



DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

SB 577 – Leading The Fight Against Hate

Hate crimes are increasing, both locally and nationally. According to the Southern Poverty Law Center, Oregon was 11th in total hate crimes reported in the ten days following the presidential election, a figure not adjusted for total population. Similarly, the FBI reports that Oregon’s number of hate crimes reported increased over 60% from 2015-16. Despite this clear increase, data provided by the Oregon Criminal Justice Commission shows a decline roughly 50% in both convictions and arrests for the crime of intimidation, Oregon’s “hate crime” provision, since the early 2000s. Observing this sharp increase in hate crime frequency without a concurrent rise in arrests and prosecution, the Attorney General convened a Task Force on Hate Crimes to assess the adequacy of Oregon law and resource levels in combating these serious offenses. This Task Force, which includes representatives from Unite Oregon, CAUSA, the Jewish Federation, the Council on American-Islamic Relations, the Sikh community, Neveh Shalom, the ACLU, the Oregon Criminal Defense Lawyers Association, the Oregon District Attorneys Association, the Oregon Chiefs of Police, the Oregon State Police, the Department of Public Safety Standards and Training and the Criminal Justice Commission, began meeting in July of 2018 and has met monthly subsequently. During the month of January, the Task Force conducted “listening sessions” with community members in Portland, Salem and Medford and took over 8 hours of testimony about community experiences with hate and bias crimes. The Task Force has reached unanimous agreement and now submits these recommendations to the legislature.

Recommendation #1: Focus on the victim. When polled on the subject, community stakeholders cite “insufficient law enforcement response” as their number one frustration when dealing with hate crimes incidents. Stakeholders report calls to 9-1-1 being minimized or outright ignored by the responding officer. This creates the sentiment that hate crimes are not taken seriously. A portion of this difficulty can be explained by the very strong protections afforded to freedom of speech under the Oregon Constitution. A stakeholder who is confronted

by a screaming bigot only inches from their face may well feel that they are the victim of a hate crime, and may experience much of the trauma and fear associated with victimization, despite the fact that this speech is protected by the constitution and therefore not appropriately the subject of a criminal investigation. But hearing from law enforcement that there is “nothing they can do about it” only reinforces already existing divisions between law enforcement and Oregon’s most diverse communities while also tending to promote the view that hate crimes are unimportant to political leaders. The Anti-Defamation League recommends that states strive to track and address not only hate “crimes” but also hate “incidents,” bigoted interactions against members of a protected class which, while not necessarily criminal on their own, are intensely traumatic for those targeted and which may serve as the canary in the coal mine for an increased possibility of hate-driven criminal activity in that area or against that particular community. Under existing law, these incidents are not tracked.

The City of Eugene has chosen a different approach. They require that a person who reports a bias incident, whether or not it can be prosecuted, to be referred to services, and for the information on that incident to be collected. The State of Oregon should follow that approach. The Task Force recommends that any victim who self-designates as having experienced a bias crime or incident where reasonable suspicion cannot be established or the case otherwise investigated should be referred to the Department of Justice for victims services, including but not limited to safety planning, coordination with community non-profits and other resources. The Department of Justice has offered a preliminary estimate of 2.0 additional FTE to carry out this project.

Recommendation #2: Improve the collection of hate crime data. The Federal Bureau of Investigation has concluded that hate crimes are systematically underreported throughout the nation. Under existing law, law enforcement agencies are required to record any crime which they interpret to be a “bias crime.” Many, if not most, law enforcement agencies report no hate crimes. In 2018, Medford, Grants Pass, Roseburg and Bend combined to report precisely zero hate crimes in their cities. During this same period, the City of Eugene reported over 50 hate crimes. This difference reflects not an epidemic of hate in the City of Eugene but rather a

deliberate policy by that agency to make a commitment to reporting that runs parallel to their commitment to providing services to those who experience hate.

Under existing law, a law enforcement agency who investigates a hate or bias crime is required to note the character of the criminal activity and the protected class status of the victim. This information is then aggregated by the Oregon State Police, sent to the Federal Bureau of Information to assist with the tabulation of their annual Hate Crimes Statistics report, and made available to the public via an annual report. While the Oregon State Police have been typically compliant with these reporting requirements, the data is not as useful as it could be. An OSP report will state, for example, that there were 15 hate crimes reports in Portland during a given year, and that 7 of those reports stem from incidents against Hispanic individuals. A stronger interpretation of the data would be able to include that those 7 incidents occurred in the span of 27 days, all involved vandalism of a particular nature, and were concentrated in two adjacent zip codes. This improved data interpretation would allow for not just the coarse aggregation of data but targeted outreach to impacted communities, improved safety planning and other non-theoretical benefits. Reaching this goal requires not just augmented data collection standards but a more sophisticated interpretation. The Oregon Criminal Justice Commission is a nationally recognized expert on the interpretation of criminogenic data, and they believe they are capable of offering the heightened analytical capabilities necessary to achieve improved results. The CJC believes they can significantly utilize existing infrastructure and analytical capacity to offset additional costs, and would request only 1.0 FTE in additional analytical staffing to achieve the desired result. This capacity could also be leveraged to process the additional information that would be collected by the Oregon Department of Justice in the previous section, providing Oregon with the clearest possible picture of hate and bias activity.

Recommendation #3: Require prosecutors to track hate and bias data. Under existing law, prosecutors are not subject to the requirement that any identified hate or bias cases be flagged and reported to the Oregon State Police or other authority. This is especially problematic because most hate and bias crime cases, particularly the more serious cases, are not facially identifiable as a “hate crime.” In Oregon, prosecutors may seek an “upward departure” in any

felony case involving hate or bias, allowing them to as much as double the presumptive sentence if the motivation can be proven beyond a reasonable doubt. However, this information is not necessarily reflected in the charging instrument or crime of conviction, which renders it invisible for all tracking mechanisms. The task force recommends that prosecutors work with the Criminal Justice Commission to develop a system to flag and track hate and bias crimes. This will provide great insight into the number and character of hate crimes, how they are prosecuted, how they are punished, and the rate of recidivism – all information unavailable in the current system.

Recommendation #4: Modernize our “Intimidation” statute. Our intimidation statute was written in 1981, and it is in many ways a product of that time. The Task Force offers the following recommendations:

- **Focus on the harm, not on the number of participants.** When the intimidation law was created, law makers were confronted with organized hate activity associated with the Aryan Nation and other “skinhead” organizations. As such, they chose to focus on the number of individuals rather than the nature of the harm. Under Oregon law, it is presently a felony for two individuals to apply racist graffiti but a misdemeanor for one individual to beat another individual because of the color of their skin. Proposal would recognize that violence, or the immediate threat of violence, based on a person’s membership in a protected class as a felony.
- **Rename the crime to reflect what it is.** “Intimidation” does not fairly reflect the nature of the underlying crime. Proposal would rename the crime to “Bias Crime in the First/Second Degree.”
- **Add “gender identity” as a protected class.** Individuals victimized for their gender identity are believed to be the fastest growing type of hate crime. A plurality of states have already taken the step of adding gender identity to their list of protected classes. It is time for Oregon to join them.