

HATE CRIME FAQs

SOUTH DAKOTA

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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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intimidate based on someone's social identity in South Dakota?	
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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.

South Dakota's hate crime law is unique in that it defines behavior typically associated with hate crimes as "Malicious Harassment." In South Dakota, "[n]o person may maliciously and with the specific intent to intimidate or harass any person or specific group of persons because of that person's or group of persons' race, ethnicity, religion, ancestry, or national origin: (1) Cause physical injury to another person; (2) Deface any real or personal property of another person; (3) Damage or destroy any real or personal property of another person; or (4) Threaten, by word or act, to do the acts prohibited if there is reasonable cause to believe that any of the acts prohibited in subdivision (1), (2), or (3) of this section will occur."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 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.
- 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 South Dakota have a state hate crime law?

Yes, South Dakota has a state hate crime law. Section 22-19B-1 of South Dakota's Codified Laws prohibits any person from interfering with the civil rights of another "because of that person's or group of persons' race, ethnicity, religion, ancestry, or national origin."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 or your group's "race, ethnicity, religion, ancestry, or national origin," then that person may be guilty of a hate crime under South Dakota law.

Please note, discrimination based on gender, gender identity, sexual orientation, or disability is NOT covered by the statute.

4. Who is protected under South Dakota's hate crime law?

South Dakota's hate crime law protects any person who is the victim of a crime because of his or her actual or perceived:

- Nationality;
- Race or ethnicity;
- Ancestry; or
- Religion

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 Dakota's relevant laws?

South Dakota has criminal and civil laws that you may turn to if someone damages your property because of bias, prejudice, or hatred. First, South Dakota's hate crime law, called "Malicious Harassment" and discussed above, provides wide protection to your real and personal property. The hate crime law prohibits any person from defacing or damaging "any real property of another person" "because of that person's or group of persons' race, ethnicity, religion, ancestry, or national origin."⁴ Section 22-19B-2 defines defacing to include "cross-burnings or the placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism on the property of another person without that person's permission."⁵

Malicious Harassment is a separate charge the State can bring in addition to other charges. It is a Class 6 felony, and those charged under the law are subject to two years

imprisonment in the state penitentiary or a fine of four thousand dollars, or both. 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 bias, prejudice, or hatred against a certain social group (e.g., before attacking, the perpetrator shouted “Go home!”). What are South Dakota’s relevant laws?**

South Dakota’s main hate crime law, called Malicious Harassment and described above, addresses attacks that cause physical injury or threats to do so, if they are motivated by bias, prejudice, or hatred.⁶ Again, under this law, it is unlawful for any person to interfere with your civil rights by force, threat, or intimidation.

As mentioned in the previous section, Malicious Harassment is a separate charge the State can bring in addition to other charges. It is a Class 6 felony, and those charged under the law are subject to two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both. Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

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

South Dakota has a number of special laws that protect religious groups and places of worship from hate motivated acts.

- S.D. Codified Laws § 22-19B-1 – “Malicious Harassment” Defined⁷

This section, discussed in detail above, punishes any person who “knowingly defaces, damages or destroys any real or personal property” because of a person’s or group’s religion. Section 22-19B-1 also punishes any person who threatens or causes physical injury to another for the same reason. This is a Class 6 felony that carries a penalty of two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both. Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

- S.D. Codified Laws § 22-19B-4 – Preventing Practice of Religion⁸

This section punishes any person who intentionally prevents another person from performing any lawful act enjoined upon or recommended by the religion which such person professes. This is a criminal law, and is classified as a Class 1 misdemeanor. Offenders are subject to one year imprisonment in a county jail or two thousand dollars fine, or both.

- S.D. Codified Laws § 22-19B-5 – Compelling Practice of Religion⁹

This section punishes any person who intentionally attempts, by threats or violence, to compel another person to adopt, practice, or profess any particular form of religious belief. This is a criminal law, and is classified as a Class 1 misdemeanor. Offenders are subject to one year imprisonment in a county jail or two thousand dollars fine, or both.

- 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 Dakota?**

Yes, South Dakota's main hate crime law prohibits any person from defacing or damaging "any real property of another person" "because of that person's or group of persons' race, ethnicity, religion, ancestry, or national origin."¹⁰ Section 22-19B-2 defines defacing to include "cross-burnings or the placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism on the property of another person without that person's permission."¹¹

Note that this is a criminal law, and any claims under this code 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?**

You can contact one of the three victim witness specialists in the State Attorney General's Office of Crime Victim Services at (605) 280-7967 for Pierre, (605) 661-0029 for Yankton, or (605) 690-1476 for Brookings; your local state's attorney office (listing online); or The United States Attorney's Office for the District of South Dakota at (605) 330-4400. 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 Dakota have civil laws relevant to hate crimes or hate incidents?**

Yes, In addition to the criminal penalty provided in § 22-19B-1, South Dakota has a civil cause of action for malicious harassment:

- S.D. Codified Laws § 20-9-32 is the parallel provision to the criminal hate crime statute. It allows that the victim of malicious intimidation or harassment may recover both special and general damages, including damages for emotional distress, reasonable attorney fees and costs, and punitive damages. The civil cause of action for malicious intimidation or harassment is in addition to any other remedies, criminal or civil, otherwise available under law.¹²

Note that it only covers the acts listed in 22-19B-1, namely interfering with a person's civil rights by force, threat, or intimidation, or knowingly defacing, damaging or destroying property because of a person's or group of person's "race, ethnicity, religion, ancestry, or national origin." It does not appear to cover 19B-4 and 19B-5, dealing with preventing and compelling the practice of religion.

Private citizens can bring 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 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."¹³

In South Dakota, if someone intentionally injures you or your property, you may be able to sue that person under § 20-9-6, which grants every person "the right of protection from bodily harm or restraint, from personal insult, from defamation, and from injury to his personal relations, and every person is bound, without contract, to abstain from injuring any such rights of others and to abstain from injuring the person or property of another."¹⁴ This law appears to cover the following common law torts:

- Assault – Included in South Dakota's *criminal* definition of simple assault is an attempt to "cause bodily harm to another" with the "actual ability to cause the injury"; an attempt "by physical menace or credible threat to put another in fear of imminent bodily harm, with or without the actual ability to harm the other person;" and intentionally causing "bodily injury to another which does not result in serious bodily injury."¹⁵ This last definition appears to encompass the common law definition of civil battery (South Dakota does not have a criminal battery law, except those covering unborn and infant children). An example of an assault is when someone uses a gun to threaten another.
- Battery - Battery is often defined as any willful and unlawful use of force or violence upon the person of another. 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.¹⁶
- False Imprisonment – South Dakota's criminal false imprisonment law punishes "[a]ny person who knowingly and purposely restrains another person unlawfully so as to substantially interfere with such person's liberty."¹⁷ 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”) - To bring an IIED claim, you must be able to show the following: (1) extreme and outrageous conduct by another who has the intent of causing, or at least has reckless disregard of the probability of causing, emotional distress; (2) that you suffered severe or extreme emotional distress; and (3) the other person’s outrageous conduct caused your distress. 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.¹⁸
- 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 a trespasser in South Dakota for civil tort purposes is defined as “any person who enters on the property of another without permission and without an invitation, express or implied.”¹⁹ 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 often defined at common law as the wrongful exercise of dominion over the property of another in a manner inconsistent with the owners’ rights. An example of conversion would be if someone damaged your car.

In addition, if it can be proven that the person injured you or your property because of oppression, fraud, or malice, actual or presumed, 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 Dakota, you can recover punitive damages for the following:

“In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, or in any case of wrongful injury to animals, being subjects of property, committed intentionally or by willful and wanton misconduct, in disregard of humanity, the jury, in addition to the actual damage, may give damages for the sake of example, and by way of punishing the defendant.”²⁰

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?**

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

1. *Access to Justice, Inc.* is associated with the State Bar of South Dakota and provides legal services to individuals living at or below 125% of the federal guidelines as well as the elderly, veterans, survivors of domestic violence, sexual assault or stalking and individuals with disabilities who live at or below 200% of the federal poverty guidelines. They also have a reduced fee program for those not eligible for the above.
Phone: (855) 287-3510
2. *American Civil Liberties Union (ACLU) of South Dakota.* To request legal assistance, fill out a legal intake form at <https://action.aclu.org/secure/sd-legal-intake>.
Phone: (605) 332-2508
3. Dakota Plains Legal Services represents low-income clients in South Dakota and North Dakota, and specializes in representing Native Americans. Phone: (605) 342-7171
<https://www.dpls.org>

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 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 S.D. Codified Laws § 22-19B-1.

³ *Id.*

⁴ *Id.*

⁵ S.D. Codified Laws § 22-19B-2.

⁶ S.D. Codified Laws § 22-19B-1.

⁷ *Id.*

⁸ S.D. Codified Laws § 22-19B-4.

⁹ S.D. Codified Laws § 22-19B-5.

¹⁰ S.D. Codified Laws § 22-19B-1.

¹¹ S.D. Codified Laws § 22-19B-2.

¹² S.D. Codified Laws § 20-9-32.

¹³ S.D. Codified Laws § 20-9-6.

¹⁴ S.D. Codified Laws § 20-9-6.

¹⁵ S.D. Codified Laws § 22-18-1.

¹⁶ See e.g., *Stratmeyer v Engberg*, 649 N.W.2d 921, 925 (S.D.2002)

¹⁷ S.D. Codified Laws § 22-19-7.

¹⁸ See e.g., *Citibank (S.D.) N.A. v Hauff*, 668 N.W.2d 528, 535 (S.D. 2003)

¹⁹ S.D. Codified Laws § 20-9-11.1.

²⁰ S.D. Codified Laws § 21-3-2.