

VICTIM SELECTION PENALTY ENHANCEMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code regarding sentencing for offenses committed against persons selected because of certain personal attributes and modifies the Public Safety Code regarding reporting crimes that exhibit evidence of prejudice.

Highlighted Provisions:

This bill:

- ▶ provides that the penalty for a criminal offense is subject to enhancement by one degree if the offender acted against an individual because of the offender's perception of the individual's ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion, or sexual orientation;
- ▶ provides the same enhancement provisions if the criminal offense damages property and the offender acted against the property because of the offender's perception of the individual's ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion, or sexual orientation;
- ▶ states that the provisions do not affect an individual's constitutional right of free speech or any other constitutional rights; and
- ▶ amends the Bureau of Criminal Identification's duties regarding recording crimes that exhibit evidence of prejudice based on specified categories.

Money Appropriated in this Bill:

None



Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-202, as last amended by Laws of Utah 2016, Chapter 144

ENACTS:

76-3-203.12, Utah Code Annotated 1953

REPEALS:

76-3-203.3, as last amended by Laws of Utah 2007, Chapter 229**76-3-203.4**, as enacted by Laws of Utah 2006, Chapter 184

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **53-10-202** is amended to read:**53-10-202. Criminal identification -- Duties of bureau.**

The bureau shall:

(1) procure and file information relating to identification and activities of persons who:

(a) are fugitives from justice;

(b) are wanted or missing;

(c) have been arrested for or convicted of a crime under the laws of any state or nation;

and

(d) are believed to be involved in racketeering, organized crime, or a dangerous offense;

(2) establish a statewide uniform crime reporting system that shall include:

(a) statistics concerning general categories of criminal activities;

(b) statistics concerning crimes that exhibit evidence of prejudice based on [~~race, religion, ancestry, national origin, ethnicity, or~~] ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion, sexual orientation, and any other categories that the division finds appropriate; and

(c) other statistics as required by the Federal Bureau of Investigation;

(3) make a complete and systematic record and index of the information obtained under this part;

- (4) subject to the restrictions in this part, establish policy concerning the use and dissemination of data obtained under this part;
- (5) publish an annual report concerning the extent, fluctuation, distribution, and nature of crime in Utah;
- (6) establish a statewide central register for the identification and location of missing persons, which may include:
- (a) identifying data including fingerprints of each missing person;
 - (b) identifying data of any missing person who is reported as missing to a law enforcement agency having jurisdiction;
 - (c) dates and circumstances of any persons requesting or receiving information from the register; and
 - (d) any other information, including blood types and photographs found necessary in furthering the purposes of this part;
- (7) publish a quarterly directory of missing persons for distribution to persons or entities likely to be instrumental in the identification and location of missing persons;
- (8) list the name of every missing person with the appropriate nationally maintained missing persons lists;
- (9) establish and operate a 24-hour communication network for reports of missing persons and reports of sightings of missing persons;
- (10) coordinate with the National Center for Missing and Exploited Children and other agencies to facilitate the identification and location of missing persons and the identification of unidentified persons and bodies;
- (11) receive information regarding missing persons, as provided in Sections 26-2-27 and 53A-11-502, and stolen vehicles, vessels, and outboard motors, as provided in Section 41-1a-1401;
- (12) adopt systems of identification, including the fingerprint system, to be used by the division to facilitate law enforcement;
- (13) assign a distinguishing number or mark of identification to any pistol or revolver, as provided in Section 76-10-520;
- (14) check certain criminal records databases for information regarding motor vehicle salesperson applicants, maintain a separate file of fingerprints for motor vehicle salespersons,

and inform the Motor Vehicle Enforcement Division when new entries are made for certain criminal offenses for motor vehicle salespersons in accordance with the requirements of Section 41-3-205.5;

(15) check certain criminal records databases for information regarding driving privilege card applicants or cardholders and maintain a separate file of fingerprints for driving privilege applicants and cardholders and inform the federal Immigration and Customs Enforcement Agency of the United States Department of Homeland Security when new entries are made in accordance with the requirements of Section 53-3-205.5.

(16) review and approve or disapprove applications for license renewal that meet the requirements for renewal;

(17) forward to the board those applications for renewal under Subsection (16) that do not meet the requirements for renewal; and

(18) within funds appropriated by the Legislature for the purpose, implement and manage the operation of a firearm safety program, in conjunction with the state suicide prevention coordinator, as described in this section and Section 62A-15-1101, including:

(a) coordinating with the Department of Health, local mental health and substance abuse authorities, the public education suicide prevention coordinator, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:

(i) produce a firearm safety brochure with information about the safe handling and use of firearms that includes:

(A) rules for safe handling, storage, and use of firearms in a home environment;

(B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;

(C) information about suicide prevention and awareness; and

(D) information about the availability of firearm safety packets;

(ii) procure cable-style gun locks for distribution pursuant to this section; and

(iii) produce a firearm safety packet that includes both the firearm safety brochure described in Subsection (18)(a)(i) and the cable-style gun lock described in Subsection (18)(a)(ii);

(b) distributing, free of charge, the firearm safety packet to the following persons, who

shall make the firearm safety packet available free of charge:

- (i) health care providers, including emergency rooms;
- (ii) mental health practitioners;
- (iii) other public health suicide prevention organizations;
- (iv) entities that teach firearm safety courses; and
- (v) school districts for use in the seminar, described in Section 53A-15-1302, for

parents of students in the school district;

(c) creating and administering a redeemable coupon program described in this section and Section 76-10-526, that may include:

(i) producing a redeemable coupon that offers between \$10 and \$200 off the purchase of a gun safe from a participating federally licensed firearms dealer, as defined in Section 76-10-501, by a Utah resident who has filed an application for a concealed firearm permit;

(ii) advertising the redeemable coupon program to all federally licensed firearms dealers and maintaining a list of dealers who wish to participate in the program;

(iii) printing or writing the name of a Utah resident who has filed an application for a concealed firearm permit on the redeemable coupon;

(iv) mailing the redeemable coupon and the firearm safety brochure to Utah residents who have filed an application for a concealed firearm permit; and

(v) collecting from the participating dealers receipts described in Section 76-10-526 and reimbursing the dealers;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:

- (i) producing and distributing the firearm safety brochures and packets;
- (ii) procuring the cable-style gun locks for distribution; and
- (iii) administering the redeemable coupon program; and

(e) reporting to the Law Enforcement and Criminal Justice Interim Committee regarding implementation and success of the firearm safety program:

- (i) during the 2016 interim, before November 1; and
- (ii) during the 2018 interim, before June 1.

Section 2. Section 76-3-203.12 is enacted to read:

76-3-203.12. Victim selection penalty enhancement -- Definitions -- Penalties.

152 (1) An actor is subject to enhanced penalties under Subsection (2) if the actor
153 intentionally selects:

154 (a) the individual against whom the offense is committed in whole or in part because of
155 the actor's belief or perception regarding an individual's ancestry, disability, ethnicity, gender,
156 gender identity, national origin, race, religion, or sexual orientation, or the association of that
157 individual with another individual or group of individuals who have one or more of these
158 characteristics, whether or not the actor's belief or perception was correct; or

159 (b) the property damaged or otherwise affected by the offense in whole or in part
160 because of the actor's belief or perception regarding the ancestry, disability, ethnicity, gender,
161 gender identity, national origin, race, religion, or sexual orientation of the property's owner,
162 possessor, or occupant, or the association or relationship of the property's owner, possessor, or
163 occupant with another individual or group of individuals having one or more of these
164 characteristics, whether or not the actor's belief or perception was correct.

165 (2) (a) If the trier of fact finds beyond a reasonable doubt that an actor has committed a
166 crime and selected the individual or property in the manner described in Subsection (1), the
167 actor is subject to an enhanced penalty for the offense under Subsection (2)(b).

168 (b) The enhanced penalties are:

169 (i) a class C misdemeanor is a class B misdemeanor;

170 (ii) a class B misdemeanor is a class A misdemeanor;

171 (iii) a class A misdemeanor is a third degree felony;

172 (iv) a third degree felony is a second degree felony; and

173 (v) a second degree felony is a first degree felony.

174 (3) If the trier of fact finds beyond a reasonable doubt that the actor has committed a
175 first degree felony and selected the individual or property in the manner described in
176 Subsection (1), the sentencing judge or the Board of Pardons and Parole shall consider:

177 (a) the actor's selection of the individual or property as an aggravating factor; and

178 (b) whether the penalty for the first degree felony is increased under another provision
179 of state law.

180 (4) This section does not apply to the actor's selection of a victim because of the
181 victim's gender in the commission of a sexual offense under Title 76, Chapter 5, Part 4, Sexual
182 Offenses.

183 (5) This section does not prevent the court from imposing alternative sanctions as the
184 court finds appropriate.

185 (6) This section does not affect or limit any individual's constitutional right to the
186 lawful expression of free speech or other recognized rights secured by the Utah Constitution or
187 the laws of the state, or by the United States Constitution or the laws of the United States.

188 (7) Subsection (1)(a) does not create a special or protected class for any purpose other
189 than a criminal penalty enhancement under this section.

190 Section 3. **Repealer.**

191 This bill repeals:

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

193 Section **76-3-203.4, Hate crimes -- Aggravating factors.**

Legislative Review Note
Office of Legislative Research and General Counsel