



MEMORANDUM

To: Office of the District Attorney, Ninth Judicial District (“ODA”)-All Personnel
From: Jefferson J. Cheney, District Attorney *J. Cheney*
Date: 1/1/2022
Subject: Office Policy Regarding Implementation of SB 21-174-Officer Credibility Disclosure Procedures
Copy To: All Law Enforcement Agencies Within the 9th Judicial District-Colorado

I. **Purpose**-The purpose of this memorandum is to outline office policy regarding the implementation procedures to comply with SB 21-174-Peace Officer Credibility Disclosure Notifications as codified in Section 16-2.5-501 et seq., C.R.S. In addition, the purpose of this policy shall be 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. Whitley*, 514 U.S. 419 (1995), and its progeny as well as the Colorado Rules of Criminal Procedure. The public confidence regarding the criminal justice system is of extraordinary importance. Prosecutors and peace officers are expected to have integrity which is above reproach. In the past, peace officers may have avoided being the subject of a sustained finding of dishonesty or untruthfulness and the subject of a formal *Brady* disclosure by resigning their employment with a law enforcement agency. Subsequently, such officers may have gained employment with another law enforcement agency elsewhere in the state because there was no legal standard in relation to peace officer certification and no public database that may contain a record of dishonesty or untruthfulness. Therefore, a standardized procedure is necessary to ensure public confidence in the criminal justice system. Because of the inconsistency throughout the state and within the twenty two judicial districts regarding the tracking and reporting of peace officers for whom an investigation resulted, or may have resulted if completed, in a sustained finding of untruthfulness, the Colorado legislature enacted statutory provisions to clarify the standards for tracking and reporting peace officers with potential credibility

issues, the responsibilities of the various law enforcement agencies throughout the state, the responsibilities of district attorney, and the responsibilities of the Colorado Peace Officer Standards and Training (“P.O.S.T.”) Board. These statutory procedures are codified in Section 16-2.5-501 et seq., C.R.S., and the Act passed by the legislature and codified in this statute is attached hereto and incorporated herein by this reference.

II. Application and Effective Date of Policy-This policy shall apply to circumstances in which the Office of the District Attorney-9th Judicial District (“ODA”) has been notified by any law enforcement agency that there has been a sustained finding involving law enforcement officer untruthfulness, dishonesty, criminal conduct, bias, and other issues as required, including, in some specific scenarios, matters still under investigation. I direct all ODA personnel to read and abide by this policy. This policy is effective January 1, 2022.

III. 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 (IV)(A) and (IV)(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.
- 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.

IV. Responsibility of the Law Enforcement Agencies Within the 9th Judicial District Pursuant to C.R.S. §16-2.5-501 et seq.-Notwithstanding any other procedures or existing legal requirements regarding the disclosure of exculpatory evidence in a criminal proceeding, beginning January 1, 2022, all law enforcement agencies within the 9th Judicial District shall:

A. Promptly notify the ODA, in writing, of any sustained finding made after January 1, 2022, where a peace officer has:

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 a felony or any crime involving dishonesty; and
5. Violated any policy of the law enforcement agency regarding dishonesty.

B. In addition to the credibility disclosure notification required as stated in Section (IV)(A), herein above, all law enforcement agencies within the 9th Judicial District-Colorado shall also notify the ODA, in writing, as soon as practicable when a peace officer is under criminal or administrative investigation, that if sustained, would require disclosure under Section (IV)(A), herein above, 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 the defendant's criminal case.

C. Pursuant to Section (B), herein above, all law enforcement agencies within the 9th Judicial District-Colorado shall promptly notify the ODA once the law enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits. 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 ODA in writing of the outcome and the agency or involved peace officer may request that the ODA remove the credibility disclosure notification from its records as set forth in Section (VI)(C)(1 through 3), herein below. However, nothing in this section shall require the ODA 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 IV(B), herein above, applied at the time of the disclosure to the ODA.

D. Prior to making any credibility disclosure notification required under Sections (IV)(A) or (IV)(B), herein above, the 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 ODA. If seven (7) days' notice is not practicable due to an impending trial or motions date, the law enforcement agency shall provide as much notice to the involved peace officer as is practicable under the circumstances.

E. All law enforcement agencies within the 9th Judicial District-Colorado who make a credibility disclosure notification shall send a hard copy of the notification addressed to: District Attorney, Office of the District Attorney, 9th Judicial District, 109 Eighth Street, Suite 308, Glenwood Springs, CO 81601. In addition, such notification should be emailed to: jcheney@9daco.org; bsollars@9daco.org; and info@9daco.org. The "subject line" of any email shall be: "Officer Credibility Disclosure Notification." The credibility disclosure notification shall include the following:

1. The name of the peace officer;
2. The name of the law enforcement agency that employs or employed the peace officer at the time of the investigation or sustained finding described in subsection (IV)(A)(1 through 5), herein above, or (IV)(B)(1 and 2), herein above;
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 as set forth in Section (IV)(A), herein above, or whether the notification relates to an open criminal or administrative investigation pursuant to Section (IV)(B), herein above.

V. Responsibility of the ODA Pursuant to C.R.S. §16-2.5-501 et seq.-The ODA shall:

- A. Identify the point of contact to whom any credibility disclosure notification shall be sent. (Note: See Section (IV)(E), herein above).
- B. Maintain a current record of all notifications.
- C. Post on the website of the ODA how the public may access the statewide database as created by P.O.S.T.

- D. Timely notify defense counsel of any such credibility disclosure notifications as required by C.R.Crim.P. 16;
- E. Remove a credibility disclosure pursuant to Section (IV)(C), herein above, if appropriate and lawful (See Section VI(D), herein below); and
- F. On or before February 1, 2022, make available to the public this policy which shall include a process for the ODA to:
 - 1. Receive credibility disclosure notifications;
 - 2. Maintain a current record of all credibility disclosure notifications, distinguishing between the credibility disclosure notifications in subsections (2)(c)(I) and (2)(c)(II) of C.R.S. §16-2.5-501. (Note: See Section IV(A) and IV(B), herein above);
 - 3. Describe how members of the public can access the database created by the P.O.S.T. Board pursuant to section 24-31-303(1)(t) concerning peace officers who are subject to credibility disclosure notifications;
 - 4. Establish a process to timely notify a defense attorney or defendant of credibility notification records pursuant to Rule 16 of the Colorado Rules of Criminal Procedure; and
 - 5. Remove any credibility disclosure notification records when appropriate and lawful. (Note: See Section VI(D), herein below).
- G. Review this procedure every four years with the first review hereafter occurring January 1, 2027.

VI. ODA Procedures Pursuant to this Policy-ODA personnel shall comply with the following procedures:

- A. Upon receipt of a credibility disclosure notification described in Section (IV)(A) or Section (IV)(B), herein above, the ODA shall, without unnecessary delay, upload the notification into the Discovery file in the Action Prosecutor database of any accused in whose case the peace officer was a witness. The credibility disclosure notification shall be promptly made available to any defense counsel who has entered a formal entry of appearance or to any accused who is self-represented or acting *Pro Se*. In addition, with respect to the peace officer who is the subject of the notification, the ODA shall denote in its current records the involved officer as having a credibility disclosure notification; such denotation shall be a permanent attribute linked to the subject officer's name in the Action Prosecutor database.
- B. Upon receipt of a credibility disclosure notification, the ODA shall, without unnecessary delay, forward a copy of the notification to the identified peace officer at any known address.
- C. The IT director/team leader shall create a readily-identifiable tab titled, "Officer Credibility Notification Procedures" on the ODA website found at www.9daco.org which contains the following link: www.coloradopost.gov. The IT

director/team leader shall upload this procedure to the ODA's website under the tab titled, "Officer Credibility Notification Procedures."

D. The ODA shall only remove credibility notification records from the ODA'S records and notification procedures when:

1. A law enforcement agency made a credibility disclosure notification about an open criminal or administrative investigation pursuant to Section (IV)(B), above, and subsequently notifies the ODA 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 ODA remove the credibility disclosure notification from the ODA's records.
2. When the district attorney makes an independent determination, based on review of the underlying records (if access to the underlying records is granted by the law enforcement agency, officer, or by court order) that removal is appropriate and lawful.
3. When the ODA receives a court order directing the ODA to remove the credibility notification records.

An Act

SENATE BILL 21-174

BY SENATOR(S) Cooke and Ginal, Coram, Gardner, Jaquez Lewis, Kolker, Lee, Liston, Lundeen, Moreno, Priola, Rankin, Smallwood, Zenzinger, Garcia;
also REPRESENTATIVE(S) Bird and Carver, Bockenfeld, Duran, Hooton, McCluskie, McCormick, Mullica, Pelton, Pico, Roberts, Young.

CONCERNING ADOPTION OF WRITTEN POLICIES BY LAW ENFORCEMENT AGENCIES FOR CONSTITUTIONALLY REQUIRED PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS.

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

SECTION 1. In Colorado Revised Statutes, **add** part 5 to article 2.5 of title 16 as follows:

PART 5 PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS

16-2.5-501. Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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.

(1) "CREDIBILITY DISCLOSURE NOTIFICATION" MEANS THE NOTIFICATION DESCRIBED IN SECTION 16-2.5-502 (2)(c).

(2) "LAW ENFORCEMENT AGENCY" MEANS A STATE OR LOCAL AGENCY THAT EMPLOYS PEACE OFFICERS.

(3) "PEACE OFFICER" MEANS A PEACE OFFICER AS DEFINED IN SECTION 24-31-901 (3) AND INCLUDES AN OFFICER, RESERVE, VOLUNTEER, OR EMPLOYEE WHO PERFORMS A LAW ENFORCEMENT FUNCTION.

16-2.5-502. Peace officer credibility disclosures - policies and procedures. (1) ON OR BEFORE JANUARY 1, 2022, EACH LAW ENFORCEMENT AGENCY AND DISTRICT ATTORNEY'S OFFICE SHALL ADOPT AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES CONSISTENT WITH THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS CREATED AND RECOMMENDED BY THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE ESTABLISHED IN SUBSECTION (2)(a) OF THIS SECTION.

(2)(a) THERE IS HEREBY CREATED THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE. THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE MUST BE COMPRISED OF THE FOLLOWING MEMBERS AS APPOINTED BY THEIR RESPECTIVE ORGANIZATIONS:

(I) A REPRESENTATIVE OF THE COLORADO DISTRICT ATTORNEYS' COUNCIL;

(II) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING POLICE OFFICERS;

(III) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING THE CHIEFS OF POLICE;

(IV) A REPRESENTATIVE FROM AN ORGANIZATION REPRESENTING THE COUNTY SHERIFFS;

(V) A COUNTY ATTORNEY DESIGNATED BY AN ORGANIZATION REPRESENTING COUNTIES; AND

(VI) A CITY ATTORNEY DESIGNATED BY AN ORGANIZATION

REPRESENTING MUNICIPALITIES.

(b) THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE MUST BE CO-CHAIRLED BY THE REPRESENTATIVE FROM THE COLORADO DISTRICT ATTORNEYS' COUNCIL AND THE REPRESENTATIVE FROM THE ORGANIZATION REPRESENTING PEACE OFFICERS. THE CO-CHAIRS OF THE COMMITTEE SHALL SET THE DATES, TIMES, AND PROCEDURES FOR THE COMMITTEE MEETINGS AS DEEMED NECESSARY TO MEET THE REQUIREMENTS OF THIS SECTION. THE PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION COMMITTEE SHALL CREATE A STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS BY DECEMBER 1, 2021.

(c) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION POLICIES AND PROCEDURES MUST INCLUDE, BUT NEED NOT BE LIMITED TO:

(I) A PROMPT NOTIFICATION FROM A LAW ENFORCEMENT AGENCY TO THE DISTRICT ATTORNEY OF ANY SUSTAINED FINDING THAT A PEACE OFFICER HAS:

(A) KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT, KNOWINGLY OMITTED A MATERIAL FACT IN AN OFFICIAL CRIMINAL JUSTICE RECORD, OR KNOWINGLY OMITTED A MATERIAL FACT WHILE TESTIFYING UNDER OATH OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS;

(B) DEMONSTRATED A BIAS BASED ON RACE, RELIGION, ETHNICITY, GENDER, SEXUAL ORIENTATION, AGE, DISABILITY, NATIONAL ORIGIN, OR ANY OTHER PROTECTED CLASS;

(C) TAMPERED WITH OR FABRICATED EVIDENCE; OR

(D) BEEN CONVICTED OF ANY CRIME INVOLVING DISHONESTY, BEEN CHARGED IN A CRIMINAL PROCEEDING WITH ANY FELONY OR ANY CRIME INVOLVING DISHONESTY, OR VIOLATED ANY POLICY OF THE LAW ENFORCEMENT AGENCY REGARDING DISHONESTY.

(II) A LAW ENFORCEMENT AGENCY'S OBLIGATION TO NOTIFY THE DISTRICT ATTORNEY'S OFFICE IN THE LAW ENFORCEMENT AGENCY'S

JURISDICTION WHEN:

(A) A PEACE OFFICER IS A POTENTIAL WITNESS IN A PENDING CRIMINAL PROSECUTION IN WHICH A CRIMINAL DEFENDANT HAS BEEN FORMALLY CHARGED;

(B) THE PEACE OFFICER 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

(C) THE RESULT OF THE CONCURRENT CRIMINAL OR ADMINISTRATIVE INVESTIGATION, IF SUSTAINED, WOULD REQUIRE DISCLOSURE.

(III) A PROCESS FOR A LAW ENFORCEMENT AGENCY TO PROMPTLY NOTIFY THE DISTRICT ATTORNEY OF SUCH A FINDING; AND

(IV) A PROCESS TO REMOVE A PEACE OFFICER'S CREDIBILITY DISCLOSURE NOTIFICATION FROM THE DISTRICT ATTORNEY'S CREDIBILITY DISCLOSURE NOTIFICATION RECORD IF APPROPRIATE AND LAWFUL.

(d) (I) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS ESTABLISHED IN SUBSECTION (2)(c) OF THIS SECTION MUST REQUIRE THAT A LAW ENFORCEMENT AGENCY SHALL INCLUDE IN THE CREDIBILITY DISCLOSURE NOTIFICATION:

(A) THE NAME OF THE PEACE OFFICER;

(B) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS OR EMPLOYED THE PEACE OFFICER AT THE TIME OF THE INVESTIGATION OR SUSTAINED FINDING DESCRIBED IN SUBSECTION (2)(c)(I) OF THIS SECTION OR AN INVESTIGATION DESCRIBED IN SUBSECTION (2)(c)(II) OF THIS SECTION;

(C) 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."

(D) THE APPLICABLE STATUTORY PROVISION IDENTIFYING THE BASIS FOR THE CREDIBILITY DISCLOSURE NOTIFICATION AS SET FORTH IN

SUBSECTIONS (2)(c)(I)(A) THROUGH (2)(c)(I)(D) OF THIS SECTION.

(II) THE STATEWIDE MODEL FOR PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS MUST PROVIDE A PROCESS TO NOTIFY THE INVOLVED PEACE OFFICER AT LEAST SEVEN CALENDAR DAYS PRIOR TO SENDING THE CREDIBILITY DISCLOSURE NOTIFICATION TO THE DISTRICT ATTORNEY'S OFFICE, IF PRACTICABLE.

(3) ON OR BEFORE FEBRUARY 1, 2022, EACH DISTRICT ATTORNEY SHALL MAKE AVAILABLE TO THE PUBLIC THE POLICIES AND PROCEDURES CREATED AND IMPLEMENTED PURSUANT TO SUBSECTION (2) OF THIS SECTION. THE POLICIES AND PROCEDURES MUST INCLUDE, BUT NEED NOT BE LIMITED TO, A PROCESS FOR A DISTRICT ATTORNEY TO:

(a) RECEIVE CREDIBILITY DISCLOSURE NOTIFICATIONS;

(b) MAINTAIN A CURRENT RECORD OF ALL CREDIBILITY DISCLOSURE NOTIFICATIONS, DISTINGUISHING BETWEEN THE CREDIBILITY DISCLOSURE NOTIFICATIONS IN SUBSECTIONS (2)(c)(I) AND (2)(c)(II) OF THIS SECTION;

(c) DESCRIBE HOW MEMBERS OF THE PUBLIC CAN ACCESS THE DATABASE CREATED BY THE P.O.S.T. BOARD PURSUANT TO SECTION 24-31-303 (1)(r) CONCERNING PEACE OFFICERS WHO ARE SUBJECT TO CREDIBILITY DISCLOSURE NOTIFICATIONS. THE PROCEDURES MUST BE POSTED ON THE DISTRICT ATTORNEY'S OR COUNTY'S WEBSITE.

(d) ESTABLISH A PROCESS TO TIMELY NOTIFY A DEFENSE ATTORNEY OR DEFENDANT OF CREDIBILITY DISCLOSURE NOTIFICATION RECORDS PURSUANT TO RULE 16 OF THE COLORADO RULES OF CRIMINAL PROCEDURE; AND

(e) REMOVE ANY CREDIBILITY DISCLOSURE NOTIFICATION RECORDS WHEN APPROPRIATE AND LAWFUL.

(4) EACH DISTRICT ATTORNEY SHALL REVIEW THE POLICIES AND PROCEDURES ADOPTED AND IMPLEMENTED PURSUANT TO SUBSECTION (3) OF THIS SECTION AT LEAST EVERY FOUR 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. WHITLEY*, 514 U.S. 419 (1995), AND ITS PROGENY; AS WELL

AS THE COLORADO RULES OF CRIMINAL PROCEDURE.

SECTION 2. In Colorado Revised Statutes, 24-31-303, amend (1)(r) introductory portion, (1)(r)(III), and (1)(r)(IV); and add (1)(r)(V) as follows:

24-31-303. Duties - powers of the P.O.S.T. board. (1) The P.O.S.T. board has the following duties:

(r) SUBJECT TO AVAILABLE APPROPRIATIONS, beginning on January 1, 2022, to create and maintain a database, IN A SEARCHABLE FORMAT TO BE PUBLISHED ON ITS WEBSITE, containing information related to a peace officer's:


(III) Decertification by the P.O.S.T. board; and


(IV) Termination for cause; AND

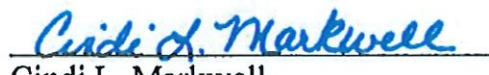
(V) ACTIONS AS DESCRIBED BY THE APPLICABLE STATUTORY PROVISION IDENTIFYING THE BASIS FOR THE CREDIBILITY DISCLOSURE NOTIFICATION AS SET FORTH IN SECTION 16-2.5-502 (2)(c)(I).


SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Leroy M. Garcia
PRESIDENT OF
THE SENATE


Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Cindi L. Markwell
SECRETARY OF
THE SENATE


Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED July 2, 2021 at 9:40 am
(Date and Time)


Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO