

## **Intent (*Mens Rea*) Requirements for Hate Crimes in Various States**

### **California**

The *Mens Rea* for hate crimes in California, only requires that the conduct be “committed in whole or in part, because of” the victim’s membership in a qualifying group. Cal. Penal Code § 422.55(a). This statute lays out California’s *Mens Rea* for hate crimes, defining a hate crime as: a criminal act committed, ***in whole or in part, because of one or more of the following actual or perceived characteristics of the victim***: (1) [d]isability[;] (2) [g]ender[;] (3) [n]ationality[;] (4) [r]ace or ethnicity[;] (5) [r]eligion[;] (6) [s]exual orientation[; or] (7) [a]ssociation with a person or group with one or more of these actual or perceived characteristics. *Id.* (emphasis added); *see also id.* at § 422.6(a), (b) (bias crime of interference with civil rights applies where certain conduct was undertaken “***willfully***” or “***knowingly***” and “***in whole or in part because of one or more of the actual or perceived characteristics of the victim....***”) (emphasis added).

### **Colorado**

Hate crimes in Colorado are known as bias-motivated crimes, their *Mens Rea* requires: ***(1) “the intent to intimidate or harass another”; (2) “in whole or in part because of” the victim’s protected characteristics; and (3) an accused who acted “knowingly....”*** Colo. Rev. Stat. § 18-9-121(2) (emphasis added).

### **District of Columbia (Washington DC)**

The *Mens Rea* for hate crimes in Washington DC requires solely that the conduct “demonstrate[d] [the] accused’s prejudice based on” the victim’s protected characteristics. D.C. Code § 22-3701(1A). Washington DC’s *Mens Rea* for hate crimes is located in its definition of “bias-related crime,” which is stated as follows:

a designated act 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, disability, matriculation, or political affiliation of a victim of the subject designated act. ***A designated act need not solely be based on or because of an accused’s prejudice.*** *Id.* (emphasis added).

### **Florida**

The *Mens Rea* for hate crimes in Florida simply requires that the criminal conduct “***evidences prejudice based on***” the protected characteristic of the victim. Fla. Stat. § 775.085(1)(a), (3) (emphasis added) (the “essential element” is evidence demonstrating “that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within” a protected class).

### **Massachusetts**

The *Mens Rea* for hate crimes in Massachusetts requires that a criminal act was “coupled with overt actions” “motivated at least in part by... prejudice” constituting “bigotry and bias” towards a person from a qualifying group. Mass. Gen. Laws ch. 22C, § 32. This statute encompasses the Massachusetts’ *Mens Rea* for hate crimes by defining them as:

any criminal act coupled with overt actions *motivated by bigotry and bias* including, but not limited to, a threatened, attempted or completed overt act *motivated at least in part* by racial, religious, ethnic, handicap, gender, gender identity or sexual orientation *prejudice*, or which otherwise deprives another person of his constitutional rights by threats, intimidation or coercion, or which seek to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation. *Id.* (emphasis added); *see also id.* at ch., 265, § 39(a) (bias crime of assault or battery for purpose of intimidation applies to “[w]hoever commits an assault or a battery upon a person or damages the real or personal property of a person *with the intent to intimidate such person because of* such person’s” membership in a qualifying group) (emphasis added).

### New Jersey

Hate crimes in New Jersey are classified as bias intimidation crimes, their *Mens Rea* requires, depending on the crime: (1) “*purpose,*” “*knowing,*” or *specific targeting*, (2) “*because of*” the victim’s protected characteristic. N.J. Stat. § 2C:16-1(a)(1), (2), (3) (emphasis added).

### New York

The *Mens Rea* of New York’s hate crime laws focuses on conduct that is: (1) intentional and (2) committed “in whole or in substantial part because of a belief or perception” regarding the victim’s membership in a qualifying group. N.Y. Penal Law § 485.05(1). New York’s *Mens Rea* for hate crimes is contained in N.Y. Penal Law § 485.05, which defines a hate crime as committing an offense while:

(a) *intentionally* select[ing] the person against whom the offense is committed or intended to be committed *in whole or in substantial part because of a belief or perception* regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or (b) *intentionally* commit[ting] the act or acts constituting the offense *in whole or in substantial part because of a belief or perception* regarding the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct. *Id.* (emphasis added); *see also id.* at § 240.31 (allowing for a charge of first-degree aggravated harassment where a person has engaged in certain conduct, such as cross-burning, “*with intent to harass, annoy, threaten or alarm* another person, *because of a belief or perception* regarding [the victim’s membership in a qualifying group], regardless of whether the belief or perception is correct....” (emphasis added).

### Oregon

The *Mens Rea* required for hate crimes in Oregon differs between first-degree and second-degree offenses, but generally focuses on conduct that is: (1) intentional and (2) committed because the actor believes the victim possesses certain characteristics. A first-degree offense, depending on the nature of the conduct, can apply whether the accused acted “[i]ntentionally, knowingly, [ ] recklessly,” or “with criminal negligence” “because of the person’s perception of the other person’s” characteristics. Or. Rev. Stat. § 166.165(1)(a), (b), (c) (emphasis added). Whereas a second-degree offense, depending on the conduct, is applicable

where one acted “*with [] intent*” or “*intentionally*” “*because of the person’s perception*” of the other person’s” characteristics. *Id.* at § 166.155(1)(a), (b), (c) (emphasis added).

### **Texas**

In Texas, a hate crime enhancement takes place through a finding that an offense was committed because of bias or prejudice, the *Mens Rea* of which requires that the defendant: (1) “*intentionally* selected” the victim or victim’s property, (2) “*because of... bias or prejudice*” against a protected group or status. Tex. Code Crim. Proc. art. 42.014(a) (emphasis added); Tex. Penal Code Ann. § 12.47.