

SENATE BILL NO. 396—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing an investigation of a peace officer by a law enforcement agency. (BDR 23-1098)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 certain provisions governing peace officers applicable to a peace officer who is a probationary employee of a law enforcement agency; revising provisions governing the review by a peace officer of administrative or investigative files maintained by a law enforcement agency; revising provisions governing investigations of or hearings concerning peace officers that are conducted by a law enforcement agency; providing for the civil liability of a law enforcement agency for a violation of certain provisions governing peace officers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, a law enforcement agency that investigates an allegation of
2 misconduct by a peace officer or takes any punitive action against the peace officer
3 must comply with certain requirements for providing notice and a hearing, using
4 polygraphic examinations, maintaining confidentiality and taking other actions
5 relating to the rights of the peace officer. (NRS 289.010-289.120) **Section 1** of this
6 bill expands the definition of "peace officer" to include a peace officer who is a
7 probationary employee of a law enforcement agency. **Section 1** also expands the
8 definition of "punitive action" to include the termination of employment of a
9 probationary peace officer by a law enforcement agency. (NRS 289.010) **Section 2**
10 of this bill authorizes a peace officer who is the subject of an investigation by a law
11 enforcement agency to review any administrative or investigative file maintained
12 by the law enforcement agency concerning the investigation if, after the conclusion
13 of the investigation, the charges against the peace officer are sustained and the law
14 enforcement agency imposes or considers the imposition of punitive action against



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the peace officer. (NRS 289.057) **Section 3** of this bill requires a law enforcement agency that intends to conduct an interrogation or to hold a hearing concerning an investigation of a peace officer to provide a written notice of that fact to both the peace officer who is the subject of the investigation and to any peace officer believed by the law enforcement agency to have knowledge of any fact concerning the complaint or allegation made against the peace officer who is the subject of the investigation. **Section 3** also requires the law enforcement agency to allow the peace officer to review certain compiled evidence prepared by the peace officer before conducting the interrogation or hearing and prohibits the law enforcement agency from taking various other actions concerning the peace officer. (NRS 289.060) **Section 4** of this bill provides that a law enforcement agency which violates certain provisions governing the rights of peace officers is civilly liable to the peace officer for damages in the amount of \$25,000 for each violation, in addition to any actual damages and reasonable attorney's fees and costs incurred by the peace officer because of the violation. **Section 4** also requires the arbitrator or court which makes the determination that the law enforcement agency committed the violation to make certain specific findings concerning the violation. (NRS 289.095) **Sections 5 and 6** of this bill ensure that the limitation set forth in existing law concerning the amount of damages that may be awarded against an officer or employee of the State or a political subdivision of the State does not apply to an award of damages made pursuant to **section 4**.

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

Section 1. 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 NRS 289.057 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.

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. *The term includes a peace officer who is a probationary employee of a law enforcement agency.*

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. *The term includes a nonconfirmation of employment, dismissal or any other refusal of a law enforcement agency to continue the employment of a peace officer who is a probationary employee of the law enforcement agency.*



Sec. 2. NRS 289.057 is hereby amended to read as follows:

289.057 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. A law enforcement agency shall not suspend a peace officer without pay during or pursuant to an investigation conducted pursuant to this section until all investigations relating to the matter have concluded.

3. After the conclusion of the investigation:

(a) If the ~~investigation causes a~~ *charges brought against the peace officer are sustained and, based on those charges, the* law enforcement agency ~~to impose~~:

(1) Imposes or considers the imposition of punitive action against the peace officer ~~[who was the subject of the investigation and the]~~; and

(2) The peace officer has received *a* notice of the imposition *or proposed imposition* of the punitive action, *including a notice of the right of the peace officer to attend any hearing conducted before the imposition or proposed 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. NRS 289.060 is hereby amended to read as follows:

289.060 1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide *a* written notice to the peace officer ~~[A]~~ *who is the subject of the investigation and to any peace officer believed by the law enforcement agency to have knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation. Each of those peace officers* may waive the notice required pursuant to this section.



- 1 2. The notice must include:
- 2 (a) A description of the nature of the investigation;
- 3 (b) A summary of *the* alleged misconduct of the peace officer ~~[-]~~
4 *who is the subject of the investigation;*
- 5 (c) The date, time and place of the interrogation or hearing;
- 6 (d) The name and rank of the officer in charge of the
7 investigation and the officers who will conduct any interrogation;
- 8 (e) The name of any other person who will be present at any
9 interrogation or hearing; and
- 10 (f) A statement setting forth the provisions of subsection 1 of
11 NRS 289.080.

12 3. The law enforcement agency shall:

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

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

19 (1) He is required to provide a statement and answer
20 questions related to ~~[-]~~ *the* alleged misconduct ~~[-and-]~~ *of the peace*
21 *officer who is the subject of the investigation;*

22 (2) If he fails to provide such a statement or to answer any
23 such questions, the agency may charge him with insubordination ~~[-]~~
24 *; and*

25 (3) *He is entitled to review any evidence pursuant to*
26 *subsection 4.*

27 (c) Limit the scope of the questions during the interrogation or
28 hearing to the alleged misconduct of the peace officer ~~[-]~~ *who is the*
29 *subject of the investigation.*

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

33 4. *If the law enforcement agency has any audio, video or*
34 *written evidence prepared by the peace officer, and the evidence is*
35 *compiled during the investigation, the law enforcement agency*
36 *shall allow the peace officer a reasonable period to review the*
37 *evidence off the record before the interrogation or hearing begins.*

38 5. *If a law enforcement agency has any knowledge of or a*
39 *belief that a peace officer may be subject to punitive action, the*
40 *law enforcement agency shall not, without complying with the*
41 *provisions of NRS 289.010 to 289.120, inclusive, order or*
42 *otherwise require the peace officer to provide a written statement*
43 *or memorandum concerning any involvement or activities of the*
44 *peace officer in the alleged misconduct of the peace officer who is*
45 *the subject of the investigation.*



6. *If a peace officer provides a statement or answers a question relating to the alleged misconduct of the peace officer who is the subject of the investigation pursuant to this section after he is charged or threatened to be charged with insubordination for failing to provide the statement or answer, the statement or answer must not be used against the peace officer in any criminal investigation of the peace officer.*

Sec. 4. NRS 289.085 is hereby amended to read as follows:

289.085 1. 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 NRS 289.010 to 289.120, inclusive, 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.

2. *If an arbitrator or court determines that a law enforcement agency intentionally violated a provision of NRS 289.010 to 289.120, inclusive, during an investigation of a peace officer, the law enforcement agency is civilly liable to the peace officer for damages in the amount of \$25,000 for each violation, in addition to the amount of any actual damages and reasonable attorney's fees and costs incurred by the peace officer because of the violation. The arbitrator or court shall include in its determination a specific finding:*

(a) *That the law enforcement agency engaged in misconduct;*

(b) *Setting forth each violation committed by the law enforcement agency; and*

(c) *Setting forth the amount of any damages awarded pursuant to this section.*

3. *If an arbitrator awards a peace officer any damages or reasonable attorney's fees and costs pursuant to this section, the peace officer may confirm the award pursuant to NRS 38.239.*

Sec. 5. NRS 41.035 is hereby amended to read as follows:

41.035 1. ~~[An]~~ *Except as otherwise provided in NRS 289.085, an award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the State or any political subdivision, immune contractor or State Legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of \$75,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant. An award may not include any amount as exemplary or punitive damages.*

2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action



1 sounding in tort and arising from any recreational activity or
2 recreational use of land or water which is brought against:

3 (a) Any public or quasi-municipal corporation organized under
4 the laws of this State.

5 (b) Any person with respect to any land or water leased or
6 otherwise made available by that person to any public agency.

7 (c) Any Indian tribe, band or community whether or not a fee is
8 charged for such activity or use. The provisions of this paragraph do
9 not impair or modify any immunity from liability or action existing
10 on February 26, 1968, or arising after February 26, 1968, in favor of
11 any Indian tribe, band or community.

12 ➤ The Legislature declares that the purpose of this subsection is to
13 effectuate the public policy of the State of Nevada by encouraging
14 the recreational use of land, lakes, reservoirs and other water owned
15 or controlled by any public or quasi-municipal agency or
16 corporation of this State, wherever such land or water may be
17 situated.

18 **Sec. 6.** NRS 41.035 is hereby amended to read as follows:

19 41.035 1. ~~[An]~~ *Except as otherwise provided in NRS*
20 *289.085, an* award for damages in an action sounding in tort
21 brought under NRS 41.031 or against a present or former officer or
22 employee of the State or any political subdivision, immune
23 contractor or State Legislator arising out of an act or omission
24 within the scope of his public duties or employment may not exceed
25 the sum of \$100,000, exclusive of interest computed from the date
26 of judgment, to or for the benefit of any claimant. An award may not
27 include any amount as exemplary or punitive damages.

28 2. The limitations of subsection 1 upon the amount and nature
29 of damages which may be awarded apply also to any action
30 sounding in tort and arising from any recreational activity or
31 recreational use of land or water which is brought against:

32 (a) Any public or quasi-municipal corporation organized under
33 the laws of this State.

34 (b) Any person with respect to any land or water leased or
35 otherwise made available by that person to any public agency.

36 (c) Any Indian tribe, band or community whether or not a fee is
37 charged for such activity or use. The provisions of this paragraph do
38 not impair or modify any immunity from liability or action existing
39 on February 26, 1968, or arising after February 26, 1968, in favor of
40 any Indian tribe, band or community.

41 ➤ The Legislature declares that the purpose of this subsection is to
42 effectuate the public policy of the State of Nevada by encouraging
43 the recreational use of land, lakes, reservoirs and other water owned
44 or controlled by any public or quasi-municipal agency or



1 corporation of this State, wherever such land or water may be
2 situated.

3 **Sec. 7.** 1. This section and sections 1 to 5, inclusive, of this
4 act become effective on October 1, 2009.

5 2. Section 5 of this act expires by limitation on September 30,
6 2011.

7 3. Section 6 of this act becomes effective on October 1, 2011.

