

protected classes of homelessness, marital status, political ideology, age, or parental status; and

WHEREAS, the state felony malicious harassment law covers the protected classes of race, color, religion, ancestry, national origin, gender, sexual orientation, mental handicap, physical handicap, and sensory handicap; and

WHEREAS, the Seattle City Auditor released a report on May 9, 2019, finding that reports of hate crimes have risen by almost 400 percent since 2012; and

WHEREAS, the City Auditor's report indicated that reports of crimes of malicious harassment increased 346 percent since 2012; and

WHEREAS, the City Auditor's report found that reports of crime with bias elements increased 378 percent since 2012 and reports of non-criminal bias incidents increased 448 percent since 2012; and

WHEREAS, in the 2019 legislative session the Washington Legislature enacted Engrossed Substitute House Bill 1732, which changed the name of the felony malicious harassment offense to "hate crime offense" and clarified terms for people with disabilities and for gender identity; and

WHEREAS, creating a misdemeanor special allegation for hate crimes in Seattle would allow for hate and bias crimes that are prosecuted as misdemeanors to be designated and identified as hate crimes; and

WHEREAS, removing malice from the elements to be proven in the special allegation allows prosecution of hate or bias crimes at the misdemeanor level for protected classes currently covered by the state felony law and City-level protected classes, which are race, color, religion, ancestry, national origin, gender, sexual orientation, mental handicap, physical handicap, and sensory handicap, homelessness, marital status, political ideology, age, or parental status; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 12A.06.115 of the Seattle Municipal Code, last amended by Ordinance 123395, is amended as follows:

12A.06.115 ((Malicious harassment.)) Hate crime motivation

~~((A. A person is guilty of malicious harassment if he or she))~~ In a prosecution for any misdemeanor or gross misdemeanor under the Seattle Municipal Code, the City Attorney may file a special allegation of hate crime motivation when the defendant ~~((maliciously and))~~ intentionally commits ~~((one (1) of the following acts))~~ the act because of ~~((his or her))~~ the defendant's perception of another person's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, mental disability, physical disability, sensory disability, homelessness, marital status, political ideology, age, or parental status. Such a special allegation must be proved beyond a reasonable doubt, with either the court making a finding of fact as to this special allegation if it finds the defendant guilty of the crime or, if a jury trial is had, the jury finding a special verdict as to this special allegation if it finds the defendant guilty of the crime. ~~((:~~

~~1. Causes physical injury to another person; or~~

~~2. By threat places another person in reasonable fear of harm to his or her person or property or harm to the person or property of a third person; provided however, that it shall not constitute malicious harassment for a person to speak or act in a critical, insulting, or deprecatory way so long as his or her words or conduct do not constitute a threat of harm to the person or property of another person; or~~

~~3. Causes physical damage to or the destruction of the property of another person.~~

~~B. "Threat" means to communicate, directly or indirectly, the intent to:~~

~~1. Cause bodily injury immediately or in the future to another; or~~

~~2. Cause damage immediately or in the future to the property of another; or~~

~~3. Subject another person to physical confinement or restraint.~~

~~C.))~~ For purposes of this ~~((section: "Homelessness"))~~ Section 12A.06.115, "homelessness" means the status or condition of being without a home, including, but not limited to, the state of living in the streets.

~~((D. Every person who, in the commission of malicious harassment, shall commit any other crime, may be punished therefor as well as for the malicious harassment, and may be prosecuted for each crime separately.~~

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D. When sentencing or imposing conditions on a person convicted of or given a deferred sentence or a deferred prosecution or who has entered into a statutory or non-statutory diversion agreement on a misdemeanor or gross misdemeanor with a special allegation of hate crime motivation, the court must require, as part of the sentence or conditions, that the person fulfill the terms of a program, attend a training, or perform community service designed to educate persons committing the offense about the negative consequences of hate crimes or bias crimes committed against the protected class of the victim of the offense. The court may waive this requirement where such a program, training, or community service opportunity is unavailable or impractical or upon a finding of good cause by the court.

E. The City Attorney's Office shall provide an annual report to the City Council each year on the special allegations filed under this Section 12A.06.115. This report shall include data on the demographics of defendants and the protected class status of victims.

Section 2. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)