

Union Calendar No. 40

111TH CONGRESS
1ST SESSION

H. R. 1913

[Report No. 111-86]

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. CONYERS (for himself, Mr. FRANK of Massachusetts, Mr. ABERCROMBIE, Mr. ACKERMAN, Ms. BALDWIN, Ms. BERKLEY, Mr. BERMAN, Mrs. BIGGERT, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Mrs. BONO MACK, Mr. BRALEY of Iowa, Ms. CORRINE BROWN of Florida, Mr. CAO, Mrs. CAPPS, Mr. CASTLE, Ms. CASTOR of Florida, Mr. CLAY, Mr. CUMMINGS, Mr. DELAHUNT, Mr. DRIEHAUS, Mr. GENE GREEN of Texas, Mr. ISRAEL, Ms. KILROY, Mr. KIRK, Mr. KUCINICH, Mr. LANCE, Mrs. MALONEY, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MOORE of Kansas, Mr. MORAN of Virginia, Mr. NADLER of New York, Mr. OLVER, Mr. PETERS, Mr. POLIS of Colorado, Ms. ROS-LEHTINEN, Mr. SERRANO, Ms. SLAUGHTER, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Ms. WATSON, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 27, 2009

Additional sponsors: Mr. CAPUANO, Ms. LEE of California, Mr. COHEN, Mr. HARE, Mr. FILNER, Mrs. DAVIS of California, Mr. HASTINGS of Florida, Mr. MAFFEL, Mr. CROWLEY, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. HOLT, Mr. SIRES, Mr. VAN HOLLEN, Ms. SCHAKOWSKY, Mr. DOGGETT, Mr. PASTOR of Arizona, Mr. BRADY of Pennsylvania, Mr. GRIJALVA, Ms. ZOE LOFGREN of California, Ms. NORTON, Mr. QUIGLEY, Mr. LEWIS of Georgia, Ms. ROYBAL-ALLARD, Mr. PRICE of North Carolina, Mr. WU, Mr. CLYBURN, Mr. MITCHELL, Mr. OBERSTAR, Mr. GEORGE MILLER of California, Mrs. MCCARTHY of New York, Ms. MATSUI, Mr. VISCLOSKY, Mr. SMITH of Washington, Mr. SESTAK, Mr. PLATTS, Mr. GONZALEZ, Mr. COURTNEY, Ms. JACKSON-LEE of Texas, Ms. GIFFORDS, Mr. LANGEVIN, Mr. KLEIN of Florida, Mr. SHERMAN, Ms. PINGREE of Maine, Mr. INSLEE, Mr. SNYDER, Mr. DAVIS of Illinois,

Mr. WAXMAN, Mr. DOYLE, Ms. HARMAN, Mr. ROTHMAN of New Jersey, Mr. COOPER, Mr. HINCHEY, Mr. McDERMOTT, Mr. CONNOLLY of Virginia, Ms. DEGETTE, Mr. FATAH, Mr. MILLER of North Carolina, Ms. CLARKE, Mr. LOEBSACK, Mr. PIERLUISI, Mr. JOHNSON of Georgia, Mr. McMAHON, Mr. FARR, Mr. CLEAVER, Mr. KENNEDY, Mr. JACKSON of Illinois, Ms. HIRONO, Mr. ENGEL, Mr. CARNAHAN, Ms. MOORE of Wisconsin, Mr. MARKEY of Massachusetts, Mr. PASCRELL, Mr. YARMUTH, Ms. LORETTA SANCHEZ of California, Mr. AL GREEN of Texas, Ms. FUDGE, Mr. BACA, and Mr. CARSON of Indiana

APRIL 27, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 2, 2009]

A BILL

To provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Local Law Enforcement*
 5 *Hate Crimes Prevention Act of 2009”.*

6 **SEC. 2. DEFINITION OF HATE CRIME.**

7 *In this Act—*

8 (1) *the term “crime of violence” has the meaning*
 9 *given that term in section 16, title 18, United States*
 10 *Code;*

11 (2) *the term “hate crime” has the meaning given*
 12 *such term in section 280003(a) of the Violent Crime*

1 *Control and Law Enforcement Act of 1994 (28 U.S.C.*
2 *994 note); and*

3 *(3) the term “local” means a county, city, town,*
4 *township, parish, village, or other general purpose po-*
5 *litical subdivision of a State.*

6 **SEC. 3. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**
7 **PROSECUTIONS BY STATE, LOCAL, AND TRIB-**
8 **AL LAW ENFORCEMENT OFFICIALS.**

9 *(a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-*
10 *ANCE.—*

11 *(1) IN GENERAL.—At the request of a State,*
12 *local, or tribal law enforcement agency, the Attorney*
13 *General may provide technical, forensic, prosecu-*
14 *torial, or any other form of assistance in the criminal*
15 *investigation or prosecution of any crime that—*

16 *(A) constitutes a crime of violence;*

17 *(B) constitutes a felony under the State,*
18 *local, or tribal laws; and*

19 *(C) is motivated by prejudice based on the*
20 *actual or perceived race, color, religion, national*
21 *origin, gender, sexual orientation, gender iden-*
22 *tity, or disability of the victim, or is a violation*
23 *of the State, local, or tribal hate crime laws.*

24 *(2) PRIORITY.—In providing assistance under*
25 *paragraph (1), the Attorney General shall give pri-*

1 *ority to crimes committed by offenders who have com-*
2 *mitted crimes in more than one State and to rural*
3 *jurisdictions that have difficulty covering the extraor-*
4 *ordinary expenses relating to the investigation or pros-*
5 *ecution of the crime.*

6 *(b) GRANTS.—*

7 *(1) IN GENERAL.—The Attorney General may*
8 *award grants to State, local, and Indian law enforce-*
9 *ment agencies for extraordinary expenses associated*
10 *with the investigation and prosecution of hate crimes.*

11 *(2) OFFICE OF JUSTICE PROGRAMS.—In imple-*
12 *menting the grant program under this subsection, the*
13 *Office of Justice Programs shall work closely with*
14 *grantees to ensure that the concerns and needs of all*
15 *affected parties, including community groups and*
16 *schools, colleges, and universities, are addressed*
17 *through the local infrastructure developed under the*
18 *grants.*

19 *(3) APPLICATION.—*

20 *(A) IN GENERAL.—Each State, local, and*
21 *Indian law enforcement agency that desires a*
22 *grant under this subsection shall submit an ap-*
23 *plication to the Attorney General at such time,*
24 *in such manner, and accompanied by or con-*

1 *taining such information as the Attorney Gen-*
2 *eral shall reasonably require.*

3 *(B) DATE FOR SUBMISSION.—Applications*
4 *submitted pursuant to subparagraph (A) shall be*
5 *submitted during the 60-day period beginning on*
6 *a date that the Attorney General shall prescribe.*

7 *(C) REQUIREMENTS.—A State, local, and*
8 *Indian law enforcement agency applying for a*
9 *grant under this subsection shall—*

10 *(i) describe the extraordinary purposes*
11 *for which the grant is needed;*

12 *(ii) certify that the State, local govern-*
13 *ment, or Indian tribe lacks the resources*
14 *necessary to investigate or prosecute the*
15 *hate crime;*

16 *(iii) demonstrate that, in developing a*
17 *plan to implement the grant, the State,*
18 *local, and Indian law enforcement agency*
19 *has consulted and coordinated with non-*
20 *profit, nongovernmental violence recovery*
21 *service programs that have experience in*
22 *providing services to victims of hate crimes;*
23 *and*

24 *(iv) certify that any Federal funds re-*
25 *ceived under this subsection will be used to*

1 *supplement, not supplant, non-Federal*
2 *funds that would otherwise be available for*
3 *activities funded under this subsection.*

4 (4) *DEADLINE.*—*An application for a grant*
5 *under this subsection shall be approved or denied by*
6 *the Attorney General not later than 30 business days*
7 *after the date on which the Attorney General receives*
8 *the application.*

9 (5) *GRANT AMOUNT.*—*A grant under this sub-*
10 *section shall not exceed \$100,000 for any single juris-*
11 *isdiction in any 1-year period.*

12 (6) *REPORT.*—*Not later than December 31, 2011,*
13 *the Attorney General shall submit to Congress a re-*
14 *port describing the applications submitted for grants*
15 *under this subsection, the award of such grants, and*
16 *the purposes for which the grant amounts were ex-*
17 *pended.*

18 (7) *AUTHORIZATION OF APPROPRIATIONS.*—
19 *There is authorized to be appropriated to carry out*
20 *this subsection \$5,000,000 for each of fiscal years*
21 *2010 and 2011.*

22 **SEC. 4. GRANT PROGRAM.**

23 (a) *AUTHORITY TO AWARD GRANTS.*—*The Office of*
24 *Justice Programs of the Department of Justice may award*
25 *grants, in accordance with such regulations as the Attorney*

1 *General may prescribe, to State, local, or tribal programs*
2 *designed to combat hate crimes committed by juveniles, in-*
3 *cluding programs to train local law enforcement officers in*
4 *identifying, investigating, prosecuting, and preventing hate*
5 *crimes.*

6 (b) *AUTHORIZATION OF APPROPRIATIONS.—There are*
7 *authorized to be appropriated such sums as may be nec-*
8 *essary to carry out this section.*

9 **SEC. 5. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**
10 **ASSIST STATE, LOCAL, AND TRIBAL LAW EN-**
11 **FORCEMENT.**

12 *There are authorized to be appropriated to the Depart-*
13 *ment of Justice, including the Community Relations Serv-*
14 *ice, for fiscal years 2010, 2011, and 2012, such sums as*
15 *are necessary to increase the number of personnel to prevent*
16 *and respond to alleged violations of section 249 of title 18,*
17 *United States Code, as added by section 7 of this Act.*

18 **SEC. 6. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

19 (a) *IN GENERAL.—Chapter 13 of title 18, United*
20 *States Code, is amended by adding at the end the following:*

21 **“§ 249. Hate crime acts**

22 **“(a) IN GENERAL.—**

23 **“(1) OFFENSES INVOLVING ACTUAL OR PER-**
24 **CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-**
25 **GIN.—Whoever, whether or not acting under color of**

1 *law, willfully causes bodily injury to any person or,*
2 *through the use of fire, a firearm, or an explosive or*
3 *incendiary device, attempts to cause bodily injury to*
4 *any person, because of the actual or perceived race,*
5 *color, religion, or national origin of any person—*

6 *“(A) shall be imprisoned not more than 10*
7 *years, fined in accordance with this title, or*
8 *both; and*

9 *“(B) shall be imprisoned for any term of*
10 *years or for life, fined in accordance with this*
11 *title, or both, if—*

12 *“(i) death results from the offense; or*

13 *“(ii) the offense includes kidnaping or*
14 *an attempt to kidnap, aggravated sexual*
15 *abuse or an attempt to commit aggravated*
16 *sexual abuse, or an attempt to kill.*

17 *“(2) OFFENSES INVOLVING ACTUAL OR PER-*
18 *CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-*
19 *UAL ORIENTATION, GENDER IDENTITY, OR DIS-*
20 *ABILITY.—*

21 *“(A) IN GENERAL.—Whoever, whether or*
22 *not acting under color of law, in any cir-*
23 *cumstance described in subparagraph (B), will-*
24 *fully causes bodily injury to any person or,*
25 *through the use of fire, a firearm, or an explosive*

1 *or incendiary device, attempts to cause bodily*
2 *injury to any person, because of the actual or*
3 *perceived religion, national origin, gender, sex-*
4 *ual orientation, gender identity, or disability of*
5 *any person—*

6 *“(i) shall be imprisoned not more than*
7 *10 years, fined in accordance with this title,*
8 *or both; and*

9 *“(ii) shall be imprisoned for any term*
10 *of years or for life, fined in accordance with*
11 *this title, or both, if—*

12 *“(I) death results from the offense;*

13 *or*

14 *“(II) the offense includes kid-*
15 *naping or an attempt to kidnap, ag-*
16 *gravated sexual abuse or an attempt to*
17 *commit aggravated sexual abuse, or an*
18 *attempt to kill.*

19 *“(B) CIRCUMSTANCES DESCRIBED.—For*
20 *purposes of subparagraph (A), the circumstances*
21 *described in this subparagraph are that—*

22 *“(i) the conduct described in subpara-*
23 *graph (A) occurs during the course of, or as*
24 *the result of, the travel of the defendant or*
25 *the victim—*

1 “(I) across a State line or na-
2 tional border; or

3 “(II) using a channel, facility, or
4 instrumentality of interstate or foreign
5 commerce;

6 “(ii) the defendant uses a channel, fa-
7 cility, or instrumentality of interstate or
8 foreign commerce in connection with the
9 conduct described in subparagraph (A);

10 “(iii) in connection with the conduct
11 described in subparagraph (A), the defend-
12 ant employs a firearm, explosive or incen-
13 diary device, or other weapon that has trav-
14 eled in interstate or foreign commerce; or

15 “(iv) the conduct described in subpara-
16 graph (A)—

17 “(I) interferes with commercial or
18 other economic activity in which the
19 victim is engaged at the time of the
20 conduct; or

21 “(II) otherwise affects interstate
22 or foreign commerce.

23 “(b) *CERTIFICATION REQUIREMENT.*—No prosecution
24 of any offense described in this subsection may be under-
25 taken by the United States, except under the certification

1 *in writing of the Attorney General, the Deputy Attorney*
2 *General, the Associate Attorney General, or any Assistant*
3 *Attorney General specially designated by the Attorney Gen-*
4 *eral that—*

5 “(1) *such certifying individual has reasonable*
6 *cause to believe that the actual or perceived race,*
7 *color, religion, national origin, gender, sexual ori-*
8 *entation, gender identity, or disability of any person*
9 *was a motivating factor underlying the alleged con-*
10 *duct of the defendant; and*

11 “(2) *such certifying individual has consulted*
12 *with State or local law enforcement officials regard-*
13 *ing the prosecution and determined that—*

14 “(A) *the State does not have jurisdiction or*
15 *does not intend to exercise jurisdiction;*

16 “(B) *the State has requested that the Fed-*
17 *eral Government assume jurisdiction;*

18 “(C) *the State does not object to the Federal*
19 *Government assuming jurisdiction; or*

20 “(D) *the verdict or sentence obtained pursu-*
21 *ant to State charges left demonstratively*
22 *unvindicated the Federal interest in eradicating*
23 *bias-motivated violence.*

24 “(c) *DEFINITIONS.—*

25 “(1) *In this section—*

1 “(A) the term ‘explosive or incendiary de-
2 vice’ has the meaning given such term in section
3 232 of this title; and

4 “(B) the term ‘firearm’ has the meaning
5 given such term in section 921(a) of this title.

6 “(2) For the purposes of this chapter, the term
7 ‘gender identity’ means actual or perceived gender-re-
8 lated characteristics.

9 “(d) *RULE OF EVIDENCE.*—In a prosecution for an of-
10 fense under this section, evidence of expression or associa-
11 tions of the defendant may not be introduced as substantive
12 evidence at trial, unless the evidence specifically relates to
13 that offense. However, nothing in this section affects the
14 rules of evidence governing impeachment of a witness.”.

15 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
16 table of sections at the beginning of chapter 13 of title 18,
17 United States Code, is amended by adding at the end the
18 following new item:

 “249. Hate crime acts.”.

19 **SEC. 7. SEVERABILITY.**

20 If any provision of this Act, an amendment made by
21 this Act, or the application of such provision or amendment
22 to any person or circumstance is held to be unconstitu-
23 tional, the remainder of this Act, the amendments made by
24 this Act, and the application of the provisions of such to
25 any person or circumstance shall not be affected thereby.

1 **SEC. 8. RULE OF CONSTRUCTION.**

2 *Nothing in this Act, or the amendments made by this*
3 *Act, shall be construed to prohibit any expressive conduct*
4 *protected from legal prohibition by, or any activities pro-*
5 *tected by the Constitution.*

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