

SENATE BILL NO. 111—SENATORS FORD AND ATKINSON

PREFILED FEBRUARY 1, 2015

Referred to Committee on Government Affairs

SUMMARY—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. (BDR 43-618)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 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 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 the policies and procedures adopted by 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:

- 1 **Section 1** of this bill requires: (1) certain peace officers employed by the
- 2 Nevada Highway Patrol to wear a portable event recording device while on duty;
- 3 and (2) the Nevada Highway Patrol to adopt policies and procedures governing the
- 4 use of portable event recording devices. **Section 1** also establishes that any record
- 5 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 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 480 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Nevada Highway Patrol shall:

(a) Require each uniformed peace officer 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:

(I) 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;



1 (4) *Requiring that any record made by a portable event*
2 *recording device be retained by the Nevada Highway Patrol for*
3 *not less than 15 days; and*

4 (5) *Establishing disciplinary rules for peace officers who:*

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

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

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

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

15 (a) *Requested on a per incident basis; and*

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

19 3. *As used in this section, "portable event recording device"*
20 *means a device issued to a peace officer employed by the Nevada*
21 *Highway Patrol to be worn on his or her body and which records*
22 *both audio and visual events during an encounter with a member*
23 *of the public while performing his or her duties as a peace officer.*

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

25 179.425 "Electronic, mechanical or other device" means any
26 device or apparatus which can be used to intercept a wire or oral
27 communication other than:

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

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

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

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

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

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

41 239.010 1. Except as otherwise provided in this section and
42 NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,
43 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160,
44 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
45 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,



1 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,
2 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,
3 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,
4 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
5 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,
6 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801,
7 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450,
8 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,
9 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,
10 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
11 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
12 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,
13 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
14 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
15 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,
16 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350,
17 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025,
18 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135,
19 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070,
20 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
21 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
22 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080,
23 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275,
24 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264,
25 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460,
26 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
27 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,
28 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175,
29 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534,
30 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195,
31 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570,
32 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610,
33 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555,
34 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,
35 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536,
36 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040,
37 534A.031, 561.285, 571.160, 584.583, 584.655, 598.0964,
38 598.0979, 598.098, 598A.110, 599B.090, 603.070, 603A.210,
39 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,
40 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265,
41 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133,
42 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,
43 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185,
44 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089,
45 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400,



1 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191,
2 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625,
3 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225,
4 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320,
5 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065,
6 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133,
7 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340,
8 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190,
9 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280,
10 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,
11 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117,
12 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196,
13 704B.320, 704B.325, 706.1725, 710.159, 711.600, *and section 1 of*
14 *this act*, sections 35, 38 and 41 of chapter 478, Statutes of Nevada
15 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and
16 unless otherwise declared by law to be confidential, all public books
17 and public records of a governmental entity must be open at all
18 times during office hours to inspection by any person, and may be
19 fully copied or an abstract or memorandum may be prepared from
20 those public books and public records. Any such copies, abstracts or
21 memoranda may be used to supply the general public with copies,
22 abstracts or memoranda of the records or may be used in any other
23 way to the advantage of the governmental entity or of the general
24 public. This section does not supersede or in any manner affect the
25 federal laws governing copyrights or enlarge, diminish or affect in
26 any other manner the rights of a person in any written book or
27 record which is copyrighted pursuant to federal law.

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

30 3. A governmental entity that has legal custody or control of a
31 public book or record shall not deny a request made pursuant to
32 subsection 1 to inspect or copy or receive a copy of a public book or
33 record on the basis that the requested public book or record contains
34 information that is confidential if the governmental entity can
35 redact, delete, conceal or separate the confidential information from
36 the information included in the public book or record that is not
37 otherwise confidential.

38 4. A person may request a copy of a public record in any
39 medium in which the public record is readily available. An officer,
40 employee or agent of a governmental entity who has legal custody
41 or control of a public record:

42 (a) Shall not refuse to provide a copy of that public record in a
43 readily available medium because the officer, employee or agent has
44 already prepared or would prefer to provide the copy in a different
45 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

~~for~~ (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



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1 electronic surveillance on a campus of the System without the
2 knowledge of the person being observed.

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

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

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

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

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

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

16 **Sec. 6.** (Deleted by amendment.)

17 **Sec. 6.3.** 1. There is hereby appropriated from the State
18 Highway Fund to the Nevada Highway Patrol Division of the
19 Department of Public Safety for the purpose of carrying out the
20 requirements of section 1 of this act the following sums:

21
22 For the Fiscal Year 2015-2016.....\$785,002
23 For the Fiscal Year 2016-2017.....\$475,104
24

25 2. The sums appropriated by subsection 1 are available for
26 either fiscal year. Any remaining balance of those sums must not be
27 committed for expenditure after June 30, 2017, by the entity to
28 which the appropriation is made or any entity to which money from
29 the appropriation is granted or otherwise transferred in any manner,
30 and any portion of the appropriated money remaining must not be
31 spent for any purpose after September 15, 2017, by either the entity
32 to which the money was appropriated or the entity to which the
33 money was subsequently granted or transferred, and must be
34 reverted to the State Highway Fund on or before September 15,
35 2017.

36 **Sec. 6.5.** 1. The Nevada Highway Patrol Division of the
37 Department of Public Safety shall adopt, at a minimum, initial
38 policies and procedures as required by section 1 of this act, on or
39 before July 1, 2016.

40 2. The Advisory Commission on the Administration of Justice
41 created pursuant to NRS 176.0123 shall, at a meeting held by the
42 Commission, include as an item on the agenda a discussion of the
43 progress of the Nevada Highway Patrol in adopting initial policies
44 and procedures as required by section 1 of this act. The meeting
45 must be held on or after July 1, 2016.



1 3. The Director of the Department shall attend the meeting
2 required by subsection 2 to provide a report concerning the progress
3 of the Nevada Highway Patrol in adopting such policies and
4 procedures.

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

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

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

