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SENATE BILL 25-240

BY SENATOR(S) Bridges and Kirkmeyer, Amabile, Roberts, Weissman;
also REPRESENTATIVE(S) Bird and Taggart, Sirota, Carter, Espenoza.

CONCERNING THE CREATION OF THE ELECTRONIC DISCOVERY IN CRIMINAL
CASES TASK FORCE.

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

SECTION 1. In Colorado Revised Statutes, **add** 16-18-106 as follows:

16-18-106. Electronic discovery in criminal cases task force - creation - purpose - membership - report - repeal. (1) THERE IS CREATED THE ELECTRONIC DISCOVERY IN CRIMINAL CASES TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK FORCE".

(2) THE PURPOSE OF THE TASK FORCE IS TO STUDY THE COSTS AND MANAGEMENT OF ELECTRONIC DISCOVERY IN CRIMINAL CASES.

(3) THE TASK FORCE CONSISTS OF THE FOLLOWING MEMBERS:

(a) THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

ATTORNEYS' COUNCIL, OR THE DIRECTOR'S DESIGNEE, WHO IS THE CHAIR OF THE TASK FORCE;

(b) AN ATTORNEY EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER, WHO IS THE VICE-CHAIR OF THE TASK FORCE AND IS APPOINTED BY THE STATE PUBLIC DEFENDER;

(c) AN ATTORNEY EMPLOYED BY, OR UNDER CONTRACT WITH, THE OFFICE OF ALTERNATE DEFENSE COUNSEL, APPOINTED BY THE OFFICE OF ALTERNATE DEFENSE COUNSEL;

(d) AN ATTORNEY WITHIN THE ANTITRUST UNIT OF THE ATTORNEY GENERAL'S OFFICE, APPOINTED BY THE ATTORNEY GENERAL;

(e) ONE INFORMATION TECHNOLOGY PROFESSIONAL EMPLOYED BY THE COLORADO DISTRICT ATTORNEYS' COUNCIL, AND ONE DISTRICT ATTORNEY WHO HAS KNOWLEDGE OF ELECTRONIC DISCOVERY, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL;

(f) AN INFORMATION TECHNOLOGY PROFESSIONAL EMPLOYED BY THE OFFICE OF STATE PUBLIC DEFENDER, APPOINTED BY THE STATE PUBLIC DEFENDER;

(g) ONE EMPLOYEE OF A SHERIFF'S OFFICE WHO HAS KNOWLEDGE OF ELECTRONIC DISCOVERY, APPOINTED BY THE EXECUTIVE DIRECTOR OF THE COUNTY SHERIFFS OF COLORADO;

(h) AN EMPLOYEE OF A POLICE DEPARTMENT WHO HAS KNOWLEDGE OF ELECTRONIC DISCOVERY, APPOINTED BY THE COLORADO ASSOCIATION OF THE CHIEFS OF POLICE;

(i) AN EMPLOYEE OF THE COLORADO STATE PATROL WHO HAS KNOWLEDGE OF ELECTRONIC DISCOVERY, APPOINTED BY THE CHIEF OF THE COLORADO STATE PATROL; AND

(j) A COUNTY COMMISSIONER WHO HAS KNOWLEDGE OF LOCAL ELECTRONIC DISCOVERY COSTS AND LOCAL CONTRACTS RELATED TO ELECTRONIC DISCOVERY, APPOINTED BY COLORADO COUNTIES, INCORPORATED.

(4) (a) THE APPOINTING AUTHORITIES SHALL APPOINT MEMBERS TO THE TASK FORCE WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND PROMPTLY NOTIFY THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL OF THE APPOINTMENT.

(b) THE MEMBERS APPOINTED TO THE TASK FORCE SERVE FOR THE DURATION OF THE TASK FORCE.

(c) ANY VACANCY OCCURRING IN THE MEMBERSHIP OF THE TASK FORCE MUST BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

(d) THE MEMBERS OF THE TASK FORCE SERVE ON THE TASK FORCE WITHOUT COMPENSATION.

(5) THE TASK FORCE SHALL:

(a) HOLD ITS FIRST MEETING ON OR BEFORE JULY 1, 2025, AT A TIME AND PLACE DETERMINED BY THE CHAIR OF THE TASK FORCE;

(b) MEET AT LEAST ONCE EVERY MONTH OR MORE OFTEN AS DIRECTED BY THE CHAIR OF THE TASK FORCE;

(c) COMMUNICATE WITH AND OBTAIN INPUT FROM LAW ENFORCEMENT AGENCIES, PROSECUTORS, AND DEFENSE ATTORNEYS THROUGHOUT THE STATE AFFECTED BY THE ISSUES IDENTIFIED IN SUBSECTION (6) OF THIS SECTION; AND

(d) CREATE SUBCOMMITTEES, AS NEEDED, TO CARRY OUT THE DUTIES OF THE TASK FORCE. THE SUBCOMMITTEES MAY CONSIST, IN PART, OF PERSONS WHO ARE NOT MEMBERS OF THE TASK FORCE AND WHO MAY VOTE ON ISSUES BEFORE THE SUBCOMMITTEE BUT WHO ARE NOT ENTITLED TO A VOTE AT TASK FORCE MEETINGS.

(6) THE TASK FORCE SHALL EXAMINE AND GATHER INFORMATION REGARDING THE FOLLOWING:

(a) THE CURRENT CONTRACTS IN PLACE BETWEEN A LAW ENFORCEMENT AGENCY, A DISTRICT ATTORNEY'S OFFICE, THE OFFICE OF THE ATTORNEY GENERAL, THE OFFICE OF STATE PUBLIC DEFENDER, THE OFFICE

OF ALTERNATE DEFENSE COUNSEL, OR, IF AVAILABLE, PRIVATE CRIMINAL DEFENSE ATTORNEYS AND A VENDOR FOR ELECTRONIC DISCOVERY SERVICES AND INFORMATION TECHNOLOGY SERVICES, AND INCLUDE THE FOLLOWING INFORMATION REGARDING EACH CONTRACT:

(I) THE LENGTH AND EXPIRATION DATE OF THE CONTRACT;

(II) THE COST OF THE CONTRACT;

(III) THE TERMS, CONTRACTED SERVICES, LICENSING REQUIREMENTS, AND ANY OTHER KEY COMPONENT OF THE CONTRACT; AND

(IV) THE EXPECTED FUTURE COSTS OF THE CONTRACT, IF KNOWN;

(b) THE AMOUNT AND TYPE OF INFORMATION PLACED INTO ELECTRONIC DISCOVERY, INCLUDING:

(I) THE NUMBER, SIZE, AND TYPE OF FILES PLACED INTO THE STATEWIDE ELECTRONIC DISCOVERY PORTAL THAT CAN BE FULLY DOWNLOADED, ACCESSED, OR UTILIZED THROUGH THE ELECTRONIC DISCOVERY PORTAL;

(II) THE NUMBER, SIZE, AND TYPE OF FILES THAT REQUIRE PROSECUTION AND DEFENSE TO USE AN OUTSIDE VENDOR OR WEBSITE TO FULLY DOWNLOAD, ACCESS, OR UTILIZE THE ELECTRONIC DISCOVERY DOCUMENTS; AND

(III) THE NUMBER, SIZE, AND TYPE OF FILES THAT ARE PLACED ON PHYSICAL INFORMATION TECHNOLOGY DEVICES SUCH AS FLASH DRIVES, EXTERNAL HARD DRIVES, OR PHYSICAL COPIES IN ORDER FOR PROSECUTION AND DEFENSE TO ACCESS AND UTILIZE THE ELECTRONIC DISCOVERY DOCUMENTS;

(c) THE EXTENT TO WHICH PROSECUTORS, PUBLIC DEFENDERS, ALTERNATE DEFENSE COUNSEL ATTORNEYS, PRIVATE DEFENSE ATTORNEYS, AND PRO SE DEFENDANTS HAVE EQUITABLE ACCESS AND THE ABILITY TO REVIEW AND UTILIZE ELECTRONIC DISCOVERY DOCUMENTS COMPARED TO OTHER PROSECUTORS, PUBLIC DEFENDERS, ALTERNATE DEFENSE COUNSEL ATTORNEYS, PRIVATE DEFENSE ATTORNEYS, AND PRO SE DEFENDANTS, INCLUDING:

(I) THE TIME IT TAKES TO DOWNLOAD INFORMATION TO VIEW;

(II) THE ABILITY TO SEARCH DISCOVERY DOCUMENTS ELECTRONICALLY;

(III) THE ABILITY TO SEE AUTOMATED TRANSCRIPTIONS, USE ARTIFICIAL INTELLIGENCE TO GENERATE TRANSCRIPTIONS, OR USE ANY OTHER TOOLS TO EXPEDITE REVIEW OF DISCOVERY DOCUMENTS; AND

(IV) THE ABILITY TO IDENTIFY WHICH OFFICER THE BODY CAMERA FOOTAGE IS FROM OR THE ABILITY TO IDENTIFY WHERE ANOTHER SOURCE OF VIDEO FOOTAGE WAS TAKEN FROM;

(d) HOW THE AMOUNT AND TYPE OF INFORMATION PLACED INTO ELECTRONIC DISCOVERY HAS CHANGED SINCE THE CREATION OF THE STATEWIDE ELECTRONIC DISCOVERY PORTAL AND, TO THE EXTENT KNOWN, HOW ELECTRONIC DISCOVERY IS PROJECTED TO CHANGE OVER THE NEXT TEN YEARS;

(e) THE FEASIBILITY OF CREATING A SYSTEM THAT WOULD MAKE THE ELECTRONIC DISCOVERY PROCESS MORE EFFICIENT AND EQUITABLE, AVOID OR MINIMIZE THE NEED FOR OUTSIDE VENDORS, AND BETTER CONTROL COSTS;

(f) THE POSSIBLE COORDINATION OF LAW ENFORCEMENT AGENCIES, PROSECUTING AGENCIES, THE OFFICE OF STATE PUBLIC DEFENDER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL, AND PRIVATE DEFENSE ATTORNEY CONTRACTS TO MAKE THE ELECTRONIC DISCOVERY PROCESS MORE EFFICIENT AND EQUITABLE, AVOID OR MINIMIZE THE NEED FOR OUTSIDE VENDORS, AND BETTER CONTROL COSTS;

(g) THE EXPECTED COSTS TO THE STATE, COUNTY, AND LOCAL GOVERNMENT IF CHANGES ARE NOT MADE TO THE ELECTRONIC DISCOVERY PROCESS OVER THE NEXT TEN YEARS; AND

(h) RECOMMENDATIONS, INCLUDING POSSIBLE LEGISLATION, THAT WOULD ASSIST IN:

(I) CONTROLLING THE COST OF ELECTRONIC DISCOVERY, INCLUDING WHAT CONTRACT OR STATUTORY CHANGES ARE NEEDED TO ALLOW FOR

COORDINATED CONTRACT NEGOTIATION AND PAYMENT TO VENDORS BY THE STATE AND LOCAL GOVERNMENTS;

(II) ENSURING THE FLOW OF ELECTRONIC DISCOVERY FROM ONE ENTITY TO ANOTHER;

(III) WORK EFFICIENCY, INCLUDING SAVING TIME FOR EMPLOYEES WHO CREATE OR USE ELECTRONIC DISCOVERY;

(IV) PROVIDING EQUITABLE ACCESS TO AND USE OF ELECTRONIC DISCOVERY WHILE PROTECTING THE WORK PRODUCT AND MENTAL PROCESSES OF PROSECUTION AND DEFENSE; AND

(V) CONSIDERING PROCEDURAL CHANGES TO EXISTING STATUTES; COLORADO RULES OF CRIMINAL PROCEDURE; OR PRACTICES RELATED TO THE DISCOVERY OBLIGATIONS OF PROSECUTION, DEFENSE, AND LAW ENFORCEMENT AGENCIES TO IMPROVE DISCOVERY COMPLIANCE AND PROCESSES.

(7) (a) LAW ENFORCEMENT AGENCIES, DISTRICT ATTORNEYS' OFFICES, THE OFFICE OF THE ATTORNEY GENERAL, THE OFFICE OF STATE PUBLIC DEFENDER, AND THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL SHARE INFORMATION REQUESTED BY THE TASK FORCE REGARDING CONTRACTS, VENDORS, THE ELECTRONIC DISCOVERY PROCESS, AND COSTS BUT SHALL NOT SHARE INFORMATION THAT WOULD VIOLATE STATE OR FEDERAL LAWS, REGULATIONS, OR RULES OR THAT WOULD VIOLATE THE RIGHTS OF A PERSON INVOLVED IN A CRIMINAL CASE.

(b) THE ENTITIES SPECIFIED IN SUBSECTION (7)(a) OF THIS SECTION SHALL RESPOND TO REQUESTS FROM THE TASK FORCE FOR INFORMATION PURSUANT TO SUBSECTION (7)(a) OF THIS SECTION IN GOOD FAITH AND PROVIDE INFORMATION WITHIN A REASONABLE TIME.

(8) ON OR BEFORE NOVEMBER 1, 2025, THE TASK FORCE SHALL SUBMIT A REPORT TO THE JOINT BUDGET COMMITTEE AND THE JOINT TECHNOLOGY COMMITTEE THAT, AT A MINIMUM, DESCRIBES THE FOLLOWING:

(a) THE WORK AND STUDY OF THE TASK FORCE;

(b) THE FINDINGS AND RECOMMENDATIONS REGARDING THE ISSUES AND TOPICS CONSIDERED BY THE TASK FORCE AS DESCRIBED IN SUBSECTION (6) OF THIS SECTION; AND

(c) LEGISLATIVE PROPOSALS AND EXPECTED RELATED COSTS BASED ON THE TASK FORCE'S FINDINGS AND RECOMMENDATIONS.

(9) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2027.

SECTION 2. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO