

Amendment No. 392

Assembly Amendment to Assembly Bill No. 265

(BDR 23-716)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

JRS/BJE



Date: 4/25/2011

A.B. No. 265—Revises provisions governing the rights of peace officers.
(BDR 23-716)



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; ~~requiring a law enforcement agency to release a peace officer from his or her regular working hours to attend certain hearings and administrative proceedings under certain circumstances;~~ 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 ~~compensate~~ revise a peace officer's work schedule for attending certain hearings and administrative proceedings; ~~providing a civil penalty for certain violations of the rights of a peace officer;~~ 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.

Finally, existing law provides that, if a peace officer is the subject of an investigation of alleged misconduct, ~~existing law provides that~~ 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 of this bill requires instead that any time a peace officer is required to attend any interrogation, hearing or administrative proceeding concerning the peace officer, such interrogation, hearing or administrative proceeding must be held during the peace officer's regular working hours, or the peace officer must be released from his or her regular working hours the day before the interrogation, hearing or administrative proceeding and must be compensated for the day of the interrogation, hearing or administrative proceeding at his or her regular wages.~~

~~Existing law provides that, if prejudicial evidence is obtained in violation of a peace officer's rights during an investigation of the peace officer which could result in punitive action, that evidence is inadmissible in any administrative proceeding or civil action against the peace officer. (NRS 289.085) Section 2 of this bill provides that, in addition to the exclusion of the evidence, a person who violates a peace officer's rights intentionally, knowingly or willfully in such an investigation is liable to the peace officer for a civil penalty of not more than \$5,000, plus reasonable attorney's fees and costs.] 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.~~

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 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.

~~Section 1.1~~ *Sec. 1.5* 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 ~~who is the subject of the investigation.~~ who is the subject of the investigation. If the law enforcement agency believes that any other peace officer has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation, the law enforcement agency shall provide a written notice to the peace officer advising the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. Any peace officer who serves as a witness during an interview must be allowed a reasonable opportunity to arrange for a representative chosen by the peace officer to attend the interview with the peace officer. Such a representative must not include the peace officer who is the subject of the investigation or any other witness who the law enforcement agency believes may have knowledge of any fact relating to the investigation. Any peace officer specified in this subsection may waive the notice required pursuant to this section.

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

- (a) A description of the nature of the investigation;
- (b) A summary of alleged misconduct of the peace officer ~~and any other peace officer whom the law enforcement agency is investigating in connection with the complaint or allegation;~~
- (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 ~~or hearing;~~
- (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 the peace officer's regular working hours, if reasonably practicable, or compensate the peace officer for that time based on the peace officer's regular wages if no charges arise from the interrogation.~~ revise the peace officer's work schedule to allow any time that is required for the interrogation or for any hearing 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 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 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)~~ (b) Immediately before ~~the~~ any interrogation or hearing begins, inform the peace officer 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) ((b))~~ Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer. 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) ((e))~~ Allow the peace officer to explain an answer or refute a negative implication which results from questioning during an interrogation or hearing.

~~4. If a peace officer is required to attend any interrogation, hearing or other administrative proceeding held relating to an investigation of the peace officer conducted pursuant to NRS 289.057 or any internal administrative grievance procedure conducted pursuant to NRS 289.020, the law enforcement agency shall:~~

~~(a) If the law enforcement agency interrogates the peace officer, interrogate the peace officer during the peace officer's regular working hours, if reasonably practicable; or~~

~~(b) Release the peace officer from his or her regular working hours the day before the interrogation, hearing or other administrative proceeding and compensate the peace officer for the day of the interrogation, hearing or other administrative proceeding based on the peace officer's regular wages.} 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.~~

~~Sec. 2. [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. A person who intentionally, knowingly or willfully violates a provision of NRS 289.010 to 289.120, inclusive, during an investigation of a peace officer is liable for a civil penalty of not more than \$5,000 for each violation, payable to the peace officer, together with reasonable attorney's fees and costs.} (Deleted by amendment.)~~

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