
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 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:

- 1 Existing law provides certain rights to peace officers. (NRS 289.010-289.120)
2 **Section 1** of this bill provides if a peace officer is suspended without pay pending



3 the outcome of a criminal prosecution, the peace officer shall receive back pay if
4 the case is dismissed or the peace officer is found not guilty.

5 **Section 2** of this bill requires the questioning of a peace officer by a superior
6 officer to stop if the peace officer requests representation. **Section 2** also prohibits
7 the use of a peace officer's compelled statement in a civil case against the peace
8 officer without his or her consent.

9 Under existing law, with limited exception, the home address and any
10 photograph of a peace officer that is in the possession of a law enforcement agency
11 are confidential and not public information. (NRS 289.025) Existing law also
12 requires, with limited exception, that: (1) a uniformed peace officer wear a portable
13 event recording device while on duty; and (2) video recorded on such a device must
14 be available for public inspection. (NRS 289.830) **Section 3** of this bill provides
15 that, with limited exception, the video of a peace officer is confidential and not
16 public information. **Section 9** of this bill requires, with limited exception, a law
17 enforcement agency to redact the face of any peace officer appearing in a video
18 recorded by a portable event recording device before the video may be released for
19 public inspection.

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

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

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

38 Under existing law, evidence obtained in violation of the rights of peace
39 officers is inadmissible. (NRS 289.085) **Section 7** of this bill provides instead that
40 if evidence is obtained in violation of the rights of peace officers, the administrative
41 proceeding or civil action filed against the peace officer must be dismissed and the
42 officer must be awarded back pay, attorney fees, costs and any other relief the
43 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
2 thereto a new section to read as follows:

3 *If a law enforcement agency suspends a peace officer without*
4 *pay pending the outcome of a criminal prosecution and the*
5 *charges against the peace officer are dismissed or the peace*
6 *officer is found not guilty, the law enforcement agency shall*



1 *award the peace officer back pay for the duration of the*
2 *suspension.*

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

4 289.020 1. A law enforcement agency shall not use punitive
5 action against a peace officer if the peace officer chooses to exercise
6 the peace officer's rights under any internal administrative
7 grievance procedure.

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

12 3. *If a peace officer requests representation while being*
13 *questioned by a superior officer on any matter, the questioning*
14 *must cease immediately and the peace officer must be allowed a*
15 *reasonable opportunity to arrange for the presence and assistance*
16 *of a representative before the questioning may resume.*

17 4. If a peace officer refuses to comply with ~~the request~~ *an order*
18 by a superior officer to cooperate with the peace officer's own or
19 any other law enforcement agency in a criminal investigation, the
20 agency may charge the peace officer with insubordination.

21 5. *Except as otherwise provided in this subsection, any*
22 *statement a peace officer is compelled to make pursuant to this*
23 *chapter shall not be disclosed or used in a civil case against the*
24 *peace officer without the consent of the peace officer. Such a*
25 *statement may be used in an administrative hearing regarding the*
26 *employment of the peace officer.*

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

28 289.025 1. Except as otherwise provided in subsections 2 and
29 3 and NRS 239.0115 ~~and~~ *and 289.830*, the home address and any
30 photograph *or video* of a peace officer in the possession of a law
31 enforcement agency are not public information and are confidential.

32 2. ~~The~~ *Except as otherwise provided in NRS 289.080 and*
33 *289.830, a photograph or video* of a peace officer may be released:

- 34 (a) If the peace officer authorizes the release; or
35 (b) If the peace officer has been arrested.

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

- 39 (a) A report of a 911 telephone call.
40 (b) A police report, investigative report or complaint which a
41 person filed with a law enforcement agency.
42 (c) A statement made by a witness.
43 (d) A report prepared pursuant to NRS 432B.540 by an agency
44 which provides child welfare services, which report details a plan
45 for the placement of a child.



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

2 289.057 1. ~~[An]~~ *Except as otherwise provided in this*
3 *subsection, an* investigation of a peace officer may be conducted in
4 response to a complaint or allegation that the peace officer has
5 engaged in activities which could result in punitive action. *A law*
6 *enforcement agency shall not conduct an investigation pursuant to*
7 *this subsection if the activities of the peace officer occurred more*
8 *than 1 year from the date of a complaint or allegation unless the*
9 *alleged misconduct would be a crime punishable as a felony or*
10 *gross misdemeanor.*

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

16 3. After the conclusion of the investigation:

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

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

34 (c) *If the law enforcement agency concludes that the peace*
35 *officer did not violate a statute, policy, rule or regulation, the law*
36 *enforcement agency shall not reopen the investigation.*

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

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

43 289.060 1. Except as otherwise provided in this subsection, a
44 law enforcement agency shall, not later than 48 hours before any
45 interrogation or hearing is held relating to an investigation



1 conducted pursuant to NRS 289.057, provide a written notice to the
2 peace officer who is the subject of the investigation. If the law
3 enforcement agency believes that any other peace officer has any
4 knowledge of any fact relating to the complaint or allegation against
5 the peace officer who is the subject of the investigation, the law
6 enforcement agency shall provide a written notice to the peace
7 officer advising the peace officer that he or she must appear and be
8 interviewed as a witness in connection with the investigation. Any
9 peace officer who serves as a witness during an interview must be
10 allowed a reasonable opportunity to arrange for the presence and
11 assistance of a representative authorized by NRS 289.080. Any
12 peace officer specified in this subsection may waive the notice
13 required pursuant to this section.

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

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

26 3. The law enforcement agency shall:

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

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



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

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

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

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

24 4. If a peace officer provides a statement or answers a question
25 relating to the alleged misconduct of a peace officer who is the
26 subject of an investigation pursuant to NRS 289.057 after the peace
27 officer is informed that failing to provide the statement or answer
28 may result in punitive action against him or her, the statement or
29 answer must not be used against the peace officer who provided the
30 statement or answer in any subsequent criminal proceeding.

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

32 289.080 1. Except as otherwise provided in subsection ~~4~~ 5,
33 a peace officer who is the subject of an investigation conducted
34 pursuant to NRS 289.057 may upon request have two
35 representatives of the peace officer's choosing present with the
36 peace officer during any phase of an interrogation or hearing
37 relating to the investigation, including, without limitation, a lawyer,
38 a representative of a labor union or another peace officer.

39 2. Except as otherwise provided in subsection ~~4~~ 5, a peace
40 officer who is a witness in an investigation conducted pursuant to
41 NRS 289.057 may upon request have two representatives of the
42 peace officer's choosing present with the peace officer during an
43 interview relating to the investigation, including, without limitation,
44 a lawyer, a representative of a labor union or another peace officer.



1 The presence of the second representative must not create an undue
2 delay in either the scheduling or conducting of the interview.

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

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

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

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

16 **[4.] 5.** A representative must not otherwise be connected to, or
17 the subject of, the same investigation.

18 **[5.] 6.** Any information that a representative obtains from the
19 peace officer who is a witness concerning the investigation is
20 confidential and must not be disclosed.

21 **[6.] 7.** Any information that a representative obtains from the
22 peace officer who is the subject of the investigation is confidential
23 and must not be disclosed except upon the:

24 (a) Request of the peace officer; or

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

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

29 **[7.] 8.** The peace officer, any representative of the peace officer
30 or the law enforcement agency may make a stenographic, digital or
31 magnetic record of the interview, interrogation or hearing. If the
32 agency records the proceedings, the agency shall at the peace
33 officer's request and expense provide a copy of the:

34 (a) Stenographic transcript of the proceedings; or

35 (b) Recording on the digital or magnetic tape.

36 **[8.] 9.** After the conclusion of the investigation, the peace
37 officer who was the subject of the investigation or any
38 representative of the peace officer may, if the peace officer appeals
39 a recommendation to impose punitive action, review and copy the
40 entire file concerning the internal investigation, including, without
41 limitation, any recordings, notes, transcripts of interviews and
42 documents contained in the file.

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

44 289.085 If an arbitrator or court determines that evidence was
45 obtained during an investigation of a peace officer concerning



1 conduct that could result in punitive action in a manner which
2 violates any provision of NRS 289.010 to 289.120, inclusive, and
3 ~~[that such evidence may be prejudicial to the peace officer, such~~
4 ~~evidence is inadmissible and] *section 1 of this act*, the arbitrator or~~
5 court shall ~~[exclude such evidence during any] :~~

6 *1. Dismiss with prejudice the administrative proceeding*
7 *commenced or civil action filed against the peace officer [H]; and*

8 *2. Award the peace officer back pay, attorney fees, costs and*
9 *any other relief the hearing officer, arbitrator or court determines*
10 *is appropriate.*

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

12 289.090 The provisions of *subsections 2, 3 and 4 of* NRS
13 289.057 [H] *and NRS* 289.060, 289.070 and 289.080 do not apply to
14 any investigation which concerns alleged criminal activities.

15 **Sec. 9.** NRS 289.830 is hereby amended to read as follows:

16 289.830 1. A law enforcement agency shall require
17 uniformed peace officers that it employs and who routinely interact
18 with the public to wear a portable event recording device while on
19 duty. Each law enforcement agency shall adopt policies and
20 procedures governing the use of portable event recording devices,
21 which must include, without limitation:

22 (a) Except as otherwise provided in paragraph (d), requiring
23 activation of a portable event recording device whenever a peace
24 officer is responding to a call for service or at the initiation of any
25 other law enforcement or investigative encounter between a
26 uniformed peace officer and a member of the public;

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

30 (c) Prohibiting the recording of general activity;

31 (d) Protecting the privacy of persons:

32 (1) In a private residence;

33 (2) Seeking to report a crime or provide information
34 regarding a crime or ongoing investigation anonymously; or

35 (3) Claiming to be a victim of a crime;

36 (e) Requiring that any video recorded by a portable event
37 recording device must be retained by the law enforcement agency
38 for not less than 15 days; and

39 (f) Establishing disciplinary rules for peace officers who:

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

42 (2) Intentionally manipulate a video recorded by a portable
43 event recording device; or

44 (3) Prematurely erase a video recorded by a portable event
45 recording device.



1 2. ~~[Any]~~ *Except as otherwise provided in subsection 3, any*
2 record made by a portable event recording device pursuant to this
3 section is a public record which may be:

4 (a) Requested only on a per incident basis; and

5 (b) Available for inspection only at the location where the
6 record is held if the record contains confidential information that
7 may not otherwise be redacted.

8 3. *A law enforcement agency shall redact the face of any*
9 *peace officer appearing in any video recorded by a portable event*
10 *recording device before a record may be released pursuant to*
11 *subsection 2 unless:*

12 (a) *The peace officer authorizes the release; or*

13 (b) *The peace officer has been arrested.*

14 4. As used in this section:

15 (a) "Law enforcement agency" means:

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

17 (2) A metropolitan police department;

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

19 (4) A department, division or municipal court of a city or
20 town that employs marshals; or

21 (5) The Nevada Highway Patrol.

22 (b) "Portable event recording device" means a device issued to a
23 peace officer by a law enforcement agency to be worn on his or her
24 body and which records both audio and visual events occurring
25 during an encounter with a member of the public while performing
26 his or her duties as a peace officer.

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



