

STATEMENT

OF THE

ANTI-DEFAMATION LEAGUE

ON

H.R. 1592

**THE LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION
ACT**

BEFORE THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND
SECURITY

APRIL 17, 2007

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The Anti-Defamation League is pleased to provide testimony as the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security conducts hearings on H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA). This necessary legislation, introduced under the leadership of Reps. Conyers, Kirk, Baldwin, Shays, Frank, Bono, Nadler, and Ros-Lehtinen, would eliminate gaps in federal authority to investigate and prosecute bias-motivated crimes.

DEFINING THE ISSUE: THE IMPACT OF HATE VIOLENCE

All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or dollars and cents. By making members of minority communities fearful, angry, and suspicious of other groups -- and of the power structure that is supposed to protect them -- these incidents can damage the fabric of our society and fragment communities.

The Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment to all citizens alike." Dedicated to combatting anti-Semitism, prejudice, and bigotry of all kinds, defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in the development of innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

Over the past decade, the League has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual Audit of Anti-Semitic Incidents, drafting model hate crime statutes for state legislatures, and serving as a principal resource for the FBI in developing training and outreach materials for the Hate Crime Statistics Act (HCSA), which requires the Justice Department to collect statistics on hate violence from law enforcement officials across the country.

The attempt to eliminate prejudice requires that Americans develop respect and acceptance of cultural differences and begin to establish dialogue across ethnic, cultural, and religious boundaries. Education and exposure are the cornerstones of a long-term solution to prejudice, discrimination, bigotry, and anti-Semitism.

Effective responses to hate violence by public officials and law enforcement authorities can play an essential role in deterring and preventing these crimes.

Hate Crime Statutes: A Message to Victims and Perpetrators

In partnership with human rights groups, civic leaders and law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims. While bigotry cannot be outlawed, hate crime penalty enhancement statutes demonstrate an important commitment to confront criminal activity motivated by prejudice.

At present, forty-five states and the District of Columbia have enacted hate crime penalty-enhancement laws, many based on an ADL model statute drafted in 1981. In Wisconsin v. Mitchell, 508 U.S. 476 (1993), the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty-enhancement statute -- effectively removing any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his/her race, religion, sexual orientation, gender, or ethnicity.

ADDRESSING LIMITATIONS IN EXISTING FEDERAL CRIMINAL CIVIL RIGHTS STATUTES

H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA), would establish a new federal criminal code provision, 18 U.S.C. §249. This section would complement an existing statute, 18 U.S.C. §245 – one of the primary statutes used to combat racial and religious bias-motivated violence. Enacted in 1968, 18 U.S.C. §245 prohibits intentional interference, by force or threat of force, with the enjoyment of a federal right or benefit (such as voting, going to school, or working) on the basis of race, color, religion, or national origin.

Under current law, the government must prove both that the crime occurred because of a person's membership in a protected group, such as race or religion, and because (not while) he/she was engaging in a federally-protected activity. At previous House and Senate hearings on this legislation, in 1998 and 1999, Justice Department officials identified a number of significant racial violence cases in which federal prosecutions had been stymied by these unwieldy dual jurisdictional requirements. In addition, federal authorities are currently unable to involve themselves in cases involving death or serious bodily injury resulting from crimes directed at individuals because of their sexual orientation, gender, gender identity, or disability.

The LLEHCPA would complement existing law in two ways. First, the legislation would remove the overly-restrictive obstacles to federal involvement by permitting prosecutions without having to prove that the victim was attacked because he/she was engaged in a federally-protected activity. Second, it would provide new authority for federal officials to investigate and prosecute cases in which the bias

violence occurs because of the victim's real or perceived sexual orientation, gender, gender identity, or disability.

However, neither the sponsors nor the supporters of this measure expect that federal prosecutors will seek to investigate and prosecute every bias crime as a federal criminal civil rights violation. State and local authorities investigate and prosecute the overwhelming majority of hate crime cases – and will continue to do so after the LLEHCPA is enacted. From 1991- 2005, for example, the FBI documented over 113,000 hate crimes. During that period, however, the Justice Department brought fewer than 100 cases under 18 U.S.C. § 245. But some crimes will merit federal involvement -- for exactly the same reasons that Congress in 1968 determined that certain crimes directed at individuals because of "race, color, religion or national origin" required a federal remedy.

The LLEHCPA would provide a necessary backstop to state and local enforcement by permitting federal authorities to provide assistance in these investigations – and by allowing federal prosecutions when necessary to achieve a just result. In those states without hate crime statutes, and in others with limited coverage, local prosecutors are simply not able to pursue bias crime convictions. Currently, only thirty-two states include sexual orientation-based crimes in their hate crimes statutes, twenty-eight states include coverage of gender-based crimes, and thirty-two states include coverage for disability-based crimes. **[See the attached chart of state hate crimes statutory provisions at Appendix A].**

Limitations on Federal Hate Crime Prosecutions

As drafted, the LLEHCPA contains a number of significant limitations on prosecutorial discretion. First, the bill's requirement of actual injury, or, in the case of crimes involving the use of fire, a firearm, or any explosive device, an attempt to cause bodily injury, limits the federal government's jurisdiction to the most serious crimes of violence against individuals -- not property crimes.

Second, for the proposed new categories -- gender, gender identity, sexual orientation, and disability -- federal prosecutors will have to prove an interstate commerce connection with the crime -- similar to the constitutional basis relied upon for the Church Arson Prevention Act passed unanimously by Congress in 1997.

Third, the LLEHCPA contains a restrictive certification requirement, similar to that included in 18 U.S.C. § 245:

(b) **Certification Requirement-** No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

`(1) such certifying individual has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

`(2) such certifying individual has consulted with State or local law enforcement officials regarding the prosecution and determined that--

`(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

`(B) the State has requested that the Federal Government assume jurisdiction;

`(C) the State does not object to the Federal Government assuming jurisdiction; or

`(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

Federal prosecutors can be expected to continue to defer to state authorities under its expanded authority -- but the LLEHCPA will permit prosecutions of bias-motivated violence that might not otherwise receive the attention they deserve. Supporters of the LLEHCPA know well that new federal criminal civil rights jurisdiction to address crimes directed at individuals because of their gender, gender identity, sexual orientation, or disability will not result in the elimination of these crimes. But the possibility of federal involvement in select cases, the impact of FBI investigations in others, and partnership arrangements with state and local investigators in still other cases, should prompt more effective state and local prosecutions of these crimes.

Demonstrating the extraordinarily broad support this legislation has attracted from state and local officials, every major national law enforcement organization in the country has endorsed H.R. 1592:

- Federal Law Enforcement Officers Association
- Hispanic American Police Command Officers Association
- Hispanic National Law Enforcement Association
- International Association of Chiefs of Police
- International Brotherhood of Police Officers
- Major Cities Chiefs Association
- National Asian Peace Officers Association
- National Black Police Association
- National Center for Women & Policing
- National Coalition of Public Safety Officers
- National District Attorneys Association
- National Latino Police Officers Association
- National Organization of Black Law Enforcement Executives

- National Sheriffs' Association
- Police Executive Research Forum
- Police Foundation

Recent Federal Responses to Hate Violence

The federal government has an essential leadership role to play in confronting criminal activity motivated by prejudice and in promoting prejudice reduction initiatives for schools and the community. In recent years, Congress has provided broad, bipartisan support for several federal initiatives to address these crimes. These initiatives have led to significant improvements in the response of the criminal justice system to bias-motivated crime. The LLEHCPA builds on the foundation of these existing laws.

1) The Hate Crime Statistics Act (HCSA) (28 U.S.C. Sec. 534)

Though a number of private groups and state law enforcement agencies track incidents of hate violence, the HCSA now provides the best national picture of the magnitude of the hate violence problem in America -- though still clearly incomplete. Enacted in 1990, the HCSA requires the Justice Department to acquire data on crimes which "manifest prejudice based on race, religion, sexual orientation, or ethnicity" from law enforcement agencies across the country and to publish an annual summary of the findings. President George HW Bush's signing statement for the Act from April 23, 1990 is eloquent:

Enacting this law today helps move us toward our dream: a society blind to prejudice, a society open to all. Until we reach that day when the bigotry and hate of mail bombings, and the vandalisms of the Yeshiva school and the Catholic churches we've seen recently, and so many other sad, sad incidents are no more -- until that day, we must remember: For America to continue to be a good place for any of us to live, it must be a good place for all of us to live. <http://bushlibrary.tamu.edu/research/papers/1990/90042302.html>

In the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322 September 13, 1994), Congress expanded coverage of the HCSA to require FBI reporting on crimes based on "disability."

Fifteen Years of HCSA Data: Progress and Significant Promise

In 2005 (the most current data available) there were 7,163 reported bias-motivated criminal incidents, compared to 7,649 in 2004. Of the 7,163 total incidents, 3,919 were motivated by racial bias; 1,017 by sexual orientation bias; 944 by ethnicity/national origin bias; and 53 were reported to have occurred against disabled individuals. 1,227 (17.1%) of all reported crimes were motivated by religious bias, as compared to 1,374 (18%) in 2004. Of the incidents motivated by religious bias in 2005, 848 (69.1%) were directed against Jews and Jewish institutions. They accounted for 11.8% of the total number of reported hate crimes in 2005. In 2004, of the incidents motivated by religious bias, 954 (69.4%) were anti-Semitic. 12,417 law enforcement agencies in the United States participated in this

data collection effort, compared to 12,711 in 2004. The number of participating agencies dropped 2.3% from 2004 and only 16.4% of participating agencies reported even a single hate crime.

The FBI's 2005 HCSA report is available here:

<http://www.fbi.gov/ucr/hc2005/index.html> [For additional details, see the attached comparison of FBI hate crime statistics from 1991-2005 at Appendix B].

Of special concern is the fact that reported crimes directed against Hispanic individuals increased markedly – in a report in which virtually every other category of crime decreased. ADL recently documented a disturbing increase in the number of violent assaults against Hispanics, legal immigrants, and undocumented persons – and those perceived to be immigrants – by white supremacists and other far-right extremists in our report, “Extremists Declare 'Open Season' on Immigrants: Hispanics Target of Incitement and Violence.” That report is available here: http://www.adl.org/main_Extremism/immigration_extremists.htm

Clearly these hate crime numbers do not speak for themselves. Behind each and every one of these statistics is an individual or a community targeted for violence for no other reason than race, religion, sexual orientation, disability, or ethnicity.

Despite an incomplete reporting record over the first fifteen years of the Act, the LLEHCSA has proved to be a powerful mechanism to confront violent bigotry against individuals on the basis of their race, religion, sexual orientation, or ethnicity. For that reason, the Anti-Defamation League especially welcomes provisions in H.R. 1592 that would mandate additional reporting requirements for hate crimes directed at individuals on the basis of their gender and gender identity and for crimes committed by and against juveniles:

SEC. 8. STATISTICS.

(a) In General- Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting `gender and gender identity,' after `race,'.

(b) Data- Subsection (b)(5) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting `, including data about crimes committed by, and crimes directed against, juveniles' after `data acquired under this section'.

Studies have demonstrated that victims are more likely to report a hate crime if they know a special reporting system is in place. Police officials have come to appreciate the law enforcement and community benefits of tracking hate crime and responding to it in a priority fashion. By compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction.

However, studies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the most likely targets of hate violence are the least likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police -- especially if they were in trouble. Gay, lesbian, and transgender victims, facing hostility, discrimination, and, possibly, family pressures, may also be reluctant to come forward to report these crimes. These issues present a critical challenge for improving law enforcement response to hate violence. The history of the implementation of the HCSA, however, demonstrates that data collection efforts can spark increased public awareness of the problem and improvements in the local response of police and the criminal justice system to these crimes.

The proposed new data collection requirement for juvenile hate crime perpetrators and victims is also very important. There is a paucity of published information about juvenile hate crime offenders. The HCSA report does not provide specific information about either juvenile hate crime offenders or victims. An October 2001 report by the Justice Department's Bureau of Justice Statistics, however, provided disturbing information about the too-frequent involvement of juveniles in hate crime incidents. This report, <http://www.ojp.usdoj.gov/bjs/abstract/hcrn99.htm> which carefully analyzed nearly 3,000 of the 24,000 hate crimes to the FBI from 1997 to 1999, revealed that a disproportionately high percentage of both the victims and the perpetrators of hate violence were young people under 18 years of age:

- 33% of all known hate crime offenders were under 18 -- 31% of all violent crime offenders and 46% of the property offenders.
- Another 29% of all hate crime offenders were 18-24.
- 30% of all victims of bias-motivated aggravated assaults and 34% of the victims of simple assault were under 18.
- 34% of all persons arrested for hate crimes were under 18 -- 28% of the violent hate crimes and 56% of the bias-motivated property crimes.
- Another 27% of those arrested for hate crimes were 18-24.

2) Hate Crime Sentencing Enhancement Act (28 U.S.C § 994 Note)

Congress enacted a federal complement to state hate crime penalty-enhancement statutes in the 1994 crime bill. This provision required the United States Sentencing Commission to increase the penalties for crimes in which the victim was selected "because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure applies only to federal crimes, such as attacks and vandalism that occur in national parks and on federal property.

3) The Church Arson Prevention Act (CAPA) (Public Law 104-155 July 3, 1996)

This measure, sponsored by then-Sen. Lauch Faircloth (R-NC) and Sen. Edward Kennedy (D-MA), and, in the House, by Reps. Henry Hyde (R-IL) and John Conyers (D-MI), was originally designed solely to facilitate federal investigations and prosecutions of these crimes by amending 18 U.S.C. § 247, a statute enacted by Congress in 1988 to provide federal jurisdiction for religious vandalism cases in which the destruction exceeds \$10,000. Hearings were held on both the impact of these crimes and the appropriate response of government. Federal prosecutors testified that the statute's restrictive interstate commerce requirement and its relatively significant damages threshold had been obstacles to federal prosecutions.

Following the hearings, Congress found that "[t]he incidence of arson of places of religious worship has recently increased, especially in the context of places of religious worship that serve predominately African-American congregations." Legislators appropriately recognized that the nation's response to the rash of arsons should be more ambitious and comprehensive than mere efforts to ensure swift and sure punishment for the perpetrators.

In a welcome example of bipartisanship, both the House and the Senate unanimously approved CAPA, which expanded federal criminal jurisdiction to investigate and prosecute attacks against houses of worship, increased the penalties for these crimes, and authorized additional FBI and BATF investigators, and DOJ prosecutors and community conciliators.

There is growing awareness of the need to complement tough laws and more vigorous enforcement -- which can deter and redress violence motivated by bigotry with education and training initiatives designed to reduce prejudice. The Federal government has a central role to play in funding program development in this area and promoting awareness of initiatives that work. **[Selected resources on hate crime response and counteraction are attached at Appendix C].**

Conclusion

The fundamental cause of bias-motivated violence in the United States is the persistence of racism, bigotry, and anti-Semitism. Unfortunately, there are no quick, complete solutions to these problems. Ultimately, the impact of all bias crime initiatives will be measured in the response of the criminal justice system to the individual act of hate violence.

We applaud the leadership of the sponsors of this measure and urge the Judiciary Committee to approve this important legislation as soon as possible.