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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 WEST VIRGINIA

Disclaimer: This guide is designed for informational purposes only. It is not legal advice and is not intended to create an attorney-client relationship. The Lawyers' Committee for Civil Rights does not warrant any information contained in this guide, nor does the Committee suggest that the information in this guide should be used as a basis to pursue legal advice or decision-making.

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.

In West Virginia, a hate crime is defined as “violence, or intimidation by threat of violence” committed against a person or their property because of one or more of the following characteristics of the victim: (1) race; (2) color; (3) religion; (4) ancestry; (5) national origin; (6) political affiliation; or (7) sex.”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 West Virginia have a state hate crime law?**

Yes, West Virginia does have a state hate crime law. Section 61-6-21 of the West Virginia Code prohibits any person from interfering with the civil rights of another “because of such other person’s race, color, religion, ancestry, national origin, political affiliation or sex.”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 one of the above mentioned protected classes, then that person may be guilty of a hate crime under West Virginia law.

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

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

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|-------------|-----------------------------|
| • Race; | • National Origin; |
| • Color; | • Political Affiliation; or |
| • Religion; | • Sex. |
| • Ancestry; | |

Note: West Virginia’s hate crime law does not protect a person who is the victim of a crime because of his or her physical or mental disability, gender identity, or sexual orientation. The Supreme Court of Appeals of West Virginia held that the term “sex” in the hate crime statute is plain and unambiguous and does not include sexual orientation.

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 West Virginia’s relevant laws?**

West Virginia has two laws that you may turn to if someone damages your property because of bias, prejudice, or hatred. First, West Virginia’s hate crime law, discussed under above, provides protection to your real and personal property. The hate crime law prohibits any person from committing violence or intimidation by threat of violence against any person’s property because of their protected class and further prohibits conspiring with another person to willfully cause property damage.”⁴ Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

The second law is the West Virginia Human Rights Act, which permits the Attorney General to bring a civil action for property damage, destruction, or trespass promulgated by an individual’s protected class.⁵

Note: Unlike West Virginia's hate crime law, the West Virginia Human Rights Act includes disability as a protected class. Like the hate crime law, the Human Rights Act does not include gender identity or sexual orientation as a protected class.

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 West Virginia's relevant laws?**

West Virginia's hate crime law, W. Va. Code §61-6-21(a), described under 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.

In addition, W. Va. Code §61-6-21(d), provides for penalty enhancement to increase punishments for perpetrators of common crimes motivated by bias, prejudice, or hatred. 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. Such motivation when committing a felony or misdemeanor is considered a circumstance in aggravation of the crime when imposing sentence.

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 West Virginia have any special laws protecting religious groups from hate motivated acts?**

West Virginia does not have a separate, specific law protecting religious groups from hate motivated acts beyond the hate crime law described under Section 61-6-21, which protects, among other classes of individuals, those with a specific religious belief or practice.

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 West Virginia?**

No, this type of action would likely fall under the general hate crime law established under Section 61-6-21, if motivated by the individual's protected class.

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 Civil Rights Division: (304) 558-0546; Your local District Attorney's Office (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 West Virginia have civil laws relevant to hate crimes or hate incidents?

Yes, West Virginia has a civil law relevant to hate crimes and hate incidents entitled the West Virginia Human Rights Act. This law provides a right to be free from violence, intimidation, or discrimination and provides a procedural tool that allows an individual to file a private lawsuit. Specifically:

- § 5-11-2 of the law declares that all West Virginia citizens are entitled to equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental, and financing of housing accommodations or real property without regard to race, religion, color, national origin, ancestry, sex, age/familial status, blindness, or disability.
- § 5-11-9 prohibits violence or intimidation by threat of violence committed against a person or property because of a person's certain characteristics.
- § 5-11-10 permits a private individual the ability to file with the West Virginia Human Rights Commission a complaint alleging unlawful discriminatory practices. If the Commission issues the individual a right to sue, then the individual is granted, under § 5-11-13, the ability to bring a civil action in the county where the respondent resides.
- § 5-11-20 permits the Attorney General the ability to bring a civil action for actual or threatened physical force or violence against any person, or property damage, destruction, or trespass promulgated by the individual's protected class. This section grants the Attorney General the ability to inflict injunctive or other equitable relief and a civil penalty of no more than \$5,000 per violation.

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 West Virginia, 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 - Assault is defined as an unlawful attempt to commit a violent injury to another person or to unlawfully commit an act that places another person in reasonable apprehension of immediate injury. A good example of assault without actual bodily injury is when someone uses a realistic toy gun to threaten another person.
- Battery - Battery is defined as unlawfully and intentionally making physical contact of a provoking nature to another person or unlawfully and intentionally causing physical harm to another person. 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 “the illegal detention of a person without lawful process.”⁶ 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 prevail on a claim for intentional or reckless infliction of emotional distress, plaintiff must show: (1) that defendant's conduct was atrocious, intolerable, and so extreme and outrageous as to exceed bounds of decency; (2) that defendant acted with intent to inflict emotional distress, or acted recklessly when it was certain or substantially certain emotional distress would result from his/her conduct; (3) that actions of defendant caused plaintiff to suffer emotional distress; and (4) that emotional distress suffered by plaintiff was so severe that no reasonable person could be expected to endure it.⁷ An example is someone having severe and emotional distress due to being falsely told that their spouse has died in an accident.
- Trespass on Property – To prove criminal trespass the plaintiff must show that the defendant knowingly entered a structure or conveyance without being authorized, licensed or invited.⁸ An example of trespassing would be if an unauthorized person stayed on your property after being asked to leave.

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 your local bar association or 1-844-9-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. **West Virginia Human Rights Commission**
Phone: 304-558-2616 or 888-676-5546
<http://www.hrc.wv.gov>
2. **Attorney General's Office**
<http://www.ago.wv.gov>

Main Office: 304-558-2021

Civil Rights Division: 304-558-0546
3. **Local Human Rights Commissions**

City of Beckley: <http://www.beckley.org/departments/human-rights/>

Phone: 304-256-1768

City of Morgantown:
<http://www.morgantownwv.gov/government/commissions/human-rights-commission/>

Phone: 304-225-3582

City of Weirton: <http://www.cityofweirton.com/244/Human-Rights-Commission>

Phone: 304-797-8844

City of Wheeling:
<http://www.wheelingwv.gov/citygovernment.php?id=200>

Phone: 304-234-3609
4. The State Bar of West Virginia
Legal Aid Services directory can be found at:
<http://www.wvlawyerreferral.org/help/legal-aid-of-wv/>
5. Legal Aid of West Virginia
<http://www.lawv.net/Resources/Other-Resources>

Phone: 1-866-985-2948

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 W. Va. Code §61-6-21(a).

³ W. Va. Code §61-6-21(b).

⁴ W. Va. Code §61-6-21(c).

⁵ W. Va. Code §5-11-20.

⁶ *Beachum v. White*, No. 11-1469, 2013 WL 3185152, at *5 (W. Va. June 24, 2013).

⁷ *Travis v. Alcon Labs., Inc.*, 202 W. Va. 369, 375, 504 S.E.2d 419, 425 (1998).

⁸ W. Va. Code § 61-3B-2.