

SENATE BILL NO. 166—SENATOR SCHEIBLE

MARCH 2, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to crimes motivated by certain characteristics of the victim. (BDR 15-246)

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 crimes; revising provisions relating to crimes motivated by certain characteristics of the victim; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that if a person commits certain crimes ordinarily punishable as misdemeanors because of certain characteristics of the victim including race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression, then the crime committed is punishable as a gross misdemeanor. (NRS 207.185) Existing law also provides that if a person commits certain crimes punishable as felonies because a certain characteristic of the victim, including race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression, is different from that characteristic of the perpetrator, then the crime is punishable by an additional penalty. (NRS 193.1675) For these crimes punishable as felonies, **section 1** of this bill removes the requirement that the perpetrator must have a characteristic that is different from the characteristic of the victim for the additional penalty to apply and instead provides that the perpetrator may be punished by an additional penalty if the perpetrator committed the crime because of the characteristics of the victim, thereby making the standard the same for these crimes as it is for certain crimes punishable as misdemeanors under existing law. **Section 1** also adds to the list of such crimes punishable as felonies the crime of making threats or conveying false information concerning acts of terrorism, weapons of mass destruction or lethal agents or toxins.

Section 2 of this bill adds to the list of crimes ordinarily punishable as misdemeanors that are punishable as gross misdemeanors if committed because of certain characteristics of the victim the crime of threatening to cause bodily harm or death to a pupil or employee of a school district or charter school.

Sections 1 and 2 also: (1) provide that a person commits a crime because of the characteristics of the victim if the existence of any such characteristic is the primary cause in fact for the commission of the crime; and (2) require the prosecuting attorney to prove beyond a reasonable doubt that the person would not have



committed the crime but for the existence of such a characteristic. **Sections 1 and 2** additionally provide that any incidental comment about such a characteristic of the victim that is made by the person who commits the crime must not be the sole basis for imposing an additional or enhanced penalty, respectively, against the person, but may be considered together with other evidence as to the motivation of the person for committing the crime.

Existing law authorizes a person who has suffered injury as the proximate result of the commission of certain crimes by a perpetrator who was motivated by certain characteristics of the injured person to bring a civil action to recover his or her actual damages and punitive damages. (NRS 41.690) **Section 3** of this bill adds to the list of such crimes for which such a person may bring such a civil action the crimes of: (1) making threats or conveying false information concerning acts of terrorism, weapons of mass destruction or lethal agents or toxins; and (2) threatening to cause bodily harm or death to a pupil or employee of a school district or charter school.

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 , *because of the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or group of persons*, willfully violates any provision of NRS 200.030, 200.050, 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 200.481 which is punishable as a felony, NRS 200.508, 200.5099, subsection 2 of NRS 200.575, NRS **202.448**, 205.010 to 205.025, inclusive, 205.060, 205.067, 205.075, NRS 205.0832 which is punishable as a felony, NRS 205.220, 205.226, 205.228, 205.270, 206.150, NRS 206.330 which is punishable as a felony or NRS 207.190 ~~[because the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of the victim was different from that characteristic of the perpetrator]~~ may, in addition to the term of imprisonment prescribed by statute for the crime, be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years. In determining the length of any additional penalty imposed, the court shall consider the following information:

- (a) The facts and circumstances of the crime;
- (b) The criminal history of the person;
- (c) The impact of the crime on any victim;
- (d) Any mitigating factors presented by the person; and
- (e) Any other relevant information.



1 ➡ The court shall state on the record that it has considered the
2 information described in paragraphs (a) to (e), inclusive, in
3 determining the length of any additional penalty imposed.

4 2. *For the purposes of this section, a person willfully violates*
5 *any provision of law listed in subsection 1 because of the actual or*
6 *perceived race, color, religion, national origin, physical or mental*
7 *disability, sexual orientation or gender identity or expression of*
8 *another person or group of persons if the existence of any such*
9 *protected characteristic is the primary cause in fact for the*
10 *commission of the crime, regardless of whether one or more other*
11 *causes for the commission of the crime exist. For an additional*
12 *penalty to be imposed pursuant to this section, the prosecuting*
13 *attorney must prove beyond a reasonable doubt that the person*
14 *would not have committed the crime but for the existence of such*
15 *a protected characteristic.*

16 3. *If a person willfully violates any provision of law listed in*
17 *subsection 1, any comment made by the person about the actual or*
18 *perceived race, color, religion, national origin, physical or mental*
19 *disability, sexual orientation or gender identity or expression of*
20 *another person or group of persons that the court determines is*
21 *incidental must not be the sole basis for imposing an additional*
22 *penalty pursuant to this section, but may be considered in*
23 *conjunction with other evidence as to the motivation of the person*
24 *for committing the crime.*

25 4. A sentence imposed pursuant to this section:

26 (a) Must not exceed the sentence imposed for the crime; and

27 (b) Runs consecutively with the sentence prescribed by statute
28 for the crime.

29 ~~[3.]~~ 5. This section does not create a separate offense but
30 provides an additional penalty for the primary offense, whose
31 imposition is contingent upon the finding of the prescribed fact.

32 **Sec. 2.** NRS 207.185 is hereby amended to read as follows:

33 207.185 1. Unless a greater penalty is provided by law, a
34 person who, ~~[by reason]~~ *because* of the actual or perceived race,
35 color, religion, national origin, physical or mental disability, sexual
36 orientation or gender identity or expression of another person or
37 group of persons, willfully violates any provision of NRS 200.471,
38 200.481, 200.5099, 200.571, 200.575, 203.010, 203.020, 203.030,
39 203.060, 203.080, 203.090, 203.100, 203.110, 203.119, NRS
40 205.0832 which is punishable as a misdemeanor, NRS 205.240,
41 205.2715, 205.274, 205.2741, 206.010, 206.040, 206.125, 206.140,
42 206.200, 206.310, NRS 206.330 which is punishable as a
43 misdemeanor, NRS 207.180, 207.200 ~~[or]~~, 207.210 *or 392.915* is
44 guilty of a gross misdemeanor.



2. *For the purposes of this section, a person willfully violates any provision of law listed in subsection 1 because of the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or group of persons if the existence of any such protected characteristic is the primary cause in fact for the commission of the crime, regardless of whether one or more other causes for the commission of the crime exist. For an enhanced penalty to be imposed pursuant to this section, the prosecuting attorney must prove beyond a reasonable doubt that the person would not have committed the crime but for the existence of such a protected characteristic.*

3. *If a person willfully violates any provision of law listed in subsection 1, any comment made by the person about the actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or group of persons that the court determines is incidental must not be the sole basis for imposing an enhanced penalty pursuant to this section, but may be considered in conjunction with other evidence as to the motivation of the person for committing the crime.*

Sec. 3. 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 200.030, 200.050, 200.280, 200.310, 200.366, 200.380, 200.400, 200.460, 200.463, 200.4631, 200.464, 200.465, 200.467, 200.468, 200.471, 200.481, 200.508, 200.5099, 200.571, 200.575, **202.448**, 203.010, 203.020, 203.030, 203.060, 203.080, 203.090, 203.100, 203.110, 203.119, 205.010 to 205.025, inclusive, 205.060, 205.067, 205.075, 205.0832, 205.220, 205.226, 205.228, 205.240, 205.270, 205.2715, 205.274, 205.2741, 206.010, 206.040, 206.125, 206.140, 206.150, 206.200, 206.310, 206.330, 207.180, 207.190, 207.200 ~~for~~ , 207.210 **or 392.915** by a perpetrator who was motivated by the injured person's actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression may bring an action for the recovery of his or her 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 the person 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, "gender identity or expression" has the meaning ascribed to it in NRS 193.0148.



1 **Sec. 4.** The amendatory provisions of this act apply to offenses
2 committed on or after October 1, 2021.

