

**Senator Daniel W. Thatcher** proposes the following substitute bill:

**VICTIM TARGETING PENALTY ENHANCEMENTS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel W. Thatcher**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts provisions relating to sentencing for a criminal offense committed against a victim who is selected because of certain personal attributes.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides an enhanced penalty for a criminal offense committed against a victim who is selected because of certain personal attributes; and
- ▶ provides that this bill does not affect an individual's constitutional rights, including an individual's constitutional right of free speech.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**76-3-203.14**, Utah Code Annotated 1953

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26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **76-3-203.14** is enacted to read:

28 **76-3-203.14. Victim targeting penalty enhancement -- Penalties.**

29 (1) As used in this section "personal attribute" means:

30 (a) age;

31 (b) ancestry;

32 (c) disability;

33 (d) ethnicity;

34 (e) familial status;

35 (f) gender identity;

36 (g) homelessness;

37 (h) marital status;

38 (i) matriculation;

39 (j) national origin;

40 (k) race;

41 (l) religion;

42 (m) sex;

43 (n) sexual orientation;

44 (o) service in the U.S. Armed Forces;

45 (p) status as an emergency responder, as defined in Section [53-2b-102](#); or

46 (q) status as a law enforcement officer, correctional officer, special function officer, or  
47 any other peace officer, as defined in Title 53, Chapter 13, Peace Officer Classifications.

48 (2) A defendant is subject to enhanced penalties under Subsection (3) if the defendant  
49 intentionally selects:

50 (a) the victim of the criminal offense because of the defendant's belief or perception  
51 regarding the victim's personal attribute or a personal attribute of another individual or group of  
52 individuals with whom the victim has a relationship; or

53 (b) the property damaged or otherwise affected by the criminal offense because of the  
54 defendant's belief or perception regarding the property owner's, possessor's, or occupant's  
55 personal attribute or a personal attribute of another individual or group of individuals with  
56 whom the property owner, possessor, or occupant has a relationship.

57 (3) (a) If the trier of fact finds beyond a reasonable doubt that a defendant committed a  
58 criminal offense and selected the victim or property damaged or otherwise affected by the  
59 criminal offense in the manner described in Subsection (2), the defendant is subject to an  
60 enhanced penalty for the criminal offense as follows:

- 61 (i) a class C misdemeanor is a class B misdemeanor;
- 62 (ii) a class B misdemeanor is a class A misdemeanor;
- 63 (iii) a class A misdemeanor is a third degree felony;
- 64 (iv) a third degree felony is a third degree felony punishable by an indeterminate term  
65 of imprisonment for not less than one year nor more than five years; and
- 66 (v) a second degree felony is a second degree felony punishable by an indeterminate  
67 term of imprisonment for not less than two years nor more than 15 years.

68 (b) If the trier of fact finds beyond a reasonable doubt that a defendant committed a  
69 criminal offense that is a first degree felony and selected the victim or property damaged or  
70 otherwise affected by the criminal offense in the manner described in Subsection (2), the  
71 sentencing judge or the Board of Pardons and Parole shall consider the defendant's selection of  
72 the victim or property as an aggravating factor.

73 (4) This section does not:

- 74 (a) apply if:
  - 75 (i) the penalty for the criminal offense is increased or enhanced under another  
76 provision of state law; or
  - 77 (ii) the personal attribute of the victim or property owner, possessor, or occupant is an  
78 element of a criminal offense under another provision of state law;
- 79 (b) prevent the court from imposing alternative sanctions as the court finds appropriate;
- 80 (c) affect or limit any individual's constitutional right to the lawful expression of free  
81 speech or other recognized rights secured by the Utah Constitution or the laws of the state, or  
82 by the United States Constitution or the laws of the United States; or
- 83 (d) create a special or protected class for any purpose other than a criminal penalty  
84 enhancement under this section.

85 (5) (a) If a final decision of a court of competent jurisdiction holds invalid any  
86 provision of this section or the application of any provision of this section to any person or  
87 circumstance, the remaining provisions of this section remain effective without the invalidated

88 provision or application.

89 (b) The provisions of this section are severable.