
SENATE BILL NO. 348—SENATORS SETTELMEYER, CEGAVSKE;
BROWER, GOICOECHEA, GUSTAVSON AND HARDY

MARCH 18, 2013

JOINT SPONSORS: ASSEMBLYMEN HAMBRICK; PAUL ANDERSON,
ELLISON, FIORE, GRADY, HICKEY, OSCARSON AND
WHEELER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the rights of peace
officers. (BDR 23-463)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to peace officers; revising the circumstances under which a peace officer must be provided with an opportunity for a hearing; prohibiting a peace officer from using any internal administrative grievance procedure to make unsupported allegations against a superior officer; prohibiting access by a peace officer upon whom punitive action is imposed pursuant to an administrative investigation or a representative of the peace officer to certain confidential information relating to the investigation; revising provisions relating to peace officers who are witnesses in an investigation of another peace officer; revising provisions concerning polygraphic examinations given to persons who make certain allegations against a peace officer; authorizing, under certain circumstances, a law enforcement agency to seek a determination from the district court as to whether evidence was properly excluded by an arbitrator during an administrative proceeding; and providing other matters properly relating thereto.



* S B 3 4 8 *

Legislative Counsel's Digest:

1 Existing law requires a law enforcement agency to provide a peace officer with
2 an opportunity for a hearing if the peace officer: (1) is denied a promotion on
3 grounds other than merit; or (2) has punitive action imposed against him or her.
4 (NRS 289.020) **Section 1** of this bill removes the requirement to provide a hearing
5 if a peace officer is denied a promotion on grounds other than merit. **Section 1** also
6 provides that a peace officer shall not use any internal administrative grievance
7 procedure to make an allegation that has no supporting facts against a superior
8 officer and that the law enforcement agency may charge a peace officer who
9 violates this provision with insubordination and making a false statement.

10 Existing law further provides that if punitive action is imposed against a peace
11 officer after the conclusion of an investigation of the peace officer that was
12 conducted in response to a complaint or allegation that the peace officer engaged in
13 certain activities, the peace officer or his or her representative may, unless
14 prohibited by law, review any administrative or investigative file relating to the
15 investigation which is maintained by the law enforcement agency. (NRS 289.057)
16 **Section 2** of this bill provides that the peace officer or representative may not be
17 given access to certain confidential information relating to the investigation.

18 Existing law requires a law enforcement agency to provide a written notice to
19 any peace officer whom the law enforcement agency believes has any knowledge
20 of any fact relating to the complaint or allegation against another peace officer who
21 is the subject of an investigation. The written notice must advise the peace officer
22 that he or she must appear and be interviewed as a witness in connection with the
23 investigation. (NRS 289.060) **Section 3** of this bill removes these provisions and
24 provides that a peace officer who has been identified as a witness in an
25 investigation of another peace officer may identify himself or herself as a subject of
26 the investigation if the peace officer reasonably believes that he or she may be
27 culpable in relation to the investigation and therefore subject to discipline. Existing
28 law also authorizes a peace officer who is a witness in an investigation to have two
29 representatives present during an interview conducted in relation to the
30 investigation. Any such representative is required to keep confidential all
31 information concerning the investigation that he or she obtains from the peace
32 officer. (NRS 289.080) **Section 5** of this bill removes these provisions.

33 Existing law prohibits a person who makes certain allegations against a peace
34 officer from being required to submit to a polygraphic examination as a condition
35 to the investigation of the person's allegation, but authorizes the person to request
36 or agree to be given such an examination. (NRS 289.070) **Section 4** of this bill
37 removes the provision which authorizes the person to request or agree to be given a
38 polygraphic examination.

39 Finally, existing law provides that if an arbitrator or court determines that
40 evidence was obtained during the investigation of a peace officer in a manner
41 which violates certain provisions of law and that such evidence may be prejudicial
42 to the peace officer, the evidence is inadmissible and must be excluded during an
43 administrative proceeding commenced or civil action filed against the peace officer.
44 (NRS 289.085) **Section 6** of this bill authorizes a law enforcement agency that is
45 aggrieved by such a determination of an arbitrator to apply to the district court for a
46 determination as to whether such evidence was properly excluded.



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

1 **Section 1.** NRS 289.020 is hereby amended to read as follows:
2 289.020 1. A law enforcement agency shall not use punitive
3 action against a peace officer if the peace officer chooses to exercise
4 the peace officer's rights under any internal administrative
5 grievance procedure.

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

10 3. If a peace officer refuses to comply with a request by a
11 superior officer to cooperate with the peace officer's own or any
12 other law enforcement agency in a criminal investigation, the
13 agency may charge the peace officer with insubordination.

14 4. *A peace officer shall not use any internal administrative*
15 *grievance procedure to make an allegation that has no supporting*
16 *facts against a superior officer. If a peace officer makes any such*
17 *allegation, the agency may charge the peace officer with*
18 *insubordination and making a false statement.*

19 **Sec. 2.** NRS 289.057 is hereby amended to read as follows:

20 289.057 1. An investigation of a peace officer may be
21 conducted in response to a complaint or allegation that the peace
22 officer has engaged in activities which could result in punitive
23 action.

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

29 3. After the conclusion of the investigation:

30 (a) If the investigation causes a law enforcement agency to
31 impose punitive action against the peace officer who was the subject
32 of the investigation and the peace officer has received notice of the
33 imposition of the punitive action, the peace officer or a
34 representative authorized by the peace officer may, except as
35 otherwise *provided in this paragraph or* prohibited by federal or
36 state law, review any administrative or investigative file maintained
37 by the law enforcement agency relating to the investigation,
38 including any recordings, notes, transcripts of interviews and
39 documents. *The peace officer or representative may not be given*
40 *access to any executive or official information. As used in this*
41 *paragraph, "executive or official information" means confidential*
42 *information maintained by a law enforcement agency which is*



1 *deliberative or evaluative in nature and which is generated during*
2 *the course of an investigation conducted pursuant to this section.*

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

11 **Sec. 3.** NRS 289.060 is hereby amended to read as follows:

12 289.060 1. Except as otherwise provided in this ~~subsection,~~
13 *section,* a law enforcement agency shall, not later than 48 hours
14 before any interrogation or hearing is held relating to an
15 investigation conducted pursuant to NRS 289.057, provide a written
16 notice to the peace officer who is the subject of the investigation. ~~If~~
17 ~~the law enforcement agency believes that any other peace officer~~
18 ~~has any knowledge of any fact relating to the complaint or allegation~~
19 ~~against the peace officer who is the subject of the investigation, the~~
20 ~~law enforcement agency shall provide a written notice to the peace~~
21 ~~officer advising the peace officer that he or she must appear and be~~
22 ~~interviewed as a witness in connection with the investigation. Any~~
23 ~~peace officer who serves as a witness during an interview must be~~
24 ~~allowed a reasonable opportunity to arrange for the presence and~~
25 ~~assistance of a representative authorized by NRS 289.080.~~

26 2. *A peace officer who has been identified as a witness in an*
27 *investigation conducted pursuant to NRS 289.057 may, before or*
28 *during an interview in which the peace officer serves as a witness,*
29 *identify himself or herself as a subject of the investigation if the*
30 *peace officer reasonably believes that he or she may be culpable in*
31 *relation to the investigation and therefore subject to discipline. An*
32 *investigator who reasonably believes that a peace officer has made*
33 *an admission that may lead to discipline during such an interview*
34 *shall stop the interview. If a peace officer makes an admission*
35 *pursuant to this subsection, the law enforcement agency shall*
36 *provide a written notice to the peace officer in accordance with the*
37 *provisions of subsection 1.*

38 3. Any peace officer specified in ~~this~~ subsection *1 or 2* may
39 waive the notice required pursuant to this section.

40 ~~2-~~ 4. The notice provided to ~~the~~ a peace officer who is the
41 subject of ~~the~~ an investigation must include:

- 42 (a) A description of the nature of the investigation;
43 (b) A summary of alleged misconduct of the peace officer;
44 (c) The date, time and place of the interrogation or hearing;



1 (d) The name and rank of the officer in charge of the
2 investigation and the officers who will conduct any interrogation or
3 hearing;

4 (e) The name of any other person who will be present at any
5 interrogation or hearing; and

6 (f) A statement setting forth the provisions of subsection 1 of
7 NRS 289.080.

8 ~~13-1~~ 5. The law enforcement agency shall:

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

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

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

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

32 (c) Limit the scope of the questions during the interrogation or
33 hearing to the alleged misconduct of the peace officer who is the
34 subject of the investigation. If any evidence is discovered during the
35 course of an investigation or hearing which establishes or may
36 establish any other possible misconduct engaged in by the peace
37 officer, the law enforcement agency shall notify the peace officer of
38 that fact and shall not conduct any further interrogation of the peace
39 officer concerning the possible misconduct until a subsequent notice
40 of that evidence and possible misconduct is provided to the peace
41 officer pursuant to this chapter.

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



1 ~~4~~ 6. If a peace officer provides a statement or answers a
2 question relating to the alleged misconduct of a peace officer who is
3 the subject of an investigation pursuant to NRS 289.057 after the
4 peace officer is informed that failing to provide the statement or
5 answer may result in punitive action against him or her, the
6 statement or answer must not be used against the peace officer who
7 provided the statement or answer in any subsequent criminal
8 proceeding.

9 **Sec. 4.** NRS 289.070 is hereby amended to read as follows:

10 289.070 1. During an investigation conducted pursuant to
11 NRS 289.057, the peace officer against whom the allegation is made
12 may, but is not required to, submit to a polygraphic examination
13 concerning such activities.

14 2. A person who makes an allegation against a peace officer
15 pursuant to NRS 289.057 may not be required to submit to a
16 polygraphic examination as a condition to the investigation of the
17 person's allegation . ~~†, but may request or agree to be given a~~
18 ~~polygraphic examination. If such a person requests or agrees to be~~
19 ~~given a polygraphic examination, such an examination must be~~
20 ~~given.†~~

21 3. If a polygraphic examination is given to a peace officer
22 pursuant to this section, a sound or video recording must be made of
23 the polygraphic examination, the preliminary interview and the
24 postexamination interview. Before the opinion of the polygraphic
25 examiner regarding the peace officer's veracity may be considered
26 in a disciplinary action, all records, documents and recordings
27 resulting from the polygraphic examination must be made available
28 for review by one or more polygraphic examiners licensed or
29 qualified to be licensed in this State who are acceptable to the law
30 enforcement agency and to the officer. If the opinion of a reviewing
31 polygraphic examiner does not agree with the initial polygraphic
32 examiner's opinion, the peace officer must be allowed to be
33 reexamined by a polygraphic examiner of the peace officer's choice
34 who is licensed or qualified to be licensed in this State.

35 4. The opinion of a polygraphic examiner regarding the peace
36 officer's veracity may not be considered in a disciplinary action
37 unless the polygraphic examination was conducted in a manner
38 which complies with the provisions of chapter 648 of NRS. In any
39 event, the law enforcement agency shall not use a polygraphic
40 examiner's opinion regarding the veracity of the peace officer as the
41 sole basis for disciplinary action against the peace officer.

42 **Sec. 5.** NRS 289.080 is hereby amended to read as follows:

43 289.080 1. Except as otherwise provided in subsection ~~4~~ 3,
44 a peace officer who is the subject of an investigation conducted
45 pursuant to NRS 289.057 may upon request have two



1 representatives of the peace officer's choosing present with the
2 peace officer during any phase of an interrogation or hearing
3 relating to the investigation, including, without limitation, a lawyer,
4 a representative of a labor union or another peace officer.

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

13 ~~3.~~ A representative of a peace officer must assist the peace
14 officer during the interview, interrogation or hearing. The law
15 enforcement agency conducting the interview, interrogation or
16 hearing shall allow a representative of the peace officer to explain
17 an answer provided by the peace officer or refute a negative
18 implication which results from questioning of the peace officer but
19 may require such explanation to be provided after the agency has
20 concluded its initial questioning of the peace officer.

21 ~~4.~~ 3. A representative must not otherwise be connected to, or
22 the subject of, the same investigation.

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

26 ~~6.~~ 4. Any information that a representative obtains from the
27 peace officer who is the subject of the investigation is confidential
28 and must not be disclosed except upon the:

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

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

34 ~~8.~~ 5. The peace officer, any representative of the peace
35 officer or the law enforcement agency may make a stenographic,
36 digital or magnetic record of the interview, interrogation or hearing.
37 If the agency records the proceedings, the agency shall at the peace
38 officer's request and expense provide a copy of the:

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

41 ~~9.~~ 6. After the conclusion of the investigation ~~and~~ *and at the*
42 *request and expense of* the peace officer who was the subject of the
43 investigation, *the peace officer* or any representative of the peace
44 officer may, if the peace officer appeals a recommendation to
45 impose punitive action, review and copy the entire file concerning



1 the internal investigation, including, without limitation, any
2 recordings, notes, transcripts of interviews and documents contained
3 in the file.

4 **Sec. 6.** NRS 289.085 is hereby amended to read as follows:

5 289.085 **1.** If an arbitrator or court determines that evidence
6 was obtained during an investigation of a peace officer concerning
7 conduct that could result in punitive action in a manner which
8 violates any provision of NRS 289.010 to 289.120, inclusive, and
9 that such evidence may be prejudicial to the peace officer, such
10 evidence is inadmissible and the arbitrator or court shall exclude
11 such evidence during any administrative proceeding commenced or
12 civil action filed against the peace officer.

13 **2.** *Any law enforcement agency aggrieved by the*
14 *determination of an arbitrator that evidence is inadmissible*
15 *pursuant to subsection 1 may apply to the district court for a*
16 *determination as to whether such evidence was properly excluded.*

17 **Sec. 7.** This act becomes effective on July 1, 2013.

