



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

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915 I Street, Sacramento, CA 95814-2671

CONSENT REPORT
August 18, 2009

Honorable Members of the
Law and Legislation Committee

Title: Legislative Position: Support U.S. Senate Bill 909 relating to the Matthew Shepard Hate Crimes Prevention Act

Location/Council District: Citywide

Recommendation:

Staff recommends that the Law and Legislation Committee adopt a support position on U.S. Senate Bill 909 relating to the Matthew Shepard Hate Crimes Prevention Act.

Contact: Ken Bernard, Captain, 808-0800

Presenters: Katherine Lester, Lieutenant, 808-0375

Department: Police

Division: Office of the Chief

Organization No: 1100

Description/Analysis

Issue: Staff is recommending that the Committee adopt a support position on S. 909 which was added as an amendment to S. 1390, the National Defense Authorization Act for Fiscal Year 2010. S. 1390 is considered to be "must pass" legislation. On July 23, 2009, the legislation passed the Senate on an 87-7 vote. The bill now will proceed to a House-Senate Conference Committee and could be ready for presidential signature as early as September 2009.

This bill would expand the existing 1969 U.S. Federal Hate Crime Law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, or disability, extending coverage of protected categories beyond actual or perceived race, color, religion, or national origin.

If this bill is adopted, it will remove the current prerequisite that a hate crime victim be engaged in a federally-protected activity and give federal authorities the ability to engage in hate crime investigations and prosecutions which the local agency chooses not to pursue or is unable to investigate. This bill would also require the FBI to track statistics on hate crimes against transgender people and

provide \$10 million in grant funding for 2010 and 2011 to help state and local agencies pay for investigating and prosecuting hate crimes.

The bill, also known as the Local Law Enforcement Hate Crimes Prevention Act, has been introduced in substantially similar form in each Congress since 1999. The current bill expands on earlier versions by including transgender provisions and making it explicit that the law should not be interpreted to restrict people's freedom of speech or association. Most recently, the bill was reintroduced to the Senate by Senator Kennedy. On June 25, 2009, the Senate Judiciary Committee held a hearing on this bill at which Attorney General Eric Holder testified in support of the legislation. This marked the first time that a sitting Attorney General has ever testified in support of a bill. Additionally, President Obama has stated that one of his goals is to ensure this legislation passes.

S. 909 is supported by thirty-one state Attorney Generals and over 210 national law enforcement, civic, educational, and civil rights organizations. These organizations include the NAACP, the AFL-CIO, the American Medical Association, the International Association of Chiefs of Police, and the National Sheriff's Association.

Just prior to the Senate vote on July 23, 2009, several additional amendments were added which include new Justice Department rules on the use of the hate crime prosecution authority, the addition of military personnel, their families, and property, to the bill's protected classes, and most controversially, the authority of federal prosecutors to seek the death penalty in some hate crime cases, a move opposed by many supporters of the Matthew Shepard Act. These additional amendments will be reviewed and possibly modified by the House-Senate Conference Committee prior to a full House vote.

Policy Considerations: From 1998-2007, there were 12,372 hate crimes involving violence based on sexual orientation. These crimes fell entirely outside of the scope of current Federal jurisdiction.

Environmental Considerations: None.

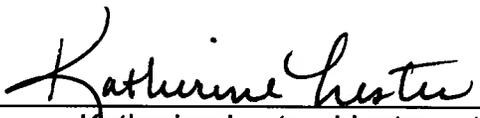
Rationale for Recommendation: S. 909 would allow for direct federal assistance to investigate and prosecute hate crimes. Federal support will be administered through the Office of Justice Programs to ensure that recipients of federal assistance establish infrastructure which will address the needs and concerns of all affected parties, including community groups, schools, colleges, and universities.

Financial Considerations: Grant funding is available to state, local, and tribal agencies with the passage of S. 909 for the extraordinary expenses associated with the investigation and prosecution of a hate crime. The total amount of grants will be \$10 million over a two year period. The maximum amount to be awarded to any one agency is \$100,000 a year. The Attorney General may award grants to programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officials in identifying, investigating, prosecuting and preventing hate

crimes. The bill also allows for funding of personnel to prevent and respond to violations of the Act for fiscal years 2010, 2011, and 2012.

The bill also provides for non-financial assistance at the request of a local law enforcement agency if the crime is one involving violence, is a felony under state law, and 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 state, local or tribal hate crime laws.

Emerging Small Business Development (ESBD): None.

Respectfully Submitted by: 
Katherine Lester, Lieutenant

Approved by: 
Rick Braziel, Chief of Police

Recommendation Approved:

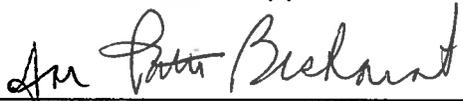

RAY KERRIDGE
City Manager

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Attachment 1**Background**

This Act is named for a gay American student, Matthew Shepard, who was tortured and murdered in 1998 near Laramie, Wyoming. During the ensuing trial of his attackers, witnesses stated that Shepard was targeted because he was gay. His killers were not charged under hate crimes laws because, at the time, the hate crime law in Wyoming did not recognize homosexual persons as a suspect class. Shepard's murder and subsequent trial brought national attention to the desire to amend U.S. hate crime legislation at both the state and federal levels.

The Matthew Shepard Act, officially titled the Local Law Enforcement Hate Crimes Prevention Act or LLEHCPA, is a proposed bill in the US Congress that would expand the existing 1969 US Federal Hate Crime Law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, or disability. The 1969 Federal Hate Crime Law extends only to crimes motivated by actual or perceived race, color, religion, national origin, and only while the victim is engaged in Federally-protected activities.

If passed, the bill would also:

1. Remove the prerequisite that the victim be engaged in a federally-protected activity¹;
2. Give federal authorities the ability to engage in hate crime investigations that local authorities choose not to pursue or in cases in which a Federal interest is clear;
3. Provide \$10 million in funding for 2010 and 2011 to help state and local agencies pay for investigating and prosecuting hate crimes;
4. Require the FBI to track statistics on hate crimes against transgender people;
5. Expand coverage of protected categories beyond actual or perceived race, color, religion, or national origin to include gender, disability, sexual orientation and gender identity².

¹ The current Federal hate crime statute is only applicable when the victim is engaged in any of six "federally protected activities." These are enumerated in the statute as: (A) enrolling in or attending public school or public college; (B) participating in or enjoying a service, program, facility, or activity provided or administered by any State or local government; (C) applying for or enjoying employment; (D) serving in a State court as a grand or petit juror; (E) travelling in or using a facility of interstate commerce; and (F) enjoying the goods or services of certain places or public accommodation. See 18 USC § 245 (b)(2).

² From 1998-2007, there were 12,372 hate crimes involving violence based on sexual orientation. These crimes fell entirely outside the scope of current Federal jurisdiction.

Legislative Progress

This bill was first introduced into the House of Representatives on April 3, 2001, by Rep. John Conyers and was referred to the Subcommittee on Crime where it failed to advance in the committee³.

The bill was reintroduced to the House of Representatives by Rep. Conyers on April 22, 2004 and referred to the newly-renamed Subcommittee on Crime, Terrorism, and Homeland Security where it again failed to advance in the committee.

For a third time, the bill was introduced to the House of Representatives on May 26, 2005 by Rep. Conyers. It was referred to the same committee where it died when it failed to advance.

The bill was introduced for a fourth time on March 30, 2007, again by Rep. Conyers. The 2007 version of the bill added gender identity to the list of suspect classes for prosecution of hate crimes and was again referred to the Subcommittee on Crime, Terrorism, and Homeland Security. The bill passed the subcommittee by voice and the full House Judiciary Committee by a vote of 20-14. The bill progressed to the US Senate where it was introduced by Sen. Ted Kennedy on April 12, 2007. It was referred to the Senate Judiciary Committee where it failed to advance in the committee.

On July 11, 2007, Sen. Kennedy attempted to introduce the bill as an amendment to the Senate Defense Reauthorization bill (H.R. 1585). Due to a Republican filibuster, Senate Majority Leader Harry Reid delayed the votes on the hate crime amendment and the defense bill until September, 2007.

The bill passed the Senate on September 27, 2007 as an amendment to the Defense Reauthorization bill. Ultimately, the amendment was dropped due to opposition from antiwar Democrats, conservative groups, and President George W. Bush. Opponents of the bill argued that it would restrict free speech and that existing federal law was sufficient to prevent hate crimes.

In 2008, then President-elect Obama stated that one of his goals would be to ensure that the bill passed⁴.

On April 28, 2009, Sen. Kennedy reintroduced the bill to the Senate. On June 25, 2009, the Senate Judiciary Committee held a hearing on the bill.

On July 15, 2009, the Matthew Shepard Act was adopted as an amendment to S. 1390 (the National Defense Authorization Act for Fiscal Year 2010) by a cloture vote of 63-

³ The LLEHCPA has been introduced in substantially similar form in each Congress since 1999. The 2007 bill expands on earlier versions by including transgender provisions and making it explicit that the law should not be interpreted to restrict people's freedom of speech or association.

⁴ See Obama's "Plan to Strengthen Civil Rights," available at http://change.gov/agenda/civil_rights_agenda/.

28⁵. An opponent of the Act, Senator Jeff Sessions added an amendment to the Senate version of the bill that will allow prosecutors to seek the death penalty for hate crime murders⁶.

The bill passed with the passing of the Defense bill on July 23, 2009. Currently, the House version of the defense bill does not include the hate crimes legislation⁷.

Opposition

Opponents argue that the Act would effectively “muzzle people of faith who dare to express their moral and biblical concerns about homosexuality⁸.”

H.R. 1592, the Local Law Enforcement Hate Crimes Prevention Act of 1997, and the companion bill to S. 909, contains a “Rule of Construction,” which specifically provides that “Nothing in 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 Constitution⁹.”

Supporters of the Matthew Shepard Act generally oppose the recent amendments by Sen. Sessions which added a death penalty provision¹⁰ and a requirement by the Attorney General to promulgate guidelines with “neutral and objective criteria for determining whether a crime was motivated by the status of the victim¹¹.”

Support

The Act is supported by thirty-one state Attorney Generals and over 210 national law enforcement, civic, educational, and civil rights organizations¹². Testifying in support of the bill on June 25, 2009 was Attorney General Eric Holder. This marked the first time that a sitting Attorney General has ever testified in favor of a bill.

It should be noted that during the Attorney General’s testimony, the first investigative example that he referred to was a local case:

“In July 2007, Joseph and Georgia Silva allegedly assaulted another couple on a public beach in South Lake Tahoe, California, using derogatory racial and ethnic

⁵ Eleveld, Kerry (2009-07-17). “[Hate Crimes Passes, Faces Veto](http://www.advocate.com/news_detail_ektid98991.asp)”. *The Advocate*. http://www.advocate.com/news_detail_ektid98991.asp. Retrieved on 2009-07-17.

⁶ Rushing, J. Taylor (2009-07-20). “[Hate Crimes Amendments Pass Easily](http://thehill.com/leading-the-news/hate-crimes-amendments-pass-easily-2009-07-20.html)”. *The Hill*. <http://thehill.com/leading-the-news/hate-crimes-amendments-pass-easily-2009-07-20.html>. Retrieved on 2009-07-21.

⁷ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00242.

⁸ House Votes to Expand Hate Crime Protection, New York Times, 5-3-2007.

⁹ Text of H.R. 1592 “Referred to Senate Committee after being Received from House,” as accessed on 10-2-2007. The text of S. 1105 does not include this section.

¹⁰ See S. Amdt. 1615.

¹¹ See S. Amdt. 1617.

¹² Supporters of the legislation include the IACP, the National Sheriff’s Association, AFL-CIO, American Medical Association, the NAACP, and the American Psychological Association. A November 2001 poll indicated that 73% of Americans favor hate crime legislation covering sexual orientation.

slurs as they beat one of the Indian-American victims with a shoe and tackled and hit the other victim repeatedly in the head. Despite the defendants' repeated use of racial slurs, the State court refused to acknowledge that the crime was motivated by the victims' ethnicity. The court's dismissal of hate crime charges understandably resulted in outrage among Asian and South Asian communities. On March 5, 2009, a Federal grand jury in Sacramento charged each of the defendants with violations of 18 U.S.C. § 245(b)(2)(B) for their assaults on the victims. In special cases like this one, the public is served when, after consultation with State and local authorities, prosecutors have a Federal alternative to use to prosecute hate crimes¹³."

The Attorney General made the following assertions during his testimony:

1. State, local, and tribal communities would continue to play the primary role in the investigation and prosecution of all types of hate crimes.
2. There are occasions when the Federal government may be in a better position to investigate particular hate crimes- particularly those involving interstate hate crimes or when state prosecutions fail to adequately serve the interests of justice.
3. The language of the bill limits federal intervention to acts that result in bodily injury.
4. The bill requires a written certification by the state Attorney General or their designee before prosecution may be undertaken.
5. The bill requires proof of a nexus to interstate commerce in cases involving conduct based on bias covered by any of the newly protected categories- gender, sexual orientation, gender identity, of disability.

Pending Issues

The following issues are currently being discussed and will need to be decided by the House-Senate Conference Committee prior to the furtherance of the bill:

1. Admission of Evidence. S. 909 would allow for the admission of evidence in accordance with Federal guidelines. Companion bill H.R. 1913 contains an additional prohibition on the introduction of evidence unless it specifically relates to the charged offense.
2. Statute of Limitations. S. 909 contains no express statute of limitations, therefore prosecution would be limited to the five year limitation provided by 18 USC § 3282 (a). The Attorney General is recommending that the bill be amended to extend the statute of limitations to seven years¹⁴.

¹³ [Senate Hate Crimes Hearing at 10am « HRC Back Story](http://www.hrcbackstory.org/2009/06/senate-hate-crimes-hearing-at-10am/):". 2009-06-25.
<http://www.hrcbackstory.org/2009/06/senate-hate-crimes-hearing-at-10am/>.

¹⁴ The recommendation is to be consistent with the Congressional mandate expressed in the Emmett Till Unsolved Civil Rights Crime Act of 2007 which supports the aggressive prosecution of cold hate crime murders.

3. **Certification Provision.** The Attorney General is recommending the certification provision be amended to conform with the existing certification process that has been in place since its enactment 40 years ago¹⁵.
4. **Companion Bill.** The House version of the Defense Bill does not include Hate Crime language.
5. **Controversial Amendments.** The recent amendments by Senator Sessions will need to be either eliminated from the Senate bill or added to the companion bill in the House. Failure to include the death penalty in the Act, which will be codified at 18 U.S.C. § 249, will not impact state action because states with the death penalty will still be free to pursue that action¹⁶. Additionally, Senator Session recommended through amendment that the Attorney General set guidelines for determining whether a crime was motivated by the status of the victim.

Assistance other than Financial Assistance

The bill provides that at the request of a local law enforcement agency, the Attorney General may provide any other form of investigative or prosecution assistance of any crime that:

1. Constitutes a crime of violence;
2. Is a Felony under the State law;
3. 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 state, tribal, or local hate crime laws.

Priority in these cases shall be given to crimes committed by offenders who have committed crimes in more than one State or to rural jurisdictions that have difficulty covering the expense related to the investigation and prosecution of a hate crime.

Grants

The Attorney General may award funding to State, local, and tribal law enforcement agencies for the extraordinary expenses associated with the investigation and prosecution of hate crimes.

The Office of Justice Programs will ensure that recipients of grant funding address the needs and concerns of all affected parties, including community groups, schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

The application process shall begin when authorized by the Attorney General and will remain open for 60 days. Recipients of the grants will be notified within 180 days after

¹⁵ See 18 USC § 245.

¹⁶ Since the introduction of the Hate Crimes Prevention Act, no version of the bill included the death penalty provision. This amendment has led to opposition from the supporters of the original Matthew Shepard Hate Crimes Act.

the application is received. The total amount of grants will be \$10 million over a two year period (FY 2010 and FY 2011). The maximum amount to be awarded to any one agency is \$100,000 a year.

Grant Requirements

State, local, and tribal agencies must:

1. Describe the extraordinary purposes for which the grant is needed;
2. Certify that the agency lacks the necessary resources to investigate or prosecute the hate crime;
3. Demonstrate that, in developing a plan to implement the grant, the agency has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to the victims of hate crimes; and
4. Use Federal funds to supplement, not supplant, non-Federal funds.

Grant Program

The Attorney General may award grants to State, local, or tribal programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officials in identifying, investigating, prosecuting, and preventing hate crimes.

The Grant also allows for funding of personnel to prevent and respond to violations of the Act for fiscal years 2010, 2011 and 2012.

Hate Crimes in the City of Sacramento

In 2007, there were 20 reported hate crimes in the City. In 2008, there were 13 reported hate crimes, and for 2009 through June 30, there have been 6 reported hate crimes.

Attachment 2

August 18, 2009

Honorable Ted Kennedy
Member United States Senator
317 Russell Senate Building
Washington D.C. 20510

Subject: Support S. 909 – Matthew Shepard Hate Crimes Prevention Act

Dear Senator Kennedy,

On behalf of the City of Sacramento, I am pleased to write in support of S. 909 which was incorporated into S. 1390- the National Defense Authorization Act for Fiscal Year 2010 on July 23, 2009. The Hate Crimes Prevention Act would expand the existing 1969 U.S. Federal Hate Crime Law to include crimes motivated by a victim's actual or perceived gender, sexual orientation, or disability, extending coverage of protected categories beyond actual or perceived race, color, religion, or national origin.

From 1998-2007, there were 12,372 hate crimes involving violence based on sexual orientation. These crimes fell entirely outside of the scope of current Federal jurisdiction. While Sacramento is notably diverse with a lack of disharmony, our City has experienced 39 reported hate crimes since 2007.

The Hate Crimes Prevention Act would allow for direct federal assistance to investigate and prosecute hate crimes. Federal support will be administered through the Office of Justice Programs to ensure that recipients of federal assistance establish infrastructure which will address the needs and concerns of all affected parties, including community groups, schools, colleges, and universities.

Thank you for supporting this important legislation.

Sincerely,

Sandy Sheedy, Chair
Law and Legislation Committee

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Congresswoman Doris Matsui
Mayor Kevin Johnson and Council

Attachment 3

Matthew Shepard Hate Crimes Prevention Act (Introduced in Senate)

S 909 IS

111th CONGRESS

1st Session

S. 909

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

IN THE SENATE OF THE UNITED STATES

April 28, 2009

Mr. REID (for Mr. KENNEDY (for himself, Mr. LEAHY, Ms. SNOWE, Ms. COLLINS, Mr. SPECTER, Mr. SCHUMER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. LEVIN, Ms. MIKULSKI, Mr. WHITEHOUSE, Mr. CARDIN, Ms. KLOBUCHAR, Mr. LIEBERMAN, Mrs. GILLIBRAND, Mr. MERKLEY, Mr. REED, Mr. NELSON of Florida, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAYH, Mr. UDALL of Colorado, Mrs. SHAHEEN, Mr. HARKIN, Mr. BROWN, Mrs. MURRAY, Mr. CASEY, Mr. JOHNSON, Mr. LAUTENBERG, Mr. NELSON of Nebraska, Ms. LANDRIEU, Ms. CANTWELL, and Mr. AKAKA)) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Matthew Shepard Hate Crimes Prevention Act'.

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) 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.
- (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) A prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, 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 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

SEC. 3. DEFINITION OF HATE CRIME.

In this Act--

(1) the term 'crime of violence' has the meaning given that term in section 16, title 18, United States Code;

(2) the term 'hate crime' has the meaning given such term in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note); and

(3) the term 'local' means a county, city, town, township, parish, village, or other general purpose political subdivision of a State.

SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT OFFICIALS.

(a) Assistance Other Than Financial Assistance-

(1) **IN GENERAL-** At the request of State, local, or tribal law enforcement agency, 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;

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

(C) 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 the State, local, or tribal hate crime laws.

(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 one 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 State, local, and tribal law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) **OFFICE OF JUSTICE PROGRAMS-** In implementing the grant program under this subsection, the Office of Justice Programs shall 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.

(3) APPLICATION-

(A) **IN GENERAL-** Each State, local, and tribal law enforcement agency that desires 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, local, and tribal law enforcement agency applying for a grant under this subsection shall--

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

- (ii) certify that the State, local government, 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, local, and tribal law enforcement agency 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.

(4) DEADLINE- An application for a grant under this subsection shall be approved or denied by the Attorney General not later than 180 business days after the date on which the Attorney General receives the application.

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

(6) REPORT- Not later than December 31, 2010, 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.

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

SEC. 5. GRANT PROGRAM.

(a) Authority To Award Grants- The Office of Justice Programs of the Department of Justice may award grants, in accordance with such regulations as the Attorney General may prescribe, to State, local, or tribal 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. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of Justice, including the Community Relations Service, for fiscal years 2010, 2011, and 2012 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 section 7 of this Act.

SEC. 7. 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:

Sec. 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, a dangerous weapon, 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 kidnapping 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, GENDER IDENTITY, OR DISABILITY-

(A) IN GENERAL- Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, 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, gender identity 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 kidnapping 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, dangerous weapon, 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.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES- Whoever, within the special maritime or territorial jurisdiction of the United States, commits an offense described in paragraph (1) or (2) shall be subject to the same penalties as prescribed in those paragraphs.

(b) Certification Requirement-

- (1) IN GENERAL- 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, or his designee, that--
 - (A) the State does not have jurisdiction;
 - (B) the State has requested that the Federal Government assume jurisdiction;
 - (C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or
 - (D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.
- (2) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) Definitions- In this section--

- (1) the term `bodily injury' has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;
- (2) the term `explosive or incendiary device' has the meaning given such term in section 232 of this title;
- (3) the term `firearm' has the meaning given such term in section 921(a) of this title; and
- (4) the term `gender identity' for the purposes of this chapter means actual or perceived gender-related characteristics.'

- (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. 8. STATISTICS.

(a) In General- Subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting 'gender and gender identity,' after 'race,'.

(b) Data- Subsection (b)(5) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note) is amended by inserting ', including data about crimes committed by, and crimes directed against, juveniles' after 'data acquired under this section'.

SEC. 9. SEVERABILITY.

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.

SEC. 10. RULE OF CONSTRUCTION.

For purposes of construing this Act and the amendments made by this Act the following shall apply:

(1) RELEVANT EVIDENCE- Courts may consider relevant evidence of speech, beliefs, or expressive conduct to the extent that such evidence is offered to prove an element of a charged offense or is otherwise admissible under the Federal Rules of Evidence. Nothing in this Act is intended to affect the existing rules of evidence.

(2) VIOLENT ACTS- This Act applies to violent acts motivated by actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability of a victim.

(3) CONSTITUTIONAL PROTECTIONS- Nothing in this Act shall be construed to prohibit any constitutionally protected speech, expressive conduct or activities (regardless of whether compelled by, or central to, a system of religious belief), including the exercise of religion protected by the First Amendment and peaceful picketing or demonstration. The Constitution does not protect speech, conduct or activities consisting of planning for, conspiring to commit, or committing an act of violence.

(4) FREE EXPRESSION- Nothing in this Act shall be construed to allow prosecution based solely upon an individual's expression of racial, religious, political, or other beliefs or solely upon an individual's membership in a group advocating or espousing such beliefs.

Attachment 4

Amendments to S. 1390 relative to S. 909

SA 1615

Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 1390, to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

title, or both, and shall be subject to the penalty of death in accordance with chapter 228, if—

“(i) death results from the offense; or

“(ii) the offense includes kidnapping 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, GENDER IDENTITY, OR DISABILITY.—

“(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, 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, gender identity 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, and shall be subject to the penalty of death in accordance with chapter 228, if—

(As printed in the Congressional Record for the Senate on Jul 16, 2009.)

SA 1617

Mr. SESSIONS submitted an amendment intended to be proposed by him to the bill S. 1390, to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

“(3) REGULATIONS.--All prosecutions conducted by the United States pursuant to this section shall be undertaken pursuant to guidelines issued by the Attorney General that shall establish neutral and objective criteria for determining whether a crime was motivated by the status of the victim.

(As printed in the Congressional Record for the Senate on Jul 16, 2009.)