

SENATE BILL NO. 212—SENATOR D. HARRIS

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.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~for mitted 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 submit to the Office of the Attorney General 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; prohibiting the use of restraint chairs; prohibiting peace officers from using certain forms of force in response to protests and demonstrations; 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 provides that before resorting to a higher level of force, a peace officer is required to use de-escalation techniques and alternatives to higher levels of force that are consistent with the training of the peace officer. If the peace officer uses a higher level of 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.



**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** of this bill requires each law enforcement agency to submit to the Office of the Attorney General annually a report containing certain information relating to incidents involving the use of force that occurred during the previous calendar year. **Section 3** also requires the Office of the Attorney General to: (1) review the reports submitted by law enforcement agencies; (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**: (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** in any way against a peace officer during any criminal proceeding.

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 prohibits 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 back of a person; or (2) using a chemical agent without first declaring that the protest or demonstration constitutes an unlawful assembly and providing orders to disperse, an egress route from the area and reasonable time to disperse.

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

*(1) Must be balanced against the level of resistance exhibited by the person; and*

*(2) Must be carefully controlled.*

*2. A peace officer may, after giving a warning, if feasible, use deadly force to effect the **lawful detention or** 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*



~~12.1~~ (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 not armed with a deadly weapon; and

(b) Appears to the peace officer or is known 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;

(5) Pregnant;

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

(7) Experiencing a medical emergency.

↪ The written policy adopted and training provided pursuant to this subsection must reflect the best practices with respect to the use of force on the persons described in this subsection.

4. As used in this section:

(a) "Law enforcement agency" means:

(1) A police department of an incorporated city;

(2) The sheriff's office of a county;

(3) A metropolitan police department;

(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 pursuant to NRS 289.150 to 289.360, inclusive, to fulfill its duty.

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

**Sec. 3.** Chapter 193 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On or before March 1 of each year, each law enforcement agency shall make available to the public and submit to the Office of the Attorney General a report that includes, without limitation, a compilation of statistics relating to incidents involving the use of



1 *force that occurred during the previous calendar year, including,*  
2 *without limitation:*

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

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

10 2. *To the extent of legislative appropriation, the Office of the*  
11 *Attorney General shall:*

12 (a) *Review the reports submitted by law enforcement agencies*  
13 *pursuant to this section;*

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

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

20 3. *Each law enforcement agency in this state shall participate*  
21 *in the National Use-of-Force Data Collection of the Federal*  
22 *Bureau of Investigation.*

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

26 5. *As used in this section:*

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

28 (1) *The sheriff’s office of a county;*

29 (2) *A metropolitan police department;*

30 (3) *A police department of an incorporated city;*

31 (4) *The Department of Corrections;*

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

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

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

39 (b) *“Peace officer” means any person upon whom some or all*  
40 *of the powers of a peace officer are conferred pursuant to NRS*  
41 *289.150 to 289.360, inclusive.*

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

43 193.350 1. In carrying out his or her duties, a peace officer  
44 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 not use a restraint chair on another person.*

4. *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 back of a person; or*

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

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

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

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

➡ *If there is a threat of harm or death to a person or of harm to property, then only one order to disperse must be provided.*

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

~~[4-]~~ 6. As used in this section:

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

(b) *“Choke hold” means:*

(1) A method by which a person applies sufficient pressure to another person to make breathing difficult or impossible, including, without limitation, any pressure to the neck, throat or



windpipe that may prevent or hinder breathing or reduce intake of air; or

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

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

*(d) “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.*

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

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

**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, 4, 5 and 6 of this act become effective on October 1, 2021.

3. Section 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 October 1, 2022, for all other purposes.

