

Bill Presentation and Testimony in Support of HB 1537
By Representative Mary Schneider
House Judiciary Committee, Lawrence Klemin, Chair
Tuesday, February 7, 2023

Chairman Klemin, Vice Chairperson Karls, and Members of the Judiciary Committee:

This bill is about bias or hate crimes. A bias or hate crime is usually defined in state law as one that involves threats, harassment, or physical harm, and is motivated by prejudice against someone's race, color, religion, national origin, ethnicity, sexual orientation or physical or mental disability.

Although we have examples of acts that have occurred against North Dakota citizens in each of those categories, North Dakota is one of only five states, or maybe fewer today, that doesn't adequately protect its citizens against bias crimes.

So why is it important to have laws that protect against bias crimes? It's important because (1) the victims belong to protected categories of people under the law, and (2) because bias crimes are unique in that not only do they impact the individual who has been targeted, but they often impact the entire community with which that individual identifies. Victimizing citizens because of their race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry is an affront to our society, our communities, and our culture.

An assault against an individual is bad; an assault against an individual because of the group they represent, the protected class they represent, is worse. If your instincts are to say we should treat everyone the same, or we don't need a special classification for certain groups, know the law at all levels has treated these protected classes as special. For example:

- The Supreme Court applies "strict scrutiny" in certain cases where there are issues of race, religion or national origin, referring to the groups as "suspect classes." Other categories are subject to "intermediate scrutiny."
- The 1964 Civil Rights Act applies to many of those protected classes, with others added over the years.
- Our state human rights act focuses on such groups.

Why we single out these groups is discussed in court cases at all levels and in federal and states' laws, and academic publications. It's because of some common traits:

- They have been historically discriminated against.
- They have immutable characteristics (highly visible traits).
- They are powerless or have diminished ability to protect themselves (a "discrete or insular minority").

- Their distinguishing characteristics don't inhibit the group from contributing meaningfully to society.

So, this bill overall treats the groups named in it specially for reasons longstanding and throughout law and justice systems. That's why 45 states have incorporated bias or hate crimes into their laws. They have clearly stated, and we have not, that certain groups need particular protections, that we should gather specific data and report it as other states do, and that we must train our law enforcement personnel on recognizing and dealing with bias crimes. Those are components of this bill. Most states add penalty enhancements, too, but this bill is minimal in that regard.

HB 1453 may seem familiar to some of you who were here last session, but it is not an old friend. It is still a bill that prioritizes education and training of law enforcement, and data collection, and would put those requirements into law.

Section 1 includes a course of instruction and ongoing training for peace officers, a refresher training, and periodic updating of the course as necessary. Section 2 puts bias language into the aggravated assault statute in subsection 1e. In the harassment part of Section 3, it also adds that language, and in Section 4, you'll find the bias language in criminal mischief at 2.d.

Section 5 is particularly important because it defines "bias crime" and "law enforcement agency" and requires the collection of information on bias crimes and on groups and individuals committing them. That information is public, but the names of the victim and perpetrator are not. The attorney general has flexibility and latitude in this bill to establish how, when and what manner of reporting there will be. It's only required that by July 1, he will submit a written report summarizing the data to legislative management, and annually report to the FBI which collects the data from each state.

Now I said this wasn't what we call around here "old friend" legislation—those bills that come back again and again in the same way. This isn't old friend legislation, in part because you weren't friendly to the original bill in the first place, and because a lot of things have changed since this Committee saw the original bias crime bill.

We worked with law enforcement who were involved with, and knowledgeable about, the training that would be required, so the bill could take advantage of what was already started or planned, and so the wording fit to allow flexibility where needed. Bill proponents will continue to work with Post leadership to eliminate costs of training refreshers by building them into existing programs as suggested in neutral testimony. Where there are suggestions of how to better streamline reporting we will do so.

We incorporated bias language into the criminal statutes but reduced most penalty enhancements. This bill says it's more important to get in place the language protecting certain groups, the education of law enforcement, and the reporting of bias, rather than filling the jails and prisons with longer sentences.

We took seriously the Department of Corrections concerns about adding to prison and jail populations. The last legislature got “restorative justice” incorporated into North Dakota’s sentencing statutes, so there’s a powerful tool to use with bias crime offenders.

Restorative justice is a system that incorporates the victim and community into the penalty process so a perpetrator can be shown the harm he or she has caused, and participate in making amends in many different ways, depending on the nature of the offense, the parties, and the community response. Restorative justice works particularly well where there is both an individual and societal or community harm, and it serves to divert or decrease the necessity of jail or prison time.

And here’s what else has changed. There were many groups and individuals who testified last session about the need for bias crime legislation, and they were upset that we didn’t act. In the communities of Fargo and Grand Forks, for instance, people worked with their local officials, demonstrated the need for bias crime law, and were able to successfully get local hate crime ordinances in place. But you will hear from them why that is not enough and hear from others why it is important to extend those protections to other parts of the state.

After you have heard the testimony today, and read the statistics and testimony on line, we can talk as a group about other bias crimes misconceptions: that we already have enough criminal laws, that you can’t legislate thought-based behavior, that you can’t legislate away hate, that police officers or prosecuting attorneys won’t know how to charge or try these cases, that you can’t know what constitutes a person’s intent or what’s in his or her mind. Because all of those things are untrue, no matter who says them, who believes them, or how often they’re heard.

Take just intent or what’s in a person’s mind when a crime is committed. In the justice system we judge intent with most crimes, certainly the most violent, destructive, and dangerous ones. We can frequently tell from words and deeds the nature of intent—what was in people’s minds when they committed their crime. Broad principles of law focus on mens rea and actus rea, the guilty mind and guilty acts. Law enforcement personnel, prosecutors, and judges make decisions and determinations regularly about intent as part of their jobs.

So please consider this bill and the many people and groups who support it seriously. It serves to fill a gap that will allow important community conversations about diversity, acceptance and tolerance. It can help us minimize discriminatory behavior, protect our protected classes, and intervene when there are harmful acts against vulnerable people. We need to speak clearly as a state, that we will neither welcome nor tolerate crimes of bias or hatred, and where those occur, we will have the training, the education, the data, and the responses that prevent and stop their occurrences.

(And if your gut tells you that you just don’t like this bill, remember what your mother said, “You don’t have to like it, you just have to do it.”)