

SENATE BILL NO. 2—COMMITTEE OF THE WHOLE

AUGUST 1, 2020

Referred to Committee of the Whole

SUMMARY—Revises provisions relating to peace officers. (BDR 23-11)

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

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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; eliminating the prohibition on the use of a peace officer’s compelled statement in a civil case; revising provisions regarding when a law enforcement agency may initiate an investigation into the alleged misconduct of a peace officer; revising provisions relating to the reassignment of a peace officer who is under investigation; authorizing a peace officer or representative to inspect certain evidence and submit a response after the conclusion of an investigation; revising provisions requiring the dismissal of civil and administrative proceedings against a peace officer under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides certain rights to peace officers 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 eliminates the prohibition on the use of a peace officer’s compelled statement in a civil case against the peace officer without his or her consent.

Existing law authorizes a law enforcement agency to conduct an investigation of a peace officer in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action. Unless the alleged misconduct would be a crime punishable pursuant to state or federal law, a law enforcement agency is prohibited from conducting such an investigation if the activities of the peace officer occurred more than 1 year before the date of the filing of the complaint or allegation. (NRS 289.057) **Section 2** of this bill: (1) provides that an investigation must be commenced by the law enforcement within a



15 reasonable period of time after the date of the filing of the complaint or allegation
16 with the law enforcement agency; and (2) prohibits a law enforcement agency from
17 conducting an investigation if the complaint or investigation is filed more than 5
18 years after the activities of the peace officer occurred. **Section 2** also eliminates the
19 prohibition on a law enforcement agency reopening an investigation unless
20 the agency discovers new material evidence. **Section 2** further eliminates the
21 prohibition on reassigning a peace officer during an investigation without the peace
22 officer's consent.

23 Under existing law, a law enforcement agency must allow a representative of a
24 peace officer who is the subject of an investigation to inspect certain evidence in
25 the possession of the law enforcement agency. After the conclusion of the
26 investigation, if the peace officer appeals a recommendation to impose punitive
27 action, the peace officer or his or her representative may review and copy the entire
28 file concerning the internal investigation. (NRS 289.080) **Section 3** of this bill
29 provides, instead, that after the conclusion of an investigation, if a law enforcement
30 agency intends to recommend that punitive action be imposed, the law enforcement
31 agency must notify the peace officer and give the peace officer or his or her
32 representative a reasonable opportunity to inspect any evidence in the possession of
33 the law enforcement agency and submit a response. If the law enforcement agency
34 recommends punitive action be imposed and the peace officer appeals the
35 recommendation, the peace officer or any representative may review and copy the
36 entire file concerning the internal investigation.

37 Under existing law, if an arbitrator or court determines that evidence was
38 obtained during an investigation of a peace officer which was in violation of the
39 rights of peace officers, the arbitrator or court, as applicable, is required to dismiss
40 with prejudice the administrative proceeding or civil action. (NRS 289.085)
41 **Section 4** of this bill requires, instead, the arbitrator or court to: (1) exclude such
42 evidence if the evidence may be prejudicial to the peace officer; and (2) dismiss the
43 administrative proceeding or civil action, with prejudice, if such evidence was
44 obtained by a law enforcement agency in bad faith.

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 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 requests representation while being
11 questioned by a superior officer on any matter that the peace officer
12 reasonably believes could result in punitive action, the questioning
13 must cease immediately and the peace officer must be allowed a
14 reasonable opportunity to arrange for the presence and assistance of
15 a representative before the questioning may resume.



1 4. If a peace officer refuses to comply with an order by a
2 superior officer to cooperate with the peace officer's own or any
3 other law enforcement agency in a criminal investigation, the
4 agency may charge the peace officer with insubordination.

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

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

16 289.057 1. Except as otherwise provided in this subsection,
17 an investigation of a peace officer may be conducted in response to
18 a complaint or allegation that the peace officer has engaged in
19 activities which could result in punitive action. *Any such*
20 *investigation of a peace officer must be commenced by the law*
21 *enforcement agency within a reasonable period of time after the*
22 *date of the filing of the complaint or allegation with the law*
23 *enforcement agency.* A law enforcement agency shall not conduct
24 an investigation pursuant to this subsection if the *complaint or*
25 *allegation is filed with the law enforcement agency more than 5*
26 *years after the* activities of the peace officer occurred. ~~[more than 1~~
27 ~~year from the date of the filing of a complaint or allegation with the~~
28 ~~law enforcement agency unless the alleged misconduct would be a~~
29 ~~crime punishable pursuant to state or federal law.]~~

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

35 3. After the conclusion of the investigation:

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



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

9 ~~[(e) If the law enforcement agency concludes that the peace
10 officer did not violate a statute, policy, rule or regulation, the law
11 enforcement agency shall not reopen the investigation unless the law
12 enforcement agency discovers new material evidence related to the
13 matter.]~~

14 ~~—4. Except as otherwise provided in subsection 5, a law
15 enforcement agency shall not reassign a peace officer temporarily or
16 permanently without his or her consent during or pursuant to an
17 investigation conducted pursuant to this section or when there is a
18 hearing relating to such an investigation that is pending.~~

19 ~~—5.] 4. A law enforcement agency may reassign a peace officer
20 temporarily or permanently without his or her consent during or
21 pursuant to an investigation conducted pursuant to this section or
22 when there is a hearing relating to such an investigation that is
23 pending . [if the law enforcement agency finds, based on specific
24 facts or circumstances, that reassignment of the peace officer is
25 necessary to maintain the efficient operation of the law enforcement
26 agency.]~~

27 **Sec. 3.** NRS 289.080 is hereby amended to read as follows:

28 289.080 1. Except as otherwise provided in subsection 5, a
29 peace officer who is the subject of an investigation conducted
30 pursuant to NRS 289.057 may upon request have two
31 representatives of the peace officer's choosing present with the
32 peace officer during any phase of an interrogation or hearing
33 relating to the investigation, including, without limitation, a lawyer,
34 a representative of a labor union or another peace officer.

35 2. Except as otherwise provided in subsection 5, a peace officer
36 who is a witness in an investigation conducted pursuant to NRS
37 289.057 may upon request have two representatives of the peace
38 officer's choosing present with the peace officer during an interview
39 relating to the investigation, including, without limitation, a lawyer,
40 a representative of a labor union or another peace officer. The
41 presence of the second representative must not create an undue
42 delay in either the scheduling or conducting of the interview.

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



1 4. The law enforcement agency conducting the interview,
2 interrogation or hearing shall allow a representative of the peace
3 officer to ~~f~~:

4 ~~—(a) Inspect the following if related to the investigation and in the~~
5 ~~possession of the law enforcement agency:~~

6 ~~—(1) Physical evidence;~~

7 ~~—(2) Audio recordings, photographs and video recordings; and~~

8 ~~—(3) Statements made by or attributed to the peace officer.~~

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

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

15 6. Any information that a representative obtains from the peace
16 officer who is a witness concerning the investigation is confidential
17 and must not be disclosed.

18 7. Any information that a representative obtains from the peace
19 officer who is the subject of the investigation is confidential and
20 must not be disclosed except upon the:

21 (a) Request of the peace officer; or

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

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

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

31 (a) Stenographic transcript of the proceedings; or

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

33 9. After the conclusion of the investigation, *if a law*
34 *enforcement agency intends to recommend that punitive action be*
35 *imposed against* the peace officer who was the subject of the
36 investigation ~~[or any representative of the peace officer may, if]~~ ,
37 *the law enforcement agency must notify the peace officer of such*
38 *fact and give the peace officer or any representative of the peace*
39 *officer a reasonable opportunity to inspect any evidence in the*
40 *possession of the law enforcement agency and submit a response.*
41 *The law enforcement agency must consider any such response*
42 *before making a recommendation to impose punitive action*
43 *against the peace officer. If the law enforcement agency*
44 *recommends punitive action be imposed against the peace officer*
45 *and* the peace officer appeals ~~[a]~~ *the* recommendation to impose



1 punitive action, *the peace officer or any representative of the peace*
2 *officer may* review and copy the entire file concerning the internal
3 investigation, including, without limitation, any *evidence,*
4 recordings, notes, transcripts of interviews and documents contained
5 in the file.

6 **Sec. 4.** NRS 289.085 is hereby amended to read as follows:
7 289.085 If an arbitrator or court determines that evidence was
8 obtained during an investigation of a peace officer concerning
9 conduct that could result in punitive action in a manner which
10 violates any provision of NRS 289.010 to 289.120, inclusive, *and*
11 *that such evidence may be prejudicial to the peace officer, such*
12 *evidence is inadmissible and* the arbitrator or court shall ~~dismiss~~
13 ~~with prejudice the~~ *exclude such evidence during any*
14 administrative proceeding commenced or civil action filed against
15 the peace officer. *If the arbitrator or court further determines that*
16 *such evidence was obtained by a law enforcement agency in bad*
17 *faith, the arbitrator or court must dismiss the administrative*
18 *proceeding or civil action with prejudice.*

19 **Sec. 5.** NRS 289.090 is hereby amended to read as follows:
20 289.090 The provisions of subsections 2 ~~to 5, inclusive,~~ , 3
21 *and 4* of NRS 289.057 and NRS 289.060, 289.070 and 289.080 do
22 not apply to any investigation which concerns alleged criminal
23 activities.

24 **Sec. 6.** This act becomes effective upon passage and approval.

