



## **Law You Can Use: Consumer Information Column**

### **Ohio law allows increased penalties for hate crimes**

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#### **Defining hate crimes**

Ohio law broadly defines hate crimes as criminal acts motivated by prejudice or intolerance and directed toward a member of a gender, racial, religious or social group. Ohio law does not, however, consider hate crimes as stand-alone offenses. Rather, they are considered as factors in determining penalties or sentences for other crimes.

The only Ohio statute that speaks directly to hate crimes is the “ethnic intimidation” provision under the Ohio Revised Code, which prohibits commission of the misdemeanor crimes of aggravated menacing, menacing, criminal damaging, criminal mischief and some types of telephone harassment, when done “by reason of” the race, color, religion or national origin of another person or group of persons. The statute does not currently include any specific reference to crimes motivated by prejudice or intolerance with respect to sexual orientation or gender identification.

#### **Hate crime penalties**

Penalties for hate crimes vary according to the criminal acts with which they are associated. Ohio law provides that the “hate” aspect of a crime is punishable either through a “penalty enhancement” or as a “discretionary sentencing factor.” Penalties vary depending on the underlying criminal act.

When the penalty for a misdemeanor offense specifically named in the ethnic intimidation statute (such as menacing or criminal damaging) is “enhanced,” the potential penalty is increased. In an ethnic intimidation prosecution, the motivation behind the specific underlying offense becomes an element of the crime. This means that a judge or jury must find, beyond a reasonable doubt, that the criminal act was motivated by race, color, religion or national origin of another person or group of persons. Once this additional finding is made, the offense is elevated into a higher-level misdemeanor or felony.

If, for example, someone is charged with a first-degree misdemeanor offense of telephone harassment, which carries a possible penalty of up to six months in jail, that offense may be enhanced to become a felony of the fifth degree if the offender is also determined to be guilty of “ethnic intimidation.” This higher-degree offense will carry the greater possible penalty of one year in prison.

In addition to allowing for penalty enhancement when certain offenses are found to be hate-motivated, Ohio law also allows judges to consider the hate crime aspect of an offense when imposing sanctions in felony cases.

Ohio judges must follow mandatory minimums, statutory maximums, presumptions and sentencing factors when sentencing offenders, especially in felony cases. When applying these



guidelines, Ohio law allows judges to consider “hate” circumstances in sentencing if, “in committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation or religion.” At the sentencing hearing, the judge has broad discretion to decide how much consideration, if any, will be given to “hate crime factors.”

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### **About the Author**

Attorney Terry K. Sherman is licensed to practice criminal defense law in the state and federal courts of Ohio and has been in private criminal defense practice since 1971. He is a frequent lecturer at the Ohio State Bar Association on the topics of opening statements, direct and cross examination and closing arguments. Mr. Sherman received his undergraduate education at Ohio University and his law degree cum laude from The Ohio State University College of Law.

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