

Amendment No. 824

Assembly Amendment to Senate Bill No. 212 Second Reprint	(BDR 14-215)
Proposed by: Assemblyman Yeager	
Amendment Box: Replaces Amendment No. 786.	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 212 R2 (§ 3.3).

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.

BAW



Date: 5/29/2021

S.B. No. 212—Revises provisions relating to the use of force by peace officers.
(BDR 14-215)



SENATE BILL NO. 212—SENATORS D. HARRIS;
OHRENSCHALL AND SPEARMAN

MARCH 11, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the use of force by peace officers.
(BDR 14-215)

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

CONTAINS UNFUNDED MANDATE (§ 3.3)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 peace officers; revising provisions relating to the use of force by peace officers; requiring certain law enforcement agencies to adopt a written policy relating to the use of force; requiring certain law enforcement agencies to submit to the Central Repository for Nevada Records of Criminal History certain information relating to certain incidents involving the use of force by peace officers; requiring the preparation and submittal of a report relating to such information; imposing certain restrictions and requirements regarding the use of restraint chairs; prohibiting peace officers from using certain forms of force under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a defendant who is being arrested flees or forcibly resists, a peace officer may use only the amount of reasonable force necessary to effect the arrest, unless deadly force is authorized under the circumstances. (NRS 171.122) Existing law also provides that a peace officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person: (1) has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or (2) poses a threat of serious bodily harm to the peace officer or to others. (NRS 171.1455)

Section 2 of this bill requires a peace officer to use de-escalation techniques and alternatives to the use of force whenever possible or appropriate and consistent with the training of the peace officer. If the peace officer uses force, the peace officer must: (1) if it is possible for the peace officer to do so safely, identify himself or herself as a peace officer; and (2) use only the amount of force objectively reasonable to safely accomplish a lawful purpose.

Section 2 further requires law enforcement agencies to adopt a written policy on the threat certain persons pose to peace officers or others and include certain information relating to the use of force. **Section 1** of this bill makes a conforming change to clarify the circumstances under which a peace officer may use force to effect an arrest.

Section 3.3 of this bill requires: (1) each law enforcement agency to annually make available to the public and to submit monthly to the Central Repository for Nevada Records of Criminal History a report containing certain information relating to incidents involving the use of force; and (2) the Central Repository to make the use-of-force data available to the public on its Internet website. **Section 3.3** also requires the Office of the Attorney General to: (1) review the use-of-force data that is publicly available on the Internet website of the Central Repository; (2) prepare a report containing any conclusions or recommendations resulting from its review; and (3) submit its report to the Governor and the Director of the Legislative Counsel Bureau each year. Additionally, **section 3.3**: (1) requires each law enforcement agency to participate in the National Use-of-Force Data Collection of the Federal Bureau of Investigation; and (2) prohibits using the data collected under **section 3.3** in any way against a peace officer during any criminal proceeding.

Existing law provides that homicide by a public officer or person acting under the command and in the aid of the public officer is justifiable in protecting against an imminent threat to the life of a person, among other circumstances. (NRS 200.140) **Section 3.7** of this bill prohibits a peace officer from using deadly force against a person based on the danger that the person poses to himself or herself, if a reasonable peace officer would believe that the person does not pose an imminent threat of death or serious bodily harm to the peace officer or another person. **Section 4.5** of this bill : (1) makes a conforming change to reflect the exception established in section 3.7 for when homicide by a ~~public~~ peace officer is not justifiable ~~;~~ and (2) changes the persons who are authorized to assert that a homicide is justifiable to include peace officers and persons acting under the command and in the aid of peace officers, rather than public officers and persons acting under the command and in the aid of public officers.

Existing law prohibits a peace officer from using a choke hold on another person or placing a person who is in the custody of the peace officer in any position which compresses his or her airway or restricts his or her ability to breathe. (NRS 193.350) **Section 4** of this bill imposes certain restrictions and requirements regarding the use of a restraint chair. **Section 4** also provides that in responding to a protest or demonstration, a peace officer is prohibited from: (1) discharging a kinetic energy projectile indiscriminately into a crowd or in a manner that intentionally targets the head, pelvis or spine or any other vital area of the body of a person unless the person poses an immediate threat of physical harm or death to the peace officer or others; or (2) using a chemical agent without first declaring that the protest or demonstration constitutes an unlawful assembly and providing orders to disperse under certain circumstances, an egress route from the area and reasonable time to disperse.

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

Section 1. NRS 171.122 is hereby amended to read as follows:

171.122 1. Except as otherwise provided in subsection 2, the warrant must be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request the officer must show the warrant to the defendant as soon as possible. If the officer does not have a warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the officer's intention to arrest the defendant, of the offense charged, the authority to make it and of the fact that a warrant has or has not been issued. The defendant must not be subjected to any more restraint than is necessary for the defendant's arrest and detention. If the defendant either flees or forcibly resists, the officer may ~~[-except as otherwise provided in NRS 171.1455.]~~ use only the amount of reasonable force necessary to effect the arrest ~~[-]~~ as provided in NRS 171.1455 and 193.350.

2. In lieu of executing the warrant by arresting the defendant, a peace officer may issue a citation as provided in NRS 171.1773 if:

(a) The warrant is issued upon an offense punishable as a misdemeanor;

(b) The officer has no indication that the defendant has previously failed to appear on the charge reflected in the warrant;

(c) The defendant provides satisfactory evidence of his or her identity to the peace officer;

(d) The defendant signs a written promise to appear in court for the misdemeanor offense; and

(e) The officer has reasonable grounds to believe that the defendant will keep a written promise to appear in court.

3. The summons must be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person then residing in the house or abode who is at least 16 years of age and is of suitable discretion, or by mailing it to the defendant's last known address. In the case of a corporation, the summons must be served at least 5 days before the day of appearance fixed in the summons, by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the State of Nevada or at its principal place of business elsewhere in the United States.

Sec. 2. NRS 171.1455 is hereby amended to read as follows:

171.1455 ~~[[If necessary to prevent escape, an]]~~

1. A peace officer shall use de-escalation techniques and alternatives to the use of force whenever possible or appropriate and consistent with his or her training, including, without limitation, advisements, warnings, verbal persuasion and other tactics. If it is necessary for the peace officer to use force, the peace officer must:

(a) If it is possible to do so safely, identify himself or herself as a peace officer through verbal commands, visual identification, including, without limitation, a clearly marked uniform or vehicle, or other reasonable means; and

(b) Use only the level of force that is objectively reasonable under the circumstances to bring an incident or person under control and safely accomplish a lawful purpose. The level of force used by the officer must, to the extent feasible:

(1) Be balanced against the level of force or resistance exhibited by the person; and

(2) Be carefully controlled.

2. A peace officer may, after giving a warning, if feasible, use deadly force to effect the arrest of a person only if there is probable cause to believe that the person:

~~[[1]]~~ *(a) Has committed a felony which involves the infliction or threat of serious bodily harm or the use of deadly force; or*

~~[[2]]~~ *(b) Poses a threat of serious bodily harm or death to the peace officer or to others.*

3. Each law enforcement agency shall adopt a written policy and provide training to a peace officer regarding the potential threat of serious bodily harm or death to the peace officer or others from a person who:

(a) Is known or reasonably believed not to be armed with a deadly weapon; and

(b) Is known or reasonably believed by the peace officer to be:

(1) Under 13 years of age;

(2) Over 70 years of age;

(3) Physically frail;

(4) Mentally or physically disabled;

1 (5) *Pregnant;*

2 (6) *Suffering from a mental or behavioral health issue; or*

3 (7) *Experiencing a medical emergency.*

4 4. *The written policy adopted and training provided pursuant to subsection*
5 *3 must reflect the best practices with respect to the use of force on the persons*
6 *described in that subsection.*

7 5. *In addition to any other information required pursuant to subsection 3,*
8 *the written policy must include, without limitation:*

9 (a) *Guidelines for the use of force;*

10 (b) *Guidelines for the use of deadly force;*

11 (c) *A requirement that peace officers utilize de-escalation techniques, crisis*
12 *intervention and other alternatives to force when feasible;*

13 (d) *A requirement that peace officers utilize de-escalation techniques for*
14 *responding to persons with mental illness or experiencing a behavioral health*
15 *crisis;*

16 (e) *A requirement that the law enforcement agency, when feasible, send a*
17 *peace officer who has been trained in crisis intervention to respond to an incident*
18 *involving a person who has made suicidal statements;*

19 (f) *Factors for evaluating and reviewing all incidents which require the use*
20 *of force; and*

21 (g) *The date on which the written policy was adopted by the law enforcement*
22 *agency.*

23 6. *As used in this section, unless the context otherwise requires:*

24 (a) *“Law enforcement agency” means:*

25 (1) *A police department of an incorporated city;*

26 (2) *The sheriff’s office of a county;*

27 (3) *A metropolitan police department;*

28 (4) *The Department of Corrections;*

29 (5) *The police department for the Nevada System of Higher Education;*

30 (6) *Any political subdivision of this State employing park rangers to*
31 *enforce laws within its jurisdiction; or*

32 (7) *Any political subdivision of this State which has as its primary duty*
33 *the enforcement of law and which employs peace officers pursuant to NRS*
34 *289.150 to 289.360, inclusive, to fulfill its duty.*

35 (b) *“Level of force” means an escalating series of actions a peace officer*
36 *may use to resolve or control a situation or person depending on the intensity of*
37 *the situation or resistance of the person that ranges from the use of no force to*
38 *the use of deadly force.*

39 **Sec. 3.** Chapter 193 of NRS is hereby amended by adding thereto the
40 provisions set forth as sections 3.3 and 3.7 of this act.

41 **Sec. 3.3.** 1. *Each law enforcement agency shall annually make available*
42 *to the public and on a monthly basis submit to the Central Repository a report*
43 *that includes, without limitation, a compilation of statistics relating to incidents*
44 *involving the use of force that occurred during the immediately preceding*
45 *calendar year, or month, as applicable, including, without limitation:*

46 (a) *The number of complaints against peace officers employed by the law*
47 *enforcement agency relating to the use of force and the number of such*
48 *complaints that were substantiated; and*

49 (b) *A compilation of statistics relating to incidents involving the use of force*
50 *that, for each incident, includes, without limitation, all information collected by*
51 *the National Use-of-Force Data Collection of the Federal Bureau of*
52 *Investigation.*

2. Each law enforcement agency shall submit the report required pursuant to subsection 1 in a manner approved by the Director of the Department of Public Safety and in accordance with the policies, procedures and definitions of the Department.

3. The Central Repository shall make the use-of-force data submitted by each law enforcement agency pursuant to subsection 1 available for access by the public on the Internet website of the Central Repository.

4. The Central Repository may accept gifts, grants and donations from any source for the purpose of carrying out the provisions of this section.

5. To the extent of legislative appropriation, the Office of the Attorney General shall:

(a) Review the use-of-force data that is publicly available on the Internet website of the Central Repository;

(b) Prepare a report containing any conclusions or recommendations resulting from its review; and

(c) On or before December 1 of each year, submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature the report prepared pursuant to paragraph (b).

6. Each law enforcement agency in this State shall participate in the National Use-of-Force Data Collection of the Federal Bureau of Investigation.

7. Information collected pursuant to this section must not be introduced into evidence or otherwise used in any way against a peace officer during a criminal proceeding.

8. As used in this section:

(a) "Central Repository" means the Central Repository for Nevada Records of Criminal History.

(b) "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 Corrections;

(5) The police department for the Nevada System of Higher Education;

(6) Any political subdivision of this State employing park rangers to enforce laws within its jurisdiction; or

(7) Any political subdivision of this State which has as its primary duty the enforcement of law and which employs peace officers to fulfill its duty.

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

Sec. 3.7. 1. In carrying out his or her duties, a peace officer shall not use deadly force against a person based on the danger that the person poses to himself or herself, if a reasonable peace officer would believe that the person does not pose an imminent threat of death or serious bodily harm to the peace officer or another person.

2. As used in this section, "peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

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

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

2. A peace officer shall not place a person who is in the custody of the peace officer in any position which compresses his or her airway or restricts his or her ability to breathe. A peace officer shall monitor any person who is in the custody of the peace officer for any signs of distress and shall take any actions necessary to

place such a person in a recovery position if he or she appears to be in distress or indicates that he or she cannot breathe.

3. *In carrying out his or her duties, a peace officer shall use a restraint chair on another person only if:*

(a) *The person resists an order of a peace officer in a physically violent or life-threatening manner;*

(b) *A supervising peace officer who has attained the rank of sergeant or higher authorizes the use of a restraint chair;*

(c) *The peace officer informs a member of the medical staff that a restraint chair will be used;*

(d) *A member of the medical staff conducts a medical evaluation of the person immediately before and immediately after the person is placed in the restraint chair; and*

(e) *The law enforcement agency that employs the peace officer creates and maintains a video recording of the incident involving the use of the restraint chair.*

↪ *A peace officer shall not threaten a person with the use of a restraint chair unless the person is resisting an order of the peace officer in a physically violent or life-threatening manner.*

4. *After a person is placed in a restraint chair:*

(a) *A peace officer shall visually observe the person in the restraint chair until both medical evaluations of the person have been completed pursuant to subsection 3 and at least once every 15 minutes thereafter;*

(b) *If the person in the restraint chair appears to be in distress or indicates that he or she is in distress or requires medical aid, a peace officer shall ensure that medical aid is rendered to the person as soon as practicable;*

(c) *A supervising peace officer who has attained the rank of sergeant or higher shall evaluate whether it is necessary for the person to remain in the restraint chair at least once every 30 minutes after the person has been placed in the restraint chair;*

(d) *The person must not be restrained in the restraint chair for more than 2 hours unless a supervising peace officer who has attained the rank of sergeant or higher approves the use of a restraint chair for more than 2 hours and such use complies with the policy adopted pursuant to this subsection; and*

(e) *The law enforcement agency that employs the peace officer who used the restraint chair shall create and maintain a record of the incident which includes, without limitation:*

(1) *The period for which the person was restrained in the restraint chair; and*

(2) *A description of any injuries sustained by the person as a result of the use of the restraint chair.*

↪ *Each law enforcement agency shall adopt a written policy that establishes the circumstances under which a person may be restrained in a restraint chair for more than 2 hours.*

5. *A restraint chair must not be used to restrain a person who is pregnant.*

6. *The provisions of subsections 3, 4 and 5 do not apply to mechanical restraint used pursuant to NRS 433.545 to 433.551, inclusive. As used in this subsection, "mechanical restraint" has the meaning ascribed to it in NRS 433.547.*

7. *A peace officer shall not, in response to a protest or demonstration:*

(a) *Discharge a kinetic energy projectile indiscriminately into a crowd or in a manner that intentionally targets the head, pelvis or spine or any other vital area*

1 of the body of a person unless the person poses an immediate threat of physical
2 harm or death to the peace officer or others; or

3 (b) Use a chemical agent without first declaring that the protest or
4 demonstration constitutes an unlawful assembly and providing to the persons
5 who are present at the protest or demonstration:

6 (1) Except as otherwise provided in this paragraph, at least three orders
7 to disperse, given in a manner that each order may be heard by those persons,
8 including, without limitation, issuing the order from multiple locations and
9 issuing the order in multiple languages;

10 (2) An egress route from the area where the protest or demonstration is
11 occurring; and

12 (3) A reasonable amount of time to disperse from the area where the
13 protest or demonstration is occurring.

14 *➤ If there is an immediate threat of physical harm or death to a person, then no
15 order to disperse must be provided. If there is an immediate threat of harm to
16 property, then only one order to disperse must be provided.*

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

20 ~~4-1~~ 9. As used in this section:

21 (a) *“Chemical agent” means any chemical which can rapidly produce
22 sensory irritation or disabling physical effects in humans, which disappear within
23 a short time following termination of exposure. The term includes, without
24 limitation, items commonly referred to as tear gas, pepper spray, pepper balls and
25 oleoresin capsicum.*

26 (b) *“Choke hold” means:*

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

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

33 ~~4-1~~ (c) *“Kinetic energy projectile” means any type of device designed to be
34 nonlethal or less lethal than standard ammunition and to be launched from any
35 device as a projectile that may cause bodily injury through the transfer of kinetic
36 energy and blunt force trauma. The term includes, without limitation, items
37 commonly referred to as rubber bullets, plastic bullets, beanbag rounds and
38 foam-tipped plastic rounds.*

39 (d) *“Peace officer” means any person upon whom some or all of the powers of
40 a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.*

41 ~~4-1~~ (e) *“Physical force” means the application of physical techniques,
42 chemical agents or weapons to another person.*

43 (f) *“Restraint chair” means a chair that secures a person in an upright
44 sitting position by restricting the movement of the arms, legs and torso of the
45 person.*

46 **Sec. 4.5.** NRS 200.140 is hereby amended to read as follows:

47 200.140 1. Homicide is justifiable when committed by a ~~public~~ peace
48 officer, or person acting under the command and in the aid of the ~~public~~ peace
49 officer, in the following cases:

50 ~~1-1~~ (a) In obedience to the judgment of a competent court.

51 ~~1-2~~ (b) When necessary to overcome actual resistance to the execution of the
52 legal process, mandate or order of a court or officer, or in the discharge of a legal
53 duty.

~~(2)~~ (c) When necessary:
~~(a)~~ (1) In retaking an escaped or rescued prisoner who has been committed, arrested for, or convicted of a felony;
~~(b)~~ (2) In attempting, by lawful ways or means, ~~and in accordance with the provisions of NRS 171.1455,~~ to apprehend or arrest a person;
~~(c)~~ (3) In lawfully suppressing a riot or preserving the peace; or
~~(d) In~~
(4) *Except as otherwise provided in section 3.7 of this act, in* protecting against an imminent threat to the life of a person.

2. As used in this section, "peace officer" has the meaning ascribed to it in NRS 169.125.

Sec. 5. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the legislature.

Sec. 6. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 7. 1. This section becomes effective upon passage and approval.

2. Sections 1, 2, 3 and 3.7 to 6, inclusive, of this act become effective on October 1, 2021.

3. Section 3.3 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting any policies or procedures and performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On the date that the Director of the Department of Public Safety determines that there is sufficient funding to carry out the provisions of that section.