



# ISSUE BRIEF

## QUESTIONS AND ANSWERS: WHAT'S WRONG WITH THOUGHT CRIME ("HATE CRIME") LAWS?

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### What are "hate crimes?"

A federal law passed in 1994 (Public Law 103-322) defines a "hate crime" as "a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."

### Why do you call them "thought crimes"?

Violent attacks upon people or property are already illegal, regardless of the motive behind them. With "hate crime" laws, however, people are essentially given one penalty for the actions they engaged in, and an *additional* penalty for the politically incorrect thoughts that allegedly motivated those actions.

### Isn't there already a federal "hate crime" law?

A 1990 law (Public Law 101-275) required the federal government to begin collecting statistics on so-called "hate crimes" from states and local governments, but did not provide for any federal prosecution of them. A 1994 law (Public Law 103-322) provided for "sentencing enhancement" (that is, higher penalties) for existing federal offenses that are found to be motivated by "hate," but did not actually create a new category of offense.

### So what's different about the currently proposed federal Thought Crime law?

This law, for the first time, would allow the federal government to prosecute any alleged "hate crime" that occurs anywhere in the country, regardless of the other circumstances – thus effectively usurping the primary responsibility of states and localities for law enforcement.

## **Are you against all Thought Crime laws, or just ones based on “sexual orientation”?**

We oppose all Thought Crime laws in principle, because penalizing people specifically for their thoughts, beliefs, or attitudes – even ones abhorrent to us and to the vast majority of Americans, such as racism – would undermine the freedom of speech and thought at the heart of our democracy.

However, we have a particular concern regarding such laws when they include “sexual orientation” and “gender identity” (a reference to cross-dressing and sex-change operations) among the categories of protection. This sends the false message that deviant sexual behaviors are somehow equivalent to other categories of protection such as race or sex. In fact, the very term “hate crime” is offensive in this context, in that it implies that mere disapproval of homosexual behavior constitutes a form of “hate” equivalent to racial bigotry.

## **Do Thought Crime laws limit freedom of speech and freedom of religion?**

In some jurisdictions that have adopted these laws, “hate crimes” have been defined to include not just violent physical acts, but merely verbal ones as well, using terms like “hate speech,” “intimidation,” and even verbal “assault.” When Thought Crime laws are interpreted in this way, they pose a serious threat to freedom of speech and religious liberty. Indeed, Christians have already been prosecuted under Thought Crime laws for peacefully expressing disapproval of homosexual behavior in Sweden, England, Canada, and even in Philadelphia.

## **Would the proposed federal Thought Crime law allow people to be prosecuted for speech alone?**

The bills that have been introduced in Congress in recent years target only violent actions, not peaceful expressions of opinion (only someone who “willfully causes bodily injury” or “attempts to cause bodily injury” could be charged). Nevertheless, by ratifying the Thought Crimes mentality, this bill paves the way for future expansions of its scope in ways that could eventually threaten freedom of speech and religion.

The 1990 “Hate Crime Statistics Act” (Public Law 101-275), for example, defines “hate crimes” much more broadly as “crimes that manifest evidence of prejudice,” and the statistics collected under that law include even non-violent offenses such as “intimidation” (in fact, nearly half – 48.9 percent – of the “hate crimes” reported in 2005 consisted of “intimidation” alone). It would be a very simple matter for a future Congress to change the definition of a “hate crime” subject to federal prosecution to match the more sweeping definition of “hate crimes” on which the federal government already gathers statistics.

## **Why would anyone oppose free speech and freedom of religion?**

Pro-homosexual activists like to claim that “hate speech” (which they define as any disapproval of homosexual behavior) leads directly to “hate violence.” For example, the 1998 murder of homosexual college student Matthew Shepard occurred the same year that pro-family groups had mounted a compassionate “Truth in Love” ad campaign highlighting the fact that many people have found happiness after leaving the homosexual lifestyle. When the *Today Show*’s Katie Couric asked Elizabeth Birch, Executive Director of the Human Rights Campaign (the nation’s largest pro-homosexual activist group), “Do you believe this ad campaign launched by some conservative groups really contributed somehow to Matthew Shepard’s death?” Birch answered, “I do, Katie.” (There is no evidence that Shepard’s murderers even knew about the ads, and ABC’s *20/20* reported in 2004 that Shepard was not killed because he was homosexual at all.) The rhetoric of pro-homosexual activists makes it clear that their goal is not just to protect homosexuals from violence, but to protect them from criticism altogether by silencing those who seek to discourage homosexual behavior.

## **Do Thought Crime laws treat everyone fairly?**

No. Thought Crime laws favor some victims of violent crimes over other victims of equally violent crimes, which violates the core principle of granting everyone the equal protection of the laws. This is a principle which is guaranteed by the 14<sup>th</sup> Amendment to the U.S. Constitution and is even carved above the entrance to the Supreme Court (“Equal Justice Under Law”).

## **Would the proposed Thought Crime bill increase the power of the federal government?**

Yes, this bill’s sweeping grant of authority for the federal government to intervene in such crimes anywhere in the country would constitute a significant federal power grab over local law enforcement. Previous versions of the bill were deceptively named the “Local Law Enforcement Enhancement Act.” They might better have been referred to the “Local Law Enforcement *Usurpation* Act.” In fact, this law would even allow the federal government to prosecute someone who had already been *acquitted* of criminal charges at the state level, if “the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the federal interest in eradicating bias-motivated violence.”

## **Do we really need a federal Thought Crimes law?**

There is no evidence that local authorities are failing to investigate, prosecute, and punish, as they should, violent crimes against homosexuals. Special Thought Crime laws therefore serve no practical purpose, other than advancing a political agenda for the official government acceptance of homosexual behavior.

**So, do you think it's OK to beat up homosexuals?**

Absolutely not. There is no excuse for violence against *anyone* – including homosexuals. However, such violent attacks are *already* illegal. What's needed is not a new law, but the strict enforcement of existing laws – to protect *all* Americans equally.

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