



Hate Crime in America: The Debate Continues

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About the Authors

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In December 2000, in Brooklyn, New York, Mohammad Awad punched Chaim Spear while yelling obscenities and anti-Semitic remarks.¹ In nearby Queens, Nicholas Minucci, a Caucasian, fractured the skull of African American Glenn Moore with a baseball bat and robbed him in June 2005. Witnesses testified that Minucci used a racial slur before and during the attack.² In October 1998, near Laramie, Wyoming, Russell Henderson and Aaron McKinney robbed, beat, and tied Matthew Shepard, a gay man, to a fence. Five days after the attack, Shepard died from his injuries.³ In Houston, Texas, David Tuck attacked and sexually assaulted a Hispanic teenager in April 2006. Tuck shouted “white power” and racial slurs during the attack.⁴

Awad and Minucci were each convicted of a hate crime. Wyoming, where Shepard was murdered, does not have a hate-crime

statute. Houston authorities did not charge Tuck with a hate crime because the charges against him already carried a life sentence.⁵

In many cases, hate may be seen or perceived by the victims, their families, witnesses, and even law enforcement to be the motivation for a crime, but perpetrators may not be charged with a hate crime for a variety of reasons—many of the same reasons that the debate on hate-crime laws continues in this country.

Legislators, law enforcement officials, prosecutors—and the American public—continue to grapple with fundamental questions in the hate-crime debate:

- How do we define—and identify—hate crime?
- How prevalent are these types of crime?
- How do we prosecute, punish, and, ultimately, prevent hate crime?
- How do we meet the needs of hate-crime victims?

In a study funded by the National Institute of Justice, Michael Shively, Ph.D., of Abt Associates Inc., conducted a comprehensive analysis of the literature and statutes on hate crime to determine how Federal and State legislation and programs are wrestling with these issues.⁶

Scope of the Problem

Accurate estimates of the prevalence of hate crime remain elusive. National hate-crime data come from two primary sources: the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program and the Bureau of Justice Statistics (BJS) National Crime Victimization Survey (NCVS). Unfortunately, the types of data collected by these agencies differ, which creates difficulties in accurately assessing the prevalence of hate crime.

In a study of law enforcement agencies, the FBI found that 7,163 hate-crime incidents, affecting 8,795 victims, were reported in 2005 to police departments that participated in the study.⁷ Estimating incidents involving elements of hate crime during an earlier time period—July 2000 through December 2003—BJS coupled results from victim interviews with additional factors such as offender use of derogatory language or hate symbols to estimate an annual average of 191,000 incidents, affecting 210,000 victims.⁸

The disparity in these two estimates stems, in part, from an important difference in the data collected: the FBI counts only crimes that are reported to the police. For the NCVS, BJS collects information from victims, who are asked if they think hate played a role in the crime. The potential for overreporting and underreporting incidents involving elements of hate crime must also be considered. For instance, only 44 percent of the alleged incidents in the NCVS database were reported to the police,⁹ so underreporting may account for at least some of the disparity in these estimates of the prevalence of hate crime in this country. One study indicates that people may be reluctant to report for fear of police insensitivity and abuse.¹⁰

States With Laws for Protected Groups

Protected Group	No. of States
Ethnicity	45
Race	45
Religion	45
Gender	31
Disability	30
Sexual orientation	27
Age	14
Political affiliation	7

All of this suggests that despite progress in methods of data collection, the current data may not be sufficient to gauge the true scope of the problem.

Laws and Legislation

The Federal Government and all but one State (Wyoming) have specific hate-crime laws. The laws vary significantly from State to State, however, and there is no standard legal definition of hate crime. For example, although nearly all States specify race, religion, or ethnicity as characteristics of protected groups, other characteristics are not always included. (See above chart, “States With Laws for Protected Groups.”)

Hate-crime laws may define:

1. Groups that are protected (e.g., religion, race or ethnicity, gender, disability, and sexual orientation).
2. A range of predicate or underlying crimes (e.g., assault).
3. A requirement that hate or bias motivated the offense.
4. Penalty enhancements.
5. Provisions for civil remedies.
6. Requirements for data collection.
7. Training requirements for law enforcement personnel.

Although most States allow broad categories of predicate or underlying offenses to be charged as a hate crime

WHERE DID THE TERM ‘HATE CRIME’ COME FROM?

The term “hate crime” was coined in the 1980’s by journalists and policy advocates who were attempting to describe a series of incidents directed at African Americans, Asians, and Jews. The Federal Bureau of Investigation defines hate crime—also called bias crime—as “a criminal offense committed against a person, property, or society that is motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.”

(such as assault, vandalism, and a wide variety of misdemeanors and felonies) and provide for penalty enhancements, only about half the States have enacted statutes that require data collection and offer victims a specific recourse for recovering damages. Statutory provisions addressing the training of law enforcement personnel to deal with hate crime exist in only 12 States. On the Federal level, a 1994 law mandates longer sentences for hate crime committed under Federal jurisdiction. These differences in laws from State to State—and on the Federal level—make it difficult to ensure consistency in the prosecution of hate crime.

One of the most significant issues in the debate is the lack of national consensus that hate crime should be considered a separate class of crime. In addition, even supporters of hate-crime legislation disagree about how the statutes should be written. Other major questions in the debate include:

- Should hate or bias motivation be considered when the underlying offense, such as assault or vandalism, is already covered by criminal law?
- Do hate-crime laws punish thoughts rather than actions?
- What are the ramifications of basing additional penalties upon the thoughts that motivate offenders rather than on the behavior itself?
- Is it possible to determine with legally acceptable certainty the motive behind a person’s criminal acts?
- Do hate-crime laws result in more severe punishments for crimes against certain groups of people than for equivalent crimes committed against other groups?

- Are hate-crime victims more traumatized than other victims of the same underlying offense because they feel personally targeted?
- Does hate crime increase fear in the community beyond what might exist for similar crimes that are not motivated by hate?

Some States have struck down hate-crime statutes as too broad or vague. Most of the highest State courts that have heard challenges on First Amendment grounds to the penalty enhancement provision of hate-crime laws have upheld bias as a rationale for harsher punishments. The U.S. Supreme Court upheld the Wisconsin hate-crime penalty enhancement, ruling that it did not suppress free speech because the statute is motivated by the State’s desire to redress a greater societal harm that is inflicted by bias-inspired conduct, not by an attempt to suppress thoughts.¹¹

Other Responses to Hate Crime

Many jurisdictions have established hate-crime units in their police departments, and some regional task forces are devoted to investigating hate crime. Some States have increased law enforcement training on hate crime and implemented school- and community-based prevention programs. California and Massachusetts are notable for including these and other strategies in their efforts to combat hate crime.

Nonprofit organizations have also directed resources to prevention programs, services to victims, and civil lawsuits filed on behalf of victims against hate-crime perpetrators.

Although these initiatives have generated anti-hate-crime “best practices,” based on experience and backed by expert opinion, they have not been rigorously evaluated to determine if they are successful in increasing arrest and prosecution, preventing hate crime, or supporting victims.

Current Research on Hate Crime

Information about the characteristics of hate-crime offenses is based primarily on NCVS victim reports and on police reports filed through the National Incident-Based Reporting System. Both indicate that bias regarding race is the most common motivation behind a hate crime. African Americans, for example, are targeted twice as often as Caucasians, according to these databases. “Victim Reports of Hate-Crime Motivations,” the chart on this page, lists the “motivations” behind hate crimes as reported by victims who participated in a 2000–2003 NCVS survey.

A large body of research exists on prejudice and bias, but it does not explain why prejudice prompts people to commit a hate crime.¹² Only a few studies have attempted to examine the characteristics of hate-crime offenders, and these have not been definitive. A North Carolina study found that perpetrators of hate crime were more likely than other citizens to express bigoted attitudes,¹³ but this conclusion comes as no surprise. The North Carolina researchers were unable to statistically distinguish hate-crime perpetrators from other citizens based solely on attitudes, thus suggesting that there are factors beyond attitude that cause individuals to commit hate crime. To date, there simply has not been sufficient research to identify the characteristics that distinguish perpetrators of hate crimes from people with bigoted attitudes who do not engage in such acts.

Another way of analyzing criminal behavior is through offender typologies or categories.¹⁴ The most widely discussed and accepted

Victim Reports of Hate-Crime Motivations

Motivation	Percent of Incidents
Race	55.4
Association*	30.7
Ethnicity	28.7
Sexual orientation	18.0
Perceived characteristic	13.7
Religion	12.9
Disability	11.2

Source: Harlow, C.W., *Hate Crime Reported by Victims and Police* (2005) p.3, available at www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf.

Note: Percentages in this exhibit add up to more than 100 percent because some respondents indicated more than one motivation.

* Association with people who have certain characteristics, for example, a multiracial couple.

of these was formulated by Jack McDevitt, Jack Levin, and Susan Bennett.¹⁵ Based on a study of 169 cases in Boston, these researchers identified four major categories of hate-crime motivation:

- **Thrill-seeking.** Offenders who are motivated by a desire for excitement (66 percent).
- **Defensive.** Offenders who commit hate crime to protect their turf or resources in a situation that they consider threatening (25 percent).
- **Retaliatory.** Offenders acting to avenge a perceived insult or assault (8 percent).
- **Mission.** Offenders who are so strongly committed to bigotry that hate becomes their career (less than 1 percent).

No attempt has been made to validate or replicate these typologies even though they are widely used in training law enforcement officers to identify and investigate hate crime. Another study investigated self-reported antigay aggression in the San Francisco Bay area and identified four categories of offenders similar to those proposed by McDevitt.¹⁶ That study corroborates, but does not scientifically validate, McDevitt’s typologies.

Suggestions for the Future

The Abt Associates report identifies the need for more research in the following areas:

- A method for more accurately estimating the prevalence of hate crime.
- An evaluation of the impact of hate-crime legislation on deterrence, punishment, enforcement, training, and reporting.
- The motivations behind hate crime and the development of empirically based offender typologies.
- How membership in or affiliation with hate groups (or exposure to their literature) affects the commission of crime.
- The effect of hate crime on victims and communities.
- An evaluation of programs designed to prevent and respond to hate crime and to assist hate-crime victims.

The American Society of Criminology has supported these recommendations.

The Abt Associates report also recommends the development of a Federal central repository of hate-crime information to help resolve inconsistencies in how hate crime is defined and how data are collected and analyzed. The report maintains that such a repository could disseminate research findings and information on programs, and thereby lead to a better use of resources in preventing and developing responses to hate crime.

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For More Information

This article is based on:

- Shively, M., *Study of Literature and Legislation on Hate Crime in America*, final report submitted to the National Institute of Justice, Washington, DC: June 2005 (NCJ 210300), available at www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf.
- *Hate Crime Statistics 2005*, Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, October 2006, available at www.fbi.gov/ucr/hc2005/index.html.

- Harlow, C.W., *Hate Crime Reported by Victims and Police*, Special Report, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2005 (NCJ 209911): 1, available at www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf.

Other resources include:

- Bureau of Justice Assistance, *Addressing Hate Crimes: Six Initiatives That Are Enhancing the Efforts of Criminal Justice Practitioners*, Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance, 2000.
- Federal Bureau of Investigation, *Crime in the United States 2004: Hate Crime*, Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, 2005.
- D.C. Bias Crimes Task Force, *Prevention of Bias/Hate Crimes Starts With You!* Washington, DC: U.S. Attorney's Office for the District of Columbia, available at www.usdoj.gov/usao/dc/Partnerships/Files/HateCrimes.pdf.

Notes

1. Awad pled guilty to assault as a hate crime. He received 5 years' probation and was required to attend an anger-management course. Bahrapour, T., "Metro Briefing—New York: Brooklyn: Hate-Crimes Prosecution," *New York Times* [online], June 27, 2001 (accessed January 31, 2007).
2. A Queens, New York jury convicted Minucci of second-degree assault as a hate crime. He was sentenced to 15 years in prison. "Fat Nick Gets 15 Years for Bat Attack," *New York Daily News*, July 17, 2006, available at www.nydailynews.com/front/story/435818p-367135c.html (accessed February 2, 2007).
3. Henderson pled guilty to felony murder and kidnapping. A Laramie jury found McKinney guilty of two counts of felony murder. Both are serving two consecutive life sentences without the possibility of parole. Cart, J. "Killer of Gay Student Is Spared Death Penalty; Courts: Matthew Shepard's Father Says Life in Prison Shows 'Mercy to Someone Who Refused to Show Any Mercy,'" *Los Angeles Times*, November 5, 1999.

4. A district court in Houston sentenced Tuck to life in prison for aggravated sexual assault. Anti-Defamation League, "Texas White Supremacist Receives Life Sentence," December 1, 2006, available at www.adl.org/learn/extremism_in_the_news/White_Supremacy/racistskinhead_texas_1106.ht (accessed February 2, 2007).
5. Ibid.
6. Shively, M., *Study of Literature and Legislation on Hate Crime in America*, final report to the National Institute of Justice, Washington, DC: June 2005 (NCJ 210300), available at www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf.
7. *Hate Crime Statistics 2005*, Washington, DC: U.S. Department of Justice, Federal Bureau of Investigation, October 2006, available at www.fbi.gov/ucr/hc2005/index.html.
8. The NCVS contained interviews of 243 hate-crime victims. BJS then used a statistical method to estimate that this figure represents an annual, nationwide average of approximately 210,000 hate-crime victims. Harlow, C.W., *Hate Crime Reported by Victims and Police*, Special Report, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, November 2005 (NCJ 209911): 1, available at www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf.
9. Ibid.
10. Nolan, J.J., and Y. Akiyama, "The Hate Crime Statistics Act of 1990: Developing a Method for Measuring the Occurrence of Hate Violence," *American Behavioral Scientist* 46 (2002): 136–153.
11. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993).
12. Green, D.P., L.H. McFalls, and J.K. Smith, "Hate Crime: An Emergent Research Agenda," *Annual Review of Sociology* 27 (2001): 279–504.
13. Green, D.P., R.P. Abelson, and M. Garnett, "The Distinctive Political Views of Hate-Crime Perpetrators and White Supremacists," in *Cultural Divides: Understanding and Overcoming Group Conflict*, ed. D.A. Prentice, and D.T. Miller, New York: Russell Sage Foundation, 1999: 429–464.
14. Although a typology is not a formal theory, it provides a useful way of organizing observations.
15. McDevitt, J., J. Levin, and S. Bennett, "Hate Crime Offenders: An Expanded Typology," *Journal of Social Issues* 58 (2002): 303–317. The researchers analyzed 169 cases handled by the Community Disorders Unit of the Boston Police Department in 1991–1992.
16. Franklin, K., "Antigay Behaviors Among Young Adults: Prevalence, Patterns, and Motivations in a Noncriminal Population," *Journal of Interpersonal Violence* 15 (2000): 4, 339–362.