

## **Colorado SB20-217 “Enhance Law Enforcement Integrity Act”**

C.R.S. § 24-31-901 et seq.

Effective June 19, 2020 unless otherwise specified

### **Summary**

#### **Body Cameras**

By July 1, 2023 all local law enforcement agencies in the state of Colorado state patrol shall provide body-worn cameras for each peace officer who interacts with members of the public and when:

- Responding to a call for service;
- During any interaction with the public initiated by the officer; and
- When enforcing the law or investigating possible violations of the law

#### **Exceptions**

- Body cameras are not required if the peace officer is working undercover.
- Body cameras can be turned off:
  - o to avoid recording personal information that is not case related;
  - o when working on an unrelated assignment;
  - o when there is a long break in the incident or contact that is not related to the initial incident; and
  - o in administrative, tactical, and management discussions.
- Provisions do not apply to jail peace officers *unless* jail peace officers are performing a task that requires an anticipated use of force, including cell extractions and restraint chairs.

If a peace officer fails to activate a body-worn camera or dash camera or tampers with the camera’s footage or operation when required to activate the camera, there is a permissive inference that the missing footage would have reflected misconduct by the peace officer.

#### **Use of Force**

Officers are prohibited from using chokeholds or maneuvers that apply pressure to a person to make breathing difficult or impossible and any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air. Officers cannot use deadly force against someone for a minor or nonviolent offense.

#### **Failure to Intervene**

Officer must intervene and report other officers who use excessive force within 10 days of the incident. Those who fails to intervene commit a class 1 misdemeanor.

### **Convicted Peace Officers**

If any peace officer is convicted of or pleads guilty to a crime involving the unlawful use or threatened use of physical force, 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 is found civilly liable for failure to intervene in the use of unlawful force, the P.O.S.T. board shall permanently revoke the peace officer's certification.

The P.O.S.T. board shall not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer unless the peace officer is exonerated by a court.

### **Protester Protections**

Officers cannot discharge kinetic impact projectiles in a manner that targets the head, pelvis, or back; or discharge them indiscriminately into a crowd. Officers cannot use chemical agents/irritants, like pepper spray or tear gas, without issuing an order to disperse followed by sufficient time to allow compliance.

### **Qualified Immunity**

Qualified immunity is not a defense to liability

### **Data Tracking**

Beginning January 1, 2022, the P.O.S.T. Board will create and maintain a databased containing information related to a peace officer's untruthfulness; repeated failures to follow P.O.S.T. Board training requirements; decertification by the P.O.S.T. Board; and termination for cause

Beginning July 1, 2023 the Division of Criminal Justice in the Department of Public Safety shall create an Annual Report including all of the information that is reported to the Division and shall maintain a statewide database with data collected, in a searchable format, and publish the database on its website. The report will include data such as: time, date, and location of the use of force; perceived demographic information; names of peace officers, type of force used and severity of injuries; whether a weapon was used by the officer; if an investigation occurred; and whether there was a citizen complaint.

### **Relevant Statutes**

#### **§ 24-31-901 – Definitions**

“Contacts” means an interaction with an individual, whether or not the person is in a motor vehicle, initiated by a peace officer, 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.

“Peace Officer” means any person employed by a political subdivision of the state required to be certified by the P.O.S.T. board, a Colorado state patrol officer, and any noncertified deputy sheriff

- Those certified by P.O.S.T. board include: A chief of police; a police officer; a sheriff; an undersheriff; a deputy sheriff; a Colorado state patrol officer; a town marshal; a deputy town marshal; a reserve police officer; a reserve deputy sheriff; a reserve deputy town marshal; a police officer or reserve police officer employed by a state institution of higher education; a Colorado wildlife officer; a Colorado parks and recreation officer; a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo; an attorney general criminal investigator; a community parole officer; a public transit officer; a municipal court marshal; and the department of corrections inspector general
- A Colorado state patrol officer is a peace officer whose authority shall include the enforcement of all laws of the state of Colorado
- Any noncertified deputy sheriff is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, an official who has the duties of a sheriff in a city and county, or chief executive of the employing law enforcement agency.

“Physical Force” means the application of physical techniques or tactics, chemical agents, or weapons to another person.

“Serious Bodily Injury” means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks, fractures, or burns of the second or third degree.

#### **§ 24-31-902 – Incident Recordings – Release – Tampering – Fine**

By July 1, 2023 all local law enforcement agencies in the state of Colorado state patrol shall provide body-worn cameras for each peace officer who interacts with members of the public.

A Peace Officer shall wear and activate a body camera or dash camera, if vehicle is equipped with one, when responding to a call for a service or during any interaction with the public initiated by the peace offer, whether consensual or nonconsensual

A peace officer may turn off a body camera 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; and in administrative, tactical, and management discussions.

A peace officer does not need to wear or activate a body-worn camera if the peace officer is working undercover.

The above provisions do not apply to jail peace officers or staff of a local law enforcement agency if the jail has video cameras; except that the provisions do apply to jail peace officers when performing a task that requires an anticipated use of force, including cell extractions and restraint chairs.

The provisions also do not apply to the civilian or administrative staff of the Colorado State Patrol or a local law enforcement agency, the executive detail of the Colorado State Patrol, and peace officers working in a courtroom.

If a peace officer fails to activate a body-worn camera or dash camera or tampers with the camera's footage or operation when required to activate the camera, there is a permissive inference in any investigation or legal proceeding, excluding criminal proceedings against the peace officer, that the missing footage would have reflected misconduct by the peace officer.

**§ 24-31-903 – Division of Criminal Justice Report**

Beginning July 1, 2023, the Division of Criminal Justice in the Department of Public Safety shall create an Annual Report including all of the information that is reported to the Division:

- a. All use of force by its peace officers that results in death or serious bodily injury, including:
  - (i) The date, time, and location of the use of force;
  - (ii) 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 data;
  - (iii) The names of all peace officers who were at the scene, identified by whether the peace officer was involved in the use of force or not; except that the identity of other peace officers at the scene not directly involved in the use of force shall be identified by the officer's identification number issued by the P.O.S.T. board unless the peace officer is charged criminally or is a defendant to a civil suit as a result arising from the use of force;
  - (iv) The type of force used, the severity and nature of the injury, whether the peace officer suffered physical injury, and the severity of the peace officer's injury;
  - (v) Whether the peace officer was on duty at the time of the use of force;
  - (vi) Whether the peace officer unholstered a weapon during the incident;
  - (vii) Whether a peace officer discharged a firearm during the incident;
  - (viii) Whether the use of force resulted in a law enforcement agency investigation and the result of the investigation; and
  - (ix) Whether the use of force resulted in a citizen complain and the resolution of that complaint
- b. All instances when a police officer resigned while under investigation for violating department policy
- c. All data relating to contacts conducted by its peace officers, including:

- (i) 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 data;
- (ii) Whether the contact was a traffic stop;
- (iii) The time, date, and location of the contact;
- (iv) The duration of the contact;
- (v) The reason for the contact;
- (vi) The suspected crime;
- (vii) The result of the contact, such as:
  - i. No action, warning, citation, property seizure, or arrest;
  - ii. If a warning or citation as issued, the warning provided or violation cited;
  - iii. If an arrest was made, the offense charged;
  - iv. If the contact was a traffic stop, the information collected, which is limited to the driver;
- (viii) The actions taken by the peace officer during the contact, including but not limited to whether:
  - i. The peace officer asked for consent to search the person, and, if so, whether consent was provided;
  - ii. 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, if any;
  - iii. The peace officer seized any property, and, if so, the type of property that was seized and the basis for seizing the property;
  - iv. A peace officer unholstered a weapon during the contact;
  - v. All instances of unannounced entry into a residence, with or without a warrant, including:
    - 1. The date, time, and location of the use of unannounced entry;
    - 2. The perceived demographic information of the subject of the unannounced entry, provided that the identification of these characteristics is based on the observation and perception of the peace officer making the entry and other available data;
    - 3. Whether a police officer unholstered a weapon during the unannounced entry; and
    - 4. Whether a peace officer discharged a firearm during the unannounced entry

The division of criminal justice shall maintain a statewide database with data collected pursuant to this section, in a searchable format, and publish the database on its website.

The Colorado state patrol and any local law enforcement agency that fails to meet its reporting requirements pursuant to this section is subject to the suspension of its funding by its appropriating authority.

**§ 24-31-904 – Revoke Peace Officer Certification after Conviction**

If any peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, 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 is found civilly liable for failure to intervene in the use of unlawful force, the P.O.S.T. board shall permanently revoke the peace officer's certification.

The P.O.S.T. board shall not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer unless the peace officer is exonerated by a court.

**§ 24-31-905 – Prohibited Law Enforcement Action in Response to Protests**

A law enforcement agency and any person acting on behalf of law enforcement shall not:

- (i) Discharge kinetic impact projectiles and all other non- or less-lethal projectiles in a manner that targets the head, pelvis, or back;
- (ii) Discharge kinetic impact projectiles indiscriminately into a crowd; or
- (iii) Use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to ensure the order is heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order.

**§ 24-31-303 – Duties – Powers of the P.O.S.T. Board**

Beginning January 1, 2022 the P.O.S.T. Board will create and maintain a databased containing information related to a peace officer's:

- (i) Untruthfulness;
- (ii) Repeated failures to follow P.O.S.T. Board training requirements;
- (iii) Decertification by the P.O.S.T. Board; and
- (iv) Termination for cause

**§ 18-1-707 – Use of Force by Peace Officers – Definition**

Peace Officers shall apply nonviolent means, when possible, before resorting to the use of physical force.

A peace officer is prohibited from using a chokehold upon another person

- Chokehold means a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes, but is not limited to, any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air
- Chokehold also means applying pressure to a person's neck or either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries

**§ 8-18-802 – Duty to Report Use of Force by Peace Officers – Duty to Intervene**

A peace officer shall intervene to prevent or stop another peace officer from using physical force that exceeds the degree permitted, if any by § 18-1-707.

The report to the officer's immediate supervisor should include, at a minimum, the date, time, and place of the occurrence; the identity, if known, and description of the participants; and a description of the intervention actions taken.

The report must be made within 10 days of the occurrence of the use of force.

Any peace officer who fails to intervene to prevent the use of unlawful force commits a class 1 misdemeanor.

**§ 13-21-131 – Civil Action for Deprivation of Rights – Definition**

Qualified immunity is not a defense to liability