



## LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION ACT OF 2007 FREQUENTLY ASKED QUESTIONS

### What is the Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA)?

The Local Law Enforcement Hate Crimes Prevention Act (LLEHCPA) amends the existing federal hate crimes statute that addresses crimes based on race, religion and national origin to effectively remove the requirement that victims be targeted because they are engaged in a federally protected activity (such as voting or attending school). It extends the federal hate crimes statute to cover violent and attempted violent crimes based on a person's gender, sexual orientation, gender identity and disability.

In addition, the LLEHCPA authorizes the Department of Justice (DOJ) to assist state and local governments in investigating and/or prosecuting hate crimes. It authorizes the DOJ to assume jurisdiction over a hate crime if a state/locality requests it, if a state/locality is unable or unwilling to pursue the case, or if the outcome of the case does not satisfy federal interest in eradicating hate crimes. The attorney general or his/her designee must certify that one of these conditions is met before a federal prosecution may proceed.

The LLEHCPA also authorizes grants to jurisdictions for 1) extraordinary expenses associated with investigating and prosecuting hate crimes and 2) programs designed to combat hate crimes committed by juveniles.

### Aren't all crimes "hate crimes"?

**Not** all crimes are motivated by hate or bias. Perpetrators of hate crimes attack victims based on their identities; they choose victims because of *who they are*. Furthermore, most criminal laws consider some element of motive, so hate crimes laws are not unique in that respect.

Although all violent crimes are tragic and reprehensible, hate crimes are distinct because they have particularly damaging psychological consequences. For this reason, the American Psychological Association has endorsed the LLEHCPA (see <http://www.apa.org> for more information). Further, the effects of hate crimes extend beyond their initial targets, spreading fear among an entire community of similar people. Hate crimes make not only the victims, but anyone like the victims, afraid in their own neighborhoods.

### Does the LLEHCPA enhance penalties for hate crimes?

The LLEHCPA is **not** a sentence enhancement measure in any way. Enhanced sentences for hate crimes on federal property were already established in the Hate Crimes Sentencing Act of 1994. Rather, LLEHCPA extends federal jurisdiction to hate crimes in certain cases so that the DOJ may assist state efforts or initiate investigation and prosecution if state or local authorities are unable or unwilling to do so.

### **Does the LLEHCPA give special rights and protections to the LGBT community?**

**No.** The LLEHCPA adds gender, disability, sexual orientation and gender identity to the characteristics already addressed in existing civil rights legislation, including race and religion. *All* victims of violent crime targeted because of these characteristics would be protected. Thus, hate crimes committed against people because they are straight are no less covered than crimes committed against lesbian, gay, bisexual or transgender people.

### **How prevalent are anti-LGBT hate crimes?**

Hate crimes particularly affect the lesbian, gay, bisexual and transgender (LGBT) community. The FBI documented 1,213 victims of anti-LGBT violence in 2005 — roughly 14 percent of all reported hate crimes that year. However, this statistic underestimates the true prevalence of anti-LGBT violence both because hate crime reporting to the FBI is voluntary and because many incidents likely are never brought to the attention of law enforcement. The National Coalition of Anti-Violence Programs (NCAVP) tracks LGBT hate crimes in only 12 regions of the United States, and in 2005 the organization recorded more anti-LGBT hate crimes in those regions than were reported to the FBI nationally. In 2006, the NCAVP documented 1,834 victims of anti-LGBT violence, 11 of whom were murdered.

### **Will the LLEHCPA have a disproportionate negative impact on people of color in the form of increased incarceration?**

Enhanced sentencing measures may tend to target those with the fewest resources (not necessarily the worst offenders) — namely the poor, people of color and youth. However, as discussed above, the LLEHCPA **is not** a sentence enhancement measure.

The LLEHCPA amends the existing federal hate crimes statute that addresses crimes based on race, religion and national origin to effectively remove the requirement that victims are targeted because they are engaged in a federally protected activity (such as voting or attending school). For this and other reasons, many organizations that work for racial/ethnic justice support the bill, including the National Association for the Advancement of Colored People (NAACP), the Asian American Justice Center and the Mexican American Legal Defense and Education Fund.

People of color comprise the majority of anti-LGBT hate crime victims — 55 percent of those recorded by the NCAVP in 2006. Thus, rather than harming people of color, the LLEHCPA would provide new recourse for people of color who are targeted for violence because of their gender, sexual orientation and gender identity.

Criminal punishments such as those provided in the LLEHCPA are only one way to address hate crimes. The LLEHCPA goes further by authorizing funding to state and local programs aimed at preventing such crimes. These programs offer solutions to the problem of hate crimes beyond simply punishing perpetrators and benefit all communities regardless of race.

### **Would the LLEHCPA violate First Amendment freedom of speech?**

The First Amendment protects citizens from government intrusion on their thoughts, beliefs, and speech. The LLEHCPA would not allow such intrusion; it only punishes criminal acts. The bill does not prohibit hate; it penalizes violent crimes stemming from hate. The Supreme Court has found hate crimes laws to be constitutional, holding that such laws do not chill freedom of

speech.<sup>1</sup> According to the Court, the First Amendment does not prevent using evidence of speech to show the motive or intent behind a crime. The LLEHCPA explicitly states that evidence of speech may be used only if it is directly related to the particular crime being prosecuted. It ensures that evidence of a defendant's past or current expressions or associations may not be introduced as substantive evidence at trial unless they specifically relate to the offense.

### **Would the LLEHCPA be a valid enactment under the Commerce Clause?**

Legislators carefully drafted the LLEHCPA to comport with Supreme Court jurisprudence regarding congressional power. The bill, by its own explicit terms, would apply *only* where violent acts *directly* involve interstate commerce, thus conforming to the Court's requirement of federal legislation under the Constitution's Commerce Clause.<sup>2</sup>

### **Shouldn't states, rather than the federal government, investigate and prosecute violent crimes?**

State and local law enforcement agencies will continue to be responsible for investigating and prosecuting hate crimes except in the rarest of circumstances. The LLEHCPA would enable the federal government to provide assistance to states or localities in those investigations and prosecutions when necessary. In rare cases, the DOJ can assume jurisdiction over a hate crime if a state/locality requests it, if a state/locality is unable or unwilling to pursue the case, or if the outcome of the case does not satisfy federal interest in eradicating hate crimes. The attorney general or his/her designee must certify that one of these conditions is met before a federal prosecution may proceed.

Many federal and state laws overlap without adversely affecting one another. For instance, federal as well as state laws cover certain cases of murder and robbery. Rather than overrun state authority, federal involvement may back state efforts with valuable resources.

### **Who supports the LLEHCPA?**

More than 210 civil rights, educational, religious and civic organizations have voiced support for the LLEHCPA. Nearly all of the nation's major law enforcement organizations have endorsed it, including the International Association of Chiefs of Police, the National District Attorneys Association, the National Sheriffs Association, the Police Executive Research Forum and 31 state attorneys general.

### **More questions?**

Contact Federal Legislative Director Becky Dansky at [bdansky@theTaskForce.org](mailto:bdansky@theTaskForce.org) or 202.639.6315.

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<sup>1</sup> *Wisconsin v. Mitchell*, 508 U.S. 476, 13 S. Ct. 2194 (1993).

<sup>2</sup> See *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740 (2000); *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995). Cf. *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 85 S. Ct. 348 (1964).