

ASSEMBLY BILL NO. 83—ASSEMBLYMEN OHRENSCHALL, LESLIE, DENIS, PARKS, ANDERSON, ARBERRY, BEERS, BOBZIEN, BUCKLEY, CLABORN, CONKLIN, GERHARDT, HOGAN, HORNE, KIHUEN, KOIVISTO, MANENDO, MCCLAIN, MORTENSON, OCEGUERA, PIERCE, SMITH AND WOMACK

FEBRUARY 8, 2007

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing criminal and civil liability for crimes motivated by the actual or perceived status of the victim as a homeless person. (BDR 15-533)

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; providing an additional penalty for specified crimes motivated by the victim's actual or perceived status as a homeless person; expanding the aggravating circumstances for murder of the first degree to include crimes motivated by the victim's actual or perceived status as a homeless person; expanding provisions governing civil liability for certain crimes to include crimes motivated by the victim's actual or perceived status as a homeless person; expanding the program for reporting crimes motivated by certain characteristics of the victim within the Central Repository for Nevada Records of Criminal History; providing penalties; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

Existing law provides for an additional penalty when a person commits certain "hate crimes" in which the perpetrator of the crime is motivated by certain actual or perceived characteristics of the victim. (NRS 193.1675) **Section 1** of this bill expands the scope of that provision to provide that the additional penalty may also be imposed for certain hate crimes committed against a person whom the perpetrator believed to be a homeless person.

Section 2 of this bill expands existing law to provide that a hate crime committed because of the actual or perceived status of the victim as a homeless person constitutes an aggravating circumstance for murder of the first degree. (NRS 200.033)

Section 3 of this bill provides that, unless a greater penalty is provided, certain hate crimes committed against such a victim are gross misdemeanors. (NRS 207.185)

Section 4 of this bill expands the provisions permitting recovery of actual and punitive damages in a civil suit by a victim of a hate crime to include recovery against a perpetrator who acted because of the victim's actual or perceived status as a homeless person. (NRS 41.690)

Section 5 of this bill adds crimes committed based on the victim's actual or perceived status as a homeless person to the types of hate crimes for which the Program for Reporting Crimes of the Central Repository for Nevada Records of Criminal History must collect, compile and analyze statistical data. (NRS 179A.175)

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

Section 1. NRS 193.1675 is hereby amended to read as follows:

193.1675 1. Except as otherwise provided in NRS 193.169, any person who willfully violates any provision of NRS 200.280, 200.310, 200.366, 200.380, 200.400, 200.460 to 200.465, inclusive, paragraph (b) of subsection 2 of NRS 200.471, NRS 200.508, 200.5099 or subsection 2 of NRS 200.575 because the actual or perceived race, color, religion, national origin, physical or mental disability, ~~for~~ sexual orientation *or status as a homeless person* of the victim was different from that characteristic of the perpetrator may be punished by imprisonment in the state prison for an additional term not to exceed 25 percent of the term of imprisonment prescribed by statute for the crime.

2. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

3. As used in this section, "homeless person" means:

(a) A person who does not have a fixed, regular and adequate nighttime residence; or

(b) A person whose primary nighttime residence is:



1 (1) *Any supervised publicly or privately operated shelter*
2 *designed to provide temporary living accommodations, including,*
3 *without limitation, a welfare hotel, congregate shelter and*
4 *transitional housing for the mentally ill;*

5 (2) *Any institution that provides a temporary residence for*
6 *persons intended to be institutionalized; or*

7 (3) *Any public or private place not designed for, or*
8 *ordinarily used as, a regular sleeping accommodation for human*
9 *beings.*

10 **Sec. 2.** NRS 200.033 is hereby amended to read as follows:

11 200.033 The only circumstances by which murder of the first
12 degree may be aggravated are:

13 1. The murder was committed by a person under sentence of
14 imprisonment.

15 2. The murder was committed by a person who, at any time
16 before a penalty hearing is conducted for the murder pursuant to
17 NRS 175.552, is or has been convicted of:

18 (a) Another murder and the provisions of subsection 12 do not
19 otherwise apply to that other murder; or

20 (b) A felony involving the use or threat of violence to the person
21 of another and the provisions of subsection 4 do not otherwise apply
22 to that felony.

23 ➤ For the purposes of this subsection, a person shall be deemed to
24 have been convicted at the time the jury verdict of guilt is rendered
25 or upon pronouncement of guilt by a judge or judges sitting without
26 a jury.

27 3. The murder was committed by a person who knowingly
28 created a great risk of death to more than one person by means of a
29 weapon, device or course of action which would normally be
30 hazardous to the lives of more than one person.

31 4. The murder was committed while the person was engaged,
32 alone or with others, in the commission of, or an attempt to commit
33 or flight after committing or attempting to commit, any robbery,
34 arson in the first degree, burglary, invasion of the home or
35 kidnapping in the first degree, and the person charged:

36 (a) Killed or attempted to kill the person murdered; or

37 (b) Knew or had reason to know that life would be taken or
38 lethal force used.

39 5. The murder was committed to avoid or prevent a lawful
40 arrest or to effect an escape from custody.

41 6. The murder was committed by a person, for himself or
42 another, to receive money or any other thing of monetary value.

43 7. The murder was committed upon a peace officer or
44 firefighter who was killed while engaged in the performance of his
45 official duty or because of an act performed in his official capacity,



1 and the defendant knew or reasonably should have known that the
2 victim was a peace officer or firefighter. For the purposes of this
3 subsection, "peace officer" means:

4 (a) An employee of the Department of Corrections who does not
5 exercise general control over offenders imprisoned within the
6 institutions and facilities of the Department, but whose normal
7 duties require him to come into contact with those offenders when
8 carrying out the duties prescribed by the Director of the Department.

9 (b) Any person upon whom some or all of the powers of a peace
10 officer are conferred pursuant to NRS 289.150 to 289.360, inclusive,
11 when carrying out those powers.

12 8. The murder involved torture or the mutilation of the victim.

13 9. The murder was committed upon one or more persons at
14 random and without apparent motive.

15 10. The murder was committed upon a person less than 14
16 years of age.

17 11. The murder was committed upon a person because of the
18 actual or perceived race, color, religion, national origin, physical or
19 mental disability , ~~for~~ sexual orientation *or status as a*
20 *homeless person* of that person. *For the purposes of this*
21 *subsection, "homeless person" has the meaning ascribed to it in*
22 *NRS 193.1675.*

23 12. The defendant has, in the immediate proceeding, been
24 convicted of more than one offense of murder in the first or second
25 degree. For the purposes of this subsection, a person shall be
26 deemed to have been convicted of a murder at the time the jury
27 verdict of guilt is rendered or upon pronouncement of guilt by a
28 judge or judges sitting without a jury.

29 13. The person, alone or with others, subjected or attempted to
30 subject the victim of the murder to nonconsensual sexual penetration
31 immediately before, during or immediately after the commission of
32 the murder. For the purposes of this subsection:

33 (a) "Nonconsensual" means against the victim's will or under
34 conditions in which the person knows or reasonably should know
35 that the victim is mentally or physically incapable of resisting,
36 consenting or understanding the nature of his conduct, including, but
37 not limited to, conditions in which the person knows or reasonably
38 should know that the victim is dead.

39 (b) "Sexual penetration" means cunnilingus, fellatio or any
40 intrusion, however slight, of any part of the victim's body or any
41 object manipulated or inserted by a person, alone or with others, into
42 the genital or anal openings of the body of the victim, whether or
43 not the victim is alive. The term includes, but is not limited to, anal
44 intercourse and sexual intercourse in what would be its ordinary
45 meaning.



14. The murder was committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person. For the purposes of this subsection, "school bus" has the meaning ascribed to it in NRS 483.160.

15. The murder was committed with the intent to commit, cause, aid, further or conceal an act of terrorism. For the purposes of this subsection, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.

Sec. 3. NRS 207.185 is hereby amended to read as follows:

207.185 1. Unless a greater penalty is provided by law, a person who, by reason of the actual or perceived race, color, religion, national origin, physical or mental disability, ~~for~~ sexual orientation *or status as a homeless person* of another person or group of persons, willfully violates any provision of NRS 200.471, 200.481, 200.5099, 200.571, 200.575, 203.010, 203.020, 203.030, 203.060, 203.080, 203.090, 203.100, 203.110, 203.119, 206.010, 206.040, 206.140, 206.200, 206.310, 207.180, 207.200 or 207.210 is guilty of a gross misdemeanor.

2. As used in this section, the term "homeless person" has the meaning ascribed to it in NRS 193.1675.

Sec. 4. NRS 41.690 is hereby amended to read as follows:

41.690 1. A person who has suffered injury as the proximate result of the willful violation of the provisions of NRS 200.280, 200.310, 200.366, 200.380, 200.400, 200.460, 200.463, 200.464, 200.465, 200.471, 200.481, 200.508, 200.5099, 200.571, 200.575, 203.010, 203.020, 203.030, 203.060, 203.080, 203.090, 203.100, 203.110, 203.119, 206.010, 206.040, 206.140, 206.200, 206.310, 207.180, 207.200 or 207.210 by a perpetrator who was motivated by the injured person's actual or perceived race, color, religion, national origin, physical or mental disability, ~~for~~ sexual orientation *or status as a homeless person* may bring an action for the recovery of his actual damages and any punitive damages which the facts may warrant. If the person who has suffered injury prevails in an action brought pursuant to this subsection, the court shall award him costs and reasonable attorney's fees.

2. The liability imposed by this section is in addition to any other liability imposed by law.

3. As used in this section, the term "homeless person" has the meaning ascribed to it in NRS 193.1675.



1 **Sec. 5.** NRS 179A.175 is hereby amended to read as follows:

2 179A.175 1. The Director of the Department shall establish
3 within the Central Repository a Program for Reporting Crimes that
4 manifest evidence of prejudice based on race, color, religion,
5 national origin, physical or mental disability , ~~for~~ sexual orientation
6 ~~or~~ *or status as a homeless person.*

7 2. The Program must be designed to collect, compile and
8 analyze statistical data about crimes that manifest evidence of
9 prejudice based on race, color, religion, national origin, physical or
10 mental disability , ~~for~~ sexual orientation ~~or~~ *or status as a homeless*
11 *person.* The Director shall adopt guidelines for the collection of the
12 statistical data, including, but not limited to, the criteria to establish
13 the presence of prejudice.

14 3. The Criminal Repository shall include in its annual report to
15 the Governor pursuant to subsection 6 of NRS 179A.075, and in any
16 other appropriate report, an independent section relating solely to
17 the analysis of crimes that manifest evidence of prejudice based on
18 race, color, religion, national origin, physical or mental disability ,
19 ~~for~~ sexual orientation ~~or~~ *or status as a homeless person.*

20 4. Data acquired pursuant to this section must be used only for
21 research or statistical purposes and must not contain any information
22 that may reveal the identity of an individual victim of a crime.

23 5. *As used in this section, the term "homeless person" has the*
24 *meaning ascribed to it in NRS 193.1675.*

