

Amendment No. 437

Senate Amendment to Senate Bill No. 144

(BDR 23-100)

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.

NCA/BAW



Date: 4/21/2013

S.B. No. 144—Revises provisions governing the investigation of peace officers.
(BDR 23-100)



SENATE BILL NO. 144—SENATOR SEGERBLOM

FEBRUARY 18, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the investigation of peace officers.
(BDR 23-100)

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 investigation of peace officers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a law enforcement agency to provide notice to a peace officer before any interrogation or hearing is held in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action. (NRS 289.060) **Section 1** of this bill requires that such notice must include the right to review ~~any administrative or investigative file~~ certain audio or video recordings before the interrogation or hearing is held.

Existing law also authorizes a peace officer who is the subject of an investigation, in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action, to have two representatives present during any phase of an interview, interrogation or hearing related to the investigation. (NRS 289.080) **Section 2** of this bill provides that a peace officer who is the subject of such an investigation: (1) may not be precluded from having a representative present; (2) may not be limited to having only one representative; and (3) may have two representatives present during any phase of an interview, interrogation or hearing related to the investigation. **Section 2** also provides that a peace officer who is a witness in such an investigation: (1) may not be precluded from having a representative present; (2) may not be limited to having only one representative; and (3) may have two representatives during an interview relating to the investigation. ~~Finally, section 1 limits the admissibility of a statement made by a peace officer.~~

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

Section 1. 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. 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 the presence and assistance of a representative authorized by NRS 289.080. 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;
- (c) ~~The right to, except as otherwise prohibited by federal or state law, to review before the interrogation or hearing any administrative or investigative file maintained by the law enforcement agency relating to the investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents, to review any audio or video recording pursuant to subsection 3;~~
(d) The date, time and place of the interrogation or hearing;
- ~~(e)~~ (e) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation or hearing;
- ~~(f)~~ (f) The name of any other person who will be present at any interrogation or hearing; and
- ~~(g)~~ (g) A statement setting forth the provisions of subsection 1 of NRS 289.080.

3. Immediately before any interrogation or hearing begins, the peace officer who is the subject of the investigation must be afforded the right to review, except as otherwise provided in this subsection, as otherwise prohibited by federal or state law or as proscribed by the officer in charge of the investigation, any audio or video recording of any incident relating to the complaint or allegation against the peace officer that is in the possession of the law enforcement agency. Such an audio or video recording of the incident:

- (a) May include, without limitation, any:
 - (1) Audio or video recording taken from a dashboard camera;
 - (2) Footage from a surveillance camera in a residential or commercial location; or
 - (3) Footage from a camera located in an interview room.
- (b) Must not include an audio or video recording of any complainant or witness.

4. The law enforcement agency shall:

(a) Interview or interrogate the peace officer during the peace officer's regular working hours, if reasonably practicable, or 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 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.

~~4.4~~ 5. 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.

~~5. A statement made by a peace officer pursuant to this section is not admissible in any administrative proceeding or civil action, except:~~

~~(a) When the employing law enforcement agency is seeking civil sanctions against a peace officer, including disciplinary action;~~

~~(b) When the statement is made by a peace officer who is under interrogation in an administrative proceeding or civil action brought by the peace officer or the peace officer's representative, arising out of a disciplinary action; or~~

~~(c) When the statement is made by a peace officer who is under interrogation, and the statement is used to impeach the testimony of the peace officer, after an in camera review to determine whether the statement serves to impeach the peace officer's testimony.~~

Sec. 2. NRS 289.080 is hereby amended to read as follows:

289.080 1. Except as otherwise provided in subsection 4, a peace officer who is the subject of an investigation conducted pursuant to NRS 289.057 ~~may~~ upon :

(a) May not be precluded from having a representative;

(b) May not be limited to having only one representative; and

(c) May, upon request, have two representatives ~~of the peace officer's choosing~~, who may not be chosen by the employer, present with the peace officer during any phase of an interrogation or hearing relating to the investigation, 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~~ :

(a) May not be precluded from having a representative;

(b) May not be limited to having only one representative; and

(c) May, upon request, have two representatives ~~of the peace officer's choosing~~, who may not be chosen by the employer, 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.

1 3. A representative of a peace officer must assist the peace officer during the
2 interview, interrogation or hearing. The law enforcement agency conducting the
3 interview, interrogation or hearing shall allow a representative of the peace officer
4 to explain an answer provided by the peace officer or refute a negative implication
5 which results from questioning of the peace officer but may require such
6 explanation to be provided after the agency has concluded its initial questioning of
7 the peace officer.

8 4. A representative must not otherwise be connected to, or the subject of, the
9 same investigation.

10 5. Any information that a representative obtains from the peace officer who is
11 a witness concerning the investigation is confidential and must not be disclosed.

12 6. Any information that a representative obtains from the peace officer who is
13 the subject of the investigation is confidential and must not be disclosed except
14 upon the:

15 (a) Request of the peace officer; or

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

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

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

23 (a) Stenographic transcript of the proceedings; or

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

25 8. After the conclusion of the investigation, the peace officer who was the
26 subject of the investigation or any representative of the peace officer may, if the
27 peace officer appeals a recommendation to impose punitive action, review and copy
28 the entire file concerning the internal investigation, including, without limitation,
29 any recordings, notes, transcripts of interviews and documents contained in the file.