

FINAL BILL REPORT

ESB 5623

C 52 L 23
Synopsis as Enacted

Brief Description: Modifying an element of the offense of hate crime and classifying a hate crime as crimes against persons.

Sponsors: Senators Dhingra, Conway, Hasegawa, Kuderer, Liias, Lovelett, Nobles, Pedersen, Stanford and Wilson, C..

Senate Committee on Law & Justice

House Committee on Community Safety, Justice, & Reentry

Background: Hate Crime Offense. A person is guilty of a hate crime offense 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 that a reasonable person would have under all 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 who has the same gender expression or identity, or the same mental, physical, or sensory handicap as the victim.

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 that the person does not have the ability to carry out the threat.

Gender expression or identity means having or being perceived as having a gender identity,

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self-image, appearance, behavior, or expression, whether 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.

A hate crime offense is a class C felony.

Simple Assault. Assault in the 4th degree is a gross misdemeanor, and is considered a simple assault. State law does not set forth a definition of assault. The following three definitions of assault have been recognized by Washington courts:

- an attempt, with unlawful force, to inflict bodily injury upon another;
- an unlawful touching with criminal intent; and
- putting another person in apprehension of harm whether or not the actor actually intends to inflict or is incapable of inflicting that harm.

Actual physical harm or injury is not required to convict a person on the charge of simple assault.

Crimes Against Persons. Crimes may be designated by statute as crimes against persons or crimes against property. In a case involving a crime against persons the prosecutor must make reasonable efforts to inform the victim of the nature of and reasons for any plea agreement, including all offenses the prosecutor has agreed not to file, and ascertain any objections or comments the victim has to the plea agreement. The prosecutor must inform the court on the record whether the victim or victims have expressed any objections to or comments on the nature of and reasons for the plea agreement. Additional restrictions may be imposed on the offender at sentencing. Such restrictions prohibit home detention, including that the offender cannot have their record of conviction cleared, and they may be subject to community placement or community custody.

Summary: An element for the offense of a hate crime is changed. The requirement to cause a physical injury is replaced by an assault to the victim or someone else based on the attacker'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.

Hate crime offenses are added to the classification as crimes against persons.

The term swastika is replaced with Nazi emblem, symbol, or Hakenkreuz to distinguish between different symbols and ideologies.

Votes on Final Passage:

Senate	33	16
House	89	9

Effective: July 23, 2023