Report to the Legislature

Pursuant to Minn. Stat. § 363A.06, subd. 20

February 1, 2025

DEPARTMENT OF HUMAN RIGHTS

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Summary

The Minnesota Department of Human Rights submits this legislative report pursuant to Minn. Stat. § 363A.06, subd. 20. The Minnesota Department of Human Rights is statutorily tasked with enforcing the Minnesota Human Rights Act. Minn. Stat. § 363A, *et seq*.[1] The purpose of this legislative report is to provide recommendations to the Minnesota legislature about its civil rights laws.

Civil rights are rights guaranteed by the government and are designed to protect individuals against unlawful discrimination in civil society. Every Minnesotan is protected by, and benefits from, civil rights laws.

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There are *criminal* and also *civil* elements to certain civil rights laws. At both the state and federal level, these laws include protections from unlawful discrimination as well as specific criminal provisions for crimes motivated by hate or bias. This report focuses specifically on both civil and criminal civil rights laws in Minnesota.[2]

'Criminal' civil rights laws in Minnesota: In Minnesota, there are no statutes named or referencing the term "hate crimes." Instead, embedded throughout Minn. Stat. § 609, Minnesota law identifies a number of bias-motivated crimes that are unlawful. These criminal offenses require that when there is a criminal offense where a motivating factor to the criminal act is bias against an actual or perceived race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, age, national origin, or disability.[3]

'Civil' civil rights laws in Minnesota: Minnesota's civil rights laws are primarily codified in the Minnesota's Human Rights Act, and responsibilities to prevent discrimination are embedded throughout many Minnesota statutes. The Minnesota Human Rights Act states, "The

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[1] This report is a legislative report under Minn. Stat. § 363A.06, subd. 1(20), and not the result of an investigation and determination of an alleged charge of discrimination under Minn. Stat. § 363A.06, subd. 1(8). Therefore, there is no private, confidential non-investigative data on any individual governed by the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 and the Minnesota Human Rights Act, collected or included in this report.

[2] This report is not about "hate speech." Hating, disliking, or having bias against someone or a group of people, on its own, is not a violation of any civil rights law. Discussions around how and when speech may be regulated, from commercial speech, obscenity, and speech that is used for inciting imminent lawless action, is not the topic of this report.

[3] Minnesota also identifies bias-motivated crimes where a motivating factor to the criminal act is because of the victim's actual or perceived *association* with another person or group of a certain actual or perceived race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, age, national origin, or disability.

opportunity to obtain employment, housing, and other real estate, and full and equal utilization of public accommodations, public services, and educational institutions without such discrimination as is prohibited by this chapter is hereby recognized as and declared to be a civil right." The passage of this law demonstrates Minnesota legislators' focus on preventing unlawful discrimination – or preventing actions where an adverse action is taken against an individual or a group of individuals because of one or more of the following: race, color, creed, religion, national origin, sex, gender identity, marital statutes, disability, public assistance status, age, sexual orientation, and familial status.

No single report could provide a comprehensive assessment of all civil rights laws, how they developed over time, and an accurate overview and assessment of the many ways Minnesota legislators are actively supporting safety programs to reduce overall violence and foster long-term community healing and resilience. While civil rights laws are both civil and criminal, the majority of this report is focused on what community members and legislators were primarily concerned with passing this policy proposal – understanding how to better address potential bias-motivated crimes. The goal for this legislative report, therefore, is to offer Minnesota legislators recommendations for consideration on the following key findings.

Key Findings

1. **Civil rights laws are foundational to Minnesota.**

2. **Minnesota legislators may benefit from comprehensive information around the legal ecosystem of bias-motivated crimes.**

3. **To promote the safety and wellbeing of every Minnesotan, it may be beneficial to assess the impact of preventative, responsive, and restorative programs on communities that experience bias-motivated crimes**

Findings and Potential Actions

1. Civil rights laws are foundational to the State of Minnesota

On May 11, 1858, Minnesota legislators first demonstrated their commitment to civil rights by ratifying the Minnesota Constitution and prohibiting the practice of slavery in Minnesota. This was nearly a decade before the 13th Amendment to the U.S. Constitution was passed and ratified in 1865.

Minnesota legislators of both parties have a long history of working to create a Minnesota free from civil rights violations. Some examples of this commitment include:

- In 1885, Minnesota legislators passed the Minnesota Equal Accommodations Act, making it unlawful for hotels, restaurants, bars, and other public places to deny Black Minnesotans access to public places such as hotels, restaurants, and bars.

- In 1921, Minnesota legislators passed Minnesota's 1921 anti-lynching laws following the brutal beating and lynching of three Black men, Elias Clayton, Elmer Jackson, and Isaac McGhie, by a mob in Duluth.[4]

- In 1955, Minnesota legislators passed the 1955 Fair Employment Peace Act, outlawing unlawful discrimination in employment.[5]

- In 1989, Minnesota legislators first passed criminal statutes outlawing bias-motivated crimes.

    - Aware of the many violent crimes occurring against gay Minnesotans because of their sexual orientation,[6] Minnesota legislators defined bias-motivated crimes to include crimes motivated because of a victim's sexual orientation. Minnesota legislators included this twenty years before the federal government would do

[4] As an example of how laws change or merge over time, Minnesota's anti-lynching law would eventually be repealed. The Emmett Till Anti-Lynching Bill, a federal anti-lynching law, was passed in 2022.
[5] This followed Minneapolis passing the first municipal fair employment discrimination law in the country in 1948.
[6] As an example, Terry Knudson was murdered on June 6, 1979, in Minneapolis by three men who decided they wanted to "rob a fag." They cornered Terry and beat him to death with a metal pipe. https://www.findagrave.com/memorial/136924474/terrill_dale-knudsen

so as part of the 2009 Matthew Shepard & James Byrd Jr. Hate Crimes Prevention Act.[7]

- Minnesota legislators also defined bias-motivated crimes to include crimes motivated by disability status. Again, at the federal level, disability status would not be included in federal hate crime legislation until the 2009 Matthew Shepard & James Byrd Jr. Hate Crimes Prevention Act.

Minnesota's Bias-Motivated Crimes

Criminal Code – Minn. Stat. § 609:

- § 609.2231 subd. 4 Assaults Motivated by Bias
- § 609.2233 Felony Assault Motivated by Bias; Increased Statutory Maximum Sentence
- § 609.595 subd. 1(a) Criminal Damage to Property in the Second Degree
- § 609.595 subd. 2(b)(2) Criminal Damage to Property in the Third Degree
- § 609.749 subd. 3 Aggravated Violations

Crimes; Expungement; Victims – Minn. Stat. § 611A:

- § 611A.79 Civil Damages for Bias Offenses

Criminal Procedure; Peace Officers; Privacy of Communications – Minn. Stat. § 626:

- § 626.5531 Reporting of Crimes Motivated by Bias
- § 626.8451 subd. 1 Training Course; Crimes Motivated by Bias.
- § 626.8469 subd. 1 In-service Training Required.

Foundational to the fabric of Minnesota is that Minnesota legislators have offered sustained bi-partisan support of civil rights laws throughout Minnesota history.

[7] Matthew Shepard & James Byrd Jr. were both brutally murdered in 1998. James Byrd, a Black man, was murdered by white supremacists, who tied Byrd to the back of their truck and dragged him down the street before leaving what was left of his body in front of a Black church. Matthew Shepard, a gay man, was beaten, tortured, and left to die while tied to a fence.

Recommendations

1. **Continued support of strong civil rights laws from the Minnesota legislature is critical.** Minnesota already benefits from strong civil rights laws – both civil and criminal civil rights laws. These legal systems incorporate legal and procedural safeguards to ensure that parties have reasonable notice to civil and criminal actions, parties have the opportunity to present their case, decisions are supported by clear reasoning based on legal standards of proof, and that parties have the opportunity to appeal. Minnesota legislators should continue to strongly support civil rights laws.

2. **Minnesota legislators could consider reorganizing and recodifying the various bias-motivated crimes into a series of successive subdivisions to promote better clarity and impact.** Minnesota's statutory provisions identifying bias-motivated crimes are embedded throughout a variety of non-successive subdivisions throughout Minn. Stat. § 609, making it challenging for stakeholders to identify all the crimes currently in statute. Additional statutory requirements related to civil damages for bias-motivated offenses, reporting of potential bias motivated crimes, and training are also located in different subdivisions throughout Minn. Stat. §§ 611A and 626.

3. **Legislators should continue to support the entire continuum of civil rights enforcement systems.** Strong administrative agencies, court systems, and prosecution offices, as well as well-resourced civil legal services and public defenders, all play an essential role in Minnesota's civil rights laws. These entities and systems are critical for protecting Minnesotans from unfounded charges of discrimination or bias-motived crimes. They are also critical for holding individuals accountable that engage in unlawful discrimination or bias-motivated crimes, and for preventing these unlawful acts from occurring again.

Foundational Civil Rights Laws

Below are key civil rights provisions of the United States and Minnesota Constitutions as well as foundational state and federal civil rights laws.

- Minnesota's Constitution adopted 1857 (Abolishes enslavement in Minnesota)
- Thirteenth Amendment 1864 (Abolishes enslavement in the United States)
- Fourteenth Amendment 1868 (Equal Protection Clause)
- Fifteenth Amendment 1870 (Black men guaranteed the right to vote)
- The Enforcement Act of 1871 (aka: The Ku Klux Klan Act and the Civil Rights Act of 1871)
- Minnesota's Constitution amended 1868 (Black men guaranteed right to vote)
- Minnesota's Equal Accommodations Act of 1885
- Nineteenth Amendment 1920 (women guaranteed right to vote)
- Minnesota's Anti-Lynching Law of 1921
- Minnesota's Fair Employment Practices Act of 1955
- Civil Rights Act of 1964
- Voting Rights Act of 1965
- Minnesota's 1967 Act Against Discrimination
- Fair Housing Act 1968
- Minnesota Human Rights Act of 1973
- Minnesota's 1990 criminal law statute embed bias-motivated crimes
- Americans with Disabilities Act of 1990
- Violent Crime Control & Law Enforcement Act of 1994 (includes Violence Against Woman (VAWA))
- Matthew Shepard & James Byrd Jr. Hate Crimes Prevention Act of 2009
- COVID Anti-Hate Crimes Act of 2021
- Emmett Till Antilynching Act of 2022

There are also substantial rules, guidance memoranda, and court cases providing legal interpretations that are essential to fully understanding the scope of civil rights laws.

2. Minnesota legislators may benefit from comprehensive information around the legal ecosystem of bias-motivated crimes

In 1988, Minnesota legislators required all peace officer agencies to submit data related to crimes that were potentially motivated by bias. In compliance with this requirement, each law enforcement entity across Minnesota submits its information to the Minnesota Bureau of Criminal Apprehension (BCA) at the Minnesota Department of Public Safety.[8]

The BCA issues an annual Minnesota Uniform Crime Report, detailing criminal activity occurring across Minnesota. Every year, several pages are of the report are dedicated to potential bias-motivated crimes.

Minnesota Legislators Require Data (Minn. Stat. § 626.5531)

Reporting of crimes motivated by bias. *A peace officer must report to the head of the officer's department every violation of chapter 609 or a local criminal ordinance* ***if the officer has reason to believe, or if the victim alleges****, that the act was committed* ***in whole or in substantial part****:*

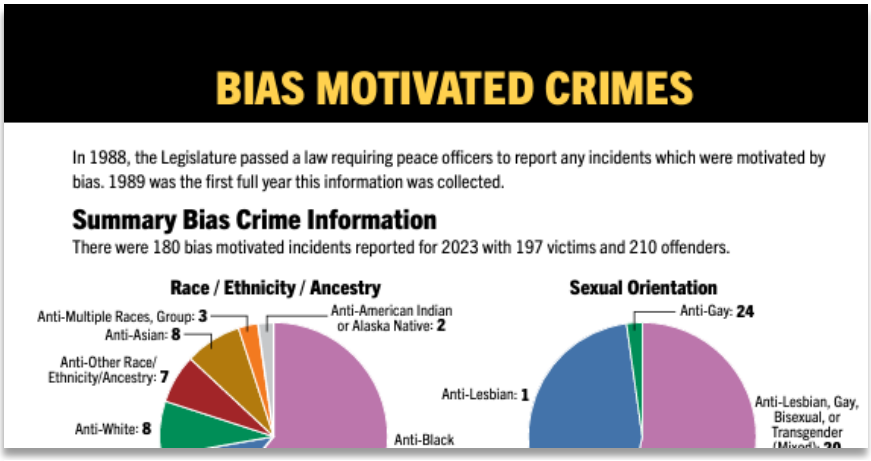
1. ***because of the victim's actual or perceived*** *race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, age, national origin, or disability as defined in section 363A.03, or*

2. ***because of the victim's actual or perceived association with another person or group of a certain actual or perceived race****…*

[8] The Federal Bureau of investigation (FBI) also tracks and reports annually on potential bias-motivated crimes from across the country. These reports from the FBI are located on the FBI's Crime Data Explorer. Minnesota submits its data to the FBI.

Law enforcement entities are correctly reporting what they are asked to report, *potentially* bias-motivated crimes.

As a result, the Uniform Crime Report refers to these potentially bias-motivated crimes as "incidents."[9]



A snapshot of the bias-motivated incidents data from the 2024 Minnesota Uniform Crime Report

This data set is critical for legislators to understand the potential frequency and impact of bias-motivated crimes across Minnesota. However, stakeholders identify that this one data set alone leave some remaining questions unanswered.

Additional data is necessary to understand if there has been a change in prosecution or conviction rates

In 2015, a Minnesotan was sitting with her family at a restaurant in Coon Rapids, Minnesota, when another customer attacked her by hitting her with a glass mug across the face because the customer was upset that she was not speaking English. The woman suffered deep cuts to her face, requiring 17 stiches. After this attack, she struggled to leave her house, no longer feeling safe.

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[9] There is no statutory definition for a "bias-motivated incident;" however, the language in Minn. Stat. § 626.5531 suggests that a bias-motivated incident occurs when an officer has reason to believe, or a victim alleges, that that the act was committed in whole or substantial part because of a prohibited reason. There is no agreed-upon definition of what is otherwise considered a "bias-motivated incident," a "civil rights incident," or a "hate incident." All phrases are often used interchangeably. In fact, several organizations that report such incidents use various methodology for reporting. For example, some organizations will not include online activity in quantitative metrics tracking the frequency of such incidents, while other organizations do include online activity. Similarly, some organizations do not include workplace discrimination in their analysis, while other organizations do include these incidents. And while some organizations conduct a modest investigation before determining that an incident is appropriately included in the overall dataset, other organizations rely only on victim reports without completing any additional credibility determinations.

In discussing this case, the prosecutor's office stated, "We know that this was a crime that appears to be based on hatred and bias."[10]

By 2015, bias-motivated crimes had been outlawed in Minnesota for 25 years. In this case, victim and community groups were actively calling for hate crime charges in addition to assault charges.

And yet, the prosecutor's office made the intentional decision to not bring the additional bias-motivated charge. The prosecutor's office reported that it made this decision because the underlying criminal charge for assault would result in a greater sentence, and they did not want to risk a lower sentence by bringing a lower-level bias-motivated charge.

As a result, Minnesota legislators, again with bi-partisan support, passed Minn. Stat. § 609.2233, providing that a person who commits a bias-motivated assault, as defined by statute, "is subject to a statutory maximum penalty of 25 percent longer than the maximum penalty otherwise applicable." The woman who was attacked at the restaurant testified in support of this legislation so that if something similar were to happen again, the person responsible would face additional penalties because of the crime was motivated by bias.

Even after the passage of this law, additional review and assessment of quality data is required in order to know whether Minn. Stat. § 609.2233 resulted in its intended outcome. Insufficient data is publicly available to know whether there has been an increase in prosecutions with bias-motivated charges, or whether there has been a change in conviction rates for these crimes.

Community groups and legislators did not believe this additional felony provision resulted in meaningful change. In fact, following the 2017 white supremacists rally in Charlottesville, Virginia, and the attempted fire-bombing of a mosque in Bloomington Minnesota, a group of community organizations created the Communities Combating Hate Coalition and proposed changes around hate crimes and community support to address those crimes.

The bill language and details changed over time, but the first three of the following objectives where ultimately achieved in the 2023 legislative session:

1. **Expand criminal penalties:** Clarify and expand what types of violent offenses may be charged as hate crimes and increase penalties for bias-motivated property damages.

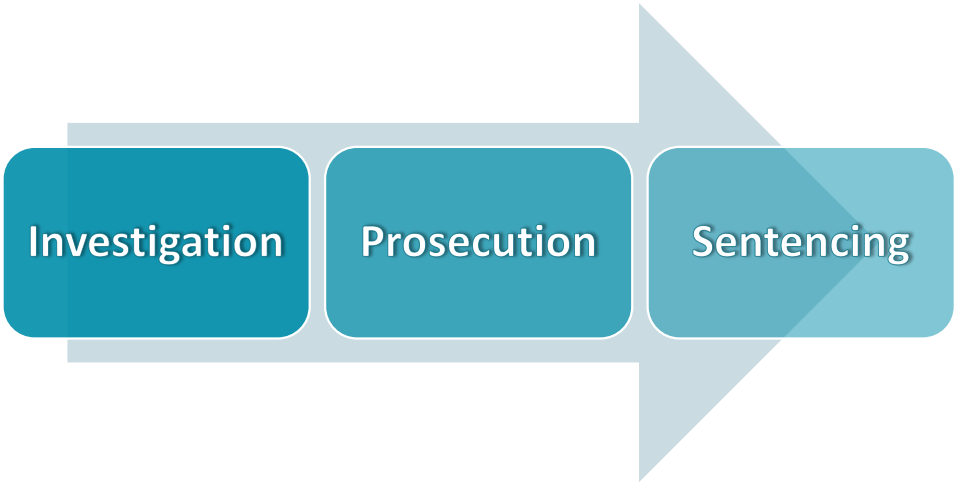
[10] Woman Accused in Applebee's Assault Won't Be Charged with Hate Crime." Bring Me the News, 12 Nov. 2015, https://bringmethenews.com/news/woman-accused-in-applebees-assault-wont-be-charged-with-hate-crime

2. **Provide better training to officers:** Provide updates to the Peace Officer Standards and Training (POST) licensing curriculum to train law enforcement officers.

3. **Prepare a report that helps better understand civil rights trends** and recommends potential policy changes.

4. **Support community groups:** Grant opportunities toward strengthening community resilience and promoting community healing and understanding.

Given these important changes to Minn. Stat. § 609, Minnesota legislators may benefit from supporting an evaluation process to understand the impact to the changes made to Minn. Stat. § 609. As part of this evaluation, Minnesota legislators may consider a comprehensive mapping of the full enforcement pipeline, coupled with relevant data throughout. With this holistic information of the full ecosystem, it will be possible to better understand what combination of resources and efforts are most effective at meeting the goals of Minnesota legislators to address the needs of community members.



Importantly, for an entity to conduct this type of evaluation and mapping, it must collect, standardize, and report on administrative data from several different entities, including every police department across Minnesota, Minnesota court systems, and the sentencing commission.[11] It may also be necessary to incorporate data received from federal justice agencies, including: the U.S. Marshals Service, U.S. Drug Enforcement Administration, Executive Office for U.S. Attorneys, Administrative Office of the U.S. Courts, and the U.S. Sentencing Commission.

[11] The entity identified to complete this evaluation will likely need to be certified to access and analyze Criminal Justice Information Services (CJIS) data.

These questions are examples of additional information that could be gathered as part of a values-stream mapping process to identify and support the combination of resources and efforts that are most effective at meeting the goals of the legislature.

- Of the 180 bias-motivated incidents reported to the BCA in 2023, how many are based on an officer's belief that that the crime was motivated by bias, and how many are based on a victim's belief that the crime was motivated by bias?

- How many times did a community member report what they believed may be a bias-motivated crime that was not included in the report, and why? Potential reasons for not including these reports could include:
    - Underlying crime did not happen "because of" prohibited reason
    - Crime was not committed in whole or substantial part because of bias
    - Person is reporting bias but no crime (hating someone or a group of people, without an underlying criminal act, is not a bias-motivated crime)
    - Lack of resources
- The most recent 2023 report states that 180 bias-motivated incidents occurred. Were there also 180 investigations into bias-motivated incidents, or were some incidents not investigated?

- The most recent 2023 report states that 210 offenders engaged in bias-motivated incidents. Were those 210 offenders referred to a prosecutor's office to hold them accountable for engaging in bias-motivated crimes?

- How often did a prosecutor's office decide to prosecute only the underlying crime and not for engaging in bias-motivated crime? For what reason(s)? Potential reasons for making this decision could include:
    - Felt sentence associated with underlying crime was likely to be sufficient to demonstrate seriousness of crime
    - Evidence of bias was insufficient to prove beyond reasonable doubt
    - Additional investigation demonstrated bias was not the reason for the crime
    - Referred to another jurisdiction
    - Prioritization of office resources
    - Ability to otherwise enhance sentence (*Blakely v. Washington*, 542 U.S. 296 (2004))
- What was the conviction rate when there was a bias-motivated crime involved? How does that compare to the conviction rates where there was not a bias-motivated crime.

- What is the average sentence term when there is a bias-motivated crime?

- Where there any departures from sentencing guidelines when bias-motivated crimes occurred?

Recommendations

1. **Minnesota legislators may benefit from a full mapping of the entire enforcement pipeline to better understand the combination of resources and efforts that are most effective at meeting the goals of the legislature.** This full-mapping process could include mapping the full progression of bias-motivated crime data – from initial interaction with police, through sentencing. It should break down all the steps, gather relevant data for each stage, and then, with full data demonstrating actual tension points, quickly implement iterative improvements and identify changes that require more comprehensive change, including legislative action.

2. **Minnesota legislators may similarly benefit from supporting an evaluation** to understand the impact to the recent changes made to the bias-motivated crimes statutes throughout Minn. Stat. § 609.

3. **Minnesota legislators should consider partnering with a neutral research entity.** Given that this type of evaluation and mapping will require an entity to collect, standardize, and report on administrative data from several different entities, including every police department across Minnesota, Minnesota court systems, and the sentencing commission, this work should likely be conducted by a neutral research entity with knowledge of value-stream mapping tools.

4. **Minnesota legislators should continue to support and review the collection and analysis of quality data** to understand this ecosystem, as well as data demonstrating the impact of bias and hate in Minnesota. Examples of these data sources include: the Minnesota Student Survey, the Minnesota Sentencing Guidelines Report, and the Minnesota Uniform Crime Report.

3. To promote the safety and wellbeing of every Minnesotan, it may be beneficial to assess the impact of preventative, responsive, and restorative programs on communities that experience bias-motivated crimes

The primary strategy for preventing bias-motivated crimes in Minnesota has been through a deterrence model by outlawing specific bias-motivated crimes and permitting sentence enhancements. Currently, convictions for bias-motivated crimes may result in restitution, fines, and jail time. However, Minnesota legislators and community members are often looking for additional (or supplemental) solutions to heal and restore a sense of security to whole communities that may be impacted by bias-motivated crimes. These outcomes often require approaching bias-motivated crimes with a more holistic understanding of the public safety ecosystem.

For instance, community members and legislators are often looking for tools to break the cycles of misunderstandings, dehumanization, and hate that might result in violence. The legal system cannot offer tools to address these outcomes because hating, disliking, or having bias against someone or a group of people, on its own, is not a violation of any civil rights laws.

A holistic public safety approach recognizes that the legal system plays an important role, but cannot be the only solution, especially to crimes that so deeply impact entire communities. Therefore, it is critical to recognize the role of preventative, supportive, and restorative programs that support individuals, families, and communities. These programs include but are not limited to after-school programs, restorative justice programs, as well as housing, employment, and education programing. A variety of these programs seek to break cycles of violence and provide safe, thriving communities for every Minnesotan. By including these programs in a holistic view or map of the public safety ecosystem, legislators could identify gaps in resources and opportunities to partner with other government entities or philanthropic organizations.

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Recommendations

1. **Minnesota legislators should continue to invest in many programs that build individual, family, and community safety, add resiliency tools, and break the cycle of violence.** Minnesota legislators can map the public safety landscape with this interconnected lens to determine how current programs and systems in place are already addressing the goals of Minnesota legislators to proactively and reactively respond to bias-motivated incidents, where there may be gaps, and what evaluation is needed to assess effectiveness.

2. **Proactive support.** Continue to support culturally competent professional support and mental health resources so that Minnesotans have access to tools to build resiliency.

3. **Proactive support.** Continue to support harm reduction strategies such as providing safety technology at frequently targeted places and institutions – such as synagogues, mosques, and Black churches.

4. **Reactive support.** Continue to support community groups after a potential hate crime by providing immediate mental health support.

5. **Proactive and restorative support.** Continue to support community-based solutions. Local community-based organizations play a vital role in the community safety resiliency ecosystem. These groups are building partnerships across different backgrounds to break the cycles of misunderstanding, dehumanization, hate, and violence.

6. **Restorative support.** Evaluate current restorative justice programs to determine if they can be an effective way of addressing bias-motivated crimes either in place of or alongside of the traditional criminal justice system.

Conclusion

Since the founding of the State of Minnesota, the Minnesota legislature has repeatedly supported civil rights laws that afford Minnesotans the right to live their lives full of dignity and joy, without fear of discrimination or violence. Today, Minnesota legislators continue to support many important tools to continue to advance this vision.

Mapping the full process for the criminal justice system as it relates to bias-motivated crimes will provide a data-driven approach to identify the combination of resources and efforts that are most effective at meeting the legislature's goals. Furthermore, continuing to respond to bias-motivated incidents with a holistic public safety lens is critical to support community safety, build resiliency, and break the cycles of violence.

References

There is immense information on the substantive legal issues of discrimination, bias-motivated crimes, the history of civil rights, and the Constitution. To prepare this report, the Minnesota Department of Human Rights reviewed state and federal civil rights laws, Minnesota's Uniform Crime Report, the Minnesota Student Survey, the Minnesota Sentencing Practices Report, multiple reports from community organizations, extensive primary source documents from the Minnesota Historical Society, and additional material referenced below.

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