

ACT 240

S.B. NO. 951

A Bill for an Act Relating to Hate Crimes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Crimes and threats against persons because of their race, religion, disability, ethnicity, national origin, or sexual orientation are a significant problem across the nation. The legislature finds that the State's interest in preventing crimes motivated by bigotry and hate goes beyond its interest in preventing other felonies or misdemeanors, and that the protection of Hawaii's citizens from threats of harm due to bigotry and hate is a compelling state interest.

The legislature further finds that Hawaii is one of a distinct minority of states in the nation that do not have laws addressing hate-motivated crimes. Additionally, Hawaii is one of only four states in the country that do not participate in the hate crimes data reporting program created by the federal Hate Crimes Statistics Act.

The purpose of this Act is to:

- (1) Allow extended term sentencing for the perpetrators of hate-motivated crimes; and
- (2) Provide a mechanism to compile, track, and analyze hate crimes data in Hawaii.

SECTION 2. Chapter 846, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . HATE CRIME REPORTING

§846- Definitions. As used in this part, the following terms have the following meanings:

“Hate crime” means any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, or sexual orientation of any person.

“Hate crime data” means information, incident reports, records, and statistics relating to hate crimes, collected by the attorney general.

“Incident report” means an account of occurrence of a hate crime received or collected by the attorney general.

“Sexual orientation” means:

- (1) Having a preference for heterosexuality, homosexuality, or bisexuality;
- (2) Having a history of any one or more of these preferences; or
- (3) Being identified with any one or more of these preferences.

§846- Responsibility for system. (a) The department of the attorney general shall be responsible for the collection, storage, dissemination, and analysis of all hate crime data from all agencies that have primary investigative, action, or program responsibility for adult or juvenile offenses, including the county police departments, the county prosecutors, the family courts, and the departments or agencies responsible for administering any correctional facilities.

(b) The attorney general shall develop the system and the procedures for reporting, inputting, accessing, and protecting the information concerning the commission of hate crimes and obtaining the agreement of agencies permitted to directly input and access information.

(c) Hate crime data collected by the attorney general may be shared with other agencies in accordance with section 92F-19. Public dissemination of this information shall be subject to section 92F-13.

§846- Responsibility of agencies. Agencies that have investigative, detention, custodial, adjudicative, or program responsibility for adult or juvenile offenses shall cooperate with the attorney general in establishing the hate crime reporting system by:

- (1) Providing information in the agency files that can be included pursuant to the format approved by the attorney general;
- (2) Maintaining procedures internally consistent with uniform procedures and guidelines provided by the attorney general;
- (3) Reporting information to the attorney general that is timely, complete, and accurate after the occurrence of an event over which the agency had direct responsibility; and
- (4) Maintaining procedures for the periodic checking of information to minimize the possibility of storing and maintaining inaccurate information.

§846- Annual reports. The attorney general shall summarize and analyze reports of hate crimes data that are received, and shall compile and transmit an annual report of hate crime data to the governor, the judiciary, the department of public safety, and the legislature.”

SECTION 3. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

“**§706-662 Criteria for extended terms of imprisonment.** A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
- (2) The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or
 - (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with the Hawaii rules of evidence.
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
 - (b) The maximum terms of imprisonment authorized for each of the defendant’s crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) The defendant is an offender against the [~~elder,~~ elderly, handicapped, or a minor under the age of eight, whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
 - (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
 - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:

- (i) Sixty years of age or older;
 - (ii) Blind, a paraplegic, or a quadriplegic; or
 - (iii) Eight years of age or younger; and
 - (c) Such disability is known or reasonably should be known to the defendant.
- (6) The defendant is a hate crime offender whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
 - (b) The defendant intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, or sexual orientation of any person.’’

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon approval.

(Approved June 13, 2001.)