MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Seventh Session
March 6, 2013

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:32 p.m. on Wednesday, March 6, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Pat Spearman, Vice Chair
Senator Mark A. Manendo
Senator Pete Goicoechea
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Tick Segerblom, Senatorial District No. 3

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Heidi Chlarson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Tom Clark, Burning Man
Raymond Allen, Burning Man
Megan Miller, Burning Man
Maria Partridge, Advisory Board, Black Rock Arts Foundation
Rebecca Gasca
Ron Dreher, Police Officers Research Association of Nevada
Kirk Hooten, Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs

David Roger, Las Vegas Police Protective Association
Paul Villa, Reno Police Protective Association; Secretary, Peace Officers Research Association of Nevada
Priscilla Maloney, American Federation of State, County and Municipal Employees, AFL-CIO
Kelly Sweeney, Director, Labor Relations, Las Vegas Metropolitan Police Department
Jon Montisano, Investigator, Internal Affairs Division, Henderson Police Department
Tim Shattler, Deputy Chief, Department of Detention and Enforcement, City of Las Vegas
Jackie Muth, Lieutenant, Commander, Office of Professional Responsibility, Department of Public Safety
Michael Oh, Assistant City Attorney, City of Henderson
Chuck Callaway, Las Vegas Metropolitan Police Department
Robert Roshak, Executive Director, Nevada Sheriffs' and Chiefs' Association
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Bill Bainter, Lieutenant, Nevada Highway Patrol, Department of Public Safety
Tim Bedwell, City of North Las Vegas; Police Officer, City of North Las Vegas
Brian Daw, Clark County School District

Chair Parks:
We have two bills for consideration today, but we will open the hearing with a presentation about the Burning Man festival.

Tom Clark (Burning Man):
It has been a long time since a representative from Burning Man has made a presentation in the Legislative Building. Burning Man is a fantastic event put on in the Black Rock Desert that many people really enjoy. You should have a letter from Krys T. Bart, President and CEO of the Reno-Tahoe Airport Authority (Exhibit C), talking about the number of people from different countries coming through northern Nevada to attend this event. From the perspective of Burning Man, we have been behind the curtain for some time. It is really important, especially in these economic times, for you to see just what this event brings, not just to northern Nevada but the entire State.

Raymond Allen (Burning Man):
It is a pleasure to speak to you about what Burning Man is doing for the State and what we are all about. Our presentation contains some historical background information about Burning Man, our demographics, a summary of the economic benefit the event provides for the State as well as highlights of what our related nonprofits are accomplishing in the area and worldwide.

We developed this presentation (Exhibit D) for an audience that has never attended the event. They say a picture is worth a thousand words, and this aerial photo of Black Rock City on Slide 1 captures the essence of the event, the spirit, the collaboration and the artistic elements. Slide 3 shows the sunken pirate ship that was placed on the playa and then removed after the event.

Mr. Clark:
The pirate ship in Slide 3 was fully engineered, orchestrated, designed and built in Reno.

Mr. Allen:
The first Burning Man event was held in San Francisco in 1986, founded by Larry Harvey. Mr. Harvey built an 8-foot sculpture of a man, transported it to Baker Beach and set it on fire. There were 20 people in attendance and because it was such an incredible and moving experience, they decided to repeat the event again the next year. Fast forward a couple of years later and by 1990, there were 500 people in attendance and the event outgrew the small beach in San Francisco.

A group of artists known as the Cacophony Society in San Francisco had been coming to the Black Rock Desert for a number of years to play large bocce ball. The group thought the Black Rock Desert might be a place to hold the large-scale art and the community occurring at the Burning Man event. The event moved to the Black Rock Desert in 1990. By 1992, there were 1,000 participants, and it was the first year a permit was required by the U.S. Department of the Interior, Bureau of Land Management (BLM). This began the long history of collaboration with the BLM to put on the Burning Man event.

In 2000, U.S. Congress enacted a bill making the Black Rock Desert a National Conservation Area (NCA) with language to support large-scale recreational events. Congress was aware of Burning Man and the cultural benefits it provided to Nevada.

Slide 8 shows the peak population of Black Rock City from 1990 through 2012. We began with just a handful of folks, and last year we had 56,000 participants. There have only been a couple of years where the population dipped. In 2008, there was a little response to the economy, but it picked up again the following year.

Burning Man is founded on ten principles: radical inclusion; gifting; decommodification; radical self-reliance; radical self-expression; communal effort; civic responsibility; participation; immediacy; and leaving no trace. Decommodification means we do not sell anything or display any advertising at the event, although there is a great deal of commerce happening outside of the event in order to make it happen. Most of the principles have to do with community and people coming together to build things they could not complete alone, such as extremely large pieces of art and large interactive theme camps. Some of the large art cars take 2 years to build, and they only get driven for one week in the desert.

Often we get asked why anyone would spend 2 years building an art car that will only be driven for a week? Not only is it fun to drive the art car around in Black Rock City, but it is also fun to hang out with your friends to build something you have never been able to do before, especially if you are not a professional artist. That really captures the essence of Burning Man.

Regarding the infrastructure, it is not lawless but highly organized. Black Rock City is much like any other city in America with a department of public works and a volunteer staff that surveys, plans, builds, maintains and even removes the city once the event is over. One of the first things built is an 8.5-mile fence to demarcate the private event site from the public land. The fence is constructed by hand and completed in 1 day. Each year, the workers try to decrease the time it takes to construct the fence. We have offered to supply them with tools and mechanized equipment to construct the fence, but they prefer constructing it by hand. This gives you a feel for the folks who build Black Rock City.

The playa safety council covers all of the departments dealing with the health, safety and welfare of our participants as well as interacting with the 15 government agencies with jurisdictional oversight of the event. We have the Black Rock Rangers, emergency services, medical, fire, and a Federal Aviation Administration (FAA) and Nevada Department of Transportation (NDOT)

approved airport—the only temporary airport approved by the FAA and NDOT. The airport and everything else exists for only 1 week and is then removed.

We have a community services function, which includes a number of departments providing the resources participants will need while they are away from their homes for 8 days. We have an operating post office with its own postmark. We have coffee, ice, fully functioning radio stations with the ability to broadcast public service announcements in case of an emergency and a whole host of other resources for the participants to use.

Mr. Clark:
The only items participants can actually purchase while at the event are coffee and ice. Participants will need these elements, especially the ice, while on the playa. Proceeds from the purchase of these items are returned to the community. We do not sell beer or soda at the event. Sales only happen through the Burning Man gifting committee.

Mr. Allen:
The following information is from the census compiled from the 2012 Burning Man event. An anthropologist from the University of California, Los Angeles, has been studying Burning Man for 10 years, and this information comes from her efforts. People between the age of 30 and 49 years of age make up 46 percent of the participants. There is an additional 13 percent between the ages of 50 to 80 years and older. These ages give a sense of what the event is all about. Many people think the event only draws young kids, and if you think about what it costs to come to the desert and build that kind of art and community, you will understand it is the older folks who are participating.

We have a wide variety of income brackets as noted on Slide 14. Burning Man is a cross section of society in general. About 80 percent of participants have some college background, which denotes the education and creativity that goes into some of the artwork, for example, the land yacht that drives around Black Rock City.

Mr. Clark:
Boats are a very popular mode of transportation on the playa, and that inspired the pier that was built in Reno. From a Nevada perspective, it seems odd that the one thing people like to drive on the desert is a boat.

Mr. Allen:
Participants come from all over the world, with 71 percent from the United States, and we get participants from every state. Most participants do not arrive in Reno and go directly to the desert. Most stay in Reno at least for a day on either end of the event. Many participants fly into the event, which means they will be buying more goods and services while they are here rather than those participants who attend from Reno or Sacramento.

Chair Parks:
Did you say fly into the event?

Mr. Allen:
Participants will fly into Reno, rent a car, buy everything they need and drive to the event; then they drive back, return the car and fly out again.

Mr. Clark:
They can also fly to Burning Man's FAA- and NDOT-approved airport at the facility. We do see our more affluent citizens fly directly into Burning Man itself.

Mr. Allen:
We are currently working with the local charter companies in and around Reno to get participants into and out of Black Rock City more safely. Participants registered as Democrats make up 34 percent of those attending the event, and Republicans make up 24 percent. Then 33 percent have not limited themselves to either party. You may think this group is apolitical, but almost 83 percent of eligible voters have voted in at least one of the last four federal elections. We are not seeing a subculture at Burning Man but a cross section of America. Many of the participants attending the event are bipartisan or middle of the road politically.

I find it comical when people say Burning Man is a lawless event since we have more government agencies than most events. We work with almost every government agency at the State, federal, local and tribal level as listed on Slide 18. The Pyramid Lake Paiute Tribe is involved with our ingress and egress. We work with the Reno-Tahoe International Airport, Humboldt General Hospital CareFlight, FAA, FCC, citizen groups in Reno, Gerlach Volunteer Fire Department and other agencies. We could not put this event on without the assistance from these agencies.

Every year, our production company spends about $5 million in northern Nevada to buy goods and services necessary for the event. We also provide listings on our Website to every business in northern Nevada that engages with our participants or offers goods and services. We have folks who review the information to ensure it is current. Our participants are shopping in northern Nevada.

In 2012, participants spent $30 million in services coming into and out of the event. This information comes from the census filled out at Burning Man. We also obtain numbers to cross reference from area businesses. Calculations of $30 million divided by 56,000 participants comes out to about $535 per participant, which may be a little low. Most people are going to fly into Reno, stay in a hotel, buy gas, rent a car, and buy food, water and sunscreen.

Safari RV of Reno says Burning Man is a high-class event. It draws artists, technical people and Europeans—a good crowd that brings significant dollars to the area. Some businesses say they would not remain open if it were not for Burning Man.

Mr. Clark:
We are in Nevada, so we think about conventions. If the Safari Club International Convention comes to northern Nevada, we can say it will have so many participants who spend this much; they will spend in the casino and this much on food; and we can determine a number. The Burning Man population is considerably different than that, so it is difficult to come up with a specific number we can say the event brings in per person. The $30 million is a conservative number on what the population brings to the State. Some participants will fly into Las Vegas and then fly or drive to Reno for the event.

Senator Manendo:
Is this subject to the Live Entertainment Tax?

Mr. Clark:
Not at this time because Burning Man is considered an art festival. There will be a debate in the Assembly regarding the Live Entertainment Tax, and we will be participating in the debate.

Senator Manendo:
I am not sure if Burning Man is exempt because of the arts portion or because it is a nonprofit. The NASCAR event with 100,000 people in Las Vegas is also exempt from the Live Entertainment Tax.

Mr. Clark:
Black Rock City is a limited liability company (LLC) that has branched out in recent months to become a nonprofit. There is a transition between the corporate side and the nonprofit side. It is important to note the corporate side exists because there is tremendous liability. When the founders brought Burning Man forward, they did it as an LLC. Their legacy of planning for future years has gone toward the nonprofit model. Burning Man is an art festival at its core.

Chair Parks:
You are also exempt from the Live Entertainment Tax because it is an outdoor event and as such is not taxed.

Mr. Clark:
Yes. The Nevada Tax Commission has agreed.

Mr. Allen:
In addition to what Burning Man spends in Nevada in materials and services, we contribute to northern Nevada through fees and costs paid to several government agencies. In 2012, Burning Man paid the BLM $1.1 million, which paid for lodging of officers, travel and supplies for services used by the BLM. We also paid $700,000 in use fees, which goes toward recreation and enhancing the experiences of the Black Rock Desert to bring more tourists to the area in the off season. We find that many of our participants like the Nevada desert and want to return for additional tourism opportunities throughout the year. We paid about $1.25 million to all other agencies in 2012 for a combined total of about $3.1 million.

In addition to the fees, what the participants spend and what Burning Man spends, we also conduct charitable giving. All proceeds from ice sales at the event are donated to charities in northern Nevada that share some of our principles, with the main focus on art, civic engagement and the environment. We have focused heavily on Pershing County. Slides 23 and 24 list the recipients of Burning Man donations from the 2012 event.

Since 2003, we have given almost $400,000 in charitable donations to organizations in Pershing County. The total for all of northern Nevada since 2003 is about $560,000.

Our affiliated groups are doing other things throughout Nevada and the world. Slide 26 shows a picture on the left of the rocket ship that was at Burning Man several years ago and on the right is the same rocket ship on the Embarcadero in downtown San Francisco.

When people come to Burning Man, they are inspired when they realize they can complete projects they could never have completed by themselves. Participants can create huge art pieces even if they are not professional artists. They get excited and want to live this lifestyle all year long. Participants want to take the experience they gained at the event and share it with the rest of the world. There are many ways to do just that.

The Black Rock Arts Foundation has 501(c)(3) tax-exempt status. It takes large-scale interactive temporary art and brings it to other areas like San Francisco. The Foundation has also completed a number of projects in downtown Reno along the Riverwalk. The Black Rock Arts Foundation was created in 2001 to foster Burning Man-style art. Its mission is to put art around the world to inspire people about Burning Man and its ten principles. The Foundation also gives grants to artists to finish Burning Man-style art in other places.

Mr. Clark:
Maria Partridge is here from the Black Rock Arts Foundation to provide a presentation of what the Foundation is doing within the State with the Big Art for Small Towns project.

Mr. Allen:
We are trying to take some of the art from Burning Man and Burning Man-styled art to the smaller towns in northern Nevada. We believe this will help stimulate tourism when people stop to see the artwork because it is quite spectacular. We received a grant from the National Endowment for the Arts to create two large pieces for the town of Fernley.

Another affiliated group, Black Rock Solar, was founded in 2007 and grew out of the rebate program created by the Nevada Legislature. With those rebates

and Burning Man volunteer labor, creativity and inspiration, Black Rock Solar has donated 2.8 megawatts throughout the State. There has been so much solar power installed along Highway 447 that it was designated by former Governor Jim Gibbons as America's Solar Highway in 2010.

Burners Without Borders (BWB) was formed the year the Gulf Coast was devastated by Hurricane Katrina. There were a number of participants from the Gulf Coast attending Burning Man during the hurricane. These participants did not know if they had homes to return to; at the time, cell phone reception was spotty in Black Rock City. These people could not find out if their families or homes had survived the hurricane.

A group of folks from Burning Man left the event to take some of the heavy equipment used to build Black Rock City to the Gulf Coast and conduct relief work. They formed the BWB organization and are still providing relief work today. Burners Without Borders is conducting relief work in Peru and on the East Coast to demolish homes destroyed by Superstorm Sandy. This is extremely valuable work for the people who lost their homes because many of them do not qualify for government assistance unless the home is removed. There are not many nonprofits doing this type of work, so BWB is helping wherever they can. These people have embraced the culture of Burning Man and are doing interesting things around the world. In 2008 when the levee broke in Fernley, Burners Without Borders showed up to help with the residents who were flooded.

Mr. Clark:
When Hurricane Katrina hit the Gulf Coast, it was Labor Day weekend during the Burning Man event. We huddled in center camp to decide how we could help. We called a couple of construction companies in Reno who brought five large trucks to Black Rock City. As participants were leaving Burning Man, we collected dry goods, water and food, filling those five trucks. We also collected $42,000 in cash in less than 24 hours for the relief effort.

The community was expecting to receive people from the Gulf Coast into the Reno market, so we gave all five truckloads of food and water to the Salvation Army to be disseminated to the refugees. It was an exciting time inside the Burning Man community to be able to ask Black Rock City to help these people coming from the Gulf Coast.

Mr. Allen:
We have a global network of regional contacts and smaller events happening around the world. We have the newly created Burning Man Project, which is a 501(c)(3) nonprofit corporation. The plan is to roll all our operations into this nonprofit for sustainability and longevity so that Burning Man can continue functioning in Nevada by providing services and benefits to the State.

The external relations team is a group of folks who work for Burning Man and volunteer. The group's mission is to acculturate folks who have never attended the event who are interested in taking a tour and meeting the organizers to see our safety infrastructure. We began this program about 9 years ago and have had government officials, civic leaders, community leaders and business owners as guests. If you would like to come to Black Rock City, we will show you how the city is built, how the art is made and how the city functions.

We will close our presentation the same way we close our event each year—with fireworks and an explosion as pictured on Slides 34 and 35.

Mr. Clark:
The tours conducted by the external relations team are a good way to see the event for 1 day to understand what Burning Man is all about. You will see how the city is built and the culture of the event.

Chair Parks:
Most of the fireworks put on in Las Vegas are put on by specific fireworks experts. Who do you contract with for the pyrotechnics?

Mr. Allen:
Our pyrotechnics team is from Los Angeles. This team comprises professionals who work with Hollywood and productions around the world.

Senator Goicoechea:
An ongoing issue with the BLM regards the number of participants impacting the Black Rock Desert. Are you capped at 60,000 participants?

Mr. Allen:
Last year, we had 56,000 participants. We received an environmental assessment from the BLM which allows us to grow to 70,000 participants over the next 4 years. We applied for 64,000 participants in 2012, and we still need to negotiate with the BLM for the event this year. I anticipate we will have between 56,000 and 64,000 participants in 2013 depending on our negotiations with the BLM and ticket sales.

Senator Goicoechea:
Is it hard to get tickets?

Megan Miller (Burning Man):
Yes. We first sold out in 2011 and then sold out again in 2012. We have sold all of the tickets offered so far this year. We do intend to sell another 1,000 tickets in August.

Senator Goicoechea:
What is the price of the tickets?

Ms. Miller:
The tickets sell for $380 each.

Senator Spearman:
You mentioned there are several programs under way, and you are collaborating for a downtown project in Las Vegas. Can you elaborate?

Mr. Allen:
Burning Man is collaborating with representatives from Las Vegas on the Downtown Project. We are providing consulting services for large-scale art that Tony Hsieh, CEO of Zappos.com, wants to put into the downtown area. The idea is to get people out of the casinos and interacting with more of the smaller businesses to enliven the downtown area.

Ms. Miller:
We recently hired a full-time employee to act as a cultural ambassador for that project.

Chair Parks:
Is Burning Man copyrighted to protect your name?

Mr. Allen:
Yes. We try to strike an interesting balance between copyright and creative use. We want people to take the culture of Burning Man and gift it to others. If people are selling items, we want to enforce our trademarks. If people are gifting and staying within the ten principles of the event, then we encourage that fair use.

Chair Parks:
Since we have dry lake beds in southern Nevada, have you ever considered the Ivanpah Valley off Interstate 15? Would you look at doing something in that area?

Mr. Clark:
There was a regional event born out of Las Vegas, but it got so big the BLM said it had to have the same permits as the Burning Man event. There is a lot of Burning Man-style activity in downtown Las Vegas to promote visibility. It is bringing people into our State who would not come here normally and may not get to Gerlach for the Burning Man event, but they can participate in Las Vegas.

Chair Parks:
How is the Nevada Commission on Tourism involved with promoting Burning Man?

Mr. Clark:
Two years ago, the Commission on Tourism (NCOT) placed a photo from Burning Man on its guest book. We collaborate with NCOT on a regular basis to promote Burning Man to participants in the Bay Area and our key demographic areas to bring these people back over the hill at other times of the year. We want them to come to northern Nevada for that vacation in April, May and June when they might stay for a few days.

Maria Partridge (Advisory Board, Black Rock Arts Foundation):
I live in Reno and want to share how Burning Man has contributed to the art and culture of Reno. Every year, Burning Man gives over $700,000 worth of artists' grants for the creation of sculptures for the event. Afterward, most of the work ends up back in studios or packed up in storage. One of the missions of the Black Rock Arts Foundation (BRAF) is to place the art of Burning Man into cities as temporary and or permanent public art. I have worked as a liaison between BRAF and the city of Reno for the past 6 years as a volunteer, bringing the art

of Burning Man to an empty lot in downtown Reno. So far we have placed six temporary sculptures and one permanent sculpture in a city park.

We received multiple grants from the Reno Arts and Culture Commission and have collaborated with the Nevada Arts Council, the Sierra Arts Foundation and the Nevada Museum of Art, plus the Black Rock Design Institute on cultural events. We received additional funding from the Hawkins Foundation and the Pioneer Center for the Performing Arts. Each summer, we provide free downtown programming around the Burning Man sculptures with fire spinning, live music, DJs and hula-hoop workshops. Thousands of people have enjoyed the summer entertainment for the past 6 years.

Based on the success of Burning Man as public art in Reno, the Burning Man Project has developed a program called Big Art for Small Towns to bring art to small towns throughout Nevada. Our first project focuses on Fernley. The Burning Man Project and BRAF were awarded a grant from the National Endowment for the Arts. There will be two sculptures; one sculpture will come from the event and the other sculpture will be created by locals in collaboration with Burning Man artists.

We are also collaborating with Mr. Hsieh and the Las Vegas Downtown Project to bring multiple sculptures to Las Vegas. Right now, they are reviewing five major sculptures. Downtown Reno has a beautiful sculpture at the Reno City Plaza that was at Burning Man in 2009. I look forward to continuing the relationship between Burning Man and Nevada through the placement of public art. I also conduct art tours on the playa and would be happy to show you around.

Rebecca Gasca:
I was asked by today's presenters to provide a bit of prospective as somebody who has worked both professionally at the event and in my personal life working as a volunteer. I moved to Nevada in 2001 to attend the University of Nevada, Reno, and it was not until New Year's Eve of 2004 when I was in Patagonia, South America, that I learned about Burning Man. A Norwegian fellow and a Danish fellow who found out I was from Nevada began peppering me with questions about Burning Man.

Fast-forward 4 years, my first experience out on the playa was in 2008 when I worked for the American Civil Liberties Union (ACLU) where the ACLU

provided information for participants in partnership with Lawyers for Burners about knowing their rights and understanding how to properly interact with law enforcement. As you saw from the demographics, this is a highly educated population and very participatory, so we found ripe ground to interact and engage with people who would be ambassadors for their own constitutional rights in their own communities. People may attend the event who are not native citizens of the United States, but they still have constitutional rights, so interacting with them was an interesting opportunity.

Since leaving the ACLU last year, I was on the playa as a part of the external relations team. I received some unique opportunities to understand the functioning of the event itself, and after the event I did some work with the LLC in Pershing County. I am here on my own behalf as an individual and not representing any of my clients whom I otherwise represent.

What Burning Man means to the Reno community is endless opportunity and participation and an ability to collaborate in ways that people might not have otherwise. That also means internationally. Some of the art projects you see on the playa and installed around the world evolve from collaboration with people worldwide. Some of the participants build projects piece by piece in different communities and come together on the playa to complete their projects.

I volunteered my time to write the grant application requesting funding for BRAF. When I was offered a job in Washington, D.C., a few years ago, Burning Man was one of the reasons I decided to stay in Nevada. The community and collaboration of this unique event have kept me here and participating in ways I would never have expected. I serve with the Board of Directors for the Friends of Black Rock High Rock, which oversees the 1.2 million acres of Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area.

I also participate with some of the work in Las Vegas to help people engage in the arts. I know people in Reno who made their way during the recession without taking unemployment benefits because of the Burning Man community. People have gained new job skills because of the workshops and hands-on work the art requires. People have been able to get jobs because of their relationship within the Burning Man community. Nevada is lucky to have such an event that brings us forward in a way that no other event does internationally, nationally and locally.

Chair Parks:
I will close the presentation for Burning Man and open the hearing on Senate Bill 144.

SENATE BILL 144: Revises provisions governing the investigation of peace officers. (BDR 23-100)

Senator Tick Segerblom (Senatorial District No. 3):
Senate Bill (S.B.) 144 is a technical amendment to what is known as the police officers bill of rights in chapter 289 of the *Nevada Revised Statutes* (NRS). I have a presentation (Exhibit E). This chapter has a couple of provisions which I have dealt with in my personal practice. As an attorney, I represent some police officer unions, and in the course of that representation I will be notified to attend an internal affairs (IA) investigatory interview where a police officer has been accused, unofficially, of inappropriate behavior.

The officer is brought in for an internal investigation interview. The officer is notified of the accusation in writing, then attends a meeting where he or she is placed under oath. He or she is interviewed regarding the complaint that prompted the IA investigation. At the end of the meeting, the IA investigator summarizes the meeting. Oftentimes, even if the initial complaint is not serious, the officer will be charged and terminated for lying during the investigation rather than being charged regarding the original complaint. On numerous occasions, I have seen cases when an officer is brought into a meeting where he or she does not know what the other side knows.

For example, there might be a videotape of an incident the officer was involved in, but the officer has never seen the video. The officer is asked questions about what happened, and if it does not agree with the videotape, the officer is charged with lying during the investigation. The IA investigator has completed his research prior to meeting with the officer. The officer being investigated does not have access to the witness statements or any video. Senate Bill 144 seeks to recognize that in those circumstances when an investigation of the incident has already occurred and before the officer is brought in to be interviewed, he or she is allowed access to the information held by the IA investigator. Therefore, the officer can answer the questions appropriately. This is basic common sense and due process but seems to be controversial in the law enforcement community.

An incident occurred at a jail when a Taser was used on someone. Everything in the jail is videotaped so the incident was recorded, but the officer was accused of watching the incident and not taking action. The officer is brought into the interview but is not provided the videotape prior to the meeting so he or she can ask questions. An officer should not be asked questions about a videotape, which everyone agrees is objective, be placed under oath and be asked questions without seeing the videotape ahead of time. Another provision in the bill deals with the *Garrity* warning, which formalizes the process when an officer is placed under oath and those things said cannot be used against him in following proceedings under certain circumstances. We are also clarifying how many representatives can be present during these interviews.

Ron Dreher (Police Officers Research Association of Nevada):
I have been part and privy to the peace officers bill of rights in Nevada, NRS 289, for a number of years. I have been representing police officers for 29 years in the State, and we have worked hard to ensure this particular law offers due process rights. This bill has evolved from the original intent. First and foremost, this bill provides protections to everyone who is in law enforcement. You will notice there are many officers at the hearing to provide their opposition to the bill. Everything we have worked toward with this legislation in the past and in this bill is applicable to them; for example, if someone gets involved in an officer-involved shooting, as anyone in a uniform can. We have worked hard to ensure these rights are fair and equitable for everyone.

Senator Segerblom spoke about section 1, which deals with the issues of discovery. When officers are noticed of investigations under NRS 289.060, they are supposed to receive allegations of misconduct. When I represent an officer, I ask for information about who made the complaint. An administrative investigation complaint is usually a complaint drawn from within the department that somebody did something wrong, and one of the supervisors says there should be an IA investigation.

Another is an outside complaint, such as when a citizen says, I suspect the officer committed excessive force; therefore, a complaint is filed. What we are trying to incorporate into this discovery section is the issue of who is the complainant, what is the complaint specifically and whether there is a videotape or audiotape available.

We represent officers who should be aware of the information to be used against them prior to giving statements because they should have that right.

As an example: an officer pursued an individual into a 7-Eleven. The individual entered the store, ran around the corner and into a back room where he was subsequently apprehended. The officer wrote in his report, "I saw the suspect turn, stop and look at me, and proceed to the other room, at which time he was subsequently arrested." During the IA interview, the officer was questioned about the video without seeing it. He was asked, "Are you sure he turned, stopped and looked at you?" The officer said, "Yes, I believe he did." After that statement was given, the officer and I were allowed to view the videotape of the scene. The suspect did not stop, he turned, looked and kept going. The initial recommendation for that officer was for termination. We prevailed in this case, but that example is the reason for this bill.

In a more recent case, there was a video recording of an incident. I made three demands to see the video. I want the Committee to understand a hearing is never the next day and most of the time the interview is 30 days to 60 days to several months later. I wanted the officer to review the video. If the officer does not see the video in a timely manner, there is always the possibility the officer is going to give a statement that does not say everything exactly as in the video. The officer is then held to be untruthful and subject to discipline. Some departments do exactly what I am saying; others do not. It is an investigative tool that everything is not always shared with the other side because there are times when you do not want to share information. Maybe we can review this bill further and provide an administrative-directive-investigative complaint history. That would allow us to know what the total complaint is, and we could obtain any video involved. That is in section 1 of the bill.

As for section 2, dealing with NRS 289.080, why would we want to put civil protections in this particular law? Over the years, we have tried to provide *Garrity* protection. *Garrity* is the U.S. Supreme Court case decided in 1967 that involves giving a compelled statement, as in an IA investigation. Once the *Garrity* warning is given, the officer is protected from any criminal prosecution. The compelled statement given in a civil prosecution is missing. The exceptions to keeping the civil protections for the officer are when the officer provides a compelled statement in a subsequent predisciplinary hearing or in a meeting with the chief of police or the sheriff or the Department of Public Safety or whoever is conducting the IA investigation. If the situation goes to arbitration, it

is not our intent to keep that information protected. What is protected is when it goes outside that realm to a civil court proceeding. You will also note that setting provides a way for a judge or court or arbitrator in an in-camera review to see what portions of that compelled statement would be admissible.

What we call our peace officers bill of rights is modeled after the California Public Safety Officers Procedural Bill of Rights Act because the officers in that state have those civil protections and the exceptions. When an admonishment is being given to an officer in an IA hearing, it begins: you are being ordered to provide a compelled statement under threat of insubordination; any statement you provide in here cannot and will not be used against you in a criminal court proceeding. That is the *Garrity* warning we have in law. We want the next section to say you also have protections on a limited basis in the civil arena.

The right to a representative belongs to the individual, but because of concerns, you will see why we included this language in the bill.

Senator Spearman:
You indicated the investigation can be delayed for several months. Why does it take so long? Is that standard practice, or does it only happen once in a while?

Mr. Dreher:
It happens all of the time. I have never had an internal affairs investigation happen overnight. These investigations usually take a minimum of 30 days. They could be less, but I have never had one that took less than 30 days.

Senator Segerblom:
After an incident, depending on the severity, there will be some kind of investigation that requires the officer to write a report or use a tape recorder to tape a statement. The department conducts the internal investigations a month later. This is critical because by the end of the month, your memory is gone. The officer is trying to remember what happened and he is under oath. The investigators can catch the officer off guard; they already know what happened because they have the videotape in front of them. We want to review the videotape too.

Mr. Dreher:
An investigation begins with gathering facts for any complaints generated, interviewing witnesses and putting the case together. This is why it takes so

much time. Usually the last person to be interviewed is the principal or the target of the investigation. This is where being timely comes into play.

Kirk Hooten (Las Vegas Police Protective Association; Southern Nevada Conference of Police and Sheriffs):
I represent about 4,000 peace officers in southern Nevada. I originally approached Senator Segerblom with a simple five-word change and found out simple can quickly turn into complex. In section 2, subsection 1, paragraph (c) of S.B. 144 is the deleted language I wanted to address. It may seem straightforward, but the essence of the words—of the peace officer's choosing—is why we brought this bill forward. The Las Vegas Police Protective Association is involved with ongoing litigation that has taken over a year. We are now at the U.S. Supreme Court, prevailing all the way. The crux of the legal matter is those five definitive and commanding words. Whomever the peace officer chooses could be believed to be required to come and represent him or her in that hearing. If a peace officer chose Senator Parks, then Senator Parks would be commanded and bound by statute to be there. That is the essence of the legal argument and why we sought the language change.

The existing language in NRS 289 allows up to two representatives, and S.B. 144 changes the wording in section 2, subsection 1, paragraph (c) "of the peace officer's choosing" to "who may not be chosen by the employer."

David Roger (Las Vegas Police Protective Association):
Section 1, subsection 5 of S.B. 144 deals with the civil aspects of these statements made by a peace officer. As Mr. Dreher indicated, the U.S. Supreme Court in *Garrity v. New Jersey*, 385 U.S. 493 87 S.Ct. 616 (1967), heard a case where New Jersey police officers were accused of being involved in a ticket-fixing scheme with the courts. The police department wanted to conduct an interview along with the attorney general's office. The officers were each informed they were being compelled to speak to and answer questions about this incident as a condition of employment. They were given a choice. They could refuse to answer questions, and if they did, they would be considered insubordinate and would be terminated, or they could waive their Fifth Amendment rights so as not to incriminate themselves and give statements. They chose to keep their jobs and gave statements which turned out to be incriminating. The officers were indicted for those charges, and the statements given to their employer were used against them; they were convicted, and the case went to the U.S. Supreme Court.

The U.S. Supreme Court said public employees are entitled to their Fifth Amendment rights and these officers were put in an unenviable position to choose forfeiture of their jobs or forfeiture of their constitutional rights. Under the *Garrity* decision, if a public employee, i.e. a police officer, is compelled to give a statement as a condition of employment under the threat of termination, he or she must give a statement. Once statements are given to the department, they cannot be used against the officers in a criminal case because the officers are invoking their Fifth Amendment rights. That is written in NRS 289.060 subsection 4. This language already in statute provides the *Garrity* protections for when an officer is compelled to give a statement to the department.

We reviewed other jurisdictions and found in California, those same compelled statements are also protected in civil proceedings.

Section 1, subsection 5, subparagraphs (a), (b) and (c) of S.B. 144 is proposed language to prohibit the use of statements against the officer in a civil case with some exceptions. One, the department can use the officer's statement against him or her in any civil proceedings rising out of his or her employment with the police department. Two, the peace officer may also use his or her own statements in cases initiated by the peace officer. The third exception applies if the officer is sued or is a witness in a civil case and his or her testimony is inconsistent with his or her trial or arbitration testimony. The arbiter or the trial judge may then review the statement given to the department in chambers. If the trial judge or the arbiter determines there is impeachment material in that statement, the arbiter has the discretion to turn it over to the opposing party.

Senator Hammond:
You said the bill would provide the protections to police officers in the area of civil cases except for the three exceptions. Could you repeat those for me?

Mr. Roger:
Section 1, subsection 5 provides three exceptions. One is that the department can use the officer's statement in a civil case if the officer is terminated and files for arbitration where the case is heard in front of an arbiter. Obviously, the department will be able to use the officer's statement in the arbitration; even though it is a civil proceeding, it is part of his or her employment.

Senator Hammond:
Is the department trying to determine if the officer is fit for the job?

Mr. Roger:
Yes. The second part of the exception is that the police officer may use his or her own statement in a civil case. For example, if a police officer decides to sue some other defendant or the department itself, he or she can use his or her own statement provided earlier as a prior consistent statement under our evidence code. An officer sues his or her own department, and the department says, this is the first time you have made this allegation. The officer can say he or she made the allegation in a prior statement and pull out the statement he or she gave to IA.

The third is a situation where an officer either is a defendant or a witness in a civil case, and the officer gives inconsistent testimony. The trial judge could look at the statement the officer gave to IA or the department in chambers in order to determine if he or she said anything different during that statement, which could be impeachment material in the trial. At that point, the trial judge would have the discretion to turn over the officer's statement to the other side in order to impeach the officer.

Senator Spearman:
There is a term called "under duress" if there is a criminal act. Is this the counterpart to that in a civil or IA investigation?

Mr. Roger:
The California statute uses the term "under duress," and it comes out of the original *Garrity* case. The statement is considered to be compelled because the officer is compelled to give the statement and give up his or her constitutional rights; it is a statement given under duress rather than being voluntary. The officer had to give up rights in order to give that statement and keep his or her job.

Senator Spearman:
When I was a young lieutenant and captain doing street duty, we had to have a notebook to keep information, just in case. After the shift was over, we went back to the station to update the information. Do police officers have the notebook or an electronic version of one? Is that something they can use to avoid self-incrimination when they are being interviewed?

Mr. Roger:
I can only speak for law enforcement in Clark County. From my experience as former district attorney, I saw that officers take notes in the field, go back to the substation to dictate their reports and destroy the raw notes. There may be some officers with boxes of notes in their garages, but for the most part the notes are destroyed.

Senator Spearman:
Once they destroy their personal notes, in the event they are interviewed, do the officers have access to the reports?

Mr. Roger:
It would depend on the policy of the department, and each department is different. For some departments, as soon as supervisors know an officer is being investigated by IA, they will tell the officer he or she cannot speak with other witnesses or access reports.

Senator Spearman:
If the protocols are asymmetric, does this bill seek to make them uniform?

Senator Segerblom:
Yes. The many police departments in the State vary widely. Las Vegas Metropolitan Police Department (Metro), to its credit, has many detailed policies, but some of the smaller departments lack the detail, and a local sheriff will do whatever he or she wants to do.

Chair Parks:
Can you share with the Committee the language that is contained in the California Bill of Rights? Are you aware of any experience encountered in California relative to this statutory provision?

Mr. Roger:
My experience is all within Clark County, but during my research I found it does not appear this statute has been overturned by any of the appellate courts or the Supreme Court of California.

Mr. Dreher:
If you review the California Government Code section 3300-3313, the Public Safety Officers Procedural Bill of Rights Act, you will see a number of caselaws already generated through California. It has not been overturned and is widely used. The officers are provided this information every time they are admonished and provide statements. The codes have been used in California for a long time. The language has been tried and proven to protect the officers in these specific areas.

Paul Villa (Reno Police Protective Association; Secretary, Peace Officers Research Association of Nevada):
We support S.B. 144 because the language standardizes representation for law enforcement. The Reno Police Protective Association members understand they are entitled to representation, but we have a young membership due to the demographic turnover in the agency during the past 5 years. Peace Officers Research Association of Nevada (PORAN) travels around the State and puts on training in IA matters. Board members and volunteer members from our Association attend that training. When they have completed the training, they are expected to represent our membership in IA investigations. If you are subject to an IA investigation and have never been through one before, you only know you need representation. Whoever is a representative will seek out the officer or the officer will seek out the representative.

I was notified of this issue this morning. The PORAN recently conducted training, and a number of police supervisors attended the training. One of our members, a line officer, was the subject of an investigation and served notice. A supervisor approached him and volunteered his service as a representative. Surely you can all see a conflict. The supervisor accompanied this officer and represented him in the IA investigation with nothing more than the PORAN training.

The supervisor had no other training nor the approval of the Reno Police Protective Association. Our very young member, who had never been the subject of an investigation before, only knew he was entitled to representation.

The officer would never had made the mistake if the Association had been able to insist he was entitled to two representatives. The language is in NRS 289 needs to be standard, and S.B. 144 would address this issue.

Senator Spearman:
Section 2, subsection 1, paragraph (a) reads the peace officer "may not be precluded from having a representative." The language listed in paragraphs (a), (b) and (c) use the word "may" instead of "shall," which sounds optional. Is that just semantics?

Mr. Villa:
Had I written the bill I would have used the word "shall," but "may not" certainly sounds definitive. In the case of the Reno Police Department, all IA investigators are supervisors and above. No line officers are assigned to that function. The IA investigators are very good about ensuring the officers do not appear before them without representation. However, this bill addresses a loophole by mandating an officer gets at least two representatives, who cannot be chosen by the employer. Yes, I believe it is semantics.

Senator Spearman:
In a hypothetical case, you have two officers being investigated for the same event. They are given the right to look at the information held by the supervisors. Does that allow one officer to compare his or her testimony with the other officer? If so, is there a way to ensure the integrity of the investigation is not compromised by the officers comparing notes?

Mr. Villa:
I can only speak about the Reno Police Department and how this issue is conducted there. Witness officers are ordered not to speak to anyone about the investigation with the exception of their representative. The two officers could certainly have the same representative at different interviews. They are under orders not to speak to anyone about that event except their representatives.

Senator Spearman:
Is there a penalty for noncompliance?

Mr. Villa:
The penalty, if the officer is found to be untruthful or in violation, is harsh and can be up to and including termination.

Priscilla Maloney (American Federation of State, County and Municipal Employees, AFL-CIO):
As a labor representative, I represent sworn officers for the State, and much of the testimony you have heard pertains to local governments and police departments. We have multiple positions in State service that follow the definition of a sworn officer. Specifically, most of my caseload comes from State correctional officers also covered under NRS 289.150.

Outside a collective bargaining agreement, if a correctional officer is investigated and subsequently disciplined, the officer enters the personnel administrative process for termination and or suspension under NRS 284, which covers all State employee disciplinary proceedings. The American Federation of State, County and Municipal Employees is in strong support of S.B. 144, but because I have multiple cases pending with the Department of Corrections, I cannot provide specific details. I can provide global examples without details that speak to the nature of the problems addressed in this bill.

In one instance, an officer was involved in an incident that gave rise to a disciplinary action in December 2011. The investigation notice was not given to the officer until May 2012. Once the investigation has concluded, we move over to NRS 284, and the department has 90 days to complete the investigation because of a bill passed last Session. It used to be open-ended, and there were instances where officers were not provided with the outcome of investigations. In one case, an employee was on administrative leave for just under a year while the matter was being investigated. There is a time issue, and it speaks directly to recollection, videotapes and notes, so the officer under investigation is sitting for 90 days without any knowledge of the matter. The officer goes into the interview, answers questions and then waits to see the adjudication outcome.

Once appeals are filed, after the 90 days, officers are served with their discipline; then I am entitled to discovery—but not before. The bill addresses that problem. We have had some issues where the department is not always crystal clear about understanding or honoring the requirement. If a meeting scheduled with your administration is either disciplinary or likely to lead to a

disciplinary action, you are entitled to have a representative attend the meeting with you. We have employees who have said they are concerned because the meeting sounds as if it is disciplinary, but they are told it is not, and if you do not answer our questions we charge you with insubordination.

There is an internal note-taking function in the computer system within the Department of Corrections. If ordered by the shift commander, officers can make a report about an incident. An officer has access to the computer system to look at his or her own records. I had at least one officer tell me he went back into the system and was unable to find his report. Some of the timelines in Corrections are extremely long. I had one case that the incident giving rise to the subsequent investigation took place in December 2011 and the officer was not interviewed until May 2012. The ultimate discipline, officers call it dropping paper, was completed 3 months later. Statutorily, in the civil service governing all State employees including the correctional officers, the department has 90 days to issue a specificity of charges, which is like a mini indictment.

There are problems with the discovery issues of tapes and videos because I am not privy to discovery until an appeal is filed. I was recently informed by one of the representatives of the Office of the Attorney General (AG) that a request must pass through the AG's Office in order for me to review tapes, videos or notes.

Senator Spearman:
It is not automatic now if the officer needs the information as part of his or her defense?

Ms. Maloney:
We are having an ongoing conversation about discovery. The Office of the Attorney General instructed me to affirmatively ask for the information. When an appeal is filed for any State employee or for these correctional officers, the Department of Personnel will send the entire personnel jacket, but notes, videos and tapes from the facilities are not offered. I must affirmatively request these items. We are entitled to the information and will get it once the appeal is filed and not before.

Senator Spearman:
In the Uniform Code of Military Justice (UCMJ), it is called an Article 32 investigation because you are gathering facts. While you are gathering facts, the

accused person automatically has access to all of the information because that person must mount a defense. Whatever happens in discovery is available to both sides of the Judge Advocate General process. As a paramilitary organization, I wonder if it is implied and not proscribed. Does this law seek to make everything available to the accused so that he or she can mount a defense?

Ms. Maloney:
I have had situations where the Department will come back to tell me an audiotape was lost. We should have been able to access that audiotape when it was first available. When I receive an investigation notice under NRS 289, which comports with NRS 284, I receive two pages with one paragraph, such as: you are accused of insubordination due to this incident when you touched an inmate while passing a feeding tray. Between that notification and when we file the notice of appeal, 90 days to conclude the investigation and 10 working days to file the appeal, we have nothing. I do not have the personnel jacket let alone other items until the appeal is filed.

Senator Spearman:
If there is evidence related to an internal affairs investigation or interview, is the protocol to have a chain of custody? If something is lost, will you know who the person was who touched it last? Relying on my military experience, if someone who accesses information was the last person to touch it before it gets lost, then that person is subject to punishment under the UCMJ. How can something be lost and no one be held accountable?

Ms. Maloney:
Other than a civil lawsuit within the administrative proceeding, it is just too bad. A hearings officer ultimately assigned to the disciplinary hearing who functions as an arbitrator, can say that is unfortunate. Department, what do you have to say about that? At the administrative level, there is no penalty for lost information.

Mr. Roger:
The NRS provides that only after the investigation is completed and the department determines punishment can an officer receive the entire case file to mount a defense. The timeline is: the department investigates the case, interviews the officer and determines that punishment is appropriate; at that point, the officer files a grievance from the determination that he has violated

policy. Only then may the officer review the entire investigative file. The officer receives no information until that point.

Kelly Sweeney (Director, Labor Relations, Las Vegas Metropolitan Police Department):
The officers do not receive the investigative file and materials until after the case is closed and the department has determined discipline will be imposed. Before that occurs, officers are given notice when they are provided notice of their interviews. Within Metro we provide officers with all of the information they will need to address the allegations. In addition, Metro does provide any video evidence we have prior to the interview as well as any documentation that the officer has authored and produced. The officer does not receive the witness statements and other documentation that may have been obtained.

Our concern is that allowing the officers to review the investigative file prior to the interview would give them a chance to see what all of the other witnesses have said. This may taint the officers' recollection of events. Officers may intentionally or unconsciously rely on other witness recollections rather than their own. In the worst-case scenario, this would give an officer a chance to make up a story or cover his or her actions, knowing what all of the other witnesses have said so he can tailor his statement accordingly.

From a pragmatic standpoint, we give officers a 48-hour notice of this interview. Under the proposed language, 48 hours may not give an officer a meaningful opportunity to review this investigative file depending on the timing of the notice. Some of these files are quite large.

Administratively, an officer would need to review the file during normal work hours where staff members can provide the access. There are witness statements, other documentation and a variety of information, and it all takes time to review. It may not be realistic to complete this process in 48 hours. This could potentially raise arguments that we are not keeping within the spirit of NRS 289 and we are not providing the entire file to the officer within this 48-hour period. Administratively, it would not be possible for Metro.

We are also concerned this could potentially be a centerpiece argument for unions to delay the investigation or interrogation, saying they need more time to review the file or they need additional time. That just pushes the investigation out further.

Another concern is that detectives frequently put investigative notes in the file, sometimes regarding follow-up, sometimes regarding other witnesses, potential leads and possible criminal information. An officer's review of this file could prompt him or her to thwart the investigation by intercepting those other witnesses or leads after seeing them appear in the notes, which arguably we would have to provide to the officer.

Providing the officers with access to the case, the statements and all of the transcripts within that 48-hour notice is administratively unrealistic for Metro. More important, we believe that to get to the bottom of the investigation—simply the findings of fact of what occurred—the language is inappropriate to allow the officer to review the investigative file prior to the interview.

Senator Spearman:
Initially, you stated the officer is given whatever he or she would need. Who decides what he or she needs when looking at evidence? Are you looking at whatever you have collected prior to when the investigation begins? Who decides what the officer needs?

Ms. Sweeney:
The Internal Affairs Bureau investigators decide, but Metro practice is that we always provide the videotape ahead of time and any documentation that the officer has authored. Anything that subject officer has authored can be provided before the interview. Any other documentation is left to the discretion of the investigator.

Jon Montisano (Investigator, Internal Affairs Division, Henderson Police Department):
Ms. Sweeney summarized our concerns very well. We oppose the specific verbiage of section 1, subsection 2, paragraph (c). This could taint the validity of our investigations. It is tantamount to providing a suspect prior to being charged in a criminal investigation all of the information we have regarding an incident and allowing the subject to digest the information prior to coming into the interview. Just as we do not provide information in a criminal investigation, this same situation could taint our internal investigations.

As an example, when we serve officers, they specifically know the allegations and the associated reports. Officers have access to the computer dispatch information on the call. They also have access to their digital in-car video

systems. They do not have access to the witness statements, the complainant statements and initial allegations, and any videos such as provided by the 7-Eleven as noted in the earlier example. The officer would not have initial access to video from the 7-Eleven.

I was brought into internal affairs from a 7-Eleven incident, and I did not need to see the video. While my department asked me questions and time had passed or things were a little vague, I did not have independent recall specifically, but my answers stood when I said I am not sure but I believe this is what happened. I could definitively say on the allegations, because they were so egregious, that I did not do that conduct; I did this. The investigator told me after reviewing the video that is exactly what he saw. I had the independent recall of my conduct. The subtle nuances I may not have recalled where the gentleman looked or if he handed me his license or his insurance card first. I specified I was not 100 percent sure, but I believe it was this. The investigator took it at face value. I do not believe our Department would hold an officer in contempt or say that he was falsifying his information because he did not have exact recall of subtle nuances. We specifically focus on the allegation of misconduct.

Senator Spearman:
You said the officer would not have access to the investigator's notes and witness information, so is it standard practice to commingle that information? If the file were subpoenaed, could the information be separated or would you scrub it?

Ms. Sweeney:
All of the documentation is incorporated in our Internal Affairs electronic system. The officers are provided hard copies of anything they have authored out of that system. Everything else is contained in the system.

Senator Spearman:
Once the information is entered electronically, there is no way to separate it?

Ms. Sweeney:
I believe the Internal Affairs Bureau personnel could individually separate all of the information.

Tim Shattler (Deputy Chief, Department of Detention and Enforcement, City of Las Vegas):
I am speaking on behalf of myself and Lieutenant Joseph Freeman. We are in concurrence with statements provided by previous speakers to the Committee and in opposition of this bill.

Jackie Muth (Lieutenant, Commander, Office of Professional Responsibility, Department of Public Safety):
On behalf of the Department of Public Safety, I oppose S.B. 144. The purpose of an interrogation during an internal affairs investigation is to solicit the pristine recollection of the events without compromising or altering the facts. Allowing an officer to review an entire investigative file gives access to everything, including the witness statements from other employees who have compelled testimony or to members of the public who may have been alleged to be harmed by an involved officer. The officer's notes as well as anything and everything contained in the investigative file which must be maintained by statute therefore becomes available to this officer under this bill. Unfortunately, if this bill is passed as written, it will eliminate the agency's ability to conduct an unbiased and fair investigation.

When dealing with law enforcement, public trust is obviously crucial. If this bill passes, it will compromise the potential of the public trust between law enforcement and the community. One of the highest priorities placed on law enforcement is the ability for us to police our own. This bill could force an agency to maintain an employee who is no longer suitable for employment to be maintained for one purpose or the other. This bill defeats the purpose to police our own employees.

If you have unethical officers who will compromise the values, the policies and the law, this bill will give them the behavior to further their unethical behavior by allowing them to review files and alter testimony accordingly. This interview is to be an unbiased, pristine recollection by the officer without having the tainted information at his or her disposal.

Speaking specifically for the Department of Public Safety, we also allow our employees to review any and all materials available to them as officers. We encourage them to review their police reports or their in-dash video cameras. They can also review any reports generated by the computer dispatch system

and anything else they can review as employees prior to coming in for an interview with internal affairs.

Allowing an accused officer to review witness statements compelled by our witness employees could provide repercussions. The lack of cohesiveness in a working environment could be jeopardized. There could be threats of retaliation and threats of intimidation for our witness employees who are now going to be afraid to come forward and be truthful with Internal Affairs. The witnesses would be aware a coworker can review witness statements prior to coming in for an interview.

I really want to encourage you to think about the additional repercussions this bill could cause further down the line. I would ask the Committee to use a reasonable standard. Is it reasonable to allow employees the right to view all of the evidence against them before they are interviewed with their pristine recollection? This is not in the best interest of all parties and not reasonable.

Michael Oh (Assistant City Attorney, City of Henderson):
I am testifying in opposition to S.B. 144. I echo the same concerns as previous speakers. In terms of the IA investigation, we want to maintain the integrity of the Henderson Police Department in investigating allegations of police misconduct. Allowing the police officers to review the entire file, including the witness statements, prior to being interviewed could have the potential of allowing them to alter their recollection of the events that occurred whether intentional or not.

Referring to the 7-Eleven example, after viewing the video and the officer's statement when he might be subject to termination based upon not remembering a certain sequence of events, there is a provision already in NRS 289.060, subsection 3, paragraph (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."

If anything comes out during the interrogation that is inconsistent with what the investigator has found, the officer is given an opportunity to explain any of those discrepancies. Those concerns are already included in the NRS 289 language.

Chuck Callaway (Las Vegas Metropolitan Police Department):
Recently, our agency has been scrutinized because of use of force. One of the things brought up consistently is the allegation that we do not hold our employees accountable. If this bill passes, it will have an impact on how we manage our employees and how we conduct proper investigations to hold employees accountable for their actions. It is a step in the wrong direction. In the vast majority of cases, complaints are made against officers that may be unfounded and when the facts are brought to light, we find the officers' actions were policy violations or did not rise to the level of a criminal event. By the same token, there are cases where we need to have the tools necessary to conduct a proper investigation.

Senator Hammond:
It sounds like most of the opposition to the bill is in section 1, subsection 2, paragraph (c), basically the right to review all of the material prior to the interview. How does everyone feel about the rest of the bill? Is anyone in opposition to section 2, subsection 2, paragraphs (a), (b) and (c)?

Mr. Callaway:
Yes. The biggest sticking point for us is: say you were stopped by two officers during a car stop and something occurred you believed was misconduct between the two officers, and they were called in and investigated. The first officer can give a statement about what happened on that night and the second officer would look at the first officer's statement and tailor his statement based on what he read in the file. It is inappropriate, goes against good investigative practices and is not fair to the public. That is our biggest concern.

In speaking to the rest of the bill, we do not have concerns about the civil issues. In regard to the witness officer provision in A.B. No. 265 of the 76th Session, that was put into NRS 289 during the last Legislative Session and it has some negative impact. Sheriffs in the smaller rural counties say it is problematic allowing the witness officer to have a representative for an interview about what occurred when he or she is not the subject officer of the investigation. Another bill coming this Session, S.B. 348, may address some of these concerns. Based on these issues, we oppose the bill as a whole.

SENATE BILL 348: Revises provisions governing the rights of peace officers (BDR 23-463)

Senator Hammond:
Is there anyone else who has problems with the bill as a whole?

Ms. Sweeney:
I agree with the testimony of Mr. Callaway. Our objections to other portions of the bill are not as strong regarding the notice and the representatives, but we do oppose the bill in its entirety.

Robert Roshak (Executive Director, Nevada Sheriffs' and Chiefs' Association):
Our concerns with the bill have already been expressed. If you add section 1, subsection 2, paragraph (c) to NRS 289, you are creating a second class of citizens who have more rights than the police officers who protect or arrest them or both. You are giving them leeway that others do not have when they are charged in an investigation.

Eric Spratley, Lieutenant (Washoe County Sheriff's Office):
All my concerns have been expressed by other testifiers. Investigating law enforcement misconduct allegations is an important function of law enforcement organizations. The citizens of Nevada, the constituents we serve, deserve an honest and forthright investigation. The investigations must be thorough, unbiased and balanced to maintain the always fragile public trust. Granting investigative file access prior to a focus interview would give a ridiculously tremendous advantage to the accused officer and his or her counsel. Law enforcement cannot afford to unbalance the investigative scales so blatantly in favor of officers under investigation. To do so would be a thumbing of law enforcement's nose at public trust. I suggest we try the truth. The Washoe County Sheriff's Office opposes S.B. 144 in its entirety.

Bill Bainter (Lieutenant, Nevada Highway Patrol, Department of Public Safety):
The Nevada Highway Patrol along with the other law enforcement communities strongly oppose S.B. 144. Basically everything has been covered regarding our concerns. Allowing the subject employee who is under investigation to review the investigative file prior to the interview is not a good investigative practice. It can impact our ability as an agency and investigators to sustain allegations of serious misconduct. In some cases, we have an obligation to the community to take action against an officer.

Our concern is providing the entire case file to be reviewed. Oftentimes we will show the in-car video during the interview. Our concern is the other information contained in the file, including the complainant interview, other witnesses and documentation.

Tim Bedwell (City of North Las Vegas; Police Officer, City of North Las Vegas):
My organization is in opposition to the bill. We do not oppose section 2 of the bill regarding representation for an officer but oppose the rest. I would like to provide clarification for some of the questions asked by Senator Spearman with correlation to the UCMJ. It is important to understand that police officers are not being compelled to give any statements to be used against them in a criminal case under the *Garrity* warning. That does not correlate to an Article 31 in the military. An Article 31 is more of a correlation to a *Miranda* warning. The military does not have civil remedies for offenses under the punitive codes. We are paramilitary, but we do not have criminal offenses for insubordination. In the military, that is a criminal offense under the UCMJ. You would go through the military process and be given an Article 31, not a *Garrity* warning. A *Garrity* warning does not apply at all in the military. The next step in that process is an Article 32, which is the fact-finding hearing. That is more like a preliminary hearing in a criminal offense. It is tough, but you have to detach yourself from the military because we are talking about noncriminal interviews. These interviews will not be used for criminal reasons, and that is why they are conducted under the *Garrity* warning.

Senator Spearman:
Are you talking about nonpunitive actions?

Mr. Bedwell:
Yes. This is nonpunitive compared to what the military uses because all punitive actions in the military are criminal in nature, even if you go to an Article 15. These are fact-finding interviews conducted by the investigators to determine if there is going to be an action by the employer against the employee. The statements cannot be used in a criminal case against them. This bill is trying to extend that to the civil side. The usage of the statements by a police officer under *Garrity* cannot be used in a criminal fashion, and there is no correlation to the military.

Senator Segerblom:
I did not hear any opposition to the second two parts of the bill, but the opponents said they oppose the bill in its entirety. No one ever said they did not like the *Garrity* warning in a civil matter because we do not support the idea of having representation. Those two parts have not been refuted.

Regarding section 1, you heard the problem of all agencies handling the investigation differently. If you are going to give someone the right to respond, you have to let them see and review the material before they are brought in and put under oath and asked questions regarding the event. To see something in real time just after you have been given an oath, you do not have the ability to really respond. That is what we are talking about. The analogy is that this is like a criminal investigation, and we do not want to give the police officers any more rights than we give to criminals. These are not criminals; these are our peace officers. When you treat a police officer like a criminal, that is my concern. These people are entitled to dignity and to be treated to due process and should be given statements and videos before they are interviewed.

There may be an issue with an incident involving more than one police officer. You do not want collusion and so do not give the other officer's statements. I can understand that distinction. If you have an independent witness who gave a statement, the officer should be allowed to read that statement before being brought in and questioned. This is what we are addressing with this bill.

Brian Daw (Clark County School District):
I submit written testimony from the Clark County School district in opposition of S.B. 144 (Exhibit F).

Chair Parks:
I will close the hearing on S.B. 144 and reschedule Senate Bill 79 to the Senate Government Affairs Committee meeting on Monday, March 11, to be heard first. We have concluded our business for today and the meeting is adjourned at 3:56 p.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE:

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
	C	1	Reno-Tahoe Airport Authority	Letter
	D	35	Burning Man and Nevada: Two Decades of Mutual Benefit	Presentation
S.B. 144	E	6	Senator Tick Segerblom	Summary sheet
S.B. 144	F	1	Brian Daw	Written Testimony