

Representative David Litvack proposes the following substitute bill:

CRIMINAL PENALTY AMENDMENT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Litvack

LONG TITLE

General Description:

This bill modifies the Criminal Code by providing enhanced penalties if the defendant selects a victim because of the defendant's bias or prejudice.

Highlighted Provisions:

This bill:

- ▶ defines the enhanced penalties and defines the term "bias or prejudice";
- ▶ provides that a finding of bias or prejudice may not be based solely on evidence of the defendant's mere beliefs,
- ▶ associations, or expressions, unless admissible and relevant to the defendant's motive;
- ▶ allows the court, in its discretion, to impose alternative sentencing provisions in
- ▶ cases subject to the enhanced penalties; and
- ▶ repeals the current statute commonly referred to as the hate crimes statute.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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, intentionally selected the victim or the property primarily because of the defendant's actual bias or prejudice:

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

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony;

(d) second degree felony is a first degree felony; or

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

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

(ii) the Board of Pardons and Parole shall consider the finding by the trier of fact that the convicted person selected the victim primarily because of the defendant's actual bias or prejudice as an aggravating factor in determining the length of incarceration.

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

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

(3) The trier of fact may not base a finding that the defendant acted because of actual bias or prejudice under Subsection (1) solely on one or more of the following, unless the evidence is relevant to the defendant's motive and is admissible under the Utah Rules of Evidence:

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

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

58 (c) evidence of the defendant's associations.

59 (4) This section does not prevent the court from imposing alternative sanctions as the
60 court finds appropriate to the defendant's case.

61 (5) This section does not create any legal status or right not already in existence in
62 statute or common law.

63 (6) As used in this section, "bias or prejudice" means intentionally selecting the victim
64 based on, but not limited to, the perceived or actual attributes of race, color, ~~h~~ [disability,] ~~h~~
64a religion,

65 ~~h~~ [sexual orientation, national origin, ancestry,] ~~h~~ age, or gender.

66 (7) If any provision of this bill or the application of any provision of this bill to any
67 person or circumstance is held invalid, the remainder of this bill shall be given effect without
68 the invalid provision or application.

69 **Section 2. Repealer.**

70 This bill repeals:

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