

1 1037-S.E AMH JUD H4305.1

2 **ESHB 1037** - H COMM AMD **ADOPTED 2/10/92**  
3 By Committee on Judiciary

4  
5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. I. RCW 9A.36.080 and 1989 c 95 s 1 are each amended to  
8 read as follows:

9 (1) A person is guilty of malicious harassment if he or she  
10 perceives, accurately or inaccurately, that another person is of a  
11 particular race, color, religion, ancestry, national origin, sexual  
12 orientation, or has a mental, physical, or sensory handicap, and  
13 maliciously and with the intent to intimidate or harass ((another))  
14 that person because of, or in a way that is reasonably related to,  
15 associated with, or directed toward, that person's perceived race,  
16 color, religion, ancestry, national origin, sexual orientation, or  
17 mental, physical, or sensory handicap:

18 (a) Causes physical injury to another person; or

19 (b) By words or conduct places another person in reasonable  
20 fear of harm to his or her person or property or harm to the person  
21 or property of a third person. Such words or conduct include, but  
22 are not limited to, (i) cross burning, (ii) painting, drawing, or  
23 depicting symbols or words ((~~on the property of the victim~~)) when  
24 the symbols or words historically or traditionally connote hatred  
25 or threats toward the victim, or (iii) written or oral

1 communication designed to intimidate or harass because of, or in a  
2 way that is reasonably related to, associated with, or directed  
3 toward, that person's perceived race, color, religion, ancestry,  
4 national origin, sexual orientation, or mental, physical, or  
5 sensory handicap. However, it does not constitute malicious  
6 harassment for a person to speak or act in a critical, insulting,  
7 or deprecatory way unless the context or circumstances surrounding  
8 the words or conduct places another person in reasonable fear of  
9 harm to his or her person or property or harm to the person or  
10 property of a third person; or

11 (c) Causes physical damage to or destruction of the property  
12 of another person.

13 (2) The words or conduct do not have to be communicated or  
14 conducted on the victim's property to violate subsection (1)(b) of  
15 this section.

16 (3) "Sexual orientation" for the purposes of this section,  
17 means heterosexuality, homosexuality, or bisexuality.

18 (4) The following constitute ((~~per-se~~)) prima facie evidence  
19 of violations of this section:

20 (a) Cross burning on the victim's property; or

21 (b) Defacement of the property of the victim ((~~or a third~~  
22 ~~person~~)) with symbols or words when the symbols or words  
23 historically or traditionally connote hatred or threats toward the  
24 victim.

25 A judicial finding that conduct is not prima facie evidence of  
26 a violation of this section shall not preclude the state from

1 prosecuting a person under subsection (1) of this section.

2 ~~((3))~~ (5) Malicious harassment is a class C felony.

3 ~~((4))~~ (6) In addition to the criminal penalty provided in  
4 subsection ~~((3))~~ (5) of this section, there is hereby created a  
5 civil cause of action for malicious harassment. A person may be  
6 liable to the victim of malicious harassment for actual damages and  
7 punitive damages of up to ten thousand dollars.

8 ~~((5))~~ (7) The penalties provided in this section for  
9 malicious harassment do not preclude the victims from seeking any  
10 other remedies otherwise available under law or preclude the state  
11 from prosecuting other applicable crimes.

12 (8) Nothing in this section confers or expands any civil  
13 rights or protections to any group or class identified under this  
14 section, beyond those rights or protections that exist under the  
15 federal or state Constitution or the civil laws of the state of  
16 Washington."

17 "NEW SECTION. Sec. II. A new section is added to chapter  
18 36.28A RCW to read as follows:

19 (1) The Washington association of sheriffs and police chiefs  
20 shall establish and maintain a central repository for the  
21 collection and classification of information regarding violations  
22 of RCW 9A.36.080. Upon establishing such a repository, the  
23 association shall develop a procedure to monitor, record, and  
24 classify information relating to violations of RCW 9A.36.080 and  
25 any other crimes of bigotry or bias apparently directed against

1 other persons because the people committing the crimes perceived,  
2 accurately or inaccurately, that their victims were of a particular  
3 race, color, religion, ancestry, national origin, sexual  
4 orientation, or had a mental, physical, or sensory handicap.

5 (2) All local law enforcement agencies shall report monthly to  
6 the association concerning all violations of RCW 9A.36.080 and any  
7 other crimes of bigotry or bias in such form and in such manner as  
8 prescribed by rules adopted by the association. Agency  
9 participation in the association's reporting programs, with regard  
10 to the specific data requirements associated with violations of RCW  
11 9A.36.080 and any other crimes of bigotry or bias, shall be deemed  
12 to meet agency reporting requirements. The association must  
13 summarize the information received and file an annual report with  
14 the governor and the senate law and justice committee and the house  
15 of representatives judiciary committee.

16 (3) The association shall disseminate the information  
17 according to the provisions of chapters 10.97 and 10.98 RCW, and  
18 all other confidentiality requirements imposed by federal or  
19 Washington law.

20 (4) The criminal justice training commission shall provide  
21 training for law enforcement officers in identifying, responding  
22 to, and reporting all violations of RCW 9A.36.080 and any other  
23 crimes of bigotry or bias."

24 "NEW SECTION. **Sec. III.** The provisions of this act shall  
25 be liberally construed in order to effectuate its purpose."

1           "NEW SECTION.   **Sec. IV.**           If any provision of this act or  
2 its application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected."

5           "NEW SECTION.   **Sec. V.**    If specific funding for the purposes  
6 of implementing section 2(4) of this act, referencing this act by  
7 bill and section number, is not provided by June 30, 1992, in the  
8 supplemental omnibus appropriations act, section 2 of this act  
9 shall be null and void."

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11       By Committee on Judiciary

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13           On page 1, line 1 of the title, after "bias;" strike the  
14 remainder of the title and insert "amending RCW 9A.36.080; adding  
15 a new section to chapter 36.28A RCW; and creating new sections."