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 5,516 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-
The mission of the Fair Housing Center of Central Indiana (FHCCI) is to ensure equal housing opportunities by eliminating housing discrimination through advocacy, enforcement, education and outreach. The FHCCI is located at 445 N. Pennsylvania St., Suite 610, Indianapolis, IN 46204. Phone: 317-644-0673 or 855-270-7280. Relay: 711. Email: info@fhcci.org Web: www.fhcci.org

The work that provided the basis for this publication was supported by funding under a grant/cooperative agreement with the U.S. Department of Housing & Urban Development. The substance and findings of this work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in the publication. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney. Alternative formats for those with disabilities available upon request. © Fair Housing Center of Central Indiana 2016. Do not use without the express permission of FHCCI. Version 09/2016. P023.