

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 15-0622.02 Michael Dohr x4347

HOUSE BILL 15-1286

HOUSE SPONSORSHIP

Kagan and Salazar,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE COURT'S AUTHORITY TO REQUIRE PROSECUTION IN**
102 **CASES OF POLICE MISCONDUCT WHEN THE DECISION NOT TO**
103 **PROSECUTE WAS AN ABUSE OF DISCRETION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Under current law, a person may file an affidavit with a court having jurisdiction over an alleged offense that a prosecuting attorney refuses to prosecute asking the court to require prosecution of the alleged offense. The court may require prosecution if it finds the decision not to prosecute was arbitrary or capricious and without reasonable excuse. For

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 10, 2015

an alleged offense involving police misconduct resulting in serious bodily injury or death, the bill allows the court to require prosecution if the court finds that the decision not to prosecute was an abuse of discretion.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-5-209 as
3 follows:

4 **16-5-209. Judge may require prosecution.** (1) The judge of a
5 court having jurisdiction of the alleged offense, upon affidavit filed with
6 the judge alleging the commission of a crime and the unjustified refusal
7 of the prosecuting attorney to prosecute any person for the crime, may
8 require the prosecuting attorney to appear before the judge and explain
9 the refusal. If after that proceeding, based on the competent evidence in
10 the affidavit, the explanation of the prosecuting attorney, and any
11 argument of the parties, the judge finds that the refusal of the prosecuting
12 attorney to prosecute was arbitrary or capricious and without reasonable
13 excuse, the judge may order the prosecuting attorney to file an
14 information and prosecute the case or may appoint a special prosecutor
15 to do so. The judge ~~shall~~ **MUST** appoint the special prosecutor from among
16 the full-time district attorneys, assistant district attorneys, or deputy
17 district attorneys who serve in judicial districts other than where the
18 appointment is made; except that, upon the written approval of the chief
19 justice of the supreme court, the judge may appoint any disinterested
20 private attorney who is licensed to practice law in the state of Colorado
21 to serve as the special prosecutor. Any special prosecutor appointed
22 pursuant to this section shall be compensated as provided in section
23 20-1-308, C.R.S.

1 (2) THE JUDGE OF A COURT HAVING JURISDICTION OF AN ALLEGED
2 OFFENSE INVOLVING POLICE MISCONDUCT RESULTING IN SERIOUS BODILY
3 INJURY OR DEATH, UPON AFFIDAVIT FILED WITH THE JUDGE ALLEGING THE
4 COMMISSION OF A CRIME AND THE UNJUSTIFIED REFUSAL OF THE
5 PROSECUTING ATTORNEY TO PROSECUTE ANY PERSON FOR THE CRIME, MAY
6 REQUIRE THE PROSECUTING ATTORNEY TO APPEAR BEFORE THE JUDGE AND
7 EXPLAIN THE REFUSAL. IF AFTER THAT PROCEEDING, BASED ON THE
8 COMPETENT EVIDENCE IN THE AFFIDAVIT, THE EXPLANATION OF THE
9 PROSECUTING ATTORNEY, AND ANY ARGUMENT OF THE PARTIES, APPLYING
10 ONLY AN ABUSE OF DISCRETION STANDARD, THE JUDGE FINDS THAT THE
11 REFUSAL OF THE PROSECUTING ATTORNEY TO PROSECUTE WAS AN ABUSE
12 OF DISCRETION, THE JUDGE MAY ORDER THE PROSECUTING ATTORNEY TO
13 FILE AN INFORMATION AND PROSECUTE THE CASE OR MAY APPOINT A
14 SPECIAL PROSECUTOR TO DO SO. THE JUDGE MUST APPOINT THE SPECIAL
15 PROSECUTOR FROM AMONG THE FULL-TIME DISTRICT ATTORNEYS,
16 ASSISTANT DISTRICT ATTORNEYS, OR DEPUTY DISTRICT ATTORNEYS WHO
17 SERVE IN JUDICIAL DISTRICTS OTHER THAN WHERE THE APPOINTMENT IS
18 MADE; EXCEPT THAT, UPON THE WRITTEN APPROVAL OF THE CHIEF JUSTICE
19 OF THE SUPREME COURT, THE JUDGE MAY APPOINT ANY DISINTERESTED
20 PRIVATE ATTORNEY WHO IS LICENSED TO PRACTICE LAW IN THE STATE OF
21 COLORADO TO SERVE AS THE SPECIAL PROSECUTOR. ANY SPECIAL
22 PROSECUTOR APPOINTED PURSUANT TO THIS SECTION SHALL BE
23 COMPENSATED AS PROVIDED IN SECTION 20-1-308, C.R.S.

24 **SECTION 2. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.