



SPONSOR: Sen. Pinkney & Sen. S. McBride & Rep. Morrison &  
Rep. K. Johnson  
Sens. Lockman, Sokola; Reps. Baumbach, Kowalko,  
Wilson-Anton

DELAWARE STATE SENATE  
151st GENERAL ASSEMBLY

SENATE BILL NO. 144

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES AGAINST PUBLIC  
HEALTH, ORDER, AND DECENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 1304, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 1304. Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C  
4     felony, class B felony, class A felony.

5           (a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who  
6     ~~intentionally~~intentionally does any of the following is guilty of a hate crime:

7           (1) Commits ~~said the~~ crime for the purpose of interfering with the victim's free exercise or enjoyment of any  
8     right, ~~privilege~~privilege, or immunity protected by the First Amendment to the United States Constitution, or commits  
9     ~~said the~~ crime because the victim has exercised or enjoyed ~~said rights~~or a First Amendment right, privilege, or  
10    immunity.

11          (2) ~~Selects the victim because of the victim's~~Commits the crime and is motivated in whole or in part by a  
12    belief or perception regarding the race, religion, color, disability, sexual orientation, sex, age, gender identity, national  
13    ~~origin or ancestry, shall be guilty of a hate crime. For purposes of this section:~~ origin, or ancestry of a person or group,  
14    regardless of whether the belief or perception is accurate.

15          (b) For purposes of this section:

16           a. "Gender identity" means a gender-related identity, appearance, expression, or behavior of a person,  
17     regardless of the person's assigned sex at birth.

18           b. "Group" includes an organization or association of persons, whether formal or informal.

19           ~~b.c.~~ "Protective hairstyle" includes braids, locks, and twists.

20           ~~e.d.~~ "Race" includes traits historically associated with race, including hair texture and a protective  
21     hairstyle.

d.e. "Sexual orientation" means heterosexuality, bisexuality, or homosexuality.

~~(b)(c) Hate crimes shall be~~ A hate crime is punished as follows:

(1) If the underlying offense is a violation or unclassified misdemeanor, the hate crime ~~shall be~~ is a class A misdemeanor;

(2) If the underlying offense is a class A, B, or C misdemeanor, the hate crime ~~shall be~~ is a class G felony;

(3) If the underlying offense is a class C, D, E, F, or G felony, the hate crime ~~shall be~~ is 1 grade higher than the underlying offense;

(4) If the underlying offense is a class A or B felony, the hate crime ~~shall be~~ is the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense ~~shall~~ must be doubled.

(d) The Superior Court has exclusive jurisdiction over a violation of this section.

Section 2. Amend Subchapter VII, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1305. Desecration; class A misdemeanor; class G felony.

(a) A person is guilty of desecration if the person threatens, attempts, or does intentionally deface, damage, pollute or otherwise physically mistreat any of the following:

(1) A burial place.

(2) A public monument or structure.

(3) Any private property or structure.

(4) A place of worship or place primarily used for religious purposes.

(5) A school, educational institution, or community center.

(b)(1) Any person who commits desecration of a burial place is guilty of a class A misdemeanor and upon conviction shall be fined not less than \$1,000 nor more than \$10,000.

(2) Any person who commits desecration under paragraph (a)(2) through (a)(5) of this section is guilty of a class A misdemeanor unless the value of the damage caused is in excess of \$1,500 in which case the desecration is a class G felony.

(3) The penalty for a violation of this section must include restitution and 250 hours of community service.

(c) The Superior Court has exclusive jurisdiction over a violation of this section.

§ 1306. Cross or religious symbol burning; class A misdemeanor, class G felony.

51 (a) A person is guilty of cross or religious symbol burning when the person threatens, attempts or does burn, or  
52 causes to be burned, any cross or other religious symbol, on any private or public property with the intent to intimidate an  
53 individual or a group of individuals. A violation of this subsection is a class G felony.

54 (b)(1) A person is guilty of cross or religious symbol burning when the person burns, or causes to be burned, any  
55 cross or other religious symbol, on any private or public property without all of the following:

56 a. The express written consent of the owner of the property.

57 b. A minimum of 48 hours advanced notification of the proposed burning to the fire board or call board of  
58 the county in which the burning is to take place.

59 (2) A violation of this subsection is a class A misdemeanor.

60 (c) The Superior Court has exclusive jurisdiction over a violation of this section.

61 § 1307. Civil remedies for violations of hate crimes and related offenses.

62 (a) A person incurring injury to self, including emotional distress, or damage or loss to property, as a result of  
63 conduct committed in violation of § 1304, § 1305, or § 1306 of this title has a civil cause of action to secure an injunction,  
64 damages, or other appropriate relief in law or in equity.

65 (b) In an action under subsection (a) of this section, whether a violation of § 1304, § 1305, or § 1306 of this title  
66 has occurred is to be determined according to the burden of proof used in other civil actions for similar relief.

67 (c)(1) The Attorney General may initiate a cause of action against a person or group who violates § 1304, § 1305,  
68 or § 1306 of this title on behalf of any person or group that has sustained injury to person or property.

69 (2) For purposes of this subsection, “group” means as defined under § 1304(b) of this title,

70 (d)(1) In an action to enforce this section, the court may award the prevailing party or the Attorney General a  
71 reasonable attorney’s fee. In awarding attorney’s fees under this subsection, the court may include reasonable expert fees as  
72 part of the attorney’s fee.

73 (2) On prevailing in an action under subsection (a) of this section, the plaintiff may recover both special and  
74 general damages, including damages for emotional distress and punitive damages.

75 (e) Notwithstanding any other provision of the law to the contrary, a parent or legal guardian of an unemancipated  
76 minor is liable for a judgment rendered against the minor under this section.

77 § 1309. Hate crime reporting requirement.

78 (a) A police agency shall report the number of violations, or investigations into a violation, of § 1304 of this title to  
79 the Division of Civil Rights and Public Trust, established under § 2553 of Title 29, on a quarterly basis.

80           (b) The Division of Civil Rights and Public Trust may request a police agency to provide any additional  
81 information deemed necessary to effectuate the Division's mission.

82           Section 3. Amend § 805, Title 11 of the Delaware Code by making deletions as shown by strike through and  
83 insertions as shown by underline as follows:

84           § 805. Cross or religious symbol burning; class A misdemeanor.

85           ~~A person is guilty of cross or religious symbol burning when the person burns, or causes to be burned, any cross or~~  
86 ~~other religious symbol, upon any private or public property without the express written consent of the owner of such~~  
87 ~~property and without a minimum of 48 hours advanced notification of the proposed burning to the fire board or call board~~  
88 ~~of the county in which the burning is to take place.~~

89           ~~Cross or religious symbol burning is a class A misdemeanor.~~ [Repealed.]

90           Section 4. Amend § 1331, Title 11 of the Delaware Code by making deletions as shown by strike through and  
91 insertions as shown by underline as follows:

92           § 1331. Desecration; class A misdemeanor.

93           ~~A person is guilty of desecration if the person intentionally defaces, damages, pollutes or otherwise physically~~  
94 ~~mistreats any public monument or structure, any place of worship, the national flag or any other object of veneration by the~~  
95 ~~public or a substantial segment thereof, in a public place and in a way in which the actor knows will outrage the~~  
96 ~~sensibilities of persons likely to observe or discover the actions.~~

97           ~~Desecration is a class A misdemeanor.~~ [Repealed.]

98           Section 5. Amend § 1340, Title 11 of the Delaware Code by making deletions as shown by strike through and  
99 insertions as shown by underline as follows:

100           § 1340. Desecration of burial place.

101           ~~A person is guilty of desecration of a burial place if the person intentionally defaces, damages, pollutes or~~  
102 ~~otherwise physically mistreats any such burial place. Any person who desecrates a burial place is guilty of a class A~~  
103 ~~misdemeanor and upon conviction shall be fined not less than \$1,000 nor more than \$10,000.~~ [Repealed.]

#### SYNOPSIS

This Act modernizes the hate crime statute and consolidates related offenses together with the hate crime statute in the Criminal Code.

Changes to the hate crime statute include:

(1) That the hate crime be motivated, in whole or in part, on a bias. This reflects instances where a hate crime is committed but is only motivated in part by hate in addition to another component.

(2) That the focus be on the defendant's belief or perception. Currently our law focuses on the victim's actual race, gender, religion, or other immutable characteristic, rather than focusing on the state of mind of the defendant. This change refocuses the inquiry on the defendant's state of mind, and specifically, what the defendant believes to be true at the time the act was committed.

(3) Prohibiting any crime committed in whole or in part on a belief or perception of an immutable characteristic of a group. This Act adds “group” to make clear that a hate crime can be committed because of the hate towards a group at large.

In addition, this Act does the following:

(1) Combines and updates the existing desecration and desecration of a burial place sections maintaining the existing penalties.

(2) Establishes a right of civil remedies to allow individuals to seek relief from hate crime, desecration, and religious symbol burning related injury.

(3) Requires law enforcement to report violations and investigations of violations of hate crimes to the Division of Civil Rights and Public Trust.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Pinkney