

SENATE COMMITTEE OF REFERENCE REPORT

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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."

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