

Hate Crimes and Bias Incidents

337.1 PURPOSE AND SCOPE

This Department recognizes and places a high priority on the rights of all individuals guaranteed under the Constitution and the laws of this state. When such rights are infringed upon by violence, threats or other harassment, this Department will utilize all available resources to see that justice is served under the law. This policy has been developed to provide members of this Department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

337.2 DEFINITIONS

Except where otherwise noted (*), the following definitions are provided per RCW 9A.04.110:

Bodily Injury, Physical Injury, or Bodily Harm - Physical pain or injury, illness, or an impairment of physical condition.

Malice and Maliciously - To import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

Reasonable Person - A member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim (RCW 9A.36.080(1)(a)).

Sexual Orientation - Heterosexuality, homosexuality or bisexuality

Gender Identity - 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 what is traditionally associated with the sex assigned to that person at birth.

Threat - To communicate, directly or indirectly, the intent to cause bodily injury immediately or in the future to any other person or to cause physical damage immediately or in the future to the property of another person.

Bias Incident* - Offensive derogatory comments directed at a person's sexual orientation, race, or other protected status which causes fear and/or concern in the targeted community during a non-criminal incident.

Crime with Bias Elements* - An event in which a crime is committed that is not bias-based but during the incident the suspect uses derogatory language directed at the victims' protected status group.

* NOT A RCW DEFINITION

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337.3 CRIMINAL STATUTES

337.3.1 HATE CRIMES

HATE CRIMES

A person is guilty of a hate crime offense if he/she maliciously and intentionally commits one of the following acts because of his/her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity or mental, physical, or sensory disability. (RCW 9A.36.080(1)):

- (a) Causes physical injury to the victim or another person;
- (b) Causes physical damage to or destruction of the property of the victim or another person; or
- (c) Threatens a specific person or group of persons and places that person, or members of the specific groups of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation or who has the same gender expression or identity, or the same mental, physical, or sensory disability as the victim. Words alone do not constitute a hate crime offense unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute a hate crime offense if it is apparent to the victim that the person does not have the ability to carry out the threat.

337.3.2 PRIMA FACIE ACTS OF HATE

Prima facie acts of hate are (RCW 9A.36.080(2)):

- (a) Burning a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or
- (b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.
- (c) Defaces religious real property with words, symbols, or items that are derogatory to persons of the faith associated with the property.
- (d) Places a vandalized or defaced religious item or scripture on the property of a victim who is or whom the actor perceives to be of the faith with which that item or scripture is associated.
- (e) Damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim or attempts to or successfully removes religious garb or other faith based attire from the victim's person without the victim's authorization.
- (f) Places a noose on the property of a victim who is or whom the actor perceives to be of a racial or ethnic minority group.

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337.3.3 THREATS TO BOMB OR INJURE PROPERTY

It is unlawful for any person to threaten to bomb or otherwise injure any public or private school building, any place of worship or public assembly, any governmental property, or any other building, common carrier, or structure, or any place used for human occupancy; or to communicate or repeat any information concerning such a threatened bombing or injury, knowing such information to be false and with intent to alarm the person or persons to whom the information is communicated or repeated (RCW 9.61.160(1)).

337.3.4 FEDERAL JURISDICTION

The federal government has the power to investigate and prosecute bias-motivated violence by giving the U.S. Department of Justice jurisdiction over crimes of violence where the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability (18 USC § 245).

337.4 CIVIL STATUTES

In addition to the criminal penalty provided in RCW 9A.36.080 for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorney's fees and costs incurred in bringing the action (RCW 9A.36.083).

337.5 PREVENTING AND PREPARING FOR LIKELY HATE CRIMES

While it is recognized that not all crime can be prevented, this Department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by:

- (a) Making an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes to form and cooperate with prevention and response networks.
- (b) Providing victim assistance and follow-up as outlined below, including community follow-up.
- (c) Educating community and civic groups about hate crime laws.

337.6 INITIAL RESPONSE FOR INVESTIGATING HATE CRIMES

Whenever any member of this Department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officer(s) will be promptly assigned to contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate.
- (b) A supervisor should be notified of the circumstances as soon as practical, if probable cause for a crime exists.
- (c) Once "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects, etc.), the assigned officer(s) will take

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all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved.

- (d) The assigned officer(s) will interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
- (e) Depending on the situation, the assigned officer(s) or supervisor may request additional assistance from detectives or other resources to further the investigation.
- (f) The assigned Officer(s) will document the hate crime or bias incident in a RMS police report.
- (g) The assigned officer(s) will include all available evidence indicating the likelihood of a hate crime in an appropriate report. All related reports will be clearly marked as "Hate Crimes" by completing the "Bias" option and note the victim's protected class, and, absent prior approval of a supervisor, will be completed and submitted by the assigned officer(s) before the end of their work week.
- (h) The "on scene" supervisor shall notify their precinct Lieutenant as soon as possible if a victim of Hate Crime experiences serious injury or death. If no serious injury or death occurs, the on scene supervisor shall include the hate crime or bias incident in a C-Brief.

337.6.1 INVESTIGATIONS RESPONSIBILITIES FOR HATE CRIMES

If a case is assigned to the Investigations Division, the Investigations Commander will be responsible for following up on the reported hate crime as follows:

- (a) Coordinate further investigation with the Clark County Prosecutor and other appropriate law enforcement agencies, as appropriate.
- (b) Maintain contact with the victim(s) and other involved individuals as needed.
- (c) Coordinate with the Public Information Coordinator regarding any information that should be reported to the media.
- (d) Maintain statistical data on suspected hate crimes and tracking as indicated and report such data to the Washington Association of Sheriff's and Police Chiefs (WASPC) (RCW 36.28A.030).

337.7 TRAINING

All members of this Department will receive Criminal Justice Training Commission (CJTC) approved training on hate crime recognition and investigation (RCW 43.101.290).