



Improving the Prevention and Enforcement of Hate Crimes

Hate crimes are serious and well-documented problems but remain inadequately recognized and addressed. The 2009-2011 Public Policy Program of the American Association of University Women (AAUW) advocates “freedom from violence and fear of violence in homes, schools, workplaces and communities.”¹ To this end, AAUW supports legislation such as the Local Law Enforcement Hate Crimes Prevention Act and the Mathew Shepard Hate Crimes Prevention Act, which would strengthen the federal response to hate crimes.

In 1968, Congress enacted a hate crimes prevention law that covers violent crimes resulting in death or serious bodily injury.² Crimes must be motivated by a person’s race, color, national origin, or religion and occur while the victim is engaged in a specified federally protected activity. AAUW believes that this important hate crimes prevention law must be extended to cover violent crimes motivated by gender, gender identity, sexual orientation, or disability and must not be limited to victims engaged in federally protected activities.

The Case for Expansion

Violent crimes motivated solely or primarily by bias or hatred against a group to which the victim belongs intimidate all members of that group, and give them a reason to fear for not only their own safety but that of the entire group. Hate crimes law punishes the intimidation committed by the assailant in a violent crime, in addition to the act of violence itself. The incidence of hate crimes continues to increase, according to the FBI Uniform Crime Reports. The most recent report showed that there were 9,535 reported hate crime victims in 2007.³ In light of the increase in hate crimes, AAUW believes Congress must pass hate crimes legislation that protects all Americans.

One recent example of what might have been classified as a gender-based hate crime captured media attention in October 2006. A milkman from Amish Country in Pennsylvania shot and killed five schoolgirls and injured at least five more in an execution-style assault. He specifically separated the boys and had them leave the schoolhouse before committing the murderous assault on the young girls.⁴ These actions suggest that gender bias was a factor in this horrible crime. Sadly, because gender-bias motivated crime is not currently covered in our federal hate crimes law, he could not be charged with a hate crime.

Strengthen Existing Federal Hate Crime Laws

AAUW believes the federal government has a role in preventing violence against people in all groups that have historically been subjected to bias-related violence. Existing law should be expanded in two key ways.

- *Strengthen current hate crimes law.* First, it is necessary to expand the situations when the U.S. Department of Justice can prosecute defendants for violent crimes based on race, color, religion, or national origin. Under current law, federal authorities can only step in if the victim was engaged in a specified federally protected activity—such as

serving on a jury, voting, or attending public school. As a result, current law does not reach all the cases where individuals kill or injure others because of bias against religion, color, national origin, or race. AAUW supports hate crimes legislation that would broaden current law to cover all violent bias-motivated crimes when the defendant causes bodily injury or uses a fire, a firearm, or an explosive device to attempt to cause injury.

- *Expand current law to cover gender, gender identity, sexual orientation, and disability.* Second, hate crimes prevention legislation must authorize the U.S. Department of Justice to prosecute individuals who commit violent crimes against others because of the victim's gender, gender identity, sexual orientation, or disability. Current federal law does not permit federal involvement in these cases, though statistics show they are highly prevalent. In fact, since the FBI began collecting statistics in 1991, reported hate crimes based on sexual orientation have dramatically increased, and comprised 15.9 percent of all hate crimes victims for 2007. That means that out of 9,535 hate crimes victims reported to the FBI, 1,512 were targeted on the basis of sexual orientation. In addition 84 were targeted on the basis of disability.⁵ The FBI does not currently track hate crimes motivated by gender; AAUW-supported hate crimes prevention legislation corrects this problematic oversight.

In the first session of the 110th Congress, the House passed a bill and the Senate approved an amendment that would strengthen current hate crimes law as well as expand it to cover gender, gender identity, sexual orientation, and disability. Unfortunately, the Bush administration issued a statement of administration policy recommending a veto of the provisions.⁶ AAUW is committed to passing this legislation during the 111th Congress.

Unfounded Concerns Regarding Hate Crimes Prevention Legislation

Hate crimes prevention legislation does not violate the first amendment right to free speech guaranteed by the U.S. Constitution. The hate crimes prevention legislation's language does not apply to name-calling, verbal abuse, or expressions of hatred toward any group, even if statements amount to hate speech. However, causing or attempting to cause bodily injury is clearly *not* speech protected by the first amendment. Hate crimes legislation has been carefully drafted and modified to assure its constitutionality under Supreme Court precedent.

In addition, the Local Law Enforcement Hate Crimes Prevention Act and the Mathew Shepard Hate Crimes Prevention Act do not make every violent crime against women a bias crime, just as not every crime against an African-American is based on racial prejudice. Federal courts already routinely assess the question of gender motivation in the context of workplace discrimination claims and under other civil rights laws. Prosecutors and judges can rely on the same type of analysis that would pertain to the other protected groups – considering the language, nature and severity of the attack, motive, patterns of behavior, and common sense – to determine whether a violent crime was motivated by gender bias.

Finally, federal jurisdiction provides an important complement to state jurisdiction to allow law enforcement authorities a broad range of options in achieving justice in any particular case. In recent years, the existing federal hate crimes law has been used only in carefully selected cases. AAUW believes that while states should continue to play the primary role in the prosecution of hate crime violence, the federal government must be able to address cases that local authorities are either unable or unwilling to investigate and prosecute. The support that federal authorities can provide local law enforcement agencies is invaluable in cases of bias-motivated crime, and only strengthens the response to hate-fueled attacks on the fabric of our communities.

Hate Crimes Issues in the Higher Education Act

Every year, more than half a million students endure bias-motivated slurs, vandalism, threats, and physical assaults on college campuses.⁷ The FBI typically documents almost 10,000 hate crimes every year, and other estimates range as high as 200,000.⁸ To increase awareness of hate crimes on college campuses, the 1998 Higher Education Act required all colleges and universities to collect and report hate crime statistics to the Office of Postsecondary Education (OPE) of the U.S. Department of Education. The Department of Education utilized the definition of hate crime developed by the FBI, but the criminal offenses required to be reported did not match the existing FBI crime categories.

Currently, colleges must report any crimes involving bodily injury in which the victim was targeted because of his or her race, gender, religion, sexual orientation, ethnicity, or disability. However, there have been limitations to the data gathered under HEA, which likely resulted from discrepancies between the FBI and HEA hate crimes categories. The FBI definition includes several types of offenses previously omitted by the HEA definition. These include arson, larceny/theft, intimidation, and destruction/damage/vandalism.⁹ The omission of these crimes results in significant gaps in OPE data and substantial inconsistencies between FBI and OPE statistics.

In the 110th Congress, AAUW led the effort to pass the provision that aligns the HEA hate crimes reporting categories with the categories used by the FBI. This improved data will give parents and students a more accurate sense of campus safety, and provide colleges with a better picture of their campus climate. AAUW will work with the new Congress and administration to fund and inspire necessary education, training, and outreach initiatives to fully implement this new campus hate crime reporting standard, and to ensure that schools report the required data.

Resources for Advocates

It is AAUW advocates across the country who speak their minds on issues important to them that truly advance AAUW's mission. Stay informed with updates on hate crimes legislation and other issues by subscribing to AAUW's Action Network. Make your voice heard in Washington and at home by using AAUW's Two-Minute Activist to urge your members of Congress to support legislation that sends the message that hate-motivated violence will not be tolerated. Write a letter to the editor of your local paper to educate and motivate other members of your

community. Attend town hall meetings for [your members of Congress](#), or set up a meeting with your elected official's district office near you to discuss these policies. AAUW members can also subscribe to *Washington Update*, our free, weekly e-bulletin that offers an insider's view on the latest policy news, resources for advocates, and programming ideas. For details on these and other actions you can take, visit www.aauw.org/takeaction. For more information, read AAUW's related position papers on higher education, and AAUW's research, including *Drawing the Line: Sexual Harassment on Campus*. You can find these and other resources on our website at www.aauw.org.

Conclusion

Hate crimes are serious, well-documented problems that remain inadequately recognized and prosecuted. AAUW believes such crimes are forms of discrimination, and Congress should pass legislation that sends the message that hate-motivated violence will not be tolerated, and if it does occur, the federal government will protect its citizens and prosecute appropriately.

For more information, call 202/785-7793 or e-mail VoterEd@aauw.org.

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¹ American Association of University Women. (June 2009). *2009-11 AAUW Public Policy Program*. Retrieved July 9, 2009, from http://www.aauw.org/advocacy/issue_advocacy/principles_priorities.cfm.

² Title 18 U.S.C. §245.

³ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services. (October 2008). *Hate Crime Statistics, 2007*. Retrieved January 5, 2009, from <http://www.fbi.gov/ucr/hc2007/victims.htm>.

⁴ McCaffrey, R., Duggan, P. and Wilgoren, D. (October 3, 2006) Five Killed at Pennsylvania Amish School. *The Washington Post*. Retrieved January 5, 2009, from <http://www.washingtonpost.com/wp-dyn/content/article/2006/10/03/AR2006100300229.html>.

⁵ U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services. (October 2008). *Hate Crime Statistics, 2007*. Retrieved January 5, 2009, from <http://www.fbi.gov/ucr/hc2007/victims.htm>.

⁶ Office of Management and Budget. (May 3, 2007). *Statement of Administration Policy*. Retrieved January 9, 2009, from <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1592sap-h.pdf>.

⁷ Southern Poverty Law Center. (2004) *10 Ways to Fight Hate on College Campuses*. Retrieved January 5, 2009, from <http://www.tolerance.org/campus>.

⁸ Harlow, C.W and Bureau of Justice Statistics. (November 2005) *Hate Crime Reported by Victims and Police*. Special Report. Retrieved January 5, 2009, from <http://www.ojp.usdoj.gov/bjs/pub/pdf/hcrvp.pdf>.

⁹ FBI. "Hate Crime Statistics 2007: Universal Crime Reporting." Retrieved January 5, 2009, from <http://www.fbi.gov/ucr/hc2007/index.html>.