

2021

ANNUAL SEMINAR ON MUNICIPAL LAW



Practical tips for implementing new statutory mandates on police departments

Beyond adopting new forms of civil and criminal liability for individual police officers, recent changes to Colorado state law simply impose a host of new day-to-day operational mandates on police departments. Our speakers will relate the way their departments are interpreting and implementing these new mandates, with a special focus on body-worn camera requirements, contact reporting, and access to records related to internal investigations and police disciplinary actions.

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LEGISLATIVE CHANGES AND NEW OPERATIONAL MANDATES FOR LAW ENFORCEMENT AGENCIES

CML ANNUAL SEMINAR ON MUNICIPAL LAW OCTOBER 2021

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ROADMAP

- Overview of recent legislative changes impacting law enforcement operations and mandates under SB 217 and HB 1250
- Overview of interpretation and logistical issues related to BWC and records issues, data reporting mandates, release of IA files
- This presentation focuses on specific parts of the recent legislation related to operational issues and does not address other aspects of these bills related to Use of Force, Civil Liability etc. that create their own host of challenges

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CHANGES AFFECTING LAW ENFORCEMENT UNDER SB 217 AND HB 1250

SB 217 OPERATIONAL MANDATES ON LAW ENFORCEMENT FOR BWC AND DATA REPORTING

- Passed June 19, 2020
- Created Requirements for LEAs to develop BWC Programs and requirements for release of certain footage by July, 2023 pursuant to C.R.S. 24-31-902
- Created Requirements that LEAs require officers to collect data related to “contacts” to report to their employing agency pursuant to C.R.S. 24-31-309
- Created Requirements that LEAs collect data related to Contacts and UoF pursuant to C.R.S. 24-31-903 by January 1, 2023
- Updated by the passage of HB 1250 in 2021

HB 1250 UPDATES TO SB 217 MANDATES

- Passed July 6, 2021
- Clarifies language in SB 217 related to “contacts” for the purposes of data reporting requirements under C.R.S. 24-31-309
- Advanced effective dates for requirements to collect UoF data pursuant to C.R.S. 24-31-903 to report to the Division of Criminal Justice to April, 2022
- Advanced effective dates of for BWC requirements under C.R.S. 24-31-902 and release originally to take effect in 2023
- Made all provisions also applicable to State Patrol in addition to local LEAs

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BODY WORN CAMERA



NEW BWC REQUIREMENT EFFECTIVE DATES PER HB 1250

- **Effective Immediately (“if a peace officer is wearing a body-worn camera”)**
 - Sanctions for “tampering” with body worn camera or dash-cam camera video or operations (CRS 24-31-902 (1)(a)(III))
 - All procedures and deadlines for release of audio and video recordings (CRS 24-31-902 (2))
- **Effective July 1, 2022 (“if a peace officer is wearing a body-worn camera”)**
 - All of the other operational requirements for BWC set forth in CRS 24-31-902
- **Effective July 1, 2023**
 - Requirement for all law enforcement agencies to fully adopt and deploy BWC to the full extent required by the law and comply with all of the operational requirements in CRS 24-31-902

OPERATIONAL REQUIREMENTS FOR OFFICERS UNDER C.R.S. 24-31-902 (1)

- Peace officers **shall wear and activate** a BWC or dash camera (if the vehicle is equipped with one) when:
 - Responding to a call for service
 - Entering into a premises for the purposes of enforcing the law or in response to a call for service
 - During a welfare check not including a motorist assist
 - During any interaction with the public that is initiated by the officer that is consensual or non consensual for the purpose of enforcing the law or investigating violations of the law
- **Exceptions:**
 - BWC and dash cam **do not** need to be turned on in route to a call for service, but need to be turned on shortly before the vehicle approaches a scene
 - BWC **may be turned off** in the following circumstances:
 - To avoid recording personal information that is not case related
 - When working on an unrelated assignment
 - During long breaks in an incident
 - In administrative, tactical, and management discussions when civilians are not present
 - A peace officer does not need to wear or activate a body worn camera if the peace officer is working undercover
 - These provisions of this section do not apply to jail peace officers or staff if the jail has video cameras except during tasks that require and anticipated use of force including cell extractions and restraint chairs. Civilian or administrative staff of the CSP or local law enforcement, executive detail, and courtroom officers are exempt.

INTERPRETATION QUESTIONS

- What is an “unrelated assignment?”
- How long is a “long break?”
- What about officers taking reports at the front desk/over the phone?
- How far away do civilians have to be to “not be present” for the purposes of management and tactical discussions?
- Do officers need to wear BWC in the jail when completing administrative paperwork in the presence of an arrestee?
- How will we address officers that are cross designated and required to follow policies by federal partners like HSI and ATF?

C.R.S 24-31-902 (2)- RELEASE OF VIDEO AND AUDIO RECORDINGS

- **2) (a)** For all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado state patrol shall release, upon request, all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within **twenty-one days** after the local law enforcement agency or the Colorado state patrol received the request for release of the video or audio recording.

CHALLENGES ASSOCIATED WITH C.R.S. 24-31-902 (2)

- What constitutes a “complaint” and “notice” for the purposes of the 21 day requirement for release?
- Are requests made available to the “public” per the statute or just the requestor?
- Is every BWC released or is the release limited to the camera depicting the conduct giving rise to a complaint?
- Fees for records processing?
- When are waivers required to release unblurred footage, timeline for getting waivers from victims/defendants?
- “Blurring” “Muting” and Vendor program capabilities?
- Impact on pending IA and criminal cases?
- Additional Personnel needs with new deadlines?

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DATA REPORTING MANDATES AND REPORTING TO THE DIVISION OF CRIMINAL JUSTICE

C.R.S 24-31-309 (3.5)- CONTACT REPORTING

3) Profiling practices prohibited. Profiling as defined in subsection (2) of this section is prohibited; except that a peace officer may use age when making law enforcement decisions if the peace officer is investigating a juvenile status offense.

- (3.5) A peace officer, as defined in [section 24-31-901 \(3\)](#), shall have a legal basis for making a contact, as defined in [section 24-31-901 \(1\)](#), whether consensual or nonconsensual, for making a contact with a member of the public for purposes of enforcing the law or investigating possible violations of the law. After making a contact, a peace officer, as defined in [section 24-31-901 \(3\)](#), shall report to the peace officer's employing agency:
 - (a) 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;
 - (b) Whether the contact was a traffic stop;
 - (c) The time, date, and location of the contact;
 - (d) The duration of the contact;
 - (e) The reason for the contact;
 - (f) The suspected crime;

C.R.S 24-31-309 (3.5)- CONTACT REPORTING

- g) The result of the contact, such as:
 - (I) No action, warning, citation, property seizure, or arrest;
 - (II) If a warning or citation was 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;
- h) 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, vehicle, or other property, and, if so, whether consent was provided
 - (II) The peace officer searched the person, a vehicle, 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 or brandished a weapon during the contact, and, if so, the type of weapon; and
 - (V) A peace officer discharged a weapon during the contact.

C.R.S 24-31-903-REPORTING TO DCJ

- **(1)** 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 pursuant to subsection (2) of this section, aggregated and broken down by the law enforcement agency that employs peace officers, along with the underlying data.
- **(2)** Beginning April 1, 2022, the Colorado state patrol and each local law enforcement agency that employs peace officers shall report to the division of criminal justice the following using data-collection methods developed for this purpose by the division of criminal justice in conjunction with the Colorado bureau of investigation and local law enforcement agencies:

C.R.S. 24-31-903 (A)

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- (a) All use of force by its peace officers that results in death or serious bodily injury or that involves the use of a weapon, 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 a peace officer unholstered or brandished a weapon during the incident, and, if so, the type of weapon;
 - (VII) Whether a peace officer discharged a weapon during the incident;
 - (VIII) Whether the use of force resulted in a law enforcement agency investigation and the result of the investigation;
 - (IX) Whether the use of force resulted in a civilian complaint and the resolution of that complaint;
 - (X) Whether an ambulance was called to the scene and whether a person was transported to a hospital from the scene whether in an ambulance or other transportation; and
 - (XI) Whether the person contacted exhibited a weapon during the interaction leading up to the injury or death, and, if so, the type of weapon and whether it was discovered before or after the use of force;

C.R.S 24-31-903 (B) (C)

- **(b)** All instances when a peace officer resigned while under investigation for violating department policy;
- **(c)** All data relating to contacts and entries into a residence, including a forcible entry, 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; except that this subsection (2)(c)(I) does not apply to a person contacted who is a witness to a crime or a survivor of a crime;
 - **(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;

C.R.S 24-31-903 (B)-(C)

- **(VII)** The result of the contact, such as:**(A)** No action, warning, citation, property seizure, or arrest;**(B)** If a warning or citation was issued, the warning provided or violation cited;**(C)** If an arrest was made, the offense charged;**(D)** 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:
 - **(A)** The peace officer asked for consent to search the person, and, if so, whether consent was provided;
 - **(B)** The peace officer searched the person, a vehicle, or any property, and, if so, the basis for the search and the type of contraband or evidence discovered, if any;
 - **(C)** The peace officer seized any property and, if so, the type of property that was seized and the basis for seizing the property;
 - **(D)** A peace officer unholstered or brandished a weapon during the contact, and, if so, the type of weapon; and
 - **(E)** A peace officer discharged a weapon during the contact;**(d)** All instances of unannounced entry into a residence, with or without a warrant, including:
 - **(I)** The date, time, and location of the use of unannounced entry;
 - **(II)** 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;
 - **(III)** Whether a peace officer unholstered or brandished a weapon during the unannounced entry, and, if so, the type of weapon; and
 - **(IV)** Whether a peace officer discharged a weapon during the unannounced entry.**(e)** The number of officer-involved civilian deaths.

PRACTICAL ISSUES RELATED TO DATA REPORTING MANDATE

- Unfunded mandate with more questions than answers
- Very large volume of data to collect with no direction at this time regarding mechanism for collection or time to do it
- Advanced compliance deadline, will LEAs be able to comply due to complexity, time, resources etc. ?
- What systems will be used to report data?
 - RMS?
 - CAD?
 - Third party vendor?
- Still no guidance from DCJ as to how they want the data reported to ensure consistency amongst different jurisdictions or access to a single standardized reporting form
- Still no guidance about how often the data will be reported by LEAs
- Concerns about data misinterpretation/ representation and what that means for Patterns and Practice Investigations

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ACCESS TO INTERNAL AFFAIRS AND INVESTIGATION FILES

LEGISLATIVE HISTORY

- Prior to 2019, anyone seeking to review records in a police internal investigation file would make a request under the “balance of public and private interests” test (*Harris* factors) that governs any request for law enforcement records under the Colorado Criminal Justice Records Act.
- In 2019, the CCJRA was amended by [HB19-1119](#) to make it easier for anyone to access such files of completed investigations as relates to a “specific, identifiable incident.” Different law enforcement agencies interpreted this phrase in different ways, and sometimes denied requests that were not specific enough.

HB 1250 AND PEOPLE V. SPRINKLE

- Criminal justice reformers and media interests successfully lobbied this year to include a last-minute amendment to [HB21-1250](#) striking the words “specific, identifiable” from the CCJRA statutes.
- Then, on June 28, in the case of [People v. Sprinkle](#), a 5-2 majority of the Colorado Supreme Court held that the burden never was on the requestor to tailor his or her request to specific incidents. Instead, the language in the statute was intended to describe only the kinds of investigatory files the police agency would be required to disgorge. In the words of dissenting Justice Samour, this holding allows “fishing” requests where someone may be seeking access to all concluded investigations in the department or all investigations related to a particular officer.

IMPACTS

- Notation when IA records are subject to these requirements for staff/records technicians that are not attorneys
- Increased volume of CCJRA requests
- Increased volume of SDTs
- Plaintiff's attorneys using to get discovery outside of normal discovery process

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QUESTIONS/DISCUSSION