

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

2019 OCT 22 PM 4:25
OFFICE OF THE
SECRETARY

October 22, 2019

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

I am writing to transmit the "Hate Crime Civil Enforcement Clarification Amendment Act of 2019" (The Bill). This Bill expands civil enforcement under the *Bias-Related Crime Act of 1989* (The Act). The Act prohibits what it refers to as "bias-related crimes," i.e., any criminal offense that "demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation." Anyone who perpetrates a bias-related crime could face criminal penalties, as well as a civil action brought by anyone who incurs injury from a bias-related crime.

The bill strengthens civil enforcement of the by clarifying that the Attorney General may bring civil actions for bias-related crimes, or when any person interferes or attempts to interfere with the exercise of federally or District-protected rights through threats, intimidation, or coercion. Civil remedies could, in addition to remedies available in a private civil action, include penalties up to \$10,000 per offense.

The Office of the Attorney General looks forward to working with the Council and other stakeholders on this important measure. If you have any questions, your staff may contact Deputy Attorney General for Legislative Affairs, James A. Pittman, at James.Pittman@DC.Gov.

Sincerely,

Karl A. Racine
Attorney General



Chairman Phil Mendelson
at the request of the Attorney General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Bias-Related Crime Act of 1989 to expand available causes of action and remedies and to clarify the Attorney General's enforcement authority.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Hate Crime Civil Enforcement Clarification Amendment Act of 2019".

Sec. 2. The Bias-Related Crime Act of 1989, effective May 8, 1990 (D.C. Law 8-121; D.C. Official Code § 22-3701 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 22-3701) is amended as follows:

(1) Designate the existing paragraph (1) as paragraph (1A).

(2) A new paragraph (1) is added to read as follows:

"(1) "Attorney General" means the Attorney General for the District of Columbia provided for by section 435 of the District of Columbia Home Rule Act, effective May 27, 2010 (D.C. Law 18-160; D.C. Official Code § 1-204.35).".

(3) Paragraph (1A) is amended by striking the phrase "physical disability" and inserting the word "disability" in its place.

(4) New paragraphs (5) and (6) are added to read as follows:

34 “(5) “Person” means an individual, firm, corporation, partnership, cooperative,
35 association, or any other organization, legal entity, or group of individuals however organized.

36 “(6) “Rights secured by District or federal law” means rights secured by the
37 Constitution or laws of the United States, or rights secured by the laws of the District.”.

38 (b) Section 5 (D.C. Official Code § 22-3704) is amended to read as follows:

39 “Sec.5. Civil action.

40 “(a) Whenever any person, whether or not acting under color of law, interferes or
41 attempts to interfere by threats, intimidation, or coercion with the exercise or enjoyment by any
42 other person or persons of rights secured by District or federal law, or commits a bias-related
43 crime against the other person or persons:

44 “(1) The other person or persons shall, irrespective of any criminal prosecution or
45 the result of any criminal prosecution, have a civil cause of action in a court of competent
46 jurisdiction for appropriate relief; and

47 “(2) The Attorney General may, irrespective of any criminal prosecution, of the
48 result of a criminal prosecution, or of any cause of action pursued under paragraph (1) of this
49 subsection, bring, in the name of the District of Columbia, a civil action for appropriate relief.

50 “(b) The parent of a minor shall be liable for any damages that a minor is required to pay
51 under subsection (a) of this section if any action or omission of the parent or legal guardian
52 contributed to the actions of the minor.

53 “(c) In the course of an investigation to determine whether to seek relief under subsection
54 (a)(2) of this section, the Attorney General may subpoena witnesses, administer oaths, require
55 sworn written responses to written questions, examine an individual under oath, and compel
56 production of records, books, papers, contracts, and other documents, subject to the procedures

in section 110a(d) and (e) of the Office of the Attorney General for the District Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88d(d) and (e)). Information obtained under this section is not admissible in a later criminal proceeding against the person who provides the evidence.

“(d) Appropriate relief under this section may include:

“(1) Injunctive relief;

“(2) Actual or nominal damages for economic or non-economic loss, including damages for emotional distress;

“(3) Punitive damages in an amount to be determined by a jury or a court sitting without a jury, which may include treble damages for any economic or non-economic loss the person suffered;

“(4) Reasonable attorneys’ fees and costs; or

“(5) In a civil action brought by the Attorney General under subsection (c) of this section, a civil penalty of up to \$10,000 per violation of this act.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

79 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
80 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: James Pittman
Deputy Attorney General
Legislative and Intergovernmental Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: October 21, 2019

SUBJECT: Legal Sufficiency Review – Draft “Hate Crime Civil Enforcement
Clarification Amendment Act of 2019”
(AE-19-650)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Brian K. Flowers