



2018 NOV 29 PM 4: 33

OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

NOV 29 2018

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave., NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is are bills entitled the *Community Harassment Prevention Emergency Declaration Resolution of 2018*, *Community Harassment Prevention Emergency Amendment Act of 2018*, *Community Harassment Prevention Temporary Amendment Act of 2018*, *Community Harassment Prevention Amendment Act of 2018*, which seek to provide additional safeguards for protected classes against bias-related crimes in the District.

Specifically, the legislation amends the *Omnibus Public Safety and Justice Amendment Act of 2009* (D.C. Law 18-88; D.C. Official Code *passim*), to create the offense of Harassing an Entity. This offense would prohibit a person from purposefully engaging in a course of conduct directed at a specific entity with the intent to cause members, participants, or employees of that entity to fear for their safety, feel alarmed, disturbed or frightened, or suffer emotional distress. It also prohibits a person from engaging in course of conduct that the person knows or should have known would cause members, participants, or employees of the entity to fear for their safety, feel seriously alarmed, disturbed, or frightened, or suffer emotional distress. Further, the bill amends section 3(a) of the *Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982* (D.C. Law 4-203; D.C. Official Code § 22-3312.02(a)) to expand the types of property on which it is unlawful to display certain emblems that deprive any person or class of persons of equal protection of the law or that intimidate or causes fear in a person or threatens to harm a person or damage property.

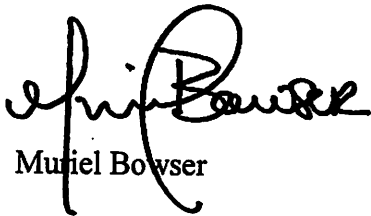
Reports of bias-related crimes and incidents have increased significantly in the District – and the country – in the past two years. As we have seen all too clearly recently, from the murder of an African American couple in a Kroger parking lot to the horrific shooting at the Tree of Life synagogue that left 11 people dead, each hate crime takes a toll not only on the victim, but also on the community. I have made it a priority of my administration to provide support to our individuals and the community that have been targeted by hate.

While the rise in reported hate crimes has been disturbing, the harassing incidents that may not currently be covered by our extensive statute on bias related crimes is just as troubling. Organizations have been targeted for repeated harassing phone calls and letters, causing alarm among employees and members. However, the existing stalking statute (D.C. Code § 22-3133) protects an “individual,” and it is unclear whether that will extend to the same behavior targeting an organization. As a result, the legislation seeks to serve as a remedy for entities organized by association for any established purpose that are vulnerable to serious incidents of harassment and implied threats. By providing law enforcement with a tool for combatting this harassment, it ensures that individuals can safely assemble to advance their common interests.


Additionally, the current “display of certain emblems” statute only covers private premises or property in the District primarily used for religious, educational, residential, memorial, charitable, cemetery purposes, or any public property. So while more than twenty suspected nooses and swastikas have been reported in the District in 2017 and 2018, it is not clear that someone placing them on some types of property with an intent to intimidate or frighten the community could be held accountable. By expanding the statute to apply to any public property or private property of another without permission, the bill provides additional recourse in cases of displays of certain symbols of hate.

Given the current trends showing an increase in bias-related crimes and incidents, I believe that emergency legislative action is necessary to protect District residents. I urge the Council to move forward quickly with consideration and passage of the legislation. Chief Peter Newsham and I are available to discuss any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is fluid and cursive, with the first name "Muriel" written in a larger, more prominent script than the last name "Bowser".

Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to make it unlawful to deface or burn a religious or secular symbol on any property of another without permission or to place or display on such property a physical impression that a reasonable person would perceive as a threat to physically damage the property of another; and to amend the Omnibus Public Safety and Justice Amendment Act of 2009 to make it unlawful to harass an entity.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Community Harassment Prevention Emergency Amendment Act of 2018”.

Sec. 2. Section 3(a) of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code § 22-3312.02(a)), is amended as follows:

(a) The lead-in language is amended to read as follows:

“(a) It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol on any private property of another without the permission of the owner or the owner’s designee or on any public property in the District of Columbia; or to place or to display in any of these locations a sign, mark, symbol, emblem, or other physical impression including, but not limited to: a Nazi swastika, a noose, or any manner of exhibit

24 which includes a burning cross, real or simulated, where it is probable that a reasonable person
25 would perceive that the intent is:"

26 (b) Paragraph (3) is amended by striking the word "person" and inserting the phrase
27 "person or property" in its place.

28 Sec. 3. The Omnibus Public Safety and Justice Amendment Act of 2009, effective
29 December 10, 2009 (D.C. Law 18-88; D.C. Official Code *passim*), is amended as follows:

30 (a) The heading of Title V is amended to read as follows:

31 "TITLE V
32 STALKING; HARASSING AN ENTITY".

33 (b) Section 501 (D.C. Official Code § 22-3131) is amended by adding a new subsection
34 (c) to read as follows:

35 "(c) This title also provides law enforcement with a tool for combatting harassment of an
36 entity, thereby helping to ensure that individuals can safely assemble to advance their common
37 interests."

38 (c) Section 502 (D.C. Official Code § 22-3132) is amended by adding a new paragraph
39 (4A) to read as follows:

40 "(4A) "Entity" means a group organized by association for any established
41 common purpose, including, but not limited to a religious, social, educational, or recreational
42 purpose.

43 (d) A new section 503a is added to read as follows:

44 "Sec. 503a. Harassing an entity.

45 "(a) It is unlawful for a person to purposefully engage in a course of conduct directed at a
46 specific entity:

47 “(1) With the intent to cause members, participants, or employees of that entity to:

48 “(A) Fear for their safety;

49 “(B) Feel seriously alarmed, disturbed, or frightened; or

50 “(C) Suffer emotional distress;

51 “(2) That the person knows would cause members, participants, or employees, of

52 that entity to:

53 “(A) Fear for their safety;

54 “(B) Feel seriously alarmed, disturbed, or frightened; or

55 “(C) Suffer emotional distress; or

56 “(3) That the person should have known would cause a reasonable person who is

57 a member, participant, or employee of that entity to:

58 “(A) Fear for his or her safety;

59 “(B) Feel seriously alarmed, disturbed, or frightened; or

60 “(C) Suffer emotional distress.

61 “(b) This section does not apply to constitutionally protected activity.

62 “(c) Where a single act is of a continuing nature, each 24-hour period constitutes a
63 separate occasion.”.

64 “(d) The conduct on each of the occasions need not be the same as it is on the others.”.

65 (e) The heading of section 504 (D.C. Official Code § 22-3134) is amended to read as
66 follows:

67 “Sec. 504. Penalties for stalking.”.

68 (f) A new section 504a is added to read as follows:

69 “Sec. 504a. Penalties for harassing an entity.

70 “(a) Except as provided in subsections (b) and (c) of this section, a person who violates
71 section 503a shall be fined not more than the amount set forth in section 101 of the Criminal Fine
72 Proportionality Amendment Act of 2013, effective July 5, 2013 (D.C. Law 19-317; D.C. Official
73 Code § 22-3571.01), imprisoned for not more than 12 months, or both.

74 “(b) A person who violates section 503a shall be fined not more than the amount set forth
75 in section 101 of the Criminal Fine Proportionality Amendment Act of 2013, effective July 5,
76 2013 (D.C. Law 19-317; D.C. Official Code § 22-3571.01), imprisoned for not more than 5
77 years, or both, if the person:

78 “(1) At the time, was subject to a court, parole, or supervised release order
79 prohibiting contact with an entity’s members, participants, or employees;

80 “(2) Has one prior conviction in any jurisdiction of harassing any entity within the
81 previous 10 years; or

82 “(3) Caused more than \$2,500 in financial injury.

83 “(c) A person who violates section 503a shall be fined not more than the amount set forth
84 in section 101 of the Criminal Fine Proportionality Amendment Act of 2013, effective July 5,
85 2013 (D.C. Law 19-317; D.C. Official Code § § 22-3571.01), imprisoned for not more than 10
86 years, or both, if the person has 2 or more prior convictions in any jurisdiction for harassing an
87 entity, at least one of which was for a jury demandable offense.”.

88 Sec. 4. Fiscal impact statement.

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

92 Sec. 5. Effective date.

93 This act shall take effect following approval by the Mayor and shall remain in effect for
94 no longer than 90 days, as provided for emergency acts of the Council of the District of
95 Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24,
96 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Alana Intriери
Executive Director
Office of Policy and Legislative Affairs

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: November 29, 2018

SUBJECT: Legal Sufficiency Certification of the "Community Harassment
Prevention Amendment Act of 2018," Emergency and Temporary
Versions and Emergency Declaration Resolution
(AE-17-644-D)

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


Janet M. Robins