
ASSEMBLY BILL NO. 403—ASSEMBLYMEN SHELTON; AND JONES

MARCH 17, 2015

JOINT SPONSOR: SENATOR FORD

Referred to Committee on Government Affairs

SUMMARY—Revises provisions concerning peace officers.
(BDR 23-813)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 2)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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; requiring certain peace officers to wear a portable event recording device while on duty; requiring certain law enforcement agencies to adopt policies and procedures governing the use of portable event recording devices; requiring peace officers to undergo certain training; requiring peace officers to maintain liability insurance; requiring a peace officer to pay any costs incurred by a law enforcement agency as the result of conducting an investigation in response to a complaint or allegation against the peace officer in certain circumstances; requiring certain advisory review boards to review internal investigations of peace officers and make recommendations regarding any disciplinary action recommended by the employers of such peace officers; requiring such advisory review boards to review the policies and procedures of law enforcement agencies and make recommendations regarding any changes to such policies and procedures; exempting the use of portable event recording devices from the provisions governing the interception of certain communications; exempting the use of portable event recording devices upon certain property; and providing other matters properly relating thereto.



* A B 4 0 3 *

Legislative Counsel's Digest:

Section 2 of this bill requires law enforcement agencies to require each uniformed peace officer it employs whose duties involve regular contact with the general public to wear a portable event recording device while on duty. **Section 2** also requires law enforcement agencies to adopt policies and procedures governing the use of portable event recording devices, which must include, at a minimum: (1) requiring activation of the portable event recording device at certain times; (2) prohibiting deactivation of a portable event recording device until the conclusion of a law enforcement or investigative encounter; (3) prohibiting the recording of general activity; (4) protecting the privacy of certain persons; (5) limiting the period for which a video recorded by a portable event recording device should be retained; and (6) establishing disciplinary rules for peace officers concerning the misuse of a portable event recording device.

Existing law authorizes investigative or law enforcement officers to intercept wire or oral communications, subject to certain requirements. (NRS 179.410-179.515) **Section 8** of this bill exempts a portable event recording device worn by a peace officer from the definition of an "electronic, mechanical or other device" used to intercept wire or oral communication. Existing law also prohibits the surreptitious electronic surveillance on: (1) the grounds of any facility owned or leased by the State of Nevada; (2) the property of a public school; or (3) a campus of the Nevada System of Higher Education. (NRS 331.220, 393.400, 396.970) **Sections 9-11** of this bill create an exception from certain unauthorized electronic surveillance conducted pursuant to **section 2**.

Existing law also authorizes the investigation of a peace officer to be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action. (NRS 289.057) **Section 5** of this bill provides that if the investigation causes a law enforcement agency to impose punitive action against the peace officer who was the subject of the investigation, the peace officer is responsible for any costs incurred by the law enforcement agency as a result of conducting the investigation.

Existing law additionally authorizes the creation of advisory review boards consisting of appointed persons who are not currently employed as peace officers to advise governing bodies of cities and counties and metropolitan committees on fiscal affairs on issues concerning peace officers within the city or county or employed by a metropolitan police department, as applicable. Such advisory review boards may refer complaints against such peace officers to their employers, review internal investigations of peace officers and make recommendations regarding any disciplinary action recommended by their employers. (NRS 289.380, 289.383, 289.387) **Section 6** of this bill requires such advisory review boards to: (1) review internal investigations of peace officers and make recommendations regarding any disciplinary action recommended by their employers; and (2) review the policies and procedures of law enforcement agencies and make recommendations regarding any changes to such policies and procedures.

Section 3 of this bill provides that as a condition of the certification of each peace officer, the Peace Officers' Standards and Training Commission must require each peace officer to be trained in the appropriate way to communicate during situations that arise in the course of the peace officer's duties. **Section 4** of this bill requires peace officers to maintain liability insurance covering the peace officer's activities in the course of his or her duties.



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

Section 1. Chapter 289 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. 1. Each law enforcement agency shall:

(a) Require each uniformed peace officer it employs whose duties involve regular contact with the general public to wear a portable event recording device while on duty.

(b) Adopt policies and procedures governing the use of portable event recording devices, which must include, at a minimum:

(1) Requiring activation of a portable event recording device whenever a peace officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a uniformed peace officer and a member of the public;

(2) Prohibiting deactivation of a portable event recording device until the conclusion of a law enforcement or investigative encounter;

(3) Prohibiting the recording of general activity;

(4) Protecting the privacy of persons:

(I) In a private residence;

(II) Seeking to report a crime or provide information regarding a crime or ongoing investigation anonymously; or

(III) Claiming to be a victim of a crime;

(5) Limiting the period for which a video recorded by a portable event recording device should be retained; and

(6) Establishing disciplinary rules for peace officers who:

(I) Fail to operate a portable event recording device in accordance with any departmental policies;

(II) Manipulate a video recorded by a portable event recording device; or

(III) Prematurely erase a video recorded by a portable event recording device.

2. As used in this section:

(a) "Law enforcement agency" means:

(1) The sheriff's office of a county;

(2) A metropolitan police department;

(3) A police department of an incorporated city; or

(4) The Nevada Highway Patrol.

(b) "Portable event recording device" means a device issued to a peace officer by a law enforcement agency to be worn on his or her body and which records both audio and visual events



1 *occurring during an encounter with a member of the public while*
2 *performing his or her duties as a peace officer.*

3 **Sec. 3.** *As a condition of the certification of each peace*
4 *officer, the Peace Officers' Standards and Training Commission*
5 *shall require each peace officer to be trained in the appropriate*
6 *way to communicate during situations that arise in the course of*
7 *the peace officer's duties, including, without limitation, training*
8 *concerning language that is inappropriate to use because it may*
9 *escalate the situation.*

10 **Sec. 4.** *Any person upon whom some or all of the powers of a*
11 *peace officer are conferred pursuant to NRS 289.150 to 289.360,*
12 *inclusive, shall maintain liability insurance covering the peace*
13 *officer's activities in the course of his or her duties.*

14 **Sec. 5.** NRS 289.057 is hereby amended to read as follows:

15 289.057 1. An investigation of a peace officer may be
16 conducted in response to a complaint or allegation that the peace
17 officer has engaged in activities which could result in punitive
18 action.

19 2. Except as otherwise provided in a collective bargaining
20 agreement, a law enforcement agency shall not suspend a peace
21 officer without pay during or pursuant to an investigation conducted
22 pursuant to this section until all investigations relating to the matter
23 have concluded.

24 3. After the conclusion of the investigation:

25 (a) If the investigation causes a law enforcement agency to
26 impose punitive action against the peace officer who was the subject
27 of the investigation and the peace officer has received notice of the
28 imposition of the punitive action, the peace officer or a
29 representative authorized by the peace officer may, except as
30 otherwise prohibited by federal or state law, review any
31 administrative or investigative file maintained by the law
32 enforcement agency relating to the investigation, including any
33 recordings, notes, transcripts of interviews and documents.

34 (b) If, pursuant to a policy of a law enforcement agency or a
35 labor agreement, the record of the investigation or the imposition of
36 punitive action is subject to being removed from any administrative
37 file relating to the peace officer maintained by the law enforcement
38 agency, the law enforcement agency shall not, except as otherwise
39 required by federal or state law, keep or make a record of the
40 investigation or the imposition of punitive action after the record is
41 required to be removed from the administrative file.

42 *(c) If the investigation causes a law enforcement agency to*
43 *impose punitive action against the peace officer who was the*
44 *subject of the investigation, the peace officer is responsible for any*



costs incurred by the law enforcement agency as a result of conducting the investigation.

Sec. 6. NRS 289.387 is hereby amended to read as follows:

289.387 1. A review board that is created pursuant to paragraph (a) of subsection 2 of NRS 289.380 or pursuant to NRS 289.383 must meet in panels of five members to carry out its duties.

2. A review board that is created pursuant to paragraph (b) of subsection 2 of NRS 289.380 must meet in panels of three members to carry out its duties.

3. Members must be selected randomly to serve on a panel, and the panel shall select one of its members to serve as chair of the panel.

4. A panel of a review board created pursuant to NRS 289.380 or 289.383 ~~may~~:

(a) ~~Refer~~ *May refer* a complaint against a peace officer, school police officer, constable or deputy of a constable to the employer of the peace officer, school police officer, constable or deputy of a constable.

(b) ~~Review~~ *Shall review* an internal investigation of a peace officer, school police officer, constable or deputy of a constable within the jurisdiction of the governing body that created the review board and make recommendations regarding any disciplinary action against the peace officer, school police officer, constable or deputy of a constable that is recommended by his or her employer, including, without limitation:

(1) Increasing or decreasing the recommended level of discipline; and

(2) Exonerating the peace officer, school police officer, constable or deputy of a constable who has been the subject of the internal investigation.

(c) Shall review the policies and procedures of law enforcement agencies and make recommendations regarding any changes to such policies and procedures.

5. The employer of a peace officer, school police officer, constable or deputy of a constable shall make available to a panel of the review board any personnel file or other material necessary for the panel to conduct a review.

6. When reviewing an internal investigation of a peace officer, school police officer, constable or deputy of a constable pursuant to subsection 4, the panel shall provide the peace officer, school police officer, constable or deputy of a constable with notice and an opportunity to be heard. The peace officer, school police officer, constable or deputy of a constable may represent himself or herself at the hearing before the panel or be represented by an attorney or other person of his or her own choosing. The review board,



1 governing body and employer of the peace officer, school police
2 officer, constable or deputy of a constable are not responsible for
3 providing such representation.

4 7. The chair of a panel of a review board shall report the
5 findings and recommendation of the panel regarding disciplinary
6 action to the employer of the peace officer, school police officer,
7 constable or deputy of a constable.

8 8. A police officer, school police officer, constable or deputy of
9 a constable may appeal a recommendation made by a panel of the
10 review board. The ordinance pursuant to which the review board is
11 created must specify the manner for conducting appeals, and may
12 provide for, if both parties agree, without limitation, mediation,
13 conciliation or review by another panel of randomly selected
14 members of the review board. If the appeal is heard by another panel
15 of the review board, the determination made by the panel hearing
16 the appeal is final and binding and is not subject to judicial review.

17 9. The findings and recommendation of a panel of the review
18 board are public records unless otherwise declared confidential by
19 state or federal law.

20 10. A proceeding of a panel of such a review board is closed to
21 the public.

22 **Sec. 7.** NRS 289.450 is hereby amended to read as follows:

23 289.450 As used in NRS 289.450 to 289.600, inclusive, *and*
24 *section 3 of this act*, unless the context otherwise requires, the
25 words and terms defined in NRS 289.460 to 289.490, inclusive,
26 have the meanings ascribed to them in those sections.

27 **Sec. 8.** NRS 179.425 is hereby amended to read as follows:

28 179.425 "Electronic, mechanical or other device" means any
29 device or apparatus which can be used to intercept a wire or oral
30 communication other than:

31 1. Any telephone instrument, equipment or facility, or any
32 component thereof:

33 (a) Furnished to the subscriber or user by a communications
34 common carrier in the ordinary course of its business and being used
35 by the subscriber or user in the ordinary course of its business; or

36 (b) Being used by a communications common carrier in the
37 ordinary course of its business, or by an investigative or law
38 enforcement officer in the ordinary course of his or her duties.

39 2. A hearing aid or similar device being used to correct
40 subnormal hearing to not better than normal.

41 *3. A portable event recording device, as defined in section 2*
42 *of this act.*

43 **Sec. 9.** NRS 331.220 is hereby amended to read as follows:

44 331.220 1. Except as otherwise provided in subsection 2, it is
45 unlawful for a person to engage in any kind of surreptitious



1 electronic surveillance on the grounds of any facility owned or
2 leased by the State of Nevada without the knowledge of the person
3 being observed.

4 2. Subsection 1 does not apply to any electronic surveillance:

5 (a) Authorized by a court order issued to a public officer, based
6 upon a showing of probable cause to believe that criminal activity is
7 occurring on the property under surveillance;

8 (b) By a law enforcement agency pursuant to a criminal
9 investigation; ~~(c)~~

10 (c) *By a peace officer wearing a portable event recording*
11 *device pursuant to section 2 of this act; or*

12 (d) Which is necessary as part of a system of security used to
13 protect and ensure the safety of persons on the grounds of the
14 facility.

15 **Sec. 10.** NRS 393.400 is hereby amended to read as follows:

16 393.400 1. Except as otherwise provided in subsection 2, it is
17 unlawful for a person to engage in any kind of surreptitious
18 electronic surveillance on any property of a public school without
19 the knowledge of the person being observed.

20 2. Subsection 1 does not apply to any electronic surveillance:

21 (a) Authorized by a court order issued to a public officer, based
22 upon a showing of probable cause to believe that criminal activity is
23 occurring on the property of the public school under surveillance;

24 (b) By a law enforcement agency pursuant to a criminal
25 investigation;

26 (c) *By a peace officer wearing a portable event recording*
27 *device pursuant to section 2 of this act;*

28 (d) Which is necessary as part of a system of security used to
29 protect and ensure the safety of persons on the property of the public
30 school; or

31 ~~(d)~~ (e) Of a class or laboratory when authorized by the teacher
32 of the class or laboratory.

33 **Sec. 11.** NRS 396.970 is hereby amended to read as follows:

34 396.970 1. Except as otherwise provided in subsection 2, it is
35 unlawful for a person to engage in any kind of surreptitious
36 electronic surveillance on a campus of the System without the
37 knowledge of the person being observed.

38 2. Subsection 1 does not apply to any electronic surveillance:

39 (a) Authorized by a court order issued to a public officer, based
40 upon a showing of probable cause to believe that criminal activity is
41 occurring on the property under surveillance;

42 (b) By a law enforcement agency pursuant to a criminal
43 investigation;

44 (c) *By a peace officer wearing a portable event recording*
45 *device pursuant to section 2 of this act;*



- 1 *(d)* Which is necessary as part of a system of security used to
2 protect and ensure the safety of persons on the campus; or
3 ~~†(d)†~~ *(e)* Of a class or laboratory when authorized by the teacher
4 of the class or laboratory.

5 **Sec. 12.** The provisions of NRS 354.599 do not apply to any
6 additional expenses of a local government that are related to the
7 provisions of this act.

8 **Sec. 13.** This act becomes effective on January 1, 2016.

