

# Report of the Committee on General Welfare

## Bias-Related Violence

Local Law 11  
January 6, 1993

Int. No. 558-B

*To approve and adopt, as amended, a local law to amend the administrative code of the city of New York, in relation to the remedies for incidents of bias-related violence and harassment in the human rights law.*

This proposed local law would amend Title 8, the Human Rights Law, to provide for a private right of action for victims of bias related violence or harassment. In particular, aggrieved persons would be authorized to bring a private action, in a court of competent jurisdiction or alternatively to file a complaint with the New York City Human Rights Commission, against the perpetrator of such conduct and any damages awarded would be payable to the injured party. Under the statutory scheme presently in place, such actions may be brought only by the Corporation Counsel and no damages are awarded. Instead, the perpetrator is fined a civil penalty which is payable to the city's general fund.

Conduct actionable under Title 8 [see: sections 8-602(a) and 8-603 (a)] includes interference by threats, intimidation or coercion, or attempts to interfere by threats, intimidation or coercion, with the exercise or enjoyment of rights secured by the Constitutions or laws of the United States or of the State of New York or local laws of the City of New York because of the person's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with the person, marital status, disability or alienage or citizenship status.

Conduct may also be actionable if the transgression is against real or personal property [see: section 8-603(b)]. Knowingly defacing, damaging or destroying the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured by the Constitutions or laws of the United States or of the State of New York or local laws of the City of New York because of the person's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, or whether children are, may or would be residing with the person, disability or alienage or citizenship status.

It is important to note that the target of the discriminatory harassment provisions of the Human Rights Law is conduct, not speech. Specifically, the law prohibits conduct that interferes or attempts to interfere with a person's exercise of lawful rights. Such conduct may be speech in the form of "threats, intimidation or coercion," but as the Supreme Court explained in *R.A.V. v. City of St. Paul, Minnesota*, 112 S.Ct. 2538 (1992), the First Amendment does not prohibit regulation of such speech because the speech is only, "swept up incidentally within the reach of a statute directed at conduct rather than speech."

Some examples of conduct that has recently occurred and is prohibited under Title 8 and proposed to be made actionable pursuant to this local law are:

1. painting of swastikas on synagogues,
2. attacks on people for being in "the wrong neighborhood,
3. spray painting children's faces white,

4. vandalizing a person's home to discourage him or her from moving into the neighborhood, and
5. cemetery desecration.

Proposed Int. No.558-B would also amend chapter six of title eight of the code to clarify what constitutes discriminatory harassment by adding the phrase "and such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's" before the list of protected classification. This phrase is added so that the discriminatory harassment provisions of chapter six conform with the interpretation given to provisions concerning unlawful discrimination by the Commission on Human Rights and the courts. The Commission and the courts have interpreted provisions regarding unlawful discrimination to cover incidents in which the given classification, race, for example, is only part of the motive for the behavior. The addition of this phrase is in no way intended to imply that in other areas of the Human Rights Law where the phrase has not been added, such as the areas of discriminatory practices, the given classification must be the sole motive for the behavior.

*UPDATE:* On December 16,1992, the Committee on General Welfare adopted Int. No.558-A as amended. On January 6 1993, at the request of Corporation Counsel, the Committee on General Welfare will consider further amendments to this proposed local law. The proposed amendment would exempt from the provisions of this proposed local law police officers acting within the scope of their employment. This amendment was requested because Police Officers are already under the jurisdiction of both the Police Department and the Civilian Complaint Review Board and, therefore, this proposed local law would create the possibility of duplicative reviews and punishment for the same offense.

Accordingly, your Committee recommends its adoption as amended.