

U.S. DEPARTMENT OF JUSTICE

Hate Crimes & Hate Incidents



What is a HATE CRIME?



Federally Protected Classes

Race, Color, National Origin

Religion

Disability

Sexual Orientation

Familial Status

Sex, Gender

Gender Identity

Overview of Federal Hate Crime Laws



18 U.S.C. 241- Conspiracy Against Rights

- ▶ This statute makes it unlawful for two or more persons to conspire to injure, threaten, or intimidate a person in any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to the individual by the U.S. Constitution or the laws of the U.S.
- ▶ A violation of § 241 is always a felony offense, even if the related substantive offense is a misdemeanor. In addition, a conviction under § 241 carries a potential ten-year term of imprisonment; and if death results, or if the defendant's actions in connection with the conspiracy include kidnapping or sexual abuse, or attempted kidnapping, sexual abuse or murder, the offense is punishable by imprisonment for any term of years or for life, or by death. The statute of limitations is five years, but if death results then there is no statute of limitations. See 18 U.S.C. §§ 3281 and 3282.

18 U.S.C. 245- Violent Interference with Federally Protected Rights

- ▶ This statute makes it a crime to use or threaten to use force to willfully interfere with a person's participation in a federally protected activity because of race, color, religion, or national origin. Federally protected activities include public education, employment, jury service, travel, or the enjoyment of public accommodations. Under this statute, it is also a crime to use or threaten to use force against those who are assisting and supporting others in participating in these federally protected activities.
- ▶ A violation of § 245 is a felony offense punishable by a maximum of ten years in prison and a fine of \$250,000 if "bodily injury" results or if the acts committed in violation of the statute "include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire." If the acts resulted in death, or if such acts "include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill," the defendant is subject to imprisonment for any term of years or for life or may be sentenced to death. In all other circumstances, the offense is a misdemeanor punishable by a maximum of one year in prison and a fine of \$100,000. See 18 U.S.C. § 245(b). The statute of limitations is five years, unless the offense is death eligible, in which case there is no statute of limitations. See 18 U.S.C. § 3282

Ninth Circuit Case Law- 18 U.S.C. 245

- ▶ United States. v. Silva, 428 Fed.Appx. 737 (9th Cir. 2011) (unpub)
 - This is a very short (2-paragraph) opinion affirming a § 245(b)(2)(B) conviction for violent interference with the victim's right to enjoy a public beach administered by a city's Department of Parks and Recreation. The court held that Rule 404(b) evidence, bearing on the defendant's intent and motivation, had been properly admitted.
- ▶ United States v. Armstrong, [620 F.3d 1172](#), 1175 (9th Cir. 2010)
 - The Ninth Circuit upheld a sentence imposed upon defendants for assaulting a victim to willfully injure, intimidate, and interfere with him because of his race and because he was enjoying the goods and services of an establishment that serves the public, in violation of § 245(b)(2)(F). The Court upheld a sentence increase pursuant to USSG 3A1.1 based upon the selection of the victim because of race. One of the defendants had objected to the increase, claiming that it was his codefendant, who initiated the assault, that selected the victim. The court also upheld the adjustment given for obstruction.

Ninth Circuit Case Law- 18 U.S.C. 245

- ▶ United States v. Allen, [341 F.3d 870](#) (9th Cir. 2003).
 - Defendants were convicted of violating § 245(b)(2)(B), and the Ninth Circuit affirmed. The defendants, white supremacists, had participated in a "park patrol," which was intended to drive minorities out of a local park. The defendants argued that the victims had not been participating in or enjoying any benefit, service, privilege, program, facility, or activity provided by the state under § 245(b)(2)(B) because the park had been closed at the time of the incident. The district court had rejected this argument, and the Ninth Circuit agreed.
 - The defendants also challenged the admission at trial of skinhead and white supremacist evidence, including color photographs of their tattoos, Nazi-related literature, group photographs, and skinhead paraphernalia. The defendants argued that, under Fed. R. Evid. 403, the prejudicial effect of the evidence had outweighed its probative value and that admission of the evidence had been cumulative. The district court had denied the defendants' motions to exclude this evidence because it concluded that the evidence was relevant to proving the defendants' motive, intent, and plan. The Ninth Circuit agreed with the district court, holding that, although the evidence was prejudicial, it was not unfairly so and it properly had been admitted in order to prove racial animus.

42. U.S.C. 3631- Criminal Interference with Right to Fair Housing

- ▶ This statute makes it a crime to use or threaten to use force to interfere with housing rights because of the victim's race, color, religion, sex, disability, familial status, or national origin.
- ▶ A violation of § 3631 is a felony offense punishable by a maximum of ten years imprisonment and a fine of \$250,000 if "bodily injury" results or if the acts committed in violation of the statute "include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire." The offense is punishable by imprisonment for any term of years or for life if the crime resulted in death or "if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill." Otherwise the offense is a misdemeanor punishable by a maximum of one year in prison and a fine of \$100,000.

Ninth Circuit Case Law- 42 U.S.C. 3631

- ▶ United States v. Smith, [2010 WL 510634](#) (9th Cir. Feb. 12, 2010).
 - Prosecution of defendant who made repeated threats, over CB radio, to go to the home of an African-American victim, burn a cross, hang the victim in a tree, and rape the victim's wife. At some point, the victim told the defendant to "come on over" and the defendant did so, arriving with several other men and began verbally harassing the victim. The victim had wisely called the police, who broke up the incident before any violence actually occurred. The conviction was upheld on appeal. The appellate court opinion dealt with criminal procedure and sentencing issues. Significantly, the Ninth Circuit held that, to obtain an enhancement for racial motivation, the government need not prove that race was a primary motivating factor but that, instead, it was sufficient to show the same level of motive required for conviction in the first instance (the jury had been instructed that, to convict, it must determine that race was a substantial—not a primary—motivating factor).
- ▶ United States v. Sanders, [41 F.3d 480](#) (9th Cir. 1994).
 - The defendant sent letters replete with racial epithets to a local chapter of the NAACP. The chapter president's home was also at the office, leading to § 3631(a) charges. The court held that it was not error for the district court to hold the defendant ineligible for a reduction of sentence because his activities were but a "single instance" of conduct "evidencing little or no deliberation."

Ninth Circuit Case Law- 42 U.S.C. 3631

- ▶ United States v. McInnis, 976 F.2d 1226 (9th Cir. 1992).
 - The defendant, who lived next door to the African-American victims, fired a single-action rifle into the black family's home twice, and the bullet pierced two walls and struck one occupant's stomach, requiring surgery. The defendant was convicted on § 3631(a) charges. He appealed claiming that the evidence was insufficient to prove that the defendant had the specific intent to injure, intimidate or interfere with the victim because of her race and because of the victim's occupation of her home. The court rejected this argument based on the defendant's numerous racial remarks immediately before the shooting. Furthermore, the police found numerous items of racist paraphernalia in the defendant's home. The defendant challenged the admission into evidence four of these as unduly prejudicial, because each bore swastikas, but the court rejected the argument. The Court of Appeals also accepted the government's argument that the district court improperly sentenced the defendant by failing to correctly calculate the base offense level using assault as the underlying crime. This case includes a detailed discussion of voluntary intoxication as a defense to a specific intent crime and is useful to cite in response to a defendant raising such a defense.

- ▶ United States v. Skillman, 922 F.2d 1370 (9th Cir. 1990).
 - The defendant was convicted of charges under §§ 3631(a), 241, and 844(h)(1) after a cross burning outside the home of a black family. The defendant claims there was insufficient evidence to convict him because he was merely present at the scene of a crime. However, the court held that the requisite "slight connection" existed in that the defendant carried a can of gasoline to the scene of the crime. The court also rejected the defendant's contention that he was unduly prejudiced by discussion of his status as a skinhead at trial; the evidence was deemed relevant given that the racial implications were part of the elements of the § 3631 charges. The court upheld the application of a vulnerable victim enhancement: "Skillman knew or should have known that a black family ... would be terrified and particularly susceptible to this criminal conduct."

18 U.S.C. 247- Damage to Religious Property, Church Arson Prevention Act

- ▶ This statute prohibits the intentional defacement, damage, or destruction of religious real property because of the religious nature of the property, where the crime affects interstate or foreign commerce, or because of the race, color, or ethnic characteristics of the people associated with the property. The statute also criminalizes the intentional obstruction by force, or threat of force of any person in the enjoyment of that person's free exercise of religious beliefs.
- ▶ If a violation of § 247 results in bodily injury to any person or if it includes the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, the penalty is not more than 20 years in prison. If bodily injury results *and* the violation is by means of fire or an explosive, the penalty is not more than 40 years in prison. If death results or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, the penalty is any term of years or life. In all other cases, a violation of § 247 is a misdemeanor. See 18 U.S.C. § 247(d)(1)-(4). The statute of limitations is seven years, unless death results, in which case there is no statute of limitations. See 18 U.S.C. § 247(g).

18 U.S.C. 249- The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009

- ▶ The Shepard Byrd Act is the first statute allowing federal criminal prosecution of hate crimes motivated by the victim's actual or perceived sexual orientation or gender identity. The Act makes it a federal crime to willfully cause bodily injury, or attempt to do so using a dangerous weapon, because of the victim's actual or perceived race, color, religion, or national origin. The Act also covers crimes committed because of the actual or perceived religion, national origin, sexual orientation, gender, gender identity, or disability of any person, if the crime affected interstate or foreign commerce or occurred within federal special maritime or territorial jurisdiction.
- ▶ A violation of § 249 is always a felony offense. A conviction under § 249 carries a statutory maximum of ten years imprisonment; and if death results, or if the defendant's actions include kidnapping or attempted kidnapping, sexual abuse or attempted sexual abuse, or an attempt to kill, the offense is punishable by imprisonment for any term of years or for life. 18 U.S.C. § 249. The statute of limitations is seven years unless death results, in which case there is no statute of limitations

34 U.S.C. 30501- The COVID-19 Hate Crimes Act

- ▶ This statute directs the Department of Justice to speed up the review of hate crimes for bringing charges. The Department must also work to improve the reporting of hate crimes and hate incidents in light of the rise in anti-Asian hate during the COVID-19 pandemic. To meet this goal, the law requires the Department to reach out to law enforcement agencies and to provide them with helpful tools and resources for reporting, enforcing, and preventing hate crimes.

Emmett Till Unsolved Civil Rights Crime Act

H. R. 923

One Hundred Tenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To provide for the investigation of certain unsolved civil rights 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 "Emmett Till Unsolved Civil Rights Crime Act of 2007".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that all authorities with jurisdiction, including the Federal Bureau of Investigation and other entities within the Department of Justice, should—

- (1) expeditiously investigate unsolved civil rights murders, due to the amount of time that has passed since the murders and the age of potential witnesses; and
- (2) provide all the resources necessary to ensure timely and thorough investigations in the cases involved.

SEC. 3. DEPUTY CHIEF OF THE CRIMINAL SECTION OF THE CIVIL RIGHTS DIVISION.

(a) **IN GENERAL.**—The Attorney General shall designate a Deputy Chief in the Criminal Section of the Civil Rights Division of the Department of Justice.

(b) **RESPONSIBILITY.**—

(1) **IN GENERAL.**—The Deputy Chief shall be responsible for coordinating the investigation and prosecution of violations of criminal civil rights statutes that occurred not later than December 31, 1969, and resulted in a death.

(2) **COORDINATION.**—In investigating a complaint under paragraph (1), the Deputy Chief may coordinate investigative activities with State and local law enforcement officials.

(c) **STUDY AND REPORT.**—

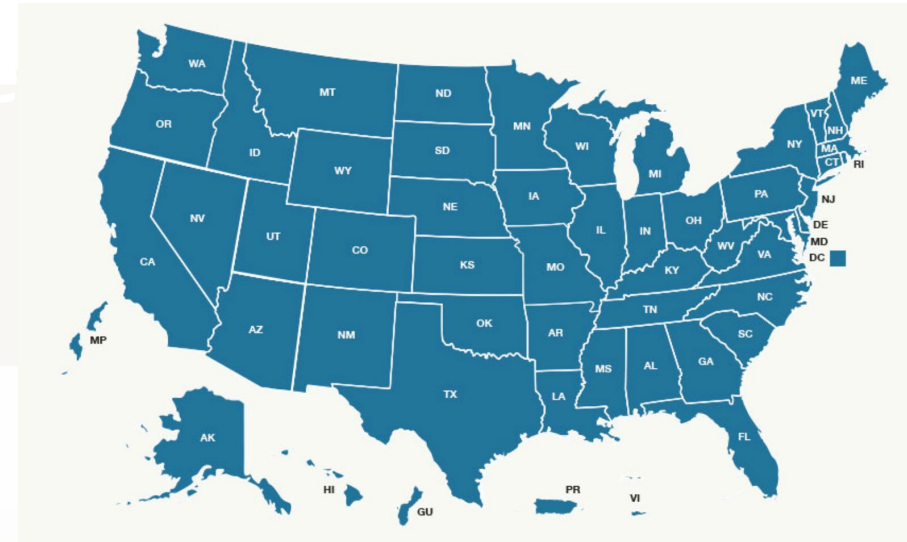
(1) **STUDY.**—The Attorney General shall annually conduct a study of the cases under the jurisdiction of the Deputy Chief or under the jurisdiction of the Supervisory Special Agent and, in conducting the study, shall determine—

(A) the number of open investigations within the Department for violations of criminal civil rights statutes that occurred not later than December 31, 1969;

Hate Crime Statutes in Washington

Washington hate crime laws protect the following groups:

- ▶ Race/Color
- ▶ National Origin
- ▶ Religion
- ▶ Sexual Orientation
- ▶ Gender/Sex
- ▶ Gender Identity
- ▶ Disability



First Amendment Protections

The First Amendment protects:



Expressing one's personal beliefs

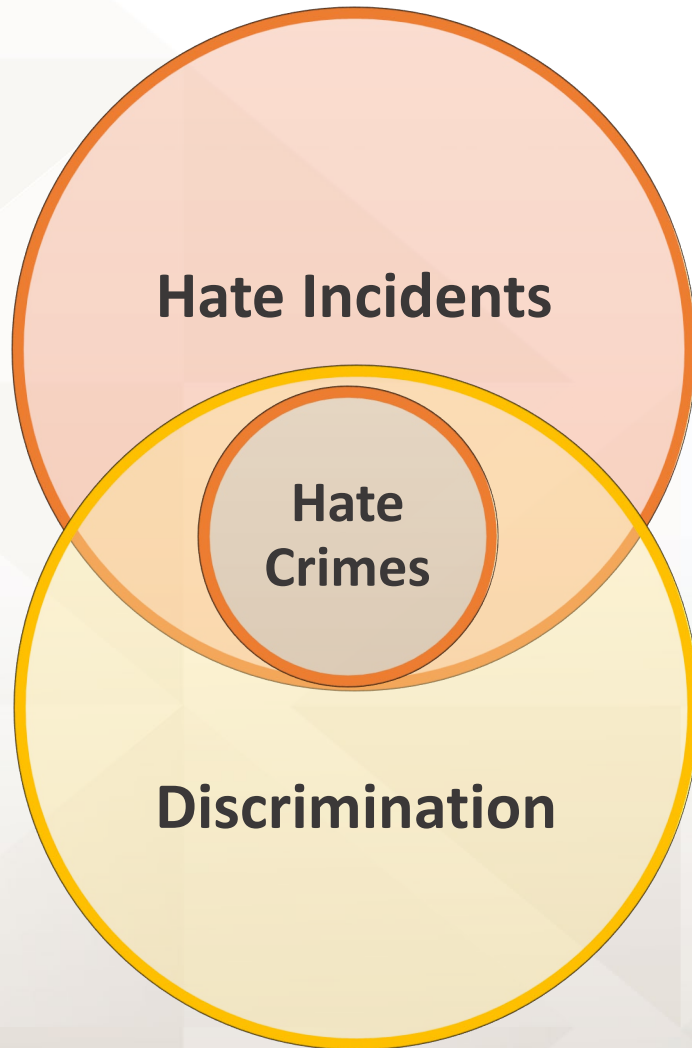


Asking others to adopt those beliefs



Being a member of a group that expresses or advocates for such beliefs

Some Hate Incidents May Be Discrimination



**Federal law protects you from
illegal discrimination.**

Report civil rights violations to:
USAWAE.CivilRights@usdoj.gov

(509) 835-6306

and/or

www.civilrights.justice.gov

Difference between Hate Crimes and Hate Incidents



Report Both to Law Enforcement

What to do When a Hate Crime Occurs



**Get
immediate
help:
Dial 9-1-1.**



**Report the
hate crime to
your local law
enforcement (456-
2233) and then the
FBI.**



**Submit Tips
to FBI:
www.fbi.gov/tips**

Relevant Hate Crime Factors

Victim is Part of a Protected Class

Comments, Written Statements, or Gestures

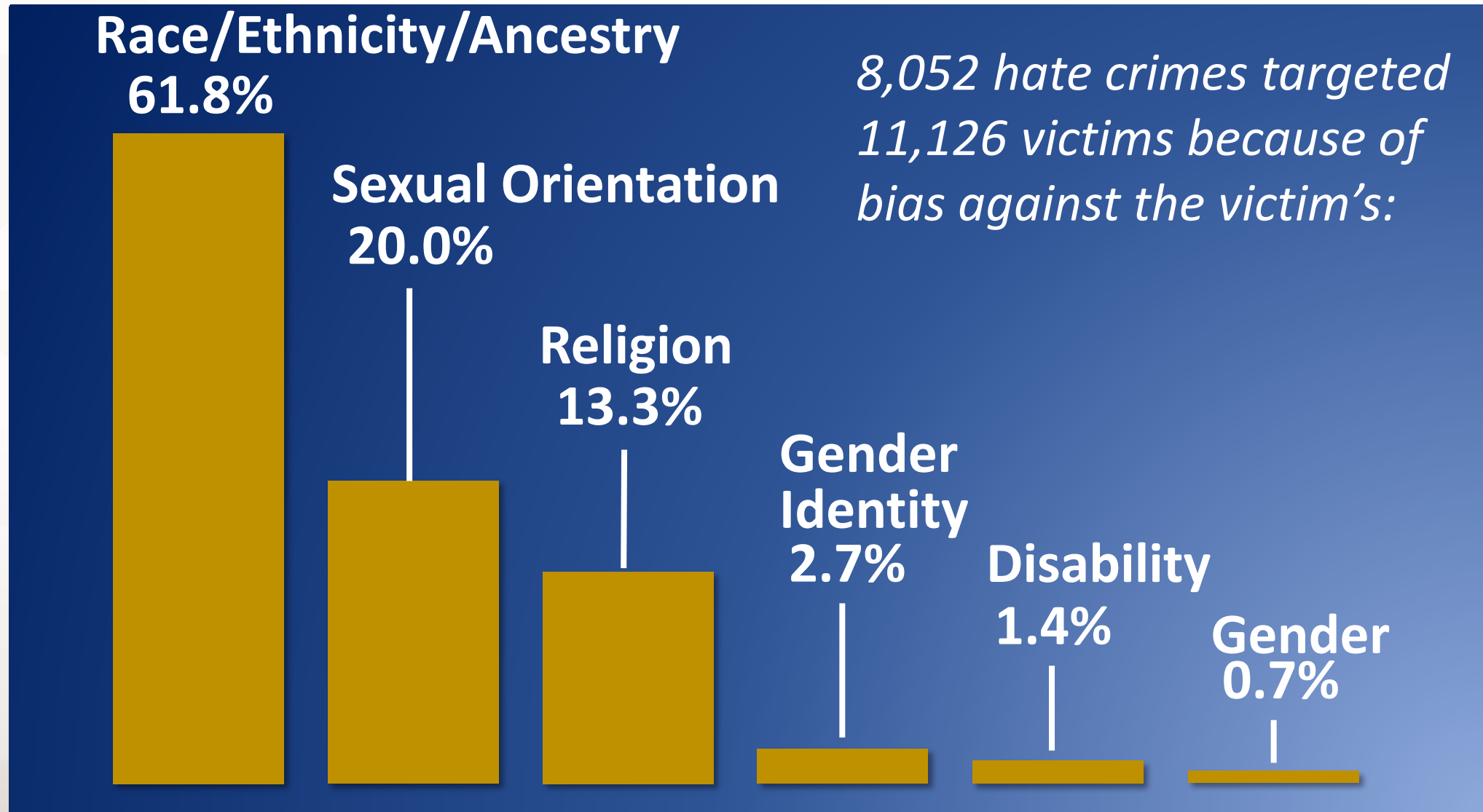
Drawings, Markings, Symbols, or Graffiti

Membership in Hate Groups

Previous Hate Crimes or Incidents

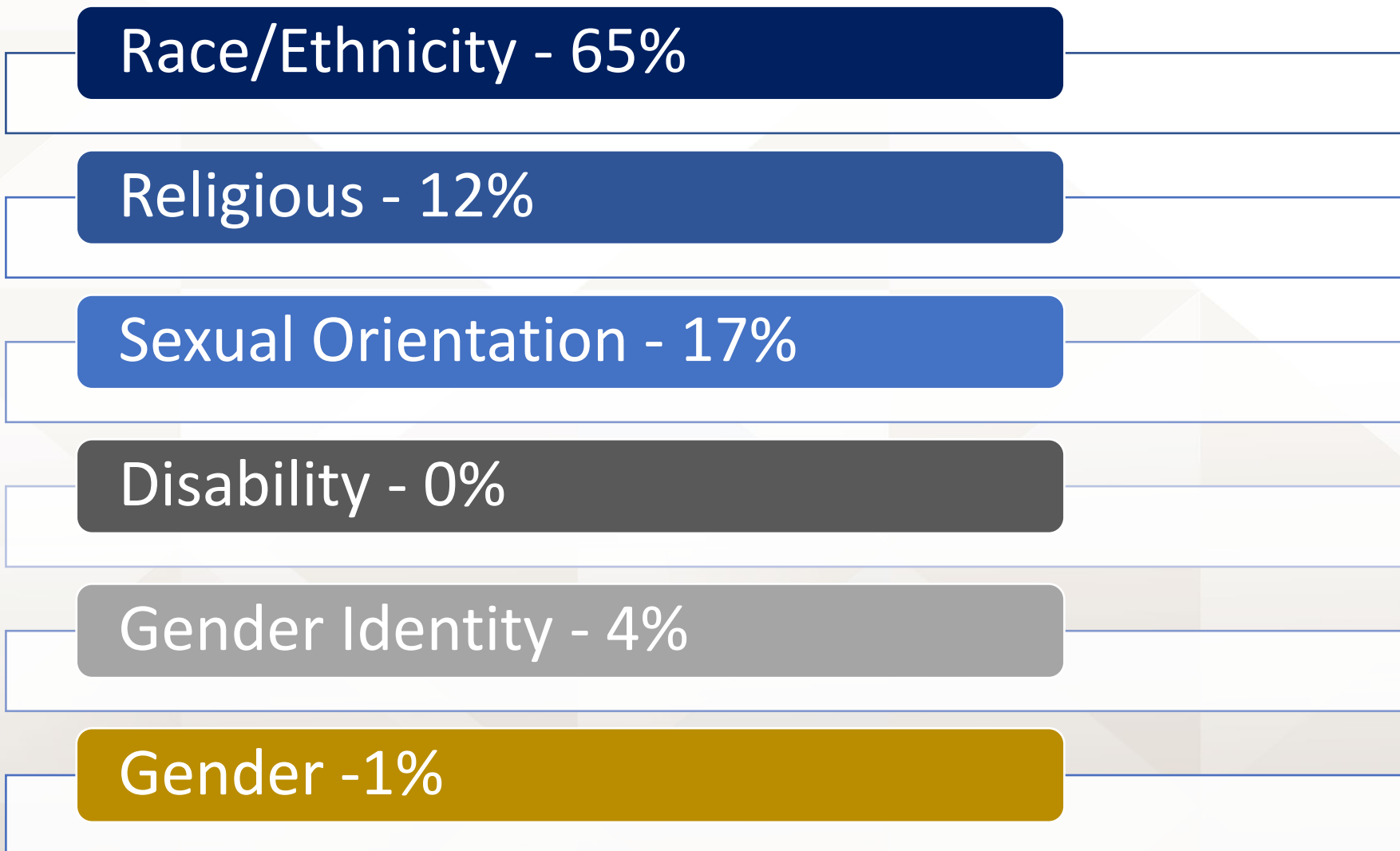
Location of Incidents (such as church, temple, etc.)

2020 Reported Hate Crime Statistics - by Bias



Source: FBI Crime Data Explorer 2020 Hate Crimes Statistics

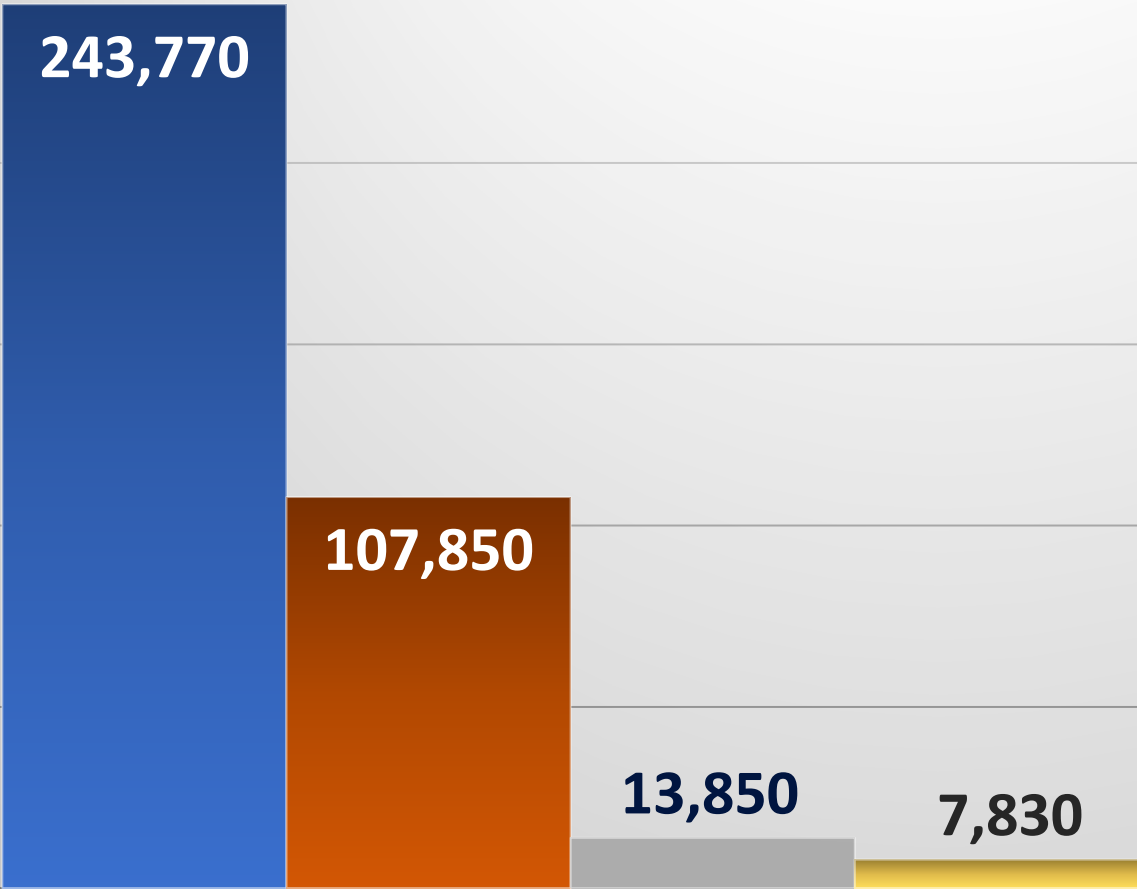
Spokane Hate Crimes Reported to SPD (2010-2020)



Source: FBI Crime Data Explorer

National Crime Victimization Survey Responses

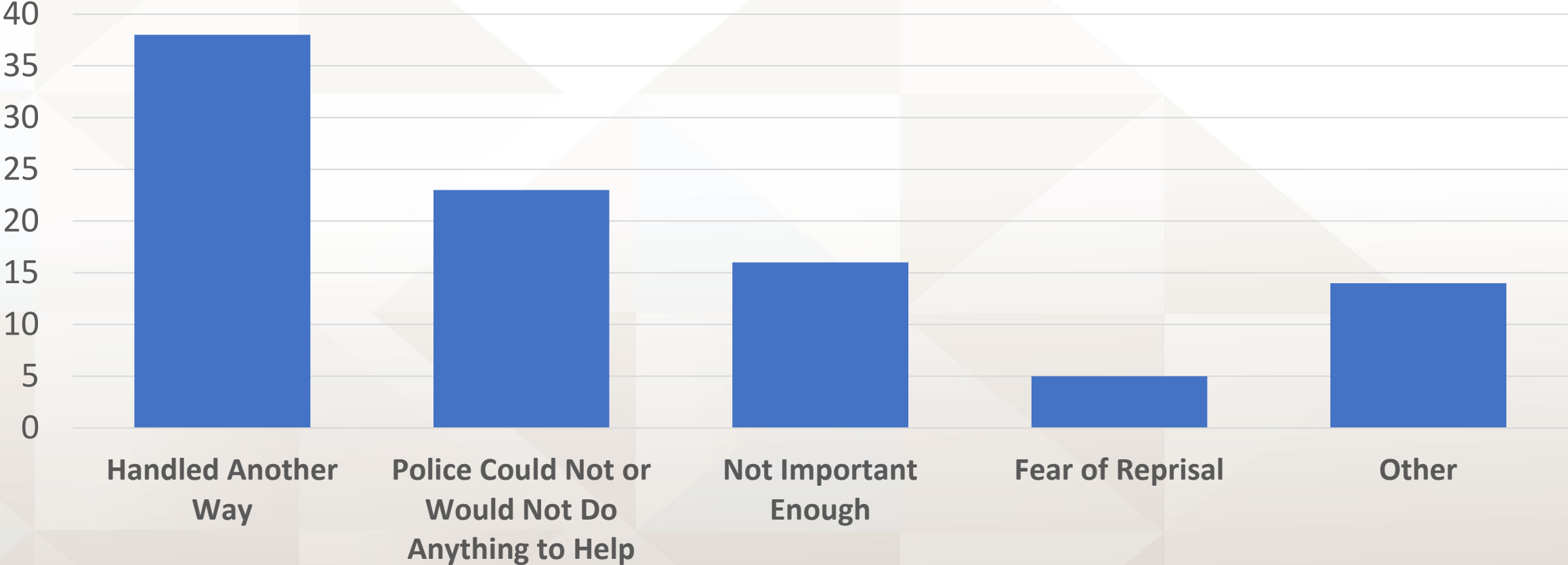
Annual Reported Averages from 2010-2019



- NCVS - Average annual hate crime victimizations
- NCVS - Victimization reported to police
- NCVS - Victim reported that the police confirmed the crime was a hate crime
- UCR Reported - Average annual hate crime victims

Why Hate Crimes Are Underreported

Most Important Reasons for Not Reporting Hate Crimes to the Police, 2015-2019



Additional Resources



National Resources

Stop Hate Project:

www.8449NoHate.org

Victim Connect Resource Center:

www.victimconnect.org

Local Resources

Crime Check 456-2233

Need to report a CRIME?

U.S. Attorney's Office- EDWA,
Civil Rights Team
(509) 838-6306

USAWAE.CivilRights@usdoj.gov



THE UNITED STATES
DEPARTMENT *of* JUSTICE

United States Attorney's Office
Eastern District of Washington

U.S. Attorney's Office Eastern District of Washington
Civil Rights Team

Email: USAWAE.CivilRights@usdoj.gov

Phone: (509) 835-6306

Webpage: <https://www.justice.gov/usao-edwa/edwa-civil-rights-webpage>

QUESTIONS?