

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 18-0867.01 Michael Dohr x4347

HOUSE BILL 18-1404

HOUSE SPONSORSHIP

Coleman and Williams D.,

SENATE SPONSORSHIP

Marble and Lundberg,

House Committees

Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PUBLIC DISCLOSURE OF A COMPLETED PEACE OFFICER
102 INTERNAL INVESTIGATION FILE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes an internal investigation file (file) of a peace officer for in-uniform or on-duty conduct that involves a member of the public subject to an open records request. The bill requires some information to be redacted before complying with the open records request. The bill allows the custodian of the file to first provide a summary of the file to the requestor and then allows the requestor access

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
May 2, 2018

to the file after the requester has reviewed the summary. Under the bill, a custodian of a file in which there is an ongoing criminal case can deny inspection of the file. The file becomes open for inspection after all the charges are dismissed or the defendant is sentenced.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-305, **amend**
3 (5) as follows:

4 **24-72-305. Allowance or denial of inspection - grounds -**
5 **procedure - appeal.** (5) (a) On the ground that disclosure would be
6 contrary to the public interest, and unless otherwise provided by law, the
7 custodian may deny access to records of investigations conducted by or
8 of intelligence information or security procedures of any sheriff, district
9 attorney, or police department or any criminal justice investigatory files
10 compiled for any other law enforcement purpose.

11 (b) (I) PRIOR TO DETERMINING WHETHER DISCLOSURE WOULD BE
12 CONTRARY TO THE PUBLIC INTEREST, THE CUSTODIAN SHALL PERFORM AN
13 INDIVIDUALIZED ANALYSIS OF EACH OF THE SPECIFIC RECORDS REQUESTED
14 BY BALANCING:

15 (A) THE PRIVACY INTERESTS OF THE INDIVIDUAL WHO MAY BE
16 IMPACTED BY A DECISION TO ALLOW INSPECTION;

17 (B) THE AGENCY'S INTEREST IN KEEPING CONFIDENTIAL
18 INFORMATION CONFIDENTIAL;

19 (C) THE AGENCY'S INTEREST IN PURSUING ONGOING
20 INVESTIGATIONS WITHOUT COMPROMISING THEM;

21 (D) THE PUBLIC PURPOSE TO BE SERVED IN ALLOWING INSPECTION;
22 AND

23 (E) OTHER PERTINENT CONSIDERATIONS RELEVANT TO THE

1 PARTICULAR REQUEST.

2 (II) THE FOLLOWING PROVISIONS ONLY APPLY TO RECORDS
3 REGARDING AN INTERNAL INVESTIGATION RELATED TO THE ON-DUTY OR
4 IN-UNIFORM CONDUCT OF A PEACE OFFICER, AS DESCRIBED IN PART 1 OF
5 ARTICLE 2.5 OF TITLE 16, INVOLVING A MEMBER OF THE PUBLIC:

6 (A) WHEN THE CUSTODIAN IS PERFORMING THE BALANCING TEST
7 IN SUBSECTION (5)(b)(I) OF THIS SECTION REGARDING AN INTERNAL
8 INVESTIGATION RECORD RELATED TO THE ON-DUTY OR IN-UNIFORM
9 CONDUCT OF A PEACE OFFICER, AS DESCRIBED IN PART 1 OF ARTICLE 2.5 OF
10 TITLE 16, INVOLVING A MEMBER OF THE PUBLIC, THE CUSTODIAN SHALL
11 ADHERE TO THE FOLLOWING PRINCIPLES. THERE IS A COMPELLING PUBLIC
12 INTEREST IN PUBLIC INSPECTION OF COMPLETED INTERNAL INVESTIGATION
13 FILES RELATED TO A PEACE OFFICER'S ON-DUTY OR IN-UNIFORM CONDUCT
14 INVOLVING A MEMBER OF THE PUBLIC; PUBLIC ACCESS TO INTERNAL
15 INVESTIGATION FILES ENHANCES THE EFFECTIVENESS OF INTERNAL
16 INVESTIGATIONS, RATHER THAN IMPAIRING THEM; AND TRANSPARENCY
17 ENHANCES PUBLIC CONFIDENCE IN THE AGENCY. PEACE OFFICERS DO NOT
18 HAVE A REASONABLE EXPECTATION OF PRIVACY IN ON-DUTY OR
19 IN-UNIFORM CONDUCT INVOLVING A MEMBER OF THE PUBLIC.

20 (B) IF, AFTER PERFORMING THE BALANCING TEST IN SUBSECTION
21 (5)(b)(I) OF THIS SECTION, THE CUSTODIAN MAKES A PRELIMINARY
22 DETERMINATION THAT THE FACTORS WEIGH AGAINST RELEASE, THE
23 CUSTODIAN SHALL CONSIDER WHETHER REDACTION OF THE RECORDS
24 WOULD SATISFY THIS SECTION'S OBJECTIVE OF DISCLOSURE WHILE ALSO
25 ADDRESSING PRIVACY CONCERNs. THE CUSTODIAN SHALL REDACT
26 SPARINGLY IN ORDER TO MAXIMIZE THE AMOUNT OF INFORMATION
27 AVAILABLE TO THE PUBLIC.

1 (C) IF, AFTER PERFORMING THE REQUIRED BALANCING TEST AND
2 CONSIDERING REDACTION, THE CUSTODIAN DETERMINES THAT THE
3 FACTORS WEIGH AGAINST RELEASE, THE CUSTODIAN MAY DENY
4 DISCLOSURE OF THE RECORDS OR ANY PORTION THEREOF.

5 (D) IF THE CUSTODIAN DENIES DISCLOSURE OF THE RECORDS, THE
6 CUSTODIAN SHALL UPON REQUEST PROVIDE THE REQUESTER WITH A
7 WRITTEN EXPLANATION OF THE BASIS FOR THE DENIAL AS TO EACH
8 RECORD DENIED, INCLUDING ARTICULATION OF THE CUSTODIAN'S
9 BALANCING OF THE PUBLIC AND PRIVATE INTERESTS.

10 (E) ANY LOCAL POLICY, LOCAL RULE, OR ORDINANCE THAT
11 PROHIBITS CUSTODIANS FROM DISCLOSING RECORDS OF CLOSED INTERNAL
12 INVESTIGATIONS RELATED TO ON-DUTY OR IN-UNIFORM CONDUCT OF A
13 PEACE OFFICER, AS DESCRIBED IN PART 1 OF ARTICLE 2.5 OF TITLE 16,
14 INVOLVING A MEMBER OF THE PUBLIC IS UNENFORCEABLE; EXCEPT THAT
15 THE CUSTODIAN OF AN INTERNAL INVESTIGATION MAY DENY INSPECTION
16 IF THE INSPECTION IS PROHIBITED BY RULES PROMULGATED BY THE
17 SUPREME COURT OR BY A COURT ORDER AND THE CUSTODIAN MAY DENY
18 INSPECTION PURSUANT TO APPLICATION OF SUBSECTION (5)(a) OF THIS
19 SECTION AND SUBSECTION (5)(b) OF THIS SECTION.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

1 November 2018 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.