



## Hate Crimes and COVID-19

### The Crimes Code of Pennsylvania Makes it Unlawful to Commit a Hate Crime

Since the inception of the COVID-19 crisis, across the country, there have been reports that members of the Asian or Asian American community have been targeted with despicable acts of harassment, assault, and intimidation. These reports indicate that there are those who wrongly seek to shift the blame for the crisis to Asians or Asian Americans who neither created or transported this disease to our State. Plainly, this invisible pathogen does not discriminate. Acts of harassment towards the Asian or Asian American community in housing, public accommodations, education, or employment may constitute illegal discrimination under the Pennsylvania Human Relations Act ("PHRA"). Acts associated with intolerance of another group are immoral and may also be criminal.

### Ethnic Intimidation

Pennsylvania's hate crime provision is called "ethnic intimidation." The crime of ethnic intimidation makes it a crime to commit certain offenses against persons and property when the motivation for those offenses is the malicious intention towards the **race, color, religion or national origin** of the victim. When an act is a crime, it is an offense against the entire community, not just the people directly involved. A hate crime magnifies the harm: the community is hurt not only by the underlying offense, but also by the hateful message the offense was intended to send, and the fear and intimidation it was intended to cause.

The Pennsylvania Human Relations Commission chairs the Interagency Task Force, members of which are deeply concerned with incidents in the Commonwealth that cause civil tension. Acts of hatred certainly can be and often are the source of civil tension. Acts of hate or ethnic intimidation can also be reported to the Pennsylvania Human Relations Commission for review by the Interagency Task Force. Although the Pennsylvania Human Relations Commission does not investigate

*Updated on March 25, 2020*



criminal matters, we can refer you to the appropriate law enforcement entity.

### **Consequence of Hate Crime Charge: Increased exposure to punishment**

In Pennsylvania, each separate crime carries a designated level of possible punishment. When the crime of ethnic intimidation is charged, the exposure to punishment is graded as the next degree higher than the underlying offense to which the ethnic intimidation charge is attached. For example, the crime of assault is normally graded as a second-degree misdemeanor. Second degree misdemeanors expose a perpetrator to a possible jail term of 2 years and a fine of up to \$5,000.00. If the underlying crime of assault can be shown to have been committed with a malicious intention towards the victim's **race, color, religion or national origin**, the crime of ethnic intimidation is graded as the next degree higher, or as a first-degree misdemeanor. The exposure to punishment for a first-degree misdemeanor is 5 years in prison and up to a \$10,000.00 fine. **In other words, charging ethnic intimidation enhances a perpetrator's exposure to punishment.**

### **Requirements: Underlying Offenses**

Before ethnic intimidation can be charged, a perpetrator must have committed an underlying offense. Generally, the crimes code lists the applicable underlying offenses as those offenses against the person and those offenses against property. Several offenses that are often the underlying offenses to an ethnic intimidation charge include: harassment, assault, terroristic threats, criminal mischief (vandalism), and arson.

### **Report Acts of Hatred**

If you see or know of acts of hatred directed towards a victim's race, color, religion or national origin, do not hesitate to contact your local police department.



## **Civil Remedy for Victims of Ethnic Intimidation**

The Pennsylvania legislature created civil remedies that are specifically designed for victims of hate crimes. The civil remedy provision is found at 42 Pa.C.S. Section 8309. This provision allows a victim of ethnic intimidation to recover general damages (loss of property and costs associated with a physical injury) and emotional damages. Victims can also recover punitive damages (a value that is designed to make the perpetrator hurt financially). Another important provision of the civil remedy assists victims to find attorneys because an attorney can recover their fees. Finally, the civil remedy provision envisions seeking an injunction (asking a court to order that the offending actions stop).

## **Right to Bring a Private Criminal Complaint**

When a victim believes that their local police department has not taken an incident seriously or does not consider an incident as a hate crime, a victim has the right to pursue a private criminal complaint. Bringing a private criminal complaint can be accomplished by going to your local district justice. The PHRC encourages victims to contact their local Bar Association for assistance.