

2023 HOUSE JUDICIARY

HB 1537

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1537
2/7/2023

Relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty

11:12 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Training requirements.
- Bias crime definitions.
- Criminal mischief.
- Required training.
- Section 1: Mandating training every three years; not two years.

Rep. Schneider: Introduced the bill. Testimony #19447, #19451, #19453, #19432

Lieutenant Daniel Haugen, NDHP: Testimony #19298

Dwight Stanley, Executive Secretary ND Police officers (no written testimony)

Kelly Gorz, Associated Director, High Plains Fair Housing Center: Testimony #19381

Kristen Dvorak, Executive Director of The Arc of ND: Testimony #19431

Sharnell Seaboy, ND Native Bowl, Testimony #19585

Brianna Iron Road: Director of Community Outreach at the Pipe Resource Center in Mandan: Testimony #19585, #19602

Additional written testimony:

#19050, #19053, #19124, #19126, #19134, #19144, #19155, #19158, #19186, #19245, #19315, #19320, #19363, #19416, #19417, #19418, #19419, #19439, #19447, #19457, #19460, #19464, #19308, #19345, #19470, #19474

House Judiciary Committee

HB 1537

02/07/2023

Page 2

Hearing adjourned at 12:00 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1537
2/7/2023

Relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty

2:52 PM Chairman Klemin reopened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, , Rep. Schneider, Rep. VanWinkle, and Rep. Vetter

Discussion Topics:

- Economy.
- Targeted population.
- Police training.
- Transgender population.
- Fiscal Note.

Bill Patre, District 46: No written testimony.

Sargianna Wutzke, Bismarck Human Relations Committee: Testimony #19443

Mandi Carroll, Minot, ND. Testimony #19371

Christina Sambor, Legislative Coordinator, ND Coalition for Homeless People, Youthworks, ND Human Rights Coalition: Testimony #19635

Nancy Guy, District 47 resident: Testimony #19326

Hearing closed at 3:23 PM.

Chairman Klemin:

Appointed a subcommittee:

Chairman Rep. Bahl

Rep. Rios

Rep. Schneider

Meeting closed at 3:39 PM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1537
2/14/2023

Relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty

10:00 AM Chairman Klemin reopened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent Rep. Cory

Discussion Topics:

- Bullying.
- Fargo's hate crime ordinance.
- Bias crimes.

Dr. Gaberial Balf: Previously submitted testimony #19474.

Berry Nelson: Fargo resident. Testimony #20550

Murrey Sagsveen, Retired Attorney. Testimony #20551

Cody Severson, Chairman Fargo Human Rights Committee: previously submitted testimony #19395.

Olivia Data: Student: Testimony #20638

Melany Mosaz, Mother and Advocate: Described rational attacks that happened to her and her family. Law enforcement needs written legislation to act. Bismarck City Commissioners were concerned and that the state needs to act for children and everyone. No written testimony.

Additional written testimony: #20642, #20654, #20666, #20694, #20698, #20714, #20716, #20734, #20757, #20771

Hearing closed at 10:34 AM

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1537
2/15/2023

Subcommittee Meeting

Relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty.
--

Rep. Bahl, Chairman opened the subcommittee meeting at 8:00 AM. Members present: Rep. Bahl, Rep. Rios, and Rep. Schneider.

Discussion Topics:

- Technical amendment
- Penalties.
- Police officer training.
- Bias acts.

Rep. Schneider: Presented proposed amendments testimony #27116 and #27117.

Rep. Schneider moved to bring forward 23.0958.01001 and 23.0958.01003.
Seconded by Rep. Bahl

Representatives	Vote
Representative Landon Bahl	Y
Representative Rios	N
Representative Mary Schneider	Y

Roll call vote: 2 Yes 1 No Motion carried.

Meeting closed at 8:46 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1537
2/15/2023

Relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty

10:14 AM Chairman Klemin opened the meeting. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Cory

Discussion Topics:

- Subcommittee reported.
- Proposed amendment.

Rep. Rios: Continued discussion on testimony #27116, #27117.

Rep. Schneider: Went over the amendment 23.0958.01004. Also, description of sentencing decision consideration. Testimony #27120

Rep. Shannon Roers Jones moved amendment 23.0958.01004 (#27119)
Seconded by Rep. Bahl

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll Call Vote: 10 Yes 2 No 1 Absent

Motion carried

Rep. Shannon Roers Jones moved a Do Pass as Amended;
Seconded by Rep. Bahl

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	A
Representative Donna Henderson	N
Representative SuAnn Olson	N
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	N

Roll call vote: 4 Yes 8 No 1 Absent Failed.

Rep. Vetter moved an amendment to remove Section 2;Page 5.
 Seconded by Rep. VanWinkle

Rep. Vetter Withdrew motion.

Rep. Vetter moved to amend Section 2; Strike on Line 20 and 28 “actual or perceived” Strike “sexual orientation, gender identity” replace Ensure a bias crime is accurately reported with include instruction on proper reporting requirements.
 Seconded by Rep. Henderson:

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	N
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Motion carried 8-4-1.

Rep. Vetter moved a Do Pass as Amended;

Seconded by Rep. Bahl

Representatives	Vote
------------------------	-------------

Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	A
Representative Donna Henderson	N
Representative SuAnn Olson	Y
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	N
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	Y

Roll call vote: 6 Yes 6 No 1 Absent Motion Failed

Representative Satrom moved to remove Section 2 of HB 1537.
Seconded by Representative VanWinkle.

Representative Satrom Withdrew his motion.

Representative Satrom moved to remove Section 2 leave in Section 3.

Seconded by Representative VanWinkle.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Landon Bahl	N
Representative Cole Christensen	N
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	N
Representative Shannon Roers Jones	N
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 6-6-1 Motion failed.

Rep. Vetter moved for No Committee Recommendation.
Seconded by Rep. Satrom

Rep. Vetter withdrew his motion.

Rep. Henderson moved a Do Not Pass as Amended

Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Landon Bahl	N
Representative Cole Christensen	Y
Representative Claire Cory	A
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	N
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll Call Vote: 7 Yes 5 No 1 Absent. Motion carried.

Carrier: Rep. Karls

Meeting closed at 11:30 AM.

Delores Shimek, Committee Clerk

February 15, 2023

4
2-15-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1537

- Page 1, line 1, after "enact" insert "a new subsection to section 12.1-32-04 and"
- Page 1, line 2, after the first "to" insert "factors to be considered in sentencing decisions and"
- Page 1, line 3, replace "sections" with "section"
- Page 1, line 3, remove ", 12.1-17-02, 12.1-17-07, and 12.1-21-05"
- Page 1, line 4, replace "the peace officer standards and training board" with "a law enforcement agency"
- Page 1, line 4, after the second "training" insert "approved by the peace officer standards and training board"
- Page 1, line 5, remove ", aggravated assault, harassment, and criminal mischief"
- Page 2, line 13, remove "provide refresher training to all licensed peace officers every"
- Page 2, line 14, replace "two years in identifying and responding to bias crimes" with "require peace officers complete bias crimes refresher training every three years, as a requirement for license renewal"
- Page 2, line 20, replace "Ensure a bias crime is accurately reported" with "Include instruction on proper reporting requirements"
- Page 2, line 20, replace "5" with "3"
- Page 2, line 22, replace "course" with "training criteria"
- Page 2, line 23, replace "5" with "3"
- Page 3, remove lines 5 through 31
- Page 4, remove lines 1 through 31
- Page 5, replace lines 1 through 20 with:

"SECTION 2. A new subsection to section 12.1-32-04 of the North Dakota Century Code is created and enacted as follows:

The defendant's crime was committed in whole or in part because of bias against color, religion, gender, disability, national origin, ancestry, age, veteran status, or political affiliation."

- Page 6, line 15, remove ", bias"
 - Page 6, line 16, remove "motivations."
- Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1537: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO NOT PASS** (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1537 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new subsection to section 12.1-32-04 and"

Page 1, line 2, after the first "to" insert "factors to be considered in sentencing decisions and"

Page 1, line 3, replace "sections" with "section"

Page 1, line 3, remove ", 12.1-17-02, 12.1-17-07, and 12.1-21-05"

Page 1, line 4, replace "the peace officer standards and training board" with "a law enforcement agency"

Page 1, line 4, after the second "training" insert "approved by the peace officer standards and training board"

Page 1, line 5, remove ", aggravated assault, harassment, and criminal mischief"

Page 2, line 13, remove "provide refresher training to all licensed peace officers every"

Page 2, line 14, replace "two years in identifying and responding to bias crimes" with "require peace officers complete bias crimes refresher training every three years, as a requirement for license renewal"

Page 2, line 20, replace "Ensure a bias crime is accurately reported" with "Include instruction on proper reporting requirements"

Page 2, line 20, replace "5" with "3"

Page 2, line 22, replace "course" with "training criteria"

Page 2, line 23, replace "5" with "3"

Page 3, remove lines 5 through 31

Page 4, remove lines 1 through 31

Page 5, replace lines 1 through 20 with:

"SECTION 2. A new subsection to section 12.1-32-04 of the North Dakota Century Code is created and enacted as follows:

The defendant's crime was committed in whole or in part because of bias against color, religion, gender, disability, national origin, ancestry, age, veteran status, or political affiliation.

Page 6, line 15, remove ", bias"

Page 6, line 16, remove "motivations."

Re-number accordingly

TESTIMONY

HB 1537



House Judiciary
Chairperson and Committee Members

HB 1537 Support

The Downtown Business Association of Bismarck represents over 200 members with 9,000 employees in North Dakota's second largest employment district.

May 10, 2022 our Board of Directors voted to support a local proposal to approve a Hate Crime Ordinance. The Bismarck City Commission at that time indicated that this was something that should be done at the state level. Please accept this testimony as our continued support for this concept.

The Downtowners Association represents nearly 9,000 employees in a variety of businesses citywide, and for the last decade a barrier to business growth has been the lack of available workers. An ordinance or law such as this brings us inline with competing communities' policies and assists Bismarck in talent recruitment and retention efforts. We see this bill as a continuation of efforts to attract workforce to our state and communities. Any local ordinance in Bismarck would seek the advice of law enforcement and the court system to ensure all parties are on the same page.

We encourage your DO PASS vote on HB 1537.
Sincerely,

A handwritten signature in black ink, appearing to read "Kate Herzog".

Kate Herzog, COO
Chief Operating Officer
Downtown Business Association of Bismarck

President
Downtown Bismarck Community Foundation

2-2-2023

Dear Legislators,

I am writing to ask for your backing on this most important legislation. North Dakotan citizens deserve the peace of mind that comes with bias crime legislation. Bias/Hate crimes not only target and impact a certain individual, but they affect the community as a whole. This legislation would help ease the nervousness many minorities currently feel.

Legislation would also help put “teeth” into practice so that people will understand that there are repercussions for their actions, under penalty of law. Defined consequences including penalties for deplorable behavior that are consistent throughout the state of North Dakota should be our goal. This legislation helps to make this possible.

As an educator, I also see bias and hear hate speak. These actions are on the increase in our schools. Legislation would help address this in schools as well as on the streets, giving teachers, students, and community members a broad understanding of what is acceptable and expected in our schools.

I ask for your yes vote on this legislation.

Sincerely,

Angie Moser



February 4, 2023
Jonathan C. Frye
Bismarck, North Dakota.

Testimony of Jonathan C. Frye, President of Dakota OutRight.

Re: Support of HB1537

“The duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty.”

Attn: Members of the ND Judiciary Committee.

My name is Jonathan Frye and I do support HB1537.

The reasoning behind my support of HB1537 is because as an individual immersed in the issues of the North Dakota LGBTQ+ population and as the leader of an LGBTQ+ organization, I am sensitive to the ongoing concerns and needs of these peoples.

This bill would assist this community with the following:

1. Collection of bias crime information would allow objective information gathering to show quantitative data for interested parties on the issues and ongoing needs of the LGBTQ+ communities of North Dakota, where issues are arising, and how they may be addressed and remedied.
2. Assisting peace officers with furthering and ongoing education in distinguishing bias crimes, how to understand and assist with issues surrounding any bias crimes, and ensuring that the incident of bias crime is accurately and timely reported for tracking.
3. Offering the LGBTQ+ communities of North Dakota reassurance that peace officers are adequately trained, informed, and sensitive to the issues and needs of the communities that they are serving.
4. Permitting use of reported bias crime information for public inquiry to supplement knowledge and education of issues in North Dakota regarding the LGBTQ+ population.

Thank you for your consideration of this testimony, I respectfully ask that you provide a “DO PASS” recommendation to HB1537.

Re: HB 1537

Dear Representatives:

I am writing in **support** of HB 1537, to enact legislation to track, discourage, and punish targeted crimes against people based upon their religion, race, color, gender, sexual orientation, or disability.

As a child, I was taught not to discriminate against others and to treat all people with kindness and respect. Recent events have taught me others didn't receive the benefit of those lessons. In an increasingly divided and violent society, who wouldn't want to do the right thing and protect everyone?

Please support HB 1537.

Sincerely,
Terri Hedman
5524 16 Street South
Fargo, ND 58104

Testimony of Erin Price
supporting
HOUSE BILL NO. 1537
House Judiciary Committee
February 7, 2023

Chairman Klemin and members of the committee, thank you for taking my testimony into consideration today.

My name is Erin Price, and I am an Associate Professor of English at Bismarck State College. It is my honor to also be the faculty advisor for BSC's LGBT+ Club. I am submitting testimony to you today on behalf of myself and the Club members of Bismarck State College – many of whom were too scared to write to you themselves. They did not want their names on official testimony for fear of retribution from family, friends, and strangers.

These incredibly talented, kind, funny, full-of-promise students live with this fear in the back of their minds constantly – just because they want to live authentically. I assure you; they are not fearful due to paranoia. I have been teaching since 2006 and many (too many) of my students at BSC have confided in me that they have been targets of hate crimes – all too often they feel unsupported in even reporting these events. They are marginalized and underrepresented and unsupported in too many ways.

Please do the right thing and show your support for HB 1357. This bill adds a very necessary hate crime element to the underlying crimes of Aggravated Assault, Harassment, and Criminal Mischief. There is also a section addressing required law enforcement training in identifying and responding to bias crimes and a reporting requirement, which would ensure an accurate assessment of the problem.

I am urging you to support HB 1357. Let's show these students that their health and safety – that they themselves – are worth protecting.

Thank you for considering my testimony.

Respectfully,

Erin Price
Associate Professor of English
Faculty Advisor, LGBT+ Club
Bismarck State College

I have lived in Bismarck since 2006, and I believe now is the right time to pass this kind of legislation. In my experience, Bismarck is full of friendly people willing to help fellow residents out in many different circumstances – from digging out cars stuck in snow drifts, to quickly raising funds for any number of local causes, to simply smiling at those they pass on the street. Let's pass this bill and help Bismarck retain its reputation for friendliness and generosity.

It is not good, of course, to commit an offense of any sort, but bias crimes have an extra chilling effect on their targets. Bias crimes often leave victims feeling scared, vulnerable, and unprotected in their own communities. People who commit bias crimes cause harm to other human beings not for the common reasons of greed or revenge or jealousy, but simply because they do not like some immutable quality of that person (or group). These qualities include a person's race, religion, gender, sexual orientation, disability, color, or country of national origin.

Not surprisingly, the victim of a bias crime (and the victim's community) is often left feeling terrified, angry, and distrustful of other groups in the community. Because they were targeted, they start to see other groups of people as threats, causing ripples of fear and strife to flow through a city society. The city runs the risk of groups of people separating themselves into isolated silos, each suspicious and wary of the others.

We want to work together in Bismarck to continue to be a welcoming and open place both for newcomers and for those who have been here for generations. Passing this bias crime legislation can help achieve that goal.

Please provide a Do Pass on this bill – and help all residents of Bismarck feel welcome.

Thank you,

Hannah Vanorny

Chairman Klemin and Committee Members,

I strongly urge a Do Pass on HB1537. This is an important bill which will enhance the safety of our citizens and help train peace officers to appropriately respond to hate crimes in the state. A few years ago, a friend of mine was the victim of a hate crime in Bismarck. The harassment he received took longer to resolve than necessary, because there was not an ordinance in place for handling the harassment and threats he received. I urge you to take the next step in advancing the wellbeing of all the citizens of North Dakota by passing HB1537.

Thank you,

Rev. Gretchen Deeg

Testimony In Support of HB 1537

Karen K. Ehrens
Bismarck
February 5, 2023

Chair Klemin and Members of the Judiciary Committee:

You have the power to send a message to all in North Dakota and across the nation: Hate is not welcome in North Dakota.

With a “Do pass” recommendation, you can make happen this new vision:

People who live here and who businesses want to attract to live here can live without fear.

With this legislation, there will be a clearer understanding of bias crimes to help police officers do their jobs; there will be education to new and current officers about these issues; there will be a way forward through restorative justice to help people understand and change their way of thinking and attitudes.

Please vote in favor of a “Do pass” recommendation.

5 Feb. 2023

To: ND House Judiciary Committee

Ref: HB 1537-Written Testimony

I write to you as a citizen of North Dakota. I do not write as a representative of any employer. Professionally I am a Cultural Liaison Officer for a Police Department, I have taught Intercultural Communication at the University of North Dakota, and I have my Master's Degree in Criminal Justice Studies from St Cloud State and a Bachelor's Degree in Criminal Justice from the University of North Dakota.

HB 1537 comes before you to introduce Bias Crimes into the ND Century Code, as a sentencing enhancement. A biased crime has two parts, the crime itself and the biased motivation. Both parts have to be proven for a person to be found guilty of a biased crime. According the FBI and US Department of Justice, biased crimes have been on the increase across the US. The reason for enhanced sentences of these crimes is due to the level of violence involved with these crimes. A majority of biased crimes are personal crimes to include aggravated assault to murder (DOJ, 2023). The most common motivation of biased crimes is thrill seeking, which is someone spontaneously looking for excitement and often do not know their victims. Other motivators would include defensive, retaliatory, and mission driven. Defensive motivations are the second most common motivation, which involves a person committing a crime based on a trait the person sees as a danger to themselves (Southern Poverty Law Center, 2023).

One common misconception is that biased crime legislation tries to curtail a person's constitutional right to free speech. The US Supreme Court has upheld that hate speech and other forms of speech are covered as free speech. The distinction is when a person voices a threat of violence against someone, as in menacing or terrorizing. This bill does not affect a person's right of free speech. This bill only adds enhancement to crimes when there is found to be a motivation of bias involved in the crime.

Furthermore, this bill includes a wide variety of protected classes to include veteran status, race, political affiliation, sex, religion, and sexual orientation to name a few. It should be reiterated that the crimes that include these bias motivation factors cause violent crimes. If we look at the US society today, there is a strong polarization in terms of political affiliation, race, and sexual orientation. These strong feelings can cause volatile reactions from people. Again, this bill only adds enhancement to sentences of certain crimes, if a biased motivation is found to have been involved. This bill does not restrict a person's freedom of speech.

Looking at the numbers, only approximately 12 of 109 of North Dakota law enforcement agencies report hate crimes to the State and Federal Government, in 2019. Nationally in 2021, race motivations make up about 64 percent of biased crimes, followed by sexual orientation at 15 percent, and religion at 14 percent. Crime data shows that 66 percent of these crimes are crimes against a person. In North Dakota for 2020, there were 21 biased crimes reported 17 of which race the primary motivation for the crime. The other three there was a bias motivation against sexual orientation. Furthermore, in 2019, there were 18 biased crimes, in ND. Fourteen of these had a biased motivation of race, three involved a bias of sexual orientation, and one involved a bias of religion. Again, currently only about 12 agencies report biased crimes, in ND for the year 2019 (USDOJ, 2023).

I encourage the North Dakota Legislature to vote to implement the biased crimes bill that is being submitted. Not only does it act as a deterrent to would be perpetrators, but it would also include required training for law enforcement on biases and investigations of biased crimes. This training would improve the capabilities of our great police officers in the state, especially as the state gets more diverse. This bill will also require all agencies to report biased crimes, which will help us to see the full picture of what is going on in the state pertaining to the criminal realm. The more information of criminal activity we have the better our officers will be at finding solutions to the issues. I ask that you vote to enact this bill.

Very Respectfully,
Brian Samson
Grand Forks, ND

References:

US Department of Justice. www.justice.gov/hatecrimes. 2023.

Southern Poverty Law Center. www.splcenter.org. 2023

Good morning,

I am Reverend Edith A. Love, minister of the Unitarian Universalist Church of Fargo-Moorhead. We wish to encourage passage of HB 1537. We believe in the inherent worth and dignity of ALL people. Our church and our faith tradition are firmly in support of HB1537 because it is our position that nobody should ever be subject to threat, harassment, or physical harm that is motivated by prejudice against their race, color, religion, national origin, ethnicity, sexual orientation, or physical or mental disability. We declare North Dakota as a place of refuge, and we should make that message crystal clear by backing it up with the force of law. Moving here to seek a better life or being brave enough to love openly should not cause people to fear for their safety. We implore you to pass this measure on behalf of love and justice for the citizens of North Dakota. Thank you.

JUDICIARY COMMITTEE

February 7, 2023

Written testimony of the North Dakota Peace Officer Standards and
Training Board

Lieutenant Daniel Haugen, Chairman

To: Chairman Klemin and members of the Judiciary Committee.

My name is Lieutenant Daniel Haugen, I am the chairman of the Peace Officer Standards and Training Board. I am also the director of the North Dakota Law Enforcement Training Center and a lieutenant in the North Dakota Highway Patrol. I am here testifying in my capacity as the POST Board Chairman on House Bill 1537, as it's read today.

The North Dakota Peace Officer Standards and Training Board will be referred to as the POST board in my testimony. The board consist of 9 members, 8 of whom, are appointed by the attorney general. As the director of the North Dakota Law Enforcement Training Center, I am statutorily on the board which has two staff members employed by the attorney general's Bureau of Criminal Investigation.

HB 1537 contains language that mandates requirements for the POST board. With that, I'll provide testimony on Section 1, as their chairman.

Section 1

12-63-04

- Subsection 1-c. This adds the requirement for the POST board to establish a curriculum for training in bias crimes. Currently, the POST board only establishes the curriculum for the basic and advanced peace officer training. The board currently doesn't establish individual curriculums for courses like investigating homicides, sex crimes, or even ethics. I'm not sure mandating this topic over other topics is necessary. The board does currently

have mandated terminal performance objectives on “bias in policing” for the basic academy, and this class has been taught in all academies for the last two years. Every new peace officer in the past two years has received this training, as the board understands this is an important topic. If the law changes to mandate that the board establishes the curriculum for existing officers, it could be done.

- Subsection 3. This section mandates that the board shall provide refresher training every two years in identifying and responding to bias crimes. The board is an independent board that only has two employees, one of whom is a peace officer and 9 board members. The board does not have the personnel to provide instruction to 2,400 peace officers every two years. This would require an appropriation to the Attorney General’s office, which is required to provide the board staff. The law enforcement training center, under the highway patrol could provide the training every two years online, but again an appropriation would need to be made to the highway patrol, as 2,400 “users” on the academy’s Learning Management System would cost thousands of dollars annually. Learning Management Systems are also not hands off systems. They require someone to monitor and answer student questions. With around 2,400 officers, that amount of potential request for help will be daunting.

As I work for the highway patrol, my own agency does require this training and I am required to take it annually, among other courses like ethics. The POST board does support training of officers, but maybe the onus should be on the agency and not the small board. The board could create and provide the curriculum, which would be provided the agencies to administer themselves.

- Subsection 3-a-3. This new line would require the board ensure that these crimes are accurately reported as required by this act. The board would not have the means to track this reporting, as it isn’t our data. Section 5 states that agencies would need to report to the attorney general annually, not the

POST board. The POST board would be tasked with ensuring this occurs under this bill. The attorney general's office is a separate entity than the POST board. The board would also have no authority over an agency that fails to comply with that reporting. The board has no authority over any law enforcement agency. The board only has authority over licensees (individuals). If the data is to be sent to the Attorney General's office, then they should be tasked with ensuring that occurs, and not the POST board.

I stand before you to answer any questions that you may have.

Lieutenant Daniel J. Haugen, NDHP

Chairman

North Dakota Peace Officer Standards and Training Board

Testimony
to the
House Judiciary Committee
in support of
House Bill 1537
February 7, 2023

I am Murray Sagsveen, a semi-retired attorney who provides legal assistance to faith-based and other nonprofit organizations. I personally urge you to support this bill.

Occasionally we will experience an epiphany in truly unexpected situations. Several years ago, I was enjoying a backyard conversation with my daughter's friends, who would identify themselves as part of the LGBTQIA2S+¹ community. They were identifying safe streets, safe bars, safe restaurants, safe retail stores, safe employers, and safety in general.

I was shocked that my daughter and others lived in fear when they are walking to the park, shopping for groceries, or at work. My daughter explained, as only a daughter can do: "Dad, you are a straight, privileged, older, white male. You simply do not understand."

The same is likely true for law enforcement officers. They simply may not understand, because of their upbringing or life experiences, that citizens of color, our LGBTQIA2S+ brothers and sisters, and "others" may live in fear because of the shade of their skin, their sexual orientation, their ethnic background, or many other reasons.

This bill would direct the Peace Officer Standards and Training Board to provide refresher training to:

- help police officers distinguish a bias crime from any other crime;
- help police officers understand and assist a victim of bias crime; and
- ensure a bias crime is accurately reported.

The bill would also establish appropriate penalties for individuals who harm others because of their actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

Essentially, if enacted, peace officers would be better trained to "serve and protect." Please recommend a "do pass" for this bill.

Murray G. Sagsveen
1277 Eagle Crest Loop
Bismarck, ND 58503

¹ This is an acronym for lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, two-spirit, plus others.



TESTIMONY on HB 1537
from the
NATIONAL ASSOCIATION OF SOCIAL WORKERS—NORTH DAKOTA CHAPTER
to the
ND House Judiciary Committee
February 7, 2023

Dear Chair Klemin and members of the House Judiciary Committee,

NASW-ND submits this testimony in support of House Bill 1537. We appreciate the opportunity to share our perspective.

The North Dakota Chapter of the National Association of Social Workers (NASW-ND) recently supported bias crime ordinances in both Bismarck and Grand Forks. Similarly, this bill will protect North Dakota residents by documenting bias crimes, holding perpetrators of bias crimes accountable, creating trainings for peace officers while also providing clarity and consistency throughout the state.

The NASW Code of Ethics states that social workers support the inherent dignity and worth of a person, regardless of individual or group differences. This bill would help protect vulnerable populations by giving them additional legal protection against hate-motivated violence and harassment.

This bill would also increase public safety by stopping harassment and intimidation towards certain populations before it turns violent. It also has the potential to increase the reporting of bias crimes which in turn may give law enforcement more tools and resources to hold perpetrators accountable.

Your support of this bill would send a message that bias crimes are not tolerated and that North Dakota values and protects individuals, regardless of their differences.

NASW-ND respectfully requests that members of the House Judiciary Committee vote DO PASS on HB 1537.

Testimony submitted by:
 Kristin Rubbelke, LSW
 Executive Director
 NASW-ND

The North Dakota Chapter of the National Association of Social Workers (NASW-ND) is a membership association representing social workers in the state of North Dakota. The mission of NASW-ND is to strengthen and protect the practice of social work in North Dakota and to advance sound and equitable social policy. Our position on this bill is solidly grounded in our organization’s mission.

As a mother of a transgender teen in the North Dakota, I strongly support HB 1537. HB 1537 would enact legislation that would track, discourage, and punish targeted crimes against people based upon their religion, race, color, gender, sexual orientation, or disability. North Dakotan citizens deserve the peace of mind that comes with HB 1537 as there should be repercussions for bias and hate in the state. Hate crimes not only target and impact a certain individuals but can affect the community as a whole. This bill offers an opportunity to let the citizens of the state and those who may want to relocate here to work that hate is not welcome here.

Please support HB 1537 with a Do Pass vote.

HB1537 Bias Crimes Bill
House Judiciary Committee
February 7,2023
Testimony in Support by Nancy Guy

Good morning, Chairman Klemin and Committee members. Thank you for the opportunity to testify in support of House Bill 1537 on Bias Crimes. My name is Nancy Guy and I am a resident of District 47 here in Bismarck.

Earlier this year, I completed 8 years of service as a Bismarck City Commissioner. As an elected City official, I wanted our community to be welcoming and for all our residents to feel safe and welcome as they worked, played and raised their families in our community. Over that period of 8 years, members of most of the groups protected by this legislation spoke to me about crimes committed against them that would likely have been actionable under this proposed statute. The City had no way to help them and the states attorney had no way to specifically address this kind of crime. Each of these Bismarck residents declined to press charges because they didn't think they would be heard or believed and felt their situation with the perpetrator would become worse.

Everywhere I turn, I hear conversations about all the open jobs and how badly we need people to move to North Dakota to fill those jobs. Bismarck is no exception to that work force shortage. How do we expect people to move to Bismarck, or anywhere in North Dakota, if they can't feel safe and protected?

An oppression can't be addressed if it can't be identified and quantified. HB1537 identifies these crimes as bias crimes, requires training to enable law enforcement officers to identify bias crimes and work with the victims, and requires reporting so the Attorney General has an accurate portrayal of the size of the problem.

Thank you again for the opportunity to testify in support and I urge you to vote DO PASS on HB 1537.

Are there any questions for me?

**Testimony Presented on HB1537 to the
House Judiciary Committee
Representative Lawrence R. Klemin, Chairman**

**Arlette Preston
February 7, 2023**

Chairman Klemin, Members of the Judiciary Committee – My name is Arlette Preston. I am here to voice my support for HB 1537. I am a member of the Fargo City Commission but I am here as an individual, as a mother and as a concerned citizen.

Examples exist of crimes committed against individuals in our community due to their race, religion, gender identity, sexual orientation. I would like to focus on one in particular. You may be familiar with this incident – which happened in the fall of 2021. The perpetrator was a white male who recently pled guilty to charges of aggravated assault and simple assault.

The man was a nextdoor neighbor of a black family in a twin home in south Fargo. The children of the black family were playing on a shared driveway, when the man came out of his home angry and approached the children. He called the children a racist slur before slapping the 11yo girl in the face, after which he picked her up by the neck, choking her. When her sister tried to intervene, he also attacked the sister.

This and other incidents cut close to home for my family. My husband and I were fortunate enough to adopt our daughter, who is black, in 1989. She grew up in south Fargo less than a block from where this incident happened. All I could think of was the type of impact that incident would have had on my daughter – indeed what trauma was inflicted on these two young children, not only from the assault, but also by the derogatory term assigned to them because of their skin color.

The City of Fargo has hate crime ordinances in place. However, since this was aggravated assault, the crime was charged out at the state level. The City of Fargo is unable to pursue charging him with a hate crime due to double jeopardy restrictions.

The ordinances we put in place require reporting of these incidents, identified as potential hate crimes, to the Commission on a regular basis. It has provided a more clear way for the elected officials and the public to track their incidence. Our police department has provided additional training on recognizing and reporting hate crimes. They continue to clarify for both their employees and the public what a hate crime is.

The implementation of our ordinances is ongoing. It is definitely not a panacea in dealing with crimes targeted at classes of people. However, it is a step forward and has communicated to the vulnerable populations in our community that targeted crimes are not tolerated.

Our ability to effectively deal with crimes of this sort requires a similar approach at the state level. This is just one more tool for law enforcement. I hope you will see your way to supporting this effort.

Thank you for listening.

Chairman Klemin and Committee Members,

I strongly urge a Do Pass on HB1537.

Hate and bias crimes are especially damaging to their victims and to the social fabric of our communities, yet our existing statutes are vague and make it more difficult to address these crimes. HB 1537 helps to ensure that our peace officers are trained to respond appropriately to these crimes, and gives them clearer guidance on what crimes fall under this category, making their job easier. While we might prefer to believe that bias-related crimes do not happen here in North Dakota, I have several New American friends who have experienced harassment based on their race and ethnicity while living here in Bismarck. As North Dakota seeks to attract and retain new citizens, protecting the well-being of diverse groups of people in our state from bias-related crimes is essential to creating the strong, vibrant communities necessary for our future.

I urge you to take the next step in advancing the wellbeing of all the citizens of North Dakota by passing HB1537.

Thank you,
Rev. Sylvia Bull

TESTIMONY on HB 1537
ND House Judiciary Committee
February 7, 2023

Dear Chair Klemin and members of the House Judiciary Committee,

I **submit this testimony in support of House Bill 1537**. I appreciate the opportunity to share my perspective.

The Air Force brought me to North Dakota in 2007 as an Air Force spouse and Air Force veteran. I owned a successful photography business that I recently closed to attend the Minot State social work program. I occupy several board positions with the National Association of Social Work and I am completing internships at High Plains Fair Housing Center and the North Dakota Human Rights Coalition. Additionally, I have served on the board of the Taube Art Museum since 2016, including serving four years as board president. Our family has been active in our community with volunteerism in and outside the church, both in Minot and Grand Forks, since moving to North Dakota.

I **strongly urge your support for HB1537**. I believe this bill will help ND because we have seen division growing in our country at an alarming rate. I am attaching an [extensive study](#) from 2018 which linked hate crime violence to social media usage. The findings are not that social media usage increases violence, but that repeated rhetoric by politicians, public figures, and/or the media **empowers and emboldens** people who share those views to act on them.

Since the last time you heard testimony on a similar bill, we have only seen an increase in the polarization in the U.S. To add to that, we currently have 21 anti-transgender bills being presented during this legislative session. If you have not had the opportunity to listen to some of the testimony presented to the House Human Services Committee, I highly recommend it. It is important to listen to the lived experiences contrasted with the rhetoric from bill proponents.

There are citizens in your state who are transgender. They are begging this legislature to recognize their rights. The Declaration of Independence states all persons are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. Trans people simply aren't asking to pursue happiness at this point. They aren't even really asking for much liberty – they are still on the life part. They are fighting for their lives.

Undoubtedly, one of the 21 trans bills *will* pass. We hear from testimony that there are residents of this state who do not want them here, who even refuse to acknowledge their existence. Trans people have heard the rhetoric, both in testimony and in the media. They are watching these bills CLOSELY. They feel the danger daily. For this reason, trans people need this bill.

Let's also acknowledge that we are on Native American land today. This second group *needs* this bill, this protection. Our Indigenous neighbors suffer many abuses; abuses to which our government often turns a blind eye. This committee, rather, this entire legislative body, could not fully rectify the abuses they've suffered and continue to suffer. Just last week during a Jamestown vs. Bismarck high school basketball game, multiple racial incidents occurred involving slurs and exceptionally offensive sound effects. I am asking you to do a small act in a long journey of reparations to our Indigenous neighbors whose land we stole – offer them a small protection and acknowledge their struggle. Our Native American neighbors need this bill.

For these reasons and many others, I strongly urge you to vote **DO PASS on HB 1537**. Thank you for your time, consideration, and service to our state.

Mandi Carroll

High Plains Fair Housing Center



**68th Legislative Assembly, House Judiciary Committee
Public Hearing on House Bill 1537
February 7th, 2023**

Good Morning. My name is Kelly Gorz, and I am the Associate Director for High Plains Fair Housing Center, a private nonprofit with the mission to strengthen communities and ensure equal access to housing across North Dakota. On behalf of High Plains Fair Housing Center and myself, I would like to thank Chairman Klemin and the House Judiciary Committee for the opportunity to speak on behalf of High Plains Fair Housing Center today in support of HB1537.

High Plains FHC is a statewide nonprofit with offices in Bismarck and Grand Forks. Our mission is to strengthen communities and to ensure equal access to fair housing in the region through training, education, enforcement, and advocacy. Fair housing is a right protected by federal and state laws. Fair housing means you may freely choose a place to live without regard to your race, color, religion, sex, or national origin, or because you are disabled or have children in your family and in North Dakota because you are on public assistance, because of your age, or marital status. Nationwide, fair housing centers play a key role in responding to bias crimes because of the alarming statistic that more than 30% of all bias crimes happen at or near a person's home.

Bias crimes historically go vastly underreported. The Southern Poverty Law Center states that about ninety-six (96) percent of bias crimes are underreported. This is for various reasons – lack of trust in systems, insufficient training to identify bias crimes, and various other barriers. Enacting this legislation is an essential first step in building trust with historically disenfranchised communities and will send a clear and consistent message from the state of North Dakota that bias-motivated attacks are unacceptable in our community.

Importantly, when a bias-motivated crime is committed, the victim's entire community is often left feeling victimized, vulnerable, fearful, isolated, and unprotected by the law. The impact of bias-motivated crime is far greater than the already terrible impact on the individual. The damage to the very fabric of a community where a bias crime has occurred must also be considered. Bias crimes, in effect, create a kind of public injury because they rapidly erode public confidence in being kept free and safe from these crimes. To that extent, crimes of this nature can traumatize entire communities.

www.highplainsfhc.org

High Plains Fair Housing Center | info@highplainsfhc.org
PO Box 5222 | Grand Forks, ND 58206 | 701-203-1077

Nothing in this letter is legal advice, for legal advice please see an attorney.

North Dakota is one of only five states that does not currently have bias crime laws. There are five general types of bias crime statute classifications: penalty enhancement; independent offense; data collection; training; and civil action, remedies, or commission development. The states with the broadest and most comprehensive protections against hate crime have a combination of all five of these statute classifications. High Plains Fair Housing Center has produced a research report that has been emailed to the committee members for their reference concerning various bias crime legislation that is in place nationwide.

Bias crimes hurt all levels of a community, and this is the time for North Dakota to convey that it will not tolerate crimes that intentionally send a message of fear to our neighbors. Now is the time to address this important need in our community.

Thank you for your consideration and for making North Dakota a more welcoming community.

Sincerely,

A handwritten signature in cursive script that reads "Kelly Gorz".

Kelly Gorz, Associate Director



www.highplainsfhc.org
701.792.2878

Hate Crime Legislation Review

Draft Two
February 1, 2023



Mandi Carroll

High Plains Fair Housing Center

Overview and Executive Summary

This report will provide a review of state hate crime statutes around the United States, a review of various protected classes at the state level, and will discuss several impediments or issues with hate crime legislation in general. Information provided in this section comes from the [State Hate Crimes Statutes compendium](#) from the Brennan Center for Justice.

This report finds that best practice for crafting hate crime legislation includes the following considerations:

- Penalty Enhancement
- Independent Offense
- Data Collection
- Training
- Civil Action, Remedies, and/or Commission

North Dakota is one of five states that currently does not have hate crime legislation. Thus, it is recommended that hate crime legislation is a priority for the upcoming legislative session.

Federal Hate Crime Laws

Though this report focuses on state statutes, it is important to review federal hate crime legislation. [The United States Department of Justice Civil Rights Division enforces federal hate crime legislation.](#) The Civil Rights Act of 1968 was the first piece of hate crime legislation passed at a federal level. Title I permits federal prosecution of anyone who "willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with ... any person because of his race, color, religion or national origin" or because the victim attempts to engage in one of six types of federally protected activities, such as attending school, patronizing a public place/facility, applying for employment, acting as a juror in a state court or voting. Protections were also provided for fair housing rights. In 1988, familial status and disability were added as protected classes.

Additional hate crime legislation followed, including:

- Conspiracy Against Rights, 18 U.S.C. § 241
- Criminal Interference with Right to Fair Housing, 42 U.S.C. § 3631
- Damage to Religious Property, Church Arson Prevention Act, 18 U.S.C. § 247 - The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 18 U.S.C. § 249
- Violent Interference with Federally Protected Rights, 18 U.S.C. § 245

Review of State Statutes

The vast majority of states have enacted hate crime legislation at the state level. There are five general types of hate crime statute classifications: penalty enhancement; independent offense; data collection; training; and civil action, remedies, or commission development. The states with the broadest and most comprehensive protections against hate crime have a combination of all five of these statute classifications. This section will also discuss the widespread nature of some crime statutes. Appendix one lists the statute classification.

Penalty Enhancement

By and large, the most popular type of hate crime legislation per state is penalty enhancements of existing criminal statutes when evidence shows a correlation between the crime and the victim's protected class. Some states choose to promote hate crimes to felony class charges, while others choose higher-level misdemeanors. Several states enumerate sentencing provisions when the crime is hate-based.

Independent Offense

The second most popular type of hate crime legislation per state is independent offense statutes. These statutes enumerate a specific, separate charge for various hate crimes.

Data Collection

Several states have statutes that include mandatory data collection. Data collection is important as it can help states effectively determine the levels of hate crimes within the state.

[Additionally, the federal government requires states to report hate crimes to the FBI.](#)

Mandating and maintaining state repositories of hate crime data may help streamline the federal reporting process, which may increase accuracy and prevent the breakdown of the chain of reporting. Some states simply require the statewide collection of hate crime data. Other states enumerate who is responsible for the data collection, most frequently higher-level law enforcement officers and/or law enforcement agencies. In some cases, the Governor's office, the State Bureau of Identification, and/or the Department of Public Safety are responsible for collection.

Training

A handful of states enumerate training requirements for law enforcement professionals through hate crime statutes. This type of statute is intended to be proactive in nature and is meant to mitigate under-reporting by educating law enforcement about when a crime should be considered a hate crime. Some state statutes enumerate who is supposed to facilitate these trainings. Examples include the Criminal Justice Training Commission in WA; Commission on Standards and Training in RI; the Board of Public Safety Standards and Training in OR; Municipal Police Training Committees in MA; New Mexico Law Enforcement Academy in NM; and Illinois Law Enforcement Training Standards Board in IL.

Civil Action, Civil Remedies, and/or Commission

A few states have statutes that require civil actions/remedies and/or the establishment of a state-level commission to address hate crimes and hate-related incidents. Iowa, Idaho, Michigan, Oklahoma, Washington, and Vermont provide a civil right of action in addition to criminal charges. Illinois created the Commission on Discrimination and Hate Crimes. This commission works in partnership with a wide variety of residents to identify and uproot sources of discrimination and bias at the source; works with community leaders, elected officials, and

law enforcement to develop resources, training, and disseminate information for a fast, efficient response to hate crimes; to work with educators on issues surrounding hate and bias and to teach acceptance of diversity; to review state laws to ensure that the laws are widely known and applied correctly; to provide recommendations to the Governor and Legislative Assembly for any statutory changes needed to eliminate hate crimes/discrimination; and to help implement recommendations by working with the aforementioned entities along with the business community and state social services. Louisiana also has established a state-level Commission on Human Rights.

Method of Civil Remedy: Restorative Justice

One possible civil remedy for North Dakota could be restorative justice. [Restorative Justice](#) is an emerging remedy being utilized by many different communities to aid in healing after a hate crime occurs. The restorative process increases understanding and helps perpetrators change their mindset, which may reduce the chance of reoffending. Activities involved with restorative justice can include material reparation (financial restitution, replacement of damaged goods, fixing of damaged property); emotional reparation (verbal or written apology); relational reparation (agreement regarding future interactions); community reparations (volunteering at a charity, removing graffiti from public property, cleaning up public spaces); moral learning reparations (providing a report on the harm caused, presenting a reflection document to aggrieved parties about what has been learned); and utilizing multiagency support (social services, teachers, housing officers, medical referrals, and/or rehabilitation centers). Restorative justice is a dialogue process that seeks to help perpetrators and victims seek peace and understanding. Research shows that in addition to socioemotional benefits, [restorative justice even can even have significant neurological benefits](#). As restorative justice both empowers victims and increases understanding and impact for perpetrators, it would be a helpful, forward-thinking, and effective way to handle hate crimes in North Dakota.

Nature of Crimes

Many states (Alabama, Arizona, Connecticut, Delaware, Washington D.C., Florida, Georgia, New York, South Carolina, South Dakota, Virginia, Illinois, Washington, and Vermont) have specific statutes regarding cross-burning and other types of hate crime specific to religion (vandalism, desecration, etc.). Many states also enumerate separate or enhanced penalties if the perpetrator wears a mask.

States with No Hate Crime Legislation

As of September 1, 2020, the Brennan Center for Justice states that there are only five states that do not have any criminal hate crime statute. Those states are Arkansas, Indiana, North Dakota, South Carolina, and Wyoming.

Snapshot of Surrounding State Statutes

<u>State Statute Description Type Protected Class</u>				
Montana	MONT. CODE ANN. § 45-5-221 “Malicious Intimidation or Harassment Relating to Civil or Human Rights – Penalty”	Makes it a felony to maliciously intimidate, harass, injure, or destroy the property of a victim because of their race, creed, religion, color, national origin, or involvement in civil rights or human rights activity.	Independent Offense	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
Montana	MONT. CODE ANN. § 45-5-222 “Sentence Enhancement - Offenses Committed Because of Victim's Race, Creed, Religion, Color, National Origin or Human Rights Activities”	Penalty enhancement for any crime except malicious intimidation or harassment when the crime was motivated by the victim's race, color, creed, national origin, or involvement in civil rights or human rights activity, or that involved damage/destruction to a building regularly used for religious worship.	Penalty Enhancement	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
South Dakota	S.D. CODIFIED LAWS CH, 22-19B [§§ 22-19B-1 – 22-19B-5] “Hate Crimes”	Makes it a felony to intimidate or harass a specific person or group because of their race, ethnicity, religion, ancestry, or national origin. Incorporates cross burning or placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism into the crime of defacement. Makes it a misdemeanor to prevent another from practicing their religion by threats or violence. Makes it a misdemeanor to compel another to practice or adopt a religion by threat or	Independent Offense	Race, religion, national origin, ethnicity, or ancestry

		violence.		
Minnesota	MINN. STAT. § 626.5531 “Reporting of Crimes Motivated by Bias”	Requires peace officers to report every violation of chapter 609 or a local criminal ordinance if the officer has reason to believe or the victim alleges that the offender was motivated to commit the act by the victim’s race, religion, national origin, sex, age, disability, or sexual orientation.	Data Collection	Race, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.2231 SUBD. 4 “Assault in the Fourth Degree”	Makes it a misdemeanor crime to assault another because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin, and a felony for repeat offenders within five years of their previous conviction.	Independent Offense	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.595 SUBDS. 1A & 2 “Damage to Property”	Penalty enhancement to second-degree and third-degree criminal damage when motivated by race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minnesota	MINN. STAT. § 609.749 SUBD. 3 (A)(1) “Stalking; Penalties”	Penalty enhancement to aggravated stalking is when the offender commits the offense because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex

Minnesota	MINN. STAT. § 626.8451 SUBD. 1 “Training in Identifying and Responding to Certain Crimes”	Requires a training course to assist peace officers in identifying and responding to crimes motivated by the victim's race, religion, national origin, sex, age, disability, or sexual orientation.	Training	Race, religion, national origin, sexual orientation, disability, age, sex, training
-----------	--	---	----------	---

Review of Protected Classes

The most popular protected classes are as follows: race, color, ethnicity, national origin, sex, religion, and disability status. Many states also include gender, gender identity, and sexual orientation. This section will discuss the protected classes as enumerated by the Federal Bureau of Investigation and will also explore various other unique protected classes throughout various states.

FBI Unified Hate Crime Protected Classes

The FBI’s Unified Crime Reporting Program was created after the 1990 passage of the Hate Crime Statistics Act, 28 U.S.C. § 534, which requires the attorney general to collect data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.” The collected data can help identify specific hate-related themes or issues that are occurring in any given community. [The FBI UCR Program categorizes biases as follows:](#)

- Race/Ethnicity/Ancestry
 - Anti-American Indian or Alaska Native
 - Anti-Arab
 - Anti-Asian
 - Anti-Black or African American
 - Anti-Hispanic or Latino
 - Anti-Multiple Races, Group
 - Anti-Native Hawaiian or Other Pacific Islander
 - Anti-White
- Religion
 - Anti-Buddhist
 - Anti-Catholic

- Anti-Eastern Orthodox (Russian, Greek, Other)
- Anti-Hindu
- Anti-Islamic
- Anti-Jehovah's Witness
- Anti-Jewish
- Anti-Mormon
- Anti-Multiple Religions, Group
- Anti-Other Christian
- Anti-Other Religion
- Anti-Protestant
- Anti Sikh
- Anti-Atheism/Agnosticism/etc,
- Sexual Orientation
 - Anti-Bisexual
 - Anti-Gay (Male)
 - Anti-Heterosexual
 - Anti-Lesbian
 - Anti-Lesbian, Gay, Bisexual, or Transgender (Mixed Group)
- Disability
 - Anti-Mental Disability
 - Anti-Physical Disability
- Gender
 - Anti-Male
 - Anti-Female
- Gender Identity
 - Anti-Transgender
 - Anti-Gender Non-Conforming

Other State-Level Protected Classes

In addition to the protected classes enumerated above, several states have other protected classes. Some of these include marital status; personal appearance; familial status; family responsibility; matriculation; political affiliation; genetic information; source of income; status as a victim of domestic violence; place of residence/business; association with someone of a protected class; person's actual or perceived status as a government employee; members of law enforcement, correctional officers, and/or first responders; homelessness; involvement in civil rights or human rights activities; age; and service in US Armed Forces.

Impediments to Hate Crime Legislation

One of the largest issues concerning hate crimes is that so many go unreported. A [2005 Study of Literature and Legislation on Hate Crime in America](#) suggests that this may be because

- People may not understand what constitutes a hate crime in their state.
- People may not believe that what happened to them is in fact a hate crime.
- Some victims may be reluctant to report to the police out of fear.
- Some law enforcement officers may not recognize or may not choose to acknowledge the role of hate in certain offenses.

The [Southern Poverty Law Center](#) believes that hate crimes are underreported by about 140 percent. The [most recent FBI UCR data](#) shows that nearly 88% of law enforcement agencies reported zero hate crimes in their jurisdictions, which may be attributed to the above underreporting reasoning factors. [ProPublica](#) found many instances where the hate crime reporting chain broke down as the data traveled from local to state to federal departments. Additionally, only 12% of states have statutes that require that law enforcement officers be trained to identify and investigate hate crimes, which may lead to underreporting, misclassifying, and under-identifying hate crimes from the start. However, even when these impediments and underreporting estimates are considered, [hate crimes are on the rise throughout the United States](#).

APPENDIX 1

Penalty Enhancement

States that have penalty enhancement statutes include Washington D.C., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin.

Independent Offense

States that have independent offense hate crime statutes for a variety of crimes include Washington, D.C., Arizona, California, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Maine, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Tennessee, Virginia, West Virginia, and Washington.

Data Collection

A handful of states require state-level hate crime data to be maintained by and/or disseminated to state-level Human Rights Commissions. States that have data collection statutes include Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Virginia, and Washington.

Hate Crime Training

States with hate crime training requirements include California, Connecticut, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, New Mexico, Oregon, Rhode Island, and Washington.

Links of Note/References

Brennan Center for Justice. (2020). *State Hate Crime Statutes*.

<https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>

Department of Justice Civil Rights Division. (2019). *Hate Crime Laws*.

<https://www.justice.gov/crt/hate-crime-laws>

Department of Justice Criminal Justice Information Services Division. (2018). *2018 Hate Crime Statistics*. <https://ucr.fbi.gov/hate-crime/2018>

Federal Bureau of Investigation. (n.d.). *Hate Crime Statistics*.

<https://www.fbi.gov/services/cjis/ucr/hate-crime>

Levin, B. (2018). *Hate Crimes Rise in U.S. Cities and Counties in Time of Division and Foreign Interference*. Center for the Study of Hate and Extremism; California State University San Bernadino.

<https://www.ochumanrelations.org/news/report-shows-hate-crimes-rise-time-division-for-foreign-interference/>

Reisel, Dan. (2013). *The Neuroscience of Restorative Justice*.

https://www.ted.com/talks/dan_reisel_the_neuroscience_of_restorative_justice/transcript

Schwencke, K. (2017). *Why America Fails at Gathering Hate Crime Statistics*. ProPublica.

<https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>

Shanmugasundaram, S. (2018). *Hate Crimes, Explained*. Southern Poverty Law Center.

<https://www.splcenter.org/20180415/hate-crimes-explained>

Shively, M. (2005). *Study of Literature and Legislation on Hate Crime in America*. Abt Associates,

Inc. <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>

Walters, M. A. (2019). *Repairing the Harms of Hate Crime: Towards a Restorative Justice Approach* (No. 108; Resource Material Series). United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

https://www.unafei.or.jp/publications/pdf/RS_No108/No108_10_VE_Walters.pdf

**Testimony Presented on HB 1537 to the
House Judiciary Committee**

Representative Lawrence R. Klemin, Chairman

Cody Severson, Chair, Fargo Human Rights Commission

February 6, 2023

Chairman Klemin, members of the House Judiciary Committee, I wish to speak in support of HB 1537, on behalf of the members of the Fargo Human Rights Commission. We recognize that hate crimes happen in our community and our state. According to the FBI, there were 21 reported hate crimes in North Dakota in 2020.

North Dakota is one of four states without effective hate crime legislation. This legislation would provide equal protection for all North Dakota residents, visitors, and workers.

We know that law enforcement including rank, file and leadership of the Fargo Police Department support state hate/bias crime legislation as it would provide law enforcement additional options to address and hold accountable those who would commit a crime based on someone's protected status.

A strong aspect of this bill is the fact that protected communities are enumerated. Any resident could be subject to a hate crime, but it is important that communities known to be at higher risk are clearly listed. Members of communities, of color, of minority religion, of the Lesbian, Gay Bisexual and Transgender community, of communities of people with disabilities are known to receive the greatest amount of hate directed at them.

We also support the importance HB 1537 places upon data collection and training of members of law enforcement. As much as we are encouraged and support the efforts of the Fargo Police Department to address this need, we recognize the importance of consistency throughout the state and believe appropriations to support the implementation of the measure will aid law enforcement agencies.

We recognize that hate crime goes largely unreported. The reasons for this are many: people do not know of their rights, they may fear retaliation, or they do not believe their community would support them.

In June of 2021, Fargo became the first North Dakota city to pass a hate crimes ordinance. We are proud of this action and believe it announced the fact that the city believes that all residents of our community have a right to live with safety, security and with out fear. Such an ordinance, however, has limitations that only a statewide law can address.

Passing HB1537 sends a clear and inconvertible message: our communities do not sanction hate at any level. We ask a DO PASS on HB1537.

Testimony Presented on HB1537 to the

House Judiciary Committee

Representative Lawrence R. Klemin, Chairman

Dr. Timothy J. Mahoney, M.D., Mayor of the City of Fargo

February 7, 2023

Chairman Klemin and Members of the Judiciary Committee:

Upon consideration by the Board of City Commissioners on February 6, 2023, the City of Fargo respectfully requests that HB 1537 be converted into an Interim Committee study bill. The issues identified in HB 1537 warrant a thoughtful, deliberative, and comprehensive study and should be considered by the Legislative Assembly in the upcoming Interim. Members of the law enforcement community and prosecuting attorneys should be included in this study process, along with the political subdivisions of the State of North Dakota.

I seek your consideration in forwarding HB 1537 to an appropriate study process to better understand the issues presented and to craft a thoughtful future policy response.

Sincerely,

Dr. Timothy J. Mahoney, M.D.
Mayor
City of Fargo

HB 1537

My testimony is in support of HB 1537 and I ask that you give this bill a Do Pass. This bill helps protect residents of North Dakota who identify within a minority population. Not only this but it also recognizes the experiences of individuals who identify within these minority populations. It recognizes the fact that people have experienced hate in North Dakota. I personally have experienced hate in North Dakota. By passing this bill you are taking a stand to say that hate will no longer be accepted here.

Thank you for your time.

Best regards,

Leah Wozniak

Dear Chair Klemin and members of the House Judiciary Committee,

My testimony is in support of House Bill 1537. I ask that you give this bill a Do Pass.

The reason for this is that this bill impacts the people I care about, it will help make many of my loved ones feel safer living in North Dakota. It puts more definition on what would be considered a hate crime on a level and federal level. It puts efforts forward into collecting data when such things as a Bias or Hate Incident happen. North Dakota is one of the very few states that does not require data collection. That means we do not even have an estimate on if a bias or hate incident. According to the U.S. Department of Justice, in 2020 there were 29 cases of types of crimes (persons, property, and society) committed in North Dakota. Yet, with those 29 cases, there were 17 of them with bias motivation being of race/ethnicity/ancestry I'm not sure if you are curious, but it makes me wonder how many go unreported. Or even how much were as in 2022.

Not only will collecting data help, but I believe this will help North Dakota since there are no existing hate crime laws that do not enumerate sexual orientation or gender identity. It updates definitions that included those who do live in North Dakota. Even the federal government includes sexual orientation.

Some may argue that motivation is subjective and that it is sometimes impossible to determine if a crime was committed as a result of the offender's bias. The presence of bias does not automatically imply that a crime is a hate crime. Only when a law enforcement inquiry finds enough information to convince a reasonable and prudent person that the offender's acts were motivated, in whole or in part, by their bigotry, could an agency report an incident as a hate crime. Having this bill pass will help our law enforcement learn and acknowledge what to do.

Thank you for your time, consideration, and service to our state,

Best regards,

Charles Vondal



NORTH DAKOTA Hate Crimes Incidents in 2020

What is a Hate Crime?

Hate Crimes: At the federal level, a crime motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.

Bias or Hate Incident: Acts of prejudice that are not crimes and do not involve violence, threats, or property damage.

For additional information on hate crimes resources visit <https://www.justice.gov/hatecrimes>.

How do I report a hate crime?

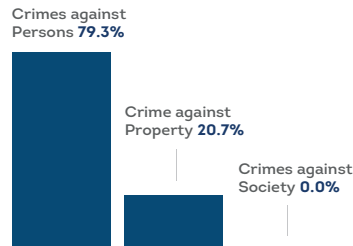
If you believe you are the victim of a hate crime or believe you witnessed a hate crime:

For emergencies **Dial 911**

OR

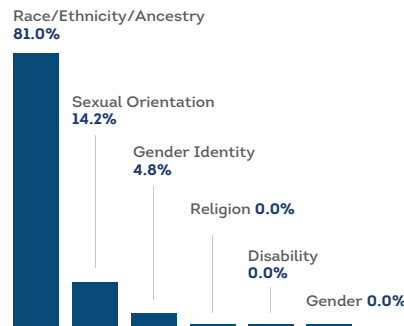
Step 1: Report the crime to your local police.

Step 2: Quickly follow up this report with a tip to the Federal Bureau of Investigation's (FBI) tip line at 1-800-225-5324.



Types of Crime

Crimes against Persons	23
Crimes against Property	6
Crimes against Society	0



Bias Motivation Categories

Race/Ethnicity/Ancestry	17
Religion	0
Sexual Orientation	3
Disability	0
Gender	0
Gender Identity	1

Bias Motivation Categories

Bias Motivation Categories	2018	2019	2020
Race/Ethnicity/Ancestry	4	14	17
Religion	3	1	0
Sexual Orientation	3	3	3
Disability	0	0	0
Gender	0	0	0
Gender Identity	0	0	1

Department of Justice

To learn more visit: <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

If you believe you are the victim of a hate crime or believe you witnessed a hate crime: report the crime to your local police then quickly follow up this report with a tip to the Federal Bureau of Investigation's (FBI) tip line at 1-800-225-5324.

For more detailed statistics and additional information on the above data, please visit the FBI Crime Data Explorer at <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime>.



**House Judiciary
HB 1537
February 7, 2023**

Rep Klemin and committee members. I am Kirsten Dvorak, Executive Director of The Arc of North Dakota.

The Arc and its six chapters throughout the state advocate for and with people with intellectual and developmental disabilities (IDD) to protect and advance their human rights and ensure their full participation as citizens of safe and inclusive communities. Like all citizens, people with IDD have a right to justice and fair treatment in all areas of the criminal justice system, including when they become victims of hate crimes.

The Arc of the United States reports that “individuals with IDD are significantly more likely to be victimized (at least two times more likely for violent crimes and four to ten times more likely for abuse and other crimes), yet their cases are rarely investigated or prosecuted because of discrimination, devaluation, the prejudice that they are not worthy of protection, and false stereotypes that none can be competent witnesses. Their victimization comes in many forms, including violence, oppression, financial exploitation, sexual exploitation, and human trafficking.”

People with disabilities have been isolated, marginalized, and dehumanized throughout history. And while significant work has been done to improve the lives and treatment of people with disabilities, hatred towards people with disabilities still exists. In 2019, the Federal Bureau of Investigation reported 170 hate crime incidents based on disability. And the number of victims was likely much higher than what is reported

Because violence against people with disabilities is under-reported, these individuals are considered invisible victims – we cannot see what is not reported. Crimes are underreported for a variety of reasons. Barriers to reporting include communication challenges, being taught to be compliant and not cause a problem, fear of retaliation, negative interactions with law enforcement or the justice system, and lack of support and accommodations when reporting.

There is significant work in criminal justice to make justice and fair treatment a reality for people with IDD and other disabilities. Today we can take one step towards that goal. By voting yes, you are giving people with disabilities the power to speak up for themselves and the ability to seek justice. Thank you.

Kirsten Dvorak

701-222-1854

Bill Presentation and Testimony in Support of HB 1537
By Representative Mary Schneider
House Judiciary Committee, Lawrence Klemin, Chair
Tuesday, February 7, 2023

Chairman Klemin, Vice Chairperson Karls, and Members of the Judiciary Committee:

This bill is about bias or hate crimes. A bias or hate crime is usually defined in state law as one that involves threats, harassment, or physical harm, and is motivated by prejudice against someone's race, color, religion, national origin, ethnicity, sexual orientation or physical or mental disability.

Although we have examples of acts that have occurred against North Dakota citizens in each of those categories, North Dakota is one of only five states, or maybe fewer today, that doesn't adequately protect its citizens against bias crimes.

So why is it important to have laws that protect against bias crimes? It's important because (1) the victims belong to protected categories of people under the law, and (2) because bias crimes are unique in that not only do they impact the individual who has been targeted, but they often impact the entire community with which that individual identifies. Victimizing citizens because of their race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry is an affront to our society, our communities, and our culture.

An assault against an individual is bad; an assault against an individual because of the group they represent, the protected class they represent, is worse. If your instincts are to say we should treat everyone the same, or we don't need a special classification for certain groups, know the law at all levels has treated these protected classes as special. For example:

- The Supreme Court applies "strict scrutiny" in certain cases where there are issues of race, religion or national origin, referring to the groups as "suspect classes." Other categories are subject to "intermediate scrutiny."
- The 1964 Civil Rights Act applies to many of those protected classes, with others added over the years.
- Our state human rights act focuses on such groups.

Why we single out these groups is discussed in court cases at all levels and in federal and states' laws, and academic publications. It's because of some common traits:

- They have been historically discriminated against.
- They have immutable characteristics (highly visible traits).
- They are powerless or have diminished ability to protect themselves (a "discrete or insular minority").

- Their distinguishing characteristics don't inhibit the group from contributing meaningfully to society.

So, this bill overall treats the groups named in it specially for reasons longstanding and throughout law and justice systems. That's why 45 states have incorporated bias or hate crimes into their laws. They have clearly stated, and we have not, that certain groups need particular protections, that we should gather specific data and report it as other states do, and that we must train our law enforcement personnel on recognizing and dealing with bias crimes. Those are components of this bill. Most states add penalty enhancements, too, but this bill is minimal in that regard.

HB 1453 may seem familiar to some of you who were here last session, but it is not an old friend. It is still a bill that prioritizes education and training of law enforcement, and data collection, and would put those requirements into law.

Section 1 includes a course of instruction and ongoing training for peace officers, a refresher training, and periodic updating of the course as necessary. Section 2 puts bias language into the aggravated assault statute in subsection 1e. In the harassment part of Section 3, it also adds that language, and in Section 4, you'll find the bias language in criminal mischief at 2.d.

Section 5 is particularly important because it defines "bias crime" and "law enforcement agency" and requires the collection of information on bias crimes and on groups and individuals committing them. That information is public, but the names of the victim and perpetrator are not. The attorney general has flexibility and latitude in this bill to establish how, when and what manner of reporting there will be. It's only required that by July 1, he will submit a written report summarizing the data to legislative management, and annually report to the FBI which collects the data from each state.

Now I said this wasn't what we call around here "old friend" legislation—those bills that come back again and again in the same way. This isn't old friend legislation, in part because you weren't friendly to the original bill in the first place, and because a lot of things have changed since this Committee saw the original bias crime bill.

We worked with law enforcement who were involved with, and knowledgeable about, the training that would be required, so the bill could take advantage of what was already started or planned, and so the wording fit to allow flexibility where needed. Bill proponents will continue to work with Post leadership to eliminate costs of training refreshers by building them into existing programs as suggested in neutral testimony. Where there are suggestions of how to better streamline reporting we will do so.

We incorporated bias language into the criminal statutes but reduced most penalty enhancements. This bill says it's more important to get in place the language protecting certain groups, the education of law enforcement, and the reporting of bias, rather than filling the jails and prisons with longer sentences.

We took seriously the Department of Corrections concerns about adding to prison and jail populations. The last legislature got “restorative justice” incorporated into North Dakota’s sentencing statutes, so there’s a powerful tool to use with bias crime offenders.

Restorative justice is a system that incorporates the victim and community into the penalty process so a perpetrator can be shown the harm he or she has caused, and participate in making amends in many different ways, depending on the nature of the offense, the parties, and the community response. Restorative justice works particularly well where there is both an individual and societal or community harm, and it serves to divert or decrease the necessity of jail or prison time.

And here’s what else has changed. There were many groups and individuals who testified last session about the need for bias crime legislation, and they were upset that we didn’t act. In the communities of Fargo and Grand Forks, for instance, people worked with their local officials, demonstrated the need for bias crime law, and were able to successfully get local hate crime ordinances in place. But you will hear from them why that is not enough and hear from others why it is important to extend those protections to other parts of the state.

After you have heard the testimony today, and read the statistics and testimony on line, we can talk as a group about other bias crimes misconceptions: that we already have enough criminal laws, that you can’t legislate thought-based behavior, that you can’t legislate away hate, that police officers or prosecuting attorneys won’t know how to charge or try these cases, that you can’t know what constitutes a person’s intent or what’s in his or her mind. Because all of those things are untrue, no matter who says them, who believes them, or how often they’re heard.

Take just intent or what’s in a person’s mind when a crime is committed. In the justice system we judge intent with most crimes, certainly the most violent, destructive, and dangerous ones. We can frequently tell from words and deeds the nature of intent—what was in people’s minds when they committed their crime. Broad principles of law focus on mens rea and actus rea, the guilty mind and guilty acts. Law enforcement personnel, prosecutors, and judges make decisions and determinations regularly about intent as part of their jobs.

So please consider this bill and the many people and groups who support it seriously. It serves to fill a gap that will allow important community conversations about diversity, acceptance and tolerance. It can help us minimize discriminatory behavior, protect our protected classes, and intervene when there are harmful acts against vulnerable people. We need to speak clearly as a state, that we will neither welcome nor tolerate crimes of bias or hatred, and where those occur, we will have the training, the education, the data, and the responses that prevent and stop their occurrences.

(And if your gut tells you that you just don’t like this bill, remember what your mother said, “You don’t have to like it, you just have to do it.”)

February 6, 2023

To: House Judiciary Committee
Re: Do Pass on HB 1537

Chairman Klemin and Members of the House Judiciary Committee:

I ask that you consider a recommendation of "Do Pass" for HB 1537, relating to the data collection and reporting of bias crimes, as well as reenacting sections of law relating to peace officer standards with a board to oversee training on bias crimes, aggravated assault, harassment, and criminal mischief.

If there is a statewide mechanism for reporting and organizing data for such crimes, we would have a more accurate representation of how many of these crimes are occurring across the state. With a training program in place for peace officers on bias related crimes, along with a stiffer penalty for such crimes, perhaps these crimes would decrease.

If these measures were passed into law citizens who experience aggravated assault and harassment due to race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry, may feel safer in our communities.

In June 2022, the Bismarck City Commission considered a hate crime ordinance, but it was decided that such an ordinance would work best on a statewide level. HB 1537 provides this opportunity.

Please choose "DO PASS" on HB 1537.

Sincerely,
Christine Kujawa
Citizen, Bismarck, ND

HB 1537 Testimony

February 7, 2023

Chairmen Klemin and members of the House Judiciary Committee,

My name is Sargianna Wutzke and I am writing in support of HB 1537. I am a member of the Bismarck Human Relations Committee and this year our committee testified in support of the Hate Crime Ordinance in the city of Bismarck.

HB 1537 is a much-needed bill in our state. Enacting a bias crime bill is a way that the state can show how the state prioritizes the safety of all people and that all people deserve to be treated with respect regardless of a person's differences. Bias crimes are committed based on a bias towards a certain group. The bias can be based on actual or perceived race, color, religion, disability, gender, sexual orientation, gender identity, national origin, or ancestry according to this bill.

Currently, we do not have a standard way of tracking in our state to determine how often bias crimes are occurring. This bill would change that and there would be data available to track such things as bias crime numbers, who the bias crimes are targeting and what and where bias crimes are occurring. Another important aspect of this bill is training for police officers. Police officers would be adequately trained on distinguishing these crimes by offering the same training across the state. The information that is collected would allow for the use of bias related crime information to the public so the public can see how often this occurs in our state.

I work at Community Options, an agency that provides services to people with developmental disabilities. Hate Crimes for people with developmental disabilities is the invisible hate crime. Many times, people with developmental disabilities are not always thought of being a protected category. If this bill were to pass, disability is one of the categories that is protected. According to the ARC between 2017 and 2019, there was a 35% increase in hate crimes based on disability.

Too often people think that bias related crimes do not occur in North Dakota however there are examples to counter this where people have targeted someone based on one of the protected classes in this bill. Passing this bill will show that all people are welcome in our state and will ensure all people are protected as well.

Sargianna Wutzke



Location Type

Agencies may specify the location of an offense within a hate crime incident as 1 of 46 location designations. However, not all reporting agencies have made the programming changes to allow the relatively new location designations; therefore, the data collected to date are not yet representative of all location designations. The location designations of the hate crime incidents reported in 2021 (based on Table 10) were:

- 32.2 percent of hate crime incidents happened in or near residences/homes.
- 16.9 percent occurred on highways/roads/alleys/streets/sidewalks.
- 8.1 percent happened at schools/colleges (based on 3 designations).
- 7.0 percent took place in parking/drop lots/garages.
- 2.8 percent happened in restaurants.
- 2.7 percent occurred at parks/playgrounds.
- 2.6 percent took place in churches/synagogues/temples/mosques.
- 2.2 percent took place in commercial office buildings.
- 2.1 percent occurred in convenience stores.
- 1.6 percent happened in government/public buildings.
- 1.6 percent happened in bars/nightclubs.
- 1.5 percent happened in cyberspace.
- 1.4 percent took place in jails/prisons/penitentiaries/corrections facilities.
- 1.4 percent took place in grocery/supermarkets.

- 1.4 percent occurred in specialty stores (TV, fur, etc.).
- 1.3 percent took place in drug stores/doctors' offices/hospitals.
- 1.2 percent happened in hotels/motels/etc.
- 1.2 percent occurred in department/discount stores.
- 1.2 percent occurred in air/bus/train terminals.
- 1.2 percent occurred in service/gas stations.
- 4.2 percent of hate crimes occurred in the remaining specified location categories or in multiple locations.
- 4.2 percent took place in other/unknown locations.

Location by bias motivation

Race/ethnicity/ancestry bias

Law enforcement reported 4,470 hate crime incidents motivated by race/ethnicity/ancestry bias in 2021. Of these:

- 30.9 percent happened in or near residences/homes.
- 18.7 percent occurred on highways/roads/alleys/streets/sidewalks.
- 7.4 percent took place in parking/drop lots/garages.
- 7.2 percent happened at schools/colleges (based on 3 designations).
- 3.0 percent took place in restaurants.
- 2.7 percent occurred at parks/playgrounds.
- 2.5 percent happened at convenience stores.
- 2.4 percent occurred in commercial office buildings.
- 1.7 percent took place in government/public buildings.

- 1.7 percent happened in jails/prisons/penitentiaries/corrections facilities.
- 1.7 percent happened in drug stores/doctors' offices/hospitals.
- 1.6 percent occurred in specialty stores (TV/fur/etc.).
- 1.6 percent happened in grocery/supermarkets.
- 1.5 percent took place at service/gas stations.
- 1.4 percent took place in bars/nightclubs.
- 1.4 percent occurred in hotels/motels/etc.
- 1.3 percent happened in cyberspace.
- 1.3 percent took place at department/discount stores.
- 1.2 percent occurred at air/bus/train terminals.
- 4.8 percent happened in the remaining specified location categories or in multiple locations.
- 4.1 percent occurred in other/unknown locations.

Sexual-orientation bias

Law enforcement reported that bias motivation against a particular sexual orientation prompted 1,127 hate crime incidents in 2021. Of these:

- 37.5 percent happened in or near residences/homes.
- 14.1 percent occurred on highways/roads/alleys/streets/sidewalks.
- 10.1 percent happened at schools/colleges (based on 3 designations).
- 5.8 percent took place in parking/drop lots/garages.
- 3.7 percent occurred in restaurants.
- 3.5 percent happened in bars/nightclubs.

- 2.7 percent took place at parks/playgrounds.
- 1.7 percent took place in air/bus/train terminals.
- 1.7 percent happened in commercial office buildings.
- 1.6 percent occurred in cyberspace.
- 1.3 percent happened in government/public buildings.
- 1.3 percent occurred in jails/prisons/penitentiaries/corrections facilities.
- 1.3 percent took place in specialty stores (TV, fur, etc.).
- 1.2 percent took place in hotels/motels/etc.
- 1.2 percent occurred in churches/synagogues/temples/mosques.
- 1.1 percent occurred in convenience stores.
- 5.9 percent happened in the remaining specified location categories or in multiple locations.
- 4.2 percent occurred in other/unknown locations.

Religious bias

Of the 1,005 reported hate crime incidents that took place due to a religious bias:

- 29.0 percent happened in or near residences/homes.
- 14.3 percent occurred in churches/synagogues/temples/mosques.
- 13.4 percent took place on highways/roads/alleys/streets/sidewalks.
- 8.7 percent happened at schools/colleges (based on 3 designations).
- 7.3 percent took place in parking/drop lots/garages.
- 2.8 percent occurred at parks/playgrounds.

- 1.9 percent happened in commercial office buildings.
- 1.8 percent happened in restaurants.
- 1.7 percent occurred in cyberspace.
- 1.7 percent took place in grocery/supermarkets.
- 1.6 percent took place in convenience stores.
- 1.6 percent happened in department/discount stores.
- 1.4 percent occurred in government/public buildings.
- 1.1 percent took place in service/gas stations.
- 7.7 percent occurred in the remaining specified location categories or in multiple locations.
- 4.2 percent took place in other/unknown locations.

Gender identity bias

During 2021, 266 hate crimes motivated by gender identity bias were reported. Of these:

- 39.5 percent took place at residences/homes.
- 16.5 percent happened on highways/roads/alleys/streets/sidewalks.
- 9.0 percent happened at schools/colleges (based on 3 designations).
- 7.1 percent took place in parking/drop lots/garages.
- 2.6 percent occurred at bars/nightclubs.
- 2.6 percent took place in convenience stores.
- 2.3 percent took place in commercial office buildings.
- 2.3 percent happened in cyberspace.

- 1.9 percent occurred at air/bus/train terminals.
- 1.9 percent occurred at parks/playgrounds.
- 1.9 percent happened in restaurants.
- 1.5 percent occurred in fields/woods.
- 1.5 percent happened in government/public buildings.
- 1.1 percent happened in drug stores/doctors' offices/hospitals.
- 1.1 percent took place in grocery/supermarkets.
- 1.1 percent happened at hotels/motels/etc.
- 4.1 percent took place in the remaining specified location categories or in multiple locations.
- 1.9 percent happened at other/unknown locations.

Disability bias

Bias against individuals with a disability (either physical or mental) motivated 134 reported hate crime incidents in 2021. Of these:

- 63 occurred in or near residences/homes.
- 17 took place on highways/roads/alleys/streets/sidewalks.
- 15 happened in schools/colleges (based on 3 designations).
- 5 took place in parking/drop lots/garages.
- 3 occurred in jails/prisons/penitentiaries/corrections facilities.
- 3 took place in specialty stores (TV, fur, etc.).
- 2 happened in department/discount stores.
- 2 occurred in government/public buildings.

- 16 occurred in the remaining specified locations or in multiple locations.
- 8 took place in other/unknown locations.

Gender bias

Law enforcement reported 72 gender bias hate crimes in 2021. Of these:

- 26 happened at residences/homes.
- 9 occurred on highways/roads/alleys/streets/sidewalks.
- 5 took place in commercial office buildings.
- 4 happened in parking/drop lots/garages.
- 3 occurred at hotels/motels/etc.
- 3 happened in schools/colleges (based on 3 designations).
- 2 took place in cyberspace.
- 2 occurred in drug stores/doctor's offices/hospitals.
- 2 occurred in jails/prisons/penitentiaries/corrections facilities.
- 2 happened at parks/playgrounds.
- 10 took place in the remaining specified locations or in multiple locations.
- 4 happened in other/unknown locations.

Multiple-bias incidents

In 2021, law enforcement agencies reported 188 multiple-bias hate crime incidents. Of these:

- 26.6 percent occurred in or near residences/homes.
- 13.3 percent took place on highways/roads/alleys/streets/sidewalks.

- 11.7 percent happened in schools/colleges (based on 3 designations).
- 6.4 percent occurred at parks/playgrounds.
- 6.4 percent took place in parking/drop lots/garages.
- 4.3 percent took place in commercial office buildings.
- 3.2 percent happened in churches/synagogues/temples/mosques.
- 2.7 percent took place at government/public buildings.
- 2.1 percent happened in convenience stores.
- 2.1 percent took place at department/discount stores.
- 2.1 percent happened in restaurants.
- 1.6 percent occurred in cyberspace.
- 1.1 percent happened at banks/savings and loans.
- 1.1 percent occurred at service/gas stations.
- 6.4 percent occurred in the remaining specified location categories or in multiple locations.
- 9.0 percent were reported in other/unknown locations.

#5845

ADVISORY MEMORANDUM

To: U.S. Commission on Civil Rights
From: North Dakota Advisory Committee to the U.S. Commission on Civil Rights
Date: September 25, 2019
Subject: Advisory Memorandum on Hate Crimes in North Dakota

The North Dakota State Advisory Committee to the United States Commission on Civil Rights (Committee), in support of the Commission's project on hate crimes, held a briefing on June 19, 2019. The Committee sought to learn about the impact of these crimes statewide as well as the effectiveness of current legislation aimed at preventing hate crimes within North Dakota.

As background, North Dakota has been notorious for high occurrences of hate crimes, ranking second with the most per capita in 2012, 2014, and 2015.¹ While the state reported a five year low of eight bias motivated crimes in 2016, some speculate that this is due in part to a three percent participation rate amongst North Dakota police agencies in the hate crime statistics reporting program.² While there was also a relatively low rate in 2017, the Bismarck Tribune reported that seven hate motivated crimes that occurred in Fargo had gone uncounted in the report.³ Of the fifteen reported in 2017, eight were motivated by the victims' race, five by religion, and two by sexual orientation.⁴

There have been a number of hate related occurrences and crimes in North Dakota that have garnered significant state and national media attention. In 2017, several Somali residents of Fargo were berated by a woman shouting expletives and telling the Somali residents that "we're going to kill every one of you f---ing Muslims."⁵ Additional incidents included a woman's hijab being pulled off and a Somali man being beaten in front of his home. This vile rant and other acts initiated a push by activist organizations in the state calling for a change to the state's hate crime laws.⁶

* The Committee expresses its appreciation to Patrick Williamson, Georgetown Law Student and the Eastern Regional Office Intern, for his work on this advisory memorandum.

¹ Archie Ingersoll, "North Dakota again ranks 2nd in most hate crimes per capita," Nov. 19, 2016, <https://www.inforum.com/news/4163100-north-dakota-again-ranks-2nd-most-hate-crimes-capita> (noting that North Dakota has held the No. 2 spot since 2012, except in 2013 when it ranked first with 7.1 hate crimes per 100,000 residents).

² Dave Olson, "FBI hate crime rate down in ND, but may be missing 7 Fargo cases," Bismarck Tribune, Nov. 18, 2017, https://bismarcktribune.com/news/state-and-regional/fbi-hate-crime-rate-down-in-nd-but-may-be/article_b99b7e2f-a0a0-506d-8b55-a642a94c3797.html.

³ Ibid.

⁴ FBI 2017 Hate Crimes Statistics, <https://ucr.fbi.gov/hate-crime/2017/tables/table-12.xls>.

⁵ KVVR, "Mapleton Woman Fired After Viral Racist Rant, Community Rally Scheduled in Fargo," July 26, 2017, <https://www.kvvr.com/2017/07/26/mapleton-woman-fired-viral-racist-rant-community-rally-scheduled-fargo>

⁶ Hukun Dabar, Briefing before the North Dakota State Advisory Committee to the US. Commission on Civil Rights, Fargo, ND, June 19, 2019, transcript, pp. 26 [hereinafter *Fargo Briefing*].

The Committee invited government officials, advocates, an elected official, and the public to speak to the Committee about hate crimes in North Dakota. This Advisory Memorandum highlights the information the Committee learned at the briefing.

BACKGROUND

A hate crime is criminal behavior targeted at an individual because of his or her real or perceived association with personal characteristics that are protected under civil rights law. The United States Federal Bureau of Investigation (FBI) defines a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, ethnic origin, or sexual orientation.”

1. Hate Crimes Nationally

The Civil Rights Act of 1968 (CRA) was a momentous statute that criminalized a new class of hate motivated acts.⁷ The CRA sought to address racial violence against civil rights workers and individuals pursuing federally protected activities. The CRA permits federal prosecution of any person who willfully injures, intimidates, or interferes with another person, or attempts to do so, by force because of the victim’s race, color, religion, or national origin, provided that the offense occurred while the victim was attempting to engage in a statutorily protected activity.⁸ Examples of statutorily protected activities under the CRA include voting; enrolling in or attending any institution of public education; applying for or enjoying employment by any private or public employer; and enjoying the benefits or services of any establishment of public accommodation such as hotels, restaurants, movie theaters, and sports arenas.⁹ Importantly, the CRA did not designate as a hate crime offenses that occurred while a victim was not engaged in one of the identified statutorily protected activities. As such, prosecution under the CRA often proved difficult.¹⁰

While advocacy groups such as the Anti-Defamation League (ADL), the Southern Poverty Law Center (SPLC), and the National Gay and Lesbian Task Force (NGLTF) began compiling data on bias-motivated violence in the 1980s, official federal data was not collected until 1990 with the passage of the Hate Crimes Statistics Act (HCSA).¹¹ The HCSA requires the Attorney General to collect, as a part of the Uniform Crime Reports (UCR) Program, data “about crimes

⁷ The Civil Rights Act of 1968, 18 U.S.C. 5(b)(2).

⁸ *Id.*

⁹ *Id.*

¹⁰ For a successful case using 18 U.S.C. § 245, see *United States v. Nelson*, 277 F.3d 164 (2nd Cir. 2002).

¹¹ Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534)

that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.”¹² In September 1994, the Violent Crime Control and Law Enforcement Act amended the HCSA to add disabilities as a factor that could be considered as a basis for hate crimes.¹³ Although the HCSA mandated hate crimes data collection for five years, the FBI considers the collection of such statistics to be a permanent addition to the UCR Program.¹⁴

Also included as part of the Violent Crime Control and Enforcement Act of 1994, the Hate Crime Sentencing Enhancement Act¹⁵ (HCSEA) mandated a revision of United States Sentencing Guidelines to provide sentencing enhancements of at least three offense levels for hate crime offenses. The HCSEA included protection for those targeted because of their ethnicity, gender, disability, or sexual orientation, in addition to protecting individuals on the basis of race, color, religion and national origin.¹⁶ Because this sentence enhancement can only be employed when an underlying federal crime is committed, its enactment did not expand the substantive scope of any federal criminal law prohibitions, and it excludes many offenses prosecuted at the state level where hate may be a motive. While the HCSEA did evoke Congressional willingness to address hate crimes, the scope of substantive federal protection remained unchanged.

In 2009, the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009¹⁷ (HCPA) provided additional authority for federal officials to investigate and prosecute hate crimes. The HCPA closed the loophole in the Civil Rights Act which limited federal hate crime prosecution to cases in which the victim had been engaged in a statutorily protected activity at the time of the crime.¹⁸ The HCPA also authorized the U.S. Department of Justice to investigate and prosecute “certain bias-motivated crimes based on the victim’s actual or perceived sexual orientation, gender, gender identity, or disability.”¹⁹ Finally, the HCPA provided limited jurisdiction “for federal law enforcement officials to investigate certain bias-motivated crimes in states where current law is inadequate”²⁰ and provided federal aid and

¹²*Id.*

¹³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796-2151 (codified at 42 U.S.C. §§ 13701–14223).

¹⁴ 28 U.S.C. § 534. The Church Arson Prevention Act of July 1996 indefinitely extended the mandate for collection of hate crime statistics, making it a permanent part of the UCR program.

¹⁵ Hate Crime Sentencing Enhancement Act, Pub. L. No. 103-322, § 280003, 108 Stat. 1796, 2096 (codified as 28 U.S.C. § 994 .

¹⁶ *Id.*

¹⁷ Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, §§ 4701-4713, 123 Stat. 2835, 2835-2845) (codified at 18 U.S.C. § 249)

¹⁸ 18 U.S.C. § 249; *See* Anti-Defamation League. “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) What You Need to Know.” ADL.org.

<https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf> (retrieved September 10, 2019).

¹⁹ HCPA: WHAT YOU NEED TO KNOW; *See* 18 U.S.C. § 249(a)(1)-(2).

²⁰ HCPA: WHAT YOU NEED TO KNOW

technical assistance to state, local, and tribal jurisdictions to help them more effectively investigate, prosecute, and prevent hate crimes from occurring.²¹

2. Hate Crimes in North Dakota

North Dakota Law defines a hate crime as any act by force, threat of force, or economic coercion that interferes with a victim exercising his or her right to full and equal enjoyment of a public facility or intimidates a victim from exercising such rights. Specifically, the statute provides:

A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:

- (1) Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
- (2) Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.²²

Offenders may be subject to the class B misdemeanor maximum penalty of thirty days imprisonment, a fine of \$1,500, or both.²³ North Dakota does not have legislation authorizing the increased sentence of a defendant who violates § 12.1-14-04. In 2011, several bills were introduced to amend the statutory framework and provide for increased sentences but were ultimately not passed by the legislature.²⁴

ASSERTIONS AND THEMES FROM THE JUNE 19, 2019 BRIEFING

North Dakota Hate Crime Law is Inadequate

Panelist Miriam Zeidman stated that hate crime laws, “send that message that no one should be targeted for a crime because of who they are or who they love and that the state recognizes the unique harm that such crime causes.”²⁵ Panelists expressed a concern that the law in North Dakota fails to send that message. While North Dakota has technically enacted hate crime legislation, the governing code links hate crime violations to violations of public accommodation laws. Specifically, North Dakota Century Code § 12.1-14-04 prohibits interfering with a victim’s

²¹ 42 U.S.C. § 3716.

²² N.D. Cent. Code § 12.1-14-04.

²³ N.D. Cent. Code § 12.1-32-01.

²⁴ Ruth Buffalo, *Fargo Briefing*, transcript, pp. 16-17.

²⁵ Miriam Zeidman, *Fargo Briefing*, transcript pp. 11.

right to full and equal enjoyment of a public facility based on sex, race, color, religion, or national origin.²⁶ According to several panelists, this approach to preventing hate crimes is unconventional, ineffective, and in need of reform.²⁷

Panelist Miriam Zeidman, the Midwest Civil Rights Counsel for the ADL, said that “[b]oth concepts of addressing hate crime and discrimination in public places are important. But requiring a causal link to public accommodations discrimination renders the hate crime laws less effective.”²⁸ This is due, in part, to the prevalence of hate crimes unconnected to the use of a public facility. For example, panelist Jack Weinstein recounted several personal experiences of discrimination such as people drawing swastikas on his own property,²⁹ a crime that would likely not fall under the current statute.

North Dakota’s hate crime laws were also regarded as providing insufficient protection to the LGBTQ community.³⁰ Kara Ingelhart, an attorney at Lambda Legal, stated that eleven states recognize sexual orientation as a protected category in their hate crimes laws, nineteen protect both sexual orientation and gender identity, and North Dakota protects neither.³¹ She suggested that this “send[s] a message that LGBTQ people are still legitimate targets for violence – which is something that very few Americans would support.”³²

Hate crime laws “send the message that no one should be targeted for a crime because of who they are or who they love and that the state recognizes the unique harm that such crimes cause.”³³ Panelists at the July 19, 2019 briefing expressed a sense that the current law in North Dakota insufficiently addresses hate crimes and the tragic impact they can have on a person, family, and community.³⁴

A Need for Mandatory Reporting

Panelist Miriam Zeidman stated that “[c]ollection of data is indispensable to counteract bias motivated crimes.”³⁵ Generally, we rely on data to identify patterns and trends that inform solutions to issues we face, both legislative and otherwise. Addressing the prevalence of hate crimes in North Dakota is no different. Miriam Zeidman stated that “data collection raises public awareness of the problem and can spark improvement in the local response to the issue.”³⁶ Zeidman also believes that hate crime laws are most effective when police know how to identify,

²⁶ N.D. Cent. Code § 12.1-14-04.

²⁷ See; Miriam Zeidman, *Fargo Briefing*, transcript, p. 6; Barry Nelson, *Fargo Briefing*, transcript, p. 11; Kara Ingelhart, *Fargo Briefing*, transcript pp. 20-21;

²⁸ Miriam Zeidman, *Fargo Briefing*, transcript, p. 7.

²⁹ Jack Weinstein, *Fargo Briefing*, transcript, p. 28.

³⁰ See Kara Ingelhart, *Fargo Briefing*, transcript, p. 20.

³¹ *Ibid.*

³² *Ibid.*, p. 21.

³³ Miriam Zeidman, *Fargo Briefing*, transcript, p. 11.

³⁴ See *Ibid.*, p. 6.

³⁵ Miriam Zeidman, *Fargo Briefing*, transcript, p. 9.

³⁶ *Ibid.*, p. 10.

respond to, and report these sorts of crimes.³⁷ Currently, North Dakota law lacks a provision to require mandatory reporting and data collection.

This mandatory reporting should lead to better coordination to between local, state and federal agencies to address hate crimes both to prosecute the hate crimes but also to provide victim support. Both Barry Nelson and Hukun Dabar personally worked with victims of bias motivated hate crimes and found that they were not supported throughout the legal process.³⁸

Recognizing and including important demographics, such as the LGBTQ community, in hate crime reporting laws is crucial to ensure the veracity and integrity of collected data. While the majority of hate crimes in the state are motivated by the perpetrators racial bias, sexual orientation and gender identity are not included in the current statutory framework.³⁹ Failing to include this protected category may lead to the under-identification of hate crimes.⁴⁰ With a nationwide fifteen percent of bias motivated crimes being motivated by sexual orientation bias, Panelist Kara Ingelhart believes that current information suggests a higher rate of anti-LGBTQ motivated hate crimes than are statistically known in North Dakota.⁴¹

Public Education

Public education, especially pertaining to available victim resources, is an important part of a comprehensive effort to combat hate crimes. Although it is important to enact legislation to codify a zero tolerance stance on hate crimes, aiding victims in reporting and dealing with these crimes is also of great concern in North Dakota.⁴² As noted previously, North Dakota technically has a hate crime law; however, panelists expressed a concern that those laws are “so obtuse that it’s not identified as such by people who are potentially victims...”⁴³ A lack of knowledge of and access to resources and recourse available to victims might make them less likely to report occurrences of hate crimes,⁴⁴ especially when coupled with the fear experienced in conjunction with being victimized. Jack Weinstein, while recounting his experience reporting bias motivated crimes, noted that while the reporting process was difficult for him, it would “be impossible for those without the voice, security, education, or social capital that I have.”⁴⁵

³⁷ Ibid.,p. 9.

³⁸ Barry Nelson, *Fargo Briefing*, transcript, p. 13-14, Hukun Dabar, *Fargo Briefing*, transcript, p. 26

³⁹ Kara Ingelhart, *Fargo Briefing*, transcript, p. 23.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² See Barry Nelson, *Fargo Briefing*, transcript, p. 13; Kara Ingelhart, *Fargo Briefing*, transcript, p. 23; Jack Russell Weinstein, *Fargo Briefing*, transcript, p. 31.

⁴³ Barry Nelson, *Fargo Briefing*, transcript, p. 12.

⁴⁴ See Ruth Buffalo, *Fargo Briefing*, transcript, p. 17; Barry Nelson, *Fargo Briefing*, transcript, p. 13; Jack Weinstein, *Fargo Briefing*, transcript, p. 31.

⁴⁵ Jack Weinstein, *Fargo Briefing*, transcript, p. 32.

Latisha Mazzuro-Homes emphasized that people need to know what to do when you are a victim of a hate crime in simple and plain language in order to encourage people to report crime. This is particularly important to reach community members if their first language is not English.⁴⁶

Panelist Ruth Buffalo, a state representative, noted that one challenge that we face in North Dakota is that people don't really understand or grasp the fact that their behavior is bias motivated. Recently, there was a case where an individual was taken out of a sweat lodge -during a religious practice -here in Fargo by the authorities. "Should that be a hate crime by pulling somebody out of a sweat lodge -- which is considered a church? They're practicing their civil rights by exercising their religious freedom."⁴⁷

She noted, "[p]eople are afraid to speak out," which is one of the many reasons hate crimes go unreported. One method panelists prescribed for this issue is to educate and inform victims that services and resources are available to them.⁴⁸

A Need for Mandatory Training

The strongest bias motivated crime laws in the country include mandatory bias motivated crime training for law enforcement officers. In order for bias motivated crime laws to be most effective, the first responders must be trained regarding identifying, responding to, and reporting such crimes in addition to working with victims in their communities.⁴⁹

Economic Consequences of Insufficient Hate Crime Laws

Although the impact of the victim, the victim's family, and their community are of the utmost importance, Panelist Kara Ingelhart discussed the economic impact that lackluster hate crimes laws can have on the entire community. Data shows that minority communities, specifically the LGBTQ community, are more likely to reside in regions where there are more inclusive statutory protections for minority communities.⁵⁰ Further, evidence suggests that cis-gendered and heterosexual persons also gravitate towards and relocate to inclusive, socially diverse regions.⁵¹ Further, corporate entities have been shown to seek out jurisdictions with more protections for minority populations for recruiting purposes because of the diversity in these regions.⁵²

Kara Ingelhart asserted that, in addition to discouraging diversity by disincentivizing minority communities from settling in a particular region, having poor or no protections in place for these communities may also pose economic harm to the particular jurisdiction.⁵³

⁴⁶ Latisha Mazzuro-Holmes, *Fargo Briefing*, transcript, p. 34.

⁴⁷ See Ruth Buffalo, *Fargo Briefing*, transcript, p. 20.

⁴⁸ See Kirsten Dauphinais, *Fargo Briefing*, transcript, p. 48.

⁴⁹ See Miriam Zeidman, *Fargo Briefing*, transcript, p. 9.

⁵⁰ See Kara Ingelhart, *Fargo Briefing*, transcript, p. 23.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., p. 24.

CONCLUSION

The Committee submits this Advisory Memorandum in support of the Commission's 2019 report on hate crimes. Based on the briefing and the testimony received, the Committee may consider taking additional steps and examining the topic in more depth.



PRESS RELEASE
April 8, 2021

Contact:

North Dakota Advisory Committee to the U. S. Commission on Civil Rights Condemns Violence Against Americans of Asian and Pacific Islander Descent

The members of the North Dakota Advisory Committee to the U.S. Commission on Civil Rights unequivocally condemn all forms of anti-Asian hate speech, violence and crimes that have meteorically risen nationwide in the past few years.

The escalation of hate crimes against Asian Americans is not new. There is a long history of violence, discrimination and xenophobia against the Asian American Pacific Islander community. A recent report found that anti-Asian hate crimes increased 150 percent in 2020 in America's 16 largest cities, despite overall hate crimes dropping 7 percent in those cities.² Moreover, from March 19, 2020, to Feb. 28, 2021, there were more than 3,795 hate incidents, including verbal harassment and physical assault, against Americans of Asian and Pacific Islander descent reported to Stop AAPI Hate, a nonprofit organization that tracks such incidents.¹

The killing of six American women of Asian descent in Atlanta and the heinous killing of Asians in California have shocked the nation and spawned nationwide protests.² Most recently the brutal stomping in broad daylight of a 65-yr old Filipina on her way to church and inhumane indifference shown by three men who watched the attack unfold, one of whom was a building security guard who closed the front door while the woman struggled to get up, has only reinforced the fear among Americans of Asian descent.³

In the past, the North Dakota Advisory Committee has examined hate crimes in North Dakota. The Committee released an Advisory Memorandum and noted that "North Dakota has been notorious for high occurrences of hate crimes." To address the issue, the Committee noted the need for public education on hate crimes, mandatory reporting and data collection on hate crimes, and mandatory bias motivated crime training for law enforcement officers that trains first responders to identify and work victims.

"In light of the recent escalation of hate crimes against Americans of Asian and Pacific Islander descent the Advisory Committee renews its call that the state do its part to combat racism and oppression within the state and in our communities," said Michelle Rydz, chair of the North Dakota Advisory Committee.

¹ <https://www.yahoo.com/gma/washington-teenager-arrested-attack-asian-192112313.html>

² <https://www.yahoo.com/entertainment/marylands-korean-american-first-lady-203950664.html>

³ <https://wtop.com/maryland/2021/03/hogan-announces-new-steps-to-protect-marylands-asian-community/>

⁴ <https://www.marylandmatters.org/2021/03/20/in-wake-of-atlanta-killings-md-leaders-implore-asian-communities-to-speak-out/>

⁵ <https://www.washingtonpost.com/nation/2021/03/20/atlanta-shooting-updates/>

⁶ <https://www.nytimes.com/2021/03/30/nyregion/asian-attack-nyc.html>

Civil Rights *and* Fair Housing in North Dakota



A Briefing Report of the
North Dakota Advisory Committee to the
U.S. Commission on Civil Rights

July 2021

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory Committee in each of the 50 states and the District of Columbia. These Committees are composed of state/district citizens who serve without compensation; they are tasked with advising the Commission of civil rights issues in their states/district that are within the Commission's jurisdiction. Committees are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state or district's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to Committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states/district.

Letter of Transmittal

North Dakota Advisory Committee to
the U.S. Commission on Civil Rights

Members of the Commission

Norma Cantu, Chair
J. Christian Adams
Debo P. Adegbile
Stephen Gilchrist
Gail Heriot
David Kladney
Peter N. Kirsanow
Michael Yaki

Mauro Morales, *Staff Director*

The North Dakota Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, "Fair Housing in North Dakota." The report was approved by the Advisory Committee by a vote of 7 to 1.

Sincerely,

Michelle Rydz, *Chairperson*

**North Dakota Advisory Committee to the
U.S. Commission on Civil Rights**

Michelle Rydz, Chair	Grand Forks
Cesareo Alvarez	New Town
Yee Han Chu	Grand Forks
Kirsten Dauphinais	Grand Forks
Crystal Dueker	Fargo
Stephanie Johnson	Grand Forks
Cheryl Kary	Bismarck
Lisa Lone Fight	New Town
Sheryl Stradinger	Bismarck

Acknowledgements

The North Dakota Advisory Committee would like to thank each of the panelists who presented to the Committee and the members of the public who either submitted written testimony or who spoke during the period of public comment.

TABLE OF CONTENTS	
I. Introduction	4
II. Background	4
<i>A. The Fair Housing Act</i>	6
<i>B. The North Dakota Housing Discrimination Act</i>	6
III. Summary of the Panels	7
<i>A. Weakening of Federal Enforcement of the Fair Housing Act</i>	7
1. Rewriting the Disparate Impact	8
<i>B. Fair Housing Concerns in North Dakota</i>	9
1. Criminal Background Records and History	9
2. Sex Discrimination	10
3. Disability Discrimination	12
4. Housing Affordability and Homelessness	13
5. Lack of legal support, low damages, and limited access to judicial process	14
6. Lack of Education, Knowledge, and the Language Barrier	14
7. Limited Resources of North Dakota’s Federal Housing Assistance Program	15
IV. Findings and Recommendations	16

I. INTRODUCTION

On June 30, 2020, the North Dakota Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to conduct a study of access to fair housing throughout the state. Specifically, the Committee sought to examine potential disparities regarding access to housing and discrimination based upon the protected categories of the population as designated by the Constitution. The Committee also sought to explore challenges to the access of fair housing facing the formerly incarcerated, individuals with disabilities, and those experiencing homelessness.

Beginning on June 30, 2020, and continuing on July 7, 14 and 21, the Committee convened public teleconferences to hear testimony regarding challenges and recommendations regarding access to housing in North Dakota. The following report results from the testimony provided during this meeting, as well as materials collected by the Committee in the analysis of this report. It begins with a brief background of the issue to be considered by the Committee. It then presents an overview of the testimony received. Finally, it identifies primary findings as they emerged from this testimony, as well as recommendations for addressing related civil rights concerns.

II. Background

Housing Discrimination has been a part of America's legacy since post-emancipation. Federal housing policies developed during the New Deal created discriminatory mortgage lending practices called "redlining" resulting in segregated communities. White homeownership was incentivized by federal programs and financial supports while black homeownership in the same communities was barred by restrictive covenants and financial disincentives to realtors and builders.¹

¹ Rose Helper, *Racial Policies and Practices of Real Estate Brokers*, 201 (1969). Institutional racism has always played a part. In 1924, the National Association of Real Estate Brokers adopted an article in its code of ethics stating that "a Realtor should never be instrumental in introducing into a neighborhood...members of any race or

After the long, hot summer of 1967 in which there were dozens of race riots nationwide protesting systemic racism in the United States,² President Lyndon B. Johnson appointed the National Advisory Commission on Civil Disorders, chaired by Illinois Governor Otto Kerner.³ Referred to as the Kerner Commission, its goal was to identify the root causes of the racial unrest, and what could be done to prevent future occurrences.⁴ The Kerner Commission conducted a comprehensive investigation of racial discord and reported pervasive discrimination and segregation in employment, education, and housing as the fundamental causes for the racial disorders.⁵

The report's most famous passage warned, “Our nation is moving toward two societies, one black, one white—separate and unequal.” The report was a strong indictment of white America: “What white Americans have never fully understood — but what the Negro can never forget — is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.”⁶

nationality... whose presence will clearly be detrimental to property values in that neighborhood,” a clause that remained in effect until 1950. *See also* National Academy of Public Administration, *Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning*, 2003, p. 26 (noting that Federal agencies, notably the Federal Housing Authority and the Veterans Administration, had practices that supported or fostered housing segregation. These practices included subsidizing suburban growth at the expense of urban areas, supporting racial covenants by denying African Americans mortgage insurance in integrated communities, providing mortgage insurance in segregated residential areas, and redlining).

² *See e.g.*, Kelly Gonsalves, *The 'Long, Hot Summer of 1967'*, *The Week*, Aug. 2, 2017

<https://theweek.com/captured/712838/long-hot-summer-1967>; Kenneth T. Walsh, 50 Years After Race Riots, Issues Remain the Same,” *U.S. News & World Report*, July 12, 2017, (noting that 50 years after the riots of 1967 the issues remain largely the same).

³ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/national-advisory-commission-civil-disorders-report>. National Advisory Commission on Civil Disorders, *Report of the National Advisory Commission on Civil Disorders*. P.1 (1968). The report included a detailed history of blacks in American society and recommendations for improving the social conditions that foment riots.

⁴ *Ibid.*

⁵ *Ibid.*, 7.

⁶ *Ibid.*

The Commission found inadequate housing conditions, in part, led to the unrest that caused the riots. The housing problem by their analysis was a *political* problem, one that required a political response.⁷

A. The Fair Housing Act

The Fair Housing Act passed in response to the death of Martin Luther King, Jr. was enacted “to provide, within constitutional limitations, for fair housing throughout the United States.”⁸ The act prohibited discrimination on the basis of “race, color, religion, or national origin” in the sale or rental of housing, the financing of housing, or the provision of brokerage services.⁹ The Fair Housing Act was amended in 1974, adding sex discrimination to the list of prohibited activities.¹⁰ The last major change was in 1988 when the Fair Housing Act was amended to prohibit discrimination based on physical and mental disabilities and familial status and included a provision to strengthen enforcement and required multi-family buildings built after 1991 to be accessible.¹¹

B. The North Dakota Housing Discrimination Act

The North Dakota Housing Discrimination Act enacted in 1999 is substantially equivalent to the Federal Fair Housing Act and adds additional protections with respect to age, marriage, public assistance, and status as a victim of domestic violence. Under the provisions of N.D.C.C.

⁷ Ibid, 35.

⁸ 42 U.S.C. § 3601 (2018). The Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2018), was originally enacted as Title VIII of the Civil Rights Act of 1968.

⁹ 42 U.S.C. §§ 3604-3606 (2018).

¹⁰ Housing and Community Development Act, Pub. L. No. 93-383 (1974).

¹¹ Fair Housing Amendments Act, Pub. L. No. 100-430 (1988). In April 2021, the Congressional Research Service issued a report that provides background on the Fair Housing Act, including changes to policies and practices in 2018 and 2021 at <https://sgp.fas.org/crs/misc/R44557.pdf>.

Chapter 14-02.5, the North Dakota Department of Labor and Human Rights is charged with receiving and investigating complaints of unlawful housing discrimination.¹²

III. Summary of the Panels

A. Weakening of Federal Enforcement of the Fair Housing Act¹³

Several panelists spoke of concern of the weakening of the Affirmatively Furthering Fair Housing provision of the FHA. Morgan Williams, General Counsel for the National Fair Housing Alliance, spoke about the provision in the FHA which says that any jurisdiction that receives HUD funds must use those funds in a way that Affirmatively Furthers Fair Housing or promotes open housing choice in integrated communities. He explained that it was largely ignored for many decades because the mandate had no private right of action associated with it. He continued, “In 2015, HUD issued a rule formally titled the Affirmatively Furthering Fair Housing (AFFH) final rule, that provides great guidance for jurisdictions on ensuring that their public policy considerations, in conjunction with their use of HUD funds, serves to promote more integrated communities. Unfortunately, in 2020, a new HUD rule was enacted. The new rule, Preserving Community and Neighborhood Choice, effectively struck down the only meaningful guidance since the Fair Housing Act for how states and localities should redress discriminatory housing practices.”¹⁴

Sarah Pratt, a civil rights lawyer, noted that any discussion about eliminating the obligation to affirmatively further fair housing would require that “[they] change the Fair Housing Act because that obligation is embedded in the Fair Housing Act. It's been there since 1968.”¹⁵ She

¹² N.D. Cent. Code § 14-02.5.

¹³ The panels were held in June and July of 2020. The two rules referenced in this section have since been repealed. We have left them in the report to illustrate the necessity of legislating these rules so they are not continuously changed with each new administration.

¹⁴ Morgan Williams, testimony before the North Dakota Advisory Committee to the U.S. Commission on Civil Rights, briefing, June 30, 2020, transcript, p. 4, (hereafter cited as Briefing Transcript).

¹⁵ Sara Pratt, Briefing Transcript, July 7, 2020, p 7.

continued that affirmatively furthering fair housing is a “fundamental bedrock civil rights principle.”¹⁶

1. Rewriting the Disparate Impact

Similarly, panelists were concerned that the Preserving Community and Neighborhood Choice rule implemented by HUD in 2020 made it substantially more difficult for plaintiffs seeking to use a disparate impact theory to remediate discrimination under the Fair Housing Act.¹⁷ Morgan Williams spoke of the 2015 U.S. Supreme Court decision *Texas v. Inclusive Communities* which upheld disparate impact liability as cognizable under the Fair Housing Act.¹⁸ He noted that HUD’s 2015 Affirmatively Furthering Fair Housing rule outlined a standard for disparate impact liability that draws from existing jurisprudence and provides a uniform approach to considering disparate impact claims, as well as for industry players to consider disparate impact analysis from a compliance standpoint.¹⁹ Sara Pratt concurred, “This analysis is the best tool enforcers have to challenge policies and practices that have little or no real business justification but often are deeply exclusionary.”²⁰ HUD’s Preserving Community and Neighborhood Choice rule in 2020 undid much of Affirmatively Furthering Fair Housing rule.²¹

¹⁶ *Id.*

¹⁷ HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard, 85 Fed. Reg. 60,288 (Sept. 24, 2020). See generally, Briefing Transcripts of the North Dakota Advisory Committee, June 30, 2020 and July 7 and 14, 2020.

¹⁸ Williams, Briefing Transcript, June 30, 2020, p. 13.

¹⁹ *Ibid.*

²⁰ Pratt, Briefing Transcript, July 7, 2020, p. 8.

²¹ Megan Russo, Preserving Community and Neighborhood Choice?, *The Regulatory Review*, Nov. 17, 2020, <https://www.theregreview.org/2020/11/17/russo-preserving-community-neighborhood-choice/>. As of this writing, the Biden Administration has reversed the previous administration’s course on the Disparate Impact Rule undoing the 2020 rule.

B. Fair Housing Concerns in North Dakota

1. Criminal Background Records and History

According to the North Dakota Department of Corrections and Rehabilitation, Black and Native Americans are four times more likely to be incarcerated, on parole, or on probation than their white counterparts. Overall, North Dakota's population is 84 percent white, three percent Black, six percent Native American, three percent other, and four percent Hispanic. This contrasts with the North Dakota prison population which is five percent Hispanic, 19 percent Native American, and 65 percent white, clearly reflecting the disproportionate numbers of communities of color incarcerated in the state.²²

Individuals with criminal backgrounds have difficulty securing housing and often results in homelessness.²³ Panelist Kelly Gorz, the Associate Director of High Plains Fair Housing Center, said that she sees a lot of problems with "blanket policies" which require tenant applicants to have no criminal background, including arrest records.²⁴ Additionally, North Dakota has a law which allows landlords to charge up to two months' rent as a security deposit if the tenant applicant has been convicted of a felony offense.²⁵ Because there is a disproportionate number of people of color in North Dakota's prisons and jails, this law may have a disparate impact and therefore be in violation of the Fair Housing Act.²⁶

Panelist Adam Martin, founder and Executive Director of the F5 project, an organization that provides housing for recently released felons, spoke of not being able to keep up with the demand of housing for those newly released from prison. Martin contends that one of the "biggest issues facing North Dakota, when it comes to housing, is felony backgrounds and mass incarceration" "noting that, out of a population of 790,000 people in North Dakota, 213,000

²² Adam Martin, Briefing transcript, July 14, 2020, pp. 3-4.

²³ Ibid.

²⁴ Kelly Gorz, Briefing Transcript, June 30, 2020, p. 11.

²⁵ North Dakota Century Code at 47-16-07.

²⁶ Martin, Briefing transcript, at 3-4.

individuals (about 28 percent of the population) have a criminal background. This high number demonstrates that many North Dakotans are facing barriers to finding housing.²⁷ Martin further noted that, in his experience, when newly released individuals are placed with good, reputable landlords, he has “only seen one person go back to prison out of all the people that [F5] helped.”²⁸

2. *Sex Discrimination*

For many years, Human Rights activists worked with North Dakota legislators to introduce the legislation to the Human Rights Act amending North Dakota Century Code Chapter 14-02.4 to include protections for LGBTQ status in housing and employment.²⁹ Hearings in support of the legislation included many personal stories about individuals who experienced discrimination in their work and in their housing in North Dakota.³⁰ Despite these important and often heartbreaking stories, North Dakota’s Legislature repeatedly voted against adding LGBTQ status as a protected class, and in some years, the legislation did not make it out of committee.³¹

In 2018, High Plains Fair Housing Center used match-pair testing to gather data about gender discrimination in access to housing. The testers were transgender or gender non-conforming individuals paired with cisgender individuals. The analysis consisted of comparing the treatment of the transgender or gender non-conforming individuals to control testers across a number of indicators. Overall, 70 percent of the trans/gender non-conforming testers experienced subtle forms of discrimination: no eye contact, no handshake, refusal to use the proper pronoun even after the tester informed property manager of their preferred pronoun. Additionally, 80 percent of the trans/gender non-conforming testers experienced discrimination by not being shown the same number of units or showing them different and often inferior units. Other instances of discrimination, such as rushing through the showings or not providing detailed information,

²⁷ Ibid. at 4.

²⁸ Ibid at 5.

²⁹ Cody Schuler, Briefing Transcript, July 21, 2020, p. 8-9.

³⁰ Ibid.

³¹ Ibid at 9.

occurred in 50 percent of the cases for the trans/gender non-conforming testers. Finally, in 60 percent of the cases trans/gender non-conforming testers were asked prying questions that the control testers were not asked, such as, “Do you have a job? What is your level of education? Are you married? Do you have kids?”³²

In discussing sex discrimination, Commissioner Erica Thunder of the North Dakota Department of Labor and Human Rights discussed the application of the U.S. Supreme Court’s recent decision in the *Bostock v. Clayton County*.³³ The *Bostock* opinion clarified what discrimination on the basis of sex means.³⁴ The court, through the *Bostock* opinion, has now confirmed that the basis of sex also provides protections for homosexual and transgender employees.³⁵ Commissioner Thunder went on to state that the *Bostock* definition of sex may, and should, be applied to the North Dakota Human Rights Act, as amended, and the Housing Discrimination Act, as amended.³⁶

Barry Nelson of the North Dakota Human Rights Coalition stated, “since the *Bostock* decision speaks to employment and not specifically to housing, . . . the North Dakota legislature should move to amend the Human Rights Act to include LGBTQ protections.”³⁷ Panelist Cody Schuler, Executive Director of the Fargo-Moorhead Coalition to End Homelessness, agreed explaining that the lack of protection for the LGBTQ+ community is one of the underlying causes of homelessness, especially for young people.³⁸

³² Michelle Rydz, High Plains Fair Housing Center, *Housing Discrimination in the Transgender and Gender Non-Conforming Community in North Dakota*, https://www.highplainsfhc.org/uploads/1/2/3/9/123997003/hpfhc_annual_report_2018.pdf (2018).

³³ 140 S. Ct. 1731 (2020).

³⁴ See generally *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

³⁵ *Id.*

³⁶ Martin, Briefing Transcript, July 14, 2020, p. 6, 8.

³⁷ Barry Nelson, Briefing Transcript, July 14, 2020, p. 11.

³⁸ Schuler, Briefing Transcript, July 21, 2020, p. 9.

3. *Disability Discrimination*

Kelly Gorz, Associate Director of High Plains Fair Housing Center, the only Federal Housing Initiative Program in the state, spoke about discrimination on the basis of disability and noted that in the last three years calls to the intake line of High Plains Fair Housing Center with claims of disability discrimination made-up between 50-70 percent of all calls received.³⁹ There are three affirmative protections under the Fair Housing Act for individuals with disabilities: (1) housing providers must make reasonable accommodations to their rules, policies, practices, and services necessary for people with disabilities to equally enjoy the property; (2) housing providers must allow residents with disabilities, at the residents' expense, to make reasonable modifications to physical structures necessary in order for them to use and enjoy the property; and (3) multi-family buildings built after 1991 should be accessible, as described in the Fair Housing Act design manual.⁴⁰

Gorz further stated that High Plains Fair Housing Center conducted a series of fair housing tests to identify barriers to housing for persons with disabilities. The tests consisted of matched-paired tests (one tester sought an apartment for a family member with a disability and one control tester without a disability). The study found that 23 percent of protected testers experienced steering to less desirable units or buildings with a lower rent even though the tester provided guidance on what the person with the disability could afford. Findings also showed that 16 percent of the protected testers were told that they did not have availability in the buildings that they inquired about, whereas the matched control testers were told there was availability. Five percent of the protected testers were asked intrusive questions. When testing for the affirmative right of a reasonable accommodation, 40 percent of testers who inquired about an emotional support animal were given overly restrictive requirements. Restrictive requirements included: providing DNA and a picture of the animal, verification letters written only by doctors or only by North

³⁹ Gorz, Briefing Transcript, June 30, 2020, p. 9.

⁴⁰ U.S. Dep't of Housing & Urb. Dev., Fair Housing Act Design Manual, (Rev. Apr. 1998); High Plains Fair Housing Center, Rental Housing Discrimination on the Basis of Mental Disabilities in North Dakota, 5, https://www.highplainsfhc.org/uploads/1/2/3/9/123997003/hpfhc_mdstudy.nd.pdf.

Dakotan doctors, filling out an addendum, and the company sending forms to the tenant's doctor.⁴¹

4. *Housing Affordability and Homelessness*

Gorz also spoke about the results of North Dakota's Analysis of Impediments to Fair Housing (Analysis of Impediments) that indicated that there is insufficient access to affordable housing.⁴² She explained that although North Dakota has public assistance protections, because some landlords do not accept vouchers which makes finding affordable housing very difficult.⁴³ She noted that the Analysis of Impediments indicated that problems identified for rental housing disproportionately impacted renters from protected classes, including disability and race.⁴⁴ Gorz noted that another contributing factor in accessing affordable housing is the use of credit scores for screening applicants despite the fact that a low credit score is not a negative indicator for rent payment.⁴⁵

Schuler agreed with this assessment and added that evictions, poor credit, and lacking access to transportation can lead to homelessness.⁴⁶ Once homeless, there are major barriers to getting rehoused.⁴⁷ Schuler indicated that roughly 50 percent of the Fargo-Moorhead homeless population are people of color despite the Fargo-Moorhead population being 87 percent white."⁴⁸

Cheryl Kary, the Executive Director of Sacred Pipe Resource Center, spoke regarding barriers to finding housing in the state.⁴⁹ Sacred Pipe Resource Center is a Native-led nonprofit organization that serves American Indian populations in Bismarck, Mandan, and Lincoln.⁵⁰

⁴¹ High Plains Fair Housing Center, Rental Housing Discrimination on the Basis of Mental Disabilities in North Dakota, https://www.highplainsfhc.org/uploads/1/2/3/9/123997003/hpfhc_mdstudy.nd.pdf.

⁴² Gorz, Briefing Transcript, June 30, 2020, p. 9

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid at 11.

⁴⁶ Schuler, Briefing Transcript, July 21, 2020, p. 8

⁴⁷ Ibid.

⁴⁸ Ibid. at 7-8.

⁴⁹ Cheryl Kary, Briefing Transcript, July 21, 2020, p. 10.

⁵⁰ Ibid.

Sacred Pipe Resource Center surveyed the American-Indian population in those communities and noted that “about six percent of the population surveyed was homeless; of that, 52 percent of them said that they could not afford housing, which is the reason they were homeless.”⁵¹ Kary explained that one of the biggest barriers for those who are homeless is their access to justice and knowing where to report their problems or voice their concerns.⁵² Unfortunately, the lack of knowledge and education on where to find support seems to be deeply rooted as a fundamental barrier to fair housing.

5. *Lack of legal support, low damages, and limited access to judicial process*

Panelist Margaret Jackson discussed the need for more attorneys that focus on public interest law in North Dakota and that the current lack of legal support for complainants leads to low damages for victims of discrimination. Sometimes complaints are being resolved by paying \$500 or another minimal amount even for repeat offenders. This can make people apathetic to the complaint process and not feel it is worth it to seek justice. Low damages also do not incentivize property owners to change their policies or practices.⁵³

6. *Lack of Education, Knowledge, and the Language Barrier*

Language barriers as well as a lack of efforts made to educate marginalized communities about discrimination in housing against persons with disabilities, Native Americans, and immigrants exists in North Dakota.⁵⁴ Translation services, which are required, are not readily available to assist in further educating communities about their rights and how to file or address their complaints.⁵⁵

The need for general fair housing education is twofold, as it applies both for educating landlords on how they can be held accountable if they do not follow the Fair Housing Act and for the

⁵¹ Ibid. at 11.

⁵² Ibid. at 21.

⁵³ Margaret Jackson, Briefing Transcript, July 7, 2020.

⁵⁴ Margaret Jackson, Briefing Transcript, July 7, 2020, p. 6.

⁵⁵ Ibid. at 6-7

tenants, so they know their rights and how to exercise them. Jackson continued to explain how education is the key to effective enforcement asserting that it really comes down to enforcement, the need to enhance civil rights understanding and demonstrate to housing providers and housing consumers that bad actors will be held accountable for discriminatory practices.”⁵⁶

Similarly, Sara Pratt explained that there continues to be a disconnect on when landlords should act. Some landlords do not act in circumstances of neighbor-on-neighbor harassment, including sexual harassment, but they do intervene if there are noise complaints.⁵⁷ This is because there is a disconnect in the education and outreach by HUD that needs to specifically address a landlord’s role in all aspects of harassment.⁵⁸

7. *Limited Resources of North Dakota’s Federal Housing Assistance Program*

Professor Margaret Jackson argued that the North Dakota Department of Labor and Human Rights often lacks the resources to conduct proper investigations. Discrimination investigations by Federal Housing Assistance Program should be more robust and should include more than interviewing complainants and respondents.⁵⁹

Jackson further explained low fair housing remedies and general lack of fair housing knowledge could be tied to the lack of judicial precedent.⁶⁰ Because most fair housing complaints are resolved at the administrative level, they are not establishing judicial precedent that would inevitability garner greater public and legal recognition and greater damages.⁶¹

Jackson also emphasized increasing training for the staff of the North Dakota Department of Labor and Human Rights, by increasing their understanding of the components of the fair

⁵⁶ Ibid. at 11.

⁵⁷ Pratt, Briefing Transcript, July 7, 2020, p 10.

⁵⁸ Ibid.

⁵⁹ Jackson, Briefing Transcript, July 7, 2020, p. 9-10

⁶⁰ Ibid.

⁶¹ Ibid.

housing laws, and what they're intending to remedy and why higher remedies can deter future instances of discrimination.⁶²

This will lead to a greater understanding of what they are trying to remedy and therefore increase the damage amounts, which is a key component of enforcement and making the law work. Since there are few fair housing cases that are found to have reasonable cause, there are few cases that reach the Attorney General's office.⁶³ Therefore, there is an overall lack of understanding of the Fair Housing Act at the Attorney General's office. Enhancing the training of the North Dakota Attorney General Staff lawyers will have a profound effect on the enforcement of the Fair Housing Act in North Dakota.⁶⁴

IV. Findings and Recommendations

The North Dakota Advisory Committee heard testimony that current access to fair housing may disproportionately affect residents on the basis of race, color, sex, age, disability, and national origin. In addition, the Committee heard concerns regarding the need to find reasonable ways to promote fair housing at the local, state, and federal levels.

Below, the Committee offers to the Commission a summary of concerns identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission's consideration several recommendations that apply both to the State of North Dakota and to the nation as a whole.

Legislative Action, Complaint Resolution, Enforcement

- Penalties for housing discrimination must be severe enough to command the attention of landlords. Punishment of violators will deter repeat offenders and also warn other landlords about the consequences of noncompliance.

⁶² Ibid.

⁶³ Ibid. at 10.

⁶⁴ Ibid.

- All new buildings should be accessible including having doors that have power opening capabilities, and all buildings should eventually be modified to meet this standard.
- The North Dakota Department of Labor and Human Rights is charged with investigating complaints of discrimination in the areas of housing, employment, and public accommodations, as well as with increasing public awareness and conducting training around these issues. In order to carry out these charges, the department should have additional funding to support the hiring of more investigators and outreach staff.
- North Dakota Century Code 47-16-07 should be amended to remove the ability to charge individuals convicted of a felony offense up to two months' rent as a security deposit.
- North Dakota Human Rights law should be expanded to include fair housing protections for veterans and the LGBTQ community.
- State and federal legislation is needed to make the Affirmatively Furthering Fair Housing tool, the equal access and the disparate impact rules permanent. So that they are codified in law and not able to be removed when new administrations take office.

Affordability

- There should be increased investment in affordable and accessible housing that is integrated with the general North Dakota community to provide equal opportunity for all North Dakotans including refugees, immigrants, and people with disabilities.
- The State of North Dakota should provide available funds for low interest loans and grants to property managers and developers to maintain and keep older housing stock. Housing with "housing problems" disproportionately impacts people from protected classes.

Education and Training

-
- North Dakota should establish a statewide rental registry or licensure that would facilitate fair housing outreach and education for landlords. This registry should include large and small landlords and should identify if/when they have had fair housing training.
 - Increased education about fair housing rights at all levels is essential. The Committee recommends that the North Dakota Department of Public Instruction partner with nonprofit organizations to adapt current education programs to include civil rights curriculum starting in early childhood education and continuing into middle and secondary school.
 - The State of North Dakota should set aside funds to incentivize the University of North Dakota's School of Law to enhance their civil rights and fair housing curriculum. This will help develop civil rights attorneys that might increase damages to plaintiffs who bring fair housing complaints.
 - The State of North Dakota should partner with non-profits and tribal leaders to provide comprehensive fair housing training to the community. Violations of housing laws will not be resolved if tenants do not know their rights and landlords do not understand their responsibilities under fair housing laws.
 - There needs to be more funding available to nonprofit organizations to help individuals transition from incarceration to transitional housing that provides support, training, and adequate services to these individuals as they attempt to procure permanent housing.

Rate of rape/sexual assault, robbery, aggravated assault, and simple assault victimizations, 1993-2021

Year	Crime Type	Number	Number CI Lower Bound	Number CI Upper Bound	Number SE	Rate	Rate CI Lower Bound	Rate CI Upper Bound	Rate SE
2009	Rape/sexual assault	305,574	215,384	395,764	46,016	1.2	0.85	1.56	0.18
2010	Rape/sexual assault	268,574	176,313	360,836	47,073	1.0	0.69	1.41	0.18
2011	Rape/sexual assault	244,188	163,202	325,173	41,320	0.9	0.63	1.26	0.16
2012	Rape/sexual assault	346,830	240,208	453,451	54,400	1.3	0.92	1.73	0.21
2013	Rape/sexual assault	300,165	197,849	402,481	52,203	1.1	0.75	1.52	0.20
2014	Rape/sexual assault	284,345	189,085	379,606	48,603	1.1	0.71	1.42	0.18
2015	Rape/sexual assault	431,837	305,392	558,281	64,514	1.6	1.13	2.07	0.24
2016	Rape/sexual assault	298,407	216,444	380,370	41,819	1.1	0.80	1.40	0.15
2017	Rape/sexual assault	393,979	289,593	498,366	53,259	1.4	1.06	1.83	0.20
2018	Rape/sexual assault	734,632	573,484	895,779	82,220	2.7	2.08	3.25	0.30
2019	Rape/sexual assault	459,306	342,771	575,841	59,458	1.7	1.24	2.08	0.21
2020	Rape/sexual assault	319,948	218,479	421,416	51,771	1.2	0.79	1.52	0.19
2021	Rape/sexual assault	324,496	246,110	402,883	39,994	1.2	0.88	1.44	0.14

Rate This Page

Top

House Judiciary Public Hearing
Tuesday, February 07, 2023, 11:00 AM
Room 327B - ND State Capitol

SUPPORTING HB 1537: Relating to the data collection and reporting of bias crimes; to amend and reenact sections 12-63-04, 12.1-17-02, 12.1-17-07, and 12.1-21-05 of the North Dakota Century Code, relating to the duty of the peace officer standards and training board to provide training on bias crimes, aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative management; and to provide a penalty.

Sponsors: Introduced by Rep. Schneider, Rep. Boschee, Sen. Braunberger, Rep. Conmy, Rep. Dakane, Rep. Davis, Rep. Dobervich, Rep. Finley-DeVillie, Rep. Hanson, Sen. Mathern, Sen. Piepkorn

Please include with the Committee Hearing testimony journal for public record

House Judiciary Chair Representatives Lawrence R. Klemin (District 47 | R) and Karen Karls (District 35 | R), Vice Chair Representative Landon Bahl (District 17 | R), Representatives Cole Christensen (District 24 | R), Claire Cory (District 42 | R), Donna Henderson (District 9B | R), SuAnn Olson (District 8 | R), Nico Rios (District 23 | R), Shannon Roers Jones (District 46 | R), Bernie Satrom (District 12 | R), Mary Schneider (District 21 | D), Lori VanWinkle (District 3 | R), Steve Vetter (District 18 | R), and fellow citizens of North Dakota, Greetings.

My name is Kevin R. Tengesdal. I am a citizen of North Dakota residing here in Bismarcks District 35. I am a Navy Vet and a graphic designer, and finally in my final year as a student in the MSW program through UND. My final research paper I am currently writing is an integrative review of the literature examining affirmative psychotherapy and its use with families of LGBTQ individuals. As a Christian who is gay, I resolutely request a unanimous do pass on House Bill 1537 as presented.

Varying bias policies have been put in place at various municipal levels and can be equally effective in the jurisdictions in which they operate. However, having a patchwork of municipal ordinances creates confusion, particularly for the public, whereas statewide legislation creates clarity and visibility.

GLAAD the worlds largest Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) media advocacy organization states that research from San Francisco State University found that gay or transgender youth living in an unsafe environment, especially being targets of biased crimes involving threats, harassment, or physical harm are:

- 8.4x more likely to report having attempted suicide
- 5.9x more likely to endure high levels of depression
- 3.4x more likely to use illegal drugs
- 3.4x more likely to be at high risk of HIV and STDs

I am confident the Representatives who have introduced this bill, their constituents, and supporters of this bill do not want these statistics to be representative of North Dakotas LGBTQ youth. Bias crimes are unique because not only does the crime impact the individual targeted, but the crime impacts the entire community with which that individual identifies.

A lack of statewide bias crimes legislation impacts law enforcement because there needs to be more clarity and consistency. A statewide bias crime statute provides clarity in defining bias crime and requires the training and orientation necessary. This legislation will reassure marginalized communities of North Dakota that peace officers are adequately trained, informed, and in tune with the concerns of the safety and well-being of the communities they serve.

You and the 2023 North Dakota Legislative Assembly members must choose to stand on the right side of dignity and respect and vote in unanimous favor of this bill.

Thank you for your time and your consideration.

Chair Klemin and members of the House Judiciary Committee: My name is Amy Ingersoll, and I am providing testimony in support of HB1537. I have served in several leadership positions in state-wide organizations, specifically those that support and empower women.

The Department of Justice defines hate crime as that which is perpetrated in part, or in whole, due to a bias against people or groups with specific characteristics. These biases are intensified when considering the intersectionality of women's lived experiences to include woman of color, women representing non-dominant faith communities, women who are New Americans, women who identify as transgender or gender non-conforming, LGBTQIA women, and more. Hate crimes are distinct from other types of crimes, not only in their motivation but in their effect. Victims include the direct target of course, but also others who identify similarly, and importantly, communities as a whole. Hate crimes send messages to members of the victim's group that they are unwelcome and unsafe in the communities where they live and work, which decreases their feelings of safety and security. The North Dakota Women's Network has received biased, and rage filled vitriol to include death threats. More recently, one such threat resulted in disorderly conduct charges for the perpetrator. If we had a statewide law established then, this individual's threats and harassment would have met the standard to be charged with a hate crime. Those of us with lived experiences KNOW these crimes happen.

If there are any hate crime ordinances in municipalities across the state, I can tell you the piecemeal application of such a law is not helpful. I have worked alongside law enforcement professionals for more than ten years throughout my career. I can attest to the diligence they attribute to law and order and the benefit of referring to what is "on the books". In fact, the black and white nature of law is a compelling attribute of those who seek this line of work. If we want to support our law enforcement professionals, establishing a law that defines hate crimes will make determination of a charge easier and compliance with federal regulation more streamlined.

According to DOJ, 23 hate crime incidents were reported against people in North Dakota in the year 2020 (zero hate crimes were reported in the gender category). Yet, it is well researched that the majority of hate crimes are never reported. So

these data underestimate the true pervasiveness of such perpetration. This law creates a valuable opportunity for responding officers to work with alleged victims as they collect more accurate data.

In closing, I request you please vote to support HB1537. We need to highlight our values of a welcoming and safe community for all our citizens, and support law enforcement's mission to protect and serve.

Thank you,

Amy Ingersoll

Bismarck, ND 58504

Dear Chair Klemin and members of the House Judiciary Committee,

My testimony is in support of House Bill 1537. I ask that you give this bill a Do Pass.

I will defer to other individuals on the policy implementation of this legislation and speak towards the community improvement aspects of Hate Crime Legislation. Safe Home conducted a [data analysis of each state for LGBTQ+ individuals](#) and determined that we were the least safe state for this population. With the determination shared here below:

#51: North Dakota

Safety Index Score: -78

North Dakota is the number one worst state for LGBTQ+ safety according to our ranking. This state does not provide public accommodation protections based on gender identity or sexual orientation. North Dakota experiences a higher than average rate of hate crimes against the LGBTQ+ population (14.6 for every 100,000 LGBTQ+ individuals).

There are no high-ranking companies on the corporate equality index in North Dakota. Nor are there any legal protections in place in the public or private employment sector that safeguard LGBTQ+ anti-discrimination rights. North Dakota law prohibits bullying and cyberbullying in schools but contains no language specifically to protect LGBTQ+ youth. North Dakota adoption law does not explicitly allow same-sex couples the right to second-parent adoption.

According to the Us Trans Survey of 2015, “More than half (57%) of respondents said they would feel uncomfortable asking the police for help if they needed it.” It is worth considering this when considering some of the abuse and violence transgender individuals routinely experience

- (46%) of respondents were verbally harassed in the past year because of being transgender
- (9%) respondents were physically attacked in the past year because of being transgender
- (47%) of respondents were sexually assaulted at some point in their lifetime and one in ten
- (10%) were sexually assaulted in the past year..
- (54%) experienced some form of intimate partner violence, including acts involving coercive control and physical harm.

While this is from the 2015 Trans Survey, we can also look to state data for the experiences of our LGBTQ+ High School Youth.

Safety: Sexual Violence, Bullying, and School Environment	Trans	Gay	Straight
Qn93 - Youth coerced into sexual act	23.5%	6.5%	2.5%
Qn92 - Dated someone who tried controlling or emotionally hurting them	40.0%	43.9%	24.1%
Qn23 - Ever bullied on school property	44.0%	28.2%	16.4%
Qn24 - Ever bullied electronically	35.7%	28.9%	14.0%
Qn95 - Bullied because they were perceived as LGB	61.1%	45.0%	7.5%
Qn14 - Did not go to school because felt unsafe at least 1 day in last thirty	23.8%	12.0%	3.7%
Qn12 - Carried a weapon due to feeling unsafe	19.0%	7.4%	5.1%
Qn118 - Felt there we clear rules and consequence for behavior	36.5%	45.5%	60.4%
Qn119 - Felt safe at school most of times or always	37.3%	63.9%	82.4%

Beyond this data, I have heard within the last few months an incident of a knife being pulled on a transgender individual and another incident where a trans person was jumped and roughed up. Both of these incidents happened when the assailants realized the other individual was transgender. I don't believe either of these were filed or reported. I'm sure dozens of situations like this happen that I don't hear about.

When taking this together we have some suggestive data that our state isn't safe for queer populations, we have national data suggesting life is not safe for transgender people, local data that our LGBTQ+ youth are experiencing heightened levels of violence, and some suggestive data to indicate they are not turning to the police for help.

While nothing here is particularly definitive, I do believe it paints a pretty clear picture that the LGBTQ+ community is both targets of violence and does not believe there to be remedy for that. I'm not talking just about hate crimes, but about the many small and large ways they can experience abuse across their life and their faith in the system to help them.

I've heard testimony against hate crime policy and legislation amount to telling folks it isn't needed nor does it prevent crime. I welcome those folks to offer constructive solutions to the violence the data captures every time we care to look. Hate Crime Legislation is one solution to build trust in marginalized communities that their lives do matter. That the violence they experience isn't just tolerated and there is recourse for them to take.

Please consider voting Do Pass for these reasons. Thank you for your time, consideration, and service to our state,

Best regards,
Faye Seidler

Olivia Data
Testimony on HB 1205
January 17, 2023

Greetings, Chairman Klemin and members of the committee. My name is Olivia Data, I am a North Dakota resident and a freshman at Harvard College, and I am here today to urge you to vote “Do Pass” on HB 1537.

Growing up here, I’ve always heard about how the Midwest, with our “ya, you betcha’s” and our thousand casserole recipes, is a region full of love, kindness, and togetherness. We look out for our neighbors; we support our communities. So why are we turning our backs on marginalized groups?

North Dakota may be a place full of kindness, but it is also a place that has a long way to go in terms of seeing equality. Hate crimes do happen here, and they don’t just affect individuals. They affect entire communities. When we don’t have laws to help victims accurately report bias crimes, to help officers respond to bias crimes, to help hold perpetrators accountable for the harm they have done, we are telling these communities that their safety does not matter. We are telling them that their fears are not valid, that their voices are not heard.

I know that for many of us, being a victim of a hate crime is unthinkable. Maybe you are not part of a protected class, or maybe you have not directly experienced discrimination. But I ask you to think beyond the scope of individual instances of bias crimes and consider the prejudice in our state as a whole. People of color and people in the LGBTQ+ community especially often report feeling disenfranchised and disrespected here. Young people like me have grown ashamed of our hometowns because of the prejudice we’ve seen within them.

When I was in high school, I had friends of mine jeopardize their education to graduate early just so that they could leave our state faster. I have friends now who say they never want to move back here after college because they don’t feel safe in their own hometown. I love North Dakota. I was born here. I was raised here. My family is here. But I don’t want to live in a place that refuses to protect my loved ones.

We must do better in terms of supporting marginalized communities. North Dakota may be a place full of good old Midwestern kindness, but that kindness must apply to everyone.

Olivia Data
Testimony on HB 1205
January 17, 2023

Communities threatened by bias crimes deserve to be protected. They deserve to know that all of us will stand up for their safety. We all deserve to be proud of our state for being someplace that promotes equality and compassion.

I ask you to support HB 1537 because it will go a long way in showing not only the perpetrators of bias crimes, but all those who may be affected by bias crimes, that we as North Dakotans will not tolerate hatred and prejudice in our home.

Thank you for your time.

Olivia Data
Youth Action Council Coordinator
District 35
Bismarck, ND

February 7, 2023

In Support of HB 1537

Dear Chairman Klemin, esteemed Committee members.

My name is Gabriela Balf, I am a psychiatrist in Bismarck and a parent, and I speak on my behalf.

Almost ten years ago, my husband and I followed the lead of two family friends, also physicians, and moved to North Dakota, district 47. We all came with skills, passion, and a will to contribute to this state's health. The narrative we knew about North Dakota is that here people hold dear the old-fashioned ideas of hard work, independent thinking, respect, and honesty towards each other, and fierce protection of children. We thought this was the ideal place to raise our children and contribute with everything we have learned in our long years of highly specialized training at prestigious schools.

The medical community embraced us, we felt appreciated, and we gave our best, becoming the leaders of our departments. Our children made the schools proud.

Then my public health interests directed disenfranchised people my way. I listened to parents like you and me who saw their children crushed in school or on social media due to relentless bullying. Let me be clear. We have all experienced bullying. In the same way we have all experienced bad weather. But not all bullying is the same, and North Dakota weather is definitely special. It is one situation to be the straight white athlete in your high school and another to be the shy, self-doubting gay or transgender kid in school. It's one situation to have a family that can buy you a good winter jacket and another to get a hand-me-down that leaves you frozen.

How much does targeted bullying matter?! **Words matter.** I surely hope so. If you still remember words of encouragement from your mother, from your role models, I am sure you can understand what relentless demeaning means for some. More recently, we saw what Jamestown kids cheerfully expressed in a recent basketball game. Middle school taunting? How much is too much? How do you know that you crossed a line?

I get it. In a fairly homogenous state like ours, minorities like Muslims, Black kids, or LGBT+ people are not very well understood. Yet, as a new US citizen, I always thought First Amendment applies to expressing opinions that do not purposefully hurt another. I thought my kids will learn here in ND how to be respectful towards others and appreciate hard work, integrity, and the government institutions, legislative body notwithstanding.

What do they learn instead? Let me tell you what my patients recount: that it's ok to get relentless shaming on Instagram, be outed by your teachers, being constantly compared to a white, Christian, cis-gendered, middle-class, able-bodied baseline. If some kids commit suicide, it's because of their weakness, not because of the minority stress like science has demonstrated.

As an immigrant, I thought I will be valued for what I bring to the table. I thought my two daughters will be respected and will thrive in an independent thinking, solidly principled community. What do I see? Their views are demeaned, they are urged to conform to a baseline, and their lively minds are squashed under the spectrum of "if you're not with us, you're against us." This gives me flashbacks. This aggressive, simplistic view is what I ran from when I left communist Romania.

A nation's strength lies in its protection of the weakest. Yes, some of my patients are the weakest. Some of my daughter's colleagues, like her transgender friends or the pregnant 15-year-old colleague, are socially weak. Are we going to be the adults in the room, setting fair rules for everyone, and protect our children, or will we follow undigested ideas that say that if you are a healthy, able-bodied privileged majority you are free to do onto others anything you feel like doing?!

I believe in rules. As a psychiatrist, I know that that people's logical brain does not dictate their actions. Sure, most people don't start their day wanting to hurt someone. AND rules are here to reinforce principles that may be forgone when one's day gets awry. Had we all been rational beings, we would never need rules, Founding Fathers, a Century Code, etc. We would adopt our religion's equivalent of the Ten Commandments, and all would be fine. When we brought our thoughts to the Bismarck's City Commission hearing on the Hate Crime ordinance in June 2022, we were told that we need a state-level policy to address a sad reality that taints and diminishes our state's reputation.

I hope this bill represents this state-wide policy that will reinforce what we all think **North Dakota is about: an independent-thinking state that welcomes and appreciates everyone who works hard and means well. A highly moral state that is not afraid to look at its weaknesses and address them head on.** As a psychiatrist, a public health agent and as a parent I urge you to give a "DO PASS" recommendation to HB 1537.

Thank you for your time, and I stand for questions,

Gabriela Balf, MD, MPH

A handwritten signature in black ink that reads "Balf" followed by a stylized arrow pointing to the right.

Clin Assoc Prof – UND Dept of Psychiatry and Behavioral Science

Good morning, Chairperson and members of the Committee. My name is Brianna Iron Road and I am here in support of HB1537. As the Director of Community Outreach at the Sacred Pipe Resource Center, a nonprofit organization serving the Native American population in Bismarck-Mandan-Lincoln, I work directly with one of the affected groups covered under this bill. We at SPRC offer support and services to the victims of incidences that **should** have the protection of this bill, as well as those who should be represented through the data collected upon passage and implementation.

Members of the committee, we hope you will be able to recognize the value of this bill in protecting the most vulnerable of your constituents. Imagine being the victim of a crime simply for being **who you are**. You may have heard stories of racial slurs being hurled at individuals, conflicts for speaking our languages, and crimes committed against our Indigenous peoples. These actions are deeply embedded through historic racism, disposition, and violence. The major difference between what was and what will be after the passage of bills such as House Bill No. 1537 is that our laws will now cover the underlying reasons for these crimes such as hate, racism, homophobia, and more that **your** constituents face every day.

Just this last week, Native and Black student athletes had cruel slurs and taunts aimed at them. No officials or administration came to their aid. Parents had to report the problem to officials and have no assurances the matter will be dealt with. It is every day in our communities that slurs, insults, and physical harm based on nothing more than who they are that impacts our constituents. These before mentioned crimes can be classified as murder, bullying, harassment, and other heinous crimes but these are only the stories we here about yet countless go unheard. The true nature of these crimes is that at its core, crimes are rooted

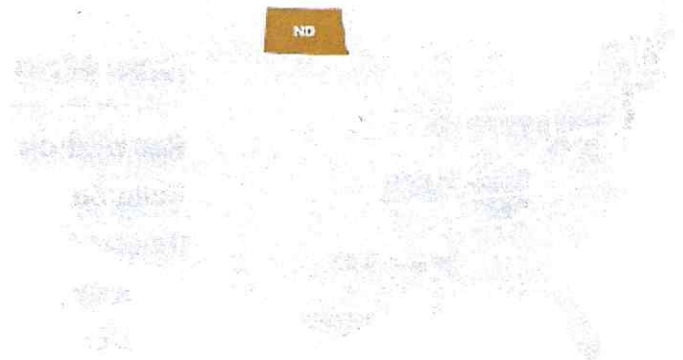
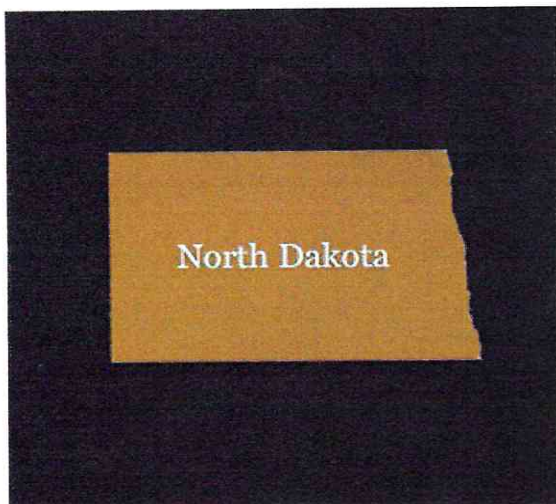
in hate, animosity, and an unwillingness to learn or change. The laws and systems created to run our country and states come from a system created by indigenous peoples. Yet these systems created by our ancestors are not being used to protect our indigenous peoples from harm when the crimes themselves are a result of bias.

Reports compiled under the compliance of the amended subsection two will allow organizations such as ours to correctly assess and create proactive and reactive measures to support victims of these crimes. This will also allow organizations much like our own to create a system to help minimize these types of crimes through outreach programs and learning opportunities within the community. By defining what bias is in the context of House Bill No. 1537, officers and public officials will be more equipped to open dialogues between their respected positions and members of their community which go unheard and are underrepresented. The definition of bias itself follows similar wording outlined by other government entities, which if necessary to be enacted at a federal level should be enacted to protect our state's citizens as well. The overall goal of data collection would do a tremendous amount of good for the constituency that House Bill No. 1537 aims help.

As for the enactment of these amendments, this will allow law enforcement officers to more clearly define crimes that often don't have a set label. This allows both the justice system and families to seek other atonements for crimes such as restorative justice rather than charging individuals outright for something that is a biased or learned behavior. House Bill No. 1537 will allow those who are victims of these crimes to be given justice while allowing offenders the ability to learn and grow from biases they carry rather than commit future crimes. As a result of this change, the diverse people of North Dakota will feel safer which will

lead to an even stronger community. In short, laws like this will convince your constituents that North Dakota is safe for them and you as elected officials want to see your communities thrive. The Scared Pipe Resource Center is calling directly on **you**, the elected officials of North Dakota, to show us your commitment to the Indigenous population, and by extension all under represented peoples, by passing the House Bill 1537. Vote yes with the people of North Dakota's safety in mind.

An official website of the United States government
[Here's how you know](#)



DOJ OFFICES

2020 Hate Crime Statistics for North Dakota

The data in the infographic below was compiled from the FBI's Uniform Crime Reporting (UCR) Program. In addition to the data below, the PDF version of the infographic provides the definition of a hate crime and information on how to report a hate crime. Download the PDF version [here](#).

Fast Facts On
North Dakota
Hate Crime
Incidents

2020



Crimes against
Persons **79.3%**



FBI Field Offices

Minneapolis
1501 Freeway Boulevard
Brooklyn Center, MN 55430

T: 763.569.8000
minneapolis.fbi.gov



US Attorney's Offices

North Dakota
www.justice.gov/usao-nd/contact



CRS Regional Offices

Rocky Mountain Regional
Office
1244 Speer Boulevard
Suite 650
Denver, CO 80204

T: 303.844.2973
F: 303.844.2907
askcrs@usdoj.gov

[↑ Back to the top](#)

Updated September 27, 2022

Was this page helpful?

Yes No

Table 13

NORTH DAKOTA

Hate Crime Incidents

per Bias Motivation and Quarter

by Agency, 2021

Agency type	Agency name	Number of incidents per bias motivation						Number of incidents per quarter				Population ¹
		Race/ Ethnicity/ Ancestry	Religion	Sexual orientation	Disability	Gender	Gender identity	1st quarter	2nd quarter	3rd quarter	4th quarter	
Total		29	2	8	0	0	0					
Cities		15	1	8	0	0	0					
	Bismarck	2	0	5	0	0	0	4	1	2	0	75,396
	Dickinson	1	0	0	0	0	0	0	0	0	1	24,179
	Fargo ²	5	0	1	0	0	0	0	0	2	3	127,313
	Lincoln	0	0	1	0	0	0	0	0	0	1	4,052
	Mandan	4	0	1	0	0	0	2	1	0	2	23,292
	Valley City ²	3	0	0	0	0	0	1	1	0	0	6,268
	Williston	0	1	0	0	0	0	0	1	0	0	31,680
Metropolitan Counties		1	0	0	0	0	0					
	Grand Forks	1	0	0	0	0	0	0	0	0	1	
Nonmetropolitan Counties		2	1	0	0	0	0					
	Golden Valley	0	1	0	0	0	0	0	0	1	0	
	Pembina	2	0	0	0	0	0	1	1	0	0	
Tribal Agencies		11	0	0	0	0	0					
	Turtle Mountain Agency	11	0	0	0	0	0	4	6	1	0	

¹ Population figures are published only for the cities.

² The figures shown include one incident reported with more than one bias motivation.



Victims

In the FBI's Uniform Crime Reporting (UCR) Program, the victim of a hate crime may be an individual, a business/financial institution, a government entity, a religious organization, or society/public as a whole. In 2021, the nation's law enforcement agencies reported that there were 9,024 victims of hate crimes. Of these victims, 271 were victimized in separate multiple-bias incidents.

The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. §249, required the FBI to collect data concerning hate crimes committed by or directed against juveniles. Beginning in 2013, law enforcement began reporting the number of victims who are 18 years of age or older, the number of victims under the age of 18, and the number of individual victims. Of the 7,930 individuals for which victim age data were reported in 2021, 6,982 hate crime victims were adults, and 948 hate crime victims were juveniles.

In 2013, the national UCR Program began collecting revised race and ethnicity data in accordance with a directive from the U.S. Government's Office of Management and Budget. The race categories were expanded from four (White, Black, American Indian or Alaska Native, and Asian or Other Pacific Islander) to five (White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander). The ethnicity categories changed from Hispanic and Non-Hispanic to Hispanic or Latino and Not Hispanic or Latino. (See the Methodology for more information about this program change as well as others.)

By bias motivation (Based on Table 1.)

An analysis of data for victims of single-bias hate crime incidents showed that:

- 64.8 percent of the victims were targeted because of the offenders' bias against race/ethnicity/ancestry.
- 15.6 percent were targeted because of bias against sexual orientation.
- 13.3 percent were victimized because of bias against religion.

- 38.8 percent were victims of anti-lesbian, gay, bisexual, or transgender (mixed group) bias.
- 11.8 percent were victims of anti-lesbian bias.
- 3.1 percent were victims of anti-bisexual bias.
- 1.1 percent were victims of anti-heterosexual bias.

Religious bias (Based on Table 1.)

Of the 1,164 victims of anti-religious hate crimes:

- 31.1 percent were victims of crimes motivated by offenders' anti-Jewish bias.
- 19.7 percent were victims of anti-Sikh bias.
- 11.5 percent were victims of anti-Islamic (Muslim) bias.
- 6.5 percent were victims of anti-Eastern Orthodox (Russian, Greek, Other) bias.
- 6.3 percent were victims of anti-Catholic bias.
- 4.0 percent were victims of anti-Protestant bias.
- 3.7 percent were victims of anti-Other Christian bias.
- 3.5 percent were victims of bias against groups of individuals of varying religions (anti-multiple religions, group).
- 2.4 percent were victims of anti-Buddhist bias.
- 1.9 percent were victims of anti-Mormon bias.
- 1.7 percent were victims of anti-Atheist/Agnostic bias.
- 1.2 percent were victims of anti-Hindu bias.
- 0.5 percent (6 individuals) were victims of anti-Jehovah's Witness bias.
- 5.9 percent were victims of bias against other religions (anti-other religion).

- 0.2 percent (13) were victims of rape.
- 0.2 percent (9) were murdered.
- 1.2 percent were victims of other types of offenses.

Crimes against property (Based on Table 2.)

In 2021, 2,957 victims of hate crimes were victims of crimes against property. Of these:

- 64.7 percent were victims of destruction/damage/vandalism.
- 17.1 percent were victims of larceny-theft.
- 5.0 percent were victims of burglary.
- 4.2 percent were victims of robbery.
- 2.1 percent were victims of arson.
- 1.7 percent were victims of motor vehicle theft.
- 5.1 percent were victims of other types of hate crime offenses.

Crimes against society (See Table 2.)

There were 286 victims of hate crimes categorized as crimes against society. Crimes against society (e.g., weapon law violations, drug/narcotic offenses, gambling offenses) represent society's prohibition against engaging in certain types of activity; they are typically victimless crimes in which property is not the object.

Testimony in Support of HB 1537

Christina Sambor, Lobbyist No. 312 – Legislative Coordinator, North Dakota Coalition for Homeless People, Youthworks, North Dakota Human Rights Coalition

North Dakota House Judiciary Committee

February 7, 2023

Chairman Klemin and Members of the Committee:

My name is Christina Sambor, I am here today on behalf of the North Dakota Coalition for Homeless People, the North Dakota Human Rights Coalition, and Youthworks. We stand strongly in favor of HB 1537, and urge this committee to recommend a “do pass.” This bill has, as the sponsor noted, been refined to take into consideration concerns of law enforcement, is a good bill, and would result in important data being collected for our state’s health and safety.

Acts of violence or disparate treatment based on someone’s identity or sincerely held beliefs happen. Other witnesses have given you many examples of such acts that have occurred in North Dakota. This has always been a sad truth about human existence. These types of crimes are not the same as crimes that have other motivations. These types of crimes pose an indiscriminate threat to entire groups of people, making them feel unsafe and unseen in their communities. Refusing to recognize these crimes as bias crimes when they happen has the effect of denying the victim justice and amplifies concerns that communities rightly have about a lack of safety.

If someone is randomly attacked by a perpetrator, who during the attack is yelling derogatory language at them about being a catholic, or being a female, or being Chinese, those facts are relevant to the perpetrator’s motive, and indicate that the perpetrator poses a general threat to anyone who is part of that community. All of us deserve recognition by the criminal justice system if we are attacked by other people simply for who we are, how we look, or what we believe. This is not a radical, “woke” or anti-conservative proposition. In fact, our neighbors South Dakota and Montana both have enacted anti-bias statutes. It is simply a reality that in protecting and policing our communities, it is of value to understand whether and where bias or “hate” crimes are occurring.

Let us not forget that any of us could end up in a group that is targeted based on general characteristics. This has happened to Indigenous people all over the world. This has happened to Christians throughout history. In fact, this very committee, and the entire House, voted nearly unanimously to prohibit the state or local governments in North Dakota from infringing on religious practice via HB 1136, Rep. Klemin’s bill.

There is clearly agreement by this committee that protection of religious status is an important public policy, even though these rights are already protected by our constitution, laws and courts. Why then would a law that recognizes and punishes violence perpetrated on the basis of that same religion be objectionable? We all want to be protected against such indefensible acts. This bill simply seeks to put a mechanism into law that says that where there is evidence that an individual was attacked because they are Christian, or black, or female, etc., that we have the ability to charge that crime, and its motivation, appropriately.

I would ask that the committee consider the crime of human trafficking. Over the last 10 years, we have passed criminal laws, provided funding, and collectively spent time and energy learning about this particular crime. We didn't pass laws in ND criminalizing the act of human trafficking specifically until 2009. Yet, I think we can agree that the ND legislature thought that defining this particular crime for what it was, a premeditated recruitment of people for the purposes of forcing, defrauding, or coercing them into sexual servitude or slave labor, was a worthwhile endeavor. Yes, we could prosecute a human trafficker for other crimes – say kidnapping, rape, assault. But do those crimes really sum up what it means to be a human trafficker? Not the way a human trafficking statute does. Here, if an individual in our communities is so motivated by their hatred for a certain racial group that they would randomly attack a child, does simply charging them with assault really sum up what they did? Does it adequately inform the community and the justice system about the threat they pose? Does it help us quantify and understand trends with these types of crimes? Not the way charging them with a bias crime would.

Should any of us find ourselves in the position of being victimized by a bias crime, it would be infuriating to have police or prosecutors tell us that why we were attacked doesn't matter because there are already laws that exist to prosecute the attack. This is a simple law that is in line with 45+ other states, conservative and liberal alike, and should be added to the Century Code. For these reasons, NDCHP, NDHRC and Youthworks respectfully requests a do pass vote on HB 1537.

Testimony Presented on HB1537 to the
House Judiciary Committee
Representative Lawrence R. Klemin, Chairman
Barry Nelson, Interim Executive Director, ND Human Rights Coalition
February 5, 2023

Chairman Klemin, members of the House Judiciary Committee, I wish to speak in support of HB 1537. My name is Barry Nelson, I am the Interim Executive Director, North Dakota Human Rights Coalition. I live in Fargo. As a lifelong resident of the state of North Dakota I can attest to the resiliency, the tenacity, the community spirit of my home state. As a white, cisgendered male, I can also testify that I have experienced nothing but respect and dignity from my fellow residents.

Sadly, in the past decade, I have been confronted over and over again that not everyone in our great state can say the same thing. And, what consistently has been the case is that some of the same people that treat me with this level of dignity and respect do not afford the same amenities to our communities of color, of people from other parts of the world, to members of the Lesbian, Gay, Bisexual and Transgender communities and to our friends and neighbors with disabilities. I have heard too many stories of people being mocked, ignored, dismissed and, yes, physically attacked and injured.

I am asking that you vote DO PASS on HB 1537 which would provide peace officer standards and training when dealing with hate crimes, would provide criteria around data collection, and direction on penalties for hate crimes.

I wish to share some examples:

- Almost 20 years ago, two young men were brutally assaulted and beaten in the doorway of their apartment. They were assaulted by the manager of the apartment building and two of his adult children. While beating them they were using racial epithets. As a result of their injuries, one of the men had permanent damage to his vision. The police chief at that time called this an obvious hate crime, perpetrated on these two men only for the reason that they were black, originally from Sudan. This was my first introduction to the immense impact of a hate crime. At a community forum shortly after the attack hundreds of people from communities of color and immigrant communities gathered to speak of the fear this unprovoked attack had upon very of them. Fear that made them keep their children indoors, of not feeling safe to shop or walk the streets. It was then I learned that North Dakota did not have hate crimes laws.
- In 2017, I had the opportunity as organizer with North Dakota Human Rights Coalition to work with High Plains Fair Housing and the Afro American Development Association to

develop a community response to an anticipated spike in hate crimes directed at people because of real or perceived national origin. Some learning moments for me:

- 1) From FBI reports North Dakota was the second highest in per capita hate crimes in the United State in the years, 2014, 2015 and 2016! Although we have lost our high ranking, the numbers of reported hate crimes continue to rise, with 23 reports in 2020.
 - 2) Three community forums were held in Fargo. Dozens of people, all people of color, came forward to tell of stories of attacks, verbal and physical. They us of incidences of one, two five years before. Stories of being harassed, of the local mosque being targeted by speeding cars and graffiti spray painted. There was There was a story – verified – of a man who literally had his nose bit off. Of individuals being trailed when leaving work.
 - 3) In the spring of 2017, another man originally from Somalia was seriously beaten by wo men – as he was moving into his new apartment. He was beaten, strangled, sending him to the emergency room. I personally met with him the next day after he was released.
 - 4) Not a month later, in a highly publicized incident, a middle-aged women was videotaped threatening three young Somali women, saying that all Moslems should be killed.
 - 5) In Bismarck another videotaped incident showed several masked men surround two Indigenous men as they were attempting to leave a hotel.
- In 2016, a Somali restaurant in Grand Forks was firebombed with \$270,000 in damages.
 - In September, 2019, I participated on a panel hosted by the ND Commission on Civil Rights, where I heard evidence of anti-Semitic activities in Grand Forks, and an incident where an Indigenous person was dragged out of a Sweat Lodge by law enforcement.
 - In the summer of 2020 the lack of hate crimes again was front and center. During a peaceful march in Fargo protesting the death of George Floyd, a man gunned his pickup into a group of marchers. One of the marchers in an attempt to shield a group of children, jumped in front of the pickup was carried on the hood of the pickup for a considerable length of time, and ultimately was seriously injured.

As I have attempted to illustrate, hate or bias crime has been around for a very long time. The time to address this with serious consideration is now.

At minimum, I ask that members of this committee and members of the full legislature, despite one's opinion, attend this conversation with the seriousness and due deliberation it deserves. I say this as I watched the process two years ago. I was profoundly affected how some members seem to approach this with a dismissive if not comedic intent.

This is particularly concerning given the most recent report of a harassment incident between two North Dakota high schools in which a student of color was seriously racially taunted by members of the audience. I'm not sure what is worse: the totally inappropriate actions of the

students, or the initial lack of serious reaction by the officials and adults in the room. This does not rise to the level of a hate crime. But, as elected leaders in our state, you have a responsibility of setting the tone by which the manner in how we treat each other is established. Until we can clearly outline the level of respect, support, of ALL our residents toward each other, we will continue to fail as a state that is promoting safety and security for all.

Testimony
to the
House Judiciary Committee
in support of
House Bill 1537
February 7, 2023

I am Murray Sagsveen, a semi-retired attorney who provides legal assistance to faith-based and other nonprofit organizations. I personally urge you to support this bill.

Occasionally we will experience an epiphany in truly unexpected situations. Several years ago, I was enjoying a backyard conversation with my daughter's friends, who would identify themselves as part of the LGBTQIA2S+¹ community. They were identifying safe streets, safe bars, safe restaurants, safe retail stores, safe employers, and safety in general.

I was shocked that my daughter and others lived in fear when they are walking to the park, shopping for groceries, or at work. My daughter explained, as only a daughter can do: "Dad, you are a straight, privileged, older, white male. You simply do not understand."

The same is likely true for law enforcement officers. They simply may not understand, because of their upbringing or life experiences, that citizens of color, our LGBTQIA2S+ brothers and sisters, and "others" may live in fear because of the shade of their skin, their sexual orientation, their ethnic background, or many other reasons.

This bill would direct the Peace Officer Standards and Training Board to provide refresher training to:

- help police officers distinguish a bias crime from any other crime;
- help police officers understand and assist a victim of bias crime; and
- ensure a bias crime is accurately reported.

The bill would also establish appropriate penalties for individuals who harm others because of their actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry.

Essentially, if enacted, peace officers would be better trained to "serve and protect." Please recommend a "do pass" for this bill.

Murray G. Sagsveen
1277 Eagle Crest Loop
Bismarck, ND 58503

¹ This is an acronym for lesbian, gay, bisexual, transgender, queer/questioning, intersex, asexual, two-spirit, plus others.

Olivia Data
Testimony on HB 1205
January 17, 2023

Greetings, Chairman Klemin and members of the committee. My name is Olivia Data, I am a North Dakota resident and a freshman at Harvard College, and I am here today to urge you to vote “Do Pass” on HB 1537.

Growing up here, I’ve always heard about how the Midwest, with our “ya, you betcha’s” and our thousand casserole recipes, is a region full of love, kindness, and togetherness. We look out for our neighbors; we support our communities. So why are we turning our backs on marginalized groups?

North Dakota may be a place full of kindness, but it is also a place that has a long way to go in terms of seeing equality. Hate crimes do happen here, and they don’t just affect individuals. They affect entire communities. When we don’t have laws to help victims accurately report bias crimes, to help officers respond to bias crimes, to help hold perpetrators accountable for the harm they have done, we are telling these communities that their safety does not matter. We are telling them that their fears are not valid, that their voices are not heard.

I know that for many of us, being a victim of a hate crime is unthinkable. Maybe you are not part of a protected class, or maybe you have not directly experienced discrimination. But I ask you to think beyond the scope of individual instances of bias crimes and consider the prejudice in our state as a whole. People of color and people in the LGBTQ+ community especially often report feeling disenfranchised and disrespected here. Young people like me have grown ashamed of our hometowns because of the prejudice we’ve seen within them.

When I was in high school, I had friends of mine jeopardize their education to graduate early just so that they could leave our state faster. I have friends now who say they never want to move back here after college because they don’t feel safe in their own hometown. I love North Dakota. I was born here. I was raised here. My family is here. But I don’t want to live in a place that refuses to protect my loved ones.

We must do better in terms of supporting marginalized communities. North Dakota may be a place full of good old Midwestern kindness, but that kindness must apply to everyone.

Olivia Data
Testimony on HB 1205
January 17, 2023

Communities threatened by bias crimes deserve to be protected. They deserve to know that all of us will stand up for their safety. We all deserve to be proud of our state for being someplace that promotes equality and compassion.

I ask you to support HB 1537 because it will go a long way in showing not only the perpetrators of bias crimes, but all those who may be affected by bias crimes, that we as North Dakotans will not tolerate hatred and prejudice in our home.

Thank you for your time.

Olivia Data
District 35
Bismarck, ND

2/13/23

I encourage the ND House to support HB 1537. I feel strongly that bias crimes in ND need to be addressed and our lawmakers need to take a stand to protect *everyone* who lives in our state.

North Dakota is one of five states without effective hate crime legislation. HB 1537 will help to make sure that hate crimes are accurately recorded and data quantified, that education is provided to law enforcement ensuring accurate identification and processing of hate crimes, and that there are increased penalties when a crime was committed where hate is proven to be the motivator.

Thank you,
Brenda Weiler

February 13, 2023

RE: Support Letter for HB 1537

Greetings Members of the House Judiciary Committee,

My name is Raychel Perman from Bismarck, ND. I am a local business owner, active community member, and a mother of three.

I strongly support HB1537 and its desire create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to the data collection and reporting of bias crimes. One of my children and many of their friends are part of the LGBTQIA+ community and Indigenous, as well. These children deserve to grow up protected by peace office who know how to handle bias based and hate crimes.

Everyone deserved to live in a state that protects the most vulnerable. Hate based crime affects not only the person but the families and community they represent. They need your support just like the people in our neighboring states who have already based effective laws. North Dakota should not be known as one of only five states who don't care enough to pass laws that collect and report bias based crimes.

As a mom, business owner, and long time ND resident, I strongly ask you to support adding the proposed new sections to HB 1537. Let's keep North Dakota... nice.

Sincerely,

~Raychel Perman

Bismarck, ND

HB 1537 is a bill whose time has come. We have had racial slurs shouted at school sports events; we have college students who think hanging nooses and putting up swastika signs is harmless “fun”; and we have people who use disrespectful to hateful language to people whose religious affiliation is different than theirs, whose skin color is different than theirs, who are relatively new arrivals in the US [while conveniently forgetting their own relatives’ of previous generations “new arrival” status in the US]; who bully, mock, or try to harm persons with disabilities as a form of recreation for the mockers; who think that gay-bashing or LGBTQ-bashing should be a new sport and would like to help initiate it. None of these behaviors is OK, nor is it “free speech.” It is harmful speech and an offense to public conscience and to public policy.

Training peace officers in identifying, responding to calls about such behavior, reporting such behavior, investigating such behavior, and pursuing penalties for assault, harassment, and criminal mischief [as defined in the bill text] is a must, for all law enforcement officers, at all levels in the state.

We cannot fall back on claims of being North Dakota nice and assertions that such behavior doesn’t happen here or is only occasional “rogue” behavior. In some areas, it is becoming endemic. It is inexcusable and a crime against people’s dignity and right to live peacefully in our society. We need to come together to show our support of and welcome to all persons in North Dakota. Please vote in favor of House Bill 1537.

**Testimony Presented on HB 1537 to the
House Judiciary Committee**

Representative Lawrence R. Klemin, Chairman

Cody Severson, Chair, Fargo Human Rights Commission

February 6, 2023

Chairman Klemin, members of the House Judiciary Committee, I wish to speak in support of HB 1537, on behalf of the members of the Fargo Human Rights Commission. We recognize that hate crimes happen in our community and our state. According to the FBI, there were 21 reported hate crimes in North Dakota in 2020.

North Dakota is one of four states without effective hate crime legislation. This legislation would provide equal protection for all North Dakota residents, visitors, and workers.

We know that law enforcement including rank, file and leadership of the Fargo Police Department support state hate/bias crime legislation as it would provide law enforcement additional options to address and hold accountable those who would commit a crime based on someone's protected status.

A strong aspect of this bill is the fact that protected communities are enumerated. Any resident could be subject to a hate crime, but it is important that communities known to be at higher risk are clearly listed. Members of communities, of color, of minority religion, of the Lesbian, Gay Bisexual and Transgender community, of communities of people with disabilities are known to receive the greatest amount of hate directed at them.

We also support the importance HB 1537 places upon data collection and training of members of law enforcement. As much as we are encouraged and support the efforts of the Fargo Police Department to address this need, we recognize the importance of consistency throughout the state and believe appropriations to support the implementation of the measure will aid law enforcement agencies.

We recognize that hate crime goes largely unreported. The reasons for this are many: people do not know of their rights, they may fear retaliation, or they do not believe their community would support them.

In June of 2021, Fargo became the first North Dakota city to pass a hate crimes ordinance. We are proud of this action and believe it announced the fact that the city believes that all residents of our community have a right to live with safety, security and with out fear. Such an ordinance, however, has limitations that only a statewide law can address.

Passing HB1537 sends a clear and inconvertible message: our communities do not sanction hate at any level. We ask a DO PASS on HB1537.

Olivia Data
Testimony on HB 1537
February 14, 2023

Greetings, Chairman Klemin and members of the committee. My name is Olivia Data, I am a North Dakota resident and a freshman at Harvard College, and I am here today to urge you to vote “Do Pass” on HB 1537.

Growing up here, I’ve always heard about how the Midwest, with our “ya, you betcha’s” and our thousand casserole recipes, is a region full of love, kindness, and togetherness. We look out for our neighbors; we support our communities. So why are we turning our backs on marginalized groups?

North Dakota may be a place full of kindness, but it is also a place that has a long way to go in terms of seeing equality. Hate crimes do happen here, and they don’t just affect individuals. They affect entire communities. When we don’t have laws to help victims accurately report bias crimes, to help officers respond to bias crimes, to help hold perpetrators accountable for the harm they have done, we are telling these communities that their safety does not matter. We are telling them that their fears are not valid, that their voices are not heard.

I know that for many of us, being a victim of a hate crime is unthinkable. Maybe you are not part of a protected class, or maybe you have not directly experienced discrimination. But I ask you to think beyond the scope of individual instances of bias crimes and consider the prejudice in our state as a whole. People of color and people in the LGBTQ+ community especially often report feeling disenfranchised and disrespected here. Young people like me have grown ashamed of our hometowns because of the prejudice we’ve seen within them.

When I was in high school, I had friends of mine jeopardize their education to graduate early just so that they could leave our state faster. I have friends now who say they never want to move back here after college because they don’t feel safe in their own hometown. I love North Dakota. I was born here. I was raised here. My family is here. But I don’t want to live in a place that refuses to protect my loved ones.

We must do better in terms of supporting marginalized communities. North Dakota may be a place full of good old Midwestern kindness, but that kindness must apply to everyone.

Olivia Data
Testimony on HB 1537
February 14, 2023

Communities threatened by bias crimes deserve to be protected. They deserve to know that all of us will stand up for their safety. We all deserve to be proud of our state for being someplace that promotes equality and compassion.

I ask you to support HB 1537 because it will go a long way in showing not only the perpetrators of bias crimes, but all those who may be affected by bias crimes, that we as North Dakotans will not tolerate hatred and prejudice in our home.

Thank you for your time.

Olivia Data
District 35
Bismarck, ND

House Bill #1537

68th Legislative Assembly

Representatives: Schneider, Boschee, Conmy, Dakane, Davis, Dobervich, Finley-DeVille, and Hanson
Senators: Mathern and Piepkorn

I am a resident and parent of North Dakota and I support this bill.

The State of North Dakota needs to protect all the citizens within its borders. We live in a state that is predominantly white and heterosexual. The laws in this state are designed and geared towards whites, with very little thought or bearing on others that live in this state who are not white, are not heterosexual or born in the USA. The LGBTQAI community are especially vulnerable.

I am the other of a transgender person in the State of North Dakota. Every time my child goes out, my child is in danger and the laws here are not strong enough or designed to protect people who are in the LGBTQAI community.

Law Enforcement need training on how to handle crisis situations which involve the LGBTQAI citizens of North Dakota. Sensitivity Training also needs to be part of the training to insure that Law Enforcement responds to an incident and knows how to interact with ALL the parties involved with tact and professionalism.

My child deserves the same protection as what I enjoy and anything less is not ok.

School faculty, staff and counselors should have mandatory sensitivity training and education on all marginalized groups that are present here in North Dakota.

Living in North Dakota shouldn't be scary for people who are not white and heterosexual. Everyone who comes in contact with first responders or has some kind of contact with our schools such as a student or a parent needs to know that they will be treated with the same respect, care and professionalism as their counterparts, the white heterosexuals in North Dakota.

This bill fills in the gaps that the current laws have.

I encourage you all to vote Do Pass on this bill.

Thank you,

Kristie Miller

House Bill #1537

68th Legislative Assembly

Representatives: Schneider, Boschee, Conmy, Dakane, Davis, Dobervich, Finley-DeVille, and Hanson
Senators: Mathern and Piepkorn

I am a resident and parent of North Dakota and I support this bill.

The State of North Dakota needs to protect all the citizens within its borders. We live in a state that is predominantly white and heterosexual. The laws in this state are designed and geared towards whites, with very little thought or bearing on others that live in this state who are not white, are not heterosexual or born in the USA. The LGBTQAI community are especially vulnerable.

I am the other of a transgender person in the State of North Dakota. Every time my child goes out, my child is in danger and the laws here are not strong enough or designed to protect people who are in the LGBTQAI community.

Law Enforcement need training on how to handle crisis situations which involve the LGBTQAI citizens of North Dakota. Sensitivity Training also needs to be part of the training to insure that Law Enforcement responds to an incident and knows how to interact with ALL the parties involved with tact and professionalism.

My child deserves the same protection as what I enjoy and anything less is not ok.

School faculty, staff and counselors should have mandatory sensitivity training and education on all marginalized groups that are present here in North Dakota.

Living in North Dakota shouldn't be scary for people who are not white and heterosexual. Everyone who comes in contact with first responders or has some kind of contact with our schools such as a student or a parent needs to know that they will be treated with the same respect, care and professionalism as their counterparts, the white heterosexuals in North Dakota.

This bill fills in the gaps that the current laws have.

I encourage you all to vote Do Pass on this bill.

Thank you,

Kristie Miller

Dear Senators, I am writing in favor of HB 1537. I ask that you give this bill a Do Pass.

I think it is very important to include a course of instruction and ongoing training in identifying and responding to bias crimes and agree with the addition of 12.1-17-02. Aggravated assault additional point e., and including a collection of bias crime information report.

I firmly believe that collecting this information for public reporting while providing continued training in efforts to better protect potential victims of bias crimes due to a person's actual or perceived race, color, religion, gender, disability, sexual orientation, gender identity, national origin, or ancestry better protects all North Dakotans.

I firmly believe HB 1537 would have a positive impact in communities across North Dakota as we continue to work towards positive growth and change as a state.

As a lifelong resident of North Dakota, I urge the committee to vote DO PASS on HB 1537.

February 14, 2023

Dear Chairman Klemin and Committee members.

I graduated from a college in Minnesota in the 1970's. The "joke" when we were seniors looking for jobs was this: "Well, you can always end up in North Dakota." Snarky, huh?

I did "end up" in North Dakota and I was glad I did, because I met my husband! I wasn't into politics that much, but at the time I had a sense that North Dakota had a pretty good balance of ideas – we've had Democrat and Republican governors and I remember voting as an Independent. The political climate now has drastically changed for the worse, in my opinion.

I've read a lot of the testimony in favor of this bill and I heartily agree. As a white, cisgender, gray-haired old lady I have not been a victim of a hate crime, but many of my friends are LGBTQ+ people. I have seen the fear on their faces and hear of the extra precautions they take. One of my young friends said he was afraid to go anywhere west of Fargo in ND. This isn't paranoia – the hate speech, bullying, and lack of understanding, is real and it's ugly.

It's time to pass this hate crimes legislation!

I urge you to give a "DO PASS" recommendation to HB 1537.

Naomi Franek
Fargo, ND

February 14, 2023

In Support of HB 1537

Dear Chairman Klemin, esteemed Committee members.

My name is Gabriela Balf, I am a psychiatrist in Bismarck and a parent, and I speak on my behalf.

Almost ten years ago, my husband and I followed the lead of two family friends, also physicians, and moved to North Dakota, district 47. We all came with skills, passion, and a will to contribute to this state's health. The narrative we knew about North Dakota is that here people hold dear the old-fashioned ideas of hard work, independent thinking, respect, and honesty towards each other, and fierce protection of children. We thought this was the ideal place to raise our children and contribute with everything we have learned in our long years of highly specialized training at prestigious schools.

The medical community embraced us, we felt appreciated, and we gave our best, becoming the leaders of our departments. Our children made the schools proud.

Then my public health interests directed disenfranchised people my way. I listened to parents like you and me who saw their children crushed in school or on social media due to relentless bullying. Let me be clear. We have all experienced bullying. In the same way we have all experienced bad weather. But not all bullying is the same, and North Dakota weather is definitely special. It is one situation to be the straight white athlete in your high school and another to be the shy, self-doubting gay or transgender kid in school. It's one situation to have a family that can buy you a good winter jacket and another to get a hand-me-down that leaves you frozen.

How much does targeted bullying matter?! **Words matter.** I surely hope so. If you still remember words of encouragement from your mother, from your role models, I am sure you can understand what relentless demeaning means for some. More recently, we saw what Jamestown kids cheerfully expressed in a recent basketball game. Middle school taunting? How much is too much? How do you know that you crossed a line?

I get it. In a fairly homogenous state like ours, minorities like Muslims, Black kids, or LGBT+ people are not very well understood. Yet, as a new US citizen, I always thought First Amendment applies to expressing opinions that do not purposefully hurt another. I thought my kids will learn here in ND how to be respectful towards others and appreciate hard work, integrity, and the government institutions, legislative body notwithstanding.

What do they learn instead? Let me tell you what my patients recount: that it's ok to get relentless shaming on Instagram, be outed by your teachers, being constantly compared to a white, Christian, cis-gendered, middle-class, able-bodied baseline. If some kids commit suicide, the narrative is that it's because of their weakness, not because of the minority stress like science has demonstrated (handout provided.)

As an immigrant, I thought I will be valued for what I bring to the table. I thought my two daughters will be respected and will thrive in an independent thinking, solidly principled community. What do I see? Their views are demeaned, they are urged to conform to a baseline, and their lively minds are squashed under the spectrum of "if you're not with us, you're against us." This gives me flashbacks. This aggressive, simplistic view is what I ran from when I left communist Romania.

A nation's strength lies in its protection of the weakest. Yes, some of my patients are the weakest. Some of my daughter's colleagues, like her transgender friends or the pregnant 15-year-old colleague, are socially weak. Are we going to be the adults in the room, setting fair rules for everyone, and protect our children, or will we follow undigested ideas that say that if you are a healthy, able-bodied privileged majority you are free to do onto others anything you feel like doing?!

I believe in rules. As a psychiatrist, I know that that people's logical brain does not dictate their actions. Sure, most people don't start their day wanting to hurt someone. AND rules are here to reinforce principles that may be forgone when one's day gets awry. Had we all been rational beings, we would never need rules, Founding Fathers, a Century Code, etc. We would adopt our religion's equivalent of the Ten Commandments, and all would be fine. When we brought our thoughts to the Bismarck's City Commission hearing on the Hate Crime ordinance in June 2022, we were told that we need a state-level policy to address a sad reality that taints and diminishes our state's reputation.

I hope this bill represents this state-wide policy that will reinforce what we all think **North Dakota is about: an independently-thinking state that welcomes and appreciates everyone who works hard and means well. A highly moral state that is not afraid to look at its weaknesses and address them head on.** As a psychiatrist, a public health agent and as a parent I urge you to give a "DO PASS" recommendation to HB 1537.

Thank you for your time, and I stand for questions,

Gabriela Balf, MD, MPH

A handwritten signature in black ink that reads "Balf" followed by a stylized arrow pointing to the right.

Clin Assoc Prof – UND Dept of Psychiatry and Behavioral Science

23.0958.01003

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1537

Introduced by

Representatives Schneider, Boschee, Conmy, Dakane, Davis, Dobervich, Finley-DeVillie,
Hanson

Senators Braunberger, Mathern, Piepkorn

1 | A BILL for an Act to create and enact a new subsection to section 12.1-32-04 and a new section
 2 | to chapter 54-12 of the North Dakota Century Code, relating to factors to be considered in
 3 | sentencing decisions and the data collection and reporting of bias crimes; to amend and
 4 | reenact ~~sections~~section 12-63-04, ~~12.1-17-02, 12.1-17-07, and 12.1-21-05~~ of the North Dakota
 5 | Century Code, relating to the duty of the peace officer standards and training board to provide
 6 | training on bias crimes, ~~aggravated assault, harassment, and criminal mischief~~; to provide for a
 7 | report to the legislative management; and to provide a penalty.

8 | **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 | **SECTION 1. AMENDMENT.** Section 12-63-04 of the North Dakota Century Code is
10 | amended and reenacted as follows:

11 | **12-63-04. Board - Powers - Duties - Authority.**

12 | The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate
13 | the qualifications of applicants, and approve the examinations for licensing under this chapter.

14 | 1. The board shall:

- 15 | a. Prescribe the criteria for certification of basic, advanced, and specialized peace
16 | officer training curriculum, instructors, and schools;
- 17 | b. Certify curriculum, instructors, schools, and officers that have met the training
18 | certification criteria;
- 19 | c. Establish the curriculum for basic and advanced peace officer training, including
20 | a course of instruction, and ongoing training in identifying and responding to bias
21 | crimes; and
- 22 | d. Prescribe minimum standards of sidearm training and certification for peace
23 | officers before they may carry a sidearm.

- 1 2. The board shall keep records and minutes necessary to carry out its functions. The
2 board may:
- 3 a. Issue subpoenas, examine witnesses, administer oaths, and investigate
4 allegations of practices violating the provisions of this chapter or rules adopted by
5 the board.
- 6 b. Examine, under oath, any applicant for licensing.
- 7 c. Examine, under oath, any licensed peace officer during a hearing to suspend,
8 revoke, or to not renew a license of a peace officer.
- 9 d. Adopt rules relating to the professional conduct of peace officers and to
10 implement the requirements of this chapter, including rules relating to
11 professional licensure, continuing education, and ethical standards of practice,
12 for persons holding a license to practice peace officer duties.
- 13 3. The board shall provide refresher training to all licensed peace officers every
14 two years in identifying and responding to bias crimes.
- 15 a. The course of instruction and ongoing training in identifying and responding to
16 bias crimes established under subdivision c of subsection 1 must:
- 17 (1) Include material to help peace officers distinguish a bias crime from any
18 other crime;
- 19 (2) Help peace officers understand and assist a victim of a bias crime; and
- 20 (3) Ensure a bias crime is accurately reported as required under section 53 of
21 this Act.
- 22 b. The board shall update the course periodically as necessary.
- 23 c. As used in this subsection, "bias crime" has the same meaning as in section 53
24 of this Act.
- 25 4. The board shall adopt rules relating to the professional conduct of licensed peace
26 officers involved in confidential informant agreements under chapter 29-29.5, and shall
27 receive complaints and make determinations if an officer's conduct violated the
28 protections provided in chapter 29-29.5. Annually, the board shall conduct an audit
29 evaluating the effectiveness of confidential informant training requirements.
- 30 4-5. The board shall establish penalties and enforce violations of protections provided in
31 chapter 29-29.5. The penalties established must be formulated based on the nature,

1 severity, gravity, and recurrence of violations. The board may deny, suspend, or
2 revoke a license or may impose probationary conditions, including remedial training.

3 ~~5.6.~~ The board may issue certifications indicating whether law enforcement agencies
4 comply with requirements for grant funding purposes.

5 ~~SECTION 2. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 ~~12.1-17-02. Aggravated assault.~~

8 ~~1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:~~

9 ~~a. Willfully causes serious bodily injury to another human being;~~

10 ~~b. Knowingly causes bodily injury or substantial bodily injury to another human~~
11 ~~being with a dangerous weapon or other weapon, the possession of which under~~
12 ~~the circumstances indicates an intent or readiness to inflict serious bodily injury;~~

13 ~~c. Causes bodily injury or substantial bodily injury to another human being while~~
14 ~~attempting to inflict serious bodily injury on any human being; or~~

15 ~~d. Fires a firearm or hurls a destructive device at another human being; or~~

16 ~~e. Causes bodily injury to another human because of the victim's actual or~~
17 ~~perceived race, color, religion, gender, disability, sexual orientation, gender~~
18 ~~identity, national origin, or ancestry.~~

19 ~~2. The person is guilty of a class B felony if the person violates subsection 1 and the~~
20 ~~victim:~~

21 ~~a. Is under twelve years of age;~~

22 ~~b. Is a peace officer or correctional institution employee acting in an official capacity,~~
23 ~~which the actor knows to be a fact; or~~

24 ~~c. Suffers permanent loss or impairment of the function of a bodily member or~~
25 ~~organ.~~

26 ~~SECTION 3. AMENDMENT. Section 12.1-17-07 of the North Dakota Century Code is~~
27 ~~amended and reenacted as follows:~~

28 ~~12.1-17-07. Harassment.~~

29 ~~1. A person is guilty of an offense if, with intent to frighten or harass another, the person:~~

30 ~~a. Communicates in writing or by electronic communication a threat to inflict injury~~
31 ~~on any person, to any person's reputation, or to any property;~~

- 1 ~~_____ b. Makes a telephone call anonymously or in offensively coarse language;~~
2 ~~_____ c. Makes repeated telephone calls or other electronic communication, whether or~~
3 ~~not a conversation ensues, with no purpose of legitimate communication; or~~
4 ~~_____ d. Communicates a falsehood in writing or by electronic communication and causes~~
5 ~~mental anguish; or~~
6 ~~_____ e. Commits an offense in violation of subdivisions a, b, c, or d in whole or in part on~~
7 ~~the basis of actual or perceived race, color, religion, gender, disability, sexual~~
8 ~~orientation, gender identity, national origin, or ancestry.~~
9 ~~_____ 2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or~~
10 ~~subsection 4. Otherwise it is a class B misdemeanor.~~
11 ~~_____ 3. Any offense defined herein and committed by use of electronic communication may be~~
12 ~~deemed to have been committed at either the place at which the electronic~~
13 ~~communication was made or at the place where the electronic communication was~~
14 ~~received.~~
15 ~~_____ 4. A person is guilty of an offense if the person initiates communication with a~~
16 ~~911 emergency line, public safety answering point, or an emergency responder~~
17 ~~communication system with the intent to annoy or harass another person or a public~~
18 ~~safety agency or who makes a false report to a public safety agency.~~
19 ~~_____ a. Intent to annoy or harass is established by proof of one or more calls with no~~
20 ~~legitimate emergency purpose.~~
21 ~~_____ b. Upon conviction of a violation of this subsection, a person is also liable for all~~
22 ~~costs incurred by any unnecessary emergency response.~~
23 ~~_____ 5. Any offense defined herein is deemed communicated in writing if it is transmitted~~
24 ~~electronically, by electronic mail, facsimile, or other similar means. Electronic~~
25 ~~communication means transfer of signs, signals, writing, images, sounds, data, or~~
26 ~~intelligence of any nature transmitted in whole or in part by a wire, radio,~~
27 ~~electromagnetic, photo-electronic, or photo-optical system.~~
28 ~~_____ **SECTION 4. AMENDMENT.** Section 12.1-21-05 of the North Dakota Century Code is~~
29 ~~amended and reenacted as follows:~~
30 ~~_____ **12.1-21-05. Criminal mischief.**~~
31 ~~_____ 1. A person is guilty of an offense if that person:~~

- 1 ~~_____ a. Willfully tampers with tangible property of another so as to endanger person or~~
2 ~~property; or~~
3 ~~_____ b. Willfully damages tangible property of another.~~
4 ~~_____ 2. The offense is:~~
5 ~~_____ a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten~~
6 ~~thousand dollars.~~
7 ~~_____ b. A class C felony if the actor intentionally causes pecuniary loss in excess of two~~
8 ~~thousand dollars but not in excess of ten thousand dollars or damages tangible~~
9 ~~property of another by means of an explosive or a destructive device.~~
10 ~~_____ c. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of~~
11 ~~two thousand dollars or if the actor intentionally causes pecuniary loss of from~~
12 ~~one hundred dollars through two thousand dollars.~~
13 ~~_____ d. A class A misdemeanor if the actor damages the property in whole or in part~~
14 ~~because of:~~
15 ~~_____ (1) The owner's actual or perceived race, color, religion, gender, disability,~~
16 ~~sexual orientation, gender identity, national origin, or ancestry; or~~
17 ~~_____ (2) The property's believed association or affiliation with or representation of~~
18 ~~race, color, religion, gender, disability, sexual orientation, gender identity,~~
19 ~~national origin, or ancestry.~~
20 ~~Otherwise the offense is a class B misdemeanor.~~

21 **SECTION 2.** A new subsection to section 12.1-32-04 of the North Dakota Century Code is
22 created and enacted as follows:

23 The defendant's crime was committed in whole or in part because of bias against
24 actual or perceived race, color, religion, gender, disability, sexual orientation, gender
25 identity, national origin, ancestry, age, veteran status, or political affiliation.

26 **SECTION 3.** A new section to chapter 54-12 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Collection of bias crime information - Report.**

29 1. As used in this section:

30 a. "Bias crime" means:

- 1 (1) A criminal act committed against a person or a person's property in whole or
2 in part because of actual or perceived race, color, religion, gender, disability,
3 sexual orientation, gender identity, national origin, or ancestry or which is
4 committed for the purpose of restraining that person from exercising the
5 person's rights under the Constitution or laws of this state or of the United
6 States in whole or in part because of actual or perceived race, color,
7 religion, gender, disability, sexual orientation, gender identity, national origin,
8 or ancestry;
- 9 (2) An illegal act directed against any person or any person's property in whole
10 or in part because of the person's actual or perceived race, color, religion,
11 gender, disability, sexual orientation, gender identity, national origin, or
12 ancestry; and
- 13 (3) All other incidents, as determined by a law enforcement agency, intended to
14 intimidate or harass an individual or group in whole or in part because of
15 actual or perceived race, color, religion, gender, disability, sexual orientation,
16 gender identity, national origin, or ancestry.
- 17 b. "Law enforcement agency" means a nonfederal public agency authorized by law
18 or by a government agency or branch to enforce the law and to conduct or
19 engage in investigations or prosecutions for violations of law. The term includes a
20 multijurisdictional task force.
- 21 2. Each law enforcement agency shall collect information on reported bias crimes, bias
22 motivations, and on groups and individuals committing bias crimes.
- 23 3. Annually, each law enforcement agency shall submit information collected under
24 subsection 2 to the attorney general in a form, time, and manner prescribed by the
25 attorney general.
- 26 4. The data and reports compiled under this section are public information and not
27 exempt from disclosure but may not contain the name of an individual who:
- 28 a. Committed or allegedly committed a bias crime; or
- 29 b. Was the victim or the alleged victim of a bias crime.

- 1 5. By July first of each year, the attorney general shall submit to the legislative
2 management and the governor a written report summarizing the data from the
3 preceding calendar year including:
- 4 a. The type of bias crimes occurring in the state;
5 b. The number of bias crimes alleged, prosecuted, and for which a conviction was
6 obtained; and
- 7 c. Bias crime victim demographics.
- 8 6. The attorney general may require the reporting of additional information not specified
9 in this section. The attorney general shall develop standard forms, processes, and
10 deadlines for the biannual submission of bias crime data by law enforcement
11 agencies.
- 12 7. If a law enforcement agency fails to file a report within thirty days after the report is
13 due, the attorney general may compel compliance by any means until the report is
14 filed.
- 15 8. Annually the attorney general shall submit to the federal bureau of investigation the
16 statistical data collected under this section regarding the occurrence of bias crimes
17 within the state.

23.0958.01001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1537

Introduced by

Representatives Schneider, Boschee, Conmy, Dakane, Davis, Dobervich, Finley-DeVile,
Hanson

Senators Braunberger, Mathern, Piepkorn

1 A BILL for an Act to create and enact a new section to chapter 54-12 of the North Dakota
2 Century Code, relating to the data collection and reporting of bias crimes; to amend and reenact
3 sections 12-63-04, 12.1-17-02, 12.1-17-07, and 12.1-21-05 of the North Dakota Century Code,
4 relating to the duty of ~~the peace officer standards and training board~~ a law enforcement agency
5 to provide training approved by the peace officer standards and training board on bias crimes,
6 aggravated assault, harassment, and criminal mischief; to provide for a report to the legislative
7 management; and to provide a penalty.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 12-63-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12-63-04. Board - Powers - Duties - Authority.**

12 The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate
13 the qualifications of applicants, and approve the examinations for licensing under this chapter.

14 1. The board shall:

- 15 a. Prescribe the criteria for certification of basic, advanced, and specialized peace
16 officer training curriculum, instructors, and schools;
- 17 b. Certify curriculum, instructors, schools, and officers that have met the training
18 certification criteria;
- 19 c. Establish the curriculum for basic and advanced peace officer training, including
20 a course of instruction, and ongoing training in identifying and responding to bias
21 crimes; and
- 22 d. Prescribe minimum standards of sidearm training and certification for peace
23 officers before they may carry a sidearm.

- 1 2. The board shall keep records and minutes necessary to carry out its functions. The
2 board may:
- 3 a. Issue subpoenas, examine witnesses, administer oaths, and investigate
4 allegations of practices violating the provisions of this chapter or rules adopted by
5 the board.
- 6 b. Examine, under oath, any applicant for licensing.
- 7 c. Examine, under oath, any licensed peace officer during a hearing to suspend,
8 revoke, or to not renew a license of a peace officer.
- 9 d. Adopt rules relating to the professional conduct of peace officers and to
10 implement the requirements of this chapter, including rules relating to
11 professional licensure, continuing education, and ethical standards of practice,
12 for persons holding a license to practice peace officer duties.
- 13 3. ~~The board shall provide refresher training to all licensed peace officers every~~
14 ~~two years in identifying and responding to bias crimes~~require peace officers complete
15 bias crimes refresher training every three years, as a requirement for license renewal.
- 16 a. The course of instruction and ongoing training in identifying and responding to
17 bias crimes established under subdivision c of subsection 1 must:
- 18 (1) Include material to help peace officers distinguish a bias crime from any
19 other crime;
- 20 (2) Help peace officers understand and assist a victim of a bias crime; and
- 21 (3) ~~Ensure a bias crime is accurately reported~~Include instruction on proper
22 reporting requirements as required under section 5 of this Act.
- 23 b. The board shall update the ~~course~~training criteria periodically as necessary.
- 24 c. As used in this subsection, "bias crime" has the same meaning as in section 5 of
25 this Act.
- 26 4. The board shall adopt rules relating to the professional conduct of licensed peace
27 officers involved in confidential informant agreements under chapter 29-29.5, and shall
28 receive complaints and make determinations if an officer's conduct violated the
29 protections provided in chapter 29-29.5. Annually, the board shall conduct an audit
30 evaluating the effectiveness of confidential informant training requirements.

1 ~~4.5.~~ The board shall establish penalties and enforce violations of protections provided in
2 chapter 29-29.5. The penalties established must be formulated based on the nature,
3 severity, gravity, and recurrence of violations. The board may deny, suspend, or
4 revoke a license or may impose probationary conditions, including remedial training.

5 ~~5.6.~~ The board may issue certifications indicating whether law enforcement agencies
6 comply with requirements for grant funding purposes.

7 **SECTION 2. AMENDMENT.** Section 12.1-17-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-17-02. Aggravated assault.**

- 10 1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:
- 11 a. Willfully causes serious bodily injury to another human being;
- 12 b. Knowingly causes bodily injury or substantial bodily injury to another human
13 being with a dangerous weapon or other weapon, the possession of which under
14 the circumstances indicates an intent or readiness to inflict serious bodily injury;
- 15 c. Causes bodily injury or substantial bodily injury to another human being while
16 attempting to inflict serious bodily injury on any human being; ~~or~~
- 17 d. Fires a firearm or hurls a destructive device at another human being; or
- 18 e. Causes bodily injury or substantial bodily injury to another human being because
19 of the victim's actual or perceived race, color, religion, gender, disability, sexual
20 orientation, gender identity, national origin, or ancestry.
- 21 2. The person is guilty of a class B felony if the person violates subsection 1 and the
22 victim:
- 23 a. Is under twelve years of age;
- 24 b. Is a peace officer or correctional institution employee acting in an official capacity,
25 which the actor knows to be a fact; or
- 26 c. Suffers permanent loss or impairment of the function of a bodily member or
27 organ.

28 **SECTION 3. AMENDMENT.** Section 12.1-17-07 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **12.1-17-07. Harassment.**

- 31 1. A person is guilty of an offense if, with intent to frighten or harass another, the person:

- 1 a. Communicates in writing or by electronic communication a threat to inflict injury
2 on any person, to any person's reputation, or to any property;
- 3 b. Makes a telephone call anonymously or in offensively coarse language;
- 4 c. Makes repeated telephone calls or other electronic communication, whether or
5 not a conversation ensues, with no purpose of legitimate communication; or
- 6 d. Communicates a falsehood in writing or by electronic communication and causes
7 mental anguish; or
- 8 e. Commits an offense in violation of subdivisions a, b, c, or d in whole or in part on
9 the basis of actual or perceived race, color, religion, gender, disability, sexual
10 orientation, gender identity, national origin, or ancestry.
- 11 2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or
12 subsection 4. Otherwise it is a class B misdemeanor.
- 13 3. Any offense defined herein and committed by use of electronic communication may be
14 deemed to have been committed at either the place at which the electronic
15 communication was made or at the place where the electronic communication was
16 received.
- 17 4. A person is guilty of an offense if the person initiates communication with a
18 911 emergency line, public safety answering point, or an emergency responder
19 communication system with the intent to annoy or harass another person or a public
20 safety agency or who makes a false report to a public safety agency.
 - 21 a. Intent to annoy or harass is established by proof of one or more calls with no
22 legitimate emergency purpose.
 - 23 b. Upon conviction of a violation of this subsection, a person is also liable for all
24 costs incurred by any unnecessary emergency response.
- 25 5. Any offense defined herein is deemed communicated in writing if it is transmitted
26 electronically, by electronic mail, facsimile, or other similar means. Electronic
27 communication means transfer of signs, signals, writing, images, sounds, data, or
28 intelligence of any nature transmitted in whole or in part by a wire, radio,
29 electromagnetic, photo-electronic, or photo-optical system.

30 **SECTION 4. AMENDMENT.** Section 12.1-21-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **12.1-21-05. Criminal mischief.**

2 1. A person is guilty of an offense if that person:

3 a. Willfully tampers with tangible property of another so as to endanger person or
4 property; or

5 b. Willfully damages tangible property of another.

6 2. The offense is:

7 a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten
8 thousand dollars.

9 b. A class C felony if the actor intentionally causes pecuniary loss in excess of two
10 thousand dollars but not in excess of ten thousand dollars or damages tangible
11 property of another by means of an explosive or a destructive device.

12 c. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of
13 two thousand dollars or if the actor intentionally causes pecuniary loss of from
14 one hundred dollars through two thousand dollars.

15 d. A class A misdemeanor if the actor damages the property in whole or in part
16 because of:

17 (1) The owner's actual or perceived race, color, religion, gender, disability,
18 sexual orientation, gender identity, national origin, or ancestry; or

19 (2) The property's believed association or affiliation with or representation of
20 race, color, religion, gender, disability, sexual orientation, gender identity,
21 national origin, or ancestry.

22 Otherwise the offense is a class B misdemeanor.

23 **SECTION 5.** A new section to chapter 54-12 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Collection of bias crime information - Report.**

26 1. As used in this section:

27 a. "Bias crime" means:

28 (1) A criminal act committed against a person or a person's property in whole or
29 in part because of actual or perceived race, color, religion, gender, disability,
30 sexual orientation, gender identity, national origin, or ancestry or which is
31 committed for the purpose of restraining that person from exercising the

- 1 person's rights under the Constitution or laws of this state or of the United
2 States in whole or in part because of actual or perceived race, color,
3 religion, gender, disability, sexual orientation, gender identity, national origin,
4 or ancestry;
- 5 (2) An illegal act directed against any person or any person's property in whole
6 or in part because of the person's actual or perceived race, color, religion,
7 gender, disability, sexual orientation, gender identity, national origin, or
8 ancestry; and
- 9 (3) All other incidents, as determined by a law enforcement agency, intended to
10 intimidate or harass an individual or group in whole or in part because of
11 actual or perceived race, color, religion, gender, disability, sexual orientation,
12 gender identity, national origin, or ancestry.
- 13 b. "Law enforcement agency" means a nonfederal public agency authorized by law
14 or by a government agency or branch to enforce the law and to conduct or
15 engage in investigations or prosecutions for violations of law. The term includes a
16 multijurisdictional task force.
- 17 2. Each law enforcement agency shall collect information on reported bias crimes, ~~bias~~
18 ~~motivations~~, and on groups and individuals committing bias crimes.
- 19 3. Annually, each law enforcement agency shall submit information collected under
20 subsection 2 to the attorney general in a form, time, and manner prescribed by the
21 attorney general.
- 22 4. The data and reports compiled under this section are public information and not
23 exempt from disclosure but may not contain the name of an individual who:
- 24 a. Committed or allegedly committed a bias crime; or
25 b. Was the victim or the alleged victim of a bias crime.
- 26 5. By July first of each year, the attorney general shall submit to the legislative
27 management and the governor a written report summarizing the data from the
28 preceding calendar year including:
- 29 a. The type of bias crimes occurring in the state;
30 b. The number of bias crimes alleged, prosecuted, and for which a conviction was
31 obtained; and

- 1 c. Bias crime victim demographics.
- 2 6. The attorney general may require the reporting of additional information not specified
3 in this section. The attorney general shall develop standard forms, processes, and
4 deadlines for the biannual submission of bias crime data by law enforcement
5 agencies.
- 6 7. If a law enforcement agency fails to file a report within thirty days after the report is
7 due, the attorney general may compel compliance by any means until the report is
8 filed.
- 9 8. Annually the attorney general shall submit to the federal bureau of investigation the
10 statistical data collected under this section regarding the occurrence of bias crimes
11 within the state.

23.0958.01004

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1537

Introduced by

Representatives Schneider, Boschee, Conmy, Dakane, Davis, Dobervich, Finley-DeVille,
Hanson

Senators Braunberger, Mathern, Piepkorn

1 A BILL for an Act to create and enact a new subsection to section 12.1-32-04 and a new section
2 to chapter 54-12 of the North Dakota Century Code, relating to factors to be considered in
3 sentencing decisions and the data collection and reporting of bias crimes; to amend and
4 reenact ~~sections~~section 12-63-04, ~~12.1-17-02, 12.1-17-07, and 12.1-21-05~~ of the North Dakota
5 Century Code, relating to the duty of ~~the peace officer standards and training board~~ a law
6 enforcement agency to provide training approved by the peace officer standards and training
7 board on bias crimes, ~~aggravated assault, harassment, and criminal mischief~~; to provide for a
8 report to the legislative management; and to provide a penalty.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1. AMENDMENT.** Section 12-63-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12-63-04. Board - Powers - Duties - Authority.**

13 The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate
14 the qualifications of applicants, and approve the examinations for licensing under this chapter.

15 1. The board shall:

- 16 a. Prescribe the criteria for certification of basic, advanced, and specialized peace
- 17 officer training curriculum, instructors, and schools;
- 18 b. Certify curriculum, instructors, schools, and officers that have met the training
- 19 certification criteria;
- 20 c. Establish the curriculum for basic and advanced peace officer training, including
- 21 a course of instruction, and ongoing training in identifying and responding to bias
- 22 crimes; and

- 1 d. Prescribe minimum standards of sidearm training and certification for peace
2 officers before they may carry a sidearm.
- 3 2. The board shall keep records and minutes necessary to carry out its functions. The
4 board may:
- 5 a. Issue subpoenas, examine witnesses, administer oaths, and investigate
6 allegations of practices violating the provisions of this chapter or rules adopted by
7 the board.
- 8 b. Examine, under oath, any applicant for licensing.
- 9 c. Examine, under oath, any licensed peace officer during a hearing to suspend,
10 revoke, or to not renew a license of a peace officer.
- 11 d. Adopt rules relating to the professional conduct of peace officers and to
12 implement the requirements of this chapter, including rules relating to
13 professional licensure, continuing education, and ethical standards of practice,
14 for persons holding a license to practice peace officer duties.
- 15 3. ~~The board shall provide refresher training to all licensed peace officers every~~
16 ~~two years in identifying and responding to bias crimes~~require peace officers complete
17 bias crimes refresher training every three years, as a requirement for license renewal.
- 18 a. The course of instruction and ongoing training in identifying and responding to
19 bias crimes established under subdivision c of subsection 1 must:
- 20 (1) Include material to help peace officers distinguish a bias crime from any
21 other crime;
- 22 (2) Help peace officers understand and assist a victim of a bias crime; and
- 23 (3) ~~Ensure a bias crime is accurately reported~~Include instruction on proper
24 reporting requirements as required under section 53 of this Act.
- 25 b. The board shall update the coursetraining criteria periodically as necessary.
- 26 c. As used in this subsection, "bias crime" has the same meaning as in section 53
27 of this Act.
- 28 4. The board shall adopt rules relating to the professional conduct of licensed peace
29 officers involved in confidential informant agreements under chapter 29-29.5, and shall
30 receive complaints and make determinations if an officer's conduct violated the

1 protections provided in chapter 29-29.5. Annually, the board shall conduct an audit
2 evaluating the effectiveness of confidential informant training requirements.

3 4.5. The board shall establish penalties and enforce violations of protections provided in
4 chapter 29-29.5. The penalties established must be formulated based on the nature,
5 severity, gravity, and recurrence of violations. The board may deny, suspend, or
6 revoke a license or may impose probationary conditions, including remedial training.

7 5.6. The board may issue certifications indicating whether law enforcement agencies
8 comply with requirements for grant funding purposes.

9 ~~SECTION 2. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is~~
10 ~~amended and reenacted as follows:~~

11 ~~12.1-17-02. Aggravated assault.~~

12 ~~1. Except as provided in subsection 2, a person is guilty of a class C felony if that person:~~

13 ~~a. Willfully causes serious bodily injury to another human being;~~

14 ~~b. Knowingly causes bodily injury or substantial bodily injury to another human~~
15 ~~being with a dangerous weapon or other weapon, the possession of which under~~
16 ~~the circumstances indicates an intent or readiness to inflict serious bodily injury;~~

17 ~~c. Causes bodily injury or substantial bodily injury to another human being while~~
18 ~~attempting to inflict serious bodily injury on any human being; or~~

19 ~~d. Fires a firearm or hurls a destructive device at another human being; or~~

20 ~~e. Causes bodily injury to another human because of the victim's actual or~~
21 ~~perceived race, color, religion, gender, disability, sexual orientation, gender~~
22 ~~identity, national origin, or ancestry.~~

23 ~~2. The person is guilty of a class B felony if the person violates subsection 1 and the~~
24 ~~victim:~~

25 ~~a. Is under twelve years of age;~~

26 ~~b. Is a peace officer or correctional institution employee acting in an official capacity,~~
27 ~~which the actor knows to be a fact; or~~

28 ~~c. Suffers permanent loss or impairment of the function of a bodily member or~~
29 ~~organ.~~

30 ~~SECTION 3. AMENDMENT. Section 12.1-17-07 of the North Dakota Century Code is~~
31 ~~amended and reenacted as follows:~~

1 ~~12.1-17-07. Harassment.~~

2 ~~1. A person is guilty of an offense if, with intent to frighten or harass another, the person:~~

3 ~~a. Communicates in writing or by electronic communication a threat to inflict injury~~
4 ~~on any person, to any person's reputation, or to any property;~~

5 ~~b. Makes a telephone call anonymously or in offensively coarse language;~~

6 ~~c. Makes repeated telephone calls or other electronic communication, whether or~~
7 ~~not a conversation ensues, with no purpose of legitimate communication; or~~

8 ~~d. Communicates a falsehood in writing or by electronic communication and causes~~
9 ~~mental anguish; or~~

10 ~~e. Commits an offense in violation of subdivisions a, b, c, or d in whole or in part on~~
11 ~~the basis of actual or perceived race, color, religion, gender, disability, sexual~~
12 ~~orientation, gender identity, national origin, or ancestry.~~

13 ~~2. The offense is a class A misdemeanor if it is under subdivision a of subsection 1 or~~
14 ~~subsection 4. Otherwise it is a class B misdemeanor.~~

15 ~~3. Any offense defined herein and committed by use of electronic communication may be~~
16 ~~deemed to have been committed at either the place at which the electronic~~
17 ~~communication was made or at the place where the electronic communication was~~
18 ~~received.~~

19 ~~4. A person is guilty of an offense if the person initiates communication with a~~
20 ~~911 emergency line, public safety answering point, or an emergency responder~~
21 ~~communication system with the intent to annoy or harass another person or a public~~
22 ~~safety agency or who makes a false report to a public safety agency.~~

23 ~~a. Intent to annoy or harass is established by proof of one or more calls with no~~
24 ~~legitimate emergency purpose.~~

25 ~~b. Upon conviction of a violation of this subsection, a person is also liable for all~~
26 ~~costs incurred by any unnecessary emergency response.~~

27 ~~5. Any offense defined herein is deemed communicated in writing if it is transmitted~~
28 ~~electronically, by electronic mail, facsimile, or other similar means. Electronic~~
29 ~~communication means transfer of signs, signals, writing, images, sounds, data, or~~
30 ~~intelligence of any nature transmitted in whole or in part by a wire, radio,~~
31 ~~electromagnetic, photo-electronic, or photo-optical system.~~

1 ~~— **SECTION 4. AMENDMENT.** Section 12.1-21-05 of the North Dakota Century Code is~~
2 ~~amended and reenacted as follows:~~

3 ~~— **12.1-21-05. Criminal mischief.**~~

4 ~~— 1. A person is guilty of an offense if that person:~~

5 ~~— a. Willfully tampers with tangible property of another so as to endanger person or~~
6 ~~property; or~~

7 ~~— b. Willfully damages tangible property of another.~~

8 ~~— 2. The offense is:~~

9 ~~— a. A class B felony if the actor intentionally causes pecuniary loss in excess of ten~~
10 ~~thousand dollars.~~

11 ~~— b. A class C felony if the actor intentionally causes pecuniary loss in excess of two~~
12 ~~thousand dollars but not in excess of ten thousand dollars or damages tangible~~
13 ~~property of another by means of an explosive or a destructive device.~~

14 ~~— c. A class A misdemeanor if the actor recklessly causes pecuniary loss in excess of~~
15 ~~two thousand dollars or if the actor intentionally causes pecuniary loss of from~~
16 ~~one hundred dollars through two thousand dollars.~~

17 ~~— d. A class A misdemeanor if the actor damages the property in whole or in part~~
18 ~~because of:~~

19 ~~— (1) The owner's actual or perceived race, color, religion, gender, disability,~~
20 ~~sexual orientation, gender identity, national origin, or ancestry; or~~

21 ~~— (2) The property's believed association or affiliation with or representation of~~
22 ~~race, color, religion, gender, disability, sexual orientation, gender identity,~~
23 ~~national origin, or ancestry.~~

24 ~~Otherwise the offense is a class B misdemeanor.~~

25 **SECTION 2.** A new subsection to section 12.1-32-04 of the North Dakota Century Code is
26 created and enacted as follows:

27 The defendant's crime was committed in whole or in part because of bias against
28 actual or perceived race, color, religion, gender, disability, sexual orientation, gender
29 identity, national origin, ancestry, age, veteran status, or political affiliation.

30 **SECTION 3.** A new section to chapter 54-12 of the North Dakota Century Code is created
31 and enacted as follows:

1 **Collection of bias crime information - Report.**

2 1. As used in this section:

3 a. "Bias crime" means:

4 (1) A criminal act committed against a person or a person's property in whole or
5 in part because of actual or perceived race, color, religion, gender, disability,
6 sexual orientation, gender identity, national origin, or ancestry or which is
7 committed for the purpose of restraining that person from exercising the
8 person's rights under the Constitution or laws of this state or of the United
9 States in whole or in part because of actual or perceived race, color,
10 religion, gender, disability, sexual orientation, gender identity, national origin,
11 or ancestry;

12 (2) An illegal act directed against any person or any person's property in whole
13 or in part because of the person's actual or perceived race, color, religion,
14 gender, disability, sexual orientation, gender identity, national origin, or
15 ancestry; and

16 (3) All other incidents, as determined by a law enforcement agency, intended to
17 intimidate or harass an individual or group in whole or in part because of
18 actual or perceived race, color, religion, gender, disability, sexual orientation,
19 gender identity, national origin, or ancestry.

20 b. "Law enforcement agency" means a nonfederal public agency authorized by law
21 or by a government agency or branch to enforce the law and to conduct or
22 engage in investigations or prosecutions for violations of law. The term includes a
23 multijurisdictional task force.

24 2. Each law enforcement agency shall collect information on reported bias crimes, ~~bias-~~
25 ~~motivations,~~ and on groups and individuals committing bias crimes.

26 3. Annually, each law enforcement agency shall submit information collected under
27 subsection 2 to the attorney general in a form, time, and manner prescribed by the
28 attorney general.

29 4. The data and reports compiled under this section are public information and not
30 exempt from disclosure but may not contain the name of an individual who:

31 a. Committed or allegedly committed a bias crime; or

- 1 b. Was the victim or the alleged victim of a bias crime.
- 2 5. By July first of each year, the attorney general shall submit to the legislative
- 3 management and the governor a written report summarizing the data from the
- 4 preceding calendar year including:
- 5 a. The type of bias crimes occurring in the state;
- 6 b. The number of bias crimes alleged, prosecuted, and for which a conviction was
- 7 obtained; and
- 8 c. Bias crime victim demographics.
- 9 6. The attorney general may require the reporting of additional information not specified
- 10 in this section. The attorney general shall develop standard forms, processes, and
- 11 deadlines for the biannual submission of bias crime data by law enforcement
- 12 agencies.
- 13 7. If a law enforcement agency fails to file a report within thirty days after the report is
- 14 due, the attorney general may compel compliance by any means until the report is
- 15 filed.
- 16 8. Annually the attorney general shall submit to the federal bureau of investigation the
- 17 statistical data collected under this section regarding the occurrence of bias crimes
- 18 within the state.

12.1-32-04. Factors to be considered in sentencing decision.

The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained.
7. The defendant has no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.