



**STATE OF COLORADO
DEPARTMENT OF LAW**

**Attorney General Phil Weiser
Statement to the Joint Committee on the Judiciary
Colorado General Assembly
January 28, 2021**

Chairpersons Lee and Weissman, members of the Committee, thank you for allowing me to visit with you today and present the Department of Law's ("Department") 2021 priorities, our annual performance plan, and our efforts to best serve Colorado. Since taking office just over two years ago, our vision for the Department has been that "together, we serve Colorado and its people, advancing the rule of law, protecting our democracy, and promoting justice for all."

The past year challenged us to innovate on how we can continue to meet those challenges, while still upholding our principles and carrying out our mission. Shifting to work-from-home due to the COVID-19 pandemic presented many hurdles to overcome, but also led to opportunities. By leveraging technology, we are supporting our clients and fighting for Colorado's interests safely and effectively. I'm proud of the work we have done this past year and am pleased to update the Committee on our progress towards fulfilling our Department vision.

Today, I will brief you on that progress, updating you on our specific efforts on criminal justice, and, lastly, responding to any questions you may have on our performance plan, departmental regulatory agenda, or FY 2021-2022 budget request. And, as always, I am happy to address any other matters the Committee wishes to discuss.

Background on the Department of Law

For those of you who are new to this Committee, I'd like to take a moment to provide a high-level background on the Department of Law. The Department upholds and defends the rule of law in a range of ways. And as the State's law office, we fulfill many functions laid out in the state statutes.

My role as Attorney General, and the Department's, is to represent and defend the legal interests of the people of Colorado and our State's sovereignty. We are charged with the primary authority for enforcing Colorado's consumer protection and antitrust laws; representing the State in criminal appeals and certain complex white-collar crimes; providing general counsel advice to statewide elected officials and agencies; training and certifying peace officers through the Peace

Officer Standards and Training (“POST”) Board; and representing the State in natural resources and environmental matters.

The Department also works concurrently with the twenty-two district attorneys throughout the State, as well as the county sheriffs, chiefs of police, and federal law enforcement agencies to carry out criminal justice responsibilities where appropriate. Furthermore, under Colorado law, the Attorney General also serves as the State’s chief legal representative and chief legal counsel to the Executive and Judicial Departments, and to all agencies, boards, and commissions falling under these two branches of government. In all cases, we act with the highest level of professionalism, and a commitment to public service and professional ethics.

Since the conclusion of the 2020 regular session of the General Assembly, we have taken on many new cases and challenges, some of which are due to the enactment of new legislation providing new statutory duties for the Department. This includes:

- conducting a patterns and practices investigation to stop government agencies’ systemic behavior that infringes on constitutional rights or privileges, a new authority granted to the Department under Senate Bill 20-217 (“SB 217”);
- defending COVID-19 public health orders issued by the Department of Public Health and Environment and executive orders issued by the Governor;
- issuing a comprehensive report, required under 2019 legislation sponsored by Representative Roberts, on variables driving the high cost of insulin and offering policy recommendations;
- pressing legal actions to protect Colorado’s waters from weakened federal protections;
- continuing actions against industry actors culpable for the opioid epidemic, as well as taking on companies engaging in price gouging and other deceptive trade practices during the pandemic;
- successfully defending the integrity of Colorado’s election laws before the United States Supreme Court; and
- implementing criminal justice reform measures enacted by the General Assembly, including the decertification of officers for untruthfulness.

In each of these cases, we take seriously our obligation to defend the rule of law and protect Colorado’s sovereignty.

Criminal Justice Improvement and Public Safety

Turning now to criminal justice and public safety, last year the General Assembly enacted Senate Bill 20-217. This legislation made many long overdue reforms to rebuild trust between law enforcement agencies and the communities they serve. This session, I look forward to being a resource to you as you continue the important work of refining and building upon SB 217. As the director of our POST Board often says, “no one hates a bad officer more than a good officer.” As chair of the POST Board, we have the opportunity to make meaningful advancements to support Colorado’s peace officers, provide necessary resources to do their jobs well, and remove any officers deemed unfit for the law enforcement profession.

In Colorado, like many states, we are releasing individuals after they serve their sentence with little support as they seek to reintegrate into society. Without a job, a place to live, or a support system, individuals may soon commit crimes and find themselves back in prison. It is estimated that, in Colorado, 50 percent of those leaving prison are re-arrested and reincarcerated within three years. We can do better. And we look forward to working on such programs in the years ahead. By doing so, we can give inmates leaving prison a fair opportunity to succeed—it means saving money on future costs of keeping someone in person; and it means preventing crimes.

Going forward, we are exploring how we can enable those leaving prison to obtain employment upon release and provide employment pathways to those who make an effort to join the workforce. This includes weeding out unnecessary barriers to entering professions—barriers not grounded in public safety or consumer protection. With statutory licensing requirements mandating that a person may not have a felony or must have no past convictions in order to be licensed, we put significant—or insurmountable—obstacles towards gainful employment. Barriers like this, when unnecessary for public and consumer safety, should be struck from our lawbooks.

Another unnecessary barrier is the suspension of driver's licenses for those with unpaid fines. All too often, penalties are stacked on top of penalties. In this case, a person's driver's license can be taken away for matters unrelated to driving offenses. This is not only an unjust penalty that prevents people from keeping gainful employment and supporting their families—but worst of all it keeps people in a criminal justice cycle they cannot escape. This is especially punitive in rural communities where public transit is limited or unavailable. I'm very hopeful the General Assembly will end this practice this session; and I'm very glad that Rep. Herod plans to bring a bill to do just that.

SB 217 provided new authority for the Department to investigate governmental authorities, including but not limited to law enforcement agencies, for patterns and practices that violate individual rights secured by the Colorado and U.S. Constitutions. This past year, we informed the public of one such investigation already underway. Modeled after that of the U.S. Department of Justice's authority, the Colorado patterns and practices authority gives us a powerful tool to investigate agencies accused of engaging in these types of behaviors and bring an action to end those behaviors. However, as we informed the Joint Budget Committee ("JBC") earlier this month, no resources were provided for the Department to perform this duty. As such, we reprioritized other important work and rely heavily on pro bono attorneys and expert support to carry out the current investigation. This isn't a sustainable way to conduct future investigations and, on that basis, we submitted a request to the JBC for minimal staffing costs to accomplish future investigations.

On the topic of SB 217 and funding, the bill included a requirement that all law enforcement personnel be equipped with body-worn cameras by July 1, 2023. I strongly support this goal. But I recognize this goal may not be achievable for all agencies—particularly smaller and rural agencies. I'm hopeful that the General Assembly sees fit to appropriate the necessary monies to support these agencies in meeting this statutory requirement. I believe the body-worn

camera requirement to be one of the most promising reforms in SB 217 to restore trust between communities and officers. I'm very hopeful that the legislature will provide the funds needed so this policy reform can meet its full potential.

A final note I wish to raise on criminal justice reform is that of bond setting hearings. I understand that Senator Lee's bill from the previous session—requiring that courts hold a bond setting hearing within 48 hours of an arrested person arriving at a jail or a holding facility—will return this year. This is an incredibly important priority to ensure that low level offenders do not languish in jail while awaiting a bond hearing. And during the pandemic, jurisdictions used videoconferencing solutions and the like, developing the capacity to hold such hearings remotely and even on weekends. This needed reform will allow an arrestee to return to his or her home, job, and family as soon as possible, and not remain in jail unnecessarily—placing jobs at risk and disrupting family supports by the arrestee's prolonged absence. To be sure, where additional resources to rural areas are necessary to make such systems viable, I would urge the General Assembly to make such investments so that justice can be served.

More broadly, the General Assembly has the opportunity to continue reforming cash bail so that low level offenders posing no risk to society (and accused of non-violent crimes outside the Victims' Rights Act) can be released within the 48 hour period without having to make any payment unless posing a flight risk. By contrast, our current system of cash bail requires those without access to funds to stay incarcerated regardless of their circumstances.

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Members of the Committee, we in Colorado are positioned to work together to solve problems in a range of areas, including how we improve our criminal justice system. As we do so, and tap our innovative spirit, we can be a model for the nation in this area and pursue justice. At the Department, I take this obligation—pursuit of justice—very seriously. And I am proud of the work my team is doing and am grateful for the support you continue to provide us.

Each of you were provided with electronic copies of the Department's SMART Act performance plan, department regulatory agenda, and FY 2020-2021 budget request. My team and I are happy to respond to questions you may have regarding these documents or address other matters you wish to discuss. Thank you for the opportunity to be with you today and for your service to our State.