

SENATE BILL REPORT

ESHB 1732

As Reported by Senate Committee On:
Law & Justice, March 28, 2019

Title: An act relating to identifying and responding to bias-based criminal offenses.

Brief Description: Concerning 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, Jinkins, Ortiz-Self, Orwall, Peterson, Ryu, Stanford, Kilduff, Santos, Thai, Senn, Macri and Pollet).

Brief History: Passed House: 3/07/19, 85-12.

Committee Activity: Law & Justice: 3/26/19, 3/28/19 [DPA, w/oRec].

Brief Summary of Amended Bill

- Renames the crime of malicious harassment to the commission of a hate crime.
- Allows a trier of fact to infer an act was due to the victim's association with a protected class if certain actions are taken.
- Requires the attorney general to convene a Hate Crime Advisory Working Group.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Holy.

Staff: Shani Bauer (786-7468)

Background: A person is guilty of malicious harassment if the person maliciously and intentionally commits one of the following acts because of the person's perception of the

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victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

- causes physical injury to the victim or someone else;
- causes physical damage to or destruction of the property of the victim or someone else; or
- 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.

The definition of sexual orientation for the purpose of malicious harassment was modified in 2009 to refer to the definition of sexual orientation in the Revised Code of Washington chapter addressing discrimination.

Under that definition, 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 Amended Bill: The crime of malicious harassment is renamed to a hate crime offense.

The list of protected classes for which a crime or threat against a person for that reason will constitute a hate crime includes gender expression or identity and within the list of classes, the term sensory handicap is changed to sensory disability.

A trier of fact may infer the act was due to the perception of the victim's association with a protected class if the person:

- defaces religious property with words, symbols, or items that are derogatory to persons of the faith associated with the property;
- places a vandalized or defaced religious item or scripture on the property of the victim;
- places a noose on the property of a victim who is or whom the actor perceives to be of a racial or ethnic minority group; or
- damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim.

The attorney general must convene a multidisciplinary Hate Crime Advisory Working Group for the purpose of developing strategies toward raising awareness of and responses to hate crime offenses. Membership in the working group includes:

- four legislators, one appointed by each of the two largest caucuses of the Senate and one appointed by each of the two largest caucuses of the House of Representatives;
- six members appointed by the Governor from organizations representing protected groups;
- one members appointed by the Governor representing prosecutors;
- one member appointed by the Governor representing law enforcement;
- one member appointed by the Governor from an organization with expertise in legislating against hate crimes and hate incidents;
- one member appointed by the Governor representing K-12 educators; and
- one member representing the Attorney General's Office.

The working group must recommend best practices for:

- preventing hate crimes and hate incidents through public awareness and anti-bias campaigns;
- increasing identification and reporting of hate crimes and hate incidents, including the standardization of data collection and reporting;
- strengthening law enforcement and prosecutorial responses through enhanced training and other measures; and
- supporting victims of hate crime and hate incident offenses, including ways of strengthening law enforcement collaboration with, and victim connection to, community advocacy and support organizations.

The working group must hold at least four meetings and issue a report with recommendations to the Governor and the Legislature no later than July 1, 2020.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S): Placing a noose on the property of a victim who is or is perceived to be of a racial or ethnic minority group is added to the list of criteria from which a hate crime may be inferred. Advisory work group membership is further specified to include legislative members, ten members appointed by the Governor, and a representative of the Attorney General's Office. The work group is required to undertake its work with a view towards restorative justice and develop strategies and responses to both hate crimes and hate incidents.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We have a growing problem of hate crimes in this state. Sadly since 2017, we have a 42 percent increase in the number of reported hate crimes compared to an increase of 17 percent for the country. We are second in the nation, right behind California. Not only is the number of hate crimes increasing, but the severity. The number of incidents that involve the use of a weapon is increasing as is the incidence of sustained injuries as a result of these hate crimes.

Regardless of your ethnicity or beliefs, it is not okay to cause suffering to other people and minority groups. The workgroup will improve Washington's response to hate crimes to help bring our state law into line with other states and name these incidents out for what they are. These crimes are not harassment—they are hate crimes.

In 2006, the Jewish Federation was victim to an awful hate crime, resulting in the death of one employee and the injury of five others. Eleven congregants were murdered this last year in Pittsburgh. The nature of hate crimes are horrendous in that they terrorize a group of people and place them in fear of congregating together.

It is a reality that being a Muslim means facing countless years of harassment. Mosques are frequently targeted for attacks and show up daily in the news. Women who wear a hijab are targeted frequently on buses or on the street. This bill will ensure that targeting someone for their religious garb is a hate crime.

Persons Testifying: PRO: Representative Javier Valdez, Prime Sponsor; Nina Martinez, Board Chair, Latino Civic Alliance; Nancy Greer, President and CEO, Jewish Federation; Monisha Harrell, Board Chair, Equal Rights Washington; Linda Clifton, Anti-Defamation League PNW; Varisha Khan, citizen; Emilia Jones, Attorney General's Office.

Persons Signed In To Testify But Not Testifying: No one.