



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB2088
Sponsored by Representatives Leding, Murdock,
M. Hodges, et al.**

Subtitle TO PROVIDE ENHANCED PENALTIES FOR A CRIMINAL OFFENSE COMMITTED BECAUSE OF THE VICTIM’S RACE, COLOR, RELIGION, ETHNICITY, ANCESTRY, NATIONAL ORIGIN, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Title 5, Chapter 4, Subchapter 7, to add an additional section, A.C.A. § 5-74-704, Enhanced penalties for offenses committed because of a victim’s race, color, religion, ethnicity, ancestry, national origin, sexual orientation, gender, gender identity, or disability. The proposed bill defines various terms, including disability, gender, gender identity, purposely selected the victim, and sexual orientation. To seek an enhancement under the proposed bill, written notice must be filed by the prosecuting attorney with the court that the offender is subject to the enhanced penalties upon a finding of guilt.

If an offender subject to the proposed enhancement pleads guilty, nolo contendere, or is found guilty of an offense and the trier of fact determines beyond a reasonable doubt that the defendant purposely selected the victim of the offense because of the victim’s actual or perceived trait (race, color, religion, ethnicity, ancestry, national origin, sexual orientation, gender, gender identity, or disability), then the minimum and maximum penalties of the offense are increased by twenty percent (20%). This increase applies to the length of term of imprisonment, period of probation, period of suspended imposition of sentence or amount of any fine. The enhancement shall not exceed twenty percent (20%).

Amends Arkansas Code Title 12, Chapter 12, Subchapter 1, to add an additional section, A.C.A. § 12-12-110, Hate crimes data collection. The proposed bill requires the Attorney General, along with assistance from the Arkansas State Police and Arkansas Crime Information Center, to establish and maintain a central repository for the collection, analysis, and dissemination of hate crimes data. Each law enforcement agency is required to submit quarterly reports concerning the commission of hate crimes to the Attorney General within its jurisdiction.

¹ This impact assessment was prepared (3/14/2017, 7:59 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

Impact Information

The Arkansas Crime Information Center reports incidents of motivated crimes to the Federal Bureau of Investigation to be included in the FBI's *Hate Crime Statistics* report. This report states that the FBI "collects data regarding criminal offenses that were motivated, in whole or in part, by the offender's bias against a race, gender, gender identity, religion, disability, sexual orientation, or ethnicity, and were committed against persons, property, or society. Because motivation is subjective, it is sometimes difficult to know with certainty whether a crime resulted from the offender's bias. Moreover, the presence of bias alone does not necessarily mean that a crime can be considered a hate crime. Only when a law enforcement investigation reveals sufficient evidence to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by his or her bias, should an agency report an incident as a hate crime." The report counts each victim of the crime as a separate incident.

In October of 2016, the FBI released *Hate Crimes Statistics 2015*. In this latest version of the report, Arkansas had a total of five (5) incidents of reported bias motivated crimes. These included three (3) incidents which were classified as racially motivated and two (2) motivated by sexual orientation. Data is not available as to how many of these five (5) incidents resulted in a charge or conviction.