

ARKANSAS SENATE
86th General Assembly - Regular Session, 2007
Amendment Form

Subtitle of Senate Bill No. 264

"TO CREATE THE OFFENSE OF HATE CRIME AND TO ESTABLISH PENALTIES FOR A
HATE CRIME."

Amendment No. 1 to Senate Bill No. 264.

Amend Senate Bill No. 264 as originally introduced:

Page 1, delete lines 9 and 10, and substitute the following:

"AN ACT TO ENHANCE THE PENALTIES FOR CERTAIN OFFENSES UNDER CERTAIN
CIRCUMSTANCES; AND FOR"

AND

Page 1, delete lines 14 and 15, and substitute the following:

"TO ENHANCE THE PENALTIES FOR CERTAIN OFFENSES UNDER CERTAIN CIRCUMSTANCES."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-38-203 is amended to read as follows:
5-38-203. Criminal mischief in the first degree.

(a) A person commits the offense of criminal mischief in the first degree if he or she purposely and without legal justification destroys or causes damage to any:

(1) Property of another; or

(2) Property, whether his or her own or property of another, for the purpose of collecting any insurance for the property.

(b) Criminal mischief in the first degree is a:

(1) Class C felony if:

(A) ~~the~~ The amount of actual damage is five hundred dollars (\$500) or more; or

(B) The evidence demonstrates beyond a reasonable doubt that the offense was committed against the victim because of a prejudice against the victim and that the prejudice was based on the victim's behavior or characteristics that could be identified by the perpetrator of the offense at the time the offense was committed; or

(2) Class A misdemeanor if otherwise committed.

(c) In an action under this section involving cutting and removing



timber from the property of another person:

(1) The following create a presumption of a purpose to commit the offense of criminal mischief in the first degree:

(A) The failure to obtain the survey as required by § 15-32-101; or

(B) The purposeful misrepresentation of the ownership or origin of the timber; and

(2)(A) There is imposed in addition to a penalty in subsection (b) of this section a fine of not more than two (2) times the value of the timber destroyed or damaged.

(B) However, in addition to subdivision (c)(2)(A) of this section, the court may require the defendant to make restitution to the owner of the timber.

SECTION 2. Arkansas Code § 5-39-203 is amended to read as follows:
5-39-203. Criminal trespass.

(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:

(1) A vehicle; or

(2) The premises of another person.

(b) Criminal trespass is a:

(1) Class B misdemeanor if:

(A) the The vehicle or premises involved is an occupiable structure; or

(B) The evidence demonstrates beyond a reasonable doubt that the offense was committed against the victim because of a prejudice against the victim and that the prejudice was based on the victim's behavior or characteristics that could be identified by the perpetrator of the offense at the time the offense was committed; or

(2) Class C misdemeanor if otherwise committed.

SECTION 3. Arkansas Code § 5-71-208 is amended to read as follows:
5-71-208. Harassment.

(a) A person commits the offense of harassment if, with purpose to harass, annoy, or alarm another person, without good cause, he or she:

(1) Strikes, shoves, kicks, or otherwise touches a person, subjects that person to offensive physical contact or attempts or threatens to do so;

(2) In a public place, directs obscene language or makes an obscene gesture to or at another person in a manner likely to provoke a violent or disorderly response;

(3) Follows a person in or about a public place;

(4) In a public place repeatedly insults, taunts, or challenges another person in a manner likely to provoke a violent or disorderly response;

(5) Engages in conduct or repeatedly commits an act that alarms or seriously annoys another person and that serves no legitimate purpose; or

(6) Places a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by that person, or residence, other than the residence of the defendant, for no purpose other than to harass, alarm, or annoy.

(b)(1) ~~Harassment~~ Except as provided in subdivision (b)(2) of this

section, harassment is a Class A misdemeanor.

(2) Harassment is a Class D felony if the evidence demonstrates beyond a reasonable doubt that the offense was committed against the victim because of a prejudice against the victim and that the prejudice was based on the victim's behavior or characteristics that could be identified by the perpetrator of the offense at the time the offense was committed.

(c) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(d)(1) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) This no contact order remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

SECTION 4. Arkansas Code § 5-71-209 is amended to read as follows:
5-71-209. Harassing communications.

(a) A person commits the offense of harassing communications if, with the purpose to harass, annoy, or alarm another person, the person:

(1) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written communication, in a manner likely to harass, annoy, or cause alarm;

(2) Makes a telephone call or causes a telephone to ring repeatedly, with no purpose of legitimate communication, regardless of whether a conversation ensues; or

(3) Knowingly permits any telephone under his or her control to be used for any purpose prohibited by this section.

(b) An offense involving use of a telephone may be prosecuted in the county where the defendant was located when he or she used a telephone, or in the county where the telephone made to ring by the defendant was located.

(c)(1) Harassing Except as provided in subdivision (c)(2) of this section, harassing communications is a Class A misdemeanor.

(2) Harassing communications is a Class D felony if the evidence demonstrates beyond a reasonable doubt that the offense was committed against the victim because of a prejudice against the victim and that the prejudice was based on the victim's behavior or characteristics that could be identified by the perpetrator of the offense at the time the offense was committed.

(d)(1) Upon the pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of

Criminal Procedure.

(2) This no contact order remains in effect during the pendency of any appeal of a conviction under this section.

(3) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(e) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Wilkins

GRH/YTC - 03-16-2007 08:07

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Secretary