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### **Timeline of Requirements enacted by SB 20-217- Enhance Law Enforcement Integrity**

**Summary of Legislation.** this bill makes several policy changes related to law enforcement practices and peace officers. Per the definition of peace officer in the legislation, most of the provisions of the bill apply to any person employed by a local government who is required to be Peace Officer Standards and Training (P.O.S.T)-certified, a Colorado State Patrol (CSP) officer, and noncertified deputy sheriffs. This document will outline the timeline and requirements of SB 20-217 once it is signed by Governor Polis. This is not meant to be an exhaustive summary.

### **Effective Immediately Upon the Governor's Signature**

**Civil action for deprivation of rights by a local law enforcement officer.** P.O.S.T-certified local law enforcement officers and non-certified deputy sheriffs may be liable to an injured party for legal, equitable, or otherwise appropriate relief if an individual claims their rights were violated under Art. II of the Colorado Constitution. This also includes failing to intervene. These actions can be filed in Colorado State Court.

- Statutory immunities and statutory limitations on liability, damages, or attorney fees do not apply to claims pertaining to local law enforcement officers, nor does the Colorado Governmental Immunity Act.
- Qualified immunity, a defense often used in Federal Section 1983 actions, is not allowed under SB 20-217.
- A defense that an officer acted in good faith is still available
- Civil actions must be commenced within two years after the cause of action occurs.

In these actions, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. When a judgment is entered in favor of a defendant, the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous.

**Mandatory indemnification.** A local government must indemnify its officers for any liability the officers incur and for any judgment or settlement entered against the officers. A municipality can require the officer to pay a maximum of \$25,000 for any claim or settlement when the officer acted in bad faith. A municipality does not have to indemnify a peace officer if the officer was convicted of a criminal violation for the conduct from which the claim arises.

**Additional civil liability.** There is now additional authority for the Colorado Attorney General to bring a civil action against a municipality based on a pattern and practice of constitutional violations by any "agent" of the municipality, not just peace officers.

**Prohibition on use of chokehold.** Officers are prohibited from using chokeholds including carotid holds.

**New requirements for “fleeing felon.”** A peace officer may only use deadly physical force if a suspect poses an imminent threat or an officer objectively believes a lesser form of force is not adequate to protect themselves and others.

**Permanent P.O.S.T-certification revocation when peace officer convicted use of force or fails to intervene.** If a peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, or is found civilly liable for the use of unlawful force, the P.O.S.T Board must permanently revoke the peace officer's certification. The P.O.S.T Board may 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. The same standards apply, if an officer fails to intervene in any use of force that results in death or serious bodily injury.

**Mandatory employer disciplinary actions.** If an officer fails to intervene in any use of force that results in death or serious injury, they must be disciplined and can be terminated.

**Officers must have justification for “contacts.”** The existing profiling statute is amended to require that there be a “legal basis for any contact... for the purpose of enforcing the law or investigating possible violations of the law.” Additionally, the officer’s business card must include information on how to file a complaint against an officer.

**Potential revocation of P.O.S.T- certification for failure to train.** 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.

**Mandatory internal reporting.** The bill mandates internal reporting by individual officers to their own employing agency of demographic and other information related to any officer-initiated contacts with a member of the public.

**Grand jury publications in peace officer-involved deaths.** If a matter related to a peace officer-involved death is referred to a grand jury and no bill is returned, the grand jury is required to issue and publish a report.

### **Effective September 1, 2020**

**Narrows use of force.** Physical force may only be used if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the officer or another person. The bill also outlines instances when deadly force shall not be used, including apprehending someone on a minor offense or when investigating a non-violent offense. Officers must ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable, and ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

**Mandatory use of force training deadline.** Every law enforcement agency is required to train police officers on new criminal use of force standards by September 1, 2020.

**New requirements for protests and demonstrations.** The bill restricts the circumstances in which “kinetic impact projectiles,” tear gas and pepper spray may be deployed by law enforcement agencies and individual officers. First an order must be issued to disperse, and the public has sufficiently and repeatedly heard the order and had time to comply.

**Prohibition against retaliation.** No member of a law enforcement agency may retaliate against an officer who intervenes to prevent unlawful use of force or who reports such use of force.

**Criminal liability for officer.** Starting on September 1, 2020, it is a Class 1 misdemeanor for a peace officer to fail to intervene or fail to report when fellow officer engages in excessive force. An officer acting as a peace officer without certification can face new criminal liability for willful and wanton performance of duties as a peace officer without proper P.O.S.T. certification.

### **Beginning January 1, 2022.**

**Database on individual law enforcement officer misconduct.** The P.O.S.T Board must create and maintain a database containing information related to all individual P.O.S.T-certified law enforcement officers':

- Untruthfulness
- Repeated failure to follow P.O.S.T Board training requirements
- Decertification by the P.O.S.T Board
- Termination for cause.

### **Effective January 1, 2023**

**Documentation and Reporting.** Law enforcement agencies must annually report the following to the Colorado Division of Criminal Justice.

- Demographic and other information in all use of force cases involving death or serious bodily injury.
- Any resignation occurring while officer was being investigate for any policy violation
- Any instance of unannounced entry into a residence without a warrant, with demographic and other information about the entry.
- Demographic and other information related to any officer-initiated contacts with a member of the public.

### **Effective July 1, 2023**

**Body-worn camera requirements for peace officers.** SB 20-217 requires agencies employing peace officers to issue, over a three-year period, body-worn cameras to peace officers that interact with the public. Beginning July 1, 2023, these peace officers must wear and activate a body-worn camera or a dashboard camera, as applicable, when responding to a call for service or during any contact. There are certain circumstances when peace officers may turn off cameras, such as to avoid the recording of personal information and in administrative, tactical, and management discussions. Undercover peace officers are not required to wear body-worn cameras. Local law enforcement agencies are required to establish a retention schedule for recordings in compliance with Colorado State Archives rules and direction.

- **Civil liability.** If a peace officer fails to activate or tampers with a body-worn or dash camera, it is inferred that the missing footage would reflect misconduct. This does not apply if the body-worn camera malfunctioned provided that the agency documentation shows the peace officer checked the camera functionality at the beginning of the shift.
- **Release of footage.** For incidents in which there is a complaint of peace officer misconduct by another officer, a civilian, or a nonprofit organization, the peace officer's

agency must release all unedited video and audio recordings of the incident to the public within 21 days from the complaint. The bill provides exceptions for active investigations and when a defendant objects. In cases of death, 72-hours in advance of release, a law enforcement agency must be providing the video to a family member or lawful representative. The bill requires redactions to protect individual privacy.

**Mandatory employer disciplinary actions.** If an officer fails to activate or tampers with a body camera they must be disciplined and can be terminated.

**Suspension of P.O.S.T-certification for failure to activate body camera.** It is mandatory that a peace officer's P.O.S.T certification be suspended for one year if they fail to activate or tamper with a body camera.

**Annual report by the Colorado Division of Criminal Justice.** Beginning on July 1, 2023 the Division must begin to publish an annual report and make available a searchable data base of the statistical information provided to the Division by every law enforcement agency in the state, with the data broken down for each local agency. The report will include information reported by each agency on:

- Demographic and other information in all use of force cases involving death or serious bodily injury.
- Any resignation occurring while officer was being investigate for any policy violation
- Any instance of unannounced entry into a residence without a warrant, with demographic and other information about the entry.
- Demographic and other information related to any officer-initiated contacts with a member of the public.

The League will continue to provide information and clarification of SB 20-217 as CML staff and membership evaluate additional implications of the bill. For questions, contact Meghan Dollar, Legislative Advocacy Manager ([mdollar@cml.org](mailto:mdollar@cml.org)). For legal questions, contact David Broadwell, General Counsel ([dbroadwell@cml.org](mailto:dbroadwell@cml.org)).