

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1569

53rd Legislature
1993 Regular Session

Passed by the House April 19, 1993
Yeas 84 Nays 12

**Speaker of the
House of Representatives**

Passed by the Senate April 13, 1993
Yeas 29 Nays 20

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1569** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1569

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Veloria, Wineberry, Romero, Wang, Locke, Thibaudeau, Wolfe, Brough, Miller, Leonard, Campbell, Cothorn, L. Johnson, J. Kohl and Anderson)

Read first time 02/26/93.

1 AN ACT Relating to malicious harassment; amending RCW 9A.36.080;
2 adding new sections to chapter 9A.36 RCW; adding a new section to
3 chapter 36.28A RCW; adding a new section to chapter 43.101 RCW;
4 creating a new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW
7 to read as follows:

8 The legislature finds that crimes and threats against persons
9 because of their race, color, religion, ancestry, national origin,
10 gender, sexual orientation, or mental, physical, or sensory handicaps
11 are serious and increasing. The legislature also finds that crimes and
12 threats are often directed against interracial couples and their
13 children or couples of mixed religions, colors, ancestries, or national
14 origins because of bias and bigotry against the race, color, religion,
15 ancestry, or national origin of one person in the couple or family.
16 The legislature finds that the state interest in preventing crimes and
17 threats motivated by bigotry and bias goes beyond the state interest in
18 preventing other felonies or misdemeanors such as criminal trespass,
19 malicious mischief, assault, or other crimes that are not motivated by

1 hatred, bigotry, and bias, and that prosecution of those other crimes
2 inadequately protects citizens from crimes and threats motivated by
3 bigotry and bias. Therefore, the legislature finds that protection of
4 those citizens from threats of harm due to bias and bigotry is a
5 compelling state interest.

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

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

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

3 (1) A person is guilty of malicious harassment if he or she
4 maliciously and ~~((with the intent to intimidate or harass another~~
5 ~~person because of, or in a way that is reasonably related to,~~
6 ~~associated with, or directed toward, that person's))~~ intentionally
7 commits one of the following acts because of his or her perception of
8 the victim's race, color, religion, ancestry, national origin, gender,
9 sexual orientation, or mental, physical, or sensory handicap:

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

11 (b) ~~((By words or conduct places another person in reasonable fear~~
12 ~~of harm to his person or property or harm to the person or property of~~
13 ~~a third person. Such words or conduct include, but are not limited to,~~
14 ~~(i) cross burning, (ii) painting, drawing, or depicting symbols or~~
15 ~~words on the property of the victim when the symbols or words~~
16 ~~historically or traditionally connote hatred or threats toward the~~
17 ~~victim, or (iii) written or oral communication designed to intimidate~~
18 ~~or harass because of, or in a way that is reasonably related to,~~
19 ~~associated with, or directed toward, that person's race, color,~~
20 ~~religion, ancestry, national origin, or mental, physical, or sensory~~
21 ~~handicap. However, it does not constitute malicious harassment for a~~
22 ~~person to speak or act in a critical, insulting, or deprecatory way~~
23 ~~unless the context or circumstances surrounding the words or conduct~~
24 ~~places another person in reasonable fear of harm to his or her person~~
25 ~~or property or harm to the person or property of a third person; or~~

26 ~~(e))~~ Causes physical damage to or destruction of the property of
27 the victim or another person; or

28 (c) Threatens a specific person or group of persons and places that
29 person, or members of the specific group of persons, in reasonable fear
30 of harm to person or property. The fear must be a fear that a
31 reasonable person would have under all the circumstances. For purposes
32 of this section, a "reasonable person" is a reasonable person who is a
33 member of the victim's race, color, religion, ancestry, national
34 origin, gender, or sexual orientation, or who has the same mental,
35 physical, or sensory handicap as the victim. Words alone do not
36 constitute malicious harassment unless the context or circumstances
37 surrounding the words indicate the words are a threat. Threatening
38 words do not constitute malicious harassment if it is apparent to the

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

3 (2) ((The following constitute per se violations of this section:

4 (a) Cross burning; or

5 (b) Defacement of the property of the victim or a third person with
6 symbols or words when the symbols or words historically or
7 traditionally connote hatred or threats toward the victim.

8 (3)) In any prosecution for malicious harassment, unless evidence
9 exists which explains to the trier of fact's satisfaction that the
10 person did not intend to threaten the victim or victims, the trier of
11 fact may infer that the person intended to threaten a specific victim
12 or group of victims because of the person's perception of the victim's
13 or victims' race, color, religion, ancestry, national origin, gender,
14 sexual orientation, or mental, physical, or sensory handicap if the
15 person commits one of the following acts:

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

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

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

25 (3) It is not a defense that the accused was mistaken that the
26 victim was a member of a certain race, color, religion, ancestry,
27 national origin, gender, or sexual orientation, or had a mental,
28 physical, or sensory handicap.

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

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

36 (6) "Sexual orientation" for the purposes of this section means
37 heterosexuality, homosexuality, or bisexuality.

38 (7) Malicious harassment is a class C felony.

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

6 ~~(5))~~ (8) The penalties provided in this section for malicious
7 harassment do not preclude the victims from seeking any other remedies
8 otherwise available under law.

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

13 NEW SECTION. Sec. 3. A new section is added to chapter 9A.36 RCW
14 to read as follows:

15 In addition to the criminal penalty provided in RCW 9A.36.080 for
16 committing a crime of malicious harassment, the victim may bring a
17 civil cause of action for malicious harassment against the harasser.
18 A person may be liable to the victim of malicious harassment for actual
19 damages, punitive damages of up to ten thousand dollars, and reasonable
20 attorneys' fees and costs incurred in bringing the action.

21 NEW SECTION. Sec. 4. A new section is added to chapter 36.28A RCW
22 to read as follows:

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

33 (2) All local law enforcement agencies shall report monthly to the
34 association concerning all violations of RCW 9A.36.080 and any other
35 crimes of bigotry or bias in such form and in such manner as prescribed
36 by rules adopted by the association. Agency participation in the
37 association's reporting programs, with regard to the specific data

1 requirements associated with violations of RCW 9A.36.080 and any other
2 crimes of bigotry or bias, shall be deemed to meet agency reporting
3 requirements. The association must summarize the information received
4 and file an annual report with the governor and the senate law and
5 justice committee and the house of representatives judiciary committee.

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

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101 RCW
10 to read as follows:

11 The criminal justice training commission shall provide training for
12 law enforcement officers in identifying, responding to, and reporting
13 all violations of RCW 9A.36.080 and any other crimes of bigotry or
14 bias.

15 NEW SECTION. **Sec. 6.** If specific funding for the purposes of
16 implementing section 5 of this act, referencing this act by bill and
17 section number, is not provided by June 30, 1993, in the omnibus
18 appropriations act, section 5 of this act shall be null and void.

19 NEW SECTION. **Sec. 7.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

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