

2021 -- H 6147

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LC002400
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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

1 affected by the offense in whole or in part because of ~~his or her hatred or animus toward~~ the actual
2 or perceived race, religion, color, disability, national origin, ~~or~~ ethnicity, gender, gender identity or
3 expression, or sexual orientation of ~~that~~ any person or group of persons or the owner or occupant
4 of that property. If the finder of fact at the hearing, or in the case of a plea of guilty or nolo
5 contendere, the district court at sentencing, determines beyond a reasonable doubt that the
6 defendant's actions were so motivated, he or she shall be sentenced to not less than thirty (30) days
7 mandatory imprisonment, nor more than one year imprisonment for that crime; and undertake
8 educational classes or community service directly related to the community harmed by the
9 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 in which the defendant claims a jury
12 trial either in the first instance or by appeal, upon any plea of guilt or nolo contendere or verdict or
13 finding of guilt of the defendant, the court shall conduct a sentencing hearing. At the hearing, the
14 court shall permit the prosecuting agency and the defense to present additional evidence to the jury
15 relevant to the determination of whether the defendant intentionally selected the person against
16 whom the offense is committed, or selected the property that is damaged, or otherwise affected by
17 the offense in whole or in part because of ~~his or her hatred or animus toward~~ the actual or perceived
18 race, religion, color, disability, national origin, ~~or~~ ethnicity, gender, gender identity or expression,
19 or sexual orientation of ~~that~~ any person or group of persons or the owner or occupant of that
20 property. If the jury at the hearing, or in the case of a plea of guilty or nolo contendere, the court at
21 sentencing, determines beyond a reasonable doubt that the defendant's actions were so motivated,
22 he or she shall be sentenced for a misdemeanor in accordance with subsection (c) of this section
23 and for a felony by the court to an additional, consecutive term of imprisonment for not less than
24 one year nor more than five (5) years, but in no case, more than double the original penalty for the
25 crime, and undertake educational classes or community service directly related to the community
26 harmed by the defendant's offense.

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

1 other sentence imposed, sentence the defendant to undertake educational classes or community
2 service directly related to the community harmed by the defendant's offense.

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

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

9 **12-28-4. Right to address court prior to sentencing.**

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

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

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

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

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

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

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SENTENCE OR EXECUTION

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

7 This act would take effect upon passage.

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