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SENATE BILL 5952

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State of Washington

61st Legislature

2009 Regular Session

By Senators McDermott, Murray, Fairley, Prentice, Kohl-Welles, Kline, Pridemore, Tom, Regala, Jacobsen, Marr, Oemig, Haugen, Franklin, Hobbs, and McAuliffe

Read first time 02/09/09. Referred to Committee on Judiciary.

1 AN ACT Relating to modifying the definition of "sexual orientation"  
2 for malicious harassment prosecution purposes; and amending RCW  
3 9A.36.080.

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

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

1 ~~heterosexuality, homosexuality, or bisexuality~~) has the same meaning  
2 as in RCW 49.60.040.

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.

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