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HATE CRIMES AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Pete Suazo

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING THE DEFINITION OF HATE CRIMES; PROVIDING ENHANCED PENALTIES FOR FELONIES COMMITTED AS HATE CRIMES; AND CLARIFYING BURDEN OF PROOF.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53-10-202, as renumbered and amended by Chapter 263, Laws of Utah 1998

76-3-203.3, as enacted by Chapter 102, Laws of Utah 1992

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53-10-202** is amended to read:

53-10-202. Criminal identification -- Duties of bureau -- Crime reporting system.

(1) As used in this section:

(a) "Mental or physical disability" means the victim has:

(i) a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness; and

(ii) one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.

(b) "Sexual orientation" means consensual homosexuality or heterosexuality.

(2) The bureau shall:

~~(1)~~ (a) procure and file information relating to identification and activities of persons who:

~~(a)~~ (i) are fugitives from justice;

~~(b)~~ (ii) are wanted or missing;

~~(c)~~ (iii) have been arrested for or convicted of a crime under the laws of any state or

28 nation; and

29 ~~[(4)]~~ (iv) are believed to be involved in racketeering, organized crime, or a dangerous
30 offense;

31 ~~[(2)]~~ (b) establish a statewide uniform crime reporting system that shall include:

32 ~~[(a)]~~ (i) statistics concerning general categories of criminal activities;

33 ~~[(b)]~~ (ii) statistics concerning crimes that exhibit evidence of prejudice based on race,
34 religion, ancestry, national origin, ethnicity, color, sexual orientation, gender, mental or physical
35 disability, or other categories that the division finds appropriate; and

36 ~~[(c)]~~ (iii) other statistics as required by the Federal Bureau of Investigation;

37 ~~[(3)]~~ (c) make a complete and systematic record and index of the information obtained
38 under this part;

39 ~~[(4)]~~ (d) subject to the restrictions in this part, establish policy concerning the use and
40 dissemination of data obtained under this part;

41 ~~[(5)]~~ (e) publish an annual report, including a summary of the data acquired under
42 Subsection (2)(b), concerning the extent, fluctuation, distribution, and nature of crime in Utah;

43 ~~[(6)]~~ (f) establish a statewide central register for the identification and location of missing
44 persons, which may include:

45 ~~[(a)]~~ (i) identifying data including fingerprints of each missing person;

46 ~~[(b)]~~ (ii) identifying data of any missing person who is reported as missing to a law
47 enforcement agency having jurisdiction;

48 ~~[(c)]~~ (iii) dates and circumstances of any persons requesting or receiving information from
49 the register; and

50 ~~[(d)]~~ (iv) any other information, including blood types and photographs found necessary
51 in furthering the purposes of this part;

52 ~~[(7)]~~ (g) publish a quarterly directory of missing persons for distribution to persons or
53 entities likely to be instrumental in the identification and location of missing persons;

54 ~~[(8)]~~ (h) list the name of every missing person with the appropriate nationally maintained
55 missing persons lists;

56 ~~[(9)]~~ (i) establish and operate a 24-hour communication network for reports of missing
57 persons and reports of sightings of missing persons;

58 ~~[(10)]~~ (j) coordinate with the National Center for Missing and Exploited Children and

59 other agencies to facilitate the identification and location of missing persons and the identification
60 of unidentified persons and bodies;

61 ~~[(11)]~~ (k) receive information regarding missing persons, as provided in Sections 26-2-27
62 and 53A-11-502, and stolen vehicles, vessels, and outboard motors, as provided in Section
63 41-1a-1401;

64 ~~[(12)]~~ (l) adopt systems of identification, including the fingerprint system, to be used by
65 the division to facilitate law enforcement; and

66 ~~[(13)]~~ (m) assign a distinguishing number or mark of identification to any pistol or
67 revolver, as provided in Section 76-10-520.

68 (3) Subsection (2)(b)(ii) does not create a cause of action or a right to bring an action, and
69 does not limit any existing cause of action or right to bring an action.

70 Section 2. Section **76-3-203.3** is amended to read:

71 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

72 (1) As used in this section:

73 ~~[(1) "Primary offense" means those offenses provided in Subsection (5).]~~

74 (a) "Mental or physical disability" means the victim has:

75 (i) a condition of physical or mental incapacitation due to a developmental disability,
76 organic brain damage, or mental illness; and

77 (ii) one or more physical or mental limitations that restrict the victim's ability to perform
78 the normal activities of daily living.

79 (b) "Sexual orientation" means consensual homosexuality or heterosexuality.

80 (2) (a) A person who commits any ~~[primary]~~ misdemeanor offense ~~[with the intent to~~
81 ~~intimidate or terrorize another person or with reason to believe that his action would intimidate or~~
82 ~~terrorize that person]~~ listed in Subsection (5) because of the actual or perceived race, religion,
83 national origin, color, gender, sexual orientation, ethnicity, or mental or physical disability of any
84 person is guilty of a third degree felony.

85 ~~[(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical~~
86 ~~safety or damages the property of that person or another. The act must be accompanied with the~~
87 ~~intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or~~
88 ~~laws of the state or by the Constitution or laws of the United States.]~~

89 (b) This Subsection (2) does not create any separate offense but provides an enhanced

90 penalty for the primary offense.

91 (c) The enhanced penalties under this Subsection (2) apply if the trier of fact finds beyond
92 a reasonable doubt that the defendant committed the offense because of the actual or perceived
93 race, religion, national origin, color, gender, sexual orientation, ethnicity, or mental or physical
94 disability of any person.

95 (3) (a) A person who commits or attempts to commit a felony because of the actual or
96 perceived race, religion, national origin, color, gender, sexual orientation, ethnicity, or mental or
97 physical disability of any person is subject to an enhanced penalty for the offense as provided in
98 Subsection (3)(b).

99 (b) (i) If the offense is a third degree felony, the convicted person shall be sentenced to an
100 enhanced minimum term of between one and three years in prison.

101 (ii) If the offense is a second degree felony, the convicted person shall be sentenced to an
102 enhanced minimum term of between two and four years in prison.

103 (iii) If the offense is a first degree felony, the convicted person shall be sentenced to an
104 enhanced minimum term of between five and eight years in prison.

105 (iv) If the offense is a capital offense for which a life sentence is imposed, the convicted
106 person shall be sentenced to a minimum term of 20 years in prison.

107 (c) The sentencing judge rather than the jury shall decide whether to impose the enhanced
108 penalty under this Subsection (3). The imposition of the penalty is contingent upon a finding by
109 the sentencing judge by a preponderance of the evidence that this Subsection (3) is applicable. In
110 conjunction with sentencing the court shall enter written findings of fact concerning the
111 applicability of this section.

112 (d) The court may suspend the imposition or execution of the enhanced sentence required
113 under this Subsection (3) if the court:

114 (i) finds that the interests of justice would be best served; and

115 (ii) states the specific circumstances justifying the disposition on the record and in writing.

116 (4) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
117 notice on the complaint in misdemeanor cases or on the information or indictment in felony cases
118 that the defendant is subject to;

119 (i) the enhancement of a misdemeanor to a third degree felony [provided] under [this
120 section.] Subsection (2); or

121 (ii) the enhanced penalty for a felony under Subsection (3).

122 (b) The notice shall be in a clause separate from and in addition to the substantive offense
123 charged.

124 ~~[(b)]~~ (c) If the notice is not included initially, the court may subsequently allow the
125 prosecutor to amend the charging document to include the notice if the court finds:

126 (i) that the amended charging documents, including any statement of probable cause,
127 provide notice ~~[that the defendant is subject to a third degree felony provided under this section]~~
128 as required in Subsection (4)(a); and

129 (ii) that the defendant has not otherwise been substantially prejudiced by the amendment.

130 (5) ~~[Primary offenses]~~ Offenses referred to in Subsection (2) are the misdemeanor offenses
131 for:

132 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107,
133 and 76-5-108;

134 (b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104, and
135 76-8-714, and Subsection 76-6-106(1)(b);

136 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

137 (d) any misdemeanor theft offense under Section 76-6-412;

138 (e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302,
139 76-8-304, 76-8-305, 76-8-307, 76-8-308, and 76-8-313 and Subsections 76-8-306(1)(a) through

140 (f) ~~[and 76-8-310 (1)]~~;

141 (f) any offense of interfering or intending to interfere with activities of colleges and
142 universities under Title 76, Chapter 8, Part 7, Colleges and Universities;

143 (g) any misdemeanor offense against public order and decency as defined in Title 76,
144 Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

145 (h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Telephone Abuse;

146 (i) any cruelty to animals offense under Section 76-9-301; and

147 (j) any weapons offense under Section 76-10-506.

148 (6) Intent under this section may not be proven solely by the defendant's abstract beliefs
149 or his membership in an organization.

Legislative Review Note
as of 12-17-98 3:12 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel