



Legislative Bulletin.....May 3, 2007

Contents:

H.R. 1592 — Local Law Enforcement Hate Crimes Prevention Act of 2007

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: At least two new programs

Total Cost of Discretionary Authorizations: \$20 million over five years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 1

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

**H.R. 1592 — Local Law Enforcement Hate Crimes Prevention Act of 2007
(Conyers, D-MI)**

Order of Business: The bill is scheduled for consideration on May 3, 2007, under a likely closed rule.

Summary: H.R. 1592 would make certain “hate crimes” new federal offenses – including crimes motivated by “sexual orientation and gender identity” (not defined in the bill). The bill would also create two new federal grant programs to assist state and local governments in investigating and prosecuting hate crimes, and require expanded data collection and reporting for hate crimes, among other provisions. The specific provisions of the bill are as follows:

- Defines “hate crime” as having the meaning in 28 U.S.C. 994 (within the Violent Crime Control and Law Enforcement Act of 1994; P.L. 103-322):

a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race,

color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.

Note: The terms sexual orientation, gender identity, and disability are not explicitly defined in the bill.

- Authorizes the U.S. Attorney General (AG), at the request of any state, local, or tribal law enforcement agency, to provide technical, forensic, prosecutorial, or any other type of assistance in the investigation and prosecution of any violent felony that is motivated by “prejudice based on the actual or perceived race, color, religion, national origin, gender, *sexual orientation, gender identity, or disability* of the victim” or is a *violation of any state, local, or tribal hate crime law*. (emphasis added)

Thus, this provision provides federal assistance for any violent felony based on the federal definition of hate crimes, as well as any violation based on any one of the state hate crime definitions. Currently, 45 states and the District of Columbia have some variation of hate crimes laws (though only 32 state statutes include sexual orientation, 28 states include gender, and 32 states include disability).

Source: http://www.adl.org/combating_hate/hatecrimes_qa/hatecrime_qa2.asp#4.

- Requires the AG to give priority to crimes committed by offenders who have committed crimes in more than one state, and to rural jurisdictions that have “difficulty covering the extraordinary expenses” (not defined) relating to the investigation or prosecution of the hate crime.
- **Creates new federal grant program.** Authorizes the AG to award federal grants to state, local, and Indian law enforcement agencies for “extraordinary expenses” (not defined) associated with the investigation and prosecution of hate crimes.
- Requires the Office of Justice Programs (under the Department of Justice – DoJ) to work closely with grantees to “ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.”
- Stipulates grant application requirements, including a statement from potential grantees on the “extraordinary purpose” (not defined) of the grant and a certification that the government entity lacks the resources to investigate or prosecute hate crimes. The AG is required to approve or deny the grant application within 30 business days of receipt of the application, and provide a report to Congress detailing all grant applications and awards. Authorizes \$10 million to be appropriated for FY 2008 and FY 2009.
- **Creates new federal grant program.** Authorizes the Office of Justice Programs to award grants to state, local, and tribal governments for programs designed to combat hate crimes committed by juveniles – including programs to train local law enforcement officers in “identifying, investigating, prosecuting, and preventing hate crimes.” Authorizes *such sums as may be necessary* to be appropriated to carry out this provision. (emphasis added)

- Authorizes such sums as may be necessary for FY 2008 – FY2010 (to the Treasury Department and DoJ) to increase the number of personnel to prevent and respond to alleged violations of hate crimes (18 U.S.C. 249), as expanded under this bill.
- Makes certain hate crimes new federal offenses and subject to certain maximum prison sentences and fines:
 - whoever causes or attempts to cause bodily injury to a person because of actual or perceived race, color, religion, or national origin, will be sentenced to a prison term of up to 10 years, fined, or both; and
 - if the offense results in death or includes kidnapping or attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or attempted murder, the offender may receive up to a life sentence in prison.
- Makes certain hate crimes new federal offenses and subject to certain maximum prison sentences and fines *in instances involving interstate commerce* (where the defendant has crossed a state or national border, or uses a weapon that has crossed such border, in conjunction with the offense):
 - whoever causes or attempts to cause bodily injury to a person because of actual or perceived religion, national origin, gender, **sexual orientation, gender identity or disability**, will be sentenced to a prison term of up to 10 years, fined, or both; and
 - if the offense results in death or includes kidnapping or attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or attempted murder, the offender may receive up to a life-sentence in prison. (emphasis added)
- Stipulates that no prosecution may be undertaken by the U.S. unless certified in writing by the AG or appropriate designee that:
 - a) the certifying individual has reasonable cause to believe that bias (against one of the above mentioned categories) was a motivating factor underlying the conduct of the defendant; and
 - b) state or local law enforcement officials have been consulted and determined that:
 - 1) the state does not have jurisdiction or does not intend to exercise jurisdiction,
 - 2) the state has requested that the federal government assume jurisdiction,
 - 3) the state does not object to the federal government assuming jurisdiction, **or**
 - 4) the verdict or sentence obtained (based on the state charges) “**left demonstratively unvindicated the federal interest in eradicating bias-motivated violence.**” (emphasis added)
- **Defines “gender identity” to mean “actual or perceived gender-related characteristics.”** The definition of “gender identity” includes the word “gender” and also states that the meaning could be “actual” or “perceived.” As such, it is not clear from this “definition” what the bill authors intend for gender identity to mean or how it should be construed in law. (emphasis added)

- States the following rule of evidence for court proceedings:

In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, ***unless the evidence specifically relates to that offense***. However, nothing in this section affects the rules of evidence governing impeachment of a witness. (emphasis added)

- Amends the Hate Crimes Statistics Act (28 U.S.C 534) to require the DoJ to collect hate crime statistics on “gender and gender identity,” in addition to those categories reported under current law (race, religion, disability, sexual orientation, and ethnicity). Also requires the inclusion of data and statistics on crimes committed by, and directed against, juveniles (within the required annual report by the DoJ).
- Includes a severability clause, stating that if one part or provision of the Act is found unconstitutional, the remaining provisions will not be affected:

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

- States the following rule of construction (an amendment offered in committee by Rep. Davis, D-AL, and passed by a voice vote):

Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by the free speech or free exercise clauses of, the First Amendment to the Constitution.

Note: Since this disclaimer states the obvious, namely that the First Amendment is still in effect and that the bill does not prohibit “any activities protected by the free speech or free exercise clauses,” the disclaimer has the appearance of strengthening free speech while not substantively providing any additional protections. Since this disclaimer does not expressly state any specific actions that would be protected under the First Amendment (i.e. – publicly denouncing homosexual behavior as a sin or placing an advertisement that includes Biblical verses that condemn homosexual behavior on a public billboard), it has the net effect of paraphrasing the First Amendment and nothing more. As the Judiciary Committee Minority staff has noted, the Supreme Court has “already has decided that hate crimes laws are constitutional under the First Amendment, and upheld the criminal conviction of a person for “hate speech” when coupled with a violent act committed by other persons (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)).” Thus, religious leaders promoting traditional morality could be made subject to compulsory legal processes (and hauled into court) simply because their religious teachings may have been misconstrued by a deranged murderer.

- Requires the U.S. Sentencing Commission to study the issue of adult recruitment of juveniles to commit hate crimes and report the findings to Congress within six months (an amendment offered by Rep. Jackson-Lee, D-TX, and passed by a voice vote).

The bill also states a number of findings, including the following:

- “The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of the victim poses a *serious national problem*. (emphasis added)
- “State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.
- “Existing Federal law is inadequate to address this problem.
- “Such violence substantially affects interstate commerce in many ways, including the following:
 - a) The movement of members of targeted groups is impeded, and members of such groups are forced to move across State lines to escape the incidence or risk of such violence.
 - b) Members of targeted groups are prevented from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.
 - c) Perpetrators cross State lines to commit such violence.
 - d) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.
 - e) Such violence is committed using articles that have traveled in interstate commerce.
- “Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct ‘races.’ *Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins*, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States. (emphasis added)
- “Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.
- “The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States, local jurisdictions, and Indian tribes.

Additional Background: Following a prolonged public debate regarding “hate crimes” in the 1980s, and specifically focusing on the question of whether incidents of violent crime motivated by specific hate toward one group was on the rise or not, Congress passed the Hate Crimes Statistics Act in 1990. This Act required the Attorney General to collect data “about the crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity” for certain violent crimes. Congress amended this law in 1994 to include “disability” as well, and required the AG to publish data annually. The AG tasked the FBI with compiling and publishing this information as part of the Uniform Crime Report (UCR) program, and hate crime statistics have been compiled, based on information voluntarily submitted by the states, since 1991.

In 1994, Congress defined “hate crime” (see Summary for definition) and required the U.S. Sentencing Commission to create guidelines to provide sentencing enhancements for hate crimes. Since then, several other federal laws have been enacted that relate to or expand federal hate crime law, including the Violence Against Women Act and the Church Arson Prevention Act. In addition, Congress provided funding for hate crimes prevention in the 2001 passage of No Child Left Behind and has appropriated funding to provide anti-hate crime training to state and local law enforcement agencies.

During consideration of the Children's Safety Act of 2005 (H.R. 3132) in the 109th Congress, Rep. Conyers offered an amendment to this bill adding the text of the “Local Law Enforcement Hate Crimes Prevention Act of 2005” (the precursor to H.R. 1592), which passed by a vote of [223 – 199](#). However, H.R. 3132 was not taken up by the Senate, and the House subsequently passed H.R. 4472, a revised version of the Children’s Safety Act that did not include the hate crimes amendment, which was signed in to law on July 27, 2006.

Possible Conservative Concerns: As noted in the Summary, sexual orientation and disability are not defined in the bill or in current law. Gender identity is defined so vaguely as to have little meaning. Within legislation that expands federal powers and provides federal grant money to investigate and prosecute state and local violent crimes, some conservatives may be concerned by the nondescript bill language and terminology. Further, section 4 of the bill explicitly provides federal grants to investigate and prosecute *state or locally defined* hate crimes, where there exists hundreds of disparities and definitions.

For example, the state of Connecticut passed [hate crimes legislation](#) in 2004, which specifically codifies definitions of sexual orientation, gender identity, and disability to include dozens of variant identities and disorders defined by the American Psychiatric Association. In its publication entitled *Diagnostic and Statistical Manual of Mental Disorders*, “disabilities” such as autogynephilia, coprophilia, necrophilia, pedophilia, transsexual, transvestite, zoophilia, and many others are included as protected classes. As such, these same groups may be covered by H.R. 1592. Thus, a violent crime against an individual that is targeted because he is a transsexual or a necrophile (sexual arousal or activity with a corpse) will be investigated, prosecuted, and sentenced more harshly than an identical violent crime against a pregnant woman or a police officer.

In addition, as noted above, those entities that have been subject to prosecution and threats under state hate crime laws (typically religious leaders promoting traditional morality) may be subject

to potential criminal liability under this bill, as prosecutors blur the line between what constitutes a “hate crime” and what they *deem* hate speech (see Free Speech section below).

Example of free speech prosecuted under state hate crime laws:

- In Philadelphia, 11 Christians were arrested and jailed overnight in 2004 for singing and preaching in a public park at a homosexual street festival. Five of them were bound over and charged with five felonies and three misdemeanors, totaling a possible 47 years in jail. These charges, based on Pennsylvania's "hate crimes" law, hung over them for months until a judge finally dismissed them. (*The Philadelphia Inquirer, February 13, 2005*).
See reports from [American Family Association](#) and the [Human Rights Campaign](#).
- In Canada, a newspaper publisher and a man who placed a newspaper ad faced jail and were fined \$4,500 each, merely for running an ad containing references to several Bible verses regarding homosexuality. (*WorldNetDaily, February 6, 2000*).
- A pastor in New York saw his billboard with a Bible verse on it taken down under pressure from city officials, who cited "hate crime" rhetoric. (*The New York Post, March 12, 2000*).
- The San Francisco Board of Supervisors officially approved a resolution urging local media to decline to run advertisements by pro-family groups that offered hope for change to homosexuals. A liberal court then winked at this egregious violation of the First Amendment. (*The San Francisco Examiner, October 20, 1998*).
Source: <http://www.cwfa.org/articledisplay.asp?id=2575&department=CFI&categoryid=papers>

Equal Justice:

“Equal justice under law” is one of America’s most firmly embedded legal principles. In fact, these exact words are etched in the stone above the main entrance to the U.S. Supreme Court building. The U.S. Declaration of Independence begins with the words, “We hold these truths to be self-evident, *that all men are created equal*, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.” The Fourteenth Amendment contains the “Equal Protection Clause” which provides that “no state shall... deny to any person within its jurisdiction the equal protection of the laws.”

Some conservatives may be concerned that any expansion of “hate crimes” would erode the equal justice principle and its practice in U.S. courtrooms – since violent crimes deemed motivated by the specific type of hatred defined in this bill would merit additional federal penalties and significantly more federal involvement and resources in investigating and prosecuting these crimes. The degree of justice served, and corresponding punishment for criminals, will depend on whether the victim is within one of the protected groups under this bill. Two identical violent crimes of murder – one a “random” act of violence and another “hate-motivated” act of violence – will be provided unequal treatment and unequal punishment.

Many homosexual advocacy groups assert that their mission is to provide equal justice to their members and associates (lesbians, gays, bisexuals, transgenders, etc.). Human Rights Campaign’s (HRC) motto is “Working for LGBT Equal Rights” and the Gay & Lesbian Advocates and Defender’s (GLAD) motto is “equal justice under law.” However, both organizations support passage of H.R. 1592, which would codify separate and distinct treatment

for the very same violent crime, and provide additional federal resources, funding, and assistance for a hate crime over another “random” violent crime.

Federalism:

The principle of federalism states that power not expressly provided to the federal government by the U.S. Constitution are reserved for the states. The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” As noted above, this bill would expand the federal government’s involvement in, and provide significant federal resources for, crimes otherwise under the jurisdiction of state and local governments. More specifically, the bill’s provisions would federalize each and every state and local crime, so long as there exists the possibility that the crime was motivated by “hate,” as defined under this bill. Some conservatives may be concerned by this significant federal encroachment of state laws and prerogatives.

Free Speech & Religious Liberties:

The First Amendment establishes that Congress “shall make no law... abridging the freedom of speech....”. The nature of “hate crime” legislation is to require law enforcement officials to try to ascertain the specific thoughts and motivations that a perpetrator may have had while committing a violent crime, in order to stiffen the penalty for the underlying offense. Current federal law allows an individual to be prosecuted as an “accessory” to a crime, or if the individual somehow “incited” violence. Thus, if an individual (such as a pastor or rabbi) denounced the act of homosexuality as a sin to a group of people, and one of those people committed a violent crime against a homosexual, it is plausible that the pastor or rabbi could be charged with inciting violence or as an accessory to the crime. State hate crime laws have been used in several instances to harass, arrest, and/or silence non-violent protests, public broadcasts and media events and displays, and other instances where individuals were lawfully exercising protected First Amendment free speech privileges. Some conservatives may be concerned that empowering the federal government, and disparate state and local governments via new federal grants, to pursue “hate crimes” may have the effect of silencing or restricting free speech. It is perceived by many conservatives that the “[LBJ amendment](#)” (regarding IRS regulations prohibiting political candidate endorsements by non-profits) has had the net effect of squelching free speech in churches and synagogues across the country since 1954. Notably, the only ramification that comes from not adhering to the LBJ Amendment is that a non-profit would potentially lose their 501(c)(3) tax status, not the potential criminal liability and prosecution that is allowed under this legislation.

Amendments: The House Rules Committee under Chairman Louise Slaughter passed a closed rule for H.R. 1592, not allowing any amendments, despite the fact that the Judiciary Committee mark-up lasted over 10 hours and numerous Members of Congress expressed their desire to offer amendments on the House Floor.

Committee Action: H.R. 1592 was introduced on March 20, 2007, and referred to the Committee on the Judiciary’s Subcommittee on Crime, Terrorism, and Homeland Security. The bill was marked-up on April 25, and it was reported (amended) to the House by a vote of 21-17 the same day.

The following Republican amendments were defeated in the Judiciary Committee markup, largely along party-line votes:

- Pence – an amendment to clarify that religious freedom is not affected. *Failed 15-20*
- Jordan – an amendment to add the unborn subject to the partial birth procedure to the list of protected classes. *Ruled non-germane*
- Gohmert – an amendment to add “random acts of violence” to the list of protected classes. *Ruled non-germane*
- Forbes – an amendment to add “members of the armed forces” to the list of protected classes. *Failed 12-16*
- Franks – an amendment to bar prosecution for actions protected under the First Amendment. *Failed on voice vote*
- Feeney – an amendment requiring that the conduct substantially affect interstate or foreign commerce. *Failed 12-19*
- Gohmert – an amendment to strike “sexual orientation” and “gender identity” from the bill. *Failed 13-18*
- Goodlatte – an amendment to add senior citizens as a protected class under the bill. *Failed 12-16*
- Goodlatte – an amendment to add pregnant women as a protected class under the bill. *Failed 15-16*
- Chabot – an amendment to add witnesses in a judicial proceeding as a protected class under the bill. *Failed 15-20*
- Chabot – an amendment to add a victim of a prior crime as a protected class under the bill. *Failed 15-20*
- Issa – an amendment to add an additional bias to the bill – “or any other animus towards that person.” *Failed on voice vote*
- Issa – an amendment to define a person to exclude the unborn. *Failed 0-33 with 3 passing*
- Gohmert – an amendment to clarify the earlier Davis amendment to specifically include religious expression. *Failed 16-20*
- Forbes – an amendment to add children under the age of 18 as a protected class under the bill. *Failed 16-21*
- King – an amendment to strike the term “gender” and replace with “sex.” *Failed 15-20*
- King – an amendment to change title of bill to “Local Law Assistance Thought Crime Prevention Act.” *Failed 13-21*
- Gohmert – an amendment to add police/law enforcement as a protected class under the bill. *Failed on a voice vote*
- Gohmert – an amendment to add the death penalty for hate crimes under the bill. *Failed on voice vote*

Administration Policy: A Statement of Administration Policy was unavailable at the time of publication.

Outside Organizations Opposing: Hate crimes legislation is being opposed by a variety of conservative and pro-family organizations, including, but not limited to:

- [AdvanceUSA](#)
- [Christian Coalition](#) *
- [Eagle Forum](#) *
- [Family Research Council](#) *

- [Traditional Values Coalition](#) *
* *Including the vote in annual Congressional Scorecard*

Outside Organizations Supporting: Hate crimes legislation is being supported by a variety of liberal organizations, including, but not limited to:

- [Anti-Defamation League](#)
- [Gay & Lesbians Advocates and Defenders \(GLAD\)](#)
- [Human Rights Campaign](#)
- [National Organization for Women](#)
- [People for the American Way](#)

Cost to Taxpayers: According to CBO, H.R. 1592 will authorize \$10 million in FY08, and at least \$20 million over the FY08-FY12 period.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. As noted above, this bill creates two new federal grant programs, and expands the definition of hate crimes in federal law. In addition, the bill would make certain hate crimes new federal offenses, including crimes motivated by “sexual orientation and gender identity.” Thus, as the Judiciary Committee minority staff has noted, this bill would federalize each and every state and local crime that has the potential of being a hate crime under federal or state law.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Constitutional Authority: A committee report citing constitutional authority is unavailable.

House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific* powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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