

ONLINE HARASSMENT AND WHEN TO CALL THE POLICE

A guide on social media harassment, free speech, and law enforcement

Many people experience unwanted, upsetting, or abusive messages on social media and other online platforms. However, not everything that feels like harassment is a crime, and not every crime requires immediately calling 911. It may be more appropriate in certain situations to call your local non-emergency police line. This guide explains the difference between online speech that Washington State law treats as criminal harassment and online speech that is protected free speech under the First Amendment to the U.S. Constitution and Article I, Section 5 of the Washington Constitution, even when it is rude, offensive, or hurtful.

This guide is for general information only. It does not cover every situation and is not a substitute for legal advice. If you are in immediate danger, call 911.

The basic legal balance

The First Amendment protects a very wide range of speech, including speech that is angry, offensive, insulting, or embarrassing to the person it is about. Washington courts have repeatedly emphasized that a person is free to make even "odious or bigoted thoughts known to the world" so long as the speech does not cross into conduct the law defines as criminal harassment, true threats, or stalking or other forms of unprotected speech under the First Amendment.

Because of this, Washington's harassment and cyberstalking laws are written narrowly. Generally, online conduct becomes a crime only when it involves one or more of the following: (1) a genuine threat of violence or serious harm, (2) a repeated course of unwanted contact after the person has said stop, (3) sexually explicit or obscene material sent without consent, or (4) conduct targeted at a specific person with the intent to harass, intimidate, or torment them.

Cyber harassment (RCW 9A.90.120). It is a crime to send an electronic communication to a person or a third party, with intent to harass or intimidate, that either contains lewd or obscene content or language, is sent anonymously or repeatedly, or threatens injury to a person or property — where the communication would cause a reasonable person with knowledge of the sender's history, to fear for their safety or suffer emotional distress, or actually did so. Emphasis added.

Harassment (RCW 9A.46.020). It is a crime to knowingly threaten to cause bodily injury, physical damage to property, unlawful confinement, or other malicious substantial harm, where the threat places the person in reasonable fear that it will be carried out. Emphasis added. This includes threats made by electronic communication.

Hate Crime (RCW 9A.36.080). It is a crime to maliciously and intentionally assault, cause physical damage, or threaten a specific person or groups of person and places such person or members of such groups in reasonable fear of harm due in whole or in part because

of another person's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same gender expression or identity, or the same mental, physical, or sensory disability as the victim. Words alone do not constitute a hate crime offense unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute a hate crime offense if it is apparent to the victim that the person does not have the ability to carry out the threat.

Disorderly person (PMC 9.80.080). The use of abusive or obscene language tending toward or causing a breach of the peace shall constitute an act of disorderly conduct, which is a misdemeanor.

Reasonable Person. The reasonable person standard referenced in the statutes is not a free-floating standard; it is anchored to the speaker's position and the full factual context in which the statement or image is made or shared. Courts ask whether a reasonable person in the defendant's place, knowing what the defendant knew and having said what the defendant said in that setting, would foresee that a listener would interpret the statement as a serious expression of intent to harm rather than as a joke.

This means the same words can be a true threat in one context and protected hyperbole in another. For example, in one case, a middle-schooler's statement about "bringing a gun" was not a true threat given his giggling demeanor, prior joking relationship with the listener, and lack of any history of conflict. This can be compared to a similar statement being made by an older speaker, with a serious demeanor and a specific and detailed plan being determined to be a true threat.

The conclusion is that the "reasonable person" concept in under these laws are not simply "would this upset an average person" — it requires (a) evaluating the full context (relationship, tone, platform, history, specificity) exactly as a reasonable person aware of that context would, and (b) that the speaker was at least conscious of a substantial risk their words would be taken as threatening. A single ambiguous, emotional, or obviously joking remark is less likely to satisfy this standard than a specific, repeated, or context-aggravated statement.

Example Hypothetical: Raising the minimum wage. Group A is in favor of raising the minimum wage. Group B is against raising the minimum wage. Each group has a dedicated Facebook page. Group B posts a stock photo of a person holding a weapon with the phrase "come out and face us" superimposed overhead on their personal group Facebook page and "tags" Group A. In the picture, the weapon is not used or pointed at anyone. Suppose also that on Group B's Facebook page there are other posts that call out Group A and/or other video clips where Group A is tagged. However, Group B does not post directly on Group A's page, nor do they directly threaten any Group A's members.

Based on this context, this post on Group B's page is unlikely to be considered a true threat despite the picture being disquieting or intimidating. First, the weapon is not used nor pointed at anyone. Second, the other messages, while confrontational in message or tone, do not direct harm towards a specific individual or even the group as a whole. Finally, the posts are all on Group B's page, rather than on Group's A page.

In contrast, if the weapon was used or pointed at a specific person or at Group A's logo, or if the picture was posted directly to Group A's page, or tagged a specific person, or there was a history of pointed messages, that could demonstrate an escalation that might constitute a true threat to a reasonable person.

When to call 911 or your local non-emergency police line. Call 911 immediately if you or someone else is in immediate physical danger, or if a threat is specific, credible, and appears imminent. Contact your local police non-emergency line or file a report if you are experiencing a repeated pattern of unwanted contact after telling the person to stop, or the person threatens to injure you or someone else.

Before you contact police, it helps to:

- Take screenshots of the messages, posts, or profile, including usernames, dates, and times.
- Save any evidence that the person knows you do not want contact (for example, a message where you asked them to stop).
- Avoid deleting or blocking the account until you have preserved evidence, since blocking can sometimes prevent you from later retrieving the content.
- Report the content to the platform in addition to, not instead of, contacting police if you believe a crime has occurred.

This guide is for general public information and does not constitute legal advice.

Online message	Likely First Amendment status	Explanation
"I think the people organizing this inclusive diversity rally are completely wrong."	 Probably protected	Expression of an opinion about a public event.
"I will protest the Pride event because I disagree with it."	 Probably protected	Peaceful political advocacy is generally protected.
"Everyone should boycott businesses that sponsor MAGA messaging."	 Probably protected	Generally, advocacy for a lawful boycott is protected.
"The organizers of this No Kings event are disgusting."	 Probably protected	Offensive expression by itself generally isn't enough to remove First Amendment protection.
"I hope this Women's March is canceled."	 Probably protected	Expression of a desired political/social outcome.
"Someone should stop this Pride rally."	 Context-dependent	Ambiguous. It could mean lawful protest or something violent; context matters.
"I hope the organizer gets what they deserve."	 Context-dependent	Could be rhetorical criticism or could contribute to a threatening communication depending on surrounding circumstances.
"If you hold that Civil Rights March, I'm going to show up with a gun."	 Probably not protected	A direct, serious threat of violence against an identifiable person can constitute a true threat.
"To Mary Smith: hold that event and I'll come find you and hurt you."	 Probably not protected	Targeted threat of unlawful violence.
"Anyone who attends the Pro-Life rally should watch their back because I'm going to hurt them."	 Probably not protected	A serious threat directed at a particular group can fall outside First Amendment protection.
"Post the organizer's address and let's go teach them a lesson tonight."	 Probably not protected	Depending on context, this could communicate or facilitate imminent unlawful violence.
"Everyone go attack the Pride Parade at 2 p.m. today."	 Probably not protected	Advocacy directed toward imminent unlawful action can lose First Amendment protection when the legal requirements for incitement are met.