



Hate Crimes: Key Federal Statutes

The Federal Bureau of Investigation characterizes hate crimes as offenses like murder, assault, or arson that are committed because of a particular bias such as prejudice based on the race or gender of the victim. Federal prosecutors have a number of statutory options for charging hate crimes. This In Focus provides a brief overview of the main statutes. More extensive discussion is found in CRS Report R47060, *Overview of Federal Hate Crime Laws*, by Peter G. Berris. Other relevant CRS products include CRS Report R46318, *Federal Data on Hate Crimes in the United States*, by Nathan James and Emily J. Hanson; and CRS In Focus IF11312, *Department of Justice’s Role in Investigating and Prosecuting Hate Crimes*, by Nathan James.

Key Term: “Because Of”

Many federal hate crime provisions apply only if the defendant acts *because of* a protected characteristic of the victim or another person. In the federal hate crime context, “because of” likely requires proof of but-for causation. See, e.g., *United States v. Miller*, 767 F.3d 585, 593 (6th Cir. 2014). But-for causation means that Y (e.g., an assault) would not have occurred if not for X (e.g., the victim’s race). *Burrage v. United States*, 571 U.S. 204, 211 (2014). A factor may be a but-for cause even if other factors combined to produce the relevant result, so long as the factor was necessary to the outcome.

18 U.S.C. § 241, Civil Rights Conspiracy

18 U.S.C. § 241 prohibits conspiracies to interfere with civil rights. Examples of covered rights might include the right to vote, or to occupy a dwelling. The federal government has relied on § 241 to prosecute a variety of bias-motivated conspiracies involving conduct such as vandalism, assault, and murder. Conviction under § 241 requires the government to show an agreement between two or more persons. The government must also prove that the purpose of the agreement was to injure, threaten, oppress, or intimidate. A range of violent and destructive conduct may qualify, as can threatening conduct like cross burning (subject to First Amendment limitations).

18 U.S.C. § 242, Deprivation of Rights Under Color of Law

Among other things, 18 U.S.C. § 242 criminalizes the willful deprivation of civil rights under color of law. Section 242 has been used to prosecute bias-motivated crimes such as the murder of civil rights workers by state law enforcement. The Department of Justice (DOJ) also used § 242 to charge officers involved in the 2020 killings of Breonna Taylor and George Floyd. Unlike § 241, § 242 does not require proof of conspiracy and therefore can reach individuals acting alone. However, § 242 applies only to action taken “under color of law.” Official authorization

of conduct is not required for it to occur under color of law, but the conduct must be more than a purely “personal pursuit.” *Screws v. United States*, 325 U.S. 91, 111 (1945). Cases interpreting “under color of law” generally focus on law enforcement and corrections personnel, but a broad range of federal and state officials may act under color of law. In limited cases, private citizens may also act under color of law, such as when engaged in a typical governmental function or acting in conjunction with government personnel.

18 U.S.C. § 245, Interference with Federally Protected Rights

18 U.S.C. § 245 contains several often-overlapping subsections. One notable provision, § 245(b)(2), prohibits willfully injuring, intimidating, or interfering with another—or attempting to do so—by force or threat of force because of the victim’s race, color, religion, or national origin *and* because of the victim’s participation in certain enumerated protected activities. The activities protected by § 245(b)(2) include, among others, receiving public education or enjoying public accommodations such as movie theaters and hotels. Federal prosecutors have used § 245(b)(2) to charge bias-motivated conduct, including in high-profile cases like the 2020 killing of Ahmaud Arbery. Another subsection (§ 245(b)(4)) also prohibits certain violent conduct directed at intimidating individuals *other than* the immediate victim from engaging in enumerated protected activities without discrimination. For instance, federal prosecutors used this provision to convict a defendant who assaulted a Black man who had been driving by an anti-busing protest in Boston, in order to intimidate a group of people from participating, without discrimination on account of their race, in their protected right to public education. Subsection 245(b)(5) creates additional protections for individuals who are assisting others in some way to participate in protected activities without discrimination. For example, in one case, the government used § 245(b)(5) in a prosecution stemming from an attack on the home of an NAACP chapter president intended to discourage NAACP’s efforts to improve housing and employment opportunities for Black people. Both § 245(b)(4) and § 245(b)(5) protect all the activities that fall under § 245(b)(2), as well as additional ones such as voting and participating in federal jury service.

42 U.S.C. § 3631, Interference with Fair Housing

The provisions of 42 U.S.C. § 3631 largely mirror 18 U.S.C. § 245, except that § 3631 specifically prohibits willful use of force to interfere with federal housing rights such as selling, renting, buying, or occupying a dwelling. In addition, § 3631 protects a more expansive list of characteristics than § 245: race, color, religion, sex, “handicap,” familial status, and national origin. Prosecutors have used § 3631 to charge incidents such as a conspiracy

to hang a noose outside the home of a family from Africa and a racially motivated armed home invasion.

18 U.S.C. § 247, Damage to Religious Property or Obstruction of Free Exercise

18 U.S.C. § 247 prohibits two different categories of conduct. The first category encompasses intentional damage to religious real property, which includes religious buildings and grounds as well as the fixtures and objects they contain. Under § 247(a)(1), intentional damage of religious real property is a crime when committed because of the religious character of that property, if the conduct affects interstate or foreign commerce. Section 247(c) prohibits intentionally damaging religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property. Prosecutors have used these provisions to charge bombings, vandalism, and arson of religious properties. The second category of covered conduct—under § 247(a)(2)—criminalizes intentional obstruction by actual or threatened force of any person’s enjoyment of the free exercise of religious beliefs, when the obstruction is in or affects interstate or foreign commerce. Prosecutors have used this subsection to charge conduct such as the fatal 2015 shooting at Emanuel African Methodist Episcopal Church in Charleston, SC.

Key Concept: Constitutional Authority

Congress enacts federal hate crime statutes using “one or more of its powers enumerated in the Constitution.” *United States v. Morrison*, 529 U.S. 598, 607 (2000). Section 247 offers an example of how this can work in the hate crime context. Subsection 247(c) applies only when the conduct occurs because of the race, color, or ethnic characteristics of any individual associated with the targeted property. This requirement not only captures the defendant’s motivations, but also connects the prohibited conduct to a source of constitutional authority—namely, Congress’s Thirteenth Amendment authority to legislatively eliminate badges and incidents of slavery such as racial discrimination. However, §§ 247(a)(1)-(a)(2) protect interests that potentially lie beyond Congress’s Thirteenth Amendment authority. Congress therefore limited covered conduct to instances implicating interstate or foreign commerce—tethering the provisions to Congress’s power under the Constitution’s Commerce Clause. Congress may premise hate crime provisions on multiple sources of constitutional authority, including others in the Fourteenth and Fifteenth Amendments, for instance. For more information on sources of constitutional authority, see generally CRS Report R45323, *Federalism-Based Limitations on Congressional Power: An Overview*, coordinated by Kevin J. Hickey.

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

Generally, 18 U.S.C. § 249 makes it a crime to “willfully cause[] bodily injury to any person or, through the use of ... a dangerous weapon,” attempt to “cause bodily injury to any person” because of specific characteristics. Section 249(a)(1) prohibits conduct committed because of the

“actual or perceived race, color, religion, or national origin of any person.” Alternatively, § 249(a)(2) criminalizes conduct committed because of the “religion, national origin, gender, sexual orientation, gender identity, or disability of any person” if an additional jurisdictional requirement is met that § 249(a)(1) does not require: that the conduct at issue implicates interstate or foreign commerce. Section 249(a)(2) outlines ways in which that requirement may be met, such as where the conduct results from the defendant or victim traveling across a state line or national border. Section 249 has been used to prosecute a range of crimes with discriminatory motives, including a racially motivated kidnapping and an assault motivated by sexual orientation bias. Federal prosecutors have also invoked § 249 in high-profile cases such as the fatal shooting at the Tree of Life Synagogue in Pittsburgh, PA, in 2018.

In 2022, Congress enacted the Emmett Till Antilynching Act, which added two new subsections criminalizing conspiracies to violate § 249. With the provisions, federal prosecutors now have at least four statutory options for charging hate crime conspiracies, including 18 U.S.C. § 241 (discussed above) or the general federal conspiracy statute, 18 U.S.C. § 371 (discussed in detail in CRS Report R41223, *Federal Conspiracy Law: A Brief Overview*, by Charles Doyle).

Key Language: “Actual or Perceived” and “Any Person”

Section 249’s provisions apply if the defendant’s conduct occurs because of an *actual or perceived* covered characteristic of *any person*. The use of “actual or perceived” permits § 249 prosecution where a defendant is motivated by a specific characteristic such as religion, but is mistaken about that characteristic. For example, DOJ once used § 249 to prosecute a man for attacking a victim he mistakenly perceived to be Jewish. The use of “any person,” meanwhile, means that § 249 can reach instances where an individual’s conduct occurs because of specific characteristics of someone *other* than the victim. This could occur, for instance, where a defendant is motivated by the race or other protected characteristic of one person, but actually attacks another person who does not possess the relevant characteristic—such as a bystander or an acquaintance.

Penalties Under Federal Hate Crime Statutes

Those convicted of violating federal hate crime statutes face fines, imprisonment, or both. The maximum authorized penalties increase where the defendant’s conduct results in particular harms such as bodily injury or death. Most of the federal hate crime statutes authorize the death penalty in some situations, although 18 U.S.C. § 249 and 42 U.S.C. § 3631 do not. A tabular summary of federal hate crime penalties is available in CRS Report R47060, *Overview of Federal Hate Crime Laws*, by Peter G. Berris.

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