

## **HATE CRIME FAQs** **SOUTH CAROLINA**

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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. 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.

South Carolina does not currently have a separate hate crime statute. However, in South Carolina, an individual may still be prosecuted for a “criminal act” such as (1) malicious injury to place of worship (S.C. Code Ann., § 16-11-535); (2) harassment and stalking (S.C. Code Ann., § 16-3-1700); (3) and homicide (S.C. Code Ann. §§ 16-3-5 – 16-3-95).

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. 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.
- If you are not comfortable calling law enforcement, consider calling a trusted community or legal services organization. You can call South Carolina Legal Services at 1-888-346-5592. You can also 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 South Carolina have a state hate crime law?**

No, South Carolina does not have a state hate crime law.

#### **4. Who is protected under South Carolina's hate crime law?**

Not applicable.

#### **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 South Carolina's relevant laws?**

South Carolina law makes it a crime to damage your property because of bias, prejudice, or hatred.

- S.C. Code Ann. § 16-11-770, provides that illegal vandalism is "an inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar materials that are on public or private property and that are publicly viewable, without the consent of the owner, manager, or agent in charge of the property." Under this law, the person charged with this offense may be guilty of a misdemeanor. Note that this is a criminal law, and any charges under this code must be brought by a prosecutor.

South Carolina state common law torts, such as trespass, conversion, or theft, may provide a cause of action to recover compensation for the damage to the property. For example, "**conversion**" is defined as unauthorized assumption and exercise of rights of ownership over goods or personal property of another, to alteration of their condition or to exclusion of rights of owner.

**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 South Carolina’s relevant laws?**

South Carolina does not have any specific hate crime laws. However, an individual may seek to enforce the following laws, which are applicable:

- Homicide is codified under S.C. Cod Ann. §§ 16-3-5 – 16-3-95. This section punishes any person who kills or attempts to kill another person with or without malice aforethought and with or without reckless disregard for the safety of others.
- Under South Carolina criminal law, lynching is an assault and battery by mob and punishable as a felony. A “mob” is defined as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.
- Assault and battery under South Carolina law is an unlawful act of a violent nature to the person of another.

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

South Carolina has a law that protects religious groups and places of worship. This law states as follows:

- S.C. Code Ann. § 16-11-535 – Malicious injury to place of worship. This section makes punishable for any person to “willfully, unlawfully, and maliciously vandalize, deface, damage, or destroy or attempt to vandalize, deface, damage, or destroy any place, structure, or building of worship.” A violation of this section is a felony and punishable by imprisonment of not less than six months nor more than ten years or fine of not more than ten thousand dollars, or both.

Note that this is a criminal law, and any claims under this sections of the code 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 South Carolina?**

- Although South Carolina has a law “on the books” prohibiting cross burning, the statute has been found unconstitutional by the state Supreme Court. See S.C. Code Ann., § 16-7-120; *State v. Ramsey*, 311 S.C. 555 (S.C. 1993).
- S.C. Code Ann. § 16-17-560 makes it unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a

rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.

**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 Victims' Assistance Program at: (803) 253-6283; your local District Attorney's Victim/ Witness Program (County listing online, or the United States Attorney's Office Victim/Witness Assistance Program in your district listing online. 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 South Carolina have civil laws relevant to hate crimes or hate incidents?**

Yes, South Carolina has civil laws relevant to hate crimes and hate incidents. These laws either provide a right to be free from violence, intimidation, or discrimination, or they provide a procedural tool that allows an individual to file a private lawsuit. The three laws are:

- The South Carolina Religious Freedom Act, S.C. Code Ann. § 1-32-30, which was enacted to restore the compelling interest test as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), and to guarantee that a test of compelling state interest will be imposed on all state and local laws and ordinances in all cases in which the free exercise of religion is substantially burdened.

In addition, South Carolina has administrative remedies available to victims of discrimination:

- You can file a complaint with the State of Human Affairs Commission, which was established to encourage fair treatment for, and to eliminate and prevent discrimination against, any member of a group protected by this chapter, and to foster mutual understanding and respect among all people in this State.

**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.

In South Carolina, 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 (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm.<sup>i</sup> An example of an assault is when someone uses a toy gun to threaten another.
- Battery - Battery is defined as the actual touching or “infliction of any unlawful, unauthorized violence on the person of another, irrespective of its degree.”<sup>ii</sup> An example of a battery is when someone punches or kicks another. A touching becomes a battery if the contact would have been offensive to an ordinary person not unduly sensitive as to personal dignity.<sup>iii</sup>
- False Imprisonment – False imprisonment is defined as depriving an individual of his liberty without justification.<sup>iv</sup> 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 intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his or her conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.”<sup>v</sup>
- 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 “any interference with one’s right to exclusive, peaceable possession of his property.”<sup>vi</sup> 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 “the unauthorized assumption and exercise of the rights of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner.”<sup>vii</sup>

In addition, if it can be proven that the person injured you or your property because of bias, prejudice, or hatred, you may be able to recover punitive damages. Punitive damages are damages awarded in addition to typical compensatory damages and they are generally considered to be a form of punishment. In South Carolina, if you can prove by “clear and convincing evidence” that an individual acted with “willful, wanton, or reckless” against you, then you may recover additional punitive damages.<sup>viii</sup>

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, the South Carolina State Bar at [www.scbar.org/](http://www.scbar.org/), or contact 844-9-NO-HATE.

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

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

1. South Carolina State Office of Victim Assistance  
Phone: 1-800-220-5370  
<http://sova.sc.gov/>
2. The Department of Justice’s South Carolina District Attorney’s Office  
A directory of South Carolina’s District Attorney’s Offices can be found at:  
<https://www.justice.gov/usao-sc/contact-us>
3. South Carolina Human Affairs Commission  
Phone: (213) 639-6089  
<http://www.schac.sc.gov/>
4. The State Bar of South Carolina  
Phone: (803) 799-6653  
<https://www.scbar.org/>
5. South Carolina Legal Services (SCLS)  
Phone: 1-888-346-5592  
<http://www.sclegal.org/>
6. South Carolina Equality  
Phone: 803.256.6500  
<https://www.scequality.org/home/>

**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](http://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.

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<sup>i</sup> *Gregg v. Ham*, 678 F.3d 333 (4<sup>th</sup> Cir. 2012).

<sup>ii</sup> *Jones by Robinson v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (S.C. App. 1995).

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iii 3 S.C. Jur. Assault and Battery § 43.

iv *Thomas v. Colonial Stores, Inc.*, 236 S. C. 95, 99, 113 S. E. 2d 337, 339 (1960).

v *Ford v. Hutson*, 276 S.C. 157, 276 S.E.2d 776 (1981) (citing Restatement (Second) of Torts § 46).

vi *Ravan v. Greenville Cnty.*, 315 S.C. 447, 463, 434 S.E.2d 296, 306 (1993).

vii *Green v. Waidner*, 284 S.C. 35, 37, 324 S.E.2d 331, 333 (Ct.App.1984).

viii S.C. Code Ann. § 15-32-510.