

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 toward a group.

Highlighted Provisions:

This bill:

- ▶ defines the enhanced penalties and defines the term "group";
- ▶ provides that the trier of fact may not base a finding that the defendant acted because of bias or prejudice solely on evidence of the defendant's mere beliefs, associations, or expressions;
- ▶ 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, selected the victim or the property primarily because of the defendant's actual bias or prejudice against a group, 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;

(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 against a group, as demonstrated by the defendant's actions related to the commission of the offense, 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:

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

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

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

59 (4) As part of any sentence imposed in a case, the court may impose alternative
60 sanctions as the 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 for a group or a member of a group.

63 (6) As used in this section, "group" means the race, color, disability, religion, sexual
64 orientation, national origin, ancestry, age, or gender of any individual or group of persons,
65 whether actual or perceived.

66 Section 2. **Repealer.**

67 This bill repeals:

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

Legislative Review Note
as of 10-3-03 10:14 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0068

Criminal Penalty Amendment*19-Jan-04**4:18 PM*

State Impact

It is estimated the Department of Corrections will require General Fund appropriations of \$12,500 in FY 2005 and \$37,500 each fiscal year thereafter. Additional General Fund appropriations may be required after FY 2006 to deal with lengthier stays of incarceration for offenders of provisions of this bill.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$12,500	\$37,500	\$0	\$0
TOTAL	\$12,500	\$37,500	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst