

108TH CONGRESS  
1ST SESSION

# S. 966

To provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

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## IN THE SENATE OF THE UNITED STATES

MAY 1, 2003

Mr. KENNEDY (for himself, Mr. SPECTER, Mr. DASCHLE, Mr. SMITH, Mr. LEAHY, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. WYDEN, Mr. JEFFORDS, Mr. SCHUMER, Mr. CHAFEE, Mr. AKAKA, Mr. ENSIGN, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BREAUX, Ms. CANTWELL, Mr. CARPER, Mrs. CLINTON, Mr. CORZINE, Mr. DAYTON, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HARKIN, Mr. INOUE, Mr. JOHNSON, Mr. KERRY, Ms. LANDRIEU, Mr. LEVIN, Mrs. LINCOLN, Ms. MIKULSKI, Mr. MILLER, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NELSON of Florida, Mr. REED, Mr. REID, Mr. ROCKEFELLER, Mr. SARBANES, Ms. STABENOW, Mr. LAUTENBERG, and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

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 Enforce-  
5 ment Enhancement Act of 2003”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) The incidence of violence motivated by the  
4 actual or perceived race, color, religion, national ori-  
5 gin, gender, sexual orientation, or disability of the  
6 victim poses a serious national problem.

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

9 (3) State and local authorities are now and will  
10 continue to be responsible for prosecuting the over-  
11 whelming majority of violent crimes in the United  
12 States, including violent crimes motivated by bias.  
13 These authorities can carry out their responsibilities  
14 more effectively with greater Federal assistance.

15 (4) Existing Federal law is inadequate to ad-  
16 dress this problem.

17 (5) The prominent characteristic of a violent  
18 crime motivated by bias is that it devastates not just  
19 the actual victim and the family and friends of the  
20 victim, but frequently savages the community shar-  
21 ing the traits that caused the victim to be selected.

22 (6) Such violence substantially affects interstate  
23 commerce in many ways, including—

24 (A) by impeding the movement of members  
25 of targeted groups and forcing such members to

1           move across State lines to escape the incidence  
2           or risk of such violence; and

3                   (B) by preventing members of targeted  
4           groups from purchasing goods and services, ob-  
5           taining or sustaining employment, or partici-  
6           pating in other commercial activity.

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

9           (8) Channels, facilities, and instrumentalities of  
10          interstate commerce are used to facilitate the com-  
11          mission of such violence.

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

14          (10) For generations, the institutions of slavery  
15          and involuntary servitude were defined by the race,  
16          color, and ancestry of those held in bondage. Slavery  
17          and involuntary servitude were enforced, both prior  
18          to and after the adoption of the 13th amendment to  
19          the Constitution of the United States, through wide-  
20          spread public and private violence directed at per-  
21          sons because of their race, color, or ancestry, or per-  
22          ceived race, color, or ancestry. Accordingly, elimi-  
23          nating racially motivated violence is an important  
24          means of eliminating, to the extent possible, the

1 badges, incidents, and relics of slavery and involun-  
2 tary servitude.

3 (11) Both at the time when the 13th, 14th, and  
4 15th amendments to the Constitution of the United  
5 States were adopted, and continuing to date, mem-  
6 bers of certain religious and national origin groups  
7 were and are perceived to be distinct “races”. Thus,  
8 in order to eliminate, to the extent possible, the  
9 badges, incidents, and relics of slavery, it is nec-  
10 essary to prohibit assaults on the basis of real or  
11 perceived religions or national origins, at least to the  
12 extent such religions or national origins were re-  
13 garded as races at the time of the adoption of the  
14 13th, 14th, and 15th amendments to the Constitu-  
15 tion of the United States.

16 (12) Federal jurisdiction over certain violent  
17 crimes motivated by bias enables Federal, State, and  
18 local authorities to work together as partners in the  
19 investigation and prosecution of such crimes.

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

1 **SEC. 3. DEFINITION OF HATE CRIME.**

2 In this Act, the term “hate crime” has the same  
3 meaning as in section 280003(a) of the Violent Crime  
4 Control and Law Enforcement Act of 1994 (28 U.S.C.  
5 994 note).

6 **SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**  
7 **PROSECUTIONS BY STATE AND LOCAL LAW**  
8 **ENFORCEMENT OFFICIALS.**

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

11 (1) IN GENERAL.—At the request of a law en-  
12 forcement official of a State or Indian tribe, the At-  
13 torney General may provide technical, forensic, pros-  
14 ecutorial, or any other form of assistance in the  
15 criminal investigation or prosecution of any crime  
16 that—

17 (A) constitutes a crime of violence (as de-  
18 fined in section 16 of title 18, United States  
19 Code);

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

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

1           (2) PRIORITY.—In providing assistance under  
2 paragraph (1), the Attorney General shall give pri-  
3 ority to crimes committed by offenders who have  
4 committed crimes in more than 1 State and to rural  
5 jurisdictions that have difficulty covering the ex-  
6 traordinary expenses relating to the investigation or  
7 prosecution of the crime.

8           (b) GRANTS.—

9           (1) IN GENERAL.—The Attorney General may  
10 award grants to assist State, local, and Indian law  
11 enforcement officials with the extraordinary expenses  
12 associated with the investigation and prosecution of  
13 hate crimes.

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

22           (3) APPLICATION.—

23           (A) IN GENERAL.—Each State that desires  
24 a grant under this subsection shall submit an  
25 application to the Attorney General at such

1 time, in such manner, and accompanied by or  
2 containing such information as the Attorney  
3 General shall reasonably require.

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

9 (C) REQUIREMENTS.—A State or political  
10 subdivision of a State or tribal official applying  
11 for assistance under this subsection shall—

12 (i) describe the extraordinary pur-  
13 poses for which the grant is needed;

14 (ii) certify that the State, political  
15 subdivision, or Indian tribe lacks the re-  
16 sources necessary to investigate or pros-  
17 ecute the hate crime;

18 (iii) demonstrate that, in developing a  
19 plan to implement the grant, the State, po-  
20 litical subdivision, or tribal official has con-  
21 sulted and coordinated with nonprofit, non-  
22 governmental victim services programs  
23 that have experience in providing services  
24 to victims of hate crimes; and

1                   (iv) certify that any Federal funds re-  
2                   ceived under this subsection will be used to  
3                   supplement, not supplant, non-Federal  
4                   funds that would otherwise be available for  
5                   activities funded under this subsection.

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

11                  (5) GRANT AMOUNT.—A grant under this sub-  
12                  section shall not exceed \$100,000 for any single ju-  
13                  risdiction within a 1 year period.

14                  (6) REPORT.—Not later than December 31,  
15                  2004, the Attorney General shall submit to Congress  
16                  a report describing the applications submitted for  
17                  grants under this subsection, the award of such  
18                  grants, and the purposes for which the grant  
19                  amounts were expended.

20                  (7) AUTHORIZATION OF APPROPRIATIONS.—  
21                  There is authorized to be appropriated to carry out  
22                  this subsection \$5,000,000 for each of fiscal years  
23                  2004 and 2005.

1 **SEC. 5. GRANT PROGRAM.**

2 (a) **AUTHORITY TO MAKE GRANTS.**—The Office of  
3 Justice Programs of the Department of Justice shall  
4 award grants, in accordance with such regulations as the  
5 Attorney General may prescribe, to State and local pro-  
6 grams designed to combat hate crimes committed by juve-  
7 niles, including programs to train local law enforcement  
8 officers in identifying, investigating, prosecuting, and pre-  
9 venting hate crimes.

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

13 **SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**  
14 **ASSIST STATE AND LOCAL LAW ENFORCE-**  
15 **MENT.**

16 There are authorized to be appropriated to the De-  
17 partment of the Treasury and the Department of Justice,  
18 including the Community Relations Service, for fiscal  
19 years 2004, 2005, and 2006 such sums as are necessary  
20 to increase the number of personnel to prevent and re-  
21 spond to alleged violations of section 249 of title 18,  
22 United States Code, as added by section 7.

23 **SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

24 (a) **IN GENERAL.**—Chapter 13 of title 18, United  
25 States Code, is amended by adding at the end the fol-  
26 lowing:

1 **“§ 249. Hate crime acts**

2 “(a) IN GENERAL.—

3 “(1) OFFENSES INVOLVING ACTUAL OR PER-  
4 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-  
5 GIN.—Whoever, whether or not acting under color of  
6 law, willfully causes bodily injury to any person or,  
7 through the use of fire, a firearm, or an explosive  
8 or incendiary device, attempts to cause bodily injury  
9 to any person, because of the actual or perceived  
10 race, color, religion, or national origin of any per-  
11 son—

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

15 “(B) shall be imprisoned for any term of  
16 years or for life, fined in accordance with this  
17 title, or both, if—

18 “(i) death results from the offense; or

19 “(ii) the offense includes kidnaping or  
20 an attempt to kidnap, aggravated sexual  
21 abuse or an attempt to commit aggravated  
22 sexual abuse, or an attempt to kill.

23 “(2) OFFENSES INVOLVING ACTUAL OR PER-  
24 CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-  
25 UAL ORIENTATION, OR DISABILITY.—

1           “(A) IN GENERAL.—Whoever, whether or  
2 not acting under color of law, in any cir-  
3 cumstance described in subparagraph (B), will-  
4 fully causes bodily injury to any person or,  
5 through the use of fire, a firearm, or an explo-  
6 sive or incendiary device, attempts to cause  
7 bodily injury to any person, because of the ac-  
8 tual or perceived religion, national origin, gen-  
9 der, sexual orientation, or disability of any per-  
10 son—

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

14                   “(ii) shall be imprisoned for any term  
15 of years or for life, fined in accordance  
16 with this title, or both, if—

17                           “(I) death results from the of-  
18 fense; or

19                           “(II) the offense includes kid-  
20 naping or an attempt to kidnap, ag-  
21 gravated sexual abuse or an attempt  
22 to commit aggravated sexual abuse, or  
23 an attempt to kill.

24           “(B) CIRCUMSTANCES DESCRIBED.—For  
25 purposes of subparagraph (A), the cir-

1           cumstances described in this subparagraph are  
2           that—

3                   “(i) the conduct described in subpara-  
4                   graph (A) occurs during the course of, or  
5                   as the result of, the travel of the defendant  
6                   or the victim—

7                           “(I) across a State line or na-  
8                           tional border; or

9                           “(II) using a channel, facility, or  
10                          instrumentality of interstate or for-  
11                          eign commerce;

12                          “(ii) the defendant uses a channel, fa-  
13                          cility, or instrumentality of interstate or  
14                          foreign commerce in connection with the  
15                          conduct described in subparagraph (A);

16                          “(iii) in connection with the conduct  
17                          described in subparagraph (A), the defend-  
18                          ant employs a firearm, explosive or incen-  
19                          diary device, or other weapon that has  
20                          traveled in interstate or foreign commerce;  
21                          or

22                          “(iv) the conduct described in sub-  
23                          paragraph (A)—

24                           “(I) interferes with commercial  
25                           or other economic activity in which

1 the victim is engaged at the time of  
2 the conduct; or

3 “(II) otherwise affects interstate  
4 or foreign commerce.

5 “(b) CERTIFICATION REQUIREMENT.—No prosecu-  
6 tion of any offense described in this subsection may be  
7 undertaken by the United States, except under the certifi-  
8 cation in writing of the Attorney General, the Deputy At-  
9 torney General, the Associate Attorney General, or any  
10 Assistant Attorney General specially designated by the At-  
11 torney General that—

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

17 “(2) he or his designee or she or her designee  
18 has consulted with State or local law enforcement of-  
19 ficials regarding the prosecution and determined  
20 that—

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

23 “(B) the State has requested that the Fed-  
24 eral Government assume jurisdiction;

1           “(C) the State does not object to the Fed-  
2           eral Government assuming jurisdiction; or

3           “(D) the verdict or sentence obtained pur-  
4           suant to State charges left demonstratively  
5           unvindicated the Federal interest in eradicating  
6           bias-motivated violence.

7           “(c) DEFINITIONS.—In this section—

8           “(1) the term ‘explosive or incendiary device’  
9           has the meaning given the term in section 232 of  
10          this title; and

11          “(2) the term ‘firearm’ has the meaning given  
12          the term in section 921(a) of this title.”.

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

          “249. Hate crime acts.”.

16          **SEC. 8. DUTIES OF FEDERAL SENTENCING COMMISSION.**

17          (a) AMENDMENT OF FEDERAL SENTENCING GUIDE-  
18          LINES.—Pursuant to the authority provided under section  
19          994 of title 28, United States Code, the United States  
20          Sentencing Commission shall study the issue of adult re-  
21          cruitment of juveniles to commit hate crimes and shall,  
22          if appropriate, amend the Federal sentencing guidelines  
23          to provide sentencing enhancements (in addition to the  
24          sentencing enhancement provided for the use of a minor  
25          during the commission of an offense) for adult defendants

1 who recruit juveniles to assist in the commission of hate  
2 crimes.

3 (b) CONSISTENCY WITH OTHER GUIDELINES.—In  
4 carrying out this section, the United States Sentencing  
5 Commission shall—

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

8 (2) avoid duplicative punishments for substan-  
9 tially the same offense.

10 **SEC. 9. STATISTICS.**

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

14 **SEC. 10. SEVERABILITY.**

15 If any provision of this Act, an amendment made by  
16 this Act, or the application of such provision or amend-  
17 ment to any person or circumstance is held to be unconsti-  
18 tutional, the remainder of this Act, the amendments made  
19 by this Act, and the application of the provisions of such  
20 to any person or circumstance shall not be affected there-  
21 by.

○