

Report of the Hate Crimes Advisory Working Group

July 2020



Washington State Office of the
Attorney General
Bob Ferguson

Letter from the Attorney General



Dear Washingtonians:

Hate crimes are a widespread problem that deserve the attention of policymakers at every level. Individuals across our state and country are becoming more emboldened to act out on the hate they feel toward others because of their national origin, religion or gender identity. State and local lawmakers should protect the right to free speech, but it is essential that those in leadership actively work to confront acts of violence and harassment that are motivated by prejudice.

As your Attorney General, protecting the civil rights of all Washington residents, including ending hate and bias crimes in our state, is one of my top priorities. Hate has no place in Washington. The rich diversity of the people who call Washington home is what makes our state a great place to live and work. State and federal laws protect that diversity. Washington state law defines hate crimes as a crime or threat against someone because of race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity or expression, or mental, physical or sensory disability.

In recognition of the need for more action to confront hate crimes and bias incidents, in 2019, the Washington State Legislature created a Hate Crime Advisory Working Group within the Attorney General's Office. This Advisory Working Group spent the last 10 months taking a hard look at what kind of hate crimes are happening in Washington and how we can strengthen our response and support victims. If acted upon, the proposals in this report from the Hate Crime Advisory Working Group will make Washington a safer, more inviting place for everyone.

As our state becomes more diverse, we must tackle issues surrounding hate crimes and bias incidents together. The proposals laid out in this report challenge our institutional practices while also examining how we can become a more accepting Washington family.

Finally, I am grateful for the contributions of members and participants of the Hate Crime Advisory Working Group, and staff in the Attorney General's Office in developing the recommendations in this report. Their dedicated work provides critical guidance for policymakers to confront this problem and protect all Washingtonians.

We are all in this together.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long, sweeping underline.

Bob Ferguson
Attorney General

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ADVISORY WORKING GROUP

Name	Organization
Miri Cypers	Anti-Defamation League's (ADL) Pacific Northwest Region
Masih Fouladi	Council on American-Islamic Relations (CAIR-WA)
Monisha Harrell	Equal Rights Washington
Maxima Patashnik	Jewish Federation of Greater Seattle
Nina Martinez	Latino Civic Alliance
Kurtis Robinson	National Alliance for the Advancement of Colored People (NAACP)
Det. Elizabeth Wareing	Seattle Police Department
Jasmit Singh	Sikh community member
Jacqueline Lawrence	Washington Association of Prosecuting Attorneys
Buddy Bear	Washington Education Association
Bre Weider	Washington State Attorney General's Office
Rep. Morgan Irwin	Washington State Legislature
Sen. Hans Zeiger	Washington State Legislature
Sen. Jesse Salomon	Washington State Legislature
Rep. Javier Valdez	Washington State Legislature



SUMMARY OF RECOMMENDATIONS

In response to House Bill 1732 (2019), codified in RCW 43.10.300, the Attorney General's Office (AGO) convened the Hate Crimes Advisory Working Group to raise awareness of and enhance responses to hate crimes and bias incidents.

LAW ENFORCEMENT

- Provide the Criminal Justice Training Commission (CJTC) with resources to develop hate crimes training.
- Require incumbent law enforcement officers to periodically complete online hate crimes training, within a specified timeframe, within the 24 hours of in-service training already required annually.
- Provide resources for an annual statewide summit for law enforcement officers and prosecutors.
- Require law enforcement agencies to assign crimes with possible bias motivation to a detective for additional screening and mandatory contact with the victim.
- Require law enforcement agencies to designate a Hate Crimes Liaison to track and monitor hate crimes and bias incidents and serve as a resource for community members.
- Include jurisdiction information for hate crimes in the Washington Association of Sheriffs and Police Chiefs' (WASPC) *Crime in Washington* annual report.

PROSECUTORS

- Provide prosecutors with an additional tool to hold hate crime offenders accountable by considering bias an aggravating circumstance for any crime.
- Classify hate crimes as a crime against persons, so offenders are subject to community custody.
- Review civil hate crimes litigation brought by other Attorneys General Offices to determine whether additional statutory authority is necessary in Washington to bring similar actions.
- Recommend that the Washington Association of Prosecuting Attorneys (WAPA) develop a state-specific hate crimes memo and provide accompanying training at its statewide conference.
- Recommend that WAPA develop a pilot program with interested prosecutors' offices to track data and publicly share information on filing practices for hate crimes.

K-12 SCHOOLS

- Provide additional sample language about discriminatory harassment in student and staff handbooks to clarify the types of actions that may constitute discriminatory harassment.
- Require posting of discriminatory harassment policy and procedures in schools to inform students about their rights.
- Require a portion of state-funded professional development to be used for training in the fields of cultural competence, equity, diversity, and inclusion.

WORKPLACE

- Require employers to post information about bias incidents and hate crimes and how to report violations in a conspicuous place where other required employment posters are posted.
- Require the state to identify and implement appropriate means of providing employees with information about bias incidents and hate crimes and how to report violations.
- Conduct additional research to assess the feasibility of developing a mandatory reporting scheme for workplace hate crimes and other additional protections for vulnerable workers, such as enhanced whistleblower protections when reporting a hate crime or bias incident.
- Require all state-elected lawmakers and employees of the Legislature to complete training that addresses structural racism and other structural inequities.

RESTORATIVE JUSTICE

- Provide resources to study the feasibility of enhancing restorative justice practices in Washington's criminal justice system, particularly concerning hate crimes as well as juvenile offenders.

ONGOING COORDINATION

- Provide resources to the AGO, including a minimum of 2-3 staff, to plan the development of a statewide coordinating body to combat hate and bias. Select responsibilities will be carried out by other entities, which may also require resources.

ACTIVITIES OF THE HATE CRIMES ADVISORY WORKING GROUP

In response to House Bill 1732 (2019), codified in RCW 43.10.300,¹ the AGO convened the Hate Crimes Advisory Working Group to raise awareness of and enhance responses to hate crimes and bias incidents. Specifically, the Advisory Working Group was tasked with developing recommendations to:

- Prevent hate crimes and hate incidents, especially those occurring in public K–12 schools and in the workplace, through public awareness and anti-bias campaigns;
- Increase identification and reporting of hate crimes and hate incidents, including recommendations for standardization of data collection and reporting;
- Strengthen law enforcement, prosecutorial, and public K–12 school responses to hate crime offenses and hate incidents through enhanced training and other measures; and
- Support victims of hate crime offenses and hate incidents—in particular, identifying ways of strengthening law enforcement, health care, and educational collaboration with, and victim connection to, community advocacy and support organizations.

In August 2019, the Governor’s Office appointed ten Advisory Working Group members - six representing those protected under the Hate Crime statute,² as well as a representative each for law enforcement, prosecutors, K-12 educators, and a local organization with national subject matter expertise.

The Hate Crimes Advisory Working Group convened a series of meetings open to the public from September 2019 to June 2020. Meetings included presentations from those with experience and expertise, staff briefings, information sharing and discussion. Hate Crimes Advisory Working Group members and non-member stakeholders also worked together in subcommittees on focused topics (Data & Reporting, Collaboration & Response, and Public Awareness), evaluating information to inform the wider Advisory Working Group’s discussions.

Meeting Schedule³

- **September 6 (Meeting in Seattle):** The Hate Crimes Advisory Working Group adopted a charter, outlining how the group would operate. Advisory Working Group members agreed to relay information to their respective constituencies about Working Group activities and gather information from their constituencies to share with the Working Group. The Anti-Defamation League presented on national trends in hate crimes, local cases, and state law.
- **October 10 and February 20 (Collaboration & Response Subcommittee Teleconferences):** Topics of discussion included law enforcement training and state and federal grant programs.
- **October 18 and February 24 (Public Awareness Subcommittee Teleconferences):** Topics of discussion included campaigns using traditional and social media as well as school-based anti-bullying campaigns.
- **November 1 and March 6 (Data Collection & Reporting Subcommittee Teleconferences):** Topics of discussion included how hate crimes are categorized and alternative reporting of bias incidents outside of traditional law enforcement settings.
- **December 5 (Meeting in Tacoma):** The Hate Crimes Advisory Working Group did a deeper dive on data hate crimes in Washington state, discussing the importance of community outreach and trust in increasing reporting of hate crimes. The Sikh Coalition delivered a presentation.
- **March 16 Meeting (Teleconference):** Representatives of the Snohomish County Prosecuting Attorney’s Office and U.S. Attorney’s Office facilitated a discussion, walking through case examples to illustrate the nuances associated with prosecuting hate crimes, as well as discussing how their offices work with victims and community groups.
- **April 10, 17, and 23 Discussions of Prospective Proposals (Teleconference):** The Hate Crimes Advisory Working Group engaged in an initial review and discussion of potential proposals, identifying the benefits and drawbacks of various approaches as well as additional information needed from staff for further refinement.
- **June 1, 5, 8, 15, and 16 Voting Meetings (Teleconference):** The Hate Crimes Advisory Working Group held a series of meetings to discuss, amend, and vote on the final recommendations laid out in this report. A list of member votes on each date is in Appendix II.

BACKGROUND ON THE ISSUE

The Hate Crimes Advisory Working Group believes all Washingtonians deserve to live, work, and go to school in environments free from hate and bias. Hate crimes impact both the individual victim and terrorize an entire group of people or community. When hate crimes occur, those impacted should be confident that reporting will result in thorough investigations that hold offenders accountable.

Defining Hate Crimes

In Washington, a person is guilty of a hate crime offense if they maliciously and intentionally commit one of the acts listed below based on bias motivation, meaning the attacker's perception of a victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.⁴

- Physical injury to the victim or anyone else;
- Damage or destruction of the property of the victim or another person; or
- Threats to a person or group of people in such a way that causes the victims to have a "reasonable fear" that the attacker will cause physical injury or property damage.

Hate crimes are considered a class C felony in Washington state and carry a maximum sentence of five years of imprisonment and/or a \$100,000 fine.⁵ The victim of hate crimes can bring a civil lawsuit against the harasser for actual damages, punitive damages of up to \$100,000, and reasonable attorneys' fees and costs incurred in bringing the action.⁶

Defining Bias incidents

According to the U.S. Department of Justice, bias incidents are acts of prejudice that are not criminal in nature and do not involve violence, threats, or property damage.⁷ These incidents can instill fear and create an unwelcoming environment.

As noted by the Oregon Department of Justice, some examples of bias incidents include:

- Using racial slurs or other degrading language;
- Distributing or displaying racist, sexist or other hateful materials; and
- Mocking a person's disability or cultural practices.⁸

Bias incidents are not consistently tracked. Some law enforcement agencies go beyond accepting reports of hate crimes and also encourage reporting of bias incidents so they can identify patterns, reach out to the community, and potentially intervene before conduct escalates to criminal behavior.

Hate Crimes in Washington

In Washington, crime reporting by law enforcement is voluntary with the exception of hate crime⁹ and domestic violence¹⁰ reporting. Local law enforcement agencies are required by law to report all hate crime violations monthly to WASPC. WASPC is required to summarize the information and file an annual report with the Governor and the relevant committees of the Legislature. WASPC fulfills this requirement by including information about hate crimes in its annual *Crime in Washington* report.¹¹

In 2018, as indicated in the 2018 *Crime in Washington* report, there were 534 reported hate crime incidents in Washington. Each incident can involve multiple crimes, such as assault and property destruction. Of the 766 reported offenses in hate crime incidents in 2018, there were 195 intimidation offenses (about 25% of all offenses), 187 simple assaults (24%), 157 property destruction offenses (20%), 99 aggravated assaults (13%) and 81 larcenies, burglaries, and robberies combined (11%). Approximately 61% of the bias motivations for hate crimes were based on the person's race, ethnicity, or ancestry, 21% were related to sexual orientation, and 12% involved religion.¹²

Table I. Number of Hate Crime Incidents in Washington with Particular Bias Motivations, 2018

Anti-Black/African American	101
Anti-LGBT*	101
Anti-White	71
Anti-Islamic/Muslim	21
Anti-Multiple Races	20
Anti-American Indian/Alaska Native	18
Anti-Jewish	18
Anti-Hispanic/Latino	16

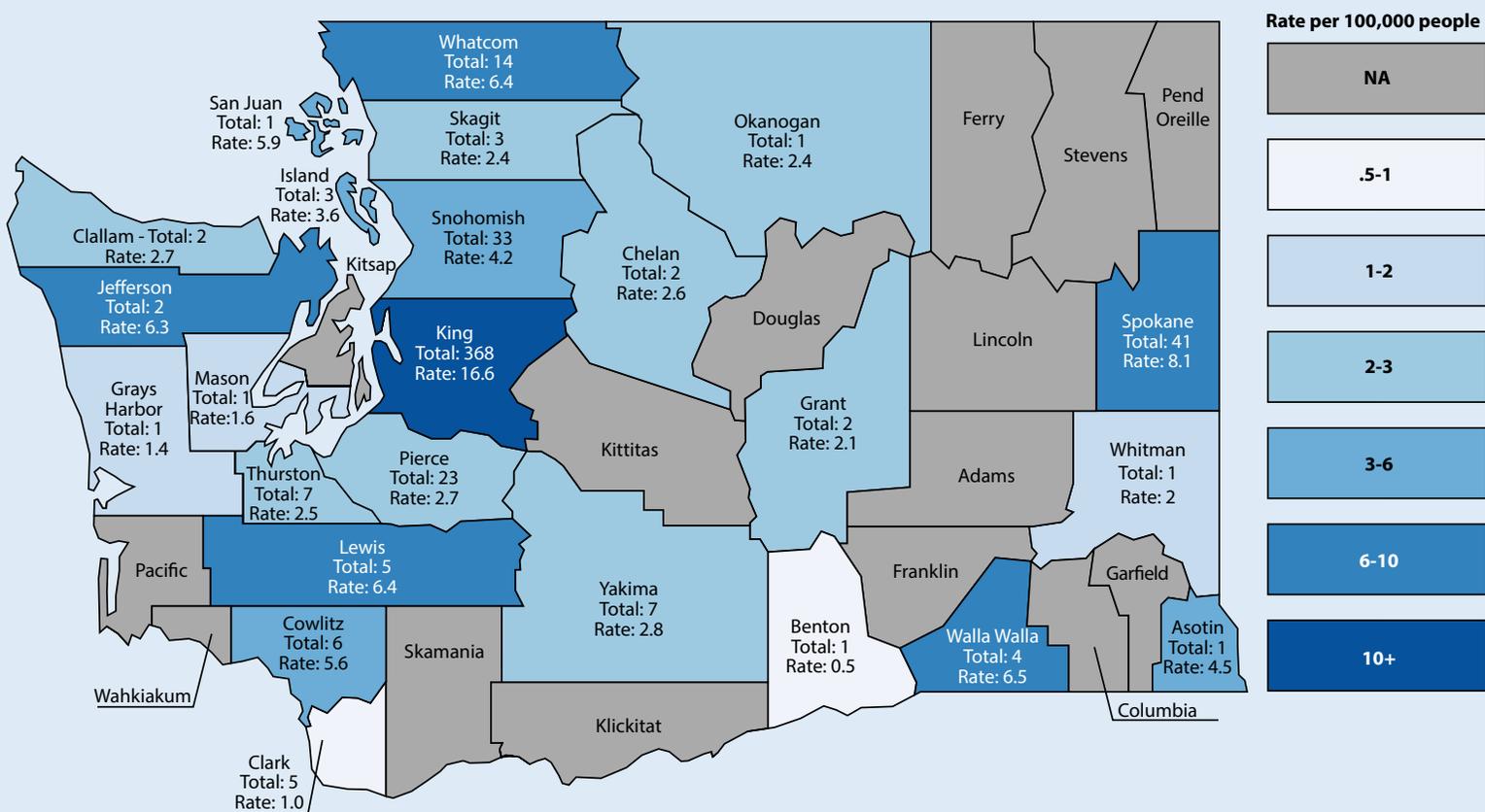
* Compilation of bias based on sexual orientation and Anti-Transgender (in the gender identity category)

Source: 2018 *Crime in Washington* report

The most common particular bias motivations in 2018 are shown in Table I; these represent all of the bias motivations involved in 15 or more hate crime incidents.

The *Crime in Washington* report does not currently include the jurisdiction in which the hate crime occurred. However, the AGO obtained 2018 jurisdiction data from WASPC. Of the state's 534 hate crime incidents in 2018, 55% (294 incidents) were reported by the Seattle Police Department (SPD). After Seattle, the jurisdictions with the three highest reported number of hate crimes were the Spokane Police Department (31 incidents), Kent Police Department (18 incidents), and King County Sheriff's Office (12 incidents). 81 law enforcement agencies (out of a total of 276) reported a hate crime in their jurisdiction in 2018;¹³ about half of these reported one incident for the year. The agencies with reported hate crimes are located in the 24 counties shown in Figure I; 15 of the counties in the state reported no hate crimes.

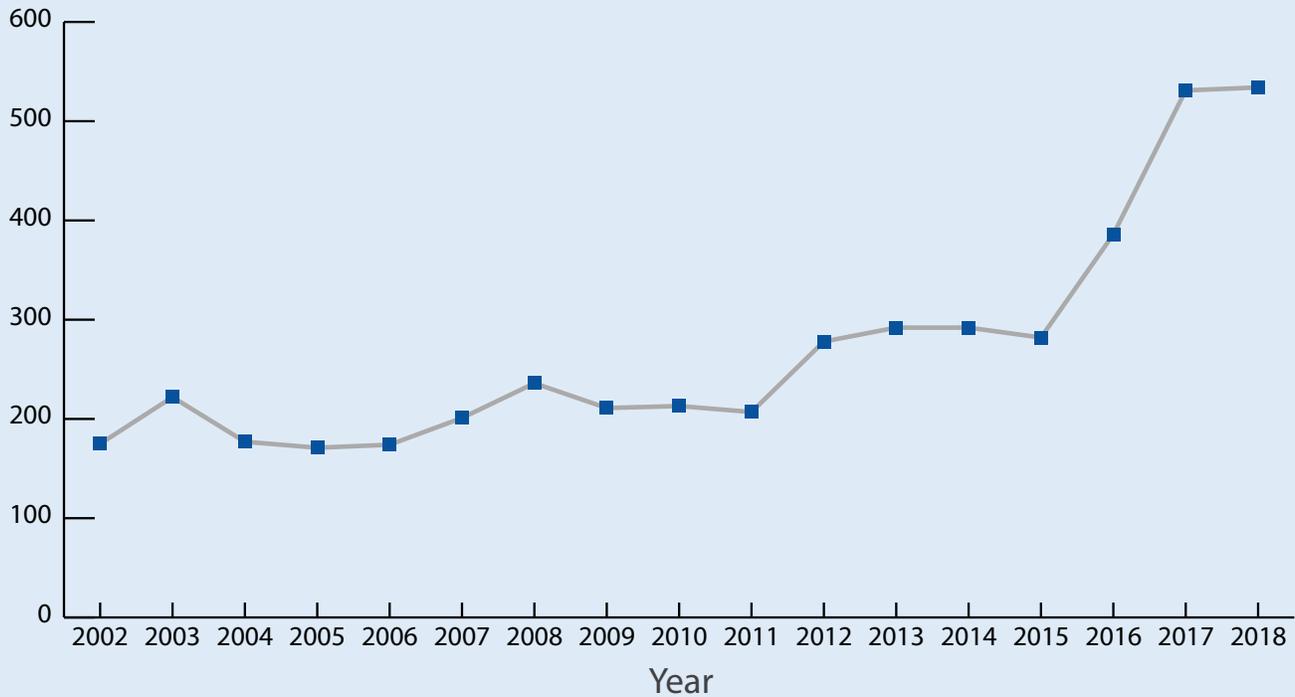
Figure I: Reported Hate Crime Incidents by County, Number and Rate per 100,000 Residents, 2018



Source: AGO analysis of data provided by the Washington Association of Sheriffs and Police Chiefs.

Though a significant portion of the state reported no hate crimes in 2018, that does not mean that hate crimes did not occur in these locations. Hate crimes are known to be underreported to law enforcement (more on this on page 7). Even when they are reported, police officers may not identify and record the crimes as hate crimes. Jurisdictions with more reported hate crimes may not actually experience more of these crimes, but instead, may have a culture that demonstrates that these crimes are taken seriously, which builds community trust and leads to increased reporting.

Figure 2: Number of Reported Hate Crime Incidents in Washington, 2002-2018



Source: Washington Association of Sheriffs and Police Chiefs

Figure 2 shows how the number of hate crime incidents in Washington recorded in official crime statistics has fluctuated over time. Notably, in 2015, SPD hired a full-time Bias Crimes Coordinator, as well as an LGBTQ Liaison Officer, who started a program, known as Safe Place, to encourage reporting of crimes against the LGBTQ community. SPD's Bias Crimes Coordinator, the only detective in the state exclusively dedicated to hate crimes, participates in community events to educate the public about hate crimes and serves as a resource for SPD staff. Given that a significant portion of the state's hate crimes are reported by SPD, hiring these individuals who proactively work to build trust with the community may explain some portion of the increase in reported hate crimes in the state in 2016 and 2017. Seattle's City Auditor, for example, noted a 346% increase in hate crimes in Seattle from 2012 to 2018.¹⁴

Underreporting of Hate Crimes

In addition to obtaining information about hate crimes from official crime statistics, which reflect crimes reported to law enforcement, we can also learn from the Bureau of Justice Statistics' (BJS) National Crime Victimization Survey (NCVS). This nationally representative survey collects information about crimes both reported and not reported to police.¹⁵ To classify a victimization as a hate crime, the NCVS requires one of three types of evidence: the offender used hate language during the commission of the crime, the offender left hate symbols at the scene, or the incident was confirmed to be a hate crime by police investigators.¹⁶ According to a BJS report with findings from the NCVS, more than half (54%) of hate crime victimizations were not reported to police from 2011-2015.¹⁷ Most commonly, victims reported that they did not report to police because they handled the matter privately or through a non-law enforcement official (41%). About a quarter (23%) of hate crime victims who did not report the crime believed that police would not want to be bothered or to get involved, would be inefficient or ineffective, or would cause trouble for them. In addition, 19% of victims stated that the victimization was not important enough to report to police.

According to the Bureau of Justice Statistics, even when violent hate crimes are reported to police, they are nearly

3 TIMES LESS LIKELY

to result in an arrest than violent crimes that do not involve hate (10% compared to 28%)

KEY TOPICS & RECOMMENDATIONS



LAW ENFORCEMENT

The Hate Crimes Advisory Working Group’s recommendations are below and include the text following each bulleted item.

Law Enforcement Training

Training can enhance law enforcement officers’ skills in recognizing hate crimes and documenting the evidence necessary to prosecute cases.¹⁸ In Washington, CJTC establishes standards and provides training to criminal justice professionals, including the 720-hour Basic Law Enforcement Academy (BLEA). Since 1993, CJTC has been required to provide training for law enforcement officers in identifying, responding to, and reporting hate crimes and any other crimes of bigotry and bias.¹⁹ The specific content and length of the hate crimes curriculum is not specified by law or rule in Washington. Currently, the BLEA addresses hate crimes when discussing the underlying crime that the hate crime is associated with, most prominently as part of the assault and harassment component of criminal law. The BLEA also includes a dedicated one-hour session on hate crimes; however, implementation is currently inconsistent, as the session is not always facilitated by an expert in enforcing Washington’s hate crime statute. When the session is facilitated by a local expert, it touches on a variety of topics, including the types of offenders who commit hate crimes, investigative processes, considerations for interacting with individuals and communities victimized by hate crimes, and documenting non-criminal bias incidents in an effort to prevent such conduct from escalating to criminal acts.

Ongoing or refresher hate crimes training is left to the discretion of local law enforcement agencies. Law enforcement officers are required to complete a minimum of 24 hours of ongoing training annually.²⁰ There are no specific content requirements related to hate crimes training. CJTC does not currently provide hate crimes training outside of the BLEA. Officers may not encounter hate crimes frequently and ongoing training would boost officers’ confidence and skills in recognizing and responding to these incidents.

Recommendations to enhance law enforcement training:

- **Provide CJTC with resources to develop hate crimes training.**

Unanimous

When developing the hate crimes training, CJTC must work in collaboration with community stakeholders representing groups protected under Washington’s hate crime statute. Online training reduces the administrative burden on law enforcement officers, allowing them to take the training at their convenience. This delivery method also provides benefits for tracking and documentation purposes. In addition to comprehensive online modules, brief “micro-trainings” provide targeted refreshers of practical skills. Online hate crime modules will include the experiences of communities impacted by hate crimes due to their race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability. Subject to the availability of funds, the online training may address, but is not limited to, the following:

- State and federal hate crime statutes;
- Identifying hate crimes;

- Identifying bias motivation;
- Investigation and interviewing tactics;
- The impacts of hate crimes on victims and communities, including testimonials by victims and advocates;
- Reporting and documentation, including how to use the information and the rationale for documenting non-criminal bias incidents; and
- Leadership-level training on engaging frontline officers as well as the community.

Some topics may benefit from in-person, interactive learning, such as using trauma-informed approaches when working with victims, employing cultural humility, and understanding the historically complex relationship between police and some communities impacted by hate crimes. CJTC must allow for a collaborative development process with meaningful contributions by community stakeholders representing those impacted by hate crimes due to their race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.

Estimated costs: \$635,000 for the development of the online training modules and micro-trainings, facilitation of in-person trainings, and staff oversight and management, plus \$500,000 for use of the online learning platform for all officers, which will be used for training on a variety of topics in addition to hate crimes (e.g., implicit bias and leadership training). Approximately \$50,000 should be dedicated to the collaborative development process with community stakeholders. The process for allocating funds for training development must be transparent. Total costs are approximately \$109 per officer to train 10,000 officers.

- **Require incumbent law enforcement officers to periodically complete online hate crimes training, within a specified timeframe, within the 24 hours of in-service training already required annually.**

Near unanimous. One abstention: CAIR-WA.

- **Provide resources for an annual statewide summit for law enforcement officers and prosecutors.**

Unanimous

The purpose of this summit is to provide a forum for those investigating and prosecuting hate crimes to exchange information about trends and best practices. Content must include contributions from impacted communities and subject matter experts as well as law enforcement officers and prosecutors. The summit must include law enforcement and prosecutors from geographically diverse regions across the state. The summit may launch an ongoing inter-agency hate crimes investigation committee or task force.

Law Enforcement Policies and Practices

In addition to training officers who respond to hate crimes, individual agency policies and practices can also help identify hate crimes and reassure victims and their communities that reports are taken seriously. For example, the FBI cites a two-tier decision-making process as a model practice.²¹ Under this system, responding officers make an initial assessment of potential bias motivation, but the final determination is made by another officer with expertise. This can reduce the pressure on responding officers to make judgments about potentially ambiguous incidents that they encounter infrequently. Local law enforcement officers in Washington noted that assigning a detective to conduct additional screening of cases potentially motivated by bias enables the detective to follow-up with victims for any additional details that may have been missed in the initial report, validates victims' experiences, and provides a point of contact if victims later remember additional information.

Recommendations for more robust law enforcement policies and practices:

- **Require law enforcement agencies to assign crimes with possible bias motivation to a detective for additional screening and mandatory contact with the victim.**

Unanimous

- **Require law enforcement agencies to designate a Hate Crimes Liaison to track and monitor hate crimes and bias incidents and serve as a point of contact for community members for information and resources.** *Note:* this is not intended to be a person solely dedicated to the Hate Crimes Liaison role, but a point person who performs this function in addition to other duties.

Unanimous

Recommendation to enhance transparency of hate crimes data:

- **Include jurisdiction information for hate crimes** in WASPC's *Crime in Washington* annual report to identify where hate crimes are recorded and where additional outreach may be needed to encourage victims to report. All jurisdictions must be required to report, even if they are reporting no hate crimes.

Unanimous



PROSECUTORS

The law enforcement investigation, including obtaining detailed statements from victims and witnesses and documenting evidence of bias, is crucial for prosecution. To successfully prosecute a case as a hate crime, prosecutors need to prove that the offender's conduct was motivated by bias. If the motive cannot be proven, prosecutors can still seek to hold offenders accountable by charging the underlying crime, such as assault. For some victims, it may not be meaningful if the bias component of the crime is not acknowledged and penalized. On the other hand, if the prosecution of the underlying crime is successful, the offender may face similar or harsher penalties. Moreover, charging a hate crime without sufficient evidence of the offender's motive beyond a reasonable doubt may result in an acquittal, which can negatively impact the community.

Recommendations to increase options to hold hate crime offenders accountable:

- **Provide prosecutors with an additional tool to hold hate crime offenders accountable** that is less restrictive than the existing hate crimes statute. Amend the Sentencing Reform Act to add a bias indicator as an aggravating circumstance, meaning that a person who commits any crime – rather than just assault, property damage, and threats – can face harsher punishment if the crime involves bias. Prosecutors should ensure that this enhancement is not used to increase sentencing disparities and marginalization of communities of color.

Suggested approach: Amend Departures from the Guidelines enumerated in the Sentencing Reform Act, RCW 9.94A.535(3), to add to the list of exclusive factors in support of an exception sentence when the defendant's conduct was motivated by the defendant's perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability in the commission of the current offense.

Unanimous

- **Classify hate crimes as a crime against persons** by amending RCW 9A.36.080 and RCW 9.94A, so offenders are subject to community custody.
Unanimous
- **Review civil hate crimes litigation brought by other Attorneys General Offices to determine whether additional statutory authority is necessary in Washington to bring similar actions.** The AGO will carry out the review.
Unanimous

Recommendation to enhance training:

- **Recommend that WAPA develop a state-specific hate crimes memo to supplement national guidance and provide accompanying training at its statewide conference.**
Unanimous

Recommendation to increase data transparency:

- **Recommend that WAPA develop a pilot program with interested prosecutors' offices to track data and publicly share information on filing practices for hate crimes**, including the number of hate crimes cases referred to prosecutors, the number and type of filings, the outcome of cases, and demographic information about offenders and victims, when available. The Snohomish County Prosecutor's Office has stated that they are willing to be one of the pilot sites. This program will inform policymakers and help the public understand how hate crime offenders are held accountable.
Unanimous



K-12 SCHOOLS

Only approximately 2% of hate crimes reported to law enforcement in Washington in 2018 occurred in K-12 schools. This is not particularly surprising, as bias incidents in schools may not be criminal and may be most appropriately handled within the school system. Non-criminal bias incidents can impact a student in many ways, contributing to physical illness, anxiety about going to school, a decline in grades, and absences from school.

In Washington, schools must address all types of harassment, intimidation, and bullying, which refers to any intentional electronic, written, verbal, or physical act that:

- Physically harms a student or damages the student's property;
- Has the effect of substantially interfering with a student's education;
- Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or
- Has the effect of substantially disrupting the orderly operation of the school.²²

As established by rule, discriminatory harassment refers to harassment, intimidation, and bullying motivated by a student's membership in a protected class²³ that creates a hostile environment.²⁴ Washington's Equal Educational Opportunity Law, among other civil rights laws, protects students against discriminatory harassment.²⁵

School districts must have complaint and appeals procedures for discrimination complaints.²⁶ School districts are also required to provide the Office of the Superintendent of Public Instruction (OSPI) a copy of their written decision in response to formal discrimination complaints.²⁷ Approximately 17% of the 119 discrimination decisions OSPI received from districts from January 2019 to April 2020 pertain to discriminatory harassment involving students (as opposed to other types of discrimination, such as sexual harassment or employment discrimination). After going through the school district's complaint and appeals process, students and parents can also file a discriminatory harassment complaint with OSPI.²⁸ OSPI has received a dozen of these complaints related to students experiencing discriminatory harassment since 2015.²⁹

As with reporting hate crimes to law enforcement, it is difficult to know how many cases of discriminatory harassment in schools are not reported, as well as the frequency of other bias incidents. Every school district must annually inform all students, parents, and employees about its discrimination complaint procedure.³⁰ OSPI provides school districts with sample language to include in student and staff handbooks to meet this requirement.³¹ The sample language includes examples of sexual harassment, but does not provide examples of discriminatory harassment. In addition, for sexual harassment specifically, school districts are also

required to display posters on policies and procedures in every school.³² OSPI makes a poster available in 17 languages to help school districts meet this requirement.³³

Recommendations to increase awareness about discriminatory harassment in schools:

- **Provide additional sample language about discriminatory harassment in student and staff handbooks to clarify the types of actions that may constitute discriminatory harassment.** Updating the sample language with examples of actions that may constitute discriminatory harassment would provide clarification and encourage reporting of actions that students may otherwise dismiss as joking or other conduct that must be tolerated or endured. OSPI's *Students' Rights* publication provides language that can be used, e.g., threats, spreading rumors, name-calling, derogatory jokes, physical assault, or other conduct that is physically threatening, harmful, or humiliating.³⁴

Unanimous

- **Require posting of discriminatory harassment policy and procedures** to inform students about their rights and align requirements for discriminatory harassment with those for sexual harassment.

Unanimous

Recommendation to proactively make classrooms more inclusive environments:

- **Require a portion of state-funded professional development to be used for training in the fields of cultural competence, equity, diversity, and inclusion.** Educators are required to complete 100 hours of continuing education every five years to maintain their certification.³⁵ The Legislature phased in funding over time, resulting in three professional learning days for educators. Every other year, school districts must use one of the state-funded professional learning days to train school district staff on one of these topics: anti-bullying strategies, culturally sustaining practices, social-emotional learning, trauma-informed practices, emotional or behavioral distress, adverse childhood experiences, and mental health literacy.³⁶ To enhance the existing requirement, amend RCW [28A.415.440](#) to require a deadline for completing training on each of the aforementioned topics. If any new state funding for professional learning days becomes available, require that new topics on cultural competence, equity, diversity, and inclusion be prioritized, similar to section 5 of [Senate Bill 5908 \(2020\)](#). In response to a previous Legislative mandate, OSPI already developed cultural competence professional development and training for school staff that aligns with standards developed by the Professional Educator Standards Board.³⁷ School districts, however, are not required to use this training.

Unanimous



WORKPLACE

The workplace provides a place to raise public awareness about hate crimes and bias incidents. Subsets of the workforce working for low wages or in isolation—such as agricultural, service sector, and domestic workers—may be particularly vulnerable to abuses, such as hate crimes. It is difficult to know how prevalent hate crimes are in the workplace because official crime statistics do not capture the victim’s relationship to the location where the crime occurred. For example, if a hate crime occurred at a store, it is not possible to determine if the victim was a customer, employee, or owner of that store. Moreover, vulnerable workers may be particularly unlikely to report hate crimes to law enforcement.

The state uses workplace posters to educate employees about their rights. State law currently requires employers to display five different posters, which are available to employers in multiple languages free of charge through the Washington State Employment Security Department and the Washington State Department of Labor and Industries (L&I), both of which monitor compliance. In addition, L&I provides information on its website about workplace bullying and violence.³⁸ An additional poster can be developed, and translated into multiple languages, by adapting a hate crimes fact sheet created by the AGO. Beyond a poster, proactive steps are needed to ensure that employees receive information about how to report hate crimes and bias incidents.

Recommendations to raise awareness about hate crimes:

- **Once the state develops the appropriate poster, require employers to post information about bias incidents and hate crimes, including how to report violations, in a conspicuous place where other required employment posters are posted.** Special attention should be paid to ensure that agricultural, construction, domestic and service sector employers comply.
Unanimous
- **Require the state to identify and implement appropriate means of providing employees with information about bias incidents and hate crimes, including how to report violations.** Special attention should be paid to agricultural, construction, domestic and service sector workers.
Unanimous

Recommendation to explore additional opportunities to address hate crimes in the workplace:

- **Conduct additional research to assess the feasibility of developing a mandatory reporting scheme for workplace hate crimes and other additional protections for vulnerable workers, such as enhanced whistleblower protections when reporting a hate crime or bias incident.** The Legislature shall determine the appropriate entities to carry out the research.
Unanimous

Recommendation for training:

- **Require all state-elected lawmakers and employees of the Legislature to complete training that addresses structural racism and other structural inequities** to better serve the needs of all Washingtonians, particularly those who have been historically excluded from the policymaking process.
Unanimous



RESTORATIVE JUSTICE

Restorative justice aims to repair harm caused by criminal activity. The Washington State Institute of Public Policy notes that restorative justice can occur at any point in the criminal justice system or as diversion from prosecution.³⁹ The Hate Crimes Advisory Working Group acknowledges that the practice may produce positive results, but further study is needed to ensure that restorative justice approaches are implemented in a manner that promotes healing of communities impacted by hate crimes.

Recommendation for further study:

- **Provide resources to study the feasibility of enhancing restorative justice practices in Washington’s criminal justice system, particularly concerning hate crimes, as well as juvenile offenders.**

Unanimous

STATEWIDE COORDINATION TO COMBAT HATE & BIAS

Adequately addressing hate requires ongoing collaboration between community partners, law enforcement officials, and government agencies.

The Hate Crimes Advisory Working Group voted separately on each of the three areas of responsibility laid out below.

- 1. Recommendation to facilitate ongoing hate crimes prevention, education, and response activities statewide:**
 - **Provide resources to the AGO, including a minimum of 2-3 staff, to plan the development of a statewide coordinating body to combat hate and bias. Select responsibilities will be carried out by other entities, which may also require resources.** Proposed membership in an advisory group to the coordinating body: organizations representing protected groups under the hate crimes statute, faith organizations, victims' rights organizations, OSPI, the Human Rights Commission, law enforcement, tribes, healthcare entities, the business community, CJTC, the U.S. Attorney's Office and county prosecutors.

Responsibilities of the AGO, which would take more than one year to carry out:

- Creating a website to serve as a clearinghouse for information to address bias and hate by:
 - Providing information about Washington's hate crime statute in accessible languages;
 - Clarifying the difference between hate crimes and bias incidents;
 - Explaining how to report a hate crime;
 - Publishing information about non-criminal bias incidents to the extent that data is available; and
 - Providing information about how to access victim support services in consultation with the Office of Crime Victim Advocacy (OCVA).
- Assessing hate and bias prevention education and training needs through needs assessment in collaboration with community groups, schools, businesses, and law enforcement, among others, subject to appropriations to hire a consultant to perform this assessment.
- Providing interactive workshops to bring together law enforcement, victims, and community members, which could include listening sessions that allow members of the public to share how hate impacts communities across Washington.
- Publishing and disseminating an annual report with hate crime and bias incident data, prosecutorial data, and victim narratives.
- Developing a hate crimes and bias incident awareness campaign.
- Creating culturally appropriate best practice protocols for state agencies to aid in responding to hate crimes and incidents.

Unanimous

- 2. Responsibility coordinated by an entity such as OCVA in collaboration with community stakeholders representing groups protected under Washington's hate crime statute:**

- Developing response protocols to provide immediate support and consultation to victims in collaboration with victim support services, law enforcement, health care, and community groups.

Unanimous

- 3. Responsibility, which begins by assessing whether information provided by federal agencies meets community needs. The Legislature shall determine the appropriate entity to carry out the assessment, which will be conducted in consultation and collaboration with community stakeholders:**

- Monitoring and analyzing paramilitary, militia, and white supremacist activity in Washington in consultation with national organizations that tracks hate groups.

Near unanimous. Abstentions: AGO and CAIR-WA.

APPENDIX I

Hate Crimes Advisory Working Group Statute

RCW 43.10.300

Hate Crime Advisory Working Group.

- (1) The Office of the Attorney General must, by September 1, 2019, coordinate and convene a multidisciplinary hate crime advisory working group for the purpose of developing strategies toward raising awareness of and appropriate responses to hate crime offenses and hate incidents. The working group must undertake its work with a view towards restorative justice.
- (2) The group's membership must include:
 - (a) Four legislators, one appointed by each of the two largest caucuses of the Senate and one appointed by each of the two largest caucuses of the House of Representatives;
 - (b) Six members appointed by the Governor from organizations representing groups protected under RCW 9A.36.080;
 - (c) One member appointed by the Governor representing law enforcement;
 - (d) One member appointed by the Governor representing prosecutors;
 - (e) One member appointed by the Governor that is from a local organization with national expertise legislating against, tracking, and responding to hate crimes and hate incidents;
 - (f) One member appointed by the Governor representing K-12 educators; and
 - (g) One member representing the Attorney General's Office
- (3) The working group must develop recommended best practices for:
 - (a) Preventing hate crimes and hate incidents, especially those occurring in public K-12 schools and in the workplace, through public awareness and antibias campaigns;
 - (b) Increasing identification and reporting of hate crimes and hate incidents, including recommendations for standardization of data collection and reporting;
 - (c) Strengthening law enforcement, prosecutorial, and public K-12 school responses to hate crime offenses and hate incidents through enhanced training and other measures; and
 - (d) Supporting victims of hate crime offenses and hate incidents, and in particular, ways of strengthening law enforcement, health care, and educational collaboration with, and victim connection to, community advocacy and support organizations.
- (4) The working group is encouraged to solicit participation and feedback from nonmember groups and individuals with relevant experience, as needed.
- (5) The working group must hold at least four meetings. By July 1, 2020, the Office of the Attorney General must report the working group's recommendations to the Governor and the Legislature, in compliance with RCW 43.01.036.

APPENDIX II

Voting Process

The Advisory Working Group was tasked with providing recommendations to the Washington State Legislature and Governor by July 1, 2020. The Advisory Working Group members voted on recommendations during meetings on June 1, 5, 8, 15, and 16. The Advisory Working Group adopted recommendations by majority vote.

Topics Voted on Each Date: **June 1:** Law Enforcement; **June 5:** Prosecutors and K-12 Schools (except professional development); **June 8:** K-12 Schools Professional Development; **June 15** Statewide Coordination and Workplace (except training for state-elected lawmakers and employees), **June 16;** Restorative Justice, Training for state-elected lawmakers and employees (last item in workplace)

The table below shows the members voting on each date.

		Jun 1	Jun 5	Jun 8	Jun 15	Jun 16
Name	Organization					
Miri Cypers	ADL's Pacific Northwest Region		X	X	X ¹	X
Masih Fouladi	CAIR-WA	X	X		X	
Monisha Harrell	Equal Rights Washington	X	X	X	X	X
Maxima Patashnik	Jewish Federation of Greater Seattle	X	X	X	X	X
Nina Martinez	Latino Civic Alliance	X	X	X	X	X
Kurtis Robinson	NAACP	X		X	X	
Det. Elizabeth Wareing	SPD	X			X	X
Jasmit Singh	Sikh community member		X	X	X	X
Jacqueline Lawrence	WAPA		X		X ²	X
Buddy Bear	Washington Education Association	X		X	X	
Bre Weider	Washington State AGO	X	X	X	X	X
Rep. Morgan Irwin	Washington State Legislature					
Sen. Hans Zeiger	Washington State Legislature					
Sen. Jesse Salomon	Washington State Legislature	X				
Rep. Javier Valdez	Washington State Legislature	X				

¹Member was present for voting on workplace items.

²Member was present for voting on workplace items and the first statewide coordination item.

ENDNOTES

1. The full text of RCW 43.10.300 can be found in Appendix I.
2. RCW 9A.36.080
3. Due to the COVID-19 public health emergency, meetings of the Hate Crimes Advisory Working Group from March to June 2020 were conducted virtually.
4. RCW 9A.36.080
5. RCW 9A.36.080
6. RCW 9A.36.083
7. <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>
8. <https://justice.oregon.gov/CrimeReporting/BiasCrime>
9. RCW 36.28A.030
10. RCW 10.99.035 (4)
11. The annual crime report is available online at: <https://www.waspc.org/crime-statistics-reports>. The 2019 *Crime in Washington* report is expected to be released in July 2020.
12. The remaining 6% involved gender identity, disability, or gender.
13. Twelve out of 276 law enforcement jurisdictions did not report *any* crime statistics, including hate crimes, to WASPC in 2018. The non-reporting agencies range from having zero full-time employees to 6 full-time employees, except for the Omak Police Department, which had 12 full-time employees as of October 2018.
14. Seattle Office of City Auditor (2019). *Review of Hate Crime Prevention, Response, and Reporting in Seattle: Phase 2 Report*. Available at: http://www.seattle.gov/Documents/Departments/CityAuditor/auditreports/2017-09%20Hate%20Crimes%20Ph2_Final.pdf
15. <https://www.bjs.gov/content/pub/pdf/hcs1317pp.pdf>
16. Bureau of Justice Statistics (2017). *Hate Crime Victimization, 2004-2015*. Available at: www.bjs.gov/content/pub/pdf/hcv0415.pdf.
17. Ibid.
18. Community Oriented Policing Service and Not In Our Town (2015). *A Prosecutor's Stand: A guide for law enforcement*. Available at: www.niot.org/sites/default/files/APSleguide.pdf.
19. RCW 43.101.290
20. WAC 139-05-300
21. Criminal Justice Information Services Division Uniform Crime Reporting Program (2015). *Hate Crimes Data Collection and Training Manual*. Available at: <https://www.fbi.gov/file-repository/ucr/ucr-hate-crime-data-collection-guidelines-training-manual-v2.pdf>.
22. RCW 28A.600.477 (5)(b)
23. Protected classes refer to groups of people who share common characteristics and are protected from discrimination and harassment. Under Washington law, discrimination is prohibited on the basis of sex, race, creed, religion, color, national origin, sexual orientation, gender expression, gender identity, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a trained guide dog or service animal by a person with a disability.
24. WAC 392-190-0555
25. RCW 28A.642.010
26. WAC 392-190-065
27. WAC 392-190-065 (5)
28. WAC 392-190-075
29. Parents and students can also reach out to the Washington State Governor's Office of the Education Ombudsman to learn more about their rights and responsibilities, school processes, and for assistance evaluating options for resolving concerns. Visit <https://oeo.wa.gov/en/education-issues/bullying-harassment-and-intimidation> or call 1-866-297-2597.
30. WAC 392-190-060
31. <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/posters-and-outreach-materials>
32. WAC 392-190-058
33. <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/posters-and-outreach-materials>
34. https://www.k12.wa.us/sites/default/files/public/equity/discriminatoryharassment/discriminatoryharassment_english.pdf
35. WAC 181-85-075
36. RCW 28A.415.440
37. RCW 28A.415.420
38. <https://lni.wa.gov/safety-health/safety-research/ongoing-projects/workplace-bullying>
39. <https://www.wsipp.wa.gov/BenefitCost/Program/45>