

Amendment No. 78

Assembly Amendment to Assembly Bill No. 58	(BDR 3-417)
<b>Proposed by:</b> Assembly Committee on Judiciary	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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.

MNM/BAW



Date: 4/15/2021

A.B. No. 58—Makes changes relating to the authority and duties of the Attorney General. (BDR 3-417)





## ASSEMBLY BILL NO. 58—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Judiciary

SUMMARY—Makes changes relating to the authority and duties of the Attorney General. (BDR 3-417)

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

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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 Attorney General; authorizing the Attorney General to ~~file a civil action to eliminate~~ investigate whether a state governmental authority, any agent thereof or any person acting on behalf of a state governmental authority has engaged in certain patterns or practices that deprive persons of certain rights, privileges or immunities ~~and requiring a law enforcement agency to provide notice to the Attorney General if a peace officer uses physical force that results in substantial bodily harm to or the death of another person, providing a penalty;~~ and file a civil action to eliminate such an identified pattern or practice in certain circumstances; establishing provisions relating to such an investigation; requiring the Attorney General to participate and cooperate in any investigation by the United States Department of Justice regarding whether the Office of the Attorney General has engaged in certain patterns or practices that deprive persons of certain rights, privileges or immunities; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 1** of this bill authorizes the Attorney General to ~~file a civil action to eliminate~~ investigate whether a state governmental authority, any agent thereof or any person acting on behalf of a state governmental authority has engaged in certain patterns or practices that deprive persons of certain rights, privileges or immunities. **Section 1** requires the Attorney General to notify the governmental authority if the Attorney General has reasonable cause to believe that any such conduct has occurred and authorizes the governmental authority to respond to the notification within 30 days. If the Attorney General and the governmental authority cannot reach an agreement as to the course of action for the governmental authority to take to remedy, change or eliminate the identified pattern or practice within 60 days after the last day on which the governmental authority may respond to the notification, section 1 authorizes the Attorney General to file a civil action against the governmental authority to eliminate

the identified pattern or practice. For the purposes of enabling the Attorney General to ~~proceed with such a civil action,~~ carry out an investigation, section 1 also authorizes the Attorney General to require certain persons to appear and testify and to produce certain documentation and tangible items. ~~Section 2 of this bill makes a conforming change to indicate the appropriate placement of section 1 in the Nevada Revised Statutes.~~ At the conclusion of such an investigation, section 1 requires the Attorney General to issue a report that includes a determination based on the results of the investigation.

Section 1 additionally requires that any state officer or employee or local governmental officer or employee who discloses a pattern or practice of conduct by a state governmental authority, any agent thereof or any person acting on behalf of a state governmental authority be afforded all protections against reprisal or retaliation provided by the provisions of law relating to the disclosure of improper governmental action.

Finally, section 1 requires the Attorney General to participate and cooperate in any investigation by the United States Department of Justice regarding whether the Office of the Attorney General has engaged in certain patterns or practices that deprive persons of certain rights, privileges or immunities.

Section 4 of this bill makes a conforming change relating to the information that is made confidential and not a public record pursuant to section 1.

~~Section 3 of this bill: (1) provides that if a peace officer uses physical force that results in substantial bodily harm to or the death of another person, the law enforcement agency that employs the peace officer must notify the Attorney General within 72 hours after the incident; (2) authorizes the Attorney General to assign personnel to observe any ensuing investigation of the incident; and (3) requires the district attorney to determine whether he or she intends to prosecute the incident or refer the case to the Attorney General and to notify the Attorney General of that determination.]~~

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

**Section 1.** Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A state governmental authority, any agent thereof or any person acting on behalf of a state governmental authority shall not engage in a pattern or practice of conduct by peace officers ~~for by~~, officials or employees of any state law enforcement agency or officials or employees of any governmental ~~agency~~ authority with responsibility for the administration of juvenile justice or the detention of juveniles that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States or this State.

2. The Attorney General may investigate any violation of subsection 1. If the Attorney General has reasonable cause to believe that a violation of subsection 1 has occurred, the Attorney General ~~, for or in the name of the State of Nevada, may, in accordance with the requirements of this section, file a civil action seeking to obtain any and all appropriate equitable and declaratory relief to eliminate the identified pattern or practice. Before~~ must, before filing a civil action, ~~[the Attorney General must]~~ notify the governmental authority ~~for an agent thereof~~ and provide the factual basis that supports his or her reasonable cause to believe that a violation of subsection 1 has occurred. ~~He~~ The governmental authority may respond to the notification at any time within 30 days after the date on which the governmental authority receives the notification.

3. The Attorney General may, in accordance with the requirements of this section, file a civil action against the governmental authority ~~for an agent thereof has not changed or eliminated the pattern or practice within 60 days after~~

~~receiving such notification, the Attorney General may file a civil action seeking to~~  
~~for or in the name of the State of Nevada:~~

(a) To obtain any and all appropriate equitable and declaratory relief to eliminate the identified pattern or practice

~~3. if the Attorney General and the governmental authority cannot reach an agreement regarding the course of action for the governmental authority to take to remedy, change or eliminate the identified pattern or practice within 60 days after the last day on which the governmental authority may respond to the notification; or~~

(b) To enforce the terms of any such agreement that is reached by the Attorney General and the governmental authority.

4. Any civil action filed by the Attorney General pursuant to subsection 3 must be filed in the district court of the county where the governmental authority maintains its headquarters.

5. For the purpose of carrying out an investigation pursuant to the provisions of this section, the Attorney General or his or her designee may issue a subpoena to compel the attendance or testimony of a witness or the production of any relevant ~~materials,~~ evidence, including, without limitation, books, papers, documents, records, photographs, recordings, reports and tangible objects ~~if~~ maintained by the governmental authority. If a witness refuses to attend, testify or produce materials as required by the subpoena, the Attorney General may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance or testimony of the witness or the production of materials;

(b) The witness has been subpoenaed pursuant to this section; and

(c) The witness has failed or refused to attend, testify or produce materials as required by the subpoena, or has refused to answer questions propounded to him or her,

and asking for an order of the court compelling the witness to attend, testify or produce materials. Upon receipt of such a petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why the witness has not attended, testified or produced materials. A certified copy of the order must be served upon the witness. If it appears to the court that the subpoena was ~~regularly~~ properly issued by the Attorney General or his or her designee, the court shall enter an order that the witness appear at a time and place fixed in the order and testify or produce materials, and that upon failure to obey the order, the witness must be dealt with as for contempt of court.

~~4. All public officers and their deputies, assistants, clerks, subordinates or employees shall render and furnish to the Attorney General or his or her designee, when so requested, assistance and all information in the possession or within the power of the person relating to investigations carried out under the provisions of this section. Any person who willfully fails to comply with this subsection is guilty of a misdemeanor.~~

~~5. 6. Except as otherwise provided in NRS 239.0115, the content of any investigation, including, without limitation, the identity of a witness, any procedure, testimony taken, document or other tangible evidence produced, or any answer made under this section is confidential and not subject to disclosure as a public book or record unless and until the filing of a civil action pursuant to this section, except if:~~

(a) Confidentiality is waived by the person upon whom the investigative demand is made;

(b) Disclosure is authorized by the district court; or

(c) Disclosure is made by a federal court ~~or~~ or federal agency. ~~or federal agency in another state or other governmental agency in this State.~~

~~6.7~~ 7. At the conclusion of an investigation by the Attorney General pursuant to this section, the Office of the Attorney General shall issue:

(a) A report that includes a determination that the governmental authority did not engage in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States or this State;

(b) A report that includes a determination that the allegations that the governmental authority engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States or this State could not be substantiated;  
or

(c) A report that includes:

(1) A determination that the governmental authority engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States or this State; and

(2) The course of action mutually agreed upon by the Attorney General and the governmental authority to remedy, change or eliminate the identified pattern or practice, or a copy of the civil action filed against the governmental authority pursuant to paragraph (a) of subsection 3.

8. Any state officer, state employee, local officer or local employee who discloses a pattern or practice of conduct prohibited by subsection 1 must be afforded all protections against reprisal or retaliation as provided by NRS 281.611 to 281.671, inclusive.

9. In addition to the requirements set forth in this section, the Attorney General shall participate and cooperate in any investigation by the United States Department of Justice regarding whether the Office of the Attorney General has engaged in a pattern or practice of conduct that deprives persons of rights, privileges or immunities secured or protected by the Constitution or laws of the United States or this State.

10. As used in this section ~~["peace"]~~ :

(a) "Law enforcement agency" has the meaning ascribed to it in NRS 289.010.

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

(c) "Relevant evidence" has the meaning ascribed to it in NRS 48.015.

Sec. 2. [NRS 41.0305 is hereby amended to read as follows:

41.0305 As used in NRS 41.0305 to 41.039, inclusive, and section 1 of this act, the term "political subdivision" includes an organization that was officially designated as a community action agency pursuant to 42 U.S.C. § 2700 before that section was repealed and is included in the definition of an "eligible entity" pursuant to 42 U.S.C. § 9902, the Nevada Rural Housing Authority, an airport authority created by special act of the Legislature, a regional transportation commission and a fire protection district, an irrigation district, a school district, the governing body of a charter school, any other special district that performs a governmental function, even though it does not exercise general governmental powers, and the governing body of a university school for profoundly gifted pupils.] (Deleted by amendment.)

1       **Sec. 3.** ~~[Chapter 228 of NRS is hereby amended by adding thereto a new~~  
2 ~~section to read as follows:~~

3       ~~1. If a peace officer uses physical force that results in substantial bodily~~  
4 ~~harm to or the death of another person, the law enforcement agency which~~  
5 ~~employs the peace officer shall, within 72 hours after the use of such physical~~  
6 ~~force, provide notice of the incident to the Office of the Attorney General.~~

7       ~~2. Upon receipt of notice of an incident pursuant to subsection 1, the~~  
8 ~~Attorney General may assign personnel to observe any ensuing investigation. For~~  
9 ~~purposes of maintaining the confidentiality of the investigative process, the~~  
10 ~~personnel assigned to such an investigation are considered members of the~~  
11 ~~investigatory team and are entitled to full access to all investigation materials and~~  
12 ~~findings afforded to other members of the investigatory team.~~

13       ~~3. Upon completion of the investigation of an incident described in~~  
14 ~~subsection 1, the district attorney of the county in which the incident occurred~~  
15 ~~shall determine if he or she intends to prosecute the incident or refer the incident~~  
16 ~~to the Attorney General and shall notify the Attorney General of his or her~~  
17 ~~determination. The district attorney shall not decline to prosecute an incident~~  
18 ~~before a determination by the Attorney General that the Attorney General does~~  
19 ~~not intend to prosecute the incident.~~

20       ~~4. As used in this section:~~

21       ~~(a) "Law enforcement agency" means any agency, office or bureau of this~~  
22 ~~State or a political subdivision of this State, the primary duty of which is to~~  
23 ~~enforce the law.~~

24       ~~(b) "Peace officer" means a person upon whom some or all of the powers of~~  
25 ~~a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.]~~  
26 **(Deleted by amendment.)**

27       **Sec. 4.** NRS 239.010 is hereby amended to read as follows:

28       239.010 1. Except as otherwise provided in this section and NRS 1.4683,  
29 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516,  
30 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150,  
31 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,  
32 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345,  
33 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260,  
34 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382,  
35 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007,  
36 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050,  
37 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129,  
38 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070,  
39 179A.165, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,  
40 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140,  
41 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475,  
42 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300,  
43 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300,  
44 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140,  
45 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030,  
46 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130,  
47 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105,  
48 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755,  
49 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387,  
50 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870,  
51 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351,  
52 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420,  
53 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240,

360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160,  
368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008,  
379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501,  
388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365,  
391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325,  
392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447,  
394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115,  
408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749,  
422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205,  
432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902,  
432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840,  
439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220,  
441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773,  
447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164,  
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, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093,  
482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469,  
484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160,  
584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210,  
604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350,  
618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265,  
624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069,  
630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125,  
632.3415, 632.405, 632.483, 633.301, 633.4715, 633.524, 634.055, 634.214,  
634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485,  
639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620,  
640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191,  
641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.800,  
642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060,  
645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320,  
645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228,  
653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275,  
669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370,  
677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152,  
679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260,  
681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306,  
687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696,  
692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420,  
693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725,  
706A.230, 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.



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

3        3. A governmental entity that has legal custody or control of a public book or  
4 record shall not deny a request made pursuant to subsection 1 to inspect or copy or  
5 receive a copy of a public book or record on the basis that the requested public  
6 book or record contains information that is confidential if the governmental entity  
7 can redact, delete, conceal or separate, including, without limitation, electronically,  
8 the confidential information from the information included in the public book or  
9 record that is not otherwise confidential.

10       4. If requested, a governmental entity shall provide a copy of a public record  
11 in an electronic format by means of an electronic medium. Nothing in this  
12 subsection requires a governmental entity to provide a copy of a public record in an  
13 electronic format or by means of an electronic medium if:

14       (a) The public record:

15           (1) Was not created or prepared in an electronic format; and

16           (2) Is not available in an electronic format; or

17       (b) Providing the public record in an electronic format or by means of an  
18 electronic medium would:

19           (1) Give access to proprietary software; or

20           (2) Require the production of information that is confidential and that  
21 cannot be redacted, deleted, concealed or separated from information that is not  
22 otherwise confidential.

23       5. An officer, employee or agent of a governmental entity who has legal  
24 custody or control of a public record:

25       (a) Shall not refuse to provide a copy of that public record in the medium that  
26 is requested because the officer, employee or agent has already prepared or would  
27 prefer to provide the copy in a different medium.

28       (b) Except as otherwise provided in NRS 239.030, shall, upon request, prepare  
29 the copy of the public record and shall not require the person who has requested the  
30 copy to prepare the copy himself or herself.