
AMENDING CHAPTER 13 OF TITLE 18, UNITED STATES CODE, TO IMPOSE
CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND FOR
OBSTRUCTION OF PERSONS IN THE FREE EXERCISE OF RELIGIOUS BE-
LIEFS

OCTOBER 2, 1987.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3258]

Legislative Office

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U.S. Dept. of Justice

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3258) to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for obstruction of persons in the free exercise of religious beliefs, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 3258 is to make it a Federal crime to travel, or use a facility or instrumentality of interstate or foreign commerce, in interstate or foreign commerce, to damage religious real property because of the religious nature of the property, or to obstruct, by force, another person in that person's free exercise of religious beliefs.

COMMITTEE CONSIDERATION

In the 99th Congress, the Committee's Subcommittee on Criminal Justice held two hearings on several bills providing for criminal penalties for certain crimes against religious practices and property.¹ Witnesses at these hearings included representatives of the United States Department of Justice and the American Jewish

¹ See *Crimes Against Religious Practices and Property: Hearings before the Subcomm. on Crim. Justice of the House Comm. on the Judiciary, 99th Cong., 1st Sess. (1986)* [hereinafter cited as "Hearings"].

Committee, as well as several Members of Congress, both Democratic and Republican. The Subcommittee unanimously reported favorably on a bill, H.R. 4980. The Committee also reported H.R. 4980 favorably,² and on September 22, 1986 the House passed it by voice vote. H.R. 4980 was pending in the Senate Judiciary Committee's Subcommittee on Criminal Law when the 99th Congress adjourned sine die.

This Congress, working with the Anti-Defamation League of B'nai B'rith, the Subcommittee on Criminal Justice drafted a bill which is similar to H.R. 4980.³ The Subcommittee unanimously reported the present bill favorably on September 17, 1987, and the Committee did so on September 29, 1987.

NEED FOR THE LEGISLATION

Religiously motivated violence—which can involve vandalism (such as defacing the walls of a synagogue with a swastika or anti-Jewish epithets) or more dangerous acts of destruction (such as arson or bombing)—appears to be a growing problem. Although precise statistics on the number of incidents directed at religious groups are not compiled as part of the Uniform Crime Reports, there is evidence of recurring incidents of defacement or destruction of places of worship, and in some instances, personal injury or murder motivated by religious hatred.⁴

The majority of religiously-motivated crimes of destruction are believed to be committed against synagogues, and involve the painting of swastikas on synagogue walls or the destruction of Torah scrolls.⁵ Black churches are believed to be the next most frequent target of religiously-motivated violence.⁶ The dearth of accurate statistics makes it difficult to assess the full impact of these crimes because many cases are reported to police as vandalism, assault, or "malicious mischief" without any indication of religious motivation.⁷

² H.R. Rep. No. 820, 99th Cong., 2d Sess. (1986).

³ There are two differences between the present bill and H.R. 4980. First, the present bill provides for narrower Federal jurisdiction. See n. 21 *infra*. Second, the penalty scheme in H.R. 4980 has been modified to parallel the penalty provisions of 18 U.S.C. 241 ("Conspiracy against rights of citizens"), a civil rights offense. See n. 25 *infra*.

⁴ See Baker, "Racial Incidents in County During 1986 Show Huge Rise", L.A. Times, Feb. 21, 1987, at 1; Center for Democratic Renewal, "A Chronology of Bigoted Violence and Hate Group Activity 1980-1986"; Davis, "But Who's Counting?", Village Voice, July 14, 1987, at 33; Harris, "Van de Kamp Seeks Stiffer Laws on 'Crimes of Hate'", L.A. Times, Jan. 17, 1987, at 1; Lee, "Anti-Semitic Incidents Rise in Florida", Miami Herald, Jan. 23, 1987, at 3, col. 1; "A Wave of Violence Strikes U.S. College Campuses", 2 Nat'l Instit. Against Prejudice and Violence Forum 1 (1987).

⁵ The New York City Police Department's Bias Incident Investigating Unit reports that in the first 3 months of 1987 Jewish places of worship comprised 10 of the 13 recorded hate crimes directed against churches in New York City. The National Institute Against Prejudice and Violence reports for 1986 that 11% of all "ethnoviolence" on college campuses was directed at Jews. Data collected by the Maryland Commission on Human Relations shows that Jews and their places of worship were the victims of hate crimes more than any other religious group in Maryland in 1986. See also Baker, "Racial Incidents in County During 1986 Show Huge Rise", L.A. Times, Feb. 21, 1987, at 1.

⁶ Goldberg, "Fight Possible on Desecration Bill", Richmond Times Dispatch, June 24, 1985, at 1. See Hearings 11 (Statement of Rep. Glickman).

⁷ The Subcommittee on Criminal Justice plans in the near future to address the problem of the lack of statistics on hate crime. The pending bills on that topic are similar to the "Hate Crime Statistics Act" drafted by that Subcommittee, reported favorably by the Committee, and passed by the House last term. See H.R. 993, 100th Cong., 1st Sess. (1987); H.R. 3193, 100th Cong. 1st Sess. (1987).

Many localities that do maintain such statistics have reported increases in crimes motivated by religious bias. In Los Angeles County, for example, the Human Relations Commission reports that such incidents increased nearly 34% from 1985 to 1986. More than 80% of the incidents were directed at Jews and their places of worship. The Anti-Defamation League of B'nai B'rith reports that in the same time period, anti-Semitic incidents increased by 68% in Florida and 10% in Midwestern metropolitan areas. Desecration of Jewish cemeteries also rose significantly in that year. Other incidents, such as the April 1985 torching of a pre-Civil War Silver Spring, Maryland synagogue, causing \$150,000 in damages, and the December 1986 beating to death of a Hasidic man on a New York subway, are becoming more prevalent. This alarming trend of virulent intolerance has become frighteningly evident as reports of serious anti-Semitic incidents on college campuses in 1986 grew to their highest recorded levels.⁸

There was more violent crime by hate groups in the three years from 1983 to 1986 than there had been over the previous two decades. The crimes, ranging from armed robberies to synagogue bombings and murder, were committed by members of various neo-Nazi, KKK and other groups, some of whom have been recently sentenced to prison for their activities.⁹ Of the 24 organizations being actively investigated by the FBI under its "domestic security/terrorism" guidelines, approximately 12 are white supremacist, Neo-Nazi groups advocating an anti-Jewish philosophy. During 1986, the FBI added four new white supremacist groups to its list of those under investigation. The Covenant, a hate group, engaged in a series of criminal activities in the wake of the 1983 Aryan Nation's conference, including the firebombing of an Indiana synagogue and the burning of a Missouri church with a predominantly black congregation.¹⁰

Members of the Order, or Silent Brotherhood, a group that in 1984 declared war against the United States Government (which the Order considers the "Zionist Occupation Government of North America"), carried out three murders, including that of Alan Berg, a Denver, Colorado radio personality who was an outspoken critic of such groups, and bombed a synagogue before a federal grand jury in Seattle indicted 23 group members for robbing and murdering to advance their cause in April 1985.¹¹

Recent reports indicate, moreover, that these racially-motivated incidents are becoming increasingly violent. The organizations tracking hate crimes attribute some of this increased violence to the desperation and radicalization of the hate groups that perpetrate a portion of such crimes.¹²

⁸ "A Wave of Violence Strikes U.S. College Campuses", 2 Nat'l Instit. Against Prejudice and Violence Forum (1987); Anti-Defamation League of B'nai B'rith, 1986 Audit of Anti-Semitic Incidents. (The Anti-Defamation League has compiled an unofficial count of anti-Semitic episodes reported to its regional offices over the past several years.)

⁹ Anti-Defamation League of B'nai B'rith, 1986 Audit of Anti-Semitic Incidents (1986).

¹⁰ Anti-Defamation League of B'nai B'rith, *The Hate Movement Today: A Chronicle of Violence and Disarray* (1987).

¹¹ *Id.*; Anti-Defamation League of B'nai B'rith, *The Hate Movement Today: A Chronicle of Violence* 9 (1987).

¹² Davis, "But Who's Counting?", *Village Voice*, July 14, 1987, at 33; Sullivan, "Racists Take Violent Path", *Christian Science Monitor*, Jan. 12, 1987, at 1.

Hate group membership fluctuates in direct proportion to swings in the economy, and in regions with depressed economies hate groups are currently experiencing increased popularity. The Center for Democratic Renewal reports that from 1980 to 1986, rallies and marches by such groups tripled, along with the number of recruitment and educational events. On a small farm in southwestern Pennsylvania, two KKK rallies were held only two weeks apart. Klan leaders accused blacks and Jews of controlling the economy.¹³

In view of the increase in violence motivated by religious bias, it is important that Congress help combat this threat to the free exercise of religious beliefs by making it possible for Federal authorities to investigate and prosecute persons who commit such crimes. H.R. 3258 will do that.

CURRENT LAW

There is presently no statutory provision of Federal law that authorizes prosecution of religiously-motivated violence. There are provisions, however, that permit prosecution of such violence in limited circumstances. First, the Federal Government can prosecute persons who engage in such violence while acting under color of law, as well as those acting in concert with persons acting under color of law.¹⁴ However, instances where persons engage in religiously-motivated violence while acting under color of law, or with another who is acting under color of law, are rare.

Secondly, the Federal Government can prosecute religiously-motivated violence if explosives are used (or attempted to be used) or arson (or attempted arson) is involved and (1) the offender flees across a state line with intent to avoid prosecution,¹⁵ or (2) the property damaged is used in or affects interstate or foreign commerce.¹⁶ However, the Federal unlawful flight provision would not, for example, permit prosecution if the underlying offense was defacing property—one of the most common forms of damage sustained by synagogues.

Finally the Federal Government can prosecute under the Assimilative Crimes Act¹⁷ for damage of religious property located on enclaves within the exclusive jurisdiction of the United States. The Assimilative Crimes Act permits prosecution by Federal authorities in Federal courts using the State definition of the offense, and subjects the defendant to the maximum penalty allowed by State law.¹⁸

SECTION-BY-SECTION ANALYSIS

Section one of H.R. 3258 amends chapter 13 of title 18, United States Code, by adding a new section (section 247) entitled "Damage to religious property; obstruction of persons in the free

¹³ Ansherry, "Apparent Rise in Hate Crimes Prompts Tougher State Laws, a National Parley", *Wall Street Journal*, Sept. 16, 1986, at 64.

¹⁴ 18 U.S.C. 242, 241.

¹⁵ 18 U.S.C. 1074.

¹⁶ 18 U.S.C. 844(i).

¹⁷ 18 U.S.C. 13.

¹⁸ See H.R. Rep. No. 1396, 96th Cong., 2d Sess. 424-28 (1980).

exercise of religious beliefs". New section 247(a)(1) makes it an offense, in any of the circumstances set forth in new section 247(b), to deface, damage, or destroy (or to attempt to deface, damage, or destroy) any religious real property because of the religious character of that property. To establish a case under new section 247(a)(1), a prosecutor must show that the defendant knowingly brought about the defacement, damage, or destruction and that the defendant was motivated by the religious character of the property.¹⁹

New section 247(a)(2) makes it an offense, in any of the circumstances set forth in new section 247(b), to use force or the threat of force in order to obstruct (or to attempt to obstruct) any person in the enjoyment of that person's free exercise of religious beliefs. To establish a case under new section 247(a)(2), a prosecutor must show that the defendant knowingly obstructed another and knew at the time of such obstructing that the person obstructed was engaging in the free exercise of religious beliefs.²⁰

New section 247(b) sets forth the circumstances in which there will be Federal jurisdiction to prosecute the offenses described in new section 247(a). New section 247(b)(1) authorizes prosecution if the defendant, in committing the offense, travels (or uses a facility or instrumentality of interstate or foreign commerce) in interstate or foreign commerce.²¹ New section 247(b)(2) imposes the additional requirement for a prosecution under new section 247(a)(2) that the loss caused by the defacement, damage, or destruction be more than \$10,000.

New section 247(c) sets forth penalties for violating new section 247. If death results from a violation, new section 247(c)(1) authorizes a fine under title 18,²² imprisonment for any term of years or for life, or both. If serious bodily injury results, new section 247(c)(2) authorizes a fine under title 18,²³ imprisonment for not more than 10 years, or both. In any other case, new section 247(c)(3) authorizes a fine under title 18,²⁴ imprisonment for not more than one year, or both.²⁵

New section 247(d) defines two terms used in the bill. New section 247(d)(1) defines "religious real property" to mean any church,

¹⁹ See H.R. Rep. No. 1396, 96th Cong., 2d Sess. 30-36 (1980) (discussion of state of mind requirement for criminal offenses).

²⁰ *Id.*

²¹ It is not sufficient for Federal prosecution merely that a facility or instrumentality of interstate commerce be used. That facility or instrumentality must, in addition, be used in interstate or foreign commerce.

This provision, worked out in consultation with the Anti-Defamation League of B'nai B'rith, provides for narrower commerce clause jurisdiction than provided for in the bill reported by the Committee and passed by the House last term. See H.R. 4980, § 1, 99th Cong., 2nd Sess. (1986) (use of a facility or instrumentality of interstate or foreign commerce sufficient).

²² For an individual, the maximum fine would be the greater of (1) \$250,000 or (2) the greater of twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss caused by the offense. 18 U.S.C. 3623(a).

²³ For an individual, the maximum fine is the greater of (1) \$250,000 or (2) the greater of twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss caused by the offense. 18 U.S.C. 3623(a).

²⁴ For an individual, the maximum fine is the greater of (1) \$100,000 or (2) the greater of twice the gross pecuniary gain derived from the offense or twice the gross pecuniary loss caused by the offense. 18 U.S.C. 3623(a).

²⁵ The penalty scheme of new section 247 is the same as the penalty scheme of 18 U.S.C. 241 ("Conspiracy against rights of citizens"). The Committee recently acted to conform the penalty scheme of 18 U.S.C. 242 ("Deprivation of rights under color of law") to that of 18 U.S.C. 241. See H.R. 2182, § 9, 100th Cong., 1st Sess. (1987); H.R. Rep. No. 100-169, 100th Cong., 1st Sess. 7, 8 (1987).

synagogue, religious cemetery or other religious real property. New section 247(d)(2) defines serious bodily injury to mean a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a bodily member, organ, or mental faculty.²⁶

Section two of the bill amends the table of sections for chapter 13 of title 18 to add a reference to new section 247.

COMMITTEE ACTION

On September 29, 1987, the Committee, by voice vote, a quorum being present, ordered the bill, H.R. 3258, reported favorably without amendment.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT ON BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the bill does not provide new budget authority or new or increased tax expenditures and no statement under section 308(a)(1) of the Congressional Budget Act of 1974 is required.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3258, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1987.

Hon. PETER W. RODINO, Jr.,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3258, a bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for obstruction of persons in the free exercise of religious beliefs, as ordered reported by the House Committee on the Judiciary, September 29, 1987. We estimate that enactment of the

²⁶ The Committee used this definition in reforming Federal rape laws. See Criminal Law and Procedure Technical Amendments Act of 1986, Pub. L. No. 99-646, § 87, 100 Stat. 3623 (enacting 18 U.S.C. 2245(4)) Sexual Abuse Act of 1986, Pub. L. No. 99-654, § 2, 100 Stat. 3662 (also enacting 18 U.S.C. 2245(4)). See also H.R. Rep. No. 594, 99th Cong., 2d Sess. 19 (1986).

bill would result in no significant cost to the federal government and in no cost to state or local governments.

The majority of crimes covered by H.R. 3258 are committed by juveniles and are prosecuted at the state level. Based on information provided by the Department of Justice, CBO expects that there would be relatively few prosecutions under this statute and thus no significant cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

OVERSIGHT FINDINGS OF COMMITTEE ON GOVERNMENT OPERATIONS

In accordance with clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that, with respect to the subject matter of the bill, the Committee on Government Operations did not submit to the Committee findings or recommendations based on investigations under clause 4(c)(2) of rule X of the Rules of the House of Representatives.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the bill will have no inflationary impact on prices and costs in the operation of the national economy.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee concurs in the estimate provided by the Congressional Budget Office and adopts that estimate as the cost estimate of the Committee.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 247 OF TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

Sec. 241. Conspiracy against rights of citizens.

* * * * *

247. *Damage to religious property; obstruction of persons in the free exercise of religious beliefs.*

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§ 247. *Damage to religious property; obstruction of persons in the free exercise of religious beliefs*

(a) *Whoever, in any of the circumstances referred to in subsection (b) of this section—*

(1) *defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or*

(2) *obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so;*

shall be punished as provided in subsection (c) of this section.

(b) *The circumstances referred to in subsection (a) are that—*

(1) *in committing the offense, the defendant travels in interstate or foreign commerce, or uses a facility or instrumentality of interstate or foreign commerce in interstate or foreign commerce; and*

(2) *in the case of an offense under subsection (a)(1), the loss resulting from the defacement, damage, or destruction is more than \$10,000.*

(c) *The punishment for a violation of subsection (a) of this section shall be—*

(1) *if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;*

(2) *if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than ten years, or both; and*

(3) *in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both.*

(d) *As used in this section—*

(1) *the term "religious real property" means any church, synagogue, religious cemetery, or other religious real property; and*

(2) *the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.*