



**68<sup>th</sup> Legislative Assembly, House Judiciary Committee  
Public Hearing on House Bill 1537  
February 7th, 2023**

Good Morning. My name is Kelly Gorz, and I am the Associate Director for High Plains Fair Housing Center, a private nonprofit with the mission to strengthen communities and ensure equal access to housing across North Dakota. On behalf of High Plains Fair Housing Center and myself, I would like to thank Chairman Klemin and the House Judiciary Committee for the opportunity to speak on behalf of High Plains Fair Housing Center today in support of HB1537.

High Plains FHC is a statewide nonprofit with offices in Bismarck and Grand Forks. Our mission is to strengthen communities and to ensure equal access to fair housing in the region through training, education, enforcement, and advocacy. Fair housing is a right protected by federal and state laws. Fair housing means you may freely choose a place to live without regard to your race, color, religion, sex, or national origin, or because you are disabled or have children in your family and in North Dakota because you are on public assistance, because of your age, or marital status. Nationwide, fair housing centers play a key role in responding to bias crimes because of the alarming statistic that more than 30% of all bias crimes happen at or near a person's home.

Bias crimes historically go vastly underreported. The Southern Poverty Law Center states that about ninety-six (96) percent of bias crimes are underreported. This is for various reasons – lack of trust in systems, insufficient training to identify bias crimes, and various other barriers. Enacting this legislation is an essential first step in building trust with historically disenfranchised communities and will send a clear and consistent message from the state of North Dakota that bias-motivated attacks are unacceptable in our community.

Importantly, when a bias-motivated crime is committed, the victim's entire community is often left feeling victimized, vulnerable, fearful, isolated, and unprotected by the law. The impact of bias-motivated crime is far greater than the already terrible impact on the individual. The damage to the very fabric of a community where a bias crime has occurred must also be considered. Bias crimes, in effect, create a kind of public injury because they rapidly erode public confidence in being kept free and safe from these crimes. To that extent, crimes of this nature can traumatize entire communities.

[www.highplainsfhc.org](http://www.highplainsfhc.org)

High Plains Fair Housing Center | [info@highplainsfhc.org](mailto:info@highplainsfhc.org)  
PO Box 5222 | Grand Forks, ND 58206 | 701-203-1077

Nothing in this letter is legal advice, for legal advice please see an attorney.

North Dakota is one of only five states that does not currently have bias crime laws. There are five general types of bias crime statute classifications: penalty enhancement; independent offense; data collection; training; and civil action, remedies, or commission development. The states with the broadest and most comprehensive protections against hate crime have a combination of all five of these statute classifications. High Plains Fair Housing Center has produced a research report that has been emailed to the committee members for their reference concerning various bias crime legislation that is in place nationwide.

Bias crimes hurt all levels of a community, and this is the time for North Dakota to convey that it will not tolerate crimes that intentionally send a message of fear to our neighbors. Now is the time to address this important need in our community.

Thank you for your consideration and for making North Dakota a more welcoming community.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Gorz".

Kelly Gorz, Associate Director



www.highplainsfhc.org  
701.792.2878

## Hate Crime Legislation Review

Draft Two  
February 1, 2023



Mandi Carroll

High Plains Fair Housing Center

### Overview and Executive Summary

This report will provide a review of state hate crime statutes around the United States, a review of various protected classes at the state level, and will discuss several impediments or issues with hate crime legislation in general. Information provided in this section comes from the [State Hate Crimes Statutes compendium](#) from the Brennan Center for Justice.

This report finds that best practice for crafting hate crime legislation includes the following considerations:

- Penalty Enhancement
- Independent Offense
- Data Collection
- Training
- Civil Action, Remedies, and/or Commission

North Dakota is one of five states that currently does not have hate crime legislation. Thus, it is recommended that hate crime legislation is a priority for the upcoming legislative session.

### Federal Hate Crime Laws

Though this report focuses on state statutes, it is important to review federal hate crime legislation. [The United States Department of Justice Civil Rights Division enforces federal hate crime legislation.](#) The Civil Rights Act of 1968 was the first piece of hate crime legislation passed at a federal level. Title I permits federal prosecution of anyone who "willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with ... any person because of his race, color, religion or national origin" or because the victim attempts to engage in one of six types of federally protected activities, such as attending school, patronizing a public place/facility, applying for employment, acting as a juror in a state court or voting. Protections were also provided for fair housing rights. In 1988, familial status and disability were added as protected classes.

Additional hate crime legislation followed, including:

- Conspiracy Against Rights, 18 U.S.C. § 241
- Criminal Interference with Right to Fair Housing, 42 U.S.C. § 3631
- Damage to Religious Property, Church Arson Prevention Act, 18 U.S.C. § 247 - The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 18 U.S.C. § 249
- Violent Interference with Federally Protected Rights, 18 U.S.C. § 245

### Review of State Statutes

The vast majority of states have enacted hate crime legislation at the state level. There are five general types of hate crime statute classifications: penalty enhancement; independent offense; data collection; training; and civil action, remedies, or commission development. The states with the broadest and most comprehensive protections against hate crime have a combination of all five of these statute classifications. This section will also discuss the widespread nature of some crime statutes. Appendix one lists the statute classification.

## Penalty Enhancement

By and large, the most popular type of hate crime legislation per state is penalty enhancements of existing criminal statutes when evidence shows a correlation between the crime and the victim's protected class. Some states choose to promote hate crimes to felony class charges, while others choose higher-level misdemeanors. Several states enumerate sentencing provisions when the crime is hate-based.

## Independent Offense

The second most popular type of hate crime legislation per state is independent offense statutes. These statutes enumerate a specific, separate charge for various hate crimes.

## Data Collection

Several states have statutes that include mandatory data collection. Data collection is important as it can help states effectively determine the levels of hate crimes within the state.

[Additionally, the federal government requires states to report hate crimes to the FBI.](#)

Mandating and maintaining state repositories of hate crime data may help streamline the federal reporting process, which may increase accuracy and prevent the breakdown of the chain of reporting. Some states simply require the statewide collection of hate crime data. Other states enumerate who is responsible for the data collection, most frequently higher-level law enforcement officers and/or law enforcement agencies. In some cases, the Governor's office, the State Bureau of Identification, and/or the Department of Public Safety are responsible for collection.

## Training

A handful of states enumerate training requirements for law enforcement professionals through hate crime statutes. This type of statute is intended to be proactive in nature and is meant to mitigate under-reporting by educating law enforcement about when a crime should be considered a hate crime. Some state statutes enumerate who is supposed to facilitate these trainings. Examples include the Criminal Justice Training Commission in WA; Commission on Standards and Training in RI; the Board of Public Safety Standards and Training in OR; Municipal Police Training Committees in MA; New Mexico Law Enforcement Academy in NM; and Illinois Law Enforcement Training Standards Board in IL.

## Civil Action, Civil Remedies, and/or Commission

A few states have statutes that require civil actions/remedies and/or the establishment of a state-level commission to address hate crimes and hate-related incidents. Iowa, Idaho, Michigan, Oklahoma, Washington, and Vermont provide a civil right of action in addition to criminal charges. Illinois created the Commission on Discrimination and Hate Crimes. This commission works in partnership with a wide variety of residents to identify and uproot sources of discrimination and bias at the source; works with community leaders, elected officials, and

law enforcement to develop resources, training, and disseminate information for a fast, efficient response to hate crimes; to work with educators on issues surrounding hate and bias and to teach acceptance of diversity; to review state laws to ensure that the laws are widely known and applied correctly; to provide recommendations to the Governor and Legislative Assembly for any statutory changes needed to eliminate hate crimes/discrimination; and to help implement recommendations by working with the aforementioned entities along with the business community and state social services. Louisiana also has established a state-level Commission on Human Rights.

### Method of Civil Remedy: Restorative Justice

One possible civil remedy for North Dakota could be restorative justice. [Restorative Justice](#) is an emerging remedy being utilized by many different communities to aid in healing after a hate crime occurs. The restorative process increases understanding and helps perpetrators change their mindset, which may reduce the chance of reoffending. Activities involved with restorative justice can include material reparation (financial restitution, replacement of damaged goods, fixing of damaged property); emotional reparation (verbal or written apology); relational reparation (agreement regarding future interactions); community reparations (volunteering at a charity, removing graffiti from public property, cleaning up public spaces); moral learning reparations (providing a report on the harm caused, presenting a reflection document to aggrieved parties about what has been learned); and utilizing multiagency support (social services, teachers, housing officers, medical referrals, and/or rehabilitation centers). Restorative justice is a dialogue process that seeks to help perpetrators and victims seek peace and understanding. Research shows that in addition to socioemotional benefits, [restorative justice even can even have significant neurological benefits](#). As restorative justice both empowers victims and increases understanding and impact for perpetrators, it would be a helpful, forward-thinking, and effective way to handle hate crimes in North Dakota.

### Nature of Crimes

Many states (Alabama, Arizona, Connecticut, Delaware, Washington D.C., Florida, Georgia, New York, South Carolina, South Dakota, Virginia, Illinois, Washington, and Vermont) have specific statutes regarding cross-burning and other types of hate crime specific to religion (vandalism, desecration, etc.). Many states also enumerate separate or enhanced penalties if the perpetrator wears a mask.

### States with No Hate Crime Legislation

As of September 1, 2020, the Brennan Center for Justice states that there are only five states that do not have any criminal hate crime statute. Those states are Arkansas, Indiana, North Dakota, South Carolina, and Wyoming.

## Snapshot of Surrounding State Statutes

<u>State Statute Description Type Protected Class</u>				
Montana	MONT. CODE ANN. § 45-5-221 “Malicious Intimidation or Harassment Relating to Civil or Human Rights – Penalty”	Makes it a felony to maliciously intimidate, harass, injure, or destroy the property of a victim because of their race, creed, religion, color, national origin, or involvement in civil rights or human rights activity.	Independent Offense	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
Montana	MONT. CODE ANN. § 45-5-222 “Sentence Enhancement - Offenses Committed Because of Victim's Race, Creed, Religion, Color, National Origin or Human Rights Activities”	Penalty enhancement for any crime except malicious intimidation or harassment when the crime was motivated by the victim's race, color, creed, national origin, or involvement in civil rights or human rights activity, or that involved damage/destruction to a building regularly used for religious worship.	Penalty Enhancement	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
South Dakota	S.D. CODIFIED LAWS CH, 22-19B [§§ 22-19B-1 – 22-19B-5] “Hate Crimes”	Makes it a felony to intimidate or harass a specific person or group because of their race, ethnicity, religion, ancestry, or national origin. Incorporates cross burning or placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism into the crime of defacement. Makes it a misdemeanor to prevent another from practicing their religion by threats or violence. Makes it a misdemeanor to compel another to practice or adopt a religion by threat or	Independent Offense	Race, religion, national origin, ethnicity, or ancestry

		violence.		
Minnesota	MINN. STAT. § 626.5531 “Reporting of Crimes Motivated by Bias”	Requires peace officers to report every violation of chapter 609 or a local criminal ordinance if the officer has reason to believe or the victim alleges that the offender was motivated to commit the act by the victim’s race, religion, national origin, sex, age, disability, or sexual orientation.	Data Collection	Race, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.2231 SUBD. 4 “Assault in the Fourth Degree”	Makes it a misdemeanor crime to assault another because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin, and a felony for repeat offenders within five years of their previous conviction.	Independent Offense	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.595 SUBDS. 1A & 2 “Damage to Property”	Penalty enhancement to second-degree and third-degree criminal damage when motivated by race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.749 SUBD. 3 (A)(1) “Stalking; Penalties”	Penalty enhancement to aggravated stalking is when the offender commits the offense because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex



Minnesota	MINN. STAT. § 626.8451 SUBD. 1 “Training in Identifying and Responding to Certain Crimes”	Requires a training course to assist peace officers in identifying and responding to crimes motivated by the victim's race, religion, national origin, sex, age, disability, or sexual orientation.	Training	Race, religion, national origin, sexual orientation, disability, age, sex, training
-----------	--	---	----------	---

## Review of Protected Classes

The most popular protected classes are as follows: race, color, ethnicity, national origin, sex, religion, and disability status. Many states also include gender, gender identity, and sexual orientation. This section will discuss the protected classes as enumerated by the Federal Bureau of Investigation and will also explore various other unique protected classes throughout various states.

## FBI Unified Hate Crime Protected Classes

The FBI’s Unified Crime Reporting Program was created after the 1990 passage of the Hate Crime Statistics Act, 28 U.S.C. § 534, which requires the attorney general to collect data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.” The collected data can help identify specific hate-related themes or issues that are occurring in any given community. [The FBI UCR Program categorizes biases as follows:](#)

- Race/Ethnicity/Ancestry
  - Anti-American Indian or Alaska Native
  - Anti-Arab
  - Anti-Asian
  - Anti-Black or African American
  - Anti-Hispanic or Latino
  - Anti-Multiple Races, Group
  - Anti-Native Hawaiian or Other Pacific Islander
  - Anti-White
- Religion
  - Anti-Buddhist
  - Anti-Catholic

- Anti-Eastern Orthodox (Russian, Greek, Other)
- Anti-Hindu
- Anti-Islamic
- Anti-Jehovah's Witness
- Anti-Jewish
- Anti-Mormon
- Anti-Multiple Religions, Group
- Anti-Other Christian
- Anti-Other Religion
- Anti-Protestant
- Anti Sikh
- Anti-Atheism/Agnosticism/etc,
- Sexual Orientation
  - Anti-Bisexual
  - Anti-Gay (Male)
  - Anti-Heterosexual
  - Anti-Lesbian
  - Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)
- Disability
  - Anti-Mental Disability
  - Anti-Physical Disability
- Gender
  - Anti-Male
  - Anti-Female
- Gender Identity
  - Anti-Transgender
  - Anti-Gender Non-Conforming

## Other State-Level Protected Classes

In addition to the protected classes enumerated above, several states have other protected classes. Some of these include marital status; personal appearance; familial status; family responsibility; matriculation; political affiliation; genetic information; source of income; status as a victim of domestic violence; place of residence/business; association with someone of a protected class; person's actual or perceived status as a government employee; members of law enforcement, correctional officers, and/or first responders; homelessness; involvement in civil rights or human rights activities; age; and service in US Armed Forces.

## Impediments to Hate Crime Legislation

One of the largest issues concerning hate crimes is that so many go unreported. A [2005 Study of Literature and Legislation on Hate Crime in America](#) suggests that this may be because

- People may not understand what constitutes a hate crime in their state.
- People may not believe that what happened to them is in fact a hate crime.
- Some victims may be reluctant to report to the police out of fear.
- Some law enforcement officers may not recognize or may not choose to acknowledge the role of hate in certain offenses.

The [Southern Poverty Law Center](#) believes that hate crimes are underreported by about 140 percent. The [most recent FBI UCR data](#) shows that nearly 88% of law enforcement agencies reported zero hate crimes in their jurisdictions, which may be attributed to the above underreporting reasoning factors. [ProPublica](#) found many instances where the hate crime reporting chain broke down as the data traveled from local to state to federal departments. Additionally, only 12% of states have statutes that require that law enforcement officers be trained to identify and investigate hate crimes, which may lead to underreporting, misclassifying, and under-identifying hate crimes from the start. However, even when these impediments and underreporting estimates are considered, [hate crimes are on the rise throughout the United States](#).

## APPENDIX 1

### Penalty Enhancement

States that have penalty enhancement statutes include Washington D.C., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin.

### Independent Offense

States that have independent offense hate crime statutes for a variety of crimes include Washington, D.C., Arizona, California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Tennessee, Virginia, West Virginia, and Washington.

## Data Collection

A handful of states require state-level hate crime data to be maintained by and/or disseminated to state-level Human Rights Commissions. States that have data collection statutes include Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, and Washington.

## Hate Crime Training

States with hate crime training requirements include California, Connecticut, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, and Washington.

## Links of Note/References

Brennan Center for Justice. (2020). *State Hate Crime Statutes*.

<https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>

Department of Justice Civil Rights Division. (2019). *Hate Crime Laws*.

<https://www.justice.gov/crt/hate-crime-laws>

Department of Justice Criminal Justice Information Services Division. (2018). *2018 Hate Crime Statistics*. <https://ucr.fbi.gov/hate-crime/2018>

Federal Bureau of Investigation. (n.d.). *Hate Crime Statistics*.

<https://www.fbi.gov/services/cjis/ucr/hate-crime>

Levin, B. (2018). *Hate Crimes Rise in U.S. Cities and Counties in Time of Division and Foreign Interference*. Center for the Study of Hate and Extremism; California State University San Bernadino.

<https://www.ochumanrelations.org/news/report-shows-hate-crimes-rise-time-division-for-foreign-interference/>

Reisel, Dan. (2013). *The Neuroscience of Restorative Justice*.

[https://www.ted.com/talks/dan\\_reisel\\_the\\_neuroscience\\_of\\_restorative\\_justice/transcript](https://www.ted.com/talks/dan_reisel_the_neuroscience_of_restorative_justice/transcript)

Schwencke, K. (2017). *Why America Fails at Gathering Hate Crime Statistics*. ProPublica.

<https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>

Shanmugasundaram, S. (2018). *Hate Crimes, Explained*. Southern Poverty Law Center.

<https://www.splcenter.org/20180415/hate-crimes-explained>

Shively, M. (2005). *Study of Literature and Legislation on Hate Crime in America*. Abt Associates,

Inc. <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>

Walters, M. A. (2019). *Repairing the Harms of Hate Crime: Towards a Restorative Justice Approach* (No. 108; Resource Material Series). United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

[https://www.unafei.or.jp/publications/pdf/RS\\_No108/No108\\_10\\_VE\\_Walters.pdf](https://www.unafei.or.jp/publications/pdf/RS_No108/No108_10_VE_Walters.pdf)