

HB 3443 – Bias Crime and Incident Statute Updates
Policy Outline

Ensure confidentiality of reports to DOJ’s hate crimes hotline and information about such reports provided to the Criminal Justice Commission 2

Expand eligibility for DOJ’s Address Confidentiality Program to include victims of bias crimes and incidents 2

Expand eligibility for protected leave from work to bias crime victims 3

Expand eligibility to break a lease without penalty bias crime victims..... 3

Provide all felony bias crime victims the right to be consulted regarding plea negotiations 3

Require the imposition of a mandatory no contact order to prevent defendants from engaging with victims of bias crimes during the pendency of a criminal prosecution 5

Direct DOJ to develop and deliver a training program for district attorney victim assistance programs to assist with providing services to bias crime victims..... 5

Provide DOJ bias crime and incident advocates with home-address confidentiality in DMV records..... 5

Ensure confidentiality of reports to DOJ’s hate crimes hotline and information about such reports provided to the Criminal Justice Commission

When individuals report bias crimes and bias incidents to the Oregon Department of Justice’s Bias Response Hotline, any data collected by the Department of Justice “that reveals the identity of any individual” is exempt from public disclosure. Further, when the Department of Justice provides data about reported bias crimes and bias incidents to the Criminal Justice Commission, such data may not include information “that reveals the identity of any individual.” ORS 147.380(5)(b) and (6)

Confidentiality on the Bias Response Hotline is crucial as it protects the safety and anonymity of reporters, witnesses, and victims, and prevents further targeting or harm. Confidentiality is integral to the success of the hotline in receiving reports and maintaining public and community trust.

The current statutes’ protections do not, however, restrict disclosure of data that does not *directly* reveal an individual’s identity, but which may subsequently be used to identify a person. This creates some potential danger that reports to DOJ may not remain confidential.

To address this concern, the bias statutes’ confidentiality provisions should be updated to match protections already found in Oregon law for sanctuary hotline reports and officer-initiated stop data (data collected to help identify and prevent profiling by law enforcement). *See* ORS 181A.826(4)(c)(B) and 181A.827(5)(b), and ORS 131.935(6) (data “that *may reveal* the identity” of any individual).

Expand eligibility for DOJ’s Address Confidentiality Program to include victims of bias crimes and incidents

Oregon Department of Justice administers an Address Confidentiality Program (ACP), a free mail forwarding service that helps victims of crime to shield their physical address. Currently, the ACP is only available to survivors of domestic violence, sexual assault, stalking, or human trafficking.

Program participants are provided with a substitute address to use instead of their real address. Participants may use the substitute address for:

- Delivery of first class, certified, and registered mail;
- Obtaining an Oregon driver’s license or ID card;
- Receiving or paying child support;
- Applying for a marriage license; and
- Enrolling dependents in public school.

Bias victims would greatly benefit from inclusion in this program. The Bias Response Hotline has received 101 reports of doxing based on protected class since its inception. In 2022 alone, the Hotline has received 257 reports of bias perpetrated by a neighbor and 185 reports of bias perpetrated by a landlord. Whether online doxing or in-person bias perpetrated at home, many victims choose to relocate due to these situations, but continue to fear bias-motivated tracking, ongoing harassment, and physical danger from known and unknown perpetrators. The explicit inclusion of bias victims in the Address Confidentiality Program shows that this harm is seen and recognized by government as warranting the ACP resource.

Expand eligibility for protected leave from work to bias crime victims

Under existing Oregon law, employees who are victims of domestic violence, harassment, sexual assault, and stalking may obtain protected leave from work to seek “safe leave,” defined as legal or law enforcement assistance or remedies, to ensure the health and safety of the employee or the employee’s minor child or dependent, to seek medical treatment, counseling and victim services, and/or to relocate their home. *See* ORS 659A.272.

Given the psychological, social, physical, and material harm as well as the destabilizing impact of hate and bias crimes on victims, bias crime victims would benefit from access to protected safe leave to seek the necessary interventions, remedies, support, and resources to find safety and stability in the aftermath of hate or bias.

Expand eligibility to break a lease without penalty bias crime victims

Under existing Oregon law, employees who are victims of domestic violence, sexual assault, and stalking may break a lease without penalty. *See* ORS 90.453.

Bias crime victims should benefit from the ability to break a lease without penalty, especially when a landlord is the perpetrator and/or fails to provide adequate protection for victims. This would allow the victim to take some power back, deciding if and when they need to relocate to interrupt the harm that many victims of bias crimes are exposed to while waiting for the appropriate authorities to respond, intervene, investigate, and enforce landlord responsibilities or laws to pertaining bias crimes.

Provide all felony bias crime victims the right to be consulted regarding plea negotiations

Under Oregon’s constitution and statutes, victims are provided with a right to be consulted, upon request, regarding plea negotiations involving any “violent felony.” *See* Or Const, Art I, § 42(1)(f) and ORS 147.512(2). “Violent felony” is limited to felonies “in which there was actual or threatened serious physical injury to a victim or a felony sexual offense.” ORS 147.500(14).

While some felony bias criminal conduct meets this threshold, other felony bias criminal conduct does not. More specifically, a person commits a violent felony under the first-degree bias crime statute if the person:

“With criminal negligence causes physical injury to another person by means of a *deadly weapon* because of the person’s perception of the other person’s race, color, religion, gender identity, sexual orientation, disability or national origin”; or

“Intentionally, because of the person’s perception of another person’s race, color, religion, gender identity, sexual orientation, disability or national origin, places another person in fear of imminent *serious physical injury*.”

ORS 166.165(1)(b) and (c), Class C felony bias crime in the first degree (emphasis added).

However, under current law, a person does not commit a violent felony under the first-degree bias crime statute if the person:

“Intentionally, knowingly or recklessly causes *physical injury* to another person because of the person’s perception of the other person’s race, color, religion, gender identity, sexual orientation, disability or national origin”

ORS 166.165(1)(a), Class C felony bias crime in the first degree (emphasis added).

The right to consultation is “crucial to ensure crime victims a meaningful role in the criminal and juvenile justice systems, to accord crime victims due dignity and respect and to ensure that criminal and juvenile court delinquency proceedings are conducted to seek the truth as to the defendant’s innocence or guilt, and also to ensure that a fair balance is struck between the rights of crime victims and the rights of criminal defendant.” Or Const, Art I, § 42(1)(f).

Bias crimes are uniquely harmful to victims in that the perpetrator’s intent and the ultimate impact on the victim can cause deep psychological harm, attacking the victim’s immutable identity and innate being. Bias crimes degrade and dehumanize, other and dismiss, divide and alienate, and ultimately silence and deprive victims of voice in a unique way that impacts their sense of belonging in their town and in this state. The harm is often a lasting harm, sending a message to individual victims and broader communities who share identity with the victim that they do not belong, that they should live in silent fear, and that they should hide their true selves.

Promoting victim voice in all felony bias crime plea negotiations is an act of restoration, representative of Oregon values, which serves to send a message of belonging and reaffirms the importance of a bias victim’s voice in our prosecutors’ offices, criminal justice processes, and criminal court systems.

Require the imposition of a mandatory no contact order to prevent defendants from engaging with victims of bias crimes during the pendency of a criminal prosecution

Under existing Oregon law, ORS 135.247, domestic and sexual violence victims are recognized as particularly vulnerable to serious harm and revictimization, and therefore they are protected by an automatic no contact order issued at the time of booking, release officer decision, and arraignment.

Bias victims share some common vulnerabilities with domestic and sexual violence victims in that they often do not report crimes to law enforcement, they may be perceived as lacking credibility, or they may be vulnerable to manipulation and be isolated within a community. Perpetrators are often known to victims. The Bias Response Hotline data show perpetrators are not strangers 76% of the time. Perpetrators in some cases also hold a position of actual or perceived power over the victim (landlord, employer, etc.). In addition, bias victims are often vulnerable to significant harm after reporting because their protected class identity may be revealed and expose them to further targeting (i.e. immigration status, LGBTQ status, etc.).

Direct DOJ to develop and deliver a training program for district attorney victim assistance programs to assist with providing services to bias crime victims

ORS 147.380(2) requires law enforcement who respond to a report of a bias *incident* to refer bias incident victims to Qualifying Local Victim Services (QLVSS) or DOJ's hate crimes hotline. This referral requirement does not apply to victims of reported bias *crimes*. This distinction was made because of the assumption that victims of bias crimes would be referred to a District Attorney Victims Assistance Program (DAVAP) to receive services.

To help ensure that victims of bias crimes who are referred to a District Attorney Victims Assistance Program (DAVAP) receive appropriate services, the Department of Justice should develop and provide a training program for employees of district attorney victim assistance programs to assist the employees with providing services to victims of bias crimes.

Provide DOJ bias crime and incident advocates with home-address confidentiality in DMV records

DOJ's hate crimes hotline advocates are repeatedly targeted on the hotline with hateful rhetoric. Almost 2% of all calls received on the hotline in 2022 are hostile callers, directing hate and bias toward the individual advocates or the programs. Providing even a first name to a victim on the hotline, commonly done in service of trauma-informed support—can identify some employees and expose them to possible harm. Advocates are themselves members of protected classes and must provide public trainings as well as services in cases with high visibility or scrutiny from the public.

Because of all of this, our hotline advocates have reasonable fear that they may be targeted through doxing or other intimidation methods. Advocates want to protect their contact information from

becoming public, prevent doxing, and want to be able to prevent their physical address from being on public documents.

Home-address confidentiality in DMV records is already provided for several types of public employees under ORS 802.250. This statute should be amended to add DOJ personnel who staff the hate crimes hotline and program as defined under ORS 147.380(1)(c).

Contact:

Kimberly McCullough, Deputy Legislative Director, kimberly.mccullough@doj.state.or.us