

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.

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## 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

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## 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 “Matthew Shepard Hate  
5 Crimes Prevention Act”.

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, gender identity, or  
6 disability of the victim poses a serious national prob-  
7 lem.

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

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

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

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

23 (6) Such violence substantially affects interstate  
24 commerce in many ways, including the following:

25 (A) The movement of members of targeted  
26 groups is impeded, and members of such groups

1 are forced to move across State lines to escape  
2 the incidence or risk of such violence.

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

7 (C) Perpetrators cross State lines to com-  
8 mit such violence.

9 (D) Channels, facilities, and instrumental-  
10 ities of interstate commerce are used to facili-  
11 tate the commission of such violence.

12 (E) Such violence is committed using arti-  
13 cles that have traveled in interstate commerce.

14 (7) 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 (8) 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 (9) 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 (10) 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 local jurisdictions, and Indian tribes.

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

25 In this Act—

1 (1) the term “crime of violence” has the mean-  
 2 ing given that term in section 16, title 18, United  
 3 States Code;

4 (2) the term “hate crime” has the meaning  
 5 given such term in section 280003(a) of the Violent  
 6 Crime Control and Law Enforcement Act of 1994  
 7 (28 U.S.C. 994 note); and

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

11 **SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**  
 12 **PROSECUTIONS BY STATE, LOCAL, AND TRIB-**  
 13 **AL LAW ENFORCEMENT OFFICIALS.**

14 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-  
 15 ANCE.—

16 (1) IN GENERAL.—At the request of State,  
 17 local, or tribal law enforcement agency, the Attorney  
 18 General may provide technical, forensic, prosecu-  
 19 torial, or any other form of assistance in the crimi-  
 20 nal investigation or prosecution of any crime that—

21 (A) constitutes a crime of violence;

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

24 (C) is motivated by prejudice based on the  
 25 actual or perceived race, color, religion, national

1 origin, gender, sexual orientation, gender iden-  
2 tity, or disability of the victim, or is a violation  
3 of the State, local, or tribal hate crime laws.

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

11 (b) GRANTS.—

12 (1) IN GENERAL.—The Attorney General may  
13 award grants to State, local, and tribal law enforce-  
14 ment agencies for extraordinary expenses associated  
15 with the investigation and prosecution of hate  
16 crimes.

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

25 (3) APPLICATION.—

1 (A) IN GENERAL.—Each State, local, and  
2 tribal law enforcement agency that desires a  
3 grant under this subsection shall submit an ap-  
4 plication to the Attorney General at such time,  
5 in such manner, and accompanied by or con-  
6 taining such information as the Attorney Gen-  
7 eral shall reasonably require.

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

13 (C) REQUIREMENTS.—A State, local, and  
14 tribal law enforcement agency applying for a  
15 grant under this subsection shall—

16 (i) describe the extraordinary pur-  
17 poses for which the grant is needed;

18 (ii) certify that the State, local gov-  
19 ernment, or Indian tribe lacks the re-  
20 sources necessary to investigate or pros-  
21 ecute the hate crime;

22 (iii) demonstrate that, in developing a  
23 plan to implement the grant, the State,  
24 local, and tribal law enforcement agency  
25 has consulted and coordinated with non-

1 profit, nongovernmental victim services  
2 programs that have experience in providing  
3 services to victims of hate crimes; and

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

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

14 (5) GRANT AMOUNT.—A grant under this sub-  
15 section shall not exceed \$100,000 for any single ju-  
16 risdiction in any 1-year period.

17 (6) REPORT.—Not later than December 31,  
18 2010, the Attorney General shall submit to Congress  
19 a report describing the applications submitted for  
20 grants under this subsection, the award of such  
21 grants, and the purposes for which the grant  
22 amounts were expended.

23 (7) AUTHORIZATION OF APPROPRIATIONS.—  
24 There is authorized to be appropriated to carry out

1       this subsection \$5,000,000 for each of fiscal years  
2       2010 and 2011.

3 **SEC. 5. GRANT PROGRAM.**

4       (a) **AUTHORITY TO AWARD GRANTS.**—The Office of  
5 Justice Programs of the Department of Justice may  
6 award grants, in accordance with such regulations as the  
7 Attorney General may prescribe, to State, local, or tribal  
8 programs designed to combat hate crimes committed by  
9 juveniles, including programs to train local law enforce-  
10 ment officers in identifying, investigating, prosecuting,  
11 and preventing hate crimes.

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

15 **SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO**  
16                   **ASSIST STATE, LOCAL, AND TRIBAL LAW EN-**  
17                   **FORCEMENT.**

18       There are authorized to be appropriated to the De-  
19 partment of Justice, including the Community Relations  
20 Service, for fiscal years 2010, 2011, and 2012 such sums  
21 as are necessary to increase the number of personnel to  
22 prevent and respond to alleged violations of section 249  
23 of title 18, United States Code, as added by section 7 of  
24 this Act.

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

2 (a) IN GENERAL.—Chapter 13 of title 18, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 249. Hate crime acts**

6 “(a) IN GENERAL.—

7 “(1) OFFENSES INVOLVING ACTUAL OR PER-  
8 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-  
9 GIN.—Whoever, whether or not acting under color of  
10 law, willfully causes bodily injury to any person or,  
11 through the use of fire, a firearm, a dangerous  
12 weapon, or an explosive or incendiary device, at-  
13 tempts to cause bodily injury to any person, because  
14 of the actual or perceived race, color, religion, or na-  
15 tional origin of any person—

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

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

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

23 “(ii) the offense includes kidnapping  
24 or an attempt to kidnap, aggravated sexual  
25 abuse or an attempt to commit aggravated  
26 sexual abuse, or an attempt to kill.

1           “(2) OFFENSES INVOLVING ACTUAL OR PER-  
2           CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-  
3           UAL ORIENTATION, GENDER IDENTITY, OR DIS-  
4           ABILITY.—

5           “(A) IN GENERAL.—Whoever, whether or  
6           not acting under color of law, in any cir-  
7           cumstance described in subparagraph (B) or  
8           paragraph (3), willfully causes bodily injury to  
9           any person or, through the use of fire, a fire-  
10          arm, a dangerous weapon, or an explosive or in-  
11          cendiary device, attempts to cause bodily injury  
12          to any person, because of the actual or per-  
13          ceived religion, national origin, gender, sexual  
14          orientation, gender identity or disability of any  
15          person—

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

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

22                           “(I) death results from the of-  
23                           fense; or

24                           “(II) the offense includes kidnap-  
25                           ping or an attempt to kidnap, aggra-

1 vated sexual abuse or an attempt to  
2 commit aggravated sexual abuse, or  
3 an attempt to kill.

4 “(B) CIRCUMSTANCES DESCRIBED.—For  
5 purposes of subparagraph (A), the cir-  
6 cumstances described in this subparagraph are  
7 that—

8 “(i) the conduct described in subpara-  
9 graph (A) occurs during the course of, or  
10 as the result of, the travel of the defendant  
11 or the victim—

12 “(I) across a State line or na-  
13 tional border; or

14 “(II) using a channel, facility, or  
15 instrumentality of interstate or for-  
16 eign commerce;

17 “(ii) the defendant uses a channel, fa-  
18 cility, or instrumentality of interstate or  
19 foreign commerce in connection with the  
20 conduct described in subparagraph (A);

21 “(iii) in connection with the conduct  
22 described in subparagraph (A), the defend-  
23 ant employs a firearm, dangerous weapon,  
24 explosive or incendiary device, or other

1                   weapon that has traveled in interstate or  
2                   foreign commerce; or

3                   “*(iv)* the conduct described in sub-  
4                   paragraph (A)—

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

9                   “*(II)* otherwise affects interstate  
10                  or foreign commerce.

11                  “*(3)* OFFENSES OCCURRING IN THE SPECIAL  
12                  MARITIME OR TERRITORIAL JURISDICTION OF THE  
13                  UNITED STATES.—Whoever, within the special mari-  
14                  time or territorial jurisdiction of the United States,  
15                  commits an offense described in paragraph (1) or  
16                  (2) shall be subject to the same penalties as pre-  
17                  scribed in those paragraphs.

18                  “*(b)* CERTIFICATION REQUIREMENT.—

19                  “*(1)* IN GENERAL.—No prosecution of any of-  
20                  fense described in this subsection may be undertaken  
21                  by the United States, except under the certification  
22                  in writing of the Attorney General, or his designee,  
23                  that—

24                  “*(A)* the State does not have jurisdiction;

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

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

7           “(D) a prosecution by the United States is  
8           in the public interest and necessary to secure  
9           substantial justice.

10          “(2) RULE OF CONSTRUCTION.—Nothing in  
11          this subsection shall be construed to limit the au-  
12          thority of Federal officers, or a Federal grand jury,  
13          to investigate possible violations of this section.

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

15               “(1) the term “bodily injury” has the meaning  
16               given such term in section 1365(h)(4) of this title,  
17               but does not include solely emotional or psycho-  
18               logical harm to the victim;

19               “(2) the term ‘explosive or incendiary device’  
20               has the meaning given such term in section 232 of  
21               this title;

22               “(3) the term ‘firearm’ has the meaning given  
23               such term in section 921(a) of this title; and

1           “(4) the term ‘gender identity’ for the purposes  
2           of this chapter means actual or perceived gender-re-  
3           lated characteristics.”.

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

          “249. Hate crime acts.”.

7           **SEC. 8. STATISTICS.**

8           (a) **IN GENERAL.**—Subsection (b)(1) of the first sec-  
9           tion of the Hate Crime Statistics Act (28 U.S.C. 534 note)  
10          is amended by inserting “gender and gender identity,”  
11          after “race,”.

12          (b) **DATA.**—Subsection (b)(5) of the first section of  
13          the Hate Crime Statistics Act (28 U.S.C. 534 note) is  
14          amended by inserting “, including data about crimes com-  
15          mitted by, and crimes directed against, juveniles” after  
16          “data acquired under this section”.

17          **SEC. 9. SEVERABILITY.**

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

1 **SEC. 10. RULE OF CONSTRUCTION.**

2 For purposes of construing this Act and the amend-  
3 ments made by this Act the following shall apply:

4 (1) **RELEVANT EVIDENCE.**—Courts may con-  
5 sider relevant evidence of speech, beliefs, or expres-  
6 sive conduct to the extent that such evidence is of-  
7 fered to prove an element of a charged offense or is  
8 otherwise admissible under the Federal Rules of Evi-  
9 dence. Nothing in this Act is intended to affect the  
10 existing rules of evidence.

11 (2) **VIOLENT ACTS.**—This Act applies to violent  
12 acts motivated by actual or perceived race, color, re-  
13 ligion, national origin, gender, sexual orientation,  
14 gender identity or disability of a victim.

15 (3) **CONSTITUTIONAL PROTECTIONS.**—Nothing  
16 in this Act shall be construed to prohibit any con-  
17 stitutionally protected speech, expressive conduct or  
18 activities (regardless of whether compelled by, or  
19 central to, a system of religious belief), including the  
20 exercise of religion protected by the First Amend-  
21 ment and peaceful picketing or demonstration. The  
22 Constitution does not protect speech, conduct or ac-  
23 tivities consisting of planning for, conspiring to com-  
24 mit, or committing an act of violence.

25 (4) **FREE EXPRESSION.**—Nothing in this Act  
26 shall be construed to allow prosecution based solely

1       upon an individual's expression of racial, religious,  
2       political, or other beliefs or solely upon an individ-  
3       ual's membership in a group advocating or espous-  
4       ing such beliefs.

○