

HATE CRIME FAQs TEXAS

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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.

TABLE OF CONTENTS

1. What is a hate crime or hate incident? 2. I believe I was the victim of a hate crime or hate incident. What should I do? 3. Does Texas have a state hate crime law? 4. Who is protected under Texas's hate crime law? 5. 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 Texas's relevant laws? 6. Someone damaged my property and it appears to have been motivated by bias, prejudice, or hatred against a certain social group. What are Texas's relevant laws? 7. Someone defaced my place of worship or otherwise interfered with my religious practice. Does Texas have any special laws protecting religious groups from hate motivated acts? 8. 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 Texas?	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? 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 Texas have civil laws relevant to hate crimes or hate incidents? 11. What are some local and state organizations working on hate crimes and hate incidents? 12. Where can I find additional information or get help?
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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, color, national origin, religion, disability, sexual orientation, 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 on 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.

In order to find that an offense was committed because of bias or prejudice, Texas' hate crime statute specifies that the person who commits the underlying offense must have intentionally selected the person or property against whom the offense was committed based on the victim's race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.² (See Question 4 for definition of "sexual preference" under Texas state law.) For purposes of reporting hate crimes, Texas maintains records relating to "crimes that are motivated by prejudice, hatred, or advocacy of violence," which include but are not limited to incidents for which statistics are or were kept under the Federal Hate Crime Statistics Act as it existed in 1996.³ This includes hate crimes motivated by prejudice against race, religion, disability, sexual orientation, or ethnicity. Texas does not keep records on crimes motivated by prejudice against gender identity, nor does Texas classify gender identity as a protected class under its hate crime law. Under Title I, Article 2.211 of the Code of Criminal Procedure, clerks of the court to report cases for which prosecutors sought a hate crime enhancement to the Texas Judicial Council.

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 Texas have a state hate crime law?

Yes, Texas does have a state hate crime law.

Article 42.014 of the Texas Code of Criminal Procedure states: "In the trial of an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the ***defendant intentionally selected the person against whom the offense was committed or intentionally selected property damaged or affected as a result of the offense because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.***"

Title 5, Penal Code, addresses offenses against a person, and Sections 28.02, 28.03, or 28.08 address property crimes.

Texas Penal Code Ann. Sec. 12.47: If an affirmative finding under Texas's hate crime law (Article 42.014 of the Texas Code of Criminal Procedure), is made in the trial of an offense other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense.

If the offense is a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days.

This section does not apply to the trial of an offense of injury to a disabled individual under Sec. 22.04, if the affirmative finding in the case under Article 42.014, Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled.⁴

Moreover, Texas aims to collect statistics on hate crimes to support its reporting efforts. Under Title I, Article 2.211 of the Code of Criminal Procedure, clerks of the court to report

cases for which prosecutors sought a hate crime enhancement to the Texas Judicial Council.

Texas Government Code, § 411.046 (Hate Crime Reporting) provides for the establishment, and maintenance of a central repository for the collection and analysis of information relating to hate crimes.⁵

Finally, §29.905 of the Texas Education Code requires that “the attorney general, in cooperation with the agency, shall develop a program that provides instruction about state laws on hate crimes (1) at appropriate grade levels, to students; and (2) to the community at large.”

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

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

- Race;
- Color;
- Disability;
- Religion;
- National origin or ancestry;
- Age;
- Gender;
- Sexual Preference.
 - Article 42.014 (c) of the Texas Code of Criminal Procedure states: “In this article, “sexual preference” has the following meaning only: a preference for heterosexuality, homosexuality, or bisexuality”

Note: Texas does NOT consider gender identity as a protected group for purposes of its hate crime law.

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 Texas’s relevant laws?**

Texas has laws that you may turn to if someone damages your property because of bias, prejudice, or hatred.

Tex. Penal Code Ann. § 28.03 (2010)—*The offense of criminal mischief is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs* and the amount of the pecuniary loss to real property or to tangible personal property is \$750 or more but less than \$30,000.

Tex. Penal Code Ann. § 28.08 (Graffiti) (2010)—A person commits an offense if, without the effective consent of the owner, *the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with: paint; an indelible marker; or an etching or engraving device.*

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 Texas’s relevant laws?

Texas’s hate crime law, Texas Code of Criminal Procedure, Art. 42.014, addresses attacks motivated by bias or prejudice.

The associated penalty enhancement laws that provide increased punishments for perpetrators of common crimes motivated by bias, prejudice, or hatred. For example, if you were physically attacked by another individual, that would most 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 Texas, if the judge or jury makes an affirmative finding that the offense is a hate crime, Section 12.47 of the Texas Penal Code outlines the punishment enhancement:

For offenses other than a Class A Misdemeanor or First Degree Felony, the underlying offense is enhanced to the next higher category of offense. For instance, if the offense is a Class B Misdemeanor and the jury returns an affirmative finding that the offense was motivated by prejudice toward the victim’s race, the offense is increased to a Class A Misdemeanor. First Degree Felonies are not enhanced under Section 12.47 because they already carry a penalty range of 5-99 years in prison. If the underlying offense is a Class A Misdemeanor, it will remain a Class A Misdemeanor but the minimum jail sentence is increased to 180 days. Enhancements for hate crimes are limited to offenses under Title 5 of the Texas Penal Code, or Section 28.02, 28.03, or 28.08, Texas Penal Code.

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 otherwise targeted a religious institution). Does Texas have any special laws protecting religious groups from hate motivated acts?

Texas protects religious groups and places of worship from hate motivated acts. This law includes:

Tex. Penal Code Ann. § 28.03 (2010)—The offense of criminal mischief is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is more than \$750 or more but less than \$30,000.

Note that these are criminal laws, and any claims under these sections of 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 Texas?**

No, Texas does not have a specific law against intimidation or terrorism.

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 Crime Victims’ Compensation Program: crimevictims@texasattorneygeneral.gov or Call (800) 983-9933 or (512) 936-1200 (in Austin).

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 Texas have civil laws relevant to hate crimes or hate incidents?**

No, Texas does not have civil laws relevant to hate crimes and hate incidents.

However, there are a number of other civil laws you can use to bring a case against someone who physically or emotionally injures you, even if these actions do not rise to the level of a hate crime. These civil laws, or causes of actions, are generally known as torts. A tort is a wrongful act that results in legal liability.

In Texas, 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: a person commits an offense if the person “intentionally, knowingly, or recklessly causes bodily injury to another” or “intentionally or knowingly threatens another with imminent bodily injury.”⁶

Battery: Under Texas common law, a battery is a harmful or offensive contact with a plaintiff’s person.⁷

Intentional Infliction of Emotional Distress: This cause of action “requires proof that: (1) the defendant acted intentionally or recklessly; (2) the defendant’s conduct was extreme

and outrageous, (3) the defendant's actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe.”⁸

11. What are some local and state organizations working on hate crimes and incidents? Please go to www.8449nohate.org or call 1-844-9-NO-HATE to identify local organizations working on hate crimes and incidents.

The following organizations are state organizations working on hate crimes and hate incidents:

1. Your local District Attorney's Office
A directory of Texas's District Attorney's Offices can be found at:
<https://www.txdirectory.com/online/da/>
2. State Attorney General's Crime Victims' Compensation Program:
crimevictims@texasattorneygeneral.gov or Call (800) 983-9933 or (512) 936-1200 (in Austin).

12. 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 Tex. Code Crim. Proc. Ann. art. 42.014 (West 2001); See Question 4 for definition of “sexual preference” under Texas state law.

³ Tex. Govt. Code § 411.046.

⁴ Tex. Penal Code Ann. § 12.47

⁵ Texas's bureau of identification and records reports hate crimes against individuals based on race, religion, disability, sexual orientation, or ethnicity in compliance with the Hate Crime Statistics Act as it was in 1996. In 2009, the Hate Crime Statistics Act was amended to include a requirement for the Attorney General to report hate crimes perpetrated based on gender and gender identity. However, Texas has not since updated its Hate Crime Reporting Statute to include gender and gender identity.

⁶ Texas Penal Code Ann § 22.01

⁷ *Carter v. Diamond URS Huntsville, LLC*, 175 F. Supp.3d 711 (S.D. Texas 2016)

⁸ *Long Canyon Phase II and III Homeowners Ass'n, Inc. v. Cashion*, No. 03-15-00498-CV, 2017 WL 875314 at *7 (Tex. App. Mar. 3, 2017)