

SENATE BILL REPORT

ESB 5623

As Passed Senate, February 22, 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, Liias, Lovelett, Nobles, Pedersen, Stanford and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/31/23, 2/02/23 [DP, w/oRec].

Floor Activity: Passed Senate: 2/22/23, 33-16.

Brief Summary of Engrossed Bill

- Replaces the requirement for causing physical injury with simple assault for the offense of a hate crime.
- Classifies hate crime offenses as crimes against persons for purposes of sentencing.
- Replaces the term "swastika" with "Nazi emblem, symbol, or Hakenkreuz" to distinguish between different symbols and ideologies.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson,

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.

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Staff: Tim Ford (786-7423)

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, 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.

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. 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 shall 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 shall 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 of Engrossed Bill: 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.

Appropriation: None.

Fiscal Note: Available.

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: This bill does two things. It changes physical injury with assault, which does encompass a lot of incidents hate crimes that are not categorized as hate crimes currently, and it recategorizes hate crimes as crimes against a person which accurately reflects that is indeed what this crime is. Crime against a person comes with 12 months of community custody where DOC can supervise offenders, emphasizing alternatives to incarceration including community service, mental health treatment, and substance use disorder treatment. Without this recategorization, there is no

way for a prosecutor to ensure the offender received completed one of these alternatives. There have been cases where hate crimes cannot be pursued despite victims being targeted because of their race. The hate crime law should be changed to include all assaultive behavior that is motivated by bias. Not just physical injury. The number of hate crimes filed is not high, so investment in these changes is modest, but empowering to victims.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Yessenia Manzo, King County Prosecuting Attorney's Office.

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