

**SECOND REVISED SUMMARY OF SB 217**  
**Concerning Measures to Enhance Law Enforcement Integrity and,**  
**In Connection Therewith, Making an Appropriation**

CML VIRTUAL CONFERENCE, AUGUST 2020

Final bill version can be located here: [link](#)

Nancy Rodgers, City of Aurora

Provisions are effective upon signing (6/19/2020) unless otherwise indicated in red.

**SECTION 1: Statewide Concern**

- The provisions of this bill are a matter of statewide concern

**SECTION 2: Law Enforcement Integrity (CRS 24-31-901)**

- Definitions -- there are 6 definitions including:
  - Contacts – interaction with an individual (traffic included) – consensual or not – initiate by an officer for the purpose of enforcing law or investigation of possible violations of the law (does not include routine interactions with public at entry or exit from a controlled area)
  - Physical force – the application of physical techniques or tactics, chemical agents, or weapons to another person
  - Tamper – intentionally damage, disable, dislodge or obstruct the sight or sound or otherwise impact functionality of a BWC or to intentionally damage, delete, or fail to upload some or all portions of a video.
- Body Worn Cameras (CRS 24-31-902(1)) - Effective date for entire BWC part 8/1/2023
  - BWC for all officers who interact with the public
  - Incident Recordings
    - Must wear and activate BWC and dash camera (if there is one) when contacting the public for enforcement or investigation
    - May turn off to in certain circumstances:
      - Avoid recording personal information that is not case related
      - When working on an unrelated assignment
      - When there is a long break in the incident/contact
      - In administrative, tactical and management discussions
    - Not required to wear/activate when undercover
  - Consequences for not recording
    - Permissive Inference in any legal proceeding or investigation that missing footage would have reflected misconduct of the officer
      - Not applicability in criminal proceedings against the officer
    - Presumptive inadmissibility of unrecorded statements
    - Termination, POST suspension
      - If court, ALJ, hearing officer, or final finding in an IA finds that an officer *intentionally failed* to activate a BWC or tampered with any

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- BWC, the officer's employer shall impose discipline up to an including termination (to the extent permitted by law).
- AND if court, ALJ, hearing officer, IA finding is there was also intent to conceal unlawful or inappropriate actions or obstruct justice, POST shall suspend certification for no less than 1 year (if citizen death, then permanent revocation)
  - Disclosure of Video and Audio (CRS 24-31-902(2)) - **Effective date 1/1/2023**
    - All unedited video and audio recordings of the incident of all types must be released to public within 21 days of the receipt of the complaint
    - Following any death: upon request to the family (individuals listed) or lawful representative at least 72 hours prior to public disclosure (family or lawful representative must be told of this right)
    - Required redaction
      - Any video that raises substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants shall be redacted or blurred to protect the privacy interest while still allowing release
      - Unredacted footage shall not be released with the written authorization of the victim or victim's next of kin (if person dead)
      - If redaction is not possible, the video is release to the victim or victim's family/lawful rep within 21 days of a complaint of misconduct.
      - When recording is not released, the agency shall notify the person whose privacy interest is implicated, if possible, within 20 days after a receipt of a complaint and inform the person of their right to waive the privacy interest.
    - Can withhold video if it would substantially interfere or jeopardize active investigation, except video shall be released within 45 days of allegation of misconduct.
      - Prosecuting attorney must provide a written explanation
    - If criminal charges filed, the defending party must file any constitutional objections to the release before the 21 day period expires
      - 21 day period is calculated differently in this section.
  - Division of Criminal Justice Report (CRS 24-31-903) - **Effective date - 1/1/2023**
    - Content list to be provided by agencies
      - All use of force that results in death/SBI with specific info (defined in bill)
      - Any resignations while under investigation by agency
      - All data related to contacts by the department's officers (see Section 16 below requiring officers to collect data about contacts)
      - All instances of unannounced entry into a residence with or without a warrant (date, time, location, perceived demographic, weapon use)
    - Statewide database published by DCJ
      - No name, address, SSN, or other unique PII of subject, victim, persons searched.
    - Suspension of funding as a consequence for failing to submit report
  - Revoke POST certification after conviction/civil liability (CRS 24-31-904)
    - Conviction for unlawful use or threatened use of unlawful force, or is found civilly liable for the use of unlawful force means POST decertification
  - Protest and Demonstrations (CRS 24-31-905)
    - No KIP or projectiles targeting head, pelvis or back

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- No indiscriminate discharge
- No chemical agents or irritants, pepper spray/tear gas, prior to order to disperse and time/space to comply

### **SECTION 3: New Civil Action for Deprivation of Rights (CRS 13-21-131)**

- An officer employed by local govt who under color of law, subjects another person to the deprivation of any individual rights secured by the Colo Constitution or a person who fails to intervene on such deprivation, is liable.
- No statutory immunities or limitations apply; CGIA does not apply
  - Qualified immunity is not a defense
- Prevailing plaintiff will be awarded fees and costs
  - Prevailing defendant will be awarded fees and costs for any claims the court finds frivolous
- Employer shall indemnify for any liability
  - EXCEPT, if employer determines the officer did not act upon good faith and reasonable belief that action was lawful, then officer personally liable and shall not be indemnified for 5% or \$25,000, whichever is less
    - If this is "uncollectible" by the officer, then the employer or employer's insurance shall pay.
  - EXCEPT, no indemnification required if officer is convicted of a criminal violation for the conduct.
- 2 year statute of limitations

### **SECTION 4: Use of Force - special relationships (CRS 18-1-703)**

- **Effective 9/1/2020**
- Jail/prisons - added "objectively reasonable and appropriate" force to maintain order and discipline
- Jail/prisons - added "objectively reasonable and appropriate" deadly force only if the inmate poses an immediate threat to the person using deadly force

### **SECTION 5: Use of Force by Officers (repeals current CRS 18-1-707 and reenacts it)**

- **Effective 9/1/2020 (except chokehold and use of deadly force)**
- Change in Statutory Use of Force – CRS 18-1-707
- Nonviolent means: Officers shall apply nonviolent means, when possible, before resorting to physical force.
  - New definition of physical force (see above): the application of physical techniques or tactics, chemical agents, or weapons to another person
- Physical Force
  - An 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 SBI or death to the officer or another person.
  - When physical force is used, an officer shall

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- NOT use deadly physical force to apprehend someone for a minor or nonviolent offense;
- Use only a degree of force consistent with the minimization of injury to others;
- Ensure that assistance and medical aid are rendered as soon as practicable; AND
- Ensure that any identified relatives or next of kin of persons who have SBI or death are notified as soon as practicable.
- Officers may not use a chokehold. **Effective upon passage**
  - Defined as 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.
  - also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries
- Deadly Physical Force is justified. **Effective upon passage.**
  - To make an arrest only when all other means of apprehension are unreasonable given the circumstances; AND
  - The arrest is for a felony involving conduct including the use or threatened use of deadly physical force; AND
  - The suspect poses an immediate threat to the officer or another person; and
  - The force does not create a substantial risk of injury to other persons.
- Identification
  - An officer shall ID him/herself and give a clear verbal warning of the intent to use a firearm or other deadly physical force with sufficient time for the warning to be observed, unless to do so would unduly place officers at risk of injury or would create a risk of death to other persons.
- Notwithstanding any of the above
  - An officer is justified in using deadly force in the officer has an objectively reasonable belief that a lesser degree of force is inadequate, and the officer has objectively reasonable grounds to believe, and does believe, that the officer or another person is in imminent danger of being killed or receiving SBI.

## **SECTION 6: Duty to Intervene; amends CRS 18-8-802 (duty to report use of force)**

- An officer shall intervene to prevent or stop another officer from using force in excess of what's allowed by CRS 18-1-707 in pursuance of the officer's duties in an arrest, custody, detention, booking, or crowd or riot control, without regard for chain of command
  - Following intervention, officer must report the intervention to supervisor
    - Report needs to be in writing
    - Report must be done within 10 days of the occurrence
    - Must include data, time, place, identify of participants and description
    - Intervention report must be appended to all other reports of the incident
  - No discipline or retaliation against those who intervene or reporting unconstitutional conduct or failing to follow what officer believes is an unconstitutional directive.
- Criminal Charges

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- Failure to intervene is a Class 1 misdemeanor.
- If an ALJ or IA investigations finds that an officer failed to intervene, the finding must be presented to the DA so the DA can determine whether charges should be filed (if charges haven't already been filed related to the incident)
- Discipline and POST Decertification
  - If ALJ, Judge, or IA investigation finds that officer failed to intervene, the employing agency shall subject the officer to discipline up to an included termination.
  - Also, the POST board shall permanently decertify the officer upon receipt of notice of the discipline.
- DA is required to explain if the DA charges an officer with excessive force why other officers on the scene haven't been charged with failure to intervene.

### **SECTION 7: Use of Physical Force – Required Training – new CRS 18-1-707(10)**

- Department shall train is officers on the new use of force provisions (section 3,4 and 5 above) prior to the provisions becoming effective September 1, 2020.

### **SECTION 8: Peace officer-involved death investigations – disclosure, CRS 20-1-114**

- If the DA refers the matter to the grand jury, the DA shall release a statement disclosing the purpose of the grand jury's investigation. If no true bill is returned, the grand jury shall issue and publish a report (was "may" previously)

### **SECTION 9: Powers of the Attorney General, CRS 24-31-101**

- May bring a civil action to enforce CRS 24-31-307(2) or criminal action to enforce CRS 24-31-307(3).
  - See description of those new statutes below (re POST Standards and Training)

### **SECTION 10: Duties – powers of the POST board, CRS 24-31-303**

- To promulgate rules including those processes to ensure substantial compliance with in-service training requirements by individual peace officers
- New database, beginning on 1/1/2022 that contains info on an officer's
  - Untruthfulness
  - Repeated failure to following training requirements
  - Decertification by POST
  - Termination for cause.

### **SECTION 11: Critical Stages of a Criminal Process, CRS 24-4.1-302 (Victims' Rights and Compensation Act)**

- Critical stage of a criminal justice process includes any hearing held pursuant to CRS 24-31-902(2)(c) (see below)

### **SECTION 12: Rights Afforded to Victims, CRS 24-4.1-302.5**

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- Victim's rights include the right
  - To obtain any incident recording described in CRS 24-31-902
  - to be heard in a hearing held pursuant to CRS 24-31-902(2)(c) (see below)
  - to request and obtain any incident recording described by CRS 24-31-902

### **SECTION 13: AG's Civil Suit - Public Integrity – Pattern and Practices, new CRS 24-31-111**

- It is unlawful for any government authority or agent or any person acting on behalf of a government to engage in a pattern or practice of conduct by officers or by officials or employees of the agency that deprives persons of rights, privileges or immunities secured by the U.S. Constitution or the Colorado Constitution
- Whenever the state AG has reasonable cause to believe a violation of this section has occurred, the AG may bring a civil action to eliminate the pattern or practice
- Before filing suit, the AG shall notify the agency/government entity and give them 60 days to change or eliminate the pattern or practice. If not, then the AG may file suit.

### **SECTION 14: POST Certification, Issuance, Renewal, Revocation, CRS 24-31-305**

- POST may revoke an officer's certification who fails to complete, satisfactorily, the training required by the POST Board.
- Prior to revocation, officer will get notice and 30 days to complete the required training.

### **SECTION 15: Enforcement by POST Board, AG charges for failure to willful ignore or not complete training; CRS 24-31-307**

- POST Board shall promulgate rules for part 3 (POST Standards and Trainings)
- AG may enforce the provisions of part 3 (POST Standards and Trainings) through an action in district court against:
  - Any officer in violation of part 3
  - Any agency permitting an officer to violate this part 3
- Criminal Charges: AG may bring criminal charges for violations of part 3 (POST Standards and Trainings) if violation is willful or wanton, or to impose fines, as set by POST, upon any individual or officer for failure to comply with part 3 or any rule promulgated under part 3.
- AG can recover attorney's fees and costs against the defendant in any enforcement action under this part 3, if the AG prevails.

### **SECTION 16: Racial Profiling – Amendments to Current Law, CRS 24-31-309**

- Officers shall have a legal basis for making a contact (define as any encounter, consensual or non-consensual, for enforcement or investigative purpose)
  - Legal basis is not defined, but could include reasonable suspicion or probable cause, which are both current lawful basis for contacts.
- Required reporting: After making contact, officers must report to the Department:
  - Perceived demographic of the person
  - Whether or not it was a traffic stop

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- If traffic stop, the information is limited to the driver
  - Time, Date, Location
  - Reason
  - Suspected crime
  - Result of the contact (no action, warning, arrest, etc)
  - Actions taken by officer, including but not limited to consent to search, search, seizure, unholstered weapon, discharged firearm.
- Business Card requirement – now add info on filing a complaint
  - Adds to the current law (which requires, during a traffic stop, officer must give business card if they're no citation and arrest) that the officer provide information about how to file a complaint

## **SECTION 17: Appropriations**

- Appropriations for state Dept. of Public Safety for CSP and to the AG (Dept of Law)

## **SECTION 18: Effective Date**

- CRS 24-31-902 (BWC) takes effect 7/1/2023
- Section 3 – 9/1/2020
- Section 4 – 9/1/2020 except CRS 18-1-707(2.5) (chokehold/carotid) and (3) (deadly force) take effect upon passage