

Hate Crime Laws in Washington

No one pretends that actions should be as free as opinions.
-J. Mill, 1859

Washington State has addressed hate crimes through the enactment of a malicious harassment statute directed at crimes and threats motivated by bigotry, prejudice and bias. Hate crimes are a class C felony and are a separate crime. If a hate crime is committed in conjunction with another crime, both crimes may be charged. Victims may sue their harassers for damages.

A person is guilty of malicious harassment if he or she: ***maliciously and intentionally*** commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation or mental, physical or sensory handicap:

- Causes physical injury to the victim or another person; or
- Causes physical damage to or destruction of the property of the victim or another person; or
- Threatens a specific person or group of people and places that person or members of the specific group of persons in reasonable fear of harm to person or property.

The statutes are set out in full below.

RCW 9A.36.080 Malicious harassment -- Definition and criminal penalty.

- (1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:
 - (a) Causes physical injury to the victim or another person;
 - (b) Causes physical damage to or destruction of the property of the victim or another person; or
 - (c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property.

The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is 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 mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

- (2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:
 - (a) Burns a cross on property of a victim who is or whom the actor perceives to be of

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

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

- (3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.
- (4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.
- (5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.
- (6) "Sexual orientation" for the purposes of this section means heterosexuality, homosexuality, or bisexuality.
- (7) Malicious harassment is a class C felony.
- (8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.
- (9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington.

RCW 9A.36.083 Malicious harassment -- Civil action.

In addition to the criminal penalty provided in RCW [1.9A.36.080](#) for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action.

The Malicious Harassment statute has withstood constitutional challenges on both vagueness and first amendment grounds. *State v. Talley*, 122 Wn.2d 192 (1993).