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## The Negative Ramifications of Hate Crime Legislation: It's Time to Reevaluate Whether Hate Crime Laws are Beneficial to Society

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# The Negative Ramifications of Hate Crime Legislation: It's Time to Reevaluate Whether Hate Crime Laws are Beneficial to Society

Briana Alongi\*

## I. Introduction

Supporters of hate crime legislation suggest that the primary reason for the codification of hate crime laws is “to send a strong message of tolerance and equality, signaling to all members of society that hatred and prejudice on the basis of identity will be punished with extra severity.”<sup>1</sup> However, hate crime laws may actually be accomplishing the opposite effect of tolerance and equality because they encourage U.S. citizens to view themselves, not as members of our society, but as members of a protected group. The enactment of hate crime legislation at the federal and state levels has led to unintended consequences and unfair practices. Today, the controversy regarding the effectiveness of hate crime laws is debated, and people question whether this type of legislation is beneficial to society.

This article will candidly reevaluate hate crime legislation. Part II will provide the definition of the term “hate crime” and the theoretical justification for enhanced sentencing involving discrimination-based conduct. Focus will be placed on data

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1. Avlana Eisenberg, *Expressive Enforcement*, 61 UCLA L. REV. 858, 860 (2014).

that disproves the theory that hate crime laws reduce or deter future hate crimes. It will also explain the underlying reasons for the enactment of hate crime laws, such as the media's role and political influences, and it will present several of the misconceptions associated with hate crime legislation. Part III will present the unintended consequences associated with the enactment of hate crime statutes, including constitutional violations. It will also explain why hate crimes are rarely prosecuted, and will focus on the inconsistency, redundancy, and arbitrary usage/application of hate crime legislation. Part III will also present an individual's response to the negative, unintended effects of hate crime legislation. Part IV will determine that hate crime legislation is not cost-effective. Part V sets forth a recommendation on improving community efforts to educate or reeducate citizens on respecting diversity. Finally, the article analyzes hate crime laws from supporting and opposing viewpoints and concludes that there is no need to separate hate crimes from other types of crimes as a means to promote a more tolerant, equal, and stable society.

## II. Understanding Hate Crime Legislation

In the United States, hate crime legislation has gained popularity at both the federal and state levels. Oregon was the first state to codify hate crime laws in 1981.<sup>2</sup> Currently, forty-five states and the District of Columbia have enacted some form of hate crime legislation; Arkansas, Georgia, Indiana, South Carolina, and Wyoming are the five states that have not enacted hate crime statutes.<sup>3</sup> "In its broadest sense, the term [hate crime] refers to an attack on an individual or his or her property (e.g., vandalism, arson, assault, murder) in which the victim is intentionally selected because of his or her race, color, religion, national origin, gender, disability, or sexual

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2. James Morsch, Comment, *The Problem of Motive in Hate Crimes: The Argument Against Presumptions of Racial Motivation*, 82 J. CRIM. L. & CRIMINOLOGY 659, 663 (1991).

3. *United States v. Cannon*, 750 F.3d 492, 510 n.3 (5th Cir. 2014) (quoting H.R. REP. NO. 111-86, pt. 1, at 5-6 (2009)); *State Laws*, USLEGAL.COM, <http://hatecrimes.uslegal.com/state-laws/> (last visited Oct. 17, 2016).

orientation.”<sup>4</sup> Federal and state laws define the conduct that constitutes hate crimes; however, the definition of hate crimes differs from state to state, especially in regard to the different groups of people protected under these laws.<sup>5</sup>

The scope of hate crime legislation expanded on October 28, 2009, when President Obama signed the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act.<sup>6</sup> This new legislation broadened the definition of hate crimes that can be prosecuted federally to include crimes motivated by a victim’s “actual or perceived race, color, religion, or national origin,”<sup>7</sup> or a victim’s “actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability.”<sup>8</sup> Prior to the Shepard and Byrd Hate Crimes Prevention Act, federal law defined hate crimes as those motivated only by the victim’s race, national origin or religion.<sup>9</sup>

Hate crime legislation at the federal and state level also provides enhanced penalties for perpetrators who commit hate crimes.<sup>10</sup> This type of legislation illustrates the harshness and severity associated with hate crime enhanced penalties.<sup>11</sup> For example, in New York, a person convicted of assault in the second degree, a class D felony, can be sentenced to up to seven years in prison.<sup>12</sup> If the conviction is recorded as a hate crime, the charge may be increased to a class C felony, in which the

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4. *Preventing Youth Hate Crime*, U.S. DEPT OF EDUC., <http://www2.ed.gov/pubs/HateCrime/start.html> (last visited Oct. 18, 2016).

5. NAT’L CRIME VICTIMS’ RIGHTS WEEK, HATE AND BIAS CRIME 40 (2015), [http://victimsofcrime.org/docs/default-source/ncvrw2015/2015ncvrw\\_stats\\_hatecrime.pdf?sfvrsn=2](http://victimsofcrime.org/docs/default-source/ncvrw2015/2015ncvrw_stats_hatecrime.pdf?sfvrsn=2) [hereinafter HATE AND BIAS CRIME].

6. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, 18 U.S.C. § 249 (2012).

7. 18 U.S.C. § 249(a)(1).

8. § 249(a)(2).

9. *Hate Crimes Law*, HUMAN RIGHTS CAMPAIGN, <http://www.hrc.org/resources/hate-crimes-law> (last visited Oct. 18, 2016).

10. *Combating Hate: Hate Crimes Law*, ANTI-DEFAMATION LEAGUE, <http://www.adl.org/combating-hate/hate-crimes-law/> (last visited Oct. 18, 2016).

11. Michael Bronski et al., *Hate Crime Laws Don’t Prevent Violence Against LGBT People*, THE NATION (Oct. 2, 2013), <http://www.thenation.com/article/hate-crime-laws-dont-prevent-violence-against-lgbt-people/>.

12. N.Y. PENAL LAW § 70.00(2)(d) (2009).

offender can be sentenced for up to fifteen years in prison.<sup>13</sup>

Enhanced penalties exist at the federal and state level because these types of crimes are considered to hurt entire communities, “not just the actual victim and the family and friends of the victim . . . .”<sup>14</sup> For example, proponents believe that when a person is victimized because of his or her color, race, religion, natural origin, gender, sexual orientation, gender identity, or disability, all of the members of that group “feel like potential targets and experience a shared sense of persecution.”<sup>15</sup> In addition, proponents argue that hate crimes should be considered more serious than conventional crimes because these crimes attack the “victim not only physically but at the [sic] core of his identity.”<sup>16</sup> Proponents also believe that perpetrators are deserving of harsher treatment because studies show that hate crimes “cause greater psychological trauma to their immediate victims than do otherwise-motivated crimes.”<sup>17</sup> In theory, enhanced punishments are also needed because they deter potential offenders of hate crimes, thereby promoting public safety and decreasing hate crime rates.<sup>18</sup>

## A. Underlying Reasons for the Enactment of Hate Crime Legislation

### 1. The Media’s Role

It has been argued that the media bears responsibility for the proliferation of hate crime legislation because the media appears to reinforce and amplify an alleged “epidemic” of hate

13. § 70.00(2)(c).

14. Matthew Shepard Hate Crimes Prevention Act, S. 909, 111th Cong. (2009) (as passed by Senate, Oct. 22, 2009), <https://www.truthtellers.org/alerts/s909text.html>.

15. MICHAEL SHIVELY, STUDY OF LITERATURE AND LEGISLATION OF HATE CRIME IN AMERICA 34 (2005), <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>.

16. Heidi M. Hurd & Michael S. Moore, *Punishing Hatred and Prejudice*, 56 STAN. L. REV. 1081, 1087 (2004) (quoting FREDERICK M. LAWRENCE, PUNISHING HATE 14 (1999)).

17. Hurd & Moore, *supra* note 16, at 1087.

18. Eisenberg, *supra* note 1, at 877.

crimes in America.<sup>19</sup> Because inter-group conflicts are more newsworthy than inter-group cooperation, the media seems “almost enthusiastic in presuming the worst about the state of inter-group relationships in American society.”<sup>20</sup> The media continues to grab the attention of viewers with headlines such as “A Cancer of Hatred Afflicts America,”<sup>21</sup> “Rise in Hate Crimes Signals Alarming Resurgence of Bigotry,”<sup>22</sup> “Decade Ended in Blaze of Hate,”<sup>23</sup> or “Members of White Supremacist Group Charged in Hate Crime.”<sup>24</sup>

However, the media fails to inform the public that the majority of crime in the United States is intra-racial, not inter-racial.<sup>25</sup> This is evidenced by the fact that “[e]ighty percent of violent crimes involve an offender and victim of the same race. Ninety-two percent of black murder victims and 66.6 percent of white murder victims are killed by murderers of the same race.”<sup>26</sup> Because most crimes involve perpetrators and victims of the same racial group, critics question the need for hate crime legislation.<sup>27</sup> Critics also believe that the passage of hate crime legislation is a political response to bias-motivated crimes that are highly publicized in the media.<sup>28</sup> The media fails to determine the legitimacy of hate crime cases before broadcasting them; the media is responsible for reporting

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19. See James B. Jacobs & Jessica S. Henry, *The Social Construction of a Hate Crime Epidemic*, 86 J. CRIM. L. & CRIMINOLOGY 366, 371 (1996).

20. *Id.*

21. JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS 50 (1998).

22. *Id.*

23. *Id.*

24. *Members of White Supremacist Group Charged in Hate Crime*, FED. BUREAU OF INVESTIGATION (Dec. 18, 2012), <https://archives.fbi.gov/archives/newark/press-releases/2012/members-of-white-supremacist-group-charged-in-hate-crime>.

25. Richard Dooling, *Good Politics, Bad Law*, N.Y. TIMES (July 28, 1998), <https://www.nytimes.com/books/98/07/26/reviews/980726.26doolint.html> (reviewing JACOBS & POTTER, *supra* note 21).

26. *Id.*

27. *Id.*

28. Brian Powell, *Fox News' Racial Crime Coverage is Hurting People*, MEDIA MATTERS FOR AM. (Aug. 23, 2013, 4:35 PM), <http://mediamatters.org/blog/2013/08/23/fox-news-racial-crime-coverage-is-hurting-people/195567>.

alleged claims of hate crimes that have turned out to be hoaxes.<sup>29</sup> Recently, these hoaxes have been evidenced in several cases across the country:

- In 2015, a gay business owner was found to be responsible for burning down his own bar, but claimed that he was a victim of “sexual orientation”;<sup>30</sup>
- In 2015, a lesbian couple burned down their own home and attempted to blame the neighbors for spray painting “anti-gay slurs” on their home before burning it down;<sup>31</sup> and
- In 2012, a lesbian “mutilated herself with anti-gay slurs, faked a kidnapping story and burnt her house down in a hate crime hoax that garnered national attention.”<sup>32</sup>

It is argued that by not distinguishing which hate crimes are real and which are not, the media becomes a tool in which liberal activists’ hoaxes are being aired to further their agendas.<sup>33</sup>

## 2. Politics

Proponents claim that hate crime legislation exists to promote tolerance and equality in our society, but many opponents believe the enforcement of hate crime statutes may be based on political motives.<sup>34</sup> For example, politicians may support hate crime laws so they can appear tough on crime but also be supportive of gay rights.<sup>35</sup> Some politicians also support hate crime laws because that support may provide them with campaign funds and votes from powerful interest

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29. Kristine Marsh, *Fake Hate: 9 False Discrimination Stories the Media Ran With*, MRC NEWSBUSTERS (Aug. 10, 2015, 11:06 AM), <http://www.newsbusters.org/blogs/culture/kristine-marsh/2015/08/10/fake-hate-9-false-discrimination-stories-media-ran>.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Eisenberg, *supra* note 1, at 881, 887.

35. See Gregory R. Nearpass, Comment, *The Overlooked Constitutional Objection and Practical Concerns to Penalty-Enhancement Provisions of Hate Crime Legislation*, 66 ALB. L. REV. 547 (2003).

groups who are lobbying for hate crime legislation.<sup>36</sup>

In addition, having candid discussions about hate crime legislation is difficult because politicians who criticize hate crime legislation are faced with “a form of political suicide.”<sup>37</sup> For example, opponents of hate crime laws are usually “pigeonholed and labeled [as] . . . racists, skinheads, or gay-bashers.”<sup>38</sup> In general, if one wants to succeed in politics, anti-hate crime discussions or criticisms are stifled and frowned upon. Ultimately, critics of hate crime legislation state that there is evidence to support the concept that “the special attention given to certain groups of individuals is perceived as political correctness rather than a legitimate extension of established legal principles.”<sup>39</sup>

## B. Misconceptions

### 1. Presumption that Hate Groups Cause Hate Crimes is Unfounded

In an attempt to understand hate crimes, attention is placed on hate groups because proponents of hate crime legislation are under the popular assumption that hate groups commit hate crimes. The misconception that hate groups, which include skinheads, neo-Nazis, white nationalists and black separatists groups,<sup>40</sup> cause hate crimes is unfounded. This is evidenced by an empirical study that was conducted to determine the relationship between hate groups and hate crimes; this research consisted of tracking and measuring hate groups and hate crime between 2002 and 2008 by using data from forty-nine states in the United States and the District of Columbia.<sup>41</sup> The results showed that the number of hate

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36. See Sara Sun Beale, *Federalizing Hate Crimes: Symbolic Politics, Expressive Law, or Tool for Criminal Enforcement?*, 80 B.U. L. REV. 1227, 1248 (2000).

37. Nearpass, *supra* note 35, at 554.

38. *Id.*

39. SHIVELY, *supra* note 15, at 37.

40. Stephanie Chan, *Growing Hate Groups Blame Obama, Economy*, CNN (Feb. 26, 2009, 7:34 PM), <http://www.cnn.com/2009/US/02/26/hate.groups.report/index.html>.

41. Matt E. Ryan & Peter T. Leeson, *Hate Groups and Hate Crime*, 31 INT'L REV. L. & ECON. 256, 257 (2011).



groups increased by 25%, while the number of hate crimes did not increase.<sup>42</sup> This research concludes that there is *not* a strong connection between hate groups and hate crimes; hate groups do not necessarily lead to hate crimes. When analyzing scientific studies, it is always important to remember that a correlation<sup>43</sup> does not prove causation.<sup>44</sup> Thus, groups may have a correlational relationship with hate crimes but not a causal relationship.

Other variables besides hate may be the reason for hate crimes, including religion, education, and income levels.<sup>45</sup> Economists Matt E. Ryan and Peter T. Leeson focus on the frustration-aggression thesis, which states that “when people endure economic hardship they get frustrated [and] . . . take their frustration out on vulnerable social groups, such as racial, sexual, and religious minorities.”<sup>46</sup> Ultimately, there is a significant connection between hate crime and poor economic conditions, such as poverty and unemployment.

## 2. Public Support for Hate Crime Legislation is not Universal

A candid focus must also be placed on the public’s view of hate crime legislation. Many people agree that violent hate crimes, such as the horrific deaths of James Byrd Jr. and Matthew Shepard, are deplorable.<sup>47</sup> However, the public also has concerns with certain provisions of hate crime legislation.

42. *Id.*

43. *Correlation*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defined as “[a] connection between two ideas, facts, phenomena, etc., esp. when one may be the cause of the other”).

44. *Causation*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defined as “[t]he causing or producing of an effect”).

45. Richard Florida, *The Geography of Hate*, THE ATLANTIC (May 11, 2011), <http://www.theatlantic.com/national/archive/2011/05/the-geography-of-hate/238708/>.

46. Ryan & Leeson, *supra* note 41, at 256. See Christopher Ingraham, *The Ugly Truth About Hate Crimes -- In 5 Charts and Maps*, WASH. POST: WONKBLOG (June 18, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/06/18/5-charts-show-the-stubborn-persistence-of-american-hate-crime>.

47. See Bill Dobbs, *Justice, Not Vengeance, for Hate Crimes*, N.Y. TIMES (Apr. 16, 2012, 10:53 AM), <http://www.nytimes.com/roomfordebate/2012/03/07/are-hate-crime-laws-necessary/justice-not-vengeance-for-hate-crimes>.

Primarily, there is no national consensus favoring this legislation because many individuals believe that hate crimes should not be classified as a separate class of crime.<sup>48</sup> In addition, research has shown that there are many people who are opposed to hate crime laws because they violate constitutional rights.<sup>49</sup> Also, in a survey conducted by Steen and Cohen, 1,300 out of 2000 American adults had minimal support for the hate crime enhanced penalty provisions.<sup>50</sup> Steen and Cohen's survey also proved that even though some of those sampled did show support for hate crime legislation, these same people also believed that "decisions about appropriate punishment for specific instances of crime are based primarily on [the] seriousness of the offense, and not on whether the offender was motivated by hate or bias."<sup>51</sup> Therefore, researchers suggest that additional research should be examined because, as witnessed in Steen and Cohen's survey, "support for hate crime may be more complex than is reflected by discrete item responses to opinion polls."<sup>52</sup>

Moreover, hate crime legislation lacks public support because some groups of people who are protected under hate crime statutes do not even support these laws. For example, lesbian gay bisexual and transgender (LGBT) groups, such as the Sylvia Rivera Law Project and Queers for Economic Justice, do not support hate crime laws.<sup>53</sup> Like many critics, they believe that hate crime laws are disproportionately used against poor people and minorities, and while enhanced sentences do not fix the problem of bias, they do create "hardened criminals."<sup>54</sup> The public is questioning the ramifications and consequences of these laws.<sup>55</sup>

### III. Issues Associated with the Enactment of Hate

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48. Michael Shively & Carrie F. Mulford, *Hate Crime in America: The Debate Continues*, NAT'L INST. OF JUST. (June 2007), <http://www.nij.gov/journals/257/pages/hate-crime.aspx>.

49. Nearpass, *supra* note 35.

50. SHIVELY, *supra* note 15, at 42.

51. *Id.*

52. *Id.*

53. Bronski et al., *supra* note 11.

54. *Id.*

55. Eisenberg, *supra* note 1, at 899-901.

## Crime Legislation

### A. Constitutionality of Hate Crime Statutes

Courts have found provisions of state hate crime statutes unconstitutional due to vagueness.<sup>56</sup> For example, in *Botts v. State*, defendants Christopher Botts and Angela Pisciotta were charged with aggravated assault for beating up two African-American men in Atlanta, Georgia.<sup>57</sup> Botts and Pisciotta were charged with hate crimes and subsequently pled guilty, but they appealed their enhanced sentences.<sup>58</sup> Georgia's hate crime law required enhanced penalties if a defendant was found to have "intentionally selected any victim or any property of the victim as the object of the offense because of bias or prejudice . . . ."<sup>59</sup> In 2004, on appeal, the Georgia Supreme Court found that the terms "bias or prejudice" were too broad and vague because they did not specify religion, gender, race, or color.<sup>60</sup> It was also found that a "statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."<sup>61</sup> The Court unanimously invalidated Georgia's hate crime law and dismissed the sentence enhancement, reducing their sentences from eight to six years.<sup>62</sup>

Vagueness is also evidenced in a more recent case, *State v. Pomianek*, in which the defendant played a trick on Brodie, an African-American co-worker, by locking him in a storage cage while stating, "you throw a banana in the cage and he goes right in . . . ."<sup>63</sup> The defendant was convicted of bias

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56. See SHIVELY, *supra* note 15, at 40.

57. *Botts v. State*, 604 S.E.2d 512, 513 (Ga. 2004).

58. *Id.*

59. GA. CODE ANN. § 17-10-17 (2000).

60. *Botts*, 604 S.E.2d at 513-14.

61. *Id.* (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)).

62. *Botts*, 604 S.E.2d at 515; *Georgia Court Throws Out Hate Crimes Law*, USA TODAY (Oct. 25, 2004, 11:50 AM), [http://usatoday30.usatoday.com/news/nation/2004-10-25-ga-hatecrimes\\_x.htm](http://usatoday30.usatoday.com/news/nation/2004-10-25-ga-hatecrimes_x.htm).

63. *State v. Pomianek*, 110 A.3d 841, 844 (N.J. 2015).

harassment.<sup>64</sup> Interestingly, according to a provision of New Jersey's hate crime statute, a defendant may be guilty of bias intimidation if "the victim . . . reasonably believed that . . . the offense was committed with a purpose to intimidate the victim. . . or . . . the victim . . . was selected to be the target of the offense because of his race [or] color . . . ."<sup>65</sup> Section 2C:16-1(a)(3) places focus on the victim's state of mind, and not the defendant's state of mind.<sup>66</sup> The New Jersey Supreme Court held that Section 2C:16-1(a)(3) was unconstitutional due to its vagueness.<sup>67</sup> The Court stated that, when focus is "on the victim's perception and not the defendant's intent, the statute does not give a defendant sufficient guidance or notice on how to conform to the law."<sup>68</sup> The conviction was reversed.<sup>69</sup>

Another controversial issue surrounding the implementation of hate crime legislation is whether these laws violate the First Amendment, the Double Jeopardy clause, or Equal Protection rights.<sup>70</sup> The first constitutional concern is that penalty enhancement provisions in hate crime legislation violate an individual's right against double jeopardy.<sup>71</sup> The Double Jeopardy clause protects against multiple punishments for the same offense and prohibits multiple prosecutions for the same offense.<sup>72</sup> This is evidenced when a defendant is charged and convicted of assault and his or her original sentence for assault is enhanced because the prosecution has additionally proved that the offender had the "specific intent to injure the victim based on their protected status . . . ."<sup>73</sup> This defendant is being dually punished, "once for his acts and again for his intent behind the acts."<sup>74</sup>

Opponents of hate crime laws also argue that these laws may raise constitutional problems because they punish not only

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64. *Id.* at 843.

65. N.J. STAT. ANN. § 2C:16-1(a)(3) (2008).

66. *Pomianek*, 110 A.3d at 850.

67. *Id.* at 843.

68. *Id.*

69. *Id.* at 856.

70. *Nearpass*, *supra* note 35, at 554-55.

71. *Id.* at 558.

72. *See* U.S. CONST. amend. V.

73. *Nearpass*, *supra* note 35, at 562.

74. *Id.*

action, but also speech and thoughts or beliefs, in violation of the First Amendment.<sup>75</sup> In *Chaplinsky v. New Hampshire*, the court held that “fighting words” constitute a class of speech that is not protected under the First Amendment.<sup>76</sup> The Court defined “‘fighting’ words [as] - those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”<sup>77</sup> Extending the term “hate crime” to include words uttered and thoughts expressed against a victim’s color, race, religion, natural origin, gender, sexual orientation, gender identity or disability is close to punishing speech and belief.<sup>78</sup> To punish individuals because of “bad political words expressed during a crime, is to punish him extra because of the beliefs he holds.”<sup>79</sup> As one critic has stated, “[t]he problem with hate crime laws . . . is that in order to crack down on hateful behavior, hateful thoughts and expression must also be targeted, which runs diametrically counter to the First Amendment’s protections for free speech and expression.”<sup>80</sup> He also stated that, “if the Constitution means anything, it means that individuals have the right to speak freely, and even jest, even when the speech is politically incorrect and should not be penalized because others take offense.”<sup>81</sup> The argument is that free speech is a vital part of our democracy, and that hate crime statutes present a slippery slope; hate crime legislation “unconstitutionally punishes speech that might cause offense and criminalizes behavior regardless of a person’s intent to cause intimidation or to act on the basis of improper bias.”<sup>82</sup>

Opponents of hate crime laws argue that hate crime legislation may also violate a person’s right to equal protection,

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75. See U.S. CONST. amend. I.

76. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942).

77. *Id.* at 572.

78. See DAVID KOPEL, INDEP. INST., HATE CRIME LAWS: DANGEROUS AND DIVISIVE 8-9 (2003), <http://www.davekopel.org/CJ/IP/Hate-Crimes.pdf>.

79. *Id.* at 8.

80. *Victory: In Unanimous Ruling, NJ Supreme Court Strikes Down "Hate Crime" Statute Used to Prosecute State Worker for Joking with Black Co-Worker*, RUTHERFORD INST. (Mar. 17, 2015), [https://www.rutherford.org/publications\\_resources/on\\_the\\_front\\_lines/victory\\_in\\_unanimous\\_ruling\\_nj\\_supreme\\_court\\_strikes\\_down\\_hate\\_crime\\_statue](https://www.rutherford.org/publications_resources/on_the_front_lines/victory_in_unanimous_ruling_nj_supreme_court_strikes_down_hate_crime_statue).

81. *Id.*

82. *Id.*

which is protected under the Fourteenth Amendment.<sup>83</sup> When applied, these hate crime laws seem to value the safety of certain victims above the safety of others.<sup>84</sup> For example, when a homosexual is a victim of vandalism and the offense is motivated by bias, the offender will receive enhanced punishment.<sup>85</sup> This places a value on the homosexual's life that is higher than that of a heterosexual's life.<sup>86</sup> In addition, it is unfair that the federal government can aid a hate crime victim's life in a way that would not be offered to a victim of crime not motivated by prejudice.<sup>87</sup> For example, the "long arm of the federal government"<sup>88</sup> could assist in the hate crime offender's arrest because hate crime laws mandate that an offender's information be shared among state, local, and federal agencies; thus, the federal aid in the apprehension of hate crime offenders is placing the hate crime victims' safety above the safety of others.<sup>89</sup>

While the goal of hate crime legislation is to promote tolerance and equality, hate crime laws may be hindering social stability because they "exacerbate societal divisions."<sup>90</sup> These laws may be creating more division and tension among people because they provide protection to selected groups. The implementation of hate crime statutes has also increased

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83. U.S. CONST. amend. XIV, § 1. This Amendment states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

*Id.*

84. Theodore Winston Pike, *Would Hate Crime Laws Make You a Lawbreaker?*, NAT'L PRAYER NETWORK, <http://www.truthtellers.org/hate%20crimes/hatecrimesarticle.html> (last visited Oct. 19, 2016).

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Pike, *supra* note 84.

90. Jacobs & Henry, *supra* note 19, at 391.

identity politics.<sup>91</sup> When crimes are charged as hate crimes, people in society increasingly relate to each other as members of competing classes/groups based on identifying characteristics, such as race or gender.<sup>92</sup> Ultimately, by exacerbating societal divisions and identity politics, hate crime laws may be problematic because they do not promote social stability.<sup>93</sup>

In addition, opponents of hate crime legislation caution that it promotes inequality because it results in “negative unintended circumstances, such as reverse discrimination.”<sup>94</sup> For example, an attack against a “Caucasian can result in less serious consequences for the offender than a similar assault against a victim who is a member of a racial or ethnic minority group.”<sup>95</sup> Another negative unintended consequence is the penalizing of more minorities because hate crime laws are enhancing penalties against minorities who are supposed to be among the *protected* groups in this legislation.<sup>96</sup> For example, there are concerns that “white crime victims are using hate crime laws to enhance penalties against minorities . . . .”<sup>97</sup> The fact that hate crime laws are enhancing penalties against more minorities is supported by statistics stating that, “[e]ighty percent of violent crimes involve an offender and victim of the same race . . . [and] [of] the 20 percent of violent crimes that are interracial, 15 percent involve black offenders and white victims; 2 percent involve white offenders and black victims; and 3 percent involve other combinations.”<sup>98</sup> This is further evidenced by hate crime cases, such as *Wisconsin v. Mitchell*, in

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91. JACOBS & POTTER, *supra* note 21, at 5 (defining identity politics as “a politics whereby individuals relate to one another as members of competing groups based upon characteristics like race, gender, religion, and sexual orientation”).

92. See KOPEL, *supra* note 78, at 8.

93. *Id.*

94. SHIVELY, *supra* note 15, at 37.

95. *Id.*

96. Bronski et al., *supra* note 11.

97. JACOBS & POTTER, *supra* note 21, at 17 (quoting Jill Tregor, executive director of San Francisco's Intergroup Clearinghouse, “which provides legal services and counseling to hate crime victims”). See Dooling, *supra* note 25.

98. HATE CRIMES 20 (Tamara L. Roleff ed., 2001), [http://www.dikseo.teimes.gr/spoudastirio/E-NOTES/H/Hate\\_Crimes\\_Viewpoints.pdf](http://www.dikseo.teimes.gr/spoudastirio/E-NOTES/H/Hate_Crimes_Viewpoints.pdf).

which a young African-American male's aggravated assault sentence was enhanced pursuant to a provision in Wisconsin's hate crime law from two years to four years because he exhorted a group of African-Americans to assault a white youth.<sup>99</sup> Another negative unintended circumstance is that longer and harsher sentences associated with hate crime legislation are leading to younger "more-hardened criminals."<sup>100</sup>

### B. Lack of Deterrence

Unfortunately, data to support the theory that hate crime legislation deters violence is considered to be inconclusive. Several reasons explain the inadequacy of the data on deterrence. First, the Uniform Crime Reporting Program (UCR), which collects hate crime data from law agencies, and the National Crime Victimization Survey (NCVS), which collects data from hate crime victims, are the two primary methods used to gather data regarding hate crimes.<sup>101</sup> The UCR gathers information from law agencies in different cities, where the type of data collected by each jurisdiction varies.<sup>102</sup> The variations in hate crime data collected by law agencies exist because there are:

- (1) Dissimilar hate crime laws from state to state, including different hate crime statistical reporting provisions;
- (2) variations in the quality of data collection procedures;
- (3) differences in law enforcement training on hate crime reporting; and
- (4) a lack of consensus about the legitimacy of treating hate crimes as separate kinds of offenses.<sup>103</sup>

Another reason for the variations is "informal departmental norms."<sup>104</sup> Police officers may fail to identify

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99. *Wisconsin v. Mitchell*, 508 U.S. 476, 479-81 (1993).

100. Bronski et al., *supra* note 11.

101. SHIVELY, *supra* note 15, at ii-iii, 52.

102. *Id.* at ii.

103. *Id.*

104. Jeannine Bell, *Policing Hatred: Police Bias Units and the*



hate crimes because of these norms; norms are the pressures from within law enforcement departments to avoid labeling crimes as motivated by bias.<sup>105</sup> “These pressures may be caused by external forces, like local political leaders who fear that hate crime data may portray their city as ‘the most bigoted city in America.’”<sup>106</sup>

The information gathered by the UCR is also inconclusive because some victims who report hate crimes to the NCVS are unwilling, unable, or simply fail to report the same hate crimes to law enforcement agencies.<sup>107</sup> This is evidenced by the fact that the information gathered from the UCR contradicts the information gathered from the NCVS; in 2004, according to the UCR, law enforcement was notified of only 45% of the hate crime victimizations that were reported to the NCVS.<sup>108</sup> In 2011, the police were notified of fewer than 25% of all hate crimes reported to the UCR; in 2012, the police were notified of 34% of hate crimes that victims reported to the UCR.<sup>109</sup> Therefore, it is difficult to determine how many hate crimes occur each year.

Inaccuracy also results from the underreporting of hate crimes by law enforcement agencies to the FBI.<sup>110</sup> Historically, some law enforcement agencies from some cities have failed to report that any hate crimes occurred.<sup>111</sup> In 2014, the cities in which law enforcement agencies failed to report any hate crimes to the UCR included Jacksonville, Fla., Irving, Tex., Durham, N.C., Ontario, Can., Provo, Utah, Tulsa, Okla., Paterson, N.J., and Bellevue, Wash.<sup>112</sup>

As mentioned in Part II, certain studies have shown that hate crime assault victims suffer greater psychological trauma

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*Construction of Hate Crime*, 2 MICH. J. RACE & L. 421, 457 (1997).

105. *Id.*

106. *Id.*

107. SHIVELY, *supra* note 15, at 52.

108. HATE AND BIAS CRIME, *supra* note 5, at 42.

109. *Id.*

110. Eisenberg, *supra* note 1, at 884.

111. *Id.* at 883.

112. ANTI-DEFAMATION LEAGUE, FBI 2014 HATE CRIME STATISTICS ACT DATA: CITIES THAT DID NOT REPORT, REPORTED ZERO OR REPORTED ONE INCIDENT (2015), <http://www.adl.org/assets/pdf/combating-hate/HCSA-DNR-and-Zero-reporting-2014.pdf>.

than assault victims of otherwise-motivated crimes; however, these studies are defective because they do not compare “ordinary assault victims with hate/bias-motivated assault victims (when the severity of the assaults and the injuries are equivalent) . . . .”<sup>113</sup> Ultimately, the studies measuring the traumatizing effects of hate and bias crimes from ordinary crimes are defective/faulty, and the idea that a hate crime perpetrator will really refrain from harming another person due to enhanced penalties is inconclusive because there is no substantial, reliable evidence to prove these theories. Based on the multiple reasons for the inaccuracy in hate crime data, improvement in the collection of this data is needed to assess the impact and necessity of hate crime legislation.

### C. Hate Crimes are Rarely Prosecuted, Inconsistent and Redundant

Even though hate crime legislation exists in the majority of states, hate crimes are rarely prosecuted, most likely because it is difficult for prosecutors to prove that a crime has been motivated by bias.<sup>114</sup> For example, while the United States Department of Justice defines a “bias crime” as “[a] committed criminal offense that is motivated, in whole or in part, by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity; also known as Hate Crime,”<sup>115</sup> determining whether a crime is motivated, *in whole or in part*, by bias is a difficult task.<sup>116</sup> Defendants will rarely provide any insight into their motivations,<sup>117</sup> and offenders will rarely confess to any type of racial animus.<sup>118</sup> If

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113. Hurd & Moore, *supra* note 16, at 1088.

114. See Jacobs & Henry, *supra* note 19, at 383-84. See also Terrence McCoy, *Chapel Hill Killings: Why Hate Crimes are so Hard to Prove*, WASH. POST (Feb. 12, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/02/12/chapel-hill-murders-why-hate-crimes-are-so-hard-to-prove/>.

115. U.S. DEPT OF JUST., HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL 8 (2012), [http://risp.ri.gov/documents/UCR/Hate\\_Crime\\_Data\\_Collection\\_Guidelines\\_rev2012.pdf](http://risp.ri.gov/documents/UCR/Hate_Crime_Data_Collection_Guidelines_rev2012.pdf).

116. Jacobs & Henry, *supra* note 19, at 384.

117. *Id.* at 384.

118. Gregory S. Parks & Shayne Jones, *Hate Crimes and Revealing Motivation through Racial Slurs*, THE JURY EXPERT (Sept. 1, 2009),

the defendant does not provide the motivation, it may be available from the crime scene, although this is also a rare occurrence.<sup>119</sup>

In the absence of these sources, the perpetrator's motives must be inferred by the information obtained from the *victim*; however, gathering information from victims becomes problematic.<sup>120</sup> A victim "may be mistaken, hold personal biases that affect his or her judgment, be overly sensitive, have misperceived the incident, or simply be unreliable."<sup>121</sup> Additionally, even if prosecutors are able to obtain information that the perpetrator had made previous anti-bias comments from the *perpetrator's* personal property, such as a computer or cell phone, the prosecutor may still have a difficult task of trying to prove, beyond a reasonable doubt, that the offender's motive, on the actual day of the crime, was based on bias or hate.<sup>122</sup> The quandary that prosecutors face is made more difficult by the reality that even "when someone has a track record of hate — or of bigotry — it doesn't necessarily mean that the crime was in any way related to that bigotry."<sup>123</sup> Ultimately, offenders commit crimes for a number of reasons, and proving a hate crime is a complex endeavor for prosecutors across the United States.<sup>124</sup>

Terrence McCoy illustrates this difficulty, describing a February 10, 2015 occurrence where Craig Hicks, a Caucasian male, shot and killed three young Muslims over a parking dispute in North Carolina.<sup>125</sup> The victims' families alleged that:

This was not a dispute over a parking space; this was a hate crime. This man had picked on my daughter and her husband a couple of times

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<http://www.thejuryexpert.com/2009/09/hate-crimes-and-revealing-motivation-through-racial-slurs/>.

119. *Id.*

120. Jacobs & Henry, *supra* note 19, at 384.

121. *Id.*

122. See SHIVELY, *supra* note 15, at 37.

123. McCoy, *supra* note 114.

124. Jacobs & Henry, *supra* note 19.

125. McCoy, *supra* note 114.

before, and he talked with them with his gun in his belt . . . He hates us for what we are and how we look.<sup>126</sup>

To date, the killing of these young Muslims is not being prosecuted as a hate crime because even if the victims' families' comments are accurate and the defendant did *actually* hate these individuals, it is still insufficient information to prove that this was a hate crime under federal or state law.<sup>127</sup> In this case, the prosecutor must still establish that Hicks' motive on the *actual* day of the murder was based on bias or hate, and the facts might prove that the motive was not racial, but due to a dispute over a parking spot.<sup>128</sup>

Social animosities worsen when hate crime legislation exists but a crime is *not* charged as a hate crime. Members of the community become "understandably unhappy when an apparently race-, gender- or religion-based crime against someone they perceive as one of their own isn't prosecuted as a hate crime."<sup>129</sup> Feelings of betrayal are also expressed by the victims' families, interest groups, and advocacy organizations.<sup>130</sup>

Opponents of hate crime legislation also question the unpredictable and inconsistent use of hate crime legislation.<sup>131</sup> That is, even when cases are undoubtedly hate crimes, a prosecutor may often choose not to charge a crime as a hate crime.<sup>132</sup> The David Ritcheson case exemplifies this, in which Ritcheson's attackers brutally attacked and sodomized this seventeen-year-old Hispanic boy with a sharp plastic pipe, but there were no hate crime charges.<sup>133</sup> Even though this case

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126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. See Eisenberg, *supra* note 1, at 863, 867.

131. *Id.* at 895.

132. *Id.*

133. Tuck v. State, No. 01-06-01086-CR, 2008 WL 4757005, at \*1 (Tex. Ct. App. Oct. 30, 2008); Turner v. State, 252 S.W.3d 571, 575 (Tex. Ct. App. 2008). See *No Hate Crime Charges After Brutal Attack*, NBCNEWS.COM (Apr. 28, 2006, 2:49 PM), <http://www.nbcnews.com/id/12530133#.UuB3AtLTlaQ> [hereinafter *No Hate Crime Charges*].

featured archetypal hate crime characteristics because the offenders were covered in swastika and white power tattoos, and referred to the victim as a “spic” and a “wetback,” neither of the defendants was charged with a hate crime.<sup>134</sup> Mike Trent, the prosecutor in the case, explained that he did not prosecute the case as a hate crime because, “[w]hether it is one or isn’t a hate crime, and it may be, that will make no difference here . . . . This is already a first-degree felony and it can’t be elevated any higher. There’s nowhere to go beyond this, unless the victim dies.”<sup>135</sup> However, the Anti-Defamation League looks for the prosecutors “to add hate-crime charges even if it won’t add to the penalties [because they] ‘want the public to accept and understand that this was a hate crime.’”<sup>136</sup>

The killing of Christopher Lane, a Caucasian Australian college student, exemplifies another recent case in which the prosecutors did not charge the offenders with a hate crime despite the evidence.<sup>137</sup> In 2013, in Duncan, Oklahoma, Lane was murdered by two African-American teenagers who had tweeted anti-white comments days prior to the murder.<sup>138</sup> The District Attorney stated that the evidence was not sufficient to establish that the primary motive of the killing was race.<sup>139</sup> Thus, charging the defendants with a hate crime would be redundant because the defendants accused of murdering Lane had already been charged with felony murder.<sup>140</sup> Even though the tweets were offensive, the United States Attorney of Oklahoma, Robert McCampbell stated, “[the tweets] don’t tell

134. Eisenberg, *supra* note 1, at 862-63.

135. *No Hate Crime Charges*, *supra* note 133 (“Trent said that adding hate-crime charges to the aggravated sexual assault faced by David Henry Tuck, 18, and Keith Robert Turner, 17, would have no legal effect.”).

136. *Id.*

137. Andres Jauregui, *Christopher Lane Murder: Race Not A Factor in Thrill Killing of Australian Baseball Player, Prosecutor Says*, HUFFINGTON POST (Aug. 26, 2013, 11:02 AM), [http://www.huffingtonpost.com/2013/08/26/christopher-lane-murder-race-not-motive\\_n\\_3816705.html](http://www.huffingtonpost.com/2013/08/26/christopher-lane-murder-race-not-motive_n_3816705.html) [hereinafter *Christopher Lane Murder*].

138. *Id.* See also Andres Jauregui, *James Edwards Tweets: Teen Charged in Murder Accused of Sending Racist Messages*, HUFFINGTON POST (Aug. 22, 2013, 12:06 PM), [http://www.huffingtonpost.com/2013/08/22/james-francis-edwards-tweets-racist-messages\\_n\\_3794913.html](http://www.huffingtonpost.com/2013/08/22/james-francis-edwards-tweets-racist-messages_n_3794913.html) (one of the teenage offenders tweeted that “90% of white ppl are nasty. #HATE THEM”).

139. *Christopher Lane Murder*, *supra* note 137.

140. *Id.*

you anything about the day of this particular crime . . . . You concentrate on the crime in front of you and you prove that crime, and there's no need to take on that extra burden of proving it was racially motivated."<sup>141</sup>

As witnessed in the Ritcheson and Lane cases, hate crime legislation can be viewed as redundant because "the predicate crimes are already punishable by criminal codes, so there is no need to create laws for a certain subset based upon the characteristics of the victim or motivation of the offender."<sup>142</sup> The James Byrd and Shepard cases evidence the fact that existing criminal laws adequately punish perpetrators.<sup>143</sup> In both of these cases, neither of which was prosecuted as a hate crime, the victims were horrifically killed, and the murderers were all convicted and adequately punished.<sup>144</sup> Critics of hate crime legislation also proclaim that "[e]xisting criminal laws cover every victim, revered or reviled alike [and] [h]ate crime laws selectively recriminalize acts that are already crimes."<sup>145</sup>

#### D. Arbitrary Exclusion

Another controversy surrounding hate crime legislation is that only select groups of people are eligible for their protection.<sup>146</sup> Opponents question whether the government arbitrarily chooses who will and will not be among the protected groups: how does the government determine and justify which group of people should be protected/included

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141. McCoy, *supra* note 114 (making these comments to Fox 25, U.S. Attorney Robert McCampbell stated, "It's much easier to talk about something being a hate crime than it is to actually go to court and prove that beyond a reasonable doubt.").

142. SHIVELY, *supra* note 15, at 38.

143. Michael Martin, *Are Hate Crime Laws Necessary?*, NAT'L PUB. RADIO (Apr. 10, 2012, 12:00 PM), <http://www.npr.org/2012/04/10/150351860/are-hate-crime-laws-necessary>.

144. ANTI-DEFAMATION LEAGUE, MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT FIFTH ANNIVERSARY, 6-7 (2014), <http://www.adl.org/assets/pdf/education-outreach/hate-crimes-prevention-act-fifth-anniversary.pdf> (explaining that one of Byrd's murderers is serving a life sentence, and the other two murderers were sentenced to death. Shepard's murderers are serving life sentences; they were not given the death penalty because Shepard's parents sought mercy for the defendants).

145. Dobbs, *supra* note 47.

146. See SHIVELY, *supra* note 15, at 38.

under hate crime laws?<sup>147</sup> A reasonable argument or illustration may be why certain groups of people, such as “government employees [who] are among the objects of targeted violence by some militia groups; [and/or] physicians who work in family planning clinics [that] are targeted for attack by other groups,” are *not* offered these same protections.<sup>148</sup>

Also, critics question if the government will continue adding certain groups to be protected under hate crime laws, evidenced by the hate crime legislation in Florida.<sup>149</sup> Because there have been several horrific hate crimes against the homeless, Florida has “broadened the category of hate crimes to include homelessness in Florida.”<sup>150</sup> This caused controversy among Florida residents because they believed this expansion “was watering [the legislation] down too much,” and that homeless people were already covered under ordinary laws.<sup>151</sup> Opponents state that this is problematic and unjust because, as the government arbitrarily adds certain people to be protected under hate crime legislation, they are also arbitrarily making it a point to exclude certain groups of people, such as the government employees and physicians mentioned above.<sup>152</sup>

Also, critics are concerned that certain hate crime prosecutions can produce some “weird kind of configurations . . . ,”<sup>153</sup> recently evidenced in a New York case in which a group of lesbians were charged with a hate crime for beating up a gay man; the crime was based on the victim’s sexual orientation.<sup>154</sup> As strange as this scenario may seem, the law reads, “as long as the prosecution can prove intent to discriminate against that group, [it] doesn’t matter what group the defendant is in.”<sup>155</sup>

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147. *Id.*

148. *Id.* at 39.

149. Martin, *supra* note 143 (quoting law professor and former federal prosecutor Paul Butler about whether there is a necessity for hate crime statutes).

150. *Id.*

151. *Id.*

152. SHIVELY, *supra* note 15, at 39.

153. Martin, *supra* note 143.

154. *Id.*

155. *Id.*

### E. An Individual's Response

Critics of hate crime legislation find it ironic that individuals who are protected under these statutes have voiced concern with the unintended negative effects of these laws.<sup>156</sup> One such individual, Kay Whitlock, a political theorist, author, and the National Representative for the Lesbian, Gay, Bisexual, and Transgender Group, delivered a candid synopsis of her concern:

[T]he simple framework of 'hate' to describe and punish violence is completely inadequate to address the deeper divisions and schisms in our culture that are the root of the problem. Arresting people, often young people, and placing them, for long periods of time, in prisons that make no attempt at rehabilitation and will undoubtedly subject them to the endemic violence of prisons, are part of the problem, not the solution . . . [T]he only way we, as a country and a political system, can move beyond a culture of violence is to work from the bottom up, not the top down. We need to address violence and hatred on the most basic interpersonal levels and at the level of small communities. Working within communities, schools, neighborhoods and organizations to examine the racial, economic and psychological reasons that are often underpinning these crimes will move us beyond the simplistic rhetoric of an ambiguously defined "hate." This may seem utopian, but community-based groups such as INCITE! Women of Color Against Violence and FIERCE, a New York City group comprised of young people of color, are doing this work already. Hate crime laws do none of this.<sup>157</sup>

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156. Bronski et al., *supra* note 11.

157. *Id.*



#### IV. Hate Crime Legislation is Not Cost-Effective

Not only is the practical value of hate crime legislation doubtful, additional funds are being allocated to maintain and enforce hate crime legislation. According to the United States Department of Justice, in 2013, \$5.1 million of its yearly budget was allocated to the Civil Rights Division for “further investment [in programs] and to support areas the Attorney General has determined warrant specific attention including . . . hate crimes . . . .”<sup>158</sup> In addition to these funds, “\$391,000 and 5 [staff] positions are requested for the Community Relations Service to support an increase in workload and responsibilities related to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act.”<sup>159</sup> The Shepard and Byrd Hate Crimes Prevention Act also provides financial assistance to local law enforcement agencies to investigate hate crimes.<sup>160</sup> For example, in addition to the yearly funding, it allows the United States Justice System to “grant state and local officials up to \$100,000 to cover the costs of prosecuting a [single] hate crime.”<sup>161</sup> In addition to this money, the federal government may need to provide funds to federal agents to assist local and state law enforcement officials with hate crime investigations.<sup>162</sup>

#### V. Recommendation

Given the negatives associated with hate crime legislation, the funds used to support hate crime legislation may be better spent on addressing the social problems that give rise to hate crimes and educating or reeducating our citizens.<sup>163</sup> Prejudicial attitudes are not innate, but learned.<sup>164</sup> Thus, families,

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158. U.S. DEPT OF JUSTICE, U.S. DEPT OF JUSTICE OVERVIEW (2014), <http://www.justice.gov/sites/default/files/jmd/legacy/2014/08/25/fy13-bud-summary-request-performance.pdf>.

159. *Id.*

160. Ari Shapiro, *Obama Sets To Sign Bill Widening Hate Crime Laws*, NAT'L PUB. RADIO (Oct. 28, 2009, 11:25 AM), <http://www.npr.org/templates/story/story.php?storyId=114223708>.

161. *Id.*

162. *Hate Crimes*, FBI, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (last visited Oct. 10, 2016).

163. Bronski et al., *supra* note 11.

164. *Preventing Youth Hate Crime*, *supra* note 4.

communities, schools and law enforcement need to work together to instill respect and appreciation for diversity by helping others “develop empathy, conflict resolution, and critical thinking skills.”<sup>165</sup> Social workers and other community relation agencies need to become more involved in educating citizens because they are trained and experienced in hate-related victimization. Ultimately, resources should be directed away from hate crime legislation and towards cultural changes to prevent hate crimes.

### Conclusion

The equality of each and every individual is vital, but the enactment of hate crime legislation is not the means to accomplish this. Distinguishing hate crimes from other types of crimes is not effective because these laws do not fulfill their intended purposes and they result in unintended, negative consequences. The main objective of hate crime legislation is to promote social stability and equality. However, in reality, these laws promote inequality and exacerbate societal divisions and identity politics. Hate crime legislation pits protected and unprotected groups against each other by declaring that certain groups of people are more deserving of legal protection than others.<sup>166</sup>

Hate crime legislation may cause reverse discrimination, creating another negative unintended circumstance. Why is it acceptable for an offender to suffer less serious consequences if they assault a person who is not protected under hate crime statutes? Another issue is that hate crime laws are enhancing penalties against minorities, and minorities are among the *protected* groups in this legislation. In addition, there is no valid proof that hate crime enhanced penalties are decreasing or deterring hate crimes, but the harsher punishments are clearly leading to more-hardened criminals.<sup>167</sup>

There may be underlying motives for the enactment of this type of legislation, and the media and politics may have played a disproportionate role in the passage of these laws. From a

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165. *Id.*

166. SHIVELY, *supra* note 15, at 38.

167. Bronski et al., *supra* note 11.

legal perspective, there is no reason to separate hate crimes from other crimes; laws already exist to protect *all* victims of crime, regardless of the victims' identity. In addition, hate crime legislation's intent to achieve tolerance and equality presents constitutional concerns, including Equal Protection, Double Jeopardy, and Freedom of Speech and thought. Most Americans agree that these constitutional violations are unacceptable in a democratic society.<sup>168</sup>

Even though hate crime legislation has gained popularity and exists in the majority of states, there are still some issues with the implementation of these laws. Prosecutors across the country claim hate crimes are difficult to prove. Focus is also placed on the vagueness and redundancy of hate crime legislation, and the inconsistency involved in the prosecution of this type of legislation. Not only is the practical value of hate crime legislation doubtful, there are additional costs affiliated with enforcing and maintaining anti-hate laws, and they place a substantial financial burden on our government and taxpayers.

In sum, hate crime legislation is not necessary or effective. At the very least, more research needs to be conducted to discover the real reasons why people commit hate crimes, and efforts made to address the reasons why people commit these crimes must improve. A political leader's opposing view on hate crime legislation should be candidly voiced and heard without the fear of being labeled as a bigot.<sup>169</sup>

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168. See Kopel, *supra* note 78.

169. Nearpass, *supra* note 35, at 554.