

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 2088

5 By: Representatives Leding, Murdock, M. Hodges, Magie, G. McGill, Sabin, D. Whitaker, Blake, V.  
6 Flowers, M.J. Gray, Tucker, Burch, Love, F. Allen  
7 By: Senators Elliott, L. Chesterfield, Bond  
8

## For An Act To Be Entitled

10 AN ACT TO PROVIDE ENHANCED PENALTIES FOR A CRIMINAL  
11 OFFENSE COMMITTED BECAUSE OF THE VICTIM'S RACE,  
12 COLOR, RELIGION, ETHNICITY, ANCESTRY, NATIONAL  
13 ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY, OR  
14 DISABILITY; AND FOR OTHER PURPOSES.  
15

## Subtitle

16  
17  
18 TO PROVIDE ENHANCED PENALTIES FOR A  
19 CRIMINAL OFFENSE COMMITTED BECAUSE OF THE  
20 VICTIM'S RACE, COLOR, RELIGION,  
21 ETHNICITY, ANCESTRY, NATIONAL ORIGIN,  
22 SEXUAL ORIENTATION, GENDER IDENTITY, OR  
23 DISABILITY.  
24

25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

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

30 5-4-704. Enhanced penalties for offenses committed because of a  
31 victim's race, color, religion, ethnicity, ancestry, national origin, sexual  
32 orientation, gender, gender identity, or disability.

33 (a) As used in this section:

34 (1) "Because of" means that:

35 (A) A victim's actual or perceived trait enumerated in  
36 subsection (b) of this section was a cause in fact of an offense, regardless



1 of whether or not other causes also existed; and

2 (B) When multiple concurrent causes existed, the victim's  
3 actual or perceived trait enumerated in subsection (b) of this section was a  
4 substantial factor in the commission of an offense;

5 (2)(A) "Disability" means a physical or mental impairment that  
6 substantially limits a major life function.

7 (B) "Disability" does not include:

8 (i) Compulsive gambling;

9 (ii) Kleptomania;

10 (iii) Pyromania;

11 (iv) Current use of illegal drugs or psychoactive  
12 substance use disorders resulting from illegal use of drugs; or

13 (v) Alcoholism;

14 (3) "Gender" means the condition of being male, female, or  
15 transgender;

16 (4) "Gender identity" means a person's actual or perceived  
17 gender-related characteristics, identity, or expression whether or not  
18 typically associated with a person's sex at birth;

19 (5) "Purposely selected the victim" does not mean that a  
20 defendant's mere abstract belief or expression was hostile or contrary to a  
21 victim's actual or perceived trait enumerated in subsection (b) of this  
22 section or that a defendant is or was associated with a group opposed to a  
23 victim's actual or perceived trait enumerated in subsection (b) of this  
24 section, unless the abstract belief, expression, or association was part of  
25 the cause of an offense; and

26 (6) "Sexual orientation" means actual or perceived  
27 heterosexuality, homosexuality, or bisexuality.

28 (b) A defendant is subject to a sentence enhancement under this  
29 section if the defendant purposely selected the victim of an offense because  
30 of the victim's actual or perceived:

31 (1) Race;

32 (2) Color;

33 (3) Religion;

34 (4) Ethnicity;

35 (5) Ancestry;

36 (6) National origin;

1           (7) Sexual orientation;

2           (8) Gender, except for an offense under § 5-14-101 et seq., § 5-  
 3 26-201 et seq., § 5-26-301 et seq., § 5-26-401 et seq., or § 5-26-501 et  
 4 seq.;

5           (9) Gender identity; or

6           (10) Disability.

7           (c) To seek a sentence enhancement under this section, the prosecuting  
 8 attorney shall file with the court written notice in the information or  
 9 indictment requesting a bifurcated trial and indicating that the defendant,  
 10 upon a finding of guilt, is subject to the enhanced penalties under this  
 11 section.

12           (d)(1) If a defendant subject to this section pleads guilty, nolo  
 13 contendere, or is found guilty of an offense and the trier of fact determines  
 14 beyond a reasonable doubt at the sentencing phase of the bifurcated trial  
 15 that the defendant purposely selected the victim of the offense because of  
 16 the victim's actual or perceived trait enumerated in subsection (b) of this  
 17 section, then the minimum and maximum penalties for the offense, including  
 18 the amount of any fine and the length of any term of imprisonment or period  
 19 of probation or suspended imposition of sentence, is increased by twenty  
 20 percent (20%).

21           (2) The sentence enhancement under this section shall not exceed  
 22 twenty percent (20%) regardless of the number of the victim's actual or  
 23 perceived traits enumerated in subsection (b) of this section that caused the  
 24 defendant to purposely select the victim.

25  
 26           SECTION 2. Arkansas Code Title 12, Chapter 12, Subchapter 1, is  
 27 amended to add an additional section to read as follows:

28           12-12-110. Hate crimes data collection.

29           (a) As used in this section "hate crime" means an offense committed by  
 30 a person who targeted the victim of the offense due to the victim's actual or  
 31 perceived:

32           (1) Race;

33           (2) Color;

34           (3) Religion;

35           (4) Ethnicity;

36           (5) Ancestry;

1           (6) National origin;

2           (7) Sexual orientation;

3           (8) Gender, except for an offense under § 5-14-101 et seq., § 5-  
4 26-201 et seq., § 5-26-301 et seq., § 5-26-401 et seq., or § 5-26-501 et  
5 seq.;

6           (9) Gender identity; or

7           (10) Disability.

8           (b)(1) With the assistance of the Department of Arkansas State Police  
9 and the Arkansas Crime Information Center, the Attorney General shall  
10 establish and maintain a central repository for the collection, analysis, and  
11 dissemination of hate crimes data.

12           (2)(A) Each law enforcement agency shall submit a quarterly  
13 report to the Attorney General concerning the commission of a hate crime  
14 within its jurisdiction.

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

18                   (i) All relevant demographic information concerning  
19 the suspect or suspects;

20                   (ii) All relevant demographic information concerning  
21 the victim or victims, including a specific reference to the victim's or  
22 victims' personal characteristic or characteristics that the law enforcement  
23 agency believed led to the commission of the hate crime;

24                   (iii) Status or outcome of the criminal  
25 investigation or, if applicable, criminal prosecution; and

26                   (iv) A summary of the hate crime, including all  
27 relevant information known at the time of the report and specifically noting  
28 whether a deadly weapon was used.

29           (3) Data concerning a hate crime maintained under the central  
30 repository shall be disseminated upon request to a local law enforcement  
31 agency, political subdivision of the state, or state agency.

32           (c)(1) The Attorney General shall publish on December 1 of each year  
33 an annual summary and report of the data required to be collected and  
34 maintained by this section, and the annual summary and report shall be  
35 delivered to the Governor, the chairs of Legislative Council, the Speaker of  
36 the House of Representatives, the President Pro Tempore of the Senate, the

1 United States Attorneys for the Eastern and Western Districts of Arkansas,  
2 and the Federal Bureau of Investigation.

3 (2) The annual summary and report required under this subsection  
4 shall be made available in a format acceptable for use by the Federal Bureau  
5 of Investigation for its annual Hate Crimes Statistics report.

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36