

# CARR CENTER FOR HUMAN RIGHTS POLICY HARVARD KENNEDY SCHOOL

# Hate Crimes



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Reimagining Rights  
& Responsibilities  
in the U.S.

## **Reimagining Rights & Responsibilities in the United States: Hate Crimes**

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## Overview

On the morning of August 3, 2019, a 21-year-old man walked into a crowded Walmart in El Paso, Texas, carrying a high-powered rifle. Many of the customers in the border city that day were Hispanic families, shopping for back-to-school deals. Without warning, the man suddenly opened fire, sending shoppers scrambling to hide, or flee, covered in blood, through the doors. When the chaos was over, 22 people were left dead, with another 24 wounded—a tragedy Texas governor Greg Abbott called “one of the most deadly days in the history of Texas.”<sup>1</sup>

While the mass shooting initially seemed an act of senseless brutality, the perpetrator’s motivation soon became clear. Earlier that day, according to the U.S. Department of Justice, he had uploaded a document to the Internet called “An Inconvenient Truth,” which chillingly justified the assault on racist grounds. “This attack is a response to the Hispanic invasion of Texas,” it read. “They are the instigators, not me. I am simply defending my country from cultural and ethnic replacement brought on by the invasion.”<sup>2</sup>

While the El Paso shooting stands out for its violence, it is just one of many recent hate crimes— offenses motivated by animus against individuals or groups because of their race, ethnicity, religion, sexual orientation, gender identity, or disability.<sup>3</sup> Data from the Federal Bureau of Investigation (FBI) shows that, after declining for almost a decade, the number of hate crimes shot up 17% in 2017 to 7,175 and remained high at 7,120 in 2018, the last year for which data is available.<sup>4</sup> Hate crime violence against individuals, rather than property, hit a 16-year high in 2018.<sup>5</sup> According to national racial advocacy groups, the FBI vastly undercounts these crimes, and even government estimates put the actual number 35 times higher.

In March 2019, 2 men in Dallas used a dating app to lure several gay men to locations before robbing them at gunpoint, sexually assaulting them, and covering them with urine and feces. In February 2020, a Louisiana man admitted to intentionally setting fire to 3 churches with predominantly African American congregations.<sup>6</sup> As the coronavirus epidemic intensified between January and May 2020, Asian Americans were subjected to countless threats and attacks, including being hit, stabbed, and having objects thrown at them, as well as verbal assaults including, “Go back to China!” “Fucking Asians, motherfuckers. You brought this disease here,” according to reports compiled by the Anti-Defamation League.

Premeditated attacks such as the El Paso shooting are a minority of hate crimes committed in the U.S. Most of these crimes, according to experts, are committed by perpetrators spontaneously “seeking thrills” by targeting minorities with violence. As such, they have been fostered by escalating hate speech during the Trump presidency, during which political discourse has been infected at high levels by rhetoric stoking animosity and inciting violence. In fact, several academic studies have specifically tied inflammatory language by the president and other officials to an increase in violent acts against minorities.<sup>7</sup>

President Trump has expressed anti-immigrant statements -- for example, calling Mexican immigrants “rapists” and “thugs”<sup>8</sup> and warning of an “invasion of illegals,” the same language used by the El Paso shooter. In addition, the president has seemingly condoned white supremacist violence -- for example, by saying that “there were very fine people on both sides” of the white supremacist protest in Charlottesville that led to the death of a counter-protestor.<sup>9</sup> After the outbreak of COVID-19 in the U.S., President Trump and right-wing media have repeatedly

1. Romero, Simon, et al. “Massacre at a Crowded Walmart in Texas Leaves 20 Dead.” *The New York Times*, 3 Aug. 2019, <https://www.nytimes.com/2019/08/03/us/el-paso-shooting.html>; “El Paso Walmart shooting by Cielo Vista Mall: What we know about the number of victims, the suspect.” *USA Today*, 5 Aug. 2019, <https://www.usatoday.com/story/news/nation/2019/08/03/el-paso-walmart-shooting-what-we-know-texas-shooting/1911030001/>; Murphy, Heather. “El Paso Shooting Suspect Indicted on Capital Murder Charge.” *The New York Times*, 12 Sept. 2019, <https://www.nytimes.com/2019/09/12/us/el-paso-suspect-capital-murder.html?auth=login-email&login=email>.

2. “Hate Crimes Case Examples.” *U.S. Department of Justice*, 2020, <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>.

3. “Learn About Hate Crimes.” *U.S. Department of Justice*, <https://www.justice.gov/hatecrimes/learn-about-hate-crimes/chart>.

4. McCarthy, Niall. “U.S. Hate Crimes Remain At Heightened Levels.” *Statista*, 13 Nov. 2019, <https://www.statista.com/chart/16100/total-number-of-hate-crime-incidents-recorded-by-the-fbi/>.

5. Hassan, Adeel. “Hate-Crime Violence Hits 16-Year High, F.B.I. Reports.” *The New York Times*, 12 Nov. 2019, <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi-report.html>.

6. “Hate Crimes Case Examples.” *U.S. Department of Justice*, 2020, <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>.

7. Kunzelman, Michael, and Astrid Galvan. “Trump Words Linked to More Hate Crime? Some Experts Think So.” *AP News*, 7 Aug. 2019, <https://apnews.com/7d0949974b1648a2bb592cab1f85aa16>.

8. Scott, Eugene. “Trump’s Most Insulting — and Violent — Language Is often Reserved for Immigrants.” *The Washington Post*, 2 Oct. 2019, <https://www.washingtonpost.com/politics/2019/10/02/trumps-most-insulting-violent-language-is-often-reserved-immigrants/>.

9. “Full Text: Trump’s Comments on White Supremacists, ‘Alt-Left’ in Charlottesville.” *Politico*, 15 Aug. 2017, <https://www.politico.com/story/2017/08/15/full-text-trump-comments-white-supremacists-alt-left-transcript-241662>.

characterized the disease as the “China” or “Wuhan” virus,<sup>10</sup> or even “kung flu,”<sup>11</sup> despite specific warnings by the FBI of a rise in hate crimes against Asian Americans “based on the assumption that a portion of the U.S. public will associate COVID-19 with China and Asian American populations.”<sup>12</sup>

While hate crime laws have only existed for the last 50 years, hate-motivated crimes have occurred since the founding of the United States. Dominant normative and legal values of earlier eras, however, often did not recognize hate crimes. For example, the persecution of Native Americans, the enslavement of Black people, the Chinese Exclusion Act, the lynching of African Americans, and other terror sown by the Ku Klux Klan have all been considered acceptable by segments of society at some point in U.S. history.

The Department of Justice began prosecuting federal hate crimes cases after the enactment of the Civil Rights Act of 1968. Thus, the literature on hate crime is new, though rapidly growing. The first American use of the term “hate crime” emerged during the Civil Rights Movement in the second half of the 20<sup>th</sup> century. The term typically refers to bias-motivated violence.<sup>13</sup> But the variation in hate crimes laws and data collection policies per state has created disparities in protection against hate crimes, which leaves people vulnerable depending on where they live. Without proper hate crime statutes and data collection, it is difficult to know the true nature and magnitude of the problem of hate crimes in the United States. In order to allocate resources and deter future hate crimes, law enforcement agencies need to understand the problem at hand.

## Hate Crimes Definitions and Data

Hate crimes must be distinguished from hate speech—expressions of prejudice that do not involve violence, threats, or property damage. The First Amendment affords broad protections for such speech, even when it is biased, offensive, or inflammatory.<sup>14</sup> To

be classified as a hate crime in the Justice Department’s National Crime Victimization Survey (NCVS), an act must involve an actual crime, such as assault, vandalism, or arson, along with at least 1 of 3 types of evidence: the offender used hate language, the offender left behind hate symbols, and/or the police investigators identified the incident as a hate crime.<sup>15</sup>

Hate crimes carry enhanced penalties because of their broader effect compared to other kinds of crime. When a bias-motivated crime is committed, not only is the crime’s immediate target victimized, but hate crimes also leave the victim’s family, community, and national identity group victimized and vulnerable.<sup>16</sup>

Hate crimes reported to the FBI are broken down according to specific attributes, including:<sup>17</sup> the bias involved, the characteristics of victims (e.g. race, gender), the characteristics of offenders (e.g. race, gender), the location (e.g. residences or homes, schools or colleges, parking lots or garages), and the jurisdiction (e.g. state, agency). Race, color, national origin, religion, gender, sexual orientation, and disability can all be motivations for hate crimes.

The FBI’s Uniform Crime Reporting (UCR) program serves as the national repository for hate crimes along with other crime data. Since information is voluntarily collected and submitted by individual law enforcement agencies, however, many crimes are not classified as hate crimes, and so the overall number of hate crimes is underreported in the FBI database.

The Justice Department’s own National Crime Victimization Survey (NCVS), which relies upon a sampling of 95,000 households, has estimated that U.S. residents experienced an average of 250,000 hate crimes annually between 2005 and 2014. Over half of these, it found, were not reported to the police.<sup>18</sup> Victimized groups, such as African Americans or LGBT people, may be reluctant

10. Chiu, Allyson. “Trump Has No Qualms About Calling Coronavirus the ‘Chinese Virus.’ That’s a Dangerous Attitude, Experts Say.” *The Washington Post*, 20 Mar. 2020, <https://www.washingtonpost.com/nation/2020/03/20/coronavirus-trump-chinese-virus/>.

11. Nakamura, David. “With ‘Kung Flu,’ Trump Sparks Backlash Over Racist Language — and a Rallying Cry for Supporters.” *The Washington Post*, 24 June 2020, [https://www.washingtonpost.com/politics/with-kung-flu-trump-sparks-backlash-over-racist-language--and-a-rallying-cry-for-supporters/2020/06/24/485d151e-b620-11ea-aca5-ebb63d27e1ff\\_story.html](https://www.washingtonpost.com/politics/with-kung-flu-trump-sparks-backlash-over-racist-language--and-a-rallying-cry-for-supporters/2020/06/24/485d151e-b620-11ea-aca5-ebb63d27e1ff_story.html).

12. Margolin, Josh. “FBI Warns of Potential Surge in Hate Crimes Against Asian Americans Amid Coronavirus.” *ABC News*, 27 Mar. 2020, <https://abcnews.com/US/fbi-warns-potential-surge-hate-crimes-asian-americans/story?id=69831920>.

13. Jenness, Valerie. “Hate Crimes,” *The Oxford Handbook of Crime and Public Policy*, edited by Micheal Tonry, Oxford University Press, 18 Sept. 2012, doi: 10.1093/oxfordhb/9780199844654.013.0022.

14. The FBI’s “Learn About Hate Crimes” states: “Under the First Amendment of the U.S. Constitution, people cannot be prosecuted simply for their beliefs. People may be offended or upset about beliefs that are untrue or based upon false stereotypes, but it is not a crime to express offensive beliefs, or to join with others who share such views. However, the First Amendment does not protect against committing a crime, just because the conduct is rooted in philosophical beliefs.” See “Learn About Hate Crimes.” *U.S. Department of Justice*, <https://www.justice.gov/hatecrimes/learn-about-hate-crimes/chart>.

15. Masucci, Madeline, and Lynn Langton. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

16. “Learn About Hate Crimes.” *U.S. Department of Justice*, <https://www.justice.gov/hatecrimes/learn-about-hate-crimes/chart>.

17. “Hate Crime Statistics.” *Federal Bureau of Investigation*, <https://www.fbi.gov/services/cjis/ucr/hate-crime>

18. Masucci, Madeline, and Lynn Langton. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

**There is a long legacy of bias-motivated criminal behavior in the U.S. However, in the past, these actions were often not considered hate crimes because they were generally consistent with the attitudes of certain dominant groups during that era.**

to report their victimization because of their distrust, fear, or strained relationships with law enforcement. Victims may also fear retaliation from perpetrators and the potential for secondary victimization by police. Some perceive a stigma of being a victim of a bias-motivated crime. Others may not be able to speak English proficiently enough to report their victimization or worry about their immigration status.<sup>19</sup>

The nonprofit Southern Poverty Law Center (SPLC) has further determined that approximately 10% of the nation's 18,000 law enforcement agencies do not report hate crimes; and many more do not properly identify hate crimes, with only 12 states requiring special training for officers to do so. In addition, daily acts of bullying or discrimination in schools, workplaces, and in public are not included in the FBI's analysis, which focuses only on violent crimes.<sup>20</sup>

To ensure a more accurate count, some non-governmental organizations have created hate crime trackers focused on victims of specific identity groups, such as Asian American and Pacific Islanders (AAPI) and LGBTQ people, allowing them to report bias-motivated crimes themselves. The Council on American-Islamic Relations, for example, reported 1,664 hate crimes against Muslims in 2018 as opposed to the FBI's count of 270.<sup>21</sup>

After launching in March 2020, for example, the group Stop AAPI Hate received over 1,700 cases of "bullying, harassment, hate speech, or violence" in just 6 weeks.<sup>22</sup> The ability to report such incidents anonymously can make people feel more comfortable

with reporting bias-motivated incidents, leading to a more accurate count. However, not all of these incidents necessarily fit the legal definition of a hate crime, pointing towards the need for more accurate official reporting.

## History of Hate Crimes in the United States

There is a long legacy of bias-motivated criminal behavior in the U.S. However, in the past, these actions were often not considered hate crimes because they were generally consistent with the attitudes of certain dominant groups during that era.<sup>23</sup> Moreover, during these periods the U.S. government was complicit or involved in perpetrating hate crimes by either directly using state violence against racial and ethnic minorities, or by denying legal redress for victims. Historical hate crimes include Native American genocide, slavery, lynching, anti-Chinese violence, and criminal conduct by the Ku Klux Klan.

## GOVERNMENT PROTECTION OF SLAVERY

The United States government was involved in the legal legitimization and perpetuation of race-based chattel slavery, practiced in the U.S. from its early colonial days through the Civil War. During this time, the federal government allowed for the continuation of slavery and gave slave owners disproportionate political power during the drafting of the Constitution, recognizing slaves as three-fifths of a person for state congressional apportionment purposes.<sup>24</sup> The U.S. government also made it more difficult for enslaved people to escape through the Fugitive Slave Acts, which allowed for the capture and return of runaway enslaved people within the territory of the United States, even after some states ended slavery.<sup>25</sup>

## GENOCIDAL VIOLENCE AGAINST NATIVE AMERICANS

The United States government was responsible for the genocide of Native Americans in the name of "civilization" and "manifest destiny," authorizing over 1,500 wars, attacks, and raids on Native Americans.<sup>26</sup> President Andrew Jackson pushed for the Indian Removal Bill of 1830, which led to the U.S. army removing 60,000 American Indians from their ancestral land over the next decade,<sup>27</sup>

19. Pezzella, Frank S. *Hate Crime Statutes: A Public Policy and Law Enforcement Dilemma*. Springer, 2017.

20. Hassan, Adeel. "Hate-Crime Violence Hits 16-Year High, F.B.I. Reports." *The New York Times*, 12 Nov. 2019, <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi-report.html>.

21. Ibid.

22. Choi, Cynthia. "In Six Weeks, STOP AAPI HATE Receives Over 1700 Incident Reports of Verbal Harassment, Shunning and Physical Assaults." *Chinese for Affirmative Action*, 20 May 2020, <https://caasf.org/press-release/in-six-weeks-stop-aapi-hate-receives-over-1700-incident-reports-of-verbal-harassment-shunning-and-physical-assaults/>.

23. Pezzella, Frank S. *Hate Crime Statutes: A Public Policy and Law Enforcement Dilemma*. Springer, 2017.

24. Philbrick, Steven. "Understanding the Three-Fifths Compromise." *Constitutional Accountability Center*, 16 Sept. 2018, <https://www.theconstitution.org/news/understanding-the-three-fifths-compromise/>.

25. "Fugitive Slave Acts." *History.com*, 11 Feb. 2020, <https://www.history.com/topics/black-history/fugitive-slave-acts>.

26. Fixico, Donald L. "When Native Americans Were Slaughtered in the Name of 'Civilization.'" *History.com*, 16 Aug. 2019, <https://www.history.com/news/native-americans-genocide-united-states>

27. Ibid.

with thousands of American Indians dying through forced marches in the removal process.<sup>28</sup> By the close of the Indian Wars in the late 19th century, fewer than 238,000 indigenous people remained of the estimated 5 million to 15 million living in North America in 1492.<sup>29</sup>

### THE KU KLUX KLAN AND LYNCHING

The Ku Klux Klan (KKK) is the oldest and most infamous American hate group, primarily attacking African Americans, but also targeting Jewish people, immigrants, LGBTQ people, and Catholics.<sup>30</sup> Founded during the reconstruction era after the Civil War, the KKK intimidated African Americans from accessing social, political, and economic rights through extrajudicial killings known as lynching, tar-and-featherings, rapes, and other violent attacks.

The Equal Justice Initiative found that between the end of Reconstruction in 1877 and 1950, there were 4084 lynchings in 12 states in the South,<sup>31</sup> which acted as a message of terror and intimidation to maintain racial subordination and segregation. A recent study found historical continuity between such hate-motivated violence in the past and contemporary hate crimes. In areas where lynching was more prevalent before 1930, hate crimes targeting blacks are less likely to be reported by police or prosecuted.<sup>32</sup>

The KKK broadened its scope in the 1920s when it opposed (mainly Catholic and Jewish) immigration, growing to an estimated 4 million members by 1925. The KKK experienced a resurgence in the 1950s and 1960s to oppose civil rights and preserve segregation, using bombings, murders, and other attacks to terrorize communities, including the killing of 4 young girls in a bombing of the 16th Street Baptist Church in Birmingham, Alabama in 1963.<sup>33</sup> The SPLC estimates that there are still between 5,000 and 8,000 Klan members today.<sup>34</sup>

### ANTI-CHINESE SENTIMENT AND THE CHINESE EXCLUSION ACT OF 1882

Anti-Chinese sentiment and competition for jobs between Chinese immigrants and American natives in the 19<sup>th</sup> century sparked racially motivated violence as Chinese men often worked for lower wages than whites. In the 1871 “The Chinese Massacre,” for example, a mob of approximately 100 white men burned and pillaged Los Angeles’ Chinatown, killing as many as 28 Chinese.<sup>35</sup>

Moreover, both federal and state governments sanctioned legal discrimination at the state and federal level during the period.<sup>36</sup> The Chinese Exclusion Act of 1882 became the first significant law restricting immigration into the United States, and the only law curtailing immigration for a specific nationality. Other laws followed, leading to Chinese immigration becoming illegal by 1902,<sup>37</sup> an act only repealed in 1943 when China became a U.S. ally in World War II. In the meantime, Asian Americans continued to be targeted during times of political and economic unrest. During the Great Depression in 1929, a California mob of hundreds of white men raided the Filipino community of Watsonville, beating and shooting people in an incident known as the Watsonville Riots. During World War II, 120,000 people of Japanese descent were arrested without due process and held in incarceration camps throughout the war.<sup>38</sup>

### Current State of Hate Crimes

Despite its shortcomings, the FBI’s UCR database is still used by government, academics, and nonprofits to chart broad trends across recent hate crimes data. According to its statistics, the overall number of hate crimes increased 17%, from 6,121 in 2016 to a decade-high 7,175 in 2017—before essentially remaining flat, with a 0.77 decrease to 7,120, in 2018.<sup>39</sup> Those numbers, however,

28. “Trial of Tears.” *History.com*, 7 July 2020, [https://www.history.com/topics/native-american-history/trail-of-tears#section\\_3](https://www.history.com/topics/native-american-history/trail-of-tears#section_3).

29. *Ibid.*

30. “Ku Klux Klan.” *Southern Poverty Law Center*, 2020, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/ku-klux-klan>.

31. *Lynching in America: Confronting the Legacy of Racial Terror*. Equal Justice Initiative, 2017, <https://lynchinginamerica.eji.org/report/>.

32. King, Ryan D., et al. “Contemporary Hate Crimes, Law Enforcement, and the Legacy of Racial Violence.” *American Sociological Review*, vol. 74, no. 2, Apr. 2009, pp. 291-315, [www.jstor.org/stable/27736062](http://www.jstor.org/stable/27736062).

33. “16th Street Baptist Church Bombing (1963).” *National Park Service*, 23 Mar. 2016, <https://www.nps.gov/articles/16thstreetbaptist.htm>.

34. “Ku Klux Klan.” *Southern Poverty Law Center*, 2020, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/ku-klux-klan>.

35. Chang, Iris. *The Chinese in America: A Narrative History*. Viking, 2003.

36. “Chinese Exclusion Act.” *History.com*, 13 Sept. 2019, <https://www.history.com/topics/immigration/chinese-exclusion-act-1882>.

37. United States, Supreme Court. *Fong Yue Ting v. United States*. 15 May 1893.

38. Chow, Andrew R. “Violence Against Asian Americans Is on the Rise—But It’s Part of a Long History.” *Time*, 20 May 2020, <https://time.com/5834427/violence-against-asian-americans-history/>.

39. “Hate Crime Statistics.” *Federal Bureau of Investigation*, <https://www.fbi.gov/services/cjis/ucr/hate-crime>.

believe a disturbing shift from crimes against property, such as vandalism, arson, and robbery, to crimes against individuals, such as intimidation, assault, murder, and rape.

Between 2017 and 2018 alone, violence against individuals rose 11.8% to 4,571, a 16-year high that now accounts for 61% of all hate crimes, according to an analysis of FBI data by the Center for the Study of Hate and Extremism at Cal State San Bernardino.<sup>40</sup> The increase of such hate crimes indicates a growing level of physical violence against vulnerable communities. The center's director, Brian Levin, noted that "There has been a disturbing shift to hate crimes directed against people as opposed to property and these increases are seen almost across the board."<sup>41</sup>

## Victim Characteristics & Hate Crime Motivation

In its analysis of FBI statistics, the Center for the Study of Hate and Extremism found increases in hate crimes against all categories of victims, including Latino, gay, disability, transgender Sikh, Asian, and white. Anti-black and anti-Semitic hate crimes decreased slightly. However, those 2 categories remained the largest percentage of all hate crimes, at 27% and 12%, respectively.

The majority of hate crimes in 2018 (59.6%) were committed as a result of race/ethnicity/ancestry bias.<sup>42</sup> Thereafter the main forms of hate crimes were those committed on the basis of religion (18.7%) and sexual orientation (16.7%).<sup>43</sup>

Among racially based hate crime incidents in 2018, 47.1% were victims of anti-Black bias, 20.1% were victims of anti-White bias, and 13% were victims of anti-Hispanic or Latino bias.<sup>44</sup> Hate crimes against Latinos, however, rose faster than other racial groups, causing some advocates to place the blame for the recent rise on anti-Hispanic rhetoric from the Trump administration.<sup>45</sup>

40. Levin, Brian, and Lisa Nakashima. *Report to the Nation: Illustrated Almanac*. Center for the Study of Hate and Extremism, 2019, [https://www.csusb.edu/sites/default/files/ALMANAC%20CSHE%20Nov.%202019\\_11.12.19\\_1130amPT\\_final.pdf](https://www.csusb.edu/sites/default/files/ALMANAC%20CSHE%20Nov.%202019_11.12.19_1130amPT_final.pdf).

41. Kaleem, Jaweed. "Latinos and Transgender People See Big Increases in Hate Crimes, FBI Reports." *Los Angeles Times*, 12 Nov. 2019, <https://www.latimes.com/world-nation/story/2019-11-12/hate-crimes-fbi-2018>.

42. Masucci, Madeline, and Lynn Langton. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

43. "About Hate Crime Statistics, 2018." *2018 Hate Crime Statistics*, Federal Bureau of Investigation, 2018, <https://ucr.fbi.gov/hate-crime/2018>.

44. "Victims." *2018 Hate Crime Statistics*, Federal Bureau of Investigation, 2018, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/victims>.

45. Hassan, Adeel. "Hate-Crime Violence Hits 16-Year High, F.B.I. Reports." *The New York Times*, 12 Nov. 2019, <https://www.nytimes.com/2019/11/12/us/hate-crimes-fbi-report.html>.

46. "Victims." *2018 Hate Crime Statistics*, Federal Bureau of Investigation, 2018, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/victims>.

47. Masucci, Madeline, and Lynn Langton. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

48. In the UCR Program, the term *known offender* does not imply that the suspect's identity is known; rather, the term indicates some aspect of the suspect was identified, thus distinguishing the suspect from an unknown offender. Law enforcement agencies specify the number of offenders and when possible, the race, ethnicity, and age of the offender or offenders as a group.

49. "Offenders." *2018 Hate Crime Statistics*, Federal Bureau of Investigation, 2018, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/offenders>.

50. Masucci, Madeline, and Lynn Langton. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, U.S. Department of Justice, June 2017, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

51. *Ibid.*

Of anti-religious hate crime victims, 56.9% were victims of anti-Jewish bias, 14.6% were victims of anti-Islamic bias, and 4.3% were victims of anti-Sikh bias. Of sexual orientation based hate-crimes, victims of anti-gay male bias made up the majority of victims at 59.7%, followed by a mix of anti-lesbian, transgender, and bisexual bias.

The Justice Department has reported that of individuals for which victim age data was reported in 2018, 89% were adults, while 11% were juveniles.<sup>46</sup> Based on National Crime Victimization Survey (NCVS) data from 2011 to 2015, the Justice Department has further reported that men and women had similar rates of hate crime victimization and that persons in households in the lowest income bracket (\$24,999 or less) had the highest rate of victimization when compared to all other income categories.<sup>47</sup>

## Offender Characteristics

The FBI's UCR data has also collected data on more than 6,000 hate-crime offenders as a way to assess the characteristics of perpetrators of hate-crime incidents.<sup>48</sup> Of these offenders, 53.6% were White, 24% were Black, 6.9% were groups made up of individuals of multiple races, and 12.9% were unknown.<sup>49</sup>

According to the National Crime Victimization Survey (NCVS) data, 43% of offenders were over the age of 30, 17% were between the ages of 18 and 29, and 15% were 17 and under.<sup>50</sup> This percentage may be underreported because bias incidents and hate crimes involving youth may be labeled as bullying.

The data further showed that hate crimes are more often committed by groups of people than other crimes. While 63% of hate crime offenders acted alone, according to NCVS data,<sup>51</sup> a higher percentage of violent hate crimes (30%) involved multiple offend-



ers than violent non-hate crimes (17%). Hate crimes are also more likely to be committed by a stranger, with only 44% of offenders known to their victims, compared to 55% for non-hate crimes.

In a 1993 study still widely used by law enforcement, sociologists Jack McDevitt and Jack Levin delineated 4 bias motivation categories of offenders most likely to commit hate crimes.<sup>52,53</sup> While these categories sometimes blur and overlap, they have been useful to better understand offender behavior. (It should be noted, however, that the motivation of the offender may not affect the degree of harm and trauma caused to the victim.)

According to McDevitt and Levin, two-thirds of hate crimes are committed by people they characterize as “thrill-seeking” offenders who are looking for psychological excitement or acceptance by their peers. These offenders are typically not associated with an organized hate group and over 90% do not know their victims.<sup>54</sup> Attacks often involve desecration and vandalism as well as violence against persons.<sup>55</sup>

In April 2020, for example, 4 teenage girls were arrested for hate crimes after they allegedly harassed an Asian woman on a New York City bus, calling her an expletive, accusing her of causing coronavirus, and hitting her on the head with an umbrella, requiring stitches for the wound.<sup>56</sup> In another instance, police in Madison Wisconsin launched a hate-crime investigation into an incident in which an 18-year-old black teenager was stopped in her car at a red light while a Black Lives Matter protest transpired nearby. Four white men approached her, sprayed lighter fluid into the car window, and set her on fire, she said, causing her to be treated at a local hospital for burns.<sup>57</sup>

“Defensive” motivations make up about one-fourth of hate crimes. These offenders typically perceive themselves as the protector of a valued tangible asset or intangible right, directing their attack at a specific victim who reflects the perceived intrusion, such as attacks on Latino Americans because of a perceived threat to jobs. “Retaliatory” attacks make up about 8% of hate crimes. These offenders typically hear about a crime committed by members of

a religious or racial group and take revenge by committing a hate crime against random members of that group, such as the crimes committed against Muslims after 9/11 or the 2015 San Bernardino terrorist attack.

“Mission” hate crimes make up about 1% of hate crimes. These offenders typically harbor an animus against other groups and view minority groups as a threat to American culture, economy, and purity of racial heritage, and consider it their career to plan and carry out attacks, with a high degree of premeditation and lethality. This is the least common and most deadly type of offender, but many high-profile hate crimes come under this category,<sup>58</sup> including the El Paso Wal-Mart Shooter.

In another high-profile example, James Fields, Jr. pleaded guilty in March 2019 to 29 hate crimes charges in connection to the murder of Heather Heyer, an anti-racism activist, during the Unite the Right Rally in Charlottesville, Virginia, in 2017. Before the attack, he posted inflammatory material on social media, including open support for the Nazi Holocaust on Jewish people, and called for violence against people of color.<sup>59</sup>

In addition to lone hate crime offenders, hate groups are also on the rise in the United States. The Southern Poverty Law Center has tracked a 30% increase in the number of active hate groups in the United States in just the past 2 years, from 784 in 2016 to 1020 in 2018. Propelled by a rise in extremism, the groups include white supremacists, neo-Nazis, and neo-Confederates.<sup>60</sup>

## Relationship Between Hate Crimes & Hate Speech

In part, the current spike in hate crime incidents can be attributed to a rise in public hate speech, which normalizes animus against groups of people and creates a permissive context in which offenders feel freer to express their hatred through violent acts. This surge in hate speech has been led by President Trump, who often uses hate speech in his public events and social media posts on Twitter. In the past few years, he has made verbal attacks against Mexicans, Muslims, Jewish people, African Americans, and Native Americans.

52. Pezzella, Frank S. *Hate Crime Statutes: A Public Policy and Law Enforcement Dilemma*. Springer, 2017.

53. Levin, Jack, and Jack McDevitt. “Hate Crimes.” *The Encyclopedia of Peace, Violence, and Conflict*, 2008, <https://jacklevinsonviolence.com/articles/HateCrimesencyc92206FINAL.pdf>.

54. Shanmugasundaram, Swathi. “Hate Crimes, Explained.” *Southern Poverty Law Center*, 15 Apr. 2018, <https://www.splcenter.org/20180415/hate-crimes-explained>.

55. “Bias Crime Offenders.” *Responding to Hate Crimes: A Multidisciplinary Curriculum*, National Center for Hate Crime Prevention, [https://www.ncjrs.gov/ovc\\_archives/reports/responding/files/sessionC.pdf](https://www.ncjrs.gov/ovc_archives/reports/responding/files/sessionC.pdf).

56. Andrew, Scottie, and Taylor Romine. “Teens Charged With Hate Crimes for Attacking a Woman On a Bus and Saying She Caused Coronavirus, NYPD Says.” *CNN*, 6 Apr. 2020, <https://www.cnn.com/2020/04/06/us/teens-attack-woman-caused-coronavirus-trnd/index.html>.

57. “Hate Crime Probe Underway After Black Woman Says She Was Burned By Lighter Fluid and Flame Thrown By White Man.” *CBS News*, 26 June 2020, <https://www.cbsnews.com/news/althea-bernstein-hate-crime-accusation-lighter-fluid-flame/>.

58. “Hate Crimes Case Examples.” *U.S. Department of Justice*, 2020, <https://www.justice.gov/hatecrimes/hate-crimes-case-examples>.

59. Zraick, Karen, and Julia Jacobs. “Charlottesville Attacker Pleads Guilty to Federal Hate Crime Charges.” 27 Mar. 2019, <https://www.nytimes.com/2019/03/27/us/james-alex-fields-charlottesville.html>.

60. Woodyard, Chris. “Hate Group Count Hits 20-Year High Amid Rise in White Supremacy, Report Says.” *USA Today*, 20 Feb. 2019, <https://www.usatoday.com/story/news/nation/2019/02/20/hate-groups-white-power-supremacists-southern-poverty-law-center/2918416002/>.

He called for a ban on all Muslims entering the United States, claiming that Muslims inherently have a “hatred” for Americans and he has repeatedly falsely claimed that thousands of Muslims celebrated in New Jersey on 9/11.<sup>61</sup> He demanded that U.S. District Judge Gonzalo Curiel, born in Indiana to Mexican immigrant parents, recuse himself from hearing a case involving Trump University because of the “conflict of interest” inherent in Judge Curiel’s “Mexican heritage.”<sup>62</sup> He retweeted anti-Semitic and anti-Muslim messages.<sup>63</sup> In a 2019 speech, he used anti-Semitic stereotypes to characterize Jews as driven by money and insufficiently loyal to Israel.<sup>64</sup> He refers to Massachusetts Senator Elizabeth Warren as “Pocahontas,” in reference to contested claims of Senator Warren’s Native American lineage.<sup>65</sup> During Black Lives Matter protests in the wake of George Floyd’s death, he was widely criticized for tweeting, “When the looting starts, the shooting starts,” a quote by a white police chief during the Civil Rights era who advocated violence against African Americans.<sup>66</sup>

Within the Trump administration, other high-level officials have used hate speech. In the run-up to the 2016 election, White House senior policy adviser Stephen Miller promoted white nationalist literature, pushed racist immigration stories showing a supposed link between immigrants and rising crime – a claim that has been debunked – and obsessed over the loss of Confederate symbols in leaked emails to the conservative website Breitbart News.<sup>67</sup> Trump’s Health and Human Services Secretary Michael Caputo made racist and derogatory comments about Chinese people. In a series of tweets on March 12, 2020, Caputo responded to a baseless conspiracy theory that the United States brought

## Research indicates that there appears to be a relationship between hate speech and hate crimes.

the coronavirus to Wuhan, China, by tweeting that “millions of Chinese suck the blood out of rabid bats as an appetizer and eat the ass out of anteaters.”<sup>68</sup>

Other public officials have also made public hateful statements. Congressman Steve King (R-IA) was stripped of his committee assignments in 2019 after he questioned why white supremacy was bad: “White nationalist, white supremacist, Western civilization — how did that language become offensive? Why did I sit in classes teaching me about the merits of our history and our civilization?” he said.<sup>69</sup> In 2018, Congressman King said that he does not want Somali Muslims working in meatpacking plants in Iowa: “I don’t want people doing my pork that won’t eat it, let alone hope I go to hell for eating pork chops.”<sup>70</sup> In June 2020, he lost his Congressional primary, widely interpreted as a condemnation of such remarks.<sup>71</sup>

Eric Porterfield, a West Virginian Republican lawmaker used a homophobic slur and later defended himself by saying that the LGBTQ community is “a modern-day version of the Ku Klux Klan, without wearing hoods, with their antics of hate” and that he was being “persecuted” by the community, which he referred to as a “terrorist group.”<sup>72</sup>

61. Healy, Patrick, and Michael Barbaro. “Donald Trump Calls for Barring Muslims From Entering U.S.” *The New York Times*, 7 Dec. 2015, <https://www.nytimes.com/politics/first-draft/2015/12/07/donald-trump-calls-for-banning-muslims-from-entering-u-s/>.

62. Kendall, Brent. “Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict.’” *The Wall Street Journal*, 3 June 2016, <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

63. Wildman, Sarah, and Jen Kirby. “Trump Retweeted Anti-Muslim Propaganda Videos From A British Hate Group.” *Vox*, 30 Nov. 2017, <https://www.vox.com/policy-and-politics/2017/11/29/16714788/trump-retweet-britain-first-islamophobia>.

64. Levin, Bess. “Trump Goes Full Anti-Semite In Room Full Of Jewish People.” *Vanity Fair*, 9 Dec. 2019, <https://www.vanityfair.com/news/2019/12/donald-trump-anti-semitic-remarks>.

65. Hirschfeld Davis, Julie. “Trump Mocks Warren as ‘Pocahontas’ at Navajo Veterans’ Event.” *The New York Times*, 27 Nov. 2017, <https://www.nytimes.com/2017/11/27/us/politics/trump-elizabeth-warren-pocahontas-navajo.html>.

66. Sprunt, Barbara. “The History Behind ‘When The Looting Starts, The Shooting Starts.’” *NPR*, 29 May 2020, <https://www.npr.org/2020/05/29/864818368/the-history-behind-when-the-looting-starts-the-shooting-starts>.

67. Edison Hayden, Michael. “Stephen Miller’s Affinity for White Nationalism Revealed in Leaked Emails.” *Southern Poverty Law Center*, 12 Nov. 2019, <https://www.splcenter.org/hatewatch/2019/11/12/stephen-millers-affinity-white-nationalism-revealed-leaked-emails>.

68. Kaczynski, Andrew, et al. “New HHS Spokesman Made Racist Comments About Chinese People in Now-Deleted Tweets.” *CNN*, 23 Apr. 2020, <https://www.cnn.com/2020/04/23/politics/michael-caputo-tweets/index.html>.

69. Gabriel, Trip, et al. “Steve King Removed From Committee Assignments Over White Supremacy Remark.” *The New York Times*, 14 Jan. 2019, <https://www.nytimes.com/2019/01/14/us/politics/steve-king-white-supremacy.html>.

70. Cheney, Kyle. “Steve King Singles Out Somali Muslims Over Pork.” *Politico*, 22 June 2018, <https://www.politico.com/story/2018/06/22/steve-king-muslims-pork-664949>.

71. Gabriel, Trip. “Steve King, House Republican With a History of Racist Remarks, Loses Primary.” *The New York Times*, 3 June 2020, <https://www.nytimes.com/2020/06/03/us/politics/steve-king-iowa-primary.html>.

72. Lam, Kristin. “West Virginia Lawmaker Called to Resign After Comparing LGBTQ People to the Ku Klux Klan.” *USA Today*, 13 Feb. 2019, <https://www.usatoday.com/story/news/2019/02/13/eric-porterfield-west-virginia-lawmaker-slammed-anti-gay-remarks/2865439002/>.

Research indicates that there appears to be a relationship between hate speech and hate crimes. A 2018 study by law professors at the University of Alabama and Loyola University found that the current political environment is associated with a statistically significant surge in reported hate crimes across the United States, even when controlling for alternative explanations.<sup>73</sup> FBI data show that since President Trump's election there has been an anomalous spike in hate crimes concentrated in counties where Trump won by larger margins. It was the second-largest uptick in hate crimes in the 25 years for which data are available, second only to the spike after September 11, 2001.<sup>74</sup> A study conducted by the Washington Post, based on data collected by the Anti-Defamation League, shows that counties that hosted a Trump campaign rally in 2016 saw hate crime rates more than double compared to counties that did not host a rally.<sup>75</sup>

Since the 2016 election, there has been an increase in the number of incidences of bias-motivated bullying in schools. In a survey of nearly 5,000 12 to 17 year-olds, in 2019, over half (52.3%) of students said they had been bullied at school in the past 30 days, compared to 38.6% in 2016 (a 35% increase).<sup>76</sup> And these actions are being committed by children as young as 6 years old. In Tennessee, a group of middle-schoolers linked arms, imitating the president's proposed border wall as they refused to let nonwhite students pass.<sup>77</sup> In Utah, 2 kindergartners told a classmate that President Trump would send him back to Mexico.<sup>78</sup>

Nationally, an average of nearly 2 incidents per school week have been publicly reported over the past 4 years.<sup>79</sup> A 2016 online survey by the Southern Poverty Law Center that included over 10,000 K-12 educators found that more than 2,500 "described specific incidents of bigotry and harassment that can be directly

traced to election rhetoric." In 476 cases, offenders used the phrase "build the wall." In 672, they mentioned deportation.<sup>80</sup>

The act of being exposed to hateful or violent speech normalizes hate towards certain groups and may create a permissive environment where some feel empowered to commit actions motivated by prejudice. A 2019 NYU study found that cities with a higher incidence of a certain kind of racist tweets reported more actual hate crimes related to race, ethnicity, and national origin.<sup>81</sup> The research team analyzed the location and linguistic features of 532 million tweets published between 2011 and 2016. They trained a machine learning model to identify and analyze 2 types of tweets: those that directly espouse discriminatory views and those that describe or comment upon discriminatory remarks or acts. The team compared the prevalence of each type of discriminatory tweet to the number of actual hate crimes reported during that same period in those same cities.

### Anti-Asian Racism Related to COVID-19

There has been a surge in hate crimes against Asian Americans in response to the coronavirus. Reports of microaggressions in public, discrimination by business establishments, workplace discrimination and harassment, and threats of and actual acts of violence towards Asian Americans and Pacific Islanders have been on the rise in the U.S under the false assumption that they are to blame for the coronavirus. The FBI had warned of this potential surge in hate crimes against Asian Americans.<sup>82</sup>

High-profile attacks include in California, a 16-year-old Asian American boy was physically assaulted by his classmates who accused him of having the coronavirus and was left hospitalized.<sup>83</sup>

73. Sims Edwards, Griffin, and Stephen Rushin. "The Effect of President Trump's Election on Hate Crimes." *SSRN*, 14 Jan. 2018, <http://dx.doi.org/10.2139/ssrn.3102652>.

74. *Ibid.*

75. Feinberg, Ayal, et al. "Counties That Hosted a 2016 Trump Rally Saw A 226 Percent Increase in Hate Crimes." *The Washington Post*, 22 Mar. 2019, <https://www.washingtonpost.com/politics/2019/03/22/trumps-rhetoric-does-ignite-more-hate-crimes/>.

76. Patchin, Justin W. "School Bullying Rates Increase by 35% from 2016 to 2019." *Cyberbullying Research Center*, 29 May 2019, <https://cyberbullying.org/school-bullying-rates-increase-by-35-from-2016-to-2019>.

77. Ferrell Knisely, Amelia. "Racist incidents are occurring in Williamson schools. Is the district doing enough?" *The Tennessean*, 8 Mar. 2019, <https://www.tennessean.com/story/news/local/williamson/schools/2019/03/08/williamson-county-schools-racist-incidents-slavery-home-work/3067113002/>.

78. Cortez, Marjorie. "Trump Presidency Worrisome to Immigrants, Refugees." *Deseret News*, 9 Nov. 2016, <https://www.deseret.com/2016/11/9/20600141/trump-presidency-worrisome-to-immigrants-refugees>.

79. *Ibid.*

80. *After Election Day The Trump Effect: The Impact of the 2016 Presidential Election on Our Nation's Schools*. Southern Poverty Law Center, 2016, <https://www.tolerance.org/sites/default/files/2017-06/After%20the%20Election%20Trump%20Effect%20Report.pdf>.

81. "Hate Speech on Twitter Predicts Frequency of Real-life Hate Crimes." *New York University*, 24 June 2019, <https://www.nyu.edu/about/news-publications/news/2019/june/hate-speech-on-twitter-predicts-frequency-of-real-life-hate-crim.html>.

82. Margolin, Josh. "FBI Warns Of Potential Surge In Hate Crimes Against Asian Americans Amid Coronavirus." *ABC News*, 27 Mar. 2020, <https://abcnews.go.com/US/fbi-warns-potential-surge-hate-crimes-asian-americans/story?id=69831920>.

83. Capatides, Christina. "Bullies Attack Asian American Teen At School, Accusing Him of Having Coronavirus." *CBS News*, 14 Feb. 2020, <https://www.cbsnews.com/news/coronavirus-bullies-attack-asian-teen-los-angeles-accusing-him-of-having-coronavirus/>.

And in Texas, a man targeted and stabbed a Burmese American man and his 2 children, ages 2 and 6, at a Sam's Club. He said he had attempted to kill the family because he believed they were "Chinese and infecting people with the coronavirus."<sup>84</sup>

Researchers at the Network Contagion Research Institute has found that the coronavirus pandemic has coincided with a surge in anti-Chinese sentiments, especially online.<sup>85</sup> And this alarming spike in verbal and physical assaults on people of Asian descent in the United States has occurred during the time in which President Trump has repeatedly used inflammatory language about China. President Trump's use of the terms "China virus," "Wuhan virus," and "kung flu" has reinforced xenophobia and intolerance against Asian people.<sup>86</sup> President Trump has specifically violated the World Health Organization's guidelines to avoid naming illnesses after locations to minimize stigma and blame toward a specific region or ethnic group for the emergence of an illness.<sup>87</sup> Additionally, the President has not directed a governmental response towards protecting people of Asian descent. While the Department of Justice and Centers for Disease Control and Prevention worked to stop bias incidents and hate crimes following the SARS outbreak and the 9/11 terrorist attacks, neither the DOJ nor the CDC have announced efforts to prevent the public targeting of Asians during the coronavirus crisis.<sup>88</sup>

The sudden emergence of racist and violent attacks towards people of Asian descent is reminiscent of the discrimination and harassment faced by American Muslims, Arabs, and South Asians in the U.S. after 9/11 and the scapegoating of Japanese Americans after Pearl Harbor. Blaming certain groups for the emergence of a public health crisis leads to an influx of hate crimes and normalization of discrimination.

## Federal Hate Crime Laws

Federal hate crimes laws cover certain crimes committed on the basis of race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. Intended to criminalize the threat of force or the use of force to intimidate people from practicing their constitutional and federally protected rights.

84. "FBI calling stabbing at Midland Sam's a hate crime." CBS7, 30 Mar. 2020, <https://www.cbs7.com/content/news/FBI-calling-stabbing-at-Midland-Sams-a-hate-crime-569233691.html>.

85. Zannettou, Savvas, et al. *Weaponized Information Outbreak: A Case Study on COVID-19, Bioweapon Myths, and the Asian Conspiracy Meme*. Network Contagion Research Institute, 13 Apr. 2020, <https://ncri.io/wp-content/uploads/NCRI-White-Paper-COVID-19-13-Apr-2020.pdf>.

86. Chiu, Allyson. "Trump Has No Qualms About Calling Coronavirus the 'Chinese Virus.' That's a Dangerous Attitude, Experts Say." *The Washington Post*, 20 Mar. 2020, <https://www.washingtonpost.com/nation/2020/03/20/coronavirus-trump-chinese-virus/>.

87. Vang, Seashia. "Trump Adds to Asian-Americans' Fears." *Human Rights Watch*, 1 Apr. 2020, <https://www.hrw.org/news/2020/04/01/trump-adds-asian-americans-fears>.

88. Fernández Campbell, Alexia, and Alex Ellerbeck. "Federal Agencies Are Doing Little About the Rise in Anti-Asian Hate." *NBC News*, 16 Apr. 2020, <https://www.nbcnews.com/news/asian-america/federal-agencies-are-doing-little-about-rise-anti-asian-hate-n1184766>.

89. "Hate Crime Laws." *U.S. Department of Justice*, 7 Mar. 2019, <https://www.justice.gov/crt/hate-crime-laws>.

90. United States, Congress, House. United States Code Title 18, section 245, *Legal Information Institute*, Cornell University Law School, <https://www.law.cornell.edu/uscode/text/18/245>.

91. McLaughlin, Elliott C. "There Are Two Names On The Federal Hate Crimes Law. One Is Matthew Shepard. The Other Is James Byrd Jr." *CNN*, 25 Apr. 2019, <https://www.cnn.com/2019/04/24/us/james-byrd-hate-crime-legislation-john-king-execution/index.html>.

92. "Hate Crime Statistics 2010." *U.S. Department of Justice*, Nov. 2011, <https://ucr.fbi.gov/hate-crime/2010/resources/hate-crime-2010-about-hate-crime>.

There are 5 federal hate crime laws: The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009; Criminal Interference with Right to Fair Housing; Damage to Religious Property, Church Arson Prevention Act; Violent Interference with Federally Protected Rights; and Conspiracy Against Rights.<sup>89</sup>

These laws were passed in line with authority from Title I of the Civil Rights Act of 1968, which permits federal prosecution of anyone who "willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with ... any person because of his race, color, religion or national origin" or because of the victim's attempt to engage in one of the 6 types of federally protected activities, such as attending school, patronizing a public place/facility, applying for employment, acting as a juror in a state court or voting.<sup>90</sup>

Federal hate crimes have also been implemented in response to horrific bias-motivated crimes. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act is named after Matthew Shepard, who was tortured and murdered in 1998 in Wyoming for being gay, and James Byrd, an African American man who was violently murdered by white supremacists in 1998 in Texas.<sup>91</sup> The murders and subsequent trials brought national and international attention to the desire to amend U.S. hate crime legislation at both the state and federal levels, including the urgency of making sexual orientation and gender identity protected classes.

**The Hate Crime Statistics Act of 1990** authorized the FBI Uniform Crime Reporting Program to collect and analyze data from federal and state voluntarily participating police agencies to access the nature and scope of hate crimes. It also 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, sexual orientation, or ethnicity.<sup>92</sup>

**The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009** is the first statute allowing federal criminal prosecution of hate crimes motivated by the victim's actual or perceived sexual orientation or gender identity. The Act makes it a federal crime to willfully cause bodily injury, or attempt to do

so using a dangerous weapon, because of the victim's actual or perceived race, color, religion, or national origin.<sup>93</sup>

**The Criminal Interference with Right to Fair Housing** makes it a crime to use or threaten to use force to interfere with housing rights because of the victim's race, color, religion, sex, disability, familial status, or national origin.<sup>94</sup>

**The Damage to Religious Property, Church Arson Prevention Act** prohibits the intentional defacement, damage, or destruction of religious property because of the religious nature of the property, where the crime affects interstate or foreign commerce, or because of the race, color, or ethnic characteristics of the people associated with the property. The statute also criminalizes the intentional obstruction by force or threat of force of any person in the enjoyment of that person's free exercise of religious beliefs.<sup>95</sup>

**The Violent Interference with Federally Protected Rights** makes it a crime to use or threaten to use force to willfully interfere with a person's participation in a federally protected activity because of race, color, religion, or national origin.<sup>96</sup>

**Conspiracy Against Rights** makes it unlawful for 2 or more persons to conspire to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to the individual by the U.S. Constitution or the laws of the U.S.<sup>97</sup>

While there are federal laws that classify actions as hate crimes and mandate data collection on the occurrence of hate crimes, there is evidence that there are gaps in the federal reporting on hate crimes. There is a wide disparity, for example, between the number of hate crimes reported by the FBI versus the Department of Justice's Bureau of Justice Statistics. Even considering that only about half of hate crime victims report the crime to police, this

does not explain the vast discrepancy between the hate crimes that the FBI reports each year in its "Hate Crime Statistics" report and the 250,000 estimated by the Bureau of Justice Statistics.<sup>98</sup>

Despite the 1988 *Uniform Federal Crime Reporting Act*, which requires federal agencies to submit crime data to the FBI, many do not. ProPublica reported in June 2017 that more than 120 federal agencies are not submitting the information to the FBI.<sup>99</sup> For example, the Defense Department's inspector general concluded in 2014: "DoD [Department of Defense] is not reporting criminal incident data to the Federal Bureau of Investigation (FBI) for inclusion in the annual Uniform Crime Reports to the President, the Congress, State governments, and officials of localities and institutions participating in the Uniform Crime Report program, as required by Federal law."<sup>100</sup> Moreover, the FBI itself does not include offenses it handles or those handled by other federal law enforcement agencies.<sup>101</sup>

The federal government needs to ensure that all law enforcement and federal agencies are abiding by its current reporting rules and encourage local, state, and federal law enforcement entities to report hate crime data.

## State Hate Crime Laws

Federal hate crimes data is flawed and incomplete, due in part to the Department of Justice's reliance on voluntary reporting from state and local law enforcement to fulfill its obligation to report national hate crimes data.<sup>102</sup>

Most states and U.S. territories have hate crime statutes that are enforced by state and local law enforcement in state and local courts. But hate crime laws in states and territories vary widely across jurisdictions, resulting in unequal protection from similar crimes in different jurisdictions. The federal government and 46

93. "Hate Crime Laws." *U.S. Department of Justice*, 7 Mar. 2019, <https://www.justice.gov/crt/hate-crime-laws>.

94. "Criminal Interference With Fair Housing Rights." *U.S. Department of Justice*, 7 Dec. 2015, <https://www.justice.gov/crt/criminal-interference-fair-housing-rights>.

95. "Damage to Religious Property." *U.S. Department of Justice*, 6 Aug. 2015, <https://www.justice.gov/crt/damage-religious-property>.

96. United States, Congress, House. United States Code Title 18, section 245, *Legal Information Institute*, Cornell University Law School, <https://www.law.cornell.edu/uscode/text/18/245>.

97. *Ibid.*

98. Shanmugasundaram, Swathi. "Hate Crimes, Explained." *Southern Poverty Law Center*, 15 Apr. 2018, <https://www.splcenter.org/20180415/hate-crimes-explained>.

99. Thompson, A.C. and Ken Schwencke, "More Than 100 Federal Agencies Fail to Report Hate Crimes to the FBI's National Database." *ProPublica*, 22 June 2017, <https://www.propublica.org/article/more-100-federal-agencies-fail-report-hate-crimes-fbi-national-database>.

100. "Evaluation of the Defense Criminal Investigative Organizations' Defense Incident-Based Reporting System Reporting and Reporting Accuracy." *U.S. Department of Defense Office of Inspector General*, 29 Oct. 2014, <https://www.dodig.mil/reports.html/Article/1119078/evaluation-of-the-defense-criminal-investigative-organizations-defense-incident/>.

101. Shanmugasundaram, Swathi. "Hate Crimes, Explained." *Southern Poverty Law Center*, 15 Apr. 2018, <https://www.splcenter.org/20180415/hate-crimes-explained>.

102. "State Hate Crimes Statutes." *Brennan Center for Justice*, <https://www.brennancenter.org/our-work/analysis-opinion/state-hate-crimes-statutes>.

states – all but Arkansas, Georgia, South Carolina, and Wyoming – have enacted hate crime laws that enhance penalties for an underlying crime.<sup>103</sup> These laws differ in significant ways. All cover bias based on race, ethnicity, or religion, but many do not include gender, disability, sexual orientation, or gender identity.

There are 3 aspects where hate crime laws vary between jurisdictions: bias motivations, penalty enhancements, and data collection.

First, different jurisdictions define hate crimes to include different bias motivations. Second, laws in some jurisdictions increase the sentence for crimes motivated by identified factors. At least 46 states and the District of Columbia have statutes with higher penalties for bias-motivated crimes. Third, some jurisdictions require collecting data on hate crimes. Data collection is important because data provides better transparency into crimes that are occurring and can help states allocate support and resources to communities in greatest need.

In addition, many law enforcement agencies do not properly identify hate crimes in the first place. Only 12 states have laws requiring that officers be trained to identify and investigate hate crimes.<sup>104</sup> Numerous police departments have misconceptions about handling hate crimes. According to ProPublica, several agencies believe it is up to prosecutors to deem an incident a hate crime.<sup>105</sup>

Thirty states have hate crimes laws and require data collection on hate crimes. However, 8 states and territories do not have any hate crimes laws or require data collection on hate crimes: American Samoa, Arkansas, Georgia, Guam, Northern Mariana Islands, South Carolina, U.S. Virgin Islands, and Wyoming. And 18 states and territories have hate crimes laws but do not require data collection: Alabama, Alaska, Colorado, Delaware, Kansas, Mississippi, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Puerto Rico, South Dakota, Tennessee, Vermont, West Virginia, and Wisconsin.<sup>106</sup>

This discrepancy between states on hate crime statutes can interfere in holding offenders accountable for their bias-motivated actions. For example, Dylann Roof murdered 9 African American worshippers at the Emanuel AME Church in Charleston, South Carolina. While his social media postings and personal website included hateful diatribes against people of African, Jewish, and Hispanic descent, the prosecutors in South Carolina could not add hate crime charges because the state does not have a state hate crime statute.<sup>107</sup> It is important for states to have their own hate

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crime statutes because it is rare for federal law enforcement to get involved in hate crime cases since most cases fall under state law. Federal law enforcement gets involved only if the state's penalties do not adequately address the crime committed.<sup>108</sup>

State hate crimes statutes can have a deterrent effect. Stronger punishments could make people think twice before acting on any racist or other hateful attitudes if they knew that there would be penalty enhancements for bias-motivated crimes. While it is difficult to determine the actual deterrence effect, if a city or state passes a strong hate crime law, it demonstrates that these types of crimes are taken seriously. In addition, stronger hate crime statutes may cause people to be more willing to report hate crimes. It is important for victims of hate crimes to know that society recognizes the unique injurious consequences of hate crimes beyond the crime itself.

States are generally responsible for charging and prosecuting hate crimes, and it is important that states have statutes that recognize the unique harm of hate crimes. Since there are wide disparities in the protections provided by the various state hate crimes laws and disparities between whether hate crime data is collected, this can cause unequal protection from similar violent crimes in different jurisdictions and obscure efforts to collect and maintain accurate national data regarding these attacks. Even if a state or territory does not have a hate crimes law, hate crimes can still be reported to the Federal Bureau of Investigation (FBI), but this is entirely reliant on voluntary reporting.

Knowing the nature and magnitude of the hate crime problem is fundamental for resource allocation and crime deterrence. More important, targeted communities are much more likely to report crime and cooperate in investigations if they believe law enforcement authorities are ready and able to respond to hate violence.<sup>109</sup> For this reason, all states should have hate crime statutes that cover gender, disability, sexual orientation, and gender identity in addition to race, ethnicity, and religion and data collection laws to ensure that offenders are being held accountable for their crimes against the victims and their communities.

103. Shanmugasundaram, Swathi. "Hate Crimes, Explained." *Southern Poverty Law Center*, 15 Apr. 2018, <https://www.splcenter.org/20180415/hate-crimes-explained>.

104. Schwencke, Ken. "Why America Fails at Gathering Hate Crime Statistics." *ProPublica*, 4 Dec. 2017, <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics>.

105. Ibid.

106. "Laws and Policies." *U.S. Department of Justice*, <https://www.justice.gov/hatecrimes/laws-and-policies>

107. Doubek, James. "How Well Do Hate Crime Laws Really Work?" *NPR*, 28 June 2015, <https://www.npr.org/sections/itsallpolitics/2015/06/28/417231920/how-well-do-hate-crime-laws-really-work>.

108. Ibid.

109. "ADL Hate Crime Map." *Anti-Defamation League*, <https://www.adl.org/adl-hate-crime-map>.

## Policy Recommendations

### How to Reimagine Rights and Responsibilities:

- **Strengthen Enforcement of Hate Crime Laws.** Increase the capacity and funding of Department of Justice enforcement of federal hate crime statutes covering race, ethnicity, religion, gender, LGBTQ, and disability hate crimes; strengthen the mandate of federal law enforcement agencies to investigate and prosecute hate crimes; enact state hate crime statutes to cover all targeted categories.
- **Increase Hate Crime Data Collection.** Centralize hate crime data from federal, state, and local law enforcement agencies in the Department of Justice, train state and local law enforcement agencies to collect and report comprehensive hate crime data to the FBI, and require every state to collect and report hate crime data.
- **Provide Federal Resources for Reporting and Deterring Hate Crimes.** Increase funding for programs to encourage victims to report hate crimes to local law enforcement; provide federal support for programs to strengthen law enforcement trust and relationships with communities of color and immigrant communities; provide federal funding for states to establish hotlines for reporting hate crimes, training on data collection and reporting and coordination among law enforcement agencies; and provide funding to support nongovernmental citizen mobilization programs to address and deter hate crimes.

## **Reimagining Rights & Responsibilities in the United States**

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