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4

A Bill

DRAFT BPG/BPG
SENATE BILL

5 By: Senators J. Hendren, Elliott, L. Chesterfield, D. Wallace
6 By: Representatives Love, Clowney, Scott, F. Allen, Murdock, Fielding, Nicks, M. Hodges, V. Flowers,
7 K. Ferguson, Richardson, Glover, Ennett, Jett, D. Douglas, Springer, Wardlaw, McCullough
8

For An Act To Be Entitled

10 AN ACT CREATING A SENTENCE ENHANCEMENT FOR CERTAIN
11 OFFENSES COMMITTED AGAINST A PERSON DUE TO THE
12 PERSON'S ATTRIBUTES; TO REQUIRE AN ANNUAL REPORT
13 CONCERNING THE COMMISSION OF HATE CRIMES IN ARKANSAS;
14 AND FOR OTHER PURPOSES.
15
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Subtitle

18 CREATING A SENTENCE ENHANCEMENT FOR
19 CERTAIN OFFENSES COMMITTED AGAINST A
20 PERSON DUE TO THE PERSON'S ATTRIBUTES;
21 AND TO REQUIRE AN ANNUAL REPORT
22 CONCERNING THE COMMISSION OF HATE CRIMES
23 IN ARKANSAS.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 5, Chapter 4, Subchapter 7, is amended
29 to add an additional section to read as follows:

30 5-4-708. Enhanced penalties for offenses committed due to victim's
31 race, color, religion, ethnicity, ancestry, national origin, homelessness,
32 gender identity, sexual orientation, sex, disability, or service in United
33 States Armed Forces.

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

36 (2) "Disability" does not include:

- 1 (A) Compulsive gambling;
- 2 (B) Kleptomania;
- 3 (C) Pyromania;
- 4 (D) Current use of a controlled substance or a
5 psychoactive substance use disorder resulting from the use of a controlled
6 substance; or
- 7 (E) Alcoholism.

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

- 11 (A) Ancestry;
- 12 (B) Color;
- 13 (C) Current or former service in the United States Armed
14 Forces;
- 15 (D) Disability;
- 16 (E) Ethnicity;
- 17 (F) Gender identity;
- 18 (G) Homelessness;
- 19 (H) National origin;
- 20 (I) Race;
- 21 (J) Religion;
- 22 (K) Sex; or
- 23 (L) Sexual orientation.

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

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

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

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

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

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

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

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

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

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

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

24 (e) This section does not:

25 (1) Serve as a basis to create a protected classification or
26 prohibit discrimination under the Intrastate Commerce Improvement Act, § 14-
27 1-401 et seq.; or

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

30
31 SECTION 2. Arkansas Code § 5-53-131 is amended to read as follows:

32 5-53-131. Frivolous, groundless, or malicious prosecutions.

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

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

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

3
 4 SECTION 3. Arkansas Code § 5-54-122 is amended to read as follows:
 5 5-54-122. Filing false report with law enforcement agency.

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

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

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

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

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

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

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

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

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

28 (2) Otherwise, filing a false report is a Class A misdemeanor.
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30 SECTION 4. Arkansas Code Title 12, Chapter 1, is amended to add an
 31 additional section to read as follows:

32 12-1-103. Hate crime data collection.

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

36 (1) Ancestry;

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

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

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

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

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

30 (i) All relevant demographic information concerning
 31 the suspect;

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

36 (iii) The status or outcome of the criminal

1 investigation or, if applicable, criminal prosecution; and

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

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

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

7 (B) Political subdivision of the state; or

8 (C) State agency.

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

12 (1) Delivered to the:

13 (A) Governor;

14 (B) Cochairs of the Legislative Council;

15 (C) Speaker of the House of Representatives;

16 (D) President Pro Tempore of the Senate;

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

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

21 (G) Federal Bureau of Investigation; and

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

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

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