

ASSEMBLY BILL NO. 105—ASSEMBLYMEN HAMBRICK,
HICKEY; ELLISON, FIORE AND WHEELER

FEBRUARY 13, 2013

Referred to Committee on Judiciary

SUMMARY—Extends to United States Marshals the power to arrest without a warrant and the power to obtain and execute search warrants. (BDR 14-584)

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 criminal procedure; extending to United States Marshals the power to arrest without a warrant and the power to obtain and execute search warrants; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law authorizes an agent of the Federal Bureau of Investigation or
- 2 Secret Service to arrest a person without a warrant in certain circumstances. (NRS
- 3 171.1245) **Section 1** of this bill extends this power to United States Marshals.
- 4 Existing law provides for the issuance and execution of search warrants. (NRS
- 5 179.015-179.115) Existing law specifically requires that a search warrant be
- 6 directed to a peace officer in the county where the warrant is to be executed, and
- 7 that the warrant command the peace officer to search the person or place named for
- 8 the property specified in the warrant. (NRS 179.045) **Section 3** of this bill includes
- 9 a United States Marshal in the definition of “peace officer” for purposes relating to
- 10 the issuance and execution of search warrants, thereby authorizing United States
- 11 Marshals to obtain and execute search warrants in this State.

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

- 1 **Section 1.** NRS 171.1245 is hereby amended to read as
- 2 follows:
- 3 171.1245 ~~Am~~ *A United States Marshal or an* agent of the
- 4 Federal Bureau of Investigation or Secret Service may, without a
- 5 warrant, arrest a person:



1 1. For a public offense committed or attempted in the ~~agent's~~
2 presence ~~of the Marshal or agent.~~

3 2. When a person arrested has committed a felony or gross
4 misdemeanor, although not in the ~~agent's~~ presence ~~of the~~
5 *Marshal or agent.*

6 3. When a felony or gross misdemeanor has in fact been
7 committed, and the *Marshal or agent* has reasonable cause for
8 believing the person arrested to have committed it.

9 4. On a charge made, upon a reasonable cause, of the
10 commission of a felony or gross misdemeanor by the person
11 arrested.

12 5. When a warrant has in fact been issued in this State for the
13 arrest of a named or described person for a public offense, and the
14 *Marshal or agent* has reasonable cause to believe that the person
15 arrested is the person so named or described.

16 **Sec. 2.** Chapter 179 of NRS is hereby amended by adding
17 thereto the provisions set forth as sections 3 and 4 of this act.

18 **Sec. 3.** *"Peace officer" includes, without limitation, a United*
19 *States Marshal.*

20 **Sec. 4.** *"Property" includes, without limitation, documents,*
21 *books, papers and any other tangible objects.*

22 **Sec. 5.** NRS 179.015 is hereby amended to read as follows:
23 179.015 As used in NRS 179.015 to 179.115, inclusive, ~~the~~
24 ~~term "property" includes documents, books, papers and any other~~
25 ~~tangible objects.~~ *unless the context otherwise requires, the words*
26 *and terms defined in sections 3 and 4 of this act have the*
27 *meanings ascribed to them in those sections.*

28 **Sec. 6.** NRS 179.045 is hereby amended to read as follows:

29 179.045 1. A search warrant may issue only on *an* affidavit
30 or affidavits sworn to before ~~the~~ *a* magistrate and establishing the
31 grounds for issuing the warrant , or as provided in subsection 2. If
32 the magistrate is satisfied that grounds for the application exist or
33 that there is probable cause to believe that they exist, the magistrate
34 shall issue a warrant identifying the property and naming or
35 describing the person or place to be searched.

36 2. In lieu of the affidavit required by subsection 1, the
37 magistrate may take an oral statement given under oath, which must
38 be recorded in the presence of the magistrate or in the magistrate's
39 immediate vicinity by a certified court reporter or by electronic
40 means, transcribed, certified by the reporter if the reporter recorded
41 it, and certified by the magistrate. The statement must be filed with
42 the clerk of the court.

43 3. Upon a showing of good cause, the magistrate may order an
44 affidavit or a recording of an oral statement given pursuant to this



1 section to be sealed. Upon a showing of good cause, a court may
2 cause the affidavit or recording to be unsealed.

3 4. After a magistrate has issued a search warrant, whether it is
4 based on an affidavit or an oral statement given under oath, the
5 magistrate may orally authorize a peace officer to sign the name of
6 the magistrate on a duplicate original warrant. A duplicate original
7 search warrant shall be deemed to be a search warrant ~~that~~ **and**
8 must be returned to the magistrate who authorized the signing of it.
9 The magistrate shall endorse his or her name and enter the date on
10 the warrant when it is returned. Any failure of the magistrate to
11 make such an endorsement and entry does not in itself invalidate the
12 warrant.

13 5. The warrant must be directed to a peace officer in the county
14 where the warrant is to be executed. It must:

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

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

20 ➔ The warrant must command the **peace** officer to search forthwith
21 the person or place named for the property specified.

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

25 7. The warrant must designate the magistrate to whom it is to
26 be returned.

27 **Sec. 7.** NRS 179.055 is hereby amended to read as follows:

28 179.055 1. ~~The~~ **A peace** officer may break open any outer
29 or inner door or window of a house, or any part of the house ~~if~~
30 anything therein, to execute ~~the~~ **a** warrant ~~if~~ if, after notice of
31 authority and purpose, the **peace** officer is refused admittance.

32 2. ~~The~~ **A peace** officer may break open any outer or inner
33 door or window of a house for the purpose of liberating a person
34 who, having entered to aid in the execution of the **peace** officer's
35 warrant, is detained therein, or when necessary for the **peace**
36 officer's own liberation.

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



1 **Sec. 8.** NRS 179.065 is hereby amended to read as follows:

2 179.065 When a person charged with a felony is supposed to
3 have on his or her person a dangerous weapon, or anything which
4 may be used as evidence of the commission of the offense, the
5 *peace* officer making the arrest shall cause the person to be
6 searched, and the weapon or other thing to be retained, subject to the
7 order of the court in which the defendant may be tried.

8 **Sec. 9.** NRS 179.075 is hereby amended to read as follows:

9 179.075 1. ~~The~~ *A* warrant may be executed and returned
10 only within 10 days after its date.

11 2. The *peace* officer taking property under the warrant shall
12 give to the person from whom or from whose premises the property
13 was taken a copy of the warrant and a receipt for the property taken
14 or shall leave the copy and receipt at the place from which the
15 property was taken.

16 3. The return shall be made promptly and shall be accompanied
17 by a written inventory of any property taken. The inventory shall be
18 made in the presence of the applicant for the warrant and the person
19 from whose possession or premises the property was taken, if they
20 are present, or in the presence of at least one credible person other
21 than the applicant for the warrant or the person from whose
22 possession or premises the property was taken, and shall be verified
23 by the *peace* officer.

24 4. The magistrate shall upon request deliver a copy of the
25 inventory to the person from whom or from whose premises the
26 property was taken and to the applicant for the warrant.

27 **Sec. 10.** NRS 179.105 is hereby amended to read as follows:

28 179.105 All property or things taken on a warrant must be
29 retained in ~~the~~ *a peace* officer's custody, subject to the order of the
30 court to which the *peace* officer is required to return the proceedings
31 before the *peace* officer, or of any other court in which the offense
32 in respect to which the property or things are taken is triable. If it
33 appears that the property taken is not the same as that described in
34 the warrant, or that there is no probable cause for believing the
35 existence of the grounds on which the warrant was issued, the
36 magistrate shall cause it to be restored to the person from whom it
37 was taken. However, no search warrant shall be quashed by any
38 magistrate or judge within this State nor shall any evidence based
39 upon a search warrant be suppressed in any criminal action or
40 proceeding because of mere technical irregularities which do not
41 affect the substantial rights of the accused.

