

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative Flanagin

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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 ACTUAL OR PERCEIVED
10 RACE, COLOR, RELIGION, ETHNICITY, ANCESTRY, NATIONAL
11 ORIGIN, OR GENDER; 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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22 SECTION 1. The penalty for any felony or misdemeanor shall be subject
23 to enhancement if the felony or misdemeanor was committed because of the
24 actual or perceived race, color, ancestry, ethnicity, religion, national
25 origin, or gender of the victim.

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27 SECTION 2. (a) For enhancement of the penalty for a felony offense to
28 apply, the prosecuting attorney shall provide notice upon the information
29 that the prosecutor will seek an enhanced penalty. The notice shall be in a
30 clause separate from and in addition to the substantive offense charged and
31 shall not be considered as an element of the offense charged.

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(b) For enhancement of the penalty for a misdemeanor to apply, the
affiant, or the prosecuting attorney if the defendant is charged by
information, shall provide written notice that the enhanced penalty will be
sought. The notice shall be in a clause separate from and in addition to the

1 substantive offense charged and shall not be considered as an element of the
2 offense charged.

3 (c) There shall be no mention in the guilt or innocence phase of the
4 trial or in any documents or evidence seen by the jury that an enhanced
5 penalty may be sought.

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7 SECTION 3. (a) Upon conviction or adjudication of guilt of a
8 defendant where notice has been duly given that an enhanced penalty will be
9 sought, the court shall conduct a separate sentencing proceeding to determine
10 the sentence. The proceeding shall be conducted by the trial judge before
11 the jury as soon as practicable. However, if the defendant enters a plea of
12 guilty and waives trial by jury, the sentencing proceeding shall be conducted
13 before the trial judge sitting without a jury. In the proceeding, evidence
14 may be presented as to any matter that the court deems relevant to sentence.

15 The state and the defendant or his counsel or both defendant and counsel
16 shall be permitted to present arguments for or against any sentence sought.

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

19 (1) That the defendant perceived, knew, or had reasonable
20 grounds to know or perceive that the victim was within the class delineated;
21 and

22 (2) That the defendant committed the offense because the victim
23 was within the class delineated.

24 (c) That the victim was within the class delineated means that the
25 reason the underlying crime was committed was the victim's actual or
26 perceived race, color, religion, ethnicity, ancestry, national origin, or
27 gender.

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29 SECTION 4. In the event it is found beyond a reasonable doubt that the
30 offense was committed by reason of the actual or perceived race, color,
31 ancestry, ethnicity, religion, national origin, or gender of the victim, then
32 the penalty for the offense may be enhanced by punishment for a term of
33 imprisonment of up to one and one-half times that authorized by law for the
34 offense committed, or a fine of up to one and one-half times that authorized
35 by law for the offense committed, or both.

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SECTION 5. The provisions of this act shall also apply to incidents in which a criminal offense is committed by a person in such a fashion as to give the appearance it was committed because of bias or prejudice based on the race, color, ancestry, ethnicity, religion, national origin, or gender of the victim, in order to cast suspicion upon or incriminate other persons because of their race, color, ancestry, ethnicity, religion, national origin, or gender.

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

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

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