

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 884\*  
Committee Substitute Favorable 4/21/99

Short Title: Matthew Shepard Memorial Act.

(Public)

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Sponsors:

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Referred to:

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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, age, or country of  
9 origin, and the offense arises out of the offender's generalized hatred of that category of  
10 persons, the offender shall be guilty of a Class 1 misdemeanor. If any Class A1 or Class 1  
11 misdemeanor offense is committed because of the victim's race, color, religion,  
12 nationality, gender, sexual orientation, disability, age, or country of origin, and the  
13 offense arises out of the offender's generalized hatred of that category of persons, the

1 offender shall be guilty of a Class I felony. If any felony is committed because of the  
2 victim's race, color, religion, nationality, gender, sexual orientation, disability, age, or  
3 country of origin, and the offense arises out of the offender's generalized hatred of that  
4 category of persons, the offender shall be punished at the sentencing level that is one  
5 level higher than that authorized by the offender's prior record level."

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

7 "**§ 14-401.14. Ethnic intimidation; teaching any technique to be used for ethnic**  
8 **intimidation.**

9 (a) If a person shall, because of race, color, religion, nationality, gender, sexual  
10 orientation, disability, age, or country of origin, assault another person, or damage or  
11 deface the property of another person, or threaten to do any such act, and the action arises  
12 out of the offender's generalized hatred of that category of persons, ~~he~~ the offender shall  
13 be guilty of a Class 1 misdemeanor. Class I felony.

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

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

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

19 (1) The defendant induced others to participate in the commission of the  
20 offense or occupied a position of leadership or dominance of other  
21 participants.

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

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

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

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

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

39 (6) The offense was committed against or proximately caused serious injury  
40 to a present or former law enforcement officer, employee of the  
41 Department of Correction, jailer, fireman, emergency medical  
42 technician, ambulance attendant, justice or judge, clerk or assistant or  
43 deputy clerk of court, magistrate, prosecutor, juror, or witness against

- 1 the defendant, while engaged in the performance of that person's official  
2 duties or because of the exercise of that person's official duties.
- 3 (7) The offense was especially heinous, atrocious, or cruel.
- 4 (8) The defendant knowingly created a great risk of death to more than one  
5 person by means of a weapon or device which would normally be  
6 hazardous to the lives of more than one person.
- 7 (9) The defendant held public office at the time of the offense and the  
8 offense related to the conduct of the office.
- 9 (10) The defendant was armed with or used a deadly weapon at the time of  
10 the crime.
- 11 (11) The victim was very young, or very old, or mentally or physically  
12 infirm, or handicapped.
- 13 (12) The defendant committed the offense while on pretrial release on  
14 another charge.
- 15 (13) The defendant involved a person under the age of 16 in the commission  
16 of the crime.
- 17 (14) The offense involved an attempted or actual taking of property of great  
18 monetary value or damage causing great monetary loss, or the offense  
19 involved an unusually large quantity of contraband.
- 20 (15) The defendant took advantage of a position of trust or confidence to  
21 commit the offense.
- 22 (16) The offense involved the sale or delivery of a controlled substance to a  
23 minor.
- 24 (17) The offense for which the defendant stands convicted was committed  
25 against a victim because of the victim's race, color, religion, nationality,  
26 gender, sexual orientation, disability, age, or country of origin,  
27 the defendant was not charged with an offense under G.S. 14-401.14,  
28 and the defendant's punishment has not already been enhanced by G.S.  
29 14-3(c).
- 30 (18) The defendant does not support the defendant's family.
- 31 (18a) The defendant has previously been adjudicated delinquent for an offense  
32 that would be a Class A, B1, B2, C, D, or E felony if committed by an  
33 adult.
- 34 (19) The serious injury inflicted upon the victim is permanent and  
35 debilitating.
- 36 (20) Any other aggravating factor reasonably related to the purposes of  
37 sentencing.

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

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

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