

Assembly Bill No. 259—Assemblymen Conklin, Anderson, Horne,
Gerhardt and Denis

CHAPTER.....

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 during an administrative proceeding commenced or civil action filed 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 if the allegation is sustained and a copy of the notice or statement of adjudication of any punitive or remedial 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 relate to a current investigation. This bill also makes confidential the home address and photograph of a peace officer in the possession of a law enforcement agency, unless the officer consents to the release of the information or the officer is arrested.

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

This bill requires such notice to be provided at least 48 hours before the interrogation or hearing and provides that the officer may waive such notice. This bill further requires the law enforcement agency to inform the peace officer immediately before the hearing or interrogation that failure to provide a statement or answer questions related to the alleged misconduct may result in a charge of insubordination.

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

This bill authorizes a peace officer to have two representatives of his choosing present during an interrogation or hearing and clarifies the role of the representatives. This bill also authorizes any representative of a peace officer to make a recording of the hearing or interrogation and allows digital recordings of a hearing or interrogation. This bill further allows a peace officer or any

representative of a peace officer to copy the entire file related to an investigation if the officer appeals a recommendation to impose punitive action against the peace officer.

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

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

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

2. *After the conclusion of the investigation:*

(a) If the investigation causes a law enforcement agency to impose punitive action against the peace officer who was the subject of the investigation and the peace officer has received notice of the imposition of the punitive action, the peace officer or a representative authorized by the peace officer may, except as otherwise prohibited by federal or state law, review any administrative or investigative file maintained by the law enforcement agency relating to the investigation, including any recordings, notes, transcripts of interviews and documents.

(b) If, pursuant to a policy of a law enforcement agency or a labor agreement, the record of the investigation or the imposition of punitive action is subject to being removed from any administrative file relating to the peace officer maintained by the law enforcement agency, the law enforcement agency shall not, except as otherwise required by federal or state law, keep or make a record of the investigation or the imposition of punitive action after the record is required to be removed from the administrative file.

Sec. 3. *If an arbitrator or court determines that evidence was obtained during an investigation of a peace officer concerning conduct that could result in punitive action in a manner which violates any provision of this section, NRS 289.010 to 289.120, inclusive, and section 2 of this act, and that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and the arbitrator or court shall exclude such evidence during any administrative proceeding commenced or civil action filed against the peace officer.*

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

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

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

(b) If the peace officer has been arrested.

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

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

1. *“Administrative file” means any file of a peace officer containing information, comments or documents about the peace officer. The term does not include any file relating to an investigation conducted pursuant to section 2 of this act or a criminal investigation of a peace officer.*

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

~~12-1~~ 3. *“Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.*

~~13-1~~ 4. *“Punitive action” means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment.*

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

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

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

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

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

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

(a) A copy of the disposition of the allegation of misconduct if the allegation is sustained; and

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

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

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

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

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

2. The notice must include:

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

3. The *law enforcement* agency shall:

- (a) Interrogate the *peace* officer during his regular working hours, if reasonably practicable, or compensate him for that time based on his regular wages if no charges arise from the interrogation.

(b) *Immediately before the interrogation or hearing begins, inform the officer orally on the record that:*

(1) He is required to provide a statement and answer questions related to his alleged misconduct; and

(2) If he fails to provide such a statement or to answer any such questions, the agency may charge him with insubordination.

(c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the *peace* officer.

~~(c)~~ (d) Allow the *peace* officer to explain an answer or refute a negative implication which results from questioning during an interrogation or hearing.

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

289.070 1. ~~An investigation of a peace officer may be conducted in response to an allegation that the officer has engaged in activities which could result in punitive action. The~~ *During an*

investigation conducted pursuant to section 2 of this act, the peace officer against whom the allegation is made may, but is not required to, 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,}~~ *3*, 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 of a peace officer must assist the peace officer during the interrogation or hearing. The law enforcement agency conducting the interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such*

explanation to be provided after the agency has concluded its initial questioning of the peace officer.

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

~~[3.]~~ 4. 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.

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

~~[4.]~~ 5. The peace officer, *any representative of the peace officer or the law enforcement agency may make* a stenographic, *digital* or magnetic record of the interrogation or hearing. If the agency records the proceedings, the agency shall at the officer's request and expense provide a copy of the:

- (a) Stenographic transcript of the proceedings; or
- (b) Recording on the *digital or* magnetic tape.

6. *After the conclusion of the investigation, the peace officer who was the subject of the investigation or any representative of the peace officer may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents contained in the file.*

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

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

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

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

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

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

3. Such a review board must be appointed by the governing body from a list of names submitted by interested persons. If an insufficient number of names of interested persons is submitted, the

governing body shall appoint the remaining members in the manner it deems appropriate.

4. A person appointed to the review board must:

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

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

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

289.383 1. If a metropolitan police department has been formed pursuant to NRS 280.110, the metropolitan police committee on fiscal affairs may request the participating political subdivisions to create a review board to advise the committee on issues concerning peace officers employed by the metropolitan police department. The participating subdivisions may jointly create such a review board by mutual ordinances.

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

3. A person appointed to the review board must:

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

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

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

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

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

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

4. A person appointed to a campus review board:

(a) Must be a resident of this State;

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

(c) Must complete training relating to law enforcement before serving as a member of the campus review board, including, without limitation, training in the policies and procedures of the Police Department for the System, the provisions of chapter 284 of NRS, the regulations adopted pursuant thereto and NRS 289.010 to 289.120, inclusive, *and sections 2 and 3 of this act* and the terms and conditions of employment of the peace officers of the System; and

(d) Shall serve without salary, but may receive from the System such per diem allowances and travel expenses as are authorized by the Board of Regents.