SENATE DOCKET, NO. 459 FILED ON: 1/16/2023

SENATE . . . . . No. 996

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

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:
Adam Gomez	*Hampden*

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SENATE . . . . . No. 996

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 996) of Adam Gomez for legislation to reform the hate crime statutes. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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 statutes 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:

SECTION 1. Section 222 of chapter 6 of the General Laws, as amended by chapter 30 of the Acts of 2021, is hereby amended by inserting, in line XX, after the words "section 39 of chapter 265" the words:- (vi) identify and recommend best practices for hate crime prevention, restorative justice programs, culturally competent outreach and reporting mechanisms, and data collection for both adults and juveniles, including those that can be implemented by police, prosecutors, judges, school officials, state agencies, community groups and others;

SECTION 2. Said section 222 of said chapter 6 is hereby further amended by striking, in line XX, the number "(vi)" and replacing it with:- (vii)

SECTION 3. Chapter 22C of the General Laws as appearing in the 2020 Official Edition is hereby amended by striking section 33 and replacing it with the following section:-

(a) The crime reporting unit shall quarterly obtain hate crime data from state, local, and campus police, and other law enforcement agencies as well as hate crime information and reports voluntarily produced by non law-enforcement entities such as community groups, advocacy groups, and civil rights agencies. All police departments and law enforcement agencies shall submit reports of hate crimes to the unit.

(b) The colonel shall promulgate regulations to standardize and centralize the submission and collection of hate crime data. Said regulations shall include, but not be limited to, the following: (1) establishment of a central repository for the collection and analysis of hate crime data and, upon the establishment of such repository, the crime reporting unit shall be responsible for collecting, analyzing, classifying and reporting such data, and shall maintain this information in the central repository; (2) procedures necessary to ensure effective data-gathering and preservation and protection of confidential information, and the disclosure of information in accordance with section thirty-five; (3) procedures for the solicitation, submission and acceptance of hate crime incident reports and the information to be included in such reports by law enforcement agencies, which shall include, but not be limited to, the demographic information of the alleged offender(s), the perceived protected characteristic(s) for which the victim(s) was targeted, and the actual protected characteristic(s) of the victim(s), if provided by the victim(s); (4) procedures for assessing the credibility and accuracy of reports of hate crime data from law enforcement agencies; and (5) procedures for the collection of hate crime information and reports voluntarily produced by non law-enforcement entities such as community groups, advocacy groups, and civil rights agencies.

SECTION 4. Section 34 of said chapter 22C, as so appearing, is hereby amended by inserting after the word “shall” in line XX, the following words:- quarterly and annually.

SECTION 5. Chapter 265 of the General Laws is hereby amended by striking section 37.

SECTION 6. Said chapter 265, as so appearing, is hereby further amended, by striking section 39 and replacing it with the following section:-

Section 39. (a) For the purposes of this section, the following words shall have the following meanings: --

"Because of", conduct would not have happened but for the actual or perceived protected characteristic(s), as defined in this section, of any person or group, regardless of the presence or absence of other motivating factors. The actual or perceived protected characteristic(s) need not be a substantial, predominant, or the sole reason for the conduct.

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

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

"Harasses", willfully and maliciously engages in a knowing pattern of conduct or a series of acts over a period of time, directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, and that conduct is not otherwise protected by law. Harassment includes, but is not limited to, conduct or acts

conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

"Protected characteristic", the race, color, religion, national origin, ethnicity, immigration status, sex, sexual orientation, gender, gender identity, gender expression, or disability, of any person or group.

"Threatens", threatening to commit a crime against the person or property of another, presently or in the future, whether the threat is delivered to the purported target of the threatened injury or to a third party.

(b) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to them by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both.

(c) Whoever willfully threatens, harasses or assaults any other person because of the actual or perceived protected characteristic of any person or group, shall be punished by a fine of

not more than five thousand dollars or by imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment.

(d) Whoever violates subsection (c) during the commission of a battery shall be punished by a fine of not more than five thousand dollars or by imprisonment in the state prison for not more than five years or in the house of correction for not more than two and one-half years, or by both such fine and imprisonment; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in state prison for not more than five years, or by both such fine and imprisonment.

(e) Whoever damages, converts, or takes and carries away real or personal property of another with the intent to intimidate, threaten or harass a person because of that person's protected characteristic, shall be punished by a fine of not more than five thousand dollars or imprisonment in a house of correction for not more than two and one-half years, or by both such fine and imprisonment. The court may also order restitution to the victim in any amount up to three times the value of property damage sustained by the owners of such property; provided, however if restitution is ordered under the provisions of this section such restitution shall be used to repair the damage done to the property.

(f) Whoever violates subsection (c) or subsection (d) or subsection (e) while using a dangerous weapon shall be punished by imprisonment in the state prison for not more than ten years or in the house of correction for not more than two and one-half years, or by both such fine and imprisonment.

(g) Whoever is convicted of a second or subsequent offense of violating subsection (d) while using a dangerous weapon and which results in bodily injury shall be punished by imprisonment in the state prison for no more than 20 years.

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

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

(j) Where appropriate, actions arising out of subsections (c) through (i) inclusive, shall be eligible for community-based restorative justice program pursuant to chapter 276B, or for participation in a community-based restorative justice program as a term of probation or as otherwise ordered by the court.

SECTION 7. Section 3 of chapter 276B is hereby amended by adding at the end thereof the following:- Notwithstanding the preceding, any person charged pursuant to section 39 of chapter

265 shall be eligible to participate in a community-based restorative justice program.

SECTION 8. This act shall take effect upon passage.