



ISSUE BRIEF

Talking Points:

THOUGHT CRIME (HATE CRIME) LAWS: UNNECESSARY AND A THREAT TO FREE SPEECH

1. **Penalizing Thoughts Instead of Actions.** So-called “hate crime” legislation would have a chilling effect on free speech by making unpopular ideas a basis for harsher treatment in criminal proceedings.
 - Currently proposed federal “hate crime” legislation would only authorize direct federal prosecution of those who cause or attempt to cause “bodily injury.” However, such acts are already crimes, regularly prosecuted and punished under state or local laws. The offender’s politically incorrect *thoughts or opinions alone* would make such crimes a federal offense.
 - The proposed bill would allow federal authorities to assist in state or local prosecution of any “crime of violence,” which is interpreted more broadly and includes even offenses where no physical force is used, but there is merely a “risk that physical force . . . may be used.”
 - The Hate Crimes Reporting Act of 1990 mandated that the statistics collected by the FBI define “hate crimes” more broadly still, to include even acts of “intimidation” (which can be as simple as name-calling). More than a quarter of the “hate crimes” in the FBI statistics are in this category, whereas only 12.4 percent were “aggravated assault.” Once the principle of punishing thoughts as well as actions is established, it will be a simple matter to broaden definitions until thoughts and speech alone trigger prosecution.
 - “Intimidation” has already been broadly interpreted to include the public criticism of homosexuality, as in the case of 11 Christian protesters charged under a Pennsylvania “ethnic intimidation” law on Oct. 10, 2004. The defendants

were charged for peacefully protesting at a “gay pride” rally and faced imprisonment and huge fines before their case was dismissed.

- Michael McGough, senior editorial writer for the *Los Angeles Times*, writes “The best argument against ‘enhanced penalty’ laws is the constitutional one. In the United States, we are taught, you can be sent to prison for what you do but not for what you think. Not only that, if government picks and chooses which crimes are the most serious based on the motivation behind them or the ethnic background of the victim, that is a violation of the 1st Amendment, isn't it?” (“There's little to like about hate-crime laws,” *Los Angeles Times*, February 19, 2007).
- 2. **Federal Intrusion into State & Local Law Enforcement.** Currently proposed “Hate Crime” legislation empowers the federal government to intervene and prosecute alleged “hate crimes” anywhere in the country, thus usurping the prerogative of state and local law enforcement. Federal hate crimes bureaucrats can intervene and claim jurisdiction in localities which lack “hate crime” laws, or where those laws are judged not to be zealously enforced.
- 3. **Sexual Orientation “Hate Crimes” – A Manufactured Crisis.** According to FBI data (*Crime in the United States, 2007*, and *Hate Crime Statistics, 2007*), anti-homosexual “hate crimes” account for a miniscule fraction of total crimes in the United States:
 - Of the 16,929 murders that occurred in 2007, five (0.03 percent) were classified as a “bias motivation” because of the sexual orientation of the victim.
 - None of the 90,427 forcible rapes that occurred in 2007 (0 percent) were reported as being a result of bias motivation because of the victim’s sexual orientation.
 - Of the 855,856 aggravated assaults in 2007, 242 (0.028 percent) were classified as bias motivation because of the victim’s sexual orientation.
- 4. **Most Alleged “Hate Crimes” are Not Serious Violent Crimes.**
 - Intimidation: Nearly one-half (47.4 percent) of all bias-motivated offenses against persons involved the crime of intimidation, defined as the use of threatening words and/or other conduct, but without using a weapon or subjecting the individual to actual physical attack.
 - Simple assault: Another 31.1 percent of bias-motivated offenses involved simple assault, which is a physical attack not involving the use of a weapon, and where the victim does not suffer obvious severe or aggravated bodily injury.

Does the rare incidence of violent “hate crimes” justify the creation through legislation of an entire new class of crime?

5. **The Myth that ‘Hate Crimes’ Are Not Being Prosecuted.** Proponents of “hate crime” legislation have not substantiated the assertion that state and local authorities are failing to prosecute such crimes. Ironically, in the most high profile case for hate crimes legislation, the murder of Matthew Shepard, the killers were convicted and sentenced to double life sentences without parole—in a state *without* a “hate crimes” law. Only the pleas of Shepard’s parents persuaded the judge to spare Henderson and McKinney the death penalty.

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