

Third, the bill clarifies that neither this Act, nor the amendments made by it may be construed to prohibit any expressive conduct protected from legal prohibition, or any activities protected by the free speech or free exercise clauses of, the First Amendment of the United States Constitution. The legislation does not punish, nor prohibit in any way, name-calling, verbal abuse, or even expressions of hatred toward any group, even if such statements amount to hate speech. Because it covers only violent actions that result in death or bodily injury nothing in this legislation prohibits lawful expression of deeply held religious beliefs. Thus, clergy and other religious persons are not prohibited from decrying any acts, lifestyles, or characteristics that they deem repugnant or contrary to their beliefs. This speech is not actionable under this bill and is in no way proscribed.

The bill specifically provides at Section 8, in its Rule of Construction, that "Nothing in this Act, or the amendments made by this Act, shall be construed to prohibit any expressive conduct protected from legal prohibition by, or any activities protected by the Constitution." Thus, the plain language of the bill makes clear that clergy or others exercising their First Amendment right to speech or expression will not be penalized by this law. Words or conduct that does not result in bodily injury is not actionable under this bill.

This legislation is needed because hate crimes have been seriously underreported. FBI statistics have only documented more than 118,000 hate crimes since 1991. In 2007, statistics demonstrated 7,624 bias-motivated criminal incidents, and police agencies identified 9,535 victims arising from 9,006 separate criminal offenses. Racially-motivated bias accounted for approximately half (50.8 percent) of all incidents; religious bias accounted for 1,400 incidents (18.4 percent); sexual orientation bias accounted for 1,265 incidents (16.6 percent); and ethnicity/national origin accounted for 1,007 incidents (13.2 percent).

H.R. 1913 will address two serious deficiencies in the Federal civil rights crimes, in which a limited set of hate crimes committed on the basis of race, color, religion, or national origin are prohibited. The principal federal hate crimes statutes are 18 U.S.C. sec. 245 and 42 U.S.C. sec. 3631, this bill expands the application of hate crimes legislation.

In the last forty years, limitations in section 245 have become apparent and needed to be addressed. For example, the existing statute requires the government not only to prove that the defendant committed an offense because of the victim's race, color, religion, or national origin, but also because of the victim's participation in one of sex narrowly defined protected activities. These activities related to enrolling/attending schools, participating in or enjoying a service, program, facility, or activity administered or provided by a state or local government, applying for or enjoying employment, serving in a state court as a juror, travelling in or using a facility of interstate commerce, and enjoying the goods or services of certain places of public accommodation. This bill extends the application of hate crimes beyond these narrow and limited situations.

The present bill extends hate crimes in another important manner. The existing statute provides no coverage for violent hate crimes committed because of the victim's perceived sexual orientation, gender, gender identity or disability. H.R. 1913 covers these statuses.

When federal jurisdiction has existed in the limited hate crime contexts authorized under 18 U.S.C. sec. 245(b), the federal government's resources, forensic expertise, and experience in the identification and proof of hate-based motivations has provided an invaluable investigative complement to the familiarity of investigators with the local community, people and customs. The limitations of section 245 have limited the opportunity for such collaboration in many incidents of violence.

As I mentioned out the outset, I understand the urgency and importance of passing this bill. I would however like to bring up two issues that I would like considered, and that I would like to work with leadership to ensure is included, in conference.

First, the bill adds a certification requirement that is not currently found in section. Specifically, it requires a written certification from the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General that the person has reason to believe that a hate crime has occurred and the person has consulted with local and state law enforcement.

This imposes yet another burden upon the Department of Justice and might infringe upon its right to bring and try hate crimes. I do not see any compelling reason for changing the existing law and adding this additional burden.

Similarly, with respect to the Rule of Evidence in section 7(d) of this legislation, it provides the following:

"In a prosecution for an offense under this section, evidence of expression or associations of the defendant may not be introduced as substantive evidence at trial, unless the evidence specifically relates to that offense. However, nothing in this section affects the rules of evidence governing impeachment of a witness."

Thus, this new rule of evidence alters the relevance standard that already exists under the Federal Rules of Evidence. It would seem appropriate to use evidence, albeit circumstantial insofar as it is relevant. For example, consider the following hypothetical that a hate crime is perpetrated but under the current construction of section 7(d), it would be inadmissible to proffer evidence that the defendant collected racist magazine or paraphernalia unless such paraphernalia was directly used in the crime or is entered for purposes of impeachment. It defies reason that the existence of such paraphernalia is relevant and should be admissible to prove that a crime was racially motivated. Therefore, I would excise the language in section 7(d). It adds restrictions to the rules of evidence that have no place in the inquiry.

Hate crimes are real. The bodily injury, loss of life, and havoc that their perpetration wreaks on an individual, a family, community, and the country is wholly unacceptable. I urge my colleagues to support an end to such hate crimes and support this bill. Its passage would make America a fuller, freer and more equal society that all accorded equal protection under the laws of the United States.

ALEX LESKO

HON. ED PERLMUTTER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 29, 2009

Mr. PERLMUTTER. Madam Speaker, I rise today to recognize and applaud Alex Lesko who has received the Arvada Wheat Ridge Service Ambassadors for Youth award. Alex Lesko is an 8th grader at Drake Middle School and received this award because his determination and hard work have allowed him to overcome adversities.

The dedication demonstrated by Alex Lesko is exemplary of the type of achievement that can be attained with hard work and perseverance. It is essential that students at all levels strive to make the most of their education and develop a work ethic that will guide them for the rest of their lives.

I extend my deepest congratulations once again to Alex Lesko for winning the Arvada Wheat Ridge Service Ambassadors for Youth award. I have no doubt he will exhibit the same dedication he has shown in his academic career to his future accomplishments.

PROVIDING FOR CONSIDERATION OF H.R. 1913, LOCAL LAW ENFORCEMENT HATE CRIMES PREVENTION ACT OF 2009

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, April 29, 2009

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H. Res. _____ the Rule on H.R. 1913, the Local Law Enforcement Hate Crimes Prevention Act of 2009. I urge my colleagues to support this rule.

The rule will provide assistance to state and local law enforcement and amend federal law to streamline the investigation and prosecution of hate crimes. The key element of the rule is its expansion of federal jurisdiction to cover crimes motivated by bias against a victim's perceived sexual orientation, gender, gender identity or disability. This legislation would make tremendous strides in garnering the civil and human rights of all Americans. Its passage would secure the equal protection of all Americans under the law. It is a landmark and long overdue piece of legislation.

This is an important legislation and I have introduced similar legislation in this and prior Congresses. While I support this legislation and urge my colleagues to support it, I am disappointed that the rule did not include my amendment which I offered last Congress.

MY AMENDMENT LANGUAGE IN H.R. 1592

Last Congress, I offered an amendment to H.R. 1592, the legislation that was introduced last term. My amendment was accepted by unanimous consent by the members of the Judiciary Committee. Specifically, my amendment required "the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall report such findings back to the Congress within 180 days." If this language was included in the present bill, it would only