

CRIMINAL PENALTY AMENDMENT

2005 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 under the Rules of Evidence;
- 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:

This bill provides a severability clause.

Utah Code Sections Affected:

ENACTS:

76-3-203.4, Utah Code Annotated 1953

REPEALS:

76-3-203.3, as last amended by Chapter 274, Laws of Utah 2004



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:

(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; and

(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) In all cases, notice that the defendant is alleged to be subject to the enhanced penalties provided in Subsection (1) shall be provided in writing and shall be served upon the defendant or his attorney not later than ten days prior to trial.

(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 admissible under the Utah Rules of Evidence, Rule 404:

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

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

(c) evidence of the defendant's associations.

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

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

59 (6) As used in this section, "bias or prejudice" means intentionally selecting the victim
60 based on perceived or actual attributes that include, but are not limited to, race, color,
61 disability, religion, sexual orientation, national origin, ancestry, age, or gender.

62 Section 2. **Repealer.**

63 This bill repeals:

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

65 Section 3. **Severability clause.**

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

Legislative Review Note

as of 11-27-04 2:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

It is estimated that the Department of Corrections will require General Fund appropriations of \$11,500 in FY 2006 and at least \$30,900 each fiscal year thereafter. Additional General Fund appropriation increases may be required in subsequent years depending on the number of offenders sentenced under the provisions of this bill and the length of incarceration.

Local governments may also be fiscally impacted by the longer sentences if persons are sentenced to jail as a condition of probation since they are reimbursed by the state with 70 percent of the core rate of the cost of incarceration. Their costs are estimated to be approximately \$7,600 in FY 2006 and \$9,100 in FY 2007 in unreimbursed expenses.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$11,500	\$30,900	\$0	\$0
TOTAL	\$11,500	\$30,900	\$0	\$0

Individual and Business Impact

Persons convicted of crimes under the provisions of this bill could spend more time incarcerated reducing their ability to generate personal income.

Office of the Legislative Fiscal Analyst