

Senate Bill No. 2—Committee of the Whole

CHAPTER.....

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

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



recommendation, the peace officer or any representative may review and copy the entire file concerning the internal investigation.

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

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

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

Section 1. NRS 289.020 is hereby amended to read as follows:

289.020 1. A law enforcement agency shall not use punitive action against a peace officer if the peace officer chooses to exercise the peace officer's rights under any internal administrative grievance procedure.

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

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

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

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



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

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

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

3. After the conclusion of the investigation:

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

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

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



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

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

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

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

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

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

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

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

~~—(1) Physical evidence;~~

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

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

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



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

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

7. Any information that a representative obtains from the peace officer who is the subject of 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 a representative for the representative's failure or refusal to disclose such information.

8. The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the interview, interrogation or hearing. 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; or
- (b) Recording on the digital or magnetic tape.

9. After the conclusion of the investigation, *if a law enforcement agency intends to recommend that punitive action be imposed against* the peace officer who was the subject of the investigation ~~for any representative of the peace officer may, if~~, *the law enforcement agency must notify the peace officer of such fact and give the peace officer or any representative of the peace officer a reasonable opportunity to inspect any evidence in the possession of the law enforcement agency and submit a response. The law enforcement agency must consider any such response before making a recommendation to impose punitive action against the peace officer. If the law enforcement agency recommends punitive action be imposed against the peace officer and the peace officer appeals [a] the recommendation to impose punitive action, the peace officer or any representative of the peace officer may* review and copy the entire file concerning the internal investigation, including, without limitation, any *evidence*, recordings, notes, transcripts of interviews and documents contained in the file.

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

289.085 If an arbitrator or court determines that evidence was obtained during an investigation of a peace officer concerning conduct that could result in punitive action in a manner which violates any provision of NRS 289.010 to 289.120, inclusive, *and*



that such evidence may be prejudicial to the peace officer, such evidence is inadmissible and the arbitrator or court shall ~~dismiss with prejudice the~~ exclude such evidence during any administrative proceeding commenced or civil action filed against the peace officer. If the arbitrator or court further determines that such evidence was obtained by a law enforcement agency in bad faith, the arbitrator or court must dismiss the administrative proceeding or civil action with prejudice.

Sec. 5. NRS 289.090 is hereby amended to read as follows:

289.090 The provisions of subsections 2 ~~[to 5, inclusive,]~~ , 3 and 4 of NRS 289.057 and NRS 289.060, 289.070 and 289.080 do not apply to any investigation which concerns alleged criminal activities.

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

