

SENATE BILL REPORT

SB 5427

As Reported by Senate Committee On:
Ways & Means, February 5, 2024

Title: An act relating to supporting people who have been targeted or affected by hate crimes and bias incidents by establishing a reporting hotline, tracking hate crimes and bias incidents, and creating a compensation program and assistance fund.

Brief Description: Concerning people who have been targeted or affected by hate crimes and bias incidents. [**Revised for 1st Substitute:** Supporting people who have been targeted or affected by hate crimes and bias incidents by establishing a reporting hotline and tracking hate crimes and bias incidents.]

Sponsors: Senators Valdez, Billig, Cleveland, Dhingra, Frame, Hasegawa, Hunt, Keiser, Kuderer, Liias, Lovelett, Lovick, Saldaña, Salomon, Stanford and Wilson, C..

Brief History:

Committee Activity: Ways & Means: 2/20/23; 1/18/24, 2/05/24 [DPS, DNP, w/oRec].

Brief Summary of First Substitute Bill

- Creates a hotline in the Attorney General's Office to receive reports of hate crimes and bias incidents and provide referrals for services.
- Establishes an advisory committee for design of the hotline program.
- Requires an annual report of hate crimes and bias incidents reported to the hotline.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

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

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

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune.

Minority Report: That it be referred without recommendation.

Signed by Senators Torres, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5427 be substituted therefor, and the substitute bill do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Schoesler, Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall and Torres.

Staff: Samuel Brown (786-7470)

Background: Hate Crime Offense. A person is guilty of a hate crime offense, a class C felony, if the person maliciously and intentionally commits one of the following acts because of the person's perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability:

- 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 a fear a reasonable person would have under all the circumstances.

Words alone do not constitute a hate crime offense unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute a hate crime offense if it is apparent to the victim the person does not have the ability to carry out the threat.

Definitions. "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 who has the same gender expression or identity, or the same mental, physical, or sensory handicap as the victim.

"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.

"Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

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

- cause bodily injury immediately or in the future to the person threatened or to any other person; or
- cause physical damage immediately or in the future to the property of a person threatened or that of any other person.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Hate Crimes and Bias Incidents Hotline. The Attorney General's Office (AGO) must oversee a hate crimes and bias incidents hotline (hotline) staffed during business hours, dedicated to assisting people who have been targeted or affected by hate crimes and bias incidents. The hotline must:

- provide appropriate victim-centered, culturally competent, and trauma-informed information and referral;
- be as accessible to as many residents of Washington as is practical within appropriations, regardless of language proficiency.

Whenever a hate crime or bias incident is reported to the hotline, it shall inquire whether the person reported the hate crime or bias incident to law enforcement. If the person targeted or affected consents, the AGO shall promptly share information concerning the incident, location, date, and real or perceived affected protected class, of the hate crime or bias incident with local law enforcement. The information shall be anonymous unless the victim consents to the disclosure of identifying information. Identifying information received by the hotline is exempt from public inspection and disclosure requirements.

The AGO must develop a pilot hotline program to assist individuals in at least three counties, one of which must be in eastern Washington, by July 1, 2025, and implement the hotline statewide by January 1, 2027.

Law Enforcement Duties. Any law enforcement agency in this state that receives a report of a hate crime or bias incident shall refer the targeted or affected person to the hotline.

Attorney General Duties. The AGO must:

- identify local service providers and culturally specific services to refer people who have been targeted by hate crimes and bias incidents;
- coordinate with other counties and relevant hotlines; and
- provide an annual report to the Governor and Legislature, published on its website, regarding hate crimes and bias incidents reported to the hotline, beginning on July 1, 2027.

Advisory Committee. The AGO must establish an advisory committee to provide advice and assistance regarding hotline program design, operation, outreach, service delivery objectives and priorities, and funding. Among others, advisory committee members must include representatives from:

- legal aid;
- at least five community organizations working with historically underserved communities;
- local and culturally specific service providers;
- state agencies; and
- other entities the AGO deems relevant.

Definitions. "Bias incident" means a person's hostile expression of animus toward another person, relating to the other person's actual or perceived race, color, ethnicity, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability. A bias incident is deemed to be non-criminal in nature and does not include expressions of support for or opposition to a government's policies or actions protected under free speech.

"Hate crimes" means the commission, attempted commission, or alleged commission of the criminal hate crime offense as currently described in state law.

Null and Void Clause. If funding is not provided in the budget, this act is null and void.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

The definition of "bias incident" is modified to include expressions based on ethnicity and to categorically exclude all expressions of support for or opposition to a government's policies or actions protected under free speech.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2025.

Staff Summary of Public Testimony (Law & Justice) (Regular Session 2023): PRO: There were no hate crime laws in Washington State prior to 2019. A lot of work was done in 2020 to look at how Washington could address the alarming rise in hate crimes and help our minorities feel safer. It is hard to get data about hate crime statistics in Washington. Especially at county and city agencies. This bill ensures there is a true indication of what that number is. If we knew the true number of hate crimes occurring and people had a safe place to go and did not have to deal with the fear of reporting to law enforcement, that number could be much higher than is currently reported. This bill will provide help to victims of violence. It will save lives by restricting access to firearms. The hotline can be a resource for minorities to receive trauma informed support.

CON: This bill allows for some ambiguous interpretation. It might be more divisive than is needed to combat hate crimes. This may muddy the waters of law enforcement in allowing people to report somewhere else that is not law enforcement. If a crime is committed, that may cause confusion. Is this necessary? Is this being approached with the right method by giving power to the Attorney General's Office to handle something they may not be connected to locally? Local police, the sheriff's departments, and state patrol can handle it better as part of their communities. There is a worry this is creating a report and get paid or hurt feelings hotline that could be used and displace real reporting of egregious hate crimes. Giving a financial incentive on the back end could incentivize people with poor intentions to target businesses or individuals.

OTHER: It is important to draw attention to the issue of hate crimes and other incidents rooted in bias. A total of 592 hate crimes were reported in Washington in 2021, an increase of 26 percent from 2020. But there is a concern related to who is getting involved and how their involvement may be interpreted by other persons. This bill requires the Attorney General's Office to set up a hate crime hotline to take calls about the incident and provide generalized information. The hotline cannot provide justice for victims. Victims of hate crimes should call 911 so law enforcement can come to their aid. There should be caution in considering this bill and the unintended consequences it may carry for those less familiar about what to do when they are the victim of a hate crime.

Persons Testifying (Law & Justice): PRO: Senator Javier Valdez, Prime Sponsor; Stephen Paolini, Anti-Defamation League; Tremayne Edwards; Nina Martinez, Latino Civic Alliance; Kristin Ang, Faith Action Network; Fay Stetz-Water, Oregon Department of Justice; Paul Schneider, Spokane Human Rights Task Force; Jenna Sims; Bill Mowat, Jewish Community Relations Council; Kendall Kosai, Organization of Chinese Americans; Joe Kendo, Washington State Labor Council.

CON: Eric Pratt, I, America.

OTHER: Taylor Gardner, WASPC.

Persons Signed In To Testify But Not Testifying (Law & Justice): PRO: Megan Dunn.

Staff Summary of Public Testimony (Ways & Means) (Regular Session 2023): PRO: In the previous year, Washington experienced the highest rate of hate crimes in the last 20 years. Many incidents do not rise to a level of crime and would thus not be reported and collected in conventional hate crime data. We need an innovative response that supports victims of hate crimes and provides much needed data. No one wants to be a victim of a hate crime. Language and cultural barriers coupled with mistrust of law enforcement contributes to a significant under reporting of hate incidents. This legislation is based on the successful implementation of Oregon's bias hotline. The hotline received \$2 million per biennium, reflecting the demand for services and support within the community. Proper funding ensures the hotline is appropriately staffed and has the resources they need available. This program does not change the definition of hate crime or expand the attorney general's authority to criminally investigate incidents. Additionally, the bias emergency fund is a tool to help recover damages incurred as the result of bias incidents, not to serve as a reward for reporting. Upon moving to Seattle, a concerned citizen was targeted for the mezuzah hung in her car, a Jewish symbol to serve as a reminder of God's presence. In her neighborhood, a car vandalism had not occurred in ten years. She was fortunate enough to be able to recover costs and find support in her friends but there are many others who do not have the same access to support. This bill enhances the ability to track and monitor these incidents so stories like hers don't go unreported.

CON: Crime is already criminal. There are methods of enforcement and punishment already defined. The term hate is open and broad, subject to interpretation and exploitation. Perception isn't always reality and laws cannot be created that deem people criminals based on perception. Aligned with these laws and a built-in financial reward system, this legislation ensures the creation of a harmful precedent of encouraged competitive victimhood to receive the financial reward. This bill has a strong likelihood of being abused, leading to a higher frequency of false reporting and encumbering the agencies responsible for its oversight with an unnecessary burdensome workload. Additionally, it increases racial tension and social division. It is unfair to victims of other types of crimes as they are suffering but do not receive compensation. This is a waste of law enforcement resources and a tyrannical abuse of police power, violating freedom of expression. It also removes any obligation for transparency and prevents public records requests, making the system easy to gain. There is concern that hate crime legislation can be used to punish people for thought and opinion rather than criminal behavior. This bill poses a threat to free expression by chilling protected speech. The bill's definition of bias incident covers expression, not conduct. If this legislation should move forward, it must first remove law enforcement from the process, anonymize information about alleged perpetrators, remove the provision that allows financial awards to complainants, and provide accurate first amendment training to all members of the bias response team.

OTHER: This bill may impede providing help to those who need help as the language about accepting reports may lead to no law enforcement response. These crimes would not be

included in Washington's tally of hate crime offenses reported to the FBI. The Attorney General's Office is not a law enforcement agency and do not accept or respond to reports of crimes. There is not support for directing victims of hate crimes to a place that can't help them.

Persons Testifying (Ways & Means): PRO: Stephen Paolini, Anti-Defamation League; Kendall Kosai, OCA; Jenna Sims; Sargun Handa, ASWWU President.

CON: Eric Pratt; John Coleman, Foundation for Individual Rights and Expression (FIRE); Julie Barrett, Conservative Ladies of Washington; Rebecca Faust; C Davis, Washingtonians to Recall Inslee; Suzanne Rohner.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

Staff Summary of Public Testimony on Proposed Substitute (Ways & Means) (Regular Session 2024): *The committee recommended a different version of the bill than what was heard.* PRO: Oregon has a similar hotline, and I've used it to direct people to resources. Hate crimes against the LGBTQ and AAPI communities have skyrocketed, making queer people less forthcoming about their identities. Many of these incidents don't rise to the level of a crime and aren't captured by crime data. This is an important investment to send the message that everyone is part of the community and supported. This will facilitate data collection and pattern recognition to combat increasing incidents based on race and religion. This substitute is about providing tangible help to those in need. This will complement prosecutors' efforts to ensure marginalized communities are comfortable coming forward, building their trust and confidence in the system. Asian families felt fear for the physical safety of their children in returning to school after the pandemic. These incidents are underreported locally and nationally. We urge you to partner with local communities and build bridges to strengthen relationships.

CON: This bill would chill protected speech. The definition of bias incident covers protected expression, not just actions. We would ask to remove law enforcement from this process completely, require anonymization of accused parties, and require First Amendment training for hotline staff. This calls for a surveillance system to monitor the speech of private individuals, encouraging people to judge each other, creating hostile environments in schools and workplaces. Money should be spent on crimes that can be verified. There is already a problem with hate crime hoaxes in the country. This is ageist; elderly people don't always know what's insensitive and could be reported. This could be used against ideological opponents. The data will be skewed, unscientific, and unreliable.

OTHER: Removal of the compensation program changes the landscape of the bill, but someone could still call this hotline thinking it's a substitute for calling 911.

Persons Testifying (Ways & Means): PRO: Jason Cummings, Snohomish County Prosecutor's Office; Kyle Kinoshita, Japanese American Citizens League of Seattle; Stephen Paolini, ADL; Kendall Kosai, Organization of Chinese Americans; Gabriel Neuman, GSBA, Washington State's LGBTQ+ & Allied Chamber of Commerce; James McMahan, WA Assn of Sheriffs and Police Chiefs; Kristin Ang, Faith Action Network (FAN); Paul Schneider, Spokane Human Rights Taskforce President; Lisa Gardner, Spokane NAACP President.

CON: John Coleman, Foundation for Individual Rights and Expression; Liv Finne, Washington Policy Center; Julie Barrett, Conservative Ladies of Washington; Sharon Damoff; Teo Morca.

OTHER: Eric pratt, America.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.