 1, 2021, to study procedures related to the use of no-knock entry warrants and forced entry. The study group is to report findings and recommendations to the A.G. on or before December 31, 2021.</p> <p><u>Re: Additional Police Reform Study:</u> Requires D.O.L.A. to contract with a nationally recognized research and consulting entity for an independent study on evidence-based practices in specific areas related to police reform. The interim study is due no later than December 30, 2021, with the final study due no later than July 1, 2022.</p>
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