

**Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-1019.01 Michael Dohr x4347

**SENATE BILL 14-190**

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**SENATE SPONSORSHIP**

**Lambert**, Hodge, Steadman

**HOUSE SPONSORSHIP**

**Gerou**, Duran, May

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**Senate Committees**

Judiciary  
Finance

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING CRIMINAL DISCOVERY, AND, IN CONNECTION**  
102             **THEREWITH, CREATING A STATEWIDE DISCOVERY SHARING**  
103             **SYSTEM, A CRIMINAL DISCOVERY SURCHARGE, CIVIL IMMUNITY**  
104             **FOR DISTRICT ATTORNEYS THAT MAKE A GOOD-FAITH EFFORT**  
105             **TO REDACT INFORMATION FROM DISCOVERY DOCUMENTS, AND**  
106             **MAKING AN APPROPRIATION.**

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**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.>)*

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.*

**Joint Budget Committee.** Last year a discovery task force (task force) was convened to develop recommendations regarding criminal discovery systems and costs. The task force recommended creating a statewide discovery sharing system (system). The bill turns the task force into the discovery project steering committee (committee). The committee shall develop a request for proposal and selection process for choosing a vendor to develop the system. The committee shall make a recommendation to the Colorado district attorneys council (CDAC) regarding the vendor after the application process is complete. CDAC shall select a vendor to develop the system after the application and selection processes are complete. The committee shall develop benchmarks and contractual requirements for the project. CDAC shall enter into a contract with the selected vendor to complete the system by June 30, 2016.

The general assembly shall appropriate moneys to the judicial department for allocation to CDAC for development and maintenance of the system. The bill creates a criminal surcharge to fund the development and maintenance of the system. A \$10 surcharge applies to each felony conviction, and a \$5 surcharge applies to each misdemeanor conviction if the defendant is represented by private counsel or appears pro se.

The bill gives civil immunity to district attorneys who make a good-faith effort to redact all information legally required to be redacted and provide discovery documents that contain information that should have been redacted.

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

2           **SECTION 1. Legislative intent.** (1) The general assembly finds  
3 it necessary to provide funding for the maintenance and development of  
4 a statewide discovery sharing system in order to create more predictable  
5 state costs associated with criminal discovery. It is the intent of the  
6 general assembly that once the statewide discovery sharing system is  
7 operational the existing general fund appropriations to the judicial  
8 department that are used to reimburse district attorneys for the cost of  
9 duplicating discoverable materials shall be used to fund the ongoing  
10 maintenance of a statewide discovery sharing system and the associated  
11 ACTION system operated by the Colorado district attorneys' council in

1 addition to the moneys generated by the surcharge created by this act.

2 (2) It is the intent of the general assembly that once the statewide  
3 discovery sharing system is operational the district attorneys shall not  
4 seek or receive reimbursement for copying discovery for anyone.

5 **SECTION 2.** In Colorado Revised Statutes, **amend** 16-9-701 as  
6 follows:

7 **16-9-701. Discovery project steering committee.** (1) (a) There  
8 shall be a discovery ~~task force~~ PROJECT STEERING COMMITTEE convened  
9 to ~~study and make recommendations regarding criminal discovery~~ ASSIST  
10 IN DEVELOPING A REQUEST FOR PROPOSAL APPLICATION AND SELECTION  
11 PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE DISCOVERY  
12 SHARING SYSTEM. The ~~task force~~ STEERING COMMITTEE consists of:

13 (I) The attorney general or his or her designee, who shall serve as  
14 the chair of the ~~task force~~ STEERING COMMITTEE;

15 (II) The state court administrator or his or her designee, who shall  
16 serve as the vice-chair of the ~~task force~~ STEERING COMMITTEE;

17 (III) The state public defender or his or her designee;

18 (IV) A representative of the criminal defense bar appointed by the  
19 chief justice;

20 (V) Three district attorneys appointed by the governor, one  
21 representing an urban judicial district, one representing a mid-sized  
22 district, and one representing a rural district;

23 (VI) A county sheriff appointed by the governor;

24 (VII) The alternate defense counsel or his or her designee;

25 (VIII) A chief of police appointed by the governor; and

26 (IX) A district court judge appointed by the chief justice.

27 (b) The ~~task force~~ PROJECT STEERING COMMITTEE must also have

1 a nonvoting member appointed by the governor from the office of  
2 information technology who serves ONLY as a technology advisor to assist  
3 the ~~task force~~ STEERING COMMITTEE.

4 (2) The chair of the discovery ~~task force~~ PROJECT STEERING  
5 COMMITTEE shall convene the first meeting of the ~~task force~~ STEERING  
6 COMMITTEE by June 30, 2013, and ~~must meet at least twice a month~~  
7 ~~thereafter until it completes its duties as listed in subsection (3) of this~~  
8 ~~section, or until November 15, 2013, whichever is earlier~~ 2014.

9 (3) The discovery ~~task force~~ ~~must~~ PROJECT STEERING COMMITTEE  
10 SHALL DEVELOP A REQUEST FOR PROPOSAL APPLICATION AND RECOMMEND  
11 A SELECTION PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE  
12 DISCOVERY SHARING SYSTEM. THE APPLICATION PROCESS MUST BE  
13 DEVELOPED IN A TIMELY MANNER SO THE SELECTION CAN BE MADE BY  
14 NOVEMBER 1, 2014, AT THE LATEST. THE STEERING COMMITTEE SHALL  
15 MAKE A VENDOR RECOMMENDATION TO THE COLORADO DISTRICT  
16 ATTORNEYS' COUNCIL AFTER THE APPLICATION PROCESS IS COMPLETED.  
17 THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL SELECT A VENDOR  
18 AFTER THE APPLICATION AND SELECTION PROCESS IS COMPLETE AND  
19 AFTER CONSIDERING THE RECOMMENDATION OF THE STEERING  
20 COMMITTEE.

21 (a) ~~Determine which district attorney's offices obtain all law~~  
22 ~~enforcement discoverable evidence in an electronic format, which district~~  
23 ~~attorney's offices will soon be able to obtain all law enforcement~~  
24 ~~discoverable evidence in an electronic format, and which district~~  
25 ~~attorney's offices will not have that ability at any point in the future~~  
26 ~~without assistance;~~

27 (b) ~~Determine the barriers for those district attorney's offices that~~

1 will never be able to obtain law enforcement discoverable evidence in an  
2 electronic format without assistance;

3 (c) Study the feasibility of a single statewide criminal case  
4 management system or other technology inserts to facilitate electronic  
5 discovery or electronic redaction;

6 (d) Study the appropriateness of a statewide standardized law  
7 enforcement reporting form that is easily redactable;

8 (e) Recommend or address short-term needs for law enforcement  
9 and district attorneys to facilitate greater use of electronic discovery;

10 (f) Suggest a definition for the term "actual costs" for purposes of  
11 reimbursement that adequately and fairly reimburses the state's district  
12 attorneys for the expenses for which the district attorney's offices are  
13 responsible related to the discovery process;

14 (g) Suggest an alternative funding process to reimburse the district  
15 attorneys for appropriate discovery costs without requiring the public  
16 defender, alternate defense counsel, or any indigent pro se defendant to  
17 pay for discovery;

18 (h) Determine which executive or judicial branch agency is best  
19 situated to serve as the conduit for state reimbursement to the district  
20 attorneys and the attorney general for the actual costs of discovery; and

21 (i) Study whether there should be a separate rate that is charged  
22 to nonindigent defendants compared to indigent defendants.

23 (4) (a) The discovery task force shall provide a preliminary report  
24 to the joint budget committee by November 1, 2013, if the final report is  
25 not completed by then. THE DISCOVERY PROJECT STEERING COMMITTEE  
26 SHALL DEVELOP BENCHMARKS AND CONTRACTUAL REQUIREMENTS FOR  
27 THE STATEWIDE DISCOVERY SHARING SYSTEM.

1           (b) ~~The discovery task force shall report to the joint budget~~  
2 ~~committee and the judiciary committees of the house of representatives~~  
3 ~~and the senate, or their successor committees, by January 31, 2014. The~~  
4 ~~report shall include recommendations for legislation, technology inserts,~~  
5 ~~and nonlegislative processes that would improve the criminal discovery~~  
6 ~~process.~~ THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL ENTER  
7 INTO A CONTRACT WITH THE SELECTED VENDOR TO COMPLETE THE SYSTEM  
8 BY OCTOBER 31, 2016. THE CONTRACT MUST INCLUDE THE BENCHMARKS  
9 AND REQUIREMENTS DEVELOPED PURSUANT TO PARAGRAPH (a) OF THIS  
10 SUBSECTION (4). THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT  
11 ATTORNEYS' COUNCIL SHALL PROVIDE PERIODIC REPORTS TO THE STEERING  
12 COMMITTEE AND THE JOINT BUDGET COMMITTEE REGARDING  
13 BENCHMARKS AND REQUIREMENTS AND THE PROGRESS OF THE  
14 DEVELOPMENT OF THE SYSTEM. IT IS NOT NECESSARY FOR THE STEERING  
15 COMMITTEE TO MEET TO RECEIVE THE PERIODIC REPORTS.

16           (5) ~~This part 7 is repealed, effective July 1, 2014.~~ THE DISCOVERY  
17 PROJECT STEERING COMMITTEE MAY MEET AS NECESSARY TO PROVIDE  
18 PRACTICAL AND TECHNICAL SUPPORT FOR THE MAINTENANCE AND  
19 IMPROVEMENT OF THE SYSTEM AND TO ENSURE THAT THE SYSTEM IS  
20 MEETING THE NEEDS OF THE CRIMINAL JUSTICE SYSTEM.

21           (6) ONCE THE STATEWIDE DISCOVERY SHARING SYSTEM IS  
22 OPERATIONAL, A DISTRICT ATTORNEY OR THE COLORADO DISTRICT  
23 ATTORNEYS' COUNCIL, WHO AFTER MAKING A GOOD-FAITH EFFORT TO  
24 REDACT ALL INFORMATION FROM A DISCOVERY DOCUMENT PROVIDED TO  
25 A DEFENDANT OR DEFENSE COUNSEL, PROVIDES A DOCUMENT THAT  
26 CONTAINS INFORMATION THAT IS LEGALLY REQUIRED TO BE REDACTED IS  
27 NOT LIABLE FOR CIVIL DAMAGES AS A RESULT OF ACTS OR OMISSIONS

1 RELATED TO PROVIDING DISCOVERY DOCUMENTS THAT CONTAIN  
2 INFORMATION REQUIRED TO BE REDACTED THAT IS NOT REDACTED.

3 **SECTION 3.** In Colorado Revised Statutes, **add** 16-9-702 as  
4 follows:

5 **16-9-702. Statewide discovery sharing system.** (1) THE  
6 COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL DEVELOP AND  
7 MAINTAIN A STATEWIDE DISCOVERY SHARING SYSTEM INTEGRATED WITH  
8 ITS ACTION SYSTEM. THE STATEWIDE DISCOVERY SHARING SYSTEM MUST  
9 BE OPERATIONAL BY NOVEMBER 1, 2016. THE COLORADO DISTRICT  
10 ATTORNEYS' COUNCIL SHALL MAINTAIN AND OPERATE THE SYSTEM WITH  
11 THE ASSISTANCE OF THE DISCOVERY PROJECT STEERING COMMITTEE  
12 CREATED IN SECTION 16-9-701.

13 (2) THE GENERAL ASSEMBLY SHALL APPROPRIATE THE NECESSARY  
14 MONEYS FROM THE GENERAL FUND AND THE STATEWIDE DISCOVERY  
15 SHARING SYSTEM SURCHARGE FUND CREATED IN SECTION 18-26-102 (2),  
16 C.R.S., TO FUND THE DEVELOPMENT AND MAINTENANCE OF THE  
17 STATEWIDE DISCOVERY SHARING SYSTEM AND MAINTENANCE OF THE  
18 EXISTING ACTION SYSTEM OPERATED BY THE COLORADO DISTRICT  
19 ATTORNEYS' COUNCIL. THE JUDICIAL DEPARTMENT SHALL ALLOCATE THE  
20 APPROPRIATED MONEYS TO THE COLORADO DISTRICT ATTORNEYS'  
21 COUNCIL FOR THE DEVELOPMENT AND MAINTENANCE OF THE STATEWIDE  
22 DISCOVERY SHARING SYSTEM AND THE EXISTING ACTION SYSTEM.

23 (3) THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL  
24 PROVIDE THE JUDICIAL DEPARTMENT FINANCIAL REPORTS REGARDING THE  
25 STATEWIDE DISCOVERY SHARING SYSTEM. THE JUDICIAL DEPARTMENT  
26 SHALL USE THE REPORTS IN PREPARING ITS ANNUAL BUDGET REQUEST. THE  
27 REPORTS MUST INCLUDE THE FOLLOWING:

1 (a) ACTUAL EXPENDITURES OF THE MONEYS APPROPRIATED FOR  
2 THE MAINTENANCE OF THE ACTION SYSTEM AND FOR THE DEVELOPMENT,  
3 IMPLEMENTATION, AND MAINTENANCE OF THE DISCOVERY SHARING  
4 SYSTEM SO THAT THE JUDICIAL DEPARTMENT CAN INCLUDE THE  
5 EXPENDITURE DATA IN ITS ANNUAL BUDGET REQUEST. THE JUDICIAL  
6 DEPARTMENT SHALL REQUIRE THE COLORADO DISTRICT ATTORNEYS'  
7 COUNCIL TO PROVIDE THE INFORMATION IN A FORMAT THAT IS CONSISTENT  
8 WITH ACTUAL EXPENDITURES REPORTED FOR OTHER LINE ITEM  
9 APPROPRIATIONS.

10 (b) THE AMOUNT OF STATE FUNDING REQUESTED FOR THE NEXT  
11 FISCAL YEAR FOR SUCH PURPOSE, INCLUDING A BREAKDOWN AND  
12 JUSTIFICATION FOR THE AMOUNT REQUESTED.

13 **SECTION 4.** In Colorado Revised Statutes, **add** article 26 to title  
14 18 as follows:

15 **ARTICLE 26**

16 **Statewide Discovery Sharing System Surcharge**

17 **18-26-101. Statewide discovery sharing system surcharge.**

18 (1) EACH PERSON WHO IS REPRESENTED BY PRIVATE COUNSEL OR APPEARS  
19 PROSE AND IS CONVICTED OF A FELONY, MISDEMEANOR, DRUG FELONY, OR  
20 DRUG MISDEMEANOR SHALL BE REQUIRED TO PAY A SURCHARGE TO THE  
21 CLERK OF THE COURT FOR THE JUDICIAL DISTRICT IN WHICH THE  
22 CONVICTION OCCURS.

23 (2) SURCHARGES PURSUANT TO SUBSECTION (1) OF THIS SECTION  
24 ARE IN THE FOLLOWING AMOUNTS:

25 (a) FOR EACH FELONY OR DRUG FELONY OF WHICH A PERSON IS  
26 CONVICTED, TEN DOLLARS; AND

27 (b) FOR EACH MISDEMEANOR OR DRUG MISDEMEANOR OF WHICH



1 A PERSON IS CONVICTED, FIVE DOLLARS.

2 (3) THE COURT MAY WAIVE ALL OR ANY PORTION OF THE  
3 SURCHARGE REQUIRED BY SECTION 18-26-101 IF THE COURT FINDS THAT  
4 A PERSON CONVICTED OF A CRIME IS INDIGENT OR FINANCIALLY UNABLE  
5 TO PAY ALL OR ANY PORTION OF THE SURCHARGE. THE COURT MAY WAIVE  
6 ONLY THAT PORTION OF THE SURCHARGE THAT THE COURT FINDS THAT  
7 THE PERSON CONVICTED OF A CRIME IS FINANCIALLY UNABLE TO PAY.

8 (4) BY JANUARY 15, 2016, THE JUDICIAL DEPARTMENT SHALL  
9 REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF  
10 REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND  
11 THE JOINT BUDGET COMMITTEE REGARDING THE COLLECTIONS MADE  
12 UNDER THIS ARTICLE.

13 **18-26-102. Collection and distribution of funds - statewide**  
14 **discovery sharing system surcharge fund - creation.** (1) THE CLERK  
15 OF THE COURT SHALL ALLOCATE THE SURCHARGE REQUIRED BY SECTION  
16 18-26-101 AS FOLLOWS:

17 (a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK OF THE  
18 COURT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS  
19 SUBSECTION (1). THE AMOUNT RETAINED SHALL BE TRANSMITTED TO THE  
20 STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH  
21 FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

22 (b) NINETY-FIVE PERCENT SHALL BE TRANSFERRED TO THE STATE  
23 TREASURER, WHO SHALL CREDIT THE SAME TO THE STATEWIDE DISCOVERY  
24 SHARING SYSTEM SURCHARGE FUND CREATED PURSUANT TO SUBSECTION  
25 (2) OF THIS SECTION.

26 (2) (a) THERE IS CREATED IN THE STATE TREASURY THE STATEWIDE  
27 DISCOVERY SHARING SURCHARGE FUND THAT CONSISTS OF MONEYS

1 RECEIVED BY THE STATE TREASURER PURSUANT TO THIS SECTION. THE  
2 MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE  
3 GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO  
4 THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR DEVELOPMENT AND  
5 MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM UNDER  
6 SECTION 16-9-702, C.R.S. THESE MONEYS ARE IN ADDITION TO GENERAL  
7 FUND MONEYS APPROPRIATED TO THE JUDICIAL DEPARTMENT FOR  
8 DISTRIBUTION TO THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR  
9 DEVELOPMENT AND MAINTENANCE OF THE STATEWIDE DISCOVERY  
10 SHARING SYSTEM UNDER SECTION 16-9-702, C.R.S.

11 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST DERIVED  
12 FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND TO THE  
13 FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY  
14 MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT  
15 TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

16 **SECTION 5. Appropriation.** In addition to any other  
17 appropriation, there is hereby appropriated, out of any moneys in the  
18 general fund not otherwise appropriated, to the judicial department, for  
19 the fiscal year beginning July 1, 2014, the sum of \$5,300,000, or so much  
20 thereof as may be necessary, for allocation to the trial courts section for  
21 the implementation of this act. Any moneys appropriated in this section  
22 not expended prior to July 1, 2015, are further appropriated to the  
23 department for the fiscal year beginning July 1, 2015, for the same  
24 purposes.

25 **SECTION 6. Applicability.** Section 4 of this act applies to  
26 offenses committed on or after September 1, 2015.

27 **SECTION 7. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.