

# HOUSE BILL REPORT

## ESB 5623

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**As Passed House:**

March 23, 2023

**Title:** An act relating to modifying an element of the offense of hate crime and classifying a hate crime as crimes against persons.

**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, Lias, Lovelett, Nobles, Pedersen, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:**

Community Safety, Justice, & Reentry: 3/9/23, 3/16/23 [DP].

**Floor Activity:**

Passed House: 3/23/23, 89-9.

**Brief Summary of Engrossed Bill**

- Modifies the conduct that constitutes a Hate Crime offense to include when a person maliciously and intentionally assaults a victim because of the person's perception of certain characteristics about the victim.
- Modifies the circumstances where a trier of fact may infer that a person intended to threaten a victim to include when a person defaces the property of a victim who is or whom the person perceives to be of Jewish heritage with a Nazi emblem, symbol, or Hakenkreuz.
- Provides that a Hate Crime offense constitutes a crime against persons.

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**HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY**

**Majority Report:** Do pass. Signed by 8 members: Representatives Goodman, Chair;

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Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse and Ramos.

**Minority Report:** Do not pass. Signed by 1 member: Representative Graham.

**Staff:** Corey Patton (786-7388).

**Background:**

Hate Crime Offense.

A person commits 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 disability:

- causes physical injury to the victim or another person;
- causes physical damage to or destruction of the property of the victim or another person; or
- threatens a specific person or group of persons and places that person, or members of the specific group of persons, in fear of harm to person or property that a reasonable person with similar characteristics to the victim would have under the same circumstances.

In a prosecution for a Hate Crime offense, the trier of fact may infer that a person intended to threaten a victim if the person committed one of the following acts:

- burns a cross on property of a victim who is or whom the person perceives to be of African American heritage;
- defaces property of a victim who is or whom the person perceives to be of Jewish heritage by defacing the property with a swastika;
- defaces religious real 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 a victim who is or whom the person perceives to be of the faith with which that item or scripture is associated;
- damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim or attempts to or successfully removes religious garb or other faith-based attire from the victim's person without the victim's authorization; or
- places a noose on the property of a victim who is or whom the person perceives to be of a racial or ethnic minority group.

"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 to cause physical damage immediately or in the future to the property of a person threatened or that of any other person. 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.

A Hate Crime offense is a class C felony ranked at seriousness level IV and is punishable by a maximum sentence of five years of imprisonment, a \$10,000 fine, or both. In addition to such criminal penalties, the victim of a Hate Crime offense may bring a civil cause of action against the perpetrator for actual damages, punitive damages of up to \$100,000, and reasonable attorneys' fees and costs incurred in bringing the action.

#### Crimes Against Persons.

State law provides a list of offenses that constitute crimes against persons. Crimes against persons are subject to certain prosecutorial standards, heightened victim notification requirements, and additional penalties at sentencing. For example, if a person is convicted of a crime against persons and sentenced to confinement in the custody of the Department of Corrections, the court must impose one year of community custody in addition to any other terms of the sentence.

#### Assault.

A person commits an assault if the person attempts to inflict bodily injury on another person with unlawful force, unlawfully touches another person with criminal intent, or puts another person in apprehension of harm.

#### **Summary of Bill:**

The conduct that constitutes a Hate Crime offense is modified to include when a person maliciously and intentionally assaults, rather than physically injures, a victim or another person because of the perpetrator's perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or disability.

The provision that permits a trier of fact to infer that a person intended to threaten a victim who is or whom the person perceives to be of Jewish heritage if the person defaced the victim's property with a swastika is modified to instead permit such an inference if the person defaced the victim's property with a Nazi emblem, symbol, or Hakenkreuz.

Hate Crime offenses are reclassified as crimes against persons.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Prosecutors have had difficulty prosecuting certain cases where particular criminal conduct is not currently considered a Hate Crime offense. This bill replaces the phrase "physical injury" with "assault" in the definition of Hate Crime to account for more situations, such as where somebody spits on a victim. Additionally, reclassifying the Hate Crime offense as a crime against persons instead of a crime against property is more accurate and comes with 12 months of community custody. This is a critical change that will create more options for supervision and treatment, rather than just imposing incarceration. Most victims are interested in restorative justice to prevent incidents from happening to others in their communities, and victims are supportive of alternatives to incarceration that include treatment and community service. Incarceration may only increase perpetrators' animosity towards victims. "Swastika" is a Sanskrit word and is a sacred symbol to Hindus. In that context, people have a different reason for painting or using the symbol. The symbol was later co-opted by Nazis. This bill replaces the word "swastika" with "Hakenkruez," which describes the Nazi version of the symbol more accurately.

(Opposed) None.

**Persons Testifying:** Senator Manka Dhingra, prime sponsor; and Yessenia Manzo, King County Prosecuting Attorney's Office.

**Persons Signed In To Testify But Not Testifying:** None.