

ESB 5623: MODIFYING AN ELEMENT OF THE OFFENSE OF HATE CRIME AND CLASSIFYING A HATE CRIME AS CRIMES AGAINST PERSONS.

Hate-motivated violence and intimidation are indisputably unacceptable. There is no place in our communities for violence motivated by a victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability. ESB 5623, however, will not eradicate hate crimes. There is no evidence that such a measure will even reduce their occurrence at all. Rather, the measure will only exacerbate mass incarceration and its myriad ills.

ESB 5623 expands the scope of what can constitute a hate crime to include not just acts causing physical injury, but also those acts which cause any contact that may be harmful or offensive and any act which causes a person to have a reasonable apprehension they may be harmfully or offensively contacted. Effectively, this elevates what might otherwise be a misdemeanor to a felony offense if it may qualify as a hate crime as defined by statute. Additionally, the bill classifies a hate crime offense as a crime against a person, mandating additional kinds of supervision after completion of term of incarceration and limits prosecutorial discretion to choose not to file charges.

There is no evidence that imprisoning a person for any length of time, no matter how long, improves public safety or reduces recidivism at all. Indeed, there has been a great deal of research to suggest that it does not and may indeed have the opposite effect. As stated in a 2021 meta-analytic study of incarceration on reoffending, “[i]ncarceration cannot be justified on the grounds it affords public safety by decreasing recidivism.”¹ There is no legitimate argument that imprisoning people serves as a deterrent to committing crime whatsoever. Neither is there evidence that being on community custody makes the supervised person less likely to subscribe to hateful ideologies.

The United States has been explicitly attempting to address ‘hate crimes’ through the criminal punishment system since at least 1990 with the passage of the Hate Crime Statistics Act, 28 USC § 534. None of those carceral-based efforts have succeeded in eradicating hate crimes in this country. More of the same will not suddenly produce different results. It is illogical to expect the systemically racist criminal punishment system² to be an effective tool in combating racism and other hate-based violence. Simply put, Washington cannot incarcerate its way out of hate.

¹ D.M. Petrich et al, 2021. *Custodial Sanctions and Reoffending: A Meta-Analytic Review*, *Crime and Justice* vol. 50, p. 353. Further, “It is often overlooked that the escalation of punitive policies was detached from any empirical base of knowledge regarding the effects of imprisonment on crime. Rather, these measures were largely based on “blind faith that a silver-bullet solution [could] magically solve the [crime] problem.” *Id* at 355. (internal citation omitted).

² While it is an opinion piece, “There’s overwhelming evidence that the criminal justice system is racist. Here’s the proof” by Radley Balko in *The Washington Post* (found here <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>) contains accessible summaries of many studies demonstrating this, as well as links to those studies for further research.

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In fact, imprisonment will likely put the imprisoned in closer contact with hate-based violence and ideology, as white supremacist hate groups are present and active within Washington prisons.³

Elevating a misdemeanor assault of any kind to a felony crime against a person does nothing except drive mass incarceration. Reference to community member's feedback regarding proposed legislation addressing "domestic violent extremism" is applicable here. In a report, the Washington Attorney General's office notes that community members from groups such as those that ESB 5623 purports to protect have clearly voiced grave concerns about using the criminal punishment system to address these serious social problems.⁴

Because it relies on expanding use of the criminal punishment system to address a problem it simply cannot effectively address, ESB 5623 should not pass.

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³ See <https://www.themarshallproject.org/2020/08/06/how-prison-turned-my-childhood-friend-into-a-neo-nazi> regarding one prisoner's experience in Walla Walla prison and the Anti-Defamation League's 2022 "Center on Extremism Report, White Supremacist Prison Gangs, 2022 Assessment," p. 40-41. Accessible here: <https://www.adl.org/sites/default/files/documents/2022-10/White-Supremacist-Report-final.pdf> .

⁴ 2022 Domestic Terrorism Study, Washington State Attorney General's Office, p. 5. Accessible at <https://agportal-s3bucket.s3.amazonaws.com/2022%20Domestic%20Terrorism%20Study.pdf>.