

# SENATE BILL REPORT

## ESB 5280

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As Passed Senate, March 8, 2017

**Title:** An act relating to making crimes and threats against persons because of their occupation as a law enforcement officer a hate crime.

**Brief Description:** Making crimes and threats against persons because of their occupation as a law enforcement officer a hate crime.

**Sponsors:** Senators Honeyford, Rivers, Becker, Sheldon, Brown, Angel, Miloscia, Warnick, Padden, Bailey and Wilson.

**Brief History:**

**Committee Activity:** Law & Justice: 2/02/17, 2/16/17 [DP].

**Floor Activity:**

Passed Senate: 3/08/17, 35-14.

**Brief Summary of Engrossed Bill**

- Adds the perception of the victim's occupation as a law enforcement officer as a prohibited act constituting malicious harassment.
- Adds assault in the third degree involving a law enforcement officer to the other crimes that may constitute harassment.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Angel, Darneille, Frockt and Wilson.

**Staff:** Aldo Melchiori (786-7439)

**Background:** A person is guilty of malicious harassment if they maliciously and intentionally commit one of the following acts because of their perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

- causes physical injury to the victim or another person;

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- causes physical damage to or destruction of the property of the victim or another person; or
- threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. A reasonable person is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim.

Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat. Malicious harassment is a Class C felony ranked at Level IV on the sentencing grid—3-9 months and/or up to a \$10,000 fine for a first offense.

A person is guilty of harassment if:

- without lawful authority, the person knowingly threatens:
  - to cause bodily injury immediately or in the future to the person threatened or to any other person; or
  - to cause physical damage to the property of another person; or
  - to subject the person threatened or any other person to physical confinement or restraint; or
  - maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to their physical or mental health or safety; and
- the person, by words or conduct, places the person threatened in reasonable fear that the threat will be carried out.

A person who harasses another is guilty of a gross misdemeanor—up to 364 days in jail and/or up to a \$5,000 fine—unless any of the following factors apply, in which case it is a Class C felony:

- the person has previously been convicted in this or any other state of any crime of harassment of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order;
- the person harasses another person by threatening to kill the person threatened or any other person;
- the person harasses a criminal justice participant who is performing their official duties at the time the threat is made; or
- the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of their official duties.

There are 38 enumerated crimes that are included in the definition of harassment.

Assault in the third degree is a Class C felony ranked at Level III on the sentencing grid—1-3 months and/or up to a \$10,000 fine for a first offense—unless the person uses a stun gun against a peace officer, in which case it is ranked at Level IV—3-9 months and/or up to a \$10,000 fine for a first offense. Assault in this degree is committed if a person:

- with intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of themselves or another person, assaults another;
- assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing their official duties;
- assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing their official duties;
- with criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm;
- assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing their official duties;
- with criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering;
- assaults a law enforcement officer or other employee of a law enforcement agency who was performing their official duties;
- assaults a peace officer with a projectile stun gun; or
- assaults a nurse, physician, or health care provider who was performing their nursing or health care duties;
- assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing their official duties or as a result of that person's employment within the judicial system; or
- assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber.

**Summary of Engrossed Bill:** A person commits malicious harassment if the person commits one of the prohibited acts because of their perception of the victim's occupation as a law enforcement officer. Assault in the third degree involving a law enforcement officer is added to the other crimes that may constitute harassment.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:** PRO: People become law enforcement officers because they have a strong belief in our state and our country. They risk their lives every day to protect us all. This will help protect police and let them go home to their families. Nationwide in 2016, 63 of the 140 law enforcement officers that lost their lives were victims of firearm violence. In 2017, 15 officers have already lost their lives and 5 of those were shot.

**Persons Testifying:** PRO: Senator Jim Honeyford, Prime Sponsor.

**Persons Signed In To Testify But Not Testifying:** PRO: Marco Monteblanco, citizen; Kelly Monteblanco, citizen; Michael Sargent, WACOPS; Dennis Seinger Jr., Washington Forestry Public Policy Group; Bud Sizemore, WACOPS.

CON: Dr. Karen Johnson, Black Alliance of Thurston County