

ASSEMBLY BILL NO. 309—ASSEMBLYMEN SPRINKLE, CARRILLO;  
ARAUJO, BENITEZ-THOMPSON, DIAZ, JOINER AND SWANK

MARCH 16, 2015

Referred to Committee on Government Affairs

SUMMARY—Provides for the confidentiality of certain communications between parties during a peer support counseling session. (BDR 23-277)

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; providing that certain communications between parties during a peer support counseling session are confidential and not admissible in certain proceedings; conferring a privilege to refuse to disclose those communications upon certain law enforcement and public safety personnel; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Existing law requires a peace officer to answer any questions posed as part of a  
2 criminal or internal affairs investigation against that officer or another officer if that  
3 officer has knowledge about the incident in question, and makes the refusal to do so  
4 punishable as insubordination. (NRS 289.020, 289.060) **Section 1** of this bill  
5 provides that any communications made between parties during a peer support  
6 counseling session are confidential and may not be disclosed or admitted in certain  
7 proceedings. **Sections 2 and 3** of this bill specifically provide that a peace officer  
8 may not be questioned concerning any communications made during a peer support  
9 counseling session. **Section 4** of this bill creates a testimonial privilege allowing a  
10 counselor or participant in a peer support counseling session to refuse to disclose or  
11 to prevent another party from disclosing any communication made during a peer  
12 support counseling session in certain court proceedings. **Section 5** of this bill  
13 provides that any notes, records or reports of any peer support counseling session  
14 are not public records.



\* A B 3 0 9 \*

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

**Section 1.** Chapter 287 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Any communication made between parties during a peer support counseling session is confidential and, except as otherwise provided in this section, may not be disclosed by any person participating in the peer support counseling session.*

*2. This section applies to all oral communications, notes, records and reports arising out of a peer support counseling session. Any notes, records or reports arising out of a peer support counseling session are not public records.*

*3. Any communication or document which is confidential pursuant to this section is not admissible in any judicial, administrative, arbitration or other adjudicatory proceeding.*

*4. This section does not prohibit any communications between counselors who conduct peer support counseling sessions, or any communications between counselors and the supervisors or staff of a peer support counseling or employee assistance program. Any such communications are confidential for purposes of this section.*

*5. This section does not apply to any of the following communications made during a peer support counseling session:*

*(a) Any threat of suicide;*

*(b) Any explicit threat of imminent and serious physical harm or death to a clearly identified or identifiable person;*

*(c) Any information relating to child abuse or elder abuse, or any other information that is required by law to be reported; or*

*(d) Any admission of criminal conduct.*

*6. This section does not limit the discovery or introduction into evidence of any knowledge acquired or observations made by any law enforcement or public safety personnel in the scope of their employment and outside of a peer support counseling session and which is otherwise subject to discovery or introduction into evidence.*

*7. As used in this section:*

*(a) "Counselor" means a person who:*

*(1) Has received training in counseling and in providing emotional and moral support to law enforcement or public safety personnel who have been involved in or exposed to emotionally traumatic experiences in the course of their employment; and*

*(2) Is designated by a law enforcement agency, public safety agency or employee assistance program to provide the services described in subparagraph (1).*



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(b) "Employee assistance program" means a program provided by a law enforcement or public safety agency to provide counseling services to its personnel through the use of law enforcement or public safety personnel who have received special training to act as peer counselors.

(c) "Law enforcement or public safety personnel" includes, without limitation, peace officers, sheriffs' deputies, corrections officers, probation officers, firefighters, paramedics, emergency dispatchers or any other employee or volunteer reserve member of a law enforcement or public safety agency whose duties involve emergency response or criminal investigation.

(d) "Peer support counseling session" means any counseling formally provided through an employee assistance program between a counselor and one or more law enforcement or public safety personnel.

**Sec. 2.** NRS 289.020 is hereby amended to read as follows:

289.020 1. A law enforcement agency shall not use punitive action against a peace officer if the peace officer chooses to exercise the peace officer's rights under any internal administrative grievance procedure.

2. If a peace officer is denied a promotion on grounds other than merit or other punitive action is used against the peace officer, a law enforcement agency shall provide the peace officer with an opportunity for a hearing.

3. ~~HH~~ *Except as otherwise required in section 1 of this act, if* a peace officer refuses to comply with a request by a superior officer to cooperate with the peace officer's own or any other law enforcement agency in a criminal investigation, the agency may charge the peace officer with insubordination.

**Sec. 3.** 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. *The law enforcement agency shall not interview any peace officer whose sole basis of knowledge regarding the complaint or allegation is his or her participation in a peer support counseling session.* Any peace officer who serves as a witness during an



1 interview must be allowed a reasonable opportunity to arrange for  
2 the presence and assistance of a representative authorized by NRS  
3 289.080. Any peace officer specified in this subsection may waive  
4 the notice required pursuant to this section.

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

- 7 (a) A description of the nature of the investigation;
- 8 (b) A summary of alleged misconduct of the peace officer;
- 9 (c) The date, time and place of the interrogation or hearing;
- 10 (d) The name and rank of the officer in charge of the  
11 investigation and the officers who will conduct any interrogation or  
12 hearing;
- 13 (e) The name of any other person who will be present at any  
14 interrogation or hearing; and
- 15 (f) A statement setting forth the provisions of subsection 1 of  
16 NRS 289.080.

17 3. The law enforcement agency shall:

18 (a) Interview or interrogate the peace officer during the peace  
19 officer's regular working hours, if reasonably practicable, or revise  
20 the peace officer's work schedule to allow any time that is required  
21 for the interview or interrogation to be deemed a part of the peace  
22 officer's regular working hours. Any such time must be calculated  
23 based on the peace officer's regular wages for his or her regularly  
24 scheduled working hours. If the peace officer is not interviewed or  
25 interrogated during his or her regular working hours or if his or her  
26 work schedule is not revised pursuant to this paragraph and the law  
27 enforcement agency notifies the peace officer to appear at a time  
28 when he or she is off duty, the peace officer must be compensated  
29 for appearing at the interview or interrogation based on the wages  
30 and any other benefits the peace officer is entitled to receive for  
31 appearing at the time set forth in the notice.

32 (b) ~~Immediately~~ *Except as otherwise provided in paragraph*  
33 *(e), immediately* before any interrogation or hearing begins, inform  
34 the peace officer who is the subject of the investigation orally on the  
35 record that:

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

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

42 (c) Limit the scope of the questions during the interrogation or  
43 hearing to the alleged misconduct of the peace officer who is the  
44 subject of the investigation. If any evidence is discovered during the  
45 course of an investigation or hearing which establishes or may



1 establish any other possible misconduct engaged in by the peace  
2 officer, the law enforcement agency shall notify the peace officer  
3 of that fact and shall not conduct any further interrogation of the  
4 peace officer concerning the possible misconduct until a subsequent  
5 notice of that evidence and possible misconduct is provided to the  
6 peace officer pursuant to this chapter.

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

11 *(e) Not question the peace officer who is the subject of the*  
12 *investigation or who is a witness in the investigation concerning*  
13 *any statements made by any party during a peer support*  
14 *counseling session.*

15 4. If a peace officer provides a statement or answers a  
16 question relating to the alleged misconduct of a peace officer who is  
17 the subject of an investigation pursuant to NRS 289.057 after the  
18 peace officer is informed that failing to provide the statement or  
19 answer may result in punitive action against him or her, the  
20 statement or answer must not be used against the peace officer who  
21 provided the statement or answer in any subsequent criminal  
22 proceeding.

23 *5. As used in this section, "peer support counseling session"*  
24 *has the meaning ascribed to it in section 1 of this act.*

25 **Sec. 4.** Chapter 49 of NRS is hereby amended by adding  
26 thereto a new section to read as follows:

27 *1. Any law enforcement or public safety personnel who*  
28 *participate in a peer support counseling session and any counselor*  
29 *providing such counseling have a privilege to refuse to disclose,*  
30 *and to prevent any other person from disclosing, any confidential*  
31 *communications set forth in section 1 of this act.*

32 *2. As used in this section, "law enforcement or public safety*  
33 *personnel" and "peer support counseling session" have the*  
34 *meanings ascribed to them in section 1 of this act.*

35 **Sec. 5.** NRS 239.010 is hereby amended to read as follows:

36 239.010 1. Except as otherwise provided in this section and  
37 NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,  
38 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160,  
39 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,  
40 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,  
41 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,  
42 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,  
43 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,  
44 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,  
45 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,



1 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801,  
2 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450,  
3 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,  
4 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,  
5 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,  
6 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,  
7 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,  
8 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,  
9 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,  
10 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,  
11 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350,  
12 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025,  
13 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135,  
14 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070,  
15 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,  
16 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,  
17 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080,  
18 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275,  
19 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264,  
20 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460,  
21 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,  
22 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,  
23 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175,  
24 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534,  
25 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195,  
26 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570,  
27 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610,  
28 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555,  
29 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,  
30 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536,  
31 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040,  
32 534A.031, 561.285, 571.160, 584.655, 598.0964, 598A.110,  
33 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015,  
34 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131,  
35 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418,  
36 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368,  
37 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212,  
38 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315,  
39 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,  
40 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,  
41 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,  
42 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,  
43 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,  
44 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,  
45 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110,



1 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310,  
2 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,  
3 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,  
4 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077,  
5 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010,  
6 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420,  
7 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325,  
8 706.1725, 710.159, 711.600, *section 1 of this act*, sections 35, 38  
9 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of  
10 chapter 391, Statutes of Nevada 2013 and unless otherwise declared  
11 by law to be confidential, all public books and public records of a  
12 governmental entity must be open at all times during office hours to  
13 inspection by any person, and may be fully copied or an abstract or  
14 memorandum may be prepared from those public books and public  
15 records. Any such copies, abstracts or memoranda may be used to  
16 supply the general public with copies, abstracts or memoranda of the  
17 records or may be used in any other way to the advantage of the  
18 governmental entity or of the general public. This section does not  
19 supersede or in any manner affect the federal laws governing  
20 copyrights or enlarge, diminish or affect in any other manner the  
21 rights of a person in any written book or record which is  
22 copyrighted pursuant to federal law.

23 2. A governmental entity may not reject a book or record  
24 which is copyrighted solely because it is copyrighted.

25 3. A governmental entity that has legal custody or control of a  
26 public book or record shall not deny a request made pursuant to  
27 subsection 1 to inspect or copy or receive a copy of a public book or  
28 record on the basis that the requested public book or record contains  
29 information that is confidential if the governmental entity can  
30 redact, delete, conceal or separate the confidential information from  
31 the information included in the public book or record that is not  
32 otherwise confidential.

33 4. A person may request a copy of a public record in any  
34 medium in which the public record is readily available. An officer,  
35 employee or agent of a governmental entity who has legal custody  
36 or control of a public record:

37 (a) Shall not refuse to provide a copy of that public record in a  
38 readily available medium because the officer, employee or agent has  
39 already prepared or would prefer to provide the copy in a different  
40 medium.

41 (b) Except as otherwise provided in NRS 239.030, shall, upon  
42 request, prepare the copy of the public record and shall not require  
43 the person who has requested the copy to prepare the copy himself  
44 or herself.



1      **Sec. 6.**   This act becomes effective upon passage and approval.

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