

7,341 Incidents and Counting: Analyzing the Evolution of American Hate Crime Legislation and How it Varies by State

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This article will explore what hate crimes are, and explore why they have been on the rise in recent years. I will track the evolution of hate crime legislation on both a federal and state level and argue that while rises in hate are consistent throughout time, they are also episodic. I will justify the need for hate crime legislation and demonstrate how state hate crime laws vastly differ, using a case study as support. I will make policy suggestions to improve existing legislation and advocate for an increase in federal funding allocated to hate crime training for law enforcement agencies. Lastly, I will suggest that training should also be required in schools and workplaces in order to diminish ignorance and intolerance, and to encourage communities to embrace and celebrate diversity rather than fear it.

What is a Hate Crime?

Before elucidating the complexities associated with hate crimes and hate crime legislation, it is important to first define what a hate crime is, and explain why these crimes occur. Considering that each state has its own legal definition of the term hate crime, it is challenging to pinpoint its exact definition. However, the general consensus among scholars is that a hate crime has three main components: (1) it must be a threatened, attempted, or completed overt criminal act, (2) it must be intentionally motivated by bias, and (3) it must target a specific category of identity or property that is protected by law. What is considered a protected category varies by state and can often be controversial. The most common protected categories are race, ethnicity, religion, and national origin.

In the wake of the COVID-19 pandemic, hate crimes directed toward Asian Americans have been on the rise, with at least 2,800 incidents reported in 2020 across the nation.⁷⁹ According to the Anti-Defamation League *Audit of Antisemitic Incidents*, in 2020, there were 2,024 reported antisemitic incidents in the United States, including 1,242 cases of

78 Brandeis University Undergraduate, Class of 2021.

79 "Covid 'Hate Crimes' against Asian Americans on the Rise." BBC News, April 2021. <https://www.bbc.com/news/world-us-canada-56218684>.



harassment, 751 incidents of vandalism, and 31 cases of assault.⁸⁰ Additionally, the Human Rights Commission reported that 37 transgender and gender non-conforming people were killed.⁸¹ These days, it seems as though reports of hate crimes are always in the news cycle, putting names and faces to these evergrowing statistics and attracting national attention. Hate crimes are not a recent phenomenon, but they are a continually increasing trend.⁸² Hate crimes send a powerful message to members of a victim's group that they are "unwelcome and unsafe in their communities," and can further marginalize minority groups.⁸³ In 2019, 7,314 total hate crimes were reported across the country (a 3.95% increase from 2018), but because of issues related to reporting (to be explained more in-depth in a later section of this paper), it is estimated that more than half of all hate incidents that *could* be reported are not formally documented.^{84,85}

In a study regarding hate crimes, sociologists Jack McDevitt and Jack Levin categorized hate crimes into four classifications. The first and most common classification is "thrill hate crimes," meaning that offenders are looking to "have some fun and stir up a little excitement ... but at someone else's expense."⁸⁶ They rarely know their victims and choose to target a certain individual who differs from them for psychological

80 "Audit of Antisemitic Incidents 2020." Anti-Defamation League. Anti-Defamation League , April 2021. <https://www.adl.org/audit2020#executive-summary>.

81 Roberts, Madeleine. "Marking the Deadliest Year on Record, HRC Releases Report on Violence Against Transgender and Gender Non-Conforming People." The Human Rights Campaign . The Human Rights Campaign, November 19, 2020. <https://www.hrc.org/press-releases/marking-the-deadliest-year-on-record-hrc-releases-report-on-violence-against-transgender-and-gender-non-conforming-people>.

82 Hernandez, Joe. "Hate Crimes Reach The Highest Level In More Than A Decade." *NPR*, 1 Sept. 2021, <https://www.npr.org/2021/08/31/1032932257/hate-crimes-reach-the-highest-level-in-more-than-a-decade?t=1634395011991>.

83 "The Psychology of Hate Crimes." American Psychological Association. American Psychological Association , August 2017. <https://www.apa.org/advocacy/interpersonal-violence/hate-crimes>.

84 "Hate Crime Statistics (2019)." The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

85 Shattuck, John, and Mathias Risse. "Hate Crimes." *Carr Center for Human Rights Policy* , February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

86 Levin , Jack, and Jack McDevitt. "Hate Crimes." *Encyclopedia of Peace, Violence and Conflict* 2 (2008).

<https://jacklevinsonviolence.com/articles/HateCrimesencyc92206FINAL.pdf>.



excitement and social acceptance by their peers.⁸⁷ An example of this kind of hate crime is when a group of teenage offenders selects a person who looks different from them and physically attacks them for that reason. The second category is defensive hate crimes. The perpetrator in this type of crime uses a triggering incident as a catalyst for the expression of their emotions. These types of perpetrators justify the attack of someone deemed as an outsider by claiming it is necessary to protect the public from “intruders.”⁸⁸ Additionally, they usually do not know the victim personally and choose them at random. An example of this kind of attack would be if a black family moved into a predominantly white neighborhood and had a rock thrown through their window. Retaliatory hate crimes are the third category, in which the perpetrator is acting out against a stranger in response to a world event and partially blaming him or her for its cause.⁸⁹ An example of this would be an attack on an Arab individual during the aftermath of 9/11. The last form of hate crime is rare and mission-based. The perpetrator views individuals who are perceived to be different as grave threats, and feels as though it is their mission to “act before it is too late.”⁹⁰ These types of perpetrators are the most likely of all types of perpetrators to join an organized hate group.⁹¹

It is important to note that although some of these hate crime typologies imply that most hate crimes are perpetrated by white supremacists, white supremacy is not the only reason why hate crimes are on the rise. Even though data indicates that acts of hate have increased, there are many who do not believe that hate crime legislation is necessary because they believe that hate crime legislation provides minority groups with special treatment, as most offenders tend to identify as white.⁹² However, this is not always the case. In 2019, 23.9% of offenders identified as African

87 Shattuck, John, and Mathias Risse. “Hate Crimes.” *Carr Center for Human Rights Policy*, February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

88 Levin, Jack, and Jack McDevitt. “Hate Crimes.” *Encyclopedia of Peace, Violence and Conflict 2* (2008).

<https://jacklevinsonviolence.com/articles/HateCrimesencyc92206FINAL.pdf>.

89 Levin and McDevitt. “Hate Crimes.”

90 Levin and McDevitt. “Hate Crimes.”

91 Levin and McDevitt. “Hate Crimes.”

92 “Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.



American, and 10% identified as Hispanic.⁹³ Furthermore, in the landmark case *Wisconsin v. Mitchell* (508 U.S. 476 (1993)), the victim identified as white and the perpetrator identified as black. This dispels the argument that hate crime laws only benefit marginalized groups, as the defendant received the same sentence a white perpetrator would receive if they had committed the same crime.⁹⁴ In 2019, data indicates that individuals of all races were victims of a hate crime, further weakening this argument.⁹⁵ Additionally, the *Mitchell* case thwarts another anti-hate crime legislation argument related to the First and Fourteenth Amendments. The Supreme Court ruled that there is a meaningful difference between punishing the content of speech and using speech as evidence of the motive behind a crime. Even so, there continues to be a vocal group of individuals who, for as long as hate crime legislation has been in existence, have been adamant in abolishing it.

Historical Background and Federal Legislative History

Hate crimes have been long embedded within the American experience, although they may appear to be a relatively recent phenomenon. Throughout history, individuals within marginalized communities have been subjected to various forms of discrimination and hatred due to elements of their identities that caused them to be perceived as “different.”⁹⁶ While it can be argued that a rise in hate crimes toward a certain demographic is an episodic reaction to a particular historical moment or event, such as the spike in hate faced by Japanese Americans during the Second World War, it is also evident that the persistence of hate crimes throughout time demonstrates the power and tenacity of prejudice. A prominent example of this is the hatred that those of African descent have historically experienced. While the expressions of hatred they experience has evolved over time, from government protection of slavery via legislation such as the Slave Trade Act of 1794 to the intentional shooting at a predominately African American

93 “Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

94 Feinman, Amy. Northeast Area Civil Rights Counsel at Anti-Defamation League. “Interview with Jessica Daniel.” April 2021.

95 “Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

96 Shattuck, John, and Mathias Risse. “Hate Crimes.” *Carr Center for Human Rights Policy* , February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.



church in Charleston, South Carolina in 2015, the fact that they do experience hatred solely because of who they are has remained.⁹⁷ The fact that intolerance and disdain toward racial, ethnic, religious, gender and sexual minorities has been a constant within American society is incredibly important to recognize, as it reveals a strong contradiction between constitutional rights in theory versus in practice. While the Constitution puts forth the assumption that all Americans' right to freely be who they are is protected, the recurrence of hate crimes serves as a reminder that this is not necessarily always true, especially for marginalized populations.

There have been efforts made by the federal government to combat civil rights violations and prevent discrimination since the enactment of the Civil Rights Act of 1866. However, the first time the federal government began to address hate crimes specifically was over a century later in 1968 through the passage of 18 U.S.C. Section 245(b)(2), which created federally protected activities.⁹⁸ This code states that it is illegal for individuals to willfully injure, intimidate, or interfere with another person's ability to "participat[e] in or enjoy[...] any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof" due to his or her race, color, religion, or national origin.^{99,100} While the creation of legislation designed to bar discrimination on the account of these four identifying categories is significant, it is important to note that this statute was limited in its application, as only six activities were explicitly listed as federally protected.

In 1990, the Hate Crimes Statistics Act (28 U.S.C. Section 534) was passed which required the Department of Justice to collect and publish data about crimes motivated by hatred based on race, religion, ethnicity and sexual orientation. The data that continues to be collected annually comes

97 Shattuck, John, and Mathias Risse. "Hate Crimes." *Carr Center for Human Rights Policy*, February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

98 Edward Kennedy, *Hate Crimes: The Unfinished Business of America*, 44 *Boston Bar J.* 6 (Jan / Feb. 2000) Accessed April 27, 2021.

99 "18 U.S. Code § 245 - Federally Protected Activities." Legal Information Institute . Cornell Law School . Accessed April 27, 2021.

<https://www.law.cornell.edu/uscode/text/18/245>.

100 Shattuck, John, and Mathias Risse. "Hate Crimes." *Carr Center for Human Rights Policy*, February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.



from voluntary submissions by state and federal law enforcement agencies. Since reporting is not mandatory, the numbers that are reported are not an accurate reflection of hate crime occurrences each year which can have many harmful consequences. This act is especially significant because it “defined the criminal conduct that constituted a hate crime: hate crimes are acts that manifest evidence of prejudice based on actual or perceived race, religion, [national origin], or ethnicity.”¹⁰¹ Four years later, the Hate Crimes Sentencing Enhancement Act was passed and added to the Violent Crime and Law Enforcement Act of 1994 as an amendment (42 U.S.C. Chapter 136). This Act permits federal judges to impose harsher penalties for hate crimes while also expanding protected categories to include hate crimes motivated by gender, disability, and sexual orientation if they occur on federal property.^{102, 103}

The Hate Crimes Prevention Act (18 U.S.C Section 249) was passed in 2009 as a response to the deaths of Matthew Shepard and James Byrd Jr. which were both hate crimes. This Act expanded federal hate crime laws further and officially included gender, disability, gender identity, and sexual orientation to the definition of a hate crime while removing jurisdictional obstacles to prosecutions of racially and religiously motivated violence.¹⁰⁴ Other hate crime related federal laws include the Criminal Interference with Right to Fair Housing Act (42 U.S.C Section 3631), which made it illegal to interfere with an individual’s housing rights due to any of their actual or perceived characteristics and the Damage to Religious Property, Church Arson Prevention Act (18 U.S.C. Section 247), which “prohibits the intentional defacement, damage, or destruction of religious property because of the religious nature of the property [...] or because of the race, color, or

101 Shattuck, John, and Mathias Risse. “Hate Crimes.” *Carr Center for Human Rights Policy*, February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

102 Stacey, Michele. 2015. “The Effect of Law on Hate Crime Reporting: The Case of Racial and Ethnic Violence.” *American Journal of Criminal Justice* : *AJCJ* 40 (4) (12): 876-900. doi:<http://dx.doi.org/10.1007/s12103-015-9289-3>.

103 “Hate Crimes Timeline.” The Human Rights Campaign. The Human Rights Campaign. Accessed May 5, 2021. <https://www.hrc.org/resources/hate-crimes-timeline>.

104 “Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021.

https://www.law.cornell.edu/wex/matthew_shepard_and_james_byrd_jr_hate_crimes_prevention_act.



ethnic characteristics of the people associated with the property.”^{105, 106} Additionally, 18 U.S.C. Section 241 makes the involvement of two or more people in the conspiracy to commit a hate crime or intimidate an individual due to their actual or perceived characteristics from enjoying constitutional rights illegal in any context where the federal government would have jurisdiction.¹⁰⁷ Through the passage of multiple legislative acts designed to prevent hate crimes from occurring or punish those who commit a crime with the intent of harming a specific person due to an element of who they are, hate crimes became a topic that garnered national attention. Demonstrating that hate crimes are a serious offense, the creation and implementation of these laws has encouraged victims to come forward and report incidents they experience as well as motivated states to add strong hate crime statutes to their criminal codes.

Hate Crime Legislation on a State Level

States are granted primary regulatory authority over their own criminal codes through the Tenth Amendment, which allows for all “powers not delegated to the United States by the Constitution, nor prohibited to it by the States” to be granted to the States.¹⁰⁸ The Tenth Amendment also gives states police power, which essentially provides states with the right to establish and enforce laws that pertain to the wellbeing of its citizens.¹⁰⁹ This delegation of power is a significant reason why hate crime statutes vary so drastically. It is left up to the states’ discretion to determine what is a hate crime and how, if at all, they should be regulated or criminalized. In a recent interview I conducted with Amy Feinman, the Northeast Area Civil Rights Counsel for the Anti-Defamation League, an organization that is devoted to securing justice and fair treatment for all, she noted that this variation is also

105 “42 U.S. Code § 3631. Violations; Penalties.” Legal Information Institute. Cornell Law School . Accessed May 7, 2021. <https://www.law.cornell.edu/uscode/text/42/3631>.

106 “18 U.S. Code § 247 - Damage to Religious Property; Obstruction of Persons in the Free Exercise of Religious Beliefs.” Legal Information Institute. Cornell Law School . Accessed May 7, 2021. <https://www.law.cornell.edu/uscode/text/18/247>.

107 “18 U.S. Code § 241 - Conspiracy against Rights.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021. <https://www.law.cornell.edu/uscode/text/18/241>.

108 “Federalism.” Criminal Law by University of Minnesota. University of Minnesota. Accessed May 5, 2021. <https://open.lib.umn.edu/criminallaw/chapter/1-1-federalism/>.

109 “Police Powers.” Legal Information Institute . Cornell Law School. Accessed May 5, 2021. “Federalism.” Criminal Law by University of Minnesota. University of Minnesota. Accessed May 5, 2021. <https://open.lib.umn.edu/criminallaw/chapter/1-1-federalism/>.



due to existing statutory frameworks.¹¹⁰ Given how their criminal codes are structured, some states opt to create free-standing hate crime statutes while others choose to embed regulations regarding bias-motivated crimes into pre-existing legislation.¹¹¹ This variation also determines whether states will choose to adopt a penalty enhancement sentencing model. The rationale behind this model is to “recognize and effectively address this unique type of crime” and use a stiffer sentence to dissuade others from engaging in this problematic and incredibly impactful criminal behavior.¹¹²

The penalty enhancement model is seen by some as a violation of an individual’s First and Fourteenth Amendment rights . However, in the decision of the 1993 case *Wisconsin v. Mitchell*, the penalty enhancement model was upheld as constitutional by the Supreme Court. In the case, Mitchell, a young black male, and his friends were found guilty of aggravated assault after beating a white male on the street into a coma. The facts of the case indicate that Mitchell intentionally selected his victim due to his race, which caused him to receive an increased sentence due to Wisconsin provision Section 939.645. Mitchell challenged the constitutionality of the enhanced penalty sentence by claiming that it was a violation of his First Amendment rights to be sentenced more harshly due to what the legislature considered “offensive thought.”¹¹³ He also claimed it was a violation of his Fourteenth Amendment rights under the equal protection clause.¹¹⁴ The Court disputed these claims and ruled that because it was not Mitchell’s thoughts that were being criminalized but rather his motive, which were clearly displayed through his actions, the enhanced

110 Feinman, Amy. Northeast Area Civil Rights Counsel at Anti-Defamation League. “Interview with Jessica Daniel.” April 2021.

111 Stacey, Michele. 2015. "The Effect of Law on Hate Crime Reporting: The Case of Racial and Ethnic Violence." *American Journal of Criminal Justice : AJCJ* 40 (4) (12): 876-900. doi:<http://dx.doi.org/10.1007/s12103-015-9289-3>; Feinman, Amy. Northeast Area Civil Rights Counsel at Anti-Defamation League. “Interview with Jessica Daniel.” April 2021.

112 “Hate Crime Laws.” Anti-Defamation League. Anti-Defamation League, 2012. <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Hate-Crimes-Law.pdf>.

113 Donna M. Evans; Colleen B. McElhaney, "Historical Overview: Massachusetts Court Decisions Shaping Federal Constitutional Law," *Boston Bar Journal* 44, no. 1 (January/February 2000): 20-[ii]

114 “Wisconsin v. Mitchell.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021. <https://www.law.cornell.edu/supct/html/92-515.ZO.html>.



sentence was constitutional and justified. This case is noteworthy because it justified the use of penalty enhancement sentencing models and recognized on a national level the consequences of hate crimes. These repercussions include “provok[ing] retaliatory crimes, inflict[ing] distinct emotional harms on their victims, and incit[ing] community unrest.”¹¹⁵”

Another area of difference is how hate crimes are defined by each state, or more specifically, which identifying categories are considered legally protected. While federal law classifies a hate crime as a crime motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability, many states have politicized some of these categories, resulting in sexual orientation, gender, and gender identity being omitted by some states.¹¹⁶ According to the Anti-Defamation League, only twenty states have statutes that do not exclude federally recognized populations from receiving legal protection.¹¹⁷

The final element that distinguishes hate crime legislation across various states is data reporting. Because the 1990 federal Hate Crimes Statistics Act requires data to be collected on a voluntary basis, there are many problems that can arise, including the fact that not all states collect hate crime data. According to the Department of Justice, only eighteen American states and territories have data reporting mandates.¹¹⁸ This can explain why states with prominent hate groups report such low numbers of hate incidents. For instance, for the past two years, Alabama has reported to the FBI that no hate crime instances have occurred within the state even though the FBI’s Hate Crime Statistics report shows that there was a 113 percent increase in violent hate crimes across the country in 2019.¹¹⁹ Alabama does not have a state law that mandates hate crime data collection. While it is very plausible to assume that unreported hate crimes have

115 Amy Feinman, “Marblehead Police Training” (Zoom, April 21, 2021).

116 Hate Crime Statistics (2019).” The United States Department of Justice . U.S.

Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

117 Thebault, Reis. “Nearly Every State Has a Hate Crime Law. Why Don't More People Use Them?” The Washington Post. The Washington Post, April 26, 2021.

<https://www.washingtonpost.com/nation/2021/04/26/hate-crime-laws-explained/>.

118 Morava, Maria and Saba Hamedy. "49 States and Territories have Hate Crime Laws -- but they Vary." *CNN Wire Service*, Mar 17, 2021.

119 “Alabama Only State in U.S. To Report Zero Hate Crimes.” ADL Atlanta. Anti-Defamation League , November 16, 2020. <https://atlanta.adl.org/news/alabama-only-state-in-u-s-to-report-zero-hate-crimes/>.



occurred in Alabama within the past few years, due to the lack of a formal reporting mechanism in place, it makes sense that victims may be fearful of coming forward. Without universally required data reporting laws, victimized populations in states without these laws do not feel as though they have support from law enforcement and legislators to report incidents. This further strains the relationship between marginalized populations and law enforcement and also affects how much funding for hate-crime related training and data collection the state receives from the federal government. This also impacts communities within that state which are the most targeted, as an inaccurate data set may mean that these communities receive less of the resources that they need.

Training in hate crime education is essential, especially for law enforcement officers. A significant reason why hate crimes may not be formally reported is because officers may not recognize when they happen. Only twelve states require special training for law enforcement officers so that they can properly identify hate crimes if they occur, which is an alarming statistic given the prevalence of hate crimes in recent years.¹²⁰ Furthermore, due to the fact that agencies possess varying knowledge about the ways that bias can motivate crime, there are instances where hate is present in a crime in a less glaring manner that may be overlooked. Additionally, some manifestations of hate that occur are not considered part of a state's official hate crime reporting data, such as bullying in schools where a slur or symbol is used to intimidate another student.¹²¹ Therefore, it makes sense that over half of the estimated 250,000 hate crimes that occurred annually between 2005 and 2014 around the country were not formally reported, as there are many reasons that a victim may be dissuaded from coming forward (including the fear of retaliation from the perpetrator).¹²² It is very problematic that hate crime statistics are inaccurate

120 Shattuck, John, and Mathias Risse. "Hate Crimes." *Carr Center for Human Rights Policy*, February 22, 2021, 1–13.

https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

121 Ross, Janell. *Why Americans can't Agree on which Crimes are Hate Crimes: What an Image about the Care and Pace of Investigating a White Baton Rouge Man Possibly Involved in Hate Crimes Tells and Conceals*. Washington: WP Company LLC d/b/a The Washington Post, 2017.

122 Ross, Janell. *Why Americans can't Agree on which Crimes are Hate Crimes: What an Image about the Care and Pace of Investigating a White Baton Rouge Man Possibly Involved in Hate Crimes Tells and Conceals*. Washington: WP Company LLC d/b/a The



and appear to be lower than the actual instance, and prevents the well-being of victimized groups from becoming a national priority.

Case Studies: Massachusetts and Pennsylvania

In order to better understand the extent to which hate crimes legislation varies in terms of structure and implementation, the hate crime laws of Massachusetts and Pennsylvania will be analyzed. These two states were selected because it is interesting to assess hate crime laws of two states within the same geographic region, but with divergent political leanings. The evaluation of laws from each state detailed below will demonstrate how and why legal responses toward hate crimes are so separate and dissimilar on a state by state basis. I also will explore how arguments against hate crime statutes have informed the creation of legislation.

In Massachusetts, there were 388 total incidents of hate crimes reported in 2019. The three highest categories of crimes committed include: race, ethnicity, and ancestry (213), religion (10), and sexual orientation (92).¹²³ Massachusetts uses a penalty enhancement sentencing model and defines hate crime officially through Mass. Gen Laws Ch. 22C, Section 32 as any criminal act that is committed with biased intentions. This means that any crime in which a victim or property is intentionally selected due to their racial, religious, ethnic, disability, gender identity, or sexual orientation is legally classified as a hate crime.¹²⁴ The Commonwealth requires hate crime data to be collected through Mass. Gen Laws Ch. 22C, Sections 33-35 and made available to all law enforcement agencies within the state.¹²⁵ Through Mass. Gen Law Ch. 266, Section 127A, it is a felony to “destroy, deface, mar or injure a church, synagogue, or other structure [...] or threaten to do so.”¹²⁶ Furthermore, Massachusetts is one of only twelve states to require

Washington Post, 2017.

123 “State Hate Crimes Statutes.” Brennan Center for Justice. Brennan Center for Justice, July 2, 2020. <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>.; “Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

124 “Hate Crime Law in Massachusetts.” Mass.gov. Commonwealth of Massachusetts. Accessed May 7, 2021. <https://blog.mass.gov/masslawlib/legal-topics/hate-crime-law-in-massachusetts/>.

125 “State Hate Crimes Statutes.” Brennan Center for Justice. Brennan Center for Justice, July 2, 2020. <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>.

126 “State Hate Crimes Statutes.” Brennan Center for Justice. Brennan Center for Justice, July 2, 2020. <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes->



law enforcement officers to receive training through Mass. Gen Laws Ch. 6, Section 116B, which could be an indication of why Massachusetts hate crime statistics appear much higher than Alabama's, and other states with a significant history of intolerance and racism. Additionally, Massachusetts treats hate crimes as a separate criminal violation through Mass. Gen Laws Ch. 265, Section 39, which states that it is illegal to "commit assault or battery upon a person, or damage the real or personal property of a person, with the intent to intimidate" due to any of the state's listed protected categories.¹²⁷ Currently, there is a new hate crime bill being discussed that would amend Section 39 to provide clear explanations of each element of the existing legislation and expand protected categories to include gender and immigration status. It would also "combine civil rights and hate crime statutes into one section of law, [...] impose stricter maximum sentences on serious offenses and strengthen penalties for repeat offenders."¹²⁸ While stressing the need for a new bill and attempting to gain support for it from colleagues and constituents, Representative Tram Nugueyen, one of the new proposed bill's lead authors, is quoted as saying:

"Hate crimes are not just against individuals. These crimes are meant to terrorize entire communities. These are crimes against all of us [...] hate crimes, much like terrorism, are designed to create fear and make people feel unsafe. We need to name them for what they are — hate crimes — and prosecute them to an added degree to tell the community that we see them, that they are valued, and that we won't tolerate such violence and hate."¹²⁹

statutes.

127 "Section 39: Assault or Battery for Purpose of Intimidation; Weapons; Punishment." The 192nd General Court of the Commonwealth of Massachusetts. Mass.gov. Accessed May 7, 2021. [https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/section39#:~:text=\(a\)%20Whoever%20commits%20an%20assault,of%20not%20more%20than%20five.](https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/section39#:~:text=(a)%20Whoever%20commits%20an%20assault,of%20not%20more%20than%20five.)

128 Lisinski, Chris. "Massachusetts Attorney General Maura Healey: Times Call for Overhaul of Hate Crime Laws." The Lowell Sun, March 31, 2021. [https://www.lowellsun.com/2021/03/31/healey-times-call-for-overhaul-of-hate-crime-laws/.](https://www.lowellsun.com/2021/03/31/healey-times-call-for-overhaul-of-hate-crime-laws/)

129 Lisinski, Chris. "Massachusetts Attorney General Maura Healey: Times Call for Overhaul of Hate Crime Laws." The Lowell Sun, March 31, 2021. [https://www.lowellsun.com/2021/03/31/healey-times-call-for-overhaul-of-hate-crime-laws/.](https://www.lowellsun.com/2021/03/31/healey-times-call-for-overhaul-of-hate-crime-laws/)



Representative Nguyen's statement epitomizes why it is essential for Massachusetts, and all states, to implement stronger legislation in response to the rise in hate witnessed around the country.

While Massachusetts is actively working on eradicating hate by considering newer, more updated legislation, Pennsylvania has had the same hate crime laws with little modification since 1982. Although there has recently been discussion on the local level to expand protected categories, progress has not yet been achieved. In its laws, Pennsylvania does not explicitly use hate crime as a legal term, but rather, classifies it as ethnic intimidation. Pennsylvania's Ethnic Intimidation Law (18 P.S. Section 2710) defines ethnic intimidation by stating that it is illegal for an individual to commit certain crimes with motivation either partly or in whole rooted in hatred toward the race, color, religion, or national origin of another person or group.¹³⁰ Ethnic intimidation is usually considered to be a separate offense, but can be charged if one of the following charges also occur: criminal mischief, assault, harassment, threats, stalking or homicide.¹³¹ Related is the Crimes Code (18 P.S. Section 3307) which makes it a crime to knowingly deface a religious facility.¹³² Furthermore, Pennsylvania mandates data collection for all crimes through its code (PA. ADM. Code Section 710) regarding state police responsibilities, so technically, even though it is not explicitly mentioned, hate crime data collection is required.¹³³ Even so, hate crime numbers are very low in Pennsylvania, with 41 total incidents reported in 2019. 28 incidents were related to race, ethnicity, and ancestry, 9 were connected to religion, and 4 were related to

130 "2010 Pennsylvania Code Title 18 - CRIMES AND OFFENSES Chapter 27 - Assault 2710 - Ethnic Intimidation." Justia US Law. Justia. Accessed May 7, 2021. <https://law.justia.com/codes/pennsylvania/2010/title-18/chapter-27/2710>.

131 "State Hate Crimes Statutes." Brennan Center for Justice. Brennan Center for Justice, July 2, 2020. <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>.

132 "Hate Crime." Office of Attorney General Josh Shapiro. Office of the Attorney General of the Commonwealth of Pennsylvania . Accessed May 7, 2021. <https://www.attorneygeneral.gov/protect-yourself/civil-rights/hate-crime/>.

133 "Bias and Hate Crimes." Pennsylvania Human Rights Commission. Commonwealth of Pennsylvania, <https://www.phrc.pa.gov/Resources/Pages/Hate-Crime.aspx>.



sexual orientation.¹³⁴ Pennsylvania uses a penalty enhancement model for ethnic intimidation violations, but because convictions are minimal despite the fact that Pennsylvania is a very populous state, it is rarely used. If one were to be considered a victim of ethnic intimidation, however, under Civil Redress (42 Pa. C.S.A. Section 8309) they can file a civil rights lawsuit against the perpetrator of a hate crime.¹³⁵

There are several reasons that could explain why this is the case, the most plausible being that the list of protected categories is quite short, excluding many populations who also face bias-motivated crimes. The reason why various demographics are excluded seems entirely political. For instance, in a 2002 amendment, sexual orientation was briefly a protected category in Pennsylvania. However, due to public outcry and how controversial it was, sexual orientation was removed as a protected category.¹³⁶ Another reason for why there are minimal ethnic intimidation convictions is because the term hate crime is never explicitly used, and the phrase ethnic intimidation appears to have different connotations on various state websites. This may amount to confusion on what would count as ethnic intimidation. This can dissuade individuals from feeling comfortable coming forward and also may cause law enforcement officials to improperly recognize and respond to a hate incident, since training related to hate crimes is not a requirement in Pennsylvania.

The difference in the number of convictions reported in Massachusetts (388) and Pennsylvania (41) in 2019 proves how the variations seen in hate crime laws and procedures by state have drastically different outcomes.¹³⁷ It is not outrageous to assume that Pennsylvania, a state with a population nearly double the size of Massachusetts, would have

134 Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.

135 “Hate Crime.” Office of Attorney General Josh Shapiro . Office of Attorney General Commonwealth of Pennsylvania, 2021.

<https://www.attorneygeneral.gov/protect-yourself/civil-rights/hate-crime/>.

136 Boren, Michael. “Pa Expands Protections for LGBT People, but Hate-Crime Law Still Doesn’t Include Them.” The Philadelphia Inquirer . The Philadelphia Inquirer, August 27, 2018. <https://www.inquirer.com/philly/news/pennsylvania/lgbt-hate-crimes-pennsylvania-human-relations-commission-20180817.html>.

137 “Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.



more incidents of hate crimes occurring than what is formally reported. However, what we have is an inaccurate picture of hate in Pennsylvania and other states with similar protocols. This is due to a variety of factors including different definitions of hate crimes, protected categories, and different training requirements. To further demonstrate how problematic this discrepancy is, I will use a federal hate crime case example and address, based on their current hate crime statutes, how Massachusetts and Pennsylvania would respond if the case occurred in either state. In May 2020, Sean Díaz De León and Juan Carlos Pagán Bonilla were convicted of knowingly targeting two transgender women in a violent carjacking.¹³⁸ They had sexual relations with the two women who were visiting Puerto Rico from New York and were angered after discovering that they were transgender.¹³⁹ The defendants then attacked the women, shot at them, and then set their car on fire. If this case were to happen in Massachusetts, it would be classified as a hate crime because gender identity is considered a protected category. Furthermore, through Mass. Gen Laws Ch. 265, Section 39, the crime would be counted as a separate offense and the defendants would receive an enhanced penalty sentence. However, if this case occurred in Pennsylvania, it would not be considered in violation of 18 P.S. Section 2710, as gender identity is not a legally recognized protected category. The families of the victims would not get justice, and the fact that the case would proceed missing an ethnic intimidation charge would send a message to transgender Pennsylvania residents that if hate crimes occur against them, no action would be taken by law enforcement because of the identifying factors that make them who they are.

Conclusion

Senator Edward Kennedy, a staunch supporter of hate crime legislation, once said “[h]ate crimes are a modern plague afflicting communities throughout the nation. Again and again, lives have been shattered by the violence of hate.”¹⁴⁰ While it is evident that instances of

138 “Hate Crime Case Examples.” United States Department of Justice. U.S. Department of Justice . Accessed May 5, 2021. <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>.

139 Ring, Trudy. “Two Men Indicted for Murders of Transgender Women in Puerto Rico.” <https://www.advocate.com/crime/2020/5/14/two-men-indicted-murders-transgender-women-puerto-rico>. Advocate, May 14, 2020.

140 Edward Kennedy, *Hate Crimes: The Unfinished Business of America*, 44 Boston Bar J. 6 (Jan / Feb. 2000) Accessed April 27, 2021.



hate have been woven into the American experience since its very beginning, Kennedy's quote is accurate in reflecting the urgency and necessity of legislation to combat a rising tide of hostility and violence experienced by marginalized communities. White supremacy, xenophobia, racism, antisemitism, homophobia, and other expressions of intolerance toward difference are nothing new, but have simply been magnified in recent years due to immense social, political, and economic change. Even though hate crime legislation exists on both a federal level and in most states, it is clear that there are flaws that must be addressed in order to ensure that the legislation is as effective as possible. It is imperative that all states have at least basic hate crime statutes implemented and utilize similar definitions of hate crimes to prevent confusion about what the term means in practice. Currently, Arkansas, South Carolina, and Wyoming do not have any hate crime statutes in place which is very problematic, as it implies that hate crimes are not legitimate or do not occur within those areas, which is not true.

While it is understandable that different states have different statutory structures, making universal hate crime laws across all states difficult to achieve, the categories of identity that are legally protected should be consistent within all states. In order to effectively combat hate experienced by one marginalized group in one state or location, it is essential to send the message that hate toward that group is not tolerated anywhere. Furthermore, training for law enforcement officers in each state should be mandatory, so that they can accurately recognize and report hate crimes if they occur and ensure that they are being entered into the system accordingly. Federal funding should be allocated to state agencies to ensure that each agency has the resources necessary to accomplish this endeavor. To that end, it should be required that all states report data of hate crimes that occur and sentencing that follows. This may dissuade potential perpetrators from manifesting hate into action and sends a message to affected communities that their experiences are being taken seriously. Ways to report hate crimes should be more accessible for those who experience them. Training should be a requirement in schools and workplaces to spread awareness about hate crimes and help individuals who experience them be able to accurately report them. Additionally, it would be beneficial if there was a hotline in place to help victims and provide guidance for how they can



achieve justice. If these steps are implemented, relationships between victimized communities, law enforcement, and legislators could improve and individuals who experience hate crimes would feel more comfortable coming forward, sharing their experiences, and assisting in the efforts for change.

While hate crime legislation is important, it is not the one solution to halting hate crimes for good. It is important to look outside the legal system and dismantle or transform systems of oppression that keep marginalized communities marginalized. Additionally, because hate crimes are often rooted in intolerance and ignorance, it is essential for there to be educational efforts in schools and workplaces to help the public to understand each other's differences, rather than fear them. There should be events within communities to celebrate different cultures, customs, and traditions, as well as more local efforts to create community and unity. For future research, it would be interesting to assess recent manifestations of hate, such as the murder of George Floyd, through the lens of hate crimes and evaluate if and how current laws would apply.



Works Cited

“18 U.S. Code § 241 - Conspiracy against Rights.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021. <https://www.law.cornell.edu/uscode/text/18/241>.

“18 U.S. Code § 245 - Federally Protected Activities.” Legal Information Institute . Cornell Law School . Accessed April 27, 2021. <https://www.law.cornell.edu/uscode/text/18/245>.

“18 U.S. Code § 247 - Damage to Religious Property; Obstruction of Persons in the Free Exercise of Religious Beliefs.” Legal Information Institute. Cornell Law School . Accessed May 7, 2021. <https://www.law.cornell.edu/uscode/text/18/247>.

“2010 Pennsylvania Code Title 18 - CRIMES AND OFFENSES Chapter 27 - Assault 2710 - Ethnic Intimidation.” Justia US Law. Justia. Accessed May 7, 2021. <https://law.justia.com/codes/pennsylvania/2010/title-18/chapter-27/2710>.

“42 U.S. Code § 3631. Violations; Penalties.” Legal Information Institute. Cornell Law School . Accessed May 7, 2021. <https://www.law.cornell.edu/uscode/text/42/3631>.

“Alabama Only State in U.S. To Report Zero Hate Crimes.” ADL Atlanta. Anti-Defamation League , November 16, 2020. <https://atlanta.adl.org/news/alabama-only-state-in-u-s-to-report-zero-hate-crimes/>.

Amy Feinman, “Marblehead Police Training” (Zoom, April 21, 2021)
Feinman, Amy. Northeast Area Civil Rights Counsel at Anti-Defamation League. “Interview with Jessica Daniel.” April 2021.

“Audit of Antisemitic Incidents 2020.” Anti-Defamation League. Anti-Defamation League , April 2021. <https://www.adl.org/audit2020#executive-summary>.



“Bias and Hate Crimes.” Pennsylvania Human Rights Commission. Commonwealth of Pennsylvania, <https://www.phrc.pa.gov/Resources/Pages/Hate-Crime.aspx>.

Boren, Michael. “Pa Expands Protections for LGBT People, but Hate-Crime Law Still Doesn’t Include Them.” *The Philadelphia Inquirer* . *The Philadelphia Inquirer*, August 27, 2018. <https://www.inquirer.com/philly/news/pennsylvania/lgbt-hate-crimes-pennsylvania-human-relations-commission-20180817.html>.

“Covid 'Hate Crimes' against Asian Americans on the Rise.” BBC News , April 2021. <https://www.bbc.com/news/world-us-canada-56218684>.

Donna M. Evans; Colleen B. McElhaney, "Historical Overview: Massachusetts Court Decisions Shaping Federal Constitutional Law," *Boston Bar Journal* 44, no. 1 (January/February 2000): 20-[ii]

“Federalism.” *Criminal Law* by University of Minnesota. University of Minnesota. Accessed May 5, 2021. <https://open.lib.umn.edu/criminallaw/chapter/1-1-federalism/>.

“Hate Crime Case Examples.” United States Department of Justice. U.S. Department of Justice . Accessed May 5, 2021. <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>.

“Hate Crime Law in Massachusetts.” *Mass.gov*. Commonwealth of Massachusetts. Accessed May 7, 2021. <https://blog.mass.gov/masslawlib/legal-topics/hate-crime-law-in-massachusetts/>.

“Hate Crime Laws.” Anti-Defamation League. Anti-Defamation League, 2012. <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Hate-Crimes-Law.pdf>.

“Hate Crime Statistics (2019).” The United States Department of Justice . U.S. Department of Justice , 2019. <https://www.justice.gov/hatecrimes/hate-crime-statistics>.



“Hate Crime.” Office of Attorney General Josh Shapiro . Office of Attorney General Commonwealth of Pennsylvania, 2021.

<https://www.attorneygeneral.gov/protect-yourself/civil-rights/hate-crime/>.

“Hate Crime.” Office of Attorney General Josh Shapiro. Office of the Attorney General of the Commonwealth of Pennsylvania . Accessed May 7, 2021. <https://www.attorneygeneral.gov/protect-yourself/civil-rights/hate-crime/>.

“Hate Crimes Timeline.” The Human Rights Campaign. The Human Rights Campaign. Accessed May 5, 2021.

<https://www.hrc.org/resources/hate-crimes-timeline>.

Levin , Jack, and Jack McDevitt. “Hate Crimes.” *Encyclopedia of Peace, Violence and Conflict* 2 (2008).

<https://jacklevinsonviolence.com/articles/HateCrimesencyc92206FINAL.pdf>.

Lisinski, Chris. “Massachusetts Attorney General Maura Healey: Times Call for Overhaul of Hate Crime Laws.” The Lowell Sun, March 31, 2021. <https://www.lowellsun.com/2021/03/31/healey-times-call-for-overhaul-of-hate-crime-laws/>.

“Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021.

https://www.law.cornell.edu/wex/matthew_shepard_and_james_byrd_jr_hate_crimes_prevention_act.

Morava, Maria and Saba Hamedy. "49 States and Territories have Hate Crime Laws -- but they Vary." *CNN Wire Service*, Mar 17, 2021.

<https://search.proquest.com/wire-feeds/49-states-territories-have-hate-crime-laws-they/docview/2501895775/se-2?accountid=9703>.

“Police Powers.” Legal Information Institute . Cornell Law School. Accessed May 5, 2021. “Federalism.” Criminal Law by University of Minnesota. University of Minnesota. Accessed May 5, 2021.

<https://open.lib.umn.edu/criminallaw/chapter/1-1-federalism/> .



“The Psychology of Hate Crimes.” American Psychological Association. American Psychological Association , August 2017. <https://www.apa.org/advocacy/interpersonal-violence/hate-crimes>.

Ring, Trudy. “Two Men Indicted for Murders of Transgender Women in Puerto Rico.” <https://www.advocate.com/crime/2020/5/14/two-men-indicted-murders-transgender-women-puerto-rico>. Advocate, May 14, 2020. <https://www.advocate.com/crime/2020/5/14/two-men-indicted-murders-transgender-women-puerto-rico>.

Roberts, Madeleine. “Marking the Deadliest Year on Record, HRC Releases Report on Violence Against Transgender and Gender Non-Conforming People.” The Human Rights Campaign . The Human Rights Campaign, November 19, 2020. <https://www.hrc.org/press-releases/marking-the-deadliest-year-on-record-hrc-releases-report-on-violence-against-transgender-and-gender-non-conforming-people>.

Ross, Janell. *Why Americans can't Agree on which Crimes are Hate Crimes: What an Image about the Care and Pace of Investigating a White Baton Rouge Man Possibly Involved in Hate Crimes Tells and Conceals*. Washington: WP Company LLC d/b/a The Washington Post, 2017.

“Section 39: Assault or Battery for Purpose of Intimidation; Weapons; Punishment.” The 192nd General Court of the Commonwealth of Massachusetts. Mass.gov. Accessed May 7, 2021. [https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/section39#:~:text=\(a\)%20Whoever%20commits%20an%20assault,of%20not%20more%20than%20five](https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/section39#:~:text=(a)%20Whoever%20commits%20an%20assault,of%20not%20more%20than%20five).

Shattuck, John, and Mathias Risse. “Hate Crimes.” *Carr Center for Human Rights Policy* , February 22, 2021, 1–13. https://carrcenter.hks.harvard.edu/files/cchr/files/hate_crimes.pdf.

“State Hate Crimes Statutes.” Brennan Center for Justice. Brennan Center for Justice, July 2, 2020. <https://www.brennancenter.org/our-work/research-reports/state-hate-crimes-statutes>.



Thebault, Reis. “Nearly Every State Has a Hate Crime Law. Why Don't More People Use Them?” The Washington Post. The Washington Post, April 26, 2021.

<https://www.washingtonpost.com/nation/2021/04/26/hate-crime-laws-explained/>.

“Wisconsin v. Mitchell.” Legal Information Institute. Cornell Law School. Accessed May 5, 2021. <https://www.law.cornell.edu/supct/html/92-515.ZO.html>.

