

# SENATE BILL REPORT

## SB 5952

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As Passed Senate, March 10, 2009

**Title:** An act relating to modifying the definition of "sexual orientation" for malicious harassment prosecution purposes.

**Brief Description:** Modifying the definition of "sexual orientation" for malicious harassment prosecution purposes.

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

**Brief History:**

**Committee Activity:** Judiciary: 2/25/09 [DP].

Passed Senate: 3/10/09, 36-12.

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Kohl-Welles, Roach and Tom.

**Staff:** Juliana Roe (786-7438)

**Background:** Under current law, 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: (a) causes physical injury to the victim or someone else; (b) causes physical damage to or destruction of the property of the victim or someone else; or (c) threatens a specific person or group of persons and puts that person, or that group in reasonable fear of harm. The fear must be fear that a reasonable person would have under the circumstances. "Reasonable person" is defined as a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the words and circumstances indicate a threat. Malicious harassment is a class C felony.

"Sexual orientation" is defined as heterosexuality, homosexuality, or bisexuality.

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*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.*

Under labor regulations in RCW 49.60.040, "sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "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.

**Summary of Bill:** The definition of "sexual orientation" is changed to mirror the definition provided in RCW 49.60.040.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: People are often motivated by their biases. Peoples' biases can include bias of sexual orientation. In the malicious harassment law, transgendered persons are not currently included as a protected class of persons. This bill would include transgendered persons. No one should be subjected to threat or intimidation based on their sexual orientation.

Harassment of persons due to sexual orientation takes place everywhere. At least 12 other states have enacted laws, or incorporated into existing laws, protections for transgendered persons. This state should not continue to punish transgendered persons for being honest about who they are.

College campuses have recently seen an increase in attacks and harassment relating to sexual orientation. This is not only an issue relating to equality, but one relating to safety. Students understand hate crimes. Hate crimes are not going anywhere in the near future. If this bill is not passed, the Legislature will be sending a message that these people are not valued. It will continue to foster a culture of fear and hate.

**Persons Testifying:** PRO: Senator McDermott, prime sponsor; Matt Holmes, Washington Student Lobby; Ramsey Campbell, Marsha Botzer, Equal Rights Washington, Washington Transgender Equality Project; Dave Ismenger, Washington Student Lobby, University of Washington Grad Students.