

Amendment No. 746

Senate Amendment to Assembly Bill No. 265 First Reprint (BDR 23-716)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No 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.

SRT/HAC



Date: 5/24/2011

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; 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.

Finally, existing law 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.

Under existing law, a peace officer who is the subject of an investigation conducted pursuant to NRS 289.057 is authorized 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 to have two representatives present during an interview conducted concerning the investigation. Section 1.7 also requires, except in certain circumstances, 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 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. 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 ~~[A]~~ *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*

1 *investigation. Any peace officer who serves as a witness during an interview must*
2 *be allowed a reasonable opportunity to arrange for ~~a representative chosen by~~*
3 *~~the peace officer to attend the interview with the peace officer. Such a~~*
4 *~~representative must not include the peace officer who is the subject of the~~*
5 *~~investigation or any other witness who the law enforcement agency believes may~~*
6 *~~have knowledge of any fact relating to the investigation.~~ the presence and*
7 *assistance of a representative authorized by NRS 289.080. Any peace officer*
8 *specified in this subsection may waive the notice required pursuant to this section.*

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

- 11 (a) A description of the nature of the investigation;
12 (b) A summary of alleged misconduct of the peace officer : ~~and any other~~
13 ~~peace officer whom the law enforcement agency is investigating in connection~~
14 ~~with the complaint or allegation;~~
15 (c) The date, time and place of the interrogation or hearing;
16 (d) The name and rank of the officer in charge of the investigation and the
17 officers who will conduct any interrogation ~~+~~ *or hearing;*
18 (e) The name of any other person who will be present at any interrogation or
19 hearing; and

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

21 3. The law enforcement agency shall:

22 (a) ~~Interrogate~~ *Interview a peace officer who is a witness or interrogate* the
23 peace officer *who is the subject of the investigation* during the peace officer's
24 regular working hours, if reasonably practicable, or ~~compensate the peace officer~~
25 ~~for that time based on the peace officer's regular wages if no charges arise from the~~
26 ~~interrogation.~~ *revise the peace officer's work schedule to allow any time that is*
27 *required for the interview or interrogation for for any hearing* to be deemed a
28 *part of the peace officer's regular working hours. Any such time must be*
29 *calculated based on the peace officer's regular wages for his or her regularly*
30 *scheduled working hours. If the peace officer is not interviewed or interrogated*
31 *during his or her regular working hours or if his or her work schedule is not*
32 *revised pursuant to this paragraph and the law enforcement agency notifies the*
33 *peace officer to appear at a time when he or she is off duty, the peace officer must*
34 *be compensated for appearing at the interview or interrogation based on the*
35 *wages and any other benefits the peace officer is entitled to receive for appearing*
36 *at the time set forth in the notice.*

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

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

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

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

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

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

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

8 289.080 1. Except as otherwise provided in subsection ~~2~~ 4, a peace
9 officer who is the subject of an investigation conducted pursuant to NRS 289.057
10 may upon request have two representatives of the peace officer's choosing present
11 with the peace officer during any phase of an interrogation or hearing relating to
12 ~~and the investigation, conducted pursuant to NRS 289.057,~~ including, without
13 limitation, a lawyer, a representative of a labor union or another peace officer.

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

21 3. A representative of a peace officer must assist the peace officer during the
22 interview, interrogation or hearing. The law enforcement agency conducting the
23 interview, interrogation or hearing shall allow a representative of the peace officer
24 to explain an answer provided by the peace officer or refute a negative implication
25 which results from questioning of the peace officer but may require such
26 explanation to be provided after the agency has concluded its initial questioning of
27 the peace officer.

28 ~~4~~ 4. A representative must not otherwise be connected to, or the subject of,
29 the same investigation.

30 ~~4~~ 5. Any information that a representative obtains from the peace officer
31 who is the subject of the investigation or a peace officer who is a witness
32 concerning the investigation is confidential and must not be disclosed except upon
33 the:

34 (a) Request of the peace officer; or

35 (b) Lawful order of a court of competent jurisdiction.

36 ↪ A law enforcement agency shall not take punitive action against a representative
37 for the representative's failure or refusal to disclose such information.

38 ~~5~~ 6. The peace officer ~~4~~ who is the subject of the investigation, any
39 representative of the peace officer or the law enforcement agency may make a
40 stenographic, digital or magnetic record of the interview, interrogation or hearing.
41 If the agency records the proceedings, the agency shall at the peace officer's request
42 and expense provide a copy of the:

43 (a) Stenographic transcript of the proceedings; or

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

45 ~~6~~ 7. After the conclusion of the investigation, the peace officer who was
46 the subject of the investigation or any representative of the peace officer may, if the
47 peace officer appeals a recommendation to impose punitive action, review and copy
48 the entire file concerning the internal investigation, including, without limitation,
49 any recordings, notes, transcripts of interviews and documents contained in the file.

50 Sec. 2. (Deleted by amendment.)

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