

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 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.



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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, 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;*

(d) The date, time and place of the interrogation or hearing;

~~(d)~~ (e) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation or hearing;

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

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

3. 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



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1 scheduled working hours. If the peace officer is not interviewed or
2 interrogated during his or her regular working hours or if his or her
3 work schedule is not revised pursuant to this paragraph and the law
4 enforcement agency notifies the peace officer to appear at a time
5 when he or she is off duty, the peace officer must be compensated
6 for appearing at the interview or interrogation based on the wages
7 and any other benefits the peace officer is entitled to receive for
8 appearing at the time set forth in the notice.

9 (b) Immediately before any interrogation or hearing begins,
10 inform the peace officer who is the subject of the investigation
11 orally on the record that:

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

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

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

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

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

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

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



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

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

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

11 289.080 1. Except as otherwise provided in subsection 4, a
12 peace officer who is the subject of an investigation conducted
13 pursuant to NRS 289.057 ~~may upon~~ :

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

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

16 *(c) May, upon request , have two representatives ~~of the peace~~*
17 *~~officer's choosing~~ , who may not be chosen by the employer,*
18 *present with the peace officer during any phase of an interrogation*
19 *or hearing relating to the investigation, including, without*
20 *limitation, a lawyer, a representative of a labor union or another*
21 *peace officer.*

22 2. Except as otherwise provided in subsection 4, a peace officer
23 who is a witness in an investigation conducted pursuant to NRS
24 289.057 ~~may upon~~ :

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

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

27 *(c) May, upon request , have two representatives ~~of the peace~~*
28 *~~officer's choosing~~ , who may not be chosen by the employer,*
29 *present with the peace officer during an interview relating to the*
30 *investigation, including, without limitation, a lawyer, a*
31 *representative of a labor union or another peace officer. The*
32 *presence of the second representative must not create an undue*
33 *delay in either the scheduling or conducting of the interview.*

34 3. A representative of a peace officer must assist the peace
35 officer during the interview, interrogation or hearing. The law
36 enforcement agency conducting the interview, interrogation or
37 hearing shall allow a representative of the peace officer to explain
38 an answer provided by the peace officer or refute a negative
39 implication which results from questioning of the peace officer but
40 may require such explanation to be provided after the agency has
41 concluded its initial questioning of the peace officer.

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



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

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

7 (a) Request of the peace officer; or

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

9 ➔ A law enforcement agency shall not take punitive action against a
10 representative for the representative's failure or refusal to disclose
11 such information.

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

17 (a) Stenographic transcript of the proceedings; or

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

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

