

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; 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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a law enforcement agency that investigates an allegation of misconduct by a peace officer or takes any punitive action against the peace officer must comply with certain requirements for providing notice and a hearing, using polygraphic examinations, maintaining confidentiality and taking other actions relating to the rights of the peace officer. (NRS 289.010-289.120)

Section 2 of this bill authorizes a peace officer who is the subject of an investigation by a law enforcement agency to review and copy any administrative or investigative file maintained by the law enforcement agency concerning the investigation if, after the conclusion of the investigation, the charges against the peace officer are sustained and the law enforcement agency imposes or considers the imposition of punitive action against 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 law enforcement agency before conducting the interrogation or hearing and prohibits the law enforcement agency from taking



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various other actions concerning the peace officer. (NRS 289.060) Finally, **section 3** provides that, 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 an investigation after he is informed that failure to provide the statement or answer may result in punitive action against him, the peace officer's answer or statement cannot be used against him in any criminal investigation of him.

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

Section 1. (Deleted by amendment.)

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 *and copy* 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



1 investigation or the imposition of punitive action after the record is
2 required to be removed from the administrative file.

3 **Sec. 3.** NRS 289.060 is hereby amended to read as follows:

4 289.060 1. Except as otherwise provided in this subsection, a
5 law enforcement agency shall, not later than 48 hours before any
6 interrogation or hearing is held relating to an investigation
7 conducted pursuant to NRS 289.057, provide **a** written notice to the
8 peace officer ~~[-A]~~ **who is the subject of the investigation and to**
9 **any** peace officer **believed by the law enforcement agency to have**
10 **knowledge of any fact relating to the complaint or allegation**
11 **against the peace officer who is the subject of the investigation.**
12 **Each of those peace officers** may waive the notice required
13 pursuant to this section.

14 2. The notice must include:

15 (a) A description of the nature of the investigation;

16 (b) A summary of **the** alleged misconduct of the peace officer ~~[-]~~
17 **who is the subject of the investigation;**

18 (c) The date, time and place of the interrogation or hearing;

19 (d) The name and rank of the officer in charge of the
20 investigation and the officers who will conduct any interrogation;

21 (e) The name of any other person who will be present at any
22 interrogation or hearing; and

23 (f) A statement setting forth the provisions of subsection 1 of
24 NRS 289.080.

25 3. The law enforcement agency shall:

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

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

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

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

38 **(3) He is entitled to review any evidence pursuant to**
39 **subsection 4.**

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

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



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1 4. If the law enforcement agency has any audio, video or
2 written evidence prepared by the peace officer, and the evidence is
3 compiled during the investigation, the law enforcement agency
4 shall allow the peace officer a reasonable period to review the
5 evidence off the record before the interrogation or hearing begins.

6 5. If a law enforcement agency has any knowledge of or a
7 belief that a peace officer may be subject to punitive action, the
8 law enforcement agency shall not, without complying with the
9 provisions of NRS 289.010 to 289.120, inclusive, order or
10 otherwise require the peace officer to provide a written statement
11 or memorandum concerning any involvement or activities of the
12 peace officer in the alleged misconduct of the peace officer who is
13 the subject of the investigation.

14 6. If a peace officer provides a statement or answers a
15 question relating to the alleged misconduct of the peace officer
16 who is the subject of the investigation pursuant to this section
17 after the peace officer is informed that failing to provide the
18 statement or answer may result in punitive action against him, the
19 statement or answer must not be used against the peace officer
20 who provided the statement or answer in any criminal
21 investigation of that peace officer.

22 Sec. 4. (Deleted by amendment.)

23 Sec. 5. (Deleted by amendment.)

24 Sec. 6. (Deleted by amendment.)

25 Sec. 7. This act becomes effective on July 1, 2009.

