
SUBSTITUTE SENATE BILL 6398

State of Washington 61st Legislature 2010 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, McDermott, Keiser, Hobbs, Murray, Jacobsen, Kohl-Welles, and Gordon)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to the definition of threat; and amending RCW
2 9A.36.080.

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

4 **Sec. 1.** RCW 9A.36.080 and 2009 c 180 s 1 are each amended to read
5 as follows:

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

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

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

14 (c) Threatens a specific person or group of persons and places that
15 person, or members of the specific group of persons, in reasonable fear
16 of harm to person or property. The fear must be a fear that a
17 reasonable person would have under all the circumstances. For purposes
18 of this section, a "reasonable person" is a reasonable person who is a
19 member of the victim's race, color, religion, ancestry, national

1 origin, gender, or sexual orientation, or who has the same mental,
2 physical, or sensory handicap as the victim. Words alone do not
3 constitute malicious harassment unless the context or circumstances
4 surrounding the words indicate the words are a threat. Threatening
5 words do not constitute malicious harassment if it is apparent to the
6 victim that the person does not have the ability to carry out the
7 threat.

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

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

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

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

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

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

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

36 (6) For the purposes of this section:

37 (a) "Sexual orientation" (~~for the purposes of this section~~) has
38 the same meaning as in RCW 49.60.040.

1 (b) "Threat" means to communicate, directly or indirectly, the
2 intent to:

3 (i) Cause bodily injury immediately or in the future to the person
4 threatened or to any other person; or

5 (ii) Cause physical damage immediately or in the future to the
6 property of a person threatened or that of any other person.

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

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

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

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