

Legal Sidebar

Charlottesville Car Crash Attack: Possibility of Federal Criminal Prosecution

08/15/2017

Attorney General Jeff Sessions has announced a federal civil rights [investigation](#) into the incident in Charlottesville, Virginia, in which a woman was killed and several others were injured when a car plowed into a group of counter-protesters on a day when protesters had clashed with participants in a white supremacist rally. Virginia [authorities](#) have arrested the Ohio driver of the car and charged him with second degree murder, a [crime](#) punishable under Virginia law by imprisonment for not less than five or more than forty years.

For both [constitutional](#) and practical reasons, law enforcement is first and foremost a state responsibility. Nevertheless, the protection of civil rights has been thought to be an important federal concern. It's too early to tell what, if any, prosecutable federal offenses the Justice Department's investigation might discover. However, various civil rights and terrorist offenses may be implicated.

Civil rights offenses: Media [reports](#) have cited two potential civil rights violations – the federal hate crime offense and the offense of interfering with federally protected activities. (For additional background on these offenses, *see* [CRS Report R43830](#). The federal hate crime [statute](#) applies to anyone who “willfully causes bodily injury to any person ... because of the actual or perceived race ... of any person.” The woman who was killed was white, and several of those injured with her were African-American. Conviction under the hate crime statute would require, among other things, evidence that the driver targeted his victims because of their race rather than because of their political beliefs, such as their perceived anti-white supremacist views. In cases where a death results, the hate crime statute carries a sentence of imprisonment for any term of years or for life.

The “protected activities” [statute](#) creates a number of civil rights crimes including those involving interference with the access to public benefits, services, facilities, and accommodations. The statute also applies to anyone who “by force ... willfully injures ... any citizen because he ... has been ... participating lawfully in speech or peaceful assembly” relating to opposition to any denial of public benefits, services, facilities, or accommodations on the basis of race, religion, or national origin. The Charlottesville attack [reportedly](#) followed sometimes violent clashes between white supremacist demonstrators and counter-demonstrators. Conviction would require, among other things, evidence that the driver targeted his victims because they had participated in lawful speech or peaceful assembly in opposition to the denial of access to federal or state benefits, services, facilities, or accommodations on the basis of race, religion, or national origin. In cases of a resulting second degree murder, the protected activities offense carries a sentence of imprisonment for any term of years or for life.

Domestic terrorism: The federal criminal code [defines](#) the term “domestic terrorism” to encompass those federal or state crimes, “dangerous to human life ... [that] appear to be intended – (i) to intimidate or coerce a civilian population; [or] to influence the policy of a government by intimidation or coercion ... [and that] occur primarily within the ... United States.” Domestic terrorism as such, however, is not a separate federal crime, but an element or aggravating factor in the case of other crimes, such as port security [bribery](#) in furtherance of domestic terrorism or [false statements](#) for purposes of domestic terrorism. Federal law does feature a number of individual terrorism offenses. [One](#) of these bans the use of weapons of mass destruction. The commercial airlines that terrorists flew into the Pentagon and the World Trade Center were [treated](#) as “weapons of mass destruction” for purposes of the statute. Whether a court would

consider a car driven into a crowd constitutes comparable use of a weapon of mass destruction remains to be seen. If so, conviction would require, among other things, proof of one of the statute's jurisdictional elements, such as interstate travel in furtherance of the offense or an effect of the offense on interstate or foreign commerce. Here too, the offense is punishable by imprisonment for any term of years or for life. The facts to date do not appear to implicate any of the other individual federal terrorism statutes.

Conspiracy and Accomplices: Initial reports have said nothing of the culpability of others in the crash. No one other than the driver has been charged. Evidence of the involvement of others would suggest the possibility of criminal liability under several other provisions of federal criminal law. More specifically, it is a federal crime to [conspire](#) to commit a federal offense; to [solicit](#) the commission of a federal violent felony of violence; or to [conspire](#) to intimidate others from enjoying "the rights and privileges" secured by federal law. Moreover, those who [counsel](#), command, aid, or abet the commission of a federal offense by another are treated as though they had committed the underlying offense themselves.

Dual or sequential state-federal prosecution: There is [no constitutional impediment](#) to both state and federal prosecution for the same misconduct, although prosecution in both forums [occurs](#) only infrequently.

Posted at 08/15/2017 04:49 PM