

ASSEMBLY BILL NO. 397—ASSEMBLYMEN MOORE,
JONES; AND DICKMAN

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to public safety.
(BDR 14-1054)

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 public safety; revising provisions governing the issuance and execution of search warrants; restricting the use of SWAT teams by a local law enforcement agency under certain circumstances; prohibiting a law enforcement agency from receiving certain property through a military equipment surplus program operated by the Federal Government; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law specifically authorizes the issuance of a search warrant from an
2 oral statement given under oath by telephonic or other electronic means. (NRS
3 179.045) **Section 1** of this bill requires a sworn affidavit or oral statement in the
4 presence of the magistrate before the search warrant is issued.

5 Existing law also authorizes a peace officer executing a search warrant to use
6 all reasonable and necessary force to break open any entrance to a house if the
7 officer is refused entry. (NRS 179.055) **Section 2** of this bill requires a peace
8 officer executing a search warrant to identify himself or herself upon entering the
9 premises, unless the magistrate issuing the search warrant finds that there is
10 probable cause that such identification may lead to the destruction, disposal or
11 concealment of the object of the search warrant or reasonable cause, based on
12 specific, articulable facts, that physical harm to any person may result. **Section 2**
13 also requires a peace officer executing a search warrant to take reasonable
14 precautions to minimize the risks of: (1) overly confrontational or invasive methods
15 that may lead to physical harm to a person; and (2) searching the wrong premises
16 by verifying the location at issue described in the search warrant.

17 **Section 5** of this bill prohibits a local law enforcement agency from deploying
18 a SWAT team unless there is a reasonable belief that: (1) there is an imminent
19 threat to the health, safety or welfare of a human life; and (2) the use of peace



20 officers will be insufficient to secure the premises and de-escalate the present
21 situation. **Section 5** also requires a local law enforcement agency to prepare, before
22 deploying a SWAT team, a written report detailing why the deployment of the
23 SWAT team is necessary and any risks that may be involved in such a deployment.

24 Existing federal law authorizes the Department of Defense to transfer certain
25 personal property of the Department, including small arms and ammunition, to
26 other federal or state agencies if the property is: (1) suitable for use by the agency
27 for law enforcement activities, including counter-drug and counter-terrorism
28 activities; and (2) no longer needed by the Department. (10 U.S.C. § 2576a) This
29 federal program, the 1033 Excess Property Program, is commonly known as the
30 1033 Program. **Section 6** of this bill prohibits a law enforcement agency in this
31 State from applying for or accepting certain property from a military equipment
32 surplus program operated by the Federal Government, including, without
33 limitation, the 1033 Program. If a law enforcement agency requests property
34 pursuant to such a program, the agency must publish a notice of the request on its
35 Internet website within 60 days after making the request.

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

- 1 **Section 1.** NRS 179.045 is hereby amended to read as follows:
2 179.045 1. A search warrant may issue only on affidavit or
3 affidavits sworn to before the magistrate and establishing the
4 grounds for issuing the warrant or as provided in subsection 2. If the
5 magistrate is satisfied that grounds for the application exist or that
6 there is probable cause to believe that they exist, the magistrate shall
7 issue a warrant identifying the property and naming or describing
8 the person or place to be searched.
9 2. In lieu of the affidavit required by subsection 1, the
10 magistrate may take an oral statement given under oath, which must
11 be recorded in the presence of the magistrate. ~~for in the magistrate's~~
12 ~~immediate vicinity by a certified court reporter or by electronic~~
13 ~~means, transcribed, certified by the reporter if the reporter recorded~~
14 ~~it, and certified by the magistrate.~~ The statement must be filed with
15 the clerk of the court.
16 3. Upon a showing of good cause, the magistrate may order an
17 affidavit or a recording of an oral statement given pursuant to this
18 section to be sealed. Upon a showing of good cause, a court may
19 cause the affidavit or recording to be unsealed.
20 4. ~~After a magistrate has issued a search warrant, whether it is~~
21 ~~based on an affidavit or an oral statement given under oath, the~~
22 ~~magistrate may orally authorize a peace officer to sign the name of~~
23 ~~the magistrate on a duplicate original warrant. A duplicate original~~
24 ~~search warrant shall be deemed to be a search warrant. It must be~~
25 ~~returned to the magistrate who authorized the signing of it. The~~
26 ~~magistrate shall endorse his or her name and enter the date on the~~
27 ~~warrant when it is returned. Any failure of the magistrate to make~~



1 ~~such an endorsement and entry does not in itself invalidate the~~
2 ~~warrant.~~

3 ~~5.~~ The warrant must be directed to a peace officer in the
4 county where the warrant is to be executed. It must:

5 (a) State the grounds or probable cause for its issuance and the
6 names of the persons whose affidavits have been taken in support
7 thereof; or

8 (b) Incorporate by reference the affidavit or oral statement upon
9 which it is based.

10 ➔ The warrant must command the officer to search forthwith the
11 person or place named for the property specified.

12 ~~6.~~ 5. The warrant must direct that it be served between the
13 hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of
14 good cause therefor, inserts a direction that it be served at any time.

15 ~~7.~~ 6. The warrant must designate the magistrate to whom it is
16 to be returned.

17 **Sec. 2.** NRS 179.055 is hereby amended to read as follows:

18 179.055 1. *Except as otherwise provided in subsection 5, the*
19 *officer shall identify himself or herself and state the purpose of*
20 *entering the premises as soon as practicable when executing a*
21 *warrant.*

22 2. The officer may break open any outer or inner door or
23 window of ~~{a house,}~~ *any premises* or any part of the ~~{house,}~~
24 *premises*, or anything therein, to execute the warrant ~~{, if,}~~ :

25 (a) *If*, after notice of authority and purpose, the officer is refused
26 admittance ~~{~~

27 ~~2.~~ ; or

28 (b) *Without notice of authority and purpose if the officer*
29 *satisfies the requirements of subsection 5.*

30 3. The officer may break open any outer or inner door or
31 window of ~~{a house,}~~ *any premises* for the purpose of liberating a
32 person who, having entered to aid in the execution of the officer's
33 warrant, is detained therein, or when necessary for the officer's own
34 liberation.

35 ~~{3.—All}~~

36 4. *Only* reasonable and necessary force may be used to effect
37 an entry into any ~~{building or property}~~ *premises* or part thereof to
38 execute a search warrant. In the execution of the warrant, the person
39 executing it may reasonably detain and search any person in the
40 place at the time in order to protect himself or herself from attack or
41 to prevent destruction, disposal or concealment of any instruments,
42 articles or things particularly described in the warrant.

43 5. *The officer may enter the premises without notice of*
44 *authority and purpose only if the magistrate authorizes the officer*



1 *not to give such notice before entering the premises because the*
2 *magistrate finds:*

3 *(a) Probable cause based upon evidence offered under oath*
4 *that the object of the warrant may be easily destroyed, disposed of*
5 *or concealed; or*

6 *(b) Reason to believe, based upon specific, articulable facts,*
7 *that physical harm to any person may result if notice of authority*
8 *and purpose were given.*

9 *6. In executing a search warrant, the officer shall take*
10 *reasonable precautions to minimize the risks of:*

11 *(a) Unnecessarily confrontational or invasive methods that*
12 *may result in physical harm to any person; and*

13 *(b) Searching the wrong premises by verifying that the*
14 *premises being searched is consistent with the place named in the*
15 *search warrant.*

16 *7. As used in this section, "premises" means any building,*
17 *house, compartment, room or other enclosure.*

18 **Sec. 3.** NRS 179.095 is hereby amended to read as follows:

19 179.095 The magistrate who has issued a search warrant shall
20 attach to the warrant ~~the duplicate original warrant, if any, and~~ a
21 copy of the return, inventory and all other papers in connection
22 therewith and shall file them with the clerk of the court having
23 jurisdiction where the property was seized.

24 **Sec. 4.** Chapter 289 of NRS is hereby amended by adding
25 thereto the provisions set forth as sections 5 and 6 of this act.

26 **Sec. 5. 1.** *A local law enforcement agency may only deploy*
27 *a SWAT team if the local law enforcement agency reasonably*
28 *believes:*

29 *(a) There is an imminent threat of causing a substantial*
30 *adverse effect on the health, safety and welfare of a human life;*
31 *and*

32 *(b) The use of regular peace officers will be insufficient to*
33 *secure the premises and de-escalate the present situation.*

34 *2. Before the deployment of a SWAT team pursuant to*
35 *subsection 1, unless it would substantially endanger the lives of*
36 *peace officers or any other person, the local law enforcement*
37 *agency shall prepare a written report which must include:*

38 *(a) A detailed account of the facts supporting the reasonable*
39 *belief that there is an imminent threat of causing a substantial*
40 *adverse effect on the health, safety and welfare of a human life;*

41 *(b) An explanation detailing why the use of regular peace*
42 *officers is insufficient to secure the premises and de-escalate the*
43 *present situation; and*

44 *(c) Whether children, pregnant women or elderly persons are*
45 *believed to be present at the premises at issue.*



1 3. *As used in this section:*

2 (a) *“Local law enforcement agency” has the meaning ascribed*
3 *to it in NRS 179D.050.*

4 (b) *“SWAT team” means a specialized team of peace officers:*

5 (1) *Trained in the use of various advanced weaponry, less*
6 *than lethal equipment and advanced tactical maneuvers; and*

7 (2) *Utilized in unusually dangerous or violent situations.*

8 **Sec. 6. 1.** *A law enforcement agency may not request or*
9 *accept the following property from a military equipment surplus*
10 *program operated by the Federal Government, including, without*
11 *limitation, the United States Department of Defense’s 1033 Excess*
12 *Property Program:*

13 (a) *Armored or weaponized drones;*

14 (b) *Aircraft that are combat configured or combat coded;*

15 (c) *Grenades or grenade launchers;*

16 (d) *Silencers; or*

17 (e) *Militarized armored vehicles.*

18 2. *If a law enforcement agency requests property from a*
19 *military equipment surplus program operated by the Federal*
20 *Government, including, without limitation, the United States*
21 *Department of Defense’s 1033 Excess Property Program, the law*
22 *enforcement agency must publish a notice of the request on its*
23 *Internet website within 60 days of making the request.*

24 3. *As used in this section, “law enforcement agency” means:*

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

26 (b) *A metropolitan police department;*

27 (c) *A police department of an incorporated city; or*

28 (d) *The Nevada Highway Patrol.*

29 **Sec. 7.** *The provisions of section 6 of this act:*

30 1. *Apply to any request submitted to the Department of*
31 *Defense by a law enforcement agency in this State that has not been*
32 *approved before October 1, 2015.*

33 2. *Do not apply to any property received from a military*
34 *equipment surplus program by a law enforcement agency before*
35 *October 1, 2015.*



