

109TH CONGRESS
1ST SESSION

S. 1145

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

IN THE SENATE OF THE UNITED STATES

MAY 26, 2005

Mr. KENNEDY (for himself, Mr. SPECTER, 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, Ms. CANTWELL, Mrs. CLINTON, Mr. COLEMAN, Mr. CORZINE, Mr. DAYTON, Mr. DODD, Mr. DURBIN, Mrs. FEINSTEIN, Mr. HARKIN, Mr. INOUE, Mr. JOHNSON, Mr. KERRY, Ms. LANDRIEU, Mr. LEVIN, Mrs. LINCOLN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Nebraska, Mr. NELSON of Florida, Mr. OBAMA, Mr. REED, Mr. SALAZAR, Mr. SARBANES, Ms. STABENOW, Mr. LAUTENBERG, Mr. PRYOR, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2005”.

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 2006, 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 2006 and 2007.

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 2006, 2007, and 2008 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 or
8 incendiary device, attempts to cause bodily injury to
9 any person, because of the actual or perceived race,
10 color, religion, or national origin of any person—

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

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

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

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

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

25 “(A) IN GENERAL.—Whoever, whether or
26 not acting under color of law, in any cir-

1 cumstance described in subparagraph (B), will-
2 fully causes bodily injury to any person or,
3 through the use of fire, a firearm, or an explo-
4 sive or incendiary device, attempts to cause
5 bodily injury to any person, because of the ac-
6 tual or perceived religion, national origin, gen-
7 der, sexual orientation, or disability of any per-
8 son—

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

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

15 “(I) death results from the of-
16 fense; or

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

22 “(B) CIRCUMSTANCES DESCRIBED.—For
23 purposes of subparagraph (A), the cir-
24 cumstances described in this subparagraph are
25 that—

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

5 “(I) across a State line or na-
6 tional border; or

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

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

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

20 “(iv) the conduct described in sub-
21 paragraph (A)—

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

1 “(II) otherwise affects interstate
2 or foreign commerce.

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

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

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

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

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

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

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

5 “(c) DEFINITIONS.—In this section—

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

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

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—

12 The analysis for chapter 13 of title 18, United States
13 Code, is amended by adding at the end the following:

 “249. Hate crime acts”.

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

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

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

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

6 (2) avoid duplicative punishments for substan-
7 tially the same offense.

8 **SEC. 9. STATISTICS.**

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

12 **SEC. 10. SEVERABILITY.**

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

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