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HATE CRIME STATISTICS ACT U.S. Dept. of Justice

SEPTEMBER 15 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary,  
submitted the following

REPORT

[To accompany S. 702]

The Committee on the Judiciary, to which was referred the bill (S. 702) to require the Attorney General to collect data about crimes which manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity, having considered the same, a quorum being present, reports favorably thereon and recommends that the bill as amended do pass.

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I. PURPOSE

The purpose of the proposed legislation is to require the Attorney General to acquire data about crimes which manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity, and thus to gain more complete and comprehensive information about the national incidence of hate crimes. At present, no such records are kept on a national level. This information can help law enforcement agencies and local communities combat hate crimes more effectively by identifying over time their frequency, location and other patterns.

## II. LEGISLATIVE HISTORY

In 1985, the Subcommittee on Criminal Justice of the House Judiciary Committee held hearings on H.R. 2455, a predecessor to S. 702. The House Judiciary Committee reported the bill favorably, and the House passed it by voice vote. That bill was pending in the Senate when the 99th Congress adjourned.

In this Congress, the House Judiciary Committee reported H.R. 3193 in April 1988, and the House passed that bill overwhelmingly in May.

Three bills were introduced in the Senate: S. 702, sponsored by Senator Paul Simon; S. 797, sponsored by Senator Howard Metzenbaum and S. 2000, sponsored by Senator Alan Cranston.

On June 21, 1988, the Subcommittee on the Constitution of the Senate Judiciary Committee held hearings, chaired by Senator Paul Simon, on those bills. Witness representing various concerned groups and law enforcement agencies testified on the need for more comprehensive data. Those testifying at the hearing were: the Honorable John Conyers, Jr.; the Honorable Barbara B. Kennelly; Ms. Patricia Clark, on behalf of the Southern Poverty Law Center; Ms. Joan C. Weiss, on behalf of the National Institute Against Prejudice and Violence; Mr. Alan M. Schwartz, on behalf of the Anti-Defamation League of the B'nai B'rith; Mr. James G. Abourezk, on behalf of the American Arab Anti-Discrimination Committee; Mr. William J. Yoshino, on behalf of the Japanese American Citizens League; Mr. Kevin Berrill, on behalf of the National Gay and Lesbian Task Force; Rev. Charles Bergstrom, a Lutheran Pastor; Dr. Steven R. Schlesinger, on behalf of the U.S. Department of Justice; Col. Leonard J. Supenski, on behalf of the Baltimore County Police Department; and Mr. Murray Friedman, on behalf of the U.S. Commission on Civil Rights. Those who submitted testimony for the hearing were: Senator Alan Cranston; Senator John Kerry; Senator Orrin G. Hatch; the Latino Institute; the American Jewish Committee; the Organization of Chinese Americans, Inc.; the American Psychological Association; the National Organization for Women; the Asian American Bar Association of the Greater Bay Area; the University of Illinois at Chicago; Pacific/Asian American Mental Health Research Center; Asian American Resource Workshop and the Washington Bureau of the NAACP.

## III. DISCUSSION

There is presently no national data collection on crimes motivated by hate and prejudice. Although individual incidents of hate crimes may be reported in the news, there is much about hate crimes in general that is not known. Questions include whether the attacks that we read about are isolated events or symptoms of a more pervasive problem; whether hate-related violence is more prevalent in particular sections of the country or in particular kinds of communities; whether certain groups are more frequently victimized than others; whether answers to these questions have changed dramatically in the last ten years; and whether we are experiencing a resurgence of racism and other types of bias, or whether they are at an ebb.

Knowing the answers to these questions is important in itself; such knowledge would tell us much about what kind of country we are, and in which direction we are moving. The very effort by the Justice Department to collect this information would send an important signal to victimized groups everywhere that the U.S. Government is concerned about this kind of crime.

Beyond that laudable goal, however, the information has important practical use. Systematic collection of data about hate crimes would be useful not only to law enforcement agencies in helping them to identify where and how to focus their resources, but also to policy makers at every level of government in helping them better gauge the extent of the problem and to local community groups in assisting them to direct their education and other mobilization efforts.

The U.S. Commission on Civil Rights, after studying this issue in conjunction with their State Advisory Committees, recognized the importance of data collection and issued a resolution on February 12, 1988, which calls on Congress to enact legislation requiring the Attorney General to collect data about hate crimes. The resolution specifically states that the collection of data is essential to determining the level of bigotry-related crime in the United States and whether such crime is on the rise.

Abt Associates of Cambridge, MA, under contract with the National Institute of Justice of the Department of Justice, prepared a report entitled "Bias Crime and the Criminal Justice Response." Data collection and reporting are the first unresolved issues and needs identified in that report.

While only a few states and communities officially monitor the incidence of hate violence (Maryland, Pennsylvania, Connecticut, Illinois, Oklahoma and Maine), those that conduct such monitoring find it an effective law enforcement tool. Colonel Leonard Supenski of the Baltimore County Police Department, who developed and implemented the Baltimore County procedures on data collection, testified that many important benefits have been derived from such data collection. Specifically, he testified that data collection has enabled the Baltimore County Police to develop long-term, non-reactive strategies to combat hate violence and has helped the department more effectively plan its response to hate violence.

Under the Uniform Crime Reporting (UCR) program, the FBI collects and publishes national crime statistics. Pursuant to the UCR, police chiefs are responsible for the initial compilation of monthly statistics from individual police reports. In most states (41), the police chiefs report to a state UCR agency which compiles its own data before forwarding the numbers to the FBI. The national UCR numbers currently include only the aggregate numbers of eight specified crimes (criminal homicide, forcible rape, aggravated assault, robbery, burglary, larceny (theft), motor vehicle theft, and arson).

The FBI has been developing a complete revision of the UCR since 1982. At the suggestion of the U.S. Department of Justice, the offenses listed in this bill correspond to offense categories listed in the current draft of the guidelines for the new UCR. For all of these offenses, the new UCR will collect comprehensive information, including the race, age, ethnicity and gender of the victim and

of the perpetrator. This information will be based on individual incident reports completed by local police officers, either as witnessed by the officers or as reported by victims.

While S. 702 does not require the Attorney General to use the UCR to collect the data on hate crimes, the committee reasoned that the updated UCR would enable the Justice Department to easily implement S. 702. Regardless of whether the UCR is the vehicle to record hate crimes, the existence of corresponding offense categories should expedite implementation of the bill, as the FBI has already developed uniform offense definitions for these categories.

Identifying crimes motivated by prejudice can sometimes be difficult. A racial epithet uttered in the course of a fight is not always evidence that the offense was motivated by hate. However, it is equally clear that there are obvious cases of bias-related motivation: a swastika on a synagogue or a cross-burning on the lawn of a black family are only two such examples.

States and local agencies that already collect data on hate crimes have been able to develop practical, working criteria which may serve as a useful guide to the Attorney General. The committee believes that the Attorney General, working with the states and organizations which already collect data, will be able to create effective guidelines so that in the vast majority of cases there will be an accurate determination of the motivation of the crime. The committee continues to recognize the importance of accurate data and urges the Attorney General to develop the best possible standards.

S. 702 has been endorsed by a broad cross-section of organizations. Included among these are the American Jewish Committee, the Anti-Defamation League of B'nai B'rith, the American Jewish Congress, the Leadership Conference on Civil Rights, the American Arab Anti-Discrimination Committee, the NAACP, the Southern Poverty Law Center, People for the American Way, the American Psychological Association, the American Civil Liberties Union, the National Gay and Lesbian Task Force, the Human Rights Campaign Fund, the National Institute Against Prejudice and Violence, the Lutheran Office for Governmental Affairs, the Japanese American Citizen's League and the Center For Democratic Renewal. In addition, a number of law enforcement organizations have endorsed the bill, including the Police Executive Research Forum, the National Black Police Association, the Police Forum and the National Organization of Black Law Enforcement Executives.

#### IV. VOTE OF THE COMMITTEE

Senator Paul Simon introduced S. 702 on March 10, 1987. It was referred to the Senate Judiciary Committee and then to the Subcommittee on the Constitution. Hearings were held on June 21, 1988. On July 27, 1988, the subcommittee polled out the bill, accepting an amendment in the nature of a substitute from Senator Simon, and reported the bill favorably to the full committee. On August 10, 1988, with a quorum present, by voice vote, the Committee on the Judiciary unanimously ordered the bill, S. 702, favorably reported.

At the meeting, the committee considered an amendment offered by Senator Grassley that would have required statistics to be kept on crimes that manifest evidence of prejudice based on membership or non-membership in a labor organization as defined in 29 U.S.C. Sec. 152 (5), in addition to "race, religion, sexual orientation, or ethnicity," and that would have added the crime of "extortion" to the sublist of "destruction, damage, or vandalism of property" that are among the list of crimes in Section 2 of S. 702. The Grassley amendment was defeated by a vote of 5-7.

The Senators that voted were:

NAYS	YEAS
Byrd	Thurmond
Metzenbaum	Hatch
DeConcini	Simpson
Leahy	Grassley
Simon	Humphrey
Specter	
Kennedy	

#### V. TEXT OF S. 702

[100th Cong; 1st Sess.]

A BILL To provide for the collection of data about crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Hate Crime Statistics Act."

#### SEC. 2. ACQUISITION AND PUBLICATION OF DATA.

(a) **IN GENERAL.**—Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about 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, forcible sodomy, forcible fondling; aggravated assault, simple assault, intimidation; arson, and destruction, damage or vandalism of property.

(b) **GUIDELINES FOR ACQUISITION OF DATA.**—The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this Act.

(c) **CONSTRUCTION.**—Nothing in this Act creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this Act, the term "sexual orientation" means consensual homosexuality or heterosexuality. This section does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act.

(d) **LIMITATION ON USE AND CONTENT OF DATA.**—Data acquired under this Act shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(e) **ANNUAL SUMMARY.**—The Attorney General shall publish an annual summary of the data acquired under this Act.

### SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act through calendar year 1994.

## VI. SECTION-BY-SECTION ANALYSIS

### *Section 1*

Section 1 of the bill provides that the short title of the legislation is the "Hate Crime Statistics Act."

### *Section 2*

Section 2(a) requires the Attorney General, under the authority of section 534 of title 28, United States Code, to acquire data about crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity. The Attorney General is directed to collect data, where appropriate, on the following crimes: murder, non-negligent manslaughter, forcible rape, forcible sodomy, forcible fondling, aggravated assault, simple assault, intimidation, arson and destruction, damage or vandalism of property. To facilitate implementation, the committee included those crimes that correspond with crimes that are expected to be included in the updated UCR. As the new UCR will collect comprehensive information on all the listed crimes, including the race, age, ethnicity and gender of the victim and perpetrator, information on whether the crime was motivated by hate could be easily incorporated. Data may also be collected on other crimes where appropriate.

Section 2(b) authorizes the Attorney General to establish guidelines for the collection of data. This section was included in response to the Department of Justice's concerns that it will be necessary to establish specific criteria in order to collect reliable data. The committee agrees that criteria should be established and recommends that the Attorney General work with both the states and organizations which collect hate crimes data in developing the appropriate criteria.

Section 2(c) expressly states that this legislation does not create any new cause of action or right to bring an action, including an action based on discrimination due to sexual orientation. The intent of this provision was to address concern that this statute might be used as the basis for a civil rights discrimination suit. While the statute does not create any new rights, this section also makes clear that it does not limit the right to bring an action under an existing statute, including an action under the Administrative Procedure Act or the All Writs Act. Finally, Section 2(c) defines sexual orientation as consensual, homosexuality or heterosexuality. It is the intention of the committee that this definition not be limited to actual behavior, but also include one who is victimized because of the perception of homosexuality or heterosexuality.

Section 2(d) ensures that the privacy of crime victims will be protected by limiting the use of the data to research or statistical purposes and by directing that the data may not contain any information that may reveal the identity of an individual victim of a crime.

Section 2(e) directs the Attorney General to publish an annual summary of the data acquired under the Act.

*Section 3*

Section 3 authorizes all appropriations necessary to carry out this Act through 1994.

VII. COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 6, 1988.*

Hon. JOSEPH R. BIDEN, Jr.,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 702, the Hate Crimes Statistics Act, as ordered reported by the Senate Committee on the Judiciary, August 10, 1988.

CBO cannot provide a precise estimate of the cost of this bill, because the bill does not specify how the department of Justice should undertake the required data collection. Information provided by the Bureau of Justice Statistics, the Federal Bureau of Investigation, and the Community Relations Service indicates that data collection costs could range from less than \$1 million annually to nearly \$10 million annually.

S. 702 would direct the Attorney General to collect and publish data about hate crimes—crimes that manifest prejudice based on race, religion, ethnicity, or sexual orientation—for calendar years 1990 to 1994. To fund this analysis, the bill authorizes the appropriation of such sums as may be necessary through calendar year 1994.

The bill does not specify the method for collecting data, or what branch of the Department of Justice would conduct the study. A number of approaches exist, and the cost would vary depending upon which method is chosen. For example, one alternative would be conducting a survey similar to the National Crime Survey which is prepared by the Bureau of Justice Statistics. This would be a very accurate method, but would also be relatively expensive, because it would require collecting data from institutions not currently surveyed. Another possibility would be requiring that local police departments report incidents of hate crimes to federal authorities, who would then conduct a follow-up investigation. A less expensive approach would be to require the Community Relations Service to compile data on hate crimes brought to their attention.

CBO does not expect that state and local governments would incur any significant costs if this bill were enacted, because none of the data collection methods would require significant additional efforts by state or local authorities.

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,  
*Acting Director.*

**VIII. REGULATORY IMPACT STATEMENT**

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration concludes that the Act will will not have direct regulatory impact.

**IX. CHANGES IN EXISTING LAW**

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee finds no changes in existing law caused by passage of S. 702.

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