

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 884*

Short Title: Matthew Shepard Memorial Act.

(Public)

Sponsors: Representatives Luebke, Insko (Primary Sponsors); Alexander, Easterling, Hackney, Hensley, Miller, Nesbitt, Womble, and Wright.

Referred to: Judiciary I.

April 1, 1999

A BILL TO BE ENTITLED

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

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 14-3(c) reads as rewritten:

7 "(c) If any Class 2 or Class 3 misdemeanor is committed because of the victim's
8 race, color, religion, nationality, gender, sexual orientation, disability, or country of
9 origin, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1
10 misdemeanor offense is committed because of the victim's race, color, religion,
11 nationality, gender, sexual orientation, disability, or country of origin, the offender shall
12 be guilty of a Class I felony. If any felony is committed because of the victim's race,
13 color, religion, nationality, gender, sexual orientation, disability, or country of origin, the

1 offender shall be punished at the sentencing level that is one level higher than that
2 authorized by the offender's prior record level."

3 Section 2. G.S. 14-401.14 reads as rewritten:

4 **"§ 14-401.14. Ethnic intimidation; teaching any technique to be used for ethnic**
5 **intimidation.**

6 (a) If a person shall, because of race, color, religion, nationality, gender, sexual
7 orientation, disability, or country of origin, assault another person, or damage or deface
8 the property of another person, or threaten to do any such act, ~~he~~ the offender shall be
9 guilty of a ~~Class 1 misdemeanor.~~ Class I felony.

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

13 Section 3. G.S. 15A-1340.16(d) reads as rewritten:

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

15 (1) The defendant induced others to participate in the commission of the
16 offense or occupied a position of leadership or dominance of other
17 participants.

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

20 (2a) The offense was committed for the benefit of, or at the direction of, any
21 criminal street gang, with the specific intent to promote, further, or
22 assist in any criminal conduct by gang members, and the defendant was
23 not charged with committing a conspiracy. A "criminal street
24 gang" means any ongoing organization, association, or group of three or
25 more persons, whether formal or informal, having as one of its primary
26 activities the commission of felony or violent misdemeanor offenses, or
27 delinquent acts that would be felonies or violent misdemeanors if
28 committed by an adult, and having a common name or common
29 identifying sign, colors, or symbols.

30 (3) The offense was committed for the purpose of avoiding or preventing a
31 lawful arrest or effecting an escape from custody.

32 (4) The defendant was hired or paid to commit the offense.

33 (5) The offense was committed to disrupt or hinder the lawful exercise of
34 any governmental function or the enforcement of laws.

35 (6) The offense was committed against or proximately caused serious injury
36 to a present or former law enforcement officer, employee of the
37 Department of Correction, jailer, fireman, emergency medical
38 technician, ambulance attendant, justice or judge, clerk or assistant or
39 deputy clerk of court, magistrate, prosecutor, juror, or witness against
40 the defendant, while engaged in the performance of that person's official
41 duties or because of the exercise of that person's official duties.

42 (7) The offense was especially heinous, atrocious, or cruel.

- 1 (8) The defendant knowingly created a great risk of death to more than one
2 person by means of a weapon or device which would normally be
3 hazardous to the lives of more than one person.
- 4 (9) The defendant held public office at the time of the offense and the
5 offense related to the conduct of the office.
- 6 (10) The defendant was armed with or used a deadly weapon at the time of
7 the crime.
- 8 (11) The victim was very young, or very old, or mentally or physically
9 infirm, or handicapped.
- 10 (12) The defendant committed the offense while on pretrial release on
11 another charge.
- 12 (13) The defendant involved a person under the age of 16 in the commission
13 of the crime.
- 14 (14) The offense involved an attempted or actual taking of property of great
15 monetary value or damage causing great monetary loss, or the offense
16 involved an unusually large quantity of contraband.
- 17 (15) The defendant took advantage of a position of trust or confidence to
18 commit the offense.
- 19 (16) The offense involved the sale or delivery of a controlled substance to a
20 minor.
- 21 (17) The offense for which the defendant stands convicted was committed
22 against a victim because of the victim's race, color, religion, nationality,
23 gender, sexual orientation, disability, or country of origin.
- 24 (18) The defendant does not support the defendant's family.
- 25 (18a) The defendant has previously been adjudicated delinquent for an offense
26 that would be a Class A, B1, B2, C, D, or E felony if committed by an
27 adult.
- 28 (19) The serious injury inflicted upon the victim is permanent and
29 debilitating.
- 30 (20) Any other aggravating factor reasonably related to the purposes of
31 sentencing.

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

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

38 Section 4. This act becomes effective December 1, 1999, and applies to
39 offenses committed on or after that date.