

Amendment No. 1027

Senate Amendment to Senate Bill No. 111 First Reprint (BDR 23-618)

Proposed by: Senate Committee on Finance

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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.

MSN/JWP



Date: 5/30/2015

S.B. No. 111—Provides for the use of portable event recording devices by peace officers. (BDR 23-618)



SENATE BILL NO. 111—SENATORS FORD AND ATKINSON

PREFILED FEBRUARY 1, 2015

Referred to Committee on Government Affairs

SUMMARY—~~Provides for~~ **Requires** the use of portable event recording devices by certain peace officers ~~employed by the Nevada Highway Patrol Division of the Department of Public Safety.~~ **employed by the Nevada Highway Patrol Division of the Department of Public Safety.** (BDR ~~23-618~~) **43-618**)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

~

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

AN ACT relating to ~~peace officers;~~ **the Nevada Highway Patrol Division of the Department of Public Safety;** requiring certain peace officers **employed by the Nevada Highway Patrol** to wear a portable event recording device under certain circumstances; requiring ~~certain law enforcement agencies;~~ **the Nevada Highway Patrol** to adopt policies and procedures governing the use of portable event recording devices; providing that records made by portable event recording devices are public records and may be requested under certain circumstances; exempting the use of portable event recording devices from provisions governing the interception of certain communications; exempting the use of portable event recording devices upon certain property; requiring the Advisory Commission on the Administration of Justice to review ~~any~~ **the** policies and procedures adopted by ~~a law enforcement agency;~~ **the Nevada Highway Patrol** governing the use of portable event recording devices; **making an appropriation;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill requires: (1) certain peace officers **employed by the Nevada Highway Patrol** to wear a portable event recording device while on duty; and (2) ~~certain law enforcement agencies;~~ **the Nevada Highway Patrol** to adopt policies and procedures governing the use of portable event recording devices. **Section 1** also establishes that any record made by a portable event recording device is a public record which may only be requested: (1) on a per incident basis; and (2) viewed at the location where the record is held if the record contains confidential information.

Existing law authorizes investigative or law enforcement officers to intercept wire or oral communications, subject to certain requirements. (NRS 179.410-179.515) **Section 2** of this bill exempts a portable event recording device worn by a peace officer **employed by the Nevada Highway Patrol** from the definition of an "electronic, mechanical or other device" used to intercept wire or oral communication.

Existing law also prohibits surreptitious electronic surveillance on: (1) the grounds of any facility owned or leased by the State of Nevada; (2) the property of a public school; or (3) a campus of the Nevada System of Higher Education. (NRS 331.200, 393.400, 396.970) Sections 3-5 of this bill create an exception for peace officers employed by the Nevada Highway Patrol wearing a portable event recording device in accordance with section 1 from certain provisions relating to unlawful surreptitious electronic surveillance.

Section 6.5 of this bill requires ~~each law enforcement agency~~ the Nevada Highway Patrol to adopt initial policies and procedures governing the use of portable event recording devices by July 1, 2016. Section 6.5 further requires the Advisory Commission on the Administration of Justice to review such initial policies and procedures at a meeting on or after July 1, 2016.

Section 6.3 of this bill makes an appropriation for the 2015-2017 biennium from the State Highway Fund to the Nevada Highway Patrol for the purpose of carrying out the requirements of this bill.

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

Section 1. Chapter ~~489~~ 480 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~Each law enforcement agency or chief of school police~~ The Nevada Highway Patrol shall:

(a) ~~Require each uniformed peace officer~~ ~~fit employe~~ employed by the Nevada Highway Patrol who routinely interacts with the public to wear a portable event recording device while on duty.

(b) ~~Adopt policies and procedures governing the use of portable event recording devices, including, without limitation:~~

(1) ~~Requiring activation of a portable event recording device whenever a peace officer is:~~

(I) ~~Responding to a call for service; or~~

(II) ~~Initiating a law enforcement or investigative encounter with a member of the public;~~

(2) ~~Prohibiting deactivation of a portable event recording device until the conclusion of the event described in subparagraph (1);~~

(3) ~~Protecting the privacy of persons:~~

(I) ~~In private residences;~~

(II) ~~Seeking to report a crime or provide information regarding a crime or ongoing investigation anonymously; and~~

(III) ~~Claiming to be a victim of a crime;~~

(4) ~~Requiring that any record made by a portable event recording device be retained by the~~ ~~law enforcement agency~~ Nevada Highway Patrol for not less than 15 days; and

(5) ~~Establishing disciplinary rules for peace officers who:~~

(I) ~~Fail to operate a portable event recording device in accordance with any policy or procedure adopted pursuant to this section;~~

(II) ~~Intentionally manipulate any record made by a portable event recording device in violation of any policy or procedure adopted pursuant to this section; or~~

(III) ~~Prematurely erase or destroy any record made by a portable event recording device.~~

2. ~~Any record made by a portable event recording device pursuant to this section is a public record which may only be:~~

(a) ~~Requested on a per incident basis; and~~

(b) Available for inspection at the location where the record is held if the record contains confidential information that may not otherwise be redacted.

3. As used in this section ~~+~~

~~(a) "Law enforcement agency" means:~~

~~(1) The sheriff's office of a county;~~

~~(2) A metropolitan police department;~~

~~(3) A police department of an incorporated city;~~

~~(4) The Department of Public Safety; or~~

~~(5) The Police Department of the Nevada System of Higher Education.~~

~~(b) "Portable, "portable event recording device" means a device issued to a peace officer employed by a law enforcement agency or chief of school police; the Nevada Highway Patrol to be worn on his or her body and which records both audio and visual events during an encounter with a member of the public while performing his or her duties as a peace officer.~~

Sec. 2. NRS 179.425 is hereby amended to read as follows:

179.425 "Electronic, mechanical or other device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

1. Any telephone instrument, equipment or facility, or any component thereof:

(a) Furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or

(b) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his or her duties.

2. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

3. A portable event recording device, as defined in section 1 of this act.

Sec. 2.5. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 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, 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, 130.312, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271,

392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964, 598.0979, 598.098, 598A.110, 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 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 the confidential information from the information included in the public book or record that is not otherwise confidential.

4. A person may request a copy of a public record in any medium in which the public record is readily available. 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 a readily available medium 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.

Sec. 3. NRS 331.220 is hereby amended to read as follows:

331.220 1. Except as otherwise provided in subsection 2, it is unlawful for a person to engage in any kind of surreptitious electronic surveillance on the grounds of any facility owned or leased by the State of Nevada without the knowledge of the person being observed.

2. Subsection 1 does not apply to any electronic surveillance:

(a) Authorized by a court order issued to a public officer, based upon a showing of probable cause to believe that criminal activity is occurring on the property under surveillance;

(b) By a law enforcement agency pursuant to a criminal investigation; ~~for~~

(c) By a uniformed peace officer of the Nevada Highway Patrol Division of the Department of Public Safety pursuant to section 1 of this act; or

(d) Which is necessary as part of a system of security used to protect and ensure the safety of persons on the grounds of the facility.

Sec. 4. NRS 393.400 is hereby amended to read as follows:

393.400 1. Except as otherwise provided in subsection 2, it is unlawful for a person to engage in any kind of surreptitious electronic surveillance on any property of a public school without the knowledge of the person being observed.

2. Subsection 1 does not apply to any electronic surveillance:

(a) Authorized by a court order issued to a public officer, based upon a showing of probable cause to believe that criminal activity is occurring on the property of the public school under surveillance;

(b) By a law enforcement agency pursuant to a criminal investigation;

(c) By a uniformed peace officer of the Nevada Highway Patrol Division of the Department of Public Safety pursuant to section 1 of this act;

(d) Which is necessary as part of a system of security used to protect and ensure the safety of persons on the property of the public school; or

~~(e)~~ (e) Of a class or laboratory when authorized by the teacher of the class or laboratory.

Sec. 5. NRS 396.970 is hereby amended to read as follows:

396.970 1. Except as otherwise provided in subsection 2, it is unlawful for a person to engage in any kind of surreptitious electronic surveillance on a campus of the System without the knowledge of the person being observed.

2. Subsection 1 does not apply to any electronic surveillance:

(a) Authorized by a court order issued to a public officer, based upon a showing of probable cause to believe that criminal activity is occurring on the property under surveillance;

(b) By a law enforcement agency pursuant to a criminal investigation;

(c) By a uniformed peace officer of the Nevada Highway Patrol Division of the Department of Public Safety pursuant to section 1 of this act;

(d) Which is necessary as part of a system of security used to protect and ensure the safety of persons on the campus; or

~~(e)~~ (e) Of a class or laboratory when authorized by the teacher of the class or laboratory.

Sec. 6. ~~[The provisions of NRS 254.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.]~~
(Deleted by amendment.)

Sec. 6.3. 1. There is hereby appropriated from the State Highway Fund to the Nevada Highway Patrol Division of the Department of Public Safety for

the purpose of carrying out the requirements of section 1 of this act the following sums:

<u>For the Fiscal Year 2015-2016</u>	<u>\$785,002</u>
<u>For the Fiscal Year 2016-2017</u>	<u>\$475,104</u>

2. The sums appropriated by subsection 1 are available for either fiscal year. Any remaining balance of those sums must not be committed for expenditure after June 30, 2017, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 15, 2017, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State Highway Fund on or before September 15, 2017.

Sec. 6.5. 1. ~~Each law enforcement agency and chief of school police in this State~~ The Nevada Highway Patrol Division of the Department of Public Safety shall adopt, at a minimum, initial policies and procedures as required by section 1 of this act, on or before July 1, 2016.

2. The Advisory Commission on the Administration of Justice created pursuant to NRS 176.0123 shall, at a meeting held by the Commission, include as an item on the agenda a discussion of the progress of ~~law enforcement agencies and chiefs of school police in this State~~ the Nevada Highway Patrol in adopting initial policies and procedures as required by section 1 of this act. The meeting must be held on or after July 1, 2016.

3. ~~A representative of each law enforcement agency and chief of school police~~ The Director of the Department shall attend the meeting required by subsection 2 to provide a report concerning the progress of ~~this or her agency~~ the Nevada Highway Patrol in adopting such policies and procedures.

~~4. As used in this section, "law enforcement agency" has the meaning ascribed to it in section 1 of this act.~~

Sec. 7. 1. This section and section 6.5 of this act become effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective upon passage and approval for the purpose of adopting policies and procedures governing the use of portable event recording devices and on January 1, 2017, for all other purposes.

3. Section 6.3 of this act becomes effective on July 1, 2015.