

June 14, 2018

MEMORANDUM

To: Members of the Civil Rights, Economic Development, Utilities & Arts Committee
From: Asha Venkataraman, Council Central Staff
Subject: Council Bill 119288: Hate Crime Motivation

On June 19, 2018, the Civil Rights, Economic Development, Utilities & Arts Committee (CRUEDA) will discuss Council Bill (CB) 119288 to amend the Seattle Municipal Code (SMC) by removing the crime of malicious harassment and creating a new special allegation of hate crime motivation to add to assault, harassment, or property destruction cases.

A special allegation is a charge enhancing a crime when specific aggravating factors can be proven. This legislation would: (1) Remove one of the elements that the City Attorney's Office's (CAO) would need to prove to successfully prosecute a hate crime; (2) expand the classes the CAO is able to protect when prosecuting hate crimes; and (3) structurally alter how the CAO charges these crimes.

This memo provides background on existing City and State of Washington criminal laws establishing hate crimes and describes the content and potential effect of the proposed legislation.

Background

Currently, the SMC provides that a person is guilty of the crime of [malicious harassment](#)¹ if they maliciously and intentionally commit assault, harassment, or property destruction because of his, her, or their perception of another person's homelessness, marital status, political ideology, age, or parental status. These classes are protected by the City but not by the State. The State has a parallel [felony malicious harassment law](#)² which covers other protected classes: race, color, religion, ancestry, national origin, gender, sexual orientation, mental handicap, physical handicap, and sensory handicap.

Effect of Proposed Council Bill

Replacing the crime of malicious harassment with the special allegation of hate crime motivation has three major impacts.

First, the CAO will no longer need to prove the element of malice to succeed in prosecuting a hate crime. The new special allegation only requires the CAO to prove that the person

¹ SMC 12A.06.115.

² RCW 9A.36.080.

committed the act intentionally, not that the person committed the act maliciously. This will allow the CAO to more broadly prosecute hate crimes and safeguard protected classes.

Second, CB 119288 will allow the CAO to prosecute hate crimes against all protected classes at the city level, not just those classes only protected by the City. Currently the state level crime of malicious harassment covers State-protected classes and the city level crime covers the remaining classes, which only the City protects. This legislation would not change the state level felony malicious harassment law, but it would create a city level special allegation that protects all State- and City-protected classes: race, color, religion, ancestry, national origin, gender, sexual orientation, mental handicap, physical handicap, sensory handicap, homelessness, marital status, political ideology, age, or parental status. No protections would be lost in this transition—any crime that the CAO could have charged as malicious harassment will be chargeable under the special allegation. In addition, this change does not affect the State’s ability to prosecute malicious harassment crimes.

Third, the form of the charge would change. Rather than prosecuting the crime of malicious harassment and proving all the elements of that crime to obtain a conviction, the CAO would be prosecuting underlying charges of assault, harassment, and property destruction and add the special allegation to the charge when the facts of the case warrant it. Even if the special allegation is not proven, the CAO could still succeed in charging the person with the underlying crime. The legislation requires that the special allegation be proven beyond a reasonable doubt, which is the standard of proof required in a criminal prosecution.

Though the sentencing range for assault, harassment, and property destruction with the special allegation is the same as that for malicious harassment, as all are misdemeanors, the CAO anticipates asking for higher sentences in cases where they could prove the special allegation. However, the CAO does not anticipate that this will lead to an increased number of cases to be prosecuted – instead of charging separately for malicious harassment, the special allegation will simply be added to the cases currently prosecuted as assault, harassment, or property destruction. Similarly, the Seattle Police Department will not be arresting persons for a new type of crime – the acts committed are the same, with only the type of charge changing.

Next Steps

CB 119288 will be discussed on June 19 and is anticipated for further discussion and a vote in committee July 10.

cc: Kirstan Arestad, Central Staff Director
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