

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 12, 2010
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB10-084 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. Article 2.5 of title 16, Colorado Revised Statutes,
4 is amended BY THE ADDITION OF A NEW PART to read:

5 PART 3
6 COLORADO PEACE OFFICERS' BILL OF RIGHTS

7 **16-2.5-301. Legislative declaration.** THE GENERAL ASSEMBLY
8 HEREBY FINDS AND DECLARES THAT THE RIGHTS AND PROTECTIONS TO
9 PEACE OFFICERS AFFORDED IN THIS PART 3 CONSTITUTE A MATTER OF
10 STATEWIDE CONCERN.

11 **16-2.5-302. Colorado peace officers' bill of rights - minimum**
12 **rights established.** (1) NOTWITHSTANDING ANY PROVISION OF STATE OR
13 LOCAL LAW TO THE CONTRARY, AND NOTWITHSTANDING ANY APPLICABLE
14 CIVIL SERVICE SYSTEM OR COLLECTIVE BARGAINING AGREEMENT ALREADY
15 IN PLACE THROUGH THE APPLICABLE EMPLOYING AGENCY, ALL PEACE
16 OFFICERS SHALL HAVE AS A MINIMUM THE RIGHTS SET FORTH IN THIS PART
17 3.

18 (2) THIS PART 3 SHALL NOT DIMINISH OR IMPAIR ANY LEGAL
19 RIGHTS POSSESSED BY INDIVIDUAL PEACE OFFICERS BY LAW OR UNDER AN

1 EXISTING CIVIL SERVICE SYSTEM OF THE PEACE OFFICER'S EMPLOYING
2 AGENCY OR ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT.

3 **16-2.5-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "DECIDING AUTHORITY" MEANS THE PERSON WHO DECIDES ON
6 DISCIPLINARY ACTION FOR A PEACE OFFICER AND MAY INCLUDE, BUT IS
7 NOT LIMITED TO, THE PEACE OFFICER'S IMMEDIATE SUPERVISOR OR THE
8 CHIEF LAW ENFORCEMENT OFFICER OF THE EMPLOYING AGENCY.

9 (2) "EMPLOYING AGENCY" MEANS THE STATE OR THE GOVERNING
10 BODY OF ANY STATUTORY OR HOME RULE MUNICIPALITY OR COUNTY
11 EMPLOYING A PEACE OFFICER FOR LAW ENFORCEMENT DUTIES, OR ANY
12 AUTHORIZED REPRESENTATIVE THEREOF.

13 (3) "MAJOR DISCIPLINARY ACTION" MEANS ANY ACTION BY AN
14 EMPLOYING AGENCY THAT WOULD RESULT IN A SUSPENSION WITHOUT PAY
15 OF MORE THAN FORTY HOURS, A DEMOTION, OR TERMINATION.

16 (4) "PEACE OFFICER" MEANS ANY PEACE OFFICER AS DESCRIBED IN
17 SECTION 16-2.5-101.

18 (5) "REPRESENTATIVE" MEANS EITHER AN ATTORNEY LICENSED IN
19 THE STATE OR A PERSON WHO ADVISES OR COUNSELS A PEACE OFFICER
20 WHO IS EITHER FROM A POLICE ASSOCIATION, THE FRATERNAL ORDER OF
21 POLICE, OR A LEGAL DEFENSE PLAN OF WHICH THE PEACE OFFICER IS A
22 MEMBER.

23 **16-2.5-304. Entry of adverse comment in personnel records.**
24 NO EMPLOYING AGENCY MAY INSERT INTO A PEACE OFFICER'S PERSONNEL
25 FILE OR ANY FILE USED FOR PERSONNEL PURPOSES BY THE EMPLOYING
26 AGENCY ANY ADVERSE COMMENT OR MATERIAL UNLESS THE PEACE
27 OFFICER HAS AN OPPORTUNITY TO REVIEW THE COMMENT OR MATERIAL,
28 TO RECEIVE A COPY THEREOF, TO RESPOND TO THE COMMENT OR
29 MATERIAL IN WRITING, AND TO HAVE SUCH RESPONSE PLACED IN THE
30 PEACE OFFICER'S PERSONNEL FILE. THE PEACE OFFICER SHALL
31 ACKNOWLEDGE SUCH REVIEW BY SIGNING THE COMMENT OR MATERIAL.
32 THE PEACE OFFICER'S SIGNATURE ONLY INDICATES THAT THE PEACE
33 OFFICER IS AWARE OF SUCH COMMENT. THE INSERTION OF SUCH ADVERSE
34 COMMENT OR MATERIAL INTO THE PEACE OFFICER'S FILE MAY BE MADE IF

1 THE PEACE OFFICER, AFTER REVIEWING THE COMMENT OR MATERIAL,
2 REFUSES TO SIGN THE COMMENT OR MATERIAL. THE REFUSAL SHALL BE
3 NOTED ON THE SUBJECT DOCUMENT AND ACKNOWLEDGED BY THE PEACE
4 OFFICER. A PEACE OFFICER SHALL HAVE THIRTY DAYS AFTER THE DATE OF
5 HIS OR HER SIGNATURE TO FILE A WRITTEN RESPONSE TO ANY ADVERSE
6 COMMENT OR MATERIAL ENTERED INTO HIS OR HER PERSONNEL FILE.
7 SUCH WRITTEN RESPONSE SHALL BE ATTACHED TO AND ACCOMPANY THE
8 ADVERSE COMMENT OR MATERIAL.

9 **16-2.5-305. Right to participate in employee organizations.** A
10 PEACE OFFICER MAY FORM, JOIN, SUPPORT, OR PARTICIPATE IN ANY
11 EMPLOYEE ORGANIZATION OR ITS LAWFUL ACTIVITIES. THE EMPLOYING
12 AGENCY MAY NOT RETALIATE OR DISCRIMINATE IN ANY MANNER AGAINST
13 A PEACE OFFICER WHO JOINS OR ADVOCATES FOR ANY EMPLOYEE
14 ORGANIZATION OR FORMATION THEREOF. THE EMPLOYING AGENCY SHALL
15 HONOR A SIGNED DUES PAYROLL DEDUCTION OF AN INDIVIDUAL PEACE
16 OFFICER FOR PAYMENT OF DUES TO AN EMPLOYEE ORGANIZATION
17 DESIGNATED THEREON.

18 **16-2.5-306. Right to a predisciplinary administrative meeting.**
19 PRIOR TO ARRIVING AT A DECISION TO IMPOSE MAJOR DISCIPLINARY
20 ACTION, THE DECIDING AUTHORITY, OR HIS OR HER DESIGNEE, SHALL
21 PROVIDE THE PEACE OFFICER WITH AN OPPORTUNITY TO BE HEARD BY THE
22 DECIDING AUTHORITY REGARDING THE CONDUCT OR INCIDENT THAT
23 FORMS THE BASIS OF THE CONTEMPLATED DISCIPLINE AND TO OFFER THE
24 PEACE OFFICER'S PERSPECTIVE ON THE APPROPRIATE LEVEL OF DISCIPLINE,
25 IF ANY, TO BE IMPOSED. THE PEACE OFFICER SHALL BE PROVIDED WRITTEN
26 NOTIFICATION OF THE MEETING, WHICH SHALL INCLUDE A SUMMARY
27 DESCRIPTION OF THE ALLEGED CONDUCT THAT FORMS THE BASIS OF THE
28 CONTEMPLATED DISCIPLINE AND THAT IDENTIFIES THE POLICIES OF THE
29 EMPLOYER THAT ARE ALLEGED TO HAVE BEEN VIOLATED. IN THE EVENT
30 THAT RECOMMENDATIONS HAVE BEEN RECEIVED BY THE DECIDING
31 AUTHORITY THAT ADDRESS WHETHER CERTAIN ALLEGED POLICY
32 VIOLATIONS SHOULD BE SUSTAINED OR THAT SUGGEST THE APPROPRIATE
33 DISCIPLINE TO BE IMPOSED FOR SUCH SUSTAINED VIOLATIONS, THE
34 DECIDING AUTHORITY SHALL PROVIDE A COPY OF ALL SUCH
35 RECOMMENDATIONS TO THE PEACE OFFICER. BOTH THE WRITTEN NOTICE
36 AND COPIES OF ANY AND ALL RECOMMENDATIONS MADE IN CONNECTION
37 THEREWITH SHALL BE PROVIDED TO THE PEACE OFFICER NO LESS THAN
38 TWENTY-FOUR HOURS PRIOR TO THE MEETING.

1 **16-2.5-307. Right to appeal major disciplinary action through**
2 **a due process hearing - minimum standards for due process hearing.**

3 (1) (a) EACH EMPLOYING AGENCY SHALL ESTABLISH A FAIR AND
4 IMPARTIAL SYSTEM THAT PERMITS APPEAL OF MAJOR DISCIPLINARY
5 ACTION THROUGH A HEARING PROCESS THAT, AT A MINIMUM, COMPORTS
6 WITH THE DUE PROCESS PROCEDURES DESCRIBED IN SECTION 24-4-105,
7 C.R.S.

8 (b) THE DUE PROCESS HEARING SHALL BE CONDUCTED BY A
9 HEARING OFFICIAL. FOR PURPOSES OF THIS SECTION, "HEARING OFFICIAL"
10 MEANS A PERSON OR A GROUP OF PERSONS MUTUALLY AGREED UPON BY
11 THE EMPLOYING AGENCY AND PEACE OFFICER. "HEARING OFFICIAL"
12 INCLUDES AN ARBITRATOR, ADMINISTRATIVE LAW JUDGE, OR OTHER
13 INDEPENDENT, UNBIASED, AND IMPARTIAL PERSON OR, WHERE
14 APPLICABLE, THE STATE PERSONNEL BOARD.

15 (c) THE PEACE OFFICER SHALL HAVE THE RIGHT TO A
16 REPRESENTATIVE DURING THE DUE PROCESS HEARING AND SHALL BE
17 ENTITLED TO ALL DUE PROCESS RIGHTS INHERENT IN A FAIR HEARING.

18 (d) THE HEARING OFFICIAL MAY SUSTAIN, MODIFY, OR REVERSE
19 THE IMPOSITION OF MAJOR DISCIPLINARY ACTION OR ANY CHARGES
20 AGAINST A PEACE OFFICER. THE HEARING OFFICIAL MAY NOT IMPOSE
21 GREATER MAJOR DISCIPLINARY ACTION AGAINST A PEACE OFFICER THAN
22 THE MAJOR DISCIPLINARY ACTION ORIGINALLY IMPOSED.

23 (e) (I) ANY DECISION, ORDER, OR ACTION BY THE HEARING
24 OFFICIAL AS RESULT OF THE DUE PROCESS HEARING SHALL BE IN WRITING
25 AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT AND CONCLUSIONS OF
26 LAW. THE FINDINGS OF FACT AND CONCLUSIONS OF LAW SHALL CONSIST
27 OF A CONCISE STATEMENT CONCERNING EACH ISSUE PRESENTED IN THE
28 HEARING.

29 (II) A DECISION BY THE HEARING OFFICIAL THAT THE MAJOR
30 DISCIPLINARY ACTION IS NOT SUSTAINED SHALL SERVE TO TERMINATE THE
31 DISCIPLINARY PROCEEDING.

32 (III) IF THE HEARING OFFICIAL DECIDES THAT THE MAJOR
33 DISCIPLINARY ACTION IS SUSTAINED, THE HEARING OFFICIAL SHALL THEN
34 REVIEW THE EVIDENCE RECEIVED CONCERNING THE PEACE OFFICER'S PAST
35 JOB PERFORMANCE AND OTHER RELEVANT INFORMATION, AS DETERMINED

1 BY THE HEARING OFFICIAL, AND CONSIDER THIS INFORMATION IN
2 DETERMINING THE APPROPRIATENESS OF THE DISCIPLINE IMPOSED.

3 (f) DECISIONS OF THE HEARING OFFICIAL SHALL BE BINDING UPON
4 THE EMPLOYING AGENCY AND THE PEACE OFFICER UNLESS MODIFIED OR
5 REVERSED BY A COURT OF COMPETENT JURISDICTION.

6 (g) AFTER A DUE PROCESS HEARING, A COPY OF A WRITTEN
7 DECISION, ORDER, OR ACTION AND THE ACCOMPANYING FINDINGS SHALL
8 BE DELIVERED TO THE PEACE OFFICER OR THE PEACE OFFICER'S
9 REPRESENTATIVE.

10 (h) THE COST OF THE DUE PROCESS HEARING AND ANY FEES OF THE
11 HEARING OFFICIAL SHALL BE BORNE EQUALLY BY THE PEACE OFFICER AND
12 THE EMPLOYING AGENCY.

13 (2) ANY PEACE OFFICER WHO HAS COMPLETED A REASONABLE
14 INITIAL NEW HIRE PROBATIONARY PERIOD, AS DEFINED BY THE EMPLOYING
15 AGENCY, SHALL HAVE THE RIGHT TO APPEAL ANY DECISION TO IMPOSE
16 MAJOR DISCIPLINARY ACTION AGAINST THE PEACE OFFICER THROUGH A
17 DUE PROCESS HEARING ESTABLISHED PURSUANT TO SUBSECTION (1) OF
18 THIS SECTION.

19 **16-2.5-308. Discipline.** NO DISCIPLINARY ACTION SHALL BE
20 TAKEN WITHOUT JUST CAUSE.

21 **SECTION 2. Applicability.** This act shall apply to all peace
22 officers employed or hired on or after the effective date of this act.

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety."

** *** ** *** **