

**HATE CRIME AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: James M. Evans**

---

**LONG TITLE**

**General Description:**

This bill amends the Criminal Code by providing enhanced penalties if the defendant selects the victim because of the defendant's bias or prejudice toward the victim. This bill provides that finding the defendant acted because of a bias or prejudice may not be based solely on evidence of a defendant's mere beliefs, associations, or expressions.

**Highlighted Provisions:**

This bill:

- ▶ provides enhanced penalties for offenses if the defendant selects a victim or property because of a bias or prejudice;
- ▶ does not allow the trier of fact to base a finding that the defendant acted because of a bias or prejudice against the victim solely on evidence of a defendant's mere beliefs, expressions, or associations;
- ▶ allows the court to impose alternative sentencing provisions in cases subject to enhanced penalties, and requires the court to state its justifying reasons; and
- ▶ allows the court to provide alternative sanctions in cases subject to the enhanced penalties.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



ENACTS:

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

---

*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. Enhanced 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 actual bias or prejudice against the victim, 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 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 or the property primarily because of actual bias or prejudice, 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, unless the evidence is specifically related to the offense for which the defendant was convicted:

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

- 59           (b) evidence of the defendant's mere membership in an organization; or  
60           (c) any evidence of the defendant's expressions or associations.  
61           (4) As part of any sentence imposed in a case subject to this section, the court may  
62 impose alternative sanctions as the court finds appropriate.

---

---

**Legislative Review Note**  
**as of 12-10-03 2:49 PM**

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

**Office of Legislative Research and General Counsel**

**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
<b>TOTAL</b>	<b>\$12,500</b>	<b>\$37,500</b>	<b>\$0</b>	<b>\$0</b>

---

**Individual and Business Impact**

No fiscal impact.

---

Office of the Legislative Fiscal Analyst