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HOUSE BILL 122

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Patricia Roybal Caballero

AN ACT

RELATING TO CRIMINAL LAW; EXPANDING THE DEFINITION OF  
"MOTIVATED BY HATE" IN THE HATE CRIMES ACT TO INCLUDE A  
VICTIM'S ECONOMICALLY DISADVANTAGED STATUS AND HOMELESSNESS.

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

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

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

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

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

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

B. "gender identity" means a person's

self-perception, or perception of that person by another, of

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1 the person's identity as a male or female based upon the  
2 person's appearance, behavior or physical characteristics that  
3 are in accord or opposed to the person's physical anatomy,  
4 chromosomal 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. "economically disadvantaged status" means that  
11 the person's income or family income is less than the federally  
12 established poverty level and is below seventy percent of the  
13 lower living-standard-income level as determined and published  
14 by the United States department of labor;

15 E. "homelessness" means that a person lacks a  
16 fixed, regular and adequate nighttime residence or has a  
17 primary nighttime residence that is:

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

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

22 [~~D.~~] F. "motivated by hate" means the commission of  
23 a crime with the intent to commit the crime because of the  
24 actual or perceived race, religion, color, national origin,  
25 ancestry, age, [~~handicapped status~~] disability, economically

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1 disadvantaged status, homelessness, gender, sexual orientation  
2 or gender identity of the victim, whether or not the offender's  
3 belief or perception was correct; and

4 [E.] G. "sexual orientation" means heterosexuality,  
5 homosexuality or bisexuality, whether actual or perceived."

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

8 "31-18B-3. HATE CRIMES--NONCAPITAL FELONIES,  
9 MISDEMEANORS OR PETTY MISDEMEANORS [~~COMMITTED BECAUSE OF THE~~  
10 ~~VICTIM'S ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL~~  
11 ~~ORIGIN, ANCESTRY, AGE, DISABILITY, GENDER, SEXUAL ORIENTATION~~  
12 ~~OR GENDER IDENTITY]~~--ALTERATION OF BASIC SENTENCE.--

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

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1 provided by law.

2 B. If a finding was entered in a previous case that  
3 the offender was convicted for committing a crime that was  
4 motivated by hate, and if a separate finding of fact by the  
5 court or jury shows beyond a reasonable doubt that in the  
6 instant case the offender committed a noncapital felony that  
7 was motivated by hate, the basic sentence of imprisonment  
8 prescribed for the offense in Section 31-18-15 NMSA 1978 may be  
9 increased by two years. An increase in the basic sentence of  
10 imprisonment pursuant to the provisions of this subsection  
11 shall be in addition to an increase in a basic sentence  
12 prescribed for the offense in Section 31-18-17 NMSA 1978. A  
13 sentence imposed pursuant to the provisions of this subsection  
14 may include an alternative sentence that requires community  
15 service, treatment, education or any combination thereof. The  
16 court may suspend or defer any or all of the sentence, or grant  
17 a conditional discharge unless otherwise provided by law.

18 C. If the case is tried before a jury and if a  
19 prima facie case has been established showing that in the  
20 commission of the offense the offender was motivated by hate,  
21 the court shall submit the issue to the jury by special  
22 interrogatory. If the case is tried by the court and if a  
23 prima facie case has been established showing that in the  
24 commission of the offense the offender was motivated by hate,  
25 the court shall decide the issue and shall make a separate

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1 finding of fact regarding the issue. If the court or jury  
2 determines that the offender is guilty of the crime and finds  
3 beyond a reasonable doubt that the offender was motivated by  
4 hate, the court shall include that determination in the  
5 judgment and sentence.

6 D. When a petty misdemeanor or a misdemeanor is  
7 motivated by hate, the basic sentence of imprisonment  
8 prescribed for the offense in Section 31-19-1 NMSA 1978 may  
9 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 **SECTION 4. EFFECTIVE DATE.**--The effective date of the  
14 provisions of this act is July 1, 2019.

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