

**Representative David Litvack** proposes the following substitute bill:

**CRIMINAL CODE AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: David Litvack**

**This act modifies the Criminal Code by providing for enhanced penalties due to the defendant's selection of the victim because of the defendant's bias or prejudice as specified. This act provides that the trier of fact may not base a finding that the defendant acted because of a bias or prejudice solely on evidence of a defendant's mere beliefs, associations, or expressions. This act allows the court to impose alternative sentencing provisions in cases subject to the enhanced penalties. This act repeals the current state "hate crimes" statute.**

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

ENACTS:

**76-3-203.4**, Utah Code Annotated 1953

REPEALS:

**76-3-203.3**, as last amended by Chapter 166, Laws of Utah 2002

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

Section 1. Section **76-3-203.4** is enacted to read:

**76-3-203.4. Penalty for crimes motivated by bias or prejudice.**

(1) If the trier of fact finds beyond a reasonable doubt that the defendant, in committing an offense, selected the victim or the victim's property primarily because of actual bias or prejudice against a victim's race, color, disability, religion, sexual orientation, national origin, ancestry, age, or gender, as demonstrated by the defendant's actions related to the commission of the offense, the enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;



- 26 (b) class A misdemeanor is a third degree felony;
- 27 (c) third degree felony is a second degree felony;
- 28 (d) second degree felony is a first degree felony; or
- 29 (e) first degree felony remains the penalty for a first degree felony, except:
- 30 (i) imposition or execution of the sentence may not be suspended unless the court finds
- 31 the interests of justice would be best served and states the specific circumstances justifying the
- 32 disposition on the record; and
- 33 (ii) the Board of Pardons and Parole shall consider the finding by the trier of fact that
- 34 the convicted person selected the victim primarily because of actual bias or prejudice against a
- 35 victim's race, color, disability, religion, sexual orientation, national origin, ancestry, age, or
- 36 gender, as demonstrated by the defendant's actions related to the commission of the offense, an
- 37 aggravating factor in determining the length of incarceration.
- 38 (2) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall cause
- 39 to be subscribed upon the information or indictment notice that it is alleged that the defendant
- 40 is subject to the enhanced penalties provided in Subsection (1).
- 41 (b) The notice under Subsection (2)(a) shall be in a clause separate from and in
- 42 addition to the primary offense charged.
- 43 (3) The trier of fact may not base a finding that the defendant acted because of actual
- 44 bias or prejudice under Subsection (1) solely on one or more of the following:
- 45 (a) evidence demonstrating the defendant's mere abstract beliefs;
- 46 (b) evidence of the defendant's mere membership in an organization; or
- 47 (c) any evidence of the defendant's expressions or associations, unless the evidence is
- 48 specifically related to the offense for which the defendant was convicted.
- 49 (4) As part of any sentence imposed in a case the court may impose alternative
- 50 sanctions as the court finds appropriate to the defendant's case.
- 51 (5) This section does not create any legal status or right not already in existence in
- 52 statute or common law.

Section 2. **Repealer.**

This act repeals:

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