

H.R.2647

National Defense Authorization Act for Fiscal Year 2010 (Enrolled as Agreed to or Passed by Both House and Senate)

DIVISION E--MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT

- Sec. 4701. Short title.
- Sec. 4702. Findings.
- Sec. 4703. Definitions.
- Sec. 4704. Support for criminal investigations and prosecutions by State, local, and tribal law enforcement officials.
- Sec. 4705. Grant program.
- Sec. 4706. Authorization for additional personnel to assist State, local, and tribal law enforcement.
- Sec. 4707. Prohibition of certain hate crime acts.
- Sec. 4708. Statistics.
- Sec. 4709. Severability.
- Sec. 4710. Rule of construction.
- Sec. 4711. Guidelines for hate-crimes offenses.
- Sec. 4712. Attacks on United States servicemen.
- Sec. 4713. Report on mandatory minimum sentencing provisions.

SEC. 4701. SHORT TITLE.

This division may be cited as the 'Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act'.

SEC. 4702. FINDINGS.

Congress makes the following findings:

- (1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a serious national problem.
- (2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.
- (3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.
- (4) Existing Federal law is inadequate to address this problem.
- (5) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and

friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

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

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

(B) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(C) Perpetrators cross State lines to commit such violence.

(D) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(E) Such violence is committed using articles that have traveled in interstate commerce.

(7) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(8) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct 'races'. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

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

(10) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.

SEC. 4703. DEFINITIONS.

(a) Amendment- Section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2096) is amended by inserting `gender identity,' after `gender,'.

(b) This Division- In this division--

(1) the term `crime of violence' has the meaning given that term in section 16 of title 18, United States Code;

(2) the term `hate crime' has the meaning given that term in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 2096), as amended by this Act;

(3) the term `local' means a county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(4) the term `State' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

SEC. 4704. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICIALS.

(a) Assistance Other Than Financial Assistance-

(1) IN GENERAL- At the request of a State, local, or tribal law enforcement agency, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that--

(A) constitutes a crime of violence;

(B) constitutes a felony under the State, local, or tribal laws; and

(C) is motivated by prejudice based on the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim, or is a violation of the State, local, or tribal hate crime laws.

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

(b) Grants-

(1) IN GENERAL- The Attorney General may award grants to State, local, and tribal law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS- In implementing the grant program under this subsection, the Office of Justice Programs shall work closely with grantees to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION-

(A) IN GENERAL- Each State, local, and tribal law enforcement agency that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION- Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS- A State, local, and tribal law enforcement agency applying for a grant under this subsection shall--

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, local government, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, local, and tribal law enforcement agency has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE- An application for a grant under this subsection shall be approved or denied by the Attorney General not later than 180 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT- A grant under this subsection shall not exceed \$100,000 for any single jurisdiction in any 1-year period.

(6) REPORT- Not later than December 31, 2011, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2010, 2011, and 2012.

SEC. 4705. GRANT PROGRAM.

(a) Authority to Award Grants- The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or tribal programs designed to combat hate crimes committed by juveniles,

including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

(b) Authorization of Appropriations- There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 4706. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section 4707 of this division.

SEC. 4707. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) In General- Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

-` Sec. 249. Hate crime acts

` (a) In General-

` (1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN- Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

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

` (B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

` (i) death results from the offense; or

` (ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

` (2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY-

` (A) IN GENERAL- Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person--

- ˘ (i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and
- ˘ (ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--
 - ˘ (I) death results from the offense; or
 - ˘ (II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

˘ (B) CIRCUMSTANCES DESCRIBED- For purposes of subparagraph (A), the circumstances described in this subparagraph are that--

- ˘ (i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim--
 - ˘ (I) across a State line or national border; or
 - ˘ (II) using a channel, facility, or instrumentality of interstate or foreign commerce;
- ˘ (ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);
- ˘ (iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or
- ˘ (iv) the conduct described in subparagraph (A)--
 - ˘ (I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or
 - ˘ (II) otherwise affects interstate or foreign commerce.

˘ (3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES- Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

˘ (b) Certification Requirement-

˘ (1) IN GENERAL- 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, or a designee, that--

- ˘ (A) the State does not have jurisdiction;
- ˘ (B) the State has requested that the Federal Government assume jurisdiction;

- (C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
- (D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.
- (2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.
- (c) Definitions- In this section--
 - (1) the term 'bodily injury' has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;
 - (2) the term 'explosive or incendiary device' has the meaning given such term in section 232 of this title;
 - (3) the term 'firearm' has the meaning given such term in section 921(a) of this title;
 - (4) the term 'gender identity' means actual or perceived gender-related characteristics; and
 - (5) the term 'State' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.
- (d) Statute of Limitations-
 - (1) OFFENSES NOT RESULTING IN DEATH- Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.
 - (2) DEATH RESULTING OFFENSES- An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.'
- (b) Technical and Conforming Amendment- The table of sections for chapter 13 of title 18, United States Code, is amended by adding at the end the following:
 - 249. Hate crime acts.'

SEC. 4708. STATISTICS.

- (a) In General- Subsection (b)(1) of the first section of the Hate Crime 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 Crime 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'.

SEC. 4709. SEVERABILITY.

If any provision of this division, an amendment made by this division, or the application of such provision or amendment to any person or

circumstance is held to be unconstitutional, the remainder of this division, the amendments made by this division, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 4710. RULE OF CONSTRUCTION.

For purposes of construing this division and the amendments made by this division the following shall apply:

(1) IN GENERAL- Nothing in this division shall be construed to allow a court, in any criminal trial for an offense described under this division or an amendment made by this division, in the absence of a stipulation by the parties, to admit evidence of speech, beliefs, association, group membership, or expressive conduct unless that evidence is relevant and admissible under the Federal Rules of Evidence. Nothing in this division is intended to affect the existing rules of evidence.

(2) VIOLENT ACTS- This division applies to violent acts motivated by actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of a victim.

(3) CONSTRUCTION AND APPLICATION- Nothing in this division, or an amendment made by this division, shall be construed or applied in a manner that infringes any rights under the first amendment to the Constitution of the United States.