



Ninety-Eighth Legislature - First Session - 2003
Introducer's Statement of Intent
LB 270

Chairperson: Kermit A. Brashear
Committee: Judiciary
Date of Hearing: January 29, 2003

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The U.S. Supreme Court has issued a series of decisions that put our hate crime statute in jeopardy. Specifically, *Apprendi v. New Jersey*, decided in 2000, held that a fact that could increase the penalty for a crime beyond the statutory maximum, other than the fact of a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt, pursuant to the jury trial guarantee of the Sixth Amendment, since those facts are equivalent to “elements” and not “sentencing factors.” New Jersey’s hate crime statute was struck down by the Court.

Nebraska’s hate crime laws are similar to New Jersey’s. The current hate crime statute in Nebraska provides that the offender be found guilty of the underlying criminal offense first, without the discrimination-based allegations disclosed to the jury. After a guilty verdict and before sentencing, if a judge decides that the underlying crime was discrimination-based, the judge shall “enhance” the penalty to the next higher penalty classification of the criminal offense unless it is punishable by a Class IB felony or higher.

More recently, in June of 2002, the U.S. Supreme Court issued a decision in the case of *Ring v. Arizona*, further clarifying that the Sixth Amendment requires that factors operating as “the functional equivalent of elements to a greater criminal offense” be found by a jury.

Because the current law does not allow a jury to hear the discrimination-based allegation, Nebraska’s statute is constitutionally suspect under *Apprendi* and under *Ring*. As such, we are duty bound to bring our hate crime statute into compliance.

Legislative Bill 270 brings Nebraska’s hate crime statute into constitutional conformity by allowing the jury to hear the underlying criminal offense and the discrimination-based allegation during the state’s case in chief. The discrimination-based allegation must be proved beyond a reasonable doubt as does the underlying criminal offense.

Principal Introducer: _____
Senator Kermit A. Brashear