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HOUSE BILL 2175

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Boldt, Crouse, Schindler and Mielke

Read first time 02/28/2003. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to clarifying malicious harassment; amending RCW  
2 9A.36.080; creating new sections; and providing for submission of this  
3 act to a vote of the people.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9A.36.080 and 1993 c 127 s 2 are each amended to read  
6 as follows:

7 (1) A person is guilty of malicious harassment if he or she  
8 maliciously and intentionally commits one of the following acts because  
9 of (~~his or her perception of~~) the victim's race, color, religion,  
10 ancestry, national origin, gender, sexual orientation, or mental,  
11 physical, or sensory handicap:

12 (a) Causes physical injury to the victim or another person;

13 (b) Causes physical damage to or destruction of the property of the  
14 victim or another person; or

15 (c) Threatens a specific person or (~~group of~~) specific persons  
16 and places that person(~~, or members of the specific group of~~) or  
17 those persons, in reasonable fear of harm to person or property. The  
18 fear must be a fear that a reasonable person would have under all the  
19 circumstances. (~~For purposes of this section, a "reasonable person"~~

1 ~~is a reasonable person who is a member of the victim's race, color,~~  
2 ~~religion, ancestry, national origin, gender, or sexual orientation, or~~  
3 ~~who has the same mental, physical, or sensory handicap as the victim.))~~  
4 Words alone do not constitute malicious harassment unless the context  
5 or circumstances surrounding the words indicate the words are a threat.  
6 Threatening words do not constitute malicious harassment if it is  
7 apparent to the victim that the person does not have the ability, will,  
8 or intent to carry out the threat.

9 (2) In any prosecution for malicious harassment, unless evidence  
10 exists which explains to the trier of fact's satisfaction that the  
11 person did not intend to threaten the victim or victims, the trier of  
12 fact may infer that the person intended to threaten a specific victim  
13 or group of victims because of the person's perception of the victim's  
14 or victims' race, color, religion, ancestry, national origin, gender,  
15 (~~sexual orientation~~) sexuality, or mental, physical, or sensory  
16 handicap if the person commits one of the following acts:

17 (a) Burns a cross on property of a victim who is or whom the actor  
18 perceives to be of African American heritage; or

19 (b) Defaces property of a victim who is or whom the actor perceives  
20 to be of Jewish heritage by defacing the property with a swastika.

21 This subsection only applies to the creation of a reasonable  
22 inference for evidentiary purposes. This subsection does not restrict  
23 the state's ability to prosecute a person under subsection (1) of this  
24 section when the facts of a particular case do not fall within (a) or  
25 (b) of this subsection.

26 (3) It is not a defense that the accused was mistaken that the  
27 victim was a member of a certain race, color, religion, ancestry,  
28 national origin, gender, or sexual orientation, or had a mental,  
29 physical, or sensory handicap.

30 (4) Evidence of expressions or associations of the accused may not  
31 be introduced as substantive evidence at trial unless the evidence  
32 specifically relates to the crime charged. Nothing in this chapter  
33 shall affect the rules of evidence governing impeachment of a witness.

34 (5) Every person who commits another crime during the commission of  
35 a crime under this section may be punished and prosecuted for the other  
36 crime separately.

37 (6) "~~(Sexual orientation)~~ Sexuality" for the purposes of this

1 section means (~~heterosexuality, homosexuality, or bisexuality~~) sexual  
2 practices or conduct.

3 (7) Malicious harassment is a class C felony.

4 (8) The penalties provided in this section for malicious harassment  
5 do not preclude the victims from seeking any other remedies otherwise  
6 available under law.

7 (9) Nothing in this section confers or expands any civil rights or  
8 protections to any group or class identified under this section, beyond  
9 those rights or protections that exist under the federal or state  
10 Constitution or the civil laws of the state of Washington.

11 (10) Nothing in this section restricts or burdens any legal right  
12 of a person under the federal or state constitution or the civil laws  
13 of the state of Washington to consider a person's sexuality in making  
14 decisions regarding employment, credit and insurance transactions,  
15 places of public resort, accommodation, or amusement, and real property  
16 transactions.

17 NEW SECTION. Sec. 2. This act is necessary for the preservation  
18 of the public peace, health, morals, or safety, or support of the state  
19 government and its existing public institutions.

20 NEW SECTION. Sec. 3. The provisions of this act are to be  
21 liberally construed to effectuate the policies and purposes of this  
22 act. In the event of conflict between this act and any other provision  
23 of law, the provisions of this act shall govern.

24 NEW SECTION. Sec. 4. If any provision of this act or its  
25 application to any person or circumstance is held invalid, the  
26 remainder of the act or the application of the provision to other  
27 persons or circumstances is not affected.

28 NEW SECTION. Sec. 5. The secretary of state shall submit this act  
29 to the people for their adoption and ratification, or rejection, at the  
30 next general election to be held in this state, in accordance with  
31 Article II, section 1 of the state Constitution and the laws adopted to  
32 facilitate its operation.

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