

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 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



21 action against him, the peace officer's answer or statement cannot be used against
22 him in any criminal investigation of him.

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

- 1 **Section 1.** (Deleted by amendment.)
2 **Sec. 2.** NRS 289.057 is hereby amended to read as follows:
3 289.057 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. A law enforcement agency shall not suspend a peace officer
8 without pay during or pursuant to an investigation conducted
9 pursuant to this section until all investigations relating to the matter
10 have concluded.
11 3. After the conclusion of the investigation:
12 (a) If the ~~investigation causes a~~ *charges brought against the*
13 *peace officer are sustained and, based on those charges, the* law
14 enforcement agency ~~to impose~~ :
15 *(1) Imposes or considers the imposition of* punitive action
16 against the peace officer ~~who was the subject of the investigation~~
17 ~~and the~~ ; and
18 *(2) The* peace officer has received *a* notice of the imposition
19 *or proposed imposition* of the punitive action, *including a notice of*
20 *the right of the peace officer to attend any hearing conducted*
21 *before the imposition or proposed imposition of the punitive*
22 *action,*
23 ↪ the peace officer or a representative authorized by the peace
24 officer may, except as otherwise prohibited by federal or state law,
25 review *and copy* any administrative or investigative file maintained
26 by the law enforcement agency relating to the investigation,
27 including any recordings, notes, transcripts of interviews and
28 documents.
29 (b) If, pursuant to a policy of a law enforcement agency or a
30 labor agreement, the record of the investigation or the imposition of
31 punitive action is subject to being removed from any administrative
32 file relating to the peace officer maintained by the law enforcement
33 agency, the law enforcement agency shall not, except as otherwise
34 required by federal or state law, keep or make a record of the
35 investigation or the imposition of punitive action after the record is
36 required to be removed from the administrative file.
37 **Sec. 3.** NRS 289.060 is hereby amended to read as follows:
38 289.060 1. Except as otherwise provided in this subsection, a
39 law enforcement agency shall, not later than 48 hours before any



1 interrogation or hearing is held relating to an investigation
2 conducted pursuant to NRS 289.057, provide **a** written notice to the
3 peace officer ~~[-A]~~ **who is the subject of the investigation and to**
4 **any peace officer believed by the law enforcement agency to have**
5 **knowledge of any fact relating to the complaint or allegation**
6 **against the peace officer who is the subject of the investigation.**
7 **Each of those peace officers** may waive the notice required
8 pursuant to this section.

9 2. The notice must include:

- 10 (a) A description of the nature of the investigation;
11 (b) A summary of **the** alleged misconduct of the peace officer ~~[-]~~
12 **who is the subject of the investigation;**
13 (c) The date, time and place of the interrogation or hearing;
14 (d) The name and rank of the officer in charge of the
15 investigation and the officers who will conduct any interrogation;
16 (e) The name of any other person who will be present at any
17 interrogation or hearing; and
18 (f) A statement setting forth the provisions of subsection 1 of
19 NRS 289.080.

20 3. The law enforcement agency shall:

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

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

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

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

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

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

38 **4. If a peace officer provides a statement or answers a**
39 **question relating to the alleged misconduct of the peace officer**
40 **who is the subject of the investigation pursuant to this section**
41 **after the peace officer is informed that failing to provide the**
42 **statement or answer may result in punitive action against him, the**
43 **statement or answer must not be used against the peace officer**
44 **who provided the statement or answer in any criminal**
45 **investigation of that peace officer.**



- 1 **Sec. 4.** (Deleted by amendment.)
- 2 **Sec. 5.** (Deleted by amendment.)
- 3 **Sec. 6.** (Deleted by amendment.)
- 4 **Sec. 7.** This act becomes effective on July 1, 2009.

