

ASSEMBLY BILL NO. 14—ASSEMBLYMAN OCEGUERA

PREFILED JANUARY 18, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions concerning graffiti and other damage to property. (BDR 15-387)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 crimes; making it unlawful to carry a graffiti implement in plain view in certain public areas without authorization from the relevant governmental entity; providing that a governmental entity which incurs costs in cleaning up or removing graffiti is a victim of graffiti for purposes of receiving restitution; revising penalties for unlawfully placing graffiti on the property of another; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 2** of this bill creates a new crime for unlawfully possessing graffiti
2 implements in certain public places. Specifically, **section 2** provides that it is a
3 misdemeanor for a person to carry on his person, and in plain view of the public, a
4 graffiti implement on certain public property without valid authorization from the
5 appropriate governmental entity. **Sections 6-8** of this bill amend existing law to
6 provide that persons who unlawfully possess a graffiti implement in violation of
7 **section 2** are treated similarly to persons who unlawfully place graffiti on the
8 property of another in violation of NRS 206.125 or 206.330. **Section 6** of this bill
9 requires a person who violates **section 2** to pay, in addition to any other fine or
10 penalty, an administrative assessment of \$250 which must be credited to the
11 Graffiti Reward Fund. (NRS 206.340) **Section 7** of this bill amends existing law
12 which provides that, under certain circumstances, a person may not sue a public
13 employee, officer or agency for any injury, wrongful death or other damage
14 incurred by a person while committing certain crimes to include the new crime



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created pursuant to **section 2** of this bill. (NRS 41.0334) **Section 8** of this bill amends existing law which authorizes a court to suspend the driver's license of a child or to delay the issuance of a driver's license to the child if he does not yet possess a driver's license when the child is adjudicated delinquent for engaging in certain acts involving graffiti or defacing property to allow such actions when a child engages in an act prohibited by **section 2** of this bill. (NRS 62E.690)

Section 3 of this bill requires a person who is ordered to pay restitution for damaging the property of another to pay the restitution to either the owner of the property or, if the damage involves the placement of graffiti on certain property, to the governmental entity that incurred the costs of cleaning up or removing the graffiti.

Section 4 of this bill increases the penalty for placing graffiti on, vandalizing, defacing or otherwise damaging: (1) a place of religious worship; (2) a facility used for the purpose of burial or memorializing the dead; or (3) a school, educational facility or community center from a gross misdemeanor to a category E felony. (NRS 206.125)

Section 5 of this bill amends the threshold amount used to determine the penalty for a person who places graffiti on or otherwise defaces public or private property without the permission of the owner from a loss of less than \$250 to \$400 for a misdemeanor and from a loss of \$5,000 or more to a loss of \$400 or more for a category E felony and deletes the penalty of gross misdemeanor for a loss of between \$250 and \$5,000. (NRS 206.330)

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

Section 1. Chapter 206 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. Any person who carries on his person and in plain view to the public a graffiti implement:

(a) While on or under any overpass or bridge or in any flood channel; or

(b) At any public facility, community center, park, playground, swimming pool, beach or recreational area whereon a sign is posted in a location reasonably expected to be viewed by the public which states that it is a misdemeanor to possess a graffiti implement at that public location without valid authorization,

↪ is guilty of a misdemeanor unless he has first received valid authorization from the governmental entity which has jurisdiction over the public area.

2. As used in this section:

(a) "Broad-tipped indelible marker" means any felt-tipped marker or similar implement which contains a fluid that is not soluble in water and which has a flat or angled writing surface of a width of one-half inch or greater.

(b) "Graffiti implement" means any broad-tipped indelible marker or aerosol paint container.



1 **Sec. 3. If a court orders a person who violates the provisions**
2 **of NRS 206.125 or 206.330 to pay restitution, the person shall pay**
3 **the restitution to:**

4 1. The owner of the property which was affected by the
5 violation; or

6 2. If the violation involved the placing of graffiti on any
7 public property or any property facing and bordering any
8 highway, street, road or alleyway, the governmental entity that
9 incurred expenses for removing, covering or cleaning up the
10 graffiti.

11 **Sec. 4.** NRS 206.125 is hereby amended to read as follows:

12 206.125 1. Unless a greater penalty is provided by law, a
13 person who knowingly vandalizes, places graffiti on, defaces or
14 otherwise damages:

15 (a) Any church, synagogue or other building, structure or place
16 used for religious worship or other religious purpose;

17 (b) Any cemetery, mortuary or other facility used for the
18 purpose of burial or memorializing the dead;

19 (c) Any school, educational facility or community center;

20 (d) The grounds adjacent to, and owned or rented by, any
21 institution, facility, building, structure or place described in
22 paragraph (a), (b) or (c); or

23 (e) Any personal property contained in any institution, facility,
24 building, structure or place described in paragraph (a), (b) or (c),

25 ➤ is guilty of a ~~{gross misdemeanor}~~ **category E felony and shall**
26 **be punished as provided in NRS 193.130.** In addition to any other
27 penalty, the court shall order the person to pay restitution for the
28 damage.

29 2. A person who is paid money for restitution pursuant to
30 subsection 1 shall use the money to repair or restore the property
31 that was damaged.

32 **Sec. 5.** NRS 206.330 is hereby amended to read as follows:

33 206.330 1. Unless a greater criminal penalty is provided by a
34 specific statute, a person who places graffiti on or otherwise defaces
35 the public or private property, real or personal, of another, without
36 the permission of the owner:

37 (a) Where the value of the loss is less than ~~{\\$250,}~~ **\\$400**, is
38 guilty of a misdemeanor.

39 (b) ~~{Where the value of the loss is \$250 or more but less than~~
40 ~~**\\$5,000, is guilty of a gross misdemeanor.**~~

41 ~~—(c)}~~ Where the value of the loss is ~~{\\$5,000}~~ **\\$400** or more or
42 where the damage results in the impairment of public
43 communication, transportation or police and fire protection, is guilty
44 of a category E felony and shall be punished as provided in
45 NRS 193.130.



2. If a person commits more than one offense pursuant to a scheme or continuing course of conduct, the value of all property damaged or destroyed by that person in the commission of those offenses may be aggregated for the purpose of determining the penalty prescribed in subsection 1.

3. A person who violates subsection 1 shall, in addition to any other fine or penalty imposed:

(a) For the first offense, perform not less than 50 hours, but not more than 99 hours, of community service.

(b) For the second offense, perform not less than 100 hours, but not more than 199 hours, of community service.

(c) For the third and each subsequent offense, perform not less than 200 hours of community service.

➔ The community service assigned pursuant to this subsection must, if possible, be related to the abatement of graffiti.

4. The parent or legal guardian of a person under the age of 18 years who violates this section is liable for all fines and penalties imposed against the person. If the parent or legal guardian is unable to pay the fine and penalties resulting from a violation of this section because of financial hardship, the court may require the parent or legal guardian to perform community service.

5. If a person who is 18 years of age or older is found guilty of violating this section, the court may issue an order suspending the driver's license of the person for a period not to exceed 6 months in addition to any other penalty imposed. If such an order is issued, the court shall require the person to surrender all driver's licenses then held by the person. If the person does not possess a driver's license, the court may issue an order prohibiting the person from applying for a driver's license within the 6 months immediately following the date of the order. The court shall, within 5 days after issuing the order, forward to the Department of Motor Vehicles any licenses together with a copy of the order.

6. The Department of Motor Vehicles:

(a) Shall not treat a violation of this section in the manner statutorily required for a moving traffic violation.

(b) Shall report the suspension of a driver's license pursuant to this section to an insurance company or its agent inquiring about the person's driving record. An insurance company shall not use any information obtained pursuant to this paragraph for purposes related to establishing premium rates or determining whether to underwrite the insurance.

7. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or other remedy available pursuant to another statute for the same conduct.



8. As used in this section, "impairment" means the disruption of ordinary and incidental services, the temporary loss of use or the removal of the property from service for repair of damage.

Sec. 6. NRS 206.340 is hereby amended to read as follows:

206.340 1. The Graffiti Reward Fund is hereby created in the State General Fund.

2. When a defendant pleads or is found guilty of violating NRS 206.125 or 206.330 ~~H~~ *or section 2 of this act*, the court shall include an administrative assessment of \$250 for each violation in addition to any other fine or penalty. The money collected must be paid by the clerk of the court to the State Controller on or before the fifth day of each month for the preceding month for credit to the Graffiti Reward Fund.

3. All money received pursuant to subsection 2 must be deposited with the State Controller for credit to the Graffiti Reward Fund. The money in the Fund must be used to pay a reward to a person who, in response to the offer of a reward, provides information which results in the identification, apprehension and conviction of a person who violates NRS 206.125 or 206.330 ~~H~~ *or section 2 of this act*.

4. If sufficient money is available in the Graffiti Reward Fund, a state law enforcement agency may offer a reward, not to exceed \$1,000, for information leading to the identification, apprehension and conviction of a person who violates NRS 206.125 or 206.330 ~~H~~ *or section 2 of this act*. The reward must be paid out of the Graffiti Reward Fund upon approval by the State Board of Examiners.

Sec. 7. NRS 41.0334 is hereby amended to read as follows:

41.0334 1. Except as otherwise provided in subsection 2, no action may be brought under NRS 41.031 or against an officer or employee of the State or any of its agencies or political subdivisions for injury, wrongful death or other damage sustained in or on a public building or public vehicle by a person who was engaged in any criminal act proscribed in NRS 202.810, 205.005 to 205.080, inclusive, 205.220, 205.226, 205.228, 205.240, 205.271 to 205.2741, inclusive, 206.310, 206.330, 207.210, 331.200 or 393.410 ~~H~~ *or section 2 of this act*, at the time the injury, wrongful death or damage was caused.

2. Subsection 1 does not apply to any action for injury, wrongful death or other damage:

(a) Intentionally caused or contributed to by an officer or employee of the State or any of its agencies or political subdivisions; or

(b) Resulting from the deprivation of any rights, privileges or immunities secured by the United States Constitution or the Constitution of the State of Nevada.



1 3. As used in this section:

2 (a) "Public building" includes every house, shed, tent or booth,
3 whether or not completed, suitable for affording shelter for any
4 human being or as a place where any property is or will be kept for
5 use, sale or deposit, and the grounds appurtenant thereto; and

6 (b) "Public vehicle" includes every device in, upon or by which
7 any person or property is or may be transported or drawn upon a
8 public highway, waterway or airway,
9 ➤ owned, in whole or in part, possessed, used by or leased to the
10 State or any of its agencies or political subdivisions.

11 **Sec. 8.** NRS 62E.690 is hereby amended to read as follows:

12 62E.690 1. Except as otherwise provided in this section, if a
13 child is adjudicated delinquent for the unlawful act of placing
14 graffiti on or otherwise defacing public or private property owned or
15 possessed by another person in violation of NRS 206.125 or
16 206.330 **H or for the unlawful act of carrying a graffiti implement**
17 **in certain places without valid authorization in violation of section**
18 **2 of this act,** the juvenile court may:

19 (a) If the child possesses a driver's license, issue an order
20 suspending the driver's license of the child for at least 90 days but
21 not more than 2 years; or

22 (b) If the child does not possess a driver's license and the child
23 is or will be eligible to receive a driver's license within the 2 years
24 immediately following the date of the order, issue an order
25 prohibiting the child from receiving a driver's license for a period
26 specified by the juvenile court which must be at least 90 days but
27 not more than 2 years:

28 (1) Immediately following the date of the order, if the child
29 is eligible to receive a driver's license; or

30 (2) After the date the child will be eligible to receive a
31 driver's license, if the child is not eligible to receive a license on the
32 date of the order.

33 2. If the child is already the subject of a court order suspending
34 or delaying the issuance of his driver's license, the juvenile court
35 shall order the additional suspension or delay, as appropriate, to
36 apply consecutively with the previous order.

