

Fighting Far-Right Violence and Hate Crimes

Resetting Federal Law Enforcement Priorities

By Michael German and Emmanuel Mauleón PUBLISHED JULY 1, 2019

On April 27, 2019, a white supremacist armed with a high-powered rifle walked into a San Diego synagogue and shot four people, one fatally, before fleeing and finally surrendering to police. A letter the gunman allegedly posted online shortly before the shooting claimed credit for a previous arson attack on an Escondido mosque, spewed racist “white genocide” conspiracy theories, cited earlier white supremacist attacks against a synagogue in Pittsburgh and mosques in New Zealand, and urged like-minded white Christians to commit further acts of violence.¹

Was this crime an act of terrorism, a hate crime, or just another homicide? Under current Justice Department policies, how far-right violence targeting people based on race, religion, national origin, gender, sexual orientation, gender identity, or disability gets categorized is often arbitrary. But it has significant consequences for how federal officials label these crimes in public statements, how they prioritize and track them, and whether they will investigate and prosecute them. As a result, the Justice Department doesn’t know how many people far-right militants attack each year in the United States, which leaves intelligence analysts and policy makers in the dark about the impact this violence inflicts on our society and how to best address it. More importantly, the failure to properly label and respond

to far-right violence deprives victimized communities of basic human dignity and equal protection of the law.

Developing more effective federal policies to address far-right violence requires a new approach that better protects vulnerable communities from all forms of violence and utilizes restorative justice practices to remediate the communal injuries that these crimes inflict.

Attacks like the San Diego synagogue shooting often fit the federal definitions of both domestic terrorism and hate crimes, as well as state violations like murder. Laws governing these crimes all carry substantial penalties, but how the Justice Department initially labels them becomes important chiefly because its policies de-prioritize hate crimes investigations. Terrorism investigations are the FBI’s number one priority and are well-resourced. These investigations tend to look broadly to determine if an ongoing criminal organization may have supported the attack or be planning new ones. In contrast, civil rights violations like hate crimes rank fifth out of eight priorities, and investigations tend to focus narrowly on a particular attack or attacker. To make matters worse, the Justice Department defers the vast majority of hate crimes investigations to state and local law enforcement without any federal evaluation to determine if the perpetrators are part of a larger violent far-right group. State and local law enforcement are often ill-equipped or

unwilling to properly respond to these crimes.

The Justice Department also regularly treats white supremacist violence not as domestic terrorism or hate crimes, but as gang crimes, which rank sixth on the FBI's priority list. The Justice Department has made no effort to comprehensively account for all incidents of far-right violence across these different program categories to reveal the full scope of their impact on American society.

Though far-right attacks represent just a tiny proportion of the violence that takes place in the U.S. each year, they require specific attention because they pose a persistent threat to vulnerable communities, particularly communities of color, immigrants, LGBTQ people, women, the disabled, and religious minorities. These communities are already disproportionately victimized by other violent crimes, including police violence, much of which is never prosecuted. Moreover, the organized nature of far-right groups that often commit this violence allows them to quickly replace any member who is incarcerated and to carry out further acts of violence after any individual crime is successfully prosecuted. Finally, since far-right attacks are intended to inflict injuries beyond the direct victims by threatening and intimidating entire communities of people who share similar attributes, they demand a more comprehensive and strategic government response. Simply increasing criminal penalties for these perpetrators does little to redress the broader social injuries that result.

Current and former Justice Department officials have been calling for a new domestic terrorism statute to combat far-right violence, but there are already dozens of federal statutes carrying severe penalties that are available to investigators and prosecutors pursuing these crimes, as detailed in our earlier white paper, *Wrong Priorities for Fighting Terrorism*.² Which of these statutes prosecutors ultimately charge in a particular case is far less important than how Justice Department officials label these attacks in public statements when they occur, and how they prioritize, resource, and track the investigation and prosecution of these crimes. Under current policies, when Justice Department officials call far-right attacks hate crimes or gang crimes and place them far down their priority list, they are sending victimized communities the unmistakable message that the government values their lives less. The Justice Department doesn't need new laws, it needs new policies. Moreover, the Justice Department has repeatedly abused its domestic terrorism authorities to target environmental activists, peace advocates, and civil rights protesters, raising appropriate concerns about how it would use any new powers Congress might provide.

The purpose of this white paper is to examine how Justice Department policies regarding far-right violence undermine our nation's security by discounting the safety concerns of American communities victimized by this reactionary

violence and official indifference. The federal government's failure to ensure equal protection of the law erodes community resilience and social cohesion. While a full assessment of the true nature, scope, and impact of far-right violence is necessary to develop sound strategies to address it, as our first white paper argued, this does not mean policy makers must wait passively until this data is fully collected. This paper argues for exploring new approaches to the problem of far-right violence, not only to address the present policy failures but to determine whether our traditional legislative approach to hate crimes — increasing criminal penalties — is effective in reducing the harms from far-right violence.

Part 1 of this paper summarizes the legal framework Congress has established to address far-right violence.

Part 2 explains the nature of the threat from far-right violence and the many tools federal prosecutors have to address it.

Part 3 shows how Justice Department policies de-prioritize far-right terrorism as a national security threat, ranking it behind cases it labels "international" terrorism and those directed at domestic protest groups. These policies label a significant portion of the violence committed by far-right militants as "hate crimes" rather than terrorism before any federal evaluation of the incident takes place, and defer the investigation, prosecution, and tracking of these crimes to state and local law enforcement.

While state prosecutions may ultimately be determined to be appropriate in many cases, by abandoning the responsibility to examine and account for these crimes the Justice Department blinds itself to the true scope of the threat. This practice also deprives the federal government of an intelligence base necessary to develop an effective strategy to target far-right violence.

Part 4 describes the obstacles that prevent state and local law enforcement from effectively responding to hate crimes and the failure of the Uniform Crime Reporting system to accurately account for this violence nationally.

Part 5 focuses on the lack of trust between law enforcement and minority communities who suffer disproportionately from police violence and abuse as well as a lack of attention when they are victims of violent crimes, which may inhibit hate crime reporting to the police.

Part 6 examines the efficacy of the current punitive approach to hate crimes legislation, showing its failure to effectively deter future crimes or assuage the concerns of the victimized communities.

Finally, Part 7 provides recommendations for a new approach to hate crimes focused on understanding the threat of organized far-right violence, reforming police practices in minority and disenfranchised communities, and developing restorative justice approaches to address the communal injuries caused by these attacks and build a more tolerant, secure, and resilient society.

The Justice Department doesn't need new laws, it needs new policies.

Part 1: The Legal Framework

The term “terrorism” is best understood as a rhetorical device that describes violence that the government or society particularly despises. There is a debate regarding whether it is an appropriate term for legal proceedings, as its use tends to politicize prosecutions of criminal acts already prohibited by other laws, but the Justice Department has embraced it. The problem is that federal officials use the terrorism label most frequently to describe criminal activity by Muslims and balk at using it when the perpetrator is white. Congress has codified a facially neutral definition of what conduct can be considered domestic terrorism, so it is crucial that the Justice Department apply the term equally, regardless of the identity of the perpetrator.

Federal law defines domestic terrorism as illegal acts occurring in the U.S. that are “dangerous to human life” and appear to be “intended to intimidate or coerce a civilian population.”³ Though this statutory definition does not itself impose any criminal liability, Congress passed 51 “federal crimes of terrorism” targeting the types of violent acts domestic far-right militants commonly commit, and a 52nd that further prohibits material support toward the commission of these crimes.

In addition, Congress passed five federal hate crimes laws outlawing violence directed at people because of bias against their race, religion, national origin, gender, sexual orientation, gender identity, or disability; designed to interfere with their free exercise of constitutional rights; deprive them of housing; or targeting places of religious devotion.⁴ Hate crimes can involve anything from minor property crimes like vandalism all the way up to mass murder. Clearly not all of these crimes could or should be considered terrorism, but there is an obvious overlap between hate crimes that involve deadly violence and domestic terrorism, as they are both intended to frighten, intimidate, and coerce a civilian population. Because far-right violence often targets communities protected by hate crimes statutes, these laws can be effective tools for prosecutors in cases labeled as domestic terrorism investigations.

Where the perpetrators of far-right violence act as a group, organized crime statutes also provide a robust mechanism to dismantle these criminal enterprises. When federal officials open a domestic terrorism investigation, they can use all of these federal laws and a multitude of others to prosecute the case, as detailed in our previous white paper, *Wrong Priorities on Fighting Terrorism*.⁵ It documented 66 different federal statutes that the Justice Department listed as the lead charge on four or more domestic terrorism prosecutions from 2013 through 2017.⁶ No new federal laws are needed to properly address this violence.

Recent examples of far-right attacks that Justice Department officials quickly and publicly labeled as acts of terror-

ism include the 2017 Charlottesville, Virginia, vehicle attack that killed Heather Heyer, a Trump fanatic’s 2018 mail bomb campaign against media companies and Democratic political figures, and a militia group’s 2017 fire-bombings of a Minnesota mosque and Illinois abortion clinic.⁷ The Justice Department prosecuted the mail bomb campaign using one of the federal crimes of terrorism, the Charlottesville vehicle attack using a hate crime statute, and the militia bombings using a terrorism statute, a hate crime statute, and an organized crime statute.

Where the available evidence gathered during a domestic terrorism investigation suggests state laws would be more effective to properly address the crime, federal agents can refer these cases to state and local prosecutors.⁸ Recent examples of far-right violence that appear to have met the statutory definition of domestic terrorism but resulted in no federal charges include the 2018 slaying of a gay Jewish man in California by a member of the violent neo-Nazi group Atomwaffen Division, the 2017 murder of a black man in New York City by a white supremacist intent on starting a race war, and the 2016 vehicular homicide of a black man in Oregon by a member of European Kindred, a white supremacist prison gang.⁹ State and local prosecutors charged these perpetrators with hate crimes and, in the New York City case, with violating a state terrorism statute. These charges indicate that the crimes likely met the federal definition of domestic terrorism as well, as they were deadly and intended to intimidate a civilian population. But the Justice Department does not account for them or other deadly far-right crimes occurring across the country as acts of domestic terrorism.

Where states have appropriate laws and the will to enforce them, the Justice Department’s deferral policy for hate crimes might make sense. The majority of hate crimes, which do not involve violence harmful to human life, can certainly be better handled by local authorities. But, as shown in a table of state hate crimes statutes at Appendix II, not all states have laws that are effectively tailored to address bias-motivated crimes, and many rarely enforce them. Indeed, the communities targeted by

far-right violence are often neglected by law enforcement when they are crime victims. There are disproportionately high rates of unsolved homicides involving black, Native American, LGBTQ, and migrant victims across the country, some number of which are likely bias crimes.¹⁰ The Justice Department pursues federal hate crimes prosecutions against only about 25 defendants each year, and its decisions to charge these few cases rather than the multitude of others appear entirely arbitrary.¹¹ The sections below detail why far-right violence needs greater attention, and how Justice Department policies fail to properly address them. As a result, many Americans less safe and less confident that law enforcement protects or serves their interests.

Part 2: The Nature of the Threat

Organized far-right violence has posed an enduring threat in the United States since its founding, particularly targeting communities of color, immigrants, LGBTQ people, women, and religious minorities. The Ku Klux Klan is one of the most violent and persistent criminal organizations in U.S. history, but it is only one of hundreds of different far-right groups, including white supremacists, nativists, neo-fascists, militias, and sovereign citizens that have used and continue to use violence to promote their political, religious, and social goals. Researchers at the National Consortium for the Study of Terrorism and Response to Terrorism compiled an Extremist Crime Database (ECDB) to collect open-source data on the violent and non-violent criminal activities of far-right groups. These researchers reported in 2011 that “active members of far-right extremist groups have been involved in over 330 homicide incidents in the [previous] 20 years.”¹²

The Anti-Defamation League includes 52 police officers among the victims slain by far-right militants from 2011 to 2018.¹³ These likely include a 2012 ambush of law enforcement officers by a group of sovereign citizens in Laplace, Louisiana, which left two deputies killed and two more seriously wounded.¹⁴ Though some of these perpetrators were reportedly on the FBI’s terrorism watchlist prior to the shootings, no federal charges followed. Mass casualty events like this one and others involving white supremacist attackers in Oak Creek, Wisconsin; Colorado Springs, Colorado; and Charleston, South Carolina, are consistent with research that indicates that far-right homicide incidents are particularly violent — four times more likely to involve multiple victims than the average homicide event.¹⁵

By December 2018, the ECDB researchers had identified 450 fatalities from 210 far-right attacks they deemed “ideologically-motivated” between 1990 and 2018.¹⁶ This limiting nomenclature is meaningful because, as the ECDB researchers point out, individuals associated with far-right groups often engage in violence and other criminal activity that cannot properly be categorized as “ideologically motivated.” Federal law enforcement agents have arrested hundreds of white supremacist gang members across the country in recent years for racketeering, drug trafficking, murder, and other violent crimes not meant to further an ideological goal so much as to maintain their criminal enterprise.¹⁷ These crimes are not typically captured in terrorism or hate crimes databases — and often not even tracked in gang databases — so law enforcement officials often underestimate the true scope of the violence far-right groups commit each year.¹⁸

Other studies have documented a correlation between the presence of far-right and white supremacist “hate groups” and an increase in hate crime attacks.¹⁹ A 2014 study compared ECDB far-right homicide data from

1990 to 2008 with information identifying far-right hate groups published by the Southern Poverty Law Center and verified through other media sources. It found that far-right homicides are significantly more likely to occur in counties where at least one identified “hate group” resides.²⁰ For every additional “hate group” present per 10,000 residents within a county, the likelihood of a hate-motivated homicide increased by 23 percent.²¹

It is important to clarify that the vast majority of individuals associated with so-called “hate groups” do not engage in violence. Law enforcement should always focus specifically on the relatively few individuals and organized groups that engage in serious criminal activities rather than the many who merely espouse odious views. A 2005 ECDB-related survey of state law enforcement agencies used language that seemed better designed to determine the prevalence of violent groups across the U.S., using the term “terrorist group” to imply the use of violence rather than just hateful rhetoric, instead of “hate group” or “extremist group.” Eighty-five percent of survey respondents confirmed the presence of at least one far-right “terrorist” group within their jurisdictions.²²

The Justice Department clearly recognizes the overlap between organized far-right violence that meets the definition of domestic terrorism and hate crimes. FBI policy instructs agents investigating a federal hate crime to open a domestic terrorism investigation whenever the suspect has “a nexus to any kind of white supremacist group.”²³ It is unclear, however, whether the FBI always follow this policy. Despite the attorney general calling the Charlottesville vehicle attack an act of terrorism, the Justice Department and FBI publicly labeled the investigation of Alex Fields’ murder of Heather Heyer during the 2017 “Unite the Right” rally in Charlottesville a “civil rights investigation,” seemingly ignoring that it took place during a pre-planned white supremacist riot.²⁴ To be clear, the deci-

sion to ultimately charge Fields under federal hate crimes statutes exposes him to severe punishment, including the death penalty, so no new laws are necessary to fully address his crime even if none of the 51 “federal crimes of terrorism” could have been charged. But publicly labeling a case as a hate crime investigation at the onset narrows the scope of these inquiries to the individual act, rather than examining it as a part of a potentially larger and ongoing domestic terrorism conspiracy.

The good news is that the Justice Department has ample authorities to address these crimes. Unfortunately, the way the Justice Department chooses to use these tools tends to obscure the threat from far-right violence rather than clarify it.

Part 3: New Laws Unnecessary

As our first white paper in this series demonstrated, Congress has already done its part to address far-right terrorism.²⁵ It established a clear statutory definition of “domestic terrorism,” enacted 51 distinct “federal crimes of terrorism” that can be used to prosecute purely domestic acts, and further criminalized the provision of material support toward the commission of any of these crimes.²⁶ The Justice Department named counterterrorism its number one mission after the 9/11 attacks, but it has as a matter of policy and practice subordinated investigations of far-right militants, which it labels “domestic” terrorists, in favor of those targeting Muslim suspects, which it calls “international” or “homegrown” terrorists.²⁷

The Justice Department implemented these policies and practices despite the fact that academic sources report that there have been as many, if not more Americans killed by far-right terrorists than by “international” terrorists since 9/11.²⁸ The truth is that no one knows the total number of fatalities resulting from far-right violence because the Justice Department does not collect accurate data regarding these attacks, despite a congressional mandate to do so.²⁹

Even though the Justice Department devotes fewer resources to “domestic” terrorism investigations and promotes them less aggressively in the media, its own records suggest that domestic terrorist groups are more active than “international” terrorists.³⁰ Prosecution statistics produced by the Executive Office for U.S. Attorneys indicate that federal prosecutors have filed 892 “domestic” terrorism cases over the last 10 years, more than twice as many as the 442 “international” terrorism prosecutions over the same period.³¹

The Justice Department’s politicized promotion of “international” terrorism prosecutions was most recently demonstrated when it published a January 2018 report alleging that 73 percent of defendants convicted on terrorism-related charges were immigrants or visitors to the U.S.³² Only by excluding domestic terrorism cases involving U.S. citizens could this misleading figure be achieved. The Justice Department now acknowledges that the report, which was issued to justify the Trump administration’s “Muslim ban” and other policies aimed at restricting immigration, was inaccurate and misleading.³³ It has refused to withdraw or correct the data, however.

Even within the narrower realm of “domestic” terrorism, the Justice Department has prioritized cases that target civil rights, anti-war, social justice, and environmental protest groups over violent white supremacists. For years the FBI maintained that “eco-terrorism,” which hasn’t produced any U.S. fatalities over many decades, was the primary domestic terrorism threat.³⁴ While environmental protest groups have engaged in civil disobedience and property damage, this activity could only very

rarely be considered “dangerous to human life,” which is a necessary element of the statutory definition of domestic terrorism.³⁵ In 2010, the Justice Department inspector general criticized the FBI for treating non-violent civil disobedience and vandalism as justification to conduct lengthy and aggressive terrorism investigations of environmental activists, racial and social justice protesters, and peace advocates.³⁶

Recent evidence suggests the Justice Department is continuing to treat protests as terrorism, particularly in its monitoring of minority-led movements like Native American water protectors and Black Lives Matter activists, the latter falsely framed as “Black Identity Extremists.”³⁷ The Justice Department’s failed attempt to prosecute more than 200 anti-Trump activists who were near where some windows were broken and a limousine was lit on fire during the J20 post-inauguration protests stands in sharp contrast to the relative handful of federal arrests arising from more than two years of far-right rioting across the country where journalists and counter-protesters were beaten, stabbed, shot, and killed.³⁸ In contrast, the *Intercept* published an analysis of 752 cases the Justice Department classified as domestic terrorism since 9/11 and found only 268 involved far-right defendants who were charged with crimes that met the federal definition of terrorism.³⁹

Two examples illustrate this point. When six anti-racist protesters were stabbed at a 2016 rally, the FBI and state police painted the white supremacists as victims and investigated the wounded protesters instead.⁴⁰ The FBI’s memorandum opening a full investigation of the anti-racist protest group By Any Means Necessary (BAMN) described the Ku Klux Klan as an organization that “some perceived to be supportive of a white supremacist agenda.”⁴¹ The memo referenced previous instances when BAMN activists engaged in non-violent civil disobedience, including yelling to disrupt a public meeting, to justify its terrorism investigation.⁴² Similarly, 2017 FBI training materials regarding “abortion extremism” referenced the decades-long campaign of deadly violence by

anti-abortion militants, but also warned of a purported terrorist threat from “pro-choice extremists.”⁴³ The document acknowledged that the only individual purportedly fitting this category “acted independently and without any direct affiliation with a pro-choice group.”⁴⁴ It nonetheless presented a broad profile of potential “pro-choice extremists” that could encourage over-zealous policing of non-violent political advocacy groups. Manufacturing imaginary terrorist threats to create false “both sides” counterweights to far-right violence threatens Americans’ First Amendment rights and undermines their security while diverting law enforcement resources from real threats.

Without accurate data about how federal agents and prosecutors use their resources, it is impossible to assess their performance. The Justice Department redacts the case docket numbers from the prosecution records it releases, which inhibits researchers’ ability to examine the court records to determine the proportion of cases involving deadly far-right violence versus non-violent civil disobedience or property crimes committed by protest groups. Moreover, federal prosecutors decline to prosecute the majority of domestic terrorism and hate crimes cases the FBI refers to them, for a variety of reasons.⁴⁵ Obscuring the nature of the Justice Department’s domestic terrorism investigations and prosecutions makes it impossible for policy makers to determine whether counterterrorism resources are properly directed based on objective assessments of the deadliest threats. The Brennan Center is currently suing the Justice Department to obtain more detailed records regarding federal prosecutions.⁴⁶

To obfuscate matters further, the Justice Department treats many of the racist, xenophobic, Islamophobic, anti-Semitic, homophobic, and misogynistic attacks committed by far-right militants not as acts of terrorism, but as hate crimes. Congress has passed five federal hate crimes statutes since 1968, giving the Justice Department authority to investigate, prosecute, and severely punish acts of violence motivated by bias based on race, religion, national origin, gender, sexual orientation, gender identity, or disability.⁴⁷ It also passed the Hate Crimes Statistics Act of 1990, requiring the Justice Department to properly track and document the number of bias crimes throughout the United States.⁴⁸

The Justice Department abdicates its responsibility to enforce these laws, however, by deferring investigation and prosecution of the vast majority of these crimes — as well as the mandated national accounting of this threat — to state and local law enforcement. While the federal

government cannot and should not be expected to investigate and prosecute all hate crimes around the country, it must recognize that state and local law enforcement are not capable of adequately responding to what is a national and even international crime problem.

As reflected in the chart at Appendix II, not all states have laws tailored to address this violence. Many states that have hate crimes laws fail to enforce them. Only about 12 percent of police departments around the country report hate crimes occurring within their jurisdictions to the federal government. State and local law enforcement agencies are poorly equipped to track violent far-right militants that operate through national and international criminal networks. These enforcement and reporting deficits leave the federal government blind to the true nature and scope of far-right violence in this country and leave the victims and their communities

without justice or protection from further attacks.

To their credit, Justice Department officials have recently acknowledged that the current system is inadequate.⁴⁹ Deputy Attorney General Rod Rosenstein conceded that just “because hate crimes are not reported does not mean they are not happening.”⁵⁰ But his proposed solutions — a new hate crimes website, another survey, and more training — are insufficient. They ignore the natural obstacles and disincentives that inhibit state and local police agencies from fully identifying, acknowledging, investigating, and prosecuting far-right violence within their jurisdictions and across the nation. The minority, immigrant,

LGBTQ, and anti-racist dissident communities targeted by far-right violence often have fraught relationships with law enforcement agencies that tend to over-police them as crime suspects, yet underserve them when they are crime victims.

In crafting a proper response to far-right terrorism, it must be noted that such violence represents just a tiny fraction of the violence American communities suffer each year. Though violent crime is significantly reduced from decades past, it still disproportionately impacts the same communities targeted by hate crimes and victimized by police violence, abuse, and neglect. The reactionary nature of far-right violence — that is, its tendency to reinforce existing political, economic, and social inequities — fuels distrust whenever the authorities do not respond quickly and deliberately to enforce the law when these attacks occur. The perpetrators take such inaction for official sanction of their violence and become emboldened, while the victim communities lose confidence that the law will protect them. The state response — or non-re-

**No one knows
the total number
of fatalities
resulting from
far-right violence
because the Justice
Department does
not collect accurate
data regarding
these attacks.**

sponse — to far-right violence can further fray the bonds with these communities and stoke greater social division. Understanding this context is critical to developing a more effective response, which must take place within a broader law enforcement reform effort designed to protect and serve all communities from all kinds of harm.

Clearly not all hate crimes could be properly considered terrorism, but illegal acts that are “dangerous to human life” and “intended to intimidate or coerce a civilian population” fit the definition of definition of “domestic terrorism” that Congress codified in statute.⁵¹ Calling such violence a hate crime when it targets marginalized communities is more than just a semantic downgrade. FBI policy ranks counterterrorism as its primary mission, while civil rights violations such as hate crimes are its fifth priority, behind cyber-crimes and public corruption, reducing the investigative resources devoted to these investigations.⁵² The FBI should treat these crimes as a top priority, particularly where the offender is part of a far-right group that has committed similar violence in the past.

While it is critical for the FBI to evaluate these incidents as potential acts of domestic terrorism, they can still be prosecuted using federal hate crimes statutes or other criminal laws, as the evidence dictates. FBI policy

requires opening a domestic terrorism investigation if the subject of a federal hate crime investigation has a nexus to a white supremacist group.⁵³ The bureau should have the same policy when the subject of a state hate crime investigation involving deadly violence is associated with a far-right group. Many of these cases, and likely even most, could still be left to state and local police and prosecutors when the facts and circumstances suggest they could provide a more appropriate and efficient forum to effectively address the criminal activity in question. But involving federal law enforcement in the initial evaluation of these investigations would both improve the Justice Department’s awareness of the scope and nature of the threat from far-right violence, and support more effective state and local law enforcement responses to hate crimes. Federal attention to these crimes within jurisdictions that do not have effective hate crimes statutes or do not enforce them may encourage state legislatures to enact appropriate laws and inspire police and prosecutors to enforce them. Where the alleged hate crime does not involve illegal acts dangerous to human life and does not involve organized criminal activity, the Justice Department can and should continue its policy of deferring these cases to state and local law enforcement, as appropriate.

Part 4: Obstacles to Effective Hate Crimes Enforcement

There are significant obstacles and disincentives that make it difficult for state and local police and prosecutors to effectively address hate crimes and other far-right violence. To begin with, six states do not even have hate crimes laws.⁵⁴ The various state and local laws that are on the books vary significantly in whom they protect, the methods and standards for proving bias, as well as when and how they are applied. These discrepancies result in widely disparate outcomes for similar crimes in different jurisdictions.⁵⁵ Some statutes establish stand-alone crimes, while others authorize penalty enhancements for existing crimes when motivated by bias.

The Hate Crimes Statistics Act of 1990 requires the Justice Department to collect national statistics regarding bias crimes, but it chooses instead to rely on state and local law enforcement agencies voluntarily reporting to the FBI through the Uniform Crime Reporting (UCR) system, rather than conducting its own investigations and data collection activities regarding these crimes. The problem is, not all police agencies submit data to the UCR system and the vast majority of those that do report zero hate crimes.⁵⁶ National Crime Victim Surveys document 30 to 40 times more bias crimes than the UCR.

These deficiencies have been well-documented over the past few decades, yet they persist. Ten years after passage of the Hate Crimes Statistics Act, the Justice Department funded a Northeastern University study to find ways to improve the accuracy of hate crimes reporting. This study, published in 2000, described two barriers preventing an accurate accounting of hate crimes in the U.S.: social conditions inhibiting victims and witnesses from reporting these crimes to law enforcement and disincentives for state and local police and prosecutors to investigate, prosecute, and report them to the Justice Department.⁵⁷

The number of law enforcement agencies participating in UCR reporting has gone up over time, but so has the percentage of agencies reporting zero hate crimes. In 1998, 83 percent of the 10,730 participating agencies reported no hate crimes. In 2017, 87.4 percent of 16,149 participating agencies reported no hate crimes.⁵⁸ The remaining 12.6 percent of law enforcement agencies that reported at least one hate crime in 2017 identified a total of 7,175 incidents involving more than 8,800 victims, including 990 aggravated assaults, 15 murders, and 23 rapes.⁵⁹ The more than 2,300 property crimes involving destruction, damage, or vandalism they reported in

2017 are aggregated in the UCR data, so it is impossible to distinguish between a potential terrorist act, like a bombing, versus racist graffiti scribbled in on a bathroom wall based on these records.⁶⁰ The true number of hate crimes committed against Americans, and the damage this violence inflicts on American communities, remains unmeasured.

The Justice Department in 2018 conceded that there remains a significant “gap” in the national hate crimes statistics it publishes. Unfortunately, the reforms it announced — establishing a new web portal for police

and the public to learn about hate crimes and how to report them and yet another hate crimes survey — are simply increasing investments in a fatally-flawed methodology because they ignore the obstacles and disincentives that make it difficult for these entities to effectively address racist and reactionary violence.⁶¹

No governor, mayor, or police chief wants their state or locality to be known for having a high rate of hate crimes.⁶² Police officers and prosecutors have a tremendous amount of discretion in determining what evidence to credit and what to ignore in evaluating whether bias played a role in a crime, and may lack the

interest or knowledge necessary to identify hate crime indicators.⁶³ Federal hate crimes training programs are impractical, however, because states and localities all have different statutes and evidentiary rules that are continually being interpreted by the courts and refined by state legislatures. What might be effective advice in one jurisdiction is simply inapplicable in another. One New Jersey hate crime statute, for example, required only a victim’s perception that the crime was motivated by bias to obtain a conviction, rather than the more common requirement of proving the biased intent of the attacker.⁶⁴ A state appeals court overturned a conviction based on

In many cases, the communities targeted by hate crimes are also disproportionately victims of police violence and abuse, yet they are underserved as crime victims.

this law in 2013, remanding it for retrial with the added requirement that the defendant's state of mind be proven.⁶⁵ The New Jersey Supreme Court rejected the appellate court's re-writing of the statute, however, and deemed it unconstitutional in 2015.⁶⁶

Even where local politicians encourage hate crimes enforcement, pursuing these charges requires police and prosecutors to prove that a specific bias motivated the crime, and often, that this was the only motivation. *ProPublica* examined 981 hate crimes reported in Texas from 2010 to 2015, and found only eight were successfully prosecuted using hate crimes statutes.⁶⁷ Northeastern University's study compared investigative practices between jurisdictions that reported zero hate crimes and those that reported one or more. Its survey suggested that agencies that did not report hate crimes may be more likely to look for indicators that a crime was *not* motivated by bias during an investigation, rather than factors which would verify bias.⁶⁸ For prosecutors, establishing a defendant's mental state can sometimes prove a difficult challenge, placing an additional burden on what might otherwise be a straightforward investigation and prosecution of a violent crime. Because evidence of bias often

rests on a defendant's speech and association, important constitutional protections can also be implicated. The hate crime statute in Georgia was struck down on constitutional grounds, for example, just as the aforementioned New Jersey statute was.⁶⁹

The fundamental hurdle toward adequately prosecuting hate crimes at the state level, however, is the steep underreporting of hate crimes by victims and witnesses to law enforcement. Northeastern University's 2000 study determined that the "most critical" factor inhibiting such reporting "appears to be the interaction between police and victim communities."⁷⁰ Frank Pezzella, a professor of criminology at John Jay College of Criminal Justice clarified the problem: "The same people that these laws are designed to protect are the ones with the most strained relationships with police — blacks, LGBT people, [and] undocumented aliens."⁷¹ In many cases, the communities targeted by hate crimes are also disproportionately victims of police violence and abuse, yet they are underserved as crime victims. Where an already stigmatized community's tensions with law enforcement are high, victims of hate crimes have to consider the costs of subjecting themselves to a potentially negative police interaction.⁷²

Part 5: Over-Policed and Underserved

The same communities that are often victimized by far-right violence have historically been subjected to high rates of police abuse, violence, and discrimination as well.⁷³ In 2018, 1,166 people in the United States were killed by police, most of which resulted from stops for nonviolent offenses.⁷⁴ A study of fatal interactions with police from January 2012 through February 2018 showed that black men were 3.2 to 3.5 times more likely than white men to be killed by police.⁷⁵ Latino men were 1.4 to 1.7 times as likely to be killed by police than white men.

A separate study by the *Guardian* using 2015 data found that 62.7 percent of unarmed people killed by police were non-white, though minorities make up only 38 percent of the population.⁷⁶

Black people were more than twice as likely as white people to be unarmed when killed by police. Native Americans represent just 0.9 percent of the population, but account for 2.2 percent of all police killings.⁷⁷

Beyond police killings, these same communities are often subjected to humiliating and discriminatory treatment by law enforcement. For example, the landmark stop-and-frisk case *Floyd v. City of New York* revealed that the New York City Police Department had stopped 4.4 million people between 2004 and 2012, 83 percent of whom were black or Latinx.⁷⁸ NYPD records showed that police stopped, frisked, and used force against black and Latinx people at much higher rates, even though stops of whites were significantly more likely to result in weapons seizures.⁷⁹ Eighty-eight percent of all stops found no evidence of criminality or weapons.⁸⁰ Similar racial disparities in police stops have been found in Chicago, Baltimore, Philadelphia, Los Angeles, and elsewhere.⁸¹ National data compiled by the Justice Department indicates that police also threaten or use force against people of color more than twice as often as against white people.⁸² Law enforcement also disproportionately uses militarized units like SWAT teams in neighborhoods with high populations of African Americans. These tactics inflame community tensions, but research suggests they do not reduce violent crime rates or improve officer safety.⁸³ Black people, especially women and LGBTQ-identified, are also more highly vulnerable to sexual violence during police stops than their white counterparts, ranging from invasive searches to “sexual extortion to rape.”⁸⁴

Community concerns over the racial disparities evident in police violence and abuse are heightened by a lack of accountability. The Justice Department has jurisdiction over civil rights violations committed under color of law and other police misconduct, but it prosecutes few cases each year.⁸⁵ Even as the FBI has warned its agents about white supremacists and other far-right groups infiltrating police departments, it does not appear to have taken

significant measures to protect communities of color from this threat.⁸⁶ A *Pittsburgh Tribune-Review* analysis of Justice Department records from 1995 to 2015 showed federal prosecutors declined to pursue charges against law enforcement officials in 96 percent of the civil rights cases referred to them from law enforcement agencies.⁸⁷ A federal hate crime charge levied against a New Jersey police chief for an on-duty assault of a black teenager in 2018 was the first such prosecution brought in more than a decade.⁸⁸

The aggressive policing these communities face does not keep them safe. Though the U.S. homicide rate has dropped significantly since its peak in 1980, so has the rate at which these crimes are solved or “cleared” in the parlance used in the UCR.⁸⁹ In that deadliest year, the national homicide clearance rate was 72 percent.⁹⁰ By 2016, it fell to 59.4 percent, a record low, despite far fewer homicides to solve. The problem was considerably worse in many cities. In Detroit, the 2016 clearance rate was less than 15 percent, while in Chicago it was about 26 percent, and New Orleans 28 percent.⁹¹ Though the national clearance rate crept up to 61.6 in 2017, over 6,000 murders reported to the UCR remained without charges or arrests.⁹²

Homicide clearance rates differ considerably depending on the race of the victim. According to a *Washington Post* study of 52 of the largest U.S. cities, over 70 percent of unsolved homicide cases have black victims.⁹³ The *Post* found 63 percent of killings of white victims led to an arrest, while only 47 percent of homicides with black victims were solved.⁹⁴ The New York *Daily News* found similar results in a study of the New York Police Department’s 2013 homicide clearance rates.⁹⁵ The NYPD performed significantly better than the national average, solving approximately 70 percent of the homicides in New York City. But when the figures are disaggregated by race, a more complex story is revealed. The clearance rate for homicides involving white victims was 86.2 percent, but dropped to 80 percent for Asian victims, 55.6 percent for Hispanic victims, and 45.4 percent for black victims.⁹⁶ Law enforcement officials often blame uncooperative witnesses for this disparity. In Houston, where homicide

solve rates for Hispanic victims are lowest, police chief Art Acevedo cited the fear of deportation as a deterrent to cooperation with police investigations.⁹⁷

Non-deadly violence appears even less of a priority, though the effects may be felt much more broadly as there are significantly more casualties. The Gun Violence Archive documents an annual average of over 55,000 shooting incidents resulting in roughly 14,000 fatalities, leaving about 41,000 non-fatal shootings each year.⁹⁸ A 2019 study of data from 22 U.S. cities found only 21 percent of non-fatal shootings of black or Latino victims are solved, a rate 16 percent lower than shootings involving a white victim.⁹⁹

Sex crimes are also underenforced. According to UCR data, the number of reported rapes in the U.S. has risen steadily over the past five years, topping out at 135,755 in 2017.¹⁰⁰ Law enforcement agencies solve just over one-third of these crimes.¹⁰¹ Yet rape kit evidence that could identify sex offenders often sits on the shelves of police crime labs untested for months and even years. Estimates suggest a backlog of hundreds of thousand untested rape kits still remain, despite several state and federal efforts to address this deficiency.¹⁰² Regrettably, the decision to pursue investigations and charges have been found to deprioritize victims of color, with several studies showing that prosecutors are more likely to bring sexual assault charges when victims are white rather than

non-white.¹⁰³ For example, though Native Americans experience the highest rates of sexual violence and rape, a study from 2010 found that the U.S. Attorney's Office declined to prosecute 67 percent of the sexual assault cases referred for prosecution by tribal law enforcement, the FBI, or the investigative branch of the Bureau of Indian Affairs.¹⁰⁴ In Detroit, Wayne County Prosecutor Kym Worthy attributed police failure to test decades of backlogged rape kits in part to racism and rape culture, noting that 86 percent of the untested kits belonged to victims of color.¹⁰⁵ She also noted that the police reports attached to many of the kits revealed officer bias against the victims, including writing disparaging comments about the victims, not believing their accounts, and choosing not to investigate.¹⁰⁶

The over-policing of minority communities as suspects and the unequal justice they receive as crime victims undermines trust in law enforcement. It isn't surprising then, given the disparities noted above, that violent hate crimes are 18 percent less likely to result in arrests than non-bias violent crimes.¹⁰⁷ Only 4 percent of hate crimes result in arrest, according the victim surveys analyzed by the Justice Department. Without wholesale reform of police practices, particularly as they affect minority communities, it is unlikely that a federal hate crimes web portal will significantly improve hate crimes reporting or enforcement.

Part 6: A Fatally Flawed Approach

The initiatives the Justice Department has proposed to enhance prosecutions of far-right terrorism and improve the enforcement of hate crimes laws do not include more fundamental reforms of law enforcement practices that undermine police-community relations. The Brennan Center’s first paper in this series warned about the potentially harmful consequences of Justice Department officials’ proposals to seek an expanded domestic terrorism law. Here we caution that while expanding resources and training to improve state and local enforcement of hate crimes laws could be an important part of a larger police reform effort, without a more comprehensive approach to improving relations with marginalized communities, increased hate crimes enforcement could heighten tensions rather than reduce them.

Hate crime laws are intended to serve as a deterrent to bias-motivated violence, an official condemnation of prejudice, and an expression of public support for targeted communities. But most hate crimes statutes work by expanding criminal liabilities and/or increasing existing penalties for otherwise prosecutable offenses when evidence of a biased motivation can be demonstrated. This penal approach to hate crimes conflicts with research, corroborated by the Justice Department’s National Institute of Justice, that demonstrates that even draconian penalties have not proven effective deterrents to crime.¹⁰⁸ The number of bias offenses reported in victim surveys is remarkably consistent over decades and arguably even increasing in recent years, despite the enactment of new hate crimes laws.¹⁰⁹

For the most egregious cases involving violent crimes like murder, aggravated assault, and rape, the hate crime enhancement may not significantly increase the sentences imposed.¹¹⁰ The racist, anti-Semitic, and xenophobic pre-meditated murders committed by Dylann Roof, Robert Bowers, and Adam Purinton all occurred in death penalty states: South Carolina, Pennsylvania, and Kansas, respectively. In less serious cases involving property crimes, responsible prosecutors may determine a minor act of vandalism does not justify the increased punishments contemplated in the statutory scheme or serve long-term security benefits. Prisons are often sites of extreme racial violence and segregation, and “can be ‘hotbeds’ for prejudice” and recruitment by white supremacist gangs.¹¹¹

Increasing hate crimes enforcement while continuing to rely on the traditional approach of increasing punishments for perpetrators may also do more harm than good by reinforcing and deepening existing pathologies in the criminal justice system. An effort to more rigorously enforce hate crimes laws could aggravate the mass incarceration problem and, perhaps surprisingly, reinforce existing racial disparities in criminal prosecutions.

Preventing racist violence against white people was not the stated motivation for enacting hate crimes laws, but anti-white bias cases represented more than one-fifth of the hate crimes that law enforcement reported under the “racial/ethnic/ancestry bias” category over the last five years.¹¹² In 2017, 17.5 percent of the 4,832 offenses that law enforcement agencies documented as motivated by racial/ethnic/ancestry bias involved anti-white bias.¹¹³ That figure was higher than the percentage of reported hate crimes based on anti-Hispanic/Latino, anti-Asian, anti-Pacific Islander, and anti-Arab bias combined (17 percent).¹¹⁴ Though African Americans make up only about 13.4 percent of the U.S. population, law enforcement agencies identified them as offenders in 21.3 percent of the hate crimes they reported to the UCR in 2017.¹¹⁵ While there is no doubt that black people can and do commit racist attacks against white people, it is ironic that the pronounced racial disparities seen in criminal prosecutions generally would also be reflected in the enforcement of laws specifically designed to protect minority groups.

The prevalence of young offenders and mentally ill people among the population committing hate crimes also suggests that penalty enhancements for hate-crime offenses are not necessarily an appropriate response. Although scholarly research on the subject is sparse, studies have estimated that one in four prosecuted hate crimes are committed by minors (those under 18 years of age).¹¹⁶ While the UCR only began collecting offender-age data in 2013, law enforcement reporting since then identifies approximately 20 percent of hate crime offenders as minors.¹¹⁷ Most states deal with minor offenders in one of two ways — by trying them as juveniles and increasing their sentences, or by trying them as adults and increasing their sentences.¹¹⁸

There is also some evidence that a significant number of those charged with hate crimes offenses show evidence of mental illness.¹¹⁹ In the days following the 2018 Pittsburgh synagogue shooting, the inside of a Brooklyn

synagogue was vandalized with hateful and threatening graffiti.¹²⁰ The offender, James Polite, was apprehended after setting a fire in the coat room of another synagogue.¹²¹ Polite, an LGBTQ black man in his mid-20s, had a documented history of abuse and neglect as a child and spent years in the foster-care system.¹²² He eventually found a stable home with a Jewish foster family, served an internship at New York City Hall working on hate crime and domestic violence reduction, and graduated from Brandeis University.¹²³ He was also reportedly diagnosed with bipolar disorder while going through drug abuse rehabilitation, and received medication.¹²⁴ Leading up to the vandalism, Polite had apparently been experiencing delusions, telling people he believed the FBI, CIA, and Department of Homeland Security had taken over the

homeless shelter was living in.¹²⁵ He was also posting anti-black messages under an online alter-ego.¹²⁶ Upon his arrest, Polite was transported to Woodhull hospital for an extended psychiatric evaluation.¹²⁷ He was charged with criminal mischief, arson, and reckless endangerment as hate crimes.¹²⁸

There is no doubt the crimes committed by juvenile offenders and those suffering from mental illness like Polite can be as serious and harmful as those perpetrated by rational adults. But increased prison sentences through hate crime enhancements may not be the most effective method to serve the interests of justice, nor to remedy the injury inflicted on the victimized communities and restore social harmony.

Forging a New Approach to Policing Far-Right Violence

Terrorism and hate crimes represent just a tiny fraction of the violent crime this country faces every year, which must be kept in perspective when determining how law enforcement resources should be distributed to maximize Americans' security. Yet it is important that the federal government treat far-right violence with the seriousness it deserves, given the potential for mass casualty events, which was realized in Oklahoma City, Oklahoma; Oak Creek, Wisconsin; Charleston, South Carolina; Colorado Springs, Colorado; Charlottesville, Virginia; and Pittsburgh, Pennsylvania, to name just a few. Near-misses by far-right militants who planned chemical, biological, and radiological attacks underscore the serious threat these groups pose to our society.¹²⁹

But it is clear that the Justice Department's current strategies have failed. New solutions must be sought, not a reinvestment in policies that have proven ineffective over decades. A new approach requires a re-examination of the menace that far-right terrorism presents to our society, which is different from other violent threats in three important ways:

1. Understanding Far-Right Terrorism as Organized Criminal Behavior

First, like other types of terrorism, far-right violence is a form of organized criminal behavior. A law enforcement response to incidents of far-right violence that treats each crime independently will fail to disrupt the threat posed by the other members of the organization or movement acting in concert. Effectively tackling organized crime requires law enforcement to have a sufficient intelligence base to understand a group's criminal activities and determine where its vulnerabilities lie, combined with the persistence to ensure the organization is disabled and dismantled.

The first step toward establishing sound policy is collecting accurate data about the nature and scope of far-right violence, as we argued in our first report. The Justice Department should stop relying entirely on voluntary reporting of hate crimes data from state and local law enforcement to fulfill its obligations under the Hate Crimes Statistics Act. The FBI can and should conduct its own investigation of this problem. Rather than spending its counterterrorism intelligence resources monitoring protest groups, the FBI should fully account for racist,

xenophobic, anti-Semitic, Islamophobic, homophobic, and misogynistic violence that plagues our society. It is remarkable, given the FBI's post-9/11 reorganization into a counterterrorism-focused domestic intelligence agency, that it hasn't already done so. When an act of far-right violence occurs, instead of making arbitrary case-by-case distinctions between domestic terrorism and hate crimes that obscure the nature of this violence, the FBI should use the statutory definition of domestic terrorism — violence that is dangerous to human life and intended to intimidate or coerce a civilian population — to properly triage these cases.

The FBI and Justice Department should allocate domestic terrorism resources based on an objective assessment of the threat to human life posed by particular groups, with fewer resources devoted to groups that engage in property crimes rather than violence harming people. The FBI should treat all hate crime cases where deadly violence is involved among its top investigative priorities, rather than deferring these investigations and prosecutions to state and local law enforcement. How and where a particular case is ultimately prosecuted would still depend on the individual facts and circumstances, but by evaluating each case, the FBI would develop a deeper intelligence base to understand how violent far-right groups operate in particular jurisdictions, across the nation, and around the world. Rather than tracking so-called "hate groups" and the ideologies they promote, the FBI should focus on serious crimes as the predicate for investigations and intelligence gathering regarding violent far-right groups.

Many individuals involved with white supremacists and other far-right groups routinely engage in violence and other criminal activities not intended to further the activities of the group. The FBI should work closely with

state and local authorities investigating these crimes for intelligence gathering purposes and to properly scope the threat presented by the particular groups. This way, the FBI field offices can capture a more fulsome picture of the criminal activities of violent far-right groups within their territories.

Where the suspected perpetrator of a hate crime that cannot be properly considered dangerous to human life is associated with a white supremacist group or other far-right organization whose members have previously engaged in deadly violence, the incident should be investigated as domestic terrorism, as is contemplated in the FBI's Civil Rights Policy Implementation Guide.

Where a serious hate crime not involving deadly violence is committed by someone not associated with a violent far-right group, but within a state that either has no hate crime laws or routinely fails to investigate and prosecute them, the Justice Department should consider federal prosecution. Successful federal prosecutions in these regions could provide necessary support for the targeted communities and encourage state and local authorities to pass legislation to address bias crimes.

Finally, the Justice Department needs to better understand the criminal ecosystems in which violent far-right groups operate. Terrorists exploit criminal networks to raise funds, obtain weapons, false identification documents, and other instrumentalities to support their terrorist activities. The federal government should provide assistance and resources to state and local law enforcement to address violent crime, organized crime, and illegal weapons trafficking. In short, the Justice Department should treat far-right violence as an organized crime problem, which has proven a successful model in federal prosecutions of white supremacist gang activity that has spilled outside of prisons and into American communities, but is rarely called "terrorism." The Justice Department has recently prosecuted hundreds of members of the Aryan Brotherhood, the Aryan Circle, and the New Aryan Empire with little fanfare, using statutes Congress passed to police organized crime.¹³⁰ It should simply prioritize the investigation and prosecution of these crimes as it does other terrorism cases.

2. Addressing the Communal Injuries From Far-Right Violence

Second, far-right terrorism and hate crimes victimize entire communities. Such crimes harm the larger society by creating heightened inter-community tensions, increased risk of civil disorder, psychological distress, and

feelings of insecurity.¹³¹ Taking action to address these communal injuries and promote a tolerant and inclusive society are essential elements of a strategy to counter far-right violence. A purely penal approach to hate crimes and domestic terrorism does little to assuage the fear, anger, and social division that these crimes create.

Far-right violence is particularly pernicious because it often targets the most vulnerable in our society.¹³² These crimes create *in terrorem* impacts that produce feelings of increased isolation, vulnerability, and psychological stress in members of the targeted community living far from where the attack took place.¹³³ These broad harms have been shown to have long-lasting traumatizing effects, especially where the victims already lack political, economic, or social standing.¹³⁴

For all of the evidence of grave community harms, only a few states attempt to address communal injuries of hate crimes in their statutes.¹³⁵ For instance, the Illinois Commission on Discrimination and Hate Crimes

Act established a commission "[t]o work in partnership with community leaders, educators, religious leaders, social service agencies, elected officials, and the public to identify and uproot sources of discrimination and bias at the source."¹³⁶ The commission is additionally tasked with enlisting law enforcement agencies, educators, and community leaders with training and educating the public on issues of discrimination and hate, teaching acceptance, and making the state's hate crime protections broadly known.¹³⁷

Unfortunately, the governor of Illinois has failed to appoint members to the commission, with all 21 seats remaining vacant for nearly two years.¹³⁸ The commission's mandate, however, is a worthwhile example of how hate crimes legislation can be more responsive to the full spectrum of harms created by such attacks.

Similar proposals were recently made by the New York City Commission on Human Rights in a report examining the rise of hate crimes surrounding the last presidential election.¹³⁹ The commission found that police interventions were stymied by underreporting, with only 18.4 percent of victims of physical assault reporting to the police.¹⁴⁰ The commission recommended alternative means to preventing hate crimes, including developing educational tools for vulnerable communities, holding bystander-intervention trainings, and engaging in proactive outreach.¹⁴¹

Mounting evidence suggests that both victims and communities harmed by hate crimes prefer alternative approaches to incarceration for hate crime offenders.¹⁴² Some members of communities most often affected by hate crimes are critical of enhanced penalties, recognizing that hate crime prosecutions often target the lowest hanging fruit — with convictions often skewed against

The Justice Department should treat far-right violence as an organized crime problem.

people of color, youth offenders, the mentally ill, and poor people.¹⁴³ Instead, research suggests that victims overwhelmingly prefer educational programs and restorative approaches to challenging underlying prejudice and preventing similar attacks.¹⁴⁴

A restorative approach to justice focuses on accountability for healing the harm done to victims and communities as a result of criminal acts. It involves the victim, the offender, and the community in search for solutions which promote repair, reconciliation, and reassurance.¹⁴⁵ Restorative justice is a different model than rehabilitative justice, which primarily focuses on offender.¹⁴⁶ A comprehensive restorative response to crime engages the community as a resource for reconciliation of victims and offenders, and as a resource for monitoring standards of behavior. Restorative justice is a community-building response to a crime that facilitates healing and strengthens social cohesion.¹⁴⁷

There are many different restorative justice approaches, from victim-offender mediations, to family and community counseling, to truth and reconciliation commissions. In the United Kingdom, the University of Sussex used studies, experiments, and interviews with more than 1,000 Muslim and 2,000 LGBTQ people in the United Kingdom to investigate the indirect effects of hate crimes.¹⁴⁸ They found that the most common individual response to a hate crime within their community was anger, anxiety, and feelings of vulnerability. Sixty-one percent of the Muslim and LGBTQ people who took part in the study said that they preferred restorative justice — in which victims meet or communicate with the perpetrators in order to explain the impact of their crime and agree a form of reparation — instead of enhanced prison sentences.¹⁴⁹ The participants in the study believed that restorative justice was better able to address the harm caused by hate and prejudice.

Congress should study restorative justice approaches and develop a plan to fund and implement these methods when acts of far-right terrorism and hate crimes occur. Providing alternative restorative approaches for some offenses and offenders may significantly reduce the costs of pretrial detention, trial, and incarceration. One study on the economic benefits of restorative approaches in the UK estimated that a recommended pre-court restorative justice program would pay for itself within the first year and would save the government one billion pounds over 10 years.¹⁵⁰

3. Reforming Police Practices to Restore Community Trust

Minority communities are disproportionately victims of many kinds of violence, including at the hands of law enforcement, and are often denied equal protection when they seek justice. A comprehensive strategy to protect these communities from far-right terrorism and hate crimes must include measures to address these disparities and to reform police practices.

The Justice Department has an important role in holding law enforcement officials accountable for civil rights violations, but these cases are rarely prosecuted. Recent evidence of police cooperation with and assistance to far-right groups involved in violent protests in Sacramento, California, and Portland, Oregon, should be fully investigated. Congress should also investigate what role the FBI played in providing or failing to provide intelligence to state and local police agencies regarding the violent far-right riots that took place across the country beginning in 2016. Many of the groups and individuals participating in violence during the Charlottesville “Unite the Right” rally had previously engaged in violence at rallies in Huntington Beach, San Bernardino, Sacramento, and Berkeley, California. Others that participated in violence in Charlottesville were later involved in violence at far-right events in Florida and Tennessee. What intelligence was the FBI providing to state and local law enforcement officials through the FBI’s Joint Terrorism Task Force or other federal intelligence sharing systems? Why were so few federal arrests made? Building trust in victimized communities requires accountability from law enforcement.

Finally, law enforcement can begin restoring relationships with disenfranchised communities by ending policing tactics that antagonize residents, like discriminatory stops and unaccountable police violence, and instead devoting resources to solving violent crime. Solving serious crimes that plague underserved neighborhoods can help restore public confidence in police, making law enforcement more effective over time.

Conclusion

We must reconceive the notion of national security to encompass the security of all American communities. Too often throughout history, the government sacrificed the security of some Americans, particularly those that were politically, socially, or economically marginalized, in the name of protecting a narrow view of the nation's security. Today, many of these same communities experience persistent violence, yet these crimes are too often left unaddressed by the federal, state, and local law enforcement officials sworn to protect them. The Justice Department's failure to prioritize far-right terrorism, hate crimes, and police violence affecting these communities undermines the rule of law and social cohesion, which ultimately weakens the nation's security. Rethinking this problem requires that we reorient our security efforts and resources to value all people living in the United States, and protect them from all forms of violence.

The first step requires the collection of accurate national information regarding far-right violence, so that the Justice Department can better understand and address the organized nature of this crime problem. Second, simply imposing higher sentences for crimes is not enough. Congress should explore restorative justice approaches to redress the communal injuries inflicted by far-right terrorism and hate crimes, and develop a plan to fund and implement these methods whenever such violence occurs. Finally, any comprehensive strategy to protect vulnerable communities from far-right terrorism and hate crimes must be part of a broader effort to reform police practices affecting these communities.

Appendix I

Referrals to the Department of Justice for domestic terrorism and hate crime prosecutions: Received, Declined, Prosecutions Filed, and Convictions

Year	Program Category	Referrals Received	Referrals Declined	Prosecutions Filed	Convictions
FY 2018	Domestic Terrorism (4 Categories)	402	1,083	110	89
	Hate Crimes (2 categories)	51	88	14	12
FY 2017	Domestic Terrorism (4 Categories)	262	875	117	101
	Hate Crimes (2 categories)	28	79	11	15
FY 2016	Domestic Terrorism (4 Categories)	264	885	153	106
	Hate Crimes (2 categories)	53	90	24	18
FY 2015	Domestic Terrorism (2 Categories)	377	781	140	151
	Hate Crimes (2 categories)	27	64	12	21
FY 2014	Domestic Terrorism (4 Categories)	348	1,059	151	157
	Hate Crimes (2 categories)	32	88	20	17
FY 2013	Domestic Terrorism (4 Categories)	412	958	190	179
	Hate Crimes (2 categories)	36	117	23	20

This data is derived from TRAC. *See infra*, note 31.

Appendix II

State, territories, and Washington, DC, statutes regarding hate crimes, including acts commonly understood as hate crimes.

Statute	Summary	Type	Protected Categories
Alabama			
Ala. Code § 13A-5-13 "Crimes Motivated by Victim's Race, Color, Religion, National Origin, Ethnicity, or Physical or Mental Disability"	Penalty enhancements for crimes found to have been motivated by the victim's actual or perceived race, color, religion, national origin, ethnicity, or physical or mental disability.	Penalty Enhancement	Race, color, religion, national origin, disability, ethnicity
Ala. Code § 13A-6-28 "Cross or American Flag Burning"	Makes it a felony to burn a cross with the intent to intimidate another person on the property of another, highway, or public place.	Independent Offense	Other
Alaska			
Alaska Stat. § 12.55.155 "Factors in Aggravation and Mitigation"	Penalty enhancements when the underlying crime was found to be knowingly directed because of the victim's race, sex, color, creed, physical or mental disability, ancestry, or national origin.	Penalty Enhancement	Race, color, national origin, disability, sex, creed, ancestry
Arizona			
Ariz. Rev. Stat. Ann. § 13-701(D)(15) "Sentence of Imprisonment for Felony; Presentence Report; Aggravating and Mitigating Factors; Consecutive Terms of Imprisonment; Definition"	Penalty enhancement when the crime was committed with malice toward a victim because of their real or perceived race, color, religion, national origin, gender, sexual orientation, or disability.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, or disability
Ariz. Rev. Stat. Ann. § 13-1604(A)(1) "Aggravated Criminal Damage"	Felony penalty enhancement for criminal damage to property, including defacement, when the building, structure, personal property or place is used for worship or any other religious purpose, including burial facilities.	Penalty Enhancement	Religion
Ariz. Rev. Stat. Ann. § 13-1707 "Unlawful Cross Burning"	Makes it a misdemeanor to burn a cross on the property of another, highway, or other public place with the intent to intimidate another.	Independent Offense	Other
Ariz. Rev. Stat. Ann. § 13-1708 "Unlawful Symbol Burning"	Makes it a misdemeanor to burn any symbol on the property of another, highway, or other public place with the intent to intimidate another.	Independent Offense	Other
Ariz. Rev. Stat. Ann. § 41-1750(A)(3) "Central State Repository; Department of Public Safety; Duties; Funds; Accounts; Definitions."	Requires the creation of a central state repository is responsible for collecting, storing and disseminating complete and accurate Arizona criminal history and records, including hate crime data.	Data Collection	Race, color, religion, national origin, gender, sexual orientation, disability
Arkansas – No Criminal "Hate Crime" Statute			
Ark. Code Ann. § 5-71-215(b)(1)(B) "Defacing Objects of Public Respect"	Felony penalty enhancement for defiling, desecrating, marring, or otherwise damaging any place of worship, cemetery, or burial monument.	Penalty Enhancement	Religion

Statute	Summary	Type	Protected Categories
California			
Cal. Penal Code tit. 11.6 [§§ 422.55 – 422.57] “Civil Rights”	Makes it a misdemeanor to injure, intimidate, or interfere with the rights and privileges of another in whole or part because of the actual or perceived race, color, religion, national origin, ethnicity, gender, sexual orientation, or disability of the victim, including damage to property. Includes mandatory community service. Provides that commission of a hate crime is an aggravating factor for underlying crimes, where the crime included the present ability to commit a violent injury or did cause physical injury, the property crime caused damage in excess of \$950, or the offender was previously convicted of a hate crime. Additionally, provides a penalty enhancement for someone who commits or attempts to commit a felony motivated by bias.	Independent Offense + Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, gender identity, disability, ethnicity, association with a person or group with one or more of these actual or perceived characteristics
Cal. Penal Code § 11411 “Terrorizing”	Makes it a misdemeanor to hang a noose; display a sign, mark, symbol, emblem or other physical impression including but not limited to a Nazi swastika; or burn or desecrate a cross or religious symbol with reckless disregard of the risk of terrorizing the owner or occupant of private, religious, or public property.	Independent Offense	Religion, other
Cal. Penal Code § 11412 “Terrorizing”	Makes it a felony to cause or attempt to cause another to refrain from exercising their religion or engaging in a religious service by means of a threat of unlawful injury.	Independent Offense	Religion
Cal. Penal Code § 13023 “Department of Justice - Duties of Public Agencies and Officers”	Requires statewide collection of hate crime data.	Data Collection	
Cal. Penal Code § 13519.6 “Commission on Peace Officer Standards & Training - Field Services and Standards for Recruitment & Training”	Requires the development of guidelines and law enforcement training on responding to hate crimes, providing victim services, and gathering and reporting accurate data.	Training	
Colorado			
Colo. Rev. Stat. § 18-9-113 (1)(b) “Desecration of Venerated Objects”	Higher-class misdemeanor penalty enhancement for desecrating venerated objects, including places of worship or burial grounds.	Penalty Enhancement	Religion, other

Statute	Summary	Type	Protected Categories
Colo. Rev. Stat. § 18-9-121 “Bias-Motivated Crimes”	Makes it a crime if, with the intent to intimidate or harass another person because of that person’s actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, they cause bodily injury to another person, or destroys or damages the property of another person. * Court is directed to consider alternatives for first-time offenders, including community service to benefit public & victim’s community; restorative justice alternative dispute resolution program.	Penalty Enhancement *	Race, color, religion, national origin, sexual orientation, disability, ancestry
Connecticut			
Conn. Gen. Stat. § 7-294n “State and Local Police Training Programs to Provide Training on Crimes Motivated by Bigotry or Bias”	Requires law enforcement agencies to review and establish training relative to crimes motivated by bigotry or bias.	Training	
Conn. Gen. Stat. § 29-7m “Record and Classification of Crimes Motivated by Bigotry or Bias”	Requires police, resident state troopers or constables to monitor, record, and classify all crimes committed based on bigotry or bias.	Data Collection	
Conn. Gen. Stat. § 46a-58 “Deprivation of Rights. Desecration of Property. Placing of burning cross or noose on property.”	Makes it either a misdemeanor or felony to deprive another of rights, privileges, or immunities because of religion, national origin, alienage, color, race, sex, gender identity or expression, sexual orientation, blindness or physical disability. Includes burning a cross or placing a noose on the property of another, or on public property with the intent to intimidate or harass another.	Independent Offense	Race, color, religion, national origin, sexual orientation, gender identity, disability, sex, alienage, other
Conn. Gen. Stat. § 53-37a “Deprivation of a Person’s Civil Rights by Wearing a Mask or Hood”	Felony penalty enhancement for depriving another of rights, § 46a-58, while wearing a mask, hood or other device designed to conceal the identity.	Penalty Enhancement	Other
Conn. Gen. Stat. §§ 53a-181j – 53a-181j “Intimidation Based on Bigotry”	Makes it a misdemeanor or felony to intimidate based on bigotry or bias of real or perceived race, religion, ethnicity, disability, sexual orientation or gender identity or expression, with first, second, or third-degree penalties.	Independent Offense	Race, religion, sexual orientation, gender identity, disability, ethnicity
Delaware			
Del. Code Ann. tit. 11, § 1304 “Hate Crimes”	Felony and misdemeanor penalty enhancements when victims are selected because of their race, religion, color, disability, sexual orientation, gender identity, national origin or ancestry.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, gender identity, disability, ancestry
Del. Code Ann. tit. 11, § 805 “Cross or Religious Symbol Burning”	Makes it a misdemeanor to burn a cross or other religious symbol on public or private property without express written consent.	Independent Offense	Other

Statute	Summary	Type	Protected Categories
Washington, D.C.			
D.C. Code § 22-3312.02 “Defacing or Burning Cross or Religious Symbol; Display of Certain Emblems”	Makes it a misdemeanor to burn, desecrate, mar, or deface a cross or other religious symbol or display hateful emblems such as a Nazi swastika or noose on the private premises or property in D.C. primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly of persons of a particular race, color, creed, religion, or any category listed in 2-1401-.01 (national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibility, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business), with the intent to injure, intimidate, or threaten said persons or groups.	Independent Offense	Race, color, creed, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibility, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business
D.C. Code ch. 37 [§§ 22-3701 – 22-3704] “Bias-Related Crime”	Penalty enhancements for those found guilty of committing ‘bias-related crimes,’ defined as crimes based on a victim’s actual and perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation. Additionally, requires the Mayor to collect and compile data on the incidence of bias-related crimes.	Penalty Enhancement + Data Collection	Race, color, religion, national origin, sexual orientation, gender identity, disability, sex, age, marital status, personal appearance, family responsibility, homelessness, matriculation, political affiliation
Florida			
Fla. Stat. Ann. § 775.085 “Evidencing Prejudice While Committing Offense; Reclassification”	Felony and misdemeanor penalty enhancements for any crime when it evidences prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or age.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, ancestry, ethnicity, homeless status, age
Fla. Stat. Ann. § 806.13 (2) “Arson and Criminal Mischief; Penalties”	Makes it a felony to deface, injure, or damage a church, synagogue, mosque, or other place of worship or religious article contained within.	Independent Offense	Religion, other
Fla. Stat. Ann. [§§ 876.17, 876.18] “Placing Burning or Flaming Cross”	Makes it a misdemeanor to place a burning cross on public property or the property of another without express written consent.	Independent Offense	Other
Fla. Stat. Ann. § 877.19 “Hate Crimes Reporting Act”	The Governor, in collaboration with the Florida Department of Law Enforcement must collect and disseminate data on criminal acts which evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin.	Data Collection	Race, color, religion, national origin, sexual orientation, ethnicity, ancestry
Georgia – No Criminal “Hate Crime” Statute			
Ga. Code Ann. § 16-7-26 “Vandalism to a Place of Worship”	Makes it a felony to maliciously deface or desecrate a place of public religious worship.	Independent Offense	Religion

Statute	Summary	Type	Protected Categories
Ga. Code Ann. § 16-11-37 “Terroristic Threats and Acts”	Makes it a misdemeanor or felony to burn or damage the property of another or place a flaming cross or other burning symbol or flambeau with the intent to terrorize.	Independent Offense	Other
Ga. Code Ann. § 17-10-17 “Sentencing of Defendants Guilty of Crimes Involving Bias or Prejudice; Circumstances; Parole”	Penalty enhancement for defendants who intentionally selected any victim or property as the object of offense because of bias or prejudice	Penalty Enhancement	Held unconstitutionally vague in Botts v. State , 278 Ga. 538 (2004).
Hawaii			
Haw. Rev. Stat. § 706-662 “Criteria for Extended Terms of Imprisonment”	Penalty enhancement when the offender is convicted of a crime under sections 707 (offenses against the person), 708 (offenses against property rights), or 711 (offenses against public order), and intentionally selected their victim or property because of hostility toward the victim’s actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation.	Penalty Enhancement	Race, religion, national origin, gender, sexual orientation, gender identity, or disability, ethnicity
Haw. Rev. Stat. [§§ 846-51 - 846-54] “Hate Crime Reporting: Definitions; Responsibility for System; Responsibility of Agencies; Annual Reports”	Defines “hate crime” as any criminal act in which the perpetrator intentionally selected a victim or property because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. Mandates collection of data on such crimes	Data Collection	Race, religion, national origin, gender, sexual orientation, gender identity, or disability, ethnicity
Idaho			
Idaho Code Ann. ch. 79 [§§ 18-7901 - 18-7903] “Malicious Harassment”	Makes it a felony to, or to threaten to, injure a person, or damage, destroy, or deface the real or personal property of another because of the victim’s race, color, religion, ancestry, or national origin, and allows a penalty of imprisonment, a fine, or both, as well as establishing a civil right of action.	Independent Offense	Race, color, religion, national origin, ancestry
Idaho Code Ann. § 67-2915 “Statistical Report of Malicious Harassment Crimes”	Requires the director of the Idaho state police to annually submit a report on malicious harassment crimes to the governor and the chairman of the judiciary and rules committee.	Data Collection	Race, color, religion, national origin, ancestry, other
Illinois			
720 Ill. Comp. Stat. 5/12-71 “Hate Crime”	Makes it a felony to assault, batter, intimidate, stalk, cyberstalk, or commit theft, trespass, disorderly conduct, by reason of the victim’s perceived race, color, creed, religion, ancestry, gender, gender identity, sexual orientation, physical or mental disability, or national origin. *Enhancement if crime committed in or on grounds of religious building, in a cemetery, in a school, in a public park or ethnic/religious community center, or public way.	Independent Offense + Penalty Enhancement*	Race, color, religion, national origin, gender, gender identity, sexual orientation, disability, creed, ancestry

Statute	Summary	Type	Protected Categories
730 Ill. Comp. Stat. 5/5-5-3.2 (10) "Factors in Aggravation and Extended-Term Sentencing"	Hate crime offenses are aggravating factors in favor of longer terms of imprisonment	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, creed, ancestry
720 Ill. Comp. Stat. 5/12-76 "Cross Burning"	Makes it a misdemeanor upon first offense, and felony upon subsequent offenses to burn or intend to burn a cross with the intent to intimidate.	Independent Offense	Other
720 Ill. Comp. Stat. 5/21-1.2 "Institutional Vandalism"	Makes it a felony to commit institutional vandalism by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of any individual when knowingly inflicting damage to a place used for religious worship, a burial facility, adjacent grounds, and personal property contained therein.	Independent Offense	Race, color, religion, national origin, gender, sexual orientation, disability, creed, ancestry
20 Ill. Comp. Stat. 2605/390 "Hate Crimes"	Requires state law enforcement officer to respond to, identify, and report all hate crimes. Requires the Illinois Law Enforcement Training Standards Board to develop officer training on hate crimes.	Data Collection + Training	
20 Ill. Comp. Stat. 4070 "Commission on Discrimination and Hate Crimes Act"	Commission on Discrimination and Hate Crimes Act. Purposes of the Commission include, but are not limited to, the following: (1) To work in partnership with community leaders, educators, religious leaders, social service agencies, elected officials, and the public to identify and uproot sources of discrimination and bias at the source. (2) To work with local governments, law enforcement officials and prosecutors, educators, and community organizations by assisting with the development of resources, training, and information that allow for a swift and efficient response to hate-motivated incidents. (3) To work with educators throughout Illinois on issues concerning discrimination and hate, teaching acceptance, and embracing diversity at academic institutions. (4) To help ensure that this States laws addressing discrimination and hate-related violence are widely known and applied correctly to help eradicate and prevent crimes based on discrimination and intolerance. (5) To make recommendations to the Governor and the General Assembly for statutory and programmatic changes necessary to eliminate discrimination and hate-based violence. (6) To help implement recommendations by working with State agencies, the General Assembly, the business community, the social service community, and other organizations.	Commission	

Statute	Summary	Type	Protected Categories
Indiana – No Criminal “Hate Crime” Statute			
Ind. Code § 35-38-1-7.1 (a)(12) “Considerations in Imposing Sentence” (not yet encoded)	Allows the court to consider as an aggravating circumstance in sentencing if an offender committed the offense with bias due to the victim or group’s real or perceived characteristic, trait, belief, practice, association, or other attribute the court chooses to consider. * The failure to list protected classes in the statute, along with its discretionary application, makes this statute unique among all other “hate crime” legislation, and has already led to severe criticism of the law. Accordingly, while important to include a reference in this chart, we do not consider it a true hate crime law. ¹⁵¹	Penalty Enhancement*	
Ind. Code § 10-13-3-38 (b) “Collection of Bias Crime Information; Reports”	Requires state law enforcement to collect committed or allegedly committed bias crime data, defined in § 10-31-1-1 as an offense committed knowingly or intentionally selecting the victim or property because of the color, creed, disability, national origin, race, religion, or sexual orientation of the victim or owner or occupant of the harmed property.	Data Collection	Race, color, religion, national origin, sexual orientation, disability, creed
Iowa			
Iowa Code § 80B.11 1(c)(2) “Law Enforcement Academy: Rules”	Requires law enforcement officers to be trained on investigation, identification, and reporting of public hate crime offenses.	Training	
Iowa Code § 692.15(7) “Reports to Department”	Requires all law enforcement agencies to track hate crime data, and to create reports and generate crime statistics.	Data Collection	
Iowa Code § 708.2C “Assault in Violation of Individual Rights”	Makes it a felony to assault someone in the violation of individual rights, which is a hate crime, with the intent to inflict a serious injury.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, or disability, ancestry, political affiliation, sex, age, or association with someone of those groups
Iowa Code § 712.9 “Violations of Individual Rights – Penalties”	Penalty enhancement to an offense one degree higher for violations of sections 712.3 – 712.8 (arson, reckless use of fire/explosives, explosive or incendiary materials, false reports, threats) which are also hate crimes.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, or disability, ancestry, political affiliation, sex, age, or association with someone of those groups
Iowa Code § 716.6A “Criminal Mischief in Violation of Individual Rights”	Provides for enhanced penalties of one degree higher for criminal mischief which is also a violation of individual rights, which is a hate crime.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, or disability, ancestry, political affiliation, sex, age, or association with someone of those groups

Statute	Summary	Type	Protected Categories
<p>Iowa Code § 729A “Violation of Individual Rights - Hate Crimes”</p>	<p>Defines hate crimes as assaults, violations of individual rights, criminal mischief, or trespass committed against a person or their property because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability, or their affiliation with someone of these groups. Additionally, requires the prosecuting attorney training coordinator to develop training for law enforcement personnel to sensitize those people to existence of these violations, and to help identify offenses. Provides a civil right of action.</p>	<p>Definition + Training, + Civil Action</p>	<p>Race, color, religion, national origin, sexual orientation, or disability, ancestry, political affiliation, sex, age, or association with someone of those groups</p>
Kansas			
<p>Kan. Stat. Ann. 21-6815 “Imposition of Presumptive Sentence; Jury Requirements; Departure Sentencing; Substantial and Compelling Reasons for Departure; Mitigating and Aggravating Factors”</p>	<p>Lists race, color, religion, ethnicity, national origin, or sexual orientation as aggravating factors to depart, by judge’s discretion, from sentencing guidelines.</p>	<p>Penalty Enhancement</p>	<p>Race, color, religion, national origin, sexual orientation, ethnicity</p>
Kentucky			
<p>Ky. Rev. Stat. Ann. § 17.1523 “Uniform Offense Report to Provide Indication of Bias-related Crime; Annual Reporting”</p>	<p>Requires the Justice and Public Safety Cabinet to collect data from all law enforcement agencies on crimes which appear from their facts and circumstances to have been caused as a result of or reasonably related to race, color, religion, sex, or national origin.</p>	<p>Data Collection</p>	<p>Race, color, religion, sex, national origin</p>
<p>Ky. Rev. Stat. Ann. § 525.113 “Institutional Vandalism”</p>	<p>Makes it a felony to vandalize, deface, desecrate, or damage the objects described in 525.110 based on a person’s race, color, religion, sexual orientation, or national origin.</p>	<p>Penalty Enhancement</p>	<p>Race, color, religion, national origin, sexual orientation</p>
<p>Ky. Rev. Stat. Ann. § 532.031 “Hate Crimes – Finding”</p>	<p>Defines a hate crime as an offense where a person intentionally selected their victim based on race, color, religion, sexual orientation, national origin, or actual or perceived employment as a peace officer, firefighter, or emergency medical service provider. Empowers a judge to impose harsher penalties or deny probation and other forms of early release. * A finding that an offense was a hate crime may only effects parole eligibility, determined by the parole board. Such a finding must be noted, at the judge’s discretion, in the offender’s case file. Additionally, this statute cannot be applied to homicides.¹⁵²</p>	<p>Penalty Enhancement*</p>	<p>Race, color, religion, national origin, sexual orientation, person’s actual or perceived employment as a state, city, county, or federal peace officer, member of an organized fire department, or emergency medical services personnel</p>

Statute	Summary	Type	Protected Categories
Louisiana			
La. Stat. Ann. § 14:107.2 "Hate Crimes"	Provides for penalty enhancements when an underlying crime victim is selected because of their actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, national origin, or ancestry, or because they are actually or perceived to be employed as law enforcement, firefighter, or emergency medical services personnel.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, age, creed, ancestry, perceived membership or service in, or employment with, an organization, or because of actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel
La. Stat. Ann. § 15:1204.4 "Surveys; Studies; Reports"	Mandates the collection of hate crime data to the Louisiana Commission on Human Rights, which shall be reported annually to the governor.	Data Collection	
La. Stat. Ann. § 40:2403 (H)(1) "Council on Peace Officer Standards and Training"	Requires law enforcement officers to be trained on investigation, identification, and reporting of public hate crime offenses.	Training	
Maine			
Me. Stat. tit. 17-A § 1151(8)(B) "General Sentencing Provisions: Purposes"	Includes in the guidance for sentencing provisions the intent to address the gravity of bias motivated attacks.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, sex, ancestry, homelessness, age
Me. Stat. tit. 17 [§§ 2931 – 2932] "Interference with Constitutional and Civil Rights"	Prohibition on interference with constitutional and civil rights. Makes it a misdemeanor to violate the prohibition on interference with constitutional and civil rights.	Independent Offense	Race, color, religion, national origin, sexual orientation, disability, sex, ancestry
Me. Stat. tit. 25, § 1544 "Uniform Crime Reporting"	Requires state, county, and municipal law enforcement agencies to submit crime reports to the State Bureau of Identification, including on crimes that manifest evidence of prejudice based on race, religion, disability, sexual orientation or ethnicity.	Data Collection	Race, religion, sexual orientation, disability, ethnicity
Me. Stat. tit. 25, § 2803-B "Requirements of Law Enforcement Agencies"	Requires law enforcement agencies to adopt written policies on the procedures to deal with hate or bias crimes.	Training	
Maryland			
Md. Code, Pub. Safety § 2-307 "Public Safety - Crime Data"	Requires that the Department of Public Safety collect, analyze, and disseminate information about crimes, including hate crimes based on race, religion, ethnicity, and sexual orientation.	Data Collection	Race, religion, sexual orientation, ethnicity

Statute	Summary	Type	Protected Categories
<p>Md. Code, Crim. Law tit. 10 sub. 3 [§§ 10-301 – 10-308] “Hate Crimes”</p>	<p>Makes it a misdemeanor to obstruct another’s exercise of religion; to commit or attempt to commit a crime, damage real or personal property, or burn or attempt to burn an object on the real or personal property of another; to deface, damage, or destroy a place of worship, cemetery, religious school, educational facility, or community center; to deface, damage, destroy, or attempt to deface, damage, or destroy the personal or real property of another because of bias against a person or group’s race, color, religious belief, sexual orientation, gender, disability, national origin, or homeless status. May add an additional felony for any underlying felony crime committed because of the victim’s protected status above, unless the crime results in the victim’s death. Sentences for hate crimes may be separate or concurrent from sentences for the underlying crimes.</p>	<p>Independent Offense + Penalty Enhancement</p>	
Massachusetts			
<p>Mass. Gen. Laws ch. 6, § 116B “Hate Crimes; Police Instruction”</p>	<p>Requires that the municipal police training committee provide instruction to police officers in identifying, responding to, and reporting hate crimes.</p>	<p>Training</p>	
<p>Mass. Gen. Laws ch. 22C, §§ 33–35 “Collection of Hate Crime Data; Regulations”</p>	<p>Requires that the Department of State Police Colonel collect hate crime data, that the Crime Reporting Unit report and analyze hate crime data, and transmit reports to the governor, attorney general, joint committees on public state, criminal justice and the judiciary, and senate and house committees on ways and means, and that all hate crime data be made available for all law enforcement agencies and any local and state agencies.</p>	<p>Data Collection</p>	
<p>Mass. Gen. Laws ch. 265, § 39 “Assault or Battery for Purposes of Intimidation; Punishment”</p>	<p>Makes it a felony to commit assault or battery upon a person, or damage the real or personal property of a person, with the intent to intimidate because of race, color, religion, national origin, sexual orientation, gender identity, or disability. Also requires mandated diversity training for offenders.</p>	<p>Independent Offense</p>	<p>Race, color, religion, national origin, sexual orientation, gender identity, disability</p>
<p>Mass. Gen. Laws ch. 266, § 127A “Destruction of a Place of Worship, etc.; Threats; Punishment”</p>	<p>Makes it a felony to destroy, deface, mar, or injure a church, synagogue or other building or structure used for burial or worship or threaten to do so, which may result in imprisonment up to 2.5 years.</p>	<p>Independent Offense</p>	<p>Religion</p>
Michigan			
<p>Mich. Comp. Laws § 28.257a “Crimes Motivated by Prejudice or Bias; Report”</p>	<p>Requires the chief of police of each city or village, township, and sheriff of each county to report crimes motivated by prejudice against race, ethnic origin, religion, gender, or sexual orientation to the department of state police.</p>	<p>Data Collection</p>	<p>Race, religion, gender, sexual orientation, ethnic origin</p>

Statute	Summary	Type	Protected Categories
Mich. Comp. Laws § 750.147b "Ethnic Intimidation"	Makes it a felony to commit ethnic intimidation, defined as physical contact with another person, damage or destruction of real or personal property of another, or threatening another maliciously and with specific intent to intimidate or harass another because of that person's race, color, religion, gender, or national origin. Additionally, creates a civil right of action.	Independent Offense + New Civil Action	Race, color, religion, gender, national origin
Minnesota			
Minn. Stat. § 609.595 subds. 1a & 2 "Damage to Property"	Penalty enhancement to second-degree and third-degree criminal damage when motivated by race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minn. Stat. § 609.749 subd. 3 (a)(1) "Stalking; Penalties"	Penalty enhancement to aggravated stalking when the offender commits the offense because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minn. Stat. § 609.2231 subd. 4 "Assault in the Fourth Degree"	Makes it a misdemeanor crime to assault another because of the victim's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin, and a felony for repeat offenders within five years of their previous conviction.	Independent Offense	Race, color, religion, national origin, sexual orientation, disability, age, sex
Minn. Stat. § 626.5531 "Reporting of Crimes Motivated by Bias"	Requires peace officers to report every violation of chapter 609 or a local criminal ordinance if the officer has reason to believe or the victim alleges that the offender was motivated to commit the act by the victim's race, religion, national origin, sex, age, disability, or sexual orientation.	Data Collection	Race, religion, national origin, sexual orientation, disability, age, sex
Minn. Stat. § 626.8451 subd. 1 "Training in Identifying and Responding to Certain Crimes"	Requires a training course to assist peace officers in identifying and responding to crimes motivated by the victim's race, religion, national origin, sex, age, disability, or sexual orientation.	Training	Race, religion, national origin, sexual orientation, disability, age, sex, training
Mississippi			
Miss. Code Ann. § 97-17-39 "Penalties for Injuring, Destroying or Defacing Certain Cemetery Property, Public Buildings, Schools or Churches, or Property Thereof"	Makes it a crime to destroy burial vaults, urns, memorials, vases, etc., or churches.	Independent Offense	Religion
Miss. Code Ann. §§ 99-19-301 – 99-19-309 "Enhanced Penalties for Offenses Committed for Discriminatory Reasons"	Penalty enhancement of imprisonment of twice that authorized by the law for the offense committed, for both felonies and misdemeanors, if they were committed because of the actual or perceived race, color, ancestry, ethnicity, religion, national origin, or gender of the victim. Provides that penalty enhancements can only be imposed by a jury finding that the victim was within the class delineated.	Penalty Enhancement	Race, color, religion, national origin, gender, ethnicity, ancestry, actual or perceived employment as a law enforcement officer, firefighter or emergency medical technician

Statute	Summary	Type	Protected Categories
Missouri			
Mo. Rev. Stat. § 557.035 “Hate Offenses - Provides Enhanced Penalties for Motivational Factors in Certain Offenses”	Felony penalty enhancement for crimes knowingly motivated by race, color, religion, national origin, sex, sexual orientation, or disability.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, sex
Mo. Rev. Stat. § 574.085 “Institutional Vandalism – Penalty”	Makes it a crime to vandalize, deface, or damage places of worship or a facility used for burial, and certain other properties owned and operated by a religious group.	Independent Offense	Religion
Montana			
Mont. Code Ann. § 45-5-221 “Malicious Intimidation or Harassment Relating to Civil or Human Rights – Penalty”	Makes it a felony to maliciously intimidate, harass, injure, or destroy the property of a victim because of their race, creed, religion, color, national origin, or involvement in civil rights or human rights activity.	Independent Offense	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
Mont. Code Ann. § 45-5-222 “Sentence Enhancement - Offenses Committed Because of Victim’s Race, Creed, Religion, Color, National Origin or Human Rights Activities”	Penalty enhancement for any crime except malicious intimidation or harassment when the crime was motivated by the victim’s race, color, creed, national origin, or involvement in civil rights or human rights activity, or that involved damage/destruction to a building regularly used for religious worship.	Penalty Enhancement	Race, color, religion, national origin, creed, involvement in civil rights or human rights activities
Nebraska			
Neb. Rev. Stat. § 28-111 “Enhanced Penalty; Enumerated Offenses”	Penalty enhancement to next highest penalty classification for committing manslaughter, assault, terroristic threats, stalking, kidnapping, false imprisonment, sexual assault, sexual assault of a child, arson, criminal mischief, unauthorized application of graffiti, or criminal trespass offenses because of the victim’s race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability, or because of the victim’s association with a person of one of the protected categories.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, age, ancestry, association with a person of one of the protected categories
Neb. Rev. Stat. § 28-114 “Nebraska Commission on Law Enforcement and Criminal Justice; Duties”	Requires the Commission to establish, maintain, and collect data on hate crime offenses.	Data Collection	Race, color, religion, national origin, gender, sexual orientation, disability, age, ancestry, association with a person of one of the protected categories
Nevada			
Nev. Rev. Stat. § 193.1675 “Additional Penalty: Commission of Crime Because of Certain Actual or Perceived Characteristics of Victim”	Penalty enhancement for enumerated crimes motivated by the actual or perceived race, color, religion, national origin, disability, sexual orientation, or gender identity or expression of the victim different from that characteristic of the perpetrator.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, gender identity, disability

Statute	Summary	Type	Protected Categories
Nev. Rev. Stat. § 207.185 “Penalty for commission of certain unlawful acts by reason of actual or perceived race, color, religion, national origin, physical or mental disability, sexual orientation or gender identity or expression of another person or group of persons”	Penalty enhancement to a gross misdemeanor for certain misdemeanors motivated by the actual or perceived race, color, religion, national origin, disability, sexual orientation, or gender identity or expression of the victim different from that characteristic of the perpetrator.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, gender identity, disability
New Hampshire			
N.H. Rev. Stat. Ann. § 651:6 (f) “Extended Term of Imprisonment”	Penalty enhancement for enumerated crimes motivated by victim’s race, religion, creed, national origin, or sexual orientation, age, disability, law enforcement officers, volunteer firefighters, on-call firefighters, or licensed emergency medical care providers.	Penalty Enhancement	Race, religion, national origin, sexual orientation, creed, age, disability, law enforcement officers, firefighters, emergency medical care providers
New Jersey			
N.J. Rev. Stat. § 2C:16-1 “Bias Intimidation”	Penalty enhancement for crimes committed with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, gender identity, disability, ethnicity *A portion of the statute, allowing victim belief of prejudice to act as evidence, was held unconstitutional in State v. Pomianek , 221 N.J. 66 (2015)
N.J. Rev. Stat. § 2C:33-11 “Defacement of Private Property, Crime of Fourth Degree; Act of Graffiti, Additional Penalty”	Makes it a felony to damage or deface a place of worship or burial by placing thereon a symbol, an object, a characterization, an appellation, or graffiti that exposes another to a threat of violence.	Independent Offense	Religion
N.J. Rev. Stat. § 52:9DD-9 “Duties of Council”	Requires collection of hate crime data by the Human Rights Council, including developing policy proposals for the State and assist with coordinating efforts to promote prejudice reduction and prevent and deter crimes based upon the victim’s race, color, religion, national origin, sexual orientation, ethnicity, gender, or physical, mental or cognitive disability.	Data Collection	Race, color, religion, national origin, gender, sexual orientation, disability, ethnicity, data collection
New Mexico			
N.M. Stat. Ann. § 30-15-4 “Desecration of a Church”	Makes it a felony to desecrate or deface any church.	Independent Offense	Religion
N.M. Stat. Ann. §§ 31-18B-3 – 31-18B-5 “Hate Crimes”	Penalty enhancement of an additional year of imprisonment for noncapital crimes motivated by hate. Requires every law enforcement agency to collect hate crime data to provide to the FBI, and requires the New Mexico Law Enforcement Academy to provide officer training on the detection, investigation, and reporting of hate crimes.	Penalty Enhancement + Data Collection + Training	Race, color, religion, national origin, gender, sexual orientation, gender identity, disability, ancestry, age

Statute	Summary	Type	Protected Categories
New York			
N.Y. Penal Law Art. 485 "Hate Crimes"	Penalty enhancements of one category higher for intentional offenses committed in whole or in part because of the victim's believed or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, even if the belief or perception is incorrect. Allows for offender hate crime training, education, or other programs designed to prevent hate crimes.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry, age
N.Y. Penal Law § 240.31 "Aggravated Harassment in the First Degree"	Makes it a felony to harass, annoy, threaten, or alarm another because of their race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation by burning a cross in a publicly visible manner; damaging premises used primarily for religious purposes; etch, paint, or draw a swastika without the express permission of the owner; or etch, draw, or place a noose on any building or real property without express permission.	Independent Offense	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry, age, other
N.Y. Penal Law § 240.71 "Criminal Interference with Healthcare Services or Religious Worship in the First Degree"	Felony penalty enhancement for repeat offender of criminal interference with healthcare services or religious worship in second degree.	Penalty Enhancement	Religion
N.Y. Exec. Law § 837 (f)(4)(c) "Functions, Powers, and Duties of Division"	Requires the Division of Criminal Justice Services to collect and analyze statistical and all other data on hate crimes reported to or investigated by state or local law enforcement, and then provide that information to the governor and state legislature.	Data Collection	
North Carolina			
N.C. Gen. Stat. § 14-3 (c) "Punishment of Misdemeanors, Infamous Offenses, Offenses Committed in Secrecy and Malice, or With Deceit and Intent to Defraud, or With Ethnic Animosity."	Felony & misdemeanor penalty enhancements for crimes committed because of the victim's race, color, religion, nationality or country of origin.	Penalty Enhancement	Race, color, religion, nationality, country of origin
N.C. Gen. Stat. § 14-12.14 "Placing Exhibit While Wearing a Mask, Hood, or Other Disguise"	Makes it a felony to wear a mask, hood, or other disguise for obscuring the identity of the wearer in order for them to place an exhibit, including a noose, with the intent to intimidate another.	Independent Offense	Other
N.C. Gen. Stat. § 14-49(b1) "Malicious Use of Explosive or Incendiary; Punishment"	Makes it a higher class of felony to use, aid, counsel, or procure an explosive or incendiary device against a place of worship.	Independent Offense	Religion
N.C. Gen. Stat. § 14-62.2 "Burning of Churches and Certain Other Religious Buildings"	Makes it a felony to burn or cause to be burned, or aid, counsel, or procure the burning of a church, chapel, or meeting house.	Independent Offense	Religion

Statute	Summary	Type	Protected Categories
N.C. Gen. Stat. § 14-401.14 “Ethnic Intimidation; Teaching Any Technique for Ethnic Intimidation”	Makes it a misdemeanor to or threaten to assault, damage, deface the property of another because of their race, color, religion, nationality or country of origin, or to assemble a group to teach a technique of intimidation.	Independent Offense	Race, color, religion, nationality, country of origin
North Dakota – No Criminal “Hate Crime” Statute¹⁵³			
N/A			
Ohio			
Ohio Rev. Code Ann. § 2927.12 “Ethnic Intimidation”	Penalty enhancement of one degree higher for violations of menacing, aggravated menacing, criminal damaging or endangering, criminal mischief, or telecommunications harassment by reason of the race, color, religion, or national origin of the person or persons. * Each of the enumerated crimes is a misdemeanor — this law cannot be used to enhance felony crimes.	Penalty Enhancement *	Race, color, religion, national origin
Ohio Rev. Code Ann. §§ 2927.11 (A)(4) & (B) “Desecration”	Penalty enhancement to a felony to deface, damage, pollute, or otherwise mistreat places of worship or religious objects therein, or objects of sacred devotion.	Independent Offense	Religion
Oklahoma			
Okla. Stat. tit. 21 § 850 “Malicious Harassment Based on Race, Color, Religion, Ancestry, National Origin, Disability”	Makes it a crime to maliciously intimidate or harass a person because of their race, color, religion, national origin, ancestry, or disability. Penalty enhancement for a second offense under this statute, and creates a civil right of action. Additionally, requires the Oklahoma State Bureau of Investigation to report hate crimes as defined in this section, and requires a promulgation of rules, and practices for monthly hate crime data reporting from state and local law enforcement agencies, including crimes motivated by ethnicity.	Independent Offense + Penalty Enhancement + New Civil Action + Data Collection	Race, color, religion, national origin, disability, ancestry, ethnicity
Okla. Stat. tit. 21, § 1765 “Defacing or Injuring House of Worship”	Makes it a felony to break, deface, or otherwise injure a house of worship or items used for religious purposes therein.	Independent Offense	Religion

Statute	Summary	Type	Protected Categories
Oregon			
Or. Rev. Stat. §§ 166.155 & 166.165 "Bias Crime"	Makes it a misdemeanor to, because of the actual or perceived race, color, religion, sexual orientation, gender identity, disability, or national origin of the victim, tamper with their property, cause offensive contact to their body, or threaten them with harm to them, their property, or their family. Makes it a felony when two or more persons intentionally, knowingly, or recklessly, or with criminal negligence by means of a deadly weapon, cause physical injury because of the actual or perceived race, color, religion, gender identity, national origin, sexual orientation or disability of their victim, or commit conduct that would constitute intimidation in the second degree if only committed by one person.	Independent Offense	Race, color, religion, national origin, gender identity, sexual orientation, disability, family member of person with protected characteristics
Or. Rev. Stat. § 181A.225 "Reporting of Crime Statistics"	Requires all state and local law enforcement to report crimes motivated by prejudice against the victim's race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership in labor organization, disability, age, or economic and social status, or citizenship status to the Department of State Police. The department shall prepare annual and quarterly reports for use by reporting agencies and others.	Data Collection	Race, color, religion, national origin, sexual orientation, disability, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, age, economic or social status, citizenship
Or. Rev. Stat. § 181A.470 "Training Related to the Vienna Convention and Crimes Motivated by Prejudice or That Constitute Abuse"	Requires the Board of Public Safety Standards and Training to provide training to all law enforcement officers on the identification, investigation, and reporting of crimes motivated by race, color, religion, national origin, sexual orientation, marital status, political affiliation or beliefs, membership in labor organization, disability, age, or economic and social status, or citizenship status.	Training	Race, color, religion, national origin, sexual orientation, disability, marital status, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, age, economic or social status, citizenship
Pennsylvania			
18 Pa. Cons. Stat. § 2710 "Ethnic Intimidation"	Penalty enhancement of one degree higher for non-summary offenses directed with malicious intention toward the victim's race, color, religion, or national origin. For underlying summary offenses, penalty shall be a misdemeanor.	Independent Offense + Penalty Enhancement	Race, color, religion, national origin
Pa. Adm. Code § 710 (i) "Pennsylvania State Police"	Requires the Pennsylvania State Police to collect data on hate crimes based on the victim's race, color, religion, or national origin, which shall be reported monthly by all local law enforcement agencies and the State Fire Marshal.	Data Collection	Race, color, religion, national origin

Statute	Summary	Type	Protected Categories
Rhode Island			
R.I. Gen. Laws § 12-19-38 “Hate Crimes Sentencing Act”	Penalty enhancement for both misdemeanor and felony offenses committed because of the hatred or animus toward the victim’s actual or perceived disability, religion, color, race, national origin or ancestry, sexual orientation, or gender of that person or the owner or occupant of that property.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry
R.I. Gen. Laws § 42-28-46 “Development of System Monitoring Crimes Motivated by Bigotry and Bias”	Requires the state police to collect hate crime data on crimes motivated by bigotry against the victim’s race, religion, ethnicity, gender, gender identity, sexual orientation, disability, or homeless status.	Data Collection	Race, religion, gender, sexual orientation, gender identity, disability, ethnicity, homeless or perceived to be homeless
R.I. Gen. Laws § 42-28.2-8.1 “Educational Requirements — Hate Crimes”	Requires the Commission on Standards and Training to prepare and publish training materials on identifying, investigating, and reporting hate crimes.	Training	Race, religion, gender, sexual orientation, gender identity, disability, ethnicity, homeless or perceived to be homeless
South Carolina - No Criminal “Hate Crime” Statute			
S.C. Code Ann. § 16-7-120 “Placing Burning or Flaming Cross in Public Place”	Makes it a misdemeanor to burn a cross in public or the property of another without express permission to do so.	Independent Offense	Other
S.C. Code Ann. § 16-11-535 “Malicious Injury to Place of Worship”	Makes it a felony to or attempt to or aid in the vandalization, defacement, damaging, or destroying of a place of worship.	Independent Offense	Religion
South Dakota			
S.D. Codified Laws ch. 22-19B [§§ 22-19B-1 – 22-19B-5] “Hate Crimes”	Makes it a felony to intimidate or harass a specific person or group because of their race, ethnicity, religion, ancestry, or national origin. Incorporates cross burning or placing of any word or symbol commonly associated with racial, religious, or ethnic terrorism into the crime of defacement. Makes it a misdemeanor to prevent another from practicing their religion by threats or violence. Makes it a misdemeanor to compel another to practice or adopt a religion by threat or violence.	Independent Offense	Race, religion, national origin, ethnicity, ancestry
Tennessee			
Tenn. Code Ann. § 39-14-301 (B)(2)(A) “Arson”	Penalty enhancement to a higher class of felony when knowingly committing arson by damaging a structure by means of fire or explosion when the damaged structure is a place of worship.	Penalty Enhancement	Religion
Tenn. Code Ann. § 39-17-309 “Civil Rights Intimidation”	Makes it a felony to injure, damage, deface, or destroy any real or personal property of another with the purpose of intimidating that person from exercising their civil rights, regardless of race, color, ancestry, religion, or national origin. Additional misdemeanor when wearing a mask or disguise with the intent to commit the above.	Independent Offense	Race, color, religion, national origin, ancestry

Statute	Summary	Type	Protected Categories
Tenn. Code Ann. § 39-17-311 (a)(1) “Desecration of Venerated Object”	Makes it a felony to intentionally desecrate a place of worship or burial.	Independent Offense	Religion
Tenn. Code Ann. § 40-35-114 (17) “Enhancement Factors”	Penalty enhancement for offenses committed when the defendant intentionally selected the victim or their property in whole or in part because of their real or perceived race, religion, color, disability, sexual orientation, national origin, ancestry, or gender.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry, age
Texas			
Tex. Code Crim. Proc. Ann. art. 42.014 “Finding That Offense Was Committed Because of Bias or Prejudice”	Determines that the fact-finder, whether judge or jury, determine beyond a reasonable doubt that an offense was committed because of offender’s bias or prejudice against race, color, religion, national origin or ancestry, gender, disability, or sexual preference. Upon such a finding, the judge may order a sentence of an educational program on tolerance of others.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, disability, age, ancestry
Tex. Penal Code Ann. § 12.47 “Penalty If Offense Committed Because of Bias or Prejudice”	Penalty enhancement for all offenses, except first degree felonies and Class A misdemeanors, to the next highest offense, which were found to have been committed because of bias or prejudice, as defined in Tex. Code. Crim. Pro. Ann. art. 42.014. For Class A misdemeanors, the minimum term of confinement is increased 180 days.	Penalty Enhancement	Race, color, religion, national origin, gender, sexual orientation, age, ancestry
Tex. Penal Code Ann. § 28.08 (d)(1) “Graffiti”	Makes it a misdemeanor to commit graffiti, with enhanced felony penalties if on a place of worship or human burial.	Independent Offense + Penalty Enhancement	Religion
Tex. Gov’t. Code Ann. § 411.046 “Hate Crime Reporting”	Requires the Bureau of Identification and records to establish, analyze, and maintain data on hate crimes. Such data will be submitted by all state and local law enforcement to the Bureau.	Data Collection	
Utah			
Utah Code Ann. § 76-3-203.14 “Victim Targeting Penalty Enhancement —Penalties”	Felony and misdemeanor penalty enhancements to a higher class or degree, when a defendant is found to have intentionally selected their victim or harmed the property of a victim because of the defendant’s belief or perception regarding the victim’s personal attribute or the attribute of another individual or group with whom the victim had a relationship.	Penalty Enhancement	Race, religion, national origin, age, ancestry, disability, ethnicity, familial status, gender identity, homelessness, marital status, matriculation, political expression, sex, sexual orientation, service in U.S. Armed Forces, status as emergency responder, status as law enforcement officer, correctional officer, special function officer, or any other peace officer.
Utah Code Ann. § 76-3-203.4 “Hate Crimes — Aggravating Factors”	Hate crime offenses are aggravating factors in sentencing, including the degree of community unrest caused by the offense.	Penalty Enhancement	

Statute	Summary	Type	Protected Categories
Utah Code Ann. § 53-10-202 "Criminal Identification — Duties of Bureau"	Requires the Bureau of Criminal Identification to establish a statewide uniform crime reporting system and gather statistics, including on crimes that evidence prejudice based on race, religion, ancestry, national origin, ethnicity, or other categories the bureau deems appropriate.	Data Collection	Race, religion, national origin, ancestry, ethnicity, other categories that the division finds appropriate
Vermont			
Vt. Stat. Ann. tit. 13 ch. 31 [§§ 1454 – 1457] "Discrimination"	Penalty enhancement for both misdemeanor and felony offenses maliciously motivated by the victim's actual or perceived race, color, religion, national origin, sex, ancestry, age, gender identity, sexual orientation, or service in U.S. Armed Forces. Makes it a felony to burn a cross or other religious symbol with the intention of terrorizing or harassing another. Includes a civil right of action.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, gender identity, disability, sex, ancestry, age, service in the U.S. Armed Forces
Virginia			
Va. Code Ann. § 18.2-57 (B) "Assault and Battery; Penalty"	Felony penalty enhancement with a minimum term of confinement for assaults and batteries where the offender intentionally selects the victim because of their race, color, religious conviction, or national origin.	Penalty Enhancement	Race, color, religion, national origin
Va. Code Ann. § 18.2.127 (B) "Injuries to Churches, Church Property, Cemeteries, Burial Grounds, etc.; Penalty"	Makes it a felony to destroy, damage, deface, or otherwise injure any place of worship or surrounding property.	Independent Offense	Religion
Va. Code Ann. § 18.2-423 "Burning Cross on the Property of Another or Public Place with Intent to Intimidate; Penalty; Prima Facie Evidence of Intent"	Makes it a crime to burn a cross on the property of another or public property with intent to intimidate any person or group or persons.	Independent Offense	Religion, other * Prima facie evidence of intent held unconstitutional overbroad in Elliott v. Commonwealth , 267 Va. 464 (2004)
Va. Code Ann. § 18.2-423.01 "Burning Object on Property of Another or a Highway or Other Public Place with Intent to Intimidate; Penalty"	Makes it a felony to burn an object on the property of another or public place with the intent to intimidate.	Independent Offense	Other
Va. Code Ann. § 18.2-423.1 "Placing Swastika on Certain Property With Intent to Intimidate; Penalty; Prima Facie Evidence of Intent"	Makes it a felony to place a swastika on any building used for religious worship or gathering, or school, educational facility, or community centers owned or operated by a church or religious body with the intent to intimidate.	Independent Offense	Religion
Va. Code Ann. § 18.2-423.2 "Displaying a Noose on Property of Another or Highway or Other Public Place With Intent to Intimidate; Penalty"	Makes it a felony to display a noose on the property of another or public place with intent to intimidate.	Independent Offense	Other
Va. Code Ann. § 52-8.5 "Reporting Hate Crimes"	Requires the Superintendent of the Department of State Police to establish and maintain a central repository for the collection and analysis of hate crime data, groups, and individuals carrying out such acts.	Data Collection	Race, religion, national origin, ethnicity

Statute	Summary	Type	Protected Categories
Washington			
Wash. Rev. Code Ann. [§§ 9A.36.078 – 9A.36.083] “Malicious Harassment”	Makes it a felony to maliciously harass a victim based on their actual or perceived race, color, ancestry, national origin, gender, gender identity, sexual orientation, or mental, physical, or sensory handicap, or to burn a cross on property of a victim who is or whom the actor perceives to be of African American heritage, or to deface the property with a swastika of a victim who the actor perceives to be of Jewish heritage. Additionally, provides for civil remedies.	Independent Offense + Civil Remedies	Race, color, religion, national origin, gender, gender identity, sexual orientation, disability, ancestry, African Americans, those of Jewish Ancestry
Wash. Rev. Code Ann. § 36.28A.030 “Malicious Harassment — Information Reporting and Dissemination”	Requires the Washington Association of Sheriffs & Police Chiefs to establish and maintain a central repository of hate crime data, and to create a monthly report to present to the governor, the senate law and justice committee, and the house of representatives’ judiciary committee.	Data Collection	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry
Wash. Rev. Code Ann. § 43.101.290 “Training in Crimes of Malicious Harassment”	Requires the criminal justice training commission to develop and train officers on the identification, response, and reporting of bias crimes.	Training	Race, color, religion, national origin, gender, sexual orientation, disability, ancestry, African Americans, those of Jewish Ancestry
West Virginia			
W. Va. Code Ann. § 61-6-21 “Prohibiting Violations of An Individual’s Civil Rights; Penalties”	Makes it a felony to intimidate by threat of violence, force or threat of force, or to conspire against or teach a method of intimidation against a victim or group because of their race, color, religion, ancestry, national origin, political affiliation or sex. Additionally, the commission of a hate crime will be considered an aggravating factor for any underlying crime.	Independent Offense	Race, color, religion, national origin, ancestry, political affiliation, sex
Wisconsin			
Wis. Stat. § 939.645 “Crimes Committed Against Certain People or Property”	Penalty enhancement misdemeanor and felony offenses committed against victims or their property are intentionally selected because of their race, religion, color, disability, sexual orientation, national origin or ancestry.	Penalty Enhancement	Race, color, religion, national origin, sexual orientation, disability, ancestry
Wis. Stat. § 943.012 “Criminal Damage to or Graffiti on Religious and Other Property”	Makes it a felony to damage or deface a place of worship or burial, or a facility primarily associated with groups defined by a particular significance or value to any group of persons of a particular race, religion, color, disability, sexual orientation, national origin or ancestry.	Independent Offense	Race, color, religion, national origin, sexual orientation, disability, ancestry
Wyoming — No Criminal “Hate Crime” Statute			
N/A	N/A	N/A	N/A

Statute	Summary	Type	Protected Categories
U.S. Territories			
American Samoa – No Criminal “Hate Crime” Statute			
N/A	N/A	N/A	N/A
Guam – No Criminal “Hate Crime” Statute			
N/A	N/A	N/A	N/A
Northern Mariana Islands – No Criminal “Hate Crime” Statute			
N/A	N/A	N/A	N/A
Puerto Rico			
P.R Laws Ann. app. II, r. 171 “Sentence; Evidence as to Mitigating or Aggravating Circumstances”	Aggravating circumstance in sentencing when a crime motivated by prejudice against a victim for reason of their race, color, sex, sexual orientation, gender, gender identity, origin, ethnic origin, civil status, birth, physical and/or mental disability, social status, religion, age, religious or political beliefs.	Penalty Enhancement	Race, color, religion, gender, sexual orientation, gender identity, disability, sex, origin, ethnic origin, civil status, birth, social status, age, religious or political beliefs
U.S. Virgin Islands – No Criminal “Hate Crime” Statute			
N/A	N/A	N/A	N/A

Appendix III

Percentage of anti-white bias attacks out of all racial, ethnic, and ancestry bias attacks between 2013 and 2017.

Year	No. of Reported Racial/Ethnic/Ancestry bias Offenses	No. of Anti-White Offenses Reported	Percentage of Racial/Ethnic/Ancestry Bias Offenses Reported as Anti-White
2017	4,832	844	17.5 %
2016	4,229	876	20.7 %
2015	4,029	734	18.2 %
2014	3,081	701	22.8 %
2013	3,407	728	21.4 %
Average	3,916	777	20.1 %

Data derived from the FBI's Uniform Crime Report. *See infra*, notes 112–13

Endnotes

- 1 Michael McGowan, "San Diego Shooting Suspect Posted 'Open Letter' Online," *Guardian*, April 28, 2019, <https://www.theguardian.com/us-news/2019/apr/28/john-earnest-san-diego-shooting-suspect-posted-open-letter-online>.
- 2 Michael German & Sara Robinson, *Wrong Priorities on Fighting Terrorism*, Brennan Center for Justice, 2018., https://www.brennan-center.org/sites/default/files/publications/2018_10_DomesticTerrorism_V2%20%281%29.pdf.
- 3 18 U.S.C. § 2331(5).
- 4 See U.S. Department of Justice, "Hate Crimes Laws: About Hate Crimes," accessed June 6, 2019, <https://www.justice.gov/crt/hate-crime-laws>.
- 5 German and Robinson, *Wrong Priorities on Terror*, 5-14.
- 6 *Ibid.* 9.
- 7 Charlie Savage and Rebecca Ruiz, "Sessions Emerges as Forceful Figure in Condemning Charlottesville Violence," *Washington Post*, August 14, 2017, <https://www.nytimes.com/2017/08/14/us/politics/domestic-terrorism-sessions.html>; Indictment, United States v. Sayoc, 18 Cr. 820 (S.D.N.Y. Nov. 9, 2018), available at <https://www.justice.gov/opa/press-release/file/1110046/download>; Press Release, U.S. Attorneys' Office, Central District of Illinois., *Superseding Indictment Adds New Charges Against Four East Central Illinois Men*, May 2, 2018, <https://www.justice.gov/usao-cdil/pr/superseding-indictment-adds-new-charges-against-four-east-central-illinois-men-0>.
- 8 See generally German and Robinson, *Wrong Priorities on Terror*, *supra* note 2.
- 9 Sean Emery, "Blaze Bernstein Murder Case: Samuel Woodward Charged With a Hate Crime, DA Says," *Orange County Register*, August 2, 2018, <https://www.ocregister.com/2018/08/02/samuel-woodward-will-face-a-hate-crime-enhancement-in-the-blaze-bernstein-murder-case/>; David K. Li, "White Supremacists Pleads Guilty to Race-Hate Murder of Black Man in New York," *NBC News*, January 23, 2019, <https://www.nbcnews.com/news/us-news/white-supremacist-pleads-guilty-race-hate-murder-black-man-new-n961731>; Aimee Green, "Russell Courtier: Racial Bias Murder Conviction Could Be the First in 30 Years in Oregon," *Oregonian*, March 19, 2019, <https://www.oregonlive.com/news/2019/03/jury-finds-russell-courtier-guilty-of-murdering-black-teen-with-jeep.html>.
- 10 Wesley Lowry, Kimbriell Kelly, and Steven Rich, "Murder With Impunity: An Unequal Justice," *Washington Post*, July 25, 2018, https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/?utm_term=.68b5fa47763e; Garet Bleir and Anya Zoledziowski, "Cases of Missing and Murdered Native American Women Challenge Police, Courts," *News 21*, August 15, 2018, <https://hateinamerica.news21.com/cases-of-missing-murdered-native-american-women-challenge-police-courts/>; Renata Correa Cló, Emma Keith, and Katie Gagliano, "Transgender Murders Frequently Left Unresolved," *NONDOC*, August 16, 2018, <https://nondoc.com/2018/08/16/transgender-murders-frequently-left-unresolved/>; Ryan Lenz, "Investigating Deaths of Undocumented Immigrants on the Border," *Southern Poverty Law Center*, August 26, 2012, <https://www.splcenter.org/fighting-hate/intelligence-report/2012/investigating-deaths-undocumented-immigrants-border>.
- 11 U.S. Department of Justice, *Justice Department Releases Update on Hate Crimes Prosecutions and Announces Launch of New Hate Crimes Website*, 2018, <https://www.justice.gov/opa/pr/justice-department-releases-update-hate-crimes-prosecutions-and-announces-launch-new-hate>.
- 12 National Consortium for the Study of Terrorism & Responses to Terrorism, *The Organizational Dynamics of Far-Right Hate Groups in the United States: Comparing Violent to Non-Violent Organizations*, 2011, 2, https://www.dhs.gov/sites/default/files/publications/944_OPSR_TEVUS_Comparing-Violent-Nonviolent-Far-Right-Hate-Groups_Dec2011-508.pdf (alteration added).
- 13 Anti-Defamation League, Center on Extremism, *Murder and Extremism in the United States in 2018*, 2019, 21, <https://www.adl.org/media/12480/download>.
- 14 Claire Galofaro, "St. John Sheriff Shootings Put 'Sovereign Citizens' Anti-Government Movement in Spotlight," *NOLA*, October 7, 2012, https://www.nola.com/crime/2012/10/st_john_sheriff_shootings_puts.html.
- 15 Joshua D. Freilich et al., "Patterns of Fatal Extreme-Right Crime in the United States," *Perspectives on Terrorism* 12 (2018), 38–51., <https://www.universiteitleiden.nl/binaries/content/assets/custom-sites/perspectives-on-terrorism/2018/issue-6/a3-freilich-et-al.pdf>.
- 16 *Ibid.* 39.
- 17 U.S. Department of Justice, *Multiple White Supremacist Gang Members Among 54 Defendants Charged in RICO Indictment*, 2019, <https://www.justice.gov/opa/pr/multiple-white-supremacist-gang-members-among-54-defendants-charged-rico-indictment>; U.S. Department of Justice, U.S. Attorneys' Office Northern District of Texas, *In Largest Case Prosecuted in U.S. Focusing on White Supremacist Prison Gang Members, Swift Justice Leads to Conviction of 89 Members/Associates of Aryan Brotherhood of Texas and Aryan Circle*, 2017, <https://www.justice.gov/usao-ndtx/pr/largest-case-prosecuted-us-focusing-white-supremacist-prison-gang-members-swift-justice>; Jared Gilmour, "White Supremacists Killed Alaska Man to Impress 'Their Vile and Racist Gang' Feds Say," *Sacramento Bee*, March 27, 2019, <https://www.sacbee.com/news/nation-world/national/article228513109.html>; Kevin Krause, "57 White Supremacist Gang Members Charged in North Texas Drug Trafficking, Kidnapping Conspiracy," *Dallas News*, April 30, 2018, <https://www.dallasnews.com/news/crime/2018/04/30/takedown-violent-racist-prison-gangs-results-57-arrests-drug-trafficking-kidnapping-charges>; Ken Miller, "18 Members of White Supremacist Prison Gang Indicted," *Associated Press*, February 21, 2019, <https://www.apnews.com/b1b7cafc34f54aea9d01b7bba675fd24>; Kelly Well, "Feds Bust White Supremacists With Meth, Counterfeit Bills, and a Rocket Launcher," *Daily Beast*, November 20, 2018, <https://www.thedailybeast.com/feds-bust-white-supremacists-with-meth-counterfeit-bills-and-a-rocket-launcher>.
- 18 Steven M. Chermak et al., "Law Enforcement Training and the Domestic Far Right," *Criminal Justice & Behavior* 3 (2009), 1317-1319; Mark Rumsey, "Should Police Classify White Supremacy Groups as Gangs? UNCC Researcher Says Yes," *WFAE* 90.7, December 10, 2018, <https://www.wfae.org/post/should-police-classify-white-supremacy-groups-gangs-uncc-researcher-says-yes#stream/0>; Casey Tolan, "Los Angeles is Cracking Down On a Notable White Supremacist Gang," *Pacific Standard*, January 12, 2018, <https://psmag.com/news/los-angeles-is-cracking-down-on-a-notable-white-supremacist-gang>.
- 19 See, for example, Amy Adamczyk et al., "The Relationship Between Hate Groups and Far-Right Ideological Violence," *Journal of Contemporary Criminal Justice* 30 (2014), 315. See also Sean E. Mulholland, "White Supremacist Groups and Hate Crimes," *Public Choice* 157 (2013), 91 (finding that the presence of one white supremacist group in any given county resulted in an average of 335 more hate crimes per 10,000 residents).
- 20 See Adamczyk, *Relationship Between Hate Groups*, 325.
- 21 See *ibid.*, 322.
- 22 Chermak, *Law Enforcement Training*, 1311.
- 23 FBI, *Civil Rights Program Policy Implementation Guide*, 2010, 15, https://www.aclu.org/sites/default/files/field_document/ACLURMO03541.pdf.

- 24** U.S. Attorneys' Office Western District of Virginia, *Joint Statement from United States Attorney's Office for the Western District of Virginia, Federal Bureau of Investigation and the Civil Rights Division*, 2017, <https://www.justice.gov/usao-wdva/pr/joint-statement-unity-ed-states-attorney-s-office-western-district-virginia-federal>. See also, Landon Shroder, "Domestic Terrorism: Inside the FBI's Joint Terrorism Task Force in Richmond," *RVA Magazine*, August 1, 2018, <https://rvamag.com/news/domestic-terrorism-inside-the-fbis-joint-terrorism-task-force-in-richmond.html>.
- 25** German and Robinson, *Wrong Priorities on Terror*, 1–3.
- 26** 18 U.S.C. § 2339A.
- 27** See, for example, U.S. Department of Justice, *Counterterrorism White Paper* (2006), <http://trac.syr.edu/tracreports/terrorism/169/include/terrorism.whitepaper.pdf> (allocating 67-pages of its counterterrorism strategy paper to "international" terrorism, and only two pages to "domestic" terrorism).
- 28** German and Robinson, *Wrong Priorities on Terror*, 14–17.
- 29** The Hate Crimes Statistics Act of 1990, 28 U.S.C. § 534 (1990), requires the Justice Department to "acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property." (The statute was last modified in 2009 by the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (2009), and now requires reporting for every calendar year indefinitely, as well as adding the protected categories of gender and gender identity). The Justice Department does collect several distinct data sets regarding far-right violence. These include federal prosecution data produced by the Executive Office of the United States Attorneys regarding domestic terrorism and hate crimes; crime victim surveys collected by the Bureau of Justice Statistics National Incident Based Reporting System; and Uniform Crime Reports voluntarily submitted by state and local law enforcement agencies. None of these data systems are regarded as accurate or complete accountings of far-right violence or bias crimes.
- 30** As explained in our first report, the Justice Department's distinction between what it calls "domestic" versus "international" terrorism does not track the statutory definitions or accurately describe the nature of the activities by various terrorist movements. See German and Robinson, *Wrong Priorities on Terror*, 2-5.
- 31** This data is derived from the Transactional Records Access Clearinghouse (TRAC), a data gathering and research organization at Syracuse University. TRAC's data is collected through its "systematic and informed use of the Freedom of Information Act (FOIA)." This particular data is based on the results of FOIA requests to the Executive Office of United States Attorneys, which is part of the Department of Justice, including data from FY 2009 through the end of FY 2018. See "About Us," *Transactional Records Access Clearinghouse*, <http://trac.syr.edu/aboutTRACgeneral.html>, last accessed February 19, 2019. See also "Domestic Terrorism Prosecutions Outnumber International," *Transactional Records Access Clearinghouse Reports*, <https://trac.syr.edu/tracreports/crim/481/>, last accessed June 7, 2019. It must be noted that government auditors have repeatedly criticized the Justice Department for publishing inaccurate terrorism prosecution data, particularly for overstating terrorism statistics. But the data is useful for comparison purposes because it represents the Justice Department's claimed successes in these categories. See generally U.S. General Accounting Office, *Better Management Oversight and Internal Controls Needed to Ensure Accuracy of Terrorism-Related Statistics*, 2003, <https://www.gao.gov/new.items/d03266.pdf>; U.S. Department of Justice, Office of the Inspector General, *Follow-up Audit of the Department of Justice's Internal Controls Over Reporting of Terrorism-Related Statistics: The Executive Office for United States Attorneys*, 2013, <https://oig.justice.gov/reports/2013/a1334.pdf>; German and Robinson, *Wrong Priorities on Terror*, 9.
- 32** U.S. Department of Homeland Security and U.S. Department of Justice, *Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry Into the United States Initial Report*, 2018, 2, <https://www.justice.gov/opa/press-release/file/1026436/download>.
- 33** Ellen Nakashima, "Justice Dept. Admits Error But Won't Correct Report Linking Terrorism to Immigration," *Washington Post*, January 3, 2019, https://www.washingtonpost.com/world/national-security/justice-dept-admits-error-but-wont-correct-report-linking-terrorism-to-immigration/2019/01/03/cd29997a-0f69-11e9-831f-3aa2c-2be4cbd_story.html?utm_term=.31ee5464f531.
- 34** See Henry Schuster, "Domestic Terror: Who's the Most Dangerous," *CNN*, August 24, 2005, <https://www.cnn.com/2005/US/08/24/schuster.column/>; John Vidal, "The Green Scare," *Guardian*, April 3, 2008, <https://www.theguardian.com/environment/2008/apr/03/greenbuilding.ethicalliving>.
- 35** 18 U.S.C. § 2331(5).
- 36** Office of Inspector General, U.S. Department of Justice, *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups*, 2010, 186–91, <https://oig.justice.gov/special/s1009r.pdf>.
- 37** See George Joseph and Murtaza Hussain, "FBI Tracked an Activist Involved With Black Lives Matter as They Travelled Across the U.S., Documents Show," *Intercept*, March 29, 2018, <https://theintercept.com/2018/03/19/black-lives-matter-fbi-surveillance/>; Will Parrish and Sam Lavin, "'Treating Protest as Terrorism': US Plans Crackdown on Keystone XL Activists," *Guardian*, September 20, 2018, <https://www.theguardian.com/environment/2018/sep/20/keystone-pipeline-protest-activism-crackdown-standing-rock>.
- 38** See, for example, Mike Carter and Steve Miletich, "Couple Charged With Assault in Shooting, Melee During UW Speech by Milo Yiannopoulos," *Seattle Times*, April 24, 2017, <https://www.seattletimes.com/seattle-news/crime/couple-charged-with-assault-in-shooting-melee-during-uw-speech-by-milo-yiannopoulos/>; David Kelsen, "7 Charged in Anaheim KKK Melee—But Stabby Klanner Not One of Them," *Orange County Weekly*, July 1, 2016, <https://ocweekly.com/7-charged-in-anaheim-kkk-melee-but-stabby-klanner-not-one-of-them-7305812/>; Sam Levin, "Stabbed at a Neo-Nazi Rally, Called a Criminal: How Police Targeted a Black Activist," *Guardian*, May 25, 2018, <https://www.theguardian.com/world/2018/may/25/neo-nazi-rally-california-stabbing-police-target-black-activist>; Frank John Tristan, "Huntington Beach Pro-Trump March Turns Into Attack on Anti-Trump Protestors," *Orange County Weekly*, Mar. 26, 2017, <https://www.ocweekly.com/huntington-beach-pro-trump-march-turns-into-attack-on-anti-trump-protesters-press-7991623/>; James Queally, "Ku Klux Klan Rally in Anaheim Erupts in Violence; 3 Are Stabbed and 13 Arrested," *Los Angeles Times*, Feb. 29, 2016, <http://www.latimes.com/local/lanow/la-me-ln-klan-rally-in-anaheim-erupts-in-violence-one-man-stabbed-20160227-story.html>; Frances Robles, "As White Nationalist in Charlottesville Fired, Police 'Never Moved,'" *New York Times*, Aug. 25, 2017, <https://www.nytimes.com/2017/08/25/us/charlottesville-protest-police.html>. See also Keith L. Alexander, "Federal Prosecutors Abruptly Dismiss All 39 Remaining Inauguration Day Rioting Cases," *Washington Post*, July 7, 2018, https://www.washingtonpost.com/local/public-safety/federal-prosecutors-abruptly-dismiss-all-remaining-inauguration-day-rioting-cases/2018/07/06/d7055ffe-7ee8-11e8-bb6b-c1cb691f1402_story.html?utm_term=.967acdefec32; Emily Shugerman, "J20 Protests: All You Need to Know About the Nearly 200 People Facing 60 Years in Jail for Protesting Trump," *Independent*, November 16, 2017, <https://www.independent.co.uk/news/world/americas/j20-trump-protests-trials-jail-threat-inauguration-demonstrations-explained-a8057521.html>.
- 39** Trevor Aaronson, "Terrorism's Double Standard: Violent Far-Right Extremists Are Rarely Prosecuted as Terrorists," *Intercept*, March 23, 2019, <https://theintercept.com/2019/03/23/domestic-terrorism-fbi-prosecutions/>.
- 40** See Sam Levin, "How a California Officer Protected Neo-Nazis and Targeted Their Victims," *Guardian*, January 25, 2019, <https://www.theguardian.com/us-news/2019/jan/25/california-police-neo-nazis-antifa-protest>; Sam Levin, "Anti-fascists Were Stabbed at a

Neo-Nazi Rally. Then Police Tried to Charge Them,” *Guardian*, December 5, 2018, <https://www.theguardian.com/us-news/2018/dec/05/antifa-charges-california-activists-stabbing>.

41 See FBI, *Electronic Communication: Opening EC [Redacted] BAMN – By Any Means Necessary*, 2016, 2, available at “FBI Records on By Any Means Necessary,” *Property of the People*, January 16, 2019, <https://propertyofthepeople.org/document-detail?doc-id=5686261-2019-01-11-FBI-Antifa-RL&download=https://assets.documentcloud.org/documents/5686261/2019-01-11-FBI-Antifa-RL.pdf>. See also Sam Levin, “Revealed: FBI Investigated Civil Rights Group as ‘Terrorism’ Threat and Viewed KKK as Victims,” *Guardian*, February 1, 2019, <https://www.theguardian.com/us-news/2019/feb/01/sacramento-rally-fbi-klk-domestic-terrorism-california>. In fact, of the white supremacist groups that attended the rally, the Ku Klux Klan was not one of them, which raises additional questions about the poor analysis involved in initiating this investigation.

42 FBI, *BAMN – By Any Means Necessary*, 9.

43 See FBI, *Abortion Extremism Reference Guide for Law Enforcement*, 2017, 1, available at “FBI ‘Abortion Extremism Reference Guide for Law Enforcement,’” *Property of the People*, January 31, 2019, <https://propertyofthepeople.org/document-detail?doc-id=5703370-Abortion-Extremists-1&download=https://assets.documentcloud.org/documents/5703370/Abortion-Extremists-1.pdf>. See also Anna Merlan, “Exclusive: FBI Warned Law Enforcement Agencies of Threat Posed by Non-Existent ‘Pro-Choice Extremists,’” *Jezebel*, January 31, 2019, <https://jezebel.com/exclusive-fbi-warned-law-enforcement-agencies-of-threa-1832134408>. A more accurate compilation of anti-abortion violence may be found at National Abortion Federation, *2017 Violence & Disruption Statistics*, 2018, <https://prochoice.org/wp-content/uploads/2017-NAF-Violence-and-Disruption-Statistics.pdf>.

44 See FBI, *Abortion Extremism Guide*, 1. See also Merlan, “FBI Warned Agencies of Non-Existent ‘Pro-Choice Extremists,’” 43.

45 See *infra* Appendix I.

46 See “Brennan Center Sues Department of Justice for Terrorism Data,” *Brennan Center*, August 9, 2018, <https://www.brennancenter.org/analysis/brennan-center-sues-department-of-justice-for-terrorism-data>.

47 Hate Crimes Laws, U.S. Dep’t of Justice, <https://www.justice.gov/crt/hate-crime-laws>.

48 28 U.S.C. § 534 (1990).

49 “Deputy Attorney General Rod J. Rosenstein Delivers Remarks at a Law Enforcement Roundtable Regarding Improving Identification and Reporting of Hate Crimes,” U.S. Department of Justice, October 29, 2018, <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-law-enforcement-roundtable>.

50 Deputy Attorney General Rod Rosenstein, *Remarks at a Law Enforcement Roundtable Regarding Improving Identification and Reporting of Hate Crimes*, Oct. 29, 2018, <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-law-enforcement-roundtable>.

51 18 U.S.C. § 2331(5).

52 See “Mission & Priorities,” FBI, <https://www.fbi.gov/about/mission>, last accessed June 7, 2019; “Organization, Mission, and Functions Manual: Federal Bureau of Investigation,” U.S. Department of Justice, <https://www.justice.gov/jmd/organization-mission-and-functions-manual-federal-bureau-investigation>, last updated September 26, 2014.

53 F.B.I., *Civil Rights Program Policy Implementation Guide*, 2010, 15, https://www.aclu.org/sites/default/files/field_document/ACLURM003541.pdf.

54 Arkansas, Georgia, Indiana, North Dakota, South Carolina, Wyoming. Georgia’s hate crimes statute was invalidated as unconstitutional by the Georgia Supreme Court in *Botts v. State*, 278 Ga. 538 (2004). Indiana recently enacted a “hate crimes law” in name

only, but its effectiveness has been called into question, as it lists no protected categories. Because the Indiana statute is aberrant from all other such statutes, we take the same position as the ADL in asserting that we do not consider this a hate crime law. See Anti-Defamation League, *Indiana Will Remain on the ADL List of States Without a Hate Crimes Law*, 2019, <https://chicago.adl.org/news/7850/>. See also Kellie Hwang and Kaitlin Lange, “The Controversy Around Indiana’s Current Hate Crime Bill Explained,” *Indianapolis Star*, February 22, 2019, <https://www.indystar.com/story/news/2019/02/20/hate-crime-laws-indiana-bill-what-you-need-know/2925683002/>.

55 See *infra* Appendix II. For example, some statutes require a crime to be substantially or totally motivated by bias, while others require that a victim be intentionally selected because of their protected status. These statutes may be divided into several typologies, including “penalty enhancement statutes, statutes that define bias crime as new and separate crime, civil rights statutes that penalize for violating an individual’s civil rights, and statutes that allocate resources to the collection and release of hate crime statistics.” See Harbani Ahuja, Comment, “The Vicious Cycle of Hate: Systemic Flaws in Hate Crime Documentation in the United States and the Impact on Minority Communities,” *Cardozo Law Review* 37 (2016), 1867, 1887–88 (discussing the variation within statutes). Appendix II additionally includes statutes that criminalize cross-burning, noose-hanging, desecrating or destroying a religious place of worship, and other symbolic acts which—while mostly not included directly under state “hate crimes” statutes—would be considered hate crimes in a public understanding.

56 In 2017, 16,149 law enforcement agencies participated in UCR hate crime reporting, out of approximately 18,000 law enforcement agencies nationwide, (approx. 90% participated). The vast majority of those participating reported zero hate crimes (87.4%). See “Hate Crimes by Jurisdiction, 2017,” *FBI: Uniform Crime Report*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/jurisdiction>, last accessed June 7, 2019.

57 Jack McDevitt et al., *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: Executive Summary*, U.S. DOJ: Bureau of Justice Statistics, 2000, 5, 9–11, http://www.jrsa.org/pubs/reports/bjs_bias_crime_data.pdf.

58 McDevitt, *Improving the Quality of Bias Crime Statistics*, 13; “Hate Crimes by Jurisdiction, 2017,” *FBI: Uniform Crime Report*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/jurisdiction>, last accessed June 7, 2019.

59 See “Table 2: Incidents, Offenses, Victims, and Known Offenders 2017,” *FBI: Uniform Crime Report*, <https://ucr.fbi.gov/hate-crime/2017/tables/table-2.xls>, last accessed June 7, 2019.

60 See *ibid*.

61 Rosenstein, *Remarks at a Law Enforcement Roundtable*, 2018.

62 See generally German Lopez, “Why It’s So Hard to Prosecute a Hate Crime,” *Vox*, May 23, 2017, <https://www.vox.com/identities/2017/4/10/15183902/hate-crime-trump-law> (highlighting law enforcement reticence to label crimes “hate crimes”).

63 Shea W. Cronin et al., “Bias-Crime Reporting: Organization Responses to Ambiguity, Uncertainty, and Infrequency in Eight Police Departments,” *American Behavioral Scientist* 51 (2007), 213, 217–18.

64 N.J. Rev. Stat. 2C:16-1(a)(3).

65 *State v. Pomianek*, 429 N.J. Super. 339, 343, 358-59 (App. Div. 2013).

66 *State v. Pomianek*, 221 N.J. 66 (2015).

67 Ryan Katz, “Hate Crime Law Results in Few Convictions and Lots of Disappointment,” *ProPublica*, April 10, 2017, <https://www.propublica.org/article/hate-crime-law-results-in-few-convictions-and-lots-of-disappointment>.

68 See McDevitt, *Improving the Quality of Bias Crime Statistics*, 108–109.

69 See Ariel Hart, “Georgia Court Strikes Down Law on Hate,” *New York Times*, October 26, 2004, <https://www.nytimes>.

com/2004/10/26/us/georgia-court-strikes-down-law-on-hate.html.

70 See McDevitt, *Improving the Quality of Bias Crime Statistics*, 37.

71 Jessica Huseman, "Rare Track Record: NYPD's History Chroni-
cling Hate Crimes," *ProPublica*, December 21, 2016, [https://www.pro-
publica.org/article/nypd-hate-crimes-records](https://www.pro-publica.org/article/nypd-hate-crimes-records) (alterations added).

72 See William B. Rubenstein, "The Real Story of U.S. Hate Crime
Statistics: An Empirical Analysis," *Tulane Law Review* 78 (2004), 1213,
1219.

73 See generally, for example, Michelle Alexander, *The New Jim
Crow* (New York: New Press 2012) (exploring the explosion of
mass-incarceration and its effects on black Americans); Keeanga-Ya-
mahtta Taylor, *From #BlackLivesMatter to Black Liberation* (Chicago:
Haymarket Books 2016) (examining black liberation from state op-
pression from the end of the Civil War to the beginning of the Black-
LivesMatter movement); Ida B. Wells-Barnett, *On Lynchings* (Mineola,
NY: Dover Publications 2014) (reporting on lynching in the late 1800s,
including their connection to the criminal justice system).

74 Mapping Police Violence, *Police Violence Report 2017*, 2018,
<https://policeviolencereport.org/>.

75 Frank Edwards, Ph.D. et al., "Risk of Police-Involved Death by
Race/Ethnicity and Place, United States, 2012–2018," *American
Journal of Public Health* 108 (2018), 1241, 1243–44. Original dataset
available at "FATAL ENCOUNTERS DOT ORG SPREADSHEET," *Fatal
Encounters*, <https://www.fatalencounters.org/> (click "Download Da-
tabase" button, which leads to an open-access Google Spreadsheet:
[https://docs.google.com/spreadsheets/d/1dKmaV_JiWcG8XBoRg-
P8b4e9Eopkpgt7FL7nyspvzAsE/edit#gid=0](https://docs.google.com/spreadsheets/d/1dKmaV_JiWcG8XBoRg-P8b4e9Eopkpgt7FL7nyspvzAsE/edit#gid=0)), last accessed Feb. 25,
2019. See also Scottie Andrew, "Police Are Three Times More Likely
to Kill Black Men, Study Finds: 'Not a Problem Confined to a Single
Region,'" *Newsweek*, July 23, 2018, [https://www.newsweek.com/
black-men-three-times-likely-be-killed-police-1037922](https://www.newsweek.com/black-men-three-times-likely-be-killed-police-1037922).

76 Jon Swaine et al., "Black Americans Killed By Police Twice as
Likely to be Unarmed as White People," *Guardian: The Counted*, June
1, 2015, [https://www.theguardian.com/us-news/2015/jun/01/
black-americans-killed-by-police-analysis](https://www.theguardian.com/us-news/2015/jun/01/black-americans-killed-by-police-analysis).

77 International Human Rights Clinic, Santa Clara Law School, *Lack
of Accountability for Police Killings of Minorities and Other Vulnerable
Populations in the United States, before the Inter-American Commis-
sion on Human Rights* (2017), 4, [https://www.aclu.org/sites/default/
files/field_document/santa_clara_171205_santa_clara_written_sub-
mission_for_thematic_hearing_on_police_killings.pdf](https://www.aclu.org/sites/default/files/field_document/santa_clara_171205_santa_clara_written_sub-
mission_for_thematic_hearing_on_police_killings.pdf).

78 959 F. Supp. 2d 540 (2013). See also Editorial Board, "Racial
Discrimination in Stop and Frisk," *New York Times*, August 12, 2013,
[https://www.nytimes.com/2013/08/13/opinion/racial-discrimina-
tion-in-stop-and-frisk.html](https://www.nytimes.com/2013/08/13/opinion/racial-discrimina-
tion-in-stop-and-frisk.html).

79 Editorial Board, "Racial Discrimination in Stop and Frisk."

80 Ibid.

81 See generally Aziz Z. Huq, "The Consequences of Disparate
Policing: Evaluating Stop and Frisk as a Modality of Urban Policing,"
Minnesota Law Review 101 (2017), 2397.

82 Elizabeth Davis et al., Bureau of Justice Statistics, *Special
Report: Contacts Between Police and the Public*, 2015, 2018, 16–17,
<https://www.bjs.gov/content/pub/pdf/cpp15.pdf>.

83 See, for example, Jonathan Mummolo, "Militarization Fails to
Enhance Police Safety or Reduce Crime But May Harm Police Reputa-
tion," *Proceedings of the National Academy of Sciences* 115 (2018),
9181, <https://www.pnas.org/content/pnas/115/37/9181.full.pdf>.

84 See Jasmine Sankofa, "Mapping the Blank: Centering Black
Women's Vulnerability to Police Sexual Violence to Upend Main-
stream Police Reform," *Howard Law Journal* 59 (2016), 651, 665,
668–69...see also, Mary S. Jacobs, "The Violent State: Black Women's
Invisible Struggle Against Police Violence," *William & Mary Journal of
Women & Law* 24 (2017), 39.

85 See Tom Jackman, "When Cops Are Suspects, Feds Often Take
Years to File Charges," *Washington Post*, October 23, 2018, [https://](https://www.washingtonpost.com/crime-law/2018/10/23/when-cops-are-
suspects-feds-often-take-years-file-charges/?utm_term=.2306eb-
cc6f47)

[suspects-feds-often-take-years-file-charges/?utm_term=.2306eb-
cc6f47](https://www.washingtonpost.com/crime-law/2018/10/23/when-cops-are-
suspects-feds-often-take-years-file-charges/?utm_term=.2306eb-
cc6f47).

86 See Alice Speri, "The FBI Has Quietly Investigated White
Supremacist Infiltration of Law Enforcement," *Intercept*, January 31,
2017, [https://theintercept.com/2017/01/31/the-fbi-has-quietly-in-
vestigated-white-supremacist-infiltration-of-law-enforcement/](https://theintercept.com/2017/01/31/the-fbi-has-quietly-in-
vestigated-white-supremacist-infiltration-of-law-enforcement/).

87 Brian Bowling and Andrew Conte, "Trib. Investigation: Cops Often
Let Off Hook for Civil Rights Complaints," *TribLive*, March 12, 2016,
<https://web.archive.org/web/20180814010918/> [https://triblive.
com/news/allegheeny/9939487-74/police-rights-civil](https://triblive.com/news/allegheeny/9939487-74/police-rights-civil).

88 See Lisa Rose, "This is the First Police Officer Charged With a
Federal Hate Crime in at Least 10 Years," *CNN*, December 21, 2018,
[https://www.cnn.com/2018/12/21/politics/first-police-officer-
charged-with-hate-crime-in-years/index.html](https://www.cnn.com/2018/12/21/politics/first-police-officer-
charged-with-hate-crime-in-years/index.html).

89 Alexia Cooper and Erica L. Smith, *Homicide Trends in the United
States, 1980–2008, Annual Rates for 2009 and 2010* 2011, 2, [https://
www.bjs.gov/content/pub/pdf/htus8008.pdf](https://www.bjs.gov/content/pub/pdf/htus8008.pdf).

90 Ibid. at 31.

91 See Aamer Madhani, "Unsolved Murders: Chicago, Other Big
Cities Struggle; Murder Rate a 'National Disaster,'" *USA Today*, August
10, 2018, [https://www.usatoday.com/story/news/2018/08/10/u-s-
homicide-clearance-rate-crisis/951681002/](https://www.usatoday.com/story/news/2018/08/10/u-s-
homicide-clearance-rate-crisis/951681002/).

92 See "Table 25: Percent of Offenses Cleared by Arrest or Excep-
tional Means by Population Group 2017," *FBI: Uniform Crime Report*,
[https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/
topic-pages/tables/table-25](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/
topic-pages/tables/table-25).

93 See Lowry, "Murder With Impunity."

94 Ibid.

95 See Sarah Ryley et al., "Tale of Two Cities: As Murders Hit Record
Low in NYC, a Mountain of Cases Languishes in Outer Boroughs as
Cops Focus More Manpower," *New York Daily News*, January 5, 2014,
[https://www.nydailynews.com/new-york/nyc-crime/forgotten-re-
cord-murder-rate-cases-unsolved-article-1.1566572](https://www.nydailynews.com/new-york/nyc-crime/forgotten-re-
cord-murder-rate-cases-unsolved-article-1.1566572).

96 See *ibid.*

97 See Lowry, "Murder With Impunity."

98 "Past Summary Ledgers," *Gun Violence Archive*, [https://www.
gunviolencearchive.org/past-tolls](https://www.gunviolencearchive.org/past-tolls), last accessed February 22, 2019
(these numbers exclude the roughly 22,000 annual gun-suicides).

99 See Sarah Ryley, "Shoot Someone in a Major US City, and Odds
Are You'll Get Away with It," *BuzzFeed News*, January 24, 2019, [https://
www.buzzfeednews.com/article/sarahryley/police-unsolved-shoot-
ings?utm_term=.wlvJepb4m2#.wlvJepb4m2](https://www.buzzfeednews.com/article/sarahryley/police-unsolved-shoot-
ings?utm_term=.wlvJepb4m2#.wlvJepb4m2).

100 See FBI, *Uniform Crime Report, Crime in the United States
2017: Rape*, 2018, 1, [https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-
in-the-u.s.-2017/topic-pages/rape.pdf](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-
in-the-u.s.-2017/topic-pages/rape.pdf); "Table 7: Offense Analysis
United States, 2013–2017," *FBI: Uniform Crime Report*, [https://ucr.
fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/
tables/table-7](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/
tables/table-7), last accessed June 7, 2019.

101 See "Table 25: Percent of Offenses Cleared by Arrest or Excep-
tional Means by Population Group, 2017," *FBI: Uniform Crime Report*,
[https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/
topic-pages/tables/table-25](https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/
topic-pages/tables/table-25), June 7, 2019.

102 Alexandra Svokos, "Massive Backlog of Untested Rape Kits is 'A
Public Safety Issue' That May Be Letting Offenders Slip Away, Experts
Warn," *ABC News*, January 26, 2019, [https://abcnews.go.com/
US/massive-backlog-untested-rape-kits-public-safety-issue-sto-
ry?id=60540635](https://abcnews.go.com/US/massive-backlog-untested-rape-kits-public-safety-issue-sto-
ry?id=60540635).

103 See, for example, Dawn Beichner and Cassia Spohn, "Modeling
the Effects of Victim Behavior and Moral Character on Prosecutors'
Charging Decisions in Sexual Assault Cases," *Violence & Victims* 27
(2012), 3, 12; Cassia Spohn and David Holleran, "Prosecuting Sexual
Assault: A Comparison of Charging Decisions in Sexual Assault Cases
Involving Strangers, Acquaintances, and Intimate Partners," *Justice
Quarterly* 18 (2001), 651, 673.

104 See U.S. Government Accounting Office, U.S. Department of

Justice, *Declinations of Indian Country Criminal Matters*, 2012, 3–4, <https://www.gao.gov/new.items/d11167r.pdf>. See also “Gender Based Violence and Intersecting Challenges Impacting Native American & Alaskan Village Communities,” VAW Net, <https://vawnet.org/sc/gender-based-violence-and-intersecting-challenges-impacting-native-american-alaskan-village-1>, last accessed June 7, 2019.

105 See John Saul, “Untested Rape Kits Hid 817 Serial Predators in Detroit, Tens of Thousands More Concealed in Backlog Across U.S.,” *Newsweek*, December 19, 2017, <https://www.newsweek.com/rape-kit-untested-sexual-assault-serial-rapist-detroit-prosecutor-nation-752440>.

106 Scott Simon, “Weekend Edition: Detroit Kit Tests Indicate Hundreds of Serial Rapists,” *National Public Radio*, Jan. 13, 2018, available at <https://www.npr.org/2018/01/13/577833643/detroit-kit-tests-indicate-hundreds-of-serial-rapists>.

107 Lynn Langton, Ph.D. and Madeline Masucci, U.S. Department of Justice, *Special Report: Hate Crime Victimization, 2004–2015*, 2017, 5, <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.

108 See National Institute of Justice, U.S. Department of Justice, *Five Things About Deterrence*, 2016, <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>. See also Valerie Wright, Ph.D., Sentencing Project, *Deterrence in Criminal Justice*, 2010, <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

109 See Langton, *Hate Crime Victimization*, 2 (charting approximately 250,000 annual victim reports of hate crimes between 2004–2015); McDevitt, *Improving the Quality of Bias Crime Statistics*, at 38–40 (describing hate crime reporting from 1991 to 1998).

110 See, for example, Ryan Katz, “Hate Crime Law Results in Few Convictions and Lots of Disappointment,” *ProPublica*, April 10, 2017, <https://www.propublica.org/article/hate-crime-law-results-in-few-convictions-and-lots-of-disappointment>.

111 Neil Chakraborti, “Mind the Gap! Making Stronger Connections Between Hate Crime Policy and Scholarship,” *Criminal Justice & Policy Review* 27 (2016), 577, 583 (citation omitted). See also Anti-Defamation League, *White Supremacist Prison Gangs in the United States* (2016) (documenting the rise and presence of white supremacist gangs in prisons and jails across all 50 states); Alex Tatusian, “Prison is a Real-Life Example of the World White Supremacists Want,” *Marshall Project*, August 24, 2017, <https://www.themarshallproject.org/2017/08/24/prison-is-a-real-life-example-of-the-world-white-supremacists-want>.

112 See *infra* Appendix III.

113 “Table 1: Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2017,” *FBI: Uniform Crime Report*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls>, last accessed June 7, 2019.

114 *Ibid.*

115 “Offenders, 2017,” *FBI: Uniform Crime Report*, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/offenders>, last accessed June 7, 2019.

116 Compare Caroline Wolf Harlow, U.S. Dep’t of Justice, *NCJ 209911, Hate Crime Reported by Victims and Police*, 2005, 11 (finding that, between the years 2000–2003, youth aged 17-and-under comprised approximately 21% of all offenders, with offenders between the ages of 18–20 comprising another 6.2%); with Dr. James J. Nolan III et. al., “NIBRS Hate Crimes 1995–2000: Juvenile Victims and Offenders,” *West Virginia University*, <http://www.as.wvu.edu/~jno-lan/nibrshatecrime.html> (navigate to “ANALYSIS OF NIBRS HATE CRIMES (1995–2000),” then click on “Table 1.6: Age and Number of Victims and Offenders Per Incident”) (finding that, between the years 1995–2000, youth aged 17-and-under comprised 29.1% of known hate-crime offenders, with offenders between 18–24 comprising another 26%), last accessed June 7, 2019.

117 See *FBI, Uniform Crime Report: Hate Crime Statistics, 2013: Offenders, 2014*, 2, https://ucr.fbi.gov/hate-crime/2013/topic-pages/offenders/offenders_final (reporting youth offenders at 32%);

FBI, Uniform Crime Report: Hate Crime Statistics, 2014: Offenders, 2015, 2, https://ucr.fbi.gov/about-us/cjis/ucr/hate-crime/2014/topic-pages/offenders_final (reporting youth offenders at 19%); *FBI, Uniform Crime Report: Hate Crime Statistics, 2015: Offenders, 2016*, 2, https://ucr.fbi.gov/hate-crime/2015/topic-pages/offenders_final (reporting youth offenders at 15.3%); *FBI, Uniform Crime Report: Hate Crime Statistics, 2016: Offenders 2017*, 2, <https://ucr.fbi.gov/hate-crime/2016/topic-pages/offenders> (reporting youth offenders at 16.2%); *FBI, Uniform Crime Report: Hate Crime Statistics, 2017: Offenders, 2018*, 2, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/offenders> (reporting youth offenders at 17%).

118 See Jordan Blair Woods, “Addressing Youth Bias Crime,” *U.C.L.A. Law Review* 56 (2009), 1899, 1902.

119 See, for example, Kathy Dobie, “Investing Hate: Inside New York City’s Task Force on Bias,” *Harper’s Magazine*, December 2010, <https://harpers.org/archive/2018/12/new-york-city-police-department-hate-crimes-task-force/>; Nickie D. Phillips, “The Prosecution of Hate Crimes: The Limitations of the Hate Crimes Typology,” *Journal of Interpersonal Violence* 24 (2009), 883, 897, 900, 902.

120 See William K. Raschbaum & Ali Winston, “Ilana Glazer Event at Synagogue is Cancelled After Anti-Semitic Graffiti is Found,” *New York Times*, November 2, 2018, <https://www.nytimes.com/2018/11/02/nyregion/broad-city-jewish-synagogue-anti-semitism.html?r-ref=collection%2Fsectioncollection%2Fnyregion&action=click&contentCollection=nyregion®ion=rank&module=inline&version=highlights&contentPlacement=2&pgtype=sectionfront>.

121 See Jeffrey C. Mays, “Man’s Struggles With Mental Illness and Addiction Preceded Hate Crime Charges, Friends Say,” *New York Times*, November 3, 2018, <https://www.nytimes.com/2018/11/03/nyregion/anti-semitic-hate-crime-vandalism.html?login=email&auth=login-email>.

122 See Emily Palmer, “After Years in Foster Care, Intern ‘Adopted’ by City Hall Catches a Break,” *New York Times*, December 17, 2017, <https://www.nytimes.com/2017/12/14/nyregion/after-years-in-foster-care-intern-adopted-by-city-hall-catches-a-break.html?module=inline>.

123 See *ibid.*

124 See *ibid.*

125 See Mays, “Man’s Struggles With Mental Illness.”

126 Ruth Weissmann and Laura Italiano, “‘Kill All Jews’ Graffiti Suspect Had a Dark Online Alter-Ego,” *New York Post*, November 3, 2018, <https://nypost.com/2018/11/03/kill-all-jews-graffiti-suspect-had-a-dark-online-alter-ego/>.

127 See Larry Celona, “Suspect Arrested for Scrawling ‘Kill All Jews’ in Synagogue,” *New York Post*, November 2, 2018, <https://nypost.com/2018/11/02/suspect-arrested-for-scrawling-kill-all-jews-in-synagogue/>.

128 See Rob Frehse and Augusta Anthony, “Brooklyn Man Faces 4 Hate Crime Charges After Synagogue is Defaced With Anti-Semitic Messages, Fires Set,” *CNN.com*, November 5, 2018, <https://www.cnn.com/2018/11/03/us/new-york-temple-antisemitic-messages/index.html>. Under New York’s penalty enhancements, if convicted of all the crimes Polite could potentially face upwards of 60 years in prison.

129 See Douglas M. Birch and Scott Shane, “FBI Foils Anthrax Plot in U.S. White Supremacist, Lab Owner Arrested by FBI in Nevada; Vials, Car Taken for Testing; Bacillus to Be Used as Terror Weapon, Say Federal Charges,” *Baltimore Sun*, February 20, 1998, <https://www.baltimoresun.com/news/bs-xpm-1998-02-20-1998051082-story.html>; Walter Griffin, “‘Dirty Bomb’ Parts Found in Slain Man’s Home,” *Bangor Daily News: Midcoast*, February 10, 2009, <https://bangordailynews.com/2009/02/10/politics/report-dirty-bomb-parts-found-in-slain-mans-home/>; Paul Harris, “They Seemed Normal But Plotted to Kill Thousands,” *Guardian*, March 20, 2004, <https://www.theguardian.com/world/2004/mar/21/usa.terrorism>.

130 See, e.g., Matthew Martinez, “57 White Supremacist Gang Members Charged in ‘Staggering’ Texas Meth Case, Feds Say,” *Star-Telegram*, May 1, 2018, <https://www.star-telegram.com/news/>

[local/crime/article210200934.html](https://www.houstonchronicle.com/news/houston-texas/houston/article/Aryan-Brotherhood-in-chaos-after-federal-9127170.php); Dane Schiller, "Aryan Brotherhood 'In Chaos' After Federal Takedown," *Houston Chronicle*, August 6, 2016, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Aryan-Brotherhood-in-chaos-after-federal-9127170.php>; "Arkansas White Supremacist Gang Arrested in String of Violent Crimes," *BBC News*, February 12, 2019, <https://www.bbc.com/news/world-us-canada-47219960>.

131 Brian Levin, "Hate Crimes: Worse by Definition," *Journal of Contemporary Criminal Justice* 15 (1999), 6, 17–19, <https://doi.org/10.1177/1043986299015001002>.

132 Chakraborti writes that hate crimes are distinct from other crimes because:

their violation of human rights and equality between members of society; the greater psychological injury and increased feelings of vulnerability inflicted upon the individual victim; the sense of fear and intimidation transmitted to the wider community to whom the victim "belongs"; and the security and public order problems that ensue from the widening of potentially explosive social tensions.

Chakraborti, "Mind the Gap!," 578. C.f. Frederick M. Lawrence, "Enforcing Bias-Crime Laws Without Bias: Evaluating the Disproportionate-Enforcement Critique," *Law & Contemporary Problems* 66 (2003), 49, 68 ("[B]ias crime laws, like all criminal laws, are aimed only in part at protecting individual victims; their primary purpose is to protect society.").

133 See James Weinstein, "First Amendment Challenges to Hate Crime Legislation: Where's the Speech?," *Criminal Justice Ethics* 11 (1992), 6, 13 (coining "in terrorem effects" of hate crimes to refer to community and psychic injuries of the offenses); Barbara Perry and Shahid Avi, "'We are all vulnerable': The *In Terrorem* Effects of Hate Crimes," *International Review of Victimology* 18 (2011), 57. See also Sidikat Fashola, "Understanding the Community Impact of Hate Crimes: A Case Study," *Department of Justice Canada: Victims of Crime Research Digest* 4, <http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rd4-rr4/p4.html>, last accessed June 7, 2019.

134 See Chakraborti, "Mind the Gap!," 581.

135 In our review of statutes addressing hate crimes in all 50 states, U.S. territories, and the District of Columbia, three states—Colorado, Illinois, and New Jersey—were identified to have hate crime statutes that included varying alternatives to address communal harms or restorative justice recommendations, including mediated victim/offender counseling, community service within the communities affected by the hate crimes, or establishing educational programs, and training on diversity and inclusion. See Colo. Rev. Stat. § 18-9-121 (2013) (including restorative justice counseling if requested by the victim); Ill. Comp. Stat. 4070/1–99 (2007) (establishing a commission on hate crimes and discrimination with the purpose of eradicating hate violence through education and community engagement); N.J. Rev. Stat. §52-9DD-9 (2013) (tasking the New Jersey Human Relations Counsel with addressing community harms from hate crimes).

136 Ill. Comp. Stat. 20 § 4070 *et seq.*; Ill. Comp. Stat. 20 § 4070/15 (1).

137 Ill. Comp. Stat. 20 §§ 4070/15 (2)–(4). It should be noted that "engaging community leaders" can often be an empty gesture, where self-styled community leaders with minimal community engagement present themselves as the voice of those from who they are detached. Moreover, in studies of hate crime reporting, it has been shown that victims of hate crimes report their experiences to community and religious leaders even less often than to law enforcement—suggesting that even well-meaning community leaders may be poorly informed as to the frequency of hate crimes within their communities. See Neil Chakraborti, "Responding to Hate Crime: Escalating Problems, Continued Failings," *18 Criminology & Criminal Justice* 18 (2017), 387, 393.

138 See Office of Executive Appointments, "Commission on Discrimination and Hate Crimes: Member Names," *Illinois.gov*, <https://www2.illinois.gov/sites/bac/SitePages/AppointmentsDetail.aspx?BCID=1112> (listing as "VACANT" all twenty-one commission

slots) last accessed June 7, 2019); "Attorney General Madigan Urges Governor to Restore State Hate Crimes Commission," *Illinois Attorney General*, 2017, http://www.illinoisattorneygeneral.gov/press-room/2017_03/20170308b.html (quoting Lisa Madigan, Illinois Attorney General, as saying "[a]ppointing members to this commission is a critical responsibility that the governor has ignored for too long").

139 See New York City Commission on Human Rights, *Xenophobia, Islamophobia, and Anti-Semitism in NYC Leading Up to and Following the 2016 Presidential Election*, 2018, 16–18, https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/MASAJ_S_Report.pdf.

140 See *ibid.* 12.

141 See *ibid.* 17.

142 See Chakraborti, "Mind the Gap!," 583.

143 See, for example, Dean Spade, "Introduction: Their Laws Will Never Make Us Safer," in *Against Equality: Prisons Will Not Protect You*, ed. Ryan Conrad (Montreal: AE Press 2012), 1, 6–7, available at <http://www.deanspade.net/wp-content/uploads/2013/02/against-equality.pdf>. Professor Spade poses a particularly cutting critique from a queer-abolitionist lens, urging the LGBTQ community not to rely on "violent systems" sold as "false promises—we're told the prison systems will keep us safe . . . yet we know these systems only offer violence." Spade, "Introduction: Their Laws Will Never Make Us Safer," 9.

144 See, e.g., Chakraborti, "Mind the Gap!," 538 (finding that these preferences are shared by victims of violent and non-violent attacks, as well as victims from different communities, ages, and backgrounds).

145 Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 1990, 181.

146 Lode Walgrave, "Restorative Justice for Juveniles: Just a Technique or a Fully Fledged Alternative?," 34 *Howard Journal of Crime & Justice* 34 (1995), 228, 230.

147 Kay Pranis, "Building Community Support for Restorative Justice: Principles and Strategies," *Minnesota Department of Corrections*, 1995, <https://www.iirp.edu/eforum-archiv/building-community-support-for-restorative-justice-principles-and-strategies>.

148 Dr. Jenny Paterson et al., University of Sussex, *The Sussex Hate Crime Project*, 2018, 10, <https://www.sussex.ac.uk/webteam/gateway/file.php?name=sussex-hate-crime-project-report.pdf&site=430>.

149 *Ibid.* at 37.

150 Pete Wallis, *Understanding Restorative Justice* 4 (Bristol: Policy Press 2014).

151 See, for example, Anti-Defamation League, "Indiana Will Remain on the ADL List of States Without a Hate Crimes Law," April 12, 2019, <https://chicago.adl.org/news/7850/> (noting that the legislature's failure to include explicit protections connected to immutable personal characteristics "is a clear departure from the approach taken in any other hate crime law in America," and that ADL does "not even consider it a hate crimes law."); Kellie Hwang and Kaitlin Lange, "The Controversy Around Indiana's Current Hate Crime Bill Explained," *Indianapolis Star*, February 22, 2019, <https://www.indystar.com/story/news/2019/02/20/hate-crime-laws-indiana-bill-what-you-need-know/2925683002/>.

152 See Stefano DiPietrantonio, "The Problem With Kentucky's Hate Crime Law? 'It Doesn't Really Do Much of Anything,'" *Fox19 Now*, February 12, 2019, <http://www.fox19.com/2019/02/12/problem-with-kentuckys-hate-crime-law-it-doesnt-really-do-much-anything/>; Natalia Martinez, "'Worthless': Commonwealth's Attorney Rips Kentucky's Hate-Crime Law," *Wave3 News*, February 6, 2019, <http://www.wave3.com/2019/02/06/worthless-commowealths-attorney-rips-states-hate-crime-law/>.

153 Due to the use of similar language to hate crimes statutes in other jurisdictions, other organizations have listed N.D. Cent. Code 12.1-14-04 "Discrimination in Public Places" as a hate crimes law. Our research suggests, however, that this law was intended as an

antidiscrimination statute in public places, that lawmakers and law enforcement within North Dakota do not believe they have a hate crimes law, and that no one has ever been charged of a hate crime under 12.1-14-04. Accordingly, we have added North Dakota to the list of states without hate crimes protections. See Dave Kolpack, "Push for Hate Crimes Law After Ugly Incident in North Dakota." *Associated Press*, September 17, 2017, <https://www.apnews.com/e0ad-700f782b4297b19eab9c61562361> (reporting that North Dakota's legislature has "reject[ed] two hate crimes proposals that came out of committee and turn[ed] down at least three bills meant to ban bias" in recent sessions); Rob Port, "North Dakota Doesn't Need Hate Crime Legislation," *Minot Daily News*, August 7, 2017, <https://www.minotdailynews.com/opinion/community-columnists/2017/08/north-dakota-doesnt-need-hate-crime-legislation/> (arguing that North Dakota does not need hate crimes legislation); *Second Reading of S.B. 2051*, N.D. Daily J. of the Senate 226 (February 1, 2011), available at <https://www.legis.nd.gov/assembly/62-2011/journals/sr-dailyjnl-20.pdf#Page226> (voting to reject a hate crimes bill as recently as 2011); Kaley Schwab, "North Dakota Lacks Law Prohibiting Hate Crimes," *KXNet.com*, July 31, 2017, <https://www.kxnet.com/news/bismarck-news/north-dakota-lacks-law-prohibiting-hate-crimes/779863764>.

ABOUT THE AUTHOR

► **Michael German** is a fellow with the Brennan Center’s Liberty & National Security program. He served 16 years as a special agent with the Federal Bureau of Investigation and seven as senior policy counsel with the American Civil Liberties Union. He has taught terrorism and civil liberties courses at the FBI National Academy, the National Defense University, and John Jay College of Criminal Justice. He is the author of the forthcoming *Disrupt, Discredit, and Divide: How the New FBI Damages Democracy* (The New Press, 2019). He holds a BA from Wake Forest University and a JD from Northwestern University Law School.

► **Emmanuel Mauleón** is a fellow with the Brennan Center’s Liberty & National Security program, where he works on research and policy related to discriminatory surveillance, domestic terrorism, and hate crimes. While in law school he clerked for the Council on American Islamic Relations and the Federal Public Defender’s Capital Habeas Unit in Los Angeles. He holds a JD from UCLA School of Law with specializations in critical race theory and international law, and a BFA in painting from the Rhode Island School of Design.

ABOUT THE BRENNAN CENTER’S LIBERTY AND NATIONAL SECURITY PROGRAM

The Brennan Center’s Liberty and National Security Program works to advance effective national security policies that respect constitutional values and the rule of law, using research, innovative policy recommendations, litigation, and public advocacy. The program focuses on reining in excessive government secrecy, ensuring that counterterrorism authorities are narrowly targeted to the terrorist threat, and securing adequate oversight and accountability mechanisms.

ACKNOWLEDGMENTS

The Brennan Center gratefully acknowledges The Bauman Foundation, Democracy Alliance Partners, Ford Foundation, Media Democracy Fund, Open Society Foundations, and Rockefeller Brothers Fund for their support of our liberty and national security work.

The authors would like to express their gratitude to the Brennan Center’s Yuliya Bas, Josh Bell, Lisa Benenson, Lorraine Cademartori, Justin Charles, Stephen Fee, Mireya Navarro, Jeanne Park, Alden Wallace, and Ryan Witcombe for their editing and communications assistance, to Sophia DenUyl and Raya Koreh for their research assistance with the State Hate Crimes Statutes chart, and to LNS Program legal interns Sara Robinson and Alexia Ramirez for their research contributions. We appreciate the guidance and support of Faiza Patel, Michael Waldman, and John Kowal.

**BRENNAN
CENTER**

FOR JUSTICE

Brennan Center for Justice at New York University School of Law
120 Broadway | 17th Floor | New York, NY 10271
www.brennancenter.org