

28 (e) first degree felony remains the penalty for a first degree felony, except:

29 (i) imposition or execution of the sentence may not be suspended unless the court finds
30 the interests of justice would be best served and states the specific circumstances justifying the
31 disposition on the record; and

32 (ii) the Board of Pardons and Parole shall consider the finding by the trier of fact that
33 the convicted person selected the victim primarily because of actual bias or prejudice against a
34 group, as demonstrated by the defendant's actions related to the commission of the offense, an
35 aggravating factor in determining the length of incarceration.

36 (2) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall cause
37 to be subscribed upon the information or indictment notice that it is alleged that the defendant
38 is subject to the enhanced penalties provided in Subsection (1).

39 (b) The notice under Subsection (2)(a) shall be in a clause separate from and in
40 addition to the primary offense charged.

41 (3) The trier of fact may not base a finding that the defendant acted because of actual
42 bias or prejudice under Subsection (1) solely on one or more of the following:

43 (a) evidence demonstrating the defendant's mere abstract beliefs;

44 (b) evidence of the defendant's mere membership in an organization; or

45 (c) any evidence of the defendant's expressions or associations, unless the evidence is
46 specifically related to the offense for which the defendant was convicted.

47 (4) As part of any sentence imposed in a case the court may impose alternative
48 sanctions as the court finds appropriate to the defendant's case.

49 (5) This section does not create any legal status or right not already in existence in
50 statute or common law for a group or a member of a group.

51 (6) As used in this section, "group" means the race, color, disability, religion, sexual
52 orientation, national origin, ancestry, age, or gender of any individual or group of persons ^h , OR AN
52a INDIVIDUAL AFFILIATED WITH AN IDENTIFIABLE TYPE OF BUSINESS OR THE PROPERTY OF THAT
52b BUSINESS ^h .

53 Section 2. **Repealer.**

54 This act repeals:

55 Section **76-3-203.3, Penalty for hate crimes -- Civil rights violation.**

Legislative Review Note
as of 1-15-03 4:54 PM

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

Office of Legislative Research and General Counsel

AMENDED NOTE

State Impact

This bill has an increasing fiscal note starting with \$12,500 General Fund for FY 2004 and increasing each year for the first four years. Expenses should be level at the increased rate after four years. Costs are for additional individuals going to prison and extending the sentences of some who might have gone to prison under current statute.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$12,500	\$37,500	\$0	\$0
TOTAL	\$12,500	\$37,500	\$0	\$0

Individual and Business Impact

Individuals convicted by the provisions of this bill may spend more time in prison and consequently their income earning potential could be severely limited during the time they are incarcerated.

Office of the Legislative Fiscal Analyst