2021 HOUSE JUDICIARY

HB 1345

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HB 1345
2/8/2021

Relating to internship licenses and exemptions from testing requirements of detection of deception examiners.

Chairman Klemin called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

Rep. Heinert: Introduced the bill. 8:31

Discussion Topics:

- Polygraph operators
- Qualification changes
- License fee
- Internship requirements.
- Polygraph examiner training
- Hate crimes

Mark Nickel; Special Agent, ND BCI: proposed amendment. #5836, #5837, #5838. 8:36

Rep Becker: Motion to adopt amendment #21.0813.01001. Seconded by **Rep. Christensen**.

Voice Vote: Motion carried.

Rep. Vetter moved a Do Pass as Amended. Seconded by **Rep. Karls**.

Roll call vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	Y
Rep B. Satrom	Y
Rep Vetter	Y

Rep Buffalo	Y
Rep K. Hanson	Y

Motion carried: 14-0-0. Carrier is **Rep. Karls.**

Chairman Klemin closed the hearing at 8:58.

DeLores D. Shimek
Committee Clerk

21.0813.01001
Title.02000

Adopted by the Judiciary Committee

DB 2/8/21
1081

February 8, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 1, line 14, replace "criminal" with "felony"

Page 2, line 7, replace "polygraphicists" with "polygraphists"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1345: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1345 was placed on the Sixth order on the calendar.

Page 1, line 14, replace "criminal" with "felony"

Page 2, line 7, replace "polygraphicists" with "polygraphists"

Renumber accordingly

#5836

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 1, line 14, replace "criminal" with "felony"

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Renumber accordingly

Location Type

Agencies may specify the location of an offense within a hate crime incident as 1 of 46 location designations. However, not all reporting agencies have made the programming changes to allow the relatively new location designations; therefore, the data collected to date are not yet representative of all location designations. Also, the location type *cyberspace* is collected in the National Incident-Based Reporting System only. The location designations of the hate crime incidents reported in 2019 (based on Table 10) were:

- 24.6 percent of hate crime incidents happened in or near residences/homes.
- 18.2 percent occurred on highways/roads/alleys/streets/sidewalks.
- 9.6 percent took place at schools/colleges (based on 3 designations).
- 4.7 percent happened in parking/drop lots/garages.
- 4.4 percent occurred in churches/synagogues/temples/mosques.
- 2.9 percent took place in restaurants.
- 2.7 percent happened at parks/playgrounds.
- 2.2 percent occurred in commercial office buildings.
- 1.8 percent took place in government/public buildings.
- 1.7 percent happened in convenience stores.
- 1.7 percent occurred in bars/nightclubs.
- 1.5 percent took place in air/bus/train terminals.
- 1.4 percent happened in department/discount stores.
- 1.4 percent occurred in grocery/supermarkets.

- 1.3 percent took place in drug stores/doctors' offices/hospitals.
- 1.2 percent happened in jails/prisons/penitentiaries/corrections facilities.
- 1.0 percent occurred in service/gas stations.
- 6.4 percent of hate crimes took place in the remaining specified location categories or in multiple locations.
- 11.2 percent happened in other/unknown locations.

Location by bias motivation

Race/ethnicity/ancestry bias

Law enforcement reported 3,963 hate crime incidents motivated by race/ethnicity/ancestry bias in 2019. Of these:

- 25.3 percent occurred in or near residences/homes.
- 20.5 percent took place on highways/roads/alleys/streets/sidewalks.
- 8.9 percent happened at schools/colleges (based on 3 designations).
- 6.2 percent occurred in parking/drop lots/garages.
- 3.5 percent took place in restaurants.
- 2.5 percent happened at parks/playgrounds.
- 2.3 percent occurred in commercial/office buildings.
- 2.2 percent took place in government/public buildings.
- 2.1 percent happened at convenience stores.
- 1.7 percent occurred at air/bus/train terminals.
- 1.7 percent took place at department/discount stores.
- 1.7 percent happened in bars/nightclubs.

- 1.6 percent occurred in grocery/supermarkets.
- 1.6 percent took place in jails/prisons/penitentiaries/corrections facilities.
- 1.4 percent happened in drug stores/doctors' offices/hospitals.
- 1.3 percent occurred at service/gas stations.
- 7.6 percent took place in the remaining specified location categories or in multiple locations.
- 7.8 percent happened in other/unknown locations.

Religious bias

Of the 1,521 reported hate crime incidents that occurred due to a religious bias:

- 17.9 percent occurred in or near residences/homes.
- 16.8 percent took place in churches/synagogues/temples/mosques.
- 11.7 percent happened at schools/colleges (based on 3 designations).
- 9.3 percent occurred on highways/roads/alleys/streets/sidewalks.
- 3.3 percent took place at parks/playgrounds.
- 1.8 percent happened in commercial office buildings.
- 1.8 percent occurred in parking/drop lots/garages.
- 1.6 percent took place in government/public buildings.
- 1.2 percent happened in fields/woods.
- 1.1 percent occurred in convenience stores.
- 1.0 percent took place in drug stores/doctor's offices/hospitals.
- 1.0 percent happened in restaurants.

- 1.0 percent occurred in specialty stores (TV, fur, etc.)
- 7.2 percent took place in the remaining specified location categories.
- 23.4 percent happened in other/unknown locations.

Sexual-orientation bias

Law enforcement reported that bias motivation against a particular sexual orientation prompted 1,195 hate crime incidents in 2019. Of these:

- 28.1 percent occurred in or near residences/homes.
- 22.4 percent took place on highways/roads/alleys/streets/sidewalks.
- 7.3 percent happened at schools/colleges (based on 3 designations).
- 4.4 percent occurred in parking/drop lots/garages.
- 3.8 percent took place in restaurants.
- 3.4 percent happened in bars/nightclubs.
- 2.2 percent occurred at parks/playgrounds.
- 2.2 percent took place in commercial office buildings.
- 1.9 percent happened in air/bus/train terminals.
- 1.6 percent occurred in convenience stores.
- 1.6 percent took place in churches/synagogues/temples/mosques.
- 1.5 percent happened in jails/prisons/penitentiaries/corrections facilities.
- 1.3 percent occurred in government/public buildings.
- 1.0 percent took place in department/discount stores.
- 8.3 percent happened in the remaining specified location categories or in multiple locations.

- 9.1 percent occurred in other/unknown locations.

Gender identity bias

During 2019, 198 hate crimes motivated by gender identity bias were reported. Of these:

- 25.8 percent took place at residences/homes.
- 25.3 percent happened on highways/roads/alleys/streets/sidewalks.
- 6.1 percent occurred at schools/colleges (based on 3 designations).
- 3.5 percent took place in grocery/supermarkets.
- 3.0 percent happened in parking/drop lots/garages.
- 3.0 percent occurred in commercial office buildings.
- 2.5 percent took place in restaurants.
- 2.0 percent happened in convenience stores.
- 2.0 percent occurred in drug stores/doctor's offices/hospitals.
- 1.5 percent took place in department/discount stores.
- 1.5 percent happened at parks/playgrounds.
- 1.5 percent occurred at shelters—mission/homeless.
- 1.5 percent took place in government/public buildings.
- 1.5 percent happened in jails/prisons/penitentiaries/corrections facilities.
- 1.5 percent occurred in specialty stores (TV, fur, etc.)
- 7.6 percent took place in the remaining specified location categories.
- 10.1 percent happened at other/unknown locations.

Disability bias

Bias against individuals with a disability (either physical or mental) motivated 157 reported hate crime incidents in 2019. Of these:

- 48.4 percent occurred in or near residences/homes.
- 14.6 percent took place on highways/roads/alleys/streets/sidewalks.
- 9.6 percent happened in schools/colleges (based on 3 designations).
- 4.5 percent occurred in grocery/supermarkets.
- 2.5 percent took place in parking/drop lots/garages.
- 2.5 percent happened in drug stores/doctor's offices/hospitals.
- 1.9 percent occurred in restaurants.
- 1.9 percent took place in service/gas stations.
- 1.3 percent happened in convenience stores.
- 1.3 percent occurred in government/public buildings.
- 1.3 percent took place in liquor stores.
- 5.7 percent happened in the remaining specified location categories or in multiple locations.
- 4.5 percent occurred in other/unknown locations.

Gender bias

Law enforcement reported 69 gender bias hate crimes in 2019. Of these:

- 29 took place at residences/homes.
- 7 happened at schools/colleges (based on 3 designations).
- 6 occurred on highways/roads/alleys/streets/sidewalks.

- 6 took place in drug stores/doctor's offices/hospitals.
- 2 happened in parking/drop lots/garages.
- 2 occurred in department/discount stores.
- 2 took place in air/bus/train terminals.
- 2 happened in jails/prisons/penitentiaries/corrections facilities.
- 5 occurred in the remaining specified locations.
- 8 took place in other/unknown locations.

Multiple-bias incidents

In 2019, law enforcement agencies reported 211 multiple-bias hate crime incidents. Of these:

- 24.2 percent happened in schools/colleges (based on 3 designations).
- 15.2 percent occurred in or near residences/homes.
- 12.3 percent took place on highways/roads/alleys/streets/sidewalks.
- 8.5 percent happened at parks/playgrounds.
- 6.6 percent occurred in churches/synagogues/temples/mosques.
- 3.8 percent took place in restaurants.
- 3.3 percent happened in commercial office buildings.
- 2.8 percent occurred in air/bus/train terminals.
- 2.4 percent took place in parking/drop lot/garages.
- 1.4 percent happened in bars/nightclubs.
- 1.4 percent occurred in convenience stores.

- 1.4 percent took place in department/discount stores.
- 1.4 percent happened in fields/woods.
- 1.4 percent occurred at shopping malls.
- 8.5 percent took place in the remaining specified location categories.
- 5.2 percent were reported in the other/unknown location category.

ADVISORY MEMORANDUM

To: U.S. Commission on Civil Rights
From: North Dakota Advisory Committee to the U.S. Commission on Civil Rights
Date: September 25, 2019
Subject: Advisory Memorandum on Hate Crimes in North Dakota

The North Dakota State Advisory Committee to the United States Commission on Civil Rights (Committee), in support of the Commission's project on hate crimes, held a briefing on June 19, 2019. The Committee sought to learn about the impact of these crimes statewide as well as the effectiveness of current legislation aimed at preventing hate crimes within North Dakota.

As background, North Dakota has been notorious for high occurrences of hate crimes, ranking second with the most per capita in 2012, 2014, and 2015.[1] While the state reported a five year low of eight bias motivated crimes in 2016, some speculate that this is due in part to a three percent participation rate amongst North Dakota police agencies in the hate crime statistics reporting program.[2] While there was also a relatively low rate in 2017, the Bismarck Tribune reported that seven hate motivated crimes that occurred in Fargo had gone uncounted in the report.[3] Of the fifteen reported in 2017, eight were motivated by the victims' race, five by religion, and two by sexual orientation.[4]

There have been a number of hate related occurrences and crimes in North Dakota that have garnered significant state and national media attention. In 2017, several Somali residents of Fargo were berated by a woman shouting expletives and telling the Somali residents that "we're going to kill every one of you f---ing Muslims."[5] Additional incidents included a woman's hijab being pulled off and a Somali man being beaten in front of his home. This vile rant and other acts initiated a push by activist organizations in the state calling for a change to the state's hate crime laws.[6]

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* The Committee expresses its appreciation to Patrick Williamson, Georgetown Law Student and the Eastern Regional Office Intern, for his work on this advisory memorandum.

[1] Archie Ingersoll, "North Dakota again ranks 2nd in most hate crimes per capita," Nov. 19, 2016, https://www.inforum.com/news/4163100-north-dakota-again-ranks-2nd-most-hate-crimes-capita (noting that North Dakota has held the No. 2 spot since 2012, except in 2013 when it ranked first with 7.1 hate crimes per 100,000 residents).

[2] Dave Olson, "FBI hate crime rate down in ND, but may be missing 7 Fargo cases," Bismarck Tribune, Nov. 18, 2017, https://bismarcktribune.com/news/state-and-regional/fbi-hate-crime-rate-down-in-nd-but-may-be/article_b99b7e2f-a0a0-506d-8b55-a642a94c3797.html.

[3] Ibid.

[4] FBI 2017 Hate Crimes Statistics, https://ucr.fbi.gov/hate-crime/2017/tables/table-12.xls.

[5] KVVR, "Mapleton Woman Fired After Viral Racist Rant, Community Rally Scheduled in Fargo," July 26, 2017. https://www.kvrr.com/2017/07/26/mapleton-woman-fired-viral-racist-rant-community-rally-scheduled-fargo

[6] Hukun Dabar, Briefing before the North Dakota State Advisory Committee to the US. Commission on Civil Rights, Fargo, ND, June 19, 2019, transcript, pp. 26 [hereinafter *Fargo Briefing*].

The Committee invited government officials, advocates, an elected official, and the public to speak to the Committee about hate crimes in North Dakota. This Advisory Memorandum highlights the information the Committee learned at the briefing.

BACKGROUND

A hate crime is criminal behavior targeted at an individual because of his or her real or perceived association with personal characteristics that are protected under civil rights law. The United States Federal Bureau of Investigation (FBI) defines a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, ethnic origin, or sexual orientation."

1. Hate Crimes Nationally

The Civil Rights Act of 1968 (CRA) was a momentous statute that criminalized a new class of hate motivated acts.[7] The CRA sought to address racial violence against civil rights workers and individuals pursuing federally protected activities. The CRA permits federal prosecution of any person who willfully injures, intimidates, or interferes with another person, or attempts to do so, by force because of the victim's race, color, religion, or national origin, provided that the offense occurred while the victim was attempting to engage in a statutorily protected activity.[8] Examples of statutorily protected activities under the CRA include voting; enrolling in or attending any institution of public education; applying for or enjoying employment by any private or public employer; and enjoying the benefits or services of any establishment of public accommodation such as hotels, restaurants, movie theaters, and sports arenas.[9] Importantly, the CRA did not designate as a hate crime offenses that occurred while a victim was not engaged in one of the identified statutorily protected activities. As such, prosecution under the CRA often proved difficult.[10]

While advocacy groups such as the Anti-Defamation League (ADL), the Southern Poverty Law Center (SPLC), and the National Gay and Lesbian Task Force (NGLTF) began compiling data on bias-motivated violence in the 1980s, official federal data was not collected until 1990 with the passage of the Hate Crimes Statistics Act (HCSA).[11] The HCSA requires the Attorney General to collect, as a part of the Uniform Crime Reports (UCR) Program, data "about crimes

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[7] The Civil Rights Act of 1968, 18 U.S.C. 5(b)(2).
[8] *Id.*
[9] *Id.*
[10] For a successful case using 18 U.S.C. § 245, see *United States v. Nelson*, 277 F.3d 164 (2nd Cir. 2002).
[11] Hate Crimes Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (codified at 28 U.S.C. § 534)

that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity."[12] In September 1994, the Violent Crime Control and Law Enforcement Act amended the HCSA to add disabilities as a factor that could be considered as a basis for hate crimes.[13] Although the HCSA mandated hate crimes data collection for five years, the FBI considers the collection of such statistics to be a permanent addition to the UCR Program.[14]

Also included as part of the Violent Crime Control and Enforcement Act of 1994, the Hate Crime Sentencing Enhancement Act[15] (HCSEA) mandated a revision of United States Sentencing Guidelines to provide sentencing enhancements of at least three offense levels for hate crime offenses. The HCSEA included protection for those targeted because of their ethnicity, gender, disability, or sexual orientation, in addition to protecting individuals on the basis of race, color, religion and national origin.[16] Because this sentence enhancement can only be employed when an underlying federal crime is committed, its enactment did not expand the substantive scope of any federal criminal law prohibitions, and it excludes many offenses prosecuted at the state level where hate may be a motive. While the HCSEA did evoke Congressional willingness to address hate crimes, the scope of substantive federal protection remained unchanged.

In 2009, the enactment of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009[17] (HCPA) provided additional authority for federal officials to investigate and prosecute hate crimes. The HCPA closed the loophole in the Civil Rights Act which limited federal hate crime prosecution to cases in which the victim had been engaged in a statutorily protected activity at the time of the crime.[18] The HCPA also authorized the U.S. Department of Justice to investigate and prosecute "certain bias-motivated crimes based on the victim's actual or perceived sexual orientation, gender, gender identity, or disability."[19] Finally, the HCPA provided limited jurisdiction "for federal law enforcement officials to investigate certain bias-motivated crimes in states where current law is inadequate"[20] and provided federal aid and

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12 *Id.*

13 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796-2151 (codified at 42 U.S.C. §§ 13701–14223).

14 28 U.S.C. §534. The Church Arson Prevention Act of July 1996 indefinitely extended the mandate for collection of hate crime statistics, making it a permanent part of the UCR program.

15 Hate Crime Sentencing Enhancement Act, Pub. L. No. 103-322, § 280003, 108 Stat. 1796, 2096 (codified as 28 U.S.C. § 994 .

16 *Id.*

17 Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, §§ 4701-4713, 123 Stat. 2835, 2835-2845) (codified at 18 U.S.C. § 249)

18 18 U.S.C. § 249; *See* Anti-Defamation League. "Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA) What You Need to Know." ADL.org. https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/What-you-need-to-know-about-HCPA.pdf (retrieved September 10, 2019).

19 HCPA: WHAT YOU NEED TO KNOW; *See* 18 U.S.C. § 249(a)(1)-(2).

20 HCPA: WHAT YOU NEED TO KNOW

technical assistance to state, local, and tribal jurisdictions to help them more effectively investigate, prosecute, and prevent hate crimes from occurring.[21]

2. Hate Crimes in North Dakota

North Dakota Law defines a hate crime as any act by force, threat of force, or economic coercion that interferes with a victim exercising his or her right to full and equal enjoyment of a public facility or intimidates a victim from exercising such rights. Specifically, the statute provides:

> A person is guilty of a class B misdemeanor if, whether or not acting under color of law, he, by force, or threat of force or by economic coercion, intentionally:
>
> (1) Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin and because he is or has been exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.
> (2) Injures, intimidates, or interferes with another because of his sex, race, color, religion, or national origin in order to intimidate him or any other person from exercising or attempting to exercise his right to full and equal enjoyment of any facility open to the public.[22]

Offenders may be subject to the class B misdemeanor maximum penalty of thirty days imprisonment, a fine of $1,500, or both.[23] North Dakota does not have legislation authorizing the increased sentence of a defendant who violates § 12.1-14-04. In 2011, several bills were introduced to amend the statutory framework and provide for increased sentences but were ultimately not passed by the legislature.[24]

ASSERTIONS AND THEMES FROM THE JUNE 19, 2019 BRIEFING

North Dakota Hate Crime Law is Inadequate

Panelist Miriam Zeidman stated that hate crime laws, "send that message that no one should be targeted for a crime because of who they are or who they love and that the state recognizes the unique harm that such crime causes."[25] Panelists expressed a concern that the law in North Dakota fails to send that message. While North Dakota has technically enacted hate crime legislation, the governing code links hate crime violations to violations of public accommodation laws. Specifically, North Dakota Century Code § 12.1-14-04 prohibits interfering with a victim's

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[21] 42 U.S.C. § 3716.
[22] N.D. Cent. Code § 12.1-14-04.
[23] N.D. Cent. Code § 12.1-32-01.
[24] Ruth Buffalo, *Fargo Briefing*, transcript, pp. 16-17.
[25] Miriam Zeidman, *Fargo Briefing*, transcript pp. 11.

right to full and equal enjoyment of a public facility based on sex, race, color, religion, or national origin.[26] According to several panelists, this approach to preventing hate crimes is unconventional, ineffective, and in need of reform.[27]

Panelist Miriam Zeidman, the Midwest Civil Rights Counsel for the ADL, said that "[b]oth concepts of addressing hate crime and discrimination in public places are important. But requiring a causal link to public accommodations discrimination renders the hate crime laws less effective."[28] This is due, in part, to the prevalence of hate crimes unconnected to the use of a public facility. For example, panelist Jack Weinstein recounted several personal experiences of discrimination such as people drawing swastikas on his own property,[29] a crime that would likely not fall under the current statute.

North Dakota's hate crime laws were also regarded as providing insufficient protection to the LGBTQ community.[30] Kara Ingelhart, an attorney at Lambda Legal, stated that eleven states recognize sexual orientation as a protected category in their hate crimes laws, nineteen protect both sexual orientation and gender identity, and North Dakota protects neither.[31] She suggested that this "send[s] a message that LGBTQ people are still legitimate targets for violence – which is something that very few Americans would support."[32]

Hate crime laws "send the message that no one should be targeted for a crime because of who they are or who they love and that the state recognizes the unique harm that such crimes cause."[33] Panelists at the July 19, 2019 briefing expressed a sense that the current law in North Dakota insufficiently addresses hate crimes and the tragic impact they can have on a person, family, and community.[34]

A Need for Mandatory Reporting

Panelist Miriam Zeidman stated that "[c]ollection of data is indispensable to counteract bias motivated crimes."[35] Generally, we rely on data to identify patterns and trends that inform solutions to issues we face, both legislative and otherwise. Addressing the prevalence of hate crimes in North Dakota is no different. Miriam Zeidman stated that "data collection raises public awareness of the problem and can spark improvement in the local response to the issue."[36] Zeidman also believes that hate crime laws are most effective when police know how to identify,

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[26] N.D. Cent. Code § 12.1-14-04.
[27] *See;* Miriam Zeidman, *Fargo Briefing*, transcript, p. 6; Barry Nelson, *Fargo Briefing*, transcript, p. 11; Kara Ingelhart, *Fargo Briefing*, transcript pp. 20-21;
[28] Miriam Zeidman, *Fargo Briefing*, transcript, p. 7.
[29] Jack Weinstein, *Fargo Briefing*, transcript, p. 28.
[30] *See* Kara Ingelhart, *Fargo Briefing*, transcript, p. 20.
[31] Ibid.
[32] Ibid.,p. 21.
[33] Miriam Zeidman, *Fargo Briefing*, transcript, p. 11.
[34] *See* Ibid.,p. 6.
[35] Miriam Zeidman, *Fargo Briefing*, transcript, p. 9.
[36] Ibid., p. 10.

respond to, and report these sorts of crimes.[37] Currently, North Dakota law lacks a provision to require mandatory reporting and data collection.

This mandatory reporting should lead to better coordination to between local, state and federal agencies to address hate crimes both to prosecute the hate crimes but also to provide victim support. Both Barry Nelson and Hukun Dabar personally worked with victims of bias motivated hate crimes and found that they were not supported throughout the legal process. [38]

Recognizing and including important demographics, such as the LGBTQ community, in hate crime reporting laws is crucial to ensure the veracity and integrity of collected data. While the majority of hate crimes in the state are motivated by the perpetrators racial bias, sexual orientation and gender identity are not included in the current statutory framework.[39] Failing to include this protected category may lead to the under-identification of hate crimes.[40] With a nationwide fifteen percent of bias motivated crimes being motivated by sexual orientation bias, Panelist Kara Ingelhart believes that current information suggests a higher rate of anti-LGBTQ motivated hate crimes than are statistically known in North Dakota.[41]

Public Education

Public education, especially pertaining to available victim resources, is an important part of a comprehensive effort to combat hate crimes. Although it is important to enact legislation to codify a zero tolerance stance on hate crimes, aiding victims in reporting and dealing with these crimes is also of great concern in North Dakota.[42] As noted previously, North Dakota technically has a hate crime law; however, panelists expressed a concern that those laws are "so obtuse that it's not identified as such by people who are potentially victims…"[43] A lack of knowledge of and access to resources and recourse available to victims might make them less likely to report occurrences of hate crimes,[44] especially when coupled with the fear experienced in conjunction with being victimized. Jack Weinstein, while recounting his experience reporting bias motivated crimes, noted that while the reporting process was difficult for him, it would "be impossible for those without the voice, security, education, or social capital that I have."[45]

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[37] Ibid.,p. 9.
[38] Barry Nelson, *Fargo Briefing*, transcript, p. 13-14, Hukun Dabar, Fargo Briefing, transcript, p. 26
[39] Kara Ingelhart, *Fargo Briefing*, transcript, p. 23.
[40] Ibid.
[41] Ibid.
[42] *See* Barry Nelson, *Fargo Briefing*, transcript, p. 13; Kara Ingelhart, *Fargo Briefing*, transcript, p. 23; Jack Russell Weinstein, *Fargo Briefing*, transcript, p. 31.
[43] Barry Nelson, *Fargo Briefing*, transcript, p. 12.
[44] *See* Ruth Buffalo, *Fargo Briefing*, transcript, p. 17; Barry Nelson, *Fargo Briefing*, transcript, p. 13; Jack Weinstein, *Fargo Briefing*, transcript, p. 31.
[45] Jack Weinstein, *Fargo Briefing*, transcript, p. 32.

Latisha Mazzuro-Homes emphasized that people need to know what to do when you are a victim of a hate crime in simple and plain language in order to encourage people to report crime. This is particularly important to reach community members if their first language is not English.[46]

Panelist Ruth Buffalo, a state representative, noted that one challenge that we face in North Dakota is that people don't really understand or grasp the fact that their behavior is bias motivated. Recently, there was a case where an individual was taken out of a sweat lodge -during a religious practice -here in Fargo by the authorities. "Should that be a hate crime by pulling somebody out of a sweat lodge -- which is considered a church? They're practicing their civil rights by exercising their religious freedom."[47]

She noted, "[p]eople are afraid to speak out," which is one of the many reasons hate crimes go unreported. One method panelists prescribed for this issue is to educate and inform victims that services and resources are available to them.[48]

A Need for Mandatory Training

The strongest bias motivated crime laws in the country include mandatory bias motivated crime training for law enforcement officers. In order for bias motivated crime laws to be most effective, the first responders must be trained regarding identifying, responding to, and reporting such crimes in addition to working with victims in their communities. [49]

Economic Consequences of Insufficient Hate Crime Laws

Although the impact of the victim, the victim's family, and their community are of the utmost importance, Panelist Kara Ingelhart discussed the economic impact that lackluster hate crimes laws can have on the entire community. Data shows that minority communities, specifically the LGBTQ community, are more likely to reside in regions where there are more inclusive statutory protections for minority communities.[50] Further, evidence suggests that cis-gendered and heterosexual persons also gravitate towards and relocate to inclusive, socially diverse regions.[51] Further, corporate entities have been shown to seek out jurisdictions with more protections for minority populations for recruiting purposes because of the diversity in these regions.[52]

Kara Ingelhart asserted that, in addition to discouraging diversity by disincentivizing minority communities from settling in a particular region, having poor or no protections in place for these communities may also pose economic harm to the particular jurisdiction.[53]

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[46] Latisha Mazzuro-Holmes, *Fargo Briefing*, transcript, p. 34.
[47] *See* Ruth Buffalo, *Fargo Briefing,* transcript, p. 20.
[48] *See* Kirsten Dauphinais, *Fargo Briefing*, transcript, p. 48.
[49] *See* Miriam Zeidman, *Fargo Briefing*, transcript, p. 9.
[50] *See* Kara Ingelhart, *Fargo Briefing*, transcript, p. 23.
[51] Ibid.
[52] Ibid.
[53] Ibid., p. 24.

CONCLUSION

The Committee submits this Advisory Memorandum in support of the Commission's 2019 report on hate crimes. Based on the briefing and the testimony received, the Committee may consider taking additional steps and examining the topic in more depth.

2021 SENATE JUDICIARY

HB 1345

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1345
3/9/2021

Relating to the licensing of detection of deception examiners and to repeal sections 43-31-07.1 and 43-31-16 of the North Dakota Century Code, relating to internship licenses and exemptions from testing requirements of detection of deception examiners.

Chair D Larson called Hearing to order, all senators are present: **Myrdal, Luick, Dwyer, Bakke, Heitkamp, Fors, and Larson**. [8:59]

Discussion Topics:

- Polygraph exams and explanation of Amendment
- Standardizing licensing requirements

Representative Heinert introduce HB 1345 & testified in favor [8:59]
Mark Nickel, Polygraph examiner, testified in favor [9:01]

Senator Luick [9:30] moved Amendment 21.0813.02001
Senator Dwyer [9:30] seconded the motion

The motion passes 7-0-0

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick [9:30] moved to DO PASS HB 1345 as amended
Senator Dwyer [9:30] seconded the motion

The motion passes 7-0-0
Senator Dwyer [9:32] will carry

Hearing adjourned [9:32]

Jamal Omar, Committee Clerk

Senators	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

21.0813.02001
Title.03000

Prepared by the Legislative Council staff for
Representative Heinert
March 8, 2021

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1345

Page 1, line 10, overstrike "A person" and insert immediately thereafter "An individual"

Page 1, line 13, remove the underscored colon

Page 1, line 14, replace "a. Pled" with "pled"

Page 1, line 14, remove the second "or"

Page 1, line 14, after the second underscored comma insert "or been released from incarceration or probation for, violation of a law of the United States which is a felony offense or any state or local ordinance that is"

Page 1, line 14, remove "in a"

Page 1, remove lines 15 and 16

Page 1, line 17, remove "b. Been released from incarceration or probation"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1345, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1345 was placed on the Sixth order on the calendar.

Page 1, line 10, overstrike "A person" and insert immediately thereafter "An individual"

Page 1, line 13, remove the underscored colon

Page 1, line 14, replace "a. Pled" with "pled"

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Renumber accordingly