

ASSEMBLY BILL NO. 259—ASSEMBLYMEN CONKLIN, ANDERSON,
HORNE, GERHARDT AND DENIS

MARCH 21, 2005

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to rights of peace officers. (BDR 23-546)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to peace officers; making various changes concerning administrative files of peace officers; providing that evidence obtained in violation of certain provisions may not be used in an administrative proceeding or civil action against a peace officer; providing that the home address and photograph of a peace officer are confidential; revising various provisions relating to an interrogation or a hearing concerning a peace officer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a peace officer may be investigated in response to an allegation that the officer engaged in activities which could result in punitive action and defines the types of discipline that constitute punitive action. (NRS 289.010, 289.020, 289.070)

This bill provides certain rights to a peace officer upon conclusion of an investigation, including certain rights concerning his administrative file. In addition, this bill prohibits the use of evidence obtained in violation of the statutory rights of a peace officer in an administrative proceeding or a civil action against the peace officer.

Existing law provides certain restrictions on information that a law enforcement agency may place in the file of a peace officer. (NRS 289.040)

This bill provides that the only information that may be placed into an administrative file of a peace officer who is under investigation is a copy of the disposition of the allegation of misconduct and a copy of the notice or statement of adjudication of any punitive action taken against the peace officer. This bill further gives a peace officer the right to review his administrative file if the file does not



17 relate to a current investigation. This bill also makes confidential the home address
18 and photograph of a peace officer, unless the officer consents to the release of the
19 information or the officer is arrested.

20 Existing law requires a law enforcement agency, if practical, to notify a peace
21 officer in writing within a reasonable time before interrogating or holding a hearing
22 concerning an investigation of the peace officer. (NRS 289.060)

23 This bill requires such notice to be provided at least 48 hours before the
24 interrogation or hearing and provides that the officer may waive such notice.

25 Existing law authorizes a peace officer to have a lawyer or other representative
26 present during an interrogation or hearing. (NRS 289.080)

27 This bill authorizes a peace officer to have present any two representatives
28 whom he chooses.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 289 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2. 1.** *An investigation of a peace officer may be*
4 *conducted in response to a complaint or allegation that the peace*
5 *officer has engaged in activities which could result in punitive*
6 *action.*

7 **2.** *After the conclusion of the investigation:*

8 *(a) If the investigation causes a law enforcement agency to*
9 *impose punitive action against the peace officer who was the*
10 *subject of the investigation and the peace officer has received*
11 *notice of the imposition of the punitive action, the peace officer or*
12 *a representative authorized by the peace officer may review any*
13 *administrative file maintained by the law enforcement agency*
14 *relating to the investigation, including any recordings, notes,*
15 *transcripts of interviews and documents.*

16 *(b) If, pursuant to a policy of a law enforcement agency or a*
17 *labor agreement, the record of the investigation or the imposition*
18 *of punitive action is subject to being removed from any*
19 *administrative file relating to the peace officer maintained by the*
20 *law enforcement agency, the law enforcement agency shall not*
21 *keep or make a record of the investigation or the imposition of*
22 *punitive action after the record is required to be removed from the*
23 *administrative file.*

24 **Sec. 3.** *Evidence obtained in violation of a provision of this*
25 *section, NRS 289.010 to 289.120, inclusive, and section 2 of this*
26 *act must not be used in an administrative proceeding or civil*
27 *action against a peace officer.*

28 **Sec. 4. 1.** *Except as otherwise provided in subsection 2, the*
29 *home address and any photograph of a peace officer are not*
30 *public information and are confidential.*



1 **2. The home address and photograph of a peace officer may**
2 **be released:**

3 **(a) If the peace officer authorizes the release; or**

4 **(b) If the peace officer has been arrested.**

5 **Sec. 5.** NRS 289.010 is hereby amended to read as follows:

6 289.010 As used in this chapter, unless the context otherwise
7 requires:

8 1. ***“Administrative file” means any file of a peace officer***
9 ***containing information, comments or documents about the peace***
10 ***officer, including, without limitation, a personnel file. The term***
11 ***does not include any file relating to an investigation conducted***
12 ***pursuant to section 2 of this act or a criminal investigation of a***
13 ***peace officer.***

14 2. ***“Choke hold” means the holding of a person’s neck in a***
15 ***manner specifically intended to restrict the flow of oxygen or blood***
16 ***to the person’s lungs or brain. The term includes the arm-bar***
17 ***restraint, carotid restraint and lateral vascular neck restraint.***

18 ~~[2-]~~ 3. ***“Peace officer” means any person upon whom some or***
19 ***all of the powers of a peace officer are conferred pursuant to NRS***
20 ***289.150 to 289.360, inclusive.***

21 ~~[3-]~~ 4. ***“Punitive action” means any action which may lead to***
22 ***dismissal, demotion, suspension, reduction in salary, written***
23 ***reprimand or transfer of a peace officer for purposes of punishment.***

24 **Sec. 6.** NRS 289.040 is hereby amended to read as follows:

25 289.040 1. ~~[No]~~ ***Except as otherwise provided in***
26 ***subsection 3, a law enforcement agency ~~{may}~~ shall not*** place any
27 unfavorable comment or document in ~~[the]~~ ***an administrative*** file of
28 a peace officer ***maintained by the law enforcement agency*** unless:

29 (a) The ***peace*** officer has read and initialed the comment or
30 document; or

31 (b) If the ***peace*** officer refuses to initial the comment or
32 document, a notation to that effect is noted on or attached to the
33 comment or document.

34 2. If the peace officer submits to the law enforcement agency a
35 written response within 30 days after he is asked to initial the
36 comment or document, his response must be attached to and
37 accompany the comment or document.

38 3. ***If a peace officer is the subject of an investigation of a***
39 ***complaint or allegation conducted pursuant to section 2 of this***
40 ***act, the law enforcement agency may place into an administrative***
41 ***file relating to the peace officer only:***

42 ***(a) A copy of the disposition of the allegation of misconduct;***
43 ***and***



1 (b) *A copy of the notice of or statement of adjudication of any*
2 *punitive action taken against the peace officer.*

3 4. A peace officer must be given a copy of any comment or
4 document that is placed in ~~[his personnel file.]~~ *an administrative*
5 *file of the peace officer maintained by the law enforcement*
6 *agency.*

7 5. *Upon request, a peace officer may review any*
8 *administrative file of that peace officer maintained by the law*
9 *enforcement agency that does not relate to a current investigation.*

10 Sec. 7. NRS 289.060 is hereby amended to read as follows:

11 289.060 1. ~~[The]~~ *Except as otherwise provided in this*
12 *subsection, a law enforcement* agency shall, ~~[within a reasonable~~
13 ~~time]~~ *not later than 48 hours* before any interrogation or hearing is
14 held relating to an investigation ~~[of the activities of a peace officer~~
15 ~~which may result in punitive action,]~~ *conducted pursuant to*
16 *section 2 of this act,* provide written notice to the *peace* officer. ~~[If~~
17 ~~practical under the circumstances.]~~ *A peace officer may waive the*
18 *notice required pursuant to this section.*

19 2. The notice must include:

- 20 (a) A description of the nature of the investigation;
21 (b) A summary of alleged misconduct of the peace officer;
22 (c) The date, time and place of the interrogation or hearing;
23 (d) The name and rank of the officer in charge of the
24 investigation and the officers who will conduct any interrogation;
25 (e) The name of any other person who will be present at any
26 interrogation or hearing; and
27 (f) A statement setting forth the provisions of subsection 1 of
28 NRS 289.080.

29 3. The *law enforcement* agency shall:

- 30 (a) Interrogate the *peace* officer during his regular working
31 hours, if reasonably practicable, or compensate him for that time
32 based on his regular wages if no charges arise from the
33 interrogation.
34 (b) Limit the scope of the questions during the interrogation or
35 hearing to the alleged misconduct of the *peace* officer.
36 (c) Allow the *peace* officer to explain an answer or refute a
37 negative implication which results from questioning during an
38 interrogation or hearing.

39 Sec. 8. NRS 289.070 is hereby amended to read as follows:

40 289.070 1. ~~[An investigation of a peace officer may be~~
41 ~~conducted in response to an allegation that the officer has engaged~~
42 ~~in activities which could result in punitive action. The]~~ *During an*
43 *investigation conducted pursuant to section 2 of this act, the peace*
44 officer against whom the allegation is made may, but is not required to,
45 submit to a polygraphic examination concerning such activities.



2. A person who makes an allegation against ~~[an]~~ *a peace* officer pursuant to ~~[subsection 1]~~ *section 2 of this act* may not be required to submit to a polygraphic examination as a condition to the investigation of his allegation, but may request or agree to be given a polygraphic examination. If such a person requests or agrees to be given a polygraphic examination, such an examination must be given.

3. If a polygraphic examination is given to ~~[an]~~ *a peace* officer pursuant to this section, a sound or video recording must be made of the polygraphic examination, the preliminary interview and the postexamination interview. Before the opinion of the polygraphic examiner regarding the *peace* officer's veracity may be considered in a disciplinary action, all records, documents and recordings resulting from the polygraphic examination must be made available for review by one or more polygraphic examiners licensed or qualified to be licensed in this State who are acceptable to the law enforcement agency and *to* the officer. If the opinion of a reviewing polygraphic examiner does not agree with the initial polygraphic examiner's opinion, the *peace* officer must be allowed to be reexamined by a polygraphic examiner of his choice who is licensed or qualified to be licensed in this State.

4. The opinion of a polygraphic examiner regarding the *peace* officer's veracity may not be considered in a disciplinary action unless the polygraphic examination was conducted in a manner which complies with the provisions of chapter 648 of NRS. In any event, the law enforcement agency shall not use a polygraphic examiner's opinion regarding the veracity of the *peace* officer as the sole basis for disciplinary action against the *peace* officer.

Sec. 9. NRS 289.080 is hereby amended to read as follows:

289.080 1. Except as otherwise provided in subsection 2, a peace officer may upon request have ~~[a lawyer or other representative]~~ *two representatives* of his choosing present with the peace officer during any phase of an interrogation or hearing ~~[~~ *—2.—The] relating to an investigation conducted pursuant to section 2 of this act, including, without limitation, a lawyer, a representative of a labor union or another peace officer.*

2. A representative must not otherwise be connected to, or the subject of, the same investigation.

3. Any information that ~~[the]~~ *a* representative obtains from the peace officer concerning the investigation is confidential and must not be disclosed except upon the:

- (a) Request of the peace officer; or
- (b) Lawful order of a court of competent jurisdiction.



1 ↪ A law enforcement agency shall not take punitive action against
2 ~~the~~ a representative for his failure or refusal to disclose such
3 information.

4 4. The peace officer or the law enforcement agency may make
5 a stenographic or magnetic record of the interrogation or hearing. If
6 the agency records the proceedings, the agency shall at the officer's
7 request and expense provide a copy of the:

8 (a) Stenographic transcript of the proceedings; or

9 (b) Recording on the magnetic tape.

10 **Sec. 10.** NRS 289.090 is hereby amended to read as follows:

11 289.090 The provisions of NRS 289.060, 289.070 and 289.080
12 *and section 2 of this act* do not apply to any investigation which
13 concerns alleged criminal activities.

14 **Sec. 11.** NRS 289.380 is hereby amended to read as follows:

15 289.380 1. Except as otherwise provided in NRS 289.383,
16 the governing body of a city or county may create a review board by
17 ordinance to advise the governing body on issues concerning peace
18 officers, school police officers, constables and deputies of
19 constables within the city or county.

20 2. A review board created pursuant to subsection 1 must
21 consist of:

22 (a) In a city whose population is 150,000 or more or a county
23 whose population is 100,000 or more, 25 members; and

24 (b) In a city whose population is less than 150,000 or a county
25 whose population is less than 100,000, 12 members.

26 3. Such a review board must be appointed by the governing
27 body from a list of names submitted by interested persons. If an
28 insufficient number of names of interested persons is submitted, the
29 governing body shall appoint the remaining members in the manner
30 it deems appropriate.

31 4. A person appointed to the review board must:

32 (a) Be a resident of the city or county for which the review
33 board was created, except no member of the review board may be
34 currently employed as a peace officer, school police officer,
35 constable or deputy of a constable.

36 (b) Complete training relating to law enforcement before serving
37 as a member of the review board, including, without limitation,
38 training in the policies and procedures of law enforcement agencies,
39 police of school districts and offices of constables, the provisions of
40 NRS 289.010 to 289.120, inclusive, *and sections 2 and 3 of this act*
41 and the employment contracts of the peace officers, school police
42 officers, constables or deputies of constables.

43 **Sec. 12.** NRS 289.383 is hereby amended to read as follows:

44 289.383 1. If a metropolitan police department has been
45 formed pursuant to NRS 280.110, the metropolitan police



1 committee on fiscal affairs may request the participating political
2 subdivisions to create a review board to advise the committee on
3 issues concerning peace officers employed by the metropolitan
4 police department. The participating subdivisions may jointly create
5 such a review board by mutual ordinances.

6 2. A review board created pursuant to subsection 1 must
7 consist of 25 members, appointed from a list of names submitted by
8 interested persons. The members of the metropolitan police
9 committee on fiscal affairs who are representatives of the county
10 shall appoint 13 members of the review board, and the members of
11 the metropolitan police committee on fiscal affairs who are
12 representatives of each participating city within the county shall
13 appoint an equal number of the remaining 12 members. If an
14 insufficient number of names of interested persons are submitted,
15 the members of the metropolitan police committee on fiscal affairs
16 shall appoint the remaining members in the manner they deem
17 appropriate.

18 3. A person appointed to the review board must:

19 (a) Be a resident within the jurisdiction of the participating
20 subdivisions for which the review board was created, except no
21 member of the review board may be currently employed as a peace
22 officer.

23 (b) Complete training relating to law enforcement before serving
24 as a member of the review board, including, without limitation,
25 training in the policies and procedures of law enforcement agencies,
26 the provisions of NRS 289.010 to 289.120, inclusive, *and sections 2*
27 *and 3 of this act* and the employment contracts of the peace officers.

28 **Sec. 13.** NRS 396.3291 is hereby amended to read as follows:

29 396.3291 1. The Board of Regents may create on each
30 campus of the System a campus review board to advise the president
31 or other chief administrative officer of the campus and, upon
32 request, the Board of Regents on issues concerning allegations made
33 against peace officers of the Police Department for the System
34 involving misconduct while serving on the campus.

35 2. A campus review board created pursuant to subsection 1
36 must consist of not less than 15 members.

37 3. A campus review board must be appointed by the Board of
38 Regents from a list of names submitted by interested persons within
39 the System and in the general public. If an insufficient number of
40 names of persons interested in serving on a campus review board are
41 submitted, the Board of Regents shall appoint the remaining
42 members in the manner it deems appropriate.

43 4. A person appointed to a campus review board:

44 (a) Must be a resident of this State;

45 (b) Must not be employed as a peace officer;



- 1 (c) Must complete training relating to law enforcement before
2 serving as a member of the campus review board, including, without
3 limitation, training in the policies and procedures of the Police
4 Department for the System, the provisions of chapter 284 of NRS,
5 the regulations adopted pursuant thereto and NRS 289.010 to
6 289.120, inclusive, *and sections 2 and 3 of this act* and the terms
7 and conditions of employment of the peace officers of the System;
8 and
9 (d) Shall serve without salary, but may receive from the System
10 such per diem allowances and travel expenses as are authorized by
11 the Board of Regents.

