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OFFICE OF THE ATTORNEY GENERAL

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***AMENDMENT TO AB58***

***Statement of Intent:*** Based on conversations, both internal and with stakeholders, the Office of the Attorney General does not at this time intend to seek additional concurrent jurisdiction over law enforcement use of force investigations. The changes to Pattern and Practice investigations in these amendments are the product of feedback from numerous stakeholders, including:

- Office of the Attorney General
- Nevada Sheriffs and Chiefs Association
- American Civil Liberties Union of Nevada
- Las Vegas Metropolitan Police Department
- Clark County Public Defender's Office
- Nevada District Attorneys Association
- Nevada Attorneys for Criminal Justice
- Washoe County Sheriff's Office
- Washoe County Public Defender's Office
- Nevada Police Union
- Reno Police Department
- Las Vegas Metro Police Managers and Supervisors Association
- Nevada Association of Public Safety Officers
- The Human Exploitation And Trafficking Team (HEAT)

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EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A **State of Nevada** governmental authority, any agent thereof, or any person acting on behalf of a governmental authority shall not engage in a pattern or practice of conduct by:*

*(a) **peace officers;***

*(b) **officials or employees of any State of Nevada law enforcement agency as defined by NRS 289.010; or***

*(c) **officials or employees of any governmental agency authority with responsibility for the administration of juvenile justice or the detention of juveniles***

*↳ that deprives persons of rights, privileges or immunities secured or protected by the Constitution~~s~~ or laws of the United States or this State.*

*2. The Attorney General, ~~for or in the name of the State of Nevada, may, in accordance with the requirements of this section, file a civil action seeking to obtain any and all appropriate equitable and declaratory relief to eliminate the identified pattern or practice. Before filing a civil action, the Attorney General~~ may investigate any violation of subsection 1. If the Attorney General has reasonable cause to believe that a violation of subsection 1 has occurred, prior to filing an action the Attorney General, must notify the governmental authority ~~or an agent thereof~~ and provide the factual basis that supports his or her reasonable cause to believe that a violation of subsection 1 has occurred. **The governmental authority shall be afforded up to 30 days to respond to the notification by the Attorney General's Office.** If the governmental authority **and the Attorney General do not agree upon a course of action to remedy, change, or eliminate** ~~or an agent thereof~~ ~~has not changed or eliminated~~ the pattern or practice within 60 days after receiving **the***

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deadline for the governmental authority to respond such notification, the Attorney General may, in accordance with the requirements of this section, file a civil action against the governmental authority, for or in the name of the State of Nevada, in a District Court of competent jurisdiction where the governmental authority maintains its headquarters, seeking to obtain any and all appropriate equitable and declaratory relief to eliminate the identified pattern or practice.

3. The Attorney General shall participate and cooperate in any United States Department of Justice investigation regarding whether the Office of the Attorney General has engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitutions or laws of the United States or this State.

4. The Attorney General may file a civil action in a District Court of competent jurisdiction where the governmental authority maintains its headquarters, to enforce the terms of any agreement between the parties, as provided in subsection 2.

~~5.3~~ For the purpose of carrying out an investigation pursuant to the provisions of this section, the Attorney General or his or her designee may issue a subpoena to compel the attendance or testimony of a witness or the production of any relevant materials evidence as defined by NRS 48.015, including without limitation, books, papers, documents, records, photographs, recordings, reports and tangible objects maintained by the agency. If a witness refuses to attend, testify or produce materials as required by the subpoena, the Attorney General may report to the district court by petition, setting forth that:

*(a) Due notice has been given of the time and place of attendance or testimony of the witness or the production of materials;*

*(b) The witness has been subpoenaed pursuant to this section; and*

*(c) The witness has failed or refused to attend, testify or produce materials as required by the subpoena, or has refused to answer questions propounded to him or her,*

*↪ and asking for an order of the court compelling the witness to attend, testify or produce materials. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why the witness has not attended, testified or produced materials. A certified copy of*

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*the order must be served upon the witness. If it appears to the court that the subpoena was regularly properly issued by the Attorney General or his or her designee, the court shall enter an order that the witness appear at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order, the witness must be dealt with as for contempt of court.*

~~5.4. All public officers and, including without limitation, their deputies, assistants, clerks, subordinates or employees shall render and furnish to the Attorney General or his or her designee, when such a request is made pursuant to this Act so requested, assistance and all information in the possession or within the power of the person relating to investigations carried out under the provisions of this section. Any person who willfully fails to comply with this subsection is guilty of a misdemeanor.~~

6. Any state officer, state employee, local governmental officer, or local government employee who discloses a pattern or practice of conduct prohibited by subsection 1 of this Act shall be afforded all protections against reprisal or retaliation as provided by NRS 281.611 through NRS 281.671, inclusively.

7. At the conclusion of an investigation pursuant to this section, the Office of the Attorney General shall:

(a) Issue a report that includes a determination that the governmental agency did not engage in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitutions or laws of the United States or this State;

(b) Issue a report that includes a determination that the allegations that the governmental agency engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitutions or laws of the United States or this State could not be substantiated; or

(c) Issue a report that includes:

(1) a determination that the governmental agency engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitutions or laws of the United States or this State, and

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**(2) the course of action to remedy, change, or eliminate the identified pattern or practice mutually agreed upon by the Attorney General and the governmental agency, or a copy of the action filed in a court of competent jurisdiction against the governmental agency.**

**8.5. Except as otherwise provided in NRS 239.0115, the content of any investigation, including without limitation, the identity of any witnesses, any procedure, testimony taken, document or other tangible evidence produced, or answer made under this section is confidential and not subject to disclosure as a public book or record unless and until the filing of a civil action pursuant to this section, except if:**

***(a) Confidentially is waived by the person upon whom the investigative demand is made;***

***(b) Disclosure is authorized by the district court; or***

***(c) Disclosure is made by a federal court, or federal agency, governmental agency in another state or other governmental agency in this State.***

**8.6. As used in this section, “peace officer” means a person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.**

~~Sec. 2. NRS 41.0305 is hereby amended to read as follows:~~

~~41.0305 As used in NRS 41.0305 to 41.039, inclusive, and section 1 of this act, the term “political subdivision” includes an organization that was officially designated as a community action agency pursuant to 42 U.S.C. § 2790 before that section was repealed and is included in the definition of an “eligible entity” pursuant to 42 U.S.C. § 9902, the Nevada Rural Housing Authority, an airport authority created by special act of the Legislature, a regional transportation commission and a fire protection district, an irrigation district, a school district, the governing body of a charter school, any other special district that performs a governmental function, even though it does not exercise general governmental powers, and the governing body of a university school for profoundly gifted pupils.~~

~~Sec. 3. Chapter 228 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. If a peace officer uses physical force that results in substantial bodily harm to or the death of another person, the law enforcement agency which employs the peace officer~~

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~~shall, within 72 hours after the use of such physical force, provide notice of the incident to the Office of the Attorney General.~~

~~2. Upon receipt of notice of an incident pursuant to subsection 1, the Attorney General may assign personnel to observe any ensuing investigation. For purposes of maintaining the confidentiality of the investigative process, the personnel assigned to such an investigation are considered members of the investigatory team and are entitled to full access to all investigation materials and findings afforded to other members of the investigatory team.~~

~~3. Upon completion of the investigation of an incident described in subsection 1, the district attorney of the county in which the incident occurred shall determine if he or she intends to prosecute the incident or refer the incident to the Attorney General and shall notify the Attorney General of his or her determination. The district attorney shall not decline to prosecute an incident before a determination by the Attorney General that the Attorney General does not intend to prosecute the incident.~~

~~4. As used in this section:~~

~~(a) "Law enforcement agency" means any agency, office or bureau of this State or a political subdivision of this State, the primary duty of which is to enforce the law.~~

~~(b) "Peace officer" means a person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.~~

**Sec. 4.** NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419,

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209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110,  
217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300,  
228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105,  
239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230,  
239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264,  
244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095,  
268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680,  
281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025,  
289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757,  
293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351,  
333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597,  
349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,  
360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327,  
372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626,  
387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249,  
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394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685,  
398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749,  
422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175,  
432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150,  
433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754,  
439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774,  
445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140,  
450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866,  
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501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964,  
598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.303, 604A.710, 612.265,  
616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238, 622.310, 623.131,  
623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760,

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629.047, 629.069, 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and section 1 of this act*, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

2. A governmental entity may not reject a book or record which is copyrighted solely because it is copyrighted.

3. A governmental entity that has legal custody or control of a public book or record shall not deny a request made pursuant to subsection 1 to inspect or copy or receive a copy of a public book or record on the basis that the requested public book or record contains information that is confidential if the governmental entity can redact, delete, conceal or separate,

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including, without limitation, electronically, the confidential information from the information included in the public book or record that is not otherwise confidential.

4. If requested, a governmental entity shall provide a copy of a public record in an electronic format by means of an electronic medium. Nothing in this subsection requires a governmental entity to provide a copy of a public record in an electronic format or by means of an electronic medium if:

(a) The public record:

(1) Was not created or prepared in an electronic format; and

(2) Is not available in an electronic format; or

(b) Providing the public record in an electronic format or by means of an electronic medium would:

(1) Give access to proprietary software; or

(2) Require the production of information that is confidential and that cannot be redacted, deleted, concealed or separated from information that is not otherwise confidential.

5. An officer, employee or agent of a governmental entity who has legal custody or control of a public record:

(a) Shall not refuse to provide a copy of that public record in the medium that is requested because the officer, employee or agent has already prepared or would prefer to provide the copy in a different medium.

(b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare the copy of the public record and shall not require the person who has requested the copy to prepare the copy himself or herself.