

ASSEMBLY BILL NO. 200—ASSEMBLYWOMAN GORELOW

FEBRUARY 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of cellular devices while driving. (BDR 43-845)

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 motor vehicles; authorizing a peace officer at the scene of a traffic crash to use technology to determine if a driver was using a handheld wireless communications device at the time of the crash; requiring the suspension of the driver's license of a driver who refuses a request by a peace officer to use such technology; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law prohibits the use of a handheld wireless communications device while operating a motor vehicle, with certain exceptions for hands-free use and use by certain persons authorized to use such a device. (NRS 484B.165) Existing law also authorizes a peace officer at the scene of a traffic crash to issue a traffic citation or a misdemeanor citation to any person involved in the crash if the peace officer has reasonable and probable grounds to believe the person has committed, in connection with the crash, a violation of certain motor vehicle laws or motor carrier laws. (NRS 484A.660)

**Section 1** of this bill authorizes a peace officer at the scene of a traffic crash to request access to the handheld wireless communications device of the driver of any vehicle involved in the crash if the peace officer has reasonable and probable grounds to believe the driver, at or near the time of the crash, was using the handheld wireless communications device while operating the motor vehicle involved in the crash. The peace officer may use an investigative technology device on the handheld wireless communications device to determine if the handheld wireless communications device was used during a particular time frame. **Section 1** defines "investigative technology device" as a device that, by means of analysis software or other technology, can interrogate a handheld wireless communications device and display evidence of whether the device was used for handheld or manual communications or access to data in a given time frame. **Section 1** also provides that the peace officer may only access and view evidence of use of the handheld wireless communications device and prohibits the peace officer from intentionally



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accessing or viewing any other content on the handheld wireless communications device. **Section 1** further provides that any person who operates a vehicle in this State is deemed to have given consent to the use of an investigative technology device on the handheld wireless communications device when requested by a peace officer at the scene of a crash. If a person refuses such a request, the peace officer is required to seize the driver's license or permit of the person and issue an order suspending the license or permit for 90 days. The peace officer may issue a temporary driver's license to the person if the person is eligible for such a license, which is effective for only 7 days. A person whose driver's license or permit is suspended in this manner may request a hearing by the Department of Motor Vehicles to review the suspension, and the decision made by the Department after such a hearing is subject to judicial review. Finally, **section 1** authorizes the admissibility of evidence obtained through the use of an investigative technology device in a criminal or administrative proceeding only if it is shown by documentary or other evidence that: (1) the device was functioning properly and able to produce reliable, accurate results; and (2) the peace officer was trained in the proper use of the device and used the device properly.

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

**Section 1.** Chapter 484E of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his or her consent to the use by a peace officer of an investigative technology device on any handheld wireless communications device in the possession of the person when such use is requested by the peace officer at the scene of a traffic crash pursuant to subsection 2. If the person refuses the request of the peace officer to use an investigative technology device on the handheld wireless communications device, the officer shall seize the driver's license or permit of the person pursuant to subsection 5, and any such driver's license or permit must be suspended for 90 days.*

*2. A peace officer at the scene of a traffic crash may request access to the handheld wireless communications device in the possession of the driver of any vehicle involved in the crash for the purpose of using an investigative technology device on the handheld wireless communications device when, based upon personal investigation, the peace officer has reasonable and probable grounds to believe the driver violated NRS 484B.165 at or near the time of the crash.*

*3. When using an investigative technology device on a handheld wireless communications device pursuant to this section, a peace officer may access and view only evidence of use of the handheld wireless communications device which violates*



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1 *NRS 484B.165 and shall not intentionally access or view any other*  
2 *content on the handheld wireless communications device.*

3 4. *Evidence obtained by the use of an investigative technology*  
4 *device pursuant to this section is admissible in a criminal or*  
5 *administrative proceeding only if it is shown by documentary or*  
6 *other evidence that at the time of use:*

7 (a) *The device was functioning properly and able to produce*  
8 *reliable, accurate results; and*

9 (b) *The peace officer was trained in the proper use of the*  
10 *device and used the device properly.*

11 5. *If a driver refuses the request of a peace officer pursuant*  
12 *to subsection 2 the officer shall immediately serve a 90-day order*  
13 *of suspension of the license, permit or privilege to drive on the*  
14 *person who failed to submit to the request by the officer and seize*  
15 *the license or permit to drive of the person. The officer shall then,*  
16 *unless the information is expressly set forth in the order of*  
17 *suspension, advise the person of his or her right to administrative*  
18 *and judicial review of the suspension pursuant to this section and,*  
19 *except as otherwise provided in this subsection, that the person*  
20 *has a right to request a temporary license. If the person currently*  
21 *is driving with a temporary license that was issued pursuant to this*  
22 *section, the person is not entitled to request an additional*  
23 *temporary license pursuant to this section, and the order of*  
24 *suspension issued by the officer must suspend the temporary*  
25 *license that was previously issued. If the person is entitled to*  
26 *request a temporary license, the officer shall issue the person a*  
27 *temporary license on a form approved by the Department if the*  
28 *person requests one. The temporary license must be effective for*  
29 *only 7 days including the date of issuance. The officer shall*  
30 *immediately transmit the person's license or permit to the*  
31 *Department along with the written certificate that the officer had*  
32 *reasonable and probable grounds to believe that the person*  
33 *violated NRS 484B.165 at or near the time of the crash. The*  
34 *certificate must also indicate whether the officer issued the person*  
35 *a temporary license.*

36 6. *At any time while a person is not eligible for a license,*  
37 *permit or privilege to drive following an order of suspension*  
38 *issued pursuant to subsection 5, the person may request in writing*  
39 *a hearing by the Department to review the order of suspension, but*  
40 *the person is only entitled to one hearing. The hearing must be*  
41 *conducted as soon as is practicable at any location, if the hearing*  
42 *officer permits each party and witness to attend the hearing by*  
43 *telephone, videoconference or other electronic means. The*  
44 *Director or agent of the Director may issue subpoenas for the*  
45 *attendance of witnesses and the production of relevant books and*



1 *papers and may require a reexamination of the requester. Unless*  
2 *the person is ineligible for a temporary license pursuant to*  
3 *subsection 5, the Department shall issue an additional temporary*  
4 *license for a period which is sufficient to complete the*  
5 *administrative review.*

6 *7. The scope of the hearing conducted pursuant to subsection*  
7 *6 must be limited to whether the person refused the request of the*  
8 *peace officer to use an investigative technology device on the*  
9 *handheld wireless communications device in the possession of*  
10 *the person at the time of the crash pursuant to this section. Upon*  
11 *an affirmative finding on this issue, the Department shall affirm*  
12 *the order of suspension. Otherwise, the order of suspension must*  
13 *be rescinded.*

14 *8. If, after the hearing, the order of suspension is affirmed,*  
15 *the person whose license, privilege or permit has been suspended*  
16 *is entitled to a review of the same issues in district court in the*  
17 *same manner as provided by chapter 233B of NRS. The court*  
18 *shall notify the Department upon the issuance of a stay, and the*  
19 *Department shall issue an additional temporary license for a*  
20 *period which is sufficient to complete the review.*

21 *9. If a hearing officer grants a continuance of a hearing held*  
22 *pursuant to subsection 6 at the request of the person whose*  
23 *license, permit or privilege to drive was suspended, or a court does*  
24 *so after issuing a stay of the suspension, the officer or court shall*  
25 *notify the Department, and the Department shall cancel the*  
26 *temporary license and notify the holder by mailing the order of*  
27 *cancellation to the person's last known address.*

28 *10. If a person refuses the request of the peace officer to use*  
29 *an investigative technology device on the handheld wireless*  
30 *communications device of the person pursuant to this section,*  
31 *evidence of that refusal is admissible in any criminal or*  
32 *administrative action arising out of the acts alleged to have been*  
33 *committed by the person while the person was engaging in*  
34 *conduct prohibited by NRS 484B.165.*

35 *11. This section does not preclude:*

36 *(a) The prosecution of a person for a violation of any other*  
37 *provision of law; or*

38 *(b) The suspension or revocation of a person's license, permit*  
39 *or privilege to drive pursuant to any other provision of law.*

40 *12. As used in this section, "investigative technology device"*  
41 *means a device that, by means of analysis software or other*  
42 *technology, can interrogate a handheld wireless communications*  
43 *device to determine and display evidence of whether the*  
44 *handheld wireless communications device was used for handheld*



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- 1 *or manual communications or access to data in a given time*
- 2 *frame.*

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