

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 392

Short Title: Matthew Shepard/Increase Hate Crime Penalty. (Public)

Sponsors: Senators Lucas and Miller.

Referred to: Judiciary II.

March 12, 2001

A BILL TO BE ENTITLED

AN ACT TO HONOR THE MEMORY OF MATTHEW SHEPARD BY EXPANDING
THE SCOPE OF THE HATE CRIME LAWS AND INCREASING THE
CRIMINAL PENALTY FOR COMMITTING A HATE CRIME.

Whereas, Matthew Shepard was seemingly a victim of a hate crime, his sexual orientation being the apparent reason for his murder; and

Whereas, Matthew Shepard was recently a resident of this State and lived in Raleigh for about a year; and

Whereas, violent crime is abhorrent, and violent criminal acts based on a person's group membership are particularly unacceptable in a civil society; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-3 reads as rewritten:

"§ 14-3. Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ~~ethnic~~ ethnic, gender, sexual orientation, age, or disability animosity.

(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes:

(1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;

(2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and

1 (3) If that maximum punishment is 30 days or less imprisonment or only a
2 fine, it is a Class 3 misdemeanor.

3 Misdemeanors that have punishments for one or more counties or cities pursuant to a
4 local act of the General Assembly that are different from the generally applicable
5 punishment are classified pursuant to this subsection if not otherwise specifically
6 classified.

7 (b) If a misdemeanor offense as to which no specific punishment is prescribed be
8 infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender
9 shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a
10 Class H felony.

11 (c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's
12 real or perceived race, color, religion, nationality, gender, sexual orientation, disability,
13 age, or country of origin, the offender shall be guilty of a Class 1 misdemeanor. If any
14 Class A1 or Class 1 misdemeanor offense is committed because of the victim's real or
15 perceived race, color, religion, nationality, gender, sexual orientation, disability, age, or
16 country of origin, the offender shall be guilty of a Class I felony.

17 (d) If any felony is committed because of the victim's real or perceived race,
18 color, religion, nationality, gender, sexual orientation, disability, age, or country of
19 origin, the offender shall be punished at the sentencing level that is one level higher than
20 that authorized by the offender's prior record level.

21 (e) For purposes of this section, 'sexual orientation' means having an emotional,
22 physical, or sexual attachment to another person without regard to the sex of the person
23 or an orientation for such attachment, or a self-image or expression not traditionally
24 associated with one's biological maleness or femaleness."

25 **SECTION 2.** G.S. 14-401.14 reads as rewritten:

26 "**§ 14-401.14. Ethnic intimidation; teaching any technique to be used for ethnic**
27 **intimidation.**

28 (a) If a person shall, because of real or perceived race, color, religion, nationality,
29 gender, sexual orientation, disability, age, or country of origin, assault another person,
30 or damage or deface the property of another person, or threaten to do any such act, ~~he~~
31 the offender shall be guilty of a Class 1 misdemeanor. Class I felony.

32 (b) A person who assembles with one or more persons to teach any technique or
33 means to be used to commit any act in violation of subsection (a) of this section is guilty
34 of a ~~Class 1 misdemeanor.~~ Class I felony."

35 **SECTION 3.** G.S. 15A-1340.16(d) reads as rewritten:

36 "(d) Aggravating Factors. – The following are aggravating factors:

37 (1) The defendant induced others to participate in the commission of the
38 offense or occupied a position of leadership or dominance of other
39 participants.

40 (2) The defendant joined with more than one other person in committing
41 the offense and was not charged with committing a conspiracy.

42 (2a) The offense was committed for the benefit of, or at the direction of,
43 any criminal street gang, with the specific intent to promote, further, or
44 assist in any criminal conduct by gang members, and the defendant

1 was not charged with committing a conspiracy. A "criminal street
2 gang" means any ongoing organization, association, or group of three
3 or more persons, whether formal or informal, having as one of its
4 primary activities the commission of felony or violent misdemeanor
5 offenses, or delinquent acts that would be felonies or violent
6 misdemeanors if committed by an adult, and having a common name
7 or common identifying sign, colors, or symbols.

- 8 (3) The offense was committed for the purpose of avoiding or preventing a
9 lawful arrest or effecting an escape from custody.
- 10 (4) The defendant was hired or paid to commit the offense.
- 11 (5) The offense was committed to disrupt or hinder the lawful exercise of
12 any governmental function or the enforcement of laws.
- 13 (6) The offense was committed against or proximately caused serious
14 injury to a present or former law enforcement officer, employee of the
15 Department of Correction, jailer, fireman, emergency medical
16 technician, ambulance attendant, justice or judge, clerk or assistant or
17 deputy clerk of court, magistrate, prosecutor, juror, or witness against
18 the defendant, while engaged in the performance of that person's
19 official duties or because of the exercise of that person's official duties.
- 20 (7) The offense was especially heinous, atrocious, or cruel.
- 21 (8) The defendant knowingly created a great risk of death to more than
22 one person by means of a weapon or device which would normally be
23 hazardous to the lives of more than one person.
- 24 (9) The defendant held public office at the time of the offense and the
25 offense related to the conduct of the office.
- 26 (10) The defendant was armed with or used a deadly weapon at the time of
27 the crime.
- 28 (11) The victim was very young, or very old, or mentally or physically
29 infirm, or handicapped.
- 30 (12) The defendant committed the offense while on pretrial release on
31 another charge.
- 32 (13) The defendant involved a person under the age of 16 in the
33 commission of the crime.
- 34 (14) The offense involved an attempted or actual taking of property of great
35 monetary value or damage causing great monetary loss, or the offense
36 involved an unusually large quantity of contraband.
- 37 (15) The defendant took advantage of a position of trust or confidence to
38 commit the offense.
- 39 (16) The offense involved the sale or delivery of a controlled substance to a
40 minor.
- 41 (17) The offense for which the defendant stands convicted was committed
42 against a victim because of the victim's real or perceived race, color,
43 religion, nationality, gender, sexual orientation, disability, age, or
44 country of origin.

- 1 (18) The defendant does not support the defendant's family.
2 (18a) The defendant has previously been adjudicated delinquent for an
3 offense that would be a Class A, B1, B2, C, D, or E felony if
4 committed by an adult.
5 (19) The serious injury inflicted upon the victim is permanent and
6 debilitating.
7 (20) Any other aggravating factor reasonably related to the purposes of
8 sentencing.

9 Evidence necessary to prove an element of the offense shall not be used to prove any
10 factor in aggravation, and the same item of evidence shall not be used to prove more
11 than one factor in aggravation. Evidence necessary to establish that an enhanced
12 sentence is required under G.S. 14-2.2 may not be used to prove any factor in
13 aggravation.

14 The judge shall not consider as an aggravating factor the fact that the defendant
15 exercised the right to a jury trial."

16 **SECTION 4.** This act becomes effective December 1, 2001, and applies to
17 offenses committed on or after that date.