

SB

2022

26-LS1097E
Luckhaupt
3/17/10

CS FOR SENATE BILL NO. 202(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR DAVIS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the commission of a crime when the defendant directed the conduct**
2 **constituting the crime at the victim based on the victim's race, sex, color, creed, physical**
3 **or mental disability, sexual orientation, gender identity, ancestry, or national origin."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 11.76 is amended by adding a new section to read:

6 **Sec. 11.76.150. Motivation by prejudice, bias, or hatred.** (a) A person
7 commits the crime of motivation by prejudice, bias, or hatred if the person commits a
8 crime in this title and the person knowingly directed the conduct constituting the crime
9 at the victim of the crime because of the victim's race, sex, color, creed, physical or
10 mental disability, sexual orientation, gender identity, ancestry, or national origin.

11 (b) In this section, "gender identity" means actual or perceived gender-related
12 characteristics.

13 (c) Motivation by prejudice, bias, or hatred is a

14 (1) class A misdemeanor if the crime committed is a class B

1 misdemeanor;

2 (2) class C felony if the crime committed is a class A misdemeanor;

3 (3) class B felony if the crime committed is a class C felony;

4 (4) class A felony if the crime committed is a class B felony;

5 (5) unclassified felony and the defendant shall be sentenced to a
6 definite term of imprisonment of at least five years but not more than 99 years if the
7 crime committed is a class A felony.

8 * Sec. 2. AS 12.55.155(c)(22) is amended to read:

9 (22) the defendant knowingly directed the conduct constituting the
10 offense at a victim because of that person's race, sex, color, creed, physical or mental
11 disability, sexual orientation, gender identity, ancestry, or national origin; in this
12 paragraph, "gender identity" means actual or perceived gender-related
13 characteristics;



March 4, 2010

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STUDENT ADVISORS

The Honorable Hollis French
Chair, Senate Judiciary Committee
Alaska State Senate
State Capitol, Room 417
Juneau, AK 99801-1182

Re: Senate Bill 202
Constitutional Issues

Chair French:

Thank you for the opportunity to submit written testimony regarding Senate Bill 202.

As you know, the American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. The ACLU supports legislation designed to protect the civil rights of individuals who may be targeted for violence or harassment based on membership in a historically disfavored class.

However, we are also concerned that the important First Amendment rights of all Alaskans are carefully protected. Whether under the US or Alaska Constitutions, the rights of freedom of speech and of association are crucial to our democratic society. The ACLU must oppose any legislation which would lead to governmental restrictions on, or chilling of, any speech or associational rights, even if those rights represent unpopular or repugnant views.

We applaud the Bill's sponsor for introduction of this legislation and trust that – through working with her office and the Judiciary Committee – we can address the following concerns:

1. Inclusion of necessary protections of speech and associational rights;
2. Addition of language regarding “gender identity;” and
3. Alternatives to mandatory minimum sentencing clauses.

Amendment to Protect Speech and Associational Rights

As currently drafted, SB 202 would allow prosecution of a defendant and introduction at trial of constitutionally protected speech or association as substantive evidence of the defendant's motivation, whether or not that evidence directly related to the alleged crime.

For example, if a defendant were alleged to have targeted a victim who was Jewish, the defendant's membership in the Klu Klux Klan, or internet postings he wrote attacking Zionism could be introduced at trial. Such introduction would not only be unconstitutional, but also the basis for challenging and overturning a conviction.

Contrast with the above example, a defendant who – while attacking the same Jewish victim – states: “Jews have no place in America.” Introduction of such evidence would not be based on the defendant's associations or beliefs, but rather relate to the attack and specifically relevant to his motivation to commit the alleged crime.

In order to differentiate between these two situations, we recommend the inclusion in SB 202 of language such as:

In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense.

However, nothing in this section affects the rules of evidence governing the impeachment of a witness.

It is instructive to note that similar language was included in the Federal MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT, HR 2647; Public Law No. 111-084:

SEC. 4710. RULE OF CONSTRUCTION.

For purposes of construing this division and the amendments made by this division the following shall apply:

(1) IN GENERAL.—Nothing in this division shall be construed to allow a court, in any criminal trial for an offense described under this division or an amendment made by this division, in the absence of a stipulation by the parties, to admit evidence of speech, beliefs, association, group membership, or expressive conduct unless that evidence is relevant and admissible under the Federal Rules of Evidence. Nothing in this division is intended to affect the existing rules of evidence.

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf
(pg. 653 of 656).

Inclusion of Gender Identity

As currently drafted, SB 202 leaves unprotected a minority group which has been shown to suffer violence at a far greater rate than their representation in the population: transgender individuals. It is essential that “gender identity” be included in this Bill.

Some information and statistics that may be of interest to the Committee are available at <http://www.avp.org/documents/2008HVRReportDraft3smallerfile.pdf>, *Hate Violence against Lesbian, Gay, Bisexual, and Transgender People in the United States, a Report by THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS*. Additional information regarding “Trans Murder Statistics 1970 to 2004” is at <http://www.gender.org/resources/dge/gea02002.pdf>.

Again, it is instructive to note that protections for transgender individuals were, in fact, included in the Hate Crimes Prevention Act passed by Congress:

SEC. 4707. PROHIBITION OF CERTAIN HATE CRIME ACTS.

. . . (2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

“(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person . . .

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf
(pg. 651 of 656), Public Law 111-084.

Senate Judiciary Committee
ACLU of Alaska Analysis of S.B. 202
March 4, 2010
Page 4

Elimination of Mandatory Minimums

As a general rule, the ACLU does not support mandatory minimum sentencing, and recommends that sentencing be determined by the Courts based on the particularized facts of each incident prosecuted.

Presuming the amendments outlined above, the ACLU will support SB 202, and would welcome the opportunity to work with the Bill's Sponsor and the Committee in addressing these issues.

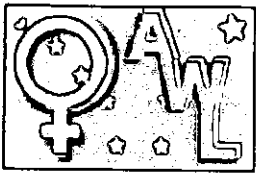
Thank you again permitting us to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "J. A. Mittman", with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Wielechowski, Vice Chair
Senator Davis, Sponsor
Senator Egan
Senator McGuire
Senator Coghill



ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

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Letter of Support

SB 202: Hate Crimes March 2010

The Alaska Women's Lobby, a statewide group with steering committees in Fairbanks, Anchorage and Juneau organized to protect and advance the rights of women, children and families supports SB 202.

According to the Anti-Defamation League 43 states and the District of Columbia have enacted hate crime laws using a "penalty-enhancement" concept similar to that proposed in SB 202. Alaska should join these states in emphasizing that people who choose to intimidate not only an individual victim but the victim's community have committed a more serious offense and should be held accountable as such.

All Alaskans have an interest in an effective response to violent bigotry. Hate crimes deserve increased penalties because the perpetrator has damaged more than one individual or institution. The offender tries to intimidate other members of the minority group by his or her actions against one person. Members of the targeted group may feel isolated, vulnerable and unprotected by the law. We need to be weaving communities together not allowing a few, bound by their ignorance, to try and keep us fragmented.

Thank you to Senator Davis for introducing this important piece of legislation. We agree with the message of her sponsor statement that while this measure alone cannot eliminate prejudice or hatred, it can send a message that Alaskans will not tolerate hate crimes in any form. Please join her in working this bill through the legislative process.

Testimony for Senate Judiciary Committee

SB 202 Hate Crimes

By Marsha Buck for Alaskans Together for Equality, Inc.

My name is Marsha Buck and I live in Juneau. I am here as past president of the Board of Directors of Alaskans Together for Equality, Inc., Alaska's statewide advocacy organization formed to advance civil equality for Alaska's gay, lesbian, bisexual, and transgender citizens. I serve on the Alaskans Together for Equality Board because my daughter is in a lifelong committed relationship with a woman and I am a proud grandmother because of that relationship. I call my daughter's partner my daughter-in-law. I am testifying today because I care deeply about the personal safety of my daughter, my daughter-in-law, and my two grandchildren.

Alaskans Together for Equality would like to thank Senator Davis for proposing SB 202 and thank you for scheduling the bill for hearing. We support the bill in its coverage of crimes motivated by prejudice, bias, or hatred based on several inherent characteristics, characteristics with which people are born, including sexual orientation. We recognize that hate crimes are not limited to our gay and lesbian neighbors or family members, but occur throughout the minority community and are designed to create fear among all Alaskans. This bill emphasizes that Alaska has no tolerance for such acts.

Our support for this bill, however, comes with conditions of an amendment. Section 11.76.150 (a) of the bill needs to be amended to include "gender identity and expression." As I'm certain you are aware, some people in our society perceive others as "different," as too feminine or too masculine, and that perception may evoke a violent emotional response leading to harm. It does not matter if the person perceived as different is heterosexual, i.e. straight, or gay to be the recipient of that response. The way in which we all identify and express our gender may be different than the societal norm, and that identity and expression needs protection under this bill. We strongly contend that many Alaskans are in jeopardy of gender expression hate crimes, particularly our youth who are often subject to bullying based on expression that is different from the fluctuating norm.

The term "gender identity" also includes Alaskans who are transgender. I was horrified to learn recently about a transgender woman whose nose was broken during an assault while she was traveling on a People Mover Bus in Anchorage - an assault that occurred because she is transgender. We ask you, representing the Alaska Legislature, to stand up firmly and amend this bill to make it clear that you have no tolerance for such acts.

In closing, Alaskans Together for Equality would ask that you pass SB 202 out of committee with an amendment that adds "gender identity" to paragraph (a) of Sec. 11.76.150. Thank you for your attention.

Marsha Buck

3/8/2010

Cindy Smith

From: Steiner, Quinlan G (DOA) [quinlan.steiner@alaska.gov]
Sent: Tuesday, March 09, 2010 1:15 PM
To: Cindy Smith
Subject: SB202

Dear Ms. Smith:

In response to Senator French's question regarding SB202, either one of the following two changes to the bill would address the question of what mens rea applies to motive:

- 1) Page 1, Line 8: delete "knowingly"
- 2) Page 1, Line 8: delete "knowingly directed the conduct constituting the crime at the victim of the crime." Replace with "intentionally selected the victim as the object of the conduct constituting the crime."

The first suggestion would eliminate the inconsistency with respect to the appropriate mens rea. The second suggestion specifically defines motive and the mens rea that applies. Please let me know if you have any questions.

Quinlan Steiner
Public Defender

Cindy Smith

From: Jeffrey A. Mittman [jmittman@akclu.org]
Sent: Wednesday, February 17, 2010 9:10 AM
To: Sen. Hollis French
Cc: Cindy Smith
Subject: SB 202

Follow Up Flag: Follow up
Flag Status: Flagged

Senator French:

We have heard that SB 202, proposed hate crimes legislation may be forwarded to the Senate Judiciary Committee.

The ACLU of Alaska generally supports protections for individuals targeted for acts of violence, and are very pleased that Senator Davis has introduced this legislation.

We hope to work with you and the Senate Judiciary Committee on passage of a Bill that protects all of Alaska's citizens, while guaranteeing that Constitutional rights are protected. To achieve that balance we would ask that the Committee consider potential revisions:

1. First Amendment Protections

In order to ensure that free speech or associational rights are not infringed, we would recommend inclusion of language in the Bill such as:

"In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense.

However, nothing in this section affects the rules of evidence governing impeachment of a witness."

2. Gender Identity

We are pleased that SB 202 includes "sexual orientation" as a covered class.

We would request that "gender identity" be included as well. We are happy to provide your office with information or statistics regarding acts of violence against transgender individuals.

3. Mandatory Minimums

We hope to discuss with you alternatives to inclusion of mandatory minimum sentences.

Again, thank you for all that you and the Committee do to protect the rights of Alaskans. We look forward to discussing these points further at your convenience, or to providing any additional information you may wish to review.

Best,

Jeffrey Mittman



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Senator Bettye Davis@legis.state.ak.us
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Senator Bettye Davis

SB 202 - "An Act relating to the commission of a crime when the defendant directed the conduct constituting the crime at the victim based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin."

SPONSOR STATEMENT

Senate Bill 202 makes any crime against a person a more serious or aggravated crime if it is motivated by race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin. Such crimes are referred to as "Hate Crimes." Hate crimes are inchoate offenses which are crimes of preparing for or seeking to commit another crime. Absent a specific law, an inchoate offense requires that the defendant have the specific intent to commit the underlying crime. For example, for a defendant to be guilty of the crime of assault in the third degree in Alaska, the defendant knowingly must place another person in fear of imminent serious physical injury or intentionally or recklessly cause serious injury to another person by means of a dangerous instrument. If this crime was motivated by hatred, bias, or prejudice, under SB 202 it merges into a more serious hate crime and is punished at a higher level than normally would be accorded the underlying offense.

Without creating a new list of "hate crimes" under AS 11.76, new Sec. 11.76.150 simply reclassifies the level of any crime up one notch if motivated by prejudice, bias, or hatred. For example, a class B misdemeanor becomes a class A misdemeanor; a class A misdemeanor becomes a C felony; a class C felony becomes a B felony, etc. Such reclassification, of course, increases the penalties appropriate to the classification in sentencing under AS 12.55.

The need for Senate Bill 202 is demonstrated by increasing reports of violence against homeless persons, minorities, religious groups, and others motivated by prejudice, bias, and hatred in Alaska and across the country in our highly diverse and multicultural society. When crimes are committed because of people's differences, the effects reverberate beyond a single victim or group into an entire community, city, state, and society as a whole. While Senate Bill 202 alone cannot eliminate prejudice/bias, or hatred, it will send a message that Alaskans will not tolerate hate crimes in any form, the consequences and punishment of which are very severe.

The New York Times

The Caucus

The Politics and Government Blog of The Times

OCTOBER 28, 2009, 7:43 PM

Obama Signs Hate Crimes Bill

By JEFF ZELENY

Doug Mills/The New York Times The hate crimes measure was included in the national defense authorization act that President Obama signed into law on Wednesday.

President Obama signed a hate crimes bill into law on Wednesday, telling an audience at the White House that the provision would “strengthen the protections against crimes based on the color of your skin, the faith in your heart, or the place of your birth.”

The law expands the definition of violent federal hate crimes to those committed because of a victim’s sexual orientation. Under existing federal law, hate crimes are defined as those motivated by the victim’s race, color, religion or national origin.

“Prosecutors will have new tools to work with states in order to prosecute to the fullest those who would perpetrate such crimes,” Mr. Obama said, speaking in the East Room of the White House at an evening reception, “Because no one in America should ever be afraid to walk down the street holding the hands of the person they love.”

The hate crimes measure was included in a defense spending bill, which Democratic leaders in Congress intentionally did in an effort to keep Republicans from blocking the legislation. The legislation had been under consideration in Congress for years. It was named in memory of Matthew Shepard, the gay Wyoming college student who was murdered 11 years ago.

“You understood that we must stand against crimes that are meant not only to break bones, but to break spirits — not only to inflict harm, but to instill fear,” Mr. Obama said. “You understand that the rights afforded every citizen under our Constitution mean nothing if we do not protect those rights — both from unjust laws and violent acts.”

The audience at the White House included Denis and Judy Shepard, the parents of Matthew, and the family of the late Senator Edward M. Kennedy, who championed the legislation for years, but died before the bill was ultimately passed.

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S. 909: Matthew Shepard Hate Crimes Prevention Act

111th Congress
2009-2010

Summaries

Congressional Research Service Summary

The following summary was written by the Congressional Research Service, a well-respected nonpartisan arm of the Library of Congress. GovTrack did not write and has no control over these summaries.

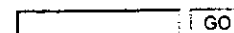
4/28/2009--Introduced.

Matthew Shepard Hate Crimes Prevention Act - Adopts the definition of "hate crime" as set forth in the Violent Crime Control and Law Enforcement Act of 1994 (i.e., a crime in which the defendant intentionally selects a victim or, in the case of a property crime, the property that is the object of the crime because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person). Authorizes the Attorney General to: (1) provide state, local, or tribal law enforcement agencies with technical, forensic, prosecutorial, or other assistance in the investigation or prosecution of violent crimes and hate crimes; and (2) award grants to assist such agencies with the extraordinary expenses associated with the investigation and prosecution of hate crimes. Authorizes the Office of Justice Programs to award grants to state, local, or tribal programs designed to combat hate crimes committed by juveniles. Authorizes appropriations to the Department of Justice (DOJ), including the Community Relations Service, for FY2010-FY2012 to prevent and respond to hate crime acts. Amends the federal criminal code to prohibit willfully causing bodily injury to any person because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of such person. Amends the Hate Crimes Statistics Act to expand data collection and reporting requirements under such Act to include: (1) crimes manifesting prejudice based on gender and gender identity; and (2) hate crimes committed by and against juveniles. Declares that nothing in this Act shall be construed to prohibit the exercise of constitutionally-protected free speech.

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Issues & Research » Civil and Criminal Justice » HR 1913: Local Law Enforcement Hate Crimes Prevent

Go 17258

HR 1913: Local Law Enforcement Hate Crimes Prevention Act of 2009

April 29, 2009

Background:

Representative John Conyers of Michigan introduced the Local Law Enforcement Hate Crimes Prevention Act of 2009 on April 2, 2009 and the bill was promptly referred to the House Committee on the Judiciary. Senator Edward Kennedy of Massachusetts is sponsoring the companion bill (S. 909). The Judiciary marked up the bill on April 22, 2009 and April 23, 2009 and moved to the House floor. The committee amendments removed the "findings" portion contained in the original bill and also removed language concerning the Hate Crimes Statistics Act (28 U.S.C. 534). An amendment offered by Rep. John Conyers on the House floor was adopted on April 29, 2009. This amendment 1) clarifies the coverage of tribal lands, 2) extends the period for the Attorney General to approve applications for grants 3) clarifies that offenses committed with weapons can be considered hate crimes 4) clarifies jurisdictions of the bill and 5) limits prosecutions, trials, and punishment for offenses not resulting in death. The bill passed the house on April 29, 2009 by a vote of 249 to 175. The Local Law Enforcement Hate Crimes Prevention Act of 2009 (H.R. 1913) currently carries one hundred twenty cosponsors and is under consideration in the Senate Judiciary Committee.

DEFINITION OF HATE CRIME:

"crime of violence" – defined in section 16, title 18, United States Code

"hate crime" – defined in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note)

"local" - means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS:

At the request of a state, local, or tribal law enforcement agency, the Attorney General (AG) may provide assistance in the criminal investigation of any crime that:

- Constitutes an act of violence;
- Constitutes a felony under the state, local, or tribal laws
- Is motivated by prejudice based on race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or
- Is a violation of state, local, or tribal hate crime laws.

The AG will give priority to crimes and offenders in multiple state jurisdictions and to rural jurisdictions, particularly those having difficulty covering "extraordinary expenses" relating to the investigation or prosecution of the crime. The AG may award grants to state, local, and Tribal law enforcement agencies for those expenses. The Office of Justice Programs (OJP) will implement the grant program and address the concerns and needs of all affected parties. Each state, local, and Tribal law enforcement agency that desires a grant must submit an application to the AG. Applications must be a 60-day period prescribed by the AG. A state, local, or Tribal law enforcement agency applying for a grant must:

- Describe the "extraordinary purposes" for which the grant is needed
- Certify that the state, local, or Indian tribe lacks the resources to investigate or prosecute the hate crime
- Demonstrate that the state, local, or Tribal law enforcement agency has consulted with non-profit, nongovernmental service programs that provide services to victims of hate crimes
- Certify that any federal funds granted will be used to supplement, not supplant, non-federal funds for specified activities

An application for a grant must be approved or denied by the AG not later than 180 business days after the date received. A grant must not exceed \$100,000 for any single jurisdiction in any 1-year period. By December 31, 2011,

the AG must submit a report to congress describing the applications, awarded grants, and purposes for which the grants were expended.

\$5 million for each FY 2010 and FY 2011 is authorized to be appropriated for this program.

GRANT PROGRAM:

OJP may award grants with the regulations prescribed by the AG to state, local, or tribal programs designed to combat hate crimes committed by juveniles. This includes programs to train local law enforcement in identifying, investigating, prosecuting, and preventing hate crimes.

There are authorized to be appropriated such sums as may be necessary to carry out this program.

AUTHORIZATION FOR ADDITIONAL PERSONNEL

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012, such sums as are necessary to increase the number of personnel to prevent and respond to alleged hate crimes.

PROHIBITION OF CERTAIN HATE CRIME ACTS

This language adds a section entitled "Hate crime acts" to Chapter 13 of title 18, USC.

This section establishes that any person who attempts or commits a hate crime (as defined in the statute):

Shall be imprisoned not more than 10 years, fined, or both AND

Shall be imprisoned for any term of years or for life if:

Death results from the offense

The offense includes kidnapping or an attempt to kidnap,

The offense includes aggravated sexual abuse, or an attempt to commit aggravated sexual abuse

Or an attempt to kill

For more information, please contact:

Susan Parnas Frederick	(202) 624-5400	susan.frederick@ncsl.org
Emily Taylor		emily.taylor@ncsl.org

Prepared by Emily Taylor, Policy Associate, NCSL Updated April 29, 2009

<p>Danver Office Tel: 303-364-7700 Fax: 303-364-7800 7700 East First Place Denver, CO 80230</p>	<p>Washington Office Tel: 202-624-5400 Fax: 202-737-1069 444 North Capitol Street, N.W., Suite 515 Washington, D.C. 20001</p>
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[Congress](#) > [Legislation](#) > 2009-2010 (111th Congress) > [S. 909](#)

Text of S. 909: Matthew Shepard Hate Crimes Prevention Act

Apr 28, 2009 - Introduced in Senate. This is the original text of the bill as it was written by its sponsor and submitted to the Senate for consideration. This is the latest version of the bill currently available on GovTrack.

S 909 IS

111th CONGRESS

1st Session

S. 909

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

April 28, 2009

Mr. REID (for Mr. KENNEDY (for himself, Mr. LEAHY, Ms. SNOWE, Ms. COLLINS, Mr. SPECTER, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. LEVIN, Ms. MIKULSKI, Mr. WHITEHOUSE, Mr. CARDIN, Ms. KLOBUCHAR, Mr. LIEBERMAN, Mrs. GILLIBRAND, Mr. MERKLEY, Mr. REED, Mr. NELSON of Florida, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAYH, Mr. UDALL of Colorado, Mrs. SHAHEEN, Mr. HARKIN, Mr. BROWN, Mrs. MURRAY, Mr. CASEY, Mr. JOHNSON, Mr. LAUTENBERG, Mr. NELSON of Nebraska, Ms. LANDRIEU, Ms. CANTWELL, and Mr. AKAKA)) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Matthew Shepard Hate Crimes Prevention Act'.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including the following:

(A) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence.

(B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(C) Perpetrators cross State lines to commit such violence.

(D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(E) Such violence is committed using articles that have traveled in interstate commerce.

(7) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(8) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct 'races'. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(9) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(10) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.

SEC. 3. DEFINITION OF HATE CRIME.

In this Act--

(1) the term 'crime of violence' has the meaning given that term in section 16, title 18, United States Code;

(2) the term 'hate crime' has the meaning given such term in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note); and

(3) the term 'local' means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICIALS.

(a) Assistance Other Than Financial Assistance-

(1) IN GENERAL- At the request of State, local, or tribal law enforcement agency, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that--

(A) constitutes a crime of violence;

(B) constitutes a felony under the State, local, or tribal laws; and

(C) is motivated by prejudice based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or is a violation of the State, local, or tribal hate crime laws.

(2) PRIORITY- In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than one State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) Grants-

(1) IN GENERAL- The Attorney General may award grants to State, local, and tribal law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS- In implementing the grant program under this subsection, the Office of Justice Programs shall work closely with grantees to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION-

(A) IN GENERAL- Each State, local, and tribal law enforcement agency that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION
- Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS- A State, local, and tribal law enforcement agency applying for a grant under this subsection shall--

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, local government, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, local, and tribal law enforcement agency has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to

supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE- An application for a grant under this subsection shall be approved or denied by the Attorney General not later than 180 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT- A grant under this subsection shall not exceed \$100,000 for any single jurisdiction in any 1-year period.

(6) REPORT- Not later than December 31, 2010, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2010 and 2011.

SEC. 5. GRANT PROGRAM.

(a) Authority To Award Grants- The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or tribal programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of

title 18, United States Code, as added by section 7 of this Act.

SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) In General- Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

'Sec. 249. Hate crime acts

'(a) In General-

'(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN- Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

'(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

'(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

'(i) death results from the offense; or

'(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

'(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY-

'(A) IN GENERAL- Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous

weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity or disability of any person--

`(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

`(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

`(I) death results from the offense; or

`(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

`(B) CIRCUMSTANCES DESCRIBED- For purposes of subparagraph (A), the circumstances described in this subparagraph are that--

`(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim--

`(I) across a State line or national border; or

`(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

'(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

'(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

'(iv) the conduct described in subparagraph (A)--

'(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

'(II) otherwise affects interstate or foreign commerce.

'(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES- Whoever, within the special maritime or territorial jurisdiction of the United States, commits an offense described in paragraph (1) or (2) shall be subject to the same penalties as prescribed in those paragraphs.

'(b) Certification Requirement-

'(1) IN GENERAL- No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or his designee, that--

'(A) the State does not have jurisdiction;

'(B) the State has requested that the Federal Government assume jurisdiction;

'(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

'(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

'(2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

'(c) Definitions- In this section--

'(1) the term 'bodily injury' has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

'(2) the term 'explosive or incendiary device' has the meaning given such term in section 232 of this title;

'(3) the term 'firearm' has the meaning given such term in section 921(a) of this title; and

'(4) the term 'gender identity' for the purposes of this chapter means actual or perceived gender-related characteristics.'

(b) Technical and Conforming Amendment- The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

'249. Hate crime acts.'

SEC. 8. STATISTICS.

(a) In General- Subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting 'gender and gender identity,' after 'race,'.

(b) Data- Subsection (b)(5) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting '

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