POLICY SPOTLIGHT:
HATE CRIME LAWS

JULY 2021

Author

MAP movement advancement project

Foreword by Judy Shepard

Matthew Shepard Foundation

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SPOTLIGHT REPORT

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MAP's mission is to provide independent and rigorous research, insight, and communications that help speed equality and opportunity for all people. MAP works to ensure that all people have a fair chance to pursue health and happiness, earn a living, take care of the ones they love, be safe in their communities, and participate in civic life. For more information, visit www.lgbtmap.org.

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Founded in 1991, Advancing Justice—AAJC's (Advancing Justice—AAJC) mission is to advance civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice – AAJC is the voice for the Asian American community – the fastest-growing population in the U.S. – fighting for our civil rights through education, litigation, and public policy advocacy. We serve to empower our communities by bringing local and national constituencies together and ensuring Asian Americans are able to participate fully in our democracy

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Equality Federation Institute is an advocacy accelerator rooted in social justice, building power in our network of state-based lesbian, gay, bisexual, transgender, and queer (LGBTQ) advocacy organizations. Since 1997, Equality Federation Institute has become a leading movement builder, national network, and strategic partner to 40+ member organizations that advocate for LGBTQ people in the states. Collectively, our member network of state partners mobilizes more than 2 million supporters across the country. From Equality Florida to Freedom Oklahoma to Basic Rights Oregon, we amplify the power of the state-based LGBTQ movement.

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The James Byrd Jr. Center to Stop Hate, at the Lawyers' Committee for Civil Rights Under Law, supports communities and individuals targeted for hate and challenges white supremacy by using creative legal advocacy, disrupting systems that enable hate, and educating the general public and policy makers. The Byrd Center's resource and reporting hotline for hate incidents, 1-844-9-NO-HATE (1-844-966-4283), connects people and organizations combating hate with the resources and support they need.

Jews For Racial & Economic Justice
Jews For Racial & Economic Justice (JFREJ) is a grassroots organization and home to New York City's Jewish Left. For over three decades, JFREJ members have organized alongside our neighbors to win an equitable New York City free from all forms of racist violence, where everyone has what they need to thrive.

Lambda Legal
Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work.

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LatinoJustice PRLDEF works to create a more just society by using and challenging the rule of law to secure transformative, equitable and accessible justice, by empowering our community and by fostering leadership through advocacy and education. For nearly 50 years, LatinoJustice PRLDEF has acted as an advocate against injustices throughout the country.

The Matthew Shepard Foundation
The mission of the Matthew Shepard Foundation is to amplify the story of Matthew Shepard to inspire individuals, organizations, and communities to embrace the dignity and equality of all people. Through local, regional, and national outreach, we empower individuals to find their voice to create change and challenge communities to identify and address hate that lives within our schools, neighborhoods, and homes. Our work is an extension of Matt's passion to foster a more caring and just world. We share his story and embody his vigor for civil rights to change the hearts and minds of others to accept everyone as they are.

National Black Justice Coalition
The National Black Justice Coalition (NBJC) is a civil rights organization dedicated to the empowerment of Black lesbian, gay, bisexual, transgender, queer+, and same gender loving (LGBTQ+/SGL) people, including people living with HIV/AIDS. NBJC's mission is to end racism, homo/trans/biphobia, and LGBTQ+/SGL bias and stigma. As America's leading national Black LGBTQ+/ SGL civil rights organization focused on federal public policy and grassroots organizing, NBJC has accepted the charge to lead Black families in strengthening the bonds and bridging the gaps between the movements for racial justice and LGBTQ+/SGL equality.

National Center for Lesbian Rights
The National Center for Lesbian Rights (NCLR) is a national legal organization committed to advancing the human and civil rights of the lesbian, gay, bisexual, transgender, and queer community through litigation, public policy advocacy, and public education. Since its founding, NCLR has maintained a longstanding commitment to racial and economic justice and the LGBTQ community's most vulnerable

National Center for Transgender Equality
The National Center for Transgender Equality advocates to change policies and society to increase understanding and acceptance of transgender people. In the nation's capital and throughout the country, NCTE works to replace disrespect, discrimination, and violence with empathy, opportunity, and justice.

National Council of Jewish Women
The National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms.

National Disability Rights Network
The National Disability Rights Network (NDRN) is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and the Client Assistance Programs (CAP) for individuals with disabilities. NDRN promotes the network's capacity, ensures that P&As/CAPs remain strong and effective by providing training and technical assistance, and advocates for laws protecting the civil and human rights of all people with disabilities.

The Sikh Coalition
The Sikh Coalition is a national, community-based organization and the largest Sikh civil rights organization in the United States. Whether it's working to secure safer schools, prevent hate and discrimination, create equal employment opportunities, empower local Sikh communities, or raise the Sikh profile in the media, the Sikh Coalition's goal is working towards a world where Sikhs, and other religious minorities in America, may freely practice their faith without fear of bias and discrimination.

Southern Poverty Law Center
Now in our 50th year, the SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. We have helped dismantle vestiges of Jim Crow, reformed juvenile justice practices, shattered barriers to equality for women, children, the LGBTQ+ community, and the disabled, and worked to protect low-wage immigrant workers from exploitation. Today, the SPLC is the premier U.S. nonprofit organization monitoring the activities of domestic hate groups and other extremists.

The Union for Reform Judaism
The Union for Reform Judaism (URJ) leads the largest and most diverse Jewish movement in North America. The URJ builds community at every level, motivates people from diverse backgrounds to participate and deepen their engagement in Jewish life, and strives to create a more whole, just, and compassionate world.

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The FBI currently defines a hate crime as a "committed criminal offense which 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." This report uses terms such as "hate crimes", "hate-motivated crimes", and "bias-motivated crimes" interchangeably.

Hate crimes and hate violence are related but different terms. Hate violence refers to a broad category of experiences or incidences of violence involving hate, prejudice, and discrimination, and not all of those experiences may fit a stricter, legal definition of a hate crime. Hate crimes generally refers to *criminal* acts, such as assault or vandalism, that are, as defined above, motivated in whole or in part by bias or hate. For example, a person yelling a racial slur at someone could be hate violence, but simply yelling a racial slur alone would not be categorized as a hate crime. Yelling racial slurs while assaulting someone, however, would likely be evidence of a hate crime. In other words, hate crimes are one type of hate violence, but not all hate violence is (by legal definitions) a hate crime.

FOREWORD

My experience with and understanding of hate crime laws is both personal and painful. In October of 1998, my son Matthew Shepard was brutally attacked, tied to a fence outside of Laramie, Wyoming, and left to die. He succumbed to his injuries five days later and became the victim of one of the most notorious anti-gay hate crimes in American history.

Although what happened to Matt was clearly motivated by hate and bias, his murderers were not charged with a hate crime because a hate crime statute did not exist in Wyoming and the federal statute did not include protections for sexual orientation or gender identity. It's been over 20 years and we've come a long way in not only improving the federal hate crime statute, named after Matt, but also expanding and strengthening state hate crime laws.

Yet today, we are at a turning point. Although we know that hate crime laws are important and have been successful in holding offenders accountable, we also know that they can and should be more impactful. This report details the different ways hate crime laws currently respond to hate violence, while amplifying opportunities for restorative approaches and innovative ways to prevent hate in the first place.

It is clear that hate crime laws have played an important role in responding to hate violence, and tragedies like the shootings at the Tree of Life Synagogue, Pulse Nightclub, Emanuel African Methodist Episcopal Church, and the most recent attack on spas in Atlanta, GA, highlight the importance of naming and acknowledging the role of bias in such violent incidents. However, hate crime laws are only one part of a broader, more holistic approach. Unfortunately, no single law can solve the complex problem of hate violence or undo the centuries of racism, homophobia, transphobia, anti-Semitism, bigotry and violence that are woven into the fabric of American history.

We at the Matthew Shepard Foundation believe that a comprehensive strategy to addressing hate crimes requires both preventative and enforcement components. The Foundation has played an active role in strengthening hate crime laws, improving hate crime data collection and reporting, and providing in-depth hate crime prevention training for law enforcement. We know that hate violence is a complicated social issue, requiring proactive community focused solutions, victim support, and a reduction of our reliance on the criminal justice system. We will continue to lend our voices to efforts that will enhance victim protections, increase community safety, and address the societal root causes that create, enable and perpetuate hate and bias.

After reading this report, I hope you walk away with a greater understanding of why hate crimes are a different type of crime, that not only directly harm individual victims, but entire communities. I hope you advocate for improved legislation like the COVID-19 Hate Crimes Act and the Jabara-Heyer NO HATE Act, which advance even stronger hate crimes protections, invest resources in violence prevention, and move us another step forward in the fight for equality and justice. And, I hope you take a moment to remember the lives lost to hate, like Matt and so many others whose families and communities demand change.

Judy Shepard
Board Chair & President

Matthew Shepard Foundation
Erasing Hate since 1998

EXECUTIVE SUMMARY

This current moment, marked by both rising hate violence and rising attention to racial justice, brings forth a need to reexamine and reimagine our responses to hate crime.

Historically, hate crime laws have served as the primary legal tool for responding to hate-motivated crime. These laws serve an important and necessary purpose in acknowledging the unique harms, to both individual victims and the broader communities affected, of these unique crimes. However, like many other laws, hate crime laws are varied, often flawed, and can even harm the very communities they are meant to serve. Ultimately, though hate crime laws intend to protect vulnerable communities, they remain a tool of the criminal justice system, which itself is often biased against the very same communities that are the predominant targets of discrimination, bias, and hate.

This report calls attention to and examines the complex variation in hate crime laws across the country, as well as the multiple limitations of—and opportunities for improving—hate crime laws. By reviewing existing laws, illustrating both gaps and innovations, and exploring the challenges of responding to bias-motivated violence within a biased criminal justice system, this report highlights the possibilities for expanding our response to hate violence, including through more holistic, restorative, and community-based efforts. It also highlights the already existing opportunities to invest needed resources in victim and community support services, rigorous data collection and analysis, and efforts to prevent violence and hate at their roots.

Ultimately, this report seeks to expand the conversation around social and policy responses to hate-motivated violence, and to identify potential paths forward for communities, advocates, and policymakers to create a safer and more resilient country for all, while also reducing the reliance on the criminal justice system. This is but one part of the larger work that remains for our country before everyone—regardless of who they are or where they're from, the color of their skin, their religion, ability, or who they love—can be safe and free.

Rising Hate Violence

Hate violence and harassment against many communities—including communities of color, people of minority faiths, LGBTQ people, people with disabilities, and others—remain a persistent and widespread problem. According to the FBI, 2019 saw a ten-year high in reported hate crimes, the majority of which are crimes motivated by racial or ethnic bias. Data from the Department of Justice show this is only the tip of the iceberg, as more than half of all hate crimes go unreported.

Data further show that anti-Jewish violence, violence against people with disabilities, and many more forms of hate violence have all increased over recent years. Violence against LGBTQ people, especially Black transgender women, also continues to rise each year. During the COVID pandemic, there has been an especially sharp increase in anti-Asian hate crimes.

No Uniform Response to Hate Crimes Across Federal and State Laws

Federal and state governments vary widely in their responses to hate violence, leading to a complex patchwork of policies and protections across the country. This means that a person who experiences a hate crime may have a completely different set of protections, options, or access to resources depending on what state the crime occurs in. Similarly, requirements for data collection, law enforcement training, and more also vary widely from state to state, leading to incomplete and inconsistent efforts in understanding the true scope of hate violence and responding effectively to it. Overall, this complexity illustrates just some of the many ways states are already responding to hate violence, and further invites an examination of which of these efforts are, or are not, effective in protecting and supporting those affected by hate crime, and ultimately in preventing hate crime.

The earliest federal hate crime laws were passed following the Civil War in response to widespread racist and white supremacist violence in the years after the war. The first modern federal hate crime law was passed in 1968, and federal law has been expanded and modified many times since. At the state level today, **46 states, D.C., and two territories (Puerto Rico and the U.S. Virgin Islands) have hate crime laws,** though they also vary in many ways, as summarized below and in the infographic.

- **Criminal punishment.** A core element of all state hate crime laws is the use of criminal punishment, typically through sentencing enhancements, to respond to instances of hate crime—though there is little evidence that sentencing enhancements deter crime.

- **Statute type.** Most states use a distinct hate crime statute to create a new, independent crime, while a small minority use general sentencing statutes to identify what characteristics (e.g., bias motivation) of an underlying, existing crime (e.g., assault) may justify enhanced sentencing. Four states use both methods. Distinct statutes can allow for greater clarity of what constitutes a hate crime (which in turn can enable more precise data collection and training) and what specific punishments (including non-carceral sentencing options) ought to be applied.
- **Protected categories.** While all hate crime laws cover race or color, ethnicity or national origin, and religion, there is considerable variation across states when it comes to additional categories such as disability, sex or gender, sexual orientation, gender identity, age, and more. This leaves a patchwork of protections for some communities depending on where they live. It can also limit data collection efforts, as data are typically (though not always) only collected on categories enumerated by state laws.
- **Institutional vandalism.** Bias-motivated violence often targets people, but it can also target institutions, such as community centers, religious schools or buildings. Most states make it a crime to target specific types of property or institutions, and this acknowledges the harm caused by hate violence that targets meaningful places, like a Jewish cemetery or LGBTQ community center, even if no person was physically harmed by the crime.
- **Collateral consequences.** A minority of states have additional consequences for those convicted of a hate crime, in addition to incarceration or other requirements at sentencing. These consequences, such as disqualifying a person convicted of a hate crime from particular lines of work after their sentence is complete or prohibiting gun ownership, may be intended to minimize the chance of future harm, but in some cases, they can also limit access to important opportunities like anti-bias education or diversion programs.
- **Non-carceral sentencing.** A minority of states' hate crime laws explicitly allow courts to recommend or require those convicted of a hate crime to complete community service or anti-bias education in addition to their sentence. These provisions create important opportunities for exploring alternative responses to hate crimes, including responses geared toward community repair and preventing hate crimes, rather than only responding after the fact.
- **Civil action.** Hate crime laws create a criminal offense, but more than half of states allow individuals to pursue a civil action or lawsuit if they experience bias-motivated crimes. This can allow an individual to seek financial damages or legal responses beyond imprisonment, and in some cases civil action can also allow for the state to take action on behalf of victims.
- **Victim protections.** Few states offer some sort of statutory protections for survivors of hate crimes, such as prohibiting insurance providers from canceling a policy (like health insurance) that was used following a hate crime. These provisions focus on the survivor and can help those who experience hate crimes to recover and to avoid further potential harm.
- **Data collection.** Only about half of states have laws that require the state to collect and analyze data on hate crimes via mandatory reporting from law enforcement agencies. An additional four states and D.C. require the state to collect and analyze such data, but do not require law enforcement agencies to report or participate in this effort. Consistent, accurate data collection is vital for understanding hate crime, as well as for evaluating the efficacy of policy interventions, the potential for biased enforcement of existing laws, and more.
- **Law enforcement training.** Roughly one-third of states require training for law enforcement on how to properly identify, competently respond to, and accurately collect and report data on hate crimes. Because hate crime laws, in their current form, rely on law enforcement for data collection and connecting victims to needed resources, consistent training requirements are important for the overall effectiveness of hate crime laws.

Challenges of Addressing Hate Violence Through The Criminal Justice System

No single law can solve the scourge of hate violence in our society, and hate crime statutes are only one part of broader efforts to end such violence and prejudice. That said, over the roughly half-century since the first modern hate crime laws were enacted, it is increasingly evident that hate crime statutes—as well as the ways law enforcement and the criminal justice system more broadly respond to hate violence—can be improved.

This is particularly true with respect to engaging a more holistic, responsive, and restorative approach to hate violence and its unique harms. Key challenges of hate crime laws currently include:

- **Flaws in hate crime data collection and reporting** are widespread, and the current system of federal data collection relies only on the voluntary participation of law enforcement. This ultimately means that extremely few hate crimes are actually reported, and many victims of hate crimes are left without needed support.
- **Abuse of the original intent of hate crime laws** is also spreading. Since 2016, six states have passed unnecessary legislation that adds police officers as a protected class under hate crime laws, despite the fact that all 50 states already have criminal statutes that specifically address and punish violence against a law enforcement officer. Importantly, these six states have passed these laws—often referred to as "Blue Lives Matter" laws—rather than meaningfully respond to criticisms of police brutality and calls for criminal justice reform.
- More broadly, hate crime laws' **harsher punishments have not been shown to deter hate violence and furthermore cannot address the root causes of hate violence.** In their current form, hate crime laws focus on punishing individual offenders without actually challenging their underlying prejudicial beliefs—let alone the prejudice in broader society—all while doing little to repair the actual harm done to victim(s) and the broader community.
- **Widespread bias in the criminal justice system** results in significant racial disparities across many outcomes, as well as clear disparities for low-income people, LGBTQ people, and other vulnerable communities—often the very communities that are targeted for hate violence. This bias is not unique to hate crime laws, but neither are hate crime laws immune from the broader injustices of the criminal justice system. Evidence shows that, for example, even though the majority of hate crimes are committed by white people, many states' law enforcement records disproportionately identify Black people as hate crime offenders. Additionally, given the many biases in the criminal system, many communities are often reluctant to report their experiences to the police out of fear of dismissal or further discrimination, leading to further inequalities in who receives support following hate violence and the ways that the criminal justice system responds to hate violence.

While these challenges are substantial, they need not mean that hate crime laws should be abandoned wholesale. Rather, they call attention to the possibility and importance of refocusing or supplementing these laws with resources on other important goals, such as investing in victim and community support services, rigorous data collection and analysis, and efforts to prevent violence and hate at their roots.

Paths Forward to Address Hate Violence

This report highlights the multiple opportunities for improving hate crime laws and better responding to people and communities affected by hate violence. These opportunities include:

- **Reducing the vulnerability of and investing in communities that are harmed by hate violence,** such as people of color, LGBTQ people, people of minority faiths, and people with disabilities. Investing in the social safety set, expanding nondiscrimination protections, and more will help reduce the broader instability caused by discrimination, in turn reducing vulnerable communities' exposure to potential violence—as well as their ability to recover from violence.
- **Preventing violence** through work that not only aims to reduce hate crimes, but also work to reduce hate and violence in and of itself. For example, in testimony to the U.S. Senate, the Leadership Conference on Civil and Human Rights (LCCHR) called for "the enactment of comprehensive legislation focusing on inclusive anti-bias education, hate crime prevention, and bullying, cyberbullying, and harassment education, policies, and training initiatives."
- **Improving law enforcement accountability and training** is imperative, including to redress and repair the disproportionate harms caused by law enforcement to vulnerable communities. Given that hate crime laws currently rely primarily on law enforcement for responding to and collecting data about hate violence, the effectiveness of hate crime laws will depend on law enforcement's treatment of and accountability to vulnerable communities.
- **Improving data collection, and especially through community-based efforts**, can help better connect survivors and those affected by hate crimes to

needed resources and support. Such data can also help policymakers and advocates craft more tailored responses to hate violence. Data collection can also help track any potential disparities or bias in the enforcement of hate crime laws, as well as to evaluate the efficacy of non-carceral responses to hate crime.

- **Shifting focus toward support and healing**, such as through expanded measures to support victims and survivors of hate crimes, community education and response strategies, and non-carceral approaches to justice.

As the United States continues to grapple with racial justice, the harms of the criminal justice system, and rising hate violence against many communities, it is critical that we reexamine our social and policy responses to hate crime. Further explicit study of the efficacy, benefits, and potential harms of hate crime laws is needed so that best practices—including those beyond the criminal system—can be identified and implemented consistently across the country. These best practices should, at a minimum, center and invest in the communities most impacted by hate violence, work to both prevent hate violence and respond to it when it does occur, and to do so without furthering the harm and disproportionate impacts of the criminal justice system. How hate crime laws, in both their current and potential form, fit into the broader work to improve the safety and security of all communities in the United States is a critical part of the work ahead.

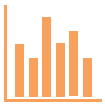
HATE CRIME LAWS:
A COMPLEXITY OF RESPONSES TO HATE VIOLENCE

In addition to federal hate crime laws, today, 46 states, the District of Columbia (D.C.), and two territories have their own hate crime laws. These laws have many components that vary widely across states, leading to a complex—and inconsistent—patchwork of policies and protections across the country.

COMPONENTS OF HATE CRIME LAWS VARY WIDELY

LAW ENFORCEMENT TRAINING
(18 states)
Requiring law enforcement to receive training on identifying, responding to, and collecting data about hate crimes.

CRIMINAL PUNISHMENT
(all hate crime laws)
Using the criminal legal system to respond to hate crimes.



DATA COLLECTION
(30 states + D.C.)
Requiring states and/or law enforcement agencies to collect, report, and/or analyze data on hate crimes in their state.

DISTINCT CRIME VS. GENERAL SENTENCING STATUTES
(38 distinct crime, 7 general sentencing, 4 both)
Defining a new distinct crime or adding bias motivation to existing crime and sentencing guidelines (or both).

VICTIM PROTECTIONS
(9 states)
Explicitly providing resources and legal protections to those who experience hate crimes.

PROTECTED CLASSES
(vary widely)
Enumerating what types of biases (such as race, disability, sexual orientation) are prohibited.

RIGHT TO CIVIL ACTION
(31 states + D.C.)
Creating a civil (i.e., not criminal) offense, allowing for lawsuits and in some cases for the state to take action on behalf of victims.

INSTITUTIONAL VANDALISM
(35 states, D.C., + two territories)
Making it a crime to target institutions like religious buildings or community centers, even if no person was harmed.

AND MORE

NON-CARCERAL SENTENCING
(12 states)
Options for judges to require anti-bias education or community service, in addition to traditional punishment, for those convicted of hate crimes.

COLLATERAL CONSEQUENCES
(11 states)
Additional consequences beyond sentencing (e.g., prohibiting gun ownership) for those convicted of hate crimes.

HATE CRIME LAWS:
CHALLENGES AND OPPORTUNITIES

No single law can solve the scourge of hate violence, and hate crime laws are only one part of larger efforts to end such violence and prejudice. That said, there are many limitations to contemporary hate crime laws—but these challenges also illustrate opportunities for creating more holistic responses to hate violence, including those that center harmed communities and that reduce reliance on the biased criminal justice system.

KEY CHALLENGES

FLAWS IN DATA COLLECTION

- Over half of all hate crimes go unreported, including due to fear of police.
- Extremely few law enforcement agencies report hate crime data to the FBI, leaving an incomplete picture of the scope of hate violence.

FAILURE TO ADDRESS ROOT CAUSES

- What can be done to prevent hate crimes—and hate itself—rather than only respond to it?
- Do these laws actually deter hate crime?
- How can we break a cycle of violence?

ABUSE OF ORIGINAL INTENT

- So-called "Blue Lives Matter" amendments exploit hate crime laws to add unnecessary protections for law enforcement—and often do so instead of responding to calls to end police violence.

BIAS IN CRIMINAL JUSTICE SYSTEM

- Biased systems can lead to biased outcomes, such as over-policing and disproportionate arrests, prosecutions, and sentencing.
- People of color are more likely to be victims of hate violence but are disproportionately listed as hate crime offenders in law enforcement reports.

PATHS FORWARD

IMPROVING DATA COLLECTION

- Funding community-based data collection and public education efforts, such as hotlines
- Requiring states to collect, analyze, and report hate crime data to the public and policymakers
- Requiring law enforcement to collect and report data to states and to the FBI

REDUCING VULNERABILITY & INVESTING IN HARMED COMMUNITIES

- Preventing the economic, social, and political conditions that leave people vulnerable to hate violence
- Investing resources in—and following the lead of—communities disproportionately harmed by hate violence

PREVENTING VIOLENCE

- Reducing hate violence by reducing hate itself
- Anti-bias education, anti-bullying efforts, bystander intervention and conflict resolution trainings, community workshops, and more

IMPROVING LAW ENFORCEMENT ACCOUNTABILITY & TRAINING

- Creating meaningful accountability to communities harmed by law enforcement
- Requiring law enforcement to have regular hate crime training to improve recognition of and responses to hate crime, including connecting victims to resources and accurately collecting data

SHIFTING TO SUPPORT & HEALING

- Responding to hate violence when it happens, while also working to break cycles of hate and harm
- Investing state and federal resources in victim and community support services, including those provided by community and nonprofit organizations
- Expanding and investing in non-carceral responses

INTRODUCTION

The United States has seen a marked increase in hate crimes and hate-motivated violence over the past 10 years.[1]

This type of violence—in which someone is targeted because of their race, color, ethnicity, national origin, religion, disability, sex, sexual orientation, gender identity, or other factors—is distinct from other types of violence. This is because hate crimes and bias-motivated violence affect not only the individual victim or survivor, but often—and often intentionally so—the broader community.[2] Burning a cross near Black homes[3] or attempting to destroy a Jewish synagogue[4] or Muslim community center,[5] for example, does not only harm the individuals directly affected; it also inflicts emotional harm and instills fear for many in the broader Black, Jewish, or Muslim communities. Assaulting a person because of their sexual orientation or gender identity does not only harm that individual, but further threatens the safety and well-being of other LGBTQ people.

As history has repeatedly shown, one prejudiced individual's words and actions can enable many others to take discriminatory or violent action. As a result, advocates argue, recognizing hate crimes as a unique type of crime—and responding to them as such—sends an important signal that such actions are unacceptable, both socially and legally.

Hate crime laws are one tool used by policymakers and the criminal justice system to address violence motivated by hate or bias. Generally speaking, these laws make it a crime to harm, intimidate, or threaten someone because of who they are, such as because of their race, religion, disability, sexual orientation, or gender.

The first contemporary federal hate crime law was passed as part of the Civil Rights Act of 1968. Federal hate crime law has expanded in multiple ways over the years, including through the Hate Crime Statistics Act of 1990, which created a federal system to track bias-motivated crimes,[6] and the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, which expanded federal law to include certain crimes based on sexual orientation, gender, gender identity, and disability.

As early as 1981, states began passing their own hate crime laws.[a] Today, 46 states, the District of Columbia, and two U.S. territories have hate crime laws, though they vary in many ways. Some of these differences include what types of bias are included, whether these laws require data collection or victim support services, and more.

This report reviews the current policy landscape of state hate crime laws and analyzes multiple dimensions of these laws. This report also examines the challenges related to hate crime laws, ranging from underreporting of hate violence to the significant challenges in relying on an already-biased criminal justice system to address bias. Evidence shows that, for example, even though the majority of hate crimes are committed by white people, many states' law enforcement records disproportionately identify Black people as hate crime offenders. Furthermore, communities of color, LGBTQ people, and others are often reluctant to report their experiences to the police out of fear of dismissal or further discrimination, leading to further inequalities in who receives support following hate violence and the ways that the criminal justice system responds to hate violence.

This report shows the complex and diverse ways that existing state law and the criminal justice system attempt to respond to hate violence. This report also shows how federal and state hate crime statutes function in a time simultaneously marked by rising hate crimes and by rising national attention to and understanding of the criminal justice system and its racial bias. The growing visibility of the broad, community-based harms that result from both hate violence and from the criminal justice system illustrates important questions about how to respond to hate violence and how to support communities that experience it.

The report concludes by outlining recommendations to center the communities most affected by hate violence, prevent such violence in the first place, and engage directly with the harm caused by incarceration and the criminal justice system.

> *Hate crimes* have been referred to as this country's original form of domestic terrorism. They have a reverberating effect, striking fear not only in the individual victim, but also in the broader community. These incidents further splinter and segregate our communities by eroding the diverse fabric of American life. … Such hatred destroys the very fabric of our democracy and negatively affects everyone in the United States."
>
> -Vanita Gupta, President & CEO of The Leadership Conference on Civil and Human Rights, May 2017.

[a] The exact dates or first states are debated, as some state civil rights laws could be considered hate crime laws.

HATE VIOLENCE IN THE UNITED STATES

Research finds that many communities in the United States experience hate violence. In 2017, a nationally representative survey by NPR, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health found that 42% of Black people and 38% of Native Americans have experienced racial violence, and further that 51% of LGBTQ people have experienced anti-LGBTQ violence.[7] Reported violent deaths of transgender people—and especially Black transgender women—reach new record highs each year. As shown in *Figure 1* on the next page, hate crimes have increased in recent years, with particularly dramatic spikes in crimes based on religion, disability, gender, and multiple biases.

As defined by the Federal Bureau of Investigation (FBI), a hate crime is a "committed criminal offense which 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."[8] Even if the person who committed the crime was mistaken about another person's actual race, sexual orientation, gender identity, or other characteristics, it is still a hate crime because it was motivated by the victim's or victims' (perceived) identity. Hate crimes can also refer to violence committed against a place or institution, such as a church, synagogue, or community center. It is increasingly common to refer to hate crimes as bias crimes or bias-motivated crimes.

While there are substantial data limitations (discussed in greater detail on pages 26-28), there are currently two key federal sources for national data on hate crimes: the FBI's Uniform Crime Reporting (UCR) Program and the Bureau of Justice Statistics' National Crime Victimization Survey (NCVS). The FBI's UCR Program collects data on hate crimes by relying on *voluntary* participation by law enforcement agencies across the country.[9] Notably, only a subset of law enforcement agencies participates in UCR efforts, and only a fraction of those actually report any hate crime incidents in a given year.

By contrast, the NCVS is an annual survey of a nationally representative sample of roughly 160,000 people across the country and their experiences of crime over the past year.[10] Because the NCVS communicates directly with people in the United States, the NCVS captures experiences of hate crimes and hate violence more broadly, regardless of whether these crimes were reported to law enforcement or whether law enforcement reported them to the FBI. (For discussion of why people may not report to law enforcement, or why law enforcement may not report to the FBI, see page pages 26-28.) As a result, the NCVS offers a much more detailed look into the scope and patterns of hate crime in the United States.

In 2019 alone, FBI data show an average of over 20 hate crimes reported *per day*: 11 hate crimes based on race or ethnicity, four based on religion, four based on sexual orientation or gender identity, and at least one other hate crime (based on disability, gender, or multiple biases) every day.

FBI data also show that annual reported hate crimes are increasing, as shown in Figure 1. Since 2013, the annual number of reported hate crimes by each type of bias—race or ethnicity, religion, disability, gender, sexual orientation and gender identity (LGBTQ), as well as multiple-bias crimes—have all increased.[b]

There are many potential reasons for the observed rise in hate crimes, including more people reporting their experiences, increased or improved reporting by law enforcement, and an actual increase in hate crime incidents. That said, there is significant evidence of increased hate crime in recent years. For example, the increase in reported hate crimes is happening despite concurrent nationwide *decreases* in other types of violent crime.[11] In another example, overall reported violent deaths and murders of transgender people—and especially Black transgender women—are on the rise, as shown in *Figure 2* on page 4. These are reports made in the media and by local community members and advocates. In many, if not most, of these cases, law enforcement did not treat or report these murders as hate crimes.

Importantly, the statistics shown here reflect only the hate crimes reported to law enforcement and then to the FBI (Figure 1) or those reported on by media or community advocates (Figure 2). As discussed next, many more hate crimes were committed but never reported, so the numbers shown here are only a fraction or minimum estimate of the widespread violence occurring across the country. Some advocates refer to this as the "justice gap,"[12] or the significant gap between the actual total experiences of hate crimes across the country and the extremely few hate crimes that are actually reported and appropriately responded to by the criminal justice system.

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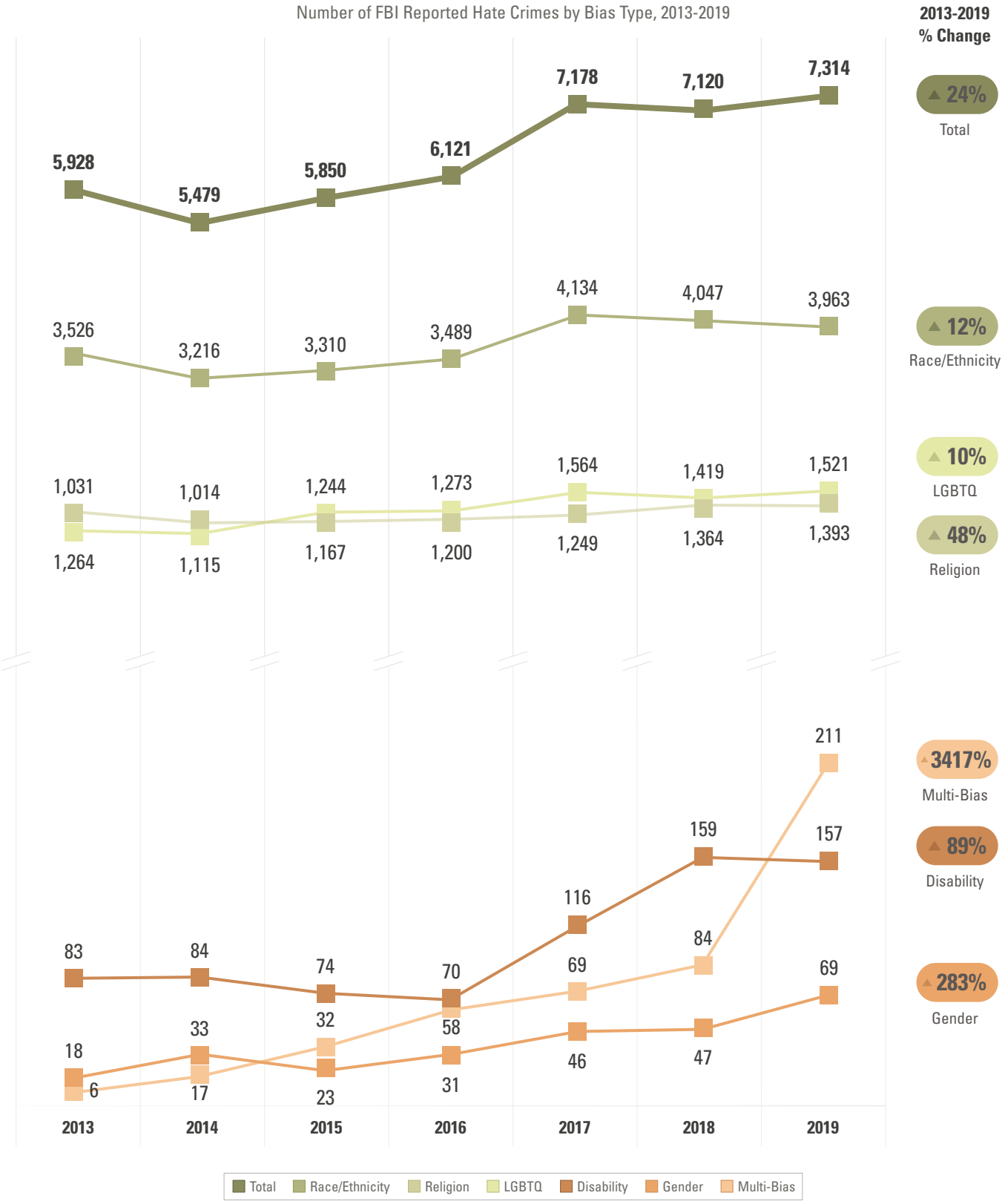
[b] The FBI first began reporting incidents based on gender identity in 2013, so analyses in this report begin that year.

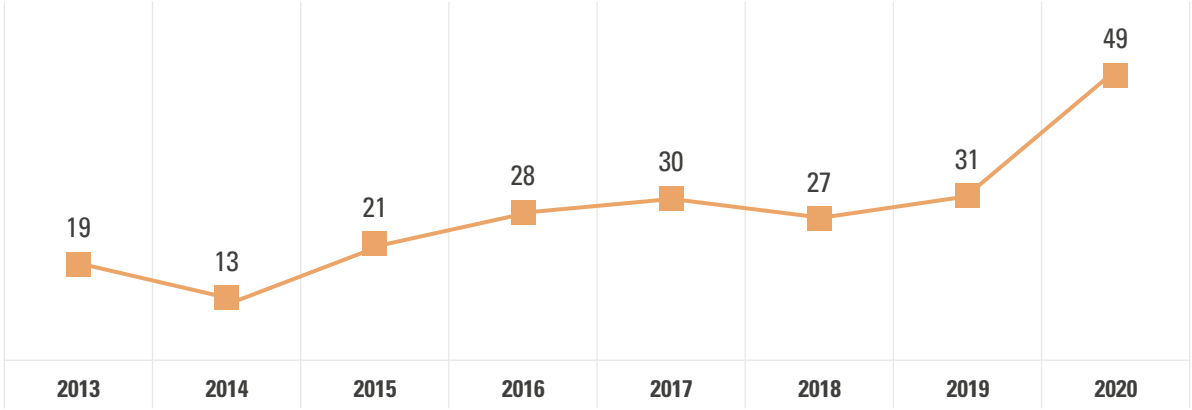
Figure 1: Reported Hate Crimes in the United States Are Increasing

Number of FBI Reported Hate Crimes by Bias Type, 2013-2019



Note: "LGBTQ" is the sum of all single-bias incidents based on either sexual orientation or gender identity, and does not include incidents based on "gender" or multiple-bias incidents.
Source: FBI's Uniform Crime Reporting (UCR) Program, Hate Crimes, 2013-2019. www.ucr.fbi.gov/hate-crime.

Figure 2: Reported Violent Deaths of U.S. Transgender People Are Increasing

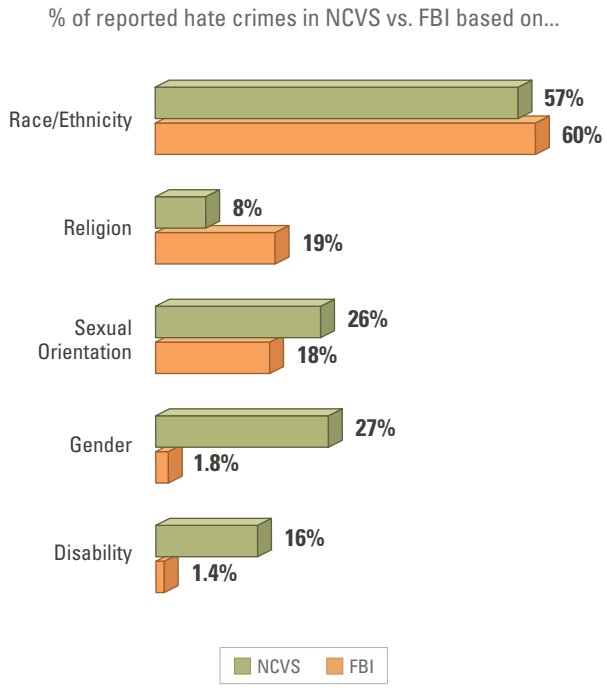


Note: These are only those that are known and accurately reported. Many transgender people's deaths are unknown due to misgendering in reporting, among other factors.
Source: MAP compilation of annual tracking by Trans Murder Monitoring (TMM) Project, HRC, and others of violent deaths of transgender and gender non-conforming people. Details available upon request.

Figure 3 on the next page illustrates the significant gap between the FBI's UCR Program's database of reported hate crimes and overall hate crime experiences of people living in the United States, as collected by the Department of Justice's NCVS. The NCVS data show that, from 2013 to 2017, an average of 204,600 "hate crime victimizations" were experienced every year—but only 7,500 hate crimes were eventually reported by law enforcement to the FBI's UCR Program. **By these estimates, only 3.6% of all hate crimes were actually reported to the FBI each year. Put another way, while the FBI's 2019 data show an average of 20 hate crimes reported per day, the NCVS data suggest closer to 556 hate crime incidents per day.**[c] Not all incidents reported in the NCVS may meet a legal definition of a hate crime, but the enormous disparity reflects the extent to which hate crimes are currently underreported.

Compared to the FBI's numbers of incidents reported by law enforcement, the NCVS survey of people living in the United States shows far higher rates of hate crimes overall and far higher rates of hate crimes based on gender, sexual orientation, and disability. As shown in *Figure 4*, over the five-year period of 2013-2017, crimes based on gender or sexual orientation comprised less than 20% of all reported hate crimes to the FBI, but over half (nearly 53%) of all crimes reported to the NCVS. This again shows that the commonly cited FBI statistics on hate crimes are only a tiny fraction of the scope of violence facing vulnerable communities, including LGBTQ and disabled people.

Figure 4: National Crime Victimization Survey Shows Significantly More Hate Crimes Based on Sexual Orientation, Gender, and Disability Than FBI Reporting Suggests



Source: Bureau of Justice Statistics' National Crime Victimization Survey (NCVS) and FBI's Hate Crime Statistics, 2013-2017. Via Bureau of Justice Statistics, 2019, "Hate Crimes Statistics," Appendix Table 2.

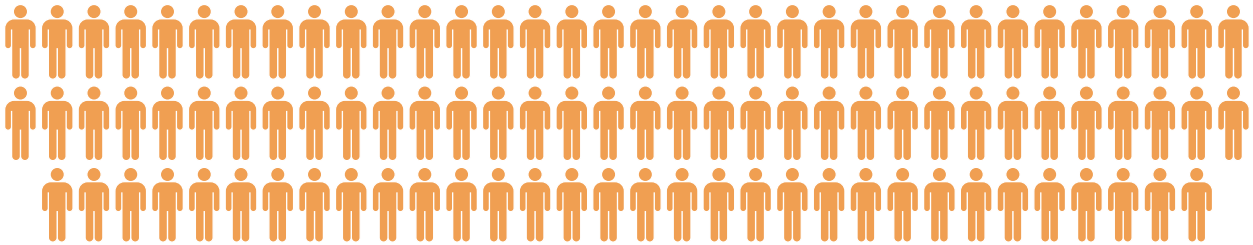
[c] The FBI reported 7,314 hate crimes in 2019 (Figure 1). If that 7,314 represents only 3.6% of hate crimes that were actually experienced, that suggests over 203,000 hate crimes occurred in 2019—an estimate roughly consistent with the NCVS reported average of 204,600 per year (Figure 3). Converting from an annual total to a daily average, this means over 556 hate crimes were committed per day in 2019.

Figure 3: Fewer than Four of Every 100 Hate Crimes Are Actually Reported to the FBI

Average annual hate crime reporting in NCVS vs. FBI's UCR, 2013-2017

204,600

hate crime victimizations per year



Of those...

101,900

are reported to police

45,600

are reported to police and described by the victim as a hate crime

15,200

are designated by police as a hate crime

7,500

are reported by police to FBI as a hate crime

Note: Data shown reflect annual averages based on 2013-2017 data.

Source: Dr. Barbara Oudekerk. 2019. "Hate Crimes Statistics." Bureau of Justice Statistics.

Anti-Transgender Violence

Many transgender people, particularly Black transgender women, face enormous barriers to their safety, health, and well-being. More than three out of five (62%) transgender people experienced discrimination in the past year alone,[d] and nearly three out of ten (29%) transgender people are living in poverty—a rate roughly twice that of cisgender straight people.[e] For transgender people of color, rates of poverty are even higher, at 43% for Latinx transgender people, 41% for American Indian transgender people, and 38% for Black transgender people.[f] This pervasive economic and social risk leaves transgender people especially vulnerable to violence, as they are less likely to have the means or other options available to protect themselves from dangerous situations.

The National Crime Victimization Survey (NCVS) is an annual and nationally representative federal survey on people's experiences of crime over the past year, including hate crimes. A recent study by The Williams Institute of NCVS data showed that transgender people are consistently more likely to be the victims of crime than non-transgender people:[g]

4x more likely to experience a violent crime

Transgender people are over four times more likely to experience violent crimes, compared to cisgender people.

2x more likely to experience a property crime

Households with a transgender person are more than twice as likely to experience property crime, such as burglary or theft, compared to households with only cisgender people.

1 in 4

Among transgender women who experienced a violent crime in the past year, one in four thought the incident was a hate crime.

What's more, reported murders and violent deaths of transgender people are increasing, as shown in Figure 2, with 2020 setting a record for the deadliest year yet and 2021 already on pace to break that record.[h]

In response to the ongoing and increasing rates of violence against transgender people, some advocates and politicians have sought to add gender identity protections to existing hate crime laws. As shown in Table 1, currently only 23 states, D.C., and two territories include gender identity. However, even in cases where gender identity is protected, there is often a gap between that legal protection and actual enforcement. For example, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, which added sexual orientation and gender identity to federal hate crime law, was passed in 2009. Yet, the first federal prosecution of a case involving a transgender person did not occur until 2016, despite the clear record of violent crime and murders of transgender people nationwide.[i]

Additionally, the growing attention to the many harms of the criminal justice system—including its disproportionate impacts on people of color and LGBTQ people—is influencing potential policy responses to hate violence. Many in the transgender community, and in the LGBTQ community more broadly, are increasingly calling for different policy reforms that focus instead on bolstering the economic security and safety of transgender people and reducing the stigma toward transgender people that often fuels hate violence.[j]

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[d] Center for American Progress. October 2020. *The State of the LGBTQ Community in 2020: A National Public Opinion Study*. Washington, D.C.
[e] M.V. Lee Badgett, Soon Kyu Choi, and Bianca Wilson. October 2019. *LGBT Poverty in the United States: A Study of Differences between sexual orientation and gender identity groups*. Los Angeles, CA: The Williams Institute.
[f] Sandy James, et al. 2016. *The Report of the 2015 U.S. Transgender Survey*. National Center for Transgender Equality (NCTE). Washington D.C.: NCTE.
[g] Andrew Flores, et al. 2021. "Gender Identity Disparities in Criminal Victimization: National Crime Victimization Survey, 2017–2018." *American Journal of Public Health* 111(4): 726-729.
[h] Anagha Srikanth. 2021. "Almost twice as many transgender Americans have been killed as this time last year." *The Hill*, April 13.
[i] Phil McCausland. 2016. "Man Pleads Guilty to First Federal Charge of Hate Crime Against Transgender Person." *NBC News*, December 21.
[j] See for example the following policy agendas, each of which either omits hate crime laws or focus on the non-carceral elements of hate crime laws (e.g., data collection) as part of a broader policy response to anti-transgender violence: Transgender Law Center's *Trans Agenda for Liberation* (2020); The National LGBTQ Anti-Poverty Network's *LGBTQ+ Priorities for the Next Presidential Term* (2021); and HRC's *2020 Blueprint for Positive Change* (2020), among others.

The Rise in Anti-Asian Hate Violence During COVID-19

Anti-Asian racism and violence are centuries-old parts of American history and policy. The Page Exclusion Act of 1875, for example, was the country's first restrictive immigration law, and it specifically tried to block Chinese and Japanese women from immigrating to the United States for fear that they were or would become sex workers.[k] This law was quickly followed by the Chinese Exclusion Act of 1882, and later federal laws further restricted immigration by other communities, including Hindu, East Indian, and Japanese people.

As with other forms of hate, increases in anti-Asian discrimination often coincide with broader national and international events.[l] During World War II, the U.S. government effectively incarcerated tens of thousands of Japanese Americans, and there was widespread and overt anti-Japanese rhetoric throughout popular culture. During and after the Vietnam War, anti-Asian discrimination and harassment were pervasive. In 1982, amid nationalist fears about the growing economic strength of Japan and its impact on the U.S. economy, a Detroit man named Vincent Chin was murdered because he was thought to be Japanese.

The COVID-19 pandemic has also brought a clear increase in anti-Asian harassment, violence, and hate crimes in the United States, as shown in the examples that follow. This increase was fueled, at least in part, by former President Trump's rhetoric throughout the pandemic, including his use of racist language to refer to the virus.[m]

150%
Increase in anti-Asian hate crimes

Research by the Center for the Study of Hate and Extremism showed a **nearly 150% increase in anti-Asian hate crimes from 2019 to 2020**, based on police statistics from the country's 16 largest cities.[n]

1 in 3
Experienced racial slurs or jokes

In a nationally representative Pew Research survey, both Asian and Black adults are more likely than white and Hispanic adults to say that racism toward their racial or ethnic group has become more commonplace since the pandemic began.[o] The same survey shows that, **since the beginning of the pandemic, nearly one in three (31%) Asian adults have experienced racial slurs or racist jokes**, and one quarter (26%) have feared someone might threaten or physically attack them.

3,800
Reports of anti-Asian hate incidents

The national coalition Stop AAPI Hate received nearly **3,800 reports of anti-Asian hate incidents in the past year, or more than ten incidents per day**.[p] Incidents were reported in all 50 states and the District of Columbia, and more than two-thirds (68%) of reported incidents were against Asian women.

In March 2021, eight people—six of whom were Asian women working in spas and massage parlors—were murdered by a white gunman in Atlanta, Georgia. In an echo of the Page Act of 1875, the shooter's "explanation" of his actions referenced "sexual addiction" and "temptation," pointing to the sexual and racial stereotypes still commonly held about Asian women. Whether or not the women murdered in Atlanta were themselves sex workers, as Asian women and as massage workers, they were vulnerable to racialized and sexualized violence rooted in prejudice toward sex workers, Asian women, and immigrants—a reality also reflected in the fact that, as noted above, more than two-thirds of reported anti-Asian hate incidents during the COVID pandemic were committed against Asian women.

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[k] Isaac Chotiner. 2021. "The History of Anti-Asian-American Violence." *The New Yorker*, March 25.
[l] Liz Mineo. 2021. "The Scapegoating of Asian Americans." *The Harvard Gazette*, March 24.
[m] Yulin Hswen, et al. 2021. "Association of "#covid19" Versus "#chinesevirus" With Anti-Asian Sentiments on Twitter: March 9–23, 2020." *American Journal of Public Health*. DOI: 10.2105/AJPH.2021.306154.
[n] Center for the Study of Hate & Extremism. March 2021. "Anti-Asian Hate Crime Reported to Police in America's Largest Cities: 2020." California State University, San Bernardino.
[o] Pew Research Center. July 2020. "Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak."
[p] Russell Jeung, Aggie Yellow Horse, Tara Popovic, and Richard Lim. March 2021. *Stop AAPI Hate National Report: 3/19/20 – 2/28/21*. Stop AAPI Hate.

This shooting, combined with the increase in hate violence toward Asian people during the pandemic, has reignited discussions about how to address, and ultimately stop, hate-motivated violence and discrimination. Some have called for stronger hate crime legislation or enforcement of existing hate crime laws.[q] The Atlanta shooting, for example, occurred less than a year after Georgia enacted a hate crime law, with many describing the event as the first test of the state's new law.[r]

However, the call for hate crime legislation or prosecution is not universal, including within Asian American communities, where advocates are thinking more holistically about how to address violence and to provide supports to communities at risk. The National Asian Pacific American Women's Forum, for example, called for a response rooted in community investment, rather than law enforcement: "We need a response to these attacks that centers Asian American women and elders. Intentional centering of women and elders must result in true aid, community support, government support, and an emphasis on our lived experiences, so that relief flows to those who need it most. We do not need more law enforcement—time and time again, more law enforcement did not lead to protection and safety. It instead leads to more violence aimed at and control of Black and Brown communities, including our own community members."[s]

This rise in anti-AAPI hate crimes during COVID-19 illustrates both the continuing prevalence of hate violence in the United States, and—as explored in more detail throughout this report—the evolving responses to and understanding of the role of hate crime law in addressing hate.

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[q] Nicholas Wu. 2021. "Lawmakers to introduce anti-hate crime legislation amid rise in anti-Asian hate and violence." *USA Today*, March 11.
[r] Astead Herndon and Stephanie Saul. 2021. "Why Some Georgia Lawmakers Want Last Week's Shootings Labeled Hate Crimes." *The New York Times*, March 21.
[s] National Asian Pacific American Women's Forum. 2021. "Condemn Hate and Violence Against Asian American Women."

NATIONAL POLICY LANDSCAPE: HATE CRIME LAW

One way that governments and policymakers have responded to hate-motivated crime and violence is through the passage of hate crime laws. Generally speaking, these laws make it punishable under criminal law to commit certain acts if they were committed in whole or in part because of the victim's actual or perceived identity. Some of these laws focus narrowly on specific intimidation tactics or vandalism, like burning a cross or vandalizing a place of worship. Other hate crime laws take a broader scope, making it a crime to harm, intimidate, or threaten someone because of their membership in a protected class, such as race, religion, or gender.

Hate crime laws vary immensely in their scope and implementation (as discussed in more detail in the following pages). At a basic level, a common feature is to increase punishments for certain acts (which may or may not already be criminalized) if they are committed because of the victim's identity. In short, this means that if a person is convicted of a hate crime, they are likely to receive a harsher punishment, as compared to a similar crime not motivated by bias toward the victim. Depending on the law's details, these harsher punishments can include longer or additional prison sentences, higher financial fines, denial of opportunities for parole or non-prison sentencing options, and much more.

Policymakers can and do respond to hate-motivated crime and violence in other ways. This can include creating and funding programs to prevent violence, supporting community-based response systems, improving data collection and reporting on hate crime, and more. In many cases, these responses are included as provisions in a hate crime bill, but they can also be created or amended independently.

This report focuses specifically on state hate crime laws and related responses to hate violence, including the many ways these policies and responses vary across states. However, it is important to first briefly examine federal hate crime law and the interplay between federal and state laws.

Federal Hate Crime Law

The earliest federal hate crime laws were passed following the Civil War in response to widespread racist and white supremacist violence in the years following the war. The Ku Klux Klan Act, also known as the Civil Rights Act of 1871, made it a federal crime to conspire to deprive

others of their civil rights, such as through intimidation or interference.[13] The law remains in effect today and continues to be used in certain cases.[14]

The first modern federal hate crime law was passed as part of the Civil Rights Act of 1968 and, like the Klan Act before it, was largely in response to racially motivated violence. In particular, the Civil Rights Act of 1968 was passed on the heels of the 1967 "race riots" and civil unrest throughout the country, including those in the days after the assassination of Martin Luther King, Jr., in April 1968. The Civil Rights Act of 1968 included many provisions, including what is more commonly known as the Fair Housing Act. The law's hate crime provisions made it a federal crime to harm or intimidate someone because of their race, color, religion, or national origin while the victim was attempting to engage in federally protected activities, including public education, employment, jury service, traveling, and using places of public accommodations.[15]

Since 1968, federal hate crime law has grown in multiple ways. For example, in 1990, Congress passed the Hate Crime Statistics Act, requiring the federal government to collect data regarding hate crimes based on race, religion, sexual orientation, or ethnicity.[16] This began the annual tracking of hate crimes by the FBI's Uniform Crime Reporting Program, as discussed in the previous section (see Figure 1).

In 2009, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expanded federal hate crime law in several ways.[17] First, it removed the original 1968 requirement—for crimes based on race, color, religion, or national origin—that the crime be committed while the victim was participating in specific federally protected activities.[18] Second, it allowed the federal government to prosecute violent hate crimes based on gender, sexual orientation, gender identity, and disability, but only if those crimes "affected interstate or foreign commerce or occurred within federal special maritime or territorial jurisdiction." Third, the law further expanded federal data collection requirements to include crimes based on gender and gender identity. Finally, the law expanded federal jurisdiction over hate crimes such that the federal government can aid states in their investigations and, in cases where the federal government determines that a state may not have adequately protected civil rights, to permit the federal government to intervene to protect civil rights. See page 33 for discussion of recently proposed legislation to further expand or strengthen federal hate crime laws.

State Hate Crime Law

States first began passing hate crime laws in the 1980s. Today, 46 states, the District of Columbia (D.C.), and two U.S. territories (Puerto Rico and the Virgin Islands) have hate crime laws, though they vary in many ways. Currently, only four states and three territories lack a hate crime law.

Notably, two of those four states without a hate crime law—Arkansas and Indiana—have policies related to hate crimes, but they do not have "true" hate crime laws. This is discussed in further detail on the next page.

The most recent state to pass a hate crime law was Georgia. Georgia's law was signed in June 2020 following the murder of Ahmaud Arbery, a 25-year-old Black man who was murdered by three white men while he was out for a run.[19] In April 2021, Arkansas passed a law related to hate crimes, but, as discussed on the next page, the law's language is so vague and generic that by potentially applying to any crime, it provides no meaningful protections against hate crimes.[20]

Early versions of hate crime laws were often called "ethnic intimidation statutes," before such violence became more commonly referred to as hate crimes in the 1980s. In states like Michigan and Ohio, which have not updated their hate crime statutes since first enacted, the law still takes the form of an ethnic intimidation statute.[21]

Beyond the common feature of penalty enhancements for certain actions motivated by bias, hate crime statutes and related laws vary widely from state to state. Key dimensions of state hate crime law include:

- Criminal punishment
- Statute type (distinct crime vs. general sentencing statutes)
- Protected classes
- Institutional vandalism
- Collateral consequences for those convicted of a hate crime
- Non-prison sentencing options
- Avenues for civil action, in addition to criminal action
- Victim protections and support
- Data collection and reporting
- Training for law enforcement

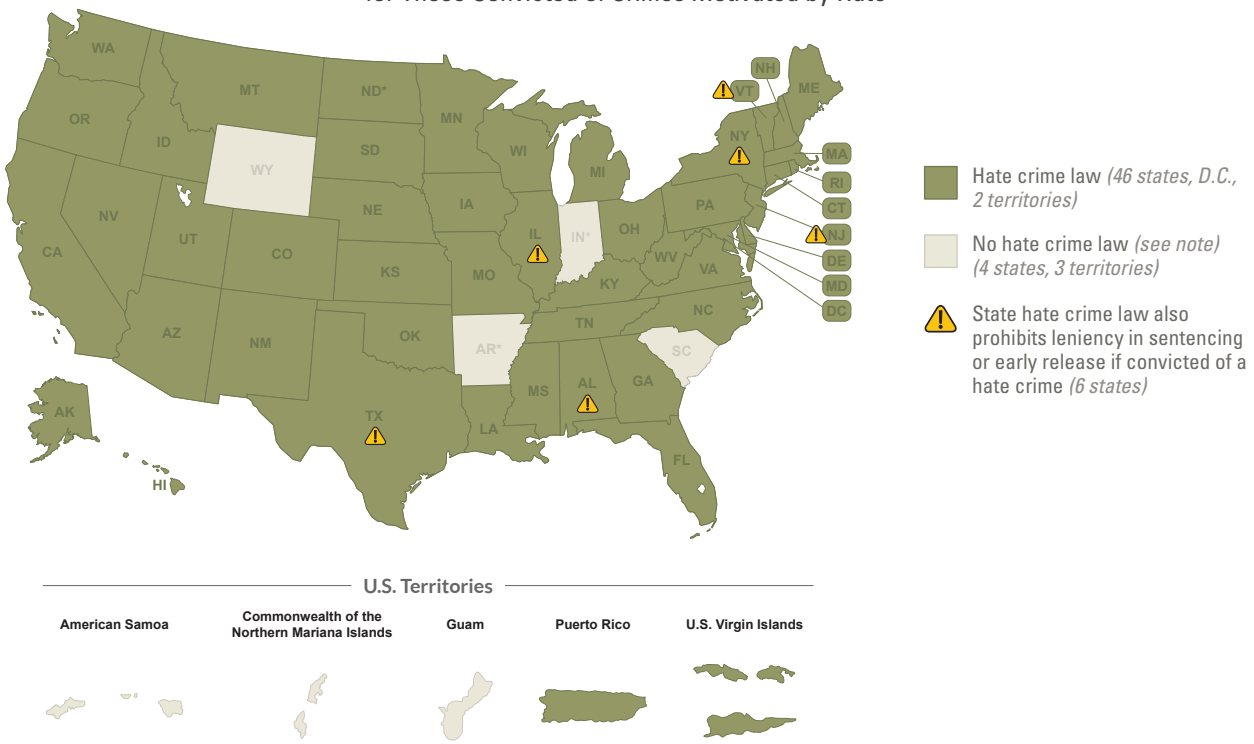
This section provides a detailed look at some of the many dimensions of hate crime laws at the state level. Importantly, some of these dimensions, such as a right to civil action or requirements for data collection, may exist independently of the hate crime laws themselves. This means that even states without an explicit hate crime law may still have statutes related to hate violence.

Criminal Punishment

Currently, 46 states, D.C., and two U.S. territories (49 in total) have hate crime laws. While these laws vary in many ways, a common element is their use of criminal punishment. If a crime is committed and motivated by hate or bias toward a protected class, hate crime laws allow for the punishing of that action through the criminal system—particularly through the use of sentencing "enhancements." Sentencing enhancements create harsher punishments compared to a similar crime committed without bias. For example, under New York's hate crime law, a designation of a hate crime increases the crime by a category (e.g., from a Class D to a Class C felony, lengthening potential prison time). Depending on the details of the law, harsher punishments can include longer or additional sentences, higher financial fines, denial of opportunities for parole or non-prison sentencing options, and much more.

Figure 5 shows the 46 states, D.C., and two territories with hate crime laws—all of which operate within the criminal legal system to respond to hate crimes. Of these, North Dakota has an especially distinct and potentially weaker hate crimes law. North Dakota's statute requires the crime to have a link to "discrimination in public facilities"—language more similar to an anti-discrimination law than other states' hate crime laws. Additionally, as reported by the Brennan Center, "lawmakers and law enforcement within North Dakota do not believe they have a hate crimes law, and that no one has even been charged of a hate crime under [the state law]."[22] Nonetheless, the law—even if limited in scope or use—covers criminal acts committed because of specific personal characteristics, and is therefore included here.

Figure 5: Nearly All States Have a Hate Crime Law, Allowing Harsher Punishments for Those Convicted of Crimes Motivated by Hate



Note: Arkansas and Indiana have laws that cover bias-motivated crimes, as well as many other types of crimes, but they are not "true" hate crime laws because they are written so broadly they could be applied to virtually any circumstance, which is at odds with both the structure and purpose of hate crime law. North Dakota has a hate crime law and it enumerates specific classes, but its structure is more similar to an anti-discrimination law than to other states' hate crime laws.

Source: MAP original analysis. Data as of 6/1/2021.

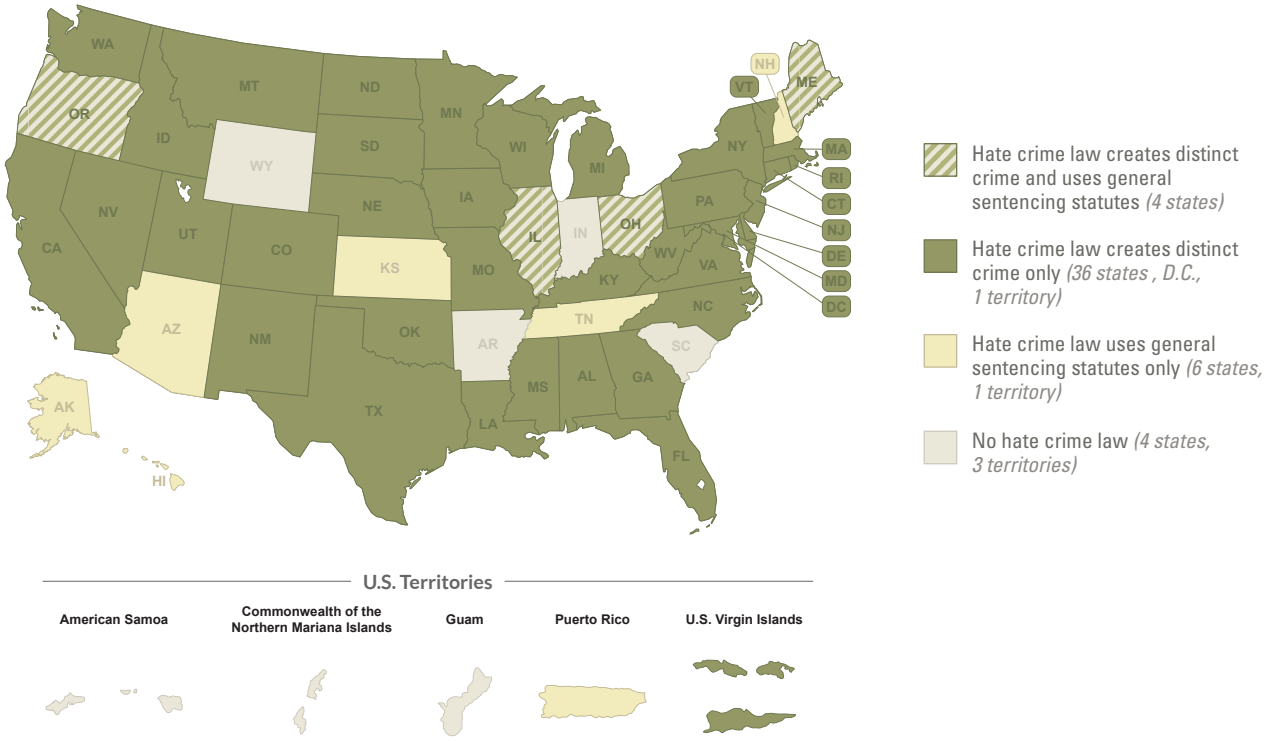
Two states—Arkansas and Indiana—have recently enacted laws that include bias-motivated crimes, among many other types of crimes, but they do not have "true" hate crime laws as found in other states. Both states' laws are written so broadly that they could be applied to virtually any circumstance, which is at odds with both the structure and purpose of hate crime law. For example, Indiana's law refers to offenses committed "with bias due to the victim's or the group's real or perceived characteristic, trait, belief, practice, association, or other attribute," without defining what may or may not be included in each of these terms and without regard for an actual history of targeted violence against such traits. As a result, "practice" could include playing a musical instrument, while "trait" or "attribute" could include having dyed hair. Belief or association, advocates argue, could be applied so broadly as to protect even hate groups like white supremacists or Neo-Nazis.[23] As a result of the overly broad applicability disconnected from a history of targeted violence, the lack of explicitly named characteristics (such as race or disability), and the "clear departure from the approach taken in any other hate crime law" in the country, the policies in Arkansas and Indiana are not "true" hate crime laws and are therefore not included in this report.[24]

Figure 5 further shows that six states have provisions that prohibit leniency in sentencing and/or prohibit early release. Returning to the example of New York, the hate crime law both creates sentencing enhancements and it also prohibits a person convicted of a hate crime from receiving early release or parole. This means that a crime that usually carries a penalty of, for example, 5-10 years in prison would automatically be upgraded to one with a penalty of 10-20 years—and further that the person, if convicted, would not be allowed to receive parole. While the specifics of these provisions vary across these six states, they all illustrate the focus on harsher punishment at the core of many hate crime laws.

Statute Type: Distinct Crime vs. General Sentencing

Hate crime laws create enhanced penalties through one of two main ways: using a **distinct hate crime statute** to create a new, independent crime, or by using **general sentencing statutes** to identify what characteristics (e.g., bias motivation) of an underlying crime (e.g., assault) may justify enhanced sentencing. Typically, distinct statutes define what a hate crime is,

Figure 6: Most, Though Not All, State Hate Crime Laws Create Distinct Crimes Rather than Adding to General Sentencing Statutes



Source: MAP original analysis. Data as of 6/1/2021.

enumerate protected classes, and establish penalties. In general sentencing statutes, the hate crime provision typically indicates that selecting a victim based on enumerated protected classes should be considered as an aggravating factor—therefore causing harsher punishments—when sentencing. Other common aggravating factors include carrying a firearm and having previously been charged with a crime.

This means that with a distinct statute, a person could be charged with two separate crimes (e.g., assault and a hate crime) and convicted and punished for one, both, or neither.[t] With a general sentencing statute, a person could be charged with a crime like assault, but the punishment may be harsher if they are found to have committed that crime due to bias against a protected characteristic, as compared to a punishment for a simple assault not motivated by prejudice.

Having a distinct statute and a general sentencing statute are not mutually exclusive. Because some distinct hate crime statutes define hate crimes to include only a specific list of certain crimes, having this additional sentencing statute is not necessarily redundant. For example, if a distinct statute defines hate crimes as only physical injury to a person, a crime of vandalizing someone's home or *property* would not constitute a hate crime. However, it could be considered an aggravating factor through the broader sentencing statute.

As shown in *Figure 6* on the previous page, 36 states, D.C., and the U.S. Virgin Islands (38 in total) have only distinct hate crime statutes. Six states and Puerto Rico use only general sentencing statutes to create hate crime laws. Four states have both distinct hate crime statutes and provisions within the general sentencing statutes, as shown in Figure 6.

Distinct statutes may be preferable to general sentencing statutes for at least two reasons. First, distinct statutes enable greater clarity about the nature of the crime, as these statutes articulate what constitutes a hate crime. Such clarity can potentially better serve the stated goals of reducing and addressing hate-motivated violence by, for example, enabling more precise data collection or more effective hate crimes training for law enforcement. Second, because distinct statutes define what constitutes a hate crime, they can also outline what specific punishments—or alternatives to punishments—ought to be applied. While relatively few states overall offer alternatives such as required community service or anti-bias training programs (see page 18), the only states that do are those with distinct statutes. That said, the only states that prevent leniency in sentencing or early parole for those convicted of hate crimes, as shown in Figure 5, are also states with distinct statutes.

Protected Categories

Hate crime laws generally enumerate, or specifically list, particular characteristics of people—such as race, religion, or disability—that are either immutable traits and/or those often targeted for discrimination and hate-motivated violence. Frequently these categories mirror broader federal and state civil rights laws, but these protected classes still vary across states.

All of the 46 states, D.C., and two territories (49 in total) that have hate crime statutes specifically address crimes committed based on someone's race, ethnicity, and religion, a core set that mirrors early protections under federal law and early state hate crime laws.[u] However, there is considerable variation across states when it comes to additional categories such as disability, sex or gender, sexual orientation, gender identity, age, and more. This leaves a patchwork of protections for some communities depending on where they live. It can also limit data collection efforts, as data are typically (though not always) only collected on categories enumerated by state laws.

As stated previously, Arkansas and Indiana have policies related to bias-motivated crimes, but these are not true hate crime laws. Additionally, neither state's hate-crime-related statute enumerates any specific protected classes.[25]

As shown in *Figure 7* on the next page, five states enumerate only the core set of race, ethnicity, and religion. The remaining 43 jurisdictions enumerate additional classes, such as disability, sexual orientation, age, and more. Commonly enumerated categories are shown in *Table 1* and summarized here:

- **Race, Ethnicity, and National Origin:** 46 states, D.C., and two territories (49 total)
- **Religion:** 46 states, D.C. and two territories (49 total)
- **Disability:** 34 states, D.C, and two territories (37 total)
- **Sex or Gender:** 33 states, D.C., and two territories (36 total)

[t] Unless the state specifically restricts the number of provisions used to punish a hate crime.

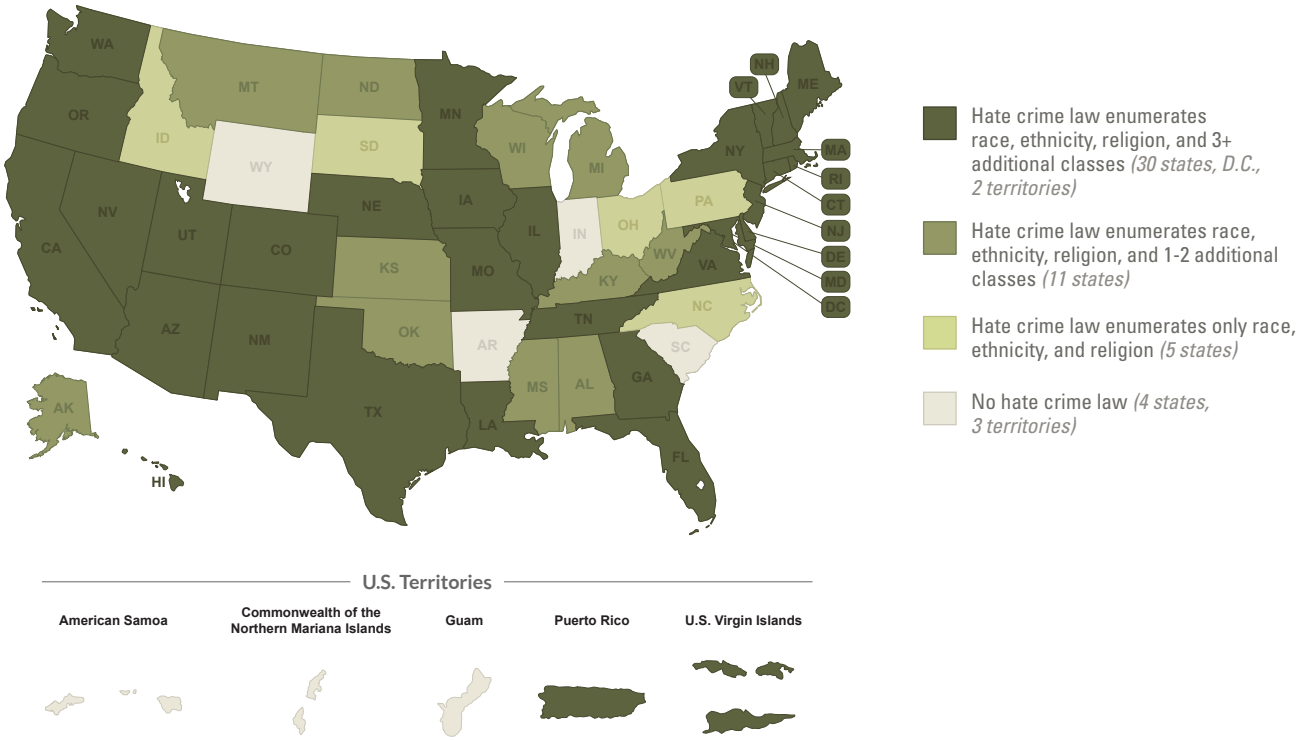
[u] "Race" may instead be "color." "Ethnicity" may instead be "ethnic origin," "national origin," or "ancestry." "Religion" may instead be "religious beliefs" or "creed." However, the summary language of "race, ethnicity, and religion" is used by many researchers and advocates.

- **Sexual Orientation:** 33 states, D.C., and two territories (36 total)
- **Gender Identity:** 23 states, D.C., and two territories (26 total)
- **Age:** 12 states, D.C., and two territories (15 total)

Additional categories in some states include homelessness, political affiliation or beliefs, "involvement in civil rights or human rights activity," and association with a person in a protected category, among others. More recently, six states have added employment as a law enforcement officer or first responder to their hate crime statutes (see *Challenges* section and Figure 16).

In 24 states, D.C., and one territory (26 total), hate crime laws refer to the "actual or perceived" characteristics of people who experience hate crimes. This means that, for example, a hate crime motivated by anti-Muslim bias would still be a hate crime even if the victim were not actually Muslim. This is because the victim was selected because of their perceived identity, even if that perception was incorrect.

Figure 7: All State Hate Crime Laws Enumerate Race, Ethnicity, and Religion; Most State Hate Crime Laws Also Enumerate Additional Classes



Note: "Additional classes" does not include the use of "actual or perceived" language or employment as law enforcement, which is instead shown in Figure 16. See Table 1 for further detail on additional enumerated classes in each state. "Race" may instead or also be "color." "Ethnicity" may instead be "ethnic origin," "national origin," "ancestry," or similar others. "Religion" may instead be "religious beliefs" or "creed."

Source: MAP original analysis. Data as of 6/1/2021.

Table 1A: State Hate Crime Laws Vary Widely in Enumerated Classes *(continued on next page)*

State	Actual or Perceived	Race, Ethnicity/ National Origin, & Religion	Disability	Sex/Gender	Sexual Orientation	Gender Identity	Age
Totals	**24 + D.C.**	**46 + D.C.**	**34 + D.C.**	**33 + D.C.**	**33 + D.C.**	**23 + D.C.**	**12 + D.C.**
Alabama	✓	✓	✓				
Alaska		✓	✓	✓			
Arizona	✓	✓	✓	✓	✓		
Arkansas	*State lacks a hate crime law*						
California	✓	✓	✓	✓	✓	✓	
Colorado	✓	✓	✓		✓	✓	
Connecticut	✓	✓	✓	✓	✓	✓	
Delaware		✓	✓	✓	✓	✓	
District of Columbia	✓	✓	✓	✓	✓	✓	✓
Florida	✓	✓	✓		✓		✓
Georgia	✓	✓	✓	✓	✓	✓	
Hawaii	✓	✓	✓	✓	✓	✓	
Idaho		✓					
Illinois	✓	✓	✓	✓	✓	✓	
Indiana	*State lacks a hate crime law*						
Iowa		✓	✓	✓	✓		✓
Kansas	✓	✓			✓		
Kentucky		✓			✓		
Louisiana	✓	✓	✓	✓	✓		✓
Maine		✓	✓	✓	✓	✓	✓
Maryland		✓	✓	✓	✓	✓	
Massachusetts		✓	✓	✓	✓	✓	
Michigan		✓		✓			
Minnesota	✓	✓	✓	✓	✓	✓	✓
Mississippi	✓	✓		✓			
Missouri		✓	✓	✓	✓	✓	
Montana		✓					
Nebraska		✓	✓	✓	✓		✓
Nevada	✓	✓	✓	✓	✓	✓	
New Hampshire		✓	✓	✓	✓	✓	✓
New Jersey	✓	✓	✓	✓	✓	✓	
New Mexico	✓	✓	✓	✓	✓	✓	✓

Table 1A: State Hate Crime Laws Vary Widely in Enumerated Classes *(continued from previous page)*

State	Actual or Perceived	Race, Ethnicity/ National Origin, & Religion	Disability	Sex/Gender	Sexual Orientation	Gender Identity	Age
New York	✓	✓	✓	✓	✓	✓	✓
North Carolina		✓					
North Dakota		✓		✓			
Ohio		✓					
Oklahoma		✓	✓				
Oregon	✓	✓	✓	✓	✓	✓	
Pennsylvania		✓					
Rhode Island	✓	✓	✓	✓	✓		
South Carolina	*State lacks a hate crime law*						
South Dakota		✓					
Tennessee	✓	✓	✓	✓	✓	✓	
Texas		✓	✓	✓	✓		✓
Utah	✓	✓	✓	✓	✓	✓	✓
Vermont	✓	✓	✓	✓	✓	✓	✓
Virginia		✓	✓	✓	✓	✓	
Washington	✓	✓	✓	✓	✓	✓	
West Virginia		✓		✓			
Wisconsin	✓	✓	✓		✓		
Wyoming	*State lacks a hate crime law*						
Totals	**24 + D.C.**	**46 + D.C.**	**34 + D.C.**	**33 + D.C.**	**33 + D.C.**	**23 + D.C.**	**12 + D.C.**

Overall note: Some states enumerate additional classes beyond what are shown in this table, such as homelessness or political affiliation.

Category notes: "Race" may also or instead be "color." "Religion" may instead be "creed" or "religious beliefs." "Ethnicity" may instead be "ethnic origin," "national origin," "ancestry," or similar others. "Sex/Gender" refers to whether a state lists sex, gender, or both; five states (DE, HI, MA, NV, OR) that do not list sex or gender are included because they do list gender identity, which by definition also covers gender. In some states listed as enumerating gender identity, this may be via the definition of sexual orientation or through explicit confirmations that gender applies to gender identity (e.g., GA, TN).

Source: MAP original analysis. Data as of 6/1/2021.

Table 1B: The Two Territories with Hate Crime Laws Enumerate Many Classes

State	Actual or Perceived	Race, Ethnicity/ National Origin, & Religion	Disability	Sex/Gender	Sexual Orientation	Gender Identity	Age
American Samoa	*Territory lacks a hate crime law*						
Guam	*Territory lacks a hate crime law*						
Northern Mariana Islands	*Territory lacks a hate crime law*						
Puerto Rico		✓	✓	✓	✓	✓	✓
U.S. Virgin Islands	✓	✓	✓	✓	✓	✓	✓

Note: Both Puerto Rico and the U.S. Virgin Islands enumerate additional classes beyond what are shown in this table, and in fact have two of the more expansive lists of enumerated classes of any U.S hate crime law.

Source: MAP original analysis. Data as of 6/1/2021.

Institutional Vandalism

People are often the target of bias-motivated violence, but such violence can also take the form of desecration or vandalism to buildings (such as LGBTQ community centers), businesses (such as Black-owned stores), or institutions (such as schools or religious sites).

Institutional vandalism statutes define the distinct crime of targeting specific types of property—sometimes including properties associated with specific groups—and outline specific penalties for this crime. This can acknowledge the harm caused by hate violence that targets meaningful places or property, even if no person was physically harmed by the crime. Historically, these statutes included religious institutions and burial grounds, and many also included government buildings or educational facilities. Beginning in the 1980s, states began adding community centers to these statutes as well. The specific properties or institutions protected vary across states.

In some cases, institutional vandalism statutes are part of a broader hate crime law, though sometimes they exist separately or independently. This means that some states with hate crime laws may not have an institutional vandalism law (e.g., Alaska)[v], and some states with institutional vandalism laws may not have a hate crime law (e.g., Arkansas or Indiana).

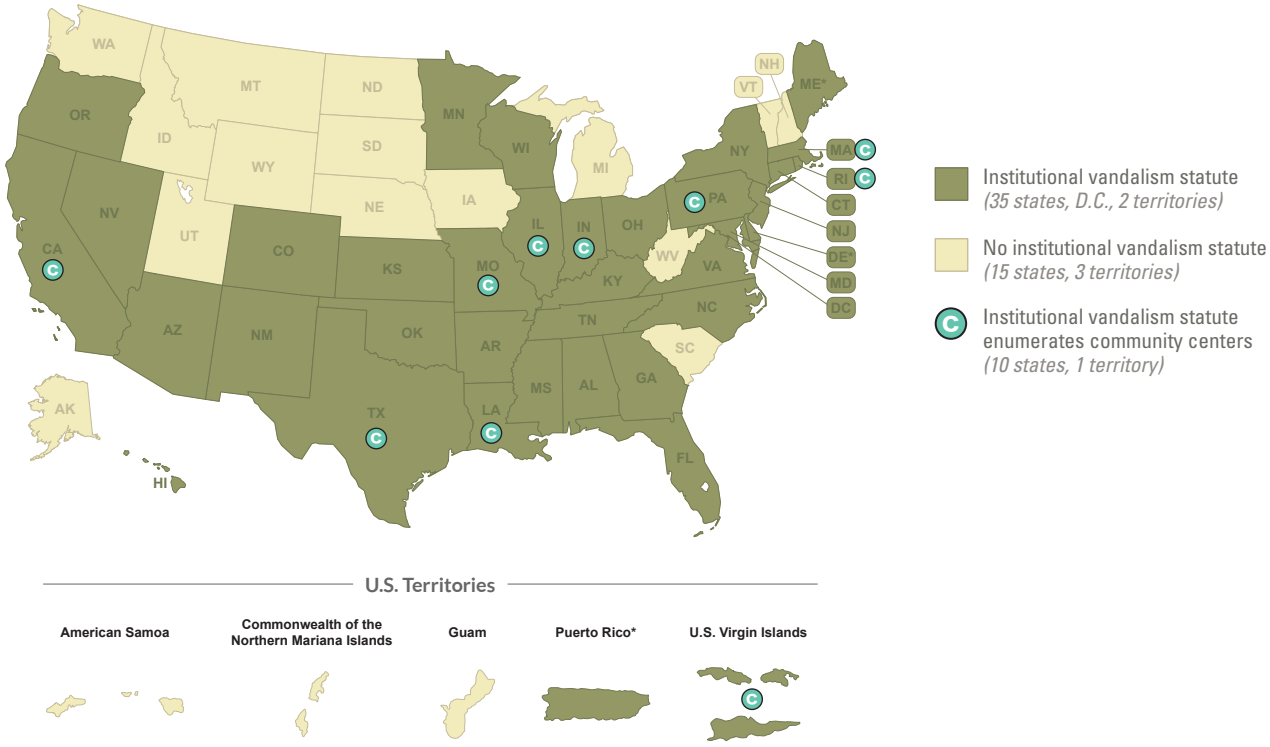
Figure 8 shows that, overall, 35 states, D.C., and two territories (38 in total) have institutional vandalism statutes of some kind. Additionally, in 10 states and one territory, the institutional vandalism statute specifically includes or refers to "community centers" as a protected institution.

Collateral Consequences

At least eleven states have statutes that create additional consequences for those convicted of a hate crime, as shown in *Figure 9*. These consequences are in addition to incarceration or other requirements at sentencing. These statutes may be intended to minimize

[v] Some states that do not have institutional vandalism statutes may have hate crime laws, and these hate crime laws may define hate crimes to include crimes against property (e.g., Idaho). As a result, bias-motivated vandalism might still be punishable even in those states without institutional vandalism statutes.

Figure 8: Roughly Two-Thirds of States Have Institutional Vandalism Laws, Making it a Crime to Target Specific Types of Property Because of their Association with Protected Groups



Note: Maine and Puerto Rico's institutional vandalism laws do not specifically mention community centers, but they do include language that could apply to community centers. Additionally, bias-motivated vandalism may still be punishable in some states without institutional vandalism laws, if the state has a hate crime law that defines hate crimes to include crimes against property (not shown here); e.g., ID, MI, MT, NE, WA).

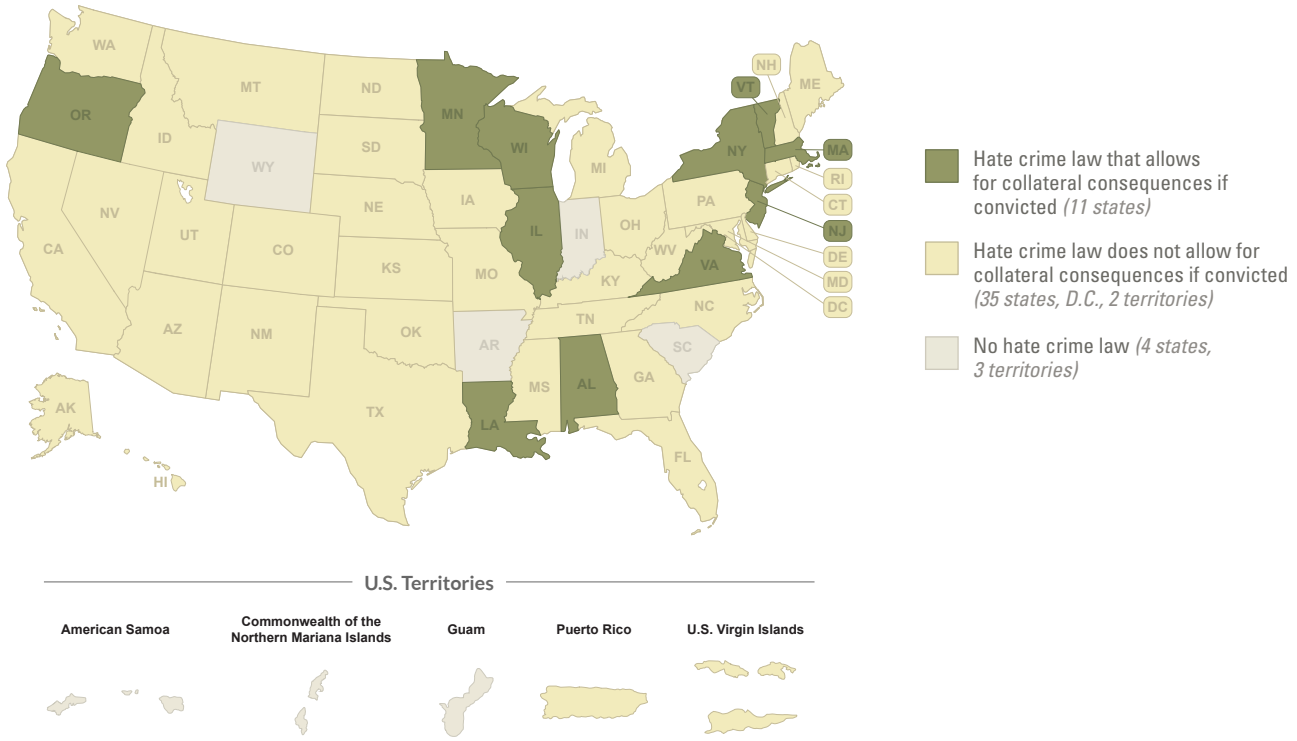
Source: MAP original analysis. Data as of 6/1/2021.

the chance of future harm, but in some cases, they can also limit access to important opportunities like anti-bias education or diversion programs.

- **Five states have statutes that require that a longer sentence is served.** These statutes are distinct from those requiring penalty enhancements at the time of sentencing. Rather, these statutes prevent participation in alternative sentencing programs (AL, IL), do not allow for the accrual of time credits by completing a course of education (IL), or do not allow merit-based early release (NY, VT). These states are also noted in Figure 5.
- **Four states disqualify those convicted of a hate crime from some forms of work, with varying conditions.** In Illinois, Minnesota, New Jersey, and Wisconsin, this includes disqualification from employment by some state departments, professional licensing required for certain professions, foster care work, and/or volunteer service. A fifth state, Virginia, has such barriers, but they can be removed by a circuit court judge, following a petition. Other states, such as Ohio, provide similar barriers, but also require that individual state departments charged with hiring or licensing create rules for identifying when an individual who has committed a hate crime can be considered rehabilitated.
- **Five states have statutes that result in heightened scrutiny or tracking,** including: mandatory DNA collection (LA); sending juvenile records to the perpetrator's school (MN); addition to a Predatory Offender Registry, if certain conditions are met (MN); ineligibility to have the conviction set aside (OR); and having the conviction count towards habitual offender status (MA, MN, OH).
- **Three states prohibit owning a firearm** if convicted of a hate crime (MN, NJ, OR).

Other less common forms of collateral consequences include the ineligibility to sue for damages for an injury resulting from commission of the offense (MN); forfeiture of vehicle, if used to commit the crime (OR); and empowering a landlord to terminate a lease after 24-hours' notice if the crime was committed on or near the premises (OR).

Figure 9: Eleven States' Hate Crime Laws Allow for Additional Punishments or Consequences Beyond Imprisonment, if Convicted of a Hate Crime



Note: Collateral consequences and their applicability vary widely across these states. See each state's statute for more further detail.

Source: MAP original analysis. Data as of 6/1/2021.

Non-Carceral Sentencing

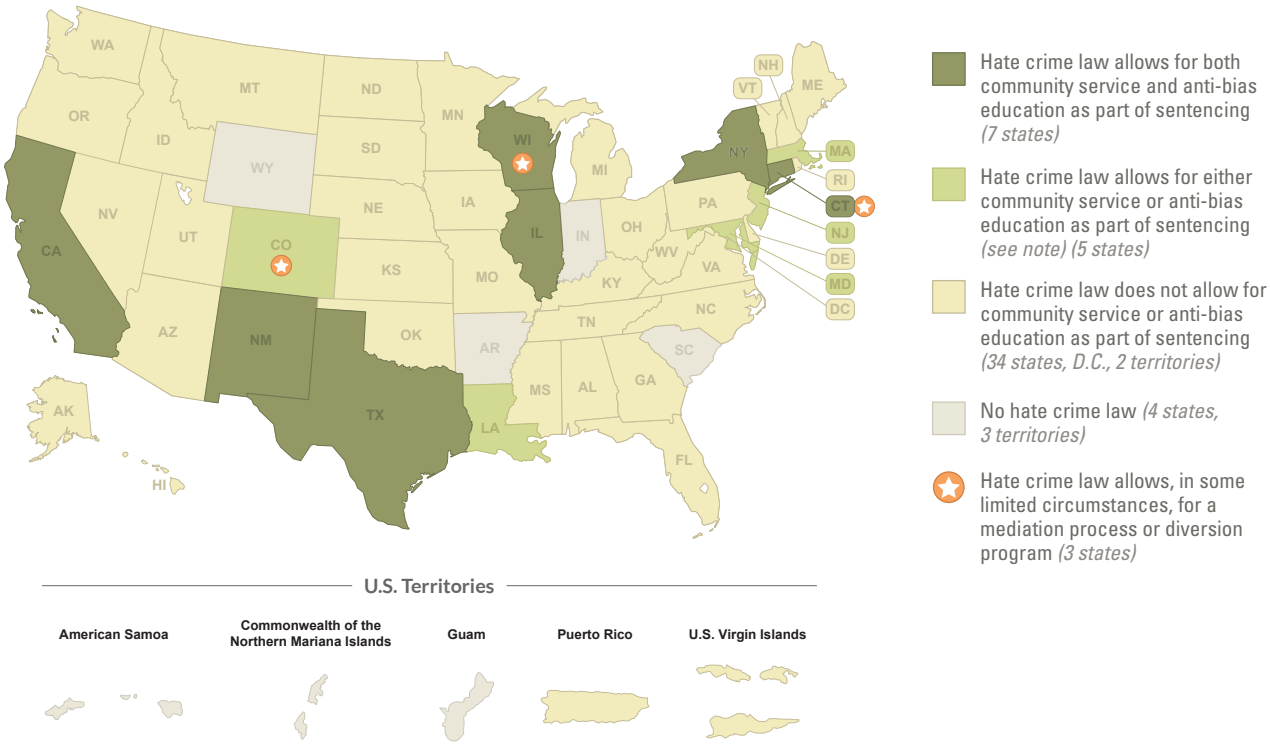
There is a growing concern that hate crime laws' use of enhanced penalties, or at least enhanced penalties alone, is an insufficient and in fact problematic response to the underlying issues that lead people to commit hate crimes (see page 30 for more discussion). More broadly, in a criminal justice system marked by substantial and systemic racial disparities in who is charged, who is convicted, and who receives harsher sentences,[26] the use of enhanced penalties (if not any use of the criminal system in general) raises a cautionary flag for its potential to create or perpetuate further racial disparities. As efforts continue to reform or reshape the criminal justice system toward rehabilitative rather than punitive goals, it is important to consider how hate crime laws might, or might not, fit into those efforts.

A minority of states' hate crime laws explicitly allow courts to recommend or require those convicted of a hate crime to complete community service or anti-bias education in addition to their sentence. These provisions create important opportunities for exploring alternative responses to hate crimes, including responses geared toward community repair and preventing hate crimes, rather than only responding after the fact. These provisions could include participating in anti-bias education, performing community service, making payments or compensation to community-based programs or victim support services agencies, and more. However, because current laws that assign these non-carceral options only do so in addition to (rather than in place of) traditional punishments, we do not refer to them here as "alternative sentences."

Unfortunately, these options are relatively uncommon. *Figure 10* shows that, overall, only 12 states have hate crime statutes that explicitly include any such provision for those convicted of hate crimes. Importantly, non-prison sentencing options may be available in other states or circumstances, but only in these 12 states are such options explicitly offered by the hate crime statute itself.

Of these 12 states, one state allows for community service only (CO), four states allow for anti-bias education

Figure 10: Few State Hate Crime Laws Allow for Community Service or Anti-Bias Education if Convicted of a Hate Crime, Though Only in Addition to Traditional Punishments



Note: CO offers community service only, while LA, MA, MD, and NJ offer anti-bias education only. Additional states beyond those shown on this map may engage in non-carceral sentencing programs or efforts for hate crimes, but this map focuses on those efforts that are explicitly part of the state's hate crime statutes.

Source: MAP original analysis. Data as of 6/1/2021.

programs (LA, MA, MD, NJ), and seven states allow for both (Figure 10). Again, these are offered only in addition to traditional forms of punishment, and often these provisions may only be permitted under certain circumstances and/or are optional and at the discretion of the sentencing court.

Figure 10 also shows that in three states—Colorado, Connecticut, and Wisconsin—there are some limited options available for mediation processes or diversionary programs that demonstrate potential alternatives to incarceration for those convicted of a hate crime. These are still only in addition to whatever carceral, financial, or other punishments or sentences the court may impose, and they are only available in limited circumstances, but they illustrate how some states are beginning to formally engage with different responses to hate crimes.

- **Colorado's** hate crime law allows the option of a "restorative justice or other suitable alternative dispute resolution program," though only for first-time offenders.[27] However, even this option is "in addition to and not in lieu of any other sentence received by the offender."[28] For more on restorative justice, see the spotlight on page 37.
- **Connecticut's** law allows the court to order participation in a hate crimes diversion program as a condition of probation, and no person can be excluded from that program based on their inability to afford the program.[29] This option is not available to those who have been previously convicted of some types of crimes or to those who have previously completed such a program.
- **Wisconsin's** law offers an alternative sentencing program, but it is only available to juveniles and again only in addition to other traditional penalties.[30] If a juvenile is found to have committed what would constitute a hate crime if committed by an adult, the sentencing court can require participation in a "victim-offender mediation program…or another means of apologizing to the victim," as well as community service and/or anti-bias education.

Importantly, while Illinois, New Jersey, and New York have some non-carceral sentencing options (Figure 10), they also have statutes prohibiting leniency in sentencing or early release for those convicted of hate crimes (Figure 5). This further illustrates how, even in states with programs like community service or anti-bias education, hate crime laws still primarily focus on criminal punishment rather than rehabilitation or healing.

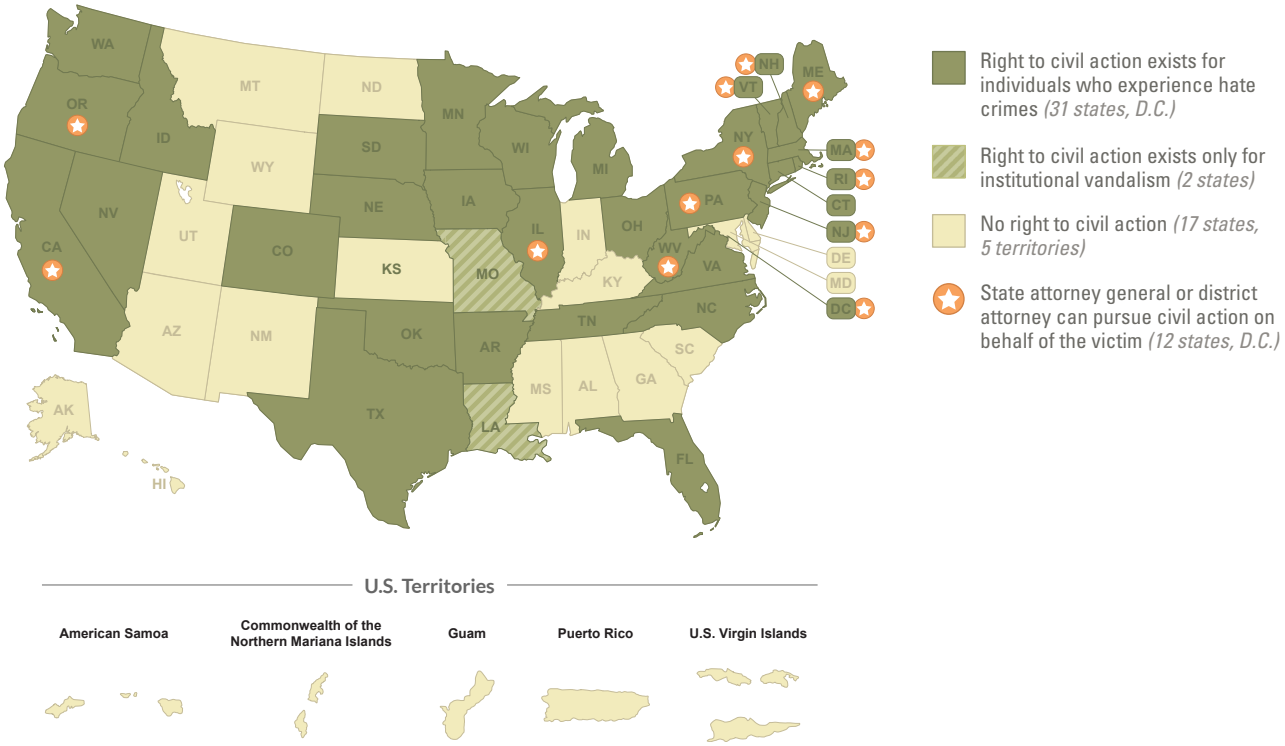
Civil Action

As illustrated in *Figure 11* on the next page, 31 states and D.C. have statutes establishing a right to civil action for individual victims of bias-motivated crimes, separate from criminal action. Common components of these statutes include allowing a person who experiences a hate crime the right to sue in civil court for damages, financial restitution, attorney fees, and injunctive relief, such as a court order of protection. In an additional two states, rights to civil action for bias-motivated crimes are only available in instances of institutional vandalism, such as vandalizing a religious building or community center.

Twelve states and D.C. empower the attorney general or district attorney to pursue a civil case on behalf of the victim. This may be beneficial as it allows someone other than the victim or survivor to pursue action in response to the hate crime, potentially relieving or reducing the potential toll on a survivor from enduring a lawsuit while still recovering from the initial crime. However, in some cases the state may pursue criminal charges even against the survivor's wishes.

Note that these civil action statutes can be independent of the hate crime law itself. This means that, even a state without a hate crime law (creating a *criminal* offense) could still allow for individuals to bring a *civil* action. In Arkansas, for example, even prior to the state's recently passed hate-crimes-adjacent criminal law (see discussion on page 11), the state already allowed for individuals to bring a civil action, if the offense is based on racial, religious, or ethnic animosity.[31]

Figure 11: Majority of States Allow for Civil Action in Response to Hate Crimes, Separate from Criminal Action



Note: A state need not have a hate crime statute (creating a criminal offense) to have a civil action statute (creating a civil offense).

Source: MAP original analysis. Data as of 6/1/2021.

Civil Actions as Alternatives to Criminal Prosecution

In May 2017, Taylor Dumpson became the first Black woman to serve as American University's student body president. As reported by The New York Times, she quickly became the target of racist attacks both on campus and online: bananas hanging from nooses were found throughout campus, and the white supremacist website The Daily Stormer posted her picture and personal information, directing the website's followers to harass Taylor—which they did, relentlessly.

Part of Taylor's response to this horrific and racist experience was to file a civil lawsuit against the website's publisher and several of the harassers. The Lawyers' Committee for Civil Rights Under Law, a nonprofit legal organization combatting racial discrimination, filed the lawsuit and in December 2018 won a settlement that involved one of the harassers agreeing to apologize to Taylor, to undergo counseling, as well as to complete anti-hate training, 200 hours of community service, and educational classes on issues of race and gender. If the former harasser violated the settlement, he was subject to financial penalties, rather than incarceration. Taylor called the settlement "rooted in the principles of restorative justice," and she reported that "the settlement gave her a sense of closure, and that she was proud that important educational and advocacy work would result from it." For more on restorative justice, see the spotlight on page 37.

SPOTLIGHT

Violence Against People with Disabilities[w]

Roughly 61 million U.S. adults—more than one in four adults—have some type of disability.[x] In general, people with disabilities are disproportionately vulnerable to violence and mistreatment, due to many factors including stigma, discrimination, and the numerous economic, social, and health disparities faced by disabled people.[y] This is especially true for disabled people of color.

2x more likely to experience a violent crime

People with disabilities are more than twice as likely to experience violent crimes than people without disabilities, according to the Bureau of Justice Statistics.[z]

89% Increase in disability hate crimes

Reported hate crimes based on disability have increased 89% from 2013 to 2019, according to FBI data (Figure A).

1 in 6 of all hate crimes are based on disability

Roughly one in six (16%) of all hate crimes are based on disability, according to the National Crime Victimization Survey (NCVS), an annual and nationally representative federal survey on people's experiences of crime over the past year (Figure D).

Even these statistics likely underrepresent the rate of hate crimes and violence against people with disabilities. The NCVS, for example, does not include individuals living in institutional settings like jails, prisons, or hospitals[aa]—places with higher rates of disabled people and where disabled people are especially vulnerable.[bb]

Despite high rates of hate crimes, people with disabilities may be less likely to report these experiences.

In general, the majority of all hate crimes are not reported to law enforcement, for a variety of reasons including the belief that police would not help or that the experience "was not important enough" to report (see further discussion on pages 27-28).[cc] In addition, disabled people who experience hate crimes may be reluctant to report for concern they will not be believed or taken seriously, that their experience will be miscategorized as abuse, and further that they may experience retribution—particularly if the crime was committed by a caretaker, healthcare provider, or another person providing assistance.[dd]

Disabled people, and especially Black disabled people, are also disproportionately policed,[ee] which may further decrease the likelihood of reporting hate crimes. **As many as 33-50% of police use-of-force incidents—including police shootings—involve people with disabilities.**[ff] To the extent that hate crime laws invest resources in law enforcement training, it is imperative that such training include education about people with disabilities and their unique experiences of vulnerability to violence, as well as explicit analysis of implicit bias, disparities in police interactions with communities of color, disabled communities, LGBTQ communities, and more.

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[w] Members of the disability community have diverse preferences and beliefs about language to describe community members. Some prefer "people-first" language (i.e., people with disabilities), while others prefer "identity-first" language (i.e., disabled people). This report uses both interchangeably to respect this diversity of thought.

[x] Centers for Disease Control and Prevention. N.d. *Disability Impacts All of Us*.

[y] Katie Jajtner, et al. 2020. "Rising Income Inequality Through a Disability Lens: Trends in the United States 1981–2018." *Social Indicators Research* 151:81–114. See also American Psychological Association's (2010) "Disability & Socioeconomic Status."

[z] Erika Harrell. 2017. "Crime Against Persons with Disabilities, 2009-2015 – Statistical Tables." Bureau of Justice Statistics, Crime Against People with Disabilities Series. NCJ 250632.

[aa] Bureau of Justice Statistics. n.d. "Data Collection: National Crime Victimization Survey (NCVS): Methodology."

[bb] Rebecca Vallas. July 2016. *Disabled Behind Bars: The Mass Incarceration of People With Disabilities in America's Jails and Prisons*. Center for American Progress.

[cc] Lynn Langton and Madeline Masucci. 2017. *Hate Crime Victimization, 2004-2015*. Bureau of Justice Statistics, Hate Crime Series. NCJ 250653.

[ee] Debra McKinney. 2018. "The Invisible Hate Crime." *Intelligence Report* 165 (Summer). Southern Poverty Law Center.

[ee] Vilissa Thompson. 2021. "Understanding the Policing of Black, Disabled Bodies." *Center for American Progress*, February 10.

[ff] David Perry and Lawrence Carter-Long. March 2016. *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability: A Media Study (2013-2015) and Overview*. The Ruderman Family Foundation.

Victim Protections & Support

While 46 states, D.C., and two territories have hate crime laws, only nine states offer some sort of statutory protections or support for survivors of these crimes, as shown in *Figure 12*. These provisions focus on the survivor and can help those who experience hate crimes to recover and to avoid further potential harm.

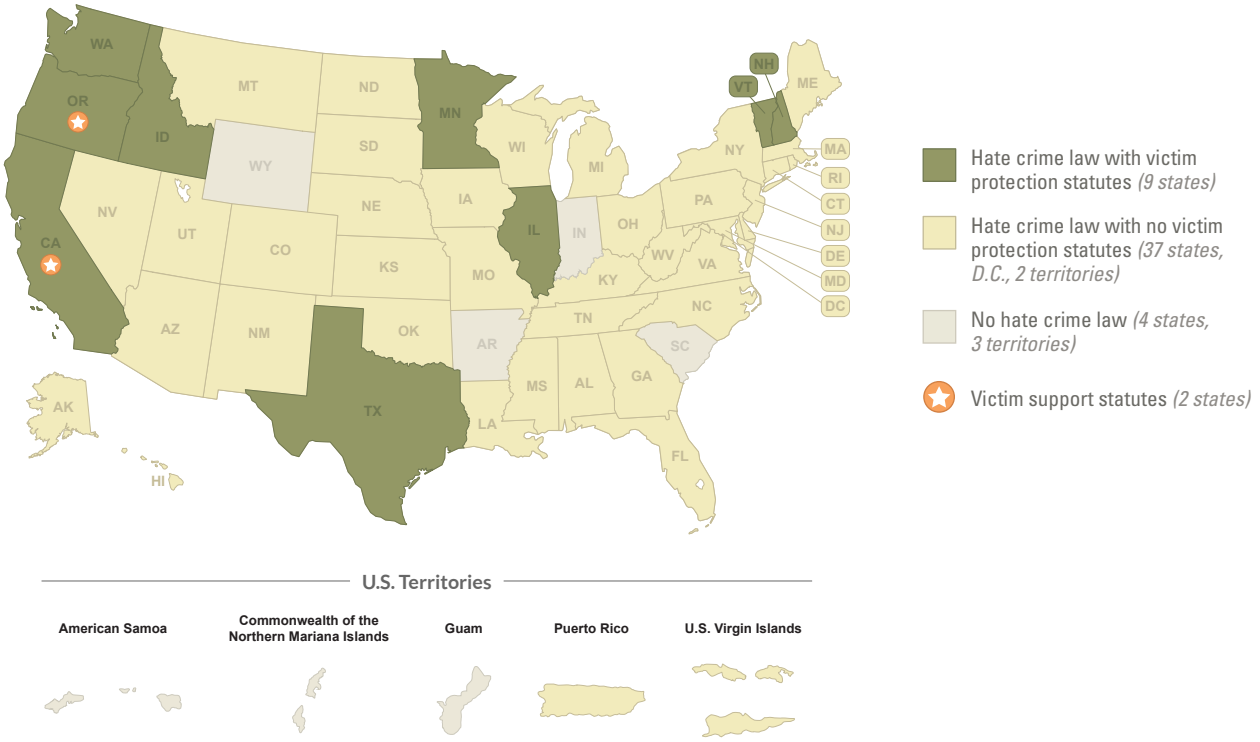
Typically, these statutes include a standard process for obtaining an order of protection (such as a restraining order) in cases where a hate crime may have occurred, including before an individual is found guilty. For example, in California, an order of protection against the perpetrator is a condition of the perpetrator's probation, medical release, and parole. States may also create a unique crime for violating such an order, as in New Hampshire.

Two states have statutes that go beyond protection to support, by requiring that victims be directed to community support services and have additional support in ensuring they are safe and that their needs are met.

Other forms of statutory-provided protection for survivors of hate crimes include:

- **Prohibiting insurance providers from cancelling or refusing to renew a policy** that was used following a hate crime, say for medical coverage or car insurance (IL, WA).
- **Prohibiting an employer from retaliating** should an employee need to take time off for a criminal proceeding related to a hate crime (MN).
- **Protecting an individual's right to collect unemployment** if they quit their job due to a hate crime or related intimidation (OR).
- **Preventing law enforcement from detaining a survivor or witness of a potential hate crime for an actual or suspected immigration violation** or handing them over to federal immigration authorities (CA).
- **Outlining a survivor's right to a fast trial** and to be informed of developments in the case (MN, VT).

Figure 12: Only Nine States' Hate Crime Laws Include Protections or Support for Survivors of Hate Crimes



Note: In the LGBTQ context, bans on so-called "gay panic" or "transgender panic" defenses may also be considered a form of victim protection. These are not shown in this map, but currently, 15 states and D.C. ban the use of such defenses: CA, CO, CT, DC, HI, IL, ME, MD, NJ, NV, NY, OR, RI, VT, VA, and WA. For more, see MAP's Equality Map tracking these laws.

Source: MAP original analysis. Data as of 6/1/2021.

Data Collection & Reporting

Data are critical for understanding the scope of violence, trends over time, and what measures or policies are effective—or ineffective—in combatting this violence. As described by the Department of Justice, such data collected about hate crime incidents typically include information about the victims, perpetrators, and motivations of hate crimes.[32] Yet data collection and reporting remain inconsistent and flawed. As a result, some states have taken steps intended to improve data collection and reporting efforts.

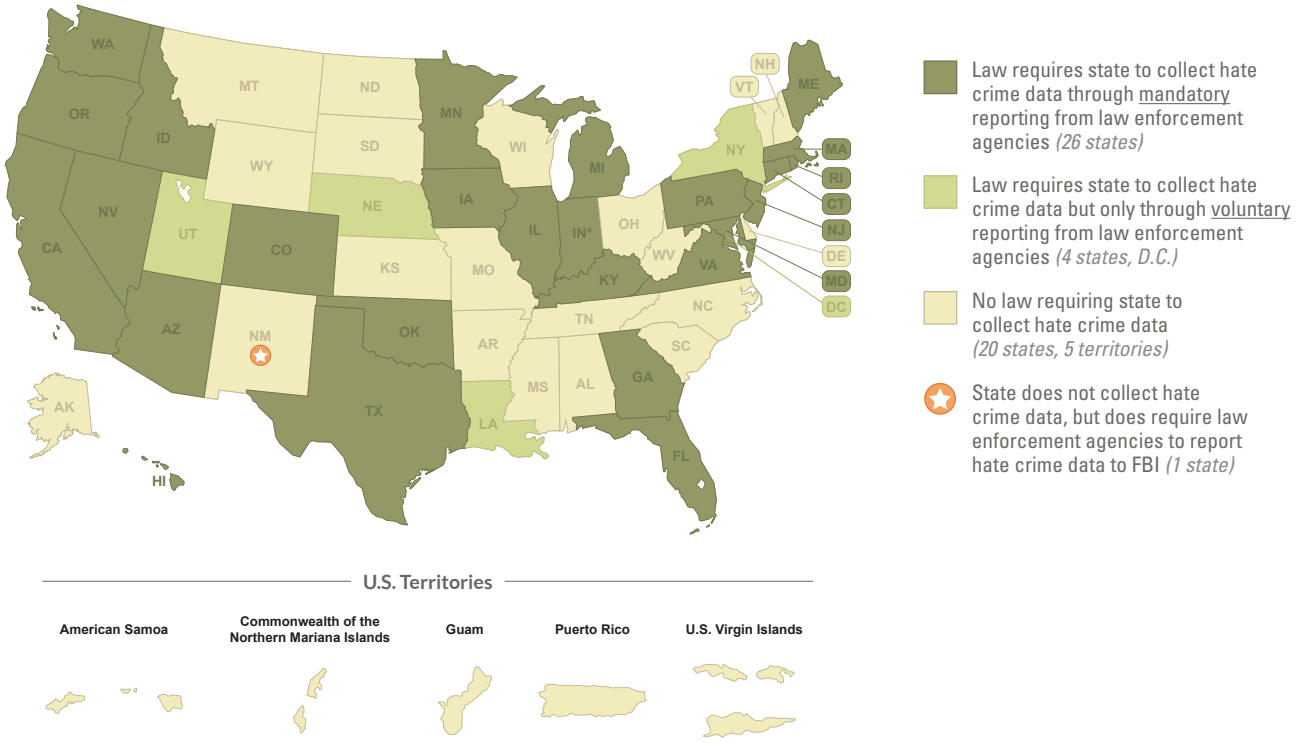
Currently, 30 states and D.C. have laws requiring some degree of state-based data collection or reporting. As shown in *Figure 13*, 26 states have laws that require law enforcement agencies to report data on hate crimes to a centralized state repository or state agency. That state repository or agency is then typically required to analyze that hate crime data and report back to law enforcement, elected officials, and/or the general public, depending on the statute. Typically, these states publish an annual and publicly available report on the extent and patterns of hate crimes in the state.

Figure 13 also shows that an additional four states and D.C. have laws that require the state to collect and analyze hate crime data, but that do not require law enforcement agencies to report such data. This means any analysis is limited to voluntarily submitted data, which may not reflect the true scope of hate crime in a given state.

While 30 states and D.C. require state-based collection of hate crime data, the actual reporting of those data by individual law enforcement entities to the FBI remains voluntary. State data collection requirements can make it easier for local law enforcement agencies to report data to the FBI, but in 2019, only 12% of the roughly 18,000 law enforcement agencies nationwide reported any hate crimes to the FBI.[33] As shown in Figure 13, only one state, New Mexico, requires local law enforcement agencies to report hate crime incidents directly to the FBI. However, the state itself is not required to collect or analyze data on hate crimes, which may limit state-specific efforts to understand and respond to unique patterns or experiences of hate crimes in the state.

Overall, twenty states and five territories do not require any statewide data collection efforts about hate

Figure 13: Only Half of States Require Law Enforcement Agencies to Collect and Report Hate Crime Data



Note: Indiana does not have a true hate crime law, but it does require data collection on bias-motivated crimes. Data collection statutes also typically enumerate classes, and these can be more or less inclusive than the hate crime statute itself. This is not shown in this map.

Source: MAP updated and adapted from Arab American Institute Foundation's (2018) *Rating the Response: Hate Crime Legislation, Reporting, and Data Collection in the United States*. Data as of 6/1/2021.

crimes committed in their states. These states may still have statewide agencies that collect and analyze data about hate crimes (e.g., Montana), but they are not statutorily required to do so. Similarly, individual law enforcement agencies within these states may still choose to collect data and/or report hate crimes to the FBI, but again, extraordinarily few choose to do so.

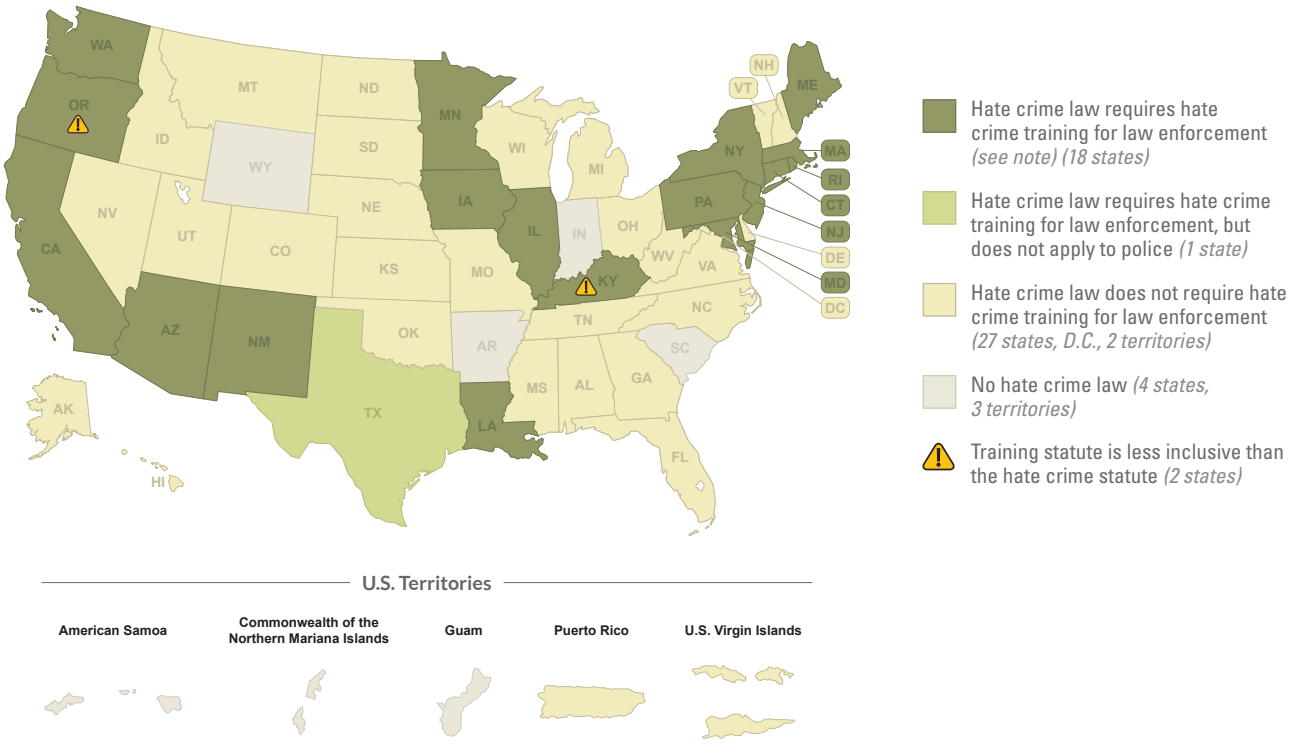
Importantly, data collection statutes can be distinct from hate crime laws themselves. This means that a state can have a law requiring data collection about hate crimes, even if the state does not have a hate crimes law, as in Indiana. It also means that data collection requirements can enumerate different classes—they can be more or less inclusive, with regards to protected classes—than the overall hate crime law in a state. For example, in Kentucky, the state's hate crime law enumerates sexual orientation, but its data collection statute does not. Conversely, in Michigan, the state's hate crime law does not enumerate sexual orientation, but the state's data collection law does.

Law Enforcement Training

Some states have statutes requiring law enforcement to be trained on the topic of hate crimes. Common components of these trainings include identifying, responding to, and accurately collecting data on and reporting hate crimes. Because hate crime laws, in their current form, rely on law enforcement for data collection and connecting victims to needed resources, consistent training requirements are important for the overall effectiveness of hate crime laws.

Overall, 18 states have statutes requiring hate crime training for law enforcement, as shown in *Figure 14*. In states without such laws, law enforcement may still receive such training, but it is not statutorily required that they do so. One additional state, Texas, only requires that prosecuting attorneys receive training related to hate crimes; police officers are not subject to this requirement. While state definitions of "law enforcement" vary, all other states that require hate crime training for law enforcement specifically include police officers. Texas is unique in its omission.

Figure 14: Roughly One-Third of States Require Hate Crimes Training for Law Enforcement



Note: State definitions of "law enforcement" vary, and so which specific parties (e.g., police, judges, prosecuting attorneys) are and are not required to receive training on hate crimes will also vary. Texas is the only state that specifically excludes police officers from its required training on hate crimes.

Source: MAP original analysis. Data as of 6/1/2021.

Law Enforcement Training and Community Accountability

While hate violence is a societal problem that requires many structural, cultural, and community interventions, currently when hate violence happens it is typically law enforcement that is called upon to respond and investigate. As such, it is important that law enforcement is adequately trained to recognize hate violence and to respond in appropriate ways. Despite this, just 18 states require hate crime training for law enforcement, with one additional state requiring training for prosecuting attorneys but not for police (Figure 14). Common components of these trainings include how to accurately identify, respond to, collect data on, and report hate crimes.

Photo: Judy and Dennis Shepard, community members, and law enforcement officers at a 2017 hate crime training panel in Orlando, Florida. Photo courtesy of MSF.

There are many organizations and advocates across the country that help train law enforcement on hate, bias, and violence prevention. A national leader in this space is the **Matthew Shepard Foundation (MSF). In partnership with the James Byrd Jr. Center to Stop Hate**, since 2017 they have provided training to over 1,420 law enforcement officials in Arizona, Florida, Illinois, Massachusetts, New Hampshire, New Jersey, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Vermont.[gg] In their own words, these trainings provide "officers and prosecutors the skills and tools required to improve relations with marginalized communities, while enhancing their understanding of the need for effective and prompt hate crime enforcement." Key learning outcomes include being able to recognize and identify indicators of a bias crime; demonstrating skilled, sensitive, and respectful engagement with victims; collecting necessary information for substantiating bias motivation; and accurately reporting data, among other goals.

In addition to these core components, MSF and James Byrd Jr. Center trainings also often include a more narrative, human-driven approach, centering the stories and experiences of the people and their families who have experienced hate crimes. This, the Foundation reports, improves law enforcement understanding through specific cases, while also cultivating a broader emotional, human understanding of the experiences of victims and their families.

Especially amidst the growing national understanding of disproportionate policing of communities of color and the serious risk of death for people of color in interactions with police, reasonable questions arise about investing additional resources into law enforcement. Some organizations, however, see this as an opportunity to respond both to hate violence and to the broader patterns of injustice in the criminal justice system at the same time. Organizations like the Matthew Shepard Foundation describe improving law enforcement's treatment of and accountability to vulnerable communities as a central goal of their work and a core outcome of their trainings, as noted above. Similarly, national organizations like the Legal Defense Fund have called for the Department of Justice to stop awarding federal funds—including funds used for training—to law enforcement agencies until the Department can ensure these agencies are not racially discriminating.[hh] Both advocates and policymakers are also calling for stronger efforts to identify and remove white supremacists from within the ranks of law enforcement.[ii]

To learn more, visit the Matthew Shepard Foundation and the Lawyers' Committee for Civil Rights.

[gg] Matthew Shepard Foundation. N.d. "Creating Safer Communities: Hate Crimes Prevention Training." Accessed March 2021.
[hh] Legal Defense Fund (LDF). 2021. "LDF Calls on AG to Freeze DOJ Funding to Law Enforcement Departments with Discriminatory Practices." *LDF*, April 20.
[ii] Amanda Rogers. 2021. "Dismantling White Supremacist Infiltration of the Military and Law Enforcement." *The Century Foundation*, January 25.

Training requirements may be distinct statutes from hate crime laws, and therefore can be more or less inclusive in terms of enumerated classes (or the specific types of hate crimes that law enforcement is required to be trained on). For example, in Kentucky, the hate crime law enumerates sexual orientation as a protected class, but the training requirement statute does not. In other words, it is a criminal offense to commit a hate crime based on sexual orientation, but Kentucky law enforcement training on hate crimes is not required to discuss or address hate crimes based on sexual orientation.

As shown here, hate crime laws are complex and vary both within and across states. The following sections address some of the major shortcomings of these laws, why advocates nonetheless continue to push for these laws, and potential alternative paths to redress violence against vulnerable communities.

CHALLENGES OF HATE CRIME LAWS

Hate-motivated violence is different from other forms of violence. The impacts of hate violence radiate outward from individual incidents and victims to the broader community, often causing deep and long-lasting harm and fear for many. As such, it is important that both the law and broader society respond to this unique form of violence and its uniquely broad harms.

Advocates of hate crime laws cite many goals of these laws, including the central importance of legally and socially responding to individual incidents of hate violence, holding offenders accountable, and using sentencing enhancements, or harsher punishments, to deter further violence.[34] Other commonly stated goals include collecting accurate data about hate violence to better inform policy and responses to hate crimes; supporting communities affected by hate violence; and seeking to reduce hate and bias in our society more broadly. Advocates also recognize that no criminal statute or singular law is going to solve the scourge of hate violence in our society and that hate crime statutes are one part of broader efforts to end violence, increase understanding, and ensure safety for all.

Over the roughly half-century since the first modern hate crime laws were enacted, it is increasingly evident that hate crime statutes—as well as the ways law enforcement and the criminal justice system more broadly respond to hate violence—can be improved, particularly with respect to engaging a more holistic, responsive, and restorative approach to hate violence and its unique harms. Key challenges currently include:

- **Flaws in hate crime data collection and reporting** are widespread, and the current system relies only on the voluntary participation of law enforcement. This ultimately means that extremely few hate crimes are actually reported, and many victims of hate crimes are left without needed support. As described earlier in this report, it also means that the true incidence of hate violence in the United States as a whole and in various communities remains unknown.
- **Abuse of the original intent of hate crime laws** is also spreading. Since 2016, six states have passed unnecessary legislation that adds police officers as a protected class under hate crime laws, despite the fact that all 50 states already have criminal statutes that specifically address and punish violence against a law enforcement officer. Importantly, these six states have passed these laws—often referred to as "Blue Lives Matter" laws—rather than meaningfully respond to criticisms of police brutality and calls for criminal justice reform.
- More broadly, hate crime laws' **harsher punishments have not been shown to deter hate violence and furthermore cannot address the root causes of hate violence.** In their current form, hate crime laws focus on punishing individual offenders without actually challenging their underlying prejudicial beliefs—let alone the prejudice in broader society—all while doing little to repair the actual harm done to victim(s) and the broader community.[35]
- **Widespread bias in the criminal justice system** results in significant racial disparities across many outcomes, as well as clear disparities for low-income people, LGBTQ people, and other vulnerable communities—often the very communities that are targeted for hate violence. This bias is not unique to hate crime laws, but neither are hate crime laws immune from the broader injustices of the criminal justice system. Evidence shows that, for example, even though the majority of hate crimes are committed by white people, many states' law enforcement records disproportionately identify Black people as hate crime offenders. Additionally, given the many biases in the criminal system, communities of color, LGBTQ people, and others are often reluctant to report their experiences to the police out of fear of dismissal or further discrimination, leading to further inequalities in who receives support following hate violence and the ways that the criminal justice system responds to hate violence.

While these challenges are substantial, they need not mean that hate crime laws should be abandoned wholesale. Ultimately, no law is perfect, and no law alone can change hearts and minds—let alone repair the harm of centuries of racism and other forms of prejudice or hatred. However, laws do have the power to meaningfully shape societal norms and to direct substantial resources to communities in need. These challenges call attention to the possibility and importance of refocusing these laws and resources on other stated goals, such as investing in victim and community support services, rigorous data collection and analysis, and efforts to prevent violence and hate at their roots. The next section *(Recommendations)* identifies potential paths forward for hate crime laws to invest in creating a safer and more resilient country for all, while also reducing the reliance on the criminal justice system and its myriad harms.

Flaws in Data Collection and Reporting

Accurate data about hate crimes can help communities, policymakers, and advocates to craft more effective responses. Yet, data collection about hate crimes remains a challenge. The primary data source about hate crimes in the United States is via the FBI's Uniform Crime Reporting Program, which relies on voluntary participation by law enforcement agencies (see also pages 2-4). This program has at least two key flaws, described below. As a result, hate crimes are significantly under-reported, giving an incomplete picture of the scope of violence. Incomplete data can also paint incorrect pictures of contemporary violence and obscure the actual patterns unfolding, including with respect to the rates that different communities are targeted,[jj] the type of crime,[kk] what policy interventions are or are not effective, and more.

First, many people who experience hate violence do not report their experiences to law enforcement, so these incidents are not included in the FBI's UCR. Reasons for not reporting may include seeking alternative means of resolution; fear of police or expectation that police would not help; that law enforcement officials themselves may have been the offenders; and more.

According to the most recently available data from the National Crime Victimization Survey (NCVS), over half of annual hate crime victimizations are not reported to police.[36] When asked the most important reason why they did not report their experience to the police, 41% of people said they handled the issue another way, "such as privately or through a non-law enforcement official (e.g., apartment manager or school official)." [37]

In the same survey, nearly a quarter (23%) of people who experienced a hate crime and did not report it to the police said they did so because they believed the police would not, or could not, do anything to help, or reporting to the police would even create further harm to the victim.[38] This belief is supported by research showing that police do not respond to violent hate crimes in the same way they respond to violent non-hate crimes: according to the Bureau of Justice Statistics, violent non-hate crimes reported to the police "were nearly three times more likely to result in an arrest than violent hate crimes." Ultimately, only one in every 25 (4%) hate crimes actually results in an arrest.[39]

Additionally, given the legitimate mistrust and fear that many communities—particularly Black and indigenous communities, as well as transgender people—have toward engaging with police, this may mean that crimes against people of color and gender minorities are even less likely to be reported to police. For example, a 2017 nationally representative survey by NPR, the Robert Wood Johnson Foundation, and the Harvard T.H. Chan School of Public Health showed that 31% of Black adults and 22% of Native American adults have avoided calling the police, even when in need, due to concern that they would be racially discriminated against.[40] Only 2% of white adults reported this same behavior. The same survey also showed that 30% of LGBTQ people of color (and

> *According to the* National Crime Victimization Survey (NCVS), over half of all annual hate crimes are not reported to police.
>
> Nearly a quarter (23%) of people who experienced a hate crime and did not report it to the police said they did so because they believed the police would not or could not do anything to help, or would even create further harm to the victim.

[jj] For example, in Figure 4 on page 4, the FBI reported that hate crimes based on gender comprise less than 2% of all hate crimes, but the NCVS reports that 27% of all hate crimes are based on gender. These two sources offer very different pictures of the scope and magnitude of gender-based hate crimes, and each picture suggests distinct paths forward for community or government response.

[kk] For example, from 2004 to 2015, the FBI reported that 60% of hate crimes were violent crime, but the NCVS found that 89% of hate crimes were violent crime. This difference also illustrates potentially different conclusions about severity, what kind of victim supports or protections might be needed, and other potential policy responses or needs. See Bureau of Justice Statistics, Hate Crime Series, Report NCJ 250653, page 8.

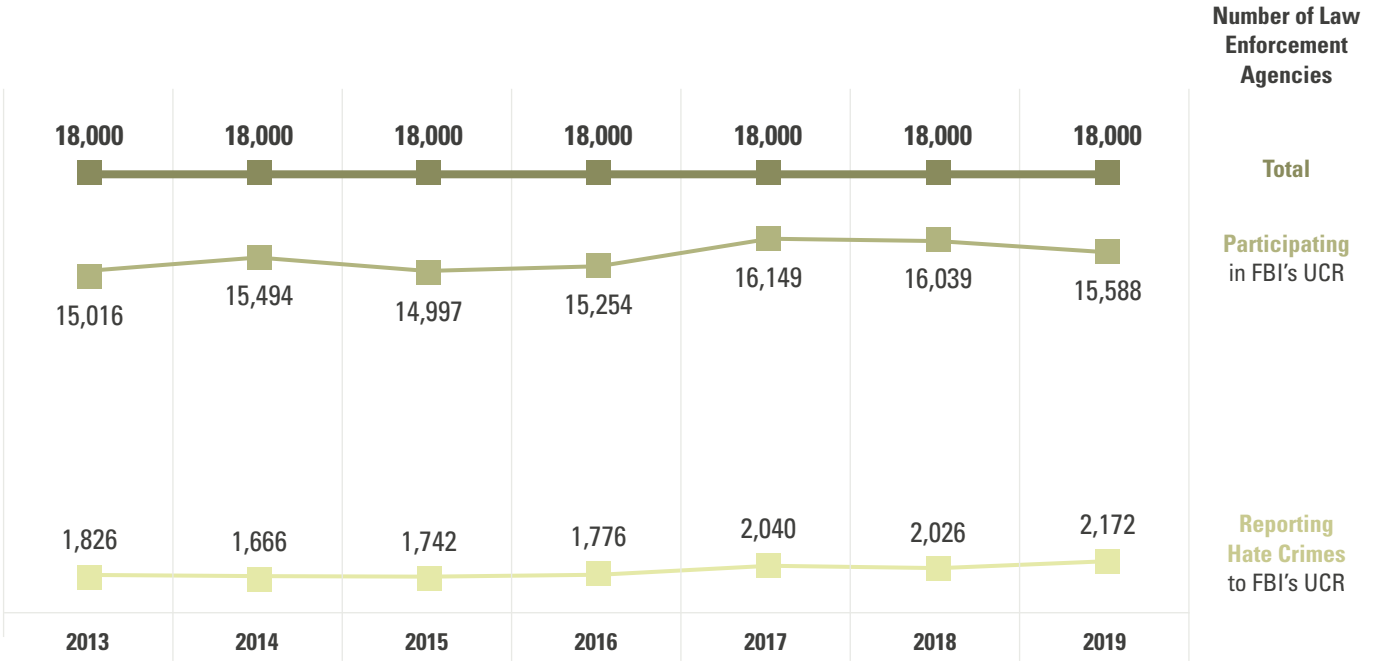
15% of all LGBTQ people) reported they had not called the police even when in need, out of fear they would be discriminated against because of their LGBTQ identity.[41]

Second, even if a hate crime is reported to the police, local law enforcement agencies may not consistently or reliably collect or report those data to the FBI. There are multiple steps between a person experiencing a hate crime and that crime eventually being reported to the FBI. Each of these steps presents unique challenges to—and opportunities for bias in—data collection and reporting. For example, once a person experiences a hate crime and reports that to law enforcement, law enforcement must properly identify and respond to the crime as such. This includes how the crime is described in initial police reports, such as categorizing the spray-painting of a swastika on a Jewish synagogue as a hate crime, rather than (only) graffiti or vandalism. However, as noted in Figure 14, only 18 states require law enforcement training on how to properly identify and investigate hate crimes.

As a result, there are likely many bias-motivated crimes across the country that, even though they are reported to the police, they are never properly recognized or addressed as hate crimes by law enforcement—and therefore are also not reported to or reflected in FBI statistics. As illustrated by Figure 3 on page 5, there is such significant drop-off in each step of the current FBI reporting process that **only an estimated 7% of hate crime experiences that are reported to police in a given year are ever reported to the FBI.**[42]

Federal law does not require state and local law enforcement agencies to participate in federal data collection efforts about hate crimes. Reporting to the FBI is a voluntary process. As a result, extraordinarily few agencies around the country report data on hate crimes to the FBI. There are roughly 18,000 federal, state, county, and local law enforcement agencies in the United States,[43] and in 2019, only 15,588 participated in the FBI's UCR Hate Crimes Statistics.[44] However, "participating" in the UCR Program is not the same as actually reporting meaningful data on hate crimes. In fact, only 2,172 agencies reported any hate crime incidents in 2019, nationwide.[45] This means that, as shown in *Figure 15*, **only 12% of all law enforcement agencies in the country (or 14% of "participating" agencies) actually reported any hate crime incidents in 2019.** What's more, the number of agencies reporting zero hate crimes has grown from 73% in 1991[46] to 86% in 2019,[47] despite the clear rise in hate violence in recent years.

Figure 15: Only a Small Fraction of Law Enforcement Agencies Report Hate Crimes to the FBI



Source: FBI's Uniform Crime Reporting (UCR) Program, Hate Crimes, 2013-2019. Table 12. www.ucr.fbi.gov/hate-crime.

Abusing Original Intent of Hate Crime Law

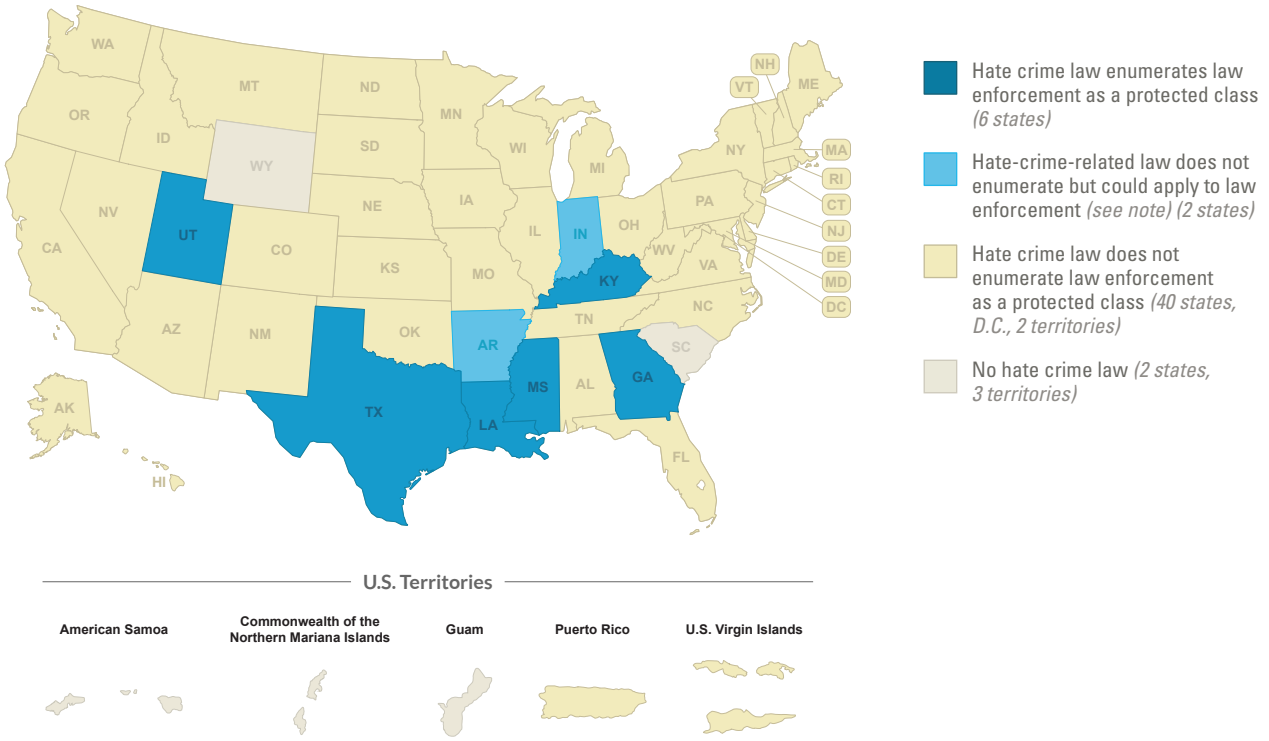
A recent development in state hate crime statutes is the expansion of what constitutes a hate crime to include violence against law enforcement. These so-called "Blue Lives" laws or amendments abuse the original intent of hate crime laws to enumerate law enforcement—a profession, not a characteristic subject to historical discrimination and violence—as a protected class.

Notably, all 50 states already have criminal statutes that specifically address and punish violence against a law enforcement officer, including enhanced penalties for crimes where the victim is a law enforcement officer or first responder.[48] Yet in recent years, six state legislatures have passed laws enumerating law enforcement officers as a protected class in hate crime statutes, as shown in *Figure 16*. In doing so, these states have not only unnecessarily created punishments that already existed in law, but they also have done so as a political response to growing calls to reduce violence committed by police and the broader criminal justice system. These new state laws were enacted at least in part as a response to the Black Lives Matter movement against police and criminal justice practices that result in the disproportionately high rates of Black people imprisoned, harassed, and killed by police officers. This is made abundantly clear by the fact that these laws' proponents often refer to them as "Blue Lives Matter" laws or amendments, as in the case of Louisiana's HB 953, initially titled the "Blue Lives Matter Act" and the first bill of this type to be passed.

These states are unique in enumerating law enforcement—a profession—as a protected class in the hate crime statute, in contrast to the historical origin and use of these laws based on characteristics of groups and individuals that make them vulnerable to discrimination, hate-motivated violence, and other forms of inequality.

Louisiana was the first to add police officers as a protected class to its hate crime statute in 2016. Kentucky, Mississippi, and Texas passed legislation that added police officers in 2017, and Utah added police officers to its law in 2019. In early 2020, Georgia was one of just four states at the time without any hate crime law whatsoever. Following the murder of Ahmaud Arbery, a 25-year-old

Figure 16: Six States Enumerate Law Enforcement as a Protected Class in Hate Crime Laws Through So-Called "Blue Lives Matter" Amendments



Note: Arkansas and Indiana do not have true hate crime laws, but they do have laws related to bias-motivated crimes. These related statutes are written with such broad and generic language that they could apply to crimes committed against law enforcement. Note also that all 50 states already criminalize violence toward law enforcement, further highlighting the politicized nature of the laws shown on this map.

Source: MAP original analysis. Data as of 6/1/2021.

Black man who was murdered while out for a run by three white men (including a former police officer), Georgia passed a hate crime law.[49] Shortly after, however, the state passed a separate law adding law enforcement as a protected class to the new hate crime statute.

Failing to Address the Root Causes of Hate Violence

More broadly, criticisms of hate crime laws often point to the discrepancy between the stated goals of hate crime laws—such as deterring or preventing hate crimes through harsher sentencing—and the actual outcomes of these laws. For example, there is **little to no evidence that harsher sentencing reduces crime—meaning there is little to no evidence supporting the central tool of these policies.** Decades of research on the death penalty show no proof that even the harshest sentencing enhancement reduces murder rates.[50] Similarly, there is no evidence that sentencing enhancements in hate crime laws reduce or deter hate-motivated crimes. These laws do create a criminal (and sometimes civil) response to hate crimes when they do happen—allowing for the potential to hold individual offenders accountable—but there remains little evidence that harsher punishments actually prevent hate crimes from occurring.

Furthermore, **hate crime laws—at least in their current form—are insufficient for redressing the ongoing and persistent hate violence in this country because these laws only respond to that violence *after* it has occurred, rather than working to *prevent* such violence.** Community advocates and anti-violence coalitions often point to the need for, among other interventions, widespread education efforts to reduce the bias that motivates hate crime.[51] But as discussed on pages 18-19, while 46 states, D.C., and two territories have hate crime laws, only 11 states have any form of anti-bias education component to their hate crime laws (Figure 10)—and those are only for people convicted of committing a hate crime and only as optional programming.

Similarly, critics argue **these laws are flawed because they focus on acts of violence at the individual or incident level, rather than at a broader societal level.**[52] This creates at least two related problems. First, this creates a particular focus on the perpetrator, nearly to the exclusion of the victim. While 46 states, D.C., and two territories have hate crime laws, only nine states have any form of victim protection or support services (Figure 12). Second, this focus on hate crimes as isolated, individual events ignores the broader societal context that creates, enables, and perpetuates hate and bias in the first place. This again points to the need for widespread anti-bias education and addressing the racism, sexism, anti-Semitism, xenophobia, and more that motivates hate violence.

Turning our collective attention to the social contexts that enable hate also allows us to address the actual root causes of why certain communities are especially vulnerable to hate violence. For example, racism leads to racial discrimination, including in the workplace, in housing, in health care, and more. Such discrimination then leads people of color to experience disproportionate rates of poverty or economic instability, housing insecurity, or unequal access to healthcare. This in turn creates disproportionate need and vulnerability, such as being forced to stay in a dangerous living situation or to seek income through survival economies because few other alternatives are available. This chain of events leaves people more vulnerable to violence or exploitation.

Taken together, these critiques illustrate that **while hate crime laws primarily *respond* to violence, it is also imperative to take action to *prevent* both violence itself and the economic and social conditions that leave some communities at higher risk of experiencing violence in the first place.**

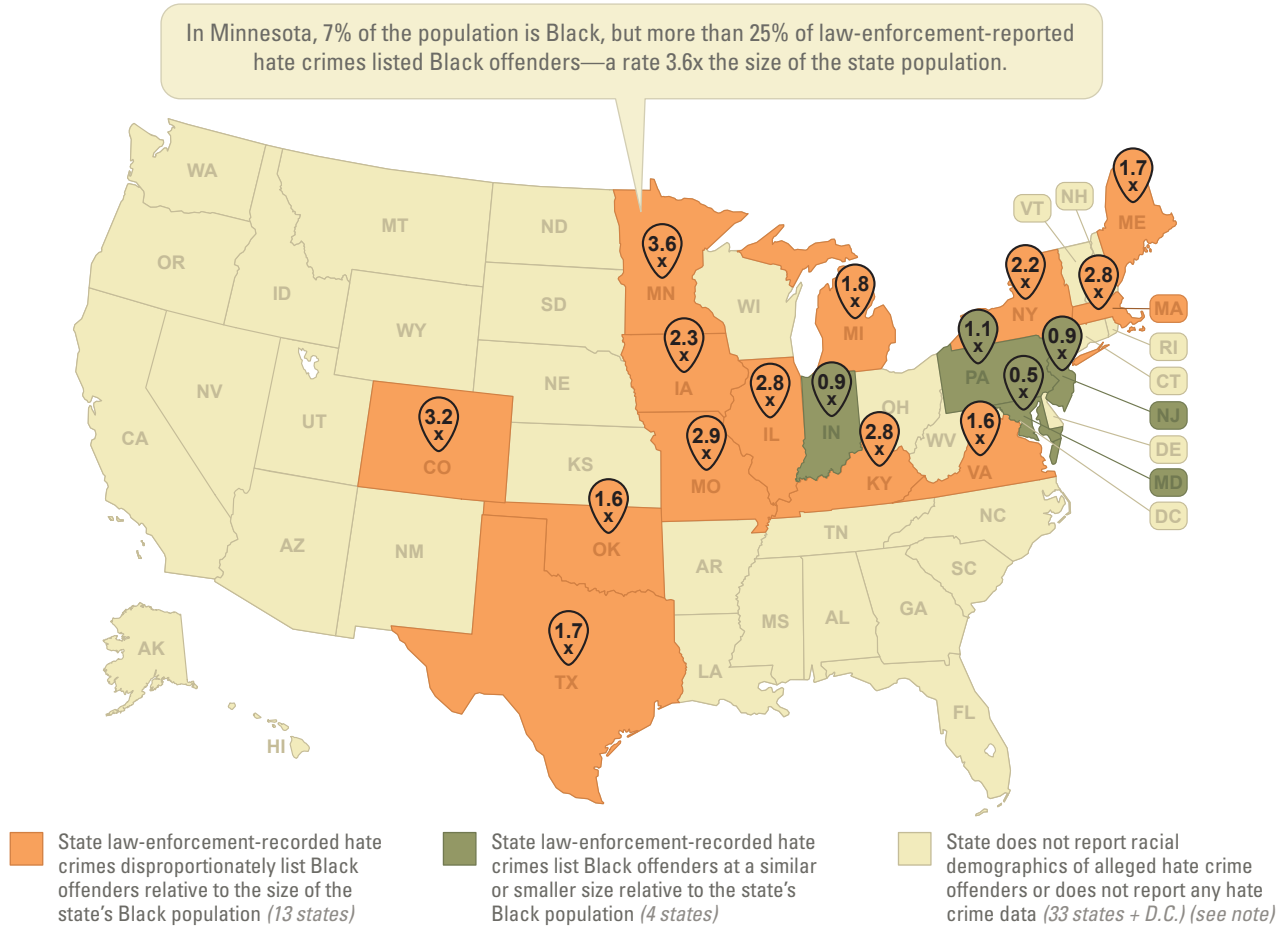
> *Hate or bias-related violence* is portrayed as individualized, ignorant, and aberrant—a criminal departure by individuals and extremist groups from the norms of society, necessitating intensified policing to produce safety. The fact is many of the individuals who engage in such violence are encouraged to do so by mainstream society through promotion of laws, practices, generally accepted prejudices, and religious views. …For instance, violence against LGBT people generally increases in the midst of highly visible, homophobic, right-wing political attacks. …Attacks against South Asian and Middle Eastern people surged in the aftermath of the anti-Arab and anti-Muslim rhetoric following 9/11."
>
> -Joey Mogul, Andrea Ritchie, & Kay Whitlock, in *Queer (In)Justice: The Criminalization of LGBT People in the United States*, 2016

Bias in the Criminal Justice System

The U.S. criminal justice system is built on, replicates, and reflects biases in our broader country. In particular, Black, LGBTQ, and other minority groups have historically, because of their identities, been targets of both the criminal justice system and hate violence. American society has not remedied the consequences of that historical criminalization, nor its remaining and continuing manifestations. As a result, many communities—including both people of color and LGBTQ people—are frequently over-policed and underserved at the same time. Especially when relying on the criminal system to address complex societal problems like hate violence, it is necessary to examine the bias inherent in the criminal justice system and the ways this bias may contribute to negative impacts on communities that are often already the targets of discrimination, bias, and hate.

Because the criminal justice system is itself biased, any use of that system has the potential to recreate or reflect those structural biases. For example, even though evidence shows that white people report higher rates of illicit drug use than Black or Hispanic people,[53] people of color are significantly more likely to be arrested and incarcerated for drug-related offenses.[54] In 2019, Black and Latino people comprised 32% of the national population[55] but 46% of people in state prison and 74% of people in federal prison for drug offenses.[56] As recent years have increasingly called attention to, this pattern is true across many areas of the criminal system, with people of color being more likely to be arrested and convicted for many types of crimes and to receive

Figure 17: People of Color Are More Likely To Experience Hate Violence, Yet Law-Enforcement-Recorded Hate Crimes Disproportionately List Black Perpetrators



Note: Not all states collect data on hate crimes, and of those that do, not all report data on the race of suspected offenders. Idaho, Utah, and Wyoming report racial data but are not included here due to reporting inconsistencies or small sample size. Note also that state-reported data shown here reflect the reported race of suspected offenders in law enforcement's incident reports. While these incident reports may lead to arrests, prosecutions, or convictions, actual data on racial demographics of hate crime arrests, prosecutions, or convictions are extremely rare or limited.

Sources: Annual crime statistics reported by each listed state across years available between 2013 and 2020. Additional details available upon request. State population data from U.S. Census Bureau, ACS 2019.

longer sentences compared to white peers.[57] Research similarly shows that LGBTQ people, particularly LGBTQ people of color, are also more likely to be arrested[58] and incarcerated,[59] and that low-income communities are disproportionately harmed by criminal fines, fees, bail, and other punishments.[60]

There is evidence that this same type of bias occurs in the context of hate crime law. As argued by legal scholars, "hate crime laws can contribute to systemic violence against those they are intended to protect… even well-intentioned hate crime laws can morph in the hands of law enforcement officials into tools used to reinforce old patterns of injustice."[61]

For example, the majority of all hate crimes are committed by white people[62] and the majority of all hate crimes are motivated by racial or ethnic bias.[63] Additionally, the growing number of "mass" hate crimes—such as the mass shootings at Tree of Life synagogue in Pittsburgh in 2018, or at a Walmart in El Paso in 2019—were committed by white nationalists. Yet, data show that hate crimes reported by state law enforcement are disproportionately listed as having Black perpetrators. Across at least 13 states, law-enforcement-recorded hate crimes listed Black offenders at a rate roughly 1.6—3.6 times than the size of the state's Black population (see *Figure 17* on the previous page).

These repeated disparities again show that—despite the fact that people of color are far more likely to *be the victims* of hate violence—the instances of hate violence that are actually documented by police (and therefore potentially prosecuted) are disproportionately those *alleged to have been committed* by Black people.

In another example, the city of Columbia, South Carolina, passed a local hate crime ordinance in late 2019, but to date the law's enforcement has led to the arrests of primarily Black and homeless people.[64] In at least two cases, the hate crimes in question involved the perpetrator allegedly using a slur to refer to police officers—in other words, the bias-motivation was anti-police.[65] Similarly, while South Carolina does not currently have a statewide hate crime law, the state did pass an antilynching law in 1951. However, "lynching" was defined without any reference to race, and as a result, "Fifty years later, though Blacks comprise only about 30 percent of South Carolina population, they represented 63 percent of those charged with lynching."[66] This is especially disturbing given the history of lynching in the United States, and especially in the U.S. South, as a primary weapon of white supremacy.

Additionally, given the many biases in the criminal justice system, people of color, LGBTQ people, and other vulnerable communities may be reluctant to report their experiences to the police (as discussed on pages 27-28). They may also fear retaliation for doing so. This leads to even less documentation of and responses to hate violence committed against people of color, LGBTQ people, and others—further exacerbating the disparities in enforcement of existing hate crime statutes.

Even if hate crimes are reported, discretion on the part of law enforcement, prosecutors, and judges and juries in when and whether to apply a hate crime charge means that these statutes are susceptible to being inconsistently or inequitably enforced. For example, a police officer may not believe that an attacker yelling anti-LGBTQ slurs during an assault rises to the level of a hate crime, and so he may not label it as such.[67] This is especially likely given that only 18 states currently require training of police officers (Figure 14) on how to properly recognize and respond to these unique crimes—not to mention potential bias, both implicit and explicit, among law enforcement personnel. With respect to prosecutors, research shows that, "because hate crime statutes only apply to criminal acts, prosecutors have full discretion to decide when to attach hate crime enhancements to indictments," and as a result, "many federal and state prosecutors tend not to utilize hate crime statutes."[68] Similarly, a jury might return a guilty verdict for a hate crime based on one bias (e.g., religion), but not for the same crime if based on another bias they may be less familiar with or sympathetic toward (e.g., disability or gender).

For prosecutors, judges, and juries, this is further complicated by the high and often confusing burden of proof required to convict a person of a hate crime. For example, under federal hate crime law, conviction requires proving "beyond a reasonable doubt" the attacker's motive: "This involves the jury deciding what motivated the defendant, but short of a confession, it is hard to lift all doubt as to the defendant's motivation."[69] Based on these strict requirements, prosecutors may choose not to pursue a potentially unachievable hate crime conviction, and judges may similarly be hesitant to apply the law.[70] (See discussion of *The Justice for Victims of Hate Crimes Act* on the next page.) Jury members might also allow the high burden of proof to act as cover for personal biases that make them not want to convict. For example, take the case of a person who assaulted a

Current Legislative Opportunities to Improve Hate Crime Laws

There are many opportunities to improve existing hate crime law, including with respect to the many challenges addressed in this report. At the federal level, multiple bills are currently being considered that would advance stronger protections, data collection efforts, victim support services, and more. These illustrate just some of the many ways that both state and federal policymakers can respond to hate violence without creating new or harsher sentencing.

Data | **Coordination & Resources** | **Victim/Community Support** | **Alternative Sentencing** | **Legal Protections** | **Training & Education**

The Domestic Terrorism Prevention Act, as currently written, would create new resources for the federal government to combat domestic terrorism, with a specific focus on white supremacist violence. It would also create an interagency task force across different parts of the federal government, allowing for a more comprehensive, coordinated, and effective response to domestic terrorism and white supremacy. Importantly, the bill does not create a new federal crime or charge—which would negatively impact already vulnerable communities[jj]—but instead relies on existing statutes, expands the resources available to fight domestic terrorism at a structural level, and creates an explicit priority of fighting white supremacy. However, federal terrorism statutes have historically been used to target Black and other activists of color, and so any use of such statutes must be carefully monitored, evaluated, and prevented from further harming communities of color.

The Justice for Victims of Hate Crimes Act would clarify what is legally required to prove a hate crime occurred, therefore providing stronger protections for those affected by hate crimes. Currently, judicial interpretation of federal law requires that prosecutors prove that bias was the only cause of a hate crime—a nearly impossible standard, and not the original intent of federal hate crimes law. This legislation would allow prosecutors to prove only that bias was a substantial motivating factor.

Passed in late May 2021, the Jabara-Heyer NO HATE Act will "provide funding for states to establish hotlines for reporting and addressing hate crimes, establish a private right of action for victims of hate crimes, support training on hate crime data collection and reporting for law enforcement officers, and authorize effective rehabilitative services for those convicted of hate crimes." [mm] This approach expands federal hate crime law with a focus on improved data collection at the state and local level, improved support for survivors of hate crimes, and—importantly—new options allowing for alternatives to criminal punishments. The new law also includes **the COVID-19 Hate Crimes Act**, which provides resources for expedited review of COVID-related hate crimes, guidance for state and local law enforcement to establish online reporting of hate crimes, and resources to make these online options available in multiple languages and to invest in "culturally competent and linguistically appropriate public education campaigns, and collection of data" regarding hate crimes.[nn]

[ll] The Leadership Conference on Civil and Human Rights. 2021. "Coalition Urges Congress Not to Expand Domestic Terrorism Charges."
[mm] Vanita Gupta. 2017. "Responses to the Increase in Religious Hate Crimes." Testimony to the Senate Committee on the Judiciary. The Leadership Conference on Civil and Human Rights.
[nn] Office of Sen. Mazie K. Hirono. 2021. "Hirono and Meng Introduce Bill to Address Surge of Anti-Asian Hate Crimes During Coronavirus Pandemic."

gay or transgender person for expressing sexual interest in them. A jury member with bias toward LGBTQ people may think this violent reaction was understandable and therefore would prefer not to convict the person of a hate crime, and the high burden of proof could give that jury member cover to do so. Conversely, research shows that—as a result of widespread overpolicing of communities of color, bias in arrests and prosecutions, and much more—across many types of alleged crimes, people of color are disproportionately more likely to be prosecuted and convicted of different crimes.[71] As a result—and as suggested by available data above (Figure 17)—hate crimes may be more likely to be identified and potentially prosecuted as such when people of color are the alleged perpetrators.

Hate crime laws are not the only example of the bias in the criminal justice system manifesting in laws or policies meant to protect vulnerable communities. Zero-tolerance policies in schools, for example, were originally proposed to create safer learning environments, but instead have created harmful and disproportionate impacts—such as higher rates of suspension, expulsion, and even arrests—for students of color, students with disabilities, and lower-income students.[72] In fact, researchers and advocates regularly point to zero-tolerance policies as part of the school-to-prison pipeline, directly contributing to the broader racial and economic disparities seen throughout the criminal justice system.[73] As zero-tolerance approaches have also been used in school anti-bullying efforts, the same pattern has played out: a policy originally intended to be protective instead results in unequal and disproportionate enforcement, particularly for people of color.[74] **This illustrates that, while bias is not unique to hate crime laws, neither are hate crime laws exempt from the bias inherent in the U.S. criminal system simply because these laws intend to protect vulnerable communities.**

RECOMMENDATIONS

Given these many challenges, why do hate crime laws remain relevant? As noted earlier, violence against vulnerable communities remains a persistent and ongoing threat today. This continued violence means there is still need for governmental and societal response. As hate crime laws have been a primary tool for responding to this violence in the past, they remain a familiar framework for many, including legislators, law enforcement, and prosecutors, to address bias-motivated violence.

Additionally, communities and advocates in some states without hate crime laws (or without specific enumerated categories, such as sexual orientation or gender identity) continue to push for their passage. For example, advocates in South Carolina—one of the four states currently without a hate crime law—continue to work for a statewide hate crime law, particularly in the wake of racist violence such as the 2015 mass shooting at the Emanuel African Methodist Episcopal (AME) Church in Charleston in which nine Black parishioners were killed.[75]

Similarly, though progressive movement and national understandings of the harms of criminal justice system continue to grow, existing hate crime laws are just that: existing. As these laws are already "on the books," they provide an already-available tool to use or leverage in the fight against violence and bigotry. Improved enforcement or expansion of existing laws—particularly whatever provisions might allow for data collection, training, anti-bias education, and victim support services—may be more politically possible than passing entirely new laws, especially in an exceptionally partisan environment.

Given these considerations, there are multiple paths forward for improving the efficacy of the desired parts of hate crime laws, reducing the harmful impacts of the criminal system, and eventually stopping bias-motivated violence in the first place. The recommendations contained here are not mutually exclusive, nor are they exhaustive; they reflect and only briefly summarize the recommendations, work, and expertise of numerous community organizations, survivors, policy and legal teams, academic researchers, and more. For more detail, further resources are available at the end of this report.

Reducing Vulnerability and Investing in Harmed Communities

First and foremost must be reducing the vulnerability of and investing in communities that are commonly the subjects of hate violence, such as people of color, LGBTQ people, people of minority faiths, and people with disabilities. Investment in harmed communities can and should include investing in the social safety net, such as through raising the minimum wage and expanded affordable housing programs, mental health services, and substance use treatment.[76] Additionally, state and federal nondiscrimination protections in employment, housing, and public places are vital to ensuring equal access to a safe workplace, stable living situation, and

needed services.[77] The Equality Act, for example, would not only provide such protections for LGBTQ people across the country, but it would also expand or add new protections against discrimination for people of color, women, people of minority faiths, and more.[78] These measures will help reduce the broader instability caused by discrimination, in turn reducing vulnerable communities' exposure to potential violence—as well as their ability to recover from violence.[79]

Preventing Violence

Another key priority is preventing violence. At its core, this work aims to not only reduce hate crimes, but also hate itself. This can range from local-level efforts such as a town's City Council or Human Rights Commissions, interfaith groups, or community coalitions working to promote an inclusive community and to rebuke hateful activities or ideologies (such as extremist groups), to state and federal efforts such as legislation to ensure schools, workplaces, and government agencies have the funding and resources to offer multicultural education, conflict resolution skills, and more.[80] For example, in testimony to the U.S. Senate, the Leadership Conference on Civil and Human Rights (LCCHR) called for "the enactment of comprehensive legislation focusing on inclusive anti-bias education, hate crime prevention, and bullying, cyberbullying, and harassment education, policies, and training initiatives."[81] Community organizations and anti-violence advocates have also called for federal working groups or task force specifically dedicated to addressing and preventing hate violence.[82]

Improved Law Enforcement Training and Accountability

Addressing hate crimes requires both efforts to prevent violence and to respond to violence when it does occur. In their current format, hate crime laws primarily rely on law enforcement to respond to hate violence. **To the extent that hate crime laws continue to rely on law enforcement in the future, this highlights the need for consistent training requirements across the country for law enforcement officials—including police officers, prosecutors, judges, and other members of law enforcement, broadly defined.** As shown in Figure 14, currently only 18 states require such training for law enforcement, with one additional state requiring training for law enforcement but specifically exempting police.

Common components of these trainings include how to accurately identify, respond to, collect data on, and report hate crimes. However, **trainings could—and should—also include components designed to address hate and bias at their roots.** For example, in 2021, the California Attorney General announced the formation of a new state Racial Justice Bureau, tasked with, among other duties, addressing hate crimes and hate organizations. This explicitly includes working with community organizations and law enforcement on hate crime reporting and prevention, including new requirements for law enforcement training on implicit and explicit bias in policing.[83]

Importantly, many communities that are commonly the targets of hate violence are also disproportionately impacted and harmed by law enforcement. As a result, there is significant and reasonable distrust and fear of police in many vulnerable communities. For example, a 2017 NPR survey showed that 31% of Black adults, 22% of Native Americans, 17% of Latinos, and 15% of LGBTQ people reported they had not called the police, even when in need, out of fear they would be discriminated against by the police.[84] This in turn limits the effectiveness of hate crime laws in their current form, as such fear can lead to hate crime experiences not being reported to police: in fact, nearly a quarter (23%) of people who experienced a hate crime and did not report it to the police said they did so because they believed the police would not or could not do anything to help, or that reporting to the police would cause even further harm.[85]

This highlights the urgent need for law enforcement to engage in dedicated and sustained efforts to improve their relationships to the communities they serve, and to take meaningful steps toward being accountable for—and repairing—past harms. To the extent that hate crime laws rely on law enforcement personnel for responding to and collecting data on hate violence across the country, the effectiveness of these laws will depend on law enforcement's relationships with and treatment of vulnerable communities.

Improved (and Community-Based) Data Collection

Better data collection, and not (only) through law enforcement, is also needed. As outlined above, accurate and comprehensive data collection is vital for providing a clear picture of the scope and patterns of

hate crimes today. This includes data about the types and motivations of hate crimes, as well as demographic data about both the victims and the perpetrators of hate crimes. Collecting demographic data about those who commit hate crimes or are prosecuted under hate crime laws is especially important, as it would show whether hate crime laws are (or are not) replicating the racial disparities common throughout the criminal justice system (e.g., whether hate crime statutes are more likely to be enforced when the alleged perpetrator is a person of color). Additionally, data collection efforts could be expanded to include the study and evaluation of alternative sentencing, diversionary programs, restorative justice programs, and other non-carceral responses to hate violence. All such efforts could contribute to future policy improvements in the service of maximizing meaningful support and protections to those affected by hate violence, while also minimizing the potential harms of the criminal justice system.

For any such data collection to occur, individuals who experience hate crimes must choose to report their experiences. This highlights multiple needs. First, public education campaigns are needed to raise awareness of the importance of reporting, the process for reporting, and the rights of and resources available to survivors of hate crimes. Second, the process for reporting hate crimes should be as simple and safe as possible: programs like community or state hotlines, where people can report their experiences and be directed to available resources, can help lower obstacles to reporting and increase access to needed support. Third, and as noted above, current hate crime laws rely on law enforcement for both responding to hate crimes and collecting data on hate crimes, but law enforcement has disproportionately harmed many vulnerable communities. As a result, it is imperative that law enforcement work to repair its relationships with the communities they serve, which will also contribute to increased reporting of hate crime experiences.

Accurate data collection requires more vthan just individuals reporting their experiences to enforcement. Law enforcement must also record and label that experience as a hate crime, and further then report that hate crime to state and federal agencies. As discussed above, this highlights the need for more and consistent training for all law enforcement personnel on how to recognize, report, and respond to hate crimes. It also **highlights the need for stronger requirements and incentives for law enforcement to report hate crimes and related data to both state and federal agencies.** Figure 13 shows that only 26 states require law enforcement to report hate crime data to the state, and Figure 15 shows how extraordinarily few law enforcement agencies actually or meaningfully report hate crime data to the FBI. As a result, additional state-based requirements and federal incentives are sorely needed. The Leadership Conference on Civil and Human Rights, for example, recommends "passing legislation mandating that some Justice Department funds should be made available only to those agencies that are demonstrating credible participation" in federal data collection (emphasis added).[86]

Importantly, however, data collection and reporting must not be limited to law enforcement agencies only. Even if data collection and reporting were to become mandatory for law enforcement agencies, this would still pose a significant problem given the historical and ongoing violations of trust and safety between police and vulnerable communities. **This illustrates the clear need to not only improve data collection on hate crimes, but also to do so through community-based efforts, hotlines, and other mechanisms beyond only law enforcement agencies.**

Shifting to Support and Healing

Within the existing framework of hate crime statutes, advocates and policymakers can **shift focus away from penalty enhancements and toward other measures, including victim support, community education and response strategies, and non-carceral approaches to healing and justice.** In light of the endemic racism and bias in the criminal system, creating harsher punishments will likely only create further disproportionate impacts on communities of color.[87] Focusing on these non-penalty-enhancement components of existing hate crime statutes can reduce the harm of the criminal justice system and its disproportionate impact on already vulnerable communities.

For example, the Michigan Alliance Against Hate Crimes (MIAAHC) is a statewide coalition of over 70 civil rights organizations, community-based groups, educators, anti-violence advocates, and state actors including U.S. and district attorneys, the state's Department of Civil Rights, and law enforcement agencies. The coalition was "established to develop a consistent and coordinated response to hate crimes and

What Is Restorative Justice?

For many people, it can be difficult to imagine alternatives to punishment, especially in the context of the U.S. criminal justice system that is built on a punitive rather than rehabilitative model. However, there are many communities around the country and across the world that already use or are exploring such alternatives. One of these alternative practices is called restorative justice, a process that responds to harm through a lens of accountability and repair, rather than punishment.

As described by the Center for Justice and Reconciliation, key principles of restorative justice include that "the people most affected by the crime should be able to participate in its resolution."[oo] In practice, this typically means that the victim(s), perpetrator(s), and affected community members voluntarily work together in a structured, dialogue-centered way to identify the harms caused, what appropriate amends or restitution would be, and taking steps to repair that harm.

For example, in 1994, two white Iowa teenagers (ages 17 and 18) graffitied a Jewish synagogue with swastikas. Rather than pursuing criminal charges, members of the synagogue held a meeting with the teenagers, facilitated by a local mediator and prosecutor. As reported by local press,[pp] the meeting included synagogue members sharing the fear and anger they felt, as well as Holocaust survivors sharing their personal experiences. The teenagers ultimately shared their own experiences with persistent bullying and abuse that left them isolated and vulnerable to recruitment by Neo-Nazi extremists. Together, the synagogue and the teenagers developed a plan to repair harm done to both the synagogue and the local community, including that the children acknowledge the harm they committed and make restitution to the synagogue through service work, learning Jewish history, and promising to complete their high school education.

Importantly, these processes are voluntary for those involved, as not all those who experience (or commit) hate crimes may want to engage in such a process. In fact, it is critical for restorative justice to work that there is full and voluntary participation by everyone involved.[qq] Only if all parties consent, then these processes can serve as potential alternatives to prosecution and punishment. Given the individual circumstances, what constitutes repair varies, but could include material reparation, such as replacement of damaged goods; emotional repair through an apology; relational repair through renewal of interpersonal relationships; community reparations through work in the community; learning; and support that may include social, education, housing, and other forms of direct assistance.

Such practices are used in schools, workplaces, faith communities, and other spaces around the country and indeed the world,[rr] and are increasingly used in some aspects of the criminal system itself.[ss] In the context of hate crime laws, for example, Wisconsin has an alternative sentencing program, though it is only available to juvenile offenders (see discussion on Figure 10).

As these approaches are far less common—and indeed their focus on healing is distinct from the criminal justice system's focus on punishment—the implementation of such programs must be carefully planned, operated, and evaluated in partnership with community-based organizations and experts to avoid the criminal system simply co-opting these programs against the stated goals—in other words, to ensure these programs are truly *alternative* processes, rather than additional punishments.

[oo] Center for Justice & Reconciliation. N.d. "Restorative Justice."
[pp] Teresa F. Frisbie. 2014. "Restorative justice is expanding in Illinois, but more can still be done." *Chicago Daily Law Bulletin*, July 28. Based on Fred Van Liew's April 22, 2012, *Des Moines Register* article, "Growing past hate: 'Restorative Justice' helps heal pain from teen's vandalism" (no longer online).
[qq] Mark Austin Walters. 2019. *Repairing the harms of hate crime: towards a restorative justice approach?* Annual report for 2018 and Resource Material Series, 108. pp. 56-72.
[rr] Center for Justice & Reconciliation. N.d. "Restorative Justice Outside the Criminal Justice System."
[ss] Center for Justice & Reconciliation. N.d. "Restorative Justice In the Criminal Justice System."

bias incidents perpetrated in Michigan," and gears its efforts toward community education, connecting victims to support and resources, cultivating community-based responses to hate crimes, and data collection.[88]

By expanding or focusing on other provisions of hate crime statutes, such as victim support (Figure 12) and non-carceral sentencing (Figure 10), further resources can be invested in supporting those survivors and communities directly impacted by hate crimes and working to prevent violence in the long run. In particular, non-carceral approaches, such as restorative or transformative justice,[tt] can provide an alternative path toward repairing harm and preventing future violence without incarceration or punishment.

For all these recommendations, the fact of the widespread and persistent violence across the country means that a similarly widespread and persistent response—i.e., one that is enacted and coordinated by the federal government—is needed. Federal leadership will help ensure a coordinated, nationwide response and dissemination of evidenced-based best practices, rather than piecemeal state-by-state efforts that may leave some without equal protection, investment, and opportunities for healing.

CONCLUSION

Today, there is a clear tension between the ongoing, real, persistent threat of violence against vulnerable communities and the laws and legal tools historically used to respond to this violence—tools that are increasingly understood to rely on a flawed criminal justice system rife with racial inequality and harm.

One legal response to bias-motivated violence against vulnerable communities is to criminalize such acts through hate crime laws. This report illustrates the wide-ranging complexity and variation of state hate crime laws and related legal responses to bias-motivated crime. For example, nearly all states with hate crime laws specifically address violence motivated by race, ethnicity, and religion, but states vary widely with respect to crimes based on sexual orientation, gender identity, and age. Similarly, roughly half of states require data collection about hate crimes committed in the states, and even fewer require training on hate crimes for law enforcement officers.

In practice, this state patchwork and variation results in inconsistent protections for vulnerable communities from state to state and varying levels governmental efforts to track, respond to, and prevent hate violence. Hate crime laws also contain numerous shortcomings and challenges, including but not limited to flawed data collection, an inherently biased criminal justice system, abuse of the original intent of hate crime statutes, and ultimately failing to address the root causes of hate-motivated violence.

Despite these challenges, communities, educators, advocates, and many more across the country have been working to develop more comprehensive and effective responses to the ongoing violence and hate-motivated crime across the country. In particular, these efforts highlight the need for investing in harmed communities; preventing violence; improved data collection; and divesting from the criminal justice system and punishment-focused provisions that would only further entrench the criminal system's racial disparities and other disproportionate impacts on already vulnerable communities.

As the United States continues to grapple with racial justice, the harms of the criminal justice system, and rising hate violence against many communities, it is critical that we reexamine our social and policy responses to hate crime. Further explicit study of the efficacy, benefits, and potential harms of hate crime laws is needed so that best practices—including those beyond the criminal system—can be identified and implemented consistently across the country. These best practices should, at a minimum, center and invest in the communities most impacted by hate violence, work to both prevent hate violence and respond to it when it does occur, and to do so without furthering the harm and disproportionate impacts of the criminal justice system. How hate crime laws, in both their current and potential form, fit into the broader work to improve the safety and security of all communities in the United States is a critical part of the work ahead.

[tt] For more on the distinctions between restorative and transformative justice, see Candace Smith's (2013) "Restorative Justice and Transformative Justice: Definitions and Debates" in *Sociology of Law, Crime, and Deviance*.

ADDITIONAL RESOURCES

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See also the recently released report *Exploring Alternative Approaches to Hate Crimes*, by Stanford Law and The Brennan Center (June 2021).

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ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at www.lgbtmap.org/equality-maps. The information in this report is current as of the date of publication.

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