

FINAL BILL REPORT

ESHB 1732

C 271 L 19
Synopsis as Enacted

Brief Description: Identifying and responding to bias-based criminal offenses.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Valdez, Entenman, Ramos, Wylie, Gregerson, Dolan, Frame, Jenkins, Ortiz-Self, Orwall, Peterson, Ryu, Stanford, Kilduff, Santos, Thai, Senn, Macri and Pollet).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

Criminal Liability for Malicious Harassment.

A person is guilty of Malicious Harassment if the person maliciously and intentionally commits one of the following acts because of his or her 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;
- 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 the same circumstances. For purposes of the offense, 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. 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.

In any prosecution for Malicious Harassment, absent evidence that the person did not intend to threaten the victim, the trier of fact may infer that a threat was intended if the person: (1) burns a cross on the property of a victim who is, or whom the actor perceives to be, of African American heritage; or (2) defaces with a swastika the property of a victim who is, or whom the actor perceives to be, of Jewish heritage.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The category of "sexual orientation," as defined, includes heterosexuality, homosexuality, bisexuality, and gender expression or identity. "Gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

Malicious Harassment is a class C felony carrying a maximum sentence of five years of imprisonment and/or a \$10,000 fine. Malicious Harassment is ranked as a seriousness level IV offense on the sentencing grid, carrying a standard range sentence of three to nine months of imprisonment for a first offense.

If a person commits another crime during the commission of Malicious Harassment, the person may be punished and prosecuted for the other crime separately.

Civil Liability for Malicious Harassment.

In addition to being subject to criminal penalties, a person who commits a Malicious Harassment offense may be civilly liable. The victim of a Malicious Harassment offense may bring a civil cause of action against the harasser for actual damages, punitive damages of up to \$10,000, and reasonable attorneys' fees and costs incurred in bringing the action.

Law Enforcement Training and Reporting of Malicious Harassment.

The Criminal Justice Training Commission (CJTC) provides basic law enforcement training and educational programs for law enforcement, corrections officers, and other public safety professionals in Washington. The CJTC is required to provide training for law enforcement officers in identifying, responding to, and reporting all Malicious Harassment offenses, and any other crimes of bigotry or bias.

The Washington Association of Sheriffs and Police Chiefs (WASPC) is required to maintain a central repository for the collection and classification of information regarding Malicious Harassment violations and other crimes of bigotry and bias. All law enforcement agencies must file monthly reports of Malicious Harassment and other bias offenses to the WASPC for compilation into an annual report to the Governor and the Legislature.

Summary:

The criminal offense of Malicious Harassment is renamed "Hate Crime Offense." References to "handicap" in the Hate Crime Offense statute are removed and replaced with the term "disability." "Gender identity or expression" is independently listed as a protected category under the Hate Crime Offense statute, rather than being included as part of the definition of "sexual orientation." Definitions of "sexual orientation" and "gender identity or expression" are included in the Hate Crime Offense statute itself, rather than by cross-reference to another statutory definition.

The acts that allow the trier of fact in a criminal prosecution for a Hate Crime Offense to infer that a threat was intended are expanded to include the following acts:

- defacing religious real property with words, symbols, or items that are derogatory to persons of the faith associated with the property;
- placing a vandalized or defaced religious item or scripture on the property of a victim who is, or whom the actor perceives to be, of the faith with which that item or scripture is associated;
- damaging, destroying, or defacing religious garb or other faith-based attire belonging to the victim, or removing or attempting to remove religious garb or other faith-based attire from the victim's person without the victim's authorization; and
- placing a noose on the property of a victim who is, or whom the actor perceives to be, of a racial or ethnic minority group.

The maximum punitive damages available in a civil action brought by the victim of a Hate Crime Offense are increased from \$10,000 to \$100,000.

A multidisciplinary hate crime advisory working group is created within the Office of the Attorney General for the purpose of developing strategies to raise awareness of and appropriate responses to hate crime offenses and hate incidents. The Office of the Attorney General must convene the working group by September 1, 2019.

The working group's membership must include four legislators, the Office of the Attorney General, and 10 members appointed by the Governor, with six representing groups protected under the Hate Crime Offense statute and one representing each of the following groups: law enforcement; prosecutors; a local organization with national expertise legislating against, tracking, and responding to hate crimes and hate incidents; and K-12 educators. The working group is encouraged to solicit participation and feedback from nonmember groups and individuals with relevant experience as needed.

The working group must develop recommended best practices for:

- preventing hate crimes and hate incidents, especially those occurring in public K–12 schools and in the workplace, through public awareness and anti-bias campaigns;
- increasing identification and reporting of hate crimes and hate incidents, including recommendations for standardization of data collection and reporting;
- strengthening law enforcement, prosecutorial, and public K–12 school responses to hate crime offenses and hate incidents through enhanced training and other measures; and
- supporting victims of hate crime offenses and hate incidents—in particular, identifying ways of strengthening law enforcement, health care, and educational collaboration with, and victim connection to, community advocacy and support organizations.

The working group must hold at least four meetings. The Office of the Attorney General must report the working group's recommendations to the Governor and the Legislature by July 1, 2020.

Votes on Final Passage:

House 85 12
Senate 35 11 (Senate amended)
House 73 21 (House concurred)

Effective: July 28, 2019