

# SENATE BILL REPORT

## SB 5850

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As Reported by Senate Committee On:  
Law & Justice, February 21, 2019

**Title:** An act relating to identifying and responding to bias-based criminal offenses.

**Brief Description:** Concerning identifying and responding to bias-based criminal offenses.

**Sponsors:** Senators Salomon, Pedersen, Wilson, C., Kuderer, Hunt, Keiser, Frockt, Das, Billig and Nguyen.

**Brief History:**

**Committee Activity:** Law & Justice: 2/19/19, 2/21/19 [DPS, DNP].

**Brief Summary of First Substitute Bill**

- Renames the crime of malicious harassment to the commission of a hate crime.
- Allows a trier of fact to infer an act was due to the victim's association with a protected class if certain actions are taken.
- Requires the attorney general to convene a Hate Crime Advisory Working Group.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5850 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

**Staff:** Shani Bauer (786-7468)

**Background:** A person is guilty of malicious harassment if the person maliciously and intentionally commits one of the following acts because of the person's perception of the

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

victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

- 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 fear that a reasonable person would have under 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 has the same mental, physical, or sensory handicap as the victim.

Words alone do not constitute malicious harassment unless the words and circumstances indicate a threat. Malicious harassment is a class C felony.

The definition of "sexual orientation" for the purpose of malicious harassment was modified in 2009 to refer to the definition of sexual orientation in the Revised Code of Washington chapter addressing discrimination.

Under that definition, sexual orientation means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "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.

**Summary of Bill (First Substitute):** The crime of malicious harassment is renamed to a hate crime offense.

The list of protected classes for which a crime or threat against a person for that reason will constitute a hate crime includes gender expression or identity and within the list of classes, the term sensory handicap is changed to sensory disability.

A trier of fact may infer the act was due to the perception of the victim's association with a protected class if the person:

- defaces religious property with words, symbols, or items that are derogatory to persons of the faith associated with the property;
- places a vandalized or defaced religious item or scripture on the property of the victim; or
- damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim.

The attorney general must convene a multidisciplinary Hate Crime Advisory Working Group for the purpose of developing strategies toward raising awareness of and responses to hate crime offenses and hate incidents. Membership in the workgroup is prescribed, to include representatives from state and local government, faith organizations, victim rights organizations, educational associations, and criminal defense attorneys.

The work group must recommend best practices for:

- preventing hate crime through public awareness and anti-bias campaigns;
- increasing identification and reporting of hate crimes and hate incidents, including the standardization of data collection and reporting;
- strengthening law enforcement and prosecutorial responses through enhanced training and other measures; and
- supporting victims of hate crime offenses or hate incidents, including ways of strengthening law enforcement collaboration with, and victim connection to, community advocacy and support organizations.

The work group is encouraged to solicit participation and feedback from nonmember groups and individuals with relevant experience. The work group must hold at least four meetings and issue a report with recommendations to the Governor and the Legislature no later than July 1, 2020.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):** "Gender expression or identity" is defined and the definition of "sexual orientation" is removed. A person is defined to include an organization or association. A trier of fact may infer an act was due to the perception of the victim's association with a protected class if the person:

- defaces religious property with words, symbols, or items that are derogatory to persons of the faith associated with the property;
- places a vandalized or defaced religious item or scripture on the property of the victim; or
- damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim.

Members are added to the advisory workgroup and the workgroup must undertake its work with a view towards restorative justice. The Washington Association of Sheriffs and Police Chiefs must collect data regarding whether a hate crime victim had a particular gender expression or identity. Intent language is added.

**Appropriation:** None.

**Fiscal Note:** Requested on February 15, 2019.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Hate crimes have been on the rise across the country in the last two years and in Washington State as well. Some people feel entitled to hate other people who are different. In turn, victims may be afraid to report a crime out of fear of retaliation.

This bill removes confusion as to the malicious harassment statute and clarifies that these are hate crimes. Many protected classes are subject to hate crimes and we can do better at protecting them. This bill declares our state a hate free zone.

Vandalism, assault, and harassment have increased 57 percent across the state and there has been a vast increase in anti-Semitic harassment. This bill strengthens our state's hate crime law and make communities safer. These measures, although symbolic, send a message that Washington does not tolerate hate crimes.

This bill is a larger effort to create communities where transgender populations can exist safely. People in this protected class have begun engaging in self-defense classes because physical attacks are prevalent. Adding gender identity and gender expression to the statute will make a difference to this community. Data collection is also sorely needed.

It is a reality of being an American Muslim today that a person must face constant harassment and bias. Mosques are frequently attacked. It is rare that the perpetrators are charged with a crime. This is not the kind of state that we want our children to grow up in.

**Persons Testifying:** PRO: Senator Jesse Salomon, Prime Sponsor; Nina Martinez, Board Chair, Latino Civic Alliance; Miri Cypers, Director Anti Defamation League Pacific Northwest; Varisha Kahn, citizen; Max Patashnik, Jewish Federation of Greater Seattle; Elayne Wylie, Gender Justice League.

**Persons Signed In To Testify But Not Testifying:** No one.