

HATE CRIME FAQs **NEBRASKA**

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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.

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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.

Nebraska's hate crime definition closely resembles the general definition above. In Nebraska, a hate crime is a criminal offense committed because of the person's (1) race, (2) color, (3) religion, (4) ancestry, (5) national origin, (6) gender, (7) sexual orientation, (8) age, (9) disability or (10) association with a person or group with one or more of these characteristics."²

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 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.

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.

² Neb. Rev. Stat. § 28-111.

- 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.
- 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, emails, 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 Nebraska have a state hate crimes law?

Yes, Nebraska does have a state hate crime law. Section 28-110 of the Nebraska Revised Statute provides that “[a] person in the State of Nebraska has the right to live free from violence, or intimidation by threat of violence, committed against his or her person or the destruction or vandalism of, or intimidation by threat of destruction or vandalism of, his or her property regardless of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.”³ In other words, if someone interferes with your civil rights by force, threat, or intimidation, or if someone knowingly defaces, damages or destroys your property because of your race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability, or association with a person with one or more of these characteristics, then that person may be guilty of a hate crime under Nebraska law.

Section 28-110 is enforced through Nebraska’s penalty enhancement law (Section 28-111), which provides increased punishment for perpetrators of common crimes motivated by bias, prejudice, or hatred.⁴ For example, if you were physically attacked by another individual, that would mostly likely be considered battery—a common crime. But, if you were attacked by another individual and that individual attacked you because of your race or nationality, then that battery may carry with it a hate crime penalty enhancement, and your attacker may face a longer than normal prison sentence. In Nebraska, a person who commits a hate crime in connection with a criminal offense shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for such criminal offense.

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

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

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| • Race; | • Gender; |
| • Color; | • Sexual orientation; |
| • Religion; | • Age; |
| • Ancestry; | • Disability; or |
| • National origin; | • Association with a person with one or more of these characteristics. |

³ Neb. Rev. Stat. § 28-110.

⁴ Neb. Rev. Stat. § 28-111.

Unlike some other states, Nebraska's hate crime protections do not include a person's gender identity.

5. Someone damaged my property and it appears to have been motivated by hate against a certain social group (e.g., a swastika, derogatory terms, etc.). What are the relevant laws in my state?

Nebraska law has protections that you may turn to if someone damages your property because of bias, prejudice, or hatred. Nebraska's hate crime law, discussed above, provides protection to your real and personal property. The hate crime law prohibits any person from committing a criminal offense against a person's property because of a person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or association with a person with one or more of these characteristics.⁵

Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

6. Someone attacked me or a family member. The attack appears to have been motivated by hate against a certain social group (e.g., before attacking, the perpetrator shouted "Go home!"). What are the relevant laws in my state?

Nebraska's hate crime law, Neb. Rev. Stat. § 28-110, described above, addresses attacks motivated by bias, prejudice, or hatred. Again, under this law, it is unlawful for any person to interfere with your civil rights by force, threat, or intimidation.

Nebraska's penalty enhancement law, discussed above, provides increased punishment for perpetrators of common crimes motivated by bias, prejudice, or hatred.⁶ The penalty enhancement laws may be used when a hate crimes is carried out in connection with the crimes listed below. Note that the penalty enhancement law does not apply to sexual assault of a child because that offense is already deemed a Class IB felony.

If a person commits any one of the following offenses against another person and does so on the basis of any of the protected categories in the statute (i.e. race, religion), then the penalty enhancement statute would apply:

- Neb. Rev. Stat. § 28-305 – Manslaughter
- Neb. Rev. Stat. § 28-308 – Assault in the first degree
- Neb. Rev. Stat. § 28-309 – Assault in the second degree
- Neb. Rev. Stat. § 28-310 – Assault in the first degree
- Neb. Rev. Stat. § 28-311.01 – Terroristic threats

⁵ Neb. Rev. Stat. § 28-110.

⁶ Neb. Rev. Stat. § 28-111.

- Neb. Rev. Stat. § 28-311.03 – Stalking
- Neb. Rev. Stat. § 28-311.13 – Kidnapping
- Neb. Rev. Stat. § 28-314 – False imprisonment in the first degree
- Neb. Rev. Stat. § 28-315 – False imprisonment in the second degree
- Neb. Rev. Stat. § 28-319 – Sexual assault in the first degree
- Neb. Rev. Stat. § 28-320 – Sexual assault in the second or third degree
- Neb. Rev. Stat. § 28-502 – Arson in the first degree
- Neb. Rev. Stat. § 28-503 – Arson in the second degree
- Neb. Rev. Stat. § 28-504 – Arson in the third degree
- Neb. Rev. Stat. § 28-519 – Criminal mischief
- Neb. Rev. Stat. § 28-524 – Unauthorized application of graffiti
- Neb. Rev. Stat. § 28-520 – Criminal trespass in the first degree
- Neb. Rev. Stat. § 28-521 – Criminal trespass in the second degree

Note that this is a criminal law, and any claims under these sections of code for penalty enhancement must be brought by a prosecutor.

7. Someone defaced my place of worship or interfered with my religious practice. Does Nebraska have any special laws protecting religious groups from hate motivated acts?

While some states have special laws protecting religious groups and places of worship, Nebraska has no such applicable law. However, Section 28-110 and Section 28-111 of the Nebraska Revised Statute may be applicable in certain cases.

For example, if someone defaces a place of worship, they might be guilty of criminal mischief, which is the intentional or reckless damage of property of another.⁷ If it can be shown that this offense was motivated by animus towards a particular religious group, then Nebraska's hate crime penalty enhancement would apply.

⁷ Neb. Rev. St. § 28-519

- 8. Someone hung a noose at my work, burnt a religious symbol by my home, or otherwise tried to intimidate 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?**

While some states have special laws prohibiting actions such as hanging a noose or cross burning, Nebraska has no such applicable law. However, if a symbol or action rises to the level of a hate crime as discussed above, Section 28-110 of the Nebraska Revised Statute will be applicable.

- 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?**

You can contact the State Attorney General's Victim Assistance Program (County listings online at <https://ago.nebraska.gov/victim-assistance-program>), or the United States Attorney's Office Victim/Witness Assistance Program in your district listing online at <https://www.justice.gov/usao-ne/victimwitness-assistance>; Nebraska's Victim Information and Notification Everyday is available 24-hours at (877) 634-8463. You can also contact the Stop Hate Hotline at 1-844-9-NO-HATE.

- 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 Nebraska have civil laws relevant to hate incidents?**

Yes, Nebraska has civil laws relevant to hate crimes and hate incidents. Section 28-113 of the Nebraska Revised Statute allows a person who has been a victim of a hate crime under Section 28-111 to "bring a civil action for equitable relief, general and specific damages, reasonable attorney's fees, and costs."

In a civil action brought pursuant to Section 28-113, "the plaintiff shall establish by a preponderance of the evidence that the defendant committed the criminal offense against the plaintiff or the plaintiff's property because of the plaintiff's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the plaintiff's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability."⁸

Private citizens can bring these civil claims.

- 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 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

⁸ Neb. Rev. Stat. § 28-113.

causes of action, are generally known as torts. A tort is a wrongful act that results in legal liability.

In Nebraska, 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 defined as a wrongful attempt with force or threats, made in a menacing manner, with intent to inflict bodily injury upon another, without requiring that the one assaulted be subjected to any actual physical injury or contact.”⁹ An example of an assault is when someone uses a toy gun to threaten another.
- Battery - Battery is defined as “an actual infliction” of an unconsented injury upon or unconsented contact with another.”¹⁰ An example of a battery is when someone uses a real gun and shoots another. Another, less extreme, example of a battery is when someone punches or kicks another.
- False Imprisonment – False imprisonment is defined as “unlawful restraint of the personal liberty or freedom of locomotion of a person without the consent and against the will of such person.”¹¹ In other words, a person is falsely imprisoned if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another. An example of false imprisonment would be if someone locked you in a room and you were unable to escape.
- Intentional Infliction of Emotional Distress (“IIED”) - IIED is best defined by its elements. To bring an IIED claim, you must be able to show: (1) the defendant’s intentional or reckless conduct (2) which is so outrageous and so extreme that the conduct goes beyond all possible bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community and (3) which causes emotional distress so severe that no reasonable person is expected to endure that severe emotional distress.¹² An example of outrageous conduct that could lead to a successful IIED claim would be someone calling your home phone and leaving threatening messages of physical violence or death.
- Trespass to Land & Conversion – Trespass to land and conversion are causes of action used when another damages your real or personal property. Trespass to land applies to real property and is defined as “a person who enters or remains upon premises in possession of another without the express or implied consent of the possessor.”¹³ An example of trespass to land would be if someone vandalized, or otherwise damaged, your front lawn. Conversion, on the other hand, applies to personal property and is defined as “any distinct act of dominion wrongfully

⁹ *Bergman by Harre v. Anderson*, 411 N.W.2d 336 (Neb. 1987)

¹⁰ *Bergman by Harre v. Anderson*, 411 N.W.2d 336 (Neb. 1987)

¹¹ *Jonson v. Heller*, 6 N.W.2d 359 (Neb. 1942)

¹² *Speer v. Dealy*, 495 N.W.2d 911 (Neb. 1993)

¹³ *Kenney v. Barna*, 341 N.W.2d 901 (Neb. 1983)

asserted over another's property in denial of or inconsistent with that person's rights.”¹⁴ An example of conversion would be if someone damaged your car.

Punitive damages, which are damages awarded in addition to typical compensatory damages and they are generally considered to be a form of punishment, are not available in Nebraska

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?

Contact your local bar association or 844-9-NO HATE.

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

Nebraska Commission on Law Enforcement and Criminal Justice

Phone: (402) 471-2194
<https://ncc.nebraska.gov/>

Nebraska Racial Profiling Advisory Committee

<https://ncc.nebraska.gov/racial-profiling-advisory-committee>

Nebraska State Bar Association

Legal aid services directory can be found at:
<http://lowincomelegalassistance.nefindalawyer.com/>

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.

¹⁴ *State v. Clark*, 588 N.W.2d 184 (Neb. 1999)