

objectives

AFTER COMPLETING THIS LESSON, YOU WILL BE ABLE TO:

- Discuss hate crime as a recently emergent legal concept;
- Describe the extent to which state and federal government have instated hate crime laws;
- Understand how case law has played a role in the evolution of certain hate crime laws;
- Describe how to evaluate a hate crime law by its verbiage and meaning;
- Understand the complexities and controversies involved in policing the newly established laws;
- List certain indicators that law enforcement uses to assess whether an offense is bias motivated; and
- Understand the complexities and controversies involved in prosecuting hate crimes.



*Please do the following
required reading for Lesson
Nine:*

- Hate Crimes, by Valerie Jenness (in M. Tonry's Crime and Public Policy)
- Policing Hatred: Police Bias Units and the Construction of Hate Crime, Chapter 28 of *Hate and Bias Crimes: A Reader* (BP)
- Contemporary Hate Crimes, Law Enforcement, and the Legacy of Racial Violence, by Ryan King, Steven Messner, and Robert D. Baller

As Jenness and Grattet (2001) have shown, "hate crime" is a recently emergent legal concept. In an effort to control bias-motivated violence, both state and federal lawmakers have passed legislation that defines the parameters of hate crime as a form of conduct and authorizes the state to pursue, prosecute, and punish those who commit hate crimes.

In this lesson, we will explore ways in which we can think about the law's responses to bias-motivated violence and the enforcement of hate crime law.



For the shortened and updated version, [see here](#).

Critical Thinking

Before we begin this lesson, I would like you to search the web for the most recently adjudicated hate crime case you can find. Then ask yourself these questions:



Was the case prosecuted under federal or state guidelines? What were these guidelines? What was the finding of the case and how was the defendant punished? Can you find any mention of services or remedies available to the victim?

Over the past thirty years or so, almost every U.S. state has adopted at least one statute that can be called a "hate crime law." These laws have taken many forms, including:

- Statutes proscribing criminal penalties for civil rights violations;
- Specific "ethnic intimidation" and "malicious harassment" statutes; and
- Provisions in previously enacted statutes for enhanced penalties if an extant crime is committed for bias or prejudicial reasons.

Critical Thinking

Search the web to determine which states (if any) still do not have hate crime laws. Determine what happens in cases where an offense could be classified a hate crime, however the state has no provisions to investigate, sentence, or punish hate crimes. How would federal laws come in to play? What are the ramifications for national hate crime reporting?



Finally, many state statutes prohibit institutional vandalism and the desecration or the defacement of religious objects, the interference with or disturbance of religious worship, cross burning, the wearing of hoods or masks, the formation of secret societies, and the distribution of publications and advertisements designed to harass select groups of individuals.

See the relevant District of Columbia code [here](#).



Across the United States, state hate crime laws vary immensely in terms of timing of passage, wording, and scope of coverage. Consider some examples of state hate crime laws:

- [California's hate crime law](#)
- [Oregon's hate crime law](#)
- [North Carolina's crime law](#)
- [Washington's hate crime law](#)
- [Connecticut's hate crime law](#)
- [North Dakota's hate crime law](#)
- [Rhode Island's hate crime law](#)

Following the states' lead, the U.S. Congress passed three laws specifically designed to address bias-motivated violence.

FEDERAL HATE CRIMES LEGISLATION

Hate Crime Statistics Act (1990)

- "manifest evidence of prejudice based on..."
- race, religion, ethnicity, sexual orientation, and later, disabilities

Violence Against Women Act (1994)

- "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to animus based on the victim's gender..."
- Gender
 - Note: ruled unconstitutional in 2000

Hate Crimes Sentencing Enhancement Act (1994)

- criminal conduct wherein "the defendant intentionally selected any victim or property..."
- race, color, religion, national origin, ethnicity, gender, disability, sexual orientation

In 1990, President Bush signed the Hate Crimes Statistics Act, which requires the U.S. Attorney General to collect statistical data on "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property" (Pub. L. § 101-275).

As a data collection law, the Hate Crimes Statistics Act does not stipulate new penalties for bias-motivated crimes, nor does it provide legal recourse for victims of bias-motivated crime.



Critical Thinking

Recall that this law has been presented in other lessons. What are the benefits of creating a data collection law? What are the shortcomings if the goal of the law is to paint a picture of the epidemiology of hate crime in the United States? For a refresher, [visit the FBI's UCR website](#).



In contrast, in 1994 the U.S. Congress passed two hate crime laws that stipulate penalties and provide legal recourse. [The Violence Against Women Act \(VAWA\)](#) specifies that "all persons within the United States shall have the right to be free from crimes of violence motivated by gender" (Pub. L. § 103-322). In addition to allocating over \$1.6 billion dollars for education, rape crisis hotlines, training of justice personnel, victim services (especially shelters for victims of battery), and special units of police and prosecutors to deal with crimes against women, the VAWA provides a civil remedy for "gender crimes."

Declaring that, "[C]rimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender" (Pub. L. § 103-322), the VAWA entitles victims to compensatory and punitive damages through the federal courts for a crime of violence if it is motivated, at least in part, by animus toward the victim's gender. This is predicated upon and promoted the inclusion of gender in the concept hate crime.

Critical Thinking

Think of some problems related to prosecuting an offender under the VAWA. Search the web for any cases in which this law was invoked. Describe the case and the outcomes.



Notably, this law was later ruled unconstitutional in the case [United States v. Morrison](#).

Petitioner Brzonkala filed suit, alleging, *inter alia*, that she was raped by respondents Antonio Morrison and James Crawford while they were all students at Virginia Polytechnic Institute. She also claimed that this attack violated forty-two USCS 13981, which provided a federal civil remedy for the victims of gender-motivated violence.

In a 5-4 decision, the U.S. Supreme Court ruled that Congress had no authority under either the federal Constitution's commerce clause or the Fourteenth Amendment to enact forty-two USCS 133981.

Also in 1994, the U.S. Congress passed the Hate Crimes Sentencing Enhancement Act. This law identifies eight predicate crimes - murder; non-negligent manslaughter; forcible rape; aggravated assault; simple assault; intimidation; arson; and destruction, damage, or vandalism of property - for which judges are allowed to enhance penalties of "not less than three offense levels for offenses that finder of fact at trial determines beyond a reasonable doubt are hate crimes."

For the purposes of this law, hate crime is defined as criminal conduct wherein "the defendant intentionally selected any victim or property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person" (Pub. L. § 103-322). Although broad in form, this law addresses only those hate crimes that take place on federal lands and properties.

Click the RELATED TOPICS icon to learn more.



Using Lexis-Nexus, try and find hate crime laws for three other states, as well as at least one bill winding its way through the federal system.

Once you've found these four examples of law, discuss how they are worded, what types of conduct they criminalize or further penalize, and what axis of social differentiation they identify as worthy of state action.

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.



The state and federal laws described above demonstrate that many advocates share a commitment to using the law, law enforcement, and the criminal justice system as a vehicle to enhance the status and welfare of minority constituencies deemed differentially vulnerable to violence motivated by bigotry. Despite variation in their wording and content, criminal hate crime statutes share some commonalities that allow them to be seen as a more or less coherent body of law.

Indeed, as Jenness (2001) has argued, there is now a recognizable [hate crime canon](#) defined by law. This "hate crime canon" can first and foremost be described as a body of law that contains core elements that imbue the term with meaning and set the limits to meaning that can be attached to the term.



Specifically, hate crime law does three important things:

1. Hate crime laws provide a new state policy action, by either creating a new criminal category, altering an existing law, or enhancing penalties for select extant crimes when they are committed for bias reasons. Thus, as a body of social policy, hate crime law extends the reach of official state action by authorizing state officials to pursue, prosecute, and punish those who perpetrate hate crime in newfound ways and with enhanced penalties.
2. Hate crime laws contain an intent standard, which refers to the subjective intention of the perpetrator rather than relying solely on the basis of objective behavior. This, as you know from Lesson Two, has consequences for how bias and discrimination are envisioned.
3. Hate crime law specifies a list of protected social statuses, such as race, religion, ethnicity, sexual orientation, gender, and disabilities. These elements of the definition of hate crime law capture the core parameters of the hate crime canon as a legal concept.

Review this roadmap for [how ideas become laws](#).
Think back to previous lessons to supply more information about how hate crime in particular has been transformed from an idea into laws.



The final key feature of the U.S. hate crime canon is *status provisions*, or what Soul and Earl (1999) refer to as "target groups," identified in hate crime law. Status provisions single out some axes of oppression as part and parcel of the hate crime problem that is now subject to legal forms of social control in the United States, while rendering other axes around which violence is organized invisible.

One of the most important elements of the substantive character of hate crime law - the adoption of select status provisions, such as race, religion, ethnicity, sexual orientation, gender, and disabilities - ensured that some victims of discriminatory violence have been recognized as hate crime victims, while others have gone unnoticed. In particular, people of color, Jews, gays and lesbians, women, and those with disabilities increasingly have been recognized as victims of hate crime. Union members, octogenarians, the elderly, children, and police officers, on the other hand, have not. In short, some groups that are differentially vulnerable to crime have been deemed victims worthy of legal redress, while some have not.

Critical Thinking

Thinking back on other lessons, provide some explanations for why some groups are not protected under hate crime statutes.



As a result of these types of legal changes, age-old forms of violent conduct have now been deemed criminal or further criminalized. Consider, for example, this manifestation of the consequences of hate crime law.

In 1988, a Broward County, Florida, circuit judge jokingly asked the prosecuting attorney the following in a case involving the beating death of an Asian-American gay man: ""That's a crime now, to beat up a homosexual?" The prosecutor replied: "Yes sir. And it's also a crime to kill them."

The judge replied: "Times have really changed."

How can we think about the enforcement of hate crime law?

Once legislatures have spoken and laws are in place, they must be applied in concrete, day-to-day circumstances by officials on the front lines of the criminal justice system. Most notably, police and prosecutors play a pivotal role in the enforcement of law, including hate crime law.



The statutes that comprise hate crime law must be operationalized, applied to concrete events, and inserted into the lives of specific individuals. Since police and prosecutors, as two interlinked clusters of law enforcement officials, manage the front lines of the criminal justice system, our discussion of the factors influencing law enforcement's capacity to recognize and classify specific forms of conduct as hate crime focuses on these players.

Law enforcement officials at federal, state, and local levels have announced plans to increase efforts designed to enforce hate crime statutes.

This is perhaps most pronounced in the creation of special bias crime units across the nation. According to the Law Enforcement Management Administrative Statistics (LEMAS) 1997 survey of the operations of American police and sheriffs departments, 40% of cities with populations over a half million and 30% of cities with populations over a quarter million have a specialized bias crime unit with full-time personnel (LEMAS 1997). Bias crime units in Los Angeles, New York, and Chicago have ninety, twenty-three, and sixteen full-time sworn officers, respectively .



Visit the [LAPD website](#) to find information regarding their hate crime policy, procedures, and mission statements. Report a synopsis of what you found.



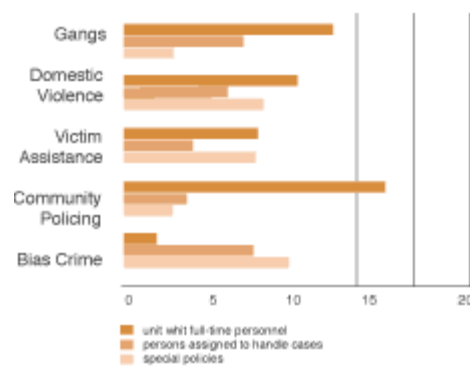
To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.



The magnitude of law enforcement policy changes, personnel changes, and organizational changes made in response to hate crime are best understood when compared to policy, personnel, and organizational commitments made to gangs, domestic violence, victim assistance services, and community policing.

Further characterizing this trend, we are seeing the same type of special units in prosecutors' offices across the country. For example, in 1998, Los Angeles County District Attorney Gil Garcetti announced plans to expand his office's hate crimes prosecution unit. As he explained, "I'm asking for more specially trained hate crime prosecutors to handle these cases. These hate crime prosecutors will also work with communities and all law enforcement in LA county to encourage the understanding and reporting of hate crimes (Boxall cited in the Los Angeles Times 1998:B3).

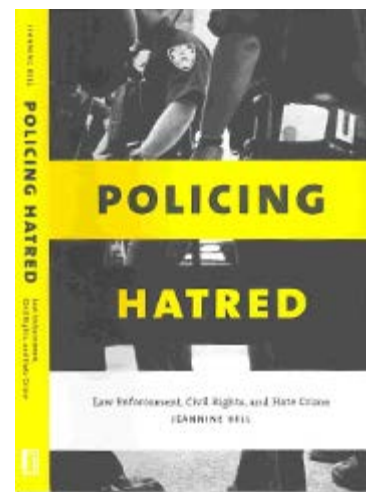
Percent of Municipal Police, County Sheriff, and County Police Departments in the U.S. with Special Units, Personnel, and Policies, 1997



In a related step, the Los Angeles Police Department implemented a Hate Crimes Monitoring System. This system allows officers to assess hate crime patterns, such as when and where potential bias-motivated crime incidents occur, and to adjust policing accordingly (*Los Angeles Times* 1999). Finally, Los Angeles supplemented and enhanced its hate crimes training program, which was originally implemented in the late 1980s (*Los Angeles Times* 1998).

The perception and classification of incidents as hate crimes falls first and foremost to front-line police officers and detectives. As Martin (1996: 459) explains in her work on "Investigating Hate Crimes: Case Characteristics and Law Enforcement Responses," in all police agencies, "the initial identification of a case as possibly bias-motivated is likely to rest with patrol officers."

Jeness and Grattet have taken this message seriously and looked at hundreds of law enforcement agencies in California.



The routine use of discretion is a common feature of police work even when the definitions of a particular crime are clear and well understood by officers. In hate crime cases, however, discretion is coupled with definitions and rules that are not entirely clear to officers because of the relative newness of the criminal category (Boyd et al. 1996; Martin 1996). Martin (1995) argues that this situation places unique burdens on officers who are confronted with determining whether an ordinary crime (assault, vandalism, arson, and so forth) has been committed or whether a "hate crime" has been committed.

This is often a difficult determination to make because, by definition (see Chapter Three and Chapter Four), hate crimes contain "parallel crimes" (Lawrence 1999). Moreover, what Boyd et al. (1996) refer to as "subjective judgments" made by police officers are necessitated by the recurrent problems of reconciling partial versus sole motives, assessing conflicting reports, identifying the intended target, separating multiple statuses of the victim, and understanding provocation.

So, what do we know about how officers determine whether or not a hate crime has been committed? Unfortunately, there are only a handful of studies addressing this issue. Fortunately, they reveal a consistent set of findings.

First, some officers merely proceed as if hate crimes can be easily incorporated into existing police practices. They don't see the enforcement of hate crime law as particularly problematic.

In contrast, however, some officers register a number of complaints about the enforcement of hate crime law. For example, some argue that hate crime laws are hopelessly vague and too ambiguous to enforce. Moreover, law enforcement personnel have more serious problems with which to contend (Walker and Katz 1995). As a result, hate crimes were dismissed as "overkill," "mostly bull," "a pain in the ass," "media hype," and "a giant cluster fuck." (cited in Boyd et al. 1996:827).

Key Considerations in the Policing of Hate Crime

- no provocation by victim
- absence of any other motive
- no prior encounters between the victim and the perpetrator
- accompanying derogatory insults
- display of offensive symbols, words, or acts (e.g., graffiti or epithets)
- victim's fear about the perpetrator or beliefs about the crime
- date and time of the occurrence
- commonsense view

Critical Thinking

Search the web for a case or incident where police did or did not deem an offense as bias motivated. Then ask yourself: What was the officer's basis for the decision?



Early research on hate crime policing has emphasized the reluctance of police officers, particularly street-level patrol officers, to fully embrace the concept of hate crime. As Walker and Katz (1996) point out, police officers often are the least likely members of the system to be sensitive to the needs of victims of hate crimes. Some officers view hate crimes as a distraction from more serious crimes and the reflection of the influence of naive policymakers and administrators who are more concerned with "political correctness" than with effective crime control (Boyd et al. 1996).

What is your opinion about whether the police should determine whether an offense is bias motivated?



To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.



Officers also often resent expansion of their responsibilities to include such crimes at a time when there are not enough resources to fight what they consider to be more pressing offenses, and when the pursuit of the baseline crime - vandalism, trespass, assault - can be more effectively investigated and prosecuted (Lawrence 1999).

For some law enforcement personnel, resistance is bound up with a more general opposition to "special treatment" for particular groups in society and community policing (Jacobs and Potter 1996), which threatens to transform the role of the police from crime fighters to social workers.

Although concerns are frequently expressed by rank-and-file police officers - especially the question of "how to get inside the offender's head" - in practice, officers overcome the ambiguity of the concept and increasingly enforce the law. Let's consider two studies that examine how police enforce hate crime law.

In their ethnographic study of the situated decision-making practices of police detectives in two divisions of a large urban police department charged with enforcing hate crime law and collecting hate crime data, Boyd et al. (1996:821) conclude that "far from finding it problematic to interpret and classify specific incidents, police detectives engage in certain routine practices in order to determine the hate-related status of an incident." This allows them to apply general principles encoded in statutes to concrete events and thus proceed with the work of policing hate crime.

Complimenting Boyd et al.'s (1996) work, Martin's (1995:316) quantitative research comparing two police units that rely upon different organizational structures to enforce hate crime laws demonstrates that detectives assigned to evaluate reported incidents of hate crimes found most cases extremely easy to classify. Obvious cases - for example, cases where a religious facility or minority family's property is vandalized and racial or religious slurs are left as graffiti, or cases wherein the perpetrator of the crime admits to a bias motivation - provoke little dispute and are routinely classified as a hate crime.

In contrast, in circumstances in which the centrality of bigoted beliefs is unclear, officers devise reasonable approaches for making relevant determinations. In these situations - for example, a situation wherein racial epithets are shouted but are secondary to some other motive, or a situation wherein the offender and victim are simply of different races or religions - officers render conservative decisions and generally forego classifying such events as hate crime.

These observations are paralleled in Boyd et al.'s study (1996). They found that many bias unit officers "expressed desire to eliminate all other possible explanations before categorizing an incident as a hate-motivated, thereby helping deflate what they believe to be the 'inflated statistics' regarding hate crime in the area" (Boyd et al. 1996:833). Other officers treated bias crimes as "just like any other kind of crime" (Boyd et al. 1996: 842).

Key Considerations in the Policing of Hate Crime

- no provocation by victim
- absence of any other motive
- no prior encounters between the victim and the perpetrator
- accompanying derogatory insults
- display of offensive symbols, words, or acts (e.g., graffiti or epithets)
- victim's fear about the perpetrator or beliefs about the crime
- date and time of the occurrence
- commonsense view

Taken together, Martin (1995; 1996) and Boyd et al.'s (1996) empirical studies provide evidence that hate crime law is enforceable, albeit in interesting and variable ways. But why does the enforcement of hate crime law vary across jurisdictions? This variation is, in large part, attributable to differences in the philosophies and the routine practices in the different departments, as well as the newness of the criminal category itself. For example, in their study of a large urban police department, Boyd et al. (1996) found that two of the most active divisions of the department employed quite different procedures for dealing with potential hate crime incidents.

In the first division, the commanding officer considered hate crime distinct from other kinds of crimes, and assigned a single senior detective the responsibility of investigating potential hate crimes. This detective handled all of the hate crime cases that came through the department over the course of several years. In addition, patrol officers were routinely reminded at roll calls of the definition of hate crimes and were given a checklist of characteristics of acts that could be indicative of hate crime, such as victim accounts and testimony about hateful expressions made during the crime (Boyd et al. 1996: 833).

In this division, the leadership's commitment to thoroughly investigate incidents as potential hate crimes was quite high, the expertise of the detective in charge of investigating potential hate crime was pronounced, and the officers' familiarity with the parameters of hate crime was strongly encouraged by police administrators.

In contrast, the second division made few changes in departmental policies. The view of the commanding officer was that "hate crimes were not a problem" in that part of the city. As a result, officers were not routinely briefed about the definition of hate crime, nor were they given instructions about how to identify and process them. Responsibility for investigating hate crimes rotated from detective to detective over the course of several years. The detective assigned the duty to investigate hate crime also had duties to investigate other crimes.

The second division treated hate crimes as comparable to other kinds of crimes, not as a special kind of crime. Whereas the detective in the first division focused his investigation on gathering evidence relative to the specific motive involved in the crime (for example, to determine whether there was evidence that it was bias-motivated), the detective in the second division largely accepted the characterization of the patrol officer and focused her attention on developing evidence related to the basic factual information of the incident in order to establish that a crime took place - much as she would have in any other crime.

As a result, the second division was both less likely to recognize when hate crimes occurred and less likely to engage in the further investigative efforts that might disconfirm the original officer's assessment of the incident. In addition, whereas the operations of the first division were likely to produce evidence that could be useful in the prosecution stage, the second division left much of that evidence gathering to prosecutors.

A comparison suggests that statistics produced by these different divisions are largely incommensurable - an "aggregating of apples and oranges," to quote Boyd et al. (1996:847) - because of the differences in the underlying set of practices that generated them. As Boyd et al. (1996:846) conclude, "Although these differences between Division A and Division B represent, in some sense, two extreme opposites, they are generalizable to other divisions in the department as well as to other police departments in the country."

Martin's (1995, 1996) comparative study of police practices in Baltimore County, Maryland, and New York City points to a set of organizational factors similar to Boyd's that influence how hate crimes are identified, verified, and recorded. Although the police in both New York City and in Baltimore County have been among the leaders in law enforcement initiatives to identify and focus attention on offenses defined as bias or hate crimes, they have employed different organizational structures and procedures to do so.

As a result, the New York City Police Department (NYPD) generates higher arrest percentages for hate crime cases than other kinds of crimes in the city, as well as higher arrest percentages than those reported by the Baltimore County police department.



In large part, New York city's higher percentages are an outgrowth of the commitment of the agency to the goals of hate crime policing and the creation of a Bias Incident Investigative Unit (BIIU). This commitment translates into much greater effort being devoted to the investigation phases, particularly with respect to follow-up work. This, in turn, generates more information about offender motives and thus more frequent confirmation that a hate crime occurred.

In addition, the BI IU employs a definition of a hate crime commensurate with the normal hate crime construct described in the previous section: "The NYPD's definition of bias crimes requires only that the offender's bias motivation be responsible in part for the offense, without defining motivation" (Martin 1995:460).



Beyond this central criterion, the department's criteria for identifying incidents as hate crime include consideration of:

1. The perpetrator's motivation;
2. The absence of any other motive;
3. The perception of the victim(s);
4. The display of offensive symbols, words, or acts;
5. The date and time of occurrence (corresponding to a significant holiday, such as Hanukkah or Martin Luther King's birthday);
6. Statements made by the perpetrator; and
7. A commonsense review of the circumstances surrounding the incident (that is, considering the totality of the circumstances) (Martin 1995: 461-462).

Baltimore County's police department does not have a specialized unit comparable to the NYPD's BIIU. Instead, patrol officers are responsible for evaluating incidents - not only for their "crime potential," but also for their "hate crime potential." Individual officers are provided fewer incentives by departmental policy to engage in the follow-up investigations that would enhance the likely of an arrest (Martin 1996).



This decentralized approach to detecting hate crime relies on a definition of hate crime that is as robust as the definition employed by the NYPD's BIIU. As Martin (1995:462) explains, "Criteria for reporting rest on a 'commonsense' approach." The key criterion is the "motivation behind the act" directed at any racial, religious, or ethnic group.

As in New York city, criteria for verification include consideration of the offender's motive; absence of another motive; display of offense symbols, words, or acts; the totality of the circumstances surrounding the incident; the effect on the victim(s); statements(s) by suspects(s), and/or victim(s); a history of similar incidents in the area or against the same victim group; and violation of certain statutes that prohibit burning a cross or other religious symbol, bomb threats, destroying the property of another, assault, unlawful use of the telephone, and common-law offenses pertaining to acts of racial, religious, and/or ethnic intimidation or harassment (Martin 1995:462). These criteria clearly signal an elaboration of the parameters of the concept, one that exceeds the statutory definition.



In both New York City and Baltimore County the proportion of cases in which an arrest was made was greater for hate crimes (Martin 1996). Beyond this finding, however, stark differences emerge in terms of the "screening thresholds" applied to individual cases and the likelihood that any individual case will be labeled a hate crime (Martin 1995, 1996), despite the fact that the departments in the study operate under similar statutory definitions of hate crime.

As Martin (1996: 476) concludes, "The findings [presented here] illustrate the effects of two alternative policing strategies for addressing hate crimes. By devoting additional time and attention to investigating such crimes, the police (particularly in New York city) generated a higher arrest rate, especially for relatively minor offenses that ordinarily receive very limited police attention."

More recent work on hate crime law enforcement in California suggests it is uneven and based on characteristics of law enforcement agencies and the community. See, for example, [Jeness and Grattet's](#) recently published research on what accounts for variability in hate crimes reporting in California cities, towns, and counties.

Critical Thinking

Visit the Uniform Crime Report to compare number of incidents documented in jurisdictions with no hate crime policy, or protocols and those with highly defined and specialized policies and units. What do the results confirm about our estimates of hate crime?



In summary, the literature on the policing of hate crime reveals the following:

- There is very little empirical literature on the topic. Indeed, there is only a handful of empirical studies; and
- Agencies and departments vary in how they enforce hate crime law. When enforcing hate crime law, law enforcement personnel take into consideration a multitude of factors that signal the commission of a hate crime.

Factors that signal the commission of a hate crime include:

- No provocation by the victim;
- An absence of any other motive;
- No prior encounters between the victim and the perpetrator;
- Accompanying derogatory insults;
- The display of offensive symbols, words, or acts (such as graffiti or epithets);
- The victim's fear about the perpetrator or beliefs about the crime;
- The date and time of the occurrence; and
- The deployment of a "common sense" view.

Critical Thinking

Can you think of other possible hate crime indicators that are not included on the previous screen?



The other side of law enforcement, the prosecution of hate crime, is an important consideration when asking "how are hate crime laws being enforced?" Unfortunately, to date, only one empirical study on the prosecution of hate crimes has been published. This, no doubt, is in large part a function of the newness of the criminal category and the lag time between changes in the legal work and scholarship devoted to understanding such changes.

However, anecdotal evidence and the work of [McPhail and Jenness](#) suggests that hate crime prosecution is in roughly the same shape as the law enforcement side. Prosecutors express mixed opinions about the viability and value of enforcing hate crime law. Some prosecutors view hate crime laws as a meaningful response to community strife insofar as they provide an extra tool to contribute to the management of crime and inter-group conflict in their community (Boxall 1998).

Other prosecutors, however, have gone on record rejecting hate crime laws as useless and unenforceable (Jacobs and Potter 1998). Prosecutors' objections to hate crime law are multifaceted. At least in the abstract, hate crime implies greater evidentiary burdens, more effort to spell out the intricacies of the law to juries, and, generally, more time and energy to prepare cases.

For prosecutors who are understaffed and subjected to heavy caseloads, the task of prosecuting hate crimes may represent an extra set of burdens they prefer to avoid in an occupation where one's work is evaluated in terms of "conviction rates." Besides, so the argument goes, one can usually convict hate crime perpetrators for their parallel crimes (Lawrence 1999).

In one study done by the National Institute of Justice in 1998, which involved surveying prosecutors across the U.S. about their experiences with prosecuting hate crime, prosecutors reported a number of "Important Issues/Problems that Hinder Prosecutor's Ability to Prosecute Hate Crime."

Also, consider "Particularly Problematic Issues in the Prosecution of Bias-Motivated Crimes."

Although there is currently no empirical social science research published on hate crime prosecution in particular, the publications of initial statistics on hate crime prosecutions, convictions, and plea bargains are beginning to be reported.

Despite the paucity of empirical research on hate crime prosecution, [Marcus-Newhall, Blake, and Baumann's](#) series of three experiments with mock jurors provided evidence that jurors' perceptions of alleged perpetrators and victims may be contingent on a constellation of extra-legal factors including race, political orientation, and peer-group involvement.

Jacobs and Potter (1998) report that very few bias crime incidents are prosecuted. For example, only 12% of reported complaints in Brooklyn (1992), only 11% of incidents in California (1995), and only 7% of complaints in San Francisco were prosecuted in 1992, 1995, and 1995, respectively (Jacobs and Potter 1998).

Let's take a look at California's most recently reported data on the prosecution of hate crime. To do so, go to the [California Attorney General's web page](#) and look up the most recent report on "Hate Crimes in California."

Critical Thinking

As a critical consumer of the data, what is your reaction to these figures? Are you inclined to agree with Jacobs and Potter's assessment that hate crimes are difficult for district attorneys to prosecute? Why?



At first glance, these statistics appear striking. But when compared to incident/prosecution ratios for other crimes, they are not so extraordinary.

To put them in perspective, consider that data for 1996 and 1997 actually fall about halfway between the percentages for aggravated assault (a crime known for being comparatively easy to police and prosecute) and vandalism (a crime known for being fairly difficult to police and prosecute). Of course, hate crime runs the gamut from assault to vandalism, therefore it is not surprising that it is somewhere between the two in terms of the ratio of incidents to convictions.

Critical Thinking

Consider the interconnectedness of local, state, and federal hate crime laws, police departments, and prosecutor's offices in addressing bias-motivated offenses. Think of how these entities work in concert and in opposition to either bring hate crime offenders to justice or not.



Another way of evaluating the prosecution of hate crime is to determine the proportion of cases that, once filed by the prosecutors, lead to convictions. Again, data along these lines are limited and preliminary. Although there is considerable variability in hate crime convictions, in general, the ratio has improved and falls within the range of other crimes. This suggests that once prosecutors decide to prosecute a crime as a hate crime, they do not seem to be struggling greatly with obtaining convictions, at least not any more so than with other crimes.

In sum, there is limited - but growing - preliminary evidence to suggest that the pessimistic view of hate crime prosecutions as causing enormous problems for prosecutors is problematic at best and unfounded at worst.

Additionally, as hate crime is becoming more intolerable, some jurisdictions are creating special prosecutorial teams to deal specifically with hate crime. In May of 2002, Michigan created a prosecutorial team to "offer its expertise and assistance to local prosecutors who file hate crime charges and will work with local community organizations to educate citizens about the definitions and implications of Michigan hate crime laws."

Critical Thinking

Can you think of additional responses that communities and court activists may take to increase the number of hate crime cases that are prosecuted?



Initial data suggest that only a small portion of incidents produce convictions. Nonetheless, when prosecutors do decide to file cases as hate crimes, they are comparatively successful in obtaining prosecutions, often by guilty plea.

For a view of how prosecutors think about and orient to hate crime, see [McPhail and Jenness \(2005/2006\)](#) and [Jenness \(2009\)](#).



summary

IN THIS LESSON YOU LEARNED:

- The newness of the hate crime canon has led to a wide range of legislative responses by individual states and the federal government. Nearly all U.S. jurisdictions have some provisions that protect hate crime victims.
- By reviewing the language of some of the state and federal laws, you learned how to evaluate a hate crime law by three measures: (1) it provides a new state policy action, (2) it contains an intent standard, and (3) the law specifies a list of protected social statuses, such as race, religion, ethnicity, sexual orientation, gender, disabilities, and so on.
- You continued to consider law enforcement's role in investigating and prosecuting these newly emergent hate crimes. As a new provision, there is considerable disparity in how hate crime training and policies are implemented and followed.
- To assess bias intent, police officers use indicators, including the absence of provocation by the victim, an absence of any other motive, no prior encounters between the victim and the perpetrator, and accompanying derogatory insults.
- Although many challenges exist in policing and prosecuting hate crimes, much of the emergent literature suggests that these challenges are not insurmountable and that many departments and prosecutors are quite successful in identifying and building cases to prosecute hate crimes.

