

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 3

By: Senators J. Hendren, Elliott, L. Chesterfield, D. Wallace

By: Representatives Love, Clowney, Scott, F. Allen, Murdock, Fielding, Nicks, M. Hodges, V. Flowers,
K. Ferguson, Richardson, Ennett, Jett, Springer, Wardlaw, McCullough

For An Act To Be Entitled

AN ACT CREATING A SENTENCE ENHANCEMENT FOR CERTAIN
OFFENSES COMMITTED AGAINST A PERSON DUE TO THE
PERSON'S ATTRIBUTES; TO REQUIRE AN ANNUAL REPORT
CONCERNING THE COMMISSION OF HATE CRIMES IN ARKANSAS;
AND FOR OTHER PURPOSES.

Subtitle

CREATING A SENTENCE ENHANCEMENT FOR
CERTAIN OFFENSES COMMITTED AGAINST A
PERSON DUE TO THE PERSON'S ATTRIBUTES;
AND TO REQUIRE AN ANNUAL REPORT
CONCERNING THE COMMISSION OF HATE CRIMES
IN ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 5, Chapter 4, Subchapter 7, is amended to add an additional section to read as follows:

5-4-708. Enhanced penalties for offenses committed due to victim's race, color, religion, ethnicity, ancestry, national origin, homelessness, gender identity, sexual orientation, sex, disability, or service in United States Armed Forces.

(a)(1) As used in this section, "disability" means a physical or mental impairment that substantially limits a major life function.

(2) "Disability" does not include:



(A) Compulsive gambling;
(B) Kleptomania;
(C) Pyromania;
(D) Current use of a controlled substance or a psychoactive substance use disorder resulting from the use of a controlled substance; or

(E) Alcoholism.

(b)(1) Except as provided in subdivision (b)(2) of this section, the state may seek to enhance a sentence as provided by this section if the defendant purposely selected the victim of an offense due to the victim's:

(A) Ancestry;
(B) Color;
(C) Current or former service in the United States Armed Forces;

(D) Disability;
(E) Ethnicity;
(F) Gender identity;
(G) Homelessness;
(H) National origin;
(I) Race;
(J) Religion;
(K) Sex; or
(L) Sexual orientation.

(2) The state may not seek to enhance a sentence for the following offenses if the sentence enhancement is based on the victim's sex:

(A) Section 5-14-101 et seq.;
(B) Section 5-26-201 et seq.;
(C) Section 5-26-301 et seq.;
(D) Section 5-26-401 et seq.; or
(E) Section 5-26-501 et seq.

(c)(1) If multiple motives for selecting a victim are present, the state may only seek a sentence enhancement under this section if a victim attribute listed in subdivision (b)(1) of this section was a substantial factor in the commission of the offense.

(2) When attempting to prove that a defendant purposely selected the victim, it does not mean that a defendant's mere abstract belief or

expression was hostile or contrary to the victim's attribute listed in subdivision (b)(1) of this section or that a defendant is or was associated with a group opposed to a victim's attribute listed in subdivision (b)(1) of this section.

(d)(1) To seek a sentence enhancement under this section, the state shall set out the factual predicate in the information or indictment filed with the court indicating that, upon a finding of guilt, the defendant is subject to a sentence enhancement under this section.

(2) If after a finding of guilt the finder of fact determines beyond a reasonable doubt that the defendant purposely selected the victim of the offense as set out in the information or indictment, the defendant is subject to the following sentence enhancements, if applicable:

(A) An additional term of imprisonment equal to twenty percent (20%) of the person's term of imprisonment;

(B) An additional fine equal to twenty percent (20%) of any assessed fine; and

(C) An additional term of probation, suspended sentence, or suspended imposition of sentence equal to twenty percent (20%) of the person's probation, suspended sentence, or suspended imposition of sentence.

(3) A sentence enhancement under this subsection shall not exceed twenty percent (20%) despite the number of the victim's attributes listed in subdivision (b)(1) of this section alleged in the information or indictment.

(e) This section does not:

(1) Serve as a basis to create a protected classification or prohibit discrimination under the Intrastate Commerce Improvement Act, § 14-1-401 et seq.; or

(2) Expand or contract the protections afforded by the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.

SECTION 2. Arkansas Code § 5-53-131 is amended to read as follows:

5-53-131. Frivolous, groundless, or malicious prosecutions.

(a) ~~Any officer or any~~ A person who knowingly brings or aids and encourages another to bring a frivolous, groundless, or malicious prosecution upon conviction is guilty of a Class A misdemeanor.

(b) A person who knowingly brings or aids and encourages another to

bring a frivolous, groundless, or malicious prosecution that seeks a sentence enhancement under § 5-4-708 upon conviction is guilty of a Class C felony.

SECTION 3. Arkansas Code § 5-54-122 is amended to read as follows:

5-54-122. Filing false report with law enforcement agency.

(a) As used in this section, “report” means any communication, either written or oral, sworn or unsworn.

(b) A person commits the offense of filing a false report if he or she files a report with any law enforcement agency or prosecuting attorney’s office of any alleged criminal wrongdoing on the part of another person knowing that the report is false.

(c)(1) Filing a false report is a Class D felony if:

(A) The alleged criminal wrongdoing is a capital offense, Class Y felony, Class A felony, or Class B felony;

(B) The law enforcement agency or prosecuting attorney’s office to whom the false report is made has expended in excess of five hundred dollars (\$500) in order to investigate the false report, including the costs of labor;

(C) Physical injury results to any person as a result of the false report;

(D) The false report is made in an effort by the person filing the false report to conceal his or her own criminal activity; ~~or~~

(E) The false report results in another ~~person~~ person’s being arrested; or

(F) The false report alleges the person who committed an offense purposely selected the victim of the offense because the victim had an attribute listed in § 5-4-708(b)(1).

(2) Otherwise, filing a false report is a Class A misdemeanor.

SECTION 4. Arkansas Code Title 12, Chapter 1, is amended to add an additional section to read as follows:

12-1-103. Hate crime data collection.

(a) As used in this section, “hate crime” means an offense committed by a person who purposely selected the victim of the offense due to the victim’s:

(1) Ancestry;

- (2) Color;
- (3) Current or former service in the United States Armed Forces;
- (4) Disability;
- (5) Ethnicity;
- (6) Gender identity;
- (7) Homelessness;
- (8) National origin;
- (9) Race;
- (10) Religion;
- (11) Sex, except for the following offenses:
 - (A) Section 5-14-101 et seq.;
 - (B) Section 5-26-201 et seq.;
 - (C) Section 5-26-301 et seq.;
 - (D) Section 5-26-401 et seq.; or
 - (E) Section 5-26-501 et seq.; or
- (12) Sexual orientation.

(b)(1)(A) The Attorney General shall establish and maintain a central repository for the collection, analysis, and dissemination of hate crime data.

(B) The Division of Arkansas State Police and the Arkansas Crime Information Center shall assist the Attorney General with the establishment of the central repository described in subdivision (b)(1)(A) of this section.

(2)(A) Each law enforcement agency shall submit a quarterly report to the Attorney General concerning the commission of hate crimes within the law enforcement agency's jurisdiction.

(B) The quarterly report required under subdivision (b)(2)(A) of this section shall contain without limitation the following information, if known:

(i) All relevant demographic information concerning the suspect;

(ii) All relevant demographic information concerning the victim, including a specific reference to the attribute of the victim that the law enforcement agency believes led to the commission of the hate crime;

(iii) The status or outcome of the criminal

investigation or, if applicable, criminal prosecution; and

(iv) A summary of the hate crime, including all relevant information known at the time of submission of the quarterly report.

(3) Data concerning a hate crime maintained in the central repository shall be disseminated upon request to a:

(A) Federal, state, or local law enforcement agency;

(B) Political subdivision of the state; or

(C) State agency.

(c) The Attorney General shall publish on December 1 of each year a summary and report of the data required to be collected and maintained under this section, and the annual summary and report shall be:

(1) Delivered to the:

(A) Governor;

(B) Cochairs of the Legislative Council;

(C) Speaker of the House of Representatives;

(D) President Pro Tempore of the Senate;

(E) United States Attorney for the Eastern District of Arkansas;

(F) United States Attorney for the Western District of Arkansas; and

(G) Federal Bureau of Investigation; and

(2) Made available in a format acceptable for use by the Federal Bureau of Investigation for its annual Hate Crime Statistics report.

(d) This section does not contradict § 5-4-708(e).