

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

**REENGROSSED**

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

LLS NO. 14-1019.01 Michael Dohr x4347

**SENATE BILL 14-190**

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**SENATE SPONSORSHIP**

**Lambert, Hodge, Steadman**

**HOUSE SPONSORSHIP**

**Gerou, Duran, May**

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**Senate Committees**

Judiciary  
Finance  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING CRIMINAL DISCOVERY, AND, IN CONNECTION**  
102 **THEREWITH, CREATING A STATEWIDE DISCOVERY SHARING**  
103 **SYSTEM, A CRIMINAL DISCOVERY SURCHARGE, CIVIL IMMUNITY**  
104 **FOR DISTRICT ATTORNEYS THAT MAKE A GOOD-FAITH EFFORT**  
105 **TO REDACT INFORMATION FROM DISCOVERY DOCUMENTS, AND**  
106 **MAKING AN APPROPRIATION.**

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**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/billsummaries>.)*

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.*

SENATE  
3rd Reading Unamended  
April 30, 2014

SENATE  
Amended 2nd Reading  
April 29, 2014

**Joint Budget Committee.** Last year a discovery task force (task force) was convened to develop recommendations regarding criminal discovery systems and costs. The task force recommended creating a statewide discovery sharing system (system). The bill turns the task force into the discovery project steering committee (committee). The committee shall develop a request for proposal and selection process for choosing a vendor to develop the system. The committee shall make a recommendation to the Colorado district attorneys council (CDAC) regarding the vendor after the application process is complete. CDAC shall select a vendor to develop the system after the application and selection processes are complete. The committee shall develop benchmarks and contractual requirements for the project. CDAC shall enter into a contract with the selected vendor to complete the system by June 30, 2016.

The general assembly shall appropriate moneys to the judicial department for allocation to CDAC for development and maintenance of the system. The bill creates a criminal surcharge to fund the development and maintenance of the system. A \$10 surcharge applies to each felony conviction, and a \$5 surcharge applies to each misdemeanor conviction if the defendant is represented by private counsel or appears pro se.

The bill gives civil immunity to district attorneys who make a good-faith effort to redact all information legally required to be redacted and provide discovery documents that contain information that should have been redacted.

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

2           **SECTION 1. Legislative intent.** (1) The general assembly finds  
3 it necessary to provide funding for the development, continuing  
4 enhancement, and maintenance of a statewide discovery sharing system  
5 in order to create more predictable state costs associated with criminal  
6 discovery. It is the intent of the general assembly that once the statewide  
7 discovery sharing system is operational the existing general fund  
8 appropriations to the judicial department that are used to reimburse  
9 district attorneys for the cost of duplicating discoverable materials shall  
10 be used to fund the ongoing maintenance of a statewide discovery sharing  
11 system and the associated ACTION system operated by the Colorado

1 district attorneys' council in addition to the moneys generated by the  
2 surcharge created by this act.

3 (2) It is the intent of the general assembly that once the statewide  
4 discovery sharing system is operational the district attorneys shall not  
5 seek or receive reimbursement for copying discovery \_\_\_ from anyone.

6 **SECTION 2.** In Colorado Revised Statutes, **amend** 16-9-701 as  
7 follows:

8 **16-9-701. Discovery project steering committee.** (1) (a) There  
9 shall be a discovery ~~task force~~ PROJECT STEERING COMMITTEE convened  
10 to ~~study and make recommendations regarding criminal discovery~~ ASSIST  
11 IN DEVELOPING A REQUEST FOR PROPOSAL APPLICATION AND SELECTION  
12 PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE DISCOVERY  
13 SHARING SYSTEM. The ~~task force~~ STEERING COMMITTEE consists of:

14 (I) The attorney general or his or her designee, who shall serve as  
15 the chair of the ~~task force~~ STEERING COMMITTEE;

16 (II) The state court administrator or his or her designee, who shall  
17 serve as the vice-chair of the ~~task force~~ STEERING COMMITTEE;

18 (III) The state public defender or his or her designee;

19 (IV) A representative of the criminal defense bar appointed by the  
20 chief justice;

21 (V) Three district attorneys appointed by the governor, one  
22 representing an urban judicial district, one representing a mid-sized  
23 district, and one representing a rural district;

24 (VI) A county sheriff appointed by the governor;

25 (VII) The alternate defense counsel or his or her designee;

26 (VIII) A chief of police appointed by the governor; and

27 (IX) A district court judge appointed by the chief justice.

1 (b) The ~~task force~~ PROJECT STEERING COMMITTEE must also have  
2 a nonvoting member appointed by the governor from the office of  
3 information technology who serves ONLY as a technology advisor to assist  
4 the ~~task force~~ STEERING COMMITTEE.

5 (2) The chair of the discovery ~~task force~~ PROJECT STEERING  
6 COMMITTEE shall convene the first meeting of the ~~task force~~ STEERING  
7 COMMITTEE by June 30, 2013, ~~and must meet at least twice a month~~  
8 ~~thereafter until it completes its duties as listed in subsection (3) of this~~  
9 ~~section, or until November 15, 2013, whichever is earlier~~ 2014.

10 (3) The discovery ~~task force~~ ~~must~~ PROJECT STEERING COMMITTEE  
11 SHALL DEVELOP A REQUEST FOR PROPOSAL APPLICATION AND RECOMMEND  
12 A SELECTION PROCESS TO CHOOSE A VENDOR TO DEVELOP A STATEWIDE  
13 DISCOVERY SHARING SYSTEM. THE APPLICATION PROCESS MUST BE  
14 DEVELOPED IN A TIMELY MANNER SO THE SELECTION CAN BE MADE BY  
15 NOVEMBER 1, 2014, AT THE LATEST. THE STEERING COMMITTEE SHALL  
16 MAKE A VENDOR RECOMMENDATION TO THE COLORADO DISTRICT  
17 ATTORNEYS' COUNCIL AFTER THE APPLICATION PROCESS IS COMPLETED.  
18 THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL SELECT A VENDOR  
19 AFTER THE APPLICATION AND SELECTION PROCESS IS COMPLETE AND  
20 AFTER CONSIDERING THE RECOMMENDATION OF THE STEERING  
21 COMMITTEE.

22 (a) ~~Determine which district attorney's offices obtain all law~~  
23 ~~enforcement discoverable evidence in an electronic format, which district~~  
24 ~~attorney's offices will soon be able to obtain all law enforcement~~  
25 ~~discoverable evidence in an electronic format, and which district~~  
26 ~~attorney's offices will not have that ability at any point in the future~~  
27 ~~without assistance;~~

1           (b) ~~Determine the barriers for those district attorney's offices that~~  
2 ~~will never be able to obtain law enforcement discoverable evidence in an~~  
3 ~~electronic format without assistance;~~

4           (c) ~~Study the feasibility of a single statewide criminal case~~  
5 ~~management system or other technology inserts to facilitate electronic~~  
6 ~~discovery or electronic redaction;~~

7           (d) ~~Study the appropriateness of a statewide standardized law~~  
8 ~~enforcement reporting form that is easily redactable;~~

9           (e) ~~Recommend or address short-term needs for law enforcement~~  
10 ~~and district attorneys to facilitate greater use of electronic discovery;~~

11           (f) ~~Suggest a definition for the term "actual costs" for purposes of~~  
12 ~~reimbursement that adequately and fairly reimburses the state's district~~  
13 ~~attorneys for the expenses for which the district attorney's offices are~~  
14 ~~responsible related to the discovery process;~~

15           (g) ~~Suggest an alternative funding process to reimburse the district~~  
16 ~~attorneys for appropriate discovery costs without requiring the public~~  
17 ~~defender, alternate defense counsel, or any indigent pro se defendant to~~  
18 ~~pay for discovery;~~

19           (h) ~~Determine which executive or judicial branch agency is best~~  
20 ~~situated to serve as the conduit for state reimbursement to the district~~  
21 ~~attorneys and the attorney general for the actual costs of discovery; and~~

22           (i) ~~Study whether there should be a separate rate that is charged~~  
23 ~~to nonindigent defendants compared to indigent defendants.~~

24           (4) (a) ~~The discovery task force shall provide a preliminary report~~  
25 ~~to the joint budget committee by November 1, 2013, if the final report is~~  
26 ~~not completed by then. THE DISCOVERY PROJECT STEERING COMMITTEE~~  
27 ~~SHALL DEVELOP BENCHMARKS AND CONTRACTUAL REQUIREMENTS FOR~~

1 THE STATEWIDE DISCOVERY SHARING SYSTEM.

2 (b) ~~The discovery task force shall report to the joint budget~~  
3 ~~committee and the judiciary committees of the house of representatives~~  
4 ~~and the senate, or their successor committees, by January 31, 2014. The~~  
5 ~~report shall include recommendations for legislation, technology inserts,~~  
6 ~~and nonlegislative processes that would improve the criminal discovery~~  
7 ~~process.~~ THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL ENTER  
8 INTO A CONTRACT WITH THE SELECTED VENDOR TO COMPLETE THE SYSTEM  
9 BY OCTOBER 31, 2016. THE CONTRACT MUST INCLUDE THE BENCHMARKS  
10 AND REQUIREMENTS DEVELOPED PURSUANT TO PARAGRAPH (a) OF THIS  
11 SUBSECTION (4). THE EXECUTIVE DIRECTOR OF THE COLORADO DISTRICT  
12 ATTORNEYS' COUNCIL SHALL PROVIDE PERIODIC REPORTS TO THE STEERING  
13 COMMITTEE AND THE JOINT BUDGET COMMITTEE REGARDING  
14 BENCHMARKS AND REQUIREMENTS AND THE PROGRESS OF THE  
15 DEVELOPMENT OF THE SYSTEM. IT IS NOT NECESSARY FOR THE STEERING  
16 COMMITTEE TO MEET TO RECEIVE THE PERIODIC REPORTS.

17 (5) ~~This part 7 is repealed, effective July 1, 2014.~~ THE DISCOVERY  
18 PROJECT STEERING COMMITTEE MAY MEET AS NECESSARY TO PROVIDE  
19 PRACTICAL AND TECHNICAL SUPPORT FOR THE MAINTENANCE AND  
20 ENHANCEMENT OF THE SYSTEM AND TO ENSURE THAT THE SYSTEM IS  
21 MEETING THE NEEDS OF THE CRIMINAL JUSTICE SYSTEM.

22 (6) ONCE THE STATEWIDE DISCOVERY SHARING SYSTEM IS  
23 OPERATIONAL, A DISTRICT ATTORNEY OR THE COLORADO DISTRICT  
24 ATTORNEYS' COUNCIL, WHO AFTER MAKING A GOOD-FAITH EFFORT TO  
25 REDACT ALL INFORMATION FROM A DISCOVERY DOCUMENT PROVIDED TO  
26 A DEFENDANT OR DEFENSE COUNSEL, PROVIDES A DOCUMENT THAT  
27 CONTAINS INFORMATION THAT IS LEGALLY REQUIRED TO BE REDACTED IS

1 NOT LIABLE FOR CIVIL DAMAGES AS A RESULT OF ACTS OR OMISSIONS  
2 RELATED TO PROVIDING DISCOVERY DOCUMENTS THAT CONTAIN  
3 INFORMATION REQUIRED TO BE REDACTED THAT IS NOT REDACTED.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 16-9-702 as  
5 follows:

6 **16-9-702. Statewide discovery sharing system.** (1) THE  
7 COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL DEVELOP AND  
8 MAINTAIN A STATEWIDE DISCOVERY SHARING SYSTEM INTEGRATED WITH  
9 ITS ACTION SYSTEM. THE STATEWIDE DISCOVERY SHARING SYSTEM MUST  
10 BE OPERATIONAL BY NOVEMBER 1, 2016. THE COLORADO DISTRICT  
11 ATTORNEYS' COUNCIL SHALL MAINTAIN AND OPERATE THE SYSTEM WITH  
12 THE ASSISTANCE OF THE DISCOVERY PROJECT STEERING COMMITTEE  
13 CREATED IN SECTION 16-9-701.

14 (2) THE GENERAL ASSEMBLY SHALL APPROPRIATE THE NECESSARY  
15 MONEYS FROM THE GENERAL FUND AND THE STATEWIDE DISCOVERY  
16 SHARING SYSTEM SURCHARGE FUND CREATED IN SECTION 18-26-102 (2),  
17 C.R.S., TO FUND THE DEVELOPMENT, CONTINUING ENHANCEMENT, AND  
18 MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM AND  
19 MAINTENANCE AND CONTINUING ENHANCEMENT OF THE EXISTING  
20 ACTION SYSTEM OPERATED BY THE COLORADO DISTRICT ATTORNEYS'  
21 COUNCIL. THE JUDICIAL DEPARTMENT SHALL ALLOCATE THE  
22 APPROPRIATED MONEYS TO THE COLORADO DISTRICT ATTORNEYS'  
23 COUNCIL FOR THE DEVELOPMENT, CONTINUING ENHANCEMENT, AND  
24 MAINTENANCE OF THE STATEWIDE DISCOVERY SHARING SYSTEM AND THE  
25 EXISTING ACTION SYSTEM.

26 (3) THE COLORADO DISTRICT ATTORNEYS' COUNCIL SHALL  
27 PROVIDE THE JUDICIAL DEPARTMENT FINANCIAL REPORTS REGARDING THE

1 STATEWIDE DISCOVERY SHARING SYSTEM. THE JUDICIAL DEPARTMENT  
2 SHALL USE THE REPORTS IN PREPARING ITS ANNUAL BUDGET REQUEST. THE  
3 REPORTS MUST INCLUDE THE FOLLOWING:

4 (a) ACTUAL EXPENDITURES OF THE MONEYS APPROPRIATED FOR  
5 THE MAINTENANCE OF THE ACTION SYSTEM AND FOR THE DEVELOPMENT,  
6 ENHANCEMENT, IMPLEMENTATION, AND MAINTENANCE OF THE DISCOVERY  
7 SHARING SYSTEM SO THAT THE JUDICIAL DEPARTMENT CAN INCLUDE THE  
8 EXPENDITURE DATA IN ITS ANNUAL BUDGET REQUEST. THE JUDICIAL  
9 DEPARTMENT SHALL REQUIRE THE COLORADO DISTRICT ATTORNEYS'  
10 COUNCIL TO PROVIDE THE INFORMATION IN A FORMAT THAT IS CONSISTENT  
11 WITH ACTUAL EXPENDITURES REPORTED FOR OTHER LINE ITEM  
12 APPROPRIATIONS.

13 (b) THE AMOUNT OF STATE FUNDING REQUESTED FOR THE NEXT  
14 FISCAL YEAR FOR SUCH PURPOSE, INCLUDING A BREAKDOWN AND  
15 JUSTIFICATION FOR THE AMOUNT REQUESTED.

16 **SECTION 4.** In Colorado Revised Statutes, **add** article 26 to title  
17 18 as follows:

18 **ARTICLE 26**

19 **Statewide Discovery Sharing System Surcharge**

20 **18-26-101. Statewide discovery sharing system surcharge.**

21 (1) EACH PERSON WHO IS REPRESENTED BY PRIVATE COUNSEL OR APPEARS  
22 PRO SE AND IS CONVICTED OF A FELONY, MISDEMEANOR, DRUG FELONY, OR  
23 DRUG MISDEMEANOR SHALL BE REQUIRED TO PAY A SURCHARGE TO THE  
24 CLERK OF THE COURT FOR THE JUDICIAL DISTRICT IN WHICH THE  
25 CONVICTION OCCURS.

26 (2) SURCHARGES PURSUANT TO SUBSECTION (1) OF THIS SECTION  
27 ARE IN THE FOLLOWING AMOUNTS:



1 (a) FOR EACH FELONY OR DRUG FELONY OF WHICH A PERSON IS  
2 CONVICTED, TEN DOLLARS; AND

3 (b) FOR EACH MISDEMEANOR OR DRUG MISDEMEANOR OF WHICH  
4 A PERSON IS CONVICTED, FIVE DOLLARS.

5 (3) THE COURT MAY WAIVE ALL OR ANY PORTION OF THE  
6 SURCHARGE REQUIRED BY SECTION 18-26-101 IF THE COURT FINDS THAT  
7 A PERSON CONVICTED OF A CRIME IS INDIGENT OR FINANCIALLY UNABLE  
8 TO PAY ALL OR ANY PORTION OF THE SURCHARGE. THE COURT MAY WAIVE  
9 ONLY THAT PORTION OF THE SURCHARGE THAT THE COURT FINDS THAT  
10 THE PERSON CONVICTED OF A CRIME IS FINANCIALLY UNABLE TO PAY.

11 (4) BY JANUARY 15, 2016, THE JUDICIAL DEPARTMENT SHALL  
12 REPORT TO THE JUDICIARY COMMITTEES OF THE HOUSE OF  
13 REPRESENTATIVES AND SENATE, OR ANY SUCCESSOR COMMITTEES, AND  
14 THE JOINT BUDGET COMMITTEE REGARDING THE COLLECTIONS MADE  
15 UNDER THIS ARTICLE.

16 **18-26-102. Collection and distribution of funds - statewide**  
17 **discovery sharing system surcharge fund - creation.** (1) THE CLERK  
18 OF THE COURT SHALL ALLOCATE THE SURCHARGE REQUIRED BY SECTION  
19 18-26-101 AS FOLLOWS:

20 (a) FIVE PERCENT SHALL BE RETAINED BY THE CLERK OF THE  
21 COURT FOR ADMINISTRATIVE COSTS INCURRED PURSUANT TO THIS  
22 SUBSECTION (1). THE AMOUNT RETAINED SHALL BE TRANSMITTED TO THE  
23 STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH  
24 FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

25 (b) NINETY-FIVE PERCENT SHALL BE TRANSFERRED TO THE STATE  
26 TREASURER, WHO SHALL CREDIT THE SAME TO THE STATEWIDE DISCOVERY  
27 SHARING SYSTEM SURCHARGE FUND CREATED PURSUANT TO SUBSECTION

1 (2) OF THIS SECTION.

2 (2) (a) THERE IS CREATED IN THE STATE TREASURY THE STATEWIDE  
3 DISCOVERY SHARING SURCHARGE FUND THAT CONSISTS OF MONEYS  
4 RECEIVED BY THE STATE TREASURER PURSUANT TO THIS SECTION. THE  
5 MONEYS IN THE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE  
6 GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO  
7 THE COLORADO DISTRICT ATTORNEYS' COUNCIL FOR DEVELOPMENT,  
8 CONTINUING ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE  
9 DISCOVERY SHARING SYSTEM UNDER SECTION 16-9-702, C.R.S. THESE  
10 MONEYS ARE IN ADDITION TO GENERAL FUND MONEYS APPROPRIATED TO  
11 THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE COLORADO  
12 DISTRICT ATTORNEYS' COUNCIL FOR DEVELOPMENT, CONTINUING  
13 ENHANCEMENT, AND MAINTENANCE OF THE STATEWIDE DISCOVERY  
14 SHARING SYSTEM UNDER SECTION 16-9-702, C.R.S.

15 (b) THE STATE TREASURER SHALL CREDIT ALL INTEREST DERIVED  
16 FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND TO THE  
17 FUND. ANY MONEYS NOT APPROPRIATED BY THE GENERAL ASSEMBLY  
18 MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT  
19 TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

20 **SECTION 5. Appropriation.** In addition to any other  
21 appropriation, there is hereby appropriated, out of any moneys in the  
22 general fund not otherwise appropriated, to the judicial department, for  
23 the fiscal year beginning July 1, 2014, the sum of \$5,300,000, or so much  
24 thereof as may be necessary, for allocation to the trial courts section for  
25 the implementation of this act. Any moneys appropriated in this section  
26 not expended prior to July 1, 2015, are further appropriated to the  
27 department for the fiscal year beginning July 1, 2015, for the same

1 purposes.

2 **SECTION 6. Applicability.** Section 4 of this act applies to  
3 offenses committed on or after September 1, 2014.

4 **SECTION 7. Safety clause.** The general assembly hereby finds,  
5 determines, and declares that this act is necessary for the immediate  
6 preservation of the public peace, health, and safety.