

UNDERSTANDING HATE CRIMES

This Fact Sheet outlines what a hate crime is; who is most commonly targeted for hate crimes in America; why prohibiting hate crimes is important; and the distinction between punishing hate *crimes* and punishing hate *speech* or hateful thoughts.

What is a hate crime? A hate crime has two elements: a **crime** (that is, a violation of criminal law) and a **specific intention**. That intention is defined under U.S. federal law as intentionally selecting the victim of the crime based on a protected characteristic of the victim, most commonly the victim's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.¹ Many states have their own lists of protected characteristics.

Why are hate crimes prohibited? Hate crimes affect the broader community in a different way than crimes where the victim was not intentionally selected based on a protected characteristic. In upholding Wisconsin's hate crimes statute, the Supreme Court explained that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest."² International

organizations have recognized the same need to fight hate crimes. Discussing hate crimes against Jews specifically, the Organization for Security and Co-operation in Europe observed:

"Violent anti-Semitic acts targeting Jewish individuals or persons perceived to be Jewish challenge the values of free, democratic and inclusive societies. Crimes such as the desecration of cemeteries, attacks on synagogues, Jewish cultural centers, Holocaust memorials or Israeli institutions can affect Jewish life throughout the OSCE region. In some participating States, these hate crimes have damaged or destroyed the few remaining traces of Jewish culture that survived the Holocaust."³

How are hate crimes against Jews categorized? Jewish identity is both ethnic *and* religious, and those who commit hate crimes against Jews may do so due to hatred of Jews as a group and/or animosity against the Jewish religion. For recordkeeping purposes, the FBI categorizes anti-Semitic hate crimes as crimes motivated by the victim's actual or perceived religion.⁴ Annually, it reports more anti-Semitic hate crimes have been

committed than hate crimes against all other religious groups combined.

Who are the victims of hate crimes? Anyone can be a victim of a hate crime if the perpetrator selects them for victimization based on a protected characteristic.⁵ Crime data show, however, that members of certain groups face a greater threat of being the subject of a hate crime than others. For instance, over the past five years for which the FBI has published hate crimes data, Jewish Americans were disproportionately targeted for hate crimes by more than 450%. Jewish Americans were targeted for about 11% of all hate crimes,⁶ despite being only 2.4% of the U.S. population.⁷ Black Americans⁸ and LGBTQ+ Americans,⁹ among others, were also disproportionately targeted for hate crimes.

What are the legal consequences if a crime is determined to be a hate crime?

Defendants who are convicted of a hate crime will likely receive a higher sentence than if they had been convicted of the same crime but without a biased motive.¹⁰ In addition, federal hate crime laws may authorize the federal government to prosecute a crime that is determined to be a hate crime.¹¹

What types of evidence prove a crime is a hate crime? In a criminal trial, the decision of whether to convict is up to the jury. But the FBI provides copious guidance to police to help them decide whether to report that a crime they are investigating was a hate crime. They call upon police to consider, for instance:

- Statements or writings by the perpetrator that indicate bias against the victim's group;
- Drawings or markings of hate symbols like swastikas;
- Use of objects that indicate bias, like a white sheet associated with the Ku Klux Klan;
- A pattern of targeting members of a particular community;
- The involvement of known hate groups;
- Tensions between the victim's and offender's groups; and
- Significant location or timing of the crime, such as if the crime occurred on a holiday or at a cultural site important to the victim's group.¹²

Are hate crimes "thought crimes"? No. Hate crimes are crimes. Federal hate crimes law specifies, for instance, that it may not be used as a basis for "prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs", even if those beliefs are hateful.¹³ And the Supreme Court has held that abstract

evidence of a defendant's hateful beliefs that are *not* connected to the alleged crime may not be admitted into evidence, even to enhance the defendant's sentence.¹⁴

Why is proving hate crimes difficult? Proving that a hate crime occurred is difficult because it requires proving not just *what* someone did, but *why* they did it (intentionally selecting the victim of the crime based on a protected characteristic). Investigators and prosecutors need to carefully collect evidence both that a perpetrator had hateful beliefs and that those beliefs led them to commit a particular crime against a particular victim.

What should institutions do about hate crimes? It is essential that institutions identify and record hate crimes when they are committed. Doing so "is essential for effective action against hate crimes, enabling law-enforcement authorities to understand the scope of the problem, discern patterns, allocate resources and investigate cases more effectively[.]"¹⁵

In the United States, both law enforcement and higher education institutions have the obligation to record and report data about hate crimes. Federal law enforcement must participate in the FBI's hate crimes reporting program, and the FBI must collect data from local law enforcement.¹⁶ Colleges

and universities must also publish reports about hate crimes and some other crimes committed on their campuses. They face significant financial penalties if they fail to do so.¹⁷

As discussed above, years of U.S. data reveal patterns of targeting particular groups for hate crimes. Those groups' security needs should be identified and provided for.¹⁸ Investigators and prosecutors should be trained to identify indicators of bias against specific groups that are disproportionately targeted.¹⁹ Targeted communities must be supported.

Critically, if and when hate crimes are committed, they must be thoroughly investigated and prosecuted.

What should I do if I may have been the victim of a hate crime? [Contact a Brandeis Center lawyer](#), or a lawyer in your own community experienced in hate crime cases.



The Louis D. Brandeis Center
for Human Rights Under Law

The Louis D. Brandeis Center for Human Rights Under Law is an independent, unaffiliated, nonprofit corporation established to advance the civil and human rights of the Jewish people and promote justice for all.

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About the Brandeis Center

The Louis D. Brandeis Center for Human Rights Under Law is an independent, unaffiliated, nonprofit corporation established to advance the civil and human rights of the Jewish people and promote justice for all. LDB engages in research, education, and legal advocacy to combat the resurgence of anti-Semitism on college and university campuses, in the workplace, and elsewhere. It empowers students by training them to understand their legal rights and educates administrators and employers on best practices to combat racism and anti-Semitism. It is not affiliated with the Massachusetts University, the Kentucky law school, or any of the other institutions that share the name and honor the memory of the late U.S. Supreme Court justice.

¹ E.g. 18 U.S.C. § 249; U.S. Sentencing Guidelines Manual § 3A1.1(a) (2018).

² *Wisconsin v. Mitchell*, 508 U.S. 476, 488 (1993).

³ Organization for Security and Cooperation in Europe, Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide, 2017, <https://www.osce.org/files/f/documents/c/c/317166.pdf>, p.1.

⁴ E.g. Federal Bureau of Investigation, Hate Crimes Statistics, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/hate-crime>; Federal Bureau of Investigation, Hate Crime Data Collection Guidelines and Training Manual, <https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view>, p.11.

⁵ E.g. Congressional Research Services, Overview of Federal Hate Crimes Laws, April 1, 2022, <https://crsreports.congress.gov/product/pdf/R/R47060>, pp.8-9.

⁶ See Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>.

⁷ <https://www.pewresearch.org/religion/2021/05/11/the-size-of-the-u-s-jewish-population/>.

⁸ Black Americans were targeted for almost 30% of all hate crimes despite being only about 12% of the U.S. population. See Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>; <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=61>.

⁹ LGBTQ+ Americans were targeted for about 18% of all hate crimes while only about 8% of the U.S. population self-reported as LGBTQ+ to the U.S. Census Bureau. See Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime>; E.g. <https://www.census.gov/library/stories/2021/11/census-bureau-survey-explores-sexual-orientation-and-gender-identity.html>.

¹⁰ E.g. U.S. Sentencing Guidelines Manual § 3A1.1(a) (2018).

¹¹ E.g. 18 U.S.C. § 249.

¹² Federal Bureau of Investigation, Hate Crime Data Collection Guidelines and Training Manual, <https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view>, pp.12-13.

¹³ Matthew Shephard and James Byrd Jr. Hate Crimes Prevention Act, S.Amdt. 1511 to S.1390 § 10(4) (2009).

¹⁴ *Dawson v. Delaware*, 503 U.S. 159 (1992).

¹⁵ Organization for Security and Cooperation in Europe, Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide, 2017, <https://www.osce.org/files/f/documents/c/c/317166.pdf>, p.36.

¹⁶ Federal Bureau of Investigation, Hate Crime Data Collection Guidelines and Training Manual, <https://le.fbi.gov/file-repository/hate-crime-data-collection-guidelines-and-training-manual.pdf/view>, p.7.

¹⁷ 20 U.S.C. §1092; 34 C.F.R. § 668.84.

¹⁸ Organization for Security and Cooperation in Europe, Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide, 2017, <https://www.osce.org/files/f/documents/c/c/317166.pdf>, pp.27-29, 34-35.

¹⁹ Organization for Security and Cooperation in Europe, Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities: A Practical Guide, 2017, <https://www.osce.org/files/f/documents/c/c/317166.pdf>, p.36.