

Amendment No. 441

Senate Amendment to Senate Bill No. 242	(BDR 23-1066)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will REMOVE the unfunded mandate from S.B. 242.

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

RMB/HAC



Date: 4/14/2019

S.B. No. 242—Revises provisions relating to peace officers. (BDR 23-1066)



SENATE BILL NO. 242—SENATOR CANNIZZARO

FEBRUARY 28, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to peace officers. (BDR 23-1066)

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

~~{CONTAINS UNFUNDED MANDATE (§ 9)
(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 that a suspended peace officer must be granted back pay under certain circumstances; requiring that the questioning of a peace officer by a superior officer cease under certain circumstances; prohibiting the disclosure or use of a peace officer's compelled statement in certain civil cases; ~~{providing, with limited exception, that a video of a police officer is confidential;}~~ limiting *with certain exceptions*, the time in which a law enforcement agency may initiate an investigation into certain alleged misconduct of a peace officer; prohibiting, with limited exception, a law enforcement agency from reassigning a peace officer while he or she is under investigation; requiring, under certain circumstances, the dismissal of civil and administrative proceedings against a peace officer; ~~{revising provisions related to the questioning or interrogation of a peace officer; requiring, with limited exception, that the face of a peace officer be redacted from a video recorded by a portable event recording device;}~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides certain rights to peace officers. (NRS 289.010-289.120) **Section 1** of this bill provides if a peace officer is suspended without pay pending the outcome of a criminal prosecution, the peace officer shall receive back pay if the case is dismissed or the peace officer is found not guilty. ~~{,}~~ ***and the officer is not subjected to punitive action by the law enforcement agency in connection with the misconduct allegations in question.***

Section 2 of this bill requires the questioning of a peace officer by a superior officer to stop if the peace officer ***reasonably believes the questioning could result in punitive action and the peace officer*** requests representation. **Section 2** also prohibits the use of a peace officer's compelled statement in a civil case against the peace officer without his or her consent ~~{,}~~ ***with limited exceptions.***

~~{— Under existing law, with limited exception, the home address and any photograph of a peace officer that is in the possession of a law enforcement agency are confidential and not public information. (NRS 289.025) Existing law also requires, with limited exception, that: (1)~~

14 a uniformed peace officer wear a portable event recording device while on duty; and (2) video
15 recorded on such a device must be available for public inspection. (NRS 289.830) Section 3 of
16 this bill provides that, with limited exception, the video of a peace officer is confidential and
17 not public information. Section 9 of this bill requires, with limited exception, a law
18 enforcement agency to redact the face of any peace officer appearing in a video recorded by a
19 portable event recording device before the video may be released for public inspection.]

20 Existing law authorizes the investigation of a peace officer in response to a complaint or
21 allegation that the peace officer engaged in activities which could result in punitive action.
22 (NRS 289.057) Section 4 of this bill prohibits a law enforcement agency from initiating such
23 an investigation if the complaint or allegation is filed more than 1 year after the misconduct
24 allegedly occurred unless the alleged misconduct ~~{would be a felony or gross misdemeanor,}~~
25 is a crime punishable pursuant to state or federal law. Section 4 further provides that a law
26 enforcement agency may not reopen an investigation if the agency determines that no
27 misconduct occurred ~~{}~~ unless the law enforcement agency discovers new material
28 evidence. Section 4 also prohibits the reassignment of a peace officer without his or her
29 consent if an investigation or hearing regarding alleged misconduct is pending.

30 ~~{Existing law sets forth notification requirements and certain other procedures for an~~
31 ~~interview, interrogation or hearing relating to an investigation of alleged misconduct of a~~
32 ~~peace officer. (NRS 289.060) Section 5 of this bill requires additional notice be given if it is~~
33 ~~discovered that a peace officer gives false information during such an interrogation or~~
34 ~~hearing.}~~

35 Section 6 of this bill provides any representative a peace officer elects to represent the
36 officer during an interrogation or hearing regarding alleged misconduct must be allowed to
37 inspect any evidence the law enforcement agency has in its possession related to the
38 investigation.

39 Under existing law, evidence obtained in violation of the rights of peace officers is
40 inadmissible. (NRS 289.085) Section 7 of this bill provides instead that if evidence is
41 obtained in violation of the rights of peace officers, the administrative proceeding or civil
42 action filed against the peace officer must be dismissed ~~, {and the officer must be awarded~~
43 ~~back pay, attorney fees, costs and any other relief the arbitrator or court deems appropriate.}~~

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

1 Section 1. Chapter 289 of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 *If a law enforcement agency suspends a peace officer without pay pending*
4 *the outcome of a criminal prosecution, ~~{and}~~ the law enforcement agency shall*
5 *award the peace officer back pay for the duration of the suspension if:*

- 6 1. The charges against the peace officer are dismissed ~~{or the}~~;
7 2. The peace officer is found not guilty ~~{, the law enforcement agency shall~~
8 award the peace officer back pay for the duration of the suspension.} at trial; or
9 3. The peace officer is not subjected to punitive action in connection with
10 the alleged misconduct.

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

12 289.020 1. A law enforcement agency shall not use punitive action against a
13 peace officer if the peace officer chooses to exercise the peace officer's rights under
14 any internal administrative grievance procedure.

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

18 3. *If a peace officer requests representation while being questioned by a*
19 *superior officer on any matter ~~{}~~ that the peace officer reasonably believes could*
20 *result in punitive action, the questioning must cease immediately and the peace*

officer must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative before the questioning may resume.

4. If a peace officer refuses to comply with ~~a request~~ *an order* 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.

5. *Except as otherwise provided in this subsection, any statement a peace officer is compelled to make pursuant to this chapter shall not be disclosed or used in a civil case against the peace officer without the consent of the peace officer. Such a statement may be used in an administrative hearing or civil case regarding the employment of the peace officer. In such a civil case, the court may review the statement in camera to determine whether the statement is inconsistent with the testimony of the peace officer and release any inconsistent statement to the opposing party for purposes of impeachment.*

Sec. 3. ~~NRS 289.025 is hereby amended to read as follows:~~

~~289.025 1. Except as otherwise provided in subsections 2 and 3 and NRS 239.0115 [.] and 289.830, the home address and any photograph or video of a peace officer in the possession of a law enforcement agency are not public information and are confidential.~~

~~2. [The] Except as otherwise provided in NRS 289.080 and 289.830, a photograph or video of a peace officer may be released:~~

~~(a) If the peace officer authorizes the release; or~~

~~(b) If the peace officer has been arrested.~~

~~3. The home address of a peace officer may be released if a peace officer has been arrested and the home address is included in any of the following:~~

~~(a) A report of a 911 telephone call.~~

~~(b) A police report, investigative report or complaint which a person filed with a law enforcement agency.~~

~~(c) A statement made by a witness.~~

~~(d) A report prepared pursuant to NRS 432B.540 by an agency which provides child welfare services, which report details a plan for the placement of a child.]~~

~~(Deleted by amendment.)~~

Sec. 4. NRS 289.057 is hereby amended to read as follows:

289.057 1. ~~[An]~~ *Except as otherwise provided in this subsection, an investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action. A law enforcement agency shall not conduct an investigation pursuant to this subsection if the activities of the peace officer occurred more than 1 year from the date of the filing of a complaint or allegation with the law enforcement agency unless the alleged misconduct would be a crime punishable [as a felony or gross misdemeanor.] pursuant to state or federal law.*

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

3. After the conclusion of the investigation:

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

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

(c) If the law enforcement agency concludes that the peace officer did not violate a statute, policy, rule or regulation, the law enforcement agency shall not reopen the investigation ~~if~~ unless the law enforcement agency discovers new material evidence related to the matter.

4. A law enforcement agency shall not reassign a peace officer temporarily or permanently without his or her consent during or pursuant to an investigation conducted pursuant to this section or when there is a hearing relating to such an investigation that is pending.

Sec. 5. ~~NRS 289.060 is hereby amended to read as follows:~~

~~289.060 1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide a written notice to the peace officer who is the subject of the investigation. If the law enforcement agency believes that any other peace officer has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation, the law enforcement agency shall provide a written notice to the peace officer advising the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. Any peace officer who serves as a witness during an interview must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative authorized by NRS 289.080. Any peace officer specified in this subsection may waive the notice required pursuant to this section.~~

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

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

~~3. The law enforcement agency shall:~~

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

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

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

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

~~— (c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, including, without limitation, if the law enforcement agency believes that the peace officer provides false information concerning a material fact during the interrogation or hearing, the law enforcement agency shall immediately notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer or hearing concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.~~

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

~~— 4. If a peace officer provides a statement or answers a question relating to the alleged misconduct of a peace officer who is the subject of an investigation pursuant to NRS 289.057 after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him or her, the statement or answer must not be used against the peace officer who provided the statement or answer in any subsequent criminal proceeding.) (Deleted by amendment.)~~

Sec. 6. NRS 289.080 is hereby amended to read as follows:

289.080 1. Except as otherwise provided in subsection ~~4.] 5,~~ a peace officer who is the subject of an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer.

2. Except as otherwise provided in subsection ~~4.] 5,~~ a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview.

3. A representative of a peace officer must assist the peace officer during the interview, interrogation or hearing.

4. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to ~~[explain]:~~

(a) Inspect all evidence related to the investigation that is in the possession of the law enforcement agency, including, without limitation, audio recordings, photographs, video recordings and statements made by or attributed to the peace officer.

(b) Explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.

~~[4.]~~ 5. A representative must not otherwise be connected to, or the subject of, the same investigation.

~~[5.]~~ 6. Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed.

~~[6.]~~ 7. Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed except upon the:

(a) Request of the peace officer; or

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

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

~~[7.]~~ 8. The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the interview, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the:

(a) Stenographic transcript of the proceedings; or

(b) Recording on the digital or magnetic tape.

~~[8.]~~ 9. After the conclusion of the investigation, the peace officer who was the subject of the investigation or any representative of the peace officer may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents contained in the file.

Sec. 7. NRS 289.085 is hereby amended to read as follows:

289.085 If an arbitrator or court determines that evidence was obtained during an investigation of a peace officer concerning conduct that could result in punitive action in a manner which violates any provision of NRS 289.010 to 289.120, inclusive, and ~~[that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and]~~ *section 1 of this act*, the arbitrator or court shall ~~[exclude such evidence during any]~~

~~1. Dismiss~~ *dismiss with prejudice the* administrative proceeding commenced or civil action filed against the peace officer. ~~[and~~

~~2. Award the peace officer back pay, attorney fees, costs and any other relief the hearing officer, arbitrator or court determines is appropriate.]~~

Sec. 8. NRS 289.090 is hereby amended to read as follows:

289.090 The provisions of *subsections 2, 3 and 4 of* NRS 289.057 ~~[and~~ *NRS* 289.060, 289.070 and 289.080 do not apply to any investigation which concerns alleged criminal activities.

Sec. 9. ~~[NRS 289.830 is hereby amended to read as follows:~~

~~289.830 1. A law enforcement agency shall require uniformed peace officers that it employs and who routinely interact with the public to wear a portable event recording device while on duty. Each law enforcement agency shall adopt policies and procedures governing the use of portable event recording devices, which must include, without limitation:~~

~~(a) Except as otherwise provided in paragraph (d), 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;~~

~~(b) Except as otherwise provided in paragraph (d), prohibiting deactivation of a portable event recording device until the conclusion of a law enforcement or investigative encounter;~~

~~(c) Prohibiting the recording of general activity;~~

~~(d) Protecting the privacy of persons;~~

~~(1) In a private residence;~~
~~(2) Seeking to report a crime or provide information regarding a crime or ongoing investigation anonymously; or~~
~~(3) Claiming to be a victim of a crime;~~
~~(c) Requiring that any video recorded by a portable event recording device must be retained by the law enforcement agency for not less than 15 days; and~~
~~(f) Establishing disciplinary rules for peace officers who:~~
~~(1) Fail to operate a portable event recording device in accordance with any departmental policies;~~
~~(2) Intentionally manipulate a video recorded by a portable event recording device; or~~
~~(3) Prematurely erase a video recorded by a portable event recording device.~~
~~2. [Any] Except as otherwise provided in subsection 3, any record made by a portable event recording device pursuant to this section is a public record which may be:~~
~~(a) Requested only on a per incident basis; and~~
~~(b) Available for inspection only at the location where the record is held if the record contains confidential information that may not otherwise be redacted.~~
~~3. A law enforcement agency shall redact the face of any peace officer appearing in any video recorded by a portable event recording device before a record may be released pursuant to subsection 2 unless:~~
~~(a) The peace officer authorizes the release; or~~
~~(b) The peace officer has been arrested.~~
~~4. 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;~~
~~(4) A department, division or municipal court of a city or town that employs marshals; or~~
~~(5) 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 occurring during an encounter with a member of the public while performing his or her duties as a peace officer.] (Deleted by amendment.)~~

Sec. 10. This act becomes effective on July 1, 2019.