
HOUSE BILL 2032

State of Washington

57th Legislature

2001 Regular Session

By Representatives Murray and McDermott

Read first time . Referred to .

1 AN ACT Relating to malicious harassment; and amending RCW
2 9A.36.080.

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

4 **Sec. 1.** RCW 9A.36.080 and 1993 c 127 s 2 are each amended to read
5 as follows:

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

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

12 (b) Causes physical damage to or destruction of the property of
13 the victim or another person; or

14 (c) Threatens a specific person or group of persons and places
15 that person, or members of the specific group of persons, in
16 reasonable fear of harm to person or property. The fear must be a
17 fear that a reasonable person would have under all the
18 circumstances. For purposes of this section, a "reasonable
19 person" is a reasonable person who is a member of the victim's

1 race, color, religion, ancestry, national origin, gender, or
2 sexual orientation, or who has the same mental, physical, or
3 sensory handicap as the victim. Words alone do not constitute
4 malicious harassment unless the context or circumstances
5 surrounding the words indicate the words are a threat. Threatening
6 words do not constitute malicious harassment if it is apparent to
7 the victim that the person does not have the ability to carry out
8 the threat.

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

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

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

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

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

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

37 (5) Every person who commits another crime during the

1 commission of a crime under this section may be punished and
2 prosecuted for the other crime separately.

3 (6) "Sexual orientation" for the purposes of this section means
4 heterosexuality, homosexuality, ~~((or))~~ bisexuality, and gender
5 expression or identity.

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

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

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

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