

**14th JUDICIAL DISTRICT ATTORNEY'S OFFICE PEACE OFFICER CREDIBILITY
DISCLOSURE NOTIFICATION PROTOCOL**

This protocol governs the District Attorney's Office disclosure and management of exculpatory information specifically related to peace officer credibility, and is consistent with applicable state and federal law. See Colorado SB 21-174: <https://leg.colorado.gov/bills/sb21-174>. This protocol is intended to facilitate compliance with these state and federal requirements. It does not give rise to or create any claim or right or cause of action by any person or entity.

I. General

A) Applicable statutes and rules:

- I. C.R.S. 24-33.5-114(4)
- II. C.R.S. 16-2.5-502(3), (4)
- III. Colo. R. Crim. P. 16 I(a)(2)

B) Definitions

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

"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.

"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.

"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.

II. Criteria for Notification to District Attorney's Office by Law Enforcement Agencies

A) Pursuant to C.R.S. 24-33.5-114(4)(b), "a state or local law enforcement agency shall notify the local district attorney whenever the agency determines there is a sustained finding that any peace officer of the agency has made a knowing misrepresentation: (I) in any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to peace officer or the peace officer's employment history; or (II) during the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct as described in CRS 18-8-404 or 18-8-405; or excessive use of force, regardless of whether the alleged criminal conduct, official misconduct, or excessive use of force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party. This notice must be provided to the District Attorney's Office not more than seven (7) days after the agency determines there is a sustained finding that a peace officer of the agency has made a knowing misrepresentation as described above."

B) Pursuant to C.R.S. 16-2.5-502(2)(C)(I), a state or local law enforcement agency shall promptly notify the District Attorney's office of any sustained finding made on or after January 1, 2022, where a peace officer:

- I. Knowingly made an untruthful statement concerning a material fact;
- II. Demonstrated a pattern of bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;
- III. Tampered with or fabricated evidence;
- IV. Has been convicted of any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty;
- V. Violated any policy of the law enforcement agency regarding dishonesty.

C) Pursuant to C.R.S. 16-2.5-502(2)(C)(II), a law enforcement agency shall notify the District Attorney's Office when a peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged, and is under a concurrent criminal or administrative investigation regarding an allegation related to the peace officer's involvement in the defendant's pending criminal case, and the result of the concurrent criminal or administrative investigation, if sustained, would require disclosure pursuant to C.R.S. 24—33.5-114 or 16-2.5-502.

D) It is further requested that state and local law enforcement notify the District Attorney's Office whenever there is a sustained finding that any civilian employee of that law enforcement agency

has engaged in conduct covered by C.R.S. 23-33.5-114(4) or 16-2.5.502(2) if that employee's regular duties could reasonably include giving sworn testimony in a criminal case.

III. Procedure for Notification to District Attorney's Office by Law Enforcement Agencies

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(s):

I. The peace officer's name;

II. 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

III. 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."*

IV. The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on

- 1) a sustained finding pursuant to Section II(A) above, or
- 2) a sustained finding pursuant to Section II(B) above, or
- 3) relates to an open criminal or administrative investigation pursuant to Section (II)(C) above.

B) The law enforcement agency shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contact(s) designated by the district attorney's office(s) located in the law enforcement agency's jurisdiction. In the 14th Judicial District, the notification shall be directed to the District Attorney, and may be copied to the senior prosecutor in the county in which the peace officer works.

C) The District Attorney's Office requests law enforcement agencies DO NOT transmit any underlying documents to the District Attorney's Office unless specifically requested, or unless ordered to do so by the court or required by operation of law. This request is intended to ensure the records of the incident remain with the agency employing the involved law enforcement officer unless further dissemination is deemed appropriate by that agency, as the custodian of those records, or unless further dissemination is required by court order or operation of law. It is further requested that no information beyond the notice above be provided to the District Attorney's

office, verbally or otherwise, unless specifically requested, or unless ordered to do so by the court or by operation of law.

Procedure upon Receipt of Notification to District Attorney's Office by Law Enforcement Agencies

- 1) Upon receipt of the notification described above, the District Attorney's Office will enter the notification into the statewide publicly searchable database maintained by the Colorado Department of Law P.O.S.T. Council and document whether the notification is pursuant to Section II(A), (B) or (C) above, and will add the peace officer to its internal credibility disclosure database if such internal database is in use.
 - a. The District Attorney's Office will notify the 14th judicial district defense bar, and other defense attorneys/defendants as required, pursuant to Colo. R. Crim. P. 16 I(a)(2), within seven (7) days or as soon as practicable, via email.
- 2) The notification will be as follows: *"This office has been notified of the existence of information in a law enforcement agency's possession regarding [name of peace officer] that may affect the peace officer's credibility in court." The District Attorney's Office [does] [does not] not have [any] underlying documentation related to this notification. Any requests for further information should be directed to the local or state agency employing the peace officer or to the presiding judge in your case."*
 - a. If the involved peace officer or qualifying civilian employee is a potential witness in any pending case, and the defense seeks production of underlying records from the District Attorney's Office through a pleading filed in the pending criminal case, the District Attorney's Office will notify the agency CEO of the employing agency to discuss the appropriate response. The default response from the District Attorney's Office will be to request the presiding judge to limit initial production to the court only, for in-camera review and judicial assessment as to whether any of the material should be disclosed to either party, defense or prosecution.
 - b. If the involved peace officer or qualifying civilian employee is not a potential witness in any pending case, and a request for disclosure is received by the District Attorney's Office under CORA/CCJRA, the District Attorney's Office will notify the requesting party that it possesses no records responsive to the request, and refer them, pursuant to Colorado law, to the custodial agency.

Procedure upon Notice of Credibility Disclosure Outside of C.R.S. 24-33.5-114(4) and 16-2.5-502

If the District Attorney's Office becomes aware of an event that may require disclosure to the defense from a source other than the officer's agency via C.R.S. 16-2.5-502 or 24-33.5-114(4), the District Attorney's office will undertake a legal assessment regarding disclosure requirements. Once that assessment is complete, if disclosure is required, the District Attorney's Office will

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notify the CEO of the agency employing the peace officer before making the disclosure if possible. In consultation with the CEO, the District Attorney will facilitate notification to the involved peace officer.

If the involved peace officer is a potential witness in any pending case, upon court order any records underlying the credibility disclosure notification already in the District Attorney's Office possession will be duplicated and provided to the court or to the defense subject to Rule 16 III(c) and/or (d).

If the involved peace officer is not a potential witness in any pending case, and a request for disclosure of records related to the credibility disclosure notification is received by the District Attorney's Office under CORA/CCJRA, the District Attorney's Office will notify and consult with the involved peace officer's CEO, as practicable, to determine the legally appropriate response under CORA/CCJRA.

Procedures for Removal of Credibility Disclosure Notification Records

If the CEO of a peace officer subject to a credibility disclosure notification determines that the reliability of the evidence underlying placement in the database is legitimately undermined, the CEO is requested to notify the District Attorney in writing. If access to or involvement of the employing agency CEO is not possible, the peace officer may, individually or through counsel, inquire of the District Attorney if removal from the database is authorized based on the demonstrable facts and circumstances of their situation.

If demonstrable clear and convincing evidence is presented that the peace officer did not engage in conduct requiring placement in the database, the District Attorney's Office shall make a determination as to whether removal of credibility disclosure notification records is appropriate and lawful. If so, such records shall be removed from the District Attorney's Office internal credibility disclosure notification database if such database is in use, and notification of removal shall be sent to the 14th judicial district defense bar, and other defense attorneys/defendants as required. In all cases, POST will be notified via email at post@coag.gov for assessment for removal from the statewide publicly searchable database maintained by the Colorado Department of Law P.O.S.T. Council.

Public Access to Statewide Dept. of Law/P.O.S.T. Peace Officer Database

The public may access the statewide publicly searchable database maintained by the Colorado Department of Law P.O.S.T. Council at <https://post.coag.gov/s/>.

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Adopted this 7 day of January, 2022.



Matt Karzen
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