

■ Matthew Shepard Hate Crimes Act

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Author: U.S. Congress and President Barack Obama

Genre: law; legislation

Summary Overview

Hate crimes are violent acts, or attempted violence, against someone based on a class of identifying characteristics, or perceived characteristics, of that person. The Matthew Shepard Act, whose full title is “The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009,” was spurred by the murders of Matthew Shepard and James Byrd, Jr., who were killed because of their sexual orientation and race, respectively. Wyoming, where Shepard was killed, had no law covering crimes carried out specifically against homosexuals. Texas, where Byrd was killed, had no hate crimes law at all. Thus, the federal act extended the government’s reach to all states in the case of hate crimes, laid out the definition of such crime, and indicated how hate crimes were punishable under federal law. Reprinted here is a section of the law that allows the FBI to investigate, as hate crimes, crimes committed in any state against someone based on their race, gender, religion, or sexual orientation.

Defining Moment

The historical context of this document stretches back to an earlier era in U.S. history and to the rights guaranteed under the Fourteenth Amendment, which deals with equal protection of the laws. The abolition of slavery in the nineteenth century did not end the prejudices and fears on which slavery was based; hence, it was thought necessary in 1868 to amend the Constitution to guarantee the equal protection of all individuals under the law. Similar fears and prejudices, however unfounded, have long surrounded homosexuality, as well. By the 1980s, the term “hate crime” came into use to describe a crime committed against someone or some group based on the person’s or group’s race, religion, gender, or sexual orientation. However, state laws covering the commission of hate crimes varied widely, or in some cases (as with Texas) were absent. In an attempt to deal with this situation, the federal government, following the high-profile killings of Byrd and Shepard, instituted the federal hate crimes law examined here.

The legislation is historically interesting not only because of its content, but because of its reception and the debate that has surrounded it. Upon first examination, the law tends to look like a continuation of older laws designed to protect people. Yet, there are

elements that upset some opponents. The law was not unanimously agreed to, and many groups were, at the time, quite vocal in their opposition to it. Some groups, such as the Family Research Council, argued that it represented a step toward the criminalization of people’s thoughts and attitudes, while others believed that it represented an infringement of free speech. Supporters, on the other hand, held that adding protections for those who have been or could be the targets of discrimination and violence, is simply a wise step in creating a fairer and more equal society.

Author Biography

The bill was introduced to the House of Representatives five times before it finally passed into the Senate, was authorized there, and was signed into law by the president. In its final and ultimately successful form, it was introduced into the House of Representatives by Congressman John Conyers (D–MI) and into the Senate by Senators Ted Kennedy (D–MA) and Gordon Smith (R–OR). It was signed into law by President Barack Obama on October 28, 2009.

One should look, too, at the two men who gave their names to this act. Matthew Shepard and James Byrd, Jr. were both killed in 1998 in brutal



President Barack Obama greets Louvon Harris, left, Betty Byrd Boatner, right, both sisters of James Byrd Jr., and Judy Shepard at a 2009 reception commemorating the enactment of the legislation. Photo via Wikimedia Commons. [Public domain.]

and tragic ways. Twenty-one-year-old Matthew Shepard was beaten to death by two men because he was gay. James Byrd, Jr. was beaten, dragged behind a truck, and eventually killed by three white

supremacists because he was a Black. He was forty-nine years old, married, and had three children. In both cases, the victim's murderers were caught and brought to justice.



Historical Document

Matthew Shepard and James Byrd, Jr. Hate Crimes Act

An Act

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:

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.

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

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.

Existing Federal law is inadequate to address this problem.

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.

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.

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.

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.

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.

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—

the term ‘crime of violence’ has the meaning given that term in section 16, title 18, United States Code;

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

the term ‘local’ means a county, city, town, township, parish, village, or other general purpose political subdivision of a State....

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—

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.

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.

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—

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.

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—

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;

the term ‘explosive or incendiary device’ has the meaning given such term in section 232 of this title;

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

the term ‘gender identity’ for the purposes of this chapter means actual or perceived gender-related characteristics....



Glossary

instrumentalities/instrumentality: means or agency by which something is done

Document Analysis

This document, like many other pieces of legislation, embodies technical language that makes reading legal contracts and similar writings difficult for laypersons. The main body of information that needs to be teased out from the “legalese” that makes up much of the document has to do with identifying what the law is about, what the foundation of the law is, what a hate crime is, and when and where the act applies. Many of these points are addressed in section 2, “Findings”; yet it is necessary to continue through the rest of the document to find, among other things, restrictions on the law. Without such restrictions, it would become easy for zealous investigators, prosecutors, or others to abuse such as law.

The law was created in order to protect individuals from the violent acts of those with an irrational hatred of another person or class of persons simply because of such characteristics as race, ethnicity, religion, gender, or sexual orientation. As the law notes, violence of this type “disrupts the tranquility and safety of communities and is deeply divisive.” Violent acts in and of themselves, of course, are not the reason for the creation of a new law. Rather, the violence has to be based on specific characteristics associated with the victim, be it gender, race, etc.

Beginning at the end of section 2, the act states that in cases where the label “hate crime” is applicable, the federal and local law enforcement teams will work together in order to prosecute and solve the crimes. Furthermore, this law applies even to Indian tribes, which are located on sovereign territory. While the federal government does not have the right to take over, is available to provide aid wherever necessary. In section 7, the details of punishment are laid out. But this section devotes the bulk of its language to outlining restrictions on the law. The law is not all-encompassing; only in specific circumstances can it be applied. These restrictions are fairly self-explanatory, but their inclusion shows the care that the law’s

creators took in creating it—likely in order to appease opponents. They did not want the federal government to have too much power in intervening in state matters, but recognized that the country needed a tool with which to fight hate crimes.

Essential Themes

Not only did the law bring attention to hate crimes, but it also highlighted some of the deep divisions that still exist in our society. The social and racial prejudices of an earlier era still remain with us, and there are similar problems surrounding other classes of persons. Nevertheless, laws such as this one are intended to combat these prejudices and spread the message of equal treatment for all under the law. Education is another avenue that can and has been pursued. Passing laws and educating people can and does lead to general acceptance of matters that once were sources of fear and loathing, but eventually come to be understood and valued.

—Anna Accettola, MA

Bibliography and Additional Reading

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