

**SENATE . . . . . No. 1051**

**The Commonwealth of Massachusetts**

PRESENTED BY:

*Adam G. Hinds*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to reform the hate crime statutes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	
<i>Maura Healey</i>	<i>Attorney General of the Commonwealth</i>	
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/4/2021</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>3/18/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/18/2021</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>3/18/2021</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>3/19/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/26/2021</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>3/31/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>4/5/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>4/26/2021</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>5/5/2021</i>

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By Mr. Hinds, a petition (accompanied by bill, Senate, No. 1051) of Adam G. Hinds, Maura Healey, Carol A. Doherty, Eric P. Lesser and other members of the General Court for legislation to reform the hate crime statutes. The Judiciary.

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**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
\_\_\_\_\_

An Act to reform the hate crime statutes.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to reform existing statute pertaining to hate crimes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 265 of the General Laws as appearing in the 2020 Official Edition  
2 is hereby amended by striking section 37.

3           SECTION 2. Said chapter 265, as so appearing, is hereby further amended, by striking  
4 section 39 and replacing it with the following section:-

5           Section 39. (a) For the purposes of this sections, the following words shall, unless the  
6 context indicates otherwise, have the following meanings: --

7           “Because of”, conduct would not have happened but for the protected characteristic(s), as  
8 defined in this section, of the person who is the object(s) of the conduct, either alone or in  
9 combination with other factors, regardless of the presence or absence of other motives, including

10 but not limited to personal animus, anger, or revenge. Hostility to the person who is the object of  
11 the conduct based on their protected characteristic or characteristics need not be a substantial,  
12 predominant, or the sole reason for the conduct. The use of bigoted slurs, signs, symbols, or  
13 reference to a person's protected characteristic or characteristics may be evidence of such a  
14 reason, but is not the only potential evidence of such a reason.

15 "Bodily injury", substantial impairment of the physical condition, including, but not  
16 limited to, any burn, fracture of any bone, subdural hematoma, injury to any internal organ, or  
17 injury which occurs as the result of harm to any bodily function or organ, including human skin.

18 "Free exercise or enjoyment of any right or privilege secured by the constitution or laws  
19 of the Commonwealth or by the constitution or laws of the United States", any recognized right  
20 protected by the Constitution or laws of Massachusetts or the United States, including those  
21 protected by statute, the common law, and regulations. A person need not be completely  
22 prevented from exercising a right for that right to have been infringed upon.

23 "Harasses", knowingly engages in conduct, a pattern of conduct or a series of acts over a  
24 period of time, directed at a specific person, which seriously alarms that person and would cause  
25 a reasonable person to suffer substantial emotional distress. Harassment includes, but is not  
26 limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication  
27 device or electronic communication device including, but not limited to, any device that transfers  
28 signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or  
29 in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but  
30 not limited to, electronic mail, internet communications, instant messages or facsimile  
31 communications.

32           “Protected characteristic”, race, color, religion, national origin, ethnicity, caste,  
33 immigration status, sexual orientation, gender, gender identity, or disability, of a person, as that  
34 characteristic is perceived by another person.

35           “Threatens”, threatening to commit a crime against the person or property of another,  
36 presently or in the future, whether the threat is delivered to the purported target of the threatened  
37 injury or to a third party. Threats include, but are not limited to, conduct or acts conducted by  
38 mail or by use of a telephonic or telecommunication device or electronic communication device  
39 including, but not limited to, any device that transfers signs, signals, writing, images, sounds,  
40 data or intelligence of any nature transmitted in whole or in part by a wire, radio,  
41 electromagnetic, photo-electronic or photo-optical system, including, but not limited to,  
42 electronic mail, internet communications, instant messages or facsimile communications.

43           “Weapon”, any implement or tool used in the commission of an assault or battery.

44           “Willfully”, person acts with the specific intent to deprive another of the free exercise or  
45 enjoyment of any right or privilege secured to them by the constitution or laws of the  
46 commonwealth or by the constitution or laws of the United States, as defined in section 15(h) of  
47 this statute, or in reckless disregard of such a legal guarantee. Conduct may be done willfully  
48 regardless of whether (i) the person committing the conduct knows that the right deprived is  
49 specifically protected by the Constitution or laws of Massachusetts or the United States, or (ii)  
50 the person who is the object of the conduct knows that they are exercising a right protected by  
51 this section.

52           (b) No person, whether or not acting under color of law, shall by force or threat of force,  
53 willfully injure, intimidate, or attempt to injure, intimidate, or oppress or threaten any other

54 person in the free exercise or enjoyment of any right or privilege secured to him by the  
55 constitution or laws of the commonwealth or by the constitution or laws of the United States.  
56 Any person convicted of violating this provision shall be fined not more than one thousand  
57 dollars or imprisoned not more than one year or both; and if bodily injury results, shall be  
58 punished by a fine of not more than ten thousand dollars or by imprisonment for not more than  
59 ten years, or both.

60 (c) Whoever willfully threatens, harasses, intimidates, or assaults any other person in the  
61 free exercise or enjoyment of any right or privilege secured by the constitution or laws of the  
62 commonwealth or by the constitution or laws of the United States, and does so because of that  
63 person's protected characteristic, shall be punished by a fine of not more than five thousand  
64 dollars or by imprisonment in a house of correction for not more than two and one-half years, or  
65 by both such fine and imprisonment.

66 (d) Whoever commits a violation of subsection (c) during the commission of a battery  
67 shall be punished by a fine of not more than twenty thousand dollars or by imprisonment in the  
68 state prison for not more than five years or in the house of correction for not more than two and  
69 one-half years, or by both such fine and imprisonment.

70 (e) Whoever commits a violation of subsection (c) while using a weapon shall be  
71 punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison  
72 for not more than three years or in the house of correction for not more than two and one-half  
73 years, or by both such fine and imprisonment.

74 (f) Whoever commits a violation of subsection (d) while using a weapon shall be  
75 punished by a fine of not more than twenty thousand dollars or by imprisonment in the state

76 prison for not more than ten years or in the house of correction for not more than two and one-  
77 half years, or by both such fine and imprisonment.

78 (g) Whoever commits a violation of subsection (d), (e) or (f), resulting in bodily injury  
79 shall be punished by a fine of not more than twenty-five thousand dollars or by imprisonment in  
80 the state prison for not more than twenty years, or by both such fine and imprisonment.

81 (h) Whoever damages, converts, or takes and carries away real or personal property with  
82 the intent to intimidate, threaten, harass another because of that person's protected characteristic,  
83 shall be punished by a fine of not more than five thousand dollars or imprisonment in a house of  
84 correction for not more than two and one half years, or by both such fine and imprisonment.

85 (i) Whoever violates subsection (c) after having been previously convicted of any of the  
86 offenses in this section, shall be punished by imprisonment in the house of correction for not  
87 more than two and one-half years or by imprisonment in the state prison for not more than five  
88 years.

89 (j) Whoever violates subsection (d) after having been previously convicted of any of the  
90 offenses in this section, shall be punished by imprisonment in the house of correction for not  
91 more than two and one-half years or by imprisonment in the state prison for not more than ten  
92 years.

93 (k) Whoever violates subsection (e) after having been previously convicted of any of the  
94 offenses in this section, shall be punished by imprisonment in the house of correction for not  
95 more than two and one-half years or by imprisonment in the state prison for not more than ten  
96 years.

97 (l) Whoever violates subsection (f) after having been previously convicted of any of the  
98 offenses in this section, shall be punished by imprisonment in the house of correction for not  
99 more than two and one-half years or by imprisonment in the state prison for not more than  
100 twenty years.

101 (m) Whoever violates subsection (g) after having been previously convicted of any of the  
102 offenses in this section, shall be punished by imprisonment in the state prison for not more than  
103 twenty-five years.

104 (n) Whoever violates subsection (g) after having been previously convicted of a violation  
105 of subsection (g) shall be punished by imprisonment in the state prison for life or for any term of  
106 years.

107 (o) Whoever, violates subsection (h) after having been previously convicted of any of the  
108 offenses in this section, shall be punished by imprisonment in the house of correction for not  
109 more than two and one-half years or by imprisonment in the state prison for not more than five  
110 years.

111 (p) Whoever conspires with another person to violate any provision of this section shall  
112 be punished by imprisonment or fine, or both; provided, however punishment shall not exceed  
113 the maximum punishment prescribed for the offense, the commission of which was the object of  
114 the conspiracy.

115 (q) An act done with specific intent to commit an offence under this section that amounts  
116 to more than mere preparation, even though failing to effect its commission, shall be an attempt  
117 to commit that offense and shall be punished by imprisonment or fine, or both; provided  
118 however, punishment shall not exceed the maximum punishment prescribed for the offense.

119 (r) The superior court shall have original and exclusive jurisdiction over actions arising  
120 out of subsections (f), (g), and (j) through (n), inclusive.

121 SECTION 3. This act shall take effect upon passage.