

Amendment No. 663

Senate Amendment to Assembly Bill No. 14 First Reprint (BDR 15-387)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 14 (§ 6).

ASSEMBLY ACTION		Initial and Date		SENATE ACTION		Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

BAW



Date: 5/2/2007

A.B. No. 14—Makes various changes to provisions concerning graffiti and other damage to property. (BDR 15-387)



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 places and in certain circumstances; providing that a governmental entity which incurs costs in cleaning up or removing graffiti may receive restitution if the graffiti was on public property; revising penalties for unlawfully placing graffiti on the property of another; revising provisions governing the suspension of or delay in issuing a driver's license when a person is convicted for placing graffiti on or defacing property; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 2 of this bill creates a new crime for unlawfully possessing certain graffiti implements in certain public places. Specifically, **section 2** provides that it is a misdemeanor for a person to carry on his person ~~and in plain view of the public~~ with the intent to vandalize, place graffiti on or otherwise deface property a graffiti implement on certain public and private property or in a public transportation vehicle without valid authorization from the appropriate governmental entity or person. **Sections 6-8** of this bill amend existing law to provide that persons who unlawfully possess a graffiti implement in violation of **section 2** are treated similarly to persons who unlawfully place graffiti on the property of another in violation of NRS 206.125 or 206.330. **Section 6** requires a person who violates **section 2** to pay, in addition to any other fine or penalty, an administrative assessment of \$250 which must be credited to the Graffiti Reward Fund. (NRS 206.340) **Section 7** amends existing law which provides that, under certain circumstances, a person may not sue a public employee, officer or agency for any injury, wrongful death or other damage incurred by a person while committing certain crimes to include the new crime created pursuant to **section 2**. (NRS 41.0334) **Section 8** 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**. (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 revises 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 to provide for mandatory fines and community service. **Section 4** also adds transportation facilities and public transportation vehicles to the list of entities covered by this section. (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. **Section 5** also revises the penalties for such an offense to include a mandatory fine and community service, revises the period for the suspension of a driver's license, defines the manner for determining the "value of the loss" and allows for aggregating the amount of damage to determine the value of the loss, but only if the value of the loss when aggregated is \$5,000 or more. (NRS 206.330)

Existing law provides for the suspension or delay in the issuance of a driver's license to a person who commits certain graffiti offenses. **Section 8** of this bill adds to the crimes for which a license may be suspended or delayed the new crime of carrying a graffiti implement in certain places and increases the minimum period of the suspension or delay to 1 year. (NRS 62E.690)

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 with the intent to vandalize, place graffiti on or otherwise deface public or private property, real or personal, of another:*

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

(b) At any public facility, community center, park, playground, swimming pool, transportation facility, 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; or

(c) In a public transportation vehicle wherein a sign is posted that is easily viewed by passengers which states that it is a misdemeanor to possess a graffiti implement in the vehicle 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 or other person who is designated to provide such authorization.

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 or other item that may be used to propel or apply fluid that is not soluble in water.

(c) "Public transportation vehicle" means a bus, train or other vehicle or instrumentality used to transport persons from a transportation facility to another location.

(d) "Transportation facility" means an airport, marina, bus terminal, train station, bus stop or other facility where a person may go to obtain transportation.

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

1. The owner of the property which was affected by the violation; or
2. If the violation involved the placing of graffiti on any public property, the governmental entity that incurred expenses for removing, covering or cleaning up the graffiti.

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

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

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

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

(c) Any school, educational facility, *transportation facility, public transportation vehicle* or community center;

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

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

is guilty of a gross misdemeanor.

2. In addition to any other penalty, the court shall order ~~that~~ a person *found guilty of a gross misdemeanor pursuant to subsection 1* to pay restitution for the damage ~~and~~ *and:*

(a) For the first offense, to pay a fine of not less than \$400 but not more than \$1,000, and to perform 100 hours of community service.

(b) For the second offense, to pay a fine of not less than \$750, but not more than \$1,000, and to perform 200 hours of community service.

(c) For a third or subsequent offense, to pay a fine of \$1,000, and to perform 200 hours of community service.

~~2.~~ 3. A person who is paid money for restitution pursuant to subsection 1 shall use the money to repair or restore the property that was damaged.

4. As used in this section:

(a) "Public transportation vehicle" has the meaning ascribed to it in section 2 of this act.

(b) "Transportation facility" has the meaning ascribed to it in section 2 of this act.

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

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

(a) Where the value of the loss is less than ~~\$250,~~ *\$1,000* is guilty of a misdemeanor.

(b) Where the value of the loss is ~~\$250,~~ *\$1,000* or more but less than \$5,000, is guilty of a gross misdemeanor.

(c) Where the value of the loss is \$5,000 or more or where the damage results in the impairment of public communication, transportation or police and fire protection, is guilty of a category E felony and shall be punished as provided in NRS 193.130. *If the court grants probation to such a person, the court shall require as a condition of probation that the person serve at least 10 days in the county jail.*

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~~ *must* be aggregated for the

purpose of determining the penalty prescribed in subsection 1 ~~[]~~, *but only if the value of the loss when aggregated is \$5,000 or more.*

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

(a) For the first offense, *pay a fine of not less than \$400 but not more than \$1,000 and perform ~~[not less than 50 hours, but not more than 99 hours.] 100 hours~~ of community service.*

(b) For the second offense, *pay a fine of not less than \$750 but not more than \$1,000 and perform ~~[not less than 100 hours, but not more than 199 hours.] 200 hours~~ of community service.*

(c) For the third and each subsequent offense, *pay a fine of \$1,000 and 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]~~ *shall, in addition to any other penalty imposed,* issue an order suspending the driver's license of the person for ~~[a period not to exceed] not less than 6 months ~~[in addition to any other penalty imposed. If such an order is issued, the]~~ but not more than 2 years. 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]~~ *shall* issue an order prohibiting the person from applying for a driver's license ~~[within the]~~ *for not less than 6 months ~~[immediately following the date of the order.] but not more than 2 years.~~* 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"]~~:

(a) *"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.

(b) *"Value of the loss" means the cost of repairing, restoring or replacing the property, including, without limitation, the cost of any materials and labor necessary to repair, restore or replace the item.*

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 ~~[]~~ *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 ~~or~~ *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 ~~or~~ *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 ~~or~~ *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.

3. As used in this section:

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

(b) "Public vehicle" includes every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, waterway or airway,

owned, in whole or in part, possessed, used by or leased to the State or any of its agencies or political subdivisions.

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

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

(a) If the child possesses a driver's license, issue an order suspending the driver's license of the child for at least ~~90 days~~ *1 year* but not more than 2 years; or

(b) If the child does not possess a driver's license and the child is or will be eligible to receive a driver's license within the 2 years immediately following the

1 date of the order, issue an order prohibiting the child from receiving a driver's
2 license for a period specified by the juvenile court which must be at least ~~[90 days]~~
3 **1 year** but not more than 2 years;

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

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

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

11 **Sec. 9.** NRS 483.250 is hereby amended to read as follows:

12 483.250 The Department shall not issue any license pursuant to the provisions
13 of NRS 483.010 to 483.630, inclusive:

14 1. To any person who is under the age of 18 years, except that the Department
15 may issue:

16 (a) A restricted license to a person between the ages of 14 and 18 years
17 pursuant to the provisions of NRS 483.267 and 483.270.

18 (b) An instruction permit to a person who is at least 15 1/2 years of age
19 pursuant to the provisions of subsection 1 of NRS 483.280.

20 (c) A restricted instruction permit to a person under the age of 18 years
21 pursuant to the provisions of subsection 3 of NRS 483.280.

22 (d) A driver's license to a person who is 16 or 17 years of age pursuant to
23 NRS 483.2521.

24 2. To any person whose license has been revoked until the expiration of the
25 period during which he is not eligible for a license.

26 3. To any person whose license has been suspended, but upon good cause
27 shown to the Administrator, the Department may issue a restricted license to him or
28 shorten any period of suspension.

29 4. To any person who has previously been adjudged to be afflicted with or
30 suffering from any mental disability or disease and who has not at the time of
31 application been restored to legal capacity.

32 5. To any person who is required by NRS 483.010 to 483.630, inclusive, to
33 take an examination, unless he has successfully passed the examination.

34 6. To any person when the Administrator has good cause to believe that by
35 reason of physical or mental disability that person would not be able to operate a
36 motor vehicle safely.

37 7. To any person who is not a resident of this State.

38 8. To any child who is the subject of a court order issued pursuant to title 5 of
39 NRS which delays his privilege to drive.

40 9. To any person who is the subject of a court order issued pursuant to NRS
41 206.330 which ~~[suspends or]~~ delays his privilege to drive until the expiration of the
42 period of ~~[suspension or]~~ delay.

43 10. To any person who is not eligible for the issuance of a license pursuant to
44 NRS 483.283.