

1 SENATE BILL 202

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL LAW; PROVIDING FOR THE ALTERATION OF A
12 BASIC SENTENCE WHEN A CRIME IS MOTIVATED BY HATE AGAINST A
13 HOMELESS PERSON; AMENDING THE HATE CRIMES ACT.

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15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 31-18B-1 NMSA 1978 (being Laws 2003,
17 Chapter 384, Section 1) is amended to read:

18 "31-18B-1. SHORT TITLE.--~~[This act]~~ Chapter 31, Article
19 18B NMSA 1978 may be cited as the "Hate Crimes Act"."

20 SECTION 2. Section 31-18B-2 NMSA 1978 (being Laws 2003,
21 Chapter 384, Section 2, as amended) is amended to read:

22 "31-18B-2. DEFINITIONS.--As used in the Hate Crimes Act:

23 A. "age" means sixty years of age or older;

24 B. "gender identity" means a person's self-
25 perception, or perception of that person by another, of the

1 person's identity as a male or female based upon the person's
2 appearance, behavior or physical characteristics that are in
3 accord or opposed to the person's physical anatomy, chromosomal
4 sex or sex at birth;

5 C. "disability" means that the person has a
6 physical or mental disability that substantially limits one or
7 more of that person's functions, such as caring for oneself,
8 performing manual tasks, walking, seeing, hearing, speaking,
9 breathing, learning and working;

10 D. "homelessness" means that a person lacks a
11 fixed, regular and adequate nighttime residence or has a
12 primary nighttime residence that is:

13 (1) a place not designated for or ordinarily
14 used as a regular sleeping accommodation for human beings; or

15 (2) a publicly or privately operated shelter
16 designed to provide temporary living accommodations;

17 ~~[D.]~~ E. "motivated by hate" means the commission of
18 a crime with the intent to commit the crime because of the
19 actual or perceived race, religion, color, national origin,
20 ancestry, age, ~~[handicapped status]~~ disability, homelessness,
21 gender, sexual orientation or gender identity of the victim,
22 whether or not the offender's belief or perception was correct;
23 and

24 ~~[E.]~~ F. "sexual orientation" means heterosexuality,
25 homosexuality or bisexuality, whether actual or perceived."

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1 SECTION 3. Section 31-18B-3 NMSA 1978 (being Laws 2003,
2 Chapter 384, Section 3, as amended) is amended to read:

3 "31-18B-3. HATE CRIMES--NONCAPITAL FELONIES, MISDEMEANORS
4 OR PETTY MISDEMEANORS [~~COMMITTED BECAUSE OF THE VICTIM'S ACTUAL~~
5 ~~OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY,~~
6 ~~AGE, DISABILITY, GENDER, SEXUAL ORIENTATION OR GENDER~~
7 ~~IDENTITY]~~--ALTERATION OF BASIC SENTENCE.--

8 A. When a separate finding of fact by the court or
9 jury shows beyond a reasonable doubt that an offender committed
10 a noncapital felony motivated by hate, the basic sentence of
11 imprisonment prescribed for the offense in Section 31-18-15
12 NMSA 1978 may be increased by one year. An increase in the
13 basic sentence of imprisonment pursuant to the provisions of
14 this subsection shall be in addition to an increase in a basic
15 sentence prescribed for the offense in Section 31-18-17 NMSA
16 1978. A sentence imposed pursuant to the provisions of this
17 subsection may include an alternative sentence that requires
18 community service, treatment, education or any combination
19 thereof. The court may suspend or defer any or all of the
20 sentence or grant a conditional discharge, unless otherwise
21 provided by law.

22 B. If a finding was entered in a previous case that
23 the offender was convicted for committing a crime that was
24 motivated by hate, and if a separate finding of fact by the
25 court or jury shows beyond a reasonable doubt that in the

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1 instant case the offender committed a noncapital felony that
2 was motivated by hate, the basic sentence of imprisonment
3 prescribed for the offense in Section 31-18-15 NMSA 1978 may be
4 increased by two years. An increase in the basic sentence of
5 imprisonment pursuant to the provisions of this subsection
6 shall be in addition to an increase in a basic sentence
7 prescribed for the offense in Section 31-18-17 NMSA 1978. A
8 sentence imposed pursuant to the provisions of this subsection
9 may include an alternative sentence that requires community
10 service, treatment, education or any combination thereof. The
11 court may suspend or defer any or all of the sentence, or grant
12 a conditional discharge unless otherwise provided by law.

13 C. If the case is tried before a jury and if a
14 prima facie case has been established showing that in the
15 commission of the offense the offender was motivated by hate,
16 the court shall submit the issue to the jury by special
17 interrogatory. If the case is tried by the court and if a
18 prima facie case has been established showing that in the
19 commission of the offense the offender was motivated by hate,
20 the court shall decide the issue and shall make a separate
21 finding of fact regarding the issue. If the court or jury
22 determines that the offender is guilty of the crime and finds
23 beyond a reasonable doubt that the offender was motivated by
24 hate, the court shall include that determination in the
25 judgment and sentence.

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D. When a petty misdemeanor or a misdemeanor is motivated by hate, the basic sentence of imprisonment prescribed for the offense in Section 31-19-1 NMSA 1978 may include an alternative sentence that requires community service, treatment, education or any combination thereof. The court may suspend or defer any or all of the sentence or grant a conditional discharge, unless otherwise provided by law."

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.