

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
March 15, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, March 15, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Brigid Duffy, Chief, Juvenile Division, Office of the District Attorney,
Clark County
John Jones, Nevada District Attorneys Association
Holly Welborn, American Civil Liberties Union of Nevada
John Piro, Office of the Public Defender, Clark County
Christine Saunders, Progressive Leadership Alliance of Nevada
Annemarie Grant
Cyrus Hojjaty

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be

time for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

VICE CHAIR CANNIZZARO:

We will open the hearing on Senate Bill (S.B.) 166.

SENATE BILL 166: Revises provisions relating to crimes motivated by certain characteristics of the victim. (BDR 15-246)

SENATOR MELANIE SCHEIBLE (Senatorial District No. 9):

Senate Bill 166 would provide technical changes to *Nevada Revised Statutes* (NRS) regarding crimes motivated by hatred or bias, commonly referred to as hate crimes. The bill would not change the definition of hate crimes, expand the classes of people protected by hate crimes in NRS nor change penalties for crimes motivated by hatred or bias.

There is a conceptual amendment ([Exhibit B](#)) to S.B. 166. The bill would align the language between NRS 207.185, which relates to misdemeanor offenses, and NRS 193.1675, which relates to gross misdemeanors and felonies. To illustrate why this is important, I will provide a realistic example and a sample verdict form ([Exhibit C](#)).

Simple battery is a misdemeanor offense punishable by up to six months in jail. It is defined as the unlawful touching of another person: punching, shoving, kicking someone. Felony battery involves other facts in attendance. If the battery causes substantial bodily harm, it becomes a Category C felony punishable by one to five years. Substantial bodily harm is defined in NRS as causing any kind of disfigurement or prolonged physical pain. If, as a result of the same act considered a misdemeanor, the victim's nose or jaw is broken, or he or she develops a permanent scar, the action is deemed felony battery causing bodily harm.

Juries determine the difference between the two types of battery. The same act committed with a hand becomes battery with a deadly weapon if a baseball bat, knife or gun is involved. From the nucleus of operative facts, the same misdemeanor crime may have the attendant circumstance of causing substantial bodily harm or being committed with a deadly weapon and thus be elevated to a felony. Battery with a deadly weapon is a Category B felony punishable by

two to ten years. It is common that a battery is committed with a deadly weapon and causes substantial bodily harm.

When a jury hears the facts of a case or the State alleges a defendant has committed battery with a deadly weapon resulting in substantial bodily harm, jurors must ask themselves three questions: whether a battery occurred, whether substantial bodily harm occurred and whether the crime was committed with a deadly weapon. Juries have the option of rendering five verdicts: not guilty, guilty of simple battery, guilty of battery with a deadly weapon, guilty of battery causing substantial bodily harm, guilty of battery with a deadly weapon and causing substantial bodily harm. The lowest level is a misdemeanor and the highest, a felony. However, that is not conveyed to jurists because we do not want them to decide based on the punishment level. We want them to match the law with the facts and, through their verdict, tell the judge what they believe happened and which elements of the crime were met.

This is the system unless the enhancement for bias or hatred is added. A problem develops because NRS 193.1675 and NRS 207.185 have differing wording. To prove a misdemeanor battery was motivated by hatred or bias, it is only necessary to show the motivation of the crime was the victim's "actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or a group of persons." The battery is now elevated to a gross misdemeanor.

To substantiate a claim of battery with substantial bodily harm with a deadly weapon or battery with both enhancements is motivated by bias or hatred, the definition is different. Battery is punishable as a felony if the motivation was

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.

The difference disallows a jury from choosing the available verdict options: misdemeanor enhanced by hate or felony enhanced by hate. The verdict form, [Exhibit C](#), is divided into two separate crimes, so jurors must choose one definition or the other, deciding whether hatred or bias was the motivation for the crime. The definition of the crime changes, so it cannot be decided at both levels simultaneously.

Section 1, subsection 1 of the proposed amendment, [Exhibit B](#), to S.B. 166 transfers the misdemeanor category language in NRS 207.185 to the felony category provisions of NRS 193.1675 so they will match. The reason is the characteristics of the defendant do not have to differ from those of the victim. An example is if someone commits a crime against someone of the same racial group but of a different religious group because of intersectional identity. The crime is clearly motivated by hatred or bias and committed because the victim has a different characteristic than the defendant, but also because they share a characteristic.

A crime motivated by hatred or bias can be a deeply personal offense for victims, the nuance of which is not usually captured in the law. There are not simply Black people and not Black people, Latinx people and not Latinx people, gay people and not gay people, and Mormon people and not Mormon people. To require that the State prove the defendant and victim have actual or perceived differences in protected characteristics can be deeply upsetting to victims who see themselves as part of the same group as defendants.

Section 2 of the proposed amendment, [Exhibit B](#), to S.B. 166 adds two crimes to the list of those enhanced by motivations of hatred or bias. *Nevada Revised Statutes* 202.448 prohibits making false threats of terrorism to include actual threats. In NRS 392.915, penalties are outlined for "threatening to cause bodily harm or death to pupil or school employee by means of oral, written or electronic communication." This was excluded from the list of offenses in NRS 41.690 for no discernible reason. I did research back to 1989 and did not find the reasoning for the difference between the felony and misdemeanor statutes nor for excluding those threat crimes.

Section 3 of the proposed amendment, [Exhibit B](#), would make conforming changes to NRS 41.690, the civil statutes. Any victim of a crime motivated by hatred or bias can sue for civil damages.

SENATOR HANSEN:

Let us say I walk out of this building and some guy does a battery assault on me with a deadly weapon with the motive of stealing my wallet. What if the exact crime is committed because he finds out I am a Mormon and he hates Mormons? Why am I less of a victim if the motive is greed, lust or domination? Why are we making special classes of victims when it is actually the conduct that has traditionally been punished? If I am attacked for being Mormon, why

should there be a greater penalty than for a simple robbery? The end result is, I get the hell beat out of me for one reason or the other. We are breaking down classes and groups and making some victims more valuable than others.

SENATOR SCHEIBLE:

That is a policy question first taken up by the Legislature in 1989. The distinction became law after Legislators made the policy choice to increase penalties for crimes committed on protected classes. I am suggesting we make the standard for misdemeanor and felony crimes based on those motivations the same.

Other motivations are specified for higher penalties. Battery with the intent to commit sexual assault is a Category A felony punishable by 1 to 20 years. There are enhancements for crimes against children, the elderly and other vulnerable people. Senate Bill 166 is not a novelty in Nevada law. It is a facet of criminal law we have determined has a policy reason for imposing more stringent penalties for the same or similar conduct with different underlying motivations.

SENATOR HANSEN:

We are dangerously close to violating people's First Amendment rights and punishing them for repugnant thoughts. I realize you do not want to change policy, but that is what Legislators do. With a female majority Legislature, it is ironic we have left out "sex" for an enhanced penalty in our policy. When a man beats up a woman that is never considered a hate crime, even though that would be legitimate if the man hates women.

SENATOR SCHEIBLE:

Because the classes include "gender identity or expression," I cannot imagine a scenario in which a crime is committed against a female victim and it has nothing to do with her gender. It has to do with the person being defined as female at birth and identifying or not identifying as such; either way, the person's gender identity is part of the reason for the crime.

That is true whether the victim's identity matches what we think is "normal" or whether the person does not conform to what we think a woman should do, look like, talk like, act like. "Gender" covers every conceivable crime against someone because he or she is a man, woman or neither.

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SENATOR HANSEN:

Would you classify rape or attempted rape as an additional type of hate crime?

SENATOR SCHEIBLE:

No.

SENATOR HANSEN:

That refutes the argument about gender identity because that has been in NRS for a long time.

VICE CHAIR CANNIZZARO:

Nevada Revised Statutes allow for enhanced penalties for misdemeanor, enhanced misdemeanor or felony hate crimes. Is that correct?

SENATOR SCHEIBLE:

Yes.

VICE CHAIR CANNIZZARO:

Does S.B. 116 create that enhancement organically?

SENATOR SCHEIBLE:

No.

VICE CHAIR CANNIZZARO:

The bill attempts to conform enhancing a misdemeanor or gross misdemeanor into a felony with an additional penalty. The language would match in the two separate enhancement categories. Is that correct?

SENATOR SCHEIBLE:

Yes.

VICE CHAIR CANNIZZARO:

The bigger question is showing that somehow the victim or perpetrator must be completely different from each other to prove the crime was motivated by the victim's protected status. Is that right?

SENATOR SCHEIBLE:

Yes.

VICE CHAIR CANNIZZARO:

Would the bill change that if it is proven a crime was motivated by the victim's status—irrespective of whether the victim and perpetrator have some kind of similar characteristics—the penalty enhancement would still apply?

SENATOR SCHEIBLE:

Yes.

VICE CHAIR CANNIZZARO:

Senator Hansen brought up some interesting points. It is not as though every crime committed is because the victim is "different" is necessarily based upon a motive of hatred toward his or her individual character. Is that correct?

SENATOR SCHEIBLE:

Yes.

VICE CHAIR CANNIZZARO:

Have you seen instances in which a robbery happens between individuals of different religions but it was not necessarily because of that, rather just to steal money?

SENATOR SCHEIBLE:

Yes. It is extremely difficult to prove the hatred or bias enhancement at either the charging, probable cause or final phases. In instances when I have seen those charges sustained, I have never witnessed anyone convicted of them. I have seen such charges sustained only when it was clear the victim was in additional danger and targeted because of his or her characteristic. That case involved two people walking down a street at the same time, and the person with a disability was targeted because he or she could not escape, instead of the able-bodied person who could. In cases like that, I have seen the hate enhancement at least make it to a verdict formulated into the charging document.

VICE CHAIR CANNIZZARO:

What I was trying to highlight is there may be differences between perpetrators and victims, but unless there is some kind of proof in the form of, for example, a statement made, attested intent, a letter or some other overt act by which a specific motive can be deduced, the enhancement would not be applied. It is not simply because there is a different characteristic that would necessarily

entitle a prosecutor to charge an enhancement under NRS 193.1675 and NRS 207.190. Is that right?

SENATOR SCHEIBLE:

Yes. In my experience, cases have been victim focused. The ultimate question is whether the defendant targeted the victim because of his or her characteristic. You will get that from the perspective of the victim. You ask whether the victim has experienced increased, more intense or "sooner harm" or a greater risk of harm because of his or her characteristic and the behavior of the defendant. Did the defendant target the victim because of the characteristic? From a public safety standpoint, are the people with that characteristic at a greater risk from the specific defendant?

VICE CHAIR CANNIZZARO:

Under the statute, would you still be required to prove the characteristic provided the particular motivation?

SENATOR SCHEIBLE:

Yes.

BRIGID DUFFY (Chief, Juvenile Division, Office of the District Attorney, Clark County):

The Office of the District Attorney, Clark County, supports S.B. 166. It is good to add the two enumerated offenses that can be enhanced as hate crimes. In Juvenile Court, we see children routinely making threats to schools and classmates. There is an oversight in statute because NRS 202 and 392 were adopted after the hate crime sections of NRS. When a terrorist threat to a school is motivated by a person's protected status, the Court is unable to notate it as an enhanceable hate crime.

Juvenile Court does not have flat sentences, so we will never enhance an offense to the point that someone will serve more time because he or she is a juvenile. Our focus is on rehabilitation, not punishment. We can, however, create case plans for youth offenders on probation to ensure they are educated about cultural competencies and biases and how to acknowledge to victims what has actually occurred. I have had cases clearly motivated by racial bias yet I could not file them as hate crimes because no such enhancement exists for juveniles.

JOHN JONES (Nevada District Attorneys Association):

The Nevada District Attorneys Association supports S.B. 166 and the proposed amendment, [Exhibit B](#), because it would provide clarity and conformity between our hate crime enhancement statutes.

HOLLY WELBORN (American Civil Liberties Union of Nevada):

The American Civil Liberties Union (ACLU) of Nevada is opposed to S.B. 166 because hate crime statutes have a significant potential for abuse. Such laws must balance the sometimes competing interests of freedom of expression and thought, curbing mass incarceration and protection against invidious discrimination. Hate crime statutes must not extend beyond their original intent to deter crime based on discrimination. The requirement that the perpetrator have different characteristics than the victim is necessary to that end; otherwise, we perpetuate the dangerous black-on-black crime myth and create enhancements that harm the very people hate crime laws are meant to protect.

The ACLU of Nevada also looked at legislative history, and it is unclear why the misdemeanor NRS does not include the differentiating characteristics requirement. The felony hate crime law is aligned with ACLU's nationwide standard.

JOHN PIRO (Office of the Public Defender, Clark County):

The Office of the Public Defender, Clark County, opposes S.B. 166. Our main objections are the elimination of "because" from section 1, subsection 1 and to moving the misdemeanor definition to the felony section. Due to the "because," the intent element of the NRS is watered down, which can become problematic when trying to prove things.

I am disheartened to hear Ms. Duffy talk about punishing juveniles further. The Department of Justice has explained education is the cure for the problem of hate crimes: education is the cure, not more penalties. We need to get beyond the old way of solving the problem.

Few laws in the criminal justice system recognize negligence or the watering down of intent. The loss of liberty is more troublesome than the loss of money. To weaken intent is one of the reasons why the Nation has become one of mass incarceration. Senate Bill 166 will overcriminalize the wrong things, especially when proper hate crime penalties already exist.

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CHRISTINE SAUNDERS (Progressive Leadership Alliance of Nevada):
The Progressive Leadership Alliance of Nevada opposes S.B. 166. Hate crime statutes are important, but we echo the comments of Ms. Welborn and Mr. Piro about unintended consequences of overcriminalization of marginalized communities.

VICE CHAIR CANNIZZARO:
We will close the hearing on S.B. 166.

CHAIR SCHEIBLE:
I request the Committee's introduction of Bill Draft Request (BDR) 10-1019.

BILL DRAFT REQUEST 10-1019: Revises provisions relating to insurance coverage for certain common-interest communities. (Later introduced as [Senate Bill 257](#).)

SENATOR PICKARD:
In section 1, subsection 2 of BDR 10-1019, townhomes and duplexes are exempted. There are several developments in my District consisting of multiple townhomes and duplexes. Could we make the exemptions based on square footage or the number of total units in a homeowners' association?

CHAIR SCHEIBLE:
We can examine that when we hold the bill policy discussion.

SENATOR OHRENSCHALL MOVED TO INTRODUCE BDR 10-1019.

SENATOR CANNIZZARO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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ANNEMARIE GRANT:
On October 4, 2015, my brother Thomas Pardee, 38, was hog-tied by two City of Reno police officers during a mental health crisis. Thomas was a guest at the Peppermill Resort Spa Casino, and when he asked security for help, he was hog-tied by police for 40 minutes. He was neither combative nor assaultive.

Forty- plus minutes later, he was dumped at the Washoe County Detention Facility, still hog-tied.

My brother was photographed but not provided with the ambulance he requested. He told them he could not breathe and was dying. He had had major surgery after his lung collapsed. On October 8, Thomas died after my family removed him from life support because he was brain dead.

The Washoe County Sheriff's Office failed to notify us our brother was at the hospital on life support. He was alone when he died. It took the hospital two days to locate my family. He was asphyxiated by the Reno police, and the Washoe County District Attorney's Office would not review his case, nor any similar cases. The Washoe County medical examiner determined my brother would not have died had he not been asphyxiated. Thomas weighed 140 pounds. He died after never assaulting anyone and simply asking for help. Please support those who ask for transparency and accountability from law enforcement and seek to protect community members from the egregious practices of the police.

CYRUS HOJJATY:

There is a lot of division and finger-pointing in our Country. We are going through a rough patch with high levels of income inequality. I recently read an article that said Jim Murren, former CEO of MGM Resorts, has greatly profited from the Covid-19 economic shutdown. Rich people keep getting richer. Neither party of our government represents the true voice of the people. Tensions between various groups will only increase. If the Committee members believe one person is the instigator, do us all a favor and let us break up the Country. We cannot get along, and our society is going nowhere. There is constant fighting, riots, civil unrest, double standards. We should save what we can and should save. Let us just break up, go on our own merry ways and have our own responsibilities. I have considered moving to another country since our Country has gone downhill. It is a corporate, fascist state. Nevada is controlled by the casino and real estate elite. The Legislature does not represent the people. Urban planning is a sham. Things are much better in other places around the world. Look at the way we have destroyed our family structure.

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CHAIR SCHEIBLE:

Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 1:49 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 166	B	1	Senator Melanie Scheible	Conceptual Amendment
S.B. 166	C	1	Senator Melanie Scheible	Sample Verdict Form