

1 AN ACT relating to hate crimes.

2 WHEREAS, the purpose of this Act is to provide increased penalties for those
3 convicted of crimes in which the victim was selected because of his or her actual or
4 perceived race, color, ethnicity, national origin, religion, mental or physical disability,
5 gender identity or expression, or sexual orientation; and

6 WHEREAS, the commission of hate crimes remains a prevalent issue to be
7 addressed in the Commonwealth of Kentucky; and

8 WHEREAS, on October 24, 2018, the Commonwealth of Kentucky was devastated
9 by the tragic loss of life at the Jeffersontown Kroger as the result of a hate crime; and

10 WHEREAS, according to the Federal Bureau of Investigation's 2017 Hate Crime
11 Statistics Report, law enforcement officials reported 378 hate crime incidents in the
12 Commonwealth of Kentucky; and

13 WHEREAS, according to the Federal Bureau of Investigation's 2017 Hate Crime
14 Statistics Report, the number of hate crimes reported by law enforcement officers
15 increased by 83.5 percent in the Commonwealth of Kentucky from the years of 2016 to
16 2017; and

17 WHEREAS, the Commonwealth of Kentucky statutorily requires the reporting of
18 crimes which appear to be the result of, or reasonably related to, race, color, religion, sex,
19 or national origin; and

20 WHEREAS, the Commonwealth of Kentucky statutorily requires law enforcement
21 and certified peace officers to undergo training relating to the investigation of, response
22 to, and reporting of hate crimes;

23 NOW, THEREFORE,

24 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

25 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO
26 READ AS FOLLOWS:

27 **(1) A defendant shall be subject to an enhanced term of imprisonment under**

1 subsection (3) of this section if he or she is convicted of a crime under KRS
2 Chapter 507, 507A, 508, 509, 510, or 525, or under KRS 512.020, 512.030,
3 512.040, 513.020, 513.030, or 513.040, or of the attempt to commit a crime under
4 those chapters or statutes; and it is proven beyond a reasonable doubt that:

5 (a) 1. The defendant intentionally selected the person against whom the
6 crime was committed; and

7 2. The primary motivation in selecting the person was that person's
8 actual or perceived race, color, ethnicity, national origin, religion,
9 mental or physical disability, gender identity or expression, or sexual
10 orientation; or

11 (b) 1. The defendant intentionally committed a crime against property
12 associated with a person; and

13 2. The primary motivation in selecting the property was the person's
14 actual or perceived race, color, ethnicity, national origin, religion,
15 mental or physical disability, gender identity or expression, or sexual
16 orientation.

17 (2) Unless a jury trial has been waived, when a defendant is convicted of a crime
18 outlined in subsection (1) of this section and the defendant is charged with
19 intentionally committing the underlying offense because of a person's actual or
20 perceived race, color, ethnicity, national origin, religion, mental or physical
21 disability, gender identity or expression, or sexual orientation:

22 (a) The court shall conduct a hearing, separate from the proceeding that
23 resulted in the defendant's conviction for the underlying offense, to
24 determine whether the person intentionally committed the underlying
25 offense primarily because of a person's actual or perceived race, color,
26 ethnicity, national origin, religion, mental or physical disability, gender
27 identity or expression, or sexual orientation;

1 **(b) The hearing shall be conducted by the same court and jury that convicted**
2 **the defendant of the underlying offense, unless the court for good cause**
3 **discharges that jury and impanels a new jury for that purpose; and**

4 **(c) The jury shall determine:**

5 **1. Whether, beyond a reasonable doubt, the person intentionally**
6 **committed the underlying offense primarily because of a person's**
7 **actual or perceived race, color, ethnicity, national origin, religion,**
8 **mental or physical disability, gender identity or expression, or sexual**
9 **orientation; and**

10 **2. The enhanced term of imprisonment to be imposed pursuant to**
11 **subsection (3) of this section, if any.**

12 **(3) When a defendant has been found to have intentionally committed an offense**
13 **outlined in subsection (1) of this section against person primarily because of that**
14 **person's actual or perceived race, color, ethnicity, national origin, religion,**
15 **mental or physical disability, gender identity or expression, or sexual orientation,**
16 **his or her sentence for the underlying offense shall be enhanced as follows:**

17 **(a) If the underlying offense is a Class A or B misdemeanor, the term of**
18 **imprisonment shall be increased by at least half of the maximum**
19 **imprisonment sentence for that misdemeanor and the fine shall be at least**
20 **half of the maximum fine amount for that misdemeanor as provided in KRS**
21 **534.040;**

22 **(b) If the underlying offense is a Class D felony, the term of imprisonment shall**
23 **be increased by one (1) to five (5) years;**

24 **(c) If the underlying offense is a Class C felony, the term of imprisonment shall**
25 **be increased by five (5) to ten (10) years; and**

26 **(d) If the underlying offense is a Class A or B felony, the term of imprisonment**
27 **shall be increased by ten (10) to twenty (20) years.**

1 (4) Any defendant who receives an enhanced term of imprisonment under this
2 section shall not be eligible for probation, shock probation, conditional discharge,
3 parole, or any other form of early release.

4 ➔Section 2. KRS 15.334 is amended to read as follows:

5 (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects
6 to be taught to all students attending a law enforcement basic training course that
7 include but are not limited to:

8 (a) Abuse, neglect, and exploitation of the elderly and other crimes against the
9 elderly, including the use of multidisciplinary teams in the investigation and
10 prosecution of crimes against the elderly;

11 (b) The dynamics of domestic violence, pediatric abusive head trauma, as defined
12 in KRS 620.020, child physical and sexual abuse, and rape; child
13 development; the effects of abuse and crime on adult and child victims,
14 including the impact of abuse and violence on child development; legal
15 remedies for protection; lethality and risk issues; profiles of offenders and
16 offender treatment; model protocols for addressing domestic violence, rape,
17 pediatric abusive head trauma, as defined in KRS 620.020, and child abuse;
18 available community resources and victim services; and reporting
19 requirements. This training shall be developed in consultation with legal,
20 victim services, victim advocacy, and mental health professionals with
21 expertise in domestic violence, child abuse, and rape. Training in recognizing
22 pediatric abusive head trauma may be designed in collaboration with
23 organizations and agencies that specialize in the prevention and recognition of
24 pediatric abusive head trauma approved by the secretary of the Cabinet for
25 Health and Family Services;

26 (c) Human immunodeficiency virus infection and acquired immunodeficiency
27 virus syndrome;

- 1 (d) Identification and investigation of, responding to, and reporting bias-related
2 crime, victimization, or intimidation that is a result of or reasonably related to
3 race, color, ethnicity, ~~[religion, sex, or]~~ national origin, religion, mental or
4 physical disability, gender identity or expression, or sexual orientation;
- 5 (e) The characteristics and dynamics of human trafficking, state and federal laws
6 relating to human trafficking, the investigation of cases involving human
7 trafficking, including but not limited to screening for human trafficking, and
8 resources for assistance to the victims of human trafficking;
- 9 (f) Beginning January 1, 2017, the council shall require that a law enforcement
10 basic training course include at least eight (8) hours of training relevant to
11 sexual assault; and
- 12 (g) Education on female genital mutilation as defined in KRS 508.125, including
13 the risk factors associated with female genital mutilation, the criminal
14 penalties for committing female genital mutilation, and the psychological and
15 health effects on a victim of female genital mutilation.
- 16 (2) (a) The council shall develop and approve mandatory in-service training courses
17 to be presented to all certified peace officers. The council may promulgate
18 administrative regulations in accordance with KRS Chapter 13A setting forth
19 the deadlines by which all certified peace officers shall attend the mandatory
20 in-service training courses.
- 21 (b) Beginning January 1, 2017, the council shall establish a forty (40) hour sexual
22 assault investigation training course. After January 1, 2019, agencies shall
23 maintain officers on staff who have completed the forty (40) hour sexual
24 assault investigation training course in accordance with the following:
- 25 1. Agencies with more than ten (10) but fewer than twenty-one (21) full-
26 time officers shall maintain one (1) officer who has completed the forty
27 (40) hour sexual assault investigation training course;

- 1 2. Agencies with twenty-one (21) or more but fewer than fifty-one (51)
2 full-time officers shall maintain at least two (2) officers who have
3 completed the forty (40) hour sexual assault investigation training
4 course; and
- 5 3. Agencies with fifty-one (51) or more full-time officers shall maintain at
6 least four (4) officers who have completed the sexual assault
7 investigation course.
- 8 (c) An agency shall not make an officer directly responsible for the investigation
9 or processing of sexual assault offenses unless that officer has completed the
10 forty (40) hour sexual assault investigation training course.
- 11 (d) The council may, upon application by any agency, grant an exemption from
12 the training requirements set forth in paragraph (b) of this subsection if that
13 agency, by limitations arising from its scope of authority, does not conduct
14 sexual assault investigations.
- 15 (e) Any agency failing to comply with paragraph (b) or (c) of this subsection
16 shall, from the date the noncompliance commences, have one (1) year to
17 reestablish the minimum number of trained officers required.
- 18 (3) The Justice and Public Safety Cabinet shall provide training on the subjects of
19 domestic violence and abuse and may do so utilizing currently available
20 technology. All certified peace officers shall be required to complete this training at
21 least once every two (2) years.
- 22 (4) The council shall promulgate administrative regulations in accordance with KRS
23 Chapter 13A to establish mandatory basic training and in-service training courses.
- 24 ➔Section 3. KRS 17.1523 is amended to read as follows:
- 25 (1) The uniform offense report shall contain provisions for obtaining information as to
26 whether or not specific crimes appear from their facts and circumstances to be
27 caused as a result of or reasonably related to race, color, ethnicity, ~~[religion, sex, or]~~

1 national origin, religion, mental or physical disability, gender identity or
 2 expression, or sexual orientation.

3 (2) All law enforcement officers, when completing a uniform offense report, shall note
 4 thereon whether or not the offense appears to be caused as a result of or reasonably
 5 related to race, color, ethnicity,~~[religion, sex, or]~~ national origin, religion, mental
 6 or physical disability, gender identity or expression, or sexual orientation, or
 7 attempts to victimize or intimidate another due to any of the foregoing causes.

8 (3) The Justice and Public Safety Cabinet shall, annually, as a part of the crime reports
 9 report on crimes which appear to have been caused by the factors cited in
 10 subsections (1) and (2) of this section.

11 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO
 12 READ AS FOLLOWS:

13 (1) A person is guilty of using hate symbols to intimidate when he or she
 14 intentionally uses, displays, or sends a symbol historically used as a symbol of
 15 impending violence, and thereby places another person in reasonable
 16 apprehension of physical injury.

17 (2) Using hate symbols to intimidate is a Class A misdemeanor.

18 ➔Section 5. The following KRS sections are repealed:

19 49.320 Victim of hate crime deemed victim of criminally injurious conduct.

20 532.031 Hate crimes -- Finding -- Effect -- Definitions.

21 ➔Section 6. The restrictions of KRS 6.945(1) shall not apply to Sections 1 to 4 of
 22 this Act.