

The 2000 United States Senate & a Hate Crimes bill: The GOP is soft on crime, hard on homosexuals

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Legislation was introduced in the United States Senate in 2000 to expand the national hate crimes act by, in part, including *sexual orientation bias* as a hate crime category, and to provide federal money to help local law enforcement agencies enhance the Federal enforcement of hate crimes, including providing federal money for investigating and prosecuting hate crimes. Increasing punishment to those found Guilty of crimes due to a victim's real or perceived sexual orientation was a key part of this legislation. Specifically, in 2000 Massachusetts Senator Edward Kennedy (Democrat) introduced Senate Amendment 3473 (S. Amdt. 3473) to Senate bill 2549. The Amendment was called the "Local Law Enforcement Enhancement Act of 2000" and it was written in part to expand the definition of hate crimes to include not only sexual orientation, but also gender and disability. Its inclusion of sexual orientation was its most contentious feature. The definition of what constituted a hate crime prior to Senator Kennedy's bill included only racial, religious or ethnic bias. Quoting from the Amendment verbatim, in part it reads:

"Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) 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.

(4) Existing Federal law is inadequate to address this problem.

(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the victim's family and friends, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including--

(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and

(B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment or participating in other commercial activity.

(7) Perpetrators cross State lines to commit such violence.

(8) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(9) Such violence is committed using articles that have traveled in interstate commerce.

(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(11) 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.

(12) 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.

(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.”

The Amendment specified that a *hate crime* as discussed in the Amendment has (to again quote verbatim from the Amendment):

“the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).”

Amendment 3473 also specified the type of criminal investigations and prosecutorial support to local, state and tribal law enforcement agencies in that it said (as quoted verbatim):

“(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.--

(1) **IN GENERAL.--**At the request of a law enforcement official of a State or Indian tribe, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that--

(A) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(B) constitutes a felony under the laws of the State or Indian tribe; and

(C) is motivated by prejudice based on the victim's race, color, religion, national origin, gender, sexual orientation, or disability or is a violation of the hate crime laws of the State or Indian tribe.

(2) **PRIORITY.--**In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.--

(1) **IN GENERAL.--**The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes. In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions 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.

(2) APPLICATION.--

(A) **IN GENERAL.--**Each State desiring a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

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

(C) **REQUIREMENTS.--**A State or political subdivision of a State or tribal official applying for assistance under this subsection shall--

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

(ii) certify that the State, political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(3) **DEADLINE.**--An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(4) **GRANT AMOUNT.**--A grant under this subsection shall not exceed \$100,000 for any single jurisdiction within a 1 year period.

(5) **REPORT.**--Not later than December 31, 2001, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(6) **AUTHORIZATION OF APPROPRIATIONS.**--There is authorized to be appropriated to carry out this subsection \$5,000,000 for each of fiscal years 2001 and 2002.

SEC. __05. GRANT PROGRAM.

(a) **AUTHORITY TO MAKE GRANTS.**--The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local 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.

(b) **AUTHORIZATION OF APPROPRIATIONS.**--There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. __06. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2001, 2002, and 2003 such sums as are

necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code (as added by this title).

SEC. __07. PROHIBITION OF CERTAIN HATE CRIME ACTS.

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

``§249. Hate crime acts

``(a) **IN GENERAL.**—

``(1) **OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.**--Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

``(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

``(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

``(i) death results from the offense; or

``(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

``(2) **OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.**--

``(A) **IN GENERAL.**--Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person--

``(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

``(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

``(I) death results from the offense; or

``(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

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

“(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim--

“(I) across a State line or national border; or

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

“(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

“(iii) in connection with the conduct described in subparagraph (A): the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

“(iv) the conduct described in subparagraph (A)--

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

“(II) otherwise affects interstate or foreign commerce.

“(b) **CERTIFICATION REQUIREMENT.**--No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that--

“(1) he or she has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

“(2) he or his designee or she or her designee has consulted with State or local law enforcement officials regarding the prosecution and determined that--

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

“(B) the State has requested that the Federal Government assume jurisdiction;

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

“(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

“(c) **DEFINITIONS.**--In this section--

“(1) the term 'explosive or incendiary device' has the meaning given the term in section 232 of this title; and

“(2) the term 'firearm' has the meaning given the term in section 921(a) of this title.”.

(b) **TECHNICAL AND CONFORMING AMENDMENT.**--The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

“249. Hate crime acts.”.

SEC. __08. DUTIES OF FEDERAL SENTENCING COMMISSION.

(a) **AMENDMENT OF FEDERAL SENTENCING GUIDELINES.**--Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

(b) **CONSISTENCY WITH OTHER GUIDELINES.**--In carrying out this section, the United States Sentencing Commission shall--

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishments for substantially the same offense.

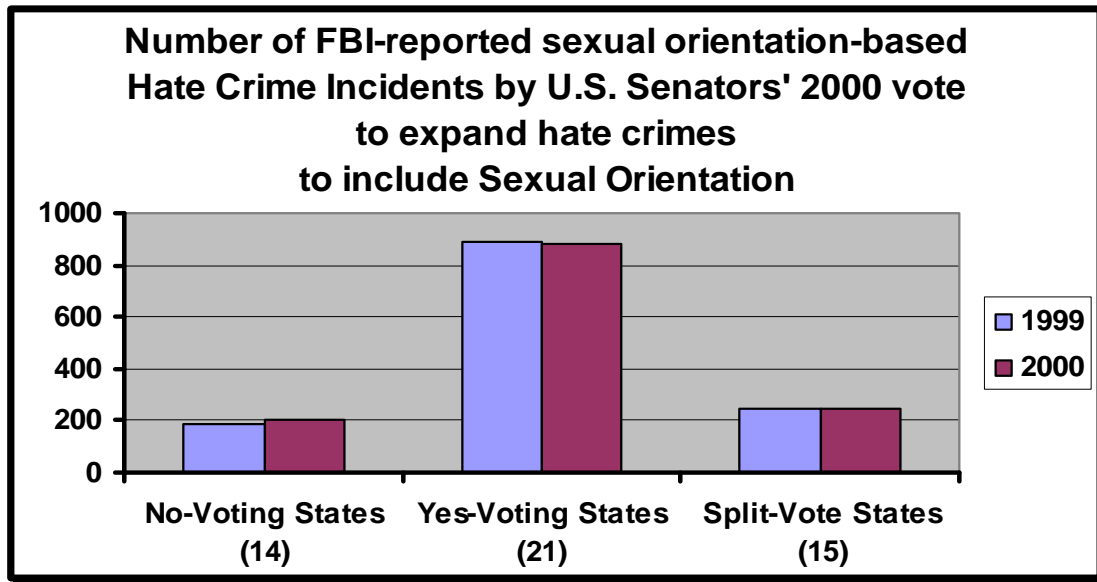
SEC. __09. STATISTICS.

Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting "gender," after "race," .”

In June, 2000, the amendment was voted on by the Senate. Both senators from 13 states voted against the “Local Law Enforcement Enhancement Act of 2000”, and these states were: Alabama; Arizona; Colorado; Idaho; Kansas; Kentucky; Mississippi; Missouri; New Hampshire; Tennessee; Texas; Utah; and Wyoming. Both senators from 21 states voted for S. Amdt. 3473, and these states were: California; Connecticut; Delaware; Florida; Hawaii; Indiana; Louisiana; Maine; Maryland; Massachusetts; Montana; Nevada; New Jersey; New York; North Dakota; Ohio; Oregon; Rhode Island; South Dakota; Vermont; and, Wisconsin. The remaining 16 states had either only one senator vote (viz., Oklahoma), or they had a split-vote between their senators on the amendment. These 15 split-vote states were: Alaska; Arkansas; Georgia; Illinois; Iowa; Michigan; Minnesota; Nebraska; New Mexico; North Carolina; Pennsylvania; South Carolina; Virginia; Washington; and, West Virginia. To amend S. 2549 to include the “Local Law Enforcement Enhancement Act of 2000” S.Amdt. 3473 needed a majority of the Senate’s approval. On June 20, 2000, S.Amdt. 3473 was agreed to; it received 57 votes. Forty-two Senators of the 106th Congress voted against it on June 20, 2000, and one Senator did not vote (viz., Oklahoma Republican Senator James Inhofe).

When examining the number of FBI-reported hate crime incidents that were caused by a *sexual orientation bias* in the year before (1999) and in the year of the 2000 Senate vote on the “Local Law Enforcement Enhancement Act of 2000”, the so-called “Yes-voting states” had a significantly higher number of such hate crime incidents compared with

“No-voting states” and compared with the “Split-vote states” as seen by the graph below. Keep in mind that almost all *sexual orientation bias* is due to anti-homosexual/bisexual hatred. For example, in 1999 a total of 98.8% of *sexual orientation bias* hate crime incidents was due to anti-homosexual/anti-bisexual hatred according to statistics from the FBI. Heterosexuals are rarely targeted as victims in *sexual orientation bias* hate crimes.



Examining the graph, it is reasonable to wonder whether the states where senators cast a vote in favor of the “Local Law Enforcement Enhancement Act of 2000” had a significantly higher population than the other states, thus accounting for the higher number of hate crime incidents. For instance, it might seem reasonable to predict that if the “Yes-Voting States” had four times the population as the “No-Voting States” and the “Split-Vote States”, then the “Yes-Voting States” would have four times the number of reported hate crime incidents. However, using population data provided by the FBI for the time-frame in question, the “Yes-Voting States” did not have a substantially higher population than the other states. The “Yes-Voting States” accounted for 52.65% of the population covered by the hate crime statistics the FBI reported in 2000. The “No-Voting States” accounted for 22.15% of the population, and the “Split-Vote States” accounted for the remaining 25.20% of the United States population covered by the hate crime incidents reported. These population and hate crime figures show that the “Yes-Voting States” had slightly more than twice the population as the states from the other two categories, but the “Yes-Voting States” had slightly more than four times the number of reported sexual orientation-based hate crimes. Therefore, population differences do not account for the two-fold higher number of reported sexual orientation-based hate crime incidents in 1999 or 2000 in the “Yes-Voting States”.

Given that “Yes-voting States” had a significantly higher number of reported sexual orientation-based hate crime incidents not accounted for by population, one might assume from the above graph that the amendment passed in June, 2000, because enough senators had federal crime information that showed sexual orientation is not an *infrequent* reason

for a hate crime. That is, one might conclude that the senators who voted for the amendment did so because they were aware that hate crimes due to *sexual orientation bias* were particularly troublesome in their states. Likewise, one might conclude that the “No-voting” senators did so, because—at least in their states—hate crimes due to *sexual orientation bias* did not seem to occur to the degree that it occurred in other parts of the nation.

However, knowledge about hate crimes due to *sexual orientation bias* in one’s own state likely had nothing to do with how the Senate voted in June, 2000. If that were the case, then there would not have been the number of split-vote states that there were. Given the lower number of reported hate crime incidents in the split-vote states, the senators from those states should have voted against the amendment reasoning that *sexual orientation bias* driven hate crimes are not much of a problem because they do not occur frequently in their home states. Instead, only half of them voted against S. Admt. 3473. Moreover, FBI data regarding hate crimes is readily available to senators (it is online at fbi.gov), and a casual perusal of that data clearly shows that hate crimes due to *sexual orientation bias* occur throughout the United States.

The most illuminating fact about the June, 2000, Senate vote of the “Local Law Enforcement Enhancement Act of 2000” is that, with few exceptions, the vote went along party lines. It appears clearly from the voting patterns that there was in 2000 an unspoken Republican party stance of intolerance directed toward those who are not heterosexual. Only one of 45 Democrats voted against S. Amdt. 3473 (West Virginia Senator Robert Byrd); the remaining 44 Democrats voted for it, whereas only 13 of 55 Republican senators voted for the amendment. About 76% of Republicans voted *against* the amendment whereas about 98% of Democratic senators voted *for* it. The GOP senatorial vote is particularly noteworthy since the GOP has repeatedly attempted to define itself as the “tough on crime” political party. However, when it comes to hate crimes directed at one group of minority class citizens—homosexuals—the facts of the voting record shows that the Republicans were anything but tough on crime in 2000.

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