

HATE CRIME – FAQs

MONTANA

Disclaimer: This guide is designed for informational purposes only. It is not legal advice and is not intended to create an attorney-client relationship. The Lawyers' Committee for Civil Rights does not warrant any information contained in this guide, nor does the Committee suggest that the information in this guide should be used as a basis to pursue legal advice or decision-making.

Note: This guide is not exhaustive. Situations or inquiries may arise that are not answered below. In those circumstances, please call 844-9-NO-HATE.

TABLE OF CONTENTS

1. <u>What is a hate crime or hate incident?</u> 2. <u>I believe I was the victim of a hate crime or hate incident. What should I do?</u> 3. <u>Does Montana have a state hate crime law?</u> 4. <u>Who is protected under Montana's hate crime law?</u> 5. <u>Someone attacked me or a family member. The attack appears to have been motivated by bias, prejudice, or hatred against a certain social group. What are Montana's relevant laws?</u> 6. <u>Someone damaged my property and it appears to have been motivated by bias, prejudice, or hatred against a certain social group. What are Montana's relevant laws?</u> 7. <u>Someone defaced my place of worship or otherwise interfered with my religious practice. Does Montana have any special laws protecting religious groups from hate motivated acts?</u> 8. <u>Someone hung a noose at my work, burnt a religious symbol by my home, or otherwise tried to humiliate me and members of my community with a symbol or message. Are there any special laws against crimes which are meant to intimidate based on someone's social identity in Montana?</u>	9. <u>The State is not investigating my case or bringing a lawsuit. How can I get in touch with an attorney with the State to discuss my case?</u> 10. <u>The State is not investigating my case or bringing a lawsuit, but I would like to explore bringing a case with a private attorney against the perpetrator (known as a "civil case"). Does Montana have civil laws relevant to hate crimes or hate incidents?</u> 11. <u>I have been attacked, put in fear of danger, intentionally made to suffer emotional distress, had my property vandalized, or harmed in another way due to an act motivated by hate. What other civil laws can I use to bring a case?</u> 12. <u>I would like to explore bringing a case with a private attorney against the perpetrator, but I do not know any private attorneys. How can I find someone to represent me?</u> 13. <u>What are some local and state organizations working on hate crimes and hate incidents?</u> 14. <u>Where can I find additional information or get help?</u>
--	--

1. What is a hate crime or hate incident?

A hate crime is generally defined as a crime against a person or property that is motivated by bias, prejudice, or hatred toward the personal, or perceived personal, characteristics of a victim, including: race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

The definition of a hate crime differs from state to state, but always includes an underlying crime.¹ Several states do not have separate statutes for crimes motivated by hate, but at a minimum, most states have enhanced penalties for crimes motivated by hatred based upon the above characteristics. Furthermore, if state and local authorities do not sufficiently protect victims of hate crimes, then the federal government may step in and prosecute hate crime violations.

Montana's hate crime definition closely resembles the general definition above. In Montana, a hate crime is a crime committed "because of the victim's race, creed, religion, color, national origin or involvement in civil rights or human rights activities."¹ Montana does not consider crimes committed because of a victim's gender or sexual orientation to be hate crimes.

A hate incident is based on the same behaviors and motivations as a hate crime, but does not rise to the level of a crime. For example, you may be a victim of hate speech, which, depending on the circumstances, may not constitute a crime (and may be protected under the First Amendment), but which may constitute a hate incident.

2. I believe I was the victim of a hate crime or hate incident. What should I do?

If you think you may be a victim of a hate crime or hate incident, you should immediately take the following three steps:

STEP 1 - - REPORT IT

For emergencies:

- If you (or others) have been injured or fear for your safety, call 911 immediately.
- If you are uncomfortable calling 911 or local law enforcement, consider calling the local United States Attorney, the local FBI Field Office, or the State Attorney General's office to report the offense. Understand, however, that these authorities may not respond as quickly as local law enforcement responding to a 911 call.
- Obtain medical attention if necessary.

For non-emergencies:

- If a non-emergency, call your local police station, or visit your local police office or federal law enforcement office as soon as possible to report the offense.

¹ Examples of underlying crimes include: assault, battery, destruction of property, threats, rape, murder, arson, robbery, and burglary. This list of criminal offenses is not exhaustive, however, and other criminal offenses may also be considered hate crimes.

- If you are not comfortable calling law enforcement, consider calling a trusted community or legal services organization. You can call 1-844-9-NO-HATE to be connected to a local organization.

Follow-up and key things to remember for both emergencies and non-emergencies:

- Ensure that a police report is filed regarding the offense and obtain a copy of the report (which should include the responding officer's name and badge number).
- Request that the police report indicate that the offense may have been a hate crime or a hate incident.
- File the report with local law enforcement, the State Attorney General's office, and federal law enforcement.
- For additional support and documentation, also report it to 844-9-NO HATE.

STEP 2 - - GATHER INFORMATION

- Preserve any evidence and take photographs of the evidence. For example, do not remove graffiti but instead, take photographs of the graffiti. Do not delete electronic correspondence (e.g., text messages, e-mails, social media posts, etc.), including your own. If you decide to involve law enforcement, you should preserve all evidence as directed by law enforcement.
- Document the experience in writing as soon as possible after the offense, including any specific words used during the offense. Record all your thoughts.
- Record any information you can remember about the perpetrator, including approximate age, height, weight, gender, race, clothing and any other distinguishing characteristics.
- Obtain contact information (names, addresses, and telephone numbers) of any other victims or witnesses to the offense.

STEP 3 - - GET ADDITIONAL SUPPORT

- Find support in the community -- through friends and family, victims' organizations, advocacy or community groups, religious organizations, legal groups, professional counseling, etc.
- Consider seeking legal representation.

Remember: you can always contact 1-844-9-NO-HATE.

3. Does Montana have a state hate crime law?

Yes, Montana does have a state hate crime law. Section 45-5-221 of the Montana Code ("malicious intimidation or harassment relating to civil or human rights") prohibits any person from causing or threatening bodily injury to another, or damaging, destroying, or defacing property, with the intention to intimidate or terrify, because of another person's "race, creed, religion, color, national origin, or involvement in civil rights or human rights activities."² Montana law does not define "civil rights or human

rights activities,” but they generally refer to activities that are protected by the U.S. and Montana Constitutions.

4. Who is protected under Montana’s hate crime law?

Montana’s hate crime law protects any person who is the victim of a crime because of his or her:

- Race;
- Color;
- Religion;
- Creed;
- National origin;
- Involvement in civil rights or human rights activities.

Unlike some states, Montana does not classify crimes motivated by the victim’s sexual orientation or gender to be hate crimes.

5. Someone damaged my property and it appears to have been motivated by bias, prejudice, or hatred against a certain social group (e.g., a swastika, derogatory terms, etc). What are Montana’s relevant laws?

Montana’s hate crime law, discussed in [Question 3](#), provides protection to your real and personal property from damage motivated by bias. The hate crime law prohibits any person from damaging, destroying, or defacing any property of another or any public property because of another person’s race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. The law explains that “defacing” property “includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without that person’s permission.”³

In addition, Montana has a penalty enhancement provision that provides increased punishments for perpetrators of common crimes motivated by bias, prejudice, or hatred. For example, if your property was damaged by another individual, that would mostly likely be considered criminal mischief—a common crime. But, if your property was damaged by another individual and that individual damaged your property because of your race or national origin, then the offense may carry with it a hate crime penalty enhancement, and your attacker may face a longer than normal prison sentence.

The penalty enhancement provision is Section 45-5-222 of the Montana Code. It provides that a person who is guilty of any crime “that was committed because of the victim’s race, creed, religion, color, national origin, or involvement in civil rights or human rights activities” may be subject “to a term of imprisonment of not less than 2 years or more than 10 years.”⁴ This prison term is in addition to the punishment for the original offense. The penalty enhancement does not apply if the original offense involved a violation of the hate crime law described in [Question 3](#).

Note: These are criminal laws, and any claims under them must be brought by a prosecutor.

- 6. Someone attacked me or a family member. The attack appears to have been motivated by bias, prejudice, or hatred against a certain social group (e.g., before attacking, the perpetrator shouted “Go home!”). What are Montana’s relevant laws?**

Montana’s hate crime law (discussed in [Question 3](#)) addresses physical attacks motivated by bias, prejudice, or hatred. Under this law, it is unlawful for any person to injure or threaten you because of your protected characteristic.

In addition, the penalty enhancement law (discussed in [Question 5](#)) may apply. A physical attack by another individual would mostly likely be considered the common crime of assault. If the assault was committed because of your race or national origin, then that assault may carry with it a hate crime penalty enhancement.

Note: These are criminal laws, and any claims under these provisions must be brought by a prosecutor.

- 7. Someone defaced my place of worship (or otherwise targeted a religious institution). Does Montana have any special laws protecting religious groups from hate motivated acts?**

Yes. Montana’s hate crime law (discussed in [Question 3](#)) and the penalty enhancement law (discussed in [Question 5](#)) both protect places of worship from hate motivated acts. The hate crime law prohibits damaging, destroying, or defacing property because of another person’s religion, with the intent to terrify, intimidate, harass, annoy, or offend.⁵ The penalty enhancement law adds an additional 2 to 10 years’ imprisonment to a sentence, if the original offense involved damage to a “building regularly used for religious worship.”⁶

Note: These are criminal laws, and any claims under these provisions must be brought by a prosecutor.

- 8. Someone hung a noose at my work, burnt a religious symbol by my home, or otherwise tried to intimidate me and members of my community with a symbol or message. Are there any special laws against intimidation or terrorism in Montana?**

Yes. Montana’s hate crime law (discussed in [Question 5](#)) specifically prohibits placing “symbols commonly associated with racial, religious, or ethnic identities or activities” on another person’s property “with the intent to terrify, intimidate, threaten, harass, annoy, or offend.”⁷

Note: This is a criminal law, and any claims under this provision must be brought by a prosecutor.

- 9. The state is not investigating my case or bringing a lawsuit. How can I get in touch with an attorney with the state to discuss my case?**

The Lawyers’ Committee for Civil Rights Under Law maintains the Stop Hate Resource Hotline (1-844-9-NO-HATE) which serves as a resource for organizations and

individuals working to combat hate in their community and can be called for reporting and resource purposes.

You can contact the Montana Department of Justice Office of Victim Services Telephone: 1-800-498-6455. The Office of Victim Services website has a list of local victims' rights advocates, available here: <https://dojmt.gov/victims/crime-victim-advocates/>.

10. The state is not investigating my case or bringing a lawsuit, but I would like to explore bringing a case with a private attorney against the perpetrator (known as a “civil case”). Does Montana have civil laws relevant to hate crimes or hate incidents?

Yes. Montana has two civil laws relevant to hate crimes and hate incidents. These laws provide a right to be free from violence, intimidation, or discrimination:

The Montana Human Rights Act (Montana Code § 49-1-102) – establishes a right to freedom from discrimination because of race, creed, religion, color, sex, physical or mental disability, or national origin.⁸ Unlike the criminal hate crime laws discussed above, this law protects from discrimination based on sex and disability. A person may bring a claim for violations of this law by filing a complaint with the Montana Human Rights Bureau.⁹ Information about filing a complaint is available here: <http://erd.dli.mt.gov/human-rights>.

The Montana Anti-Intimidation Act (Montana Code Ann. §§ 27-1-1502 and 1503) – provides that an individual or group has the right to bring a private lawsuit against those who threaten or intimidate them as they attempt to exercise a legally protected right. The law was adopted in 1996, during a period of growth among nationalist “militia” groups. The law states that it “seeks to address the growing problem of harassing and threatening behavior being undertaken by extremist individuals and groups in Montana.”¹⁰

Note: Private citizens can bring these civil claims.

As described in [Question 11](#) below, there are other civil remedies outside of this particular statute.

11. I have been attacked, put in fear of danger, intentionally made to suffer emotional distress, had my property vandalized, or harmed in another way due to an act motivated by hate. What other civil laws can I use to bring a case?

There are a number of other civil laws that you can use to bring a case against someone who physically or emotionally injures you. This is true even if the person's actions do not rise to the legal definition of a hate crime or hate incident. These other civil laws, or causes of action, are generally known as torts. A tort is a wrongful act that results in legal liability. All torts arise from the legal duty to abstain from injuring the person or property of another.

In Montana, if someone intentionally injures you or your property, you may be able to sue that person for damages using any of the following tort causes of action:

Assault – An assault is is when a person causes bodily injury to another, makes physical contact with another in an insulting or provoking manner, or causes another to believe that they may suffer bodily injury.¹¹ Examples of these acts include punching another person, bumping another person in order to start a fight, or threatening to attack another person.

Unlawful Restraint – Unlawful restraint is committed when a person “without lawful authority restrains another so as to interfere substantially with the other person’s liberty.”¹² An example of unlawful restraint would be if someone locked you in a room and you were unable to escape.

Stalking – A persons commits the offense of stalking if they cause another person to experience emotional distress or the expectation of bodily injury or death by repeatedly (i) following the stalked person or (ii) harassing, threatening, or intimidating the stalked person, whether in person or by mail or electronic communication.¹³ An example of conduct that could lead to a successful stalking claim would be someone repeatedly calling your home phone and leaving threatening messages of physical violence or death.¹⁴ Cyberbullying activities may violate this provision.

Criminal Mischief – Criminal mischief takes place when a person damages or destroys, or tampers with the property of another without their consent.¹⁵ Criminal mischief may involve “personal” property, like a car or a computer, or “real” property, like a house or a yard.

Note: Private citizens can bring these civil tort claims.

12. I would like to explore bringing a case with a private attorney against the perpetrator (known as a “civil case”), but I do not know any private attorneys. How can I find someone to represent me?

You can contact the 844-9-NO-HATE hotline, or use the local attorney referral services listed below.

13. What are some local and state organizations working on hate crimes and incidents?

The following agencies are key providers of legal assistance for victims of hate crimes and discrimination:

1. Montana Department of Justice, Office of Victim Services
Phone: 1-800-498-6455
<https://dojmt.gov/victims/>

14. I need additional help. Where can I find additional information or get help?

If you would like additional information or need additional help, please visit the Communities Against Hate resource page at www.communitiesagainsthate.org. If the information you are seeking is not on the resource page or if you need immediate help, please contact 844-9-NO-HATE.

¹ Mont. Code Ann. § 45-5-221

² Mont. Code Ann. § 45-5-221

³ Mont. Code Ann. § 45-5-221(2)

⁴ Mont. Code Ann. § 45-5-222

⁵ Mont. Code Ann. § 45-5-221(1)(c)

⁶ Mont. Code Ann. § 45-5-222(1)

⁷ Mont. Code Ann. § 45-5-221(1)(c)

⁸ Mont. Code Ann. § 49-1-102

⁹ Mont. Code Ann. § 49-2-501

¹⁰ Mont. Code Ann. § 27-1-1502-1503

¹¹ Mont. Code Ann. §45-5-201

¹² Mont. Code Ann. §45-5-301

¹³ Mont. Code Ann. §45-5-220

¹⁴ *State. v. Adgerson*, 2003 MT 284, 318 M 22, 78 P.3d 850 (2003) (repeated telephone contact by ex-husband in a manner than frightened the victim to the point where she feared for her safety was felony stalking).

¹⁵ Mont. Code Ann. §45-6-101