



Improving the Prevention and Enforcement of Hate Crimes

Hate crimes are serious and well-documented problems but have historically been inadequately recognized and addressed. The 2011-2013 Public Policy Program of the American Association of University Women (AAUW) advocates “freedom from violence and fear of violence in homes, schools, workplaces and communities.”¹ To this end, AAUW coordinated the efforts of women’s organizations that culminated in the October 2009 passage of the Mathew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. AAUW believes this long-overdue expansion of the law will strengthen the federal response to hate crimes.

In 1968, Congress enacted a hate crimes prevention law that covers violent crimes resulting in death or serious bodily injury.² Under the original terms of the legislation, crimes must have been motivated by a person’s race, color, national origin, or religion and occur while the victim is engaged in a specified federally protected activity. The new measure signed into law by President Barack Obama expands hate crimes protection categories to also cover violent crimes motivated by gender, gender identity, sexual orientation, or disability, in addition to providing local and state law enforcement with additional training and resources.³

Why Expansion Was Needed

Violent crimes motivated solely or primarily by bias or hatred against a group to which the victim belongs intimidate all members of that group, and give them a reason to fear for not only their own safety but that of the entire group. Hate crimes law punishes the intimidation committed by the assailant in a violent crime, in addition to the act of violence itself. Hate crimes are a persistent threat, according to the Federal Bureau of Investigation’s Uniform Crime Reports. The most recent report showed that there were 7,789 reported hate crime victims in 2009,⁴ and AAUW believes Congress acted appropriately to pass hate crimes legislation that protects all Americans.

In recent years, there have been a number of notable incidents of violence against women that, due to the particular nature of the crime, might have been classified as gender-based hate crimes:

- In September 2006, a man took six girls hostage and killed one of them in a Colorado high school. According to accounts, he methodically selected shorter women victims with blonde hair and sexually assaulted several of them prior to killing them.⁵
- In October 2006, a milkman from Amish Country in Pennsylvania shot and killed five schoolgirls and injured at least five more in an execution-style assault. He specifically separated the boys and had them leave the schoolhouse before committing the murderous assault on the young girls.⁶ These actions suggest that gender bias was a factor in this horrible crime.

- In August 2009, a man killed three women and wounded nine others in a Bridgeville, Pennsylvania health club after opening fire in a fitness class populated largely by women. Investigators later discovered that the man’s website included anti-women diatribes and repeated references to his lack of personal female companionship.⁷

Unfortunately, because gender hate crimes were not covered under federal law at the time these crimes were committed, the perpetrators could not be charged with a hate crime.

Strengthening Existing Federal Hate Crime Laws

AAUW believes the federal government has a role in preventing violence against people in all groups that have historically been subjected to bias-related violence. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands existing hate crimes law in three key ways.

- *Strengthens current hate crimes law.* For more than a decade, AAUW advocated for expansion of the original hate crimes statute. That statute specified that the U.S. Department of Justice can prosecute defendants for violent crimes motivated by race, color, religion, or national origin, but only if the victim was engaged in a specified federally protected activity—such as serving on a jury, voting, or attending public school. The statute did not reach all the cases where individuals kill or injure others because of bias. AAUW is pleased that the new hate crimes legislation broadens current law to cover all violent bias-motivated crimes when the defendant causes bodily injury or uses fire, a firearm, or an explosive device to attempt to cause injury.
- *Expands current law to cover gender, gender identity, sexual orientation, and disability.* For the first time in history, the new hate crimes prevention law authorizes the U.S. Department of Justice to prosecute individuals who commit violent crimes against others because of their gender, gender identity, sexual orientation, or disability. Previous federal law did not permit federal involvement in these cases, though statistics show they are prevalent. For instance, since the FBI began collecting statistics in 1991, reported hate crimes based on sexual orientation have dramatically increased, and comprised 17.8 percent of all hate crimes in 2009.⁸
- *Collects statistics on gender-bias crime.* The FBI has not previously tracked hate crimes motivated by gender, but the new hate crimes legislation corrects this problematic oversight. This provision will be a useful tool in tracking and prosecuting some incidences of domestic violence and sexual assault; an estimated 1.3 million women are victims of physical assault from an intimate partner annually.⁹

Furthermore, AAUW is hopeful that the new law will act as a strong deterrent to prevent gender-bias related crime. Sexual harassment, particularly in schools, can often act as a precursor to additional, bias-motivated crimes against women. A decade ago, AAUW’s own research revealed that 83 percent of girls and 79 percent of boys reported having experienced sexual harassment, and over one in four students stated that harassment happens “often.”¹⁰

Also, although large groups of both boys and girls report experiencing sexual harassment, girls are more likely to report being negatively affected by it.¹¹ Appropriate and effective enforcement of the new law must include proactive prevention efforts aimed at the root causes of sexual harassment against girls and boys.

Unfounded Concerns Regarding Hate Crimes Prevention Legislation

The newly expanded hate crimes prevention law does not violate the first amendment right to free speech guaranteed by the U.S. Constitution. The hate crimes statute's language does not apply to name-calling, verbal abuse, or expressions of hatred toward any group, even if statements amount to hate speech. However, causing or attempting to cause bodily injury is clearly *not* speech protected by the first amendment. The new hate crimes law was carefully drafted and modified to assure its constitutionality under U.S. Supreme Court precedent.

In addition, the new law does not make every violent crime against women a bias crime, just as not every crime against an African-American is based on racial prejudice. Federal courts already routinely assess the question of gender motivation in the context of workplace discrimination claims and under other civil rights laws. Prosecutors and judges can rely on the same type of analysis that would pertain to the other protected groups – considering the language, nature and severity of the attack, motive, patterns of behavior, and common sense – to determine whether a violent crime was motivated by gender bias.

Finally, federal jurisdiction provides an important complement to state jurisdiction to allow law enforcement authorities a broad range of options in pursuing justice in any particular case. In recent years federal hate crimes law has been used only in carefully selected cases. AAUW believes that while states should continue to play the primary role in the prosecution of hate crime violence, the federal government must be able to address cases that local authorities are either unable or unwilling to investigate and prosecute. For instance, only 27 states cover gender-bias crimes in their respective hate crimes statutes.¹² The support that federal authorities can provide local law enforcement agencies is invaluable in cases of bias-motivated crime, and only strengthens the response to hate-fueled attacks on the fabric of our communities.

Hate Crimes Issues in the Higher Education Act

Every year, more than half a million students endure bias-motivated slurs, vandalism, threats, and physical assaults on college campuses.¹³ The FBI typically documents almost 10,000 hate crimes every year, and other estimates range as high as 200,000.¹⁴ To increase awareness of hate crimes on college campuses, the 1998 Higher Education Act required all colleges and universities to collect and report hate crime statistics to the Office of Postsecondary Education (OPE) of the U.S. Department of Education. The Department of Education utilized the definition of hate crime developed by the FBI, but the criminal offenses required to be reported did not match the existing FBI crime categories.

Currently, colleges must report any crimes involving bodily injury in which the victim was targeted because of his or her race, gender, religion, sexual orientation, ethnicity, or disability.

However, there have been limitations to the data gathered under HEA, which likely resulted from discrepancies between the FBI and HEA hate crimes categories. The FBI definition includes several types of offenses previously omitted by the HEA definition. These include arson, larceny/theft, intimidation, and destruction/damage/vandalism.¹⁵ Omitting these crimes results in significant gaps in OPE data and substantial inconsistencies between FBI and OPE statistics.

The new hate crimes law also includes gender-based hate crimes in the list of crime data collected nationally by the FBI. AAUW has provided technical assistance to the FBI in clarifying definitions and training materials for this initiative. In 2010, AAUW supported the Department of Education's regulation updating the hate crimes categories collected by the department to match those collected by the FBI.¹⁶ This change, mandated by an AAUW-inspired provision in the 2008 Higher Education Opportunity Act, took effect in July 2010 and will improve data, give parents and students a more accurate sense of campus safety, and provide colleges with a better picture of their campus climate. AAUW will continue to work with Congress and the Obama administration to fund and inspire necessary education, training, and outreach initiatives to fully implement this new campus hate crime reporting standard, and to ensure that schools report the required data.

Additional Resources

For more information, read AAUW's related position papers on higher education and AAUW's research, including *Drawing the Line: Sexual Harassment on Campus*, as well as *Harassment-Free Hallways: How to Stop Sexual Harassment in School*. You can find these and other resources on our website at www.aauw.org.

Conclusion

Hate crimes are serious, well-documented problems that remain inadequately recognized and prosecuted. AAUW believes that the successful enactment of strengthened hate crimes law sends the message that hate-motivated violence will not be tolerated, and if it does occur, the federal government will protect its citizens and prosecute appropriately.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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¹ American Association of University Women. (June 2011). *2011-13 AAUW Public Policy Program*. Retrieved August 11, 2011, from www.aauw.org/act/issue_advocacy/principles_priorities.cfm.

² Title 18 U.S.C. §245.

³ U.S. Government Printing Office. (2009). H.R.2647: *National Defense Authorization Act for Fiscal Year 2010, Division E*. Retrieved February 15, 2011, from frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2647enr.txt.pdf.

⁴ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services. (November 2010). *Hate Crime Statistics, 2009*. Retrieved February 15, 2011, from www2.fbi.gov/ucr/hc2009/index.html.

⁵ The Associated Press. (September 29, 2006). *Colorado Gunman Said to Have Attacked Some Pupils Sexually*. Retrieved February 15, 2011, from www.washingtonpost.com/wp-dyn/content/article/2006/09/28/AR2006092801663.html.

- ⁶ *The Washington Post*. (October 3, 2006) *Five Killed at Pennsylvania Amish School*. Retrieved February 15, 2011, from www.washingtonpost.com/wp-dyn/content/article/2006/10/03/AR2006100300229.html.
- ⁷ The Associated Press. (August 6, 2009). *Health Club Gunman Posted Troubles on Web*. Retrieved February 15, 2011, from www.washingtonpost.com/wp-dyn/content/article/2009/08/05/AR2009080503988.html.
- ⁸ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services. (November 2010). *Hate Crime Statistics, 2009*. Retrieved February 15, 2011, from www2.fbi.gov/ucr/hc2009/index.html.
- ⁹ National Coalition Against Domestic Violence (July 2007). *Domestic Violence Facts*. Retrieved February 15, 2011, from www.ncadv.org/files/DomesticViolenceFactSheet%28National%29.pdf.
- ¹⁰ American Association of University Women. (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*. Retrieved March 24, 2011, from www.aauw.org/learn/research/upload/hostilehallways.pdf.
- ¹¹ Ibid.
- ¹² Anti-Defamation League. (August 2008). *Anti-Defamation League State Hate Crimes Statutory Provisions*. Retrieved February 15, 2011, from www.adl.org/99hatecrime/state_hate_crime_laws.pdf.
- ¹³ Southern Poverty Law Center. (2004) *10 Ways to Fight Hate on College Campuses*. Retrieved February 19, 2010, from www.tolerance.org/campus.
- ¹⁴ U.S. Department of Justice, Bureau of Justice Statistics. (November 2005) *Hate Crime Reported by Victims and Police: Special Report*. Retrieved February 15, 2011, from bjs.ojp.usdoj.gov/content/pub/pdf/hcrvp.pdf.
- ¹⁵ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services. (November 2010). *Hate Crime Statistics, 2009*. Retrieved February 15, 2011, from www2.fbi.gov/ucr/hc2009/index.html.
- ¹⁶ The Federal Register. (October 29, 2009). *Department of Education General and Non-Loan Programmatic Issues – Final Regulations*. Retrieved January 6, 2009, from www.gpo.gov/fdsys/pkg/FR-2009-10-29/pdf/E9-25373.pdf.