

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

HOUSE BILL 1257

4 By: Representatives Roberts, Flanagin, Bennett, and Brown

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For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR ENHANCED PENALTIES FOR OFFENSES
9 COMMITTED BY REASON OF THE VICTIM'S RACE, COLOR, ANCESTRY,
10 ETHNICITY, RELIGION, NATIONAL ORIGIN, GENDER, OR SEXUAL
11 ORIENTATION; AND FOR OTHER PURPOSES."

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Subtitle

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. The penalty for any of the misdemeanors enumerated in Section 2 of this act shall be subject to enhancement if the misdemeanor was committed because of the race, color, ancestry, ethnicity, religion, national origin, gender, or sexual orientation of the victim.

SECTION 2. The penalties for the following misdemeanor offenses shall be subject to enhancement under this act: false imprisonment in the second degree; battery in the third degree; assault in the first degree; assault in the second degree; assault in the third degree; coercion; terroristic threatening in the second degree; criminal mischief in the first degree (when charged as a misdemeanor); criminal mischief in the second degree (when charged as a misdemeanor); criminal trespass; disorderly conduct; harassment; harassing communications; communicating a false alarm (when charged as a misdemeanor); threatening a fire or bombing (when charged as a misdemeanor);

1 obstructing a highway or other public passage; defacing objects of public
2 respect (when charged as a misdemeanor).

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4 SECTION 3. (a) For enhancement of the penalty to apply, the affiant,
5 or the prosecuting attorney if the defendant is charged by information, shall
6 provide written notice that the enhanced penalty will be sought. The notice
7 shall be in a clause separate from and in addition to the substantive offense
8 charged and shall not be considered as an element of the offense charged.

9 (b) There shall be no mention in the guilt or innocence phase of the
10 trial or in any document or evidence seen by the jury that an enhanced
11 penalty may be sought, provided, however, that this provision shall not be
12 construed to exclude evidence which otherwise would be admissible in the
13 guilt or innocence phase of the trial.

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15 SECTION 4. (a) Upon conviction or adjudication of guilt of a
16 defendant where notice has been duly given that an enhanced penalty will be
17 sought, the court shall conduct a separate sentencing proceeding to determine
18 the sentence. The proceeding shall be conducted by the trial judge before
19 the jury as soon as practicable. However, if the defendant enters a plea of
20 guilty and waives trial by jury, the sentencing proceeding shall be conducted
21 before the trial judge sitting without a jury. In the proceeding, evidence
22 may be presented as to any matter that the court deems relevant to sentence.
23 The state and the defendant or his counsel or both defendant and counsel
24 shall be permitted to present arguments for or against any sentence sought.

25 (b) In order to impose an enhanced penalty, the jury or trial judge
26 sitting without a jury must find beyond a reasonable doubt:

27 (1) That the defendant knew that the victim was within the class
28 delineated; and

29 (2) That the defendant maliciously and with specific intent
30 committed the offense because the victim was within the class delineated.

31 (c) That the victim was within the class delineated means that the
32 reason the underlying crime was committed was the victim's race, color,
33 ancestry, ethnicity, religion, national origin, gender, or sexual
34 orientation.

35 (d) For the purpose of this section, "victim" shall include the owner

1 of property damaged, defaced, or disturbed by the defendant; the officers of
2 a corporation which owned property damaged, defaced, or disturbed by the
3 defendant; the occupants or usual residents of any building or vehicle which
4 was the subject of a criminal act by the defendant; the members or
5 congregants of any place of worship or religious study, or the members of any
6 religious, fraternal, or social organization, association, corporation or
7 club when the defendant_s criminal act was directed against the place of
8 worship or religious study or property owned, leased or possessed by such
9 religious, fraternal, or social organization, association, corporation or
10 club.

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12 SECTION 5. In the event it is found beyond a reasonable doubt that the
13 offense was committed by reason of the race, color, ancestry, ethnicity,
14 religion, national origin, gender, or sexual orientation of the victim, then
15 the penalty for the offense may be enhanced as follows: For a Class A
16 misdemeanor, the sentence shall not exceed two (2) years or a fine not to
17 exceed five thousand dollars (\$5,000), or both; for a Class B or C
18 misdemeanor, the sentence shall not exceed one (1) year or a fine not to
19 exceed one thousand dollars (\$1,000), or both. Any sentence of more than one
20 (1) year imposed under this section shall be served in the Department of
21 Correction; however, the offense shall remain a misdemeanor for all other
22 purposes.

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24 SECTION 6. In addition to any other sentence authorized by law, in the
25 event it is found beyond a reasonable doubt that the offense was committed by
26 reason of the race, color, ancestry, ethnicity, religion, national origin,
27 gender, or sexual orientation of the victim, the court may require that the
28 defendant satisfy any other conditions reasonably related to the defendant_s
29 rehabilitation. Such conditions may include community service, attending
30 educational programs, and participating in therapy programs.

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32 SECTION 7. All provisions of this act of a general and permanent
33 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
34 Code Revision Commission shall incorporate the same in the Code.

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1 SECTION 8. *If any provision of this act or the application thereof to*
2 *any person or circumstance is held invalid, such invalidity shall not affect*
3 *other provisions or applications of the act which can be given effect without*
4 *the invalid provision or application, and to this end the provisions of this*
5 *act are declared to be severable.*

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7 SECTION 9. *All laws and parts of laws in conflict with this act are*
8 *hereby repealed.*

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/s/Roberts, et al

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As Engrossed: 1/27/95 2/10/95

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