
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

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.

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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 administration of public personnel; requiring complaints alleging misconduct of certain public officers and employees to be in writing and verified; 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 certain peace officers who provide information in connection with the internal investigation of another officer to request representation by 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



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entities does not apply to actions brought against a law enforcement agency under certain circumstances; providing that review panels may not subpoena certain peace officers 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:

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

3 *A complaint alleging misconduct of an appointed public officer*
4 *or a public employee must be submitted to the appointing authority*
5 *of the public officer or the employer of the employee, as*
6 *applicable, in writing and must be verified in the manner provided*
7 *for the verification of pleadings in civil actions as set forth in*
8 *NRS 15.010.*

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

11 **Sec. 3. 1.** *Not later than 5 years after the conclusion of an*
12 *internal investigation of a peace officer, the law enforcement*
13 *agency shall expunge any information related to and references to*
14 *the internal investigation from any record or file that it maintains.*

15 **2.** *After information related to an internal investigation has*
16 *been expunged pursuant to subsection 1, that information must*
17 *not be used by a law enforcement agency to justify any adverse*
18 *action against the peace officer including, without limitation:*

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

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

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

33 **Sec. 4.** *Any statement of a peace officer during the*
34 *interrogation or hearing that is made under duress, coercion or*



1 *threat of punitive action is not admissible in any subsequent civil*
2 *action or administrative proceeding, except in an action or*
3 *administrative proceeding:*

4 1. *Brought by the law enforcement agency against the peace*
5 *officer;*

6 2. *Brought by the peace officer or the representative of the*
7 *peace officer to contest the imposition of any disciplinary action;*
8 *or*

9 3. *To impeach the testimony of that peace officer, if*
10 *authorized by the court or administrative hearing officer, as*
11 *applicable.*

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

13 289.010 As used in this chapter, unless the context otherwise
14 requires:

15 1. "Choke hold" means the holding of a person's neck in a
16 manner specifically intended to restrict the flow of oxygen or blood
17 to the person's lungs or brain. The term includes the arm-bar
18 restraint, carotid restraint and lateral vascular neck restraint.

19 2. "Peace officer" means any person upon whom some or all of
20 the powers of a peace officer are conferred pursuant to NRS
21 289.150 to 289.360, inclusive.

22 3. "Punitive action" means any action which may lead to
23 dismissal, demotion, suspension, reduction in salary, written
24 reprimand, *denial of a request to be transferred to a specialized*
25 *unit or position*, or transfer of a peace officer for purposes of
26 punishment.

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

28 289.020 1. A law enforcement agency shall not use punitive
29 action, *including, without limitation, denying a promotion or*
30 *taking action or threatening to take action* against a peace officer if
31 he chooses to exercise his rights *under this chapter or* under any
32 internal administrative grievance procedure.

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

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

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

42 289.040 1. No law enforcement agency may place any
43 unfavorable comment or document in ~~the~~ *any* file of a peace
44 officer unless:



1 (a) The officer has read and initialed the comment or document;
2 or

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

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

10 3. A peace officer must be given a copy of any comment or
11 document that is placed in ~~His~~ :

12 (a) *His personnel file ; or*

13 (b) *Any other file concerning an internal investigation in*
14 *which the peace officer is the subject of the investigation or*
15 *provides information as part of an investigation.*

16 4. *A peace officer may review, upon request and at a*
17 *reasonable time:*

18 (a) *His personnel file; and*

19 (b) *Any other file concerning an internal investigation in*
20 *which the peace officer was the subject of the investigation or*
21 *provided information as part of an investigation.*

22 5. *A law enforcement agency shall not include any*
23 *documentation of an internal investigation in the personnel file of*
24 *a peace officer.*

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

26 289.060 1. The agency shall, ~~[within a reasonable time]~~ *at*
27 *least 72 hours* before any interrogation or hearing is held relating to
28 an investigation of the activities of a peace officer which may result
29 in punitive action, provide written notice to the officer if practical
30 under the circumstances.

31 2. The notice must include:

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

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

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

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

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

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

41 3. The agency shall:

42 (a) Interrogate the officer during his regular working hours, if
43 reasonably practicable, or compensate him for that time based on his
44 regular wages if no charges arise from the interrogation.



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

3 (c) Allow the officer to explain an answer or refute a negative
4 implication which results from questioning during an interrogation
5 or hearing.

6 *(d) Inform an officer who refuses to respond to questions
7 during the interrogation or hearing that failure to answer
8 questions directly related to the investigation may result in
9 punitive action.*

10 **4. The agency shall not:**

11 *(a) Threaten the officer or use offensive language in
12 addressing the officer during the interrogation.*

13 *(b) Offer any reward to induce a person to answer any
14 question during the interrogation.*

15 *(c) Provide the home address or photograph of the officer to
16 any news media without the consent of the officer.*

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

18 289.080 1. Except as otherwise provided in subsection 2, a
19 peace officer may , upon request , have a lawyer or other
20 representative of his choosing present with the peace officer during
21 any phase of an interrogation or hearing **[]** , *including, without
22 limitation, a peace officer who is not the subject of the
23 investigation and regardless of whether the law enforcement
24 agency claims that no punitive action will be brought against that
25 officer.*

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

28 3. Any information that the representative obtains from the
29 peace officer concerning the investigation is confidential and must
30 not be disclosed except upon the:

31 (a) Request of the peace officer; or

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

33 A law enforcement agency shall not take punitive action against the
34 representative for his failure or refusal to disclose such information.

35 4. The peace officer or the law enforcement agency may make
36 a stenographic , *digital* or magnetic record of the interrogation or
37 hearing. If the agency records the proceedings, the agency shall at
38 the 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 **5. After the conclusion of the investigation, the peace officer
42 who was the subject of the investigation or a representative of the
43 peace officer may:**

44 *(a) If the peace officer appeals a recommendation to impose
45 disciplinary action, review and copy the entire file concerning the*



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

4 *(b) If there is not a recommendation to impose disciplinary*
5 *action, review the file concerning the internal investigation but*
6 *may not copy the file, except as otherwise provided in subsection 4.*

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

8 **289.110** 1. A peace officer may disclose information
9 regarding improper governmental action by filing a report with:

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

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

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

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

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

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

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

30 5. ~~This section does not apply to a peace officer who is~~
31 ~~employed by the State.~~

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

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

37 **289.120** 1. Any peace officer aggrieved by an action of his
38 employer in violation of this chapter may, after exhausting any
39 applicable internal grievance procedures, grievance procedures
40 negotiated pursuant to chapter 288 of NRS and other administrative
41 remedies, apply to the district court for judicial relief. If the court
42 determines that the employer has violated a provision of this
43 chapter, the court shall order appropriate injunctive or other
44 extraordinary relief to prevent the further occurrence of the violation



1 and the taking of any reprisal or retaliatory action by the employer
2 against the peace officer.

3 *2. Except as otherwise provided in subsection 3, in addition to*
4 *any other penalty, if a district court holds that a law enforcement*
5 *agency, or an employee, agent or representative of a law*
6 *enforcement agency acting in the scope of employment,*
7 *intentionally violated any provision of this chapter, the court shall*
8 *require the law enforcement agency to pay to the peace officer a*
9 *civil penalty in the amount of \$25,000 for each violation, any*
10 *actual damages and reasonable attorney's fees.*

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

15 *4. The limitation on an award for damages set forth in NRS*
16 *41.035 does not apply to an action brought pursuant to this*
17 *section.*

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

19 289.380 1. Except as otherwise provided in NRS 289.383,
20 the governing body of a city or county may create a review board by
21 ordinance to advise the governing body on issues concerning peace
22 officers, school police officers, constables and deputies of
23 constables within the city or county.

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

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

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

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

35 4. A person appointed to the review board must:

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

40 (b) Complete training relating to law enforcement before serving
41 as a member of the review board, including, without limitation,
42 training in the policies and procedures of law enforcement agencies,
43 police of school districts and offices of constables, the provisions of
44 NRS 289.010 to 289.120, inclusive, *and sections 3 and 4 of this*



1 *act*, and the employment contracts of the peace officers, school
2 police officers, constables or deputies of constables.

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

4 289.383 1. If a metropolitan police department has been
5 formed pursuant to NRS 280.110, the metropolitan police
6 committee on fiscal affairs may request the participating political
7 subdivisions to create a review board to advise the committee on
8 issues concerning peace officers employed by the metropolitan
9 police department. The participating subdivisions may jointly create
10 such a review board by mutual ordinances.

11 2. A review board created pursuant to subsection 1 must
12 consist of 25 members, appointed from a list of names submitted by
13 interested persons. The members of the metropolitan police
14 committee on fiscal affairs who are representatives of the county
15 shall appoint 13 members of the review board, and the members of
16 the metropolitan police committee on fiscal affairs who are
17 representatives of each participating city within the county shall
18 appoint an equal number of the remaining 12 members. If an
19 insufficient number of names of interested persons are submitted,
20 the members of the metropolitan police committee on fiscal affairs
21 shall appoint the remaining members in the manner they deem
22 appropriate.

23 3. A person appointed to the review board must:

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

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

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

35 289.390 1. ~~1A~~ *Except as otherwise provided in subsection*
36 *2, a panel of a review board that is created pursuant to NRS 289.380*
37 *or 289.383 may:*

38 (a) Administer oaths;

39 (b) Take testimony;

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

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

43 (e) Issue commissions to take testimony.

44 2. *A panel of a review board may not issue subpoenas to*
45 *compel the attendance of a peace officer, school police officer,*



1 *constable or deputy of a constable during the review of an internal*
2 *investigation pursuant to paragraph (b) of subsection 4 of NRS*
3 *289.387 to testify before the panel.*

4 3. If a witness refuses to attend or testify or produce books,
5 papers or documents as required by the subpoena, the panel may
6 petition the district court to order the witness to appear or testify or
7 produce the requested books, papers or documents.

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

9 41.035 1. ~~[An]~~ *Except as otherwise provided in NRS*
10 *289.120, an* award for damages in an action sounding in tort
11 brought under NRS 41.031 or against a present or former officer or
12 employee of the State or any political subdivision, immune
13 contractor or State Legislator arising out of an act or omission
14 within the scope of his public duties or employment may not exceed
15 the sum of \$50,000, exclusive of interest computed from the date of
16 judgment, to or for the benefit of any claimant. An award may not
17 include any amount as exemplary or punitive damages.

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

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

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

26 (c) Any Indian tribe, band or community whether or not a fee is
27 charged for such activity or use. The provisions of this paragraph do
28 not impair or modify any immunity from liability or action existing
29 on February 26, 1968, or arising after February 26, 1968, in favor of
30 any Indian tribe, band or community.

31 The Legislature declares that the purpose of this subsection is to
32 effectuate the public policy of the State of Nevada by encouraging
33 the recreational use of land, lakes, reservoirs and other water owned
34 or controlled by any public or quasi-municipal agency or
35 corporation of this state, wherever such land or water may be
36 situated.

37 **Sec. 16.** NRS 396.3291 is hereby amended to read as follows:

38 396.3291 1. The Board of Regents may create on each
39 campus of the System a campus review board to advise the president
40 or other chief administrative officer of the campus and, upon
41 request, the Board of Regents on issues concerning allegations made
42 against peace officers of the Police Department for the System
43 involving misconduct while serving on the campus.

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



- 1 3. A campus review board must be appointed by the Board of
2 Regents from a list of names submitted by interested persons within
3 the System and in the general public. If an insufficient number of
4 names of persons interested in serving on a campus review board are
5 submitted, the Board of Regents shall appoint the remaining
6 members in the manner it deems appropriate.
- 7 4. A person appointed to a campus review board:
8 (a) Must be a resident of this state;
9 (b) Must not be employed as a peace officer;
10 (c) Must complete training relating to law enforcement before
11 serving as a member of the campus review board, including, without
12 limitation, training in the policies and procedures of the Police
13 Department for the System, the provisions of chapter 284 of NRS,
14 the regulations adopted pursuant thereto and NRS 289.010 to
15 289.120, inclusive, *and sections 3 and 4 of this act*, and the terms
16 and conditions of employment of the peace officers of the System;
17 and
18 (d) Shall serve without salary, but may receive from the System
19 such per diem allowances and travel expenses as are authorized by
20 the Board of Regents.
- 21 **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.

