



SENATOR URQUHART’S HATE CRIMES AMENDMENTS: AN OVERVIEW

I. What Is a Hate Crime?

Hate crimes are crimes motivated by bias or prejudice against groups. When a victim is targeted because of her race, religion, disability, ethnicity, gender, gender identity, national origin, or sexual orientation, a hate crime has been committed. Such crimes happen when people are attacked because of who they are—because of the group that they represent. These crimes are intended to intimidate not only the victim herself, but the community to which the victim belongs.

II. Do Hate Crimes Happen in Utah?

During the last twenty years, we have learned a great deal about the prevalence of hate crimes in Utah. Since 1994, Utah law enforcement agencies have reported a total of 1,279 hate crimes to the Utah Department of Public Safety.

In 49% of these crimes, the victims were targeted because of race; 20% because of religion; 17% because of ethnicity; 14% because of sexual orientation; and 1% because of disabilities.

28% of these crimes were vandalism; 19% were simple assault; 14% were intimidation; 6% were aggravated assault; and the remaining 20% included various crimes like arson, robbery, burglary, and theft.

As this data suggests, our state has suffered greatly from these terrible crimes.

III. Utah’s Existing Hate Crimes Laws

Utah has three existing hate crimes laws. The first two laws were passed in 1992. The third law was passed in 2006. When these laws were passed, they were important steps forward for our state. By passing these laws, our Legislature acknowledged that hate crimes are a significant problem in Utah—a serious threat from which all Utahns should be protected.

A. § 53-10-202: The Hate Crimes Statistics Act (1992)

The first law, § 53-10-202, is known as the Hate Crimes Statistics Act. This law requires the Department of Public Safety to “establish a statewide uniform crime reporting system” that includes statistics on hate crimes.

When it was originally drafted by Rep. Frank Pignanelli, § 53-10-202 (H.B. 111) required the Department to report “statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin, ethnicity, or sexual orientation.”

During a committee hearing, the bill was amended. The phrase “sexual orientation” was replaced with the phrase, “any other categories that the division finds appropriate.”

B. § 76-3-203.3: The Hate Crimes Penalties Act (1992)

The second law, § 76-3-203.3, is known as the Hate Crimes Penalties Act. This law established an enhanced penalty for a certain category of crimes.

When it was originally drafted by Rep. Frank Pignanelli, § 76-3-203.3 (H.B. 112) made it a third-degree felony “for any person, maliciously and with specific intent to intimidate or harass another person because of that person’s race, religion, ancestry, national origin, ethnicity, or sexual orientation.”

During a committee hearing, the bill was amended. Although the title of the law is still “the Hate Crimes Penalties Act,” it does not mention crimes motivated by bias or prejudice against any groups. Instead, the law provides an enhanced penalty for anyone who committed a misdemeanor “with the intent to cause a person to fear to freely exercise or enjoy any right.”

C. § 76-3-203.4: Criminal Penalty Amendments (2006)

In 2006, the Legislature passed a third law that sought to address the problem of hate crimes. As originally drafted by Rep. David Litvack, § 76-3-203.4 (H.B. 90) required the sentencing judge to consider whether the defendant had committed a hate crime—i.e., whether “the defendant . . . selected the victim . . . primarily because the victim . . . was . . . a member of a group . . . targeted by animus, discrimination, legal disabilities, or hate-based crimes.”

During a committee hearing, the bill was amended, so that the language of 76-3-203.4 closely tracks the language of 76-3-204.4. Although the title of the law still refers to “Hate Crimes,” it does not mention crimes motivated by bias or prejudice against groups. Instead, the law requires the sentencing judge to consider whether the offense “is likely to incite community unrest,” or likely “to cause members of the community to reasonably fear for their physical safety or to freely exercise or enjoy any right.”

IV. The Problems with Utah’s Existing Hate Crimes Laws

Unfortunately, our state’s laws have not proven to be effective at punishing the individuals who commit hate crimes. Since 1992, it’s not clear whether anyone has been successfully punished for committing a hate crime. Prosecutors across the state agree that our hate crimes laws are rarely, if ever, enforced.

In 2001, one defendant’s sentence was overturned on appeal—even though the appeals court agreed that his actions were “racially motivated.” In that case, the court found that defendant assaulted a victim while he was “yelling racial slurs” at her—but ironically, that isn’t a “hate crime” under § 76-2-203.3. In 2015, Salt Lake District Attorney Sim Gill called our state’s hate crimes laws “toothless,” because they couldn’t be used to punish two men who had assaulted two gay Utahns, after following them home from a gay bar and calling them “faggots.”

So what, specifically, are the problems with Utah’s hate crimes laws?

First, § 76-3-203.3 and § 76-3-203.4 don’t actually apply to hate crimes. Although they say “hate crimes” in the title, they don’t mention bias or prejudice against anyone. Instead, they require prosecutors to prove that the defendant was trying to prevent the victim from exercising her rights. That’s why courts have called them “Exercise of Rights Statutes,” instead of “Hate Crimes Statutes.”

Second, the penalties in § 76-3-203.3 are limited to minor offenses, or “misdemeanors.” They don’t apply to serious offenses, or “felonies.” Under this law, if the defendant punches someone, it may be considered a “hate crime.” But if the defendant shoots someone—or even kills someone—it can’t be considered a “hate crime.” That doesn’t make sense. Utahns should be protected from all hate crimes—especially the most serious offenses like arson, kidnapping, and murder.

Finally, § 53-10-202 does not require the Department of Public Safety to report statistics on all hate crimes. It includes hate crimes in some categories, but not others. To date, the Department of Public Safety has voluntarily chosen to report hate crimes based on sexual orientation and disability, even though the law does not specifically require it. But even today, the Department does not report hate crimes based on gender identity or gender. We should fix that. Our law enforcement agencies are already reporting this information to the FBI. Our state should have access the same information as the federal government.

V. What Utah Courts Say About Utah’s Existing Hate Crimes Laws

In re J.W., 30 P.3d 1232, 1232 n.1 (Utah App. 2001):

“The title of the statute indicates that it was meant to address hate crimes. However, we note that application of Utah’s statute does not require that the perpetrator commit a primary offense against another by reason of that person’s race, color, alienage, gender, religion, or other specifically enumerated factor. Consequently, the penalty for a primary offense under section 76-3-203.3 may be enhanced regardless of whether the defendant was motivated by hatred. Accordingly, we refer to section 76-3-203.3 as the Exercise of Rights Statute because it allows enhancement whenever one commits a primary offense with the “intent to cause a person to fear or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.”

In re J.W., 30 P.3d 1232, 1235 (Utah App. 2001):

“Ironically, the evidence suggests J.W.’s actions were racially motivated rather than intended to cause B.B. ‘to fear or enjoy any right.’ Therefore, the evidence was insufficient to support enhancement under section 76-3-203.3 because the State failed to put on any direct or circumstantial evidence proving beyond a reasonable doubt that J.W. assaulted B.B. with the specific intent to cause her ‘to fear to freely exercise or enjoy any right.’”

VI. Senator Urquhart’s Proposed Hate Crimes Amendments

Senator Urquhart proposes three amendments to Utah’s existing “hate crimes” statutes:

- (1) adding “disability, gender, gender identity, and sexual orientation” to the hate crimes reporting statute, § 53-10-202;
- (2) replacing Utah’s existing “hate crimes” statutes, 76-3-203.3 and 76-3-203.4, with a single section that actually defines and punishes “hate crimes”—crimes that are motivated by bias or prejudice against particular groups; and
- (3) amending the Utah Rules of Evidence to protect the defendant’s freedom of speech and association in criminal trials for hate crimes.

¹ In re J.W., 30 P.3d 1232, 1235 (Utah App. 2001).

² In re J.W., 30 P.3d 1232, 1232 n.1 (Utah App. 2001); Ward v. State, 398 F.3d 1239, 1250 (10th Cir. 2005).



Section 1. Section **53-10-202** is amended to read:

53-10-202 Criminal identification — Duties of bureau.

The bureau shall: . . .

- (2) establish a statewide uniform crime reporting system that shall include:
 - (a) statistics concerning general categories of criminal activities;
 - (b) statistics concerning crimes that exhibit evidence of prejudice based on race, religion, ancestry, national origin, ethnicity, disability, gender, gender identity, sexual orientation, and any ~~or~~ other categories that the division finds appropriate; . . .

Section 2. Section **76-3-203.12** is enacted to read:

76-3-203.12 Hate Crimes — Definitions — Penalties.

- (1) “Hate crime” means any criminal offense against an individual or property regarding which the actor intentionally selects:
 - (a) the individual against whom the offense is committed in whole or in part because of the actor’s belief or perception regarding that an individual’s ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion, or sexual orientation, or the association of that individual with another individual or group of individuals who have one or more of these characteristics, whether or not the actor’s belief or perception was correct; or
 - (b) the property damaged or otherwise affected by the offense in whole or in part because of the actor’s belief or perception regarding the ancestry, disability, ethnicity, gender, gender identity, national origin, race, religion, or sexual orientation of the property’s owner, possessor, or occupant, or the association or relationship of the property’s owner, possessor, or occupant with another individual or group of individuals having one or more of these characteristics, whether or not the actor’s belief or perception was correct.
- (2) (a) If the trier of fact finds beyond a reasonable doubt that an actor is guilty of a hate crime under Subsection (1), the actor is subject to an enhanced penalty for the offense under Subsection (2)(b).
 - (b) The enhanced penalties are:
 - (i) a class C misdemeanor is a class B misdemeanor;
 - (ii) a class B misdemeanor is a class A misdemeanor;
 - (iii) a class A misdemeanor is a third degree felony;
 - (iv) a third degree felony is a second degree felony; and
 - (v) a second degree felony is a first degree felony.
- (3) If the actor commits a first degree felony that is a hate crime under Subsection (1), the sentencing judge or the Board of Pardons and Parole shall consider:
 - (a) the fact that the actor has committed a hate crime as an aggravating factor in deliberations; and
 - (b) whether the penalty for the first degree felony is increased under another provision of state law.



- (4) This section does not prevent the court from imposing alternative sanctions as the court finds appropriate.
- (5) The prosecuting attorney, or the grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the hate crime for which the actor is charged is subject to the enhanced penalties under Subsection (2).
- (6) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Section 3. **Repealer.**

This bill repeals:

Section **76-3-203.3**, Penalty for hate crimes — Civil rights violation.

Section **76-3-203.4**, Hate crimes — Aggravating factors.

Resolution to Amend Rules of Evidence: Admissibility of Evidence of the Actor's Expression or Association in Criminal Trials for Hate Crimes

- (1) In a criminal trial in which the actor is charged with committing a hate crime:
- (a) Evidence of the actor's expressions or associations may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged.
- (b) This section does not affect the Utah Rules of Evidence governing impeachment of a witness.

VI. Explanation of the Bill's Provisions

Section (1) defines "hate crimes." The bill defines a "hate crime" as any offense in which the victim or property is targeted because of one of the listed characteristics. This section is modeled on Wisconsin's hate crimes law, which was unanimously upheld by the U.S. Supreme Court in *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).

It's important to emphasize that Section (1) does not provide "special rights" or "special protections" to anyone. While minorities are often targeted by hate crimes, all Utahns are vulnerable. Any of us could be targeted because of our race, religion, sexuality, or other traits. When we are the victims of hate crimes, it doesn't matter which group we belong to, or whether we are targeted because we are black or white, LDS or atheist, gay or straight. When someone attacks us because of the community that we represent, a hate crime has been committed.

Section (2) says that when a defendant is charged with committing a hate crime, the prosecution must prove that the defendant committed every element of the crime beyond a reasonable doubt. This is constitutionally required. In *re Winship*, 397 U.S. 358 (1970); *Apprendi v. New Jersey*, 530 U.S. 466 (2000).



Section (3) explains how the defendant's penalty is increased when the defendant commits a hate crime. In most cases, the defendant's underlying offense is increased by one level. In cases involving first-degree felonies, the defendant's underlying offense cannot be increased. Instead, the sentencing judge and the Board of Pardons and Parole will consider the defendant's hate crime when determining the length of his imprisonment. Section (4) says that in appropriate cases, the court may impose alternative sanctions, such as a term of probation or community service. Under Utah law, courts always have discretion to impose alternative sanctions.

Section (5) says that when a defendant is charged with committing a hate crime, the prosecution must notify the defendant before the trial begins. This is constitutionally required. *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Section (6) says that the bill does not restrict anyone's freedom of speech, or any other constitutional rights. We all have the freedoms of speech—even the freedom to express hatred, bias, and prejudice. Laws against hate crimes regulate the defendant's conduct—not his thoughts, beliefs, or opinions. *Wisconsin v. Mitchell*, 508 U.S. 476, 487 (1993).

The resolution provides additional protections for the defendant's freedoms of speech and association in prosecutions for hate crimes. Under this resolution, the prosecution must rely on evidence that is "specifically related to the crime charged" in order to prove that the defendant's crime was motivated by bias. This resolution ensures that a person cannot be charged with a hate crime solely because of his membership in a group, or based on remarks that he made in the distant past—things that are not specifically related to the crime charged. Under the Utah Constitution, the Legislature may alter the Utah Rules of Evidence only by passing a Resolution by a vote of two-thirds of both houses. Utah Constitution, Article VIII, Section 4.

