

Representative LaVar Christensen proposes the following substitute bill:

CRIMINAL PENALTY AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Litvack

Senate Sponsor: Karen Hale

LONG TITLE

General Description:

This bill modifies the Criminal Code provisions regarding offenses committed with the intent to intimidate or terrorize a person and provides for consideration in sentencing regarding offenses that cause public harm.

Highlighted Provisions:

This bill:

- ▶ amends the current law regarding the intent to intimidate or terrorize to include offenses that have the effect of causing a person to reasonably fear to exercise rights under the state and federal constitutions and laws;
- ▶ provides that the listed misdemeanor offenses are increased by one misdemeanor level rather than imposing any felony penalty;
- ▶ provides that in sentencing for an offense, the judge or the Board of Pardons and Parole shall consider as an aggravating circumstance the effect of the offense in causing public harm and community unrest; and
- ▶ clarifies that the provisions of this bill do not affect or limit any exercise of constitutional rights, including freedom of expression.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-3-203.3**, as last amended by Chapter 274, Laws of Utah 2004

31 ENACTS:

32 **76-3-203.4**, Utah Code Annotated 1953



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

35 Section 1. Section **76-3-203.3** is amended to read:

36 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

37 As used in this section:

38 (1) "Primary offense" means those offenses provided in Subsection ~~[(5)]~~ (4).

39 (2) (a) A person who commits any primary offense with the intent to intimidate or
40 terrorize another person or with reason to believe that his action would intimidate or terrorize
41 that person is ~~[guilty of a third degree felony.]~~ subject to Subsection (2)(b).

42 (b) (i) A class C misdemeanor primary offense is a class B misdemeanor; and

43 (ii) a class B misdemeanor primary offense is a class A misdemeanor.

44 (3) "Intimidate or terrorize" means an act which causes the person to fear for his
45 physical safety or damages the property of that person or another. The act must be
46 accompanied with the intent to cause or has the effect of causing a person to reasonably fear to
47 freely exercise or enjoy any right secured by the Constitution or laws of the state or by the
48 Constitution or laws of the United States.

49 ~~[(4)(a) The prosecuting attorney, or grand jury if an indictment is returned, shall
50 provide notice on the complaint in misdemeanor cases that the defendant is subject to a third
51 degree felony provided under this section. The notice shall be in a clause separate from and in
52 addition to the substantive offense charged.]~~

53 ~~[(b) If the notice is not included initially, the court may subsequently allow the
54 prosecutor to amend the charging document to include the notice if the court finds:]~~

55 ~~[(i) that the amended charging documents, including any statement of probable cause,
56 provide notice that the defendant is subject to a third degree felony provided under this section;~~

57 and]

58 [~~(ii)~~ that the defendant has not otherwise been substantially prejudiced by the
59 amendment.]

60 [~~(5)~~ (4) Primary offenses referred to in Subsection [~~(2)~~] (1) are the misdemeanor
61 offenses for:

62 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106,
63 76-5-107, and 76-5-108;

64 (b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104,
65 and 76-8-714, and Subsection 76-6-106(2)(b);

66 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

67 (d) any misdemeanor theft offense under Section 76-6-412;

68 (e) any offense of obstructing government operations under Sections 76-8-301,
69 76-8-302, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;

70 (f) any offense of interfering or intending to interfere with activities of colleges and
71 universities under Title 76, Chapter 8, Part 7;

72 (g) any misdemeanor offense against public order and decency as defined in Title 76,
73 Chapter 9, Part 1;

74 (h) any telephone abuse offense under Title 76, Chapter 9, Part 2;

75 (i) any cruelty to animals offense under Section 76-9-301; and

76 (j) any weapons offense under Section 76-10-506.

77 (5) This section does not affect or limit any individual's constitutional right to the
78 lawful expression of free speech or other recognized rights secured by the Constitution or laws
79 of the state or by the Constitution or laws of the United States.

80 Section 2. Section **76-3-203.4** is enacted to read:

81 **76-3-203.4. Hate crimes -- Aggravating factors.**

82 (1) The sentencing judge or the Board of Pardons and Parole shall consider in their
83 deliberations as an aggravating factor the public harm resulting from the commission of the
84 offense, including the degree to which the offense is likely to incite community unrest or cause
85 members of the community to reasonably fear for their physical safety or to freely exercise or
86 enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of
87 the United States.

88 (2) The sentencing judge or the Board of Pardons and Parole shall also consider
89 whether the penalty for the offense is already increased by other existing provisions of law.

90 (3) This section does not affect or limit any individual's constitutional right to the
91 lawful expression of free speech or other recognized rights secured by the Constitution or laws
92 of the state or by the Constitution or laws of the United States.

Fiscal Note
Bill Number HB0090S04

Criminal Penalty Amendments

24-Feb-06

5:40 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact to law-abiding citizens.

Office of the Legislative Fiscal Analyst