

110TH CONGRESS  
1ST SESSION

# S. 1105

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. KENNEDY (for himself, Mr. SMITH, Mr. LEAHY, Mr. SPECTER, Ms. MIKULSKI, Ms. COLLINS, Mr. MENENDEZ, Ms. SNOWE, Mr. BROWN, Mr. KERRY, Mr. DURBIN, Mr. LAUTENBERG, Mr. DODD, Mr. NELSON of Nebraska, Mrs. FEINSTEIN, Mr. LEVIN, Mr. HARKIN, Mr. WHITEHOUSE, Ms. STABENOW, Mr. BIDEN, Mrs. MURRAY, Mr. BAYH, Ms. CANTWELL, Mr. CARDIN, Mr. LIEBERMAN, Mr. REED, Mr. SCHUMER, Mr. OBAMA, Mrs. BOXER, Ms. KLOBUCHAR, Mr. AKAKA, Mr. BINGAMAN, Mrs. CLINTON, Ms. LANDRIEU, Mr. ROCKEFELLER, Mrs. LINCOLN, Mr. CASEY, Mrs. MCCASKILL, Mr. INOUE, Mr. NELSON of Florida, Mr. SALAZAR, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Matthew Shepard  
3 Local Law Enforcement Hate Crimes Prevention Act of  
4 2007”.

5 **SEC. 2. FINDINGS.**

6 Congress makes the following findings:

7 (1) The incidence of violence motivated by the  
8 actual or perceived race, color, religion, national ori-  
9 gin, gender, sexual orientation, gender identity, or  
10 disability of the victim poses a serious national prob-  
11 lem.

12 (2) Such violence disrupts the tranquility and  
13 safety of communities and is deeply divisive.

14 (3) State and local authorities are now and will  
15 continue to be responsible for prosecuting the over-  
16 whelming majority of violent crimes in the United  
17 States, including violent crimes motivated by bias.  
18 These authorities can carry out their responsibilities  
19 more effectively with greater Federal assistance.

20 (4) Existing Federal law is inadequate to ad-  
21 dress this problem.

22 (5) A prominent characteristic of a violent  
23 crime motivated by bias is that it devastates not just  
24 the actual victim and the family and friends of the  
25 victim, but frequently savages the community shar-  
26 ing the traits that caused the victim to be selected.

1           (6) Such violence substantially affects interstate  
2 commerce in many ways, including the following:

3           (A) The movement of members of targeted  
4 groups is impeded, and members of such groups  
5 are forced to move across State lines to escape  
6 the incidence or risk of such violence.

7           (B) Members of targeted groups are pre-  
8 vented from purchasing goods and services, ob-  
9 taining or sustaining employment, or partici-  
10 pating in other commercial activity.

11           (C) Perpetrators cross State lines to com-  
12 mit such violence.

13           (D) Channels, facilities, and instrumental-  
14 ities of interstate commerce are used to facili-  
15 tate the commission of such violence.

16           (E) Such violence is committed using arti-  
17 cles that have traveled in interstate commerce.

18           (7) For generations, the institutions of slavery  
19 and involuntary servitude were defined by the race,  
20 color, and ancestry of those held in bondage. Slavery  
21 and involuntary servitude were enforced, both prior  
22 to and after the adoption of the 13th amendment to  
23 the Constitution of the United States, through wide-  
24 spread public and private violence directed at per-  
25 sons because of their race, color, or ancestry, or per-

1       ceived race, color, or ancestry. Accordingly, elimi-  
2       nating racially motivated violence is an important  
3       means of eliminating, to the extent possible, the  
4       badges, incidents, and relics of slavery and involun-  
5       tary servitude.

6           (8) Both at the time when the 13th, 14th, and  
7       15th amendments to the Constitution of the United  
8       States were adopted, and continuing to date, mem-  
9       bers of certain religious and national origin groups  
10      were and are perceived to be distinct “races”. Thus,  
11      in order to eliminate, to the extent possible, the  
12      badges, incidents, and relics of slavery, it is nec-  
13      essary to prohibit assaults on the basis of real or  
14      perceived religions or national origins, at least to the  
15      extent such religions or national origins were re-  
16      garded as races at the time of the adoption of the  
17      13th, 14th, and 15th amendments to the Constitu-  
18      tion of the United States.

19           (9) Federal jurisdiction over certain violent  
20      crimes motivated by bias enables Federal, State, and  
21      local authorities to work together as partners in the  
22      investigation and prosecution of such crimes.

23           (10) The problem of crimes motivated by bias  
24      is sufficiently serious, widespread, and interstate in

1 nature as to warrant Federal assistance to States,  
2 local jurisdictions, and Indian tribes.

3 **SEC. 3. DEFINITION OF HATE CRIME.**

4 In this Act—

5 (1) the term “crime of violence” has the mean-  
6 ing given that term in section 16, title 18, United  
7 States Code;

8 (2) the term “hate crime” has the meaning  
9 given such term in section 280003(a) of the Violent  
10 Crime Control and Law Enforcement Act of 1994  
11 (28 U.S.C. 994 note); and

12 (3) the term “local” means a county, city, town,  
13 township, parish, village, or other general purpose  
14 political subdivision of a State.

15 **SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**  
16 **PROSECUTIONS BY STATE, LOCAL, AND TRIB-**  
17 **AL LAW ENFORCEMENT OFFICIALS.**

18 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-  
19 ANCE.—

20 (1) IN GENERAL.—At the request of State,  
21 local, or Tribal law enforcement agency, the Attor-  
22 ney General may provide technical, forensic, prosecu-  
23 torial, or any other form of assistance in the crimi-  
24 nal investigation or prosecution of any crime that—

25 (A) constitutes a crime of violence;

1 (B) constitutes a felony under the State,  
2 local, or Tribal laws; and

3 (C) is motivated by prejudice based on the  
4 actual or perceived race, color, religion, national  
5 origin, gender, sexual orientation, gender iden-  
6 tity, or disability of the victim, or is a violation  
7 of the State, local, or Tribal hate crime laws.

8 (2) PRIORITY.—In providing assistance under  
9 paragraph (1), the Attorney General shall give pri-  
10 ority to crimes committed by offenders who have  
11 committed crimes in more than one State and to  
12 rural jurisdictions that have difficulty covering the  
13 extraordinary expenses relating to the investigation  
14 or prosecution of the crime.

15 (b) GRANTS.—

16 (1) IN GENERAL.—The Attorney General may  
17 award grants to State, local, and Indian law enforce-  
18 ment agencies for extraordinary expenses associated  
19 with the investigation and prosecution of hate  
20 crimes.

21 (2) OFFICE OF JUSTICE PROGRAMS.—In imple-  
22 menting the grant program under this subsection,  
23 the Office of Justice Programs shall work closely  
24 with grantees to ensure that the concerns and needs  
25 of all affected parties, including community groups

1 and schools, colleges, and universities, are addressed  
2 through the local infrastructure developed under the  
3 grants.

4 (3) APPLICATION.—

5 (A) IN GENERAL.—Each State, local, and  
6 Indian law enforcement agency that desires a  
7 grant under this subsection shall submit an ap-  
8 plication to the Attorney General at such time,  
9 in such manner, and accompanied by or con-  
10 taining such information as the Attorney Gen-  
11 eral shall reasonably require.

12 (B) DATE FOR SUBMISSION.—Applications  
13 submitted pursuant to subparagraph (A) shall  
14 be submitted during the 60-day period begin-  
15 ning on a date that the Attorney General shall  
16 prescribe.

17 (C) REQUIREMENTS.—A State, local, and  
18 Indian law enforcement agency applying for a  
19 grant under this subsection shall—

20 (i) describe the extraordinary pur-  
21 poses for which the grant is needed;

22 (ii) certify that the State, local gov-  
23 ernment, or Indian tribe lacks the re-  
24 sources necessary to investigate or pros-  
25 ecute the hate crime;

1 (iii) demonstrate that, in developing a  
2 plan to implement the grant, the State,  
3 local, and Indian law enforcement agency  
4 has consulted and coordinated with non-  
5 profit, nongovernmental victim services  
6 programs that have experience in providing  
7 services to victims of hate crimes; and

8 (iv) certify that any Federal funds re-  
9 ceived under this subsection will be used to  
10 supplement, not supplant, non-Federal  
11 funds that would otherwise be available for  
12 activities funded under this subsection.

13 (4) DEADLINE.—An application for a grant  
14 under this subsection shall be approved or denied by  
15 the Attorney General not later than 30 business  
16 days after the date on which the Attorney General  
17 receives the application.

18 (5) GRANT AMOUNT.—A grant under this sub-  
19 section shall not exceed \$100,000 for any single ju-  
20 risdiction in any 1-year period.

21 (6) REPORT.—Not later than December 31,  
22 2008, the Attorney General shall submit to Congress  
23 a report describing the applications submitted for  
24 grants under this subsection, the award of such

1 grants, and the purposes for which the grant  
2 amounts were expended.

3 (7) AUTHORIZATION OF APPROPRIATIONS.—

4 There is authorized to be appropriated to carry out  
5 this subsection \$5,000,000 for each of fiscal years  
6 2008 and 2009.

7 **SEC. 5. GRANT PROGRAM.**

8 (a) AUTHORITY TO AWARD GRANTS.—The Office of  
9 Justice Programs of the Department of Justice may  
10 award grants, in accordance with such regulations as the  
11 Attorney General may prescribe, to State, local, or Tribal  
12 programs designed to combat hate crimes committed by  
13 juveniles, including programs to train local law enforce-  
14 ment officers in identifying, investigating, prosecuting,  
15 and preventing hate crimes.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated such sums as may be  
18 necessary to carry out this section.

19 **SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**  
20 **ASSIST STATE, LOCAL, AND TRIBAL LAW EN-**  
21 **FORCEMENT.**

22 There are authorized to be appropriated to the De-  
23 partment of the Treasury and the Department of Justice,  
24 including the Community Relations Service, for fiscal  
25 years 2008, 2009, and 2010 such sums as are necessary

1 to increase the number of personnel to prevent and re-  
 2 spond to alleged violations of section 249 of title 18,  
 3 United States Code, as added by section 7 of this Act.

4 **SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

5 (a) IN GENERAL.—Chapter 13 of title 18, United  
 6 States Code, is amended by adding at the end the fol-  
 7 lowing:

8 **“§ 249. Hate crime acts**

9 “(a) IN GENERAL.—

10 “(1) OFFENSES INVOLVING ACTUAL OR PER-  
 11 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-  
 12 GIN.—Whoever, whether or not acting under color of  
 13 law, willfully causes bodily injury to any person or,  
 14 through the use of fire, a firearm, or an explosive or  
 15 incendiary device, attempts to cause bodily injury to  
 16 any person, because of the actual or perceived race,  
 17 color, religion, or national origin of any person—

18 “(A) shall be imprisoned not more than 10  
 19 years, fined in accordance with this title, or  
 20 both; and

21 “(B) shall be imprisoned for any term of  
 22 years or for life, fined in accordance with this  
 23 title, or both, if—

24 “(i) death results from the offense; or

1           “(ii) the offense includes kidnaping or  
2           an attempt to kidnap, aggravated sexual  
3           abuse or an attempt to commit aggravated  
4           sexual abuse, or an attempt to kill.

5           “(2) OFFENSES INVOLVING ACTUAL OR PER-  
6           CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-  
7           UAL ORIENTATION, GENDER IDENTITY, OR DIS-  
8           ABILITY.—

9           “(A) IN GENERAL.—Whoever, whether or  
10          not acting under color of law, in any cir-  
11          cumstance described in subparagraph (B), will-  
12          fully causes bodily injury to any person or,  
13          through the use of fire, a firearm, or an explo-  
14          sive or incendiary device, attempts to cause  
15          bodily injury to any person, because of the ac-  
16          tual or perceived religion, national origin, gen-  
17          der, sexual orientation, gender identity or dis-  
18          ability of any person—

19                 “(i) shall be imprisoned not more  
20                 than 10 years, fined in accordance with  
21                 this title, or both; and

22                 “(ii) shall be imprisoned for any term  
23                 of years or for life, fined in accordance  
24                 with this title, or both, if—

1                   “(I) death results from the of-  
2                   fense; or

3                   “(II) the offense includes kid-  
4                   naping or an attempt to kidnap, ag-  
5                   gravated sexual abuse or an attempt  
6                   to commit aggravated sexual abuse, or  
7                   an attempt to kill.

8                   “(B) CIRCUMSTANCES DESCRIBED.—For  
9                   purposes of subparagraph (A), the cir-  
10                  cumstances described in this subparagraph are  
11                  that—

12                  “(i) the conduct described in subpara-  
13                  graph (A) occurs during the course of, or  
14                  as the result of, the travel of the defendant  
15                  or the victim—

16                         “(I) across a State line or na-  
17                         tional border; or

18                         “(II) using a channel, facility, or  
19                         instrumentality of interstate or for-  
20                         eign commerce;

21                         “(ii) the defendant uses a channel, fa-  
22                         cility, or instrumentality of interstate or  
23                         foreign commerce in connection with the  
24                         conduct described in subparagraph (A);

1           “(iii) in connection with the conduct  
2           described in subparagraph (A), the defend-  
3           ant employs a firearm, explosive or incen-  
4           diary device, or other weapon that has  
5           traveled in interstate or foreign commerce;  
6           or

7           “(iv) the conduct described in sub-  
8           paragraph (A)—

9                   “(I) interferes with commercial  
10                   or other economic activity in which  
11                   the victim is engaged at the time of  
12                   the conduct; or

13                   “(II) otherwise affects interstate  
14                   or foreign commerce.

15       “(b) CERTIFICATION REQUIREMENT.—No prosecu-  
16       tion of any offense described in this subsection may be  
17       undertaken by the United States, except under the certifi-  
18       cation in writing of the Attorney General, the Deputy At-  
19       torney General, the Associate Attorney General, or any  
20       Assistant Attorney General specially designated by the At-  
21       torney General that—

22                   “(1) such certifying individual has reasonable  
23                   cause to believe that the actual or perceived race,  
24                   color, religion, national origin, gender, sexual ori-  
25                   entation, gender identity, or disability of any person

1 was a motivating factor underlying the alleged con-  
2 duct of the defendant; and

3 “(2) such certifying individual has consulted  
4 with State or local law enforcement officials regard-  
5 ing the prosecution and determined that—

6 “(A) the State does not have jurisdiction  
7 or does not intend to exercise jurisdiction;

8 “(B) the State has requested that the Fed-  
9 eral Government assume jurisdiction;

10 “(C) the State does not object to the Fed-  
11 eral Government assuming jurisdiction; or

12 “(D) the verdict or sentence obtained pur-  
13 suant to State charges left demonstratively  
14 unvindicated the Federal interest in eradicating  
15 bias-motivated violence.

16 “(c) DEFINITIONS.—In this section—

17 “(1) the term ‘explosive or incendiary device’  
18 has the meaning given such term in section 232 of  
19 this title;

20 “(2) the term ‘firearm’ has the meaning given  
21 such term in section 921(a) of this title; and

22 “(3) the term ‘gender identity’ for the purposes  
23 of this chapter means actual or perceived gender-re-  
24 lated characteristics.

1       “(d) **RULE OF EVIDENCE.**—In a prosecution for an  
2 offense under this section, evidence of expression or asso-  
3 ciations of the defendant may not be introduced as sub-  
4 stantive evidence at trial, unless the evidence specifically  
5 relates to that offense. However, nothing in this section  
6 affects the rules of evidence governing impeachment of a  
7 witness.”.

8       (b) **TECHNICAL AND CONFORMING AMENDMENT.**—  
9 The analysis for chapter 13 of title 18, United States  
10 Code, is amended by adding at the end the following:

“249. Hate crime acts.”.

11 **SEC. 8. STATISTICS.**

12       (a) **IN GENERAL.**—Subsection (b)(1) of the first sec-  
13 tion of the Hate Crime Statistics Act (28 U.S.C. 534 note)  
14 is amended by inserting “gender and gender identity,”  
15 after “race,”.

16       (b) **DATA.**—Subsection (b)(5) of the first section of  
17 the Hate Crime Statistics Act (28 U.S.C. 534 note) is  
18 amended by inserting “, including data about crimes com-  
19 mitted by, and crimes directed against, juveniles” after  
20 “data acquired under this section”.

21 **SEC. 9. SEVERABILITY.**

22       If any provision of this Act, an amendment made by  
23 this Act, or the application of such provision or amend-  
24 ment to any person or circumstance is held to be unconsti-  
25 tutional, the remainder of this Act, the amendments made

1 by this Act, and the application of the provisions of such  
2 to any person or circumstance shall not be affected there-  
3 by.

○