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**HOUSE BILL 1398**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives McCabe, Lovick, Haler, Klippert, Rodne, Hayes, Irwin, Johnson, Griffey, Holy, Caldier, and Muri

AN ACT Relating to making crimes and threats against persons because of their occupation as a law enforcement officer a hate crime; amending RCW 9A.36.078, 9A.36.080, 9A.46.060, 9A.36.031, and 36.28A.030; prescribing penalties; and declaring an emergency.

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

**Sec.**  RCW 9A.36.078 and 1993 c 127 s 1 are each amended to read as follows:

The legislature finds that crimes and threats against persons because of their race, color, religion, ancestry, national origin, gender, occupation as a law enforcement officer, sexual orientation, or mental, physical, or sensory handicaps are serious and increasing. The legislature also finds that crimes and threats are often directed against interracial couples and their children or couples of mixed religions, colors, ancestries, or national origins because of bias and bigotry against the race, color, religion, ancestry, or national origin of one person in the couple or family. The legislature finds that the state interest in preventing crimes and threats motivated by bigotry and bias goes beyond the state interest in preventing other felonies or misdemeanors such as criminal trespass, malicious mischief, assault, or other crimes that are not motivated by hatred, bigotry, and bias, and that prosecution of those other crimes inadequately protects citizens from crimes and threats motivated by bigotry and bias. Therefore, the legislature finds that protection of those citizens from threats of harm due to bias and bigotry is a compelling state interest.

The legislature also finds that in many cases, certain discrete words or symbols are used to threaten the victims. Those discrete words or symbols have historically or traditionally been used to connote hatred or threats towards members of the class of which the victim or a member of the victim's family or household is a member. In particular, the legislature finds that cross burnings historically and traditionally have been used to threaten, terrorize, intimidate, and harass African Americans and their families. Cross burnings often preceded lynchings, murders, burning of homes, and other acts of terror. Further, Nazi swastikas historically and traditionally have been used to threaten, terrorize, intimidate, and harass Jewish people and their families. Swastikas symbolize the massive destruction of the Jewish population, commonly known as the holocaust. Therefore, the legislature finds that any person who burns or attempts to burn a cross or displays a swastika on the property of the victim or burns a cross or displays a swastika as part of a series of acts directed towards a particular person, the person's family or household members, or a particular group, knows or reasonably should know that the cross burning or swastika may create a reasonable fear of harm in the mind of the person, the person's family and household members, or the group.

The legislature also finds that a hate crime committed against a victim because of the victim's gender may be identified in the same manner that a hate crime committed against a victim of another protected group is identified. Affirmative indications of hatred towards gender as a class is the predominant factor to consider. Other factors to consider include the perpetrator's use of language, slurs, or symbols expressing hatred towards the victim's gender as a class; the severity of the attack including mutilation of the victim's sexual organs; a history of similar attacks against victims of the same gender by the perpetrator or a history of similar incidents in the same area; a lack of provocation; an absence of any other apparent motivation; and common sense.

The legislature also finds that a hate crime committed against a victim because of the victim's occupation as a law enforcement officer may be identified in the same manner that a hate crime committed against a victim of another protected group is identified. Affirmative indications of hatred towards the victim's occupation as a law enforcement officer as a class is the predominant factor to consider. Other factors to consider include the perpetrator's use of language, slurs, or symbols expressing hatred towards the victim's occupation as a law enforcement officer as a class; the severity of the attack; a history of similar attacks against victims of the same occupation as a law enforcement officer by the perpetrator or a history of similar incidents in the same area; a lack of provocation; an absence of any other apparent motivation; and common sense.

**Sec.**  RCW 9A.36.080 and 2010 c 119 s 1 are each amended to read as follows:

(1) A person is guilty of malicious harassment if he or she 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, occupation as a law enforcement officer, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) 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. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, occupation as a law enforcement officer, 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.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, occupation as a law enforcement officer, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, occupation as a law enforcement officer, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) For the purposes of this section:

(a) "Sexual orientation" has the same meaning as in RCW 49.60.040.

(b) "Threat" means to communicate, directly or indirectly, the intent to:

(i) Cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) Cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

(7) Malicious harassment is a class C felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington.

**Sec.**  RCW 9A.46.060 and 2006 c 138 s 21 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

(1) Harassment (RCW 9A.46.020);

(2) Malicious harassment (RCW 9A.36.080);

(3) Telephone harassment (RCW 9.61.230);

(4) Assault in the first degree (RCW 9A.36.011);

(5) Assault of a child in the first degree (RCW 9A.36.120);

(6) Assault in the second degree (RCW 9A.36.021);

(7) Assault of a child in the second degree (RCW 9A.36.130);

(8) Assault in the fourth degree (RCW 9A.36.041);

(9) Assault in the third degree involving a law enforcement officer (RCW 9A.36.031);

(10) Reckless endangerment (RCW 9A.36.050);

((~~(10)~~)) (11) Extortion in the first degree (RCW 9A.56.120);

((~~(11)~~)) (12) Extortion in the second degree (RCW 9A.56.130);

((~~(12)~~)) (13) Coercion (RCW 9A.36.070);

((~~(13)~~)) (14) Burglary in the first degree (RCW 9A.52.020);

((~~(14)~~)) (15) Burglary in the second degree (RCW 9A.52.030);

((~~(15)~~)) (16) Criminal trespass in the first degree (RCW 9A.52.070);

((~~(16)~~)) (17) Criminal trespass in the second degree (RCW 9A.52.080);

((~~(17)~~)) (18) Malicious mischief in the first degree (RCW 9A.48.070);

((~~(18)~~)) (19) Malicious mischief in the second degree (RCW 9A.48.080);

((~~(19)~~)) (20) Malicious mischief in the third degree (RCW 9A.48.090);

((~~(20)~~)) (21) Kidnapping in the first degree (RCW 9A.40.020);

((~~(21)~~)) (22) Kidnapping in the second degree (RCW 9A.40.030);

((~~(22)~~)) (23) Unlawful imprisonment (RCW 9A.40.040);

((~~(23)~~)) (24) Rape in the first degree (RCW 9A.44.040);

((~~(24)~~)) (25) Rape in the second degree (RCW 9A.44.050);

((~~(25)~~)) (26) Rape in the third degree (RCW 9A.44.060);

((~~(26)~~)) (27) Indecent liberties (RCW 9A.44.100);

((~~(27)~~)) (28) Rape of a child in the first degree (RCW 9A.44.073);

((~~(28)~~)) (29) Rape of a child in the second degree (RCW 9A.44.076);

((~~(29)~~)) (30) Rape of a child in the third degree (RCW 9A.44.079);

((~~(30)~~)) (31) Child molestation in the first degree (RCW 9A.44.083);

((~~(31)~~)) (32) Child molestation in the second degree (RCW 9A.44.086);

((~~(32)~~)) (33) Child molestation in the third degree (RCW 9A.44.089);

((~~(33)~~)) (34) Stalking (RCW 9A.46.110);

((~~(34)~~)) (35) Cyberstalking (RCW 9.61.260);

((~~(35)~~)) (36) Residential burglary (RCW 9A.52.025);

((~~(36)~~)) (37) Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;

((~~(37)~~)) (38) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and

((~~(38)~~)) (39) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

**Sec.**  RCW 9A.36.031 and 2013 c 256 s 1 are each amended to read as follows:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) 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 himself, herself, or another person, assaults another; or

(b) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(c) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(d) 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 his or her official duties at the time of the assault; or

((~~(c)~~)) (e) 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 his or her official duties at the time of the assault; or

((~~(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or~~

~~(e)~~)) (f) 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 his or her official duties at the time of the assault; or

((~~(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or~~

~~(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or~~

~~(h)~~)) (g) Assaults a peace officer with a projectile stun gun; or

((~~(i)~~)) (h) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

((~~(j)~~)) (i) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions; or

((~~(k)~~)) (j) 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. This section shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with RCW 2.28.200 at the time of the assault.

(2) Assault in the third degree is a class C felony.

**Sec.**  RCW 36.28A.030 and 1993 c 127 s 4 are each amended to read as follows:

(1) The Washington association of sheriffs and police chiefs shall establish and maintain a central repository for the collection and classification of information regarding violations of RCW 9A.36.080. Upon establishing such a repository, the association shall develop a procedure to monitor, record, and classify information relating to violations of RCW 9A.36.080 and any other crimes of bigotry or bias apparently directed against other persons because the people committing the crimes perceived that their victims were of a particular race, color, religion, ancestry, national origin, gender, occupation as a law enforcement officer, sexual orientation, or had a mental, physical, or sensory handicap.

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

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

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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