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ASSEMBLY BILL NO. 330—ASSEMBLYMEN CHOWNING, OHRENSCHALL,
ARBERRY, ATKINSON, CARPENTER, CHRISTENSEN, CLABORN,
CONKLIN, GEDDES, GOICOECHEA, GOLDWATER, GRADY, LESLIE,
MANENDO, MCCLAIN, MORTENSON, OCEGUERA, PERKINS,
PIERCE, SHERER AND WILLIAMS (BY REQUEST)

MARCH 14, 2003

AMENDED—APRIL 3, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning peace officers and other public officers and employees. (BDR 23-899)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

EXPLANATION – Matter in *bolded italics* is new; *bolded italics* are amended; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to administration of public personnel; [requiring complaints alleging misconduct of certain public officers and employees to be in writing and verified;] defining public employees of a law enforcement agency; requiring information concerning an internal investigation of a *peace officer* to be expunged after a certain period; making certain statements of a peace officer during an interrogation or hearing inadmissible in a subsequent action or administrative proceeding; making various changes concerning the documentation and review of files concerning an internal investigation of a *peace officer*; making various changes concerning the interrogation and hearing conducted during an internal investigation of a *peace officer*; authorizing *peace officers* who provide information in connection with the internal investigation of another *peace officer* to request representation by a representative or a lawyer during any phase of an interrogation or hearing; providing [civil] penalties [and other damages] to be imposed against a law enforcement agency for violating certain provisions governing employment practices; [providing that the limitation on damages for public entities does not apply to actions brought against a law enforcement agency under certain

ASSEMBLY GOVERNMENT AFFAIRS

DATE: 4-3-03 ROOM: 3143 EXHIBIT J.1410

SUBMITTED BY: *Assemblyman Chowning*

circumstances;] providing that review panels may *request* [not subpoena certain] peace officers *to appear and testify* in certain circumstances; [repealing the provision that makes it a crime to file a false complaint concerning a peace officer;] and providing other matters properly relating thereto.

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

Sec 1. Chapter 281 of NRS is hereby amended by adding thereto a new section to read as follows:

~~*[A complaint alleging misconduct of an appointed public officer or a public employee must be submitted to the appointing authority of the public officer or the employer of the employee, as applicable, in writing and must be verified in the manner provided for the verification of pleadings in civil actions as set forth in NRS 15.010.]*~~ For purposes of NRS Chapters 281 and 289, "Employee of a law enforcement agency" means any person employed by any law enforcement agency, entity or authority, commissioned or non-commissioned, included within the purview of NRS 289.150 to 289.360, inclusive.

Sec. 2. Chapter 289 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 and 4 of this act.

Sec. 3. 1. *Except as otherwise provided by federal law, not later than 5 years after the conclusion of an internal investigation of a peace officer, the law enforcement agency shall not use any such conclusion, punitive action, work performance assessment, longevity ruling or any other personnel action based on that internal investigation for any personnel purpose and shall not disclose the existence of that material in the file to any person or organization outside of the law enforcement agency unless said time limit is extended due to a sustained complaint of the same or similar nature.*

2. After information related to an internal investigation has become eligible for classification for non-use or non-disclosure pursuant to subsection 1, that information must not be used by a law enforcement agency to justify any adverse action against a peace officer including, without limitation:

- (a) Taking punitive action;*
- (b) Denying a promotion;*
- (c) Denying an increase in pay;*
- (d) Denying an application for other employment; or*
- (e) Denying a request to take certain actions which are otherwise available for personal improvement.*

3. *If a civil action is filed concerning an internal investigation, information concerning the investigation must not be expunged from records and files pursuant to subsection 1 until the action has concluded and there is no further opportunity for appeal.*

[4. This section does not apply to any action of a law enforcement agency involving a peace officer that is subject to the provisions of NRS 613.330.]

Sec. 4. *Any compelled statement of a peace officer during the interrogation or hearing [that is made under duress, coercion or threat of punitive action] is not admissible in any subsequent civil action or administrative proceeding, except in an action or administrative proceeding:*

1. *Brought by the law enforcement agency against the peace officer;*
2. *Brought by the peace officer or the representative of the peace officer to contest the imposition of any disciplinary action; or*
3. *To impeach the testimony of that peace officer [, if authorized by the court or administrative hearing officer, as applicable] in any civil action where relevant.*

Sec. 5. NRS 289.010 is hereby amended to read as follows:

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

1. "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.

2. "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.

3. "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand [*denial of a request to be transferred to a specialized unit or position,*] or transfer of a peace officer for purposes of punishment *on grounds other than merit.*

Sec. 6. NRS 289.020 is hereby amended to read as follows:

289.020 1. A law enforcement agency shall not use punitive action [*including, without limitation, denying a promotion or taking action or threatening to take action*] against a peace officer if he chooses to exercise his rights *under this chapter or* under any internal administrative grievance procedure.

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

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

Sec. 7. NRS 289.040 is hereby amended to read as follows:

289.040 1. No law enforcement agency may place any unfavorable comment or document in [the] *any file in the control or possession of the law enforcement agency* unless:

(a) The *peace officer* has read and initialed the comment or document or

(b) If the officer refuses to initial the comment or document, a notation to that effect is noted on or attached to the comment or document.

2. If the peace officer submits to the law enforcement agency a written response within 30 days after he is asked to initial the comment or document, his response must be attached to and accompany the comment or document.

3. A peace officer *may review and, upon request,* must be given a copy of any comment or document that is placed in [his]:

(a) *His personnel file; or*

(b) *Any other file concerning [an] a sustained internal investigation in which the peace officer is the subject of the investigation.*

(c) *Any other file concerning an internal investigation in which the peace officer provided information as part of such investigation, limited in such instances, to any documents or statements, written or oral, given by such peace officer.*

4. *A law enforcement agency may deny access to any portion of the internal affairs investigation in those limited instances where the agency asserts that a public policy exists. Public policy exceptions shall exist where there is pending or anticipated criminal proceedings based on the conclusions of the investigation; there are confidential sources or investigative techniques to protect; or there is potential jeopardy to law enforcement personnel. If such public policy exception is alleged, the agency shall not be allowed to proceed with any punitive action based on the investigation prior to obtaining a ruling from a court of competent jurisdiction based on the court's in camera review and balancing of the interests of the peace officer and the law enforcement agency in regard to such disclosure.*

Sec. 8. NRS 289.060 is hereby amended to read as follows:

289.060 1. [The agency shall, within a reasonable time] [B]efore any interrogation or hearing is held relating to an internal investigation of the activities of *any peace officer* which may result in punitive action, *the agency shall* provide reasonable written notice to *any peace officer interviewed during the investigation and his collective bargaining agent or representative,* if practical under the circumstances, *which notice shall not be less than 48 hours unless otherwise mutually agreed upon by the agency and the peace officer.*

2. The notice must include:

(a) A description of the nature of the investigation;

(b) A summary of alleged misconduct of the peace officer;

(c) The date, time and place of the interrogation or hearing;

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

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

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

3. The agency shall:

(a) Interrogate [the] *any peace officer* during his regular working hours, if reasonably practicable, or compensate him for that time based on his regular wages if no charges arise from the interrogation.

(b) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the *peace officer*.

(c) Allow [the] *any peace officer* to explain an answer or refute a negative implication that results from questioning during an interrogation or hearing.

(d) Inform any peace officer who refuses to respond to questions during the interrogation or hearing that failure to answer questions directly related to the investigation may result in punitive action.

4. The agency shall not provide the home address or photograph of any peace officer to any news media without the consent of the peace officer.

Sec. 9. NRS 289.080 is hereby amended to read as follows:

289.080 1. Except as otherwise provided in subsection 2, *any peace officer* may, upon request, have a lawyer or other representative of his choosing present with the *peace officer* during any phase of an interrogation or hearing.

2. The representative must not otherwise be connected to, or the subject of, the same investigation.

3. Any information that the representative obtains from the peace officer concerning 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 the representative for his failure or refusal to disclose such information.

4. The peace officer may make a stenographic, *digital* or magnetic record of the interrogation or hearing, *with any other peace officer questioned during the internal investigation being entitled to record only that portion of the interrogation or hearing involving the testimony or other participation of that peace officer*. 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 *as limited by this section*; or

(b) Recording of the *digital or magnetic tape as limited by this section*.

5. *After the conclusion of the investigation, the peace officer who was the subject of the investigation or his representative may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the sustained internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and any documents contained in the file.*

Sec. 10. NRS 289.110 is hereby amended to read as follows:

289.110 1. A peace officer may disclose information regarding improper governmental action by filing a report with:

(a) The district attorney of the county in which the improper governmental action occurred; or

(b) The Attorney General if the district attorney referred to in paragraph (a) is involved in the improper governmental action.

2. Upon the filing of a report pursuant to subsection 1, the district attorney or Attorney General may investigate the report and determine whether improper governmental action did occur. Upon the completion of the investigation the district attorney or Attorney

General:

(a) If he determines that improper governmental action did occur, may prosecute the violation. The Attorney General may prosecute such a violation if the district attorney fails or refuses so to act.

(b) Shall notify the peace officer who filed the report of the results of the investigation.

3. The employer of a peace officer shall not take any reprisal or retaliatory action against a peace officer who in good faith files a report pursuant to subsection 1.

4. Nothing in this section authorizes a person to disclose information if disclosure is otherwise prohibited by law.

5. *[This section does not apply to a peace officer who is employed by the State.*

6.] As used in this section, "improper governmental action" means any action taken by an officer or employee of a law enforcement agency, while in the performance of his official duties which is in violation of any state law or regulation.

Sec. 11. NRS 289.120 is hereby amended to read as follows:

289.120 1. Any peace officer aggrieved by an action of his employer in violation of this chapter may, after exhausting any applicable internal grievance procedures, grievance procedures negotiated pursuant to chapter 288 of NRS and other administrative remedies, apply to the district court for judicial relief. If the court determines that the employer has violated a provision of this chapter, the court shall order appropriate injunctive or other extraordinary relief to prevent the further

occurrence of the violation and the taking of any reprisal or retaliatory action by the employer against the peace officer.

2. *[Except as otherwise provided in subsection 3, in addition to any other penalty,] [I] f a [district] court, state or local review board, arbitrator or internal agency review board holds that a law enforcement agency, or an employee, agent or representative of a law enforcement agency acting in the scope of employment [intentionally] violated any provision of this chapter the court [shall require the law enforcement agency to pay to the peace officer a civil penalty in the amount of \$25,000 for each violation, any actual damages and reasonable attorney's fees.*

3. *A law enforcement agency must not be held liable pursuant to this section for any act of a contractor if the contract between the law enforcement agency and the contractor provides that the contractor remains responsible for his actions.*

4. *The limitation on an award for damages set forth in NRS 41.035 does not apply to an action brought pursuant to this section.] , arbitrator or board shall exclude or otherwise condition the weight of any evidence or information obtained as a result of the violation in order to eliminate or counter any prejudice caused to the peace officer by virtue of said violation.*

Sec. 12. NRS 289.380 is hereby amended to read as follows:

289.380 1. Except as otherwise provided in NRS 289.383, the governing body of a city or county may create a review board by ordinance to advise the governing body on issues concerning peace officers, school police officers, constables and deputies of constables within the city or county.

2. A review board created pursuant to subsection 1 must consist of:

(a) In a city whose population is 150,000 or more or a county whose population is 100,000 or more, 25 members; and

(b) In a city whose population is less than 150,000 or a county whose population is less than 100,000, 12 members.

3. Such a review board must be appointed by the governing body from a list of names submitted by interested persons. If an insufficient number of names of interested persons is submitted, the governing body shall appoint the remaining members in the manner it deems appropriate.

4. A person appointed to the review board must:

(a) Be a resident of the city or county for which the review board was created, except no member of the review board may be currently employed as a peace officer, school police officer, constable or deputy of a constable.

(b) Complete training relating to law enforcement before serving as a member of the review board, including, without limitation, training in the policies and procedures of law enforcement agencies, police of school districts and offices of

constables, the provisions of NRS 289.010 to 289.120, inclusive, [*and sections 3 and 4 of this act,*] and the employment contracts of the peace officers, school police officers, constables or deputies of constables.

Sec. 13. NRS 289.383 is hereby amended to read as follows:

289.383 1. If a metropolitan police department has been formed pursuant to NRS 280.110, the metropolitan police committee on fiscal affairs may request the participating political

subdivisions to create a review board to advise the committee on issues concerning peace officers employed by the metropolitan police department. The participating subdivisions may jointly create such a review board by mutual ordinances.

2. A review board created pursuant to subsection 1 must consist of 25 members, appointed from a list of names submitted by interested persons. The members of the metropolitan police committee on fiscal affairs who are representatives of the county

shall appoint 13 members of the review board, and the members of the metropolitan police committee on fiscal affairs who are representatives of each participating city within the county shall appoint an equal number of the remaining 12 members. If an insufficient number of names of interested persons are submitted, the members of the metropolitan police committee on fiscal affairs shall appoint the remaining members in the manner they deem appropriate.

3. A person appointed to the review board must:

(a) Be a resident within the jurisdiction of the participating subdivisions for which the review board was created, except no member of the review board may be currently employed as a peace officer.

(b) Complete training relating to law enforcement before serving as a member of the review board, including, without limitation, training in the policies and procedures of law enforcement agencies, the provisions of NRS 289.010 to 289.120, inclusive, [*and sections 3 and 4 of this act*] and the employment contracts of the peace officers.

Sec. 14. [NRS 289.390 is hereby amended to read as follows:

289.390 1. A panel of a review board that is created pursuant to NRS 289.380 or 289.383 may:

(a) Administer oaths;

(b) Take testimony;

(c) Within the scope of its jurisdiction, issue subpoenas to compel the attendance of witnesses to testify before the panel;

(d) Require the production of books, papers and documents; and

(e) Issue commissions to take testimony.

2. If a witness refuses to attend or testify or produce books, papers or documents as required by the subpoena, the panel may petition the district court to

order the witness to appear or testify or produce the requested books, papers or documents.]

Sec. 15. NRS 41.035 is hereby amended to read as follows:

41.035 1. *Except as otherwise provided in NRS 289.120, an* award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the State or any political subdivision, immune contractor or State Legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of \$50,000, exclusive of interest computed from the date of judgment, to or for the benefit of any claimant. An award may not include any amount as exemplary or punitive damages.

2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort and arising from any recreational activity or recreational use of land or water which is brought against:

(a) Any public or quasi-municipal corporation organized under the laws of this state.

(b) Any person with respect to any land or water leased or otherwise made available by that person to any public agency.

(c) Any Indian tribe, band or community whether or not a fee is charged for such activity or use. The provisions of this paragraph do not impair or modify any immunity from liability or action existing on February 26, 1968, or arising after February 26, 1968, in favor of any Indian tribe, band or community. The Legislature declares that the purpose of this subsection is to effectuate the public policy of the State of Nevada by encouraging the recreational use of land, lakes, reservoirs and other water owned or controlled by any public or quasi-municipal agency or corporation of this state, wherever such land or water may be situated.] NRS 396.3291 is hereby amended to read as follows:

396.3291 1. The Board of Regents may create on each campus of the System a campus review board to advise the president or other chief administrative officer of the campus and, upon request, the Board of Regents on issues concerning allegations made against peace officers of the Police Department for the System involving misconduct while serving on the campus.

2. A campus review board created pursuant to subsection 1 must consist of not less than 15 members.

3. A campus review board must be appointed by the Board of Regents from a list of names submitted by interested persons within the System and in the general public. If an insufficient number of names of persons interested in serving on a campus review board are submitted, the Board of Regents shall appoint the remaining members in the manner it deems appropriate.

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4. A person appointed to a campus review board:
- (a) Must be a resident of this state;
 - (b) Must not be employed as a peace officer;
 - (c) Must complete training relating to law enforcement before serving as a member of the campus review board, including, without limitation, training in the policies and procedures of the Police Department for the System, the provisions of chapter 284 of NRS, the regulations adopted pursuant thereto and NRS 289.010 to 289.120, inclusive, [*and sections 3 and 4 of this act,*] and the terms and conditions of employment of the peace officers of the System; and
 - (d) Shall serve without salary, but may receive from the System such per diem allowances and travel expenses as are authorized by the Board of Regents.
- [Sec. 17. NRS 199.325 is hereby repealed.]

[TEXT OF REPEALED SECTION]

[199.325 Filing false or fraudulent complaint or allegation of misconduct against peace officer.

1. A person who knowingly files a false or fraudulent written complaint or allegation of misconduct against a peace officer for conduct in the course and scope of his employment is guilty of a misdemeanor.

2. As used in this section, "peace officer" has the meaning ascribed to it in NRS 289.010.]

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