

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0243.01 Esther van Mourik

SENATE BILL 10-084

SENATE SPONSORSHIP

Tochtrop, Carroll M.

HOUSE SPONSORSHIP

Gagliardi,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A COLORADO PEACE OFFICERS' BILL
102 OF RIGHTS.

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://www.leg.state.co.us/billsummaries>.)

While individual law enforcement agencies in the state may have adopted civil service systems or may be a part of a collective bargaining process that establishes rights of peace officers, there is no consistency among state and local governments who hire peace officers for law

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

1 3.

2 (2) THIS PART 3 SHALL NOT DIMINISH OR IMPAIR ANY LEGAL
3 RIGHTS POSSESSED BY INDIVIDUAL PEACE OFFICERS BY LAW OR UNDER AN
4 EXISTING CIVIL SERVICE SYSTEM OF THE PEACE OFFICER'S EMPLOYING
5 AGENCY OR ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT.

6 **16-2.5-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "COMPLAINANT" MEANS A PERSON WHO MAKES A FORMAL
9 COMPLAINT REGARDING A PEACE OFFICER'S ACTIONS.

10 (2) "DECIDING AUTHORITY" MEANS THE PERSON WHO DECIDES ON
11 DISCIPLINARY ACTION FOR A PEACE OFFICER AND MAY INCLUDE, BUT IS
12 NOT LIMITED TO, THE PEACE OFFICER'S IMMEDIATE SUPERVISOR OR THE
13 CHIEF LAW ENFORCEMENT OFFICER OF THE EMPLOYING AGENCY.

14 (3) "EMPLOYING AGENCY" MEANS THE STATE OR THE GOVERNING
15 BODY OF ANY STATUTORY OR HOME RULE MUNICIPALITY OR COUNTY
16 EMPLOYING A PEACE OFFICER FOR LAW ENFORCEMENT DUTIES, OR ANY
17 AUTHORIZED REPRESENTATIVE THEREOF.

18 (4) "MAJOR DISCIPLINARY ACTION" MEANS ANY ACTION BY AN
19 EMPLOYING AGENCY THAT WOULD RESULT IN LOSS OF PAY, INCLUDING BUT
20 NOT LIMITED TO A SUSPENSION OF MORE THAN THREE DAYS, A DEMOTION,
21 A FORCED TRANSFER, OR TERMINATION.

22 (5) "PEACE OFFICER" MEANS ANY PEACE OFFICER AS DESCRIBED IN
23 SECTION 16-2.5-101.

24 (6) "REPRESENTATIVE" MEANS EITHER AN ATTORNEY LICENSED IN
25 THE STATE OR A PERSON WHO ADVISES OR COUNSELS A PEACE OFFICER
26 WHO IS EITHER FROM AN INDEPENDENT POLICE ASSOCIATION, THE
27 FRATERNAL ORDER OF POLICE, OR A LEGAL DEFENSE PLAN OF WHICH THE

1 PEACE OFFICER IS A MEMBER.

2 **16-2.5-304. Right to engage in political activity.** TO THE
3 EXTENT PERMITTED BY FEDERAL OR STATE LAW, ALL PEACE OFFICERS
4 SHALL HAVE THE SAME RIGHTS TO ENGAGE IN POLITICAL ACTIVITIES AS
5 ARE AFFORDED TO ALL RESIDENTS OF THE STATE, AND NO PEACE OFFICER
6 SHALL BE PROHIBITED FROM SEEKING ELECTION TO ANY EMPLOYING
7 AGENCY. WITH THE EXCEPTION OF THE ELECTED OFFICE OF SHERIFF, A
8 PEACE OFFICER MAY NOT SERVE IN AN ELECTED POSITION OF THE
9 MUNICIPALITY, COUNTY, OR STATE GOVERNMENT WHILE HE OR SHE IS
10 EMPLOYED AS A PEACE OFFICER BY SAID MUNICIPALITY, COUNTY, OR
11 STATE GOVERNMENT. WITH THE EXCEPTION OF THE ELECTED OFFICE OF
12 SHERIFF, THE RIGHT TO ENGAGE IN POLITICAL ACTIVITY IN ACCORDANCE
13 WITH THIS SECTION SHALL NOT APPLY TO ANY PEACE OFFICER WHILE ON
14 DUTY OR WHILE IN UNIFORM.

15 **16-2.5-305. Entry of adverse comment in personnel records.**
16 NO EMPLOYING AGENCY MAY INSERT INTO A PEACE OFFICER'S PERSONNEL
17 FILE OR ANY FILE USED FOR PERSONNEL PURPOSES BY THE EMPLOYING
18 AGENCY ANY ADVERSE COMMENT OR MATERIAL UNLESS THE PEACE
19 OFFICER HAS AN OPPORTUNITY TO REVIEW THE COMMENT OR MATERIAL,
20 TO RECEIVE A COPY THEREOF, TO RESPOND TO THE COMMENT OR
21 MATERIAL IN WRITING, AND TO HAVE SUCH RESPONSE PLACED IN THE
22 PEACE OFFICER'S PERSONNEL FILE. THE PEACE OFFICER SHALL
23 ACKNOWLEDGE SUCH REVIEW BY SIGNING THE COMMENT OR MATERIAL.
24 THE PEACE OFFICER'S SIGNATURE ONLY INDICATES THAT THE PEACE
25 OFFICER IS AWARE OF SUCH COMMENT. THE INSERTION OF SUCH ADVERSE
26 COMMENT OR MATERIAL INTO THE PEACE OFFICER'S FILE MAY BE MADE IF
27 THE PEACE OFFICER, AFTER REVIEWING THE COMMENT OR MATERIAL,

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

8 **16-2.5-306. Right to participate in employee organizations.** A
9 PEACE OFFICER MAY FORM, JOIN, SUPPORT, OR PARTICIPATE IN ANY
10 EMPLOYEE ORGANIZATION OR ITS LAWFUL ACTIVITIES OR REFRAIN FROM
11 JOINING SUCH AN ORGANIZATION OR PARTICIPATING IN SUCH ACTIVITIES.
12 THE EMPLOYING AGENCY MAY NOT RETALIATE OR DISCRIMINATE IN ANY
13 MANNER AGAINST A PEACE OFFICER WHO JOINS OR ADVOCATES FOR ANY
14 EMPLOYEE ORGANIZATION OR FORMATION THEREOF. THE EMPLOYING
15 AGENCY SHALL HONOR A SIGNED DUES PAYROLL DEDUCTION OF AN
16 INDIVIDUAL PEACE OFFICER FOR PAYMENT OF DUES TO AN EMPLOYEE
17 ORGANIZATION DESIGNATED THEREON.

18 **16-2.5-307. Right to bring suit.** NO STATUTE, POLICY,
19 PROCEDURE, RULE, REGULATION, ORDINANCE, RESOLUTION, STATE OR
20 LOCAL LAW, OR CHARTER PROVISION MAY ABRIDGE THE RIGHT OF A PEACE
21 OFFICER TO BRING SUIT ARISING OUT OF THE PERFORMANCE OF HIS OR HER
22 DUTIES AS A PEACE OFFICER.

23 **16-2.5-308. Truth verification test.** (1) NO PEACE OFFICER
24 SHALL BE REQUIRED TO SUBMIT TO A POLYGRAPH EXAMINATION OR
25 SIMILAR TRUTH VERIFICATION TEST. THE REFUSAL OF A PEACE OFFICER TO
26 AGREE TO SUCH AN EXAMINATION OR TEST SHALL NOT BE GROUNDS FOR
27 DISCIPLINE, AND NO INFERENCES MAY BE DRAWN FROM SUCH REFUSAL. IF

1 A PEACE OFFICER VOLUNTARILY AGREES TO A POLYGRAPH EXAMINATION
2 OR SIMILAR TRUTH VERIFICATION TEST, THE LOCATION OF SUCH
3 EXAMINATION OR TEST AND THE POLYGRAPHER OR TEST ADMINISTRATOR
4 SHALL BE MUTUALLY AGREED UPON BETWEEN THE PEACE OFFICER AND
5 THE EMPLOYING AGENCY. ANY QUESTIONS ASKED SHALL BE NARROWLY
6 LIMITED TO THE SPECIFIC SUBJECT MATTER OF THE INVESTIGATION. A
7 PEACE OFFICER SHALL NOT BE REQUESTED TO SUBMIT TO A POLYGRAPH
8 EXAMINATION OR SIMILAR TRUTH VERIFICATION TEST UNLESS AND UNTIL
9 THE COMPLAINANT HAS TAKEN AND SUCCESSFULLY PASSED SUCH AN
10 EXAMINATION. IN THE EVENT THAT THE COMPLAINANT HAS TAKEN A
11 POLYGRAPH EXAMINATION OR SIMILAR TRUTH VERIFICATION TEST AND A
12 PEACE OFFICER IS REQUESTED TO TAKE SUCH AN EXAMINATION, THE PEACE
13 OFFICER SHALL BE ADVISED OF THE POLYGRAPHER OR TEST
14 ADMINISTRATOR WHO ADMINISTERED THE COMPLAINANT'S EXAMINATION
15 OR TEST. ANY VOLUNTARY TEST OR EXAMINATION SHALL BE AT THE
16 EXPENSE OF THE EMPLOYING AGENCY, AND THE PEACE OFFICER SHALL BE
17 PROVIDED WITH COPIES OF ALL REPORTS AND UNDERLYING DATA
18 COMPILED FROM THE TEST OR EXAMINATION.

19 (2) SUBSECTION (1) OF THIS SECTION IS NOT INTENDED TO
20 PRECLUDE AN EMPLOYING AGENCY FROM REQUIRING A POLYGRAPH
21 EXAMINATION OR SIMILAR TRUTH VERIFICATION TEST AS A PART OF ITS
22 HIRING PROCESS.

23 **16-2.5-309. Public statements regarding internal**
24 **investigations.** THE EMPLOYING AGENCY SHALL NOT MAKE A PUBLIC
25 STATEMENT REGARDING AN ONGOING INTERNAL INVESTIGATION OR
26 IDENTIFY ANY PEACE OFFICER IN CONNECTION THEREWITH. THE
27 EMPLOYING AGENCY SHALL NOT MAKE A PUBLIC STATEMENT UPON THE

1 CONCLUSION OF AN INTERNAL INVESTIGATION UNLESS THE CHARGES ARE
2 SUSTAINED. IF CHARGES ARE SUSTAINED AGAINST ANY PEACE OFFICER,
3 THE EMPLOYING AGENCY'S PUBLIC STATEMENT SHALL NOT IDENTIFY THE
4 PEACE OFFICER AGAINST WHOM CHARGES HAVE BEEN SUSTAINED OR
5 DISCLOSE THE DISCIPLINE TO BE IMPOSED. IN THE EVENT THAT CRIMINAL
6 CHARGES HAVE BEEN FILED IN CONJUNCTION WITH AN INTERNAL
7 INVESTIGATION, ANY PUBLIC STATEMENT MADE WITH RESPECT TO SUCH
8 CHARGES SHALL NOT INCLUDE ANY REFERENCES TO ANY DISCIPLINARY
9 ACTION TAKEN IN CONJUNCTION WITH THE INVESTIGATION. ANY
10 DOCUMENTATION RELATING TO A DISCIPLINARY ACTION IN A PEACE
11 OFFICER'S PERSONNEL FILE IS NOT A PUBLIC RECORD AND NOT SUBJECT TO
12 DISCLOSURE.

13 **16-2.5-310. Requiring tests of blood, breath, or urine.** (1) A
14 PEACE OFFICER MAY BE COMPELLED TO SUBMIT TO A BLOOD, BREATH, OR
15 URINE TEST ONLY ON THE BASIS OF A REASONABLE SUSPICION THAT THE
16 PEACE OFFICER IS UNDER THE INFLUENCE OF DRUGS, ALCOHOL, OR A
17 NONPRESCRIBED CONTROLLED SUBSTANCE AT THAT TIME. SUCH
18 SUSPICION MUST BE BASED ON SPECIFIC OBJECTIVE FACTS AND
19 REASONABLE INFERENCES DRAWN FROM THOSE FACTS. THE SPECIFIC
20 OBJECTIVE FACTS UPON WHICH SUCH AN ORDER IS BASED SHALL BE
21 DISCLOSED TO THE PEACE OFFICER IN WRITING AT THE TIME THE DEMAND
22 IS MADE.

23 (2) A PEACE OFFICER MAY BE COMPELLED TO SUBMIT TO A BLOOD
24 OR URINE TEST IF THE PEACE OFFICER USED FORCE THAT RESULTED IN
25 SERIOUS BODILY INJURY OR DEATH OR IF THE PEACE OFFICER IS INVOLVED
26 IN A MOTOR VEHICLE ACCIDENT RESULTING IN SERIOUS BODILY INJURY OR
27 DEATH.

1 (3) ALL EQUIPMENT AND TESTING USED IN BLOOD, BREATH, OR
2 URINE TESTS SHALL CONFORM TO THE STANDARDS SET FORTH IN THE
3 RULES OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
4 DESIGNED TO TEST BLOOD, BREATH, OR URINE PURSUANT TO SECTION
5 42-4-1304, C.R.S. A SECOND SAMPLE OF THE BLOOD, BREATH, OR URINE
6 SHALL BE PRESERVED CONSISTENT WITH THE RULES OF THE DEPARTMENT
7 OF PUBLIC HEALTH AND ENVIRONMENT BY THE EMPLOYING AGENCY AND
8 MADE AVAILABLE TO THE PEACE OFFICER UNDER INVESTIGATION.

9 (4) SUBSTANCES FOR WHICH A PEACE OFFICER MAY BE TESTED
10 UNDER THIS SECTION INCLUDE ALCOHOL, SCHEDULED NARCOTICS, AND
11 CONTROLLED SUBSTANCES AS DEFINED BY SECTION 18-18-102 (5), C.R.S.

12 (5) A PEACE OFFICER MAY VOLUNTARILY SUBMIT TO ANY TESTING
13 INCLUDED IN THIS SECTION. THIS SECTION IS NOT INTENDED TO PRECLUDE
14 THE EMPLOYING AGENCY FROM REQUIRING MANDATORY TESTING FOR
15 DRUGS AS A PART OF THE HIRING PROCESS.

16 **16-2.5-311. Arrest quotas.** (1) AN EMPLOYING AGENCY MAY
17 NOT ESTABLISH ANY POLICY REQUIRING ANY PEACE OFFICER TO MEET AN
18 ARREST QUOTA.

19 (2) AN EMPLOYING AGENCY MAY NOT USE THE NUMBER OF
20 ARRESTS OR CITATIONS ISSUED BY A PEACE OFFICER AS THE SOLE CRITERIA
21 FOR PROMOTION, DEMOTION, REPRIMAND, DISCIPLINARY FINE,
22 DISCIPLINARY TRANSFER, SUSPENSION, DISMISSAL, OR EARNING ANY
23 BENEFIT PROVIDED BY THE AGENCY. THE NUMBER OF ARRESTS OR
24 CITATIONS AND THE ULTIMATE DISPOSITION OF SUCH ARRESTS OR
25 CITATIONS MAY ONLY BE CONSIDERED IN EVALUATING THE OVERALL
26 PERFORMANCE OF A PEACE OFFICER. A COMPLETE EVALUATION MAY
27 INCLUDE, BUT NEED NOT BE LIMITED TO, ATTENDANCE, PUNCTUALITY,

1 WORK SAFETY, COMPLAINTS BY THE PUBLIC, ACCOMMODATIONS,
2 DEMEANOR, FORMAL TRAINING, AND PROFESSIONAL JUDGMENT.

3 **16-2.5-312. Internal noncriminal investigations.**

4 (1) WHENEVER A PEACE OFFICER IS SUBJECT TO AN INTERNAL
5 INVESTIGATION OR SUBJECTED TO QUESTIONING THAT COULD RESULT IN
6 DISCIPLINARY ACTION OF ANY KIND, SUCH INVESTIGATION OR
7 QUESTIONING SHALL BE CONDUCTED IN ACCORDANCE WITH THE
8 FOLLOWING RIGHTS:

9 (a) ANY PEACE OFFICER SUBJECTED TO AN INTERNAL
10 INVESTIGATION SHALL BE PRESUMED INNOCENT, AND THE INVESTIGATION
11 SHALL BE CONDUCTED IN A FAIR AND IMPARTIAL MANNER.

12 (b) NO COMPLAINT AGAINST A PEACE OFFICER SHALL BE THE
13 SUBJECT OF AN INTERNAL INVESTIGATION THAT COULD RESULT IN A
14 PERMANENT INVESTIGATIVE FILE BEING MAINTAINED BY THE EMPLOYING
15 AGENCY REGARDING SUCH INVESTIGATION UNLESS THE COMPLAINT IS
16 MADE IN WRITING AND SIGNED AND SWORN TO BY THE COMPLAINANT.
17 NOTHING IN THIS PARAGRAPH (b) SHALL LIMIT THE ABILITY OF AN
18 EMPLOYING AGENCY TO INITIATE AN INTERNAL INVESTIGATION BASED ON
19 INFORMATION PROVIDED BY ITS OWN EMPLOYEES.

20 (c) ANY INDIVIDUAL INVOLVED IN THE QUESTIONING OR
21 INTERROGATION OF A PEACE OFFICER UNDER INVESTIGATION SHALL
22 ADVISE THE PEACE OFFICER UPON THE COMMENCEMENT OF EACH
23 INTERVIEW OR CONVERSATION OF THE CAPACITY IN WHICH THE
24 INTERVIEWER IS CONDUCTING SUCH QUESTIONING AND SPECIFICALLY
25 WHETHER SUCH INTERVIEW IS ADMINISTRATIVE OR CRIMINAL IN NATURE.
26 THE PEACE OFFICER SHALL BE ADVISED OF HIS OR HER RIGHTS UNDER THIS
27 PART 3 PRIOR TO COMMENCEMENT OF EACH INTERVIEW.

1 (d) A PEACE OFFICER WHO IS THE SUBJECT OF AN INTERNAL
2 INVESTIGATION SHALL BE INFORMED IN WRITING OF THE EXISTENCE OF THE
3 COMPLAINT AND THE SPECIFIC ALLEGATIONS THAT INITIATED THE
4 ADMINISTRATIVE INVESTIGATION.

5 (e) A PEACE OFFICER WHO IS THE SUBJECT OF AN INTERNAL
6 INVESTIGATION SHALL BE INFORMED OF THE NAME, RANK, AND COMMAND
7 OF THE OFFICER IN CHARGE OF THE INVESTIGATION, THE INTERROGATING
8 OFFICER, AND ALL PERSONS PRESENT DURING QUESTIONING. ONLY ONE
9 INTERROGATOR AT A TIME MAY DIRECT QUESTIONS TO THE PEACE OFFICER
10 UNDER INTERROGATION.

11 (f) THE EMPLOYING AGENCY SHALL INITIATE ANY INTERNAL
12 INVESTIGATION WITHIN TWENTY DAYS AFTER RECEIVING A COMPLAINT OR,
13 IF INITIATED INTERNALLY, WITHIN TWENTY DAYS AFTER THE DATE WHEN
14 THE EMPLOYING AGENCY HAS KNOWLEDGE OF THE EVENTS NECESSITATING
15 THE INVESTIGATION. ALL INTERNAL INVESTIGATIONS SHALL BE
16 COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE
17 INITIATED UNLESS HIGHLY UNUSUAL CIRCUMSTANCES EXIST, AS
18 DETERMINED BY THE EMPLOYING AGENCY, REQUIRING A CONTINUATION
19 OF THE INVESTIGATION FOR UP TO AN ADDITIONAL NINETY DAYS.

20 (g) THE EMPLOYING AGENCY SHALL GIVE SPECIFIC NOTICE IN
21 WRITING TO THE PEACE OFFICER OF ANY CHARGES THAT ARE OR MAY BE
22 FILED AGAINST THE PEACE OFFICER AND OF THE SPECIFIC NATURE OF THE
23 INVESTIGATION, INCLUDING ALL FACTS KNOWN TO THE EMPLOYING
24 AGENCY AT THE TIME THE NOTICE IS PREPARED. IF ADDITIONAL FACTS ARE
25 DISCOVERED AFTER THE PEACE OFFICER RECEIVES THE INITIAL NOTICE, THE
26 EMPLOYING AGENCY SHALL DISCLOSE THE ADDITIONAL FACTS TO THE
27 PEACE OFFICER PRIOR TO ANY QUESTIONING BY THE EMPLOYING AGENCY.

1 (h) ANY PEACE OFFICER INTERVIEWED AS A PART OF AN INTERNAL
2 INVESTIGATION MAY BE REPRESENTED BY A REPRESENTATIVE OF THE
3 PEACE OFFICER'S CHOOSING AT ALL TIMES DURING QUESTIONING, AND
4 SUCH REPRESENTATIVE MAY BE PRESENT AT ALL TIMES DURING SUCH
5 QUESTIONING.

6 (i) THE EMPLOYING AGENCY SHALL PROVIDE THE PEACE OFFICER
7 A REASONABLE AMOUNT OF TIME TO ARRANGE FOR A REPRESENTATIVE TO
8 BE PRESENT AT ALL INTERVIEWS WHERE THE PEACE OFFICER IS
9 QUESTIONED.

10 (j) IF A PEACE OFFICER WAIVES HIS OR HER RIGHT TO HAVE A
11 REPRESENTATIVE PRESENT DURING AN INTERVIEW BUT LATER REASSERTS
12 THAT RIGHT AT ANY TIME DURING THE INTERVIEW, THE INTERVIEW SHALL
13 BE SUSPENDED UNTIL THE REPRESENTATIVE CAN BE PRESENT. THE PEACE
14 OFFICER SHALL HAVE THE RIGHT TO CONSULT WITH HIS OR HER
15 REPRESENTATIVE AND TO RECEIVE ADVICE, BUT NOT IN SUCH A MANNER
16 THAT INTERFERES WITH THE INVESTIGATION PROCESS, AS DETERMINED BY
17 THE EMPLOYING AGENCY.

18 (k) PRIOR TO ANY QUESTIONING, THE PEACE OFFICER OR THE
19 REPRESENTATIVE MAY REVIEW ALL EVIDENCE GATHERED DURING THE
20 INVESTIGATION WHEN SUCH INFORMATION BECOMES AVAILABLE. A PEACE
21 OFFICER WHO IS THE SUBJECT OF AN INVESTIGATION SHALL BE ASSURED
22 THAT THE EMPLOYING AGENCY WILL CONSIDER THE PEACE OFFICER'S
23 RESPONSE.

24 (l) THE EMPLOYING AGENCY SHALL NOT MAKE A PROMISE OR
25 OFFER A REWARD TO ANY PEACE OFFICER AS AN INDUCEMENT TO ANSWER
26 QUESTIONS. THE INTERVIEW MAY BE AUDIO OR VIDEO TAPE RECORDED BY
27 THE EMPLOYING AGENCY. UPON REQUEST, THE EMPLOYING AGENCY WILL

1 PROVIDE A COPY OF THE RECORDING TO THE PEACE OFFICER WITHOUT
2 CHARGE. QUESTIONS ASKED OF A PEACE OFFICER DURING AN INTERVIEW
3 MUST BE REASONABLY RELEVANT TO THE INTERNAL INVESTIGATION. THE
4 PEACE OFFICER'S FAILURE TO RECOGNIZE THE RELEVANCE OF A QUESTION
5 SHALL NOT BE JUSTIFICATION FOR THE PEACE OFFICER TO REFUSE TO
6 ANSWER THE QUESTION.

7 (m) THE EMPLOYING AGENCY SHALL CONDUCT ALL INTERVIEWS AT
8 A REASONABLE HOUR AND AT A TIME WHEN THE PEACE OFFICER IS ON
9 DUTY, EXCEPT UNDER UNUSUAL CIRCUMSTANCES AS DEFINED BY THE
10 EMPLOYING AGENCY. IF A PEACE OFFICER IS QUESTIONED DURING A
11 PERIOD WHEN THE PEACE OFFICER IS NORMALLY OFF DUTY, THIS TIME WILL
12 BE TREATED AS ON-DUTY TIME, AND THE PEACE OFFICER SHALL BE
13 COMPENSATED ACCORDINGLY. INTERVIEWS SHALL ALLOW FOR REST
14 PERIODS AND PERSONAL NECESSITIES AS IS REASONABLY NECESSARY.

15 (n) DURING THE INTERVIEW, THE EMPLOYING AGENCY SHALL NOT
16 THREATEN OR COERCE A PEACE OFFICER DIRECTLY OR INDIRECTLY AND
17 SHALL NOT SUBJECT A PEACE OFFICER TO OFFENSIVE OR ABUSIVE
18 TREATMENT OR LANGUAGE.

19 (o) IN THE EVENT THAT A PEACE OFFICER WHO IS UNDER
20 INVESTIGATION IS REQUIRED TO PROVIDE ANY SECONDARY OR ADDITIONAL
21 EVIDENCE OR STATEMENTS TO THE DECIDING AUTHORITY, THE PEACE
22 OFFICER MAY SEE ALL WRITTEN OR ORAL STATEMENTS PREVIOUSLY MADE
23 BY THE PEACE OFFICER REGARDING THE INVESTIGATION PRIOR TO GIVING
24 SUCH ADDITIONAL STATEMENTS OR EVIDENCE IN THE INVESTIGATION.

25 (p) ALL INTERVIEWS REGARDING ALLEGATIONS THAT COULD
26 RESULT IN MAJOR DISCIPLINARY ACTION SHALL BE ELECTRONICALLY
27 RECORDED AND TRANSCRIBED BY THE EMPLOYING AGENCY.

1 (q) ANY STATEMENT OF A PEACE OFFICER THAT IS VIDEO OR AUDIO
2 TAPE RECORDED SHALL CONTAIN A STATEMENT REGARDING THE NAME OF
3 THE PEACE OFFICER BEING INTERVIEWED, THE NAME OF THE PEACE
4 OFFICER UNDER INVESTIGATION, THE NAME AND RANK OF THE PEACE
5 OFFICER CONDUCTING THE INTERVIEW, THE NAMES OF ALL PERSONS
6 PRESENT DURING THE COURSE OF THE INTERVIEW, THE DATE OF THE
7 INTERVIEW, THE TIME WHEN THE INTERVIEW BEGINS AND WHEN IT ENDS,
8 AND THE TIME AND DURATION OF ANY BREAKS PROVIDED TO THE PEACE
9 OFFICER. A PEACE OFFICER SUBJECT TO INTERROGATION OR QUESTIONING
10 MAY UTILIZE HIS OR HER OWN RECORDING DEVICE TO RECORD ANY AND
11 ALL ASPECTS OF THE INTERROGATION. A COPY OF THE PEACE OFFICER'S
12 OWN RECORDING SHALL BE MADE AVAILABLE TO THE EMPLOYING AGENCY
13 UPON REQUEST.

14 (r) ANY INTERVIEW OF A PEACE OFFICER SHALL BE CONDUCTED IN
15 A PRIVATE CLOSED SETTING AND NOT IN AN OPEN OFFICE OR A PUBLIC
16 ENVIRONMENT.

17 (s) THE EMPLOYING AGENCY SHALL PROVIDE A PEACE OFFICER
18 WHO IS THE SUBJECT OF AN INTERNAL INVESTIGATION NOTIFICATION OF
19 THE DECISION OF SUCH INVESTIGATION WITHIN SEVENTY-TWO HOURS
20 AFTER COMPLETION. IT SHALL BE SUFFICIENT THAT THE EMPLOYING
21 AGENCY MAKE REASONABLE EFFORTS TO COMPLY WITH THIS PROVISION
22 WITHIN THE PERIOD PROVIDED.

23 (t) AFTER THE INVESTIGATION IS COMPLETED AND AFTER THE
24 NOTIFICATION OF THE DECISION SPECIFIED IN PARAGRAPH (s) OF THIS
25 SUBSECTION (1), AND NO LATER THAN TWO DAYS AFTER REQUESTED, OR
26 REASONABLY IN ADVANCE OF ANY PREDISCIPLINARY CONFERENCE, THE
27 PEACE OFFICER AND THE PEACE OFFICER'S REPRESENTATIVE MAY ACCESS

1 TRANSCRIPTS, RECORDS, WRITTEN STATEMENTS, AND RECORDINGS
2 PERTINENT TO THE INVESTIGATION, INCLUDING TRANSCRIPTS OF
3 QUESTIONING AND RESPONSES TO ANY POLYGRAPH EXAMINATION.

4 (2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT
5 THE INFORMAL COUNSELING OF A PEACE OFFICER BY A DECIDING
6 AUTHORITY IN REFERENCE TO A MINOR INFRACTION OF POLICY OR
7 PROCEDURE THAT DOES NOT RESULT IN DISCIPLINARY ACTION BEING
8 TAKEN AGAINST THE PEACE OFFICER.

9 **16-2.5-313. Right to a predisciplinary administrative meeting.**
10 PRIOR TO ARRIVING AT A DECISION TO IMPOSE MAJOR DISCIPLINARY
11 ACTION, THE DECIDING AUTHORITY OR HIS OR HER DESIGNEE SHALL
12 PROVIDE THE PEACE OFFICER WITH NOTICE DESCRIBING THE REASON FOR
13 THE PROPOSED ACTION, AND THE PEACE OFFICER SHALL HAVE AN
14 OPPORTUNITY TO BE HEARD AND TO RESPOND TO THE REASON FOR THE
15 PROPOSED ACTION. THE PEACE OFFICER MAY BE REPRESENTED BY HIS OR
16 HER REPRESENTATIVE AT THE PREDISCIPLINARY HEARING. THE PEACE
17 OFFICER SHALL HAVE THE RIGHT TO CONSULT WITH HIS OR HER
18 REPRESENTATIVE AND MAY RECEIVE ADVICE, BUT NOT IN A MANNER THAT
19 INTERFERES WITH THE PROGRESS OF THE MEETING.

20 **16-2.5-314. Right to appeal major disciplinary action through**
21 **a due process hearing - minimum standards for due process hearing.**

22 (1) (a) EACH EMPLOYING AGENCY SHALL ESTABLISH A FAIR AND
23 IMPARTIAL SYSTEM THAT PERMITS APPEAL THROUGH A DUE PROCESS
24 HEARING OF ALL DECISIONS TO IMPOSE MAJOR DISCIPLINARY ACTION
25 AGAINST A PEACE OFFICER.

26 (b) THE DUE PROCESS HEARING SHALL BE CONDUCTED BY A
27 HEARING OFFICIAL. FOR PURPOSES OF THIS SECTION, "HEARING OFFICIAL"

1 MEANS AN INDEPENDENT PERSON, ARBITRATOR, OR MEDIATOR MUTUALLY
2 AGREED UPON BY THE EMPLOYING AGENCY AND PEACE OFFICER, OR,
3 WHERE APPLICABLE, THE STATE PERSONNEL BOARD.

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

7 (d) THE HEARING OFFICIAL MAY SUSTAIN, MODIFY, OR REVERSE
8 THE IMPOSITION OF MAJOR DISCIPLINARY ACTION OR ANY CHARGES
9 AGAINST A PEACE OFFICER. THE HEARING OFFICIAL MAY NOT IMPOSE
10 GREATER MAJOR DISCIPLINARY ACTION AGAINST A PEACE OFFICER THAN
11 THE MAJOR DISCIPLINARY ACTION ORIGINALLY IMPOSED.

12 (e) (I) ANY DECISION, ORDER, OR ACTION BY THE HEARING
13 OFFICIAL AS RESULT OF THE DUE PROCESS HEARING SHALL BE IN WRITING
14 AND SHALL BE ACCOMPANIED BY FINDINGS OF FACT. THE FINDINGS OF
15 FACT SHALL CONSIST OF A CONCISE STATEMENT CONCERNING EACH ISSUE
16 PRESENTED IN THE HEARING.

17 (II) A DECISION BY THE HEARING OFFICIAL THAT THE MAJOR
18 DISCIPLINARY ACTION IS NOT SUSTAINED SHALL SERVE TO TERMINATE THE
19 DISCIPLINARY PROCEEDING.

20 (III) IF THE HEARING OFFICIAL DECIDES THAT THE MAJOR
21 DISCIPLINARY ACTION IS SUSTAINED, THE HEARING OFFICIAL SHALL THEN
22 REVIEW THE EVIDENCE RECEIVED CONCERNING THE PEACE OFFICER'S PAST
23 JOB PERFORMANCE AND OTHER RELEVANT INFORMATION, AS DETERMINED
24 BY THE HEARING OFFICIAL, AND CONSIDER THIS INFORMATION IN
25 DETERMINING THE APPROPRIATENESS OF THE DISCIPLINE IMPOSED.

26 (f) DECISIONS OF THE HEARING OFFICIAL SHALL BE BINDING UPON
27 THE EMPLOYING AGENCY AND THE PEACE OFFICER UNLESS MODIFIED OR

1 REVERSED BY THE DISTRICT COURT OR OTHER COURT OF COMPETENT
2 JURISDICTION.

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

7 (h) THE COST OF THE DUE PROCESS HEARING AND ANY FEES OF THE
8 HEARING OFFICIAL SHALL BE BORNE EQUALLY BY THE PEACE OFFICER AND
9 THE EMPLOYING AGENCY.

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

16 **16-2.5-315. Discipline.** (1) AN EMPLOYING AGENCY SHALL
17 FOLLOW A SYSTEM OF PROGRESSIVE DISCIPLINE THAT IS INTENDED TO BE
18 CORRECTIVE RATHER THAN PUNITIVE. DISCIPLINE SHALL NOT BE
19 DISPARATE AND SHALL BE REASONABLY CONSISTENT WITH PAST
20 DISCIPLINE OF SIMILARLY SITUATED EMPLOYEES UNDER SIMILAR
21 CIRCUMSTANCES. THIS SUBSECTION (1) SHALL NOT PRECLUDE AN
22 EMPLOYING AGENCY'S AUTHORITY TO IMPOSE A LEVEL OF DISCIPLINE THAT
23 IS WARRANTED BY THE TOTALITY OF CIRCUMSTANCES UNDER
24 CONSIDERATION.

25 (2) NO DISCIPLINARY ACTION SHALL BE TAKEN WITHOUT CAUSE.
26 THE PEACE OFFICER AGAINST WHOM DISCIPLINE IS CONTEMPLATED MAY
27 BE RELIEVED OF DUTY AND SHALL RECEIVE ALL ORDINARY PAY AND

1 BENEFITS THE SAME AS IF THE PEACE OFFICER HAD NOT BEEN RELIEVED OF
2 DUTY.

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

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