



F.A.Q.

1. Aren't all crimes hate crimes?

- No. This is really a trick question. The question should be aren't all crimes bias motivated. The answer to this question is clearly no. A defendant's motivation or intent is an appropriate sentencing consideration.
- Think of a brick thrown through your next door neighbors' window. Does the crime feel different if you learn it was done because their unmowed lawn is an eyesore -- than if it was done because they were the first African-American family to move into the sub-division? Does one motive create more concern about the community? Is one more likely to affect the victim's family more than the other? Your family? If the answer to any of these questions is yes, than you can see that there is a real difference between the crimes even though outwardly they are exactly the same.
- It is also helpful to think about possible sentencing in these two instances. No sentence that seems appropriate in either scenario will fit the other. Again, without looking at the bias motivation, these two crimes are exactly the same. It is precisely this difference that is being legislatively recognized by "hate crime" laws like this one.

2. Don't hate crime laws create special rights for "special people"?

- No. They protect people based only upon things that we all have. For example, everybody has a color and a national origin (even a sexual orientation). The law does not protect only persons of a particular color and thus there are prosecutions for both White on Black and Black on White bias motivated crimes. Additionally, the new legislation will protect persons who are not members of a group that is the intended target, but are mistakenly selected by a bias motivated perpetrator.
- Just what "special right" would it be? The right not to be assaulted? No, hate crime laws are about an offender's motivation to pronounce people like themselves to be superior to others and divide our society. Hate crime laws don't create special rights, they address special wrongs.
- Most importantly, bias crime laws do not protect only a specific crime's victim. A hate crime causes greater harm to individuals beyond the actual crime victim, and indeed the community as a whole, than do other crimes. Hate crime laws thus protect all people

3. What's the difference between a hate crime and a bias motivated crime?

Nothing. The two terms refer to the same criminal conduct. While hate crime is the more often used (perhaps because it has a more fiery sound as a news headline), the term bias motivated crime more accurately describes what is involved. A criminal defendant is not sentenced for their thoughts (even hateful ones),

4. Can someone be convicted of a hate crime for using offensive words?

- No. Under the proposed legislation an act must first be a crime, before it can be classified as a hate crime. Thus, unless what a person says and/or does is by itself criminal conduct (e.g. a direct physical threat against another), that person cannot be charged with a hate crime. The proposed law does not censor thoughts, limit speech, or even to create a criminal offense where none presently exists.
- If something isn't already a crime, it can't be a bias motivated crime.

5. Do offensive words always elevate a crime to a hate crime?

- No. Again think bias motivated crime. A person may have a bias, and may even express it by calling a victim offensive names -- but their crime is not a hate crime unless the victim's selection was motivated by the bias.

6. Why replace rather than amend the current Ethnic Intimidation Act?

- The current "ethnic intimidation" statutory language does not make it clear that it applies only to conduct that is already criminal, and that can never be used to charge someone only because of their opinion or message.
- What is needed is a law specifically designed as a "sentence enhancement." Thus the proposed law clarifies that it may only be applied where the prosecutor can first bring a charge for an independent criminal act. Only after a defendant is first found guilty of the independent criminal conduct, does the judge or jury then look at what motivated the crime. A defendant found guilty of both the independent act, and of being motivated by bias in committing that act, could receive a longer sentence.

7. Nooses have been in the news lately. How will the new law treat nooses?

- Current law requires injury to person or property in order to be charged with a crime. This can create a problem when a noose is hung on property without actually damaging the property.
- The proposed law declares that nooses (and burning crosses) constitute "injury" to property even when there is no physical damage. Thus if it can be shown that the "injury" to property was done with malicious intent, the perpetrator could be found guilty of property destruction under current law. If it can also be shown that the crime was racially motivated, the misdemeanor property offense could be enhanced and charged as a bias motivated crime.

8. Must a judge sentence a defendant more harshly if they have been found guilty of a bias motivated crime?

- No. The statute will only give the court the option of increasing the penalty imposed for breaking the law. It does not in any way require a harsher sentence.
- Critically, by making a misdemeanor into a felony when it is bias motivated, the sentencing process is enhanced even if the sentence itself ultimately is not. Felony convictions require a more detailed pre-sentencing process in which the facts of the crime and the defendant's history are examined by the court in an effort to tailor an appropriate sentence. Thus, while the court may determine after a pre-sentence investigation that the appropriate sentence is probation without any jail or prison time, the process enables the court (with input from victims' advocates and others), to consider options like mandatory counseling or community service for the defendant.
- While in many cases a conviction for a bias motivated crime may result in a 'sentence enhancement,' the law itself may be more accurately understood as providing an enhanced sentencing process which will result in enhanced sentencing options.

9. Does the proposed Bias Motivated Crime law make other improvements to the Ethnic Intimidation Act it will replace?

- The proposed law will clearly state that it covers crimes committed motivated by the victim's actual or perceived race, color.... (Presently it could be argued that a perpetrator who is motivated by their anti Muslim bias to attack a person walking out of a Mosque could not be charged with ethnic intimidation if it turns out that person is not actually Muslim, because the crime would not have been committed because of the actual victim's religion.) The focus is on the criminal's motive for the crime.
- The proposed law will cover crimes committed against one person for associating with member(s) of a targeted group. (For example, while a crime committed by a white person against a white person because they were dancing with a black person may not be motivated by an anti-white bias against the victim, it is still a bias motivated crime.)
- The proposed law will cover crimes when bias motivation is a factor, even if it is not the only motivating factor. It is already difficult enough for a prosecutor to prove bias motivation beyond a reasonable doubt; they should not have to also prove that there was no other factor involved.
- The proposed law will apply to property crimes committed on public or institutional property where the property owner, (who legally is the crime's "victim"), may not be who the perpetrator intended to harm. Hateful graffiti on public property is a crime where the victim may be the city itself, but it may also constitute a crime motivated by bias and aimed at one or more members of a specifically targeted group.

10. Will the proposed legislation limit a victim's right to bring a civil suit?

- No. The proposed law preserves a victim's right to bring separate civil suit, whether criminal charges are filed or not.