

SENATE BILL NO. 257—SENATOR WIENER

MARCH 17, 2011

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing graffiti offenses. (BDR 15-616)

FISCAL NOTE: Effect on Local Government: No.
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; revising various provisions governing graffiti offenses; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally provides that a person who unlawfully places graffiti on or otherwise defaces public or private property is guilty of a misdemeanor, gross misdemeanor or felony, depending on the value of the loss of the property. Additionally, if a person commits more than one offense pursuant to a scheme or continuing course of conduct, the value of the loss of all the property must be aggregated for the purposes of determining a penalty if the value of the loss is \$5,000 or more. (NRS 206.330) **Section 1** of this bill revises this provision and requires aggregation when the value of the loss is \$500 or more. **Section 1** also provides that a person who commits an offense on any protected site in this State is guilty of a category C felony.

Existing law also requires a person who unlawfully places graffiti on or otherwise defaces public or private property to pay a monetary fine and perform community service. (NRS 206.330) **Section 1** specifies that in addition to any other fine or penalty imposed, a court may order such a person to pay restitution. **Section 1** also provides that a person convicted of a third offense must perform up to 300 hours of community service for up to a year cleaning up, repairing, replacing or keeping clean of graffiti the property damaged or destroyed by the person or another specified property.

Section 2 of this bill also authorizes a court to order a person who unlawfully places graffiti on or otherwise defaces public or private property to participate in counseling, and if the person is less than 18 years of age, order the parent or legal guardian of the person to attend or participate in counseling. **Section 2** further authorizes the owner of public or private property that has been damaged by graffiti to bring a civil action against the person who damaged the property. The property owner may be awarded damages in an amount up to three times the cost of restoring the property, in addition to attorney's fees and costs.



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

1 **Section 1.** NRS 206.330 is hereby amended to read as follows:
2 206.330 1. Unless a greater criminal penalty is provided by a
3 specific statute, a person who places graffiti on or otherwise defaces
4 the public or private property, real or personal, of another, without
5 the permission of the owner:

6 (a) Where the value of the loss is less than \$250, is guilty of a
7 misdemeanor.

8 (b) Where the value of the loss is \$250 or more but less than
9 \$5,000, is guilty of a gross misdemeanor.

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

17 *(d) Where the offense is committed on any protected site in this*
18 *State, is guilty of a category C felony and shall be punished as*
19 *provided in NRS 193.130. If the court grants probation to such a*
20 *person, the court shall require as a condition of probation that the*
21 *person serve at least 10 days in the county jail.*

22 2. If a person commits more than one offense pursuant to a
23 scheme or continuing course of conduct, the value of all property
24 damaged or destroyed by that person in the commission of those
25 offenses must be aggregated for the purpose of determining the
26 penalty prescribed in subsection 1, but only if the value of the loss
27 when aggregated is ~~[\$5,000]~~ \$500 or more.

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

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

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

34 (c) For the third and each subsequent offense ~~[, pay]~~:

35 (1) *Pay* a fine of \$1,000 ; and ~~[perform 200 hours of]~~

36 (2) *Perform up to 300 hours of* community service ~~[, for up~~
37 *to 1 year, as determined by the court. The court may order the*
38 *person to repair, replace, clean up or keep free of graffiti the*
39 *property damaged or destroyed by the person or, if it is not*
40 *practicable for the person to repair, replace, clean up or keep free*



of graffiti that specific property, the court may order the person to repair, replace, clean up or keep free of graffiti another specified property.

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

4. *The court may, in addition to any other fine or penalty imposed, order a person who violates subsection 1 to pay restitution.*

5. The parent or legal guardian of a person under ~~the age of~~ 18 years *of age* 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.

~~5.1~~ 6. If a person who is 18 years of age or older is found guilty of violating this section, the court shall, in addition to any other penalty imposed, issue an order suspending the driver's license of the person for not less than 6 months 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 shall issue an order prohibiting the person from applying for a driver's license for not less than 6 months 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.

~~6.1~~ 7. 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.

~~7.1~~ 8. A criminal penalty imposed pursuant to this section is in addition to any civil penalty or other remedy available pursuant to *this section or* another statute for the same conduct.

~~8.1~~ 9. As used in this section:

(a) ~~“Historic site” means a site, landmark or monument of historical significance pertaining to the history of the settlement of Nevada, or Indian campgrounds, shelters, petroglyphs, pictographs and burials.~~

~~(b)~~ “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) ***“Protected site” means:***

(1) A site, landmark, monument, building or structure of historical significance pertaining to the history of the settlement of Nevada;

(2) Any Indian campgrounds, shelters, petroglyphs, pictographs and burials; or

(3) Any archeological or paleontological site, ruin, deposit, fossilized footprints and other impressions, petroglyphs and pictographs, habitation caves, rock shelters, natural caves, burial ground or sites of religious or cultural importance to an Indian tribe.

(c) “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. 2. NRS 206.345 is hereby amended to read as follows:

206.345 1. A court may, in addition to any other fine or penalty imposed, order a person who places graffiti on or otherwise defaces public or private property in violation of NRS 206.125 or 206.330 to participate in counseling, and if the person is less than 18 years of age, order the parent or legal guardian of the person to attend or participate in counseling pursuant to NRS 62E.290.

2. 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:

~~1-1~~ (a) The owner of the property which was affected by the violation; or

~~1-1~~ (b) 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.

3. The owner of public or private property that has been damaged by graffiti may bring a civil action against the person who placed the graffiti on such property. The court may award to the property owner damages in an amount up to three times the cost of restoring the property plus attorney’s fees and costs, which may be recovered from the offender or, if the offender is less than 18 years of age, from the parent or legal guardian of the offender.

Sec. 3. NRS 381.225 is hereby amended to read as follows:

381.225 1. It is unlawful for any person to commit vandalism upon any historic or prehistoric sites, natural monuments, speleological sites and objects of antiquity, or to write or paint or carve initials or words, or in any other way deface, any of those objects, Indian paintings or historic buildings.

2. Unless a greater penalty is provided in NRS 206.125 ***H*** or ***206.330***, a person violating the provisions of subsection 1 is guilty



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- 1 of a public offense proportionate to the value of the property
- 2 damaged or destroyed as set forth in NRS 193.155.

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