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HOUSE BILL 2458

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State of Washington

52nd Legislature

1992 Regular Session

By Representatives Wineberry, Appelwick, Locke, Paris, Franklin, Nelson, Wang, Leonard, Ogden, Cantwell, Vance, Cooper, Jacobsen, G. Cole, Riley, Scott, Prentice, Braddock, Jones, Inslee, Anderson, Valle, Spanel, Dorn, Dellwo, Brough, Prince, Roland, R. Fisher, G. Fisher, R. Meyers, Zellinsky, Miller, Kremen, Wilson, Hine, Sheldon, Pruitt, Orr, Heavey, Ebersole, Day, Forner, May, Haugen, J. Kohl, Ludwig, Ferguson, R. King, Wynne, Mitchell, Sprenkle, O'Brien, H. Myers, Rasmussen and Basich

Read first time 01/17/92. Referred to Committee on Judiciary.

1 AN ACT Relating to malicious harassment; amending RCW 9A.36.080;  
2 adding a new section to chapter 36.28A RCW; creating a new section; and  
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that crimes and  
6 threats against persons because of their race, color, religion,  
7 ancestry, national origin, sexual orientation, or mental, physical, or  
8 sensory handicaps are serious and increasing. The legislature also  
9 finds that crimes and threats are often directed against interracial  
10 couples and their children or couples of mixed religions, colors,  
11 ancestries, or national origins because of bias and bigotry against the  
12 race, color, religion, ancestry, or national origin of one person in  
13 the couple or family. Protection of those citizens from threats of  
14 harm due to bias and bigotry is a compelling state interest.

1 The legislature finds that cross burnings historically and  
2 traditionally have been used to threaten, terrorize, intimidate, and  
3 harass African Americans and their families and cross burnings often  
4 preceded lynchings, murders, burning of homes, and other acts of  
5 terror. Further, Nazi swastikas historically and traditionally have  
6 been used to threaten, terrorize, intimidate, and harass Jewish people  
7 and their families. Swastikas symbolize the massive destruction of the  
8 Jewish population, commonly known as the holocaust.

9 Therefore, the legislature finds that any person who burns or  
10 attempts to burn a cross or displays a swastika, if the act is directed  
11 towards a particular person, the person's family or household members,  
12 or a particular group, knows or reasonably should know that the act may  
13 create a reasonable fear of harm in the mind of the person, the  
14 person's family and household members, or the group.

15 **Sec. 2.** RCW 9A.36.080 and 1989 c 95 s 1 are each amended to read  
16 as follows:

17 (1) A person is guilty of malicious harassment if:

18 (a) He or she maliciously and with the intent to threaten,  
19 terrorize, intimidate, or harass (~~((another person))~~) the victim because  
20 of, or in a way that is reasonably related to, associated with, or  
21 directed toward, (~~((that person's))~~) the race, color, religion, ancestry,  
22 national origin, sexual orientation, or mental, physical, or sensory  
23 handicap of the victim or of one of the victim's family or household  
24 members does any of the following:

25 (~~((a))~~) (i) Causes physical injury to another person; (or

26 ~~((b))~~) (ii) Causes physical damage to or destruction of another  
27 person's property; or

28 (iii) Communicates threats, as defined in RCW 9A.04.110, directly  
29 or indirectly to the victim by words or conduct (~~((places another person~~

1 ~~in reasonable fear of harm to his person or property or harm to the~~  
2 ~~person or property of a third person. Such))~~ intended to cause the  
3 victim to fear that the threat will be carried out against the victim  
4 or another person. It is not a defense that the accused had no  
5 intention of actually carrying out the threat. Threatening words or  
6 conduct include, but are not limited to, ((i)) (A) cross burning,  
7 ((ii)) (B) painting, drawing, or depicting symbols or words ((on the  
8 property of the victim)) when the symbols or words historically or  
9 traditionally connote hatred or threats toward ((the victim)) persons  
10 of a particular race, color, religion, ancestry, national origin,  
11 sexual orientation, or toward persons with a particular mental,  
12 physical, or sensory handicap, or ((iii)) (C) written or oral  
13 communication designed to threaten, terrorize, intimidate, or harass  
14 ((because of, or in a way that is reasonably related to, associated  
15 with, or directed toward, that person's race, color, religion,  
16 ancestry, national origin, or mental, physical, or sensory handicap.  
17 However, it does not constitute malicious harassment for a person to  
18 speak or act in a)) the victim. Critical, insulting, or deprecatory  
19 ((way unless the context or circumstances surrounding the words or  
20 conduct places another person in reasonable fear of harm to his or her  
21 person or property or harm to the person or property of a third person;  
22 or

23 ~~(c) Causes physical damage to or destruction of the property of~~  
24 ~~another person))~~ words or conduct that are not threats do not  
25 constitute malicious harassment; and

26 (b) As a result of the accused's actions under (a) (i), (ii), or  
27 (iii) of this subsection, the victim is terrorized or placed in fear  
28 that the person or property of the victim or of another person will be  
29 physically injured or destroyed or that the threat communicated under  
30 (a)(iii) of this subsection will be carried out against the victim or

1 another person. The fear must be a fear that a reasonable person would  
2 have under all the circumstances. For purposes of this section, a  
3 "reasonable person" is a reasonable person who is a member of the  
4 victim's race, color, religion, ancestry, national origin, sexual  
5 orientation, or who has the same mental, physical, or sensory handicap  
6 as the victim.

7 (2) The following constitute (~~per se~~) prima facie evidence of  
8 violations of this section:

9 (a) Cross burning on the victim's property; or

10 (b) Defacement of the property of the victim (~~or a third person~~)  
11 with symbols or words when the symbols or words historically or  
12 traditionally connote hatred or threats toward the (~~victim~~) race,  
13 color, religion, ancestry, national origin, sexual orientation, or  
14 mental, physical, or sensory handicap of the victim or of one of the  
15 victim's family or household members.

16 (3) It is not a defense that the accused was mistaken that the  
17 victim or a member of the victim's family or household was of a certain  
18 race, color, religion, ancestry, national origin, sexual orientation,  
19 or had a mental, physical, or sensory handicap.

20 (4) Malicious harassment is a class (~~C~~) B felony.

21 (~~(4)~~) (5) In addition to the criminal penalty provided in  
22 subsection (~~(3)~~) (4) of this section, there is hereby created a civil  
23 cause of action for malicious harassment. A person may be liable to  
24 the victim of malicious harassment for actual damages and punitive  
25 damages of up to ten thousand dollars.

26 (6) In addition to any other court-imposed penalties, the court  
27 shall require the person found to have maliciously harassed the victim  
28 to make restitution to the victim, including the costs of any  
29 psychological counseling provided to the victim or members of the  
30 victim's family or household as a result of the malicious harassment.

1       (~~(5)~~) (7) The penalties provided in this section for malicious  
2 harassment do not preclude the victims from seeking any other remedies  
3 otherwise available under law. Nothing in this section confers or  
4 expands any civil rights or protection to any group or class identified  
5 in this section, beyond those rights and protection afforded under this  
6 section and those rights and protection that currently exist under  
7 federal or Washington state constitutional law, common law, or  
8 statutory law.

9       NEW SECTION. **Sec. 3.** A new section is added to chapter 36.28A RCW  
10 to read as follows:

11       (1) The Washington association of sheriffs and police chiefs shall  
12 establish and maintain a central repository for the collection and  
13 classification of information regarding violations of RCW 9A.36.080.  
14 Upon establishing such a repository, the association shall develop a  
15 procedure to monitor, record, and classify information relating to  
16 violations of RCW 9A.36.080 and any other crimes of bigotry or bias  
17 apparently directed against persons because of their race, color,  
18 religion, ancestry, national origin, sexual orientation, or mental,  
19 physical, or sensory handicap.

20       (2) All local law enforcement agencies shall report monthly to the  
21 association concerning all violations of RCW 9A.36.080 and any other  
22 crimes of bigotry or bias in such form and in such manner as prescribed  
23 by rules adopted by the association. Agency participation in the  
24 association's reporting programs, with regard to the specific data  
25 requirements associated with violations of RCW 9A.36.080 and any other  
26 crimes of bigotry or bias, shall be deemed to meet agency reporting  
27 requirements. The association must summarize the information received  
28 and file an annual report with the governor and the senate law and  
29 justice committee and the house of representatives judiciary committee.

1 (3) The association shall disseminate the information according to  
2 the provisions of chapters 10.97 and 10.98 RCW, and all other  
3 confidentiality requirements imposed by federal or Washington law.

4 (4) The criminal justice training commission shall provide training  
5 for law enforcement officers, prosecutors, defense attorneys, and  
6 judges in identifying and responding to all violations of RCW 9A.36.080  
7 and any other crimes of bigotry or bias.

8 NEW SECTION. **Sec. 4.** If any provision of this act or its  
9 application to any person or circumstance is held invalid, the  
10 remainder of the act or the application of the provision to other  
11 persons or circumstances is not affected.