

**SB**

**11**

<TARGET><BILL>SB 11</BILL><SUBJECT>SB  
11</SUBJECT><COMM>SJUD27</COMM></TARGET>



**FISCAL NOTE**

**STATE OF ALASKA  
2011 LEGISLATIVE SESSION**

**BILL NO.** SB11

**Analysis**

This bill would create a new crime – motivation by prejudice, bias, or hatred. Because this creates a new crime, the Department of Corrections has no historical information to determine the number of offenders that will be placed under the custody of the department.

The Department of Corrections will closely monitor potential future impacts of this legislation.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version SB011  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name): SB011-LAW-CRIM-02-11-11  
 Title An Act relating to the commission of a crime based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation...  
 Sponsor SENATOR (S) DAVIS  
 Requester (S) Judiciary  
 Dept. Affected Law  
 Appropriation Criminal  
 Allocation Criminal Justice Litigation  
 OMB Component Number 2202

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost 0.0

**POSITIONS**

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Eileen Donahue, Division Operations Manager  
 Division Administrative Services  
 Approved by John J. Burns, Attorney General  
Department of Law

Phone 465-5427  
 Date/Time 2/11/11 5:00 PM  
 Date 2/11/2011

FISCAL NOTE

STATE OF ALASKA  
2011 LEGISLATIVE SESSION

BILL NO. SB 011

**Analysis**

SB 011 would adopt a new crime – motivation by prejudice, bias, or hatred. A person commits the crime if the person commits a crime prohibited in Title 11, and knowingly directed the conduct to a victim because of the victim’s race, sex, color, creed, physical or mental disability, sexual orientation, gender identity, ancestry, or national origin. The penalty for the new crime would increase the penalty for the underlying crime one level, so that a class A misdemeanor that is motivated by prejudice, bias, or hatred, would then be a class C felony.

Passage of this legislation would have no foreseeable fiscal impact on the Department of Law.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SB 11

1 Page 1, line 3, following "**origin**":

2 Insert "**; and amending Rule 404, Alaska Rules of Evidence**"

3

4 Page 1, following line 10:

5 Insert a new subsection to read:

6 "(b) In a prosecution under this section, evidence of expression or associations  
7 of the defendant may not be admitted as substantive evidence at trial, unless the  
8 evidence specifically relates to that offense. However, nothing in this subsection  
9 affects the rules of evidence governing the impeachment of a witness."

10

11 Reletter the following subsections accordingly.

12

13 Page 2, following line 13:

14 Insert a new bill section to read:

15 "**\* Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to  
16 read:

17 **INDIRECT COURT RULE AMENDMENT.** AS 11.76.150(b), added by sec. 1 of this  
18 Act, has the effect of amending Rule 404, Alaska Rules of Evidence, by forbidding the  
19 admission of certain evidence in prosecutions under AS 11.76.150, added by sec. 1 of this  
20 Act."

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR COGHILL

TO: SB 11

- 1 Page 1, line 5, through page 2, line 7:
- 2 Delete all material.
- 3
- 4 Page 2, line 8:
- 5 Delete "Sec. 2"
- 6 Insert "Section 1"

moved —  
obj. French

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 22, 2011

**SUBJECT:** Amendment A.1 to SB 11 and the Alaska Rules of Evidence  
(Work Order No. 27-LS0087\A.1)

**TO:** Senator Hollis French  
Chair of the Senate Judiciary Committee  
Attn: Cindy Smith

**FROM:** Gerald P. Luckhaupt   
Assistant Revisor

You have asked for my comments concerning the need for amendment A.1 to protect constitutional rights to freedom of expression and freedom of association. I fail to see a need for the amendment. I also have concerns about the language used in the amendment.

The language apparently is modeled after language included in the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.

(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.

This section basically says that it does nothing. Evidence remains admissible if relevant and no changes to the existing rules of evidence are intended. Normally I would not expect changes to the admissibility of evidence in a bill unless the bill states that it is amending the rules of evidence. This section appears to me to merely restate the obvious.

Amendment A.1 is similar but different. Instead of saying that evidence is admissible if relevant and admissible under the rules of evidence, the amendment states that certain evidence "may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense." It appears to me that at a minimum a change to the existing rules of evidence is intended as the amendment does not tie admissibility to relevancy but to some other sort of specific relationship to the offense. This relationship is not explained, but the fact that some change to the existing rules of evidence is

intended can be inferred from the second sentence of the amendment which states: "However, nothing in this section affects the rules of evidence governing the impeachment of a witness." This sentence clearly states that no change is intended to the rules of evidence regarding impeachment of a witness; obviously then some change to the existing rules of evidence regarding the introduction of "substantive evidence" must be intended.<sup>1</sup> It is not clear to me what that change might be but evidently some sort of new relationship requirement is being adopted.

Is the amendment needed to protect freedom of expression or association? In my opinion the amendment is not needed. SB 11 does not alter the rules of evidence and automatically allows the introduction of all evidence of a person's membership in associations or speech. Any evidence would still have to be relevant<sup>2</sup> and admissible.<sup>3</sup> Rule 402 specifically provides that relevant evidence is admissible except as provided by the Constitution of the United States or of this state. If the introduction of certain evidence would violate the constitution then that evidence is not admissible. Relevant evidence also may be excluded if the evidence's "probative value is outweighed by the danger of unfair prejudice . . ."<sup>4</sup> And, finally, evidence of a person's character is not admissible for the purpose of proving that the person acted in conformity therewith

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<sup>1</sup> Note the differences in the last sentence of the amendment and the last sentence of the federal statute upon which it is supposedly based. The amendment states that the new section of law does not affect the rules of evidence regarding impeachment of a witness. The federal statute states that nothing is intended to affect the existing rules of evidence -- it is not limited to impeachment of a witness.

<sup>2</sup> Rule 401. Definition of Relevant Evidence. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

<sup>3</sup> Rule 402. Relevant Evidence Admissible--Exceptions--Irrelevant Evidence Inadmissible. All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, by these rules, or by other rules adopted by the Alaska Supreme Court. Evidence which is not relevant is not admissible.

<sup>4</sup> Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time. Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

except in certain situations explained by Rule 404.<sup>5</sup> SB 11 does not change any of these rules or automatically allow introduction of a person's speech or associations.

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<sup>5</sup> Rule 404. Character Evidence Not Admissible to Prove Conduct-- Exceptions--Other Crimes. (a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

(1) *Character of Accused*. Evidence of a relevant trait of character offered by an accused, or by the prosecution to rebut the same;

(2) *Character of Victim*. Evidence of a relevant trait of character of a victim of crime offered by an accused, or by the prosecution to rebut the same, or evidence of a relevant character trait of an accused or of a character trait for peacefulness of the victim offered by the prosecution in a case to rebut evidence that the victim was the first aggressor, subject to the following procedure:

(i) When a party seeks to admit the evidence for any purpose, the party must apply for an order of the court at any time before or during the trial or preliminary hearing.

(ii) The court shall conduct a hearing outside the presence of the jury in order to determine whether the probative value of the evidence is outweighed by the danger of unfair prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim. The hearing may be conducted *in camera* where there is a danger of unwarranted invasion of the privacy of the victim.

(iii) The court shall order what evidence may be introduced and the nature of the questions which shall be permitted.

(iv) In prosecutions for the crime of sexual assault in any degree and attempt to commit sexual assault in any degree, evidence of the victim's conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this rule, in the absence of a persuasive showing to the contrary.

(3) *Character of Witness*. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) Other Crimes, Wrongs, or Acts. (1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the

Admissibility of that evidence or any other evidence would still have to be relevant, admissible (and thereby constitutional), not overly prejudicial, and, if character evidence, it would have to satisfy one of the specific exceptions listed in Rule 404.

In my opinion, additional evidence that the amendment is not needed is provided by the existence of AS 12.55.155(c)(22), our "hate crime" aggravating factor. The elements of the aggravating factor are identical to the elements of proposed AS 11.76.150. If protected speech and associations could be used as evidence of a violation of AS 11.76.150 they could be used as evidence of a violation of the aggravating factor also. I have not heard of a case where constitutionally protected speech or associations were admitted as evidence under AS 12.55.155(c)(22).

GPL:ljlw  
11-127.ljlw

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person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) occurred within the 10 years preceding the date of the offense charged;

(ii) are similar to the offense charged; and

(iii) were committed upon persons similar to the prosecuting witness.

## Cindy Smith

---

**From:** Thomas Obermeyer  
**Sent:** Wednesday, February 16, 2011 11:34 AM  
**To:** Sen. Hollis French; Sen. Bill Wielechowski; Sen. Joe Paskvan; Sen. Lesil McGuire; Sen. John Coghill  
**Cc:** Sen. Bettye Davis; Cindy Smith; Jeffrey Mittman  
**Subject:** RE: Constitutional Issues regarding SB 11, 27-LS0087A

To all above addressees by the ACLU letter of 2-16-2011:

Mr. Mittman's concerns about associational rights in his ACLU letter of 2-16-2011 are the same as he expressed last year in the previous bill. We have amended the draft to include "sexual orientation" and "gender identity" in Sec. 2, AS 12.55.155(c)(22) on page 2, lines 11-13 of SB 11.

Our legislative counsel and drafter, Jerry Luckhaupt, will not be available this afternoon unless urgent because he is testifying on a bill in House Judiciary beginning 1:00 Feb 16 in Rm 120. However, in talking to Mr. Luckhaupt this morning he does not believe SB 11 needs to include language similar to the federal bill cited which he believes repeats the obvious; that the Alaska Rules of Evidence are clear (ref. AK Rule Evidence 404) and have been correctly applied for years without additional protections. Nothing in SB 11, he says, overrides the rules of evidence.

Without offering legal advice, it is my understanding that character evidence is generally not admissible per rule 404(a), but it may be admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident under 404(b). That a defendant is a member of the Klu Klux Klan or dislikes black people in general is not admissible unless tied to other evidence, such as evidence of motive, intent, etc. Mr. French, former state prosecutor, should know Rule 404 and other rules of evidence well and their applicability in criminal actions in Alaska courts. Our drafter has addressed these legal issues in the past and can again if requested when he is available.

See you at the hearing.

Tom Obermeyer

Thomas S. Obermeyer, MO Atty, M.B.A.  
Office of Senator Bettye Davis, Chair  
Alaska State Senate Health & Social Services Committee  
State Capitol Rm 30  
Anchorage, Alaska 99501  
907-465-3762 Direct  
907-465-3822 Office  
907-465-3756 Fax  
800-770-3822 Toll Free  
[Thomas.Obermeyer@legis.state.ak.us](mailto:Thomas.Obermeyer@legis.state.ak.us)

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**From:** Jeffrey Mittman [<mailto:JMittman@akclu.org>]  
**Sent:** Wednesday, February 16, 2011 8:20 AM  
**To:** Sen. Hollis French; Sen. Bill Wielechowski  
**Cc:** Sen. Joe Paskvan; Sen. Lesil McGuire; Sen. John Coghill; Sen. Bettye Davis; Cindy Smith; Thomas Obermeyer  
**Subject:** Constitutional Issues regarding SB 11

Chair French, Vice-Chair Wielechowski:

Thank you for the opportunity to submit written testimony regarding Senate Bill 11.

We have specific concerns with the proposed legislation, outlined in detail in the attached correspondence. We are hopeful that, through discussions with the Sponsor's office and the Committee, and minor modifications to the Bill, these issues can be addressed.

Please do not hesitate to contact the ACLU if you have any issues opening the attachment, or wish further information.

Thank you,

Jeffrey Mittman

Direct dial: (907) 263-2002

Cell: (907) 230-0665



Jeffrey A. Mittman  
Executive Director  
ACLU of Alaska  
1057 W. Fireweed Lane, Suite 207  
Anchorage, AK 99503-1760  
(907) 258-0044, ext. 2002  
(907) 258-0288 (fax)

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Interim: (May - Dec.)  
716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Phone: (907) 269-0144  
Fax: (907) 269-0148



Session: (Jan. - May)  
State Capitol, Suite 30  
Juneau, AK 99801-1182  
Phone: (907) 465-3822  
Fax: (907) 465-3756  
Toll free: (800) 770-3822

[Senator Bettve Davis@legis.state.ak.us](mailto:Senator_Bettve_Davis@legis.state.ak.us)

February 6, 2011

Senator Hollis French, Chair  
Senate Judiciary Committee

## RE: Request for Hearing concerning Senate Bill 11 – Hate Crimes

*"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, gender identity, ancestry, or national origin."*

Dear Senator French:

**Senator Davis respectfully requests a hearing concerning SB 11 before the Senate Judiciary Committee.** – Information provided electronically and paper copy in interoffice mail.

Attached in order are the following:

1. Sponsor Statement
2. The most recent version of the bill: SB 11, 26-LS0087\A
3. Additional Documents
  - "Racially motivated attack nets prison terms for Anchorage pair; *Anchorage Daily News*, 09/09/2010
  - Letters of support for similar previous bill in 26<sup>th</sup> Legislature, SB 202
  - Hate Crime Legislation, *Congressional Research Reports* 11/29/2010
  - Obama Signs Hate Crimes Bill- *New York Times* 10/28/2009
  - Text of S.909: Matthew Shepard Hate Crimes Prevention Act – (providing legislative intent and language, similar to HR 1913 which passed).
  - HR 1913: Local Law Enforcement Hate Crimes Prevention Act of 2009- NCSL 4/29/2009

Please let me know if you need additional information. Note: Our office requests that you not calendar a hearing on this bill from February 21-24, 2011 due to scheduling conflicts.

Sincerely,

Handwritten signature of Thomas S. Obermeyer in black ink.

Thomas S. Obermeyer  
Legislative Assistant, 465-3762

# Alaska State Legislature

Interim: (May - Dec.)  
716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Phone: (907) 269-0144  
Fax: (907) 269-0148



Session: (Jan. - May)  
State Capitol, Suite 30  
Juneau, AK 99801-1182  
Phone: (907) 465-3822  
Fax: (907) 465-3756  
Toll free: (800) 770-3822

Senator [Bettye Davis@legis.state.ak.us](mailto:Bettye.Davis@legis.state.ak.us)  
<http://www.akdemocrats.org>

## Senator Bettye Davis

### SB 11, 26-LS0087 – Increased sentencing for crimes motivated by prejudice, bias or hatred

*"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, gender identity, ancestry, or national origin."*

### SPONSOR STATEMENT

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This bill increases the sentencing for crimes motivated prejudice, bias, or hatred based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, gender identity, ancestry, or national origin. This new crime can only be committed when a person commits some underlying crime and the person directed the conduct constituting the crime at the victim due to one of the listed characteristics of the victim. The new crime increases the classification of the underlying crime one level.

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 based on the victim's race, sex, color, creed, physical or mental disability, sexual orientation, gender identity, ancestry, or national origin. 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 bill also amends AS 55.155(c)(22), an aggravating factor as sentencing for felonies, by adding "sexual orientation" and "gender identity" to the list of protected characteristics.

The need for this bill 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 this bill alone cannot eliminate prejudice, bias, or hatred, it will send a message that Alaskans will not tolerate hate crimes in any form, and sentencing for them will be substantially increased.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 7, 2011

**SUBJECT:** Sectional Summary -- SB 11 (Work Order No. 27-LS0087\A)

**TO:** Senator Bettye Davis  
Attn: Thomas Obermeyer

**FROM:** Gerald P. Luckhaupt *GPL*  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill -- the bill itself is the best statement of its contents.

**Section 1.** This new crime can only be committed when a person commits some underlying crime and the person directed the conduct constituting the crime at the victim due to one of the listed characteristics of the victim. The new crime increases the classification of the underlying crime one level.

**Section 2.** Amends AS 55.155(c)(22), an aggravating factor at sentencing for felonies, by adding "sexual orientation" and "gender identity" to the list of protected characteristics.

GPL:ljw  
11-077.ljw



## ALASKA WOMEN'S LOBBY

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

P.O. Box 20891  
Juneau, Alaska 99802-0891  
[www.akwomenslobby.org](http://www.akwomenslobby.org)

**2010  
AWL Steering  
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Lobbyist**

**Geran Tarr,  
Jordan Nigro  
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**Elizabeth Belknap**

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**Kari Robinson**

**Nancy Scheetz-  
Freymler**

**Libby Silberling**

### **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.

---

Senator Bettye Davis  
Senator  
Alaska State Legislature  
716 W. 4th Ave, Suite 400  
Anchorage, Alaska 99501  
907-269-0144 T  
907-269-0148 F  
[Senator Bettye Davis@legis.state.ak.us](mailto:SenatorBettyeDavis@legis.state.ak.us)

-----Original Message-----

From: cecoffman@acsalaska.net [mailto:cecoffman@acsalaska.net]  
Sent: Saturday, March 06, 2010 8:30 PM  
To: Sen. Bettye Davis  
Subject: Please Support Senate Bill 202, the Alaska Hate Crimes Bill

Dear Senator Davis,

I am writing to ask you to support Senate Bill 202, the Alaska Hate Crimes Bill, with an amendment to include "gender identity and expression."

I support this bill because it covers crimes motivated by prejudice, bias, or hatred based on the victim's "race, sex, color, creed, physical or mental disability, sexual orientation, ancestry, or national origin." This bill emphasizes that Alaska has no tolerance for such acts. The Alaska court system has primary jurisdiction over crimes of assault and battery, which may result in prosecution as hate crimes when occurring in Alaska. Alaska prosecutors and law enforcement officials need the support and force of an Alaska statute in order to most effectively investigate, prosecute, and track all potential hate crimes within the state.

I also support the amendment of SB 202 to add the phrase "gender identity and expression" to Sec. 11.76.150 (a) because people who are perceived as gender variant, whether heterosexual or gay, seem "different" to some people and may evoke a violent emotional response leading to harm. A substantial number of crimes have been documented that are based on the societal perception of someone as "too feminine" or "too masculine." These crimes can include bullying of both straight and gay persons in schools and throughout Alaskan communities.

I appreciate Senate Judiciary Committee for holding a hearing on SB 202, ask for its passage out of committee with a "gender identity" amendment, and support its swift movement through the legislative process so that it becomes law in the very near future.

Thank you very much for your consideration.

Sincerely,  
Christine E. Coffman  
Fairbanks, AK 99709

---

**Senator Bettye Davis**

*Senator*

Alaska State Legislature  
716 W. 4th Ave, Suite 400  
Anchorage, Alaska 99501  
907-269-0144 T  
907-269-0148 F  
[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)

---

**From:** bstringd@aol.com [mailto:bstringd@aol.com]  
**Sent:** Monday, March 08, 2010 3:01 AM  
**To:** Sen. Bettye Davis  
**Subject:** SB 202 amendment

Thank you profusely for sponsoring the amendment of gender identity and expression to Section 11.76.150(a) of SB 202. May it pass quickly out of the Senate Judiciary Committee. I strongly support your efforts to counter those whose irrational fears and prejudices incite them to hateful acts. The weekly displays seen at last summer's Assembly meetings were disgraceful and unsettling, clear proof that discrimination exists, and sadly is often promoted from the pulpit.

I, for one, would like to see tax waivers for churches modified or even eliminated. As the trend toward mega-churches continues, we can ill afford to have our local tax base further eroded, especially by those who abuse the privilege while pushing a political agenda that defies human decency. If they have sufficient funds to attempt to impose their warped views on everyone, then they should expect to be assessed the same as everyone else.

Good luck in Juneau. Your service is most appreciated!

Betty Dickenson  
1312 Sunrise Dr Anchorage

---

**Senator Bettye Davis**

***Senator***

Alaska State Legislature  
716 W. 4th Ave, Suite 400  
Anchorage, Alaska 99501  
907-269-0144 T  
907-269-0148 F

[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)

---

**From:** feldenlee1@aol.com [mailto:feldenlee1@aol.com]

**Sent:** Friday, March 05, 2010 7:48 PM

**To:** Sen. Bettye Davis

**Subject:** SB 202

Dear Senator Davis,

Thank you for sponsoring SB 202. I strongly support the addition of an amendment that adds gender identity and expression to Section 11.76.150(a). A significant number of crimes have been documented that are based on the societal perception of someone as "too feminine" or "too masculine." These crimes can include bullying of both straight and gay persons in schools and throughout Alaskan communities. Please pass this bill with a gender identity amendment out of the Senate Judiciary Committee.

Respectfully,

Sharon Lee

3524 E. 15th Ave.  
Anchorage, AK 99508

## **Racially motivated attack nets prison terms for Anchorage pair**

### **VIDEO: The duo taped the attack; one posted clips on YouTube.**

By ELIZABETH BLUEMINK  
ebluemink@adn.com

(09/09/10 21:39:15)

The Anchorage duo who threatened and harassed a Native man while he was walking down the street two years ago have been sentenced to prison terms on felony civil rights violations.

Robert Gum, 19, was sentenced to 20 months in prison, and Deanna Scaglione, 21, also known as Deanna Powers, was sentenced to 16 months. Both were given three years of probation, according to court documents.

Federal prosecutors said that the two pursued the Native man, who was on his way to Bean's Cafe, by car and on foot and verbally and physically threatened him -- pelting him with eggs and a water bottle, saying they'd hurt him with a baseball bat and a gun and shouting racial slurs. They took turns recording their June 2008 attack on a video camera and Scaglione later posted clips of the bullying on YouTube.

The two were turned in by a woman who helped raise Scaglione after Scaglione's mother died. The woman called Crime Stoppers, a privately operated tip line.

Gum and Scaglione were arrested in 2009. They admitted to investigators that their attack was racially motivated and that it was Gum's idea. They also admitted that they egged two other Alaska Natives in downtown Anchorage that night, according to prosecutors.

In a plea for leniency, Gum's grandfather wrote that Gum recognized that he had done something very wrong and needed to make amends. But he said his grandson has many Native family members and is "not a racist."

Gum was "a very young man" who committed a stupid crime while "trying to be noticed by his friends," the grandfather wrote.

During the sentencing in federal District Court, the victim of the assault gave a powerful testimonial to the court, said Assistant U.S. Attorney Kevin Feldis, the prosecutor in the case.

The victim "spoke about the impact on him, the fear and the hurt he felt, but also how he moved forward and (his) forgiveness" of his attackers, Feldis said.

The case was investigated by the Anchorage Police Department and the Federal Bureau of Investigation.

"Conduct like the assault that occurred in this case is a crime not only against the victim but also against our entire community and must be appropriately punished," said U.S. Attorney Karen Loeffler after the sentencing.

State prosecutors have also charged the two on misdemeanor assault and harassment charges.

Sentencing in that case has been set for later this month.

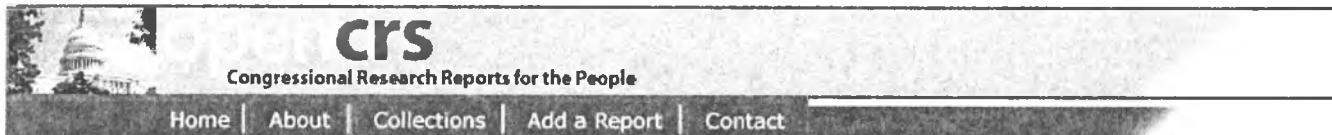
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RL33403

Hate Crime Legislation

November 29, 2010

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## Summary


On October 28, 2009, President Barack Obama signed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act into law, as Division E of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84; H.R. 2647). This law broadens federal jurisdiction over hate crimes by authorizing the Attorney General to provide assistance, when requested by a state, local, or tribal official, for crimes that (1) would constitute a violent crime under federal law or a felony under state or tribal law, and (2) are motivated by the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In other words, hate crimes are traditional crimes during which the offender is motivated by one or more biases considered to be particularly reprehensible and damaging to society as a whole. Prior to enactment, however, hate crimes were not separate and distinct offenses under federal law. Furthermore, federal jurisdiction over hate crime was limited to certain civil rights offenses. Although there is a consensus that hate crime is deplorable, determining the definitive federal role in addressing hate crime has proved contentious, as reflected in the legislative history and congressional debate. Legislation to widen federal jurisdiction over hate crime was passed by the Senate in the 106th and 108th Congresses, by the House in the 109th Congress, and by both chambers in the 110th Congress. Opponents of hate crime legislation view separate federal offenses for hate crime as redundant and largely symbolic, arguing that separate hate crime offenses would be in addition to the legal prohibitions for traditional crime that already exist under either federal or state law. They also contend that in most cases the federal nexus is tenuous, and that such offenses are best handled at the state and local level. Proponents for creating a separate and distinct federal offense for hate crime maintain that there is a fundamental difference between ordinary crime and hate crime. They believe that hate crimes are often perpetrated to send a message of threat and intimidation to a wider group, and that the effects of hate crime extend beyond the particular victim and reflect more pervasive patterns of discrimination on the basis of race, color, religion, national origin, and other characteristics. In the 111th Congress, the House Judiciary Committee amended and ordered reported a hate crimes bill (H.R. 1913; H.Rept. 111-86) on April 23, 2009. The House passed H.R. 1913 on April 29, 2009. Senator Reid, for Senator Kennedy, introduced the Matthew Shepard Hate Crimes Prevention Act (S. 909) on April 28, 2009. Senator Leahy successfully amended the National Defense Authorization Act (S. 1390) with language that is similar to S. 909 on July 16, 2009. The Senate passed S. 1390, amended, on July 23, 2009. The hate crime provisions were included in the conference report on the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647; H.Rept. 111-288). The House passed the conference report on H.R. 2647 on October 7, 2009; the Senate passed it on October 22, 2009. In addition, Representative Sheila Jackson-Lee has introduced three hate crime-related bills (H.R. 70, H.R. 256, and H.R. 262), and Representative Maloney has introduced a hate crime statistics act (H.R. 823). At issue for Congress is whether the prevalence and harmfulness of hate crimes warrant greater federal intervention to ensure that such crimes are systematically addressed at all levels of government. Another related issue is the completeness and comprehensiveness of national hate crime data. Representative Eddie Bernice Johnson introduced (H.R. 3419), which would amend the Hate Crime Statistics Act to require data collection on crimes committed against homeless persons. Senator Benjamin Cardin introduced an identical bill (S. 1765). On several occasions, the Senate Judiciary Committee was scheduled to mark up this bill during the 111th Congress, but consideration of this bill was postponed.

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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

111<sup>th</sup> 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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## 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 ',

including data about crimes committed by, and crimes directed against, juveniles' after 'data acquired under this section'.

#### **SEC. 9. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

#### **SEC. 10. RULE OF CONSTRUCTION.**

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

(1) **RELEVANT EVIDENCE-** Courts may consider relevant evidence of speech, beliefs, or expressive conduct to the extent that such evidence is offered to prove an element of a charged offense or is otherwise admissible under the Federal Rules of Evidence. Nothing in this Act is intended to affect the existing rules of evidence.

(2) **VIOLENT ACTS-** This Act applies to violent acts motivated by actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability of a victim.

(3) **CONSTITUTIONAL PROTECTIONS-** Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration. The Constitution does not protect speech, conduct or activities consisting of planning for, conspiring to commit, or committing an act of violence.

(4) **FREE EXPRESSION-** Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs.

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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	<a href="mailto:susan.frederick@ncsl.org">susan.frederick@ncsl.org</a>
Emily Taylor		<a href="mailto:emily.taylor@ncsl.org">emily.taylor@ncsl.org</a>

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

**Denver Office**

Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230

**Washington Office**

Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

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February 16, 2011

The Honorable Hollis French, Chair  
The Honorable Bill Wielechowski, Vice-Chair  
Senate Judiciary Committee  
Alaska State Senate  
Juneau, AK 99801-1182  
via email: [Senator\\_Hollis\\_French@legis.state.ak.us](mailto:Senator_Hollis_French@legis.state.ak.us)  
[Senator\\_Bill\\_Wielechowski@legis.state.ak.us](mailto:Senator_Bill_Wielechowski@legis.state.ak.us)

AMERICAN CIVIL  
LIBERTIES UNION OF  
ALASKA  
1057 W. Fireweed, Suite 207  
Anchorage, AK 99503  
(907) 258-0044  
(907) 258-0288 (fax)  
[WWW.AKCLU.ORG](http://WWW.AKCLU.ORG)

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ZACH FICK, Anchorage  
STUDENT ADVISOR

Re: **Senate Bill 11**  
**ACLU Review of Constitutional Issues**

Chair French, Vice-Chair Wielechowski:

Thank you for the opportunity to submit written testimony with respect to Senate Bill 11.

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. In that regard, we would like to advise the Committee of several issues with respect to SB 11.

**Addition of Sexual Orientation and Gender Identity to AS 12.55.155**

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. Evidence establishes that transgender persons, and lesbian, gay and bisexual individuals face discrimination and are targeted for violence.

To the extent that AS.12.55.155(c)(22) already establishes as an aggravating factor that a "defendant knowingly direct[s] . . . conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin," it is appropriate that both "sexual orientation" and "gender identity" be included as protected classes.

The ACLU applauds and thanks Senator Davis, the Bill's sponsor, for her continuing commitment to advance equal protections for all Alaskans.

Too, as the Committee is aware, hate crimes legislation at the federal level has included protections based on sexual orientation and gender identity, based on the evidence of discrimination encountered by these classes.

### **Needed Protections of Speech and Associational Rights**

The ACLU is very concerned, however, that the important First Amendment rights of **all** Alaskans must be 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 hope that – through working with the Sponsor's office and the Judiciary Committee – we can address the inclusion of necessary protections of speech and associational rights in SB 11.***

As currently drafted, the Bill 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 11 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](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ084.111.pdf) (pg. 653 of 656).

**Minor Amendments**

Presuming the amendments outlined above, the ACLU will support SB 11.

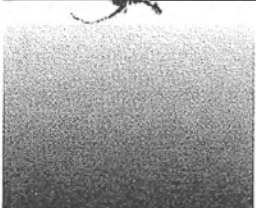
Thank you again permitting us to share our concerns. Please feel free to contact the undersigned should you require any additional information.

Sincerely,



Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Senator Joe Paskvan, [Senator Joe Paskvan@legis.state.ak.us](mailto:Senator_Joe_Paskvan@legis.state.ak.us)  
Senator Lesil McGuire, [Senator Lesil McGuire@legis.state.ak.us](mailto:Senator_Lesil_McGuire@legis.state.ak.us)  
Senator John Coghill, [Senator John Coghill@legis.state.ak.us](mailto:Senator_John_Coghill@legis.state.ak.us)  
Senator Bettye Davis, Sponsor, [Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)



## ANCHORAGE

3330 Arctic Boulevard  
Suite 103  
Anchorage, AK 99503  
(907) 565-1002  
FAX (907) 565-1000  
1-800-478-1234  
[www.dlcak.org](http://www.dlcak.org)

February 16, 2011

The Honorable Bettye Davis  
Alaska State Senate  
Alaska State Capitol, Room 30  
Juneau, Alaska 99801

Re: Senate Bill 11

Dear Senator Davis:

The Disability Law Center of Alaska supports Senate Bill 11, which proposes to increase the sentencing for crimes motivated by prejudice, bias, or hatred based on the victim's status, including physical or mental disability.

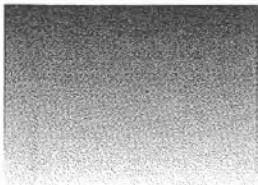
Through much of our country's history and well into the twentieth century, people with disabilities -- including those with developmental delays, epilepsy, cerebral palsy and other physical and mental impairments -- were seen as useless and dependent, hidden and excluded from society, either in their own homes or in institutions. Now, this history of isolation is gradually giving way to inclusion in all aspects of society, and people with disabilities everywhere are living and working in communities alongside family and friends. But this has not been a painless process. People with disabilities often seem "different" to people without disabilities. They may look different or talk differently. They may require the assistance of a wheelchair, a cane, or other assistive technologies. They may have seizures or have difficulty understanding seemingly simple directions.

These perceived differences evoke a range of emotions, from misunderstanding and apprehension to superiority and hatred. Bias against people with disabilities takes many forms, often resulting in discriminatory actions in employment, housing, and public accommodations. Laws like the Fair Housing Amendments Act, the Americans with Disabilities Act and the Rehabilitation Act are designed to protect people with disabilities from this type of prejudice.

Perhaps most unfortunately, disability bias can also manifest itself in the form of violence, and it is imperative that a message be sent to our state that these acts of bias motivated hatred are not acceptable in our society.

In 2009, the Bureau of Justice Statistics released a National Crime Victims Survey, which report was the first estimate of crime against people with disabilities. The findings reveal the harsh realities faced by this vulnerable population.

MEMBER OF THE  
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DISABILITY  
RIGHTS  
NETWORK



- Age-adjusted rate of nonfatal violent crime against persons with disabilities was 1.5 times higher than the rate for persons without disabilities.
- Youth ages 12 to 19 with a disability experienced violence at nearly twice the rate as those without a disability.
- Persons with a disability had an age-adjusted rate of rape or sexual assault that was more than twice the rate for persons without a disability.
- Females with a disability had a higher victimization rate than males with a disability; males had a higher rate than females among those without a disability.
- Persons with a cognitive functioning disability had a higher risk of violent victimization than persons with any other type of disability.
- Persons with more than one type of disability accounted for about 56% of all violent crime victimizations against those with any disability.
- Nearly 1 in 5 violent crime victims with a disability believed that they became a victim because of their disability.

Too frequently, bias-motivated crimes against those with disabilities have gone unreported and, because of the special problems associated with investigating and prosecuting hate violence against an individual with a disability, unprosecuted. These factors contribute to the victimization of individuals with disabilities.

Senate Bill 11 is vitally important for this vulnerable population and must be enacted in order to bring the full protection of the law to those targeted for violent, bias motivated crimes simply because they have a disability.

Sincerely,

DISABILITY LAW CENTER OF ALASKA



David C. Fleurant  
Executive Director