
ASSEMBLY BILL NO. 402—COMMITTEE ON JUDICIARY

MARCH 25, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to public safety.
(BDR 14-1033)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 public safety; clarifying the application of certain provisions relating to the recording of law enforcement activity, the placing of a person in certain positions by a peace officer and the use of physical force by a peace officer; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law authorizes a person who is not under arrest or in the custody of a
2 peace officer to record law enforcement activity in certain circumstances. (NRS
3 171.1233) Existing law also: (1) prohibits a peace officer from placing a person
4 who is in the custody of the peace officer in any position that compresses his or her
5 airway or restricts his or her ability to breathe; and (2) requires a peace officer to
6 monitor any person who is in the custody of the peace officer for any signs of
7 distress and to take any actions necessary to place such a person in a recovery
8 position if he or she appears to be in distress or indicates that he or she cannot
9 breathe. (NRS 193.350) Existing law requires a peace officer to intervene by
10 preventing or stopping another peace officer from using physical force that is not
11 justified in carrying out the arrest of a person, placing a person under detention,
12 taking a person into custody or booking a person in certain circumstances. (NRS
13 193.355) This bill clarifies that custody for the purposes of the application of such
14 provisions is limited to the physical custody of a peace officer.



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

1 **Section 1.** NRS 171.1233 is hereby amended to read as
2 follows:

3 171.1233 1. A person who is not under arrest or in the
4 *physical* custody of a peace officer may record a law enforcement
5 activity and maintain custody and control of that recording and any
6 property or instruments used by the person to record a law
7 enforcement activity. A person who is under arrest or in the *physical*
8 custody of a peace officer does not, by that status alone, forfeit the
9 right to have any such recordings, property or instruments
10 maintained and returned to him or her. This subsection must not be
11 construed to authorize a person to engage in actions that interfere
12 with or obstruct a law enforcement activity or otherwise violate any
13 other law in an effort to record a law enforcement activity.

14 2. A peace officer shall not act to interfere with a person's
15 recording of a law enforcement activity, including, without
16 limitation, by:

17 (a) Intentionally preventing or attempting to prevent the person
18 from recording a law enforcement activity;

19 (b) Threatening the person for recording a law enforcement
20 activity;

21 (c) Commanding that the person cease recording a law
22 enforcement activity when the person was nevertheless authorized
23 by law to record the law enforcement activity;

24 (d) Stopping, seizing or searching the person because he or she
25 recorded a law enforcement activity; or

26 (e) Unlawfully seizing property or instruments used by the
27 person to record a law enforcement activity, unlawfully destroying
28 or seizing any recorded image of a law enforcement activity or
29 copying such a recording of a law enforcement activity without the
30 consent of the person who recorded it or obtaining approval from an
31 appropriate court.

32 3. As used in this section:

33 (a) "Law enforcement activity" means any activity by a peace
34 officer acting under the color of law.

35 (b) "Peace officer" means any person upon whom some or all of
36 the powers of a peace officer are conferred pursuant to NRS
37 289.150 to 289.360, inclusive.

38 (c) "Record" means to capture or attempt to capture any moving
39 or still image, sound or impression through the use of any recording
40 device, camera or any other device capable of capturing audio or
41 moving or still images, or by means of written notes or
42 observations. The term includes, without limitation, the capturing of



1 or the attempt to capture any moving or still image, sound or
2 impression through the use of any such device for the purpose of
3 broadcasting an event or occurrence in real time.

4 **Sec. 2.** NRS 193.350 is hereby amended to read as follows:

5 193.350 1. In carrying out his or her duties, a peace officer
6 shall not use a choke hold on another person.

7 2. A peace officer shall not place a person who is in the
8 *physical* custody of the peace officer in any position which
9 compresses his or her airway or restricts his or her ability to breathe.
10 A peace officer shall monitor any person who is in the *physical*
11 custody of the peace officer for any signs of distress and shall take
12 any actions necessary to place such a person in a recovery position
13 if he or she appears to be in distress or indicates that he or she
14 cannot breathe.

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

19 4. As used in this section:

20 (a) "Choke hold" means:

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

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

29 (b) "Peace officer" means any person upon whom some or all of
30 the powers of a peace officer are conferred pursuant to NRS
31 289.150 to 289.360, inclusive.

32 (c) "Physical force" means the application of physical
33 techniques, chemical agents or weapons to another person.

34 **Sec. 3.** NRS 193.355 is hereby amended to read as follows:

35 193.355 1. Except as otherwise provided in this subsection, a
36 peace officer shall, without regard for chain of command, intervene
37 to prevent or stop another peace officer from using physical force
38 that is not justified in pursuance of the other peace officer's law
39 enforcement duties in carrying out the arrest of a person, placing a
40 person under detention, taking a person into *physical* custody or
41 booking a person. The duty to intervene in the use of physical force
42 that is not justified as required by this subsection only applies if:

43 (a) A peace officer observes the use of physical force that is not
44 justified or reasonably should have observed the use of physical
45 force that is not justified; and



1 (b) The circumstances are such that it is safe for the peace
2 officer to intervene.

3 2. If a peace officer who observes the use of physical force that
4 is not justified is a supervisor of the peace officer who is using such
5 physical force, the peace officer making the observation shall issue a
6 direct order to stop the use of such physical force.

7 3. A peace officer who observes the use of physical force that
8 is not justified shall report the observation to his or her immediate
9 supervisor unless the observation involves his or her immediate
10 supervisor, in which case the peace officer shall report the
11 observation to the supervisor of his or her immediate supervisor.
12 Such a report must:

13 (a) Include, without limitation:

14 (1) The date, time and location of the incident;

15 (2) The identity, if known, and a description of the
16 participants; and

17 (3) A description of the actions taken as a result of the
18 observation.

19 (b) Be made in writing not later than 10 days after the
20 occurrence of the use of physical force and observation and
21 appended to all other reports of the incident.

22 4. A member of a law enforcement agency shall not discipline
23 or retaliate in any way against a peace officer solely for:

24 (a) Intervening in the use of physical force that is not justified as
25 required by subsection 1; or

26 (b) Reporting the observation of the use of physical force that is
27 not justified as required by subsection 3.

28 5. Each law enforcement agency in this State shall train its
29 peace officers on the provisions of this section.

30 6. As used in this section:

31 (a) "Peace officer" means any person upon whom some or all of
32 the powers of a peace officer are conferred pursuant to NRS
33 289.150 to 289.360, inclusive.

34 (b) "Physical force" has the meaning ascribed to it in
35 NRS 193.350.

36 **Sec. 4.** This act becomes effective upon passage and approval.

