



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963

1401 New York Avenue, N.W., Suite 400, Washington, D.C. 20005 • phone: 202-662-8600 • fax: 202-783-0857 • www.lawyerscomm.org

HATE CRIME – FAQs

WASHINGTON

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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.

Washington's hate crime definition closely resembles the general definition above. In Washington, a hate crime is called "malicious harassment" and is defined as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) race; (2) color; (3) religion; (4) ancestry; (5) national origin; (6) gender; (7) sexual orientation; or (7) mental, physical, or sensory handicap.

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 Washington have a state hate crime law?

Yes. Section 9A.36.080 of the Washington Criminal Code states that a person is guilty of "malicious harassment," Washington's hate crime equivalent, if he or she 1) causes physical injury to the victim; 2) causes physical damage to or destruction of the property of the victim; or 3) threatens a person or group of person "because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap."

In other words, if someone injures you or your property, or 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, or mental, physical, or sensory handicap” then that person may be guilty of a hate crime under Washington law.

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

Washington’s malicious harassment statute protects any person who is the victim of a crime because of his or her actual or perceived:

- Race or ethnicity;
- Color;
- Religion;
- Ancestry or national origin;
- Gender;
- Sexual Orientation*;
- Mental, physical, or sensory handicap; or
- Association with a person or group with one or more of these actual or perceived characteristics.²

***Sexual orientation** is defined this way: “heterosexuality, homosexuality, bisexuality, and gender expression or identity[**].”³

****Gender expression or identity** is defined this way: “having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.”⁴

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 Washington’s relevant laws?

RCW § 9A.36.080(1)(b) (one provision of the “malicious harassment” statute) applies if someone damages your property because of bias, prejudice, or hatred (see also [Question 3](#)). This provision punishes offenders for causing “physical damage to or destruction of the property” of the target or another person because of the target’s actual or perceived protected traits (see [Question 4](#)).

Note that this is a criminal law, and any claims under the criminal 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 Washington’s relevant laws?

RCW § 9A.36.080(1)(a) (one provision of the “malicious harassment” statute) applies if an offender attacks a victim because of bias, prejudice, or hatred (see also [Question 3](#)).

This provision punishes offenders for causing “physical injury to the victim or another person” because of the victim’s actual or perceived protected traits (see [Question 4](#)).

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

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

As explained under [Question 3](#), Washington’s “malicious harassment” statute would apply if someone damaged or destroyed property at your place of worship through a hate motivated act.

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 Washington?

Yes. Washington’s “malicious harassment” statute (RCW 9A.36.080) specifically references hanging of a noose and burning of a cross as acts that constitute hate crimes and may be prosecuted under the law. The law creates an inference of an intended threat if the accused:

1. Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage⁵, or
2. Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.⁶

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?

The Lawyers’ Committee for Civil Rights Under Law maintains a 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 also contact the state’s Office of Crime Victims Advocacy (OCVA), which serves as a voice within government for the needs of crime victims in Washington State at <http://www.commerce.wa.gov/serving-communities/crime-victims-public-safety/office-of-crime-victims-advocacy/>

You can also contact The Victim Witness Assistance Program, which provides trained advocates to help crime victims during the investigation and prosecution of crimes. The Program Contact is: Stephanie Pratt: stephanie.pratt@commerce.wa.gov, Phone: 360-725-2899.

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 Washington have civil laws relevant to hate crimes or hate incidents?

Yes. Washington’s malicious harassment statute (RCW 9A.36.083) gives private citizens who have been the victims of hate crimes the right to file a private civil lawsuit. A person may be liable to the victim of malicious harassment for “actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys’ fees and costs incurred in bringing the action.”

Note: 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 other civil laws can I use to bring a case?

A number of other civil laws can be used to bring a case against someone who caused physical or emotional injury. 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.

Assault – An assault is defined as “(1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm”⁷ An assault can be committed even if there is no actual contact with the plaintiff, and even if the defendant had no actual ability to carry out the apparent threat. An example of an assault is when someone uses a toy gun, weapon, or open fist or hand in a manner to threaten another.

Battery – Battery is defined as “a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such contact.”⁸ This willful or intentional touching can also occur from an object put in motion by the other person. Offensive touching can constitute battery even if it does not cause injury, but the act must be done for the purpose of causing contact “or with knowledge on the part of the actor that such contact is substantially certain to be produced.”⁹ 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 when a defendant intentionally confines the plaintiff, either physically or by overcoming the plaintiff’s will, to a definable area from which there is no reasonably apparent means of escape. 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 (torts of intentional IIED and outrage are identical, although outrage also encompasses reckless conduct), you must show that: “1) the defendant engaged in extreme and outrageous conduct, 2) the defendant intentionally or recklessly inflicted emotional distress on the plaintiff, and 3) the conduct actually resulted in severe emotional distress to the plaintiff.”¹⁰ “Any claim of outrage must be predicated on behavior ‘so outrageous in character, and so extreme in degree, as to go beyond all

possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community”¹¹ A defendant's conduct must be more than malicious and intentional and liability does not extend to mere insults, indignities, threats, annoyances, or petty oppressions. An example of outrageous conduct that could lead to a successful 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. In Washington, the legal elements to recover for trespass to land are listed as the following:

- You owned or possessed the real estate at the time of the trespass (can be an owner or tenant);
- Another individual intentionally entered onto your land without proper authorization to do so;
- You suffered damage as a result.

An example of trespass to land would be if someone vandalized, or otherwise damaged, your front lawn. Specifically, a trespasser generally wrongfully enters another person's property, interferes with possession of property, damages property, or wrongfully removes resources from property. Conversion, on the other hand, applies to personal property and is defined as “the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it.”¹²

An example of conversion would be if someone damaged your car. In addition to common law liability, Washington state has a statute specifically related to trespass liability:

RCW 4.24.6302 – This law creates liability if an individual wrongfully and intentionally does any of the following:

- Damages personal property on land
- Damages any improvements made to the land
- Removes valuable property from the land, including minerals, timber, or crops
- Causes injury to the land or waste¹³

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?

Contact the Washington State Bar Association (<http://www.wsba.org/Resources-and-Services/Find-Legal-Help>) or the Stop Hate Project at 844-9-NO HATE. You may also contact the Northwest Justice Project at <https://nwjustice.org/> or <http://www.washingtonlawhelp.org>.

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:

FBI Field Office:
1110 3rd Avenue
Seattle, WA 98101-2904
Phone: (206) 622-0460
E-mail: Seattle.fbi@ic.fbi.gov
Website: seattle.fbi.gov

Office of the Attorney General:
1125 Washington St SE
Po Box 40100
Olympia, WA 98504
Phone: (360) 753-6200
Website: <http://www.atg.wa.gov/>

Northwest Justice Project:
401 Second Avenue S
Suite 407
Seattle, WA 98104
Phone: (206) 464-1519
Website: <https://nwjustice.org/> (also <http://www.washingtonlawhelp.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 RCW § 9A.36.080(1).

² RCW § 9A.36.080(1).

³ RCW § 49.60.040(26).

⁴ RCW §
49.60.040(26).

⁵ RCW § 9A.36.080(2)(a).

⁶ RCW § 9A.36.080(2)(b).

⁷ *State v. Sims*, 154 Wash. App. 1024 (2010).

⁸ *Morinaga v. Vue*, 85 Wash. App. 822, 828, 935 P.2d 637, 640 (1997).

⁹ Restatement (First) of Torts § 13 (1934).

¹⁰ *Kloepfel v. Bokor*, 149 Wash.2d 192, 195, 66 P.3d 630 (2003).

¹¹ *Sutton v. Tacoma Sch. Dist. No. 10*, 180 Wash. App. 859, 869, 324 P.3d 763, 768 (2014).

¹² *Brown ex rel. Richards v. Brown*, 157 Wash. App. 803, 239 P.3d 602 (2010).

¹³ Wash. Rev. Code Ann. § 4.24.630 (West).