

# Encyclopedia of Law & Society: American and Global Perspectives

## Hate Crimes

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Hate crimes are crimes motivated by prejudice against the victim's race, color, religion, national origin, or sexual orientation. Anyone can be the victim of a hate **[p. 693 ↓ ]** crime, so long as the attacker is motivated by a characteristic named in the jurisdiction's hate crime law, such as religion.

In 1990, the U.S. Congress enacted the Hate Crime Statistics Act, 28 U.S.C. § 534 (2000), which mandated that the government collect statistics on crimes motivated by bias against race, religion, sexual orientation, ethnicity, or national origin. It was the first federal government effort to quantify hate crimes. Because of this legislation, each year the Federal Bureau of Investigation (FBI) collects statistics from state and local law enforcement agencies around the United States. The FBI report on hate crime statistics constitutes the most comprehensive national picture of hate crimes and is often used by researchers to describe hate crimes in the United States.

The 2005 FBI report on hate crimes identified almost 7,200 single incidents in that year. Roughly half were motivated by racial bias, and the rest were motivated by bias against religion, sexual orientation, ethnicity, or disability. People generally assume that murder is the most common hate crime, but, in fact, most incidents fall into the category of intimidation. According to the FBI statistics, the racial and ethnic backgrounds of victims vary with the type of bias that motivates the incident.

## Perpetrator and Victim Characteristics

It is easier to identify a typical offender than a typical victim. By studying large numbers of hate crimes, researchers have identified the “typical” offender as a young white male who is not affiliated with an extremist or hate group. Within this broad profile, perpetrators fall into four main groups: (1) thrill seekers who commit hate crimes for excitement, (2) individuals who commit hate crimes to defend their territory, (3) perpetrators who are motivated by retaliation, and (4) individuals who are on a mission to eliminate from the world others whom they consider to be inferior.

Researchers who study the impact of hate crimes argue that such crimes are more harmful to victims than are assaults not motivated by bias. In the crime's aftermath,

victims were significantly less likely to feel safe, reported more health problems, and reported a higher rate of employment loss than did victims of nonhate crimes. Researchers speculate that the increased fear may stem from the fact that attackers frequently act in or near the victims' homes. Moreover, when a person is attacked because of a particular characteristic that she cannot change, the person is unable to do anything that will allow her to avoid attacks in the future. In other words, the person remains eternally vulnerable to another attack of the same type.

## Hate Crime Law

Hate crimes may be prosecuted under a variety of state and federal laws in the United States. In the federal courts, prosecutors may bring hate crimes under civil rights statutes punishing conspiracies to interfere with federal rights, laws protecting individuals' rights to exercise their religious beliefs, and laws protecting individuals' against certain discrimination under fair housing provisions. In 1994, a federal hate crime penalty-enhancement statute was passed; it allows the defendant to receive a harsher sentence for any crime in which the victim is selected because of his race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation.

Although prosecutors can act against the vast majority of hate crimes under criminal laws regulating assault and vandalism, states have passed a variety of special statutes aimed specifically at hate crimes. These include statutes prohibiting the wearing of masks, which were aimed originally at the Ku Klux Klan; statutes that punish cross burning; and institutional vandalism statutes designed to punish the desecration of places of worship. In addition, some states have enacted penalty enhancement statutes or ethnic intimidation statutes. Ethnic intimidation statutes create a separate offense for bias-motivated harassment or intimidation committed because of the victim's race, color, national origin, or religion; these four characteristics are among those most commonly protected. Several state statutes also prohibit bias based on ancestry, ethnicity, gender, sexual orientation, or disability.

Hate crime laws have been controversial. Critics argue that they are unconstitutional because punishing [p. 694 ↓ ] motivation violates perpetrators' rights to free expression under the U.S. Constitution's First Amendment. In 1993, the U.S. Supreme Court

disagreed, upholding the constitutionality of hate crime laws in *Wisconsin v. Mitchell*, 508 U.S. 47. According to the Court, hate crime penalty-enhancement statutes are analogous to statutes in other areas of criminal law in which the defendant's motive is a relevant factor in sentencing.

## Enforcement of Hate Crime Laws

The value of hate crime legislation can be fully realized only if it is enforced. Scholars examining the enforcement of hate crime laws have paid particular attention to police officers who have the duty of investigating hate crimes. Police officers have substantial discretion in identifying and classifying hate crimes. Although some researchers have found that police officers do not invest the substantial time and effort required for hate crime cases, others have found that, given the proper institutional support, police officers may enforce the law in ways that are both constitutional and supportive of hate crime victims.

Once police officers have identified an incident as a hate crime, they may turn the matter over to prosecutors, who have the power to decide whether to charge the incident as a hate crime, if at all. Prosecutors may have little training in bringing hate crime charges. Moreover, they may have biases that influence the decision to go forward. In addition, hate crimes are often difficult cases to prove. A prosecutor's desire to pursue only winnable cases may cause her to reject hate crime cases. Ultimately, even fewer cases may make it to court than have been identified by police officers as hate crimes.

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*See also*

- [Critical Race Feminist Theory](#)
- [Critical Race Theory](#)
- [Discretion in Legal Decision Making](#)
- [Expression, Freedom of](#)

- [Group Defamation](#)
- [Police](#)
- [Prosecutorial Discretion](#)
- [Race and Ethnicity](#)
- [Sexual Orientation](#)

#### Further Readings

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