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STUDY OF LITERATURE AND LEGISLATION ON HATE CRIME IN AMERICA

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PREPARED FOR

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Study of Literature and Legislation of Hate Crime in America

This review provides NIJ with information to aid in the development of a program of research and evaluation, identifying gaps in hate crime law and research and reviewing evidence of effective practices and innovative responses.

Hate Crime Law

History. The date of passage of the first hate crime statute is debatable, since some of the state civil rights statutes passed in the 1960s and 1970s could be regarded as hate crime laws, and since there are numerous definitions of hate crime. According to some experts, the first state hate crime statutes were passed into law in 1981. Since then, the federal government and all but one state have passed pieces of legislation addressing hate crime in some way.

Separate Class of Crime. There is no national consensus about whether hate crime should be a separate class of crime, and among those supporting hate crime statutes there is disagreement about how these statutes should be constructed and focused. The key issues in the debate include: (1) the necessity of considering hate or bias motivation

when the core offenses (e.g., assault, vandalism) are already covered by criminal law; (2) whether there is a danger in basing additional penalties for crimes upon the thoughts motivating offenders, rather than keeping the focus of criminal law on the behavior itself; (3) whether it is possible to determine with legally-acceptable levels of certainty the motive behind a person's criminal acts; (4) whether, in practice, hate crime laws result in crimes against certain groups of people being punished more severely than equivalent crimes committed against other groups and, if so, whether that is fair and legally just; (5) whether having hate crime statutes deters potential offenders; and (6) whether having these statutes hinders law enforcement's ability to investigate and prosecute crime.

Executive Summary

This report presents a summary and analysis of literature and legislation addressing hate crime¹ in the United States. Our review and analysis responds to the U.S. Department of Justice (DOJ) request for the identification of significant current issues, evidence of effective practices and innovative responses, and gaps in the law and research regarding hate and bias crime. Recognizing inadequacies in

statistical reporting on hate crime and limited research on relevant criminal justice policies and practices, this review is intended to provide the DOJ's National Institute of Justice (NIJ) with information to aid in the development of a program of research and evaluation.

A systematic review of hundreds of documents and web sites was conducted, including

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State Variability. Hate crime statutes vary widely from state to state in several ways, including: (1) the specification of “protected groups,” or identifiable sets of people whose traits are legally defined as targets of hate crime motivation (e.g., race, religion, sexual orientation); (2) whether and how they address criminal penalties and civil remedies; (3) the range of crimes covered; (4) whether the statutes contain hate crime reporting requirements; and (5) whether they require training

Executive Summary

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sources describing: (1) federal and state hate crime data collection efforts; (2) research produced by federal and state agencies, advocacy groups and other independent organizations, and scholars; (3) crime prevention and response efforts; (4) law enforcement training; and (5) descriptions and analyses of hate crime law. Given the breadth and volume of documentation on hate crime law, research, and practice, we have focused our discussion on state and federal statutes and major sources of data. Statutes legally define hate crime and thus bound criminal justice practice and provide important parameters for research, and many elements of a major program of research will be dependent upon ongoing state and federal data collection efforts. To supplement our review and analysis we provide brief overviews and references for source materials regarding a number of topics associated with hate crime research and related criminal justice practices.

In legislation as well as in the research and practice literature, the terms “hate crime” and “bias crime” are often used interchangeably. For clarity of presentation throughout this report we most often use the term “hate crime,” unless it is clear that the authors of the original documents operated with a more narrowly focused definition of either term that must be maintained in order to faithfully represent their work.

of law enforcement personnel to support improved prevention, response, and recording of hate crimes.

New Trends in Legislation. Among the trends in hate crime legislation are that an increasing number of state statutes include provisions: (1) expanding the number of “protected groups,” in particular adding groups defined by gender, sexual orientation, and disability as targets of bias and hate motivated crime; (2) providing penalty enhancement for hate and bias motivated crime; and (3) requiring data collection and statistical reporting.

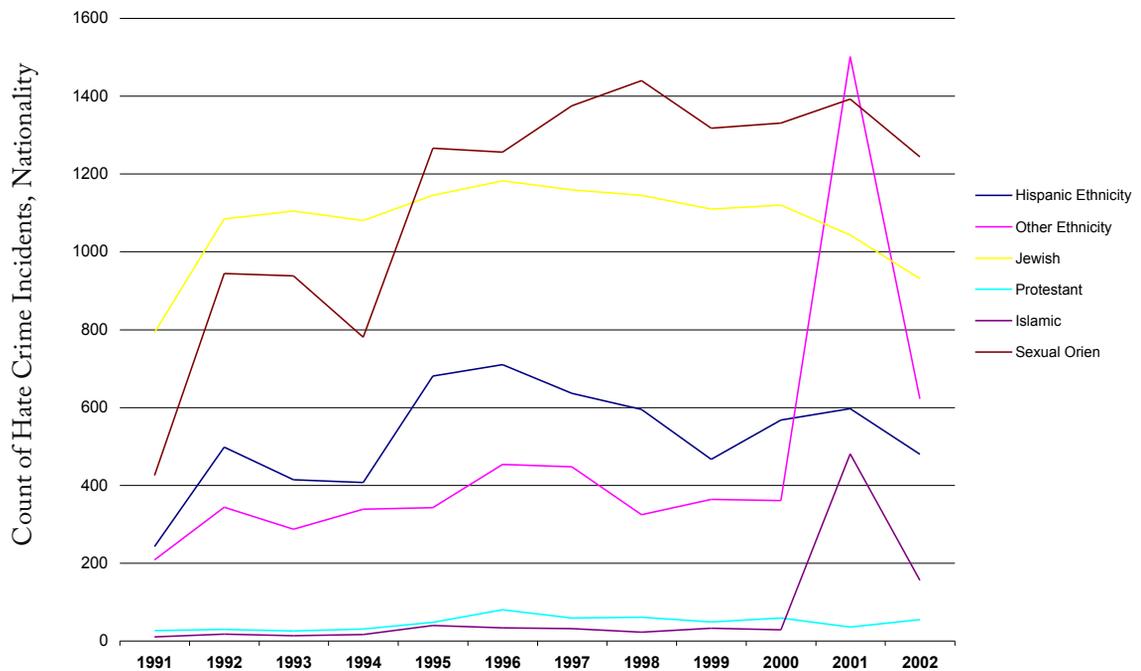
Hate Crime Data

Collection Uneven and with Gaps. National data collection efforts continue to be uneven across jurisdictions and to collectively under-represent the prevalence of hate crime. Apparent gaps and inconsistencies in national reporting can be seen when comparing hate crime reporting across states and across data sets.

Cross State Variation. Reasons for cross-state variation in hate crime rates reported via Uniform Crime Reports (UCR) and National Incident-Based Reporting Systems (NIBRS) include: (1) Dissimilar hate crime laws from state to state, including different hate crime statistical reporting provisions; (2) variations in the quality of data collection procedures; (3) differences in law enforcement training on hate crime reporting; and (4) a lack of consensus about the legitimacy of treating hate crimes as separate kinds of offenses.

Under Reporting. Reasons for the apparent underreporting of hate crime in the UCR and NIBRS include: (1) people that may not understand what constitutes hate crime in their state, and may not mention that they believe hate or bias motivated

UCR Data 1999-2003



the offense committed against them; (2) reluctance of some victims to report known offenses to police; and (3) law enforcement that does not recognize or prefers not to acknowledge the role of hate in certain offenses.

Differences in Definitions between Federal and State. Differences between state and federal hate crime definitions create differences in reported levels of hate crime. For example, Wyoming has no hate crime statutes, yet five hate crimes were reported in the 2002 Uniform Crime Reports. It is likely that the predicate crimes (e.g., vandalism) were locally recorded as conventional crimes, and the hate-motivated nature of the crime was noted elsewhere and reported as such to the UCR. It is also possible that some or all of the five hate crimes were reported to local law enforcement, and then were subsequently referred to federal authorities.

UCR and State Reports. In several states differences were observed between hate crime reported to the Federal Bureau of Investigation (FBI) for the UCR, and hate crime recorded in state-level crime statistics. Among the main reasons for these discrepancies are differences in the state and federal definitions.

Cross State Definition Variation. Cross-state variation in hate crime definitions and crime reporting laws and practices make it difficult to combine local and state data into a coherent national picture.

Collection History. While UCR and National Crime Victimization Survey (NCVS) data are uneven nationally, and NCVS has only recently been collected, there are many localized, longstanding data collection efforts. For example, Minnesota passed a law in 1988, requiring peace officers to report incidents that were motivated by bias, and annual statewide statistics have been compiled since

1989. Similarly, California has collected statewide data on hate crime since 1995, collected according to statutory guidelines and broader in scope than the UCR hate crime data collection.

Mandatory Reporting. Federal statute requires reporting of all crime, including hate crime, occurring at institutions of higher education receiving federal funds. The statutes allow reporting to either the Office of Postsecondary Education (OPE) of the U.S. Department of Education (ED), or to the FBI's UCR Program. In 2002, only 400 of nearly 7,000 colleges and universities in the U.S. reported crime data (of any kind) to the UCR, while over 6,000 of these institutions reported crime data to ED.

College Campus Discrepancies.

There are discrepancies in ED and UCR statistics on hate crime occurring on college campuses. College-by-college comparisons of counts of hate crimes reported to the UCR and ED show differences, in some cases that are very significant. In instances where a college or university reports to both the UCR and ED and the figures differ for the same college, the number of hate crime incidents in the UCR database are usually larger, even though most colleges are bound by federal statute to report to ED but UCR reporting is optional. It is unknown to what extent these discrepancies between agency data sets and differences across colleges are due to reporting errors, to different interpretations of reporting requirements, different case processing and referral procedures, differences in the structure of college public safety departments (e.g., university police departments with sworn officers versus security departments without police powers or

training), or other factors.

Campus Policy Education. It is unclear whether colleges whose security or campus safety staff are sworn law enforcement officers are aware of ED crime reporting requirements. Also unknown is whether non-sworn campus security staff receive guidance for routing cases to local police departments (thus triggering UCR reporting mechanisms), and whether they regard offenses they choose not to refer to local police as crimes and report them to ED.

Data Collection Improvement Efforts.

Current efforts to improve official data include the FBI's investment in training in how to properly collect data for the UCR, as well as the dissemination of training and data collection guides, and state efforts such as those put forth by the California Department of Justice, which invests in training law enforcement in the collection of state hate crime data.

*The lack of theory
..., coupled with the
lack of evaluation
research, makes it
difficult to determine
impact of programs*

Hate Crime Data Lags Behind. Though there have been important areas of tangible progress, the current "state of the art" data are not sufficient to establish the true national scope of the problem or trends over time. Hate crime data gathered through large national collection efforts lags behind data regarding most other types of crime.

New NCVS Questions. A promising recent development in hate crime data is the addition of questions about hate and bias crime victimization to the NCVS in 2001. Data derived from these questions in the 2001 and 2002 survey are available, but as of mid-2004, research fully describing and analyzing

the results has not yet been published. As of March 2005, the Bureau of Justice Statistics is preparing a report on the data collected in the NCVS.

Advocacy Group Qualitative Data. Several advocacy groups (e.g., Anti Defamation League [ADL]; Human Rights Campaign, Southern Poverty Law Center [SPLC]) continuously compile and periodically disseminate reports and anecdotal evidence of hate crime. Many of the incidents are gathered through direct reporting to the organizations or are gleaned from media accounts. These reports constitute an important and underutilized source of qualitative data on hate crime.

Hate Crime Research

Many Programs. There are many major hate crime prevention and response efforts, supported by criminal justice and other government agencies at all levels of government as well as by non-government organizations (NGOs).

Little Evaluation. Few hate crime prevention, response, or victim support programs or policies have been rigorously evaluated. The impact of hate crime law reform has not been subject to rigorous evaluation.

Limited Basic Research. There are many descriptive studies, debates, typologies, thought-pieces, and overviews of prior research on hate crime, but basic research on the etiology of bias motivated offenses remains relatively underdeveloped.

Lack of Research. The lack of theory with the demonstrated ability to explain or predict hate crime, coupled with the lack of evaluation research, makes it difficult to determine the realized or potential impact of criminal justice programs and policies

aimed at preventing and effectively responding to hate crime.

The Internet. The use of the internet to commit hate-motivated harassment, to broadcast hate messages, and to coordinate organized hate group activities is an area of growing concern.

Geographic Analysis. A promising recent development is analysis of the geographic distribution of hate crimes. Advances in mapping and geographic profiling software and analytic techniques, and the demonstrated utility of crime mapping to researchers and police crime analysis units, suggests this will continue to be an area of growth in hate crime research.

Information Fragmentation. The fragmentation of information across organizations, public and private sectors, and across geographic areas may serve as an impediment to the many public and private efforts to understand and respond to hate crime.

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CHAPTER 1: INTRODUCTION

Overview

Hatred born of prejudice and bias almost certainly has motivated criminal acts throughout human history (e.g., Gould, 1981; Steinfield, 1973). In the United States, obvious examples include the long legacy of violence, intimidation, and discrimination targeting each new wave of immigrants, the lynching of blacks in the South, and other forms of criminal mistreatment directed toward individuals because of their land of origin, religion, skin color, language, or other traits. What is relatively new about hate crime is not its occurrence, but its widespread recognition and codification into law.

The term “hate crime” and its analog, “bias crime,” first saw widespread use among criminal justice practitioners and researchers in the 1980s (e.g., Jenness, and Grattet, 2001). Definitions vary (e.g., Craig and Waldo, 1996; Perry, 2001; Copeland and Wolfe, 1991), but a working definition suitable for our purposes is that used by the FBI (1999):

A hate crime, also known as a bias crime, is a criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.

The operationalization of hate crime varies widely across studies, and across jurisdictions' criminal codes. State hate crime statutes differ in terms of: (1) the specific traits legally defined as targets of hate crime motivation; (2) whether and how they address criminal penalties and civil remedies; (3) the range of crimes covered; (4) whether the statutes require data collection, and for what crime types; and (5) whether training about hate crime is required for law enforcement personnel.

Hate Crime Law

Since the Washington and Oregon legislatures first passed hate crime statutes in 1981, up to 47 states (including the District of Columbia) have passed at least one piece of legislation addressing hate or bias motivated crime in some way (ADL, 2003).¹ Federal hate crime legislation was introduced and debated as early as 1985 (ADL, 2001; Grattet and Jenness, 2001), and the first federal statute, the Hate Crime Statistics Act, was passed

¹ The exact number of states with such laws is subject to interpretation, depending on what one considers a hate crime law. For example, by the ADL's count, all but one state had some form of hate crime statute through 2003. Forty-seven states (including the District of Columbia in this count) have criminal penalties for bias or hate motivated violence. Of the remaining four states, three have some other statutory provisions (such as civil remedies for offenses, or criminalization of institutional vandalism) linked to hate or bias motivation. Only Wyoming is devoid of any identified hate or bias related statute. However, applying a more stringent definition of hate crime requiring three criteria to be met (discussed later in this report), Jenness and Grattet (2001) regard only 41 states as having a hate crime statute.

in 1990. This has been followed by several other pieces of federal legislation (e.g., Hate Crime Sentencing Enhancement Act, Violence Against Women act of 1998, Church Arson Prevention Act of 1994), with several other bills pending as of the fall of 2004 (Equal Rights and Equal Dignity for Americans Act of 2003).

Issues currently being debated regarding hate crime law include the set of traits covered. For example, as of 2003, nearly all state criminal codes specify race, religion, and ethnicity, but less than two thirds of the states include sexual orientation, and approximately half of the criminal codes include gender (ADL, 2003). Advocates for gays, lesbians, people with disabilities, and women are among those actively seeking additions of their respective groups for coverage in hate crime legislation in states not currently offering it. Also in play are the application of civil remedies for hate crimes, and whether “hate speech” should be considered a criminal offense or should be protected as political speech under the First Amendment.

Hate Crime Data

Prior to 1991, there were no “official” national hate crime data from which to form a picture of the size and shape of the problem, nor to observe trends. The Hate Crime Statistics Act of 1990, mandated the collection and reporting of hate crime data, and UCR collection of hate crime data began in 1991. But by the end of the 1990s, as many as half of local law enforcement jurisdictions were not complying with the Act (McDevitt et al., 2000). UCR data on hate crime still appear incomplete.

Crime victimization surveys are the standard alternative to law enforcement data. Although surveys have problems of their own as sources of crime data (e.g., respondent recollection of events and their willingness to disclose them), they do avoid the problems of dependence upon public willingness to report to the police and are not highly dependent upon law enforcement activity and statutory definitions of hate crime.

Among the significant barriers to determining the prevalence of hate crime and trends over time has been the failure, until recently, to use representative sampling on a national level in a longitudinal or repeated cross-sectional design. Fortunately, this situation is currently being remedied. In 2001, the National Crime Victimization Survey began asking respondents who have been the victims of vandalism and various interpersonal crimes whether they believe that hate was a factor in the offenses committed against them. This survey involves random sampling of thousands of households in a rotating panel design. In developing an understanding of other types of crime the NCVS (particularly in combination with the UCR) has been invaluable, e.g., in helping to determine the prevalence, offense profiles, trends, and other important dimensions of crime. This has proved to be particularly true in crime types known or expected to be severely underreported to police, with sexual assault being the best example².

² In the 1970s and early 1980s, UCR data were almost universally considered to profoundly underrepresent the prevalence and incidence of sexual assault (e.g., Feldman-Summers and Ashworth, 1981; Kilpatrick et al., 1987; Koss et al., 1987; Williams, 1984). Independent victimization surveys of localized samples supported the

Given the best available current information, it appears that the ongoing addition of NCVS data on hate crime may allow estimation of the extent of underreporting, and examination of whether current cross-state variations in hate crime rates in UCR data are functions of different levels of hate crime or of different reporting practices. At this point, research on NCVS hate crime data is not yet available, so it is difficult to determine its impact³ on our understanding of the size and scope of the problem.

Aside from UCR data and independent, localized victimization surveys, evidence of the prevalence and character of hate crime has been primarily anecdotal (e.g., ADL, 2004; Human Rights Campaign, 2003; National Coalition of Anti-Violence Programs, 2004), or localized (e.g., Barnes and Ephross, 1994; Ehrlich, 1994; Herek et al., 2002; Shively et al., 2001). Independent studies have attempted to measure the prevalence of hate crime for selected types of victims (e.g., for gays and lesbians, or among high school students), but their estimates have varied widely depending on sampling and how hate crime was operationally defined (e.g., Herek et al., 1997; McDevitt et al., 2002; Schulthess, 1992; Shively et al., 2001), and there have been no true replications to validate results.

Hate Crime Research and Evaluation

In addition to the rapid spread of federal and state hate crime legislation over the past 20 years as well as the large investment in government data collection programs, there has been recent and dramatic growth in the volume of research literature on hate crime. While there is a long history of research on crimes motivated by bias and bigotry (e.g., Asbury, 1939; Collins, 1918; Culter, 1905), the term “hate crime” did not appear with any substantial frequency in the social research literature until relatively recently. Studies in which hate crime is so named and defined (in ways consistent with contemporary hate crime statutes) have grown from the occasional study in the 1980s (e.g., Finn and McNeil, 1988; SPLC, 1989; Weiss and Ephross, 1989) to a steady flow over the past ten years (e.g., Balboni and McDevitt, 2001; Barnes and Ephross, 1994; BJS, 2001; Ehrlich, 1994; Bell, 2002; Dharmapala, 2004; Flint, 2004; Koopmans, 1996; Hagan et al., 1995; Hamm, 1998, 2004; Herek et al., 2002; Kuehnle and Sullivan, 2001;

contention that sex crimes were vastly underreported to and by law enforcement, but both the methodological quality and the results varied widely across studies and as one-time cross sectional studies they could not provide trend information (e.g., Lizotte, 1985; Murnen et al., 1989; Tjaden and Thoennes, 2000). From the mid 1970s through the early 1990s, UCR data showed an increase of over 200 percent, and the independent surveys could not confirm or dispute the validity of this trend. The NCVS over this time period showed no significant trend either upward or downward over this time frame, suggesting that the UCR increase was mainly a function of public willingness to report to police, improvements in police response to sexual assault cases, and better record keeping. The NCVS, particularly after its sex crimes questions were redesigned in 1993, has served to solidify the knowledge base and coupled with UCR data provides the only truly national and ongoing source of quality information supporting analyses of prevalence and trends.

³ The major threat to the potential value of NCVS data on hate crime is that few hate crimes might be reported. Although there are over 50,000 households in the NCVS panel, with few cases being reported there would be small numbers to work with in any particular state or city. This small sample of incidents would make it impossible to provide valid national prevalence estimates. It is also a barrier to something perhaps more valuable than a national estimate: a picture of hate crime occurring within states and local communities.

Lee and Leets, 2002; McDevitt et al., 2001; Perry, 2003; Rayburn et al., 2003; Shively et al., 2001; Steen and Cohen, 2004)

The body of research on the causes and consequences of hate crime has been reviewed elsewhere (e.g., Berk et al., 1992; Boeckmann and Turpin-Petrosino, 2002; Craig, 2002; Green et al. 2001; Herek and Berrill, 1992; Herek et al., 1999; Levin and McDevitt, 1993, 2001; McPhail, 2002; Perry, 2001, 2003), and the major conclusions are that: (1) hate crimes are more prevalent than is suggested by reported crime data; (2) victims seldom report hate crime to law enforcement; and (3) compared to the analogous conventional offenses, hate crimes have more serious negative consequences for victims. Theories from all branches of social sciences have been posited as explanations of hate crime, including those from psychology (e.g., personality theories, usually focusing on authoritarianism among aggressors), sociology (e.g., modernization and classical Durkheimian theories involving anomie as a causal factor), and economics (e.g., competition for scarce economic resources driving aggression against “other” groups such as new immigrants of different races and nationalities). However, there has been little formal or rigorous hypothesis testing and thus there is little in the way of a theoretical foundation for explaining or predicting hate crime.

Our review found detailed descriptions of dozens of criminal justice responses to hate crime, and reports summarizing or presenting as best practices a sampling of criminal justice programs and initiatives (e.g., ADL; Bell, 2002; Human Rights Campaign; Levin and McDevitt, 2002); Martin, 2000). We found nearly every state or major metropolitan area to have some form of government-sponsored hate crime initiative involving criminal justice agencies. Many local law enforcement initiatives are collaborative endeavors involving federal agencies (such as the ATF, FBI, or the Community Relations Service), large national non-governmental organizations (such as the SPLC or the ADL), or state and community organizations (such as local advocacy groups). Most states and large cities have hate crime task forces involving coordination of effort across agencies and levels of government, and with independent community organizations.

The voluminous descriptive literature has produced suggestions for “best practices” (e.g., Bureau of Justice Assistance, 1997, 2000a, 200b, 2001), and many recommendations for how the criminal justice system can more effectively address, prevent, and respond to hate crime (CRS, 2001; International Association of Chiefs of Police, 1998; National Crime Prevention Council, 2003; SPLC, 2004). While these recommendations are built upon practical experience and expert opinion, appear well-conceived, and pass the “common sense” test of validity, few evaluations of various law enforcement and community practices have been conducted. Such evaluations would determine whether or not any particular initiative, program, or set of practices has, for example, prevented hate crime, improved the efficiency of criminal justice programs, or provided more effective support for victims (i.e., aiding their recovery, improving cooperation in prosecutions, and preventing subsequent victimization).

Need for This Review

Although there is a long history of research on violence and maltreatment based on bias and prejudice toward distinct groups (see review and discussion by Petrosino, 1999), most research explicitly addressing hate crime has occurred in the past 15 years. Coverage of the full range of potential topics is uneven, as one would expect, but in other areas there is a rapidly growing empirical foundation on which to base conclusions and guide policy. From the extant research it is also clear that there remain significant gaps in our understanding of the scope of the problem, and the effectiveness of criminal justice and community responses to it.

Goals of This Review

Recognizing inadequacies in statistical reporting on hate crime and a limited but growing body of research on relevant criminal justice policy and practice, this review was requested by the U.S. Department of Justice to provide a summary and assessment of available information on which to base a program of hate crime research and evaluation. This report presents the results of an effort to summarize and critically assess the literally thousands of books, articles, research reports, legal documents, and websites addressing hate crime. The main purpose of this review is the identification of significant current issues, effective practices, innovative responses, and gaps in the law and in the research literature regarding hate and bias crime. In sum, the reviews will assist the DOJ in describing the critical questions related to hate crime statistics, policy, and practice that current research can and cannot answer, as well as to develop suggestions for future research designed to provide data that can help enhance justice system practices to reduce hate crime.

Intended Audiences

The primary audience for this review is the U.S. Department of Justice and in particular its National Institute of Justice agency which may use this report to inform decisions about how best to support practitioners in the fields of criminal justice, those involved in comprehensive community prevention and response efforts, those providing support for victims, and those providing support for all of the above in the form of applied research. While the immediate goal is the production of an internal document for the benefit of NIJ, the report may also be refined for availability to wider audiences of practitioners, researchers, and the general public.

Methodology

With the goal of identifying major themes, trends, and areas of need (e.g., the underreporting by victims of hate and bias crime to police, and the apparent underreporting by law enforcement agencies to UCR and NIBRS), a systematic review of hundreds of documents and web sites was conducted, including obtaining sources

describing: (1) federal and state hate crime data collection efforts; (2) research produced by federal and state agencies, advocacy groups and other independent organizations, and scholars; (3) attempts to explain causation; (4) assessment of impact on victims; (5) crime prevention and response efforts; (6) law enforcement training; and (7) descriptions and analyses of hate crime law.

We engaged in a multifaceted effort to identify, screen, and collect source materials. From our previous work on hate and bias crime we had accumulated a substantial collection of literature. We built upon our existing library through systematic web searches, as well as through an approximation of “snowball sampling,” examining the sources cited by each of our obtained sources. In addition, we examined publication lists, references, and links to other resources provided by advocacy organizations.

Screening and Assessing the Utility of Source Materials

Sets of decision rules were imposed to help manage the great volume of source materials, helping to determine the credibility and value of said materials and thus informing decisions about inclusion in our review. Our knowledge of hate crime law and research led us to most of the obvious and widely known sources: e.g., various Department of Justice publications; the work of prominent scholars expert in relevant areas; non-governmental organizations (e.g., ADL; SPLC; National Gay and Lesbian Task Force; Partners Against Hate); and state government offices and task forces (various agencies, offices, and task forces, with the most prominent including those in California and Massachusetts). We then expanded the search and when faced with new materials we looked closely at: (1) whether the methods employed appeared sound and empirically based; and (2) the credibility of the sources in terms of empirical research as well as opinion, commentary, testimony, and “thought-pieces.” Applying these two primary criteria often involved additional steps and application of secondary criteria, particularly in trying to assess credibility. For example, a strong indicator of the reliability of a piece of research or legal commentary was whether it was published in a forum involving a review process. Government-sponsored studies and academic journals were regarded more highly than other sources primarily because of relatively rigorous review and accountability processes, at both the research and the publication phases.

Unpublished research manuscripts, editorials, press releases, and other documents are sometimes accessible via the web pages of individual researchers and those of associations, advocacy groups, and other private organizations. Unpublished sources were regarded as supplemental at best, and because they had not passed a peer review process, were scrutinized carefully for methodological rigor and credibility of the source.

On-Line Search Services

Abt Associates began its comprehensive search of published journal articles using the website [Ingenta.com](http://www.ingenta.com). [Ingenta.com](http://www.ingenta.com) provides a free online search service of published content from reliable research resources, offering access to article summaries of over

28,000 publications and the full text of over 6,000 publications. For reports on applied research and program evaluations in the field of criminal justice, we used the online capacities of the National Criminal Justice Reference Service (NCJRS). NCJRS maintains one of the largest repositories of web sites devoted to criminal justice statistics, and is arguably the world's most extensive source of research and statistical information on criminal justice. NCJRS is a central source of information produced by all the bureaus of the U.S. criminal justice agencies, including the Department of Justice, Office of Justice Programs, the National Institute of Justice (NIJ), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Statistics (BJS), the Bureau of Justice Assistance (BJA), the Office of Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP). The NCJRS search functions also cover research and practice journals, and reports by state and municipal criminal justice agencies.

To double-check for published articles that may have evaded Ingenta and NCJRS, we used free online services to search university library collections, and searched the major law and criminal justice journal web pages. In addition, we searched for books on hate and bias crime with on-line searches of university library collections and Amazon.com. To supplement and double-check for sources that may have been missed through the NCJRS, Ingenta, Amazon.com, and library searches, we used commercial search engines. These broadened the search considerably, identifying websites of state and local government agencies, non-governmental organizations, and individuals, blogs, newspaper articles, state and federal laws, and other materials. Some of the source materials found through these search engines were available in full-text form online and free of charge. Other sources were obtained through local libraries, library duplication and loan services, or were purchased by Abt Associates' staff.

Figure 1.1 illustrates the breadth of source materials identified by several of the online search engines.⁴ While numerous key words and phrases were used, the most narrowly and appropriately focused were the phrases "hate crime" and "bias crime." As can be seen here, the NCJRS concept search of full text sources reached its limit of 500 sources for "hate crime" and identified 316 sources for "bias crime." Ingenta identified 71 journal articles when searching for "hate crime," and 10 for "bias crime." Amazon.com identified over 2,000 "hate crime" and 163 "bias crime" books and monographs. Google listed over 300,000 "hate crime" and 8,000 "bias crime" source materials.

⁴ These numbers are provided for illustrative purposes, to provide a sense of the breadth of material available and the magnitude of the task of reviewing it. These figures were accurate on one day in mid-2004, but change frequently as new sources are added and links to some web sites are added or deleted. For example, a Google search on the phrase "hate crime" returned over 700,000 in October 2004, but had returned only about 330,000 four months earlier. Given this, the numbers provided in Figure 1.1 are not replicable.

Figure 1.1: Sources Identified by Select Internet Search Engines

Search Engine	Phrase Searched	
	“Bias Crime”	“Hate Crime”
NCJRS Abstracts (concept)	60	247
NCJRS Full Text (concept)	316	500
Ingenta	10	71
Amazon	163	2,241
Google	8,420	337,000

It is also important to note that the numbers presented in Figure 1.1 cannot be totaled, either across rows or down columns, due to considerable overlap. For example, many of the 60 “bias crime” sources identified in the NCJRS abstracts search were also included in the list of 247 “hate crime” sources. Similarly, some of the source materials were identified by more than one search engine. For example, some government-sponsored research reports would simultaneously appear in the NCJRS searches, as monographs in the Amazon.com search, and as sources identified by Google. In some cases, reports on the single study resulting in a research report or monograph would also appear in journal article form, and would be identified in the Ingenta search as well as in Amazon.com or NCJRS searches. Finally, the numbers returned by the Google searches are inflated by repetition and by a high percentage of sources inappropriate for our inquiry, such as listings for television shows, lecture notes for college courses, newspaper articles, and commentary in blogs and “position statements” by private individuals with no apparent expertise as either practitioners or researchers in the area of hate crime.

The NCVS search engine was highly effective in identifying relevant reports describing applied and academic research reports and scholarly journal articles. Ingenta returned many of the same journal articles as those identified by NCJRS, and was useful for finding articles addressing hate and bias crime published outside of mainstream criminal justice journals (e.g., sociology and psychology journals), and those addressing subjects not tied to the criminal justice system: e.g., those examining causation, victim impact, and community experiences with hate crime. Amazon.com was effective in identifying many books and monographs not located by NCJRS (or, obviously, Ingenta, since it only deals with journals).

Google was in some ways the most valuable search engine, while simultaneously being in some ways the most difficult to manage. Google was least valuable when searching on broad key words, such as “hate crime.” Its search algorithms use web site traffic to prioritize a listing, and with hundreds of thousands of listings, prioritization is critically important. The result was that many excellent sources were peppered throughout hundreds of listings not suitable for the present purposes (e.g., news accounts of recent high-profile incidents, encyclopedia sections, pamphlets, extremist web sites, blogs addressing hate crime with discussions conducted by people with little apparent expertise in the area); reports on highly useful studies that fail to draw the same level of popular attention lay buried thousands of listings deep. Google, however, was more and more useful the more narrowly the search terms were defined. For example, “hate crime violence prevention programs” returned about 85,000 listings; still a dauntingly large number, but with a higher percentage of the top listings being relevant. One of the

advantages of Google was that it uncovered sources not found by the other search engines. For example, some of the organizations providing violence prevention resources and victim support were found in the Google search using the keywords, “hate crime violence prevention programs”). Google was invaluable in identifying sources falling outside the range of research reports, journal articles, and federal government resources, such as commentary and legislative testimony on hate crime law, web sites of independent organizations addressing hate crime, and reports and web sites of state agencies, departments within state agencies, and government sponsored hate crime task forces.

Organization Web Sites

The web sites of organizations addressing hate or bias crime issues were examined for research reports, legal resources, and other references. For example, foundations and advocacy groups such as the ADL, Leadership Council on Civil Rights, SPLC, Human Rights Campaign Foundation, Partners Against Hate, and the American Civil Liberties Union all have made available reports, position statements, news updates, links to other sites, and other materials regarding hate and bias crime. Web sites of research organizations (e.g., Urban Institute, Police Executive Research Forum, and the Institute for Law and Justice) and of professional associations (e.g., International Chiefs of Police Association, National District Attorneys Association, American Prosecutors Research Institute) were examined to find studies and other materials focusing on criminal justice and other government responses to hate crime.

Statutes

Several organizations closely monitor hate and bias crime law (both statutory and case), and to control costs and expedite the collection of materials we built upon their publicly-accessible monitoring and analysis of relevant law. For example, the Anti-Defamation League provides an overview of state hate crime statutory provisions including information on whether a state’s statutes allow for civil action, and a listing of groups legally recognized as subject to hate or bias (race, religion, disability, sexual orientation, etc.). The site provides links to the relevant statutes within each state. The Human Rights Campaign, SPLC, Partners Against Hate, and other groups also provide information on current statutes, monitor ongoing legislation, and provide updates of case law. To ensure a rigorous and comprehensive review, copies of all state and federal hate and bias crime provisions were obtained. All 50 states provide on-line access to criminal codes and general laws, and access to summaries of current legislative activity. Similarly, federal laws and legislative activities are available on-line (e.g., Thomas: Legislative Information on the Internet provides a comprehensive search and retrieval service through the Library of Congress of all federal legislation). We used the free online services of the Cornell Law School’s Legal Information Institute (LII, which provides on-line access to all state criminal codes), LexisNexis, and links provided by Partners Against Hate to obtain the statutes, which were examined to double-check the currency and accuracy of the materials provided by the ADL and other sources. In

addition, we reviewed books and major law reviews and criminal law journals for overviews, analyses, and expert commentary on hate crime law.

CHAPTER 2: LEGISLATION

Since the Washington and Oregon legislatures first passed hate crime statutes in 1981, the vast majority of states and the U.S. Congress have passed at least one piece of legislation explicitly addressing hate or bias motivated crime. There is significant variation in legislation ranging from very comprehensive statutes with provisions addressing criminal sanctions and civil remedies, to one state that does not have any form of identifiable hate crime provisions. Critical to understanding hate crime statutes and to the discussion of research and evaluation issues is how hate crime is defined.

Key Issues in Defining Hate Crime

Dozens of distinct definitions of hate crime can be found in the research, legal, criminal justice, and human service literature. For the present task of presenting information for the development of a hate crime research and evaluation agenda, the most important definitions are put forth in state and federal statutes. Not only are they of obvious importance for the discussion of hate crime law, but legal definitions also drive the collection of data on hate crime. The largest national effort to collect hate crime data is the Uniform Crime Reports Program. The UCR definitions of hate crime and associated data collection and training guides are outgrowths of federal statutes, beginning with the Hate Crime Statistics Act of 1990, and continuing with subsequent federal acts amending it. Many states use definitions of hate crime that are different than those found in federal statutes and have their own data collection efforts and annual reports on hate crime (e.g., California, Washington) that stand apart from the UCR and NIBRS. In the present discussion of definitions, we focus on state and federal statutes, and we revisit definitional issues in our discussion of hate crime research and evaluation in Chapter 3.

Before delving into statutory definitions, a discussion of the distinction between the terms *hate crime* and *bias crime* is in order. Although some sources, laws, and statutes are careful to present a distinction between them, the terms are often used interchangeably, and there is no accepted consensus about their difference.

Among those discussing the distinction and separating the terms in their work, some contend that it is not always true that the hatred arises from the victim possessing traits such as a certain ethnicity or perceived sexual orientation. Hatred does not always arise in response to prejudice toward minority and/or historically oppressed groups, but sometimes stems from past interactions between the victim and perpetrator, or the immediate behavior of the victim. An offender can select victims on the basis of their race, but this does not necessarily require the kind of intense arousal of emotion implied in the term “hatred.” Lawrence (1999) argues that the term “bias crime” properly draws attention to the role of bias in generating the motivation to commit crime, while “hate crime” can include events not necessarily involving bias or prejudice:

“ *...bias crimes are crimes in which distinct identifying characteristics of the victim are critical to the perpetrator’s choice of victim. . . . the individual*

identity of the victim is irrelevant. A bias crime occurs not because the victim is who he is, but rather because the victim is what he is... Not every crime that is motivated by hatred for the victim is a bias crime. Hate based violence is a bias crime only when this hatred is connected with antipathy for a racial or ethnic group or for an individual because of his membership in that group... I use the term "bias crime" rather than "hate crime" to emphasize that the key factor in a bias crime is not the perpetrator's hatred of the victim per se, but rather his bias or prejudice toward that victim." Lawrence, 1999:9

While it is important for Lawrence to make the distinction between hate and bias crime to establish clarity for his detailed analysis of American law, the distinction he makes is not generally followed in the criminal justice field or by researchers. Researchers conducting studies and criminal justice personnel documenting training or other interventions usually put forth working definitions or, at minimum, an operational definition is stated or can be readily inferred. In statutory law and in the criminal justice system activity that is tied to these statutes, the definitions are critical and are stated.

In statutes regarded as addressing hate crime, the term is actually rarely used. Most use "bias" or "prejudice" when addressing the offender's motivation, which is the key to separating bias from its conventional counterpart. This is true even of legislation with hate crime in its title, such as the federal Hate Crime Statistics Act of 1990, that uses the term "prejudice" rather than "hate" when discussing motivation. While it may be true that the term "hate crime" less accurately captures the essence of the motivation behind the behavior, we generally use the term "hate crime" throughout the remainder of the report. We take this approach because in most research and criminal justice contexts the terms are essentially interchangeable, and "hate crime" is more widely used and commonly understood to address the range of offenses under consideration here.

In state and federal statutes, the essential elements in defining what constitutes hate crime are: (1) stating the range of predicate crimes (or, the range of conventional crimes that may potentially be regarded as hate crimes, given the second criterion); (2) stating or implying that the crime was motivated by bias or prejudice; and (3) describing the range of traits identifying protected groups. Hate crime statutes all share the necessary condition of stating or implying that some form of hate or bias motivates offenses, although there are many ways that this is communicated in the statutes. There is wider variation among statutes in the degree of specification of predicate crimes and, when specified, the range of offenses listed. There are also significant differences across statutes in the level of specification and number of protected groups listed.

To facilitate the discussion of hate crime definitions (as well as subsequent discussions of hate crime law and research), we present in Figure 2.1 an overview of hate crime statutory provisions in all 50 states and the District of Columbia.

Figure 2.1: State Hate Crime Statutory Provisions

State	Criminal Penalty	Civil Action	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Institutional Vandalism	Interfering With Religious Worship	Data Collection	Training for Law Enforcement Personnel
			Race, Religion, Ethnicity	Sexual Orientation	Gender	Disability	Age	Political Affiliation				
AL	◆		◆			◆			◆			
AK	◆		◆		◆	◆						
AZ	◆		◆	◆	◆	◆			◆		◆	◆
AR		◆	◆						◆	◆		
CA	◆	◆	◆	◆	◆	◆		◆	◆	◆	◆	◆
CO	◆	◆	◆						◆			
CT	◆	◆	◆	◆	◆	◆			◆		◆	
DC	◆	◆	◆	◆	◆	◆		◆	◆	◆	◆	
DE	◆		◆	◆		◆			◆			
FL	◆	◆	◆	◆		◆		◆	◆	◆	◆	
GA	◆	◆							◆			
HI	◆		◆	◆	◆	◆		◆	◆			
ID	◆	◆	◆						◆	◆	◆	
IL	◆	◆	◆	◆	◆	◆			◆		◆	◆
IN									◆			
IA	◆	◆	◆	◆	◆	◆		◆	◆		◆	◆
KS	◆		◆	◆		◆		◆	◆			
KY	◆		◆	◆					◆		◆	◆
LA	◆	◆	◆	◆	◆	◆		◆	◆		◆	◆
ME	◆	◆	◆	◆	◆	◆		◆	◆		◆	
MD	◆		◆						◆	◆	◆	
MA	◆	◆	◆	◆		◆			◆	◆	◆	◆
MI	◆	◆	◆		◆				◆	◆	◆	
MN	◆	◆	◆	◆	◆	◆		◆	◆		◆	◆
MS	◆		◆		◆				◆	◆		
MO	◆	◆	◆	◆	◆	◆			◆	◆		
MT	◆		◆						◆			
NE	◆	◆	◆	◆	◆	◆		◆	◆		◆	
NV	◆	◆	◆	◆		◆			◆	◆		
NH	◆		◆	◆	◆	◆						

Figure 2.1: State Hate Crime Statutory Provisions (continued)

State	Criminal Penalty	Civil Action	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Bias Toward:	Institutional Vandalism	Interfering With Religious Worship	Data Collection	Training for Law Enforcement Personnel
			Race, Religion, Ethnicity	Sexual Orientation	Gender	Disability	Age	Political Affiliation				
NJ	◆	◆	◆	◆	◆	◆			◆		◆	
NM	◆		◆	◆	◆	◆		◆			◆	◆
NY	◆		◆	◆	◆	◆		◆		◆		
NC	◆		◆		◆			◆		◆		
ND	◆		◆		◆							
OH	◆	◆	◆					◆				
OK	◆	◆	◆			◆		◆		◆	◆	
OR	◆	◆	◆	◆		◆		◆	◆		◆	◆
PA	◆	◆	◆	◆	◆	◆		◆			◆	
RI	◆	◆	◆	◆	◆	◆		◆		◆	◆	◆
SC								◆		◆		
SD	◆	◆	◆					◆		◆		
TN	◆	◆	◆	◆				◆		◆		
TX	◆	◆	◆	◆	◆	◆		◆			◆	
UT	◆											
VT	◆	◆	◆	◆	◆	◆		◆				
VA	◆	◆	◆					◆		◆	◆	
WA	◆	◆	◆	◆	◆	◆		◆			◆	◆
WV	◆				◆				◆	◆		
WI	◆	◆	◆	◆		◆		◆				
WY												

Source: Anti-Defamation League, 2003

This overview is based on work done by the ADL, which has examined the criminal codes of each state current through 2003. Figure 2.1 is a modified version of the summary table presented by the ADL (2003).⁵

We have obtained the relevant statutes for each state and have verified the accuracy and currency of the ADL's presentation, and updated where appropriate.⁶

When examining the number of states with each provision in the ADL table, it is important to note that such counts can vary depending upon the definitions of hate crime used to guide the selection and categorization of statutory provisions. The ADL's examination of statutes was guided in part by their definition of hate crime:

“... a criminal act against a person or property in which the perpetrator chooses the victim because of the victim's real or perceived race, religion, national origin, ethnicity, sexual orientation, disability or gender.

ADL, 2004

This definition is relatively broad, but it is clear from an examination of their compilation of statutes that the ADL used this definition to establish the broad parameters of hate crime, but still categorized as hate crime statutes provisions that were far narrower in scope (e.g., counted as a hate crime statute laws with shorter lists of protected groups or restricted sets of predicate crimes).

While the ADL lists 49 states plus the District of Columbia as having some form of hate crime statutory provision, Jenness and Grattet (2001:74) list only 41 states as having a hate crime law. For their analysis of the evolution and nature of hate crime law in the United States, Jenness and Grattet (2001) established a working definition of hate crime law that is different than that used by the ADL. For a statute to be considered a hate crime law by Jenness and Grattet (2001), it must meet three criteria:

- (1) Criminalizing, enhancing penalties for, or amending existing statutes regarding crimes motivated by bias toward individuals or groups based on particular status characteristics;

⁵ Others have presented similar matrices providing overviews of statutory hate crime law (e.g., Berrill and Herek, 1992; Jenness and Grattet, 2001; Lawrence, 1999; Perry, 2001), but the ADL's was selected due to its overview being more current and/or comprehensive.

⁶ In addition to formatting modifications, we have added **Arkansas** to the ADL's listed states having a provision concerning offenses motivated by bias toward race, religion, or ethnicity (Arkansas Statutes Annotated §16-123-106, passed in 1993, which addresses civil actions for offenses “motivated by racial, religious, or ethnic animosity”). We have also added **Oregon** to the states whose statutes list disabilities, age, and political affiliation as protected group traits (§181.642, addressing training for law enforcement in investigating and reporting crime “*motivated by prejudice based on...*” perception that the victim possessed a listed trait). Although **Georgia's** statute was overturned by the state Supreme Court in October 2004, we have included the statute in our discussion and in Figure 2.1 for reasons discussed below.

- (2) Containing an “intent standard,” specifically referring to the subjective intention of the offender;
- (3) Specifying a list of “protected social statuses,” such as ethnicity or sexual orientation.

This three-pronged standard includes the common elements of all widely accepted definitions of hate crime: the presence of a criminal act motivated by hate or bias toward categories of people on the basis of their traits. The standard of Jenness and Grattet (2001) goes further by requiring that the statute create a separate offense category or provide penalty enhancements for existing offenses, and that it specify the groups targeted by the hate or bias motivation.

Some of the disparity between Jenness and Grattet’s and the ADL’s counts may be due to the four-year gap between when each compiled the statutes, and also because of provisions that may have been amended. Further, three additional states adopted or revised hate crime statutes between 1999 and 2003. Most of the difference, however, is due to the utilization of distinct definitions of hate crime law and in making different discretionary decisions in determining whether specific statutes fall within these definitions.

Provisions in Legislation

With 50 states plus the District of Columbia each having unique criminal and civil statutes, there is a great range of state law that can be categorized as addressing hate or bias crime. We focus here on the major categories of provisions, identifying themes most common across state laws and discussing notable deviations from these themes. The major provisions of most statutes cover: (1) the identification of *protected groups*, i.e., categories of people identified by a list of traits considered to be the motivating factors in offenders’ choice of victims; (2) identification of *predicate crimes*, or conventional offenses eligible to be defined as hate crimes if hate or bias toward victims in protected groups can be determined; (3) stipulating that hate or bias motivated the offenses covered by the statutes; (4) criminalizing and/or providing for penalty enhancements for offenses determined to be hate or bias crimes; (5) providing for civil remedies; and (6) stipulations requiring the collection and/or dissemination of hate crime data. Another category or provision appearing less frequently in statutory law addresses training of law enforcement personnel on preventing, responding to, and/or reporting on the occurrence of hate crime. What follows is a discussion of these major statutory provisions⁷.

⁷ In addition to major provisions such as these that occur in substantial numbers of states, a number of other topics are covered in one or two statutes addressing hate and bias crime. For example, Texas Article §42.014 states that sentencing judges may, as a condition of punishment, require offenders found guilty of bias-motivated crimes to attend an educational program to promote tolerance and acceptance of others. Our current review does not attempt to fully enumerate and examine every kind of provision, focusing instead on providing an overview of major themes and trends in legislation.

Protected Groups

The five columns with reverse-shaded headings in Figure 2.1 present which states do and do not specify prejudice, bias, or hate toward specific groups defined by the traits: (1) race, religion, or ethnicity; (2) sexual orientation; (3) gender; (4) disability; (5) age; and (6) political affiliation. As can be seen here, for example, Arizona defines hate crimes as those motivated by bias toward race, ethnicity, sexual orientation, gender, or disability (Arizona Revised Statutes, § 41-1750), but not those motivated by biases toward age or political affiliation.

To provide a better sense of the portion of states with provisions identifying each type of protected group, we have tabulated the number of states with each provision in Figure 2.2. We present the percent of states with each provision in Figure 2.3. As can be seen in Figure 2.2, 46 of the states, or 90% (Figure 2.3), have statutes specifying race, ethnicity, and/or religion as traits identifying protected groups. Over 50% of states specify sexual orientation, gender, and/or disabilities as targets of bias or prejudice, while relatively few states specify age (27%) or political affiliation (12%).

Washington DC has one of the most inclusive statutes in terms of the range of specified protected groups, listing 13 distinct group traits. A bias-related crime is defined (D.C. Code §22-4001) as a:

“...designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibility, physical handicap, matriculation, or political affiliation of a victim of the subject designated act.”

California's Penal Code (§ 1170.75) is also inclusive, specifying nine actual or perceived victim traits: *“race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation.”* Similarly, Florida statutes (e.g., 2004 Florida Statute § 775.085) list prejudice based on *“the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.”*

Texas statutes are potentially very broad, but they are not specific about the range of protected groups, with several statutes using the phrase *“bias or prejudice against a group”* (e.g., Texas Government Code §42.014) or simply stating that offenses occurring because of *“prejudice, hatred, or advocacy of violence”* (Texas Government Code § 411.046) without stating specific target groups.

Figure 2.2: Count of Provision by State

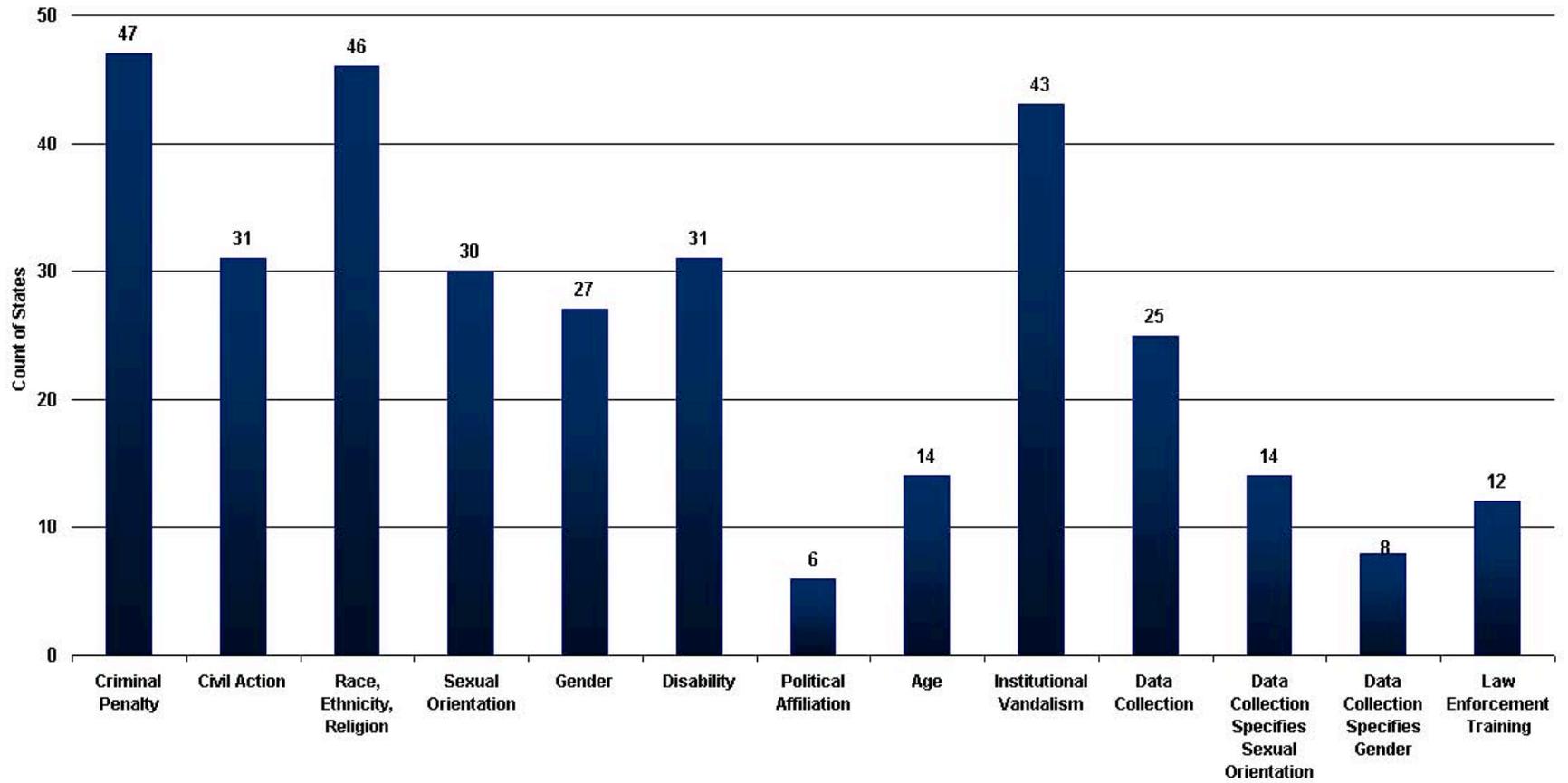
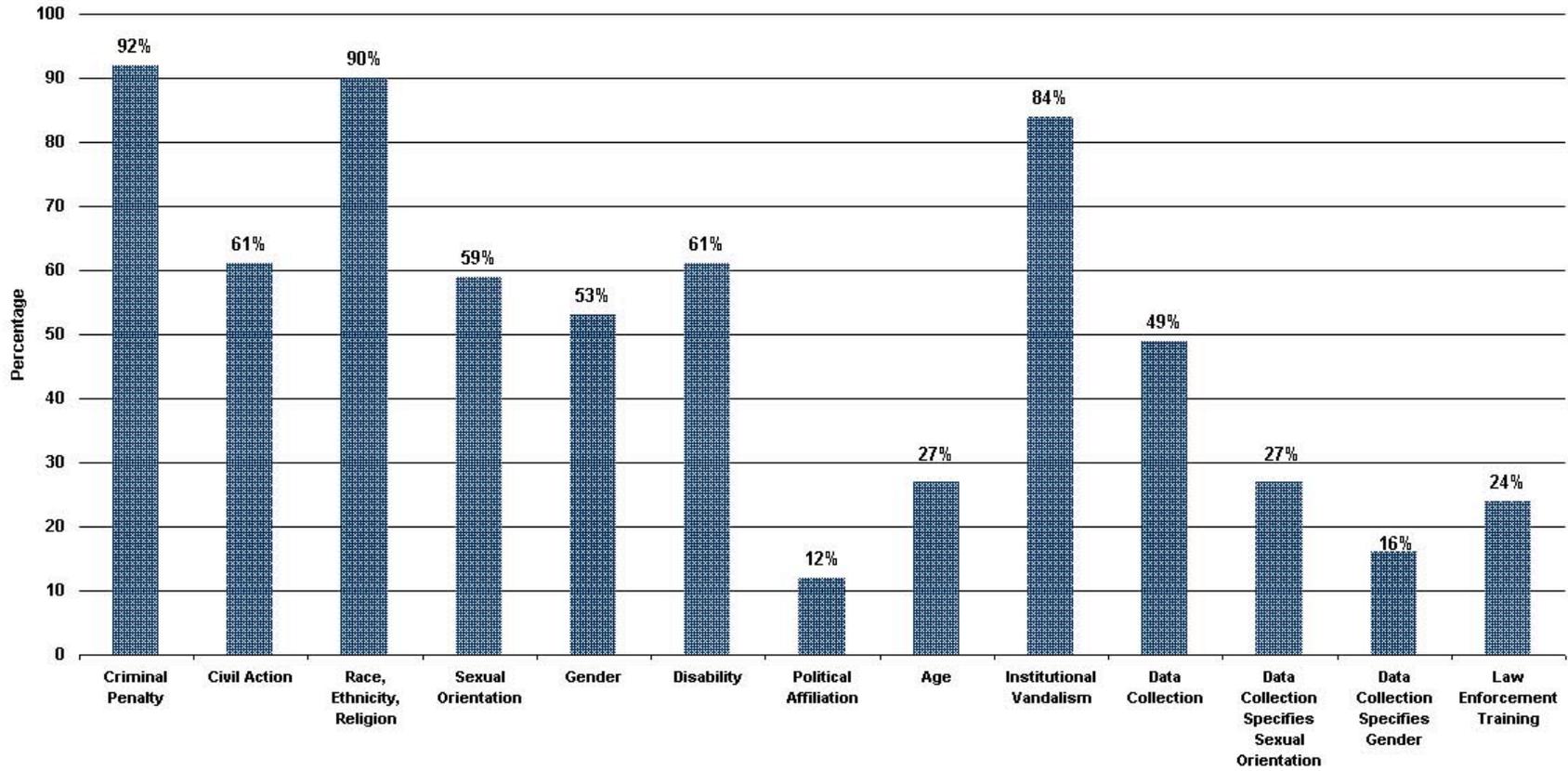


Figure 2.3: Percentage of Provision by State



Like Texas' statutes, those of Georgia, Indiana, and South Carolina do not list protected groups. Unlike Texas, statutes in these three states do not make any general statement about bias or prejudice as motivations. Georgia and Indiana list only one type of crime, institutional vandalism, covering damage to places of religious worship without specifying victim groups and without addressing motivation. It is an open question whether these statutes should be considered hate or bias crime laws. It is apparent from their breakdown of each state's statutes that the ADL consider these provisions addressing vandalism of churches or other places of worship, and statutes addressing the infringements upon civil rights as addressing hate crime. Jenness and Grattet (2001) do not list these three states as having any hate crime statutes, confirming that there are those who would disagree with the ADL's classification.

Most statutes explicitly state their list of protected groups, and the lists are normally somewhat shorter than those provided by D.C., California, and Florida. For example, Montana lists "***race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.***" Toward the more restrictive end of the scale are states like Colorado, whose statutes (e.g., C.R.S. § 18-9-121) specify a victim's "***actual or perceived race, color, religion, ancestry, or national origin***" and make no mention of disability, sexual orientation, gender, or other traits.

The first federal statute addressing hate crime was the Hate Crime Statistics Act of 1990 (HCSA), which listed four protected groups, identified by "***race, religion, sexual orientation, or ethnicity.***" In the Violent Crime Control and Law Enforcement Act of 1994, Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability." Federal legislation currently under consideration (the Hate Crime Statistics Improvement Act of 2003, and the Local Law Enforcement Hate Crimes Prevention Act of 2004) would add gender to the list of protected groups.

A provision of Rhode Island's Hate Crimes Sentencing Act (Rhode Island General Laws §12-19-38) illustrates another important feature of hate crime statutes: the distinction between victim traits or membership in a protected group, and offender's perception of the victim possessing those traits. As §12-19-38 states, hate or bias motivation can be directed toward "***the actual or perceived***" group membership of victims (see similar language in, e.g., California Penal Code §1170.75, and Louisiana Revised Statutes §40:2403). This distinction is particularly important since not all group traits are directly visible, as in the case of sexual orientation or religion, but are instead inferred on the basis of cues that are subject to interpretation and easily mistaken. For example, heterosexuals are sometimes mistaken as homosexuals due to their proximity to gay bars, to their physical appearance or mannerisms. Cues that are more easily seen and more reliable indicators of group traits are still not free of misinterpretation. For example, people with certain features and skin tones can easily be perceived to be from any one of many different racial or ethnic backgrounds.

The distinction between victim traits and perceived victim traits is important in the prosecution of hate crime. It may be that an offender attacked a heterosexual person or a

person of Italian heritage under the mistaken belief that they were attacking a homosexual or a Latino. Statutes stressing that the offender's perception that their victim was a member of a protected group makes it easier to prosecute offenses as hate crimes when the victim may not have actually been a member of a protected group. Statutes requiring that a victim be a member of a protected group make it more difficult to prosecute cases where the offender had every intention of committing a hate crime but selected the wrong victim through mistaken identity.

Predicate Crimes

Under the majority of state hate crime laws, most or all criminal violations can be classified as hate crimes if they are determined to be motivated by bias or prejudice toward an individual or group of people on the basis of certain traits they possess or are perceived to possess. At the inclusive end of the scale is a Florida provision (2004 Florida Statutes § 775.085) stating that "any felony or misdemeanor" can serve as a predicate crime. This provision enhances penalties for "...*any felony or misdemeanor*" found to occur because of prejudice toward any one of a list of protected groups. Similarly, a provision of Rhode Island's Hate Crimes Sentencing Act (Rhode Island General Laws §12-19-38) discusses procedures for addressing both misdemeanor and felony offenses, making it clear that all (or virtually all) offenses can serve as predicate offenses for hate crime

Other state hate crime statutes offer broad categories of predicate offenses, but fall short of the inclusiveness of 'any crime' or 'any felony or misdemeanor.'" For example, a provision of California's criminal code focuses on felonies or attempted felonies (California Penal Code §1170.75; see also §666.7). Colorado's (C.R.S. §18-9-121) and Nebraska's (R.R.S. Neb. §28-110) statutes focus on injury to persons or damage to property. These provisions cover broad ranges, but are less inclusive than those stating that any crime can be a predicate offense for hate crime.

Some states offer *lists* of specific offenses rather than broad categories. For example, Louisiana's Revised Statutes §107.2 contains an extensive list of predicate crimes that, if victims were selected because of actual or perceived traits defining protected groups, become hate crimes:

"first or second degree murder; manslaughter; battery; aggravated battery; second degree battery; aggravated assault with a firearm; terrorizing; mingling harmful substances; simple, forcible, or aggravated rape; sexual battery, aggravated sexual battery; oral sexual battery; carnal knowledge of a juvenile; indecent behavior with juveniles; molestation of a juvenile; simple, second degree, or aggravated kidnapping; simple or aggravated arson; placing combustible materials; communicating of false information of planned arson; simple or aggravated criminal damage to property; contamination of water supplies; simple or aggravated burglary; criminal trespass; simple, first degree, or armed robbery; purse

snatching; extortion; theft; desecration of graves; institutional vandalism; or assault by drive-by shooting.”

The 1990 version of the Federal Hate Crimes Statistics Act listed eight predicate offenses that could potentially be hate crimes (if there is manifest evidence that they were motivated by prejudice): murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage, or vandalism of property. The list was later expanded to include robbery, burglary, and motor vehicle theft. No other offenses would be considered hate crime under this definition even if they were motivated by hate, prejudice, or bias (see discussion by Jacobs and Potter, 1997).

At the most restrictive end of the scale are states such as Georgia (Official Code of Georgia §16-7-26) and Indiana (Burns Indiana Code Annotated §35-43-1-2), whose identifiable hate crime statutes address only one crime, institutional vandalism (e.g., toward places of religious worship in Georgia, and to places of religious worship, community centers, or schools in Indiana), and where no reference is made to protected groups. South Carolina statutes cover damage to places of religious worship (S.C. Code Ann. §16-11-535 and S.C. Code Ann. §16-11-110) and to the deprivation of the civil rights of others (S.C. Code Ann. §16-5-10), again without specifying victim groups.

Hate or Bias Motivation

With few exceptions, the statutes provide statements about how either bias, prejudice, or hatred led to the commission of offenses or the selection of victims. The exceptions include the aforementioned statutes of Georgia, where no reference is made to prejudice or bias or any other kind of motivation, and Wyoming, with no hate crime provisions of any kind. Among the majority of statutes addressing motivation, there are differences in how this is phrased. Ironically, most of the central statutes covering hate crime – whose distinguishing feature is the motivation of the offender – do not include the terms “hate” and many do not use “motivation” in their language, although many of the provisions use “hate crime” in their title.

The most common structure of statutory descriptions of hate or bias motivation is: (1) a statement about crime occurring, followed by (2) the phrase “because of,” “by reason of,” or “based on,” followed by (3) “prejudice toward” or “bias toward,” which is then followed by (4) a list of traits defining protected groups. For example, Florida Statute §877.19 enhances penalties for crimes arising from, “*prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim.*” A provision of the Texas criminal code (§42.014) states that a hate crime occurs when the selection of victims for certain crimes happens “*...because of the defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.*” Similar phrasing, using either “because of” or “by reason of” or another similar term, is used in most statutes, including those of California, North Carolina, Mississippi, Texas, Nebraska, and Nevada.

Some provisions omit the second component, and do not mention either “prejudice or bias.” For example, a Montana provision (e.g., Montana Code Annotated 2003, §45-5-222; see similar language in California Penal Code §1170.75; New York CLS Penal §485.05) contains the language that offenses were committed “*because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.*”

A few statutes make explicit reference to hate as a motivation (e.g., Oregon, Minnesota). For example, the previously mentioned provision of Rhode Island’s Hate Crimes Sentencing Act (Rhode Island General Laws §12-19-38) is stated as: “*because of the actor's hatred or animus toward the actual or perceived disability, religion, color, race, national origin or ancestry, sexual orientation, or gender...*” While the relevant provisions of the Texas criminal code use the terms “bias” and “prejudice,” statutes regarding the administration of state government contain a provision (§411.046) on hate crime reporting using the term “hate crime” in the provision’s title, as well as in the description of offenses on which data is to be collected:

The bureau of identification and records shall establish and maintain a central repository for the collection and analysis of information relating to crimes that are motivated by prejudice, hatred, or advocacy of violence...

Provisions of some hate crime statutes use the term “motivation” (e.g., Connecticut, Minnesota, Oregon). For example, an Arkansas statute regarding civil remedies (Arkansas Statutes Annotated §16-123-106) describes the relevant offenses as those “*motivated by racial, religious, or ethnic animosity.*”

Among the states whose statutes are least specific in how they state prejudice or bias is Georgia, whose criminal code (OCGA §16-7-26) addresses just one predicate offense and in which the hate or bias motivation is implied, rather than stated:

A person commits the offense of vandalism to a place of worship when he maliciously defaces or desecrates a church, synagogue, or other place of public religious worship.

The ADL determined that the implication of hate or bias motivation for ‘malicious’ damage targeting places of religious worship was strong enough to warrant categorizing this statute as addressing hate crime, although others may disagree.

Penalty Enhancements and Criminalization

As can be seen in Figure 2.1, the vast majority of states have provisions providing criminal penalties for hate crime. Criminal provisions either: (1) enhance penalties for hate or bias motivated crime, and/or (2) create new categories of crime (or criminalization). There is significant overlap, however, between penalty enhancement and criminalization. While ‘criminalization’ is often used and implies the creation of new offenses, review of these provisions show that most are, in essence, extensions of

statutes governing predicate crimes and function as sentence enhancements. For example, Partners Against Hate (2004) describes Hawaii Revised Statute (HRS) §711-1107 as criminalizing desecration to a place of worship. Annotations attached to this provision (HRS §0711-1107 Annotations) contain this discussion:

Previous Hawaii law prohibited certain types of desecration. For example, desecration of the United States flag was prohibited. Section 711-1107 deals more generally with all acts of desecration; i.e., acts of physical damage to or mistreatment of venerated places and objects under circumstances that the defendant knows are likely to outrage the sensibilities of persons who observe or discover the defendant's actions. Thus, any desecration of a public monument or structure; or a place of worship or burial (public or private); or, in a public place, the national flag, or any other object (such as certain religious objects) revered by a substantial segment of the public, will constitute an offense. Damage by desecration is treated separately from other types of property damage because the sense of outrage produced by such acts is out of proportion to the monetary value of the damage. Thus, desecration is a misdemeanor, although many such cases might otherwise be petty misdemeanors under §708-823 because the object desecrated is worth less than \$50.

HRS §711-1107 thus serves as a penalty enhancement for institutional vandalism, creating a special crime category separate from most other forms of property destruction and elevating the penalties above other forms of vandalism. For most practical purposes, the criminalization of certain acts and penalty enhancement for existing offenses are functionally equivalent.

Most of the 47 states with criminal hate crime provisions provide for penalty enhancements. For example, Louisiana's criminal code §107.2 contains the following description:

- (B) If the underlying offense named in Subsection A of this Section is a misdemeanor, and the victim of the offense listed in Subsection A of this Section is selected in the manner proscribed by that Subsection, the offender may be fined not more than five hundred dollars or imprisoned for not more than six months, or both. This sentence shall run consecutively to the sentence for the underlying offense.*
- (C) If the underlying offense named in Subsection A of this Section is a felony, and the victim of the offense listed in Subsection A of this Section is selected in the manner proscribed by that Subsection, the offender may be fined not more than five thousand dollars or imprisoned with or without hard labor for not more than five years, or both. This sentence shall run consecutively to the sentence for the underlying offense.*

California's Penal Code §422.7 states that actions that are normally misdemeanors can become felonies if committed because of prejudice. Code §422.75 provides for sentencing enhancements of one to three years for certain bias-motivated felonies against protected groups; for heightened penalties of two to four years if the felony hate crime was committed in concert with another person, and adds one year if the defendant had a prior hate crime conviction.

Connecticut's General Statute §53a-40a mandates sentence enhancement for "*persistent offenders of crimes involving bigotry or bias*," while §53-37a criminalizes deprivation of a person's civil rights while wearing a mask or hood.

Civil remedies

As can be seen in Figure 2.3, nearly two-thirds of states have statutory provisions allowing for some form of civil remedy or intervention to address hate crime. The most common civil actions are compensatory and punitive damages, and injunctive relief. For example, Arkansas Statutes Annotated §16-123-105 provide for civil actions for damages or injunctive relief for victims of intimidation, harassment, violence, or property damage "*where such acts are motivated by racial, religious, or ethnic animosity*."

An injunction is a civil action in the form of a court order that prohibits ("enjoins" or "restrains") a person from continuing a particular activity. Typically, the court issues a civil injunction, based on a preponderance of the evidence that enjoins the perpetrators from further intimidating the victim and other members of the victim's group. Violation of the order may result in swift arrest of the offender and a prompt criminal trial for contempt of court. Those failing to adhere to the injunction face civil or criminal contempt of court and may have to pay damages or face sanctions for failing to follow the injunction (e.g., Finn, 1994).

California has two civil rights statutes that protect people against hate crimes, intimidation, discrimination or interference with state or federal statutory or constitutional rights: The Ralph Civil Rights Act (Civil Code §51.7) and the Bane Civil Rights Act (Civil Code §52.1), which can be enforced by the District Attorney, City Attorney, California Attorney General, California Department of Fair Employment and Housing, or a private attorney. The acts state that people have the right to freedom from any violence or intimidation because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. The party asking for enforcement of rights can request injunctive relief, actual and punitive damages, penalty assessments, attorney fees and other equitable remedies.

Civil actions can serve as a form of penalty enhancement, in that fines or other remedies can be pursued in addition to whatever criminal sanctions are meted out against offenders. For example, an Idaho statute (§18-7903) creates a course of civil action for malicious harassment:

A person may be liable to the victim of malicious harassment for both special and general damages, including but not limited to damages for emotional distress, reasonable attorney fees and costs, and punitive damages. The penalties provided in this section for malicious harassment do not preclude victims from seeking any other remedies, criminal or civil, otherwise available under law.

Hate Crime Data and Reporting

For our purposes, some of the most important statutory provisions are those addressing collection of data and statistical reporting on hate crime. About half of the states have statutes addressing hate crime data collection and statistical reporting (Figure 2.3). For example, Connecticut General Statutes §29-7 mandates collection of data on "*all crimes motivated by bigotry or bias*," and states that the Division of State Police within the Department of Public Safety shall monitor, record, and classify all crimes committed in the state which are motivated by bigotry or bias.

Among states having such statutes there are a number of different courses of action outlined, including: (1) the development and maintenance of central repositories and databases; (2) establishing procedures for classifying offenses as hate crimes for statistical reporting purposes; (3) directives for law enforcement to report hate crimes within their jurisdictions to a state agency, legislative body, or data repository; (4) directives for periodic reporting and other dissemination procedures; (5) requirements for training of enforcement personnel in recognizing and reporting hate crime; and (6) penalties for agency noncompliance with reporting requirements. In several states, task forces, advisory groups, or departments within existing agencies are either created or assigned to conduct and/or coordinate data collection from law enforcement agencies.⁸

Data Collection

Several of the state laws are comprehensive in addressing these major elements of their collection and statistical reporting efforts. For example, Texas Government Code (TGC) §411.046 provides for the establishment and maintenance of a central repository for the collection and analysis of information relating to hate crimes. The statute also mandates development of procedures to monitor, record, classify, and analyze information relating to bias motivated incidents (TGC §411.046). It also requires periodic summary reports to be produced and made available to state government agencies, and allows other agencies reasonable access to the data:

The bureau of identification and records shall establish and maintain a central repository for the collection and analysis of information relating to crimes that are motivated by prejudice, hatred, or advocacy of violence...

⁸ Often, these bodies are also charged with responsibilities for training law enforcement and other criminal justice training personnel, discussed below.

On establishing the repository, the department shall develop a procedure to monitor, record, classify, and analyze information relating to incidents directed against persons and property that are apparently motivated by the factors listed in this subsection.

Local law enforcement agencies shall report offenses ... in the form and manner and at regular intervals as prescribed by rules adopted by the department. The department shall summarize and analyze information received under this subsection and file an annual report with the governor and legislature containing the summary and analysis.

The department shall make information, records, and statistics collected under this section available to any local enforcement agency, political subdivision, or state agency to the extent the information is reasonably necessary or useful to the agency or subdivision in carrying out duties imposed by law on the agency or subdivision. This subsection may not be construed to limit access to information, records, or statistics which access is permitted by other law. Dissemination of the names of defendants and victims is subject to all confidentiality requirements otherwise imposed by law.

Massachusetts hate crime data collection provisions are similarly comprehensive (Massachusetts General Laws [M.G.L.] §22C-33). Responsibility for hate crime data collection and management is placed with the State Police, who are required to promulgate regulations relative to the collection of hate crime data including:

(1) establishment of a central repository for the collection and analysis of hate crime data and, upon the establishment of such repository, the crime reporting unit shall be responsible for collecting, analyzing, classifying and reporting such data, and shall maintain this information in a central repository;

(2) procedures necessary to ensure effective data-gathering and preservation and protection of confidential information, and the disclosure of information in accordance with section thirty-five;

(3) procedures for the solicitation and acceptance of reports regarding hate crimes which are submitted to the crime reporting unit;

(4) procedures for assessing the credibility and accuracy of reports of hate crime data from law enforcement agencies.

Another Massachusetts provision (M.G.L. §22C-34) requires the crime reporting unit to summarize and analyze reports of hate crime data received from the local law

enforcement agencies, and to provide summary reports to the governor, the attorney general, and the state legislature.

A Minnesota statute (§626.5531) is unusually specific in outlining how law enforcement officers are to determine whether a hate crime occurred and how to report such instances. Peace officers are required to:

... report to the head of the officer's department every violation of chapter 609 or a local criminal ordinance if the officer has reason to believe, or if the victim alleges, that the offender was motivated to commit the act by the victim's race, religion, national origin, sex, age, disability, or characteristics identified as sexual orientation.

The Bureau of Criminal Apprehension of the Minnesota Department of Public Safety is required by this provision to adopt a reporting form to be used by law enforcement agencies in making the reports. The reports must include for each incident all of the following:

- (1) the date of the offense;
- (2) the location of the offense;
- (3) whether the target of the incident is a person, private property, or public property;
- (4) the crime committed;
- (5) the type of bias and information about the offender and the victim that is relevant to that bias;
- (6) any organized group involved in the incident;
- (7) the disposition of the case;
- (8) whether the determination that the offense was motivated by bias was based on the officer's reasonable belief or on the victim's allegation;
- (9) any additional information the superintendent deems necessary for the acquisition of accurate and relevant data.

The head of each of Minnesota's local law enforcement agencies or state law enforcement departments that employs licensed peace officers must file monthly reports with the Bureau of Criminal Apprehension. The commissioner of public safety must summarize and analyze the information received and file an annual report with the Department of Human Rights and the legislature. The commissioner may include information in the annual report concerning any additional criminal activity motivated by bias that is not covered by this section.

Law Enforcement Training

Twelve states, or nearly one in four, have statutory provisions addressing training of law enforcement personnel on at least some aspect of hate or bias motivated crime (Figure 2.3). Typically, the statutes require training for law enforcement officers in investigating,

identifying, and reporting hate crime. In addition to these, some states have provisions assigning responsibility for providing training and creating standards and materials to existing law enforcement agencies or organizations, while others mandate the creation of new departments or organizations to design and deliver training. For example, Oregon's statute (§181.642) on training includes the following:

The Board on Public Safety Standards and Training shall ensure that all police officers and certified reserve officers are trained to: (1) Investigate, identify and report crimes: (a) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical or mental handicap, age, economic or social status or citizenship of the victim ...

In Massachusetts (Massachusetts General Laws, §6-116B), a statute designates the state's existing primary law enforcement training organization, the Municipal Police Training Committee, as responsible for providing:

... instruction for police officers in identifying, responding to and reporting all incidents of hate crime.... The municipal police training committee shall include such instruction in all curricula for recruits and in-service trainees and in all police academies operated or certified by said committee.

A Louisiana statute (La.R.S. §2403) outlines in detail the composition of a council charged with overseeing hate crime training of law enforcement personnel. This provision mandates that:

The Council on Peace Officer Standards and Training, hereinafter referred to as the council, shall be placed under the jurisdiction of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice within the office of the governor. The council shall consist of the attorney general and eleven members of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice, as follows:

- (a) Three sheriffs, appointed by the governor.***
- (b) Three police chiefs, appointed by the governor.***
- (c) Two district attorneys, appointed by the governor.***
- (d) The executive director of the commission on law enforcement.***
- (e) The superintendent of state police.***
- (f) The president of the Louisiana chapter of the National Constables Association.***

The council is charged with developing materials to train peace officers to identify, respond to, and report all crimes which are directed against individuals or groups, or their property, by reason of their actual or perceived membership in a protected group.

While all of the statutes requiring training present the training requirements as mandatory, not all of them outline sanctions or other consequences for noncompliance. One that does is Minnesota statute §626.8451, which mandates training on identifying and responding to crimes motivated by bias. The statute calls for a designated board to prepare a training course to assist law enforcement officers in identifying and responding to hate crimes. The course must include material to help officers distinguish bias crimes from other crimes, to help officers in understanding and assisting victims of these crimes, and to ensure that bias crimes are accurately reported. The Minnesota statute includes provisions specifying that individuals may not be licensed as sworn law enforcement officers unless they have received this training, and that officers must be provided periodic in-service training to maintain their license. This statute may appear to aim sanctions at individual officers, since losing their license means losing their jobs, but it is also clearly in the interests of law enforcement agencies to comply since they must field a viable force.

Trends in Legislation

Jenness and Grattet (2001) have conducted perhaps the most thorough analysis of the evolution of state hate crime statutes over time. Using their analyses as a foundation and supplementing and updating this with other sources (e.g., ADL, 2003; Partners Against Hate, 2004; SPLC, 2004; state legislature websites), several major trends are apparent. Over the roughly 25-year history of hate crime legislation in the U.S., the main trend is the passage of statutes in nearly all states. As can be seen in Figure 2.4, 10 states passed hate crime statutes into law from 1981 to 1984. Another 14 states passed laws from 1985 to 1989, and by 1999, Jenness and Grattet counted 41 states as having hate crime statutes.⁹ Between 2000 and 2004, an additional five states – Georgia, Hawaii, Indiana, New Mexico, and South Carolina – passed hate crime statutes into law.¹⁰ This trend is displayed graphically in Figure 2.5.

⁹ As we mentioned earlier, others have arrived at different counts using different standards of defining statutes as addressing hate crime (ADL, 2001).

¹⁰ Georgia's statute (OGA § 17-10-17), however, was overturned by a 7-0 vote in the Georgia Supreme Court on October 25, 2004 (Botts v. The State of Georgia, S04A0798, and Pisciotta v. The State of Georgia, S04A0799). As of the time of this report, the tally of states having passed hate crime legislation would be 45, but we left the count at 46 in Figure 2.4 since it is true that 46 states (Georgia included) had passed hate crime laws with hate crime statutes meeting Jenness and Grattet's criteria.

Figure 2.4: States Passing Hate Crime Legislation, 1980-2004

Years	Number of States Passing Statutory Provisions	Cumulative Number of States with Statutory Provisions
Up to 1980	0	0
1981-1984	10	10
1985-1989	14	24
1990-1994	11	35
1995-1999	6	41
2000-2004	5	46

Sources: Jenness and Grattet, 2001, supplemented by author's compilation, 2004

In addition to the obvious trend of states passing hate crime statutes, are changes over time in the content of the statutes. An increasing number of laws include provisions: (1) expanding the number of “protected groups,” in particular adding groups defined by gender, sexual orientation, and disability as targets of bias and hate motivated crime; (2) providing penalty enhancement for hate and bias motivated crime; and (3) containing data statistical reporting requirements (ADL, 2003; Jenness and Grattet, 2001; Lawrence, 1999; Partners Against Hate, 2004).

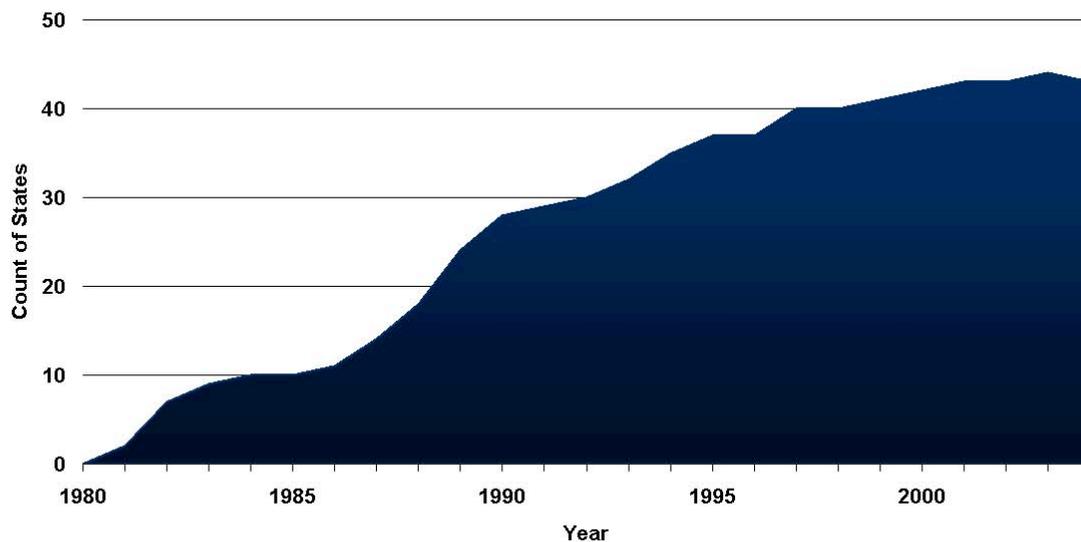


Figure 2.5: Number of States with Hate Crime Statues in Law by Year

Strengths and Weaknesses of Hate Crime Legislation

Assessing the strengths and weaknesses of the legislation involves a level of unavoidable

subjectivity. There are differences of opinion about the wisdom of having hate crime statutes in any form. For those opposed to hate crime law, all of the statutory provisions would be considered misguided and inherently flawed, built on faulty assumptions and yielding unintended negative consequences.¹¹ Those in support argue that crimes motivated by hate or bias are inherently different and more severe than their conventional counterparts, and thus require separate and more severe criminal justice and civil consequences for offenders. For those supporting the general principle of hate crime statutes, there remain grounds for critique, such as statutes covering too narrow a range of protected groups and/or predicate crimes. While weaknesses can be identified by both supporters and opponents of hate crime laws, discussions of their strengths must proceed from the assumption that hate crime can and should be addressed by law as a separate category of offense.

Strengths

Those generally in favor of hate crime statutes argue that they are necessary additions to criminal law and produce many positive outcomes:

- First, they have been argued to be *necessary responses to a more serious and fundamentally distinct class of crimes*. While opponents argue that criminal codes addressing predicate crimes are sufficient to cover crimes committed for all types of motivation, proponents argue that hate crimes are different and thus require distinct laws to address them (e.g., Franklin, 2002; Iganski, 1999; Israel, 1999; Levin, 1999; McDevitt et al., 2001). Evidence indicates that hate crimes are usually more serious than their conventional counterparts, involving more violence, physical injury, and more negative psychological and emotional consequences for victims (e.g., Barnes and Ephross, 1994; Ehrlich et al, 1994; Herek et al., 1999; Iganski, 2001; McDevitt et al., 2001). Hate crimes also have more serious consequences for communities than other crime. If a person is beaten for conventional reasons (such as an interpersonal dispute), other members of the community have little reason to fear being targeted. When a person is targeted specifically for their race or religion, all those of that race or religion feel like potential targets and experience a shared sense of persecution. Indeed, studies show bias crime victims to feel less safe than victims of analogous conventional crimes (e.g., McDevitt et al., 2001). In addition to having a more severe impact on victims and communities, hate crimes have other predictable dissimilarities compared to their counterpart offenses: hate crimes more often involve multiple offenders who more frequently victimize strangers selected haphazardly (Levin and McDevitt, 2002). Proponents argue that it is fair and just that the law should respond to hate crime in ways proportional to its severity and tailored to its unique character.

¹¹ Although there are occasional concessions that the laws are generally well intended (e.g., Franklin, 2002; Jacobs and Potter, 1998).

Hate crime laws are also necessary to deliver fair, proportional justice, calling for elevated penalties in response to the elevated seriousness of the crimes (e.g., Lawrence, 1999; Levin and McDevitt, 2002). The presumption behind increased penalties is that hate motivation makes the crimes more serious, and the penalties serve to reinforce the message to current and potential offenders that the criminal justice system (and society) considers them to be more serious. Increased penalties may also promote public safety by providing a deterrent effect (e.g., DOJ, 1998).

Finally, hate crimes have been argued to be necessary to provide effective protection to historically victimized groups, which has not been provided under conventional criminal law. For example, one of the major arguments for including sexual orientation in hate crime statutes is that assaults against gays and lesbians have been “notoriously under-investigated by the police and under-prosecuted by local district attorneys” (Lawrence, 1999: 161-162).

- Second, *there is precedent for enhancing penalties and criminalizing actions on the bases of the motivation of the offender and traits of the victim.* In determining the seriousness and appropriate sanctions for many other crimes, the level of intent is a key consideration. Premeditation is deemed to make a crime more egregious and for such acts more severe punishments are meted out than for “crimes of passion” or those occurring due to negligence, even if they have an equal result. For example, state laws provide for several levels of homicide. The key factor distinguishing whether a homicide is considered negligent homicide, manslaughter, second degree homicide, or first degree homicide is the state of mind of the offender, even though in each case the offender caused the unlawful death of another person. Insanity defenses are built upon a similar principle. If a person is not deemed to fully understand or to be able to control his or her behavior, the offense is treated differently and the offender usually receives less serious sanctions than an offender committing equally damaging offenses with a greater understanding of his or her actions and malicious intent. If the only salient feature of homicide were proving that one person caused the death of another, there would be a need for only one category of homicide. Similar acts can result from different kinds of motivation, but the law regards motivation to be important for establishing culpability and egregiousness.

In addition to considering offender motivation, there is precedent for adjusting punishment in response to victim traits. For example, many criminal codes make distinctions based upon a victim’s age, and incorporating special provisions for crimes against the elderly and the young.

- Third, hate crime statutes in at least twelve states are *contributing to the professionalization and elevating the proficiency of law enforcement by requiring training of officers.* Training provisions require that law enforcement officers and prosecutors keep informed about statutory changes to hate crime law and case law affecting how the statutes are interpreted and put into practice in the

field. They necessitate the investigation and identification of hate crime and promote more rigorous data collection and reporting practices. These investigative, legal, and data collection skills are generalizable and increase law enforcement's proficiency at addressing all crime, benefiting law enforcement agencies and the communities they serve.

- Fourth, the statutes are *contributing to the understanding of hate crimes*, which is crucial to effectively combating them. Creating unique criminal offense codes for bias motivated crime and prosecuting them separately, coupled with data collection and reporting requirements and training of law enforcement personnel, makes it possible to collect accurate information about these crimes. Accurate information is crucial for government and non-governmental organizations to effectively plan and program criminal justice responses and prevention activities to combat hatred. Although stricter punishment is critical, the goal of hate crime laws is often tied to the idea of educating perpetrators, law enforcement officers, and the public about hate in society (e.g., Religious Action Center of Reform Judaism [RAC], 2002). Without statutes requiring separate treatment for hate crimes, their magnitude and trends could only be known through victimization surveys, and such surveys require resources beyond the capacity of most law enforcement agencies and communities to conduct periodically.
- Fifth, **hate crime statutes represent the will of the people**. Many surveys of the U.S. public regarding support for hate crime legislation have been conducted, and most find from two-thirds to three-fourths of the population supports such laws. For example, a survey conducted by the Henry J. Kaiser Family Foundation in 2000, found that 73% of Americans support federal hate crime legislation that includes sexual orientation as a protected group. A Gallup Poll in 2000, found 65% of American adults support "special laws that provide harsher penalties for crimes motivated by hate of certain groups." When asked which groups should be covered by such a law, 81% of the respondents said racial minorities, 79% said religious and ethnic minorities, 78% said women, and 72% said homosexuals (Gallup Poll, February 2000). A 1999 Gallup poll found that 75% believed that lesbians and gays should be protected by hate crimes laws (Gallup Poll, February 1999). In addition to opinion polls, state legislatures indirectly reflect the will of the public in passing hate crime statutes.

Weaknesses

There are several critiques of hate crime statutes that question the assumptions upon which the laws are built, such as whether they follow from basic constitutional principles and whether they are fundamentally fair and just (e.g., Hurd, 2001; Jacobs and Potter, 1998; Lynch, 1999). Among these purported weaknesses are:

- First, *hate crime laws base crime punishment on the perceptions and traits of the criminal and the victim rather than on the crime*. The statutes focus the criminal justice system away from the actions of the offender and harm to the

victim (the core determinants of the severity of most offenses) toward the motivation of offenders and the traits of victims (e.g., Jacobs and Potter, 1998). Opponents of hate crime law argue that if the crimes are more damaging, as proponents argue, then the damage (and not the nature of the victim) is the relevant aggravating circumstance and should be the only factor considered. Having the egregiousness of the offender's behavior and degree of harm to victims (injury, monetary losses) determine the seriousness of the offense and severity of sanction, keeps the focus on the crime itself, not on the motivation of the offender or the group identity of the victim.

- Second, in focusing on the motivation of offenders, hate crime statutes are criticized for *punishing thought, and not just the actions of offenders* (e.g., Lynch, 1999). Punishing on the basis of bias motivation is argued by some to be a violation of First Amendment protections (see discussions by Israel, 1999; Lawrence, 1999:80-109). While bigoted and hateful thoughts or speech are repugnant to most people, they are constitutionally protected so long as their sentiments are not manifested in illegal acts, direct provocations to engage in them, or are "fighting words."¹² Another problem in basing criminal sanctions and civil remedies on the hate motivation is that the thoughts of offenders are inherently unknowable. While in some cases the motivation behind crimes is made clear by the offender's actions (e.g., vandalism of places of worship with swastikas or racial epithets), in most cases hate or bias cannot be so easily inferred. For example, a robbery of an African American by several Caucasians may be motivated by racial bias, but it could instead have been motivated by simple dislike, the clothes he wore, or the victim being randomly chosen. In the absence of unusually compelling evidence, it is exceedingly difficult to determine beyond a reasonable doubt that hate or bias motivated any particular offense.
- Third, some have argued that hate crime laws are an *exercise in identity politics, not sound criminal law* (e.g., Jacobs and Potter, 1998; see alternative view by Perry, 2002), and can result in unintended consequences such as reverse discrimination. Given that most criminal codes focus on whether offenders commit certain categories of acts (e.g., robbery, vandalism, assault), and on the tangible level of harm to the victim (physical harm in assaults; monetary losses in robbery or vandalism), the special attention given to certain groups of individuals is perceived as political correctness rather than a legitimate extension of established legal principles. Others caution that hate crime laws can result in negative unintended consequences, such as reverse discrimination: e.g., an assault against a Caucasian can result in less serious consequences for the offender than a similar assault against a victim who is a member of a racial or ethnic minority group.

¹² In *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942), the Supreme Court held that "fighting words" are among the classes of speech unprotected by the First Amendment. Fighting words were defined by the Court as words by which their very utterance inflict injury or tend to incite an immediate breach of the peace.

- Fourth, opponents question the *equity of naming specific groups for protection by hate crime laws*. A consequence of naming specific groups as covered by hate crime statutes is the omission of remaining groups whose traits are not mentioned. For the roughly half of states that list specific protected groups but not gender, there is an implication that those who are targeted for their gender are not deserving of the same legal status or level of protection as victims of crimes arising from racial or other biases specified. Basing punishment on the traits of specified groups of victims can be divisive, pitting groups against one another as legitimate victims deserving of legal protection (see discussion by Jacobs and Potter, 1998; Lynch, 1999). In addition, there are challenges to the inclusion of particular protected groups. For example, some have contended that sexual orientation should not be protected because it is not immutable,¹³ and proponents counter with evidence that people do not simply choose to become homosexual or bisexual, and that immutability is “a multi-layered concept” (see discussion by Lawrence, 1999:18). One can go through a list of protected groups in any state or federal hate crime statute and take issue with the inclusion or exclusion of any particular group.
- Fifth, those opposed to hate crime statutes argue that they are *unnecessary because they are redundant* (Jacobs and Potter, 1998). The predicate crimes are already punishable by criminal codes, so there is no need to create laws for a certain subset based upon the characteristics of the victim or motivation of the offender. Offenders commit arson and assault for countless unique reasons, and without hate crime laws all of these cases can be addressed by the same criminal code.
- Sixth, a criticism that can be leveled at hate crime statutes is that they *create a precedent for multiple sets of parallel laws for additional motivation types*. Similar acts can result from any number of different kinds of motivation. For example, a robbery can be the result of thrill seeking, or to obtain money to feed a drug addiction, or to buy food, or to settle an old grudge, to pay off gambling debts, or as a quasi-political act of class warfare. While the circumstances of crimes can be considered as aggravating or mitigating circumstances and can raise or lower the severity of punishment within a discretionary range allowed by statute, there are no laws delineating different levels of punishment for each and every variety of motivation. Hate crime statutes can be seen as a set of laws that are parallel to laws addressing corresponding predicate crimes but are focused on just one category of criminal motivation. One can argue that additional new sets of laws may be justified based on any other type of motivation. For example, athletes were one of the primary groups targeted by students committing the

¹³ Although it should be noted that immutability is not a universal requirement. At least seven states protect groups based upon political affiliation, which certainly is under the control of individuals. A case can also be made that one’s religion is not an immutable trait, and religion is covered by most hate crime statutes.

Columbine school shootings, and it is safe to assume that hatred toward them motivated the attacks. Yet as Lynch (1999) argues, their systematic mass murder would not be considered a hate crime in any state or federal jurisdiction. While athletes do not fit the usual criteria for inclusion in groups for hate crime law protection (i.e., historically oppressed groups often targeted because of their immutable traits) and virtually nobody is calling for their plight to be addressed by hate crime law, the relevant point of this aberrational example is that arguments can be made for including many other groups once the precedent has been set. The possibilities range from the absurd (people with piercings, blondes) to groups for which a reasonable case can be made: government employees are among the objects of targeted violence by some militia groups; physicians who work in family planning clinics are targeted for attack by other groups.

- Seventh, hate crime laws can *create unnecessary difficulty for law enforcement and the courts*. Hate crime statutes demand that many factors in addition to those needed to address the predicate crimes are investigated, documented, and presented in court. For example, the conditions may be in place for a very solid case for an assault conviction: a demonstrably injured, alleged victim exists and is cooperative; there are witnesses willing to testify that the accused committed the assault; and physical evidence corroborates the testimony. At the same time, someone alleges that the assault was motivated by hate. Now police must establish all the facts necessary to prove this, which leads to an additional layer of testimony and evidence collection and preservation, and the prosecution must integrate and present this evidence in court (in addition to all the evidence necessary to prove the predicate offense). For opponents of hate crime laws, this is regarded as placing an unnecessary burden on the criminal justice system.

Defining protected groups by gender can be problematic for prosecutors, since there is significant overlap between many kinds of sex offenses and gender-motivated hate crimes (see discussion by McPhail, 2002). When predatory rapists target women unknown to them and commit rape, should they be charged with a hate crime or a rape? To a greater extent than occurs in other conventional crime, the immutable traits of victims are deeply imbedded in the predicate crimes of rape and other categories of sexual assault. The evidence is strong that sexual violence (at least, crimes involving adults) typically involves antipathy toward people of a particular gender as a primary motivation (see Burgess-Jackson, 1999; Maletsky, 1991; Marshall et al., 1988). Many assaults and acts of vandalism occur without regard to the victim's race, but few sexual assaults occur where gender is not a motivating factor.¹⁴

¹⁴ Levin and McDevitt (2003) note that states debating whether to add gender to their hate crime statutes are encountering the difficulty of separating sex crimes and gender motivated hate crimes. They write that the debate is productively advanced in some states by applying the interchangeability criterion, which asks the question: to what extent are victims interchangeable? In hate crimes, victims are much more highly interchangeable; e.g., any Latino who walks by will be attacked, or woman encountered will be raped. This contrasts with conventional offenses, where ethnicity or gender may play a role but

To be pragmatic, prosecutors may look at hate crime laws as simply giving them another sentencing option for sex crimes, and would make a decision about prosecuting under hate crime or sex crime codes based upon which allowed for a range of sanctions they believe are reasonable for the case. Since hate crime statutes generally enhance sentences for predicate crimes, prosecutors may appreciate the option for more severe sanctions when they have particularly heinous crimes and solid cases. In jurisdictions where hate crime statutes include gender, prosecutors have a choice of pursuing either a conventional criminal code violation, or a hate crime. While it is true of all hate crimes that offenders can be charged with either the predicate crime alone or with its hate crime analogue to enhance penalties, the relationship between gender motivated hate crime and sex crimes creates special challenges for prosecutors.

In addition to potentially complicating prosecution and investigation, for those trying to track crime rates for the purposes of deploying resources for prevention and response, the overlap between sex crimes and gender motivated hate crimes may be problematic.

- Eighth, some hate crime statutes have been criticized or overturned for having *vague language*. For example, Georgia's statute (OGA § 17-10-17) was overturned by a 7-0 vote of the Georgia Supreme Court on October 25, 2004 (the decision was in response to two cases, *Botts v. The State of Georgia*, S04A0798, and *Pisciotta v. The State of Georgia*, S04A0799). The statute was ruled to be unconstitutionally vague: "persons of common intelligence must necessarily guess at its meaning and differ as to its application," with the potential to be applied to every possible form of prejudice, "no matter how obscure, whimsical, or unrelated to the victim it may be." Most hate crime laws have not met such drastic consequences for having vague language. Many of the states passing hate crime statutes since the mid 1990s have adopted, or at least have been informed by, ADL model legislation. Wisconsin adopted the ADL's model language, and the statute was unanimously upheld by the U.S. Supreme Court in *Wisconsin v. Mitchell* (1993).

In addition to these broader legal and ethical criticisms, there are more narrowly focused and pragmatic concerns, most of which proceed from the assumption that hate crime laws in general are necessary.

- Ninth, particular statutes are regarded by some as *covering too narrow a range of protected groups*. For example, in states where gender, sexual orientation, or disability are not listed as traits targeted by hate or bias motivation, advocacy groups focusing on these issues are pushing to make these additions to the list of protected groups (e.g., The Center for Gay and Lesbian Civil Rights).

victims are far less interchangeable, which is supported by studies finding a greater percentage of hate crime victims to be strangers to their attackers (Levin and McDevitt, 2002).

- Tenth, many statutes *do not address state-level hate crime data collection* and the law enforcement training to support it. Those that do seldom provide much guidance in terms of specifying the content of the training, requiring accountability, or setting standards for data collection quality.
- Eleventh, state laws generally *do little to support UCR hate crime reporting*. Most state laws with provisions for data collection refer to fulfilling their own statistical reporting requirements, and not the UCR's. Exceptions to this rule include an Oregon statute (§181.550) directing all law enforcement agencies within the state to report to the Department of State Police hate crime statistics for the purposes of the UCR system, and a Louisiana statute providing for the imposition of penalties on agencies who fail to comply with UCR data reporting requirements (La. R.S. §15:1204.5). But, aside from a few cases such as these, most states put law enforcement in the position of operating with two (often dissimilar) definitions of hate crime: that defined in their state's statutes, and that outlined in the UCR reporting guidelines.

In states with definitions of hate crime that are very different from that in the UCR guidelines it can be confusing to law enforcement: A police department's own classification of criminal charges and descriptions in police reports will all categorize offenses according to their state's criminal code, while the UCR will ask for an accounting of offenses defined differently. For example, Maryland's statute specifies only race, religion, and ethnicity as necessary for reporting, while the UCR guidelines include these plus sexual orientation, gender, disability, and other traits. For accurate UCR compliance, Maryland would have to keep a dual data collection system, with each system recording crimes meeting a different set of criteria. In addition, law enforcement personnel would have to use investigative protocols that gathered information about both types of hate crimes, those according to the UCR's and those according to Maryland's definitions. For example, Maryland officers investigating an assault that potentially could be a hate or bias crime must inquire about racial, religious, and ethnic biases, but if these do not apply they need look no further and simply tally the offense as an assault. To fully comply with UCR requirements, however, they would need to fully investigate additional forms of bias (disability, sexual orientation, age) associated with any assault even though those are not covered by the state's hate crime law.

Of course, since the UCR is a voluntary federal program asking state and local government employees to report on crimes outside of federal jurisdiction, it should remain voluntary. But there is precedent and a good case to be made for states passing laws supporting UCR reporting if they so choose.

- Twelfth, most statutes *do little to support hate crime victims and witnesses*. Laws addressing sexual assault victims could be used as models to address issues that are relevant for hate crime. For example, provisions could be written to

protect the identity and privacy of victims and witnesses, and to fund support services and provide protocols for courts to route victims to them.

- Thirteenth, the majority of states *do not mandate training of law enforcement personnel*, and among those states with statutory requirements for training there is little guidance provided about its content. Among the issues that are addressed by at least one of the 12 state hate crime statutes that have training provisions are: (1) educating and keeping law enforcement officers and prosecutors informed about statutory changes to hate crime law, as well as case law affecting how the statutes are interpreted and put into practice in the field; (2) training officers on the investigation and identification of hate crime; and (3) data collection and reporting requirements.
- Fourteenth, *public support for hate crime statutes may not be as strong* as proponents argue. While attitude surveys show that about two-thirds to three-fourths of those sampled support hate crime legislation in general, decisions about appropriate punishment for specific instances of crime are based primarily on seriousness of the offense, and not on whether the offender was motivated by hate or bias (Steen and Cohen, 2004). In their survey of 1,300 American adults in 2000, Steen and Cohen found that the public has minimal support for harsher penalties for crimes motivated by hate. Steen and Cohen's study suggests that support for hate crime may be more complex than is reflected by discrete item responses to opinion polls. Additional research should examine further how support for laws punishing hate motivation fare in the context of other factors.

Important Court Decisions Regarding Hate Crime Statutes

The most important decision about hate crime statutes was *Wisconsin v. Mitchell* (1993; 508 U.S. 476). The defendant in *Mitchell* had incited a group of young Black men who had just finished watching the movie "Mississippi Burning" (depicting KKK atrocities committed against Southern Blacks in the 1960s) to assault a 14 year-old white passerby by saying, "Do you all feel hyped up to move on some white people?" and by shouting, "You all want to fuck somebody up? There goes a white boy-- go get him." A group of about 10 individuals, responding to Mitchell, severely beat the youth, leaving him comatose for four days, inflicting permanent brain damage, and stealing his shoes.

Mitchell was tried and convicted of aggravated battery, which in Wisconsin at the time normally carried a penalty of two years in prison. The jury found that Mitchell had selected his victim because of his race, and the judge applied Wisconsin's hate-crime penalty enhancement statute (presented in Appendix C). The statute enhances the maximum penalty for an offense whenever criminals select victims because of their actual or perceived race, religion, color, disability, sexual orientation, national origin or ancestry. The application of this law resulted in the addition of two years to Mitchell's sentence. The sentence was appealed, based on the argument that the state punished Mitchell for his thoughts rather than his actions, and challenged the constitutionality of Wisconsin's penalty enhancement act as a violation of First Amendment protections of

free speech. Wisconsin's State Supreme Court agreed with Mitchell, concluding that even "bigoted thought" is constitutionally protected.

The State Supreme Court decision was appealed to the U.S. Supreme Court. Below are some of the major points raised in the state's brief to the court (summarized by the Constitutional Rights Foundation, 1994):

1. The enhancement law applies only to criminal acts (i.e. selecting a victim), not to speech or actions protected by the First Amendment.
2. During sentencing, judges commonly consider many things including a criminal's motives.
3. The law in this case does not prohibit specific speech, symbols, or beliefs.
4. The purpose of the state's enhanced penalty law is to eliminate prejudiced criminal behavior, which is a "compelling governmental interest."
5. The attorneys representing Mitchell made these points in their brief to the Supreme Court:
 - Selecting a victim is not an act but a mental process that is therefore protected by the First Amendment.
 - Judges may consider a broad range of things in sentencing criminals, but they should not be required to automatically lengthen penalties solely because of a criminal's motives.
 - The enhancement law is based on a criminal's motives, which are, in turn, based on his or her thoughts and beliefs, which are protected by the First Amendment.
 - The Wisconsin law also violates the equal protection clause of the 14th Amendment by treating criminals who are motivated by prejudice differently from criminals not so motivated, even though their crimes are identical.

In June of 1993, the U.S. Supreme Court unanimously upheld the Wisconsin hate-crime penalty-enhancement statute, ruling that "the statute in this case is aimed at conduct unprotected by the First Amendment" and that "the First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent." In addition, the Court held that the state's desire to redress greater individual and societal harm inflicted by bias-inspired conduct was the motive for passing the statute, not a disagreement with offenders' beliefs or biases, and that Wisconsin's law would not suppress free speech. The Supreme Courts of most states have heard many cases objecting to hate crime statutes, but after *Mitchell v. Wisconsin*, challenges to penalty-enhancement statutes on First Amendment bases have been unsuccessful.

In addition to First Amendment and equal protection objections,¹⁵ hate crime statutes have been challenged on the basis of due process. The due process clause requires that a criminal statute give clear notice of what activity is proscribed and provide adequate guidelines to prevent arbitrary law enforcement actions. Most of the state cases have

¹⁵ For example, challenging hate crime statutes as inconsistent with the equal protection clause of the Constitution with the argument that the statutes unconstitutionally benefit minorities as more frequent victims or unconstitutionally burden majority members as more frequent targets of prosecution.

focused on the "by reason of" or "because of" language that define crimes as bias motivated, arguing that these clauses do not make clear when bigoted behavior is punishable. Because the statutes require the commission of an underlying crime whose due process clarity is not in question, most defendants have been unsuccessful in arguing that they were unclear about their acts being punishable, and the state courts largely have rejected the claims of due process violations. But, as discussed previously, in at least one instance a statute has been overturned for vague language as when the Georgia Supreme Court overturned the state's statute (OGA § 17-10-17, enacted in 2000) declaring it unconstitutionally vague. An examination of the statute reveals that Georgia did not follow the ADL's model language or the language of other state laws that have withstood similar challenges.¹⁶

Key Federal Statutes

Given that most of criminal law is state law and that federal jurisdiction is limited, state statutes most directly affect the processing of the vast majority of hate crime cases. However, in addition to addressing hate and bias motivated federal crime, federal legislation has been very important on a symbolical level as a statement that the federal government accepts the assumptions on which hate crime statutes are built. The set of federal hate crime laws has also had a substantial, material impact on prevention and response efforts occurring at all levels of government by mandating and funding training programs and providing materials to all criminal justice agencies. In addition, federal statutes have been perhaps the most important engines propelling the growth and availability of hate crime data and research.

The text of these statutes and excellent summaries and analyses are readily available online¹⁷ and have been expertly analyzed by legal scholars and researchers (e.g., Bell, 2002; Jacobs and Potter, 1997; Jenness and Grattet, 2001; Lawrence, 1999). The major pieces of federal legislation addressing hate crime are briefly described below, followed by descriptions of additional federal legislation pending as of Fall, 2004.

Hate Crime Statistics Act (HSCA). Passed into law in 1990, the HSCA requires the Department of Justice to acquire data on crimes manifesting "prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. The vehicle for this data collection effort is the Uniform Crime Reporting system, in which law enforcement agencies voluntarily provide data on crime occurring within their jurisdiction. As part of the Violent Crime and Law Enforcement Act of 1994 (commonly referred to as "the Crime Bill" or "the Crime Act of 1994"), the HSCA was amended to require the FBI to collect data on hate crimes involving disability.

¹⁶ In *re M. S.* (1995) 10 Gal. 4th 698, the California Supreme Court upheld the constitutionality of California's hate crime statutes, rejecting defense claims that the laws are over broad, vague, or impermissible regulations of speech.

¹⁷ The enacted and pending statutes are available at "thomas.loc.gov" and summaries and analyses are available at the websites of organizations such as the ADL, Civilrights.org, Human Rights Campaign, NCJRS, ReligiousTolerance.org, and the Southern Poverty Law Center.

In addition to the benefits for research (discussed in more detail in Chapter 3 of this report), the UCR hate crime data resulting from the HCSA benefits law enforcement agencies and communities by allowing them to track hate crime and responding to it in a priority fashion. While law enforcement agencies operating in states with hate crime statutes could keep records and track hate crime without the HCSA, at the time the federal statute was enacted nearly half the states did not have hate crime laws. The HCSA provided guidelines and a definition of hate crime that were valuable tools for facilitating record keeping and tracking for agencies operating in states without (or with very limited or narrowly defined) hate crime statutes. By compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction.

The Crime Awareness and Campus Security Act of 1990¹⁸. This Act requires that higher education institutions receiving federal aid must report annual campus crime statistics, and disclose campus safety policies and provide timely warnings of crime threats. The act included language requiring that colleges collect and annually report on hate crime, to be defined consistent with the HSCA. Subsequent amendments of the Act strengthened the language to require that colleges have policies addressing campus safety and crime prevention, including specific provisions for describing programs designed to inform students and employees about crime prevention, and describing related policies and crime prevention programs (34 CFR 668.46-b-11). The Act was amended in 2003 (34 CFR 668.46), requiring institutions to report crimes according to category of prejudice, and to report to local police agencies or to a campus security authority any crimes involving bodily injury that “*manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.*”

Hate Crimes Sentencing Enhancement Act. As a part of the Violent Crime Control and Law Enforcement Act of 1994, the Hate Crimes Sentencing Enhancement Act provides for longer sentences where the offense is determined to be a hate crime. Longer sentences may be imposed if it is proven that a crime was motivated by "race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation." This Act is similar to many state laws and the ADL model legislation, but is of course limited to crimes under federal jurisdiction (e.g. crimes involving interstate commerce, or associated with the commission of other federal offenses, interfering with an individual's access to a federally protected right or benefit, such as serving on a jury, voting, or going to school).

Church Arson Prevention Act of 1996. This act was passed in response to a series of arsons occurring at churches with predominantly African American congregations. To put provisions of this act into action, the National Church Arson Task Force (NCATF) was created to oversee the investigation and prosecution of arsons at houses of worship.

¹⁸ Also informally known as the Clery Act, after the family promoting the legislation in response to the murder of their daughter on a college campus; a revision of the act in 1998 included formally changing the name to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

The NCATF is a collection of about 200 enforcement officers and prosecutors from the FBI, ATF, DOJ, and state and local law enforcement agencies, and provides for broader federal criminal jurisdiction to aid criminal prosecutions. The NCATF has worked in concert with FEMA and HUD in order to provide resources through a loan guarantee recovery fund for rebuilding churches damaged by relevant criminal offenses.

Violence Against Women Act of 1998. This is a comprehensive federal statute intended to reduce violent crime against women through supporting domestic violence and rape crisis centers and education programs for law enforcement officers and prosecutors. The bill includes a federal civil remedy for victims of gender-based violent crimes, providing them with the right to compensatory and punitive damage awards and injunctive relief.

Key Federal Statutes Pending as of Fall, 2004¹⁹

There are several key pieces of federal legislation pending as of the Fall of 2004, which if passed into law would have a significant impact on hate crime research, prevention efforts, and criminal justice responses.

The **Hate Crimes Prevention Act of 2003** (H.R. 80) was introduced in the U.S. House of Representatives and referred to the House Committee on the Judiciary on January 7, 2003. It was referred to the Subcommittee on Crime, Terrorism, and Homeland Security on March 6, 2003. The bill would amend the federal criminal code to set penalties for willfully causing or attempting to cause bodily injury to another person through the use of fire, a firearm, or an explosive device, because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person. The Act also (1) directs the United States Sentencing Commission to study the issue of adult recruitment of juveniles to commit hate crimes and, if appropriate, to amend the federal sentencing guidelines to provide sentencing enhancements for such offenses; (2) requires the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to make grants to state and local programs designed to combat hate crimes committed by juveniles; and (3) authorizes appropriations to the Department of the Treasury and to DOJ to increase the number of personnel to prevent and respond to alleged violations of provisions regarding interference with specified federally protected activities, such as voting.

Equal Rights and Equal Dignity for Americans Act of 2003 (S.16) was introduced in the Senate on January 7, 2003, and was referred to the Committee on Finance. The Act would authorize the Attorney General, upon request, to provide assistance with the investigation or prosecution of any crime that constitutes: (1) a federal crime of violence; (2) a felony under State or Indian tribal law; and (3) is motivated by prejudice based on race, color, religion, national origin, gender, sexual orientation, or disability, or is a violation of state or Indian tribe hate crime laws. It would also amend the federal criminal code to provide criminal penalties for certain hate crimes.

¹⁹ A summary, complete text, legislative history, and current status of each of these pieces of federal legislation can be obtained through *Thomas: Legislative Information on the Internet*, a service of the Library of Congress, at: <http://thomas.loc.gov/>

Hate Crime Statistics Improvement Act of 2003. This bill would amend the Hate Crime Statistics Act to require the Attorney General to acquire data about crimes that manifest evidence of prejudice based on gender. The bill (H.R. 374) was introduced and referred to the House Committee on the Judiciary January 27, 2003, and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security March 6, 2003. In April of 2003 this bill was subsumed by a provision of the Local Law Enforcement Hate Crimes Prevention Act of 2004, described below.

Local Law Enforcement Hate Crimes Prevention Act of 2004. This bill (H.R. 4204) is a companion to a senate bill introduced last year, the **Local Law Enforcement Enhancement Act of 2003** (S. 966). Among the more significant provisions of H.R. 4204/S. 966 would be the expansion of the existing federal definition of hate crimes to include crimes based on gender, sexuality, and disability. Current statutes cover crimes based on race, color, religion or national origin. The legislation also would have aided local law enforcement agencies and courts in prosecuting alleged hate crimes. Specifically, the Act would authorize the Attorney General to provide technical, forensic, prosecutorial, or other assistance in the criminal investigation or prosecution of any crime of violence under federal law or a felony under state or Indian tribal law that is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of state or tribal hate crime laws. The bill would also: (1) authorize the Attorney General to award grants to assist state, local, and Indian law enforcement officials with extraordinary expenses; (2) prohibit specified offenses involving actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability; (3) direct the U.S. Sentencing Commission to study and provide sentencing enhancements for adult recruitment of juveniles to commit hate crimes; (4) amend the Hate Crimes Statistics Act to require the crime data to be collected and published by the Attorney General to include data about crimes that manifest evidence of prejudice based on gender; and (5) direct the Office of Justice Programs to work with funded jurisdictions to support all parties affected by hate crime, and to award grants to State and local programs designed to combat hate crimes committed by juveniles.

H.R. 4204 was introduced and referred to the House Committee on the Judiciary April 22, 2004, and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security the following month. The Act (S. 966/H.R. 4204) was added as an amendment to National Defense Authorization Act for Fiscal Year 2005 and passed the Senate as part of the defense bill (S. 2400) on May 20, 2004. On June 14, 2004, the Senate voted to include the S. 966 version of the Act in the defense bill, and in September the House voted to instruct House conferees to retain the Senate language in the final version of the bill. However, in October 2004 Senate and House negotiators dropped the hate crimes language (i.e., S.966/H.R. 4204) in the defense bill. Sponsors of the legislation plan to bring the bill up again in the next Congress. The House version of the bill has 177 co-sponsors. And the September motion to instruct passed by a 232-192 vote (including 41 Republicans) but the amendment was removed in conference committee.

Violence Against Women Civil Rights Restoration Act of 2003 (H.R.394) was introduced and referred to the House Committee on the Judiciary on January 28, 2003,

and was referred to the Subcommittee on Crime, Terrorism, and Homeland Security on March 6, 2003. This bill would revise provisions of the Violence Against Women Act of 1994 regarding remedies for civil rights violations, by making a person liable to the injured party for crimes of violence motivated by gender that are under federal jurisdiction (e.g., gender motivated crime in which the defendant or the victim travels in interstate or foreign commerce, or the defendant employs a weapon, a narcotic or drug listed under the Controlled Substances Act). The act would also authorize the Attorney General to institute a civil action in U.S. district court for appropriate equitable relief whenever there is reasonable cause to believe that any state, political subdivision, official, employee, or someone acting as their agent has systematically discriminated on the basis of gender in the investigation or prosecution of gender-based crimes.

CHAPTER 3: RESEARCH AND EVALUATION LITERATURE

Accompanying the rapid spread of federal and state hate crime legislation over the past 20 years has been dramatic growth of the research literature on hate crime over the same time period. However, it would be misleading to suggest that hate crime research is a recent phenomenon. Studies of lynching (e.g., Collins, 1918) and other forms of race-motivated violence (e.g., Asbury, 1939) preceded this period by decades. But the term “hate crime” did not appear with any substantial frequency in the social research literature until recently. Studies in which hate crime is so named and defined in ways generally consistent with contemporary hate crime statutes have grown from a trickle in the 1980s (e.g., Finn and McNeil, 1988; SPLC, 1989; Weiss and Ephross, 1989) to a steady stream over the past ten years (e.g., Balboni and McDevitt, 2001; Barnes and Ephross, 1994; BJS, 2001; Ehrlich, 1994; Bell, 2002; Dharmapala, 2004; Flint, 2004; Koopmans, 1996; Hagan et al., 1995; Hamm, 1998, 2004; Herek et al., 2002; Kuehnle and Sullivan, 2001; Lee and Leets, 2002; McDevitt et al., 2001; Perry, 2003; Rayburn et al., 2003; Shively et al., 2001; Steen and Cohen, 2004).

This chapter of the report presents the result of a systematic review of well over 100 documents and web sites, including sources describing federal and state hate crime data collection efforts, government sponsored and independent research, and prevention and response efforts by criminal justice agencies and independent organizations. While the volume of research and breadth of this review means we cannot fully describe and adequately convey the contributions of every significant source, we describe dominant themes and trends. Given our goal of informing future empirical research, we have focused on gaps in data and research and point to lines of inquiry that could help to close these gaps. To this end, we: (1) examine the strengths and weakness of major data sources; (2) describe the current scope of the hate crime problem as gleaned from the best available data; (3) describe select prevention and response efforts, and (4) summarize the research examining hate crime and evaluations of programs designed to prevent and respond to it.

Measuring Hate Crime

One of the fundamental tasks necessary to develop a sound understanding of any problem is measuring its occurrence. Measurement proceeds from definitions, which determine the range of acts and circumstances to be examined. As we saw in the review of hate crime legislation, there is debate about whether and how to define hate crime. The definitional debate over hate crime among researchers and practitioners covers much of the same territory as that traveled in discussions of hate crime law. After discussing definitions of hate crimes, we turn to addressing how hate crime is measured in major data collection efforts.

Definitions

Definitions are crucial to consider when interpreting hate crime statistics, comparing rates across locales, and assessing the results and implications of research and program evaluations. For example, the more narrowly one defines hate crime (i.e., fewer protected groups, fewer specified predicate crimes) the lower the hate crime rates. Conversely, data collected under definitions with a longer list of protected groups and no restrictions on the range of predicate crimes will show higher hate crime rates. Differences in the hate crime rates of two states, for example, may have more to do with definitions than with crime occurrence.

Across state and federal legal systems, there are dozens of definitions currently being used to distinguish hate crime from other offenses for purposes of data collection. For research purposes, perhaps the most important definitions of hate crime in the U.S. are those presented by the FBI, since they affect collection of UCR data (which is arguably the single most important source of hate crime data in the nation). The UCR definition follows from those in the previously described federal hate crime legislation, particularly the Hate Crime Statistics Act (presented in the previous chapter of this report). In its *Training Guide for Hate Crime Data Collection*, the FBI (1999) defines hate or bias crimes as follows:

A hate crime, also known as a bias crime, is a criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.

Definitions provided by advocacy groups, state hate crime task forces, criminal justice professional associations, and researchers are important because they frame the issues addressed by these organizations and individuals, affecting range of crimes and victim groups that the research or interventions are intended to cover. For example, in Massachusetts the Governor's Task Force on Hate Crime (1997) provides a definition very similar to the FBI's, except that it adds gender to the list of individual traits for which victims are targeted. A hate crime is one:

... in which the perpetrator's conduct was motivated, in whole or in part, by hatred, bias, or prejudice, based on the actual or perceived race, color, religion, national origin, gender, disability, or sexual orientation of another group or individual.

The task force is a collection on criminal justice personnel, researchers, educators, and independent advocates spearheading interdisciplinary efforts to study, prevent, and effectively respond to hate crime in the state. The task force definition of hate crime drives research efforts that they sponsor and infuses the content of their programs and educational materials.

The International Association of Chiefs of Police (IACP) defines a hate crime as

a criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender's bias against an individual's or a group's race, religion, ethnic/national origin, gender, age, disability, or sexual orientation.

This definition is influential since the IACP is a professional association of law enforcement leaders and conducts empirical research on hate crimes and other topics that is nationally disseminated in the fields of public safety as well as research and policy via the association's journal, *Police Chief*, and other publications.

The definitions presented by advocacy groups addressing hate crime also have an impact on research and practice. LAMBDA GLBT Community Services, a non-profit agency dedicated to reducing homophobia, inequality, hate crimes, and discrimination, defines hate crime as:

a criminal act which is motivated, at least in part, because of someone's bias or hatred of a person's or group's perceived race, religion, ethnicity, sexual orientation, or other characteristic.

LAMBDA, 2004: www.lambda.org

The National Education Association (NEA), which provides training and education meant to combat hate crime in schools, operates with the following definition:

Hate crimes and violent acts are defined as offenses motivated by hatred against a victim based on his or her beliefs or mental or physical characteristics, including race, ethnicity, and sexual orientation.

National Education Association, 1998: *Hate Motivated Crime And Violence: Information For Schools, Communities, & Families.*

Definitions such as these that are used to collect data and guide the activities of organizations are broader than the definitions included in many of the state and federal laws. For example, the definition used by LAMBDA GLBT Community Services is, for research purposes, as broad as it could possibly be, encompassing any criminal offense at least partially motivated by bias toward any perceived characteristic of victims.

The IACP definition is less broad (as are most definitions), but is still more inclusive than many of the state laws that law enforcement officers are bound to enforce: the IACP definition specifies age as a trait defining a protected group, but only 14 states have hate crime statutes specifically addressing age (Figure 2.2). Similarly, disability, sexual orientation, and gender are specified by IACP, but are not included in the statutes of 20 states. These differences do not suggest that the IACP definition is necessarily problematic for law enforcement: officers are trained to enforce law according to criminal codes defined by statute, and most officers are probably unaware of (and

unconcerned with) how the IACP defines hate crime. Given the variation of definitions across state laws, there is no single definition that could be consistent with them all. The IACP and other NGOs and researchers choose broad definitions to establish inclusive parameters, allowing them to address a full range of issues. But for those producing research to inform policy, and for those policymakers who are consumers of the research, it can be difficult to keep straight the differences across studies, programs, and data sets. For example, as we discuss below, state laws and UCR data collection guidelines have incompatibilities that can create confusion.

Methods

As with most other types of crime, the two primary methods for measuring hate crime are *reports to law enforcement agencies* and *victimization surveys*. The measurement of hate crime shares challenges faced in measuring any other type of crime, such as the failure of all victims and witnesses to report crimes to the police and the inability or unwillingness of all victims to recall and divulge offenses committed against them. Those measuring hate crime face additional challenges uncommon to most other crimes: After establishing that a predicate crime occurred, there is the additional burden of establishing the motivation of the offender. In data regarding reports to police, the final judgment on whether a crime meets standards of hate crime is in the hands of law enforcement personnel. In victimization surveys, determining whether offenses can be regarded as hate crimes relies on how researchers define hate crime in their survey instruments, and on how well the victims can: (1) accurately recall events, (2) judge what motivated their offender(s), and (3) become willing to disclose the events that they recall.

Crime Reported to Police

Prior to 1991, there were no systematically collected, national hate crime data from which to form a picture of the size and shape of the problem, nor to observe trends. Recognizing the need for such data, Congress enacted the HSCA of 1990 (discussed briefly in the previous chapter) that requires the Attorney General to collect hate crime data. The Attorney General delegates the responsibilities of developing the procedures for and implementing, collecting, and managing hate crime data to the Director of the FBI, who in turn assigns the tasks to the Uniform Crime Reporting (UCR) Program. In 1994, the Hate Crime Statistics Act (part of the 1994 Crime Bill) amended the 1990 HSCA to include both physical and mental disabilities as potential biases. The collection of UCR data reflecting this change began in 1997 (FBI, 2003).

Uniform Crime Reports.²⁰ Those who developed the guidelines for hate crime data collection recognized that hate crimes are not separate, distinct crimes, but are traditional offenses motivated by the offender's bias. Hate crime data could be collected by capturing the additional element of bias in those offenses already reported to the UCR Program (UCR Hate Crime Supplement, 2002), which would fulfill the requirements of the HSCA while minimizing additional reporting burdens on law enforcement. Law enforcement agency participation in the UCR is voluntary. In the UCR Program, participating law enforcement agencies collect details about an offender's bias motivation associated with the following offense types: murder and non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, robbery, burglary, larceny-theft, motor vehicle theft, arson, and destruction, damage, or vandalism of property. In the past several years, over 90% of the more than 17,000 law enforcement agencies at the city, county, and state levels cooperate in the UCR program, and the participating agencies' jurisdictions contain more than 90% of the U.S. population. The FBI released its most recent annual report, *Hate Crime Statistics 2003*, in November 2004.

Figure 3.1 presents a summary of hate crime statistics collected through the UCR Program from 1991 (the first year of hate crime data collection) through 2003. While these data show many noteworthy trends and patterns, we will focus on a few. Among them is the increase from the first to the second year after passage of the HSCA, from 4,755 in 1991 to 8,075 in 1992. The total number fluctuated from year to year, peaking at over 10,000 in 1995 and declining to about 8,000 in 1999 and 2000.

²⁰ The UCR is described in detail in readily available public documents (e.g., FBI, 1999; FBI, 2004; Bureau of Justice Statistics, 2001), so we provide a very brief overview and then turn to a discussion of select results and strengths and weaknesses of the data.

Figure 3.1: Bias-Motivated Offenses Reported by the Uniform Crime Reports, 1991-2002

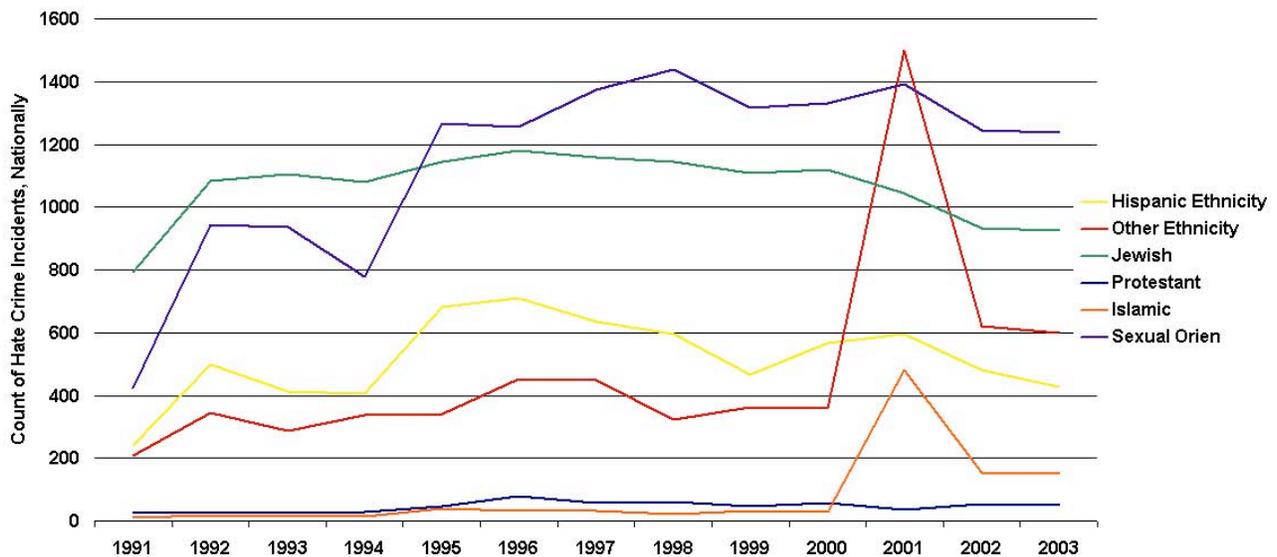
Type of Bias Motivation	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Race	2963	5050	5085	4387	6170	6767	5898	5360	4295	4368	4366	3642
Anti-White	888	1664	1600	1253	1511	1384	1267	989	781	886	889	719
Anti-Black	1689	2884	2985	2668	3805	4469	3838	3573	2958	2904	2900	2486
Anti-Native American or Alaskan Native	11	31	36	26	59	69	44	66	47	57	80	62
Anti-Asian or Pacific Islander	287	275	274	267	484	527	437	359	298	281	280	217
Anti-Multiracial Group	88	198	190	173	311	318	312	373	211	240	217	158
Ethnicity or National Origin	450	841	701	745	1022	1163	1083	919	829	927	2098	1102
Anti-Hispanic	242	498	414	407	680	710	636	595	466	567	597	480
Anti-other	208	343	287	338	342	453	447	324	363	360	1501	622
Religion	917	1240	1245	1232	1414	1500	1483	1475	1411	1483	1828	1426
Anti-Jewish	792	1084	1104	1080	1145	1182	1159	1145	1109	1119	1043	931
Anti-Catholic	23	18	31	17	35	37	32	62	36	56	38	53
Anti-Protestant	26	29	25	30	47	80	59	61	48	59	35	55
Anti-Islamic	10	17	13	16	39	33	31	22	32	28	481	155
Anti-other religious group	5	77	58	72	122	139	173	138	151	173	181	198
Anti-multireligious group	11	14	11	14	25	27	26	45	31	44	45	31
Anti-atheist, agnostic, and so on	4	1	3	3	1	2	3	2	4	4	5	3
Sexual Orientation	425	944	938	780	1266	1256	1375	1439	1317	1330	1392	1244
Anti-male homosexual	0	0	665	561	915	927	912	972	915	925	980	825
Anti-female homosexual	0	0	113	119	189	185	229	265	187	181	205	172
Anti-homosexual	421	928	111	77	125	94	210	170	178	182	173	222
Anti-heterosexual	3	13	28	16	19	38	14	13	14	22	18	10
Anti-bisexual	1	3	1	7	18	12	10	19	23	20	16	15
Disability	0	0	0	0	0	0	12	27	19	36	33	45
Anti-physical	0	0	0	0	0	0	9	14	10	20	12	20
Anti-mental	0	0	0	0	0	0	3	13	9	16	21	25
Multiple Bias	0	0	0	0	23	20	10	15	5	8	9	3
Total	4755	8075	7969	7144	9895	10706	9861	9235	7876	8152	9726	7462

As many people had feared, 2001 witnessed a spike in bias motivated crime. While one-year changes of the same magnitude had occurred previously (from 1994 to 1995) and might represent a random fluctuation, if that were true, one would expect to have seen increases more or less evenly spread out across types of bias motivation. Instead, increases in the specific kinds of hate crime fit the pattern expected by those bracing for a wave of misguided retaliation against those appearing to be of Middle-Eastern decent in

the aftermath of the terrorist attacks on September 11. As Figure 3.1 shows, there was a considerable increase in crimes motivated by bias based on ethnicity or national origin, more than doubling from 927 incidents in 2000 to 2098 in 2001. There was also an increase in crimes motivated by bias toward religion, from 1483 in 2000 to 1828 in 2004. A breakdown of trends by specific religion reveals that all of this increase was crime motivated by *anti-Islamic bias*, which experienced a *seventeen-fold increase from 2000 to 2001*. No other category of religion experienced any increase beyond minor increases easily within the bounds of random fluctuation. From 2001 to 2002, these numbers declined close to average annual levels.

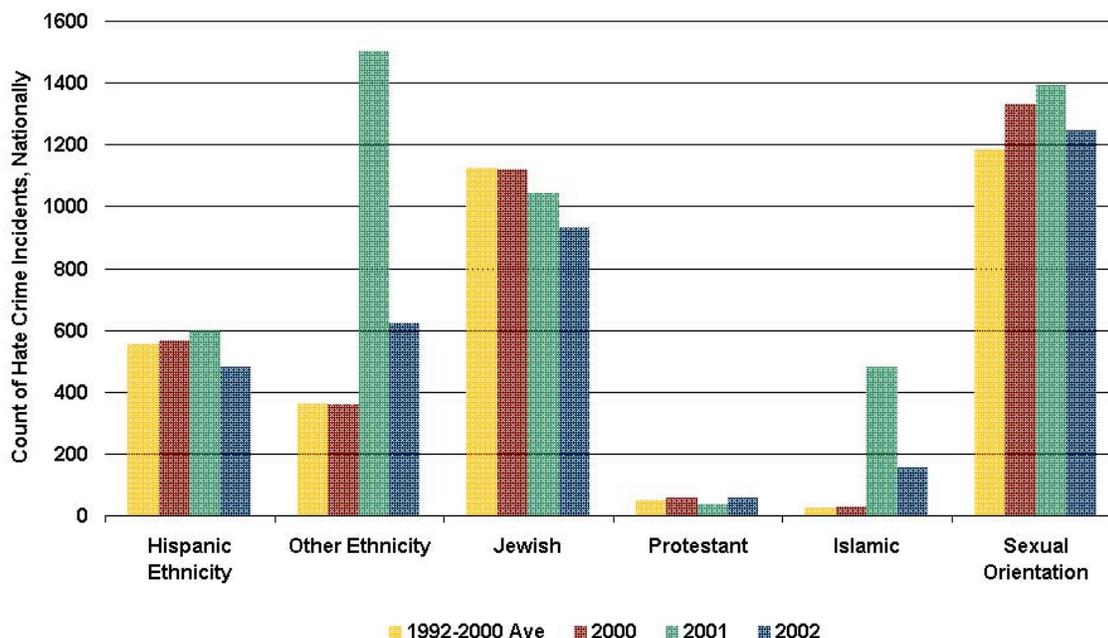
To illustrate the magnitude of increase in crime motivated by bias toward ethnicity and Islamic religion, Figure 3.2 presents trends in select categories of hate crime as measured by the UCR²¹. To provide a more stable baseline number than just the one year preceding 2001, we computed the average number of select categories of hate crime incidents nationally from 1992 to 2000 (we excluded 1991 as a “start up” year in which law enforcement agencies were clearly not participating at the levels they would in each subsequent year). In Figure 3.3 we present a comparison of the 1992-2000 mean number of reported hate crimes with the 2001 figures, and then the following year. As can be seen here, crimes motivated by bias toward Hispanic ethnicity, Jewish and Protestant religions, and sexual orientation did not show significant changes in 2001. However, crime motivated by bias toward Muslims and people of “other” ethnicity rose profoundly.

Figure 3.2: UCR 1991 to 2003



²¹ It is assumed that most of the incidents accounted for in the sharp rise in offenses based on bias toward “other” (non-Hispanic) ethnicities involved people who were perceived by offenders to be of Middle-Eastern origin. Anecdotal accounts and the corresponding increase in UCR data on offenses involving bias toward people of Islamic religion would support this assumption.

Figure 3.3: Bias Crime Reported in UCR, Highlighting Select 2001 Numbers



While it was certainly unwelcome to see evidence of increased senseless acts of hatred, this evidence validated the collection of the UCR data. In the aftermath of September 11th, there would almost certainly have been anecdotal evidence of crimes against certain groups of people, with or without the UCR data. One can easily imagine intense speculation about the magnitude of the increase in hate crime, with interest groups arguing that any particular guess was either exaggerating or underestimating the problem.

The hard data provided by the UCR served to confirm that a problem had occurred and helped to place discussions of appropriate responses on relatively firm empirical ground. While the UCR hate crime data are certainly preferable to sheer guesswork, they are not without weaknesses, and there are plausible explanations for the 2001 rise in hate crime reported to police. For example, once it was established that the terrorist attacks were conducted by people of Middle Eastern decent, the public and law enforcement personnel almost certainly had a heightened awareness of the potential for a backlash against anyone perceived to be a Muslim or to be from the Middle East. It is possible that the UCR data may reflect an increase in reporting to police alleged hate crimes that otherwise would have gone unreported. Another possibility is that police were more alert to the potential for crimes against certain groups of people or their places of worship or businesses, and that they more aggressively investigated whether such crimes were bias motivated. Perhaps there was not real increase in hate crime, but rather the spike could have been caused by a combination of increased reporting to police and an increase in their willingness to investigate and categorize offenses as hate crimes. One of the

limitations of reported crime is that without other sources of information it is difficult to rule out these other possibilities²².

To date, the most thorough assessment of the quality of hate crime data compiled by the federal hate crime statistics program is described in the report, *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection* (McDevitt et al., 2000). Noting the continued scarcity of NIBRS coverage, the study focused on examining UCR data and supplemented this with a survey of law enforcement personnel and a review of several other sources. The report examines the strengths and weaknesses of the UCR data and discusses barriers to accurate hate crime reporting and recommendations on how to improve reporting. Among the major conclusions of this study are:

- ***The best source of national hate crime data continues to be the UCR.*** Although incident based systems such as NIBRS provide more comprehensive data, these systems exist in very few jurisdictions, precluding any cross-jurisdictional comparisons or national estimates.
- Nearly 12,000 agencies ‘participate’ with the UCR Hate Crime Reporting Program, but ***the vast majority (83%, in 1998) of agencies ‘participate’ by submitting that their jurisdiction had ‘zero’ hate crimes*** during the year. ***Only ten percent of agencies report at least one hate crime.*** Participating with the UCR Hate Crime Reporting Program is an improvement more technical than substantive, and the full picture of hate crime reporting nationally has not yet been captured through official data.
- Survey results show that ***of the agencies reporting zero hate crimes to the UCR program, 31% indicated that their department had investigated and reported one or more incidents of hate crimes.*** These data demonstrate a disconnect between what line officers believe and what is reported to the FBI. Extrapolating this data, McDevitt et al. estimate that between 5,000 and 6,000 additional agencies may have encountered hate crimes that were not reported to the national program.
- ***Eighty-five percent of law enforcement officers responding to the survey report believing that hate-motivated crimes are more serious*** than similar crimes that are not motivated by bias.

²² In this specific instance, there is corroborating evidence indicating that there was a rise in anti-Muslim crime. Most of it is anecdotal, in the form of an increase in incidents reported to advocacy groups (e.g., American-Arab Anti-Discrimination Committee, 2002) or in qualitative research on small localized samples (e.g., Wessler, 2002).

- About *two thirds of law enforcement departments presently provide training on hate crimes*, but the training is usually limited to two hours in duration or less.
- Almost two thirds of police agencies reported that they had an official policy regarding hate crime.

McDevitt and colleagues (2000) also examined barriers to accurate hate crime reporting, arguing that they generally fall into one of two broad categories: individual (victim) inhibitors and police disincentives. The process of hate crime reporting (from the incident to the documentation in the UCR statistics) can be thought of as a series of seven key decision points (McDevitt et al., 2000):

1. *Victim understanding* that a crime has been committed
2. *Victim recognition* that hate (of the victim's real or perceived minority status or attribute) may be a motivating factor
3. Victim or another party solicits *law enforcement intervention*
4. Victim or another party *communicates with law enforcement* about motivation of the crime
5. *Law enforcement recognizes* the element of hate
6. *Law enforcement documents* the element of hate and, as appropriate, charges suspect with civil rights or hate/bias offense
7. *Law enforcement records* the incident and submits the information to the Uniform Crime Reports, Hate Crime Reporting Unit

These events generally occur in sequence, and if there is a breakdown at any one of these decision points, the likelihood of accurate reporting diminishes (McDevitt et al., 2000). This sequence of decision points provides a comprehensive framework for examining undercounts of hate crime in law enforcement data.

Other studies have examined one or more of these decision points and how these breakdowns occur. For example, victimization surveys repeatedly find that very few of those who have experienced hate crime victimization reported these incidents to law enforcement (e.g., Herek et al., 1997). For example, Goldberg and Hanson (1994) found only 13% of gay victims to have reported their offenses to police. In studies completed by The Prejudice Institute in Maryland, only one-third of victims reported notifying the police about the incident (Ehrlich, et al., 1994. The *Report on Anti-Gay/Lesbian*

Violence in the United States (1995) estimated that for every anti-gay or lesbian crime reported to the police, 4.67 are identified by community agencies. Other studies find that the proportion reported to police is even lower. For example, Shively et al. (2001) found less than five percent of hate crime victims in high schools to have reported the offenses to police. Nolan and Akiyama (2002), found that many victims resist reporting hate crime victimization for fear of insensitivity and abuse by police, while Shively et al. (2001) found fear of retaliation, the belief that nothing could be done about their victimization, embarrassment, and the belief that some of the incidents were not serious to be the primary reasons for non-reporting.

Nolan and Akiyama (2002) also examined in some detail how police respond to the rare instances where victims or witnesses have reported hate crime to them. They found that police do not always make an official record of what they are told by crime victims and do not always record alleged hate crimes. The authors argue that there are five key factors affecting whether police support participation in UCR hate crime reporting:

1. *Shared attitudes* about the value of hate crime reporting
2. *Perceived utility* in police/community relations
3. *Organizational self preservation* (motivation of police administration to have the organization thrive in its social environment)
4. *Perceived efficacy* of police involvement
5. *Availability of police resources*

To overcome deficiencies in hate crime recognition and reporting by the public and processing by law enforcement, McDevitt and colleagues (2000) argue that improving national data will require:

... a broad-based strategy that addresses four overarching areas: 1) building trust between members of the minority community and their local police, 2) improving law enforcement's ability to respond to victims who do come forward to report bias crimes, 3) making the national data more "user friendly" for local law enforcement purposes, and 4) using supplemental data to both shed light on the level of unreported hate crime and promote community collaborations.

McDevitt et al., 2000:12

On December 6, 2004 the ADL issued a press release stating concern that at least 5,000 police departments failed to participate in national data collection on hate crimes in 2003, and announced that it is leading a coalition of national groups seeking to expand federal

training, outreach and education materials on hate violence. ADL and a coalition of national organizations has recommended a series of changes to the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board that they assert would enable better and more accurate reporting of hate crimes by local law enforcement authorities pursuant to the HCSA. The ADL applauded the FBI's efforts in gathering and publishing hate crimes data but urged the Bureau to: (1) expand its training initiatives; (2) provide greater specificity in the data collected; (3) give incentives for state and local police agencies to participate in the national hate crime data collection effort; (4) collect additional information about the age, gender, sexual orientation, and national origin of victims and perpetrators of these crimes; and (5) revise and update its 1999 training manual and data collection guidelines to reflect the aforementioned changes.

National Incident Based Reporting System (NIBRS). For the UCR, police agencies submit crime data using the quarterly report that has little or no information about the victim or offender, and does not allow for information about multiple offenses, victims, offenders, or contextual information involved in any single criminal event. To correct these deficiencies, the National Incident Based Reporting System (NIBRS) was developed and was piloted in one state in 1988 and agencies from 10 states were submitting data by 1997. NIBRS is an incident based system that provides for the collection of many pieces of information grounded in each incident, e.g. traits of the victim, offense, offender, and harm resulting from the offense. NIBRS provides a far richer source of information about crime, and its participation by state and local law enforcement is growing. Between 1995 and 2002 participation in NIBRS grew from covering only 4% of the U.S. population to 17%. But while the coverage of NIBRS is moving in the right direction, the fact remains that it provides no information about the majority of jurisdictions and crimes.

Hate crimes were added to NIBRS data collection protocols in response to the 1990 HSCA. Law enforcement agencies participating in NIBRS began collecting hate crime data in 1991, at the same time that agencies began UCR hate crime data collection. However, it took several years before adequate data collection became prevalent enough to sustain meaningful analyses: As mentioned above, it took six years to reach the point where almost 10% of law enforcement agencies (representing just six percent of the U.S. population) from ten states were submitting NIBRS data, and hate crime represents a very small subset of this limited pool of data.²³

The Bureau of Justice Statistics conducted an analysis of hate crime data collected from 1997 to 1999. A briefing of the NIBRS hate crime data collection program and an overview of the resulting data and description of major findings is presented in the report, *Hate Crime Reported in NIBRS, 1997-99* (BJS, 2001). Among the key findings were:

²³ Of the 5.4 million NIBRS incidents reported by law enforcement agencies between 1997 and 1999, only about 3,000 (or .01% of the total) were identified as hate crimes (BJS, 2001).

- **Violence:** In 60% of hate crime incidents, the most serious offense was a violent crime, most commonly intimidation or simple assault (intimidation, defined as verbal or related threats of bodily harm, is one of the predicate offenses collected in NIBRS that is not addressed by UCR guidelines of the HSCA).
- **Predicate Crime:** In nearly 4 out of 10 incidents the most serious crime was a property offense, 73% of which were damage, destruction, or vandalism of property.
- **Bias Motivation:** Sixty-one percent of hate crime incidents were motivated by race, 14% by religion, 13% by sexual orientation, 11% by ethnicity, and 1% by victim disability.
- **Motivation Varies by Predicate Crime:** The majority of incidents motivated by race, ethnicity, sexual orientation, or disability involved a violent offense, while two-thirds of incidents motivated by religion involved a property offense, most commonly vandalism.
- **Victim Religion:** Of incidents motivated by hatred of a religion, 41% targeted Jewish victims and 31% targeted unspecified religious groups.
- **Victim Race:** Racially motivated hate crimes most frequently targeted blacks. Six in ten racially biased incidents targeted blacks, and 3 in 10 targeted whites.
- **Offender Age:** Younger offenders were responsible for most hate crimes. Thirty-one percent of violent offenders and 46% of property offenders were under age 18.
- **Location:** Thirty-two percent of hate crimes occurred in a residence, 28% in an open space, 19% in a retail/commercial establishment or public building, 12% at a school or college, and 3% at a church, synagogue, or temple.

Given the low incidence and, more importantly, given that these incidents represent a tiny fraction of all hate crimes that actually occur, it is unlikely that the profile of offenders, victims, and crimes presented in this report is representative of hate crime in America. However, the detail about the people and contextual factors involved in each incident allows for very rich descriptions and opportunities for in-depth analyses that are not possible with any other data set. If law enforcement participation in NIBRS continues to grow, this data set would represent the state of the art and provide excellent opportunities to develop detailed offender and victim profiles, to examine interactions among individuals, and to examine the impact of contextual variables on hate crime. While it will take time to pursue these questions nationally, it may already be possible to do so in

a populous state with high NIBRS compliance and other data sets available to corroborate facts and supplement analyses.

State-Level Data on Hate Crime Reported to Law Enforcement

Given that the great majority of law enforcement agencies distributed across all 50 states participate in the UCR program, it is clear that the capacity exists for hate crime data collection and record keeping at the agency level. However, in the UCR, the burden for compiling the data streaming in from numerous agencies and producing reports on the data is born by the FBI. Many states, consequently, do not invest in separate hate crime data collection or reporting. However, some states do, and these states represent opportunities to triangulate data within states to develop a better understanding of the scope and characteristics of the problem. They also present the opportunity to delve more deeply into data quality and examine the impact of statutory and other definitions on hate crime rates: For example, one could compare hate crime data submitted to the UCR with that presented in state reports and examine whether and why differences are observed (e.g., different definitions versus different record keeping practices and reporting mechanisms).

In several states differences were observed between hate crime reported to the FBI for the UCR and hate crime recorded in state-level crime statistics. Among the main reasons for these discrepancies are differences in the state and federal definitions. For example, Washington State's definition of hate crime is broader than the UCR's definition, explicitly including an additional protected group (defined by gender) in keeping with the Washington State Anti-Harassment Act. Washington keeps statistics about gender-motivated hate crime, but does not forward them to the FBI for the UCR since they fall outside the range of potential groups listed in the definition in the UCR training guidelines. Thus, state counts are higher than UCR counts in Washington State. Among the implications are that cross-state variation in hate crime definitions and crime reporting laws and practices make it difficult to "roll up" local and state data into a coherent national picture.

While UCR and, to a far greater extent, NIBRS data are uneven nationally, there are many localized, longstanding data collection efforts that can be valuable for research. For example, Minnesota passed a law in 1988 requiring peace officers to report incidents which were motivated by bias, and annual statewide statistics have been compiled since 1989, preceding UCR hate crime data collection by two years. Similarly, California has collected statewide data on hate crime since 1995, collected according to statutory guidelines and broader in scope than the UCR hate crime data collection (California Department of Justice, 2004). Hawaii passed a statute in 2001, requiring state-level data collection and reporting following statutory definitions, and the first annual report on hate crime in Hawaii covers 2002 (Hawaii Department of the Attorney General, 2003).

Reported Crime on College Campuses

As discussed in Chapter 2, the Crime Awareness and Campus Security Act of 1990 and subsequent amendments require that higher education institutions receiving federal aid must report annual hate crime statistics and must report hate motivated crimes to either campus security staff or to local police. Colleges are required to report these crimes to the Office of Postsecondary Education (OPE) of the U.S. Department of Education (ED), and may also report to local police, who in turn may report the offenses to the UCR Program. As a result, data on reported hate crime occurring on college and university campuses is available from two major sources, ED and the UCR Program. The most recent statistics from each government agency are available on their respective web pages²⁴. In 2002, only about 400 of nearly 7,000 institutions of higher education in the U.S. reported crime data (of any kind) to the FBI for the UCR program. Over 6,000 of these institutions report crime data to ED.

There are discrepancies in ED and UCR statistics on hate crime occurring on college campuses, and in some cases the differences are very significant. For example, 10 Massachusetts colleges and universities collectively reported 54 hate crimes to the UCR, but only 4 were reported to the Department of Education. In other comparisons, the differences are usually less extreme but the figures were seldom identical (unless both schools reported “zero” hate crimes). We selected a sample of colleges reporting to both the UCR and ED and compiled the number of cases of hate crime for each data set in 2002. The results are presented in Figure 3.4. In most instances where a college or university reports to both the UCR and ED and the figures differ for the same college, the number of hate crime incidents in the UCR database are usually larger. Across the 18 colleges selected there was a total of 14 hate crimes reported to ED, but these same schools during the same year reported 75 hate crimes to the UCR Program.

The sources of these differences have not been evaluated systematically, but we can speculate about why they exist. One possibility is that they stem from the instructions in the Clery Act, which requires colleges to report to local police agencies or to a campus security authority any hate motivated crime involving bodily injury. It may be that colleges vary in the procedures or routines that they establish, where they systematically refer their hate crimes to either their campus public safety department or to local police. In colleges reporting at least one offense to each of the two data programs, we do not know why certain offenses are reported to the UCR, and others to ED. It may be as simple as different people within a college routinely making different choices about where to report hate crimes. Finally, it is unclear how university personnel make distinctions among campus security staff (who may or may not be sworn peace officers with full police powers) and local police. If a college has fully uniformed, sworn law

²⁴ The campus hate crime data is available interactively at the ED web site (www.ed.gov/admins/lead/safety/crime/hatecrimes/index.html), and the UCR hate crime data are available in the FBI’s *Crime in the United States* series of annual reports (www.fbi.gov/ucr/ucr.htm).

enforcement officers, college staff may consider them “local police” and not campus security.

Figure 3.4: College Hate Crime Reported to Uniform Crime Report Program and to the Department of Education, 2002

College or University	Hate Crimes in 2002 Reported to	
	Uniform Crime Report	Department of Education
University of Arizona	5	0
University of California – San Diego	2	0
University of California – Santa Cruz	1	1
University of Delaware	5	0
University of Georgia	3	1
Illinois State University	1	2
University of Southern Maine	1	2
University of Maryland - College Park	11	0
Northeastern University	23	0
University of Massachusetts–Amherst	7	2
Mississippi State University	1	0
SUNY College - Geneseo	9	0
West Chester University (PA)	9	0
University of South Carolina – Columbia	2	2
Middle Tennessee State University	1	4
University of Utah	2	0
University of Washington	1	0
Total	75	14

Windemeyer (2003) argues that hate crimes and bias-motivated incidents on college campuses can only be addressed if campus communities become knowledgeable about the scope and seriousness of the problem. Consistent and accurate reporting of hate crimes on campus is an essential tool for hate crime prevention. Inconsistencies such as those noted here appear to add confusion rather than clarification about the scope of campus hate crime nationally.

Victimization Surveys

Crime victimization surveys are the standard alternative to law enforcement data. Although surveys have problems of their own as sources of crime data (e.g., respondent recollection of events and their willingness to disclose them), they do avoid the serious problem of dependence upon public willingness to report to the police. As discussed earlier, most studies find that between 70% and 95% of hate crime victims choose not to

report these incidents to police (e.g., Goldberg and Hanson, 1994; Herek et al., 1997; Shively et al., 2001). These and other studies question the validity of current UCR statistics on hate crimes, suggesting UCR data are of limited use for accurately estimating prevalence, incidence, or trends.

Among the significant barriers to determining the prevalence of hate crime and trends over time has been the failure, until recently, to use random or other forms of representative sampling on a national level in a longitudinal or repeated cross-sectional design. Fortunately, this situation is currently being remedied. In 2001, the *National Crime Victimization Survey* (NCVS) began asking respondents who have been the victims of vandalism and various interpersonal crimes whether they believe that hate was a factor in the offenses committed against them. This survey involves random sampling of many thousands of households in a rotating panel design. The NCVS has been invaluable, in combination with the UCR, in helping to determine the prevalence and other characteristics of other types of crime. This proved to be particularly true in crime types known or expected to be severely underreported to police, with sexual assault being the best example (e.g., Kilpatrick et al., 1987; Tjaden and Thoennes, 2000).

Given the best available current information, it appears that the ongoing addition of NCVS data on hate crime may allow sound estimation of the extent of underreporting, and examination of whether current cross-state variations in hate crime rates seen in UCR data are functions of different levels of hate crime or of different reporting practices. At this point in time, research based on NCVS hate crime data is not available.

School Hate Crime Victimization

The School Crime Supplement of the 1999 National Crime Victimization Survey included (for the first time) questions on hate language and graffiti. As reported in the 2000 Annual Report on School Safety (U.S. Department of Education and U.S. Department of Justice, 2000), the NCVS survey found that 13% of students had been called a hate-related word or name, and that 36% had seen hate-related graffiti at school. These data have been relatively stable in subsequent years (National Center for Education Statistics, 2004)²⁵.

Independent Surveys

Aside from the recent inclusion of hate crime in the NCVS and in school surveys, most victimization surveys have been cross-sectional studies conducted by researchers (e.g.,

²⁵ It is inherently important to study and respond to school crime and disorder, and we do not want to imply that the kind of hate motivated bullying and harassment addressed by these survey questions are not serious. But our review is focused on hate crime rising to the level of criminal violations, so we will elaborate on these surveys no further.

Barnes and Ephross, 1994; Ehrlich, 1994; Gay and Lesbian Community Action Council, 1990; Herek et al., 2002; Herek et al., 1999; Jay and Young, 1977; McDevitt et al., 2001; Peebles et al., 1985; Rayburn et al., 2003; Shively et al., 2001), rather than ongoing and/or national data collection projects. This body of research been reviewed elsewhere (e.g., Boeckmann and Turpin-Petrosino, 2002; Herek and Berrill, 1992; Herek et al., 1999; McDevitt, et al., 2001), and the major conclusions are that: (1) hate crimes are more prevalent than is suggested by reported crime data; (2) victims seldom report hate crime to law enforcement; and (3) compared to the predicate crime alone, hate crimes have more serious negative consequences for victims (e.g., Herek et al., 1999; Levin, 1999; McDevitt et al., 2001).

Since it is seldom the intent of these studies to provide a national prevalence estimate, the surveys stand up well to criticism that they are usually geographically constrained to one state (e.g., Shively et al., 2001), region (e.g., Franklin, 1997); community (e.g., McDevitt et al., 2001), or location within a community such as a university (e.g., Rayburn et al., 2003). While the surveys do not attempt national coverage, the variation across surveys presents difficulties for those trying to develop a larger picture or to compare results across studies. For example, independent surveys have attempted to measure the prevalence of hate crime for selected types of victims (e.g., for gays and lesbians; or among high school students), but their estimates have varied widely depending on sampling and how hate crime was operationally defined (e.g., Herek et al., 1999; Schulthess, 1992; Shively et al., 2001). Also, there have been no replications of any of these surveys to validate results.

While resource constraints are generally responsible for the use of convenience samples that are often small and local, all hate crime surveys face challenges in questionnaire design regardless of the resources available. As we have discussed elsewhere, a major factor in design is how hate crimes are defined. While state and federal statutes drive data about crime reported to police, researchers are free to define hate crime conceptually and operationally as they so choose in independent surveys.

Surveys intended to address the prevalence of hate crime face a hurdle in addition to those encountered in most other kinds of crime victimization surveys. Not only do respondents have to recall and be willing to divulge information about offenses committed against them, but they also are asked to determine that the offenses were motivated by hate or bias. For example, to assess the prevalence and characteristics of hate crime, Shively et al. (2001) asked several questions modeled after those used to measure conventional crime in the NCVS. Respondents were asked whether the individuals had experienced a certain type of crime in the prior six months and, if they responded affirmatively, they were asked several follow-up questions about the offense. For each of the offense types, respondents indicating that they had been victimized were then asked a series of questions about why they thought they were targeted. Respondents were to indicate the three most important reasons that the offender(s) chose to commit the offense committed against them. Those surveyed were presented with a list of 16 different kinds of reasons, including several outside the boundaries of bias crime: class year, income, friends, bad luck, the offender not liking or being angry with the victim, the

offender being older and bigger, and "don't know, it just happened." Offenses were classified as motivated by hate or bias when victims indicated that the offender was driven by any one or more of the following reasons: gender, race, ethnicity, sexual orientation, religion, disability, first language, and national origin.

When examining hate crime through victimization surveys, one is limited by the necessity of relying solely on the victim's perception of motivation²⁶. Clearly, there is room for error. For example, it is possible that victims may sometimes attribute assaults to hate or bias because the offenders were of a different race than themselves. In such instances, it is certainly reasonable to speculate that racial bias may have been the sole or a contributing factor. But it is also possible that the victim was in the wrong place at the wrong time and that the offenders would have been just as likely to victimize the next available target, regardless of race. While this kind of error in perception would lead to inflated estimates, other perceptual errors could lead to underestimates. For example, it is possible that a particular offense was motivated by hate, but that without an overt expression of such motivation, it could easily be undetected by the victim. Errors in perceptions of offender motivation could push hate crime estimates in either direction. Without an empirically grounded understanding of how crime victims make inferences about the motivation of the offenders, one can only speculate about how these errors in victims' perceptions affect estimates based on victimization survey data. In the absence of such information, it is reasonable to speculate that overall, the sources of error in victim perceptions that would lead to over-estimating and those leading to under-estimating may cancel each other out.

Estimation Methods

Creative ways of estimating the incidence and distribution of hate crime are being developed and may be useful stopgaps in jurisdictions where the weight of the evidence indicates ineffective or incomplete reporting by law enforcement agencies, until UCR and NIBRS more fully cover the U.S. For example, Green et al. (2001) conducted a study of crime directed at gay and lesbian targets to address two measurement problems: police agencies providing unreliable data on hate crime, and tract-level census data containing no direct information about gay or lesbian population density. The article attempts to gauge two quantities that cannot be measured directly or unambiguously: the size of the gay and lesbian populations and the number of hate crimes directed at gay and lesbian targets. Greene and colleagues examined data for New York City gathered from market research lists and from a special tabulation of the 1990 Census. Hate crime data were obtained from the Anti-Violence Project (AVP) and the New York Police Department,

²⁶ This is particularly true when estimating prevalence rates in broadly defined populations, where it is necessary to survey a group of people and identify a subset as hate crime victims on the basis of their survey responses. An exception to this sole reliance on victim perception would be a survey of people whose victimization was independently confirmed, e.g. a study examining the impact of hate crime victimization that studied only known victims of convicted offenders, or victims of acts of mass hate crime such as genocide.

and factor analyses were conducted to assess the reliability of each measure and the correlation between latent population density and hate crime. They concluded that these measures offered a reliable means of assessing cross-sectional differences in the population density and victimization of gay men. Despite the fact that advocacy groups recorded many more antigay incidents than did the police, both sources of data were in agreement about where hate crimes occurred. The study concluded that the strong correlation between population density and hate crime against gay men implied that Census data could be used to forecast the occurrence of hate crime in areas where no police records exist.

This report indicates that it is possible to triangulate data and arrive at reasonable estimates when official data are incomplete. While an excellent platform for future studies in other cities, their estimation methods may not necessarily generalize. Green et al. (2001) covered one city and was guided by a single definition of hate crime, eliminating the problems of multiple statutory definitions across jurisdictions and multiple law enforcement agency reporting practices. New York was among the first states to pass hate crime statutes and has one of the longest-running state-level hate crime data collection efforts, so it may be that police records are of better quality than those of many other cities. New York also has the advantage of access to the AVP data for their location, and less than half of states have this data (see Appendix A for a list of AVP sites and the national umbrella organization, the National Coalition of Anti-Violence Programs). In addition, New York has a large population and a proportionately large number of incidents, allowing the application of modeling and estimation techniques that would not be possible with small numbers of cases. In addition to the impediments to generalizing, another limitation of these findings is that this study only addressed violent crimes targeting individuals on the basis of their sexual orientation, which leaves out the majority of protected groups.

Anecdotal Evidence and Reports to NGOs

Several NGOs encourage and accept reports of hate crime incidents, and some compile anecdotal accounts of via the media, advocacy groups, and other sources. For example,

- The ADL produces an annual report about anti-Semitic incidents that is compiled “using official crime statistics, as well as information provided to ADL’s 30 regional offices by victims, law enforcement officers and community leaders” (ADL, 2004). The most recent report, *2003 Audit of Anti-Semitic Incidents*, counted a total of 1,557 anti-Semitic incidents (restricted to vandalism, such as property damage, cemetery desecration or anti-Semitic graffiti, and harassment, including threats and assaults directed at individuals and institutions) across the United States in 2003.

- The Human Rights Campaign (HRC)²⁷ has compiled a list and short descriptions of 651 separate hate crimes, including 181 murders, and presented them in the report, *A Chronology of Hate Crimes 1998-2002*. The incidents were gathered “primarily from media sources and initial police reports by the SPLC’s Intelligence Report, the National Coalition of Anti-Violence Programs and the Human Rights Campaign.” This report is not intended to be a comprehensive accounting of all hate-related violence, and not all of the incidents have been verified. The HRC report documents only incidents resulting in death or bodily injury, or those perpetrated with an explosive device or firearm.
- The *National Coalition of Anti-Violence Programs* (NCAVP), a network of over 20 anti-violence organizations that monitor and respond to incidents of bias motivated crime and related issues (the separate programs are listed in Appendix A), produces an annual report based on incidents known to its participating regional offices (some of these offices cover metropolitan areas, other entire states). In the most recent report, *Anti-Lesbian Gay, Bisexual, and Transgender Violence in 2003* (NCAVP, 2004), 2,051 incidents were reported within the coverage area of these 11 regional offices: Chicago, IL; Cleveland, OH; Colorado; Columbus, OH; Connecticut; Los Angeles, CA; Massachusetts; Minnesota; New York, NY; Pennsylvania; and San Francisco, CA.

These data sources have several limitations, such as the eclectic processes by which the incidents come to the attention of the organizations, the unknown level of consistency in definitions used across sites, and (in the case of the NCAVP) less than full geographic coverage across the nation (see critique by Jacobs and Henry, 1996). However, the cases are in some ways superior to the those gathered in the larger government sponsored efforts, in that some of the incidents are captured in narrative detail (e.g., HRC, 2003) and that some victims who are willing to disclose incidents to advocacy organizations may be those who are unwilling to approach police. Despite the lack of uniform collection methods, advocacy group and human rights group data are valuable in providing insight into the victim experience, and why so many hate crime victims fail to reach out to law enforcement (McDevitt et al., 2000).

Summary Regarding Hate Crime Data

National efforts to collect and compile data from law enforcement efforts continue to be uneven across jurisdictions and collectively to underrepresent the prevalence of hate crime. Apparent gaps and inconsistencies in national reporting can be seen when comparing hate crime reporting across states and across data sets. Reasons for cross-state variation in rates of hate crime reported to law enforcement (UCR, NIBRS, and state data bases) include: (1) dissimilar hate crime laws from state to state, including different hate crime statistical reporting provisions; (2) variations in the quality of data collection

²⁷ www.hrc.org

procedures; (3) differences in law enforcement training on hate crime reporting; and (4) a lack of consensus about the legitimacy of treating hate crimes as separate kinds of offenses. Reporting on hate crime occurring on college campuses is also uneven, across colleges and across data collection programs. The addition of hate crime questions to the NCVS is promising, given that the strengths and weakness of law enforcement and survey data complement one another, and a combination of the two allows a more fully developed empirical understanding to emerge. In addition to these government-sponsored efforts, independent NGOs such as the ADL, NCAVP, the SPLC, and HRC have conducted impressive programs collecting narrative accounts and data that provide an alternative to police reports that can be used in combination with UCR and/or survey data to provide descriptive profiles of victims, offenders, and incidents.

Though there have been areas of tangible progress, the current “state of the art” data are not sufficient to establish the true national scope of the problem or to track trends over time. Unfortunately, hate crime data gathered through large national collection efforts lag behind data on other types of crime. However, continued intense public and government focus on hate crime is driving efforts to improve data coverage and quality.

Explaining Hate Crime

As we discussed above, most of the literature explicitly examining hate crime has been generated in the past 20 years. As in the social science literature on other types of crime, the research attempting to explain hate crime can be placed into a few major categories: descriptive studies and typologies, and studies proposing and testing formal theories.

Typologies

One of the common means of explaining criminal behavior is the creation of typologies of offenders. While typologies are not formal theories, they help to organize empirical observations, and the types of offenders or offenses often are aligned with different types of theoretical explanations. The most widely discussed and accepted typology of hate crimes was proposed by Levin and McDevitt in 1993 and expanded upon in 2002. The typology emerged from a primary analysis of 169 cases handled by the Community Disorders Unit of the Boston Police Department in 1991-1992. Their typology proceeds from the assumption that bigotry is the underlying foundation of hate crimes, but that each of their proposed categories of offenses differs with respect to the psychological and environmental conditions that ultimately lead to hate crimes (Levin and McDevitt, 2002:306). They describe four major categories of offender motivation.

- ***Thrill-seeking offenders*** are motivated by the desire for excitement and power, and often go outside their "turf" and spontaneously vandalize property or attack members of groups they consider to be inferior to them (as well as vulnerable). In

Levin and McDevitt's study of hate crimes in Boston, this was found to be the most common type of motivation (66%).

- ***Defensive offenders*** are motivated by feeling a need to protect their turf or resources under conditions they consider to be threatening. Levin and McDevitt found 25% of the cases studied fit this category of motivation.
- ***Retaliatory offenders*** are inspired by a desire to avenge a perceived insult or assault on their group. Just eight percent of the cases studied fell within this category.
- ***Mission offenders*** see themselves as “crusaders” on a mission to eliminate groups they perceive to be inferior or evil. Only one of the 169 cases studied was classified as a mission hate crime.

Levin and McDevitt state that their primary purpose in this typology is assisting law enforcement in the investigation and identification of hate crime, but the typology also provides a framework for research. On one level, the typology is built primarily upon a psychological foundation, given its reliance on motivation as a primary organizing and explanatory principle. However, other levels of explanation are evident. For example, an economic motivation is implied in the “defensive offenders” category.

To date, there have been no replications or other tests of the validity of Levin and McDevitt's typology. Other typologies have been formulated. For example, Franklin (1997) examined self-reported anti-gay aggression among approximately 500 young adults in the greater San Francisco Bay Area. Through a factor analysis of assailant motivations, she identified four distinct offender types:

- ***Self-Defense*** assailants typically claim they were responding to aggressive sexual propositions. Rather than fabricating these accounts of homosexual aggression, these assailants appear to interpret their victims' words and actions based on their belief that homosexuals are sexual predators.
- ***Ideology*** assailants report that they assaulted gay men and lesbians because of their negative beliefs and attitudes about homosexuality. These assailants view themselves as social norm enforcers who are punishing moral transgressions. They object not so much to homosexuality itself, but to visible challenges to gender norms, such as male effeminacy or public flaunting of sexual deviance. The other two motivations, Thrill Seeking and Peer Dynamics, both stem from adolescent developmental needs.
- ***Thrill Seekers*** commit assaults to alleviate boredom, to have fun and excitement, and to feel strong.

- *Peer Dynamics* assailants commit assaults in order to prove their toughness and heterosexuality to friends. Both Thrill Seekers and Peer Dynamics assailants minimize their personal antagonism toward homosexuals, and either blame their friends for assaults or minimize the level of harm done.

Franklin (1997) also found that when compared with non-assailants, assailants: (a) held more negative attitudes toward homosexuals, (b) reported more negative social norms among their friends, (c) had higher levels of masculinity ideology, and (d) reported greater likelihood to drink alcohol in social settings.

There is obvious congruency with Levin and McDevitt's typology in identifying thrill seeking, defensive, and ideological²⁸ offender motivations. The level of agreement between the typologies is somewhat surprising given the differences in the data on which they were based. Franklin relied upon a survey of college students and used self-reported behavior to identify offenders and offenses. Levin and McDevitt examined cases reported to and investigated by an urban police department. Given what is known about the rarity of reporting to police and the fact that police focus on offenses rising in seriousness to the level of criminal violations, one would expect that Levin and McDevitt's sample of offenses would be heavily biased toward the severe end of the seriousness scale. Given that Franklin used a general population survey and that her questionnaire included relatively minor offenses less likely to be pursued by law enforcement (e.g., anti-gay threats), one would assume that she captured a broader array of offenses that reached into the less severe end of a continuum of seriousness. What was not surprising given the differences in samples was Franklin finding peer influence as a category of offense not explicitly separated by Levin and McDevitt.

Theory

Studies attempting to explain hate crime can be found in every branch of social science (see Byers and Crider, 2001), including disciplines such as sociology (e.g., Hagan et al., 1995), psychology (e.g., Kleg, 1993), social psychology (e.g., Craig, 2002; Watts, 1996), history (e.g., Ross, 1992), economics (e.g., Dharmapala, 2004), and political science (e.g., Koopmans, 1996). As one would expect in social science, many of the studies and the explanations they propose and test do not fit neatly into a particular category, but cross disciplines (e.g., MacGinty, 2001). For example, among the many analyses of hate crime in Germany are those blending history, political science, social psychology and economics in their explanations (e.g., Goldenhagen, 1996; Peukert, 1982). Several of the sociological accounts explain hate crime as a breakdown of social norms (Hagan et al., 1995; Watts, 1996). These breakdowns are viewed in historical context and can be argued (in part) to be a function of economic and political changes.

²⁸ For example, in Levin and McDevitt's schema ideology is a major component of defensive and mission offenses.

For several reasons, we do not provide additional examination of the theoretical research on hate crime in this review. First, hate crime law and research is a large, diffused body of work, and we have had to prioritize our objectives and pursue those that can be accomplished within available resources. The primary objective of this review is to provide information guiding research that will support criminal justice practice. We focused on our highest priority objectives and funneled our resources toward providing NIJ with what does not currently exist elsewhere, and that is a comprehensive examination of major statutes, sources of data, and applied research. Second, theory addressing hate crime has been ably summarized and reviewed many times before (e.g., Berk et al., 1992; Craig, 2002; Green et al. 2001; Hamm, 2004; Levin and McDevitt, 1993, 2002; McPhail, 2002; Perry, 2001, 2003).²⁹ Third, and perhaps most importantly, it is apparent from these reviews that basic research on the etiology of bias motivated offenses remains relatively underdeveloped. There are many descriptive studies, debates, typologies, thought-pieces, and overviews of hate crime research, but there is lack of theory with the demonstrated ability to explain or predict hate crime. Coupled with the lack of evaluation research, the shortage of hate crime theory empirically confirmed through hypothesis testing makes it difficult to determine the realized or potential impact of criminal justice programs and policies aimed at preventing and effectively responding to hate crime. The conclusion to be drawn from a review of hate crime theory is that work should commence that will provide a solid theoretical foundation so that one can build criminal justice programs upon it, and so that evaluations can determine whether programs are theoretically grounded.

Criminal Justice Systems Responses to Hate Crime

While it is possible to assess the quality of data on objective grounds (such as response rates, triangulation of results across data sets), it is difficult to avoid subjectivity in assessing the quality, impact, or level of innovation of criminal justice responses to hate crime in the absence of rigorous evaluations. Given the lack of evaluations of interventions³⁰, the question of “what works” in preventing and effectively responding to hate crime cannot be answered with more than anecdotal evidence or opinion. Our review found detailed descriptions of dozens of criminal justice responses to hate crime, and reports summarizing or presenting as best practices a sampling of criminal justice programs and initiatives. We found nearly every state or major metropolitan area to have some form of government-sponsored hate crime initiative involving criminal justice agencies. Many law enforcement initiatives are collaborative endeavors involving large national NGOs (such as the SPLC and the ADL) or local state and community organizations.

²⁹ The most comprehensive, thorough, and critical review of theoretical research on hate crime is presented by Green et al., 2001.

³⁰ One of the few criminal justice system responses to be rigorously evaluated was the BJS assessment of the quality of data produced by the Hate Crime Statistics Program (McDevitt et al., 2000), discussed earlier in this report.

We offer a brief overview of the numerous criminal justice and related responses to hate and bias crime. Figure 3.5 presents a list of reports describing some of the initiatives and programs, as well as documents serving as resources designed to support effective prevention and response efforts. NGOs and public agencies supporting hate crime prevention and response programs and initiatives are listed in Appendix A.

Figure 3.5: Select Resources for Practitioners Addressing Hate Crime Prevention and Response

Report/Resource Title	Sponsor / Author	Publication Date
Law Enforcement		
<i>FY 2002 Annual Report</i>	<ul style="list-style-type: none"> • Community Relations Service, U.S. DOJ 	2003
<i>Twenty Plus Things Law Enforcement Agencies Can Do to Prevent or Respond to Hate Incidents Against Arab-Americans, Muslims, and Sikhs</i>	<ul style="list-style-type: none"> • Community Relations Service, U.S. DOJ 	2001
<i>Promising Practices Against Hate Crime: Five State and Local Demonstration Projects</i>	<ul style="list-style-type: none"> • Bureau of Justice Assistance 	2000
<i>Addressing Hate Crimes: Six Initiatives That Are Enhancing the Efforts of Criminal Justice Practitioners</i>	<ul style="list-style-type: none"> • Bureau of Justice Assistance 	2000
<i>Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals</i>	<ul style="list-style-type: none"> • National Center for Hate Crime Prevention Educational Development Center • U.S. Department of Justice, Office for Victims of Crime 	2000
<i>Reporting Hate Crime: The California Attorney General's Civil Rights Commission on Hate Crimes Final Report</i>	<ul style="list-style-type: none"> • California Attorney General 	2000
<i>Hate Crime in America Summit Recommendations</i>	<ul style="list-style-type: none"> • International Association of Chiefs of Police 	1998
<i>Hate Crime Training: Core Curriculum for Patrol Officers, Detectives, and Command Officers</i>	<ul style="list-style-type: none"> • U.S. Department of Justice • U.S. Department of Treasury • National Association of Attorneys General • International Association of Directors of Law Enforcement Standards and Training 	1998
<i>A Policymaker's Guide to Hate Crime</i>	<ul style="list-style-type: none"> • Bureau of Justice Assistance 	1997

Report/Resource Title	Sponsor / Author	Publication Date
Community and Educational Settings		
<i>Ten Ways to Fight Hate On Campus: A Response Guide for College Activists</i>	<ul style="list-style-type: none"> • Southern Poverty Law Center 	2004
<i>School Safety and Security Toolkit: A guide for Parents, Schools, and Communities</i>	<ul style="list-style-type: none"> • National Crime Prevention Council 	2003
<i>How to Combat Bias and Hate Crimes: An ADL Blueprint for Action</i>	<ul style="list-style-type: none"> • Anti-Defamation League 	2003
<i>Responding to Hate: Rights, Remedies, Prevention Strategies</i>	<ul style="list-style-type: none"> • State of California, Department of Fair Employment and Housing 	2003
<i>Stop the Hate: Hate Crime Prevention Train the Trainer Manual</i>	<ul style="list-style-type: none"> • Association of College Unions International • Anti-Defamation League • Center for the Prevention of Hate Violence • National Gay & Lesbian Task Force • National Center for Hate Crime Prevention 	2003
<i>Hate Crimes on Campus: The Problem and Efforts to Confront It</i>	<ul style="list-style-type: none"> • Bureau of Justice Assistance 	2001
<i>Responding to Bigotry and Intergroup Strife on Campus: Guide for College and University Presidents and Senior Administrators</i>	<ul style="list-style-type: none"> • Anti-Defamation League 	2001
<i>Protecting Students from Harassment and Hate Crime: A Guide for Schools</i>	<ul style="list-style-type: none"> • Office for Civil Rights, U.S. Department of Education • National Association of Attorney's General 	1999
<i>Responding to Hate at School: A Guide for Teachers, Counselors, and Administrators</i>	<ul style="list-style-type: none"> • Teaching Tolerance 	1999
<i>Hate Motivated Crime and Violence: Information for Schools, Communities, and Families</i>	<ul style="list-style-type: none"> • National Education Association 	1998
<i>Healing the Hate: A National Bias Crime Prevention Curriculum for Middle Schools</i>	<ul style="list-style-type: none"> • Educational Development Center, Inc. • Office of Juvenile Justice and Delinquency Prevention 	1997
<i>Preventing Youth Hate Crime: A Manual for Schools and Communities</i>	<ul style="list-style-type: none"> • U.S. Department of Education • U.S. DOJ, Community Relations Service 	1997

Municipal Responses

While municipal police departments are usually involved as members of state or regional task forces or other form of partnerships, some cities have hate crime units within their departments and/or serve as the base of operation for multiagency tasks forces. For example, the Houston Police Department (HPD) developed a Hate Crime Program involving the appointment of a full-time Hate Crime Coordinator (a Criminal Intelligence Division Lieutenant) and HPD's Hate Crime Hotline. The Department views all hate crimes as major, and possibly organized, acts and charges the Criminal Intelligence Division (CID) with the ultimate responsibility for determining whether a crime is reported to federal or state record-keeping agencies as a hate crime. Additional responsibilities of the CID include education of both the public and police officers on the definition of hate crime, prevention techniques, reporting procedures, organized hate crime groups, and the development of strategic initiatives in dealing with hate crime issues (HPD, 2004).

In response to a series of hate motivated arsons beginning in 1993, the city of Sacramento began a series of responses that began informally and led to the establishment of permanent initiatives. An informal team of investigators was formed following the first incidents in 1993 (BJA, 1997; Wagner, 2001). The team included detectives and patrol officers from the Sacramento Police Department (SPD), an FBI agent, lab technicians from the Bureau of Alcohol, Tobacco and Firearms (ATF), and arson investigators from the Sacramento Fire Department. As the seriousness of the crimes became clear in the second wave of arsons, additional local, state, and federal officials were brought to bear on the investigation. However, conflicting demands on local police investigators were problematic, and a decision was made to focus the array of resources through an official task force on hate crime directed locally by the operations unit of SPD (BJA, 1997; Wagner, 2001). The resulting Greater Sacramento Area Hate Crimes Task Force began in 1994 and is still operating 10 years later.

State-Level Responses

Many states have highly organized, government sponsored task forces or other cross-discipline efforts. For example, California has the Attorney General's Commission on Hate Crimes that provides oversight and direction for a number of initiatives meant to prevent and better respond to hate crime (SafeState.org³¹). Among the initiatives are:

³¹ These organizations and their various initiatives are described in a series of documents provided at a website sponsored by the CVPC: safestate.org/index.cfm?navID=13

- ***Crime and Violence Prevention Center (CVPC)***, providing training to law enforcement on hate crimes. The CVPC's Hate Crime Prevention Program provides training to law enforcement, schools and community based organizations throughout California, and staff serve as liaisons between local law enforcement and the Attorney General. CVPC staff also assist other agencies by providing expertise in hate crime prevention, and collaborate with other local, state and federal agencies to respond to hate crimes when they occur, and by supporting community activities (i.e., hate crime brochures, speakers, etc.). CVPC staff assisted in community forums sponsored by the Attorney General's Civil Rights Commission on Hate Crimes to focus on issues relating to under-reporting of hate crimes and proposed innovative solutions for combating intolerance and hate violence in California communities.
- ***California Community Relations Service***, assists local communities in preventing unrest where there is potential for a civil rights violation. The Community Relations Service assists local government and communities with mediation and facilitation services that may be needed to resolve conflicts based on race, ethnicity, disability, religion, gender and sexual orientation. It offers to help establish human relations commissions and neighborhood networks in communities with no infrastructure to prevent and respond to hate crimes or bias-motivated incidents.

Massachusetts has two hate crime task forces, one sponsored by the Governor's office and the other by the Attorney General's Office. The Governor's Task Force on Hate Crimes³² (GTFHC) was commissioned in 1991 to coordinate the implementation of the Hate Crimes Reporting Act of 1990. The task force links representatives of state and local law enforcement with community advocates to ensure state government's commitment to the eradication of bias-motivated crimes. The GTFHC includes representatives of state and local police, the district attorneys' offices, the Attorney General's Office, the Department of Justice, educators, and representatives of organizations advocating for communities targeted in hate crimes. It has taken responsibility for numerous initiatives, such as commissioning hate crime prevalence surveys, lobbying for state legislative reform, and designing and implementing prevention programs in community and school settings. The other task force, the Massachusetts Hate Crimes Task Force³³ (MHCTF) was established in January, 1994, by the Office of the Attorney General and the United States Attorney's Office, in cooperation with the state's district attorneys. The MHCTF consists of federal, state, and local law enforcement officers, prosecutors, and community representatives, and is intended to design innovative and comprehensive action plans to prevent and respond to hate crimes.

³² Described at: www.mass.gov/stophate/CORE.HTM

³³ Described at: www.ago.state.ma.us/sp.cfm?pageid=1194

Federal Responses

Over the past 15 years, the federal government has undertaken a series of aggressive steps to address hate crime. In addition to the previously discussed federal legislation and data collection programs, there have been many programs and initiatives emanating from a variety of agencies. The major federal initiatives have been summarized elsewhere in a number of publicly available sources (e.g., the websites of Partners Against Hate, ADL, and SPLC). For example, the Bureau of Justice Assistance (BJA) has sponsored the Center for the Study of and Prevention of Hate Violence of the University of Southern Maine to produce a series of reports on BJA-supported initiatives and state and local demonstration projects. In the report, *Addressing Hate Crimes: Six Initiatives That Are Enhancing The Efforts of Criminal Justice Practitioners* (BJA, 2000) six programs are described:

- **The International Association of Chiefs of Police (IACP) Summit: Hate Crime in America.** Convened in collaboration with the OJP and the COPS Office, a two-day summit at which law enforcement, civil rights, and other leaders developed a broad range of recommendations for addressing hate crimes in communities across the country.
- **DOJ's National Hate Crime Training Initiative.** The development of multilevel hate crime training curricula and the creation of a nationwide training program for local law enforcement agencies to implement the curricula.
- **BJA's Roll Call Video: Responding to Hate Crimes.** The production of a 20-minute video covering the initial response to and investigation of possible hate crimes.
- **The International Association of Chiefs of Police's Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention.** The publication of a compact guide designed as a quick reference to address hate incidents, hate crimes, and how best to assist victims.
- The American Prosecutors Research Institute's (APRI's) Resource Guide, Prosecutors Respond to **Hate Crimes** Project. The publication of a resource guide on hate crimes for local prosecutors.
- **The Maine Department of the Attorney General's Designated Civil Rights Officers Project.** The development of a coordinated statewide system for hate crime investigation and prosecution.

Two other reports in this series describe a number of other initiatives within communities and college campus settings: *Promising Practices Against Hate Crimes: Five State and Local Demonstration Projects* (BJA, 2000), and *Hate Crimes on Campus: The Problem and Efforts to Confront It* (BJA, 2001).

Many other programs that appear well-conceived are described in the professional literature. For example, ED has supported initiatives in response to hate/bias crimes. For example, in 1996, under the Department of Education's Safe and Drug-Free Schools and Communities Federal Activities Grants Program, \$2 million was made available to public agencies and private nonprofit organizations for developing and implementing innovative strategies designed to prevent and reduce the incidence of hate crimes in communities. Also in 1996, the Office for Victims of Crime (OVC) and BJA supported the development of a national training and technical project that produced *A Training Curriculum to Improve the Treatment of Victims of Bias Crimes* by the Educational Development Center in Boston, Massachusetts. The project offers training for law enforcement and victim assistance professionals. Project materials emphasize that while hate crimes are similar to other crimes, they present unique challenges to professionals because of the deep negative psychological impact on the victim and the victim's community.

In addition, the U.S. Department of Justice Community Relations Service (CRS) is tasked with assisting communities that are addressing inter-group disputes. Among its duties are mediation, coordination of response efforts, publishing information bulletins, and assisting states in hate crime data collection processes (CRS, 2001). Finally, the ATF assists state and local law enforcement in the investigation of arson that is potentially hate-motivated at places of worship.

Evaluations of Criminal Justice Responses

Aside from the previously discussed assessments of the Federal Hate Crime Statistics Program (Nolan and Akiyama, 1999; McDevitt et al., 2000), there are very few published evaluations of programs or other responses to hate crime.

The response of the criminal justice system to hate crime in Sacramento was the subject of a case study. A BJA (1997) report provides a summary of how initial responses to a series of hate crimes by the SPD led to an ad hoc collaboration between local, state, and federal agencies, which in turn evolved into a permanent multijurisdictional hate crime task force. The task force designed a response plan and a suspect profile of the arsonist from locations targeted, witness statements, and voice recordings. Using the profile to conduct a computer search of white supremacists in the Sacramento area and information gleaned from an incarcerated juvenile offender, Sacramento police located and arrested a young white male fitting the profile. From this successful experience, a set of lessons learned and recommendations was put forth for the benefit of other communities faced with hate crime. For example:

- ***Train every patrol officer in the department to recognize hate crime.*** Patrol officers must understand and support a department's policies on hate crime and know how to respond when hate crime occurs
- ***Establish a multi-agency task force*** in areas where hate crime occurs and give it full support of elected officials and law enforcement agencies involved in the investigation and prosecution of hate crime. A task force's more experienced personnel and dedicated equipment enable a task force to investigate incidents and leads more quickly than an ad hoc team. It can deploy more tactical units to protect potential targets of attacks and implement strategies to stop perpetrators of hate crime before they strike again.
- ***Seek out state and federal law enforcement assistance*** in your community and make it available to the task force. For example, the Sacramento Police Department used a \$100,000 grant from the Bureau of Justice Assistance to deploy a sophisticated vehicle that permits close yet covert surveillance of hate crime suspects. The department also purchased a geographical information system with BJA grant money that became an indispensable visual aid for tactical commanders and their personnel. Task force investigators use the system to target locations and select areas of responsibility. In addition, the ATF contributed expert arson investigators to the task force, who examined arson scenes, collected evidence, and conducted state-of-the-art laboratory analysis.
- ***Encourage the participation of the community*** in the investigation. Used constructively, the desire of community- and neighborhood-based groups to apprehend the perpetrators of hate crime can be a powerful asset assisting law enforcement.

From the scant evaluation literature and the voluminous descriptive and best practices literature, there are many recommendations for how the criminal justice system can more effectively address, prevent, and respond to hate crime (CRS, 2001; DOJ, 1998; IACP, 1998). While these recommendations are built upon practical experience and expert opinion, and appear well-conceived and pass the "common sense" test of validity, no evaluations of various law enforcement practices have been conducted. These would determine whether or not any particular initiative, program, or set of practices has, for example (1) increased arrest and/or prosecution rates, (2) prevented hate crime, or (3) provided more effective support for victims (i.e., aiding their recovery, improving cooperation in prosecutions, preventing subsequent victimization).

CHAPTER 4: CONCLUSIONS

This report presents a summary and analysis of literature and legislation addressing hate crime in the United States. The main purpose of the review was the identification of significant current issues, effective practices, innovative responses, and gaps in the law and in the research literature regarding hate and bias crime. Recognizing inadequacies in statistical reporting on hate crime and limited research on relevant criminal justice policies and practices, this review was intended to provide the DOJ with information to aid in the development of a program of research and evaluation.

A systematic review of hundreds of documents and web sites was conducted, including sources describing: (1) federal and state hate crime data collection efforts; (2) research produced by federal and state agencies, advocacy groups and other independent organizations, and scholars; (3) crime prevention and response efforts; (4) law enforcement training; and (5) descriptions and analyses of hate crime law. Given the breadth and the volume of documentation on hate crime law, research, and practice, we have focused our discussion on state and federal statutes and major sources of data, since these are at the core of the scope of this review. We provide brief overviews and references, however, for source materials regarding a number of other topics.

Over the past 25 years, the federal government and all but one state have passed pieces of legislation addressing hate crime in some way. Still, there remains no national consensus about whether hate crime should be a separate class of crime, and among those supporting hate crime statutes, there is disagreement about how these statutes should be constructed and focused. The key issues in the debate include:

- (1) the necessity of considering hate or bias motivation when the core offenses (e.g., assault, vandalism) are already covered by criminal law;
- (2) whether there is a danger in basing additional penalties for crimes upon the thoughts motivating offenders, rather than keeping the focus of criminal law on the behavior itself;
- (3) whether it is possible to determine with legally-acceptable levels of certainty the motive behind a person's criminal acts;
- (4) whether, in practice, hate crime laws result in crimes against certain groups of people being punished more severely than equivalent crimes committed against other groups, and if so, whether that is fair and legally defensible;
- (5) whether having hate crime statutes deters potential offenders; and
- (6) whether having these statutes hinders law enforcement's ability to investigate and prosecute crime.

Hate crime statutes vary widely state to state in several ways, including the specification of "protected groups," whether and how they address criminal penalties and civil remedies, the range of crimes covered, how they address hate crime reporting, and whether they require training of law enforcement personnel to support improved

prevention, response, and recording of hate crimes. Among the trends in hate crime legislation are an increasing number of state statutes that include provisions expanding the number of “protected groups.” Most of this discussion centers on whether to add groups defined by gender, sexual orientation, and disability as targets of bias and hate-motivated crime.

There have been many legal and sociological analyses of hate crime statutes (Grattet and Jenness, 2001; Jacobs and Potter, 1998; Jenness and Grattet, 2001; Lawrence, 1999), but so far the impact of hate crime law reform has not been subjected to evaluation. Where adequate longitudinal data are available, it would be useful to evaluate the impact of hate crime law, such as the specific and general deterrent effects of increased sanctions, and examine whether those convicted of hate crimes are receiving sentences substantially more severe than those convicted of corresponding conventional offenses. Among other productive lines of evaluation inquiry would be: (1) whether criminal penalties are being meted out fairly, i.e., whether certain groups of people are being punished more severely than are members of other groups convicted of similar crimes; (2) comparing clearance, prosecution, and conviction rates for hate crime to those for equivalent conventional crimes; (3) whether the rates of crimes committed primarily against women are affected by the introduction of hate crime legislation when the statutes include gender as a basis for victim targeting; (4) whether having these statutes hinders law enforcement’s ability to investigate and prosecute crime; and (5) whether hate crime statutes have negative or unintended consequences.

National data collection efforts continue to be uneven across jurisdictions and collectively to underrepresent the prevalence of hate crime. Apparent gaps and inconsistencies in national reporting can be seen when comparing hate crime reporting across states and across data sets. Reasons for UCR and NIBRS cross-state variation in hate crime rates include: (1) dissimilar hate crime laws from state to state, including different hate crime statistical reporting provisions; (2) variations in the quality of data collection procedures; (3) differences in law enforcement training on hate crime reporting; and (4) a lack of consensus about the legitimacy of treating hate crimes as separate kinds of offenses.

In several states, differences were observed between hate crime reported to the FBI for the UCR, and hate crime recorded in state-level crime statistics. Among the main reasons for these discrepancies are differences in the state and federal definitions. Cross-state variation in hate crime definitions and crime reporting laws and practices make it difficult to “roll up” local and state data into a coherent national picture. While there is cross state variation, assessments of the UCR and NIBRS indicate underreporting of hate crime in all locations. Proposed reasons for the under-representation of hate crime in law enforcement counts include: (1) people not understanding what constitutes hate crime in their state, and neglecting to mention to officers that they believe hate or bias motivated the offense committed against them; (2) reluctance of some victims to report known offenses to police; and (3) law enforcement not recognizing or preferring not to acknowledge the role of hate in certain offenses.

Current efforts to improve official data include the FBI's investment in training in proper data collection protocols for the UCR, and the dissemination of training and data collection guides, as well as state efforts such as that of the California Department of Justice, which invests in training law enforcement in the collection of state hate crime data. We recommend expanding investment in training of law enforcement personnel, particularly training on: how to distinguish hate motivated crimes from other forms; identifying and gathering evidence of hate motivation; and satisfying UCR reporting requirements. While the quality of data produced by the UCR and the NIBRS programs have been assessed (Nolan and Akiyama, 1999; McDevitt et al., 2000), there have been no evaluations of law enforcement training programs focused on improving data on reported hate crime. A productive line of research would be comparing state hate crime reporting and UCR figures, and attempting to determine whether differences found are due to errors in reporting, or reflect differences between statutes and data collection procedures guiding each state and those of the UCR.

In order to receive federal funds, federal statute requires that institutions of higher education report all occurrences of crime, including hate crime. The statutes allow reporting to either the Office of Postsecondary Education (OPE) of the U.S. Department of Education (ED), or to the FBI's UCR Program. In 2002, only 400 of nearly 7,000 colleges and universities in the U.S. reported crime data (of any kind) to the UCR, while over 6,000 of these institutions reported crime data to ED. In the 400 instances of dual reporting, there are discrepancies in ED and UCR statistics on hate crime occurring on college campuses. College-by-college comparisons of counts of hate crimes reported to the UCR and ED show differences, in some cases ones that are very significant. In instances where a college or university reports to both the UCR and ED and the figures differ, the number of hate crime incidents in the UCR database are usually larger, even though most colleges are bound by federal statute to report to ED while UCR reporting is optional. It is unknown to what extent these discrepancies between agency data sets and discrepancies across colleges are due to reporting errors, different interpretations of reporting requirements, different case processing and referral procedures, differences in the structure of college public safety departments (e.g., university police departments with sworn officers versus security departments without police powers or training), or other factors. It is also unclear whether colleges whose security or campus safety staff are sworn law enforcement officers are aware of ED crime reporting requirements. It is also unknown whether non-sworn campus security staff receive guidance for routing cases to local police departments (thus triggering UCR reporting mechanisms), and whether they regard offenses they choose not to refer to local police as crimes but still report the incidents to ED. A promising recent development in hate crime data was the addition in 2001, of questions about hate and bias crime victimization to the National Crime Victimization Survey. Data derived from these questions in the 2001 and 2002 survey are available, but as of mid-2004, research fully analyzing the results has not yet been published.

Though there have been important areas of tangible progress, the current "state of the art" data are not sufficient to establish an accurate national estimate of the problem or to track

trends over time. Hate crime data gathered through large national collection efforts lag behind data on most other types of crime. While UCR, NIBRS, and ED data are uneven nationally, and NCVS has only recently been collected, there are many localized, longstanding data collection efforts (e.g., Alaska, Hawaii). For example, Minnesota passed a law in 1988, requiring peace officers to report incidents that were motivated by bias, and annual statewide statistics have been compiled since 1989. Similarly, California has collected statewide data on hate crime since 1995, compiled according to statutory guidelines and broader in scope than the UCR hate crime data collection.

In addition to government-sponsored law enforcement data and survey efforts, NGOs such as the ADL, NCAVP, the SPLC, and HRC collect narrative accounts and other types of data on hate crime. These sources provide an alternative to police reports and surveys, and can be used in combination with police and/or survey data to provide more stable estimates of prevalence and descriptive profiles of victims, offenders, and incidents. Many of the incident descriptions are gathered through direct reporting to the organizations, while some are gleaned from media accounts. These data sources have several obvious limitations, such as the less systematic ways in which the incidents come to the attention of the organizations, the unknown level of consistency in definitions used across sites, and in the case of the NCAVP, less than full geographic coverage across the nation. However, the data can be in some ways superior to those gathered via the larger government sponsored efforts, in that some of the incidents are captured in narrative detail (e.g., HRC, 2003) and some victims unwilling to approach police may be willing to disclose to these advocacy organizations.

As part of an effort to expand and improve data on hate crime, we recommend examining the availability and quality of information on hate crime collected by independent organizations. For example, the ADL and other advocacy groups and most of the Anti-Violence Projects have hotlines or places on their web sites for reporting hate crime, and it is possible that these might collectively or locally serve as valuable data sources in a multifaceted ongoing data program. We believe it would be valuable to examine systematically: (1) how NGOs document reported incidents; (2) how records of incidents are kept; (3) with whom the data are shared; and (4) whether such NGOs serve to encourage victims to report hate crimes to the police and offer support for them as they cooperate in criminal justice processing of their cases.

Given that they are the most comprehensive and valuable extant national data sources, flaws notwithstanding, we recommend continued investment in trying to expand and improve collection of hate crime data via UCR, NIBRS, NCVS, and ED. We also recommend an update and extension of the BJS examination of the UCR/NIBRS statistical reporting process (McDevitt et al., 2000), assessing how well agencies follow guidelines and statutes. The BJS study examined data collection practices and quality using UCR data through 1998, as well as mailed surveys, and a small number of interviews with practitioners specializing in hate crime data. A useful extension of this work could include evaluators working on-site in a sample of law enforcement agencies to observe and document data collection procedures, from the point of fielding reported incidents to sending statistical reports to the FBI and, where applicable, to other state or

federal agencies. In addition, where data quality and the number of incidents are sufficient, among the questions that might be addressed is whether fluctuations in UCR numbers represent true variations in the occurrence of hate crime, versus fluctuations in reporting to police and/or police responses and record keeping practices.

In states with gender listed as a trait targeted by hate or bias, a study might examine how law enforcement and prosecution is reconciling the potential confusion between sexual assault and harassment of women, and crimes motivated by gender bias. For example, using NIBRS data, one could examine crimes reported to police (involving adult female victims and male offenders) over time, and assess whether the addition of gender as a trait protected by hate crime statutes has resulted in cases previously categorized as sexual assault being classified as hate crimes.

Our review found detailed descriptions of dozens of criminal justice responses to hate crime, and reports summarizing or presenting as best practices a sampling of criminal justice programs and initiatives. Nearly every state or major metropolitan area within a state was found to have some form of government-sponsored hate crime initiative involving criminal justice agencies. Many of these law enforcement initiatives are collaborative endeavors involving large national NGOs (such as the SPLC and the ADL) or local state and community organizations.

The fragmentation of information across locales and across data sets may serve as an impediment to the many public and private efforts to understand and respond to hate crime. To support research, criminal justice practice, law, and policy, it might be beneficial for a federal agency to develop and maintain a central repository of hate crime information. Currently, excellent information is available online, but it is dispersed across many different sources. Compiled and maintained by a collection of government agencies, professional associations, advocacy groups, and researchers, these sources vary in levels of thoroughness and timeliness, and real or perceived objectivity. A government-sponsored site could alleviate many of these problems, particularly if it were developed as part of (or parallel to) a repository on research and evaluation. Federal and state data sets could be made more easily accessible to researchers, and independent research teams and advocacy groups whose data meet certain quality thresholds could be encouraged to post data sets and documentation on the repository website. The original sources or links could be provided for all state and federal statutes, as well as for government sponsored research reports. Links could be provided to good sources of information provided by independent advocacy groups and professional associations. In addition, criminal justice practitioners could benefit from easy access to descriptions of best practices in training, prevention, response, prosecution, and victim assistance resources. The site could also incorporate a blog for timely dissemination of experiences and ideas to help combat hate crime and support those affected by it.

The literature produced by researchers, practitioners, and advocacy groups makes a compelling case for the unique character and increased seriousness of hate crime. To respond to this problem, the past 20 years have witnessed enormous efforts in law reform, data collection, research, and advocacy. However, at this point in time few of the efforts

(aside from the national law enforcement hate crime statistics program) have been evaluated.

Given the great public and private investment in these responses to hate crime, and the critical need to respond effectively and efficiently to enhance public safety and victim recovery, we recommend that evaluations be conducted to examine how to improve delivery of services and whether the initiatives are producing their intended effects. Specific types of programs and initiatives in need of evaluation include law enforcement training, public education, victim support, and crime prevention. To assess their operations and impact, it would be useful first to perform evaluability assessments.

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APPENDIX A: Organizations Addressing Hate Crime Through Research, Training, And/Or Advocacy

NON GOVERNMENTAL ORGANIZATIONS

American-Arab Anti-Discrimination Committee

4201 Connecticut Ave, NW, Suite 300
Washington, D.C. 20008
(202) 244-2990
president@adc.org
www.adc.org

American Civil Liberties Union

125 Broad Street, 18th Floor
New York, NY 10004
www.aclu.org

Anti-Defamation League

823 United Nations Plaza
New York, NY 10017
(212) 885-7717
webmaster@adl.org
www.adl.org

Arab American Institute

1600 K Street NW, Suite 601
Washington, DC 20006
(202) 429-9210
www.aaiusa.org

Brudnick Center on Violence and Conflict

Northeastern University
Department of Sociology and Anthropology
569 Holmes Hall
Boston, MA 02115
(617) 373-4983
jlevin1049@aol.com
www.violence.neu.edu/

Center for Gay and Lesbian Civil Rights

1211 Chestnut St., Suite 605
Philadelphia, PA 19107
215-731-1447
www.center4civilrights.org

Center for the Prevention of Hate Violence

96 Falmouth Street, Box 9300
Portland, ME 04104-9300
(207) 780-4756
cphv@usm.maine.edu

Center for Policy Alternatives

1875 Connecticut Avenue NW, Suite 710
Washington, DC 20009
(202) 387-6030
www.stateaction.org

Disability Law Center

11 Beacon Street, Suite 925
Boston, MA 02108
Phone: 617-723-8455
Fax: 617-723-9125
www.dlc-ma.org

Facing History and Ourselves

16 Hurd Road
Brookline, MA 02445
(617) 232-1595
www.facinghistory.org

Hate Crime Research Network

Department of Sociology
Portland State University
P.O. Box 751
Portland, OR 97207
www.hatecrime.net/research.htm

Human Rights Campaign

1640 Rhode Island Avenue NW
Washington, DC 20036-3278
(202) 628-4160
www.hrc.org

Japanese American Citizens League

1765 Sutter St.
San Francisco, CA 94115
(415) 921-5225
www.jacl.org

Leadership Conference on Civil Rights

1629 K Street NW
10th Floor
Washington, DC 20006
(202) 466-3311
www.civilrights.org

National Conference for Community and Justice
National Capital Area Region
10 G Street, Suite 430 NE
Washington, DC 20002
Phone Number: 202.682.8710
Fax Number: 202.682.8714
www.nccjdc.org

National Conference for Community and Justice

New York Regional Office
475 Park Avenue South, 19th Floor
New York, NY 10016
Phone: 212-545-1300
Fax: 212-545-8053
www.ncjj.org

National Congress of American Indians

2010 Massachusetts Avenue, NW
Second Floor
Washington, DC 20036
Phone: 202-466-7767
Fax: 202-466-7797
www.ncai.org

National Council of La Raza

1111 19th Street, NW
Suite 1000
Washington, DC 20036
Phone: 202-785-1670
Fax: 202-776-1792
www.nclr.org

National Coalition of Anti-Violence Programs

240 West 35th Street
Suite 200
New York, NY 10001
Phone: (212) 714-1184
www.ncavp.org

National Gay and Lesbian Task Force

5455 Wilshire Blvd.
Suite 1505
Los Angeles, CA 90036
(323) 954-9597
www.thetaskforce.org

National Network of Violence Prevention Practitioners

55 Chapel Street
Newton, MA 02158
Phone: 617-969-7100
Fax: 617-244-3436
www.nnvpp.org

National Partnership for Women and Families

1875 Connecticut Avenue, NW
Suite 650 Washington, DC 20009
Phone: 202-986-2600
Fax: 202-986-2539
www.nationalpartnership.org

National Women's Law Center

11 Dupont Circle, NW
Suite 800
Washington, DC 20036
Phone: 202-588-5180
Fax: 202-588-5185
www.nwlc.org

Partners Against Hate

1100 Connecticut Avenue, NW
Suite #1020
Washington, DC 20036
(202) 452-8310
webmaster@partnersagainsthate.org
www.partnersagainsthate.org

Simon Wiesenthal Center

1399 South Roxbury Drive
Los Angeles, California 90035
(310) 553-9036
information@wiesenthal.net
www.wiesenthal.com

Southern Poverty Law Center

400 Washington Avenue
Montgomery, AL 36104
334.956.8200
<http://www.splcenter.org/index.jsp>

Tolerance.org

c/o The Southern Poverty Law Center
400 Washington Ave.
Montgomery, AL 36104
Phone: (334) 956-8200
<http://www.tolerance.org>

Triangle Foundation

19641 West Seven Mile
Detroit, Michigan 48219
313-537-3323
877-787-4264 (to report incidents)
www.tri.org

ANTI-VIOLENCE PROJECTS (AVPs) BY STATE

ARIZONA

Wingspan Anti-Violence Project

Hotline: (800) 553-9387
Hotline: (520) 624-0348
www.wingspanaz.org

ARKANSAS

Women's Project/Proyecto Mujeres

Phone (English):(501) 372-5113
Phone (Spanish):(501) 907-0529
www.womens-project.org

CALIFORNIA

Community United Against Violence (CUAV)

Hotline: (415)333-HELP (24 hrs)
www.cuav.org

L.A. Gay & Lesbian Center/Anti-Violence Project

Hotline: (800) 373-2227 (Southern CA)
www.laglc.org

L.A. Gay & Lesbian Center/STOP Partner Abuse/Domestic Violence Program

Hotline: (323) 860-5806

www.laglc.org/domesticviolence

COLORADO

Colorado Anti-Violence Program

Hotline: (888) 557-4441

www.coavp.org

CONNECTICUT

Connecticut Womens' Education and Legal Fund

Phone: (860) 247-6090

www.cwealf.org

ILLINOIS

Horizons Anti-Violence Project

Hotline: (773) 871-CARE

www.horizonsonline.org

LOUISIANA

Lesbian & Gay Community Center of New Orleans

Phone: (504) 945-1103

www.lgccno.net

MASSACHUSETTS

Fenway Community Health Center

Violence Recovery Program

Hotline: (800) 834-3242

www.fenwayhealth.org/services/violence.htm

The Network/La Red

Hotline: (617) 423-7233

www.thenetworklared.org

MICHIGAN

Triangle Foundation

Hotline: (313) 537-3323

Hotline: (877) 787-4264

www.tri.org

MISSOURI

Kansas City Anti-Violence Project

Phone: (816) 686-2541

www.kcavp.org

MINNESOTA

OutFront Minnesota

DV Hotline: (612) 824-8434

Phone: (800) 800-0350

www.outfront.org

NEW YORK

New York City Gay & Lesbian Anti-Violence Project

240 West 35th Street, Suite 200

New York NY 10001

(212)714-1184

(212)714-1141 (24-hour bilingual hotline)

www.avp.org

OHIO

Buckeye Region Anti-Violence Organization

Hotline: (866) 86-BRAVO

www.bravo-ohio.org

The Lesbian & Gay Community Service Center of Greater Cleveland

Phone: (216) 651-5428,

www.lgcsc.org

PENNSYLVANIA

The Center for Lesbian & Gay Civil Rights

Hotline: (215) 731-1447

www.center4civilrights.org

TEXAS

LAMBDA Gay & Lesbian Antiviolence Project

PO Box 31321

El Paso, TX 79931-0321

<http://www.lambda.org>

Montrose Counseling Center Antiviolence Program

701 Richmond Ave.

Houston, Texas 77006

Phone: (713) 529-0037

www.montrosecounselingcenter.org/info/avp.html

VERMONT

SafeSpace

Hotline: (866) 869-7341

TTY: (802) 863-0003

www.safespacevt.org

WISCONSIN

Milwaukee Lesbian, Gay, Bisexual and Transgender Community Center

Phone: (414) 271-2656

www.mkelgbt.org

RESEARCH ORGANIZATIONS AND ASSOCIATIONS

American Psychological Association

Public Policy Office

750 First Street, NE

Washington, DC 20002-4242

Phone: 202-336-6062

Fax: 202-336-6063

www.apa.org

Center for Criminal Justice Policy Research

204 Churchill Hall

Northeastern University

360 Huntington Avenue

Boston, MA 02115

617.373.3327

www.cj.neu.edu/center_for_criminal_justice_policy_research/index.php

International Chiefs of Police Association

515 North Washington St

Alexandria, VA USA 22314

phone: 703.836.6767 or 1.800.THE IACP

www.iacp.org

National Criminal Justice Association

444 North Capitol Street, NW

Suite 618

Washington, DC 20001

Phone: 202-624-1440

Fax: 202-508-3859

www.ncja.org

Police Executive Research Forum

1120 Connecticut Avenue
NW Suite 930
Washington DC, 20036
Phone: 202-466-7820
Fax: 202-466-7826
<http://www.policeforum.org>

RTI Crime, Justice Policy, and Behavior Program

Research Triangle Institute
PO Box 12194
Research Triangle Park, NC 27709-2194
Telephone: 919-485-2666
www.rti.org

FEDERAL RESOURCES

Bureau of Justice Assistance Clearinghouse

P.O. Box 6000
Rockville, MD 20849-6000
Phone: 1-800-688-4252
Fax: 301-579-5212
www.ojp.usdoj.gov/BJA

Bureau of Justice Statistics

810 7th Street, NW
Washington, DC 20531
Phone: 202-307-0765
Fax: 202-307-5846
www.ojp.usdoj.gov/bjs

Community Relations Service

U.S. Department of Justice
600 E Street, NW, Suite 6000
Washington, DC 20530
Phone: 202-305-2935
Fax: 202-305-3009
www.usdoj.gov

Criminal Justice Information Services Division

Federal Bureau of Investigation
Attn: Uniform Crime Reports
1000 Custer Hollow Road

Clarksburg, WV 26306
Phone: 304-625-4995
Fax: 304-625-5394
www.fbi.gov/hq/cjisd/cjis.htm

Federal Bureau of Investigation

J. Edgar Hoover Building
435 Pennsylvania Avenue, NW
Washington, DC 20535
Phone: 202-324-1143
www.fbi.gov

Office of Juvenile Justice and Delinquency Prevention

810 7th Street, NW
Washington, DC 20531
Phone: 202-307-5911
Fax: 202-307-2093
ojjdp.ncjrs.org

Office of Victims of Crime

810 7th Street, NW
Washington, DC 20531
Phone: 202-307-5983
Fax: 202-514-6383
www.ojp.usdoj.gov/ovc/welcome.html

**National Law Enforcement and Corrections Technology Center (NLECTC)-
National**

2277 Research Boulevard, M/S 8J
Rockville, MD 20850
Phone: 800-248-2742
Fax: 301-519-5149

U.S. Commission on Civil Rights

624 9th Street, NW
Suite 700
Washington, DC 20425
Phone: 202-337-0382
Fax: 202-376-7558
www.usccr.gov

U.S. Department of Education

400 Maryland Ave, SW
Washington, DC 20202
Phone: 202-205-5557
Fax: 202-205-5381
www.ed.gov

U.S. Department of Housing and Urban Development

451 7th Street, SW
Room 10000
Washington, DC 20410
Phone: 202-401-0388
www.jud.gov

Violence Against Women Office

950 Pennsylvania Avenue, NW
Room 5302
Washington, DC 20530
Phone: 202-616-8894
Fax: 202-307-3911
www.ojp.usdoj.gov/vawo

APPENDIX B: Bias Crimes Statutes and Related Provisions

Alabama

Ala. Code § 13A-5-13 (Penalty Enhancement)

Ala. Code § 13A-11-12 (Institutional Vandalism, Desecration of Religious Institutions)

Alaska

Alaska Stat. § 11.76.110 (Interference with Constitutional Rights)

Alaska Stat. § 12.55.155 (Penalty Enhancement)

Alaska Stat. § 34.50.020 (Liability for Destruction of Property by Minors)

Arizona

Ariz. Rev. Stat. Ann. § 13-1604 (Institutional Vandalism, Desecration of Religious Institutions)

Ariz. Rev. Stat. Ann. § 13-1702 (Penalty Enhancement)

Ariz. Rev. Stat. Ann. § 41-1750 (Data Collection)

Ariz. Rev. Stat. Ann. § 41-1822 (Training Law Personnel)

Arkansas

Ark. Code Ann. § 5-71-207 (Disturbing Religious Worship)

Ark. Code Ann. § 5-71-215 (Institutional Vandalism and Desecration of Religious Institutions)

Ark. Code Ann. § 16-123-105 (Civil Action, Private, Damages)

Ark. Code Ann. § 16-123-106 (Civil Action, Private, Damages and Injunction)

Ark. Code Ann. § 16-123-107 (Civil Action, Private, Damages and Injunction)

California

Cal. Civil Code § 52 (Civil Action, Private and Attorney General, Damages and Injunction)

Cal. Penal Code § 51.7 (Independent Criminal Civil Rights with Categories)

Cal. Penal Code § 136.2 (Stay Away Order Once Criminal Charges Filed)

Cal. Ed Code § 233.5 (Teaching to Prevent Hate Violence)

Cal. Ed Code § 233.8 (Hate Violence Identification Training)

Cal. Penal Code § 302 (Disturbing Religious Worship)

Cal. Penal Code § 422.6 (Independent Criminal Civil Rights with Categories and Institutional Vandalism)

Cal. Penal Code § 422.75 (Penalty Enhancement)

Cal. Penal Code § 422.9 (Violation of Civil Injunction is a Criminal Penalty)

Cal. Penal Code § 422.95 (Sensitivity Training)

Cal. Penal Code § 594.3 (Institutional Vandalism and Desecration of Religious Institutions)

Cal. Penal Code § 628.1 (Reporting Form for Hate Crimes)

Cal. Penal Code § 628.5 (Validating Hate Crime Incidents)

Cal. Penal Code § 666.7 (Sentence Enhancement)

Cal. Penal Code § 11410 (Declaration of Purpose for Criminal Sanctions)

Cal. Penal Code § 11411 (Cross Burning)

Cal. Penal Code § 11412 (Obstructing Exercise of Religion)
Cal. Penal Code § 1170.75 (Penalty Enhancement)
Cal. Penal Code § 13519.6 (Data Collection and Training Law Personnel)
Cal. Ed Code § 44670.3 (Staff Development)

Colorado

Colo. Rev. Stat. § 13-21-106.5 (Civil Damages For Destruction Or Bodily Injury Caused By Ethnic Intimidation)
Colo. Rev. Stat. § 18-9-113 (Institutional Vandalism and Desecration of Religious Institutions)
Colo. Rev. Stat. § 18-9-121 (Independent Criminal Civil Rights with Categories and Institutional Vandalism)

Connecticut

Conn. Gen. Stat. § 29-7m (Data Collection)
Conn. Gen. Stat. § 33-37 (Independent Criminal Civil Rights with Categories)
Conn. Gen. Stat. § 46a-58 (Independent Criminal Civil Rights with Categories, Cross Burning, and Desecration of Religious Institutions)
Conn. Gen. Stat. § 46a-64 (Independent Criminal Civil Rights with Categories—Public Accommodation Discrimination)
Conn. Gen. Stat. § 46a-64c (Independent Criminal Civil Rights with Categories—Housing Discrimination)
Conn. Gen. Stat. § 52-571(a) (Civil Action, Private, Injunction)
Conn. Gen. Stat. § 52-571(c) (Civil Action, Private, Damages)
Conn. Gen. Stat. § 53-37(a) (Mask or Hood Wearing)
Conn. Gen. Stat. § 53-37(b) (Independent Criminal Civil Rights without Categories)
Conn. Gen. Stat. § 53a-40a (Penalty Enhancement)
Conn. Gen. Stat. § 53a-181b (Independent Criminal Civil Rights with Categories and Institutional Vandalism)
Conn. Gen. Stat. § 562-251b (Civil Action, Private, Damages)
2000 Ct. ALS 72 (Classification of Hate Crimes by State Police)

Delaware

De. Code Ann. tit. 11, § 304 (Independent Criminal Civil Rights without Categories and Independent Criminal Civil Rights with Categories)
De. Code Ann. tit. 11, § 805 (Cross Burning)
De. Code Ann. tit. 11, § 1301(1)(g) (Mask Wearing)
De. Code Ann. tit. 11, § 1304 (Penalty Enhancement)
De. Code Ann. tit. 11, § 1331 (Damage to Place of Worship)
De. Code Ann. tit. 11, § 4209(e)(1)(v) (Penalty Enhancement—Aggravating Circumstance in Death Penalty Statute)

District of Columbia

D.C. Code Ann. § 22-3112.2 (Cross-Burning and Desecration of Religious Institutions)
D.C. Code Ann. § 22-3112.3 (Mask Wearing)
D.C. Code Ann. § 22-4001 (Defines Bias-Related Crimes)
D.C. Code Ann. § 22-4002 (Data Collection)
D.C. Code Ann. § 22-4003 (Penalty Enhancement)
D.C. Code Ann. § 22-4004 (Civil Action, Private, Damages and Injunction)

Florida

Fla. Stat. Ann. § 760.51 (Civil Action, Attorney General, Damages and Injunction)
Fla. Stat. Ann. § 775.085 (Penalty Enhancement and Civil Action, Private, Damages and Injunction)
Fla. Stat. Ann. § 775.0845 (Penalty Enhancement for Mask Wearing)
Fla. Stat. Ann. § 806.13 (Institutional Vandalism and Desecration of Religious Institutions)
Fla. Stat. Ann. § 876.17 (Cross Burning, Public Place)
Fla. Stat. Ann. § 876.18 (Cross Burning, Another's Property)
Fla. Stat. Ann. § 877.19 (Data Collection)

Georgia

Ga. Code Ann. § 16-7-26 (Desecration of Religious Institutions)
Ga. Code Ann. § 16-11-37(b)(1) (Cross Burning)
Ga. Code Ann. § 16-11-38 (Mask Wearing)

Hawaii

Haw. Rev. Stat. § 711-1107 (Institutional Vandalism and Desecration of Religious Institutions)

Idaho

Idaho Code § 67-2915 (Data Collection)
Idaho Code § 18-7301 (Independent Criminal Civil Rights with Categories)
Idaho Code § 18-7901 (Declaration of Purpose for Criminal Sanctions)
Idaho Code § 18-7902 (Independent Criminal Civil Rights with Categories, Desecration of Religious Institutions, Institutional Vandalism, Cross Burning)
Idaho Code § 18-7903 (Civil Action, Private, Damages and Injunction)

Illinois

20 Ill. Comp. Stat. 2605/55a(A)31 (Data Collection and Training Law Personnel)
705 Ill. Comp. Stat. 405/5-710 (Sentencing Hate Crimes Committed by Minors)
720 Ill. Comp. Stat. 5/12-7.1 (Independent Criminal Civil Rights with Categories and Civil Action, Private, Damages and Injunction)
720 Ill. Comp. Stat. 5/21-1.2 (Institutional Vandalism and Desecration of Religious Institutions)
730 Ill. Comp. Stat. 5/5-5-3.2(a)(10) (Penalty Enhancement)

Indiana

Ind. Code Ann. § 9-30-13-3 (Criminal mischief)

Ind. Code Ann. § 22-9.5-10-1 (Independent Criminal Civil Rights with Categories—Fair Housing)

Ind. Code Ann. § 31-37-19-17 (Delinquent acts involving criminal mischief or use of graffiti; suspension of operator's license or invalidation of learner's permit)

Ind. Code Ann. § 35-43-1-2 (Institutional Vandalism and Desecration of Religious Institutions)

Iowa

Iowa Code § 692.15 (Data Collection)

Iowa Code § 708.2C and 229A.2 (Independent Criminal Civil Rights with Categories)

Iowa Code § 712.9 and 729A.2 (Penalty Enhancement)

Iowa Code § 716.6A and 729A.2 (Penalty Enhancement)

Iowa Code § 729.4 (Independent Criminal Civil Rights with Categories—Fair Employment Practices)

Iowa Code § 729.5 (Independent Criminal Civil Rights without Categories, Institutional Vandalism)

Iowa Code § 729A.1 (Independent Criminal Civil Rights with Categories)

Iowa Code § 729A.4 (Training Law Personnel)

Iowa Code § 729A.5 (Civil Action, Private, Damages and Injunction)

Kansas

Kan. Stat. Ann. § 21-4003 (Independent Criminal Civil Rights with Categories)

Kan. Stat. Ann. § 21-4111 (Institutional Vandalism and Desecration of Religious Institutions)

Kan. Stat. Ann. § 21-4716 (Penalty Enhancement)

Kentucky

Ky. Rev. Stat. Ann. § 15.331 (Training Law Personnel)

Ky. Rev. Stat. Ann. § 17.1523 (Data Collection)

Ky. Rev. Stat. Ann. § 344.450 (Civil Action, Private, Damages and Injunction)

Ky. Rev. Stat. Ann. § 525.110 (Institutional Vandalism and Desecration of Religious Institutions)

Ky. Rev. Stat. Ann. § 525.113 (Institutional Vandalism)

Ky. Rev. Stat. Ann. § 532.031 ([Hate Crimes -- Finding -- Effect.](#))

Louisiana

La. Rev. Stat. Ann. § 14:107.2 (Penalty Enhancement)

La. Rev. Stat. Ann. § 14:225 (Institutional Vandalism and Desecration of Religious Institutions)

La. Rev. Stat. Ann. § 15:1204.2(B)(4) and 1204.4 (Data Collection)

La. Rev. Stat. Ann. § 40:2403(H) (Training Law Personnel)

Maine

Me. Rev. Stat. Ann. tit. 5, § 4681 (Civil Action, Attorney General, Injunction, Violation of Injunction is a Criminal Penalty)

Me. Rev. Stat. Ann. tit. 5, § 4682 (Civil Action, Private, Damages and Injunction, Violation of Injunction is a Criminal Penalty)

Me. Rev. Stat. Ann. tit. 17, § 2931 and tit. 5, § 4684A (Independent Criminal Civil Rights with Categories)

Me. Rev. Stat. Ann. tit. 17-A, § 507 (Institutional Vandalism and Desecration of Religious Institutions)

Me. Rev. Stat. Ann. tit. 17-A, § 507A (Desecration of Religious Institutions-Cemetery/Burial Ground)

Me. Rev. Stat. Ann. tit. 17-A, § 1151(8)(B) (Penalty Enhancement)

Me. Rev. Stat. Ann. tit. 25, § 1544 (Data Collection)

Maryland

Md. Code Ann. art. 27, § 470A (Independent Criminal Civil Rights with Categories, Institutional Vandalism and Desecration of Religious Institutions)

Md. Code Ann. art. 88B, § 9 (Data Collection)

Massachusetts

Mass. Gen. Laws Ann. ch. 6, § 116B (Training of Law Enforcement)

Mass. Gen. Laws Ann. ch. 12, § 11H (Civil Action, Attorney General, Injunction)

Mass. Gen. Laws Ann. ch. 12, § 11I (Civil Action, Private, Damages and Injunction)

Mass. Gen. Laws Ann. ch. 12, § 11J (Violation of Injunction is a Criminal Penalty)

Mass. Gen. Laws Ann. ch. 22C, §§ 33 to 35 (Data Collection)

Mass. Gen. Laws Ann. ch. 265, § 37 (Independent Criminal Civil Rights without Categories)

Mass. Gen. Laws Ann. ch. 265, § 39 (Independent Criminal Civil Rights with Categories and Diversity Awareness Program)

Mass. Gen. Laws Ann. ch. 266, § 98 (Institutional Vandalism and Desecration of Religious Institutions)

Mass. Gen. Laws Ann. ch. 266, § 116B (Training Law Personnel)

Mass. Gen. Laws Ann. ch. 266, § 127A (Institutional Vandalism and Desecration of Religious Institutions)

Mass. Gen. Laws Ann. ch. 268, § 34 (Mask Wearing)

Mass. Gen. Laws Ann. ch. 272, § 38 (Disturbing Religious Worship)

Mass. Gen. Laws Ann. ch. 272, § 98 (Independent Criminal Civil Rights with Categories—Public Accommodations Discrimination)

Michigan

Mich. Comp. Laws Ann. § 14.101 (Civil Action, Attorney General, Damages and Injunction)

Mich. Comp. Laws Ann. § 750.147b (Institutional Vandalism, Desecration of Religious Institutions, Cross Burning, Independent Criminal Civil Rights with Categories and Civil Action, Private, Damages and Injunction)

Mich. Comp. Laws Ann. § 752.525 (Disturbing Religious Worship)

Mich. Executive Order (Data Collection)
Mich. Comp. Laws. Ann. § 28.257a (Crimes motivated by prejudice or bias; report)

Minnesota

Minn. Stat. Ann. § 363.12 (Declaration of Policy for Criminal Sanctions)
Minn. Stat. Ann. § 609.2231 (Independent Criminal Civil Rights with Categories)
Minn. Stat. Ann. § 609.28 (Disturbing Religious Worship)
Minn. Stat. Ann. § 609.595 (Institutional Vandalism)
Minn. Stat. Ann. § 609.749(3) (1) (Penalty Enhancement)
Minn. Stat. Ann. § 611A.79 (Civil Action, Private, Injunction and Damages)
Minn. Stat. Ann. § 626.5531 (Data Collection)
Minn. Stat. Ann. § 626.8451 (Training Law Enforcement)

Mississippi

Miss. Code Ann. § 97-17-39 (Institutional Vandalism and Desecration of Religious Institutions)
Miss. Code Ann. § 97-35-17 (Disturbing Religious Worship)
Miss. Code Ann. § 99-19-301 , § 99-19-305, and § 99-19-307 (Penalty Enhancement)

Missouri

Mo. Ann. Stat. § 537.523 (Civil Action, Private, Damages and Injunction)
Mo. Ann. Stat. § 557.035 (Penalty Enhancement)
Mo. Ann. Stat. § 574.085 (Institutional Vandalism and Desecration of Religious Institutions)
Mo. Ann. Stat. § 574.090 (Penalty Enhancement)
Mo. Ann. Stat. § 574.093 (Penalty Enhancement)

Montana

Mont. Code Ann. § 45-5-221 (Independent Criminal Civil Rights with Categories, Institutional Vandalism, Cross Burning)
Mont. Code Ann. § 45-5-222 (Penalty Enhancement)
Mont. Code Ann. § 49-2-601 and § 49-2-602 (Independent Criminal Civil Rights with Categories—Housing Discrimination)

Nebraska

Neb. Stat. Ann. § 28-101, § 28-110, and § 28-111 (Penalty Enhancement and Civil Action, Private, Damages)
Neb. Stat. Ann. § 28-114 (Data Repository)
Neb. L.B. 90, 1997 Legislative Session (Data Collection)

Nevada

Nev. Rev. Stat. Ann. § 41.690 (Civil Action, Private, Damages)
Nev. Rev. Stat. Ann. § 62.226 (Unlawful act involving graffiti or defacing property)
Nev. Rev. Stat. Ann. § 193.1675 (Penalty Enhancement)
Nev. Rev. Stat. Ann. § 201.270 (Disturbing Religious Worship)
Nev. Rev. Stat. Ann. § 206.125 (Institutional Vandalism and Desecration of Religious

Institutions)

Nev. Rev. Stat. Ann. § 207.185 (Independent Criminal Civil Rights with Categories)

New Hampshire

N.H. Rev. Stat. Ann. § 651.6 (Penalty Enhancement)

New Jersey

N.J. Stat. Ann. § 2A:4A-43.2 (Penalty Enhancement)

N.J. Stat. Ann. § 2A:53A-21 (Civil Action, Private and Attorney General, Damages and Injunction)

N.J. Stat. Ann. § 2C:12-1(b)(6)(e) (Penalty Enhancement)

N.J. Stat. Ann. § 2C:33-4 (Penalty Enhancement)

N.J. Stat. Ann. § 2C:33-9 (Desecration of Religious Institutions)

N.J. Stat. Ann. § 2C:33-10 (Independent Criminal Civil Rights without Categories)

N.J. Stat. Ann. § 2C:33-11 (Institutional Vandalism and Desecration of Religious Institutions)

N.J. Stat. Ann. § 2C:44-3 (Penalty Enhancement)

N.J. Stat. Ann. § 52:9DD-9 (Prejudice Reduction)

Attorney General Directive No. 1987-3 (Data Collection)

N.J. Bias Incident Investigation Standards (Training Law Personnel)

New Mexico

N.M. Stat. Ann. § 30-13-1 (Disturbing Religious Worship)

N.M. Stat. Ann. § 30-15-4 (Desecration of Religious Institutions)

New York

N.Y. Civ. Rights Law § 40-c to -d (Independent Criminal Civil Rights without Categories and with Categories)

N.Y. Exec. Law 63 (Civil Action, Attorney General, Damages)

N.Y. Penal Law 240.21 (Disturbing Religious Worship)

N.Y. Penal Law 240.30 (Independent Criminal Civil Rights with Categories)

N.Y. Penal Law 485.05 (Hate Crime Definition)

North Carolina

N.C. Gen. Stat. § 14-3 (Penalty Enhancement)

N.C. Gen. Stat. § 14-12.12 (Cross Burning)

N.C. Gen. Stat. §§ 14-12.13 and 14-12.14 (Mask Wearing)

N.C. Gen. Stat. § 14-49 (Institutional Vandalism, Desecration of Religious Institutions)

N.C. Gen. Stat. § 14-62.2 (Church Burning)

N.C. Gen. Stat. § 14-144 (Institutional Vandalism and Desecration of Religious Institutions)

N.C. Gen. Stat. § 14-199 (Obstructing Religious Worship)

N.C. Gen. Stat. § 14-401.14 (Independent Criminal Civil Rights with Categories)

N.C. Gen. Stat. § 15A-1340.16 (Penalty Enhancement)

N.C. Gen. Stat. § 15A-1340.16(d) (Penalty Enhancement)

N.C. Gen. Stat. § 99D-1 (Definition of Hate Crime)

North Dakota

N.D. Cent. Code § 12.1-14-04 (Independent Criminal Civil Rights with Categories)
N.D. Cent. Code § 12.1-14-05 (Independent Criminal Civil Rights without Categories)

Ohio

Ohio Rev. Code Ann. § 2307.70 (Civil Action, Private, Damages)
Ohio Rev. Code Ann. § 2909.05 (Institutional Vandalism and Desecration of Religious Institutions - burial)
Ohio Rev. Code Ann. § 2927.11 (Desecration of Religious Institutions)
Ohio Rev. Code Ann. § 2927.12 (Independent Criminal Civil Rights with Categories)

Oklahoma

Okla. Stat. Ann. tit. 21, § 850 (Independent Criminal Civil Rights with Categories, Institutional Vandalism and Data Collection)
Okla. Stat. Ann. tit. 21, § 915 (Disturbing Religious Worship)
Okla. Stat. Ann. tit. 21, § 1765 (Desecration of Religious Institutions)
OK.HB 1177 (Definition of Hate Crime)

Oregon

Or. Rev. Stat. § 30.190 (Civil Action, Private, Damages and Injunction)
Or. Rev. Stat. § 166.075 (Definition of Hate Crime)
Or. Rev. Stat. § 166.155 (Independent Criminal Civil Rights with Categories)
Or. Rev. Stat. § 166.165 (Independent Criminal Civil Rights with Categories)
Or. Rev. Stat. § 166.075 (Institutional Vandalism and Desecration of Religious Institutions)
Or. Rev. Stat. § 181.550 and § 181.642 (Data Collection)

Pennsylvania

Pa. Cons. Stat., tit. 18, § 2710 (Penalty Enhancement)
Pa. Cons. Stat., tit. 18, § 3307 (Institutional Vandalism and Desecration of Religious Institutions)
Pa. Cons. Stat., tit. 18, § 5509 (Desecration of Religious Institutions)
Pa. Cons. Stat., tit 42, § 8309 (Civil Action, Private, Damages and Injunction; Attorney General, Injunction; Violation of an Injunction is a Criminal Penalty)
Pa. Cons. Stat., tit. 71, § 250 (Data Collection)

Rhode Island

R.I. Gen. Laws § 9-1-35 (Civil Action, Private, Damages and Injunction)
R.I. Gen. Laws § 11-5-13 (Penalty Enhancement)
R.I. Gen. Laws § 11-11-1 (Disturbing Religious Worship)
R.I. Gen. Laws § 11-42-3 (Independent Criminal Civil Rights with Categories)
R.I. Gen. Laws § 11-44-31 (Institutional Vandalism and Desecration of Religious Institutions)
R.I. Gen. Laws § 11-53-1 (Declaration of Purpose for Criminal Sanctions)
R.I. Gen. Laws § 11-53-2 (Cross Burning)

R.I. Gen. Laws § 11-53-3 (Independent Criminal Civil Rights with Categories)
R.I. Gen. Laws § 12-19-38 (Penalty Enhancement)
R.I. Gen. Laws § 42-28-46 (Data Collection)
R.I. Gen. Laws § 42-28.2-8.1 (Training Law Personnel)

South Carolina

S.C. Code Ann. § 16-5-10 (Independent Criminal Civil Rights without Categories)
S.C. Code Ann. § 16-11-110 (Church Burning)
S.C. Code Ann. § 16-11-535 (Willful Injury to Places of Worship)
S.C. Code Ann. § 16-17-520 (Disturbing Religious Worship)
S.C. Code Ann. § 16-17-560 (Independent Criminal Civil Rights with Categories-
Political
Rights/Opinions)
S.C. Code Ann. § 16-17-600 (Desecration of Religious Institutions)

South Dakota

S.D. Codified Laws Ann. § 22-19B-1 (Independent Criminal Civil Rights with Categories
and Institutional Vandalism)
S.D. Codified Laws Ann. § 22-19B-2 (Cross Burning)
S.D. Codified Laws Ann. § 22-19B-3 (Civil Action, Private, Damages)
S.D. Codified Laws Ann. § 22-27-1 (Disturbing Religious Worship)

Tennessee

Tenn. Code Ann. § 4-21-701 (Civil Action, Private, Damages)
Tenn. Code Ann. § 39-17-309 (Independent Criminal Civil Rights without Categories,
Institutional Vandalism, Mask Wearing)
Tenn. Code Ann. § 39-17-311 (Desecration of Religious Institutions)

Texas

Tex. Gov. Code Ann. § 411.046 (Data Collection)
Tex. Penal Code Ann. § 12.47 and Tex. Code Crim. Proc. art. 42.014 (Penalty
Enhancement)
Tex. Penal Code Ann. § 28.03-08 (Institutional Vandalism and Desecration of Religious
Institutions)

Utah

Utah Stat. Ann. § 76-3-203.3 (Penalty Enhancement)
Utah Stat. Ann. § 76-6-106 (Institutional Vandalism)
Utah Stat. Ann. § 76-6-107 (Institutional Vandalism)

Vermont

Vt. Stat. Ann. tit. 13, § 1455 (Penalty Enhancement)
Vt. Stat. Ann. tit. 13, § 1456 (Cross Burning)
Vt. Stat. Ann. tit. 13, § 1457 (Civil Action, Private, Damages and Injunction)

Virginia

Va. Code Ann. § 8.01-42-1 (Civil Action, Private, Damages and Injunction)
Va. Code Ann. § 18.2-57 (Penalty Enhancement)
Va. Code Ann. § 18.2-127 (Desecration of Religious Institutions)
Va. Code Ann. § 18.2-138 (Institutional Vandalism)
Va. Code Ann. § 18.2-422 (Mask Wearing)
Va. Code Ann. § 18.2-423 (Cross Burning)
Va. Code Ann. § 52-8.5 (Data Collection)

Washington

Wash. Rev. Code Ann. § 9.61.160 and § 9.61.180 (Threats to Bomb or Injure Religious Institutions and Public Property)
Wash. Rev. Code Ann. § 9A.36.078 (Declaration of Findings/Policy for Criminal Sanctions)
Wash. Rev. Code Ann. § 9A.36.080 (Independent Criminal Civil Rights with Categories, Institutional Vandalism and Cross Burning)
Wash. Rev. Code Ann. § 9A.36.083 (Civil Action, Private, Damages)
Wash. Rev. Code Ann. § 36.28A.030 (Data Collection)
Wash. Rev. Code Ann. § 43.101.290 (Training Law Personnel)

West Virginia

W.Va. Code § 5-11-20 (Civil Action, Attorney General, Injunction and Civil Penalties)
W.Va. Code § 15-2-24(i) (Data Collection)
W.Va. Code § 61-6-13 (Disturbing Religious Worship)
W.Va. Code § 61-6-21 (Independent Criminal Civil Rights with Categories and Penalty Enhancement)
W.Va. Code § 61-6-22 (Mask Wearing)

Wisconsin

Wis. Stat. Ann. § 895.75 (Civil Action, Private, Damages)
Wis. Stat. Ann. § 939.641 (Penalty Enhancement for Mask Wearing)
Wis. Stat. Ann. § 939.645 (Penalty Enhancement)
Wis. Stat. Ann. § 943.012 (Institutional Vandalism and Desecration of Religious Institutions)

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**APPENDIX C: Wisconsin's Penalty-Enhancement Statute,
Wis. Stat. §939.645 (1991-1992)**

§939.645. Penalty; crimes committed against certain people or property

- If a person does all of the following, the penalties for the underlying crime are increased as provided in sub. (2):
 - (a) Commits a crime under chs. 939 to 948.
 - (b) Intentionally selects the person against whom the crime under par. (a) is committed or selects the property that is damaged or otherwise affected by the crime under par. (a) in whole or in part because of the actor's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, whether or not the actor's belief or perception was correct.
- (a) If the crime committed under sub. (1) is ordinarily a misdemeanor other than a Class A misdemeanor, the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is one year in the county jail.
 - (b) If the crime committed under sub. (1) is ordinarily a Class A misdemeanor, the penalty increase under this section changes the status of the crime to a felony and the revised maximum fine is \$10,000 and the revised maximum period of imprisonment is 2 years.
 - (c) If the crime committed under sub. (1) is a felony, the maximum fine prescribed by law for the crime may be increased by not more than \$5,000 and the maximum period of imprisonment prescribed by law for the crime may be increased by not more than 5 years.
- This section provides for the enhancement of the penalties applicable for the underlying crime. The court shall direct that the trier of fact find a special verdict as to all of the issues specified in sub. (1).
- This section does not apply to any crime if proof of race, religion, color, disability, sexual orientation, national origin or ancestry or proof of any person's perception of belief regarding another's race, religion, color, disability, sexual orientation, national origin or ancestry is required for a conviction for that crime.

APPENDIX D: Text Of Anti-Defamation League Model Legislation

1. Institutional Vandalism

- A person commits the crime of institutional vandalism by knowingly vandalizing, defacing or otherwise damaging:
 - Any church, synagogue or other building, structure or place used for religious worship or other religious purpose;
 - Any cemetery, mortuary or other facility used for the purpose of burial or memorializing the dead;
 - Any school, educational facility or community center;
 - The grounds adjacent to, and owned or rented by, any institution, facility, building, structure or place described in subsections (i), (ii) or (iii) above;
or
 - Any personal property contained in any institution, facility, building, structure, or place described in subsections (i), (ii) or (iii) above.
- Institutional vandalism is punishable as follows:
 - . Institutional vandalism is a _____ misdemeanor if the person does any act described in subsection A which causes damage to, or loss of, the property of another.
 - i. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of five hundred dollars.
 - ii. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of one thousand five hundred dollars.
 - iii. Institutional vandalism is a _____ felony if the person does any act described in Subsection A which causes damage to, or loss of, the property of another in an amount in excess of five thousand dollars.
- In determining the amount of damage to, or loss of, property, damage includes the cost of repair or replacement of the property that was damaged or lost.

2. Bias-Motivated Crimes

- A person commits a Bias-Motivated Crime if, by reason of the actual or perceived race, color, religion, national origin, sexual orientation or gender of another individual or group of individuals, he violates Section _____ of the Penal code (insert code provisions for criminal trespass, criminal mischief, harassment, menacing, intimidation, assault, battery and or other appropriate statutorily proscribed criminal conduct).
- A Bias-Motivated Crime under this code provision is a _____ misdemeanor/felony (the degree of criminal liability should be at least one degree more serious than that imposed for commission of the underlying offense).

3. Civil Action for Institutional Vandalism and Bias-Motivated Crimes

- Irrespective of any criminal prosecution or result thereof, any person incurring injury to his person or damage or loss to his property as a result of conduct in violation of Sections 1 or 2 of this Act shall have a civil action to secure an injunction, damages or other appropriate relief in law or in equity against any and all persons who have violated Sections 1 or 2 of this Act.
- In any such action, whether a violation of Sections 1 or 2 of this Act has occurred shall be determined according to the burden of proof used in other civil actions for similar relief.
- Upon prevailing in such civil action, the plaintiff may recover:
 - Both special and general damages, including damages for emotional distress;
 - Punitive damages; and/or
 - Reasonable attorney fees and costs.
- Notwithstanding any other provision of the law to the contrary, the parent(s) or legal guardian(s) of any unemancipated minor shall be liable for any judgment rendered against such minor under this Section.

4. Bias Crime Reporting and Training

- The state police or other appropriate state law enforcement agency shall establish and maintain a central repository for the collection and analysis of information regarding Bias-Motivated Crimes as defined in Section 2. Upon establishing such a repository, the state police shall develop a procedure to monitor, record, classify and analyze information relating to crimes apparently directed against individuals or groups, or their property, by reason of their actual or perceived race, color, religion, national origin, sexual orientation or gender. The state police

shall submit its procedure to the appropriate committee of the state legislature for approval.

- All local law enforcement agencies shall report monthly to the state police concerning such offenses in such form and in such manner as prescribed by rules and regulations adopted by state police. The state police must summarize and analyze the information received and file an annual report with the governor and the appropriate committee of the state legislature.
- Any information, records and statistics collected in accordance with this subsection shall be available for use by any local law enforcement agency, unit of local government, or state agency, to the extent that such information is reasonably necessary or useful to such agency in carrying out the duties imposed upon it by law. Dissemination of such information shall be subject to all confidentiality requirements otherwise imposed by law.
- The state police shall provide training for police officers in identifying, responding to, and reporting all Bias-Motivated Crimes.

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