

2021 -- H 6147 SUBSTITUTE A

LC002400/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE OR EXECUTION

Introduced By: Representatives Shallcross Smith, Shekarchi, Ackerman, Ruggiero, and
Carson

Date Introduced: March 17, 2021

Referred To: House Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-19-38 of the General Laws in Chapter 12-19 entitled "Sentence
2 and Execution" is hereby amended to read as follows:

3 **12-19-38. Hate Crimes Sentencing Act.**

4 (a) If any person has been convicted of a crime charged by complaint, information, or
5 indictment in which he or she intentionally selected the person against whom the offense is
6 committed or selected the property that is damaged or otherwise affected by the offense in whole
7 or in part because of ~~the actor's hatred or animus toward~~ the actual or perceived disability, religion,
8 color, race, national origin, ~~or~~ ancestry, sexual orientation, ~~or~~ gender, or gender identity or
9 expression of ~~that~~ any person or group of persons or the owner or occupant of that property, he or
10 she shall be subject to the penalties provided in this section.

11 (b) Whenever it appears that a person may be subject to the Hate Crime Sentencing Act,
12 the prosecuting agency, in no case later than the pretrial conference, shall file with the court a notice
13 specifying that the defendant, upon conviction, is subject to the imposition of sentencing in
14 accordance with this section.

15 (c) For misdemeanor offenses, including petty misdemeanors, upon any plea of guilty or
16 nolo contendere or verdict or finding of guilty of the defendant, the district court shall conduct a
17 sentencing hearing. At the hearing, the court shall permit the prosecuting agency and the defense
18 to present additional evidence relevant to the determination of whether the defendant intentionally
19 selected the person against whom the offense is committed, or selected the property that is

1 damaged, or otherwise affected by the offense in whole or in part because of ~~his or her hatred or~~
2 ~~animus toward~~ the actual or perceived race, religion, color, disability, national origin, ~~or~~ ethnicity,
3 gender, gender identity or expression or sexual orientation of ~~that~~ any person or group of persons
4 or the owner or occupant of that property. If the finder of fact at the hearing, or in the case of a plea
5 of guilty or nolo contendere, the district court at sentencing, determines beyond a reasonable doubt
6 that the defendant's actions were so motivated, he or she shall be sentenced to not less than thirty
7 (30) days ~~mandatory~~ imprisonment, nor more than one year imprisonment for that crime, and
8 undertake educational classes or community service directly related to the community harmed by
9 the defendant's offense, and for this penalty, he or she shall not be afforded the provisions of filing,
10 ~~suspension of sentence, or probation.~~

11 (d) For felony offenses and for misdemeanor offenses, including petty misdemeanors, in
12 which the defendant claims a jury trial either in the first instance or by appeal, upon any plea of
13 guilt or nolo contendere or verdict or finding of guilt of the defendant, the court shall conduct a
14 sentencing hearing. At the hearing, the court shall permit the prosecuting agency and the defense
15 to present additional evidence to the jury relevant to the determination of whether the defendant
16 intentionally selected the person against whom the offense is committed, or selected the property
17 that is damaged, or otherwise affected by the offense in whole or in part because of ~~his or her hatred~~
18 ~~or animus toward~~ the actual or perceived race, religion, color, disability, national origin, ~~or~~
19 ethnicity, gender, gender identity or expression, or sexual orientation of ~~that~~ any person or group
20 of persons or the owner or occupant of that property. If the jury at the hearing, or in the case of a
21 plea of guilty or nolo contendere, the court at sentencing, determines beyond a reasonable doubt
22 that the defendant's actions were so motivated, he or she shall be sentenced for a misdemeanor,
23 including a petty misdemeanor, in accordance with subsection (c) of this section and for a felony
24 by the court to an additional, consecutive term of imprisonment for not less than one year nor more
25 than five (5) years, but in no case, more than double the original penalty for the crime, and
26 undertake educational classes or community service directly related to the community harmed by
27 the defendant's offense.

28 (e) For offenses in violation of chapter 44 of title 11 relating to the destruction, defacing,
29 or otherwise injuring of commercial or public property only, upon any plea of guilt or nolo
30 contendere or verdict or finding of guilt of the defendant, the court shall conduct a sentencing
31 hearing. At the hearing, the court shall permit the prosecuting agency and the defense to present
32 additional evidence relevant to the determination of whether the defendant committed the offense
33 in whole or in part because of the defendant's hatred, bias, bigotry, or animus regarding the
34 disability, religion, color, race, national origin, ethnicity, sexual orientation, gender, or gender

1 identity or expression of any person or group of persons, then the court shall, in addition to any
2 other sentence imposed, sentence the defendant to undertake educational classes or community
3 service directly related to the community harmed by the defendant's offense.

4 (f) If any provision or part of this section or the application thereof to any person or
5 circumstance is held invalid, such invalidity shall not affect any other provisions or applications of
6 this section, which can be given effect without the invalid provision or application, and to this end
7 the provisions or parts of this section are severable.

8 SECTION 2. Section 12-28-4 of the General Laws in Chapter 12-28 entitled "Victim's
9 Rights" is hereby amended to read as follows:

10 **12-28-4. Right to address court prior to sentencing.**

11 (a) Prior to the imposition of sentence upon a defendant who has been adjudicated guilty
12 of a crime in a trial, the victim of the criminal offense shall be afforded the opportunity to address
13 the court regarding the impact which the defendant's criminal conduct has had upon the victim. The
14 victim shall be permitted to speak prior to counsel for the state and the defendant making their
15 sentencing recommendations to the court and prior to the defendant's exercise of his or her right to
16 address the court.

17 (b) For the purposes of this section, "victim" is one who:

18 (1) Is named in the complaint, indictment, or information; or

19 (2) Has ~~has~~ sustained personal injury or loss of or damage to property directly attributable
20 to the ~~felonious~~ criminal conduct of which the defendant has been convicted. In homicide cases, a
21 member of the immediate family of the victim shall be afforded the right created by this section.

22 (c) "Community impact statement" means a written statement providing information about
23 the financial, emotional and physical effects of a crime on a community. "Community" means a
24 society or body of people living in the same place or neighborhood sharing common interests
25 arising from social, business, religious, governmental, scholastic or recreational associations.

26 (d) In addition to the right of a victim as identified in subsection (b) of this section, if the
27 crime has an impact on the community where the incident took place, any person, association or
28 other group of persons may file a community impact statement with the court prior to the imposition
29 of sentence on a defendant.

30 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would amend the Hate Crimes Sentencing Act to include petty misdemeanors and,
2 adds gender identity or expression to protected groups thereunder. Further, the act clarifies that
3 sentencing enhancements for hate crimes are permitted in instances where the defendant is either
4 motivated in whole or in part due to the victim's status as a member of a protected group. The act
5 also permits a judge to impose probation or a suspended sentence and to add as a condition of any
6 sentence to sentence community service or educational classes related to the community harmed
7 by the defendant's actions.

8 This act would take effect upon passage.

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