

STRENGTHENING HATE CRIME LAWS IN PENNSYLVANIA

SENATE REPUBLICAN POLICY COMMITTEE

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Thank you for inviting me to this important discussion. My name is Deb Ryan, and I am the District Attorney here in Chester County. I am so pleased to be here with my colleague Jack Stollsteimer, the District Attorney in Delaware County, as well as those advocates and stakeholders who will be speaking later this afternoon.

This is an important discussion in terms of both public safety and victims' rights. As I will explain, Pennsylvania needs to improve its present hate crime law. What was once a robust and inclusive law is now underinclusive and incomplete. Why? Because our inclusive law was struck by our courts due to a technicality in how it was enacted. I would respectfully ask that we reenact that law to cover important areas, including sexual orientation, gender, gender identity and mental or physical disability.

Let me take a few moments to provide some important background. Pennsylvania has a hate crime statute. Technically, it is called "ethnic intimidation." Its elements are contained in Title 18 Section 2710.

An individual commits this crime if "with malicious intention toward the race, color, religion or national origin of another individual or group of individuals" he or she commits certain offenses, including assault, terroristic threats, recklessly endangering another person, harassment, arson, and vandalism. The grading of ethnic intimidation is one degree higher than the classification of the other offense.

What does that mean in the courtroom? It means that if a defendant is charged with ethnic intimidation, the Commonwealth must prove beyond a reasonable doubt the elements of the crime I just identified. Ethnic intimidation can and usually is charged alongside an underlying crime, such as assault. Proving these elements is not an easy task. Nor should it be. But to prove a "malicious intention" toward, for example, a victim's race typically requires a significant amount of evidence that clearly and unambiguously demonstrates the defendant's motive. We have to prove more than just ill-will or prejudice.

Pennsylvania's ethnic intimidation statute used to be far more robust and covered, among other things, ancestry, mental or physical disability, sexual orientation, and gender or gender identity. Almost two decades ago, these provisions were approved by the Senate 32-15 and by the House 118-79 and signed into law by Governor Schweiker in 2002. Despite the bipartisan support for this law, there was a problem with its enactment. It was amended into a bill that originally covered agricultural vandalism, and the agricultural vandalism provisions were removed from the bill. The

law was challenged, and the Commonwealth Court in 2007 in *Marcavage v. Rendell* held that this process violated the original purpose requirement under the Constitution and was thus unconstitutional.<sup>1</sup> As a result, these important additions to the ethnic intimidation law were struck, and we continue to be without a robust ethnic intimidation law.

Why do we need hate crimes laws? I think the Anti-Defamation League says it well:

Whenever a bias-motivated crime is committed, the victim's entire community is left feeling victimized, vulnerable, fearful, isolated, and unprotected by the law. Such crimes can also lead to reprisals and a dangerous spiral of escalating inter-group tension and violence. Thus, the impact of the crime is far greater than the already terrible impact on the individual.<sup>2</sup>

Hate crimes punish people for their criminal acts, not for their speech, and unfortunately, we have far too many hateful acts in our country and certainly here in Pennsylvania.

This issue is also extraordinarily important to me personally. My grandparents were both Holocaust survivors, and my grandmother's entire family was killed by Nazis in Poland. My grandmother survived three concentration camps. Indeed, the reason I became a prosecutor was to help seek justice for the vulnerable, marginalized and oppressed members of the community, like my grandmother. I also have a stepsister who is gay, and she has had to deal with her own challenges because of that. Expanding our hate crimes statute reinforces the importance of condemning hate, which is so important in this climate.

I would like to discuss a recent case in Chester County in 2017. A 22-year-old man with cerebral palsy parked his car at a 7-Eleven in West Chester. As he headed toward the entrance, the defendant, who was outside of the store, began to mock him and make fun of his disability. When the victim left the store, the defendant continued his abuse and then sucker-punched him. This assault was cowardly and degrading. But it was far more than a garden-variety attack. While it was the direct victim who suffered the physical injuries, the disabilities community grieved as well. The ridicule and mockery by the defendant was ridicule and mockery that too often the disabled are subjected to. The attack itself demonstrated the fear that those with disabilities face: the fear of

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<sup>1</sup> 936 A.2d 188 (Pa. Commonwealth 2007).

<sup>2</sup> <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Introduction-to-Hate-Crime-Laws.pdf>.

physical harm and humiliation by those who victimize others simply because they are different.

The pain felt by the disabilities community is our pain.

As is the pain of our friends who are LGBTQ, who unfortunately have the same real fears. By including our LGBTQ communities in an enhanced hate crime law, we can send a strong message that we do not tolerate hate and violence based on a person's perceived LGBTQ status. And it would give us an important tool in better holding perpetrators who commit violent acts based on hate accountable.

I am proud to say that my first assistant, Mike Barry, handled a high-profile assault case motivated by the sexual orientation of the victims in 2014 when he was an assistant district attorney in Philadelphia. There, three individuals brutally attacked a gay couple at 16<sup>th</sup> and Chancellor Streets in Center City, while uttering anti-gay epithets. As Mike said back then, the attack damaged the psyche of the city. That is what hate crimes do to neighborhoods and communities. But he was unable to charge ethnic intimidation because of the present state of the law. For his hard work, Mike was a co-recipient of the person of the year award by the Philadelphia Gay News.<sup>3</sup>

The pain felt by the LGBTQ community when an assault like this happens is our pain.

Hate crimes are not going away. Hate crimes against individuals are increasing, and, sadly, we are seeing more, particularly against trans-individuals.<sup>4</sup> This is an extraordinarily disturbing trend.

Protecting our most vulnerable victims has been a theme of the Senate Judiciary Committee under Senator Baker's leadership. You have recognized that there are those with intellectual disabilities who need extra protections in order to testify against their perpetrators or who need protections from being cross-examined about prior non-consensual sexual conduct. Expanding the hate crime statute fits squarely into this theme of helping those who need our assistance to stay safe.

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<sup>3</sup> <https://epgn.com/2015/12/30/people-of-the-year-mike-barry-and-allison-ruth/>

<sup>4</sup> <https://www.hrc.org/news/new-fbi-statistics-show-alarming-increase-in-number-of-reported-hate-crimes>.

Thank you Chairman Argall and Senator Killion for convening this hearing, for considering the victims, for considering the communal hurt and pain that communities suffer when a hate crime is committed, and for your consideration of providing us an additional tool to better hold those who commit these atrocious accountable. I very much appreciate this hearing and look forward to any questions you may have.