

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

SENATE BILL 3

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, Ennett, Jett, 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  
16

## 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.  
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 5-4-708. 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.  
29

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).

25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36