Senate Bill No. 139–Senators Spearman, Parks, Manendo, Ford, Kihuen; Atkinson, Denis, Goicoechea, Hammond, Hutchison, Jones, Kieckhefer, Roberson, Segerblom, Smith and Woodhouse

Joint Sponsors: Assemblymen Bobzien, Fiore, Eisen, Healey, Elliot Anderson; Paul Anderson, Cohen, Daly, Flores, Frierson, Hambrick, Hogan, Horne, Martin, Munford, Neal, Pierce, Spiegel, Sprinkle and Swank

CHAPTER.....

AN ACT relating to crimes; revising provisions governing crimes motivated by certain characteristics of the victim; providing an additional penalty for certain crimes motivated by the victim's gender identity or expression; providing certain civil liability for a person who commits certain crimes motivated by the victim's gender identity or expression; revising provisions concerning the reporting of certain crimes; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person commits certain crimes because of a victim's actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation: (1) the person who committed the crime is subject to an additional penalty; (2) unless a greater penalty is provided by law, the person who committed the crime is guilty of a gross misdemeanor; and (3) a person injured by the crime may bring a civil action against the person who committed the crime. (NRS 41.690, 193.1675, 207.185) Further, existing law requires the Director of the Department of Public Safety to establish a Program for Reporting Crimes that is designed to collect, compile and analyze statistical data about crimes that manifest evidence of prejudice based on race, color, religion, national origin, physical or mental disability or sexual orientation. (NRS 179A.175) This bill expands those provisions to include: (1) certain additional crimes based on the categories used by the Federal Bureau of Investigation to compile statistics concerning hate crimes; and (2) cases in which a person commits a crime because of the victim's actual or perceived gender identity or expression.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

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

Section 1. Chapter 193 of NRS is hereby amended by adding thereto a new section to read as follows:

"Gender identity or expression" means the gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

Sec. 2. NRS 193.010 is hereby amended to read as follows:

193.010 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 193.011 to 193.0245, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. 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 ***200.030, 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 ***,*** [~~or~~] subsection 2 of NRS 200.575 ***, NRS 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 ***,*** [~~or~~] 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.

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

2. A sentence imposed pursuant to this section:

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

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

3. 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.

Sec. 4. NRS 207.185 is hereby amended to read as follows:

207.185 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 ***,*** ~~[or]~~ sexual orientation ***or gender identity or expression*** 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, ***NRS 205.0832 which is punishable as a misdemeanor, NRS 205.240, 205.2715, 205.274, 205.2741,*** 206.010, 206.040, ***206.125,*** 206.140, 206.200, 206.310, ***NRS 206.330 which is punishable as a misdemeanor, NRS*** 207.180, 207.200 or 207.210 is guilty of a gross misdemeanor.

Sec. 5. NRS 207.297 is hereby amended to read as follows:

207.297 As used in NRS 207.300 and 207.310:

1. "Disability" means, with respect to a person:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

2. "Familial status" means the fact that a person:

(a) Lives with a child under the age of 18 and has:

(1) Lawful custody of the child; or

(2) Written permission to live with the child from the person who has lawful custody of the child;

(b) Is pregnant; or

(c) Has begun a proceeding to adopt or otherwise obtain lawful custody of a child.

3. ~~[~~"Gender identity or expression" means a gender related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

~~4.]~~ "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

Sec. 6. 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, 200.464, 200.465, 200.467, 200.468, 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, ***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 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 ***,*** ~~[or]~~ 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 section 1 of this act.

Sec. 7. NRS 179A.175 is hereby amended to read as follows:

179A.175 1. The Director of the Department shall establish within the Central Repository a Program for Reporting Crimes that manifest evidence of prejudice based on race, color, religion, national origin, physical or mental disability ***,*** ~~[or]~~ sexual orientation ~~[.]~~ ***or gender identity or expression.***

2. The Program must be designed to collect, compile and analyze statistical data about crimes that manifest evidence of prejudice based on race, color, religion, national origin, physical or mental disability ***,*** ~~[or]~~ sexual orientation ~~[.]~~ ***or gender identity or expression.*** The Director shall adopt guidelines for the collection of the statistical data, including, but not limited to, the criteria to establish the presence of prejudice.

3. The Central Repository shall include in its annual report to the Governor pursuant to subsection 6 of NRS 179A.075, and in any other appropriate report, an independent section relating solely to the analysis of crimes that manifest evidence of prejudice based on race, color, religion, national origin, physical or mental disability ***,*** ~~[or]~~ sexual orientation ~~[.]~~ ***or gender identity or expression.***

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

5. As used in this section, "gender identity or expression" has the meaning ascribed to it in section 1 of this act.

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