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FIRST REPRINT

S.B. 242

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; 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) **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.



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 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 representative a peace officer elects to represent the officer during an interrogation or hearing regarding alleged misconduct must be allowed to inspect any evidence the law enforcement agency has in its possession related to the investigation.

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.

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. 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. ~~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. 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. (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]~~ *dismiss with prejudice the* administrative proceeding commenced or civil action filed against the peace officer.

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]~~ *and NRS* 289.060, 289.070 and 289.080 do not apply to any investigation which concerns alleged criminal activities.

Sec. 9. (Deleted by amendment.)

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

