

ASSEMBLY BILL NO. 265—ASSEMBLYMAN DALY (BY REQUEST)

MARCH 11, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the rights of peace officers. (BDR 23-716)

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 the circumstances under which a law enforcement agency is prohibited from suspending a peace officer without pay during an investigation; authorizing a representative of a peace officer to attend an interview with the peace officer under certain circumstances; requiring a law enforcement agency to revise a peace officer's work schedule for attending certain hearings and administrative proceedings; prohibiting the use in a criminal proceeding of a statement or answer of a peace officer obtained during an investigation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a law enforcement agency to conduct an investigation of a peace officer in response to a complaint or allegation that the peace officer has engaged in activities which may result in punitive action. Existing law prohibits the law enforcement agency from suspending the peace officer without pay during the investigation until all investigations relating to the matter have concluded. (NRS 289.057) **Section 1** of this bill prohibits the law enforcement agency from suspending the peace officer without pay except as otherwise provided in a collective bargaining agreement.

Existing law requires a law enforcement agency to notify a peace officer not later than 48 hours before conducting any interrogation or hearing relating to an investigation of the peace officer. (NRS 289.060) **Section 1.5** of this bill imposes additional requirements by requiring the law enforcement agency to provide a written notice to any other peace officer the law enforcement agency believes has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation. The written notice must advise the peace officer that he or she must appear and be interviewed as a witness in



connection with the investigation. **Section 1.5** also limits the use of certain evidence discovered during the course of an investigation or hearing and prohibits the use of certain statements or answers made by a peace officer in any subsequent criminal proceeding.

Existing law further provides that, if a peace officer is the subject of an investigation of alleged misconduct, a law enforcement agency must interrogate the peace officer during his or her regular working hours, if practical, or compensate the peace officer for his or her time based on the peace officer's wages, if no charges arise from the interrogation. (NRS 289.060) **Section 1.5** of this bill deletes the requirement for the payment of compensation to the peace officer and instead requires the law enforcement agency to revise the peace officer's work schedule to allow any time that is required for the interrogation to be deemed a part of the peace officer's regular working hours. If the law enforcement agency does not interrogate the peace officer during his or her regular working hours and the peace officer receives a notice to appear for an interrogation at a time that he or she is off duty, **section 1.5** requires the peace officer to be compensated for appearing at the interrogation based on his or her wages and any other benefits he or she is entitled to receive. **Section 1.5** also applies these provisions to a peace officer who is interviewed as a witness in connection with an investigation.

Existing law authorizes a peace officer who is the subject of an investigation of alleged misconduct to have two representatives present during the interrogation and hearing concerning the investigation. Any such representative is required, except under certain circumstances, to keep all information he or she learns concerning the investigation confidential. (NRS 289.080) **Section 1.7** of this bill authorizes a peace officer who is a witness in an investigation to have two representatives present during an interview conducted concerning the investigation. **Section 1.7** also requires any such representative to keep all information he or she learns concerning the investigation confidential.

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

Section 1. 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]~~ *Except as otherwise provided in a collective bargaining agreement, 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 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



1 administrative or investigative file maintained by the law
2 enforcement agency relating to the investigation, including any
3 recordings, notes, transcripts of interviews and documents.

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

12 **Sec. 1.5.** NRS 289.060 is hereby amended to read as follows:

13 289.060 1. Except as otherwise provided in this subsection, a
14 law enforcement agency shall, not later than 48 hours before any
15 interrogation or hearing is held relating to an investigation
16 conducted pursuant to NRS 289.057, provide *a* written notice to the
17 peace officer ~~[.A]~~ *who is the subject of the investigation. If the law*
18 *enforcement agency believes that any other peace officer has any*
19 *knowledge of any fact relating to the complaint or allegation*
20 *against the peace officer who is the subject of the investigation,*
21 *the law enforcement agency shall provide a written notice to the*
22 *peace officer advising the peace officer that he or she must appear*
23 *and be interviewed as a witness in connection with the*
24 *investigation. Any peace officer who serves as a witness during an*
25 *interview must be allowed a reasonable opportunity to arrange for*
26 *the presence and assistance of a representative authorized by NRS*
27 *289.080. Any* peace officer *specified in this subsection* may waive
28 the notice required pursuant to this section.

29 2. The notice *provided to the peace officer who is the subject*
30 *of the investigation* must include:

31 (a) A description of the nature of the investigation;
32 (b) A summary of alleged misconduct of the peace officer;
33 (c) The date, time and place of the interrogation or hearing;
34 (d) The name and rank of the officer in charge of the
35 investigation and the officers who will conduct any interrogation ~~[.]~~
36 *or hearing;*

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

39 (f) A statement setting forth the provisions of subsection 1 of
40 NRS 289.080.

41 3. The law enforcement agency shall:

42 (a) ~~[Interrogate]~~ *Interview or interrogate* the peace officer
43 during the peace officer's regular working hours, if reasonably
44 practicable, or ~~[compensate the peace officer for that time based on~~
45 ~~the peace officer's regular wages if no charges arise from the~~



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~~interrogation.]~~ *revise the peace officer's work schedule to allow any time that is required for the interview or interrogation to be deemed a part of the peace officer's regular working hours. Any such time must be calculated based on the peace officer's regular wages for his or her regularly scheduled working hours. If the peace officer is not interviewed or interrogated during his or her regular working hours or if his or her work schedule is not revised pursuant to this paragraph and the law enforcement agency notifies the peace officer to appear at a time when he or she is off duty, the peace officer must be compensated for appearing at the interview or interrogation based on the wages and any other benefits the peace officer is entitled to receive for appearing at the time set forth in the notice.*

(b) Immediately before ~~[the]~~ *any* interrogation or hearing begins, inform the peace officer *who is the subject of the investigation* orally on the record that:

(1) The peace officer is required to provide a statement and answer questions related to the peace officer's alleged misconduct; and

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

(c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer ~~[]~~ *who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.*

(d) Allow the peace officer *who is the subject of the investigation or who is a witness in the investigation* to explain an answer or refute a negative implication which results from questioning during an *interview*, interrogation or hearing.

4. If a peace officer provides a statement or answers a question relating to the alleged misconduct of a peace officer who is the subject of an investigation pursuant to NRS 289.057 after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him or her, the statement or answer must not be used against the peace officer who provided the statement or answer in any subsequent criminal proceeding.



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Sec. 1.7. NRS 289.080 is hereby amended to read as follows:

289.080 1. Except as otherwise provided in subsection ~~{3.}~~ **4**, a peace officer *who is the subject of an investigation conducted pursuant to NRS 289.057* may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to ~~{an} the~~ investigation, ~~{conducted pursuant to NRS 289.057.}~~ including, without limitation, a lawyer, a representative of a labor union or another peace officer.

2. *Except as otherwise provided in subsection 4, a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview.*

3. A representative of a peace officer must assist the peace officer during the *interview*, interrogation or hearing. The law enforcement agency conducting the *interview*, 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.}~~ **4.** A representative must not otherwise be connected to, or the subject of, the same investigation.

~~{4.}~~ **5.** Any information that a representative obtains from the peace officer *who is a witness* concerning the investigation is confidential and must not be disclosed.

6. *Any information that a representative obtains from the peace officer who is the subject of 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 a representative for the representative's failure or refusal to disclose such information.

~~{5.}~~ **7.** The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the *interview*, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the:

- (a) Stenographic transcript of the proceedings; or



1 (b) Recording on the digital or magnetic tape.

2 ~~[6-]~~ 8. After the conclusion of the investigation, the peace
3 officer who was the subject of the investigation or any
4 representative of the peace officer may, if the peace officer appeals
5 a recommendation to impose punitive action, review and copy the
6 entire file concerning the internal investigation, including, without
7 limitation, any recordings, notes, transcripts of interviews and
8 documents contained in the file.

9 **Sec. 2.** (Deleted by amendment.)

10 **Sec. 3.** This act becomes effective on July 1, 2011.

