

# DANGERS OF REP. FRANKEL'S 'HATE CRIMES' PACKAGE

## *HB 1902-1905*

The hate crimes package has three parts: 1) anonymous reporting and investigation of “hate” (HB 1903), followed by 2) criminal prosecution and civil actions against “hate” (HB 1902 and HB 1905), and as a result of prosecutions, 3) sentencing of “hate,” including mandated consideration of community impact statements and required education (HB 1904).

Despite changes in the most recent version, this package continues to weaponize personal offense in a society that treats disagreements as “unsafe” and perceived offense as “violence.” In such a context, a hate crimes package like this subjects reasonable people to anonymous reporting and investigation. Even if the accused is ultimately vindicated, the harm is already done by forcing the accused to fight against the investigation, prosecution, or civil complaint. Many will simply self-censor, which is never an appropriate result in a free society.

### **HB 1903 – Anonymous Reporting and Investigation (applies to public schools and post-secondary institutions):**

The problem with HB 1903 is that it uses over broad categories, which would catch good people in its investigatory net, and worse, would allow anonymous reports, undermining accountability and weaponizing the process for ideological or personal reasons. As far as the breadth, HB 1903 is not simply limited to physical injury or harm to property but allows for any “type of injury.”

While the “injury” must be “motivated by hatred,” toward, for example, the “gender expression” of individuals or groups, it is easy to see the kinds of anonymous reports that would be solicited and result in investigations. There are too many stories like that of Liam Morrison, a 12-year-old boy from Massachusetts, who wore a T-shirt at school that declared there are “only two genders.” Morrison was sent home from school after he was told it made other students feel “unsafe.” Under HB 1903, someone could make a report of feeling unsafe, which would constitute an “other type of injury,” and claim, unfairly, that the statement was motivated by hatred towards their non-binary gender identity. And HB 1903 does not require an actual criminal act to start an investigation.

Similarly, consider the girls in Randolph, Vermont who were subject to a harassment investigation for asking a 14-year-old biological boy who identified as a girl to leave their locker room. Girls like these who stand up for their bodily privacy should be protected, not subject to the kind of investigation that results from HB 1903.

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*Soliciting reports of an “other type of injury” will have a chilling effect on free speech and dissenting viewpoints in both public schools and post-secondary institutions.* Academic institutions in Western nations today have been some of the worst actors in conflating differences of opinion as violence, and as discussed above, students refer to those who disagree with them as making them “unsafe.” Academic institutions are the very places that need more clarity to allow free exchange of ideas. The last thing our education institutions need are generic terms like “other type of injury” that give wide berth for abuse of disfavored groups or individuals. This weaponization is a blatant attack on our First Amendment rights to express our sincerely held beliefs and dissenting viewpoints, especially when they are not popular or when others find them offensive.

We want to believe that the kinds of ideologically based investigations we have seen in other states will not happen here. But the only way to prevent that is to limit the scope of our laws, not expand them into the danger zone. Besides, even if an investigation could ultimately be closed, *the potential for abuse is significant because the “punishment” begins by being accused and investigated.*

### **HB 1902 - Criminal Penalties, Civil Actions, and Training**

This bill amends the Ethic Intimidation law, 18 Pa.C.S. § 2710, which was aimed at addressing racially and religiously targeted crimes. The name and purpose would be changed—the name would become Hate-Based Intimidation, and the category of victims and the scope of conduct would be expanded. Specifically, the bill would add “ethnicity, ancestry, sex, gender, gender identity, gender expression, sexual orientation and disability” as protected classes. § 2710(a).

The law increases the penalty for certain crimes if there is malicious intent toward a class. Why should we be concerned with HB 1902 if we’re only dealing with subjects we’ve already determined to be criminal? The concern is that a package that starts with anonymous reporting and investigation of what can amount to ideological controversies gets no better when criminal penalties can be added.

Consider, for instance, a parent who is upset because his daughter was sexually assaulted in a school restroom or locker room by a boy granted access to such a space because he identifies as a girl. That parent comes to a school board meeting and vents all his frustration as he is speaking to the board. The board, viewing this as hostile, asks the parent to leave. When he refuses, he is removed by school security. That is potentially a violation of 18 Pa.C.S. § 3503(b)(1)(v):

A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by . . . an actual communication to the actor to leave school grounds as communicated by a school, center or program official, employee or agent or a law enforcement officer.

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Section 3503 is an underlying crime to the proposed bill that can result in a bumped-up penalty. Considering the kinds of accusations thrown around these days, an upset father complaining about a sexual assault in those circumstances might be accused of trespassing because of malicious intent towards gender identity or gender expression.

Likewise, parents confronting school boards regarding sexually explicit materials in libraries face similar problems. Such confrontations often anger school boards. And because sometimes the sexually explicit content involves gay sex, someone may argue (wrongly) that there is malicious intent towards sexual orientation. Either situation may end up with a prosecution. In both scenarios, the original grading of first-degree misdemeanor would be elevated to a third-degree felony under the elevated penalty provisions of section 2710.

While someone may argue that prosecutors should not use the law to limit speech, unfortunately, that happened last time Pennsylvania passed a hate crimes law. See *Marcavage v. Rendell*, 936 A.2d 188 (Pa. Commw. Ct. 2007) (prosecuting protesters). And section 2710(b.1) does not fix the problem. Merely establishing that a law cannot violate the Constitution changes nothing. Law enforcement and prosecutors too often prosecute protected speech. And being vindicated in the end does not solve the problem. Cancel culture utilizes process as punishment, and this bill adds more than new arrows in cancel culture's quiver that mere references to the Constitution do not alleviate.

Worse, this bill allows for civil actions under 42 Pa.C.S. § 8309. The bill increases the likelihood of weaponizing civil actions based on ideology, especially when a prosecutor refuses to allow a criminal action to go forward.

### **HB 1905 - Criminal Penalties and Civil Actions**

This legislation is similar to HB 1902. Therefore, our concerns are the same as those detailed above. However, unlike HB 1902, this bill does not mandate annual police training.

### **HB 1904 – Amending the Sentencing Code**

This bill amends the Sentencing Code to impose special hate-crime conditions for probation or parole and mandates a sentencing judge to consider “community impact statements” against a person convicted of hate-based intimidation. Additionally, the bill subjects hate-crime offenders to a punishment scheme that allows the “harmed community” to personally participate in and impact the severity of the offender's sentence.

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Section 9720.9(a) allows for the imposition of hate-based sensitivity training and community service as a condition of satisfactory completion of probation or parole, thereby linking an offender's success to others' subjective expectations or demands.

Section 9739 interferes with a sentencing judge's discretion and authority by affording representatives of the impacted community a newly created "right" to submit statements to the judge, which "must" be considered by the judge in sentencing an individual convicted of Hate-based discrimination.

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This package of bills is not well-suited for this period of history, where ideological weaponization is so easy. These bills would add to unfair reports, investigations, prosecutions, and civil actions. This legislation should be rejected.

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