

HATE CRIMES AND HOUSING RIGHTS IN INDIANA

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A “**hate crime**” is a criminal act against a person or property in which the perpetrator chooses the victim because of the victim’s real or perceived race, color, religion, national origin or ethnicity, disability, sexual orientation, gender identity, or gender. **For a hate crime to have been committed, there must be damage to property or harm to an individual.** *Thought based speech would not qualify as a hate crime.* Hate crimes are also referred to as bias-motivated violence, crimes, or actions. As explained by the Anti-Defamation League, what makes hate crimes different from other criminal acts is whenever a bias-motivated crime is committed, often, the victim’s *entire* community is left feeling victimized, vulnerable, fearful, isolated, and unprotected by the law. Such crimes can also lead to reprisals and a dangerous spiral of escalating inter-group tension and violence. Thus, the impact of this type of bias-motivated crime is far greater than the already terrible impact on the individual.

The Anti-Defamation League estimates that a hate crime occurs every hour of every day.¹ However, it’s estimated that only 40% of hate crime victims report these crimes to the police.² For 2009, the most recent year for which data is available, *the FBI reported that there were 55 hate crimes reported in Indiana.*³ The most common reason for not reporting these crimes was the victims’ belief that “the police could not or would not help.”⁴

In 2009, President Obama signed into law the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA). The HCPA gives the U.S. Department of Justice (DOJ) the power to investigate and prosecute bias-motivated violence by providing DOJ with jurisdiction over crimes of violence where a perpetrator has selected a victim because of the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability. In addition, it provides DOJ with the ability to aid state and local jurisdictions with investigations and prosecutions of bias-motivated crimes of violence. The HCPA also allows the federal government to investigate and prosecute hate crimes when the local jurisdiction doesn’t have laws that protect its residents from bias-motivated crime, thereby allowing for greater reporting of attacks and helping victims enforce their rights.

Although federal action is imperative, state laws are also needed to meet gaps in coverage, and ensure focus on state,

local, and community based needs. Many states have enacted some form of hate crime or bias-motivated sentence-enhancement factors in attempts to curtail such crimes. The U.S. Supreme Court ruled such laws constitutional in the landmark case *Wisconsin v. Mitchell* in 1993. In some instances, state statutes give broader protection to impacted groups, than others. Most of these state laws also have mandatory reporting requirements to federal agencies for tracking and notification of believed hate crimes. As of July 2016, 45 states and the District of Columbia have passed state hate crimes laws referencing most, if not all, of the groups noted previously, but gaps remain: only 30 states and the District include sexual orientation in their law; only 30 states and the District include disability; only 26 states and the District include gender; and only 12 states and the District include gender identity.

Federal and state hate crime laws impose tougher penalties on criminals who target their victims because of the victim’s race, religion, ethnicity, sexual orientation, gender, gender identity, or disability. So, if a criminal assaults a person because that person is Jewish, the crime would likely be a hate crime. State hate crime statutes are typically “penalty enhancement” statutes, which means that they increase the penalty for an offense if the victim or target is intentionally selected for violence because of his/her personal characteristics. These enhancements may have pre-set punishments for an offense or may leave to a judge’s discretion.

However, **Indiana** remains one of only five states that has no state law regarding hate or bias-motivated crimes. The others states without such laws are Arkansas, Georgia, South Carolina, and Wyoming. According to the Southern Poverty Law Center, Indiana has 26 active hate groups operating within its borders.⁵ These include white supremacist organizations and several Neo-Nazi groups. Although bias crimes bills have been introduced into the Indiana Legislature over several legislative sessions, none of these bills have ever become state law. Unfortunately, Indiana data is significantly underreported. A recent news story noted that “More than half of Indiana law enforcement agencies do not submit hate crime data to the FBI...”⁶

The most common criticism of hate crimes legislation is that it is equivalent to a “thought crime.” *This is untrue.* Hate crime laws *only apply* to crimes that are currently unlawful. They *do not* make thought or speech illegal. The U.S. Su-

preme Court unanimously upheld hate crime legislation because it protected citizens' Constitutional right to free speech. A similar argument is that it would make religious speech that is critical of homosexuality illegal. This is also untrue because religious freedom is also a Constitutional right. Hate crime laws *only* concern those acts – assault, vandalism, and so on – that are already unlawful.

Wade Henderson, president of the Leadership Conference on Civil and Human Rights, wrote, "We recognize we cannot outlaw hate. However, laws shape attitudes. And attitudes influence behavior."⁷ The Anti-Defamation League explains that hate crimes affect more than just the victim; they create a sense of vulnerability and fear within the entire group that has been targeted.⁸ For example, a car was set on fire in front of the home of an African-American family and the garage door was vandalized with racist slurs. In this scenario, the targets are not only the families whose homes have been vandalized, but the greater African-American community. The perpetrator seeks to make the entire community feel threatened and unwelcome through these targeted crimes. This leads to segregation and alienation on the basis of race (or other targeted group), in direct violation of the federal Fair Housing Act and other civil rights laws. If we seek to create a diverse and inclusive society, we must acknowledge and prosecute the worst of discrimination first.

Federal and Indiana fair housing laws include protection for persons in housing related situations noting, "It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this part." However, this only applies to housing and where a perpetrator may be identified. The Civil Rights Act of 1964 is famous for outlawing discrimination on the basis of race, color, religion, or national origin. In its provisions, it allows for federal prosecution of a person who "willingly injures, intimidates or interferes with another person, or attempts to do so, by force because of the other person's race, color, religion or national origin." This is seen as the first example of hate crime legislation. In the decades since its passage, state and federal hate crime laws have grown

stronger in response to violence against women, African-Americans, Muslims and Jewish people, Latinos, and members of the LGBTQ community.

Unfortunately, hate crimes are occurring in Indiana.

In 2014, a group of teenagers burned a cross on the lawn of an African-American family in Greenwood, IN. Without a hate crime law, the Johnson County Prosecutor told the *Indianapolis Star*, "we're stuck with criminal mischief or misdemeanor intimidation. I don't think that does justice."⁹ In 2015, a Muslim woman in Bloomington, IN was sitting at a restaurant table with her 9-year-old daughter when a man emerged from a nearby alley shouting "white power," anti-black racial slurs, and "kill the police." The man grabbed the woman by the neck and forced her head forward, restricting her breathing as he tried to remove her headscarf, police say.¹⁰ In 2016, a man spotted a Chinese exchange student in Nashville, IN and began yelling, "I am going to kill you." The student then felt a sharp object pierce her back. The man was slashing her with a hatchet, creating lacerations that would have been fatal were it not for the thick coat she was wearing. The man admitted to police that he was a white supremacist and that he targeted the student because of her race.¹¹ Several other recent incidents have also occurred including vandalism at the Islamic Society of North America in Plainfield, IN and the beating and murder of a gay man in South Bend, IN. These crimes and their community impact show the need for a hate crime law in Indiana.

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