

Amendment No. 847

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

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.

HAC/BJE



Date: 5/21/2019

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.

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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; defining “law enforcement agency” for certain purposes; 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; 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; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides certain rights to peace officers ~~[(NRS 289.010-289.120)]~~ which are commonly known as the “Peace Officer Bill of Rights.” (NRS 289.020-289.120) This bill makes various changes relating to those rights.

Section 1 of this bill provides if a peace officer is suspended by a law enforcement agency 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.

Existing law authorizes the investigation of a peace officer in response to a complaint or allegation that the peace officer engaged in activities which could result in punitive action. (NRS 289.057) Section 4 of this bill prohibits a law enforcement agency from initiating such an investigation if the complaint or allegation is filed more than 1 year after the misconduct allegedly occurred unless the alleged misconduct is a crime punishable pursuant to state or federal law. Section 4 further provides that a law enforcement agency may not reopen an investigation if the agency determines that no misconduct occurred unless the law

enforcement agency discovers new material evidence. **Section 4** also prohibits , with limited exception, the reassignment of a peace officer without his or her consent if an investigation or hearing regarding alleged misconduct is pending.

Section 6 of this bill ~~[provides any]~~ requires a law enforcement agency conducting an interview, interrogation or hearing related to an investigation of a peace officer to allow a representative [a] of the peace officer [elects to represent the officer during an interrogation or hearing regarding alleged misconduct must be allowed] to inspect [any] the following if related to the investigation and in the possession of the law enforcement agency: (1) physical evidence [the law enforcement agency has in its possession related to the investigation]; (2) audio recordings, photographs and video recordings; and (3) statements made by or attributable to the peace officer.

Under existing law, evidence obtained in violation of the rights of peace officers is inadmissible. (NRS 289.085) **Section 7** of this bill provides instead that if evidence is obtained in violation of the rights of peace officers, the administrative proceeding or civil action filed against the peace officer must be dismissed.

Section 1.5 of this bill defines the term “law enforcement agency” for purposes of: (1) the Peace Officer Bill of Rights (NRS 289.020-289.120); (2) certain provisions of law relating to persons who possess some or all of the powers of peace officers (NRS 289.150-289.360); (3) certain provisions of law relating to advisory review boards (NRS 289.380-289.390); (4) certain provisions of law relating to certification and training of peace officers (NRS 289.450-289.650); and (5) certain provisions of law relating to the use of a choke hold by a peace officer (NRS 289.810).

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 a new section to read as follows:

If a law enforcement agency suspends a peace officer without pay pending the outcome of a criminal prosecution, the law enforcement agency shall award the peace officer back pay for the duration of the suspension if:

- 1. The charges against the peace officer are dismissed;*
- 2. The peace officer is found not guilty at trial; or*
- 3. The peace officer is not subjected to punitive action in connection with the alleged misconduct.*

Sec. 1.5. NRS 289.010 is hereby amended to read as follows:

289.010 As used in this chapter, unless the context otherwise requires:

1. “Administrative file” means any file of a peace officer containing information, comments or documents about the peace officer. The term does not include any file relating to an investigation conducted pursuant to NRS 289.057 or a criminal investigation of a peace officer.

2. “Choke hold” means the holding of a person’s neck in a manner specifically intended to restrict the flow of oxygen or blood to the person’s lungs or brain. The term includes the arm-bar restraint, carotid restraint and lateral vascular neck restraint.

3. “Law enforcement agency” means any agency, office, bureau, department, unit or division created by any statute, ordinance or rule which:

(a) Has a duty to enforce the law; and

(b) Employs any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

4. “Peace officer” means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

~~4.4~~ 5. "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment.

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. *If a peace officer requests representation while being questioned by a superior officer on any matter that the peace officer reasonably believes could 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. (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 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 unless the law enforcement agency discovers new material evidence related to the matter.*

4. ~~4.1~~ Except as otherwise provided in subsection 5, 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.

5. A law enforcement agency may 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 if the law enforcement agency finds, based on specific facts or circumstances, that reassignment of the peace officer is necessary to maintain the efficient operation of the law enforcement agency.

Sec. 5. (Deleted by amendment.)

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

289.080 1. Except as otherwise provided in subsection ~~4.1~~ 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 ~~4.1~~ 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~~ the following if related to the investigation and in the possession of the law enforcement agency:

(1) Physical evidence ~~related to the investigation that is in the possession of the law enforcement agency, including, without limitation, audio~~;

(2) Audio recordings, photographs ~~and~~ and video recordings; and ~~statements~~

(3) 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.

~~4.1~~ 5. A representative must not otherwise be connected to, or the subject of, the same investigation.

~~5.1~~ 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.

1 ~~[6.]~~ 7. Any information that a representative obtains from the peace officer
2 who is the subject of the investigation is confidential and must not be disclosed
3 except upon the:

- 4 (a) Request of the peace officer; or
5 (b) Lawful order of a court of competent jurisdiction.

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

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

- 12 (a) Stenographic transcript of the proceedings; or
13 (b) Recording on the digital or magnetic tape.

14 ~~[8.]~~ 9. After the conclusion of the investigation, the peace officer who was the
15 subject of the investigation or any representative of the peace officer may, if the
16 peace officer appeals a recommendation to impose punitive action, review and copy
17 the entire file concerning the internal investigation, including, without limitation,
18 any recordings, notes, transcripts of interviews and documents contained in the file.

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

20 289.085 If an arbitrator or court determines that evidence was obtained during
21 an investigation of a peace officer concerning conduct that could result in punitive
22 action in a manner which violates any provision of NRS 289.010 to 289.120,
23 inclusive, and ~~[that such evidence may be prejudicial to the peace officer, such~~
24 ~~evidence is inadmissible and]~~ **section 1 of this act,** the arbitrator or court shall
25 ~~[exclude such evidence during any]~~ **dismiss with prejudice the** administrative
26 proceeding commenced or civil action filed against the peace officer.

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

28 289.090 The provisions of **subsections 2** ~~[, 3 and 4]~~ **to 5, inclusive, of** NRS
29 289.057 ~~[.]~~ **and NRS** 289.060, 289.070 and 289.080 do not apply to any
30 investigation which concerns alleged criminal activities.

31 **Sec. 8.5.** **NRS 617.357 is hereby amended to read as follows:**

32 617.357 1. Each insurer shall submit to the Administrator a written report
33 concerning each claim for compensation in which the claimant is a firefighter,
34 police officer, arson investigator or emergency medical attendant that is filed with
35 the insurer pursuant to NRS 617.453, 617.455, 617.457, 617.481, 617.485 or
36 617.487. The written report must be submitted to the Administrator within 30 days
37 after the insurer accepts or denies the claim pursuant to NRS 617.356 and must
38 include:

- 39 (a) A statement specifying the nature of the claim;
40 (b) A statement indicating whether the insurer accepted or denied the claim and
41 the reasons for the acceptance or denial;
42 (c) A statement indicating the estimated medical costs for the claim; and
43 (d) Any other information required by the Administrator.

44 2. If a claim specified in subsection 1 is appealed or affirmed, modified or
45 reversed on appeal, or is closed or reopened, the insurer shall notify the
46 Administrator of that fact in writing within 30 days after the claim is appealed,
47 affirmed, modified, reversed, closed or reopened.

48 3. On or before February 1 of each year, the Administrator shall prepare and
49 make available to the general public a written report concerning claims specified in
50 subsection 1. The written report must include:

- 51 (a) The information submitted to the Administrator by an insurer pursuant to
52 this section during the immediately preceding year; and

1 (b) Any other information concerning those claims required by the
2 Administrator.

3 4. As used in this section, the term “police officer” includes a peace officer as
4 that term is defined in ~~subsection 3 of~~ NRS 289.010.

5 **Sec. 9.** (Deleted by amendment.)

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