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PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS POLICY

I. PURPOSE:

As required by state law, specifically Senate Bill 21-174, codified in Colorado Revised Statutes 16-2.5-501 *et seq.*, this policy establishes standards which require law enforcement agencies to disclose specific information to the District Attorney's Office that may impact the credibility of a peace officer in a criminal prosecution, establishes procedures for the District Attorney's Office to timely disclose such information to the defense under the Colorado Rules of Criminal Procedure and increases transparency to allow members of the public access to information concerning peace officers who are subject to a credibility disclosure notification.

II. DEFINITIONS:

As used in this policy, the below terms shall have the following meaning:

A. "**Credibility Disclosure Notification**" means the notification described in C.R.S. 16-2.5-502(2)(c) and described in Section (III)(A) and (III)(B) of this policy.

B. "**Law Enforcement Agency**" means a state or local agency that employs peace officers.

C. "**Official Criminal Justice Record**" means any handwritten or electronically produced report or documentation that a law enforcement agency requires a peace officer to complete as part of the peace officer's official duties, for the purpose of serving as the agency's official documentation of an incident, call for service, response to an alleged or suspected crime, a use of force, or during a custodial arrest or the direct supervision of a person who is in custody. Official criminal justice records also include any other reports or documents that an agency requires a peace officer to complete as part of the peace officer's official duties where the peace officer knows, or should know the information included may be relevant to an ongoing or future criminal or administrative investigation.

D. "**Untruthfulness**" or "**dishonesty**" means conduct that involves a knowing misrepresentation, including but not limited to intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead except as lawfully utilized as part of an investigatory procedure.

E. "**Sustained finding**" means a final determination by a law enforcement agency, following a law enforcement agency's administrative procedures for investigating and reviewing alleged misconduct by a peace officer on the merits.

III. LAW ENFORCEMENT AGENCY'S OBLIGATION TO PROVIDE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION

Notwithstanding any other procedures or existing legal requirements regarding the disclosure of exculpatory evidence in a criminal proceeding, beginning January 1, 2022, every law enforcement agency shall:

A. Promptly notify the District Attorney's Office in the law enforcement agency's jurisdiction, in writing, of any sustained finding made on or after January 1, 2022, where a peace officer:

   1. Knowingly made an untruthful statement concerning a material fact,

   2. Demonstrated a pattern of bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class,

   3. Tampered with or fabricated evidence,

   4. Been convicted of any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty, or

   5. Violated any policy of the law enforcement agency regarding dishonesty.

B. In addition to the credibility disclosure notification required under Section (III)(A), a law enforcement agency shall also notify the District Attorney's Office in the law enforcement agency's jurisdiction as soon as practicable when a peace officer is under a criminal or administrative investigation that if sustained, would require disclosure under Section (III)(A), and where it also meets **both** of the following circumstances:

   1. The peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; **and**

   2. The criminal or administrative investigation of the peace officer involves an allegation related to the peace officer's involvement in that defendant's pending criminal case.

C. For disclosures made pursuant to Section (III)(B), the law enforcement agency shall promptly notify the District Attorney's Office once the law enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits.

   1. If the law enforcement agency determines through its administrative process that the criminal or administrative allegations are not sustained based on the merits, the law enforcement agency should promptly notify the District Attorney's Office of the outcomeand the agency or involved peace officer may request that the District Attorney's Office remove the credibility disclosure notification from its records as

set forthin Section (V)(C), below. However, nothing in this section shall require a District Attorney's Office to remove any credibility disclosure notification that was made to a defendant pursuant to Rule 16 in a pending criminal proceeding where the requirements of Section (III)(B) applied at the time of the disclosure.

D. Prior to making any credibility disclosure notification required under Sections (III)(A) or (III)(B), a law enforcement agency must give the involved peace officer at least seven (7) calendar days' notice of the agency's intent to send a credibility disclosure notification to the District Attorney's Office.

1. If seven (7) days' notice is not practicable due to an impending trial date, the agency shall provide as much notice to the involved peace officer as is practicable under the circumstances.

IV. CREDIBILITY DISCLOSURE NOTIFICATION PROCEDURES

A. A law enforcement agency shall include the following information in the credibility disclosure notification to be provided **in writing** to the District Attorney's Office:

1. The peace officer's name,

2. The name of the law enforcement agency that employs or employed the peace officer at the time of the sustained findings or at the time of the criminal or administrative investigation,

3. The following statement: "This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of peace officer] that may affect the peace officer's credibility in court," and

4. The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding pursuant to Section (III)(A) or whether the notification relates to an open criminal or administrative investigation pursuant to Section (III)(B). In the case of notifications required under Section (III)(B), the law enforcement agency shall also include the name of the defendant and the agency case number from which the criminal or administrative investigation arose.

B. The law enforcement agency shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contacts designated by the District Attorney's Office located in the law enforcement agency's jurisdiction. (Discussed below).

V. DISTRICT ATTORNEY OBLIGATIONS

A. On or before January 1, 2022, the District Attorney's Office shall:

1. Designate the contacts to whom law enforcement agencies should send the required credibility disclosure notifications,

2. Establish a process to timely notify defense counsel or a defendant of credibility disclosure notification records pursuant to Rule 16 of the Colorado Rules of Criminal Procedure,

3. Maintain a current record of all credibility disclosure notifications, distinguishing between sustained findings disclosed pursuant to Section (III)(A) and open investigations disclosed pursuant to Section (III)(B),

4. Comply with the procedures set forth in Section (V)(B) for entering credibility disclosure notifications,

5. Post on the District Attorney's Office website the procedures for how a member of public can access the database created by the P.O.S.T. Board pursuant to section 24-31-303 (1)(r). Senate Bill 21-174 requires that this posting shall occur on or before February 1, 2022.

B. For any credibility disclosure notification made to the District Attorney's Office pursuant to Section (III)(A) (i.e. involving a sustained allegation), or Section (III)(B) and the District Attorney's Office is subsequently notified by the law enforcement agency that the completed criminal or administrative concluded the allegations against the peace officer were sustained, the District Attorney's Office denote in its current record the involved officer has a credibility disclosure notification.

C. The District Attorney's Office shall remove credibility disclosure notification records from its records and notification procedures under the following circumstances:

1. When a law enforcement agency made a credibility disclosure notification about an open criminal or administrative investigation pursuant to Section (III)(B), and subsequently notifies the District Attorney's Office that the agency concluded through its administrative process that the criminal or administrative allegations are **not** sustained based on the merits, and the law enforcement agency or peace officer makes a written request that the District Attorney's Office remove the credibility disclosure notification from the its records.

2. When the District Attorney's Office receives a court order directing the District Attorney's Office to remove the credibility notification records.

D. Pursuant to C.R.S. §16-2.5-502(V), the undersigned District Attorney hereby designates the Assistant District Attorney and Office Administrator as contacts for notification as

required above and shall be notified by law enforcement regarding obligations under parts III and IV of this section. When this information is received, the officer's name will be cross-referenced in the District Attorney's database. Defense counsel or defendant if *pro se*, shall be notified in writing via electronic or regular mail as soon as practicable regarding the credibility notification from law enforcement. Defense counsel or the defendant shall be notified of the credibility notification as well as how to obtain the credibility records. The District Attorney's Office will maintain records separately as to findings pursuant to (III)(A) and (III)(B). If the notice is received pursuant to (III)(A) or a sustained finding under (III)(B) it shall be denoted in the records. If required pursuant to subsection (V)(C), the officer's name shall be removed from any credibility record as soon as practicable.

E. The District Attorney's Office shall review the policies and procedures adopted and implemented under this Section at least every four (4) years to ensure compliance with controlling federal and state case law interpreting *Brady v. Maryland,* 373 U.S. 83 (1963); *Giglio v. United States,* 405 U.S. 150 (1972); *Kyles v. Whitely,* 514 U.S. 419 (1995), and its progeny,as well as the Colorado Rules of Criminal Procedure.

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Michael J. Rourke
District Attorney