

Hate Crimes Based on Sexual Orientation

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Hate crimes based on sexual orientation now constitute the third highest category reported in the U.S., making up 16.6 percent of all reported hate crimes [1]. Only race-based and religion-based hate crimes are more prevalent than hate crimes based on sexual orientation [2]. This research summary presents an overview of 1) the definitions of and current statistical information on hate crimes 2) the results of pertinent scientific research studies on the impact of hate crimes against LGBT persons; 3) legislative responses – at the state, federal, and international level – to these hate crimes; and 4) the efforts of the religious right to prevent LGBT hate crime legislation under the pretext of “freedom of religious expression.”

Overview of Hate Crimes: Definitions and Statistics

The term “hate crime” is the popular term for what most law officials refer to as a “bias crime.” The idea of specifically recording bias crimes stems from the 1980s, during which time the pronounced emergence of hate groups across the country occurred. These hate groups were styled after the Klu-Klux Klan and their mission was to turn back civil rights legislation. In 2005, active hate groups in the state of Arizona numbered 15, and many of these groups held ties to larger organizations outside the state [3]. It is important to note that hate groups themselves do not necessarily account for incidences of hate crimes, as hate crimes are often perpetrated by individuals acting on their own without a group affiliation.

According to the FBI, the legal definition of a hate crime (or a bias crime) is: *A criminal offense committed against a person, property or society which is motivated in whole or in part by the offender’s bias against a race, religion, disability, sexual orientation, or ethnicity/national origin* [4]. Furthermore, the American Psychological Association defines the *impact* of hate crimes:

...not only is it an attack on one’s physical self, but is also an attack on one’s very identity. Attacks upon individuals because of a difference in how they look, pray or behave have long been a part of human history. It is only recently, however, that our society has given it a name and decided to monitor it, study it and legislate it [5].

By 1990, concern over the rising number of hate crimes in the U.S. led congress to enact federal legislation directing the Attorney General to collect data regarding the incidences and motivations of these crimes. This legislation did include the category of sexual orientation as a motivation for hate crime. At the present time, the major federal agency that collects these national statistics on hate crimes is the FBI, which works with the cooperation of 12,711 law enforcement agencies. In 2007 the FBI reported a total of 7,624 bias-motivated incidents involving 6,962 offenders. The categorical breakdown of these crimes is as follows:

- *Bias crimes based on race: 52.5%*
- *Bias crimes based on Religion: 16.4%*

- *Bias crimes based on Sexual Orientation: 16.6%*
- *Bias crimes based on Ethnicity: 13.2%*
- *Bias crimes based on Disability: 1.0% [6].*

While the FBI's efforts to track and record hate crimes is considered a good start, many experts believe that compiled statistics on hate crimes are underreported. In 2004, for instance, the Southern Poverty Law Center analyzed nationally collected hate crime statistics and demonstrated a large discrepancy between the FBI's reported numbers of hate crimes per year (8,000) vs. the actual number of hate crimes per year (50,000) (cited in [8]). Additionally, the Center for Criminal Justice Policy Research at Northeastern University recently reported the results of a study that identified factors affecting the accuracy of hate crime statistics.

Specifically, errors in hate crime reporting frequently occur at the level of 1) recognition, when information relevant to bias motivation is not collected by the police; 2) classification, which occurs in the absence of recognition of bias; and 3) process, whereby indicators of bias are not transferred through proper reporting channels (cited in [9]).

In 2006 a report on anti-LGBT hate crimes in the state of Arizona was released [7, and see also for a comprehensive history of anti-LGBT hate crimes in Arizona]. According to the report, which went back to 2004, hate crimes based on sexual orientation numbered 33 in Arizona.

Research Assessing the Impact of Hate Crimes based on Sexual Orientation

A major study on hate crimes based on sexual orientation was completed in 1999 by the psychologist Gregory Herek and his colleagues at UC Davis. The study, funded by the National Institute of Mental Health, took place over a 4-year period and sampled 2300 respondents from Sacramento, California and surrounding areas. The sample population included a nearly equal number of women and men, with 83% of respondents indicating they were exclusively gay or lesbian and 17% of respondents describing themselves as bisexual. The median age of the respondents was 34 years.

One-fifth of the study's respondents were personally interviewed for the study about their experiences. All respondents completed a detailed survey that included questions regarding health, mental health, social activities and crime. The salient results of the study were published in a number of journals and are abstracted below:

- Hate crimes based on sexual orientation were less likely than other crimes to be reported to the police.
- One-fifth of the women and more than one-fourth of the men in the study reported experiencing a crime based on their sexual orientation. The types of victimization included vandalism, thefts, assaults, rape, and robbery.

- Aside from these crimes, respondents reported experiencing routine other forms of harassment, including verbal abuse, threats, and being chased.
- 16% of the respondents reported having been targets of employment discrimination based on their sexual orientation.
- Lesbian and gay survivors of hate crimes showed more signs of psychological upset, including stress, anger and depression than lesbian and gay survivors of non-bias crimes.
- The problems with hate crimes appear to last longer than for random crimes.
- Problems associated with anti-LGBT hate crimes may result from hate crimes victim's feelings of vulnerability linked to their sexual orientation. After a hate-crime incident, victims tend to experience and think of the world as more hostile and unpredictable.

In closing, Herek argues that the research findings demonstrate that hate crimes based on sexual orientation have a more serious impact on victims than other crimes do because hate crimes affect “core aspects of the victim’s identity and community affiliation.” Subsequently, he suggests that it is appropriate to deal with hate crimes as distinct from other crimes for the purposes of prevention, prosecution, and victim services ([10], and see [11] for abstracts on select publications based on the study).

Matthew Shepard and Hate Crime Legislation

The bias crime definition is used by the FBI and other agencies for purposes of crime statistics, but just because crimes may be classified as bias or hate crimes, this does not mean that they will be prosecuted as such. At the national level, efforts in 2001 and 2004, and 2008 failed to include sexual orientation as protected categories in the federal hate crime law 18 USC 245 (b) (2), passed in 1969. It is expected, however, that such legislation will pass under the current Obama administration.

At the state level, 7 states have no hate crime laws, 20 states have hate crime laws that do not protect sexual orientation, and 24 states have laws that include sexual orientation [12], including Arizona (in the public sector).

A galvanizing incident that preceded attempts to amend the Federal hate crime law was the murder of Mathew Shepard in Laramie, Wyoming, in 1998. On an October night Shepard met two men at a bar and asked them for a ride home. Subsequently, the two men robbed and severely beat him and tied him to a fence and left him to die. The murder was largely seen as motivated by hatred of homosexuals. During the trial the defendants used the “gay panic” defense, asserting that they were driven to temporary insanity by Shepard’s alleged sexual propositions towards them. Under oath, the girlfriends of the two men also testified that the men had both plotted beforehand to go to a gay hangout and rob a gay man. The men were sentenced to life in prison but the crime itself was not legally considered a hate crime because the U.S. law and the Wyoming state law held that crimes committed on the basis of sexual orientation were

not prosecutable as hate crimes [13].

The Matthew Shepard case has had a major impact on both pro- and anti-gay forces. The event has led to numerous books, films and traveling plays that have illuminated the struggle of LGBT persons to large, previously uninformed audiences. The event was also notable as it brought to prominence the Southern Baptist Pastor Fred Phelps, who – with his followers -- picketed the Matthew Shepard proceedings with large signs that read “GOD HATES FAGS.” To the chagrin of other anti-gay religious groups, Phelps’ activities helped clarify, in the public eye, links between religious hatred and violent murderous acts. Embarrassed, and afraid to be identified with Phelps, anti-gay religious groups toned down their pulpit condemnations of homosexuality in the years after the Matthew Shepard case. They turned their efforts instead to the “hate the sin, love the sinner” approach of the “ex-gay” ministries (see research summary #6 on reparative therapy.)

While the push for amending the federal hate crime law to include sexual orientation has lost momentum since the Matthew Shepard case, anti-gay forces are still concerned about its impact, as it is viewed as Stonewall-like in its magnitude by pro-LGBT communities. Subsequently, a suspicious attempt has been made to revise the Matthew Shepard case from a hate crime to a drug crime that had nothing to do with sexual orientation. It is not clear exactly who the architects of this refashioning of the Shepard case are, but the attempt picked up momentum in 2004 with a 20/20 television report by Elizabeth Vargas that suggested that the murder was motivated by nothing more than a bad methamphetamine experience [14].

Religious, right-wing resistance to Hate Crime Legislation;

Resistance to general hate crime legislation stems from scholarly concerns regarding the effectiveness of hate crime laws in reducing crime. These concerns are part of a legitimate debate that begun with the federal hate crime amendment in 1969. In the context of sexual orientation, however, members of the religious right have argued that new legislation penalizing *actions* against LGBT persons will precede legislation against *speech* against LGBT persons, which they view as their divinely ordained prerogative.

A specific example of this argument can be found on the website of *Concerned Women of America (CWA)* [15], the conservative Christian organization led by Robert Knight whose recent anti-gay campaign resulted in the removal of disposal coffee cups with quotes from a gay author from Starbucks coffee shops. Although the U.S. federal hate crime law specifically criminalizes acts of hate and not “hate speech,” CWA has followed, with trepidation, the legislation of other countries that link speech and action together as part of a whole hate crime package (see also [16] for a compendium of virulent anti-gay speech from religious conservatives).

International Hate Crime Legislation

CWA’s fears are unfounded due to the nature of U.S. hate crime legislation, but they serve as a reference point to examine international responses to hate crimes based on sexual orientation. As in the cases of gay marriage, employment non-discrimination, and gays in the military, the U.S. is behind many other Western, industrialized nations in terms of legislation against hate crimes. Countries like Canada, Sweden, Scotland, and New Zealand have not

skirted around the issue and do not view Christian proselytizing against homosexuality as a special right or even a protected category of speech. Rather, the governments of these and other countries have determined that religious beliefs do not privilege groups or individuals to condemn any group of people bound together by a single category such as race, ethnicity, nationality, or sexual orientation. This is due to the belief, proved by historical record that public denouncements of such groups can lead to stigmatization, ostracizing, and violence against individuals in those groups.

Subsequently, certain international laws have begun to view religious hate speech itself as criminal. In 2004 in Sweden, a pastor was arrested and sentenced to prison for preaching against homosexuality one year after sexual orientation was added to Sweden's hate crime law [17]. His case was overturned and the charges dismissed, but the incident marked the beginning of an international debate about links between religious hatred and acts of violence against LGBT persons.

Hate crimes based on sexual orientation: Utilizing an informed approach:

The research and reporting cited in this summary provide basic information of issues relevant to hate crimes based on sexual orientation. This report will be expanded and updated as more data become available. As is, however, the current information provides a basis from which to inform discussions and arguments regarding hate crimes based on sexual orientation. The following points may be helpful when presenting information on hate crimes based on sexual orientation:

- Hate crimes based on sexual orientation now make up over 15% of all reported hate crimes, although evidence suggests that this percentage is based on an underreporting of these crimes.
- Research indicates that lesbian and gay survivors of hate crimes showed more signs of psychological upset, including stress, anger and depression than lesbian and gay survivors of non-bias crimes.
- Research indicates that hate crimes can affect victims' lives more intensely than non-hate crimes and that it is necessary to develop stronger policies (in the areas of prevention, prosecution, and victim services) to counter these effects.
- The fact that the FBI includes sexual orientation as a category in its collection of statistical data on national hate crimes reflects a reporting variable only. Hate crimes based on sexual orientation are not punishable as such under the federal hate crime law.
- To date, 24 states have added sexual orientation to their existing hate crime laws.
- The Matthew Shepard murder galvanized LGBT communities and their supporters to push for the addition of sexual orientation to the federal hate crimes law.

Subsequently, there has been a counter-movement to take the “hate” out of this crime and reclassify it as the result of a bad drug experience.

- Opposition to hate crime legislation by the religious right is largely based on the idea that it will also lead to proscriptions against public proclamations against homosexuality, as this is what is happening in other countries with broader hate crime laws than the U.S..

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