

HATE CRIME LAWS IN THE UNITED STATES

Current federal hate crimes laws

The Hate Crime Statistics Act of 1990 (28 U.S.C. § 534), which merely requires the reporting of hate crimes to the authorities (i.e. it does not affect the penalties in any way), was the first federal statute in the USA to recognize gay, lesbian and bisexual people as a distinct group. The statute was later amended to include disabled persons as well. Similarly, the Campus Hate Crimes Right to Know Act of 1997 forces University police to collect similar data on hate crimes.

The Violent Crime Control and Law Enforcement Act of 1994 increases the sentence for crimes falling under federal jurisdiction if motivated by race, religion, national origin, ethnicity, gender, disability, or sexual orientation. If a crime does not fall under federal jurisdiction (a majority do not), then whether there will be an increased penalty for a hate crime will depend on the law of the particular state where the offense occurred.

Current state hate crimes laws

All but 5 states have some kind of law that increases the penalty for hate crimes, with a majority covering race, religion, ethnicity, sexual orientation, disability, and gender. A minority of state statutes cover age, transgender, and political affiliation. In addition, a majority of states allow for civil suits based on hate crimes as well as some form of statute requiring local authorities to collect statistics on hate crimes, (essentially state versions of the federal Hate Crime Statistics Act of 1990) while only a minority of these state statistics statutes include crimes motivated by the sexual orientation of the victim.

Proposed hate crimes laws

The Local Law Enforcement Hate Crimes Prevention Act of 2007, or LLEHCPA, drafted after Matthew Shepard's death, has never been signed into law. The LLEHCPA was passed by the House of Representatives in 2007, however the Senate failed to ratify the bill. Even if the LLEHCPA were to pass in the Senate, President Bush has hinted that he may veto the bill. Various members of Congress have been trying to pass a version of the LLEHCPA for almost a decade. The LLEHCPA expands current hate crime legislation (i.e. the Violent Crime Control and Law Enforcement Act) to include the statistical reporting of transgender-motivated hate crimes, as well as additional protections for victims targeted based on various forms of prejudice, including removing the current requirement that there must be a federal connection to increase an offender's sentence. In addition, the LLEHCPA would remove the current requirement of the Violent Crime Control and Law Enforcement Act that there must be a federal connection for the law to have jurisdiction over a particular hate crime.

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HATE SPEECH LAWS IN THE UNITED STATES

Current hate speech laws in the United States

The USA Supreme Court's decision in *Chaplinsky v. New Hampshire* (1942) stated the only restriction that could possibly be construed as a restriction on hate speech; Chaplinsky merely allows the criminalization of words that incite an "immediate, violent response." The basis for the Supreme Court's broad protection of what many in Europe would consider hate speech is the First Amendment to the US Constitution, which guarantees citizens' rights to free expression. The Supreme Court has subsequently interpreted "immediate, violent response" very strictly. For instance, in *Brandenburg v. Ohio* (1969), the court upheld the right of the Ku Klux Klan to advocate the expulsion of Jewish and African Americans based on their race, and in the *Skokie* case (1978) the court upheld the right of Nazis to rally in a neighborhood populated by many survivors of the Holocaust. In addition, in *RAV vs. St. Paul* (1992) the Court struck down the conviction of individuals who burned a cross (a symbol of racial hatred and violence) in the front yard of a family of African Americans because the offenders were convicted under a law that discriminated against their racist viewpoint, however the Court stated that the offenders could have been convicted under general trespass, harassment, and property damage laws because they encroached on the family's property. In sum, in order for hate speech to be criminalized in the United States, there must be an immediate likelihood of violence, and as we have seen, the Court construes this requirement very strictly. The Court has consistently upheld all forms of symbolic expression, including flag burning, anti-war armbands, and swastikas, calling most forms of symbolic expression "pure speech" that is protected by the First Amendment.

Reasons and arguments explaining the lack of support for hate speech laws by the general public of the USA

1. Indivisibility principle

This theory states that if a hate speech law can be used to silence groups preaching hate, then the law could probably be used to silence other groups expressing views the government disagrees with, including unpopular political views. For instance, the ACLU successfully used a Supreme Court decision that allowed the expression of hate speech to overturn the convictions of civil rights activists in the 1960's and 1970's who were imprisoned by the government for expressing views that were unpopular with the local police (i.e. the repeal of Jim Crow laws).

2. Hate speech laws address the symptoms but not the causes of prejudice

This theory states that hate speech laws do not fix the root cause of prejudice, and may actually make the prejudice worse, claiming that if we allow prejudiced opinions out in the open, it allows the majority to ridicule the prejudiced people and attack their prejudiced views, thus exposing them and convincing others not to adopt them. If those same views are forced underground, the public will never have a debate on them and many people who otherwise would be convinced to abandon their prejudices (i.e. via open discourse and debate) will continue to hold and perpetuate them.



ORGANIZATIONS FIGHTING HATE CRIME AND HATE SPEECH IN THE UNITED STATES

There are surprisingly few well-known organizations in the United States that are dedicated to fighting hate crimes, and there are even fewer that are dedicated to fighting hate speech.

Some organizations dedicated to fighting hate crimes include:

- Human Rights Campaign (http://www.hrc.org/issues/hate_crimes.asp). This group works at amending hate crimes laws on the state level and also maintains a database of hate crimes laws in the United States.
- Matthew Shepard Foundation (<http://www.matthewshepard.org>). This group is pushing for the passage of the Local Law Enforcement Hate Crimes Prevention Act of 2007 (LLEHCPA).
- National Coalition of Anti-Violence Programs (<http://ncavp.org>). This group focuses on fighting for the rights of homosexuals to be free from violence.
- Stop Hate 2000 (<http://www.stophate.us>). This group allows citizens to share ideas on how to end hate and violence.
- Partners Against Hate (<http://www.partnersagainsthate.org>). This group attacks the problem of hate crime through the education of young people as well other members of various communities.
- Families United Against Hate (FUAH) – www.fuah.org. This group provides support to victims of hate crimes.
- The LGBT (Lesbian, Gay, Bisexual, Transgender) Hate Crimes Project. This group documents anti-LGBT hate crimes to try and bring those crimes to the attention of the public.

Some organizations that are also dedicated to fighting hate speech:

- Anti-Defamation League (www.adl.org). This group focuses on stopping the defamation of Jewish people in all forms.
- People for the American Way (<http://www.pfaw.org>). This group focuses on fighting against the Christian right (politically conservative Christians).
- Latinos Against Hate Speech (<http://www.latinosagainsthatespeech.org>) and the National Council of La Raza (<http://www.nclr.org>) – Both groups fight against news commentators and journalists who appear to have an anti-Hispanic bias, usually as it relates to immigration laws and policies.



BRIEF COMPARISON OF HATE CRIMES AND HATE SPEECH LAWS IN THE UNITED STATES AND THE EUROPEAN UNION

There is a discrepancy between the United States and the European Union in the area of hate speech laws. While the United States essentially has no laws against hate speech (with the exception of speech intended to incite immediate violence), virtually all EU countries have stricter laws against hate speech. The EU generally asks that member states outlaw any form of expression that encourages racial discrimination, while the USA has no such laws. In the USA, speech that encourages racial discrimination is legal as long as it does not incite people to immediate violence. In addition, all forms of symbolic expression are allowed in the United States, while certain symbolic forms of expression are banned in some EU countries, such as swastikas. Also, it is illegal to express certain viewpoints in particular EU countries, such as the denial of the holocaust (illegal in France and Germany), while the USA allows the expression of any viewpoint, regardless of how crazy it might be.

It seems the USA is more tolerant of harmful and ridiculous viewpoints because lawmakers feel that the individuals expressing these views can best be combated by ridicule and scrutiny by the general public, as opposed to fines or imprisonment. Lawmakers in the USA feel that hate speech is less threatening than their EU counterparts, probably because the majority of the public in the USA has historically rejected these hateful viewpoints despite having full and free access to hate speech. This discrepancy between the USA and the EU may possibly be explained by the atrocities committed by Nazi Germany (a regime whose power came largely from hateful speech and ideas) and the way EU countries were able to more directly witness and feel the devastating effects of Nazism. Had the Nazis gained power in the USA during the early-middle 20th century as they did in Europe, it is likely the USA's legal tolerance of hate speech would be greatly reduced, because USA lawmakers would be more wary of the direct threat posed by the open expression of hate speech.

