

HATE CRIMES DATA

COLLECTION AND PROSECUTIONS:

Frequently Asked Questions

Issued by
Anti-Defamation League
and
Cook County Hate Crimes
Prosecution Council

Hate crimes traumatize victims and polarize communities. However, the decision of law enforcement officials whether to classify a crime as a hate crime, and the separate decision of a local prosecutor whether or not to bring hate crime charges, can be complicated and further inflame community passions. The purpose of this FAQ is to address some of the basic legal and practical considerations involved in labeling and charging a hate crime.

How does the federal government record hate crimes?

Pursuant to the terms of the Federal Hate Crime Statistics Act (HCSA)¹, the FBI is required to issue an annual report detailing the total number of hate crimes reported by law enforcement authorities nationwide.² Under this statute, hate crimes based on the victim's race, religion, ethnicity, sexual orientation, or disability are recorded. The data is taken directly from police reports. If the officer writing the report includes information about an alleged bias motivation in the report, the incident will be included in the FBI report. Many states also have their own independent systems of recording hate crimes and many publish separate state crime reports, with specific hate crime sections.³

Does a perpetrator have to be convicted of a hate crime for the FBI to count the crime as a hate crime?

No. For reporting purposes, it does not matter whether or not the perpetrators of the crime were ever charged with a hate crime.

Example. A vandal throws a brick through the window of a Jewish person's house. The words "Gas

all Jews” appear on the brick. The vandal is never caught. Law enforcement should properly record this act as a hate crime and it should be counted in the FBI’s annual HCSA report. For reporting purposes, it does not matter that no one was ever charged with a hate crime.

How do state hate crime statutes work?

Forty-five states and the District of Columbia have adopted some form of penalty-enhancement hate crime statute, many based on an ADL model hate crime law, which increases the sentence if the crime was motivated by the victim’s actual or perceived personal characteristics.⁴ Under this type of law, the prosecutor needs to prove two things: (1) that the perpetrator committed the crime and (2) that he or she committed the crime because of the victim’s race, religion, or some other personal characteristic.

So returning to the vandalism example above, if a perpetrator was arrested, a prosecutor would have two choices. If the prosecutor chooses to simply charge the perpetrator with criminal damage to property, he or she would only have to prove that the defendant threw the brick through the window. Alternatively, the prosecutor could proceed on the hate crime charge and seek higher penalties. The state would then have to prove **both** that the perpetrator threw the brick through the window and that he or she had done it intentionally because of the victim’s religion. In this case, the words on the brick would provide strong evidence of the perpetrator’s motive. Assuming that the state could prove both elements of the charge, the perpetrator would be subject to higher penalties, likely resulting in a longer period of incarceration.

Sometimes especially serious offenses like murder or attempted murder that are motivated by bias are not charged as hate crimes. Why not?

In many states, the hate crime charge only applies to certain offenses such as assault, battery, and criminal damage to property. The purpose of the sentence-enhancing feature is to attach more serious penalties to bias-motivated crimes in an effort to demonstrate the seriousness with which we, as a society, address hate violence. Higher-level felonies already have serious consequences regardless of the offender’s motivation. A murder based on the victim’s race, for example, while certainly a hate crime, would likely not be charged as a hate crime under a penalty-enhancement statute. The criminal penalties for murder are already the most severe, so it would not make sense from a prosecutor’s perspective to also charge the perpetrator with lesser included penalties. However, this crime should still be classified and reported as a hate crime for HCSA purposes.

Are hate crimes charges more difficult to prove than other crimes?

Generally, yes. Some prosecutors have expressed a reluctance to prosecute bias crimes because of the additional evidentiary burden at trial, but proving the element of intent at trial is not unique to hate crime statutes. Many criminal offenses — including possession of a controlled substance with the intent to deliver, aggravated battery or assault on a peace officer, or murder in the first degree — require additional intent elements to be proved beyond a reasonable doubt.

Do hate crime laws violate the First Amendment or punish thought?

No. Hate crimes laws punish violent acts, not beliefs or thoughts — even violent thoughts. Hate crime statutes do not punish, nor prohibit in any way, name-calling, verbal abuse or expressions of hatred toward any group *even* if such statements amount to hate speech. It is only when the perpetrator crosses the line from speech to criminal action that hate crime laws might come into effect.

Why do defendants “get off” on a less serious charge?

Plea bargaining is common in our criminal system of justice. Criminal defendants will often plead guilty to a lesser charge in order to receive a lesser penalty. Prosecutors agree to reduce the charge to avoid the risk of a trial. In hate crime cases, criminal defendants will sometimes plead guilty to a lesser charge and in return the state will drop the hate crime charge.

Can the federal government become involved with hate crime charges?

In rare situations, where the state is unable or unwilling to proceed, the federal government has limited jurisdiction to charge some cases as federal criminal civil rights violations. In these cases, a federal prosecutor must demonstrate a specific federal interest, and must prove that the victim was prevented from exercising a constitutional right on the basis of race, religion, or national origin. These are traditionally difficult cases to charge and prove because the government generally must prove that the victim was prevented from engaging in some type of constitutionally protected activity. However, even under these limited circumstances, the federal government’s backstop authority has proven very valuable in some high-profile cases and in others involving organized hate groups.

What can individuals do?

Regardless of whether a crime is charged or prosecuted as a hate crime, Americans should actively speak out in support of victims and against hate violence. Unfortunately, many hate crimes are never reported and of those that are reported, many are never solved. However, there are many ways to address bigotry and to keep it from poisoning communities. For useful ways to prevent bias-motivated behavior, see <http://www.adl.org/prejudice>. For a compilation of the League's best programs and initiatives to address hate violence, see <http://www.adl.org/blueprint.pdf>.

Special thanks to Cook County State's Attorney Richard Devine

¹ 18 U.S.C. 534 Note.

² Reporting is voluntary and the report is plagued by under-reporting. In 2004, the state of Alabama reported three hate crimes. The full FBI HCSA report is available at the FBI Web site: <http://www.fbi.gov/ucr/ucr.htm#hate>.

³ See, for example, *Hate Crime in California 2004*, available at: <http://ag.ca.gov/cjsc/publications/hatecrimes/hc04/preface.pdf>.

⁴ Different states have different protected categories. As of June 2006, race and religion are included in the hate crimes law of all 45 states, but only 32 state statutes include sexual orientation, 28 states include gender, and 32 states include disability.

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