

Amendment No. 603

Assembly Amendment to Senate Bill No. 212 First Reprint (BDR 14-215) Proposed by: Assembly Committee on Judiciary Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 212 R1 (§ 3.3).
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ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date					
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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.

NCA/BAW



Date: 5/17/2021

S.B. No. 212—Revises provisions relating to the use of force by peace officers. (BDR 14-215)



SENATE BILL NO. 212—SENATORS D. HARRIS;
OHRENSCHALL AND SPEARMAN

MARCH 11, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of force by peace officers.
(BDR 14-215)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ ~~3.3~~ 3.3)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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; revising provisions relating to the use of force by peace officers; requiring certain law enforcement agencies to adopt a written policy relating to the use of force; requiring certain law enforcement agencies to submit to the Central Repository for Nevada Records of Criminal History certain information relating to certain incidents involving the use of force by peace officers; requiring the preparation and submittal of a report relating to such information; imposing certain restrictions and requirements regarding the use of restraint chairs; prohibiting peace officers from using certain forms of force ~~in response to protests and demonstrations;~~ under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that if a defendant who is being arrested flees or forcibly resists, a peace officer may use only the amount of reasonable force necessary to effect the arrest, unless deadly force is authorized under the circumstances. (NRS 171.122) Existing law also provides that a peace officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person: (1) has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or (2) poses a threat of serious bodily harm to the peace officer or to others. (NRS 171.1455)

Section 2 of this bill requires a peace officer to use de-escalation techniques and alternatives to the use of force ~~that are~~ whenever possible or appropriate and consistent with the training of the peace officer. ~~whenever possible or appropriate.~~ If the peace officer uses force, the peace officer must: (1) if it is possible for the peace officer to do so safely, identify himself or herself as a peace officer; and (2) use only the amount of force objectively reasonable to safely accomplish a lawful purpose. **Section 2** further requires law enforcement agencies to adopt a written policy on the threat certain persons pose to peace officers or others ~~to~~ and include certain information relating to the use of force. **Section 1** of this bill makes

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17 a conforming change to clarify the circumstances under which a peace officer may use force
18 to effect an arrest.

19 **Section ~~3.3~~ 3.3** of this bill requires: (1) each law enforcement agency to **annually** make
20 available to the public and **to** submit **monthly** to the Central Repository for Nevada Records
21 of Criminal History ~~[annually]~~ a report containing certain information relating to incidents
22 involving the use of force ; ~~[that occurred during the previous calendar year]~~ and (2) the
23 Central Repository to make the use-of-force data available to the public on its Internet
24 website. **Section ~~3.3~~ 3.3** also requires the Office of the Attorney General to: (1) review the
25 use-of-force data that is publicly available on the Internet website of the Central Repository;
26 (2) prepare a report containing any conclusions or recommendations resulting from its review;
27 and (3) submit its report to the Governor and the Director of the Legislative Counsel Bureau
28 each year. Additionally, **section ~~3.3~~ 3.3**: (1) requires each law enforcement agency to
29 participate in the National Use-of-Force Data Collection of the Federal Bureau of
30 Investigation; and (2) prohibits using the data collected under **section ~~3.3~~ 3.3** in any way
31 against a peace officer during any criminal proceeding.

32 **Existing law provides that homicide by a public officer is justifiable in protecting**
33 **against an imminent threat to the life of a person, among other circumstances. (NRS**
34 **200.140) Section 3.7 of this bill prohibits a peace officer from using deadly force against**
35 **a person based on the danger that the person poses to himself or herself, if a reasonable**
36 **peace officer would believe that the person does not pose an imminent threat of death or**
37 **serious bodily harm to the peace officer or another person. Section 4.5 of this bill makes**
38 **a conforming change to reflect the exception established in section 3.7 for when homicide**
39 **by a public officer is not justifiable.**

40 Existing law prohibits a peace officer from using a choke hold on another person or
41 placing a person who is in the custody of the peace officer in any position which compresses
42 his or her airway or restricts his or her ability to breathe. (NRS 193.350) **Section 4** of this bill
43 imposes certain restrictions and requirements regarding the use of a restraint chair. **Section 4**
44 also provides that in responding to a protest or demonstration, a peace officer is prohibited
45 from: (1) discharging a kinetic energy projectile indiscriminately into a crowd or in a manner
46 that intentionally targets the head, pelvis or spine or any other vital area of the body of a
47 person unless the person poses an immediate threat of physical harm or death to the peace
48 officer or others; or (2) using a chemical agent without first declaring that the protest or
49 demonstration constitutes an unlawful assembly and providing orders to disperse ~~to~~ **under**
50 **certain circumstances**, an egress route from the area and reasonable time to disperse.

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

1 **Section 1.** NRS 171.122 is hereby amended to read as follows:

2 171.122 1. Except as otherwise provided in subsection 2, the warrant must
3 be executed by the arrest of the defendant. The officer need not have the warrant in
4 the officer's possession at the time of the arrest, but upon request the officer must
5 show the warrant to the defendant as soon as possible. If the officer does not have a
6 warrant in the officer's possession at the time of the arrest, the officer shall then
7 inform the defendant of the officer's intention to arrest the defendant, of the offense
8 charged, the authority to make it and of the fact that a warrant has or has not been
9 issued. The defendant must not be subjected to any more restraint than is necessary
10 for the defendant's arrest and detention. If the defendant either flees or forcibly
11 resists, the officer may ~~[, except as otherwise provided in NRS 171.1455,]~~ use only
12 the amount of reasonable force necessary to effect the arrest ~~to~~ **as provided in NRS**
13 **171.1455 and 193.350.**

14 2. In lieu of executing the warrant by arresting the defendant, a peace officer
15 may issue a citation as provided in NRS 171.1773 if:

16 (a) The warrant is issued upon an offense punishable as a misdemeanor;

1 (b) The officer has no indication that the defendant has previously failed to
2 appear on the charge reflected in the warrant;

3 (c) The defendant provides satisfactory evidence of his or her identity to the
4 peace officer;

5 (d) The defendant signs a written promise to appear in court for the
6 misdemeanor offense; and

7 (e) The officer has reasonable grounds to believe that the defendant will keep a
8 written promise to appear in court.

9 3. The summons must be served upon a defendant by delivering a copy to the
10 defendant personally, or by leaving it at the defendant's dwelling house or usual
11 place of abode with some person then residing in the house or abode who is at least
12 16 years of age and is of suitable discretion, or by mailing it to the defendant's last
13 known address. In the case of a corporation, the summons must be served at least 5
14 days before the day of appearance fixed in the summons, by delivering a copy to an
15 officer or to a managing or general agent or to any other agent authorized by
16 appointment or by law to receive service of process and, if the agent is one
17 authorized by statute to receive service and the statute so requires, by also mailing a
18 copy to the corporation's last known address within the State of Nevada or at its
19 principal place of business elsewhere in the United States.

20 **Sec. 2.** NRS 171.1455 is hereby amended to read as follows:

21 171.1455 ~~[If necessary to prevent escape, an]~~

22 *1. A peace officer shall use de-escalation techniques and alternatives to the*
23 *use of force ~~[+] whenever possible or appropriate and consistent with his or her~~*
24 *training, including, without limitation, advisements, warnings, verbal persuasion*
25 *and other tactics ~~[consistent with his or her training whenever possible or~~*
26 *appropriate.] If it is necessary for the peace officer to use force, the peace officer*
27 *must:*

28 (a) *If it is possible to do so safely, identify himself or herself as a peace*
29 *officer through verbal commands, visual identification, including, without*
30 *limitation, a clearly marked uniform or vehicle, or other reasonable means; and*

31 (b) *Use only the level of force that is objectively reasonable under the*
32 *circumstances to bring an incident or person under control and safely*
33 *accomplish a lawful purpose. The level of force used by the officer ~~[+] must, to the~~*
34 *extent feasible:*

35 (1) ~~[Must be]~~ *Be balanced against the level of force or resistance*
36 *exhibited by the person; and*

37 (2) ~~[Must, to the extent feasible, be]~~ *Be carefully controlled.*

38 2. A peace officer may, after giving a warning, if feasible, use deadly force to
39 effect the arrest of a person only if there is probable cause to believe that the
40 person:

41 ~~[+] (a)~~ *Has committed a felony which involves the infliction or threat of*
42 *serious bodily harm or the use of deadly force; or*

43 ~~[2-] (b)~~ *Poses a threat of serious bodily harm or death to the peace officer or*
44 *to others.*

45 3. *Each law enforcement agency shall adopt a written policy and provide*
46 *training to a peace officer regarding the potential threat of serious bodily harm*
47 *or death to the peace officer or others from a person who:*

48 (a) *Is known or reasonably believed not to be armed with a deadly weapon;*
49 *and*

50 (b) ~~[Appears to the peace officer or is]~~ *Is known or reasonably believed by*
51 *the peace officer to be:*

52 (1) *Under 13 years of age;*

53 (2) *Over 70 years of age;*

- (3) *Physically frail;*
- (4) *Mentally or physically disabled;*
- (5) *Pregnant;*
- (6) *Suffering from a mental or behavioral health issue; or*
- (7) *Experiencing a medical emergency.*

~~4.4~~ 4. *The written policy adopted and training provided pursuant to ~~this~~ subsection 3 must reflect the best practices with respect to the use of force on the persons described in ~~this~~ that subsection.*

~~4.4~~ 5. *In addition to any other information required pursuant to subsection 3, the written policy must include, without limitation:*

- (a) Guidelines for the use of force;
- (b) Guidelines for the use of deadly force;
- (c) A requirement that peace officers utilize de-escalation techniques, crisis intervention and other alternatives to force when feasible;
- (d) A requirement that peace officers utilize de-escalation techniques for responding to persons with mental illness or experiencing a behavioral health crisis;
- (e) A requirement that the law enforcement agency, when feasible, send a peace officer who has been trained in crisis intervention to respond to an incident involving a person who has made suicidal statements;
- (f) Factors for evaluating and reviewing all incidents which require the use of force; and
- (g) The date on which the written policy was adopted by the law enforcement agency.

6. *As used in this section, unless the context otherwise requires:*

- (a) *“Law enforcement agency” means:*
 - (1) *A police department of an incorporated city;*
 - (2) *The sheriff’s office of a county;*
 - (3) *A metropolitan police department;*
 - (4) *The Department of Corrections;*
 - (5) *The police department for the Nevada System of Higher Education;*
 - (6) *Any political subdivision of this State employing park rangers to enforce laws within its jurisdiction; or*
 - (7) *Any political subdivision of this State which has as its primary duty the enforcement of law and which employs peace officers pursuant to NRS 289.150 to 289.360, inclusive, to fulfill its duty.*

(b) *“Level of force” means an escalating series of actions a peace officer may use to resolve or control a situation or person depending on the intensity of the situation or resistance of the person that ranges from the use of no force to the use of deadly force.*

Sec. 3. Chapter 193 of NRS is hereby amended by adding thereto ~~a new section to read as follows:~~ the provisions set forth as sections 3.3 and 3.7 of this act.

Sec. 3.3. 1. ~~[On or before July 1 of each year, each]~~ Each law enforcement agency shall annually make available to the public and on a monthly basis submit to the Central Repository a report that includes, without limitation, a compilation of statistics relating to incidents involving the use of force that occurred during the ~~previous~~ immediately preceding calendar year, or month, as applicable, including, without limitation:

- (a) *The number of complaints against peace officers employed by the law enforcement agency relating to the use of force and the number of such complaints that were substantiated; and*

1 (b) *A compilation of statistics relating to incidents involving the use of force*
2 *that, for each incident, includes, without limitation, all information collected by*
3 *the National Use-of-Force Data Collection of the Federal Bureau of*
4 *Investigation.*

5 2. *Each law enforcement agency shall submit the report required pursuant*
6 *to subsection 1 in a manner approved by the Director of the Department of Public*
7 *Safety and in accordance with the policies, procedures and definitions of the*
8 *Department.*

9 3. *The Central Repository shall make the use-of-force data submitted by*
10 *each law enforcement agency pursuant to subsection 1 available for access by the*
11 *public on the Internet website of the Central Repository.*

12 4. *The Central Repository may accept gifts, grants and donations from any*
13 *source for the purpose of carrying out the provisions of this section.*

14 5. *To the extent of legislative appropriation, the Office of the Attorney*
15 *General shall:*

16 (a) *Review the use-of-force data that is publicly available on the Internet*
17 *website of the Central Repository;*

18 (b) *Prepare a report containing any conclusions or recommendations*
19 *resulting from its review; and*

20 (c) *On or before December 1 of each year, submit to the Governor and to the*
21 *Director for the Legislative Counsel Bureau for transmittal to the Legislature the*
22 *report prepared pursuant to paragraph (b).*

23 ~~5.5~~ 6. *Each law enforcement agency in this State shall participate in the*
24 *National Use-of-Force Data Collection of the Federal Bureau of Investigation.*

25 ~~6.6~~ 7. *Information collected pursuant to this section must not be*
26 *introduced into evidence or otherwise used in any way against a peace officer*
27 *during a criminal proceeding.*

28 ~~7.7~~ 8. *As used in this section:*

29 (a) *“Central Repository” means the Central Repository for Nevada Records*
30 *of Criminal History.*

31 (b) *“Law enforcement agency” means:*

32 (1) *The sheriff’s office of a county;*

33 (2) *A metropolitan police department;*

34 (3) *A police department of an incorporated city;*

35 (4) *The Department of Corrections;*

36 (5) *The police department for the Nevada System of Higher Education;*

37 (6) *Any political subdivision of this State employing park rangers to*
38 *enforce laws within its jurisdiction; or*

39 (7) *Any political subdivision of this State which has as its primary duty*
40 *the enforcement of law and which employs peace officers to fulfill its duty.*

41 (c) *“Peace officer” means any person upon whom some or all of the powers*
42 *of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.*

43 *Sec. 3.7. 1. In carrying out his or her duties, a peace officer shall not use*
44 *deadly force against a person based on the danger that the person poses to*
45 *himself or herself, if a reasonable peace officer would believe that the person*
46 *does not pose an imminent threat of death or serious bodily harm to the peace*
47 *officer or another person.*

48 *2. As used in this section, “peace officer” means any person upon whom*
49 *some or all of the powers of a peace officer are conferred pursuant to NRS*
50 *289.150 to 289.360, inclusive.*

51 **Sec. 4.** NRS 193.350 is hereby amended to read as follows:

52 193.350 1. In carrying out his or her duties, a peace officer shall not use a
53 choke hold on another person.

1 2. A peace officer shall not place a person who is in the custody of the peace
2 officer in any position which compresses his or her airway or restricts his or her
3 ability to breathe. A peace officer shall monitor any person who is in the custody of
4 the peace officer for any signs of distress and shall take any actions necessary to
5 place such a person in a recovery position if he or she appears to be in distress or
6 indicates that he or she cannot breathe.

7 3. *In carrying out his or her duties, a peace officer shall use a restraint*
8 *chair on another person only if:*

9 (a) *The person resists an order of a peace officer in a physically violent or*
10 *life-threatening manner;*

11 (b) *A supervising peace officer who has attained the rank of sergeant or*
12 *higher authorizes the use of a restraint chair;*

13 (c) *The peace officer informs a member of the medical staff that a restraint*
14 *chair will be used;*

15 (d) *A member of the medical staff conducts a medical evaluation of the*
16 *person immediately before and immediately after the person is placed in the*
17 *restraint chair; and*

18 (e) *The law enforcement agency that employs the peace officer creates and*
19 *maintains a video recording of the incident involving the use of the restraint*
20 *chair.*

21 ↪ *A peace officer shall not threaten a person with the use of a restraint chair*
22 *unless the person is resisting an order of the peace officer in a physically violent*
23 *or life-threatening manner.*

24 4. *After a person is placed in a restraint chair:*

25 (a) *A peace officer shall visually observe the person in the restraint chair*
26 *until both medical evaluations of the person have been completed pursuant to*
27 *subsection 3 and at least once every 15 minutes thereafter;*

28 (b) *If the person in the restraint chair appears to be in distress or indicates*
29 *that he or she is in distress or requires medical aid, a peace officer shall ensure*
30 *that medical aid is rendered to the person as soon as practicable;*

31 (c) *A supervising peace officer who has attained the rank of sergeant or*
32 *higher shall evaluate whether it is necessary for the person to remain in the*
33 *restraint chair at least once every 30 minutes after the person has been placed in*
34 *the restraint chair;*

35 (d) *The person must not be restrained in the restraint chair for more than 2*
36 *hours unless a supervising peace officer who has attained the rank of sergeant or*
37 *higher approves the use of a restraint chair for more than 2 hours and such use*
38 *complies with the policy adopted pursuant to this subsection; and*

39 (e) *The law enforcement agency that employs the peace officer who used the*
40 *restraint chair shall create and maintain a record of the incident which includes,*
41 *without limitation:*

42 (1) *The period for which the person was restrained in the restraint chair;*
43 *and*

44 (2) *A description of any injuries sustained by the person as a result of the*
45 *use of the restraint chair.*

46 ↪ *Each law enforcement agency shall adopt a written policy that establishes the*
47 *circumstances under which a person may be restrained in a restraint chair for*
48 *more than 2 hours.*

49 5. *A restraint chair must not be used to restrain a person who is pregnant.*

50 6. *The provisions of subsections 3, 4 and 5 do not apply to mechanical*
51 *restraint used pursuant to NRS 433.545 to 433.551, inclusive. As used in this*
52 *subsection, "mechanical restraint" has the meaning ascribed to it in NRS*
53 *433.547.*

1 7. *A peace officer shall not, in response to a protest or demonstration:*

2 (a) *Discharge a kinetic energy projectile indiscriminately into a crowd or in a*
3 *manner that intentionally targets the head, pelvis or spine or any other vital area*
4 *of the body of a person unless the person poses an immediate threat of physical*
5 *harm or death to the peace officer or others; or*

6 (b) *Use a chemical agent without first declaring that the protest or*
7 *demonstration constitutes an unlawful assembly and providing to the persons*
8 *who are present at the protest or demonstration:*

9 (1) *Except as otherwise provided in this paragraph, at least three orders*
10 *to disperse, given in a manner that each order may be heard by those persons,*
11 *including, without limitation, issuing the order from multiple locations and*
12 *issuing the order in multiple languages;*

13 (2) *An egress route from the area where the protest or demonstration is*
14 *occurring; and*

15 (3) *A reasonable amount of time to disperse from the area where the*
16 *protest or demonstration is occurring.*

17 ↪ *If there is an immediate threat of physical harm or death to a person ~~for off~~,*
18 *then no order to disperse must be provided. If there is an immediate threat of*
19 *harm to property, then only one order to disperse must be provided.*

20 8. If a peace officer, in carrying out his or her duties, uses physical force on
21 another person, the peace officer shall ensure that medical aid is rendered to any
22 person who is injured by the use of such physical force as soon as practicable.

23 ~~4.9.~~ 9. As used in this section:

24 (a) *“Chemical agent” means any chemical which can rapidly produce*
25 *sensory irritation or disabling physical effects in humans, which disappear within*
26 *a short time following termination of exposure. The term includes, without*
27 *limitation, items commonly referred to as tear gas, pepper spray, pepper balls and*
28 *oleoresin capsicum.*

29 (b) *“Choke hold” means:*

30 (1) A method by which a person applies sufficient pressure to another
31 person to make breathing difficult or impossible, including, without limitation, any
32 pressure to the neck, throat or windpipe that may prevent or hinder breathing or
33 reduce intake of air; or

34 (2) Applying pressure to a person’s neck on either side of the windpipe, but
35 not the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

36 ~~4(b).~~ (c) *“Kinetic energy projectile” means any type of device designed to be*
37 *nonlethal or less lethal than standard ammunition and to be launched from any*
38 *device as a projectile that may cause bodily injury through the transfer of kinetic*
39 *energy and blunt force trauma. The term includes, without limitation, items*
40 *commonly referred to as rubber bullets, plastic bullets, beanbag rounds and*
41 *foam-tipped plastic rounds.*

42 (d) *“Peace officer” means any person upon whom some or all of the powers of*
43 *a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.*

44 ~~4(e).~~ (e) *“Physical force” means the application of physical techniques,*
45 *chemical agents or weapons to another person.*

46 (f) *“Restraint chair” means a chair that secures a person in an upright*
47 *sitting position by restricting the movement of the arms, legs and torso of the*
48 *person.*

49 Sec. 4.5. *NRS 200.140 is hereby amended to read as follows:*

50 200.140 Homicide is justifiable when committed by a public officer, or
51 person acting under the command and in the aid of the public officer, in the
52 following cases:

53 1. In obedience to the judgment of a competent court.

1 2. When necessary to overcome actual resistance to the execution of the legal
2 process, mandate or order of a court or officer, or in the discharge of a legal duty.

3 3. When necessary:

4 (a) In retaking an escaped or rescued prisoner who has been committed,
5 arrested for, or convicted of a felony;

6 (b) In attempting, by lawful ways or means, to apprehend or arrest a person;

7 (c) In lawfully suppressing a riot or preserving the peace; or

8 (d) ~~¶¶~~ Except as otherwise provided in section 3.7 of this act, in protecting
9 against an imminent threat to the life of a person.

10 **Sec. 5.** The provisions of subsection 1 of NRS 218D.380 do not apply to any
11 provision of this act which adds or revises a requirement to submit a report to the
12 legislature.

13 **Sec. 6.** The provisions of NRS 354.599 do not apply to any additional
14 expenses of a local government that are related to the provisions of this act.

15 **Sec. 7.** 1. This section becomes effective upon passage and approval.

16 2. Sections 1, 2, ~~4-5~~ 3 and 3.7 to 6, inclusive, of this act become effective
17 on October 1, 2021.

18 3. Section ~~¶~~ 3.3 of this act becomes effective:

19 (a) Upon passage and approval for the purpose of adopting any policies or
20 procedures and performing any preparatory administrative tasks that are necessary
21 to carry out the provisions of this act; and

22 (b) On ~~[October 1, 2022, for all other purposes.]~~ the date that the Director of
23 the Department of Public Safety determines that there is sufficient funding to
24 carry out the provisions of that section.