

Federal Hate Crimes Legislation

NCJW MESSAGE: NCJW strongly supports the Matthew Shepard Hate Crimes Prevention Act (S 909), a bill that would strengthen and expand existing federal hate crimes law. A society's laws reflect the values of that society, and our nation must unequivocally condemn acts of violence motivated by hate and prejudice.

BACKGROUND

On April 29, The House of Representatives passed the Local Law Enforcement Hate Crimes Prevention Act (H 1913) by a vote of 249 - 175. Now, the Senate Judiciary committee must mark-up and pass the Matthew Shepard Hate Crime Prevention Act (S 909). In the last session of Congress, the House passed the LLEHCPA as a separate-standing bill by a vote of 237-180 on May 3, 2007 and on September 27, 60 Senators voted to add the hate crime provisions as an amendment to the Department of Defense authorization measure. (Adding bills as an amendment to unrelated legislation is one way that bills sometimes get passed in the Senate.) Unfortunately, the amendment was eliminated from the defense bill when the House and Senate met in a conference committee in December. NCJW is hopeful that the hate crimes legislation will pass this year.

TALKING POINTS

- ▶ **Current federal law is inadequate and state laws are inconsistent. The federal government must have broader jurisdiction to address bias-motivated crimes.** Now, only 31 states and DC include crimes based on sexual orientation in their hate crimes statutes; 27 states and DC include coverage of gender-based crimes; and 31 states and DC cover disability-based crimes. The legislation would bring consistency to addressing these kinds of crimes.
- ▶ **The measure would give local law enforcement officials important tools to combat violent, bias-motivated crime.** Federal support, through training or direct assistance, would help ensure that bias-motivated violence is effectively investigated and prosecuted. The bill would also facilitate federal investigations and prosecutions when local authorities are unwilling or unable to achieve a just result.
- ▶ **Passage of a federal law would increase public education and awareness, and encourage people to report hate crimes.** Frequently hate crimes go unreported or uninvestigated because victims and law enforcement lack awareness and experience in addressing hate crime incidents. The federal government must demonstrate its resolve to deal with violence based on prejudice in order to promote accurate reporting and prosecution of these crimes.
- ▶ **Bias-motivated crimes merit a priority response because of their special impact on the victims.** Hate crimes – designed to intimidate whole communities on the basis of personal and immutable characteristics – can spark widespread conflicts and damage the fabric of our society. Our government must send a strong message condemning these far-reaching crimes.
- ▶ **Extending federal hate crimes laws will not usurp state and local efforts. State and local authorities investigate and prosecute the majority of hate crimes.** The federal government can be expected to continue to defer to state authorities under the new law. Since 1991, for example, the FBI has documented almost 114,000 hate crimes. During that period, however, the Justice Department has brought fewer than 100 cases under the current federal hate crimes statute.

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FREQUENTLY ASKED QUESTIONS:

How are hate crimes different from other crimes? At its most fundamental level, hate violence is an aggressive expression of prejudice against another person or group of people simply because of who and what they are. Hate crimes not only affect the individuals targeted but also spread fear in the victims' communities. Hate crime laws are necessary because the failure to recognize and effectively address this unique type of crime could cause an isolated incident to explode into widespread community tension.

What would the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA) do?

It would strengthen existing federal hate crime laws in two ways. Current federal law against crimes motivated by bias limits protection to victims who are attacked because they are engaged in certain specified federally protected activities, such as voting or attending public school. It also only covers crimes motivated by bias based on race, color, religion, national origin, and ethnicity. For example, a prosecutor would have to prove the person was attacked because he was Jewish *and* because he was serving on a jury. The Local Law Enforcement Hate Crimes Prevention Act would remove the specification of federally protected activities – an unnecessary legal obstacle. The bill would also expand protected groups to include sexual orientation, gender, gender identity, and disability.

Why expand coverage to more groups? Currently, there is no general federal criminal prohibition against violent crimes directed at individuals because of their sexual orientation, gender, gender identity, or disability. The federal government must have jurisdiction to address those bias-motivated crimes in states where the law is inadequate. Only 31 states and the District of Columbia include sexual orientation-based crimes in their hate crimes statutes; 27 states and DC include coverage of gender-based crimes; and 31 states and DC include coverage for disability-based crimes.

Does the hate crimes bill grant special rights to certain groups? No. LLEHCPA would not create special rights or even new rights. It would merely expand coverage of the existing federal anti-bias crime statute, passed in 1968, that already punishes bias crimes motivated by race, color, religion, and national origin.

Would hateful thoughts and/or hate speech be considered hate crimes? No. The bill would apply only when an individual "willfully causes bodily injury to any persons, or through use of fire, a firearm, or an explosive device, attempts to cause injury to any person...." It does not apply to name calling or verbal abuse, even if it amounts to hate speech. Further, in *Wisconsin v. Mitchell*, the Supreme Court held that Congress and the states might decide to impose a greater penalty on bias-inspired conduct. Causing or attempting to cause bodily injury is clearly not protected speech.

Would every hate crime become a federal case? No. The federal government's jurisdiction under LLEHCPA would be limited to only the most serious violent crimes directed at individuals, not property. Prosecutions under current law can only be brought if the Attorney General or a designee certifies in writing that individual prosecution of a crime would be "in the public interest and necessary to secure substantial justice." As they do now, federal authorities would consult with state and local authorities before deciding whether federal involvement is warranted.