

# Examining Hate Crime in the Equality State



A Report of the  
Wyoming Advisory Committee to the  
U.S. Commission on Civil Rights

July 2020

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

**Wyoming Advisory Committee to the  
U.S. Commission on Civil Rights**

The Wyoming Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding hate crimes in Wyoming, and its impact on communities targeted because of their race, color, age, religion, or disability. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state of Wyoming. The contents of this report are primarily based on testimony the Committee heard during two public meetings; one held via webinar on August 29, 2018; the other held in Casper, WY on November 1, 2019, at Casper College.

This report details civil rights concerns relating to the incidence of and response to hate crime in the state. The Committee identified several concerns including the underreporting of hate crimes, the need for training of law enforcement to address hate crimes, bias-motivated incidents and its impact on the American Indian community, the prevalence of bias-motivated incidents, the lack of hate crime legislation and its impact on vulnerable communities, and alternative solutions to address the discrimination given the history of attempts to pass hate crime legislation. From these findings, the Committee offers to the Commission recommendations for addressing this problem of national importance.

**Wyoming Advisory Committee to the  
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## EXECUTIVE SUMMARY

Federal hate crime laws date back to the 1960s during the civil rights movement. In response to the murder of three civil rights workers, Congress passed the first hate crime statute which criminalizes a new class of bias motivated acts such as using force or threatening to use force to willfully interfering with any person because of race, color, religion or national origin<sup>1</sup> and because the person is engaged in a federally protected activity such as voting, attending public school, or jury duty.<sup>2</sup> Decades later, in the wake of a spate of attacks on churches, Congress passed the Church Arson Prevention Act of 1996 which makes it a crime to deface, damage, or destroy religious property, or interfere with a person's religious practice, and bars defacing, damaging, or destroying religious property because of the race, color, or ethnicity of persons associated with the property.<sup>3</sup> The most recent federal protection against hate crimes was enacted and named after two victims of alleged hate crimes, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 which expands the federal definition of hate crimes to include protections against crimes based on the gender, disability, gender identity, or sexual orientation of a victim; enhances the legal toolkit available to prosecutors; and increases the ability of federal law enforcement to support state and local partners.<sup>4</sup>

While these federal laws have been used to charge more than 200 defendants over the past 10 years in federal court,<sup>5</sup> the vast majority of hate crimes in the U.S. are prosecuted in state courts. Thus, enacting state hate crime laws are necessary for prosecution. In many cases, state hate crime laws are typically "penalty enhancement" statutes, in other words, they increase the penalty for an offense if the victim or target is intentionally selected for violence because of his/her personal characteristics or change the classification of a crime from misdemeanor to felony. Hate crime laws may also define protected groups, a range of predicate or underlying crimes, a requirement that hate or bias motivated the offense, provisions for civil remedies, requirements for data collection, and/or training requirements for law enforcement.<sup>6</sup> Wyoming is one of four states – along with Arkansas, Georgia, South Carolina – that do not have a hate crime law.

Proponents of hate crime legislation argue that when crimes are committed against communities because of certain personal characteristics, the targeted community feels vulnerable, fearful,

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<sup>1</sup> 18 U.S.C. § 249(a).

<sup>2</sup> *Id.* § 249(b)(1)(A).

<sup>3</sup> 18 U.S.C. § 247.

<sup>4</sup> 18 U.S.C. § 249.

<sup>5</sup> U.S. Department of Justice, Office of Public Affairs, *Department Update on Hate Crimes Prosecutions*, Jun. 29, 2018, <https://www.justice.gov/opa/pr/justice-department-update-hate-crimes-prosecutions> (accessed Jan. 28, 2019).

<sup>6</sup> U.S. Department of Justice, National Institute of Justice, *Hate Crime in America: The Debate Continues*, by Michael Shively and Carrie F. Mulford, Issue No. 257, p. 9, <https://www.ncjrs.gov/pdffiles1/nij/jr000257c.pdf> (accessed Jan. 28, 2019).

isolated, and largely unprotected by the law. Therefore, protections are necessary to send the message that crimes against communities because of their personal characteristics will not be tolerated. On the other hand, critics of hate crime legislation find that it may be a violation of the First Amendment. Other arguments against passing hate crime legislation also involve comparing antidiscrimination laws and parsing the differences between civil and criminal law;<sup>7</sup> potentially violating the Fourteenth Amendment's equal protection clause because these laws give greater protection to some groups;<sup>8</sup> and potentially violating the Fourteenth Amendment's due process clause because hate crime laws lead an ordinary person to be uncertain of their meaning,<sup>9</sup> or that facts that result in sentence enhancements must be proven to a jury beyond a reasonable doubt.<sup>10</sup>

Over the last decade, Wyoming reported between just zero to eight crimes. At the same time, hate crimes across the U.S. have increased by 17 percent in reported incidents.<sup>11</sup> While Wyoming's few reports may not signal concern over bias-motivated incidents, several reports and anecdotal information indicate otherwise. The state, famously known for the 1998 murder of Matthew Shepard, a gay University of Wyoming student, had also experienced reported incidents of places of worship being defaced with gay slurs, a police shooting of two Native Americans, anti-Semitic propaganda being circulated throughout K-12 schools, and other bias-motivated incidents that were not prosecuted. These events have triggered concerns about the prevalence of bias-motivated activity and hate groups in the state, and have resurfaced discussions regarding the need for strengthened anti-discrimination laws.

Hate crime legislation, while passed in nearly every jurisdiction, has been difficult to accurately estimate its prevalence in America.<sup>12</sup> Collecting such information has been a challenge since the FBI began tracking them in 1995. According to the National Criminal Justice, underreporting occurs because people may not understand what constitutes as a hate crime in their state and may not believe hate or bias motivated the offense committed against them; victims are reluctant to report known offenses to police; and law enforcement do not recognize or prefers not to acknowledge the role of hate in certain offenses. In some instances, it is likely that the predicate

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<sup>7</sup> Marc Fleisher, *Down the Passage Which We Should Not Take: The Folly of Hate Crime Legislation*, 2 J.L. & POL'Y 1 (1994). (Noting it is often exceedingly difficult to determine whether a person acted because of the plaintiff's victim's race, which means it is difficult to determine motive).

<sup>8</sup> See *Oregon v. Beebe*, 680 P.2d 11, 13 (Or. Ct. App. 1984).

<sup>9</sup> Susan Gellman, *Sticks and Stones Can Put You in Jail, But Can Words Increase Your Sentence? Constitutional and Policy Dilemmas of Ethnic Intimidation Laws*, 39 UCLA L. REV. 333 (1991). See also *Richards v. Florida*, 608 So.2d 917, 920 (Fla. Dist. Ct. App. 1992), *rev'd*, 638 So.2d 44 (Fla. 1994).

<sup>10</sup> See *Apprendi v. New Jersey*, 530 U.S. 466, 469 (2000).

<sup>11</sup> Federal Bureau of Investigation, *2017 Hate Crime Statistics*, <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2017-hate-crime-statistics>.

<sup>12</sup> Wendy Colomb and Kelly Damphousse, *Examination of Newspaper Coverage of Hate Crimes: A Moral Panic Perspective*, 28(2) AM. J. CRIM. JUSTICE 147 (2004).

crimes (e.g., vandalism) are locally recorded as conventional crimes, and the hate motivated nature of the crime is ignored and unprosecuted as a hate crime. The lack of action sends two messages: such offenses do not rise to the level of a hate crime and dismisses the potential for an enhanced penalty for the offense to impacted communities; and second, criminals can continue to offend without an enhanced penalty for similar offenses that are bias motivated.

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission on issues in their states that are within the Commission's jurisdiction.

In 2019, the Commission issued a seminal report addressing the federal government's role in combating hate crimes, "In the Name of Hate: Examining the Federal Government's role in Responding to Hate Crimes."<sup>13</sup> In addition, several state advisory committees such as Illinois, Maine, Massachusetts, North Dakota, Rhode Island, and Wisconsin Advisory Committees have examined hate crimes and released reports between 2015 to 2020.<sup>14</sup> Similarly, the Wyoming Advisory Committee, in recognition of the Commission's work in this area, voted in the Spring of 2019 to take up a proposal examining hate crimes in Wyoming. The Committee's inquiry consisted of examining the sufficiency of current equal protection laws in Wyoming, estimating the prevalence of alleged hate crime and hate groups (if any) in the state, and challenges or barriers which may prevent law enforcement from addressing alleged hate crimes.

The Committee held two public meetings; one held via webinar on August 29, 2018; the other held in Casper, WY on November 1, 2019 at Casper College. The Committee invited a range of stakeholders who provided testimony on hate crime reporting, the prevalence of bias-motivated incidents, the need for hate crime legislation and other alternative solutions for addressing hate crime. These stakeholders include: academics, national and state advocacy organizations; and individuals impacted by bias and hate crimes.

The Committee approved the report by a majority vote on June 16, 2020.

This report begins with background on relevant federal hate crime laws and state protections. A summary of themes based on testimony is also included. These themes include: underreporting of hate crimes, the need for training of law enforcement to address hate crimes, hate crime and its impact on the Native American community, the prevalence of bias-motivated incidents and hate crime, the impact of Wyoming's current protections for its citizens, and alternative solutions

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<sup>13</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, November 2019 <https://www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>14</sup> The Illinois, Maine, Massachusetts, North Dakota, Rhode Island, and Wisconsin Advisory Committees released reports on hate crimes. Reports can be found here: <https://www.usccr.gov/pubs/sac.php>.

given the history of attempts to pass hate crime legislation. The report concludes with findings and recommendations below issued to the Commission to forward to appropriate federal and state entities and additional considerations for school districts.

## Findings

1. Because Wyoming, known as the Equality State, does not have a hate crime law or non-discrimination protections, there may be negative economic consequences in terms of attracting future businesses and residents with diverse backgrounds from moving to the state. On a philosophical level, it may demonstrate that the state tolerates discrimination against individuals regardless of whether they belong to a protected category.
2. Accurate and complete data regarding hate crimes and bias-motivated incidents impacting protected classes is critical to effectively addressing these issues. Because data is reported voluntarily by local law enforcement, there is a lack of information in determining the prevalence of these crimes against protected groups. In addition, there is concern about the inability to report hate crimes because incidents may be classified as other crimes such as assault or suspicious behavior without acknowledging the motivation of the perpetrator.
3. Many bias-motivated incidents, which do not rise in severity to the level of criminal activity, can still be concerning for law enforcement and community members alike. Balancing the need to protect free speech can be particularly difficult when such speech can result in consistent harassment or intimidation. It may also have the potential to escalate into or incite others to engage in actual violence.
4. Employment, housing, and public accommodation protections for the lesbian, gay, bisexual, transgender, queer/questioning, and intersex (LGBTQI) community are seen as an effective method to addressing bias-motivated incidents and largely favored because hate crime legislation often includes increased penalties which may cause more financial strain on the state.
5. Hate crimes committed against the American Indian community go largely unnoticed and underreported. Testimony indicates there are several explanations for this such as the long history of prejudice and discrimination toward American Indian; law enforcement not taking the American Indian community's complaints seriously; fear of retaliation by the alleged perpetrator if the individual reports the crime; and tribal, state, and federal agencies' lack of clarity as to what constitutes as a hate crime.
6. While the Constitution protects free speech, the prevalence of bias-motivated incidents such as circulating racist and anti-gay flyers that occurred in K-12 schools raises concerns about its potential impact on the youth as it may incite violence.
7. Testimony indicated that while hate crimes are reportedly low, there are many bias-motivated incidents that have occurred that raise concern about tolerance for

discrimination. For instance, there was distribution of white supremacist and anti-LGBTQI propaganda in Cheyenne and Laramie, graffiti with anti-Catholic rhetoric spray painted on a Catholic church, anti-Semitic propaganda circulated throughout K-12 schools, and someone replaced the American flag with the flag of Nazi Germany at a local park. In addition, and there is a small number of hate groups that exist in Wyoming.

## Recommendations

Because there is a lack of information discussing the impact of hate crime on the American Indian community, the Committee recommends the U.S. Commission on Civil Rights to study this area of concern.

The U.S. Commission on Civil Rights should send this report and issue a formal recommendation to the U.S. Department of Justice Federal Bureau of Investigation (FBI) to make participation in the Uniform Crime Report data collection and reporting mandatory for all law enforcement agencies across the county. In addition, the FBI should require training for all state and local law enforcement on identifying and reporting hate crime.

The U.S. Commission on Civil Rights should send this report and issue a formal recommendation to the U.S. Congress to provide appropriations for state governments to transition to support data collection and reporting efforts.

The U.S. Commission on Civil Rights should send this report and issue formal recommendations to the Wyoming Legislature to pass legislation in the following areas:

- Study the various hate crime policies and procedures used among major law enforcement agencies
- Require statewide training for all law enforcement agencies regarding identifying, responding to, and reporting hate crime
- A hate crime statute that prohibits a broad range of bias-motivated criminal conduct and offers inclusive protections for victims. Included in this legislation should also consider alternative sentencing provisions.
- Prohibit discrimination of any based upon his or her actual or perceived sexual orientation or gender identity in employment, housing, and public accommodations similar to the ordinance enacted by the City of Laramie.
- Establish a citizen oversight board to hold police accountable for misconduct.

The U.S. Commission on Civil Rights should send this report and issue formal recommendations to the Wyoming Governor to require state-wide training for all law enforcement agencies regarding identifying, responding to, and reporting hate crime. In addition, the Governor should mandate schools to receive training on prevention of hate crimes by building a climate of inclusivity, how to identify such incidents, and how to appropriately respond.

The U.S. Commission on Civil Rights should send this report and issue a formal recommendation to state law enforcement to designate an individual as a resident expert on hate

crimes to assist law enforcement in determining if bias-motivated acts could be investigated as a hate crime.

***Considerations for School Districts***

School districts should implement clear policies and initiatives and partner with organizations that provide K-12 education on how to build inclusive and safe schools in which all students can thrive.

## INTRODUCTION

Hatred stemming from prejudice and bias has motivated criminal acts throughout history. In the United States, deliberate examples include: the extensive legacy of violence, intimidation, and discrimination targeting new waves of immigrants, the lynching of African Americans, and other forms of violence against individuals because of their national origin, religion, sexual orientation, gender identity, and other personal characteristics. Hate crimes are generally defined as bias-motivated verbal and physical attacks against a victim based upon his or her race, religion, sexual orientation, ethnicity, or national origin and charges against this type of crime can increase the severity of a sentencing.

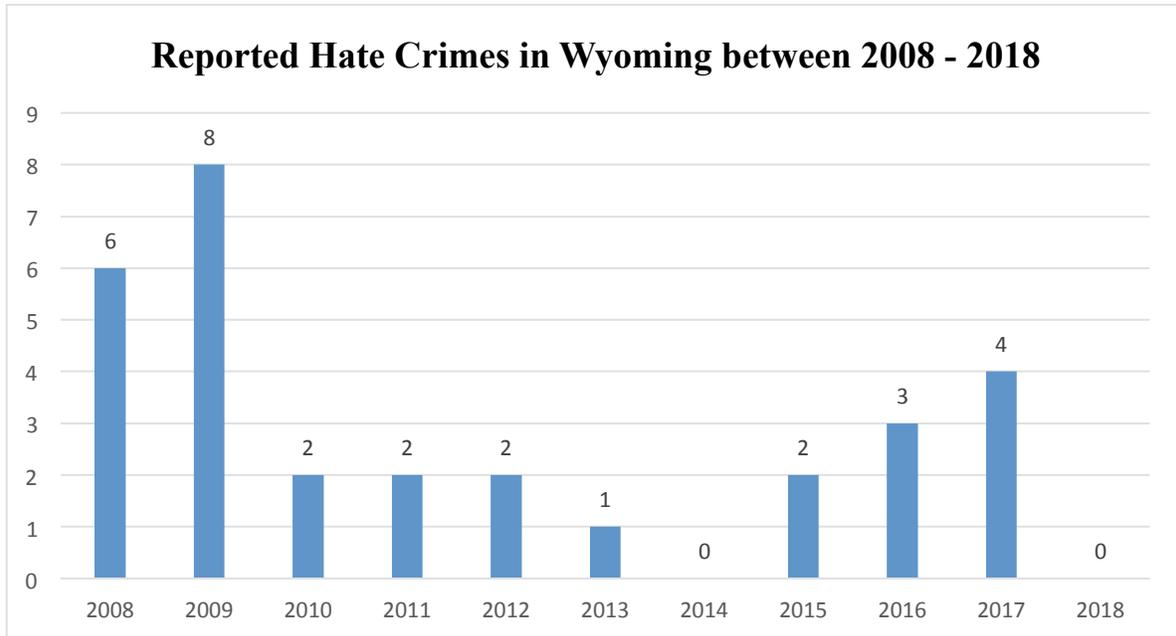
Known as the Equality State, Wyoming received its nickname for being the first state to let women vote. Today, it has fewer women in its Legislature than any other state and remains hesitant to pass hate crime law and adopt policies to counter bias-motivated incidents and violence. It is among just four states — along with Arkansas, Georgia, and South Carolina — that have not passed laws focused on crimes motivated by the victim's identity.

Over the last decade, Wyoming reported between zero to eight hate crimes to the Federal Bureau of Investigations (see Figure 1).<sup>15</sup> At the same time, hate crimes across the United States have fluctuated in numbers; however, there was an increase of 17 percent in reported incidents in the last three years (see Figure 2).<sup>16</sup> While the few reports in Wyoming may not signal concern, several reports indicate otherwise. Wyoming, infamously known for the 1998 murder of a gay University of Wyoming student named Matthew Shepard, had also experienced reported incidents of places of worship being defaced with gay slurs, a police shooting of two American Indians, anti-Semitic propaganda being circulated throughout K-12 schools and other bias-motivated incidents. These events have triggered concerns about the prevalence of bias-motivated activity and hate groups in the state, and have resurfaced discussions regarding the need for strengthened anti-discrimination laws.

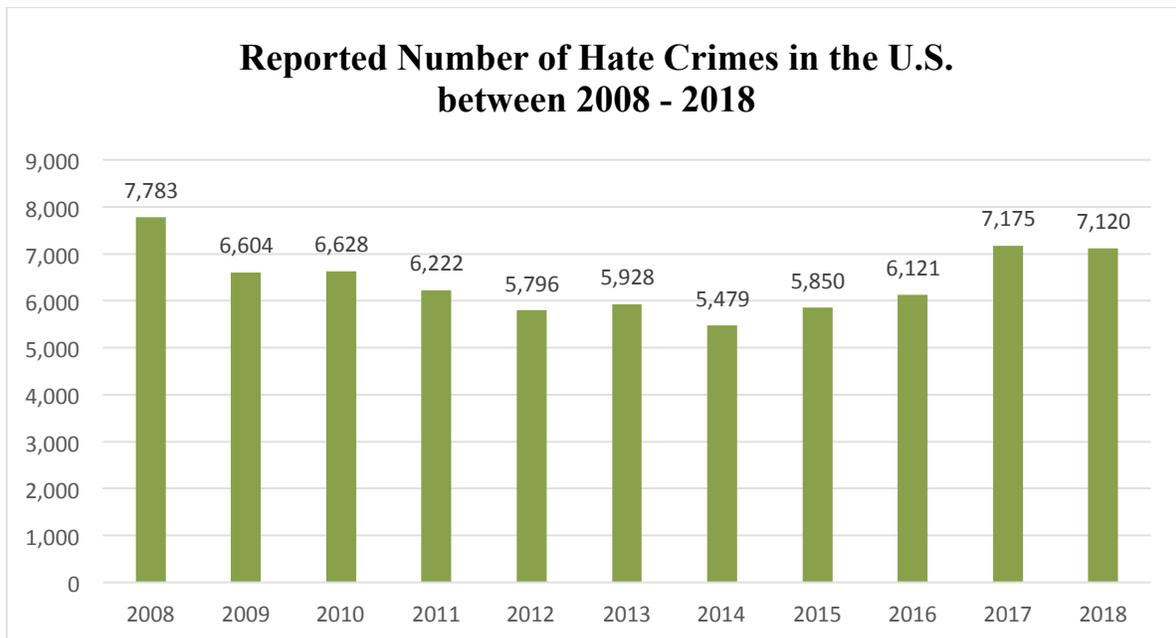
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<sup>15</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, *2008-2018 Table 12: Agency Hate Crime Reporting by State and Federal*, Hate Crime Statistics, (found on the page of each respective year).

<sup>16</sup> Ibid.



Source: Federal Bureau of Investigation, Criminal Justice Information Services Division, Hate Crime Statistics  
**Figure 1**



Source: Federal Bureau of Investigation, Criminal Justice Information Services Division, Hate Crime Statistics  
**Figure 2**

In 2019, the Commission issued a seminal report addressing the federal government's role in combating hate crimes, "In the Name of Hate: Examining the Federal Government's role in Responding to Hate Crimes."<sup>17</sup> In addition, several state advisory committees such as Illinois, Maine, Massachusetts, North Dakota, Rhode Island, and Wisconsin Advisory Committees have examined hate crimes and released reports between 2015 to 2020.<sup>18</sup> Similarly, the Wyoming Advisory Committee, in recognition of the Commission's work in this area, voted in the Spring of 2019 to take up a proposal examining hate crimes in Wyoming. The Committee's inquiry consisted of examining the sufficiency of current equal protection laws in Wyoming, estimating the prevalence of alleged hate crime and hate groups (if any) in the state, and challenges or barriers which may prevent law enforcement from addressing alleged hate crimes.

## BACKGROUND

The section below details federal legislation relevant to hate crime and existing state protections. These laws include: the Civil Rights Act of 1968, Hate Crime Statistics Act of 1990, Hate Crime Sentencing Act of 1994, Church Arson Prevention Act of 1996, Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009, and Laramie County's Non-discrimination Ordinance.

### Civil Rights Act of 1968

In 1968, Congress passed the Civil Rights Act to, among other things, address racial violence against African-Americans and civil rights workers.<sup>19</sup> Section 245 of Title 18 of the United States Code, enacted as part of the Act, penalizes any person who interferes with another person's participation in federally protected activities by use of force or threat of force because of the person's race, color, religion or national origin.<sup>20</sup> The federally protected activities under the statute include: enrolling in or attending a public school or college; participating in or enjoying a service, program, facility, or activity provided or administered by any state or local government; applying for or enjoying employment; serving in a state court as a grand or petit

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<sup>17</sup> U.S. Commission on Civil Rights, *In the Name of Hate: Examining the Federal Government's Role in Responding to Hate Crimes*, November 2019 <https://www.usccr.gov/pubs/2019/11-13-In-the-Name-of-Hate.pdf>.

<sup>18</sup> The Illinois, Massachusetts, North Dakota, Rhode Island, and Wisconsin Advisory Committees released reports on hate crimes. Reports can be found here: <https://www.usccr.gov/pubs/sac.php>.

<sup>19</sup> See S. Rep. No. 90-721, at 2 (1968), as reprinted in 1968 U.S.C.A.N. 1837, 1838; ZACHARY J. WOLFE, HATE CRIMES LAW 157 (2014).

<sup>20</sup> Civil Rights Act of 1968 § 101, Pub. L. No. 90-284, 82 Stat. 73 (codified as 18 U.S.C. § 245(b)).

juror; traveling in or using a facility of interstate commerce; enjoying the goods and services of certain places of public accommodation.<sup>21</sup>

Title VIII of the Civil Rights Act is referred to as the Fair Housing Act of 1968. It prohibits any person from interfering with another person's housing related activities by use of force or threat of force because of the person's race, color, religion or national origin.<sup>22</sup> The Fair Housing Act has been amended to expand the protected categories to include: sex, handicap, and familial status.<sup>23</sup>

## Hate Crime Statistics Act of 1990

Congress enacted the Federal Hate Crime Statistics Act in 1990 in response to a surge in the incidence of hate crimes in the 1980s.<sup>24</sup> The Act requires the Attorney General to collect data on crimes motivated by "prejudice based on race, religion, sexual orientation, or ethnicity" and to publish an annual summary of the findings.<sup>25</sup> The categories of bias expanded to include disability and gender identity in 1994 and 2009 respectively.<sup>26</sup> The Act also requires the Attorney General to "establish guidelines for the collection of such data including the necessary evidence and criteria . . . for a finding of manifested prejudice"<sup>27</sup> and delegated the duty for compiling hate crime statistics to the Federal Bureau of Investigation (FBI) as part of the Uniform Crime Reporting (UCR) program.<sup>28</sup>

## Hate Crime Sentencing Enhancement Act of 1994

In 1994, Congress passed the Hate Crime Sentencing Enhancement Act (HCSEA) as part of the Violent Crime Control and Law Enforcement Act. HCSEA mandated a revision of the United States Sentencing Guidelines to provide sentencing enhancements for perpetrators of hate

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<sup>21</sup> *Id.*

<sup>22</sup> Civil Rights Act of 1968 § 901, Pub. L. No. 90-284, 82 Stat. 89 (codified as 42 U.S.C. §3631).

<sup>23</sup> Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619; Act of Aug. 22, 1974, Pub. L. No. 93-383, § 808(b)(4), 88 Stat. 729.

<sup>24</sup> Daniel Aisaka & Rachel Clune, *Hate Crime Regulation and Challenges*, 14 GEO. J. GENDER & L. 469, 471 (2013).

<sup>25</sup> Hate Crime Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990).

<sup>26</sup> Act of Sept. 13, 1994, Pub. L. No. 103-322, § 320926, 108 Stat. 2131; Act of Oct. 28, 2009, Pub. L. No. 111-84, § 4708, 123 Stat. 2841.

<sup>27</sup> 28 U.S.C. § 534.

<sup>28</sup> U.S. Department of Justice, Criminal Justice Information Services Division, *Hate Crime Data Collection Guidelines and Training Manual 1.0*, 2012. <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

crimes.<sup>29</sup> HCSEA includes as hate crimes those crimes motivated by “the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.”<sup>30</sup> The United States Sentencing Commission amended the Federal Sentencing Guidelines to include enhanced punishment for hate crimes.<sup>31</sup> If a court determines beyond a reasonable doubt that a defendant committed a crime because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of the victim, the sentence is automatically increased by three levels of offense seriousness.<sup>32</sup>

## **Church Arson Prevention Act of 1996**

In response to a series of church burnings in the 1990s, Congress passed the Church Arson Prevention Act of 1996.<sup>33</sup> The law enhanced an earlier statute that provided federal jurisdiction for cases involving religious vandalism, but only those in which the damage exceeded \$10,000. It eliminated the minimum damage requirement and prohibits the “intentional defacement, damage, or destruction of any religious real property, because of the religious, racial, or ethnic characteristics of that property.”<sup>34</sup> Finally, it further prohibits the “intentional obstruction by force or threat of force, or attempts to obstruct any person in the enjoyment of that person's free exercise of religious beliefs.”<sup>35</sup>

## **Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009**

Because the Civil Rights Act of 1968 applies only to hate crimes committed against those in pursuit of one of the statutorily protected activities and leaves out crimes motivated by bias against the victim’s gender, sexual orientation or disability,<sup>36</sup> Congress passed the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009<sup>37</sup> to include gender, gender

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<sup>29</sup> Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 280003, 108 Stat. 1796, 2096.

<sup>30</sup> *Id.*

<sup>31</sup> U.S. Sentencing Commission, *2011 Federal Sentencing Guidelines Manual*, <http://www.ussc.gov/guidelines-manual/2011/2011-3a11>.

<sup>32</sup> The Federal Sentencing Guidelines provide 43 levels of offense seriousness. The more serious the crime, the higher the offense level and longer the sentence. *Ibid.*

<sup>33</sup> Church Arson Prevention Act of 1996, Pub. L. No. 104-155, § 3, 110 Stat. 1392.

<sup>34</sup> 18 U.S.C. § 247.

<sup>35</sup> *Id.*

<sup>36</sup> Aisaka et al., at 472.

<sup>37</sup> Hate Crimes Prevention Act, Pub. L. No. 111-84, §§ 4701–4713, 123 Stat. 2835, 2835-2845 (2009).

identity, sexual orientation and disability.<sup>38</sup> The 2009 Act also extended the federal government's prosecutorial authority to include hate crimes committed against persons not involved in the pursuit of federally protected activities.<sup>39</sup>

As a benefit to law enforcement, the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act provides federal aid and technical assistance to state, local and tribal jurisdictions to assist in the investigation, prosecution and prevention of hate crimes.<sup>40</sup> In particular, it permits the Attorney General to provide "technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution" of any crime that is a "crime of violence" or a felony under state law and is motivated by prejudice based on the victim's "race, color, religion, national origin, gender, sexual orientation, gender identity or disability."<sup>41</sup> Finally, it further allows the Attorney General to "award grants to State, local, and tribal law enforcement agencies for extraordinary expenses associated with the investigation and prosecution of hate crimes."<sup>42</sup>

## Hate Crime Laws and Wyoming

As early as 1981, Washington and Oregon passed the first statewide hate crime laws, and up to 47 states including the District of Columbia passed at least one piece of legislation addressing hate or bias motivated crime in some form.<sup>43</sup> Currently, Wyoming is one of four states that do not have a hate crime law.<sup>44</sup>

For more than a decade, civil rights advocates – especially those who represent the lesbian, gay, bisexual, transgender, queer/questioning and intersex (LGBTQI) community – have criticized the state for failing to pass legislation in response to the 1998 violent murder of a Matthew Shepard.<sup>45</sup> This incident made national news, prompting the Wyoming Legislature to consider a hate crime bill in 1999 that later failed in the House. Multiple attempts to pass a hate crimes bill

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<sup>38</sup> 18 U.S.C. § 249.

<sup>39</sup> *Id.*

<sup>40</sup> 42 U.S.C. § 3716.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> U.S. Department of Justice, National Institute of Justice, *Study of Literature and Legislation on Hate Crime in America*, by Michael Shively, Mar. 31, 2005, p. 2, <https://www.ncjrs.gov/pdffiles1/nij/grants/210300.pdf>.

<sup>44</sup> U.S. Department of Justice, "Laws and Policies, Which States and Territories Have Hate Crimes Laws and Require Data Collection on Hate Crimes," <https://www.justice.gov/hatecrimes/laws-and-policies>.

<sup>45</sup> Julie Compton, Two Decades After Matthew Shepard's Death, LGBTQ Community Still Battles Hate Violence, NBC NEWS, Oct. 12, 2018, <https://www.nbcnews.com/feature/nbc-out/two-decades-after-matthew-shepard-s-death-lgbtq-community-still-n919401>.

ensued; however, sponsoring legislations made little to no traction. In 2015, civil rights advocates renewed a call for hate crime legislation due to the shooting of two American Indians at a detox center in Riverton, Wyoming, resurfacing conversation about issues like addiction, homelessness, civil virtue, and race.<sup>46</sup>

At this writing, the Wyoming Legislature has no plans to introduce hate crime legislation in its upcoming session.

## **Laramie County Non-discrimination Ordinance**

On May 13, 2015, Laramie City Council passed an ordinance prohibiting discrimination of any person based upon his or her actual or perceived sexual orientation or gender identity in employment, housing and public accommodations.<sup>47</sup> Laramie is the first city in Wyoming to implement such a measure and provide a process for gay and transgender people to file a complaint with the City if they believe they have been the subject of discrimination. Albeit a first in its kind, an effort to pass a similar, state-wide discrimination ban failed in the state legislature earlier that year.

## **SUMMARY OF PANEL TESTIMONY**

Public meetings held on August 29, 2019 (via web hearing) and November 1, 2019 at Casper College in Casper, Wyoming included testimony from academics, advocacy organizations, policy analysts, and individuals impacted by bias-motivated incidents and/or hate crimes. Panelists were selected to provide diverse and balanced views concerning the topic. Themes discussed include the following: underreporting of hate crimes, need for training of law enforcement to identify and address hate crimes, hate crime and its impact on the American Indian community, prevalence of bias-motivated incidents, lack of hate crime legislation and its impact on vulnerable communities, and alternative solutions to address discrimination given the history of attempts to pass hate crime legislation.

## **American Indian Community Concerns**

Among several themes that emerged from testimony included the impact of discrimination and hate crime incidents affecting the American Indian community.

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<sup>46</sup> Aaron Schrank, "Shooting Stirs Racial Tension in Fremont County," *Tribal News*, Jul. 31, 2015, <https://www.wyomingpublicmedia.org/post/shooting-stirs-racial-tension-fremont-county#stream/0>.

<sup>47</sup> City of Laramie Chapter 9.32 Municipal Code <https://www.cityoflaramie.org/DocumentCenter/View/8990/Illegal-Discrimination-Ordinance?bidId=>.

The Committee invited a local community advocate, Sergio Maldonado who began his remarks by stating, “if we are truly the Equitable State, the Equality State, that hasn't filtered down to people on the reservation.”<sup>48</sup> In speaking with tribal members about their accounts of hate crime incidents on the reservation, tribal members asserted they have witnessed bias-motivated incidents occurring on the reservation and also alleged that discrimination occurs in border towns.<sup>49</sup> According to national FBI data, hate crimes against American Indian or Alaska Natives have increased in recent years. The FBI catalogued 4,029 hate crimes in 2015 motivated by race/ethnicity/ancestry, 3.4 percent of them against American Indians and Alaska Natives<sup>50</sup> and in 2018 there were 5,155; 4.1 percent of them against American Indians and Alaska Natives.<sup>51</sup> These figures are statistically significant among a people who represent only one percent of the total U.S. population.<sup>52</sup>

According to Hillary McNeel, a University of Nebraska at Omaha researcher, there is scant information available regarding hate crimes and other racially motivated incidents impacting American Indians and Alaska Natives.<sup>53</sup> The information that does exist demonstrates the complexity of defining a hate crime and the jurisdictional issues American Indians face when reporting hate crimes. For instance, one report finds that due to the lack of cooperation between the tribal governments and non-tribal governments, hate crimes against American Indians go largely unreported and prosecuted.<sup>54</sup>

As it relates to defining incidents impacting American Indians as hate crimes, there is indication that law enforcement may not be reporting incidents accurately. Mr. Maldonado described two incidents involving assaults against American Indians that, in his view, should have been labeled as a hate crime. In 2015, a Riverton man shot two American Indian men,<sup>55</sup> killing one at an

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<sup>48</sup> John Lancaster, “A Legacy of Prejudice: Lawsuits, Failed Pacts Tell Ugly Story,” *WyoFile*, Aug. 30, 2010, <https://www.wyofile.com/a-legacy-of-prejudice-lawsuits-failed-pacts-tell-ugly-story/>.

<sup>49</sup> Sergio Maldonado, testimony, *Briefing Before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights*, Casper, WY, Nov. 1, 2019, transcript, p. 16 (hereafter cited as *Casper Briefing*).

<sup>50</sup> U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *2015 Hate Crime Statistics*, [https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses\\_final](https://ucr.fbi.gov/hate-crime/2015/topic-pages/incidentsandoffenses_final).

<sup>51</sup> U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *2018 Hate Crime Statistics*, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/victims>.

<sup>52</sup> Cecily Hilleary, “Rise in Hate Crimes Alarms Native American Communities,” *VAO News*, Jun. 5, 2017, <https://www.voanews.com/usa/rise-hate-crimes-alarms-native-american-communities>.

<sup>53</sup> Hillary D. McNeel, *Hate Crimes Against American Indians and Alaskan Natives*, 21(4) J. GANG RESEARCH 11 (2013), <https://ngcrc.com/journalofgangresearch/jgr.v21n4.mcneel.pdf>.

<sup>54</sup> Dian Million, *Policing the Rez: Keeping No Peace in Indian Country*, 27(3) SOC. JUSTICE 101 (2000).

<sup>55</sup> Lillian Shrock, “Riverton Man Sentenced to Life in Prison for Killing at Detox Center,” *Casper Star Tribune*, Jan. 8, 2016, [https://trib.com/news/local/crime-and-courts/riverton-man-sentenced-to-life-in-prison-for-killing-at/article\\_d68b8694-0d64-5ebd-aa8f-4361b7d335f4.html](https://trib.com/news/local/crime-and-courts/riverton-man-sentenced-to-life-in-prison-for-killing-at/article_d68b8694-0d64-5ebd-aa8f-4361b7d335f4.html).

alcohol detox facility in Fremont County. Despite the shooter receiving a life sentence, many American Indian community members believe the incident should have been prosecuted as a hate crime as they believed the two individuals were targeted because of their race. The second incident occurred in Fremont County involved Anderson Antelope, a Northern Arapaho tribal member, who was shot and killed by a police officer in front of a Wal-Mart store. Angered over the 2019 incident, Mr. Maldonado believed the police officer could have de-escalated the interaction and used other non-lethal measures such as using pepper spray or the Taser to manage the situation.

The latter incident demonstrates ongoing community policing issues between the police and minority communities occurring across the country and is exacerbated because of the long history of prejudice and discrimination against the American Indian community.<sup>56</sup>

Testimony also indicated that there are barriers to reporting hate crime to tribal local law enforcement agencies. Among the reasons include tribal agencies and departments not understanding what constitutes as a hate crime and tribal and local law enforcement agencies not taking complaints seriously.<sup>57</sup> The reporting of hate crimes in small, predominately non-tribal and rural communities is extremely difficult and the tribal member fears personal retaliation by the alleged perpetrator.<sup>58</sup>

Finally, there was concern regarding the expression of anti-American Indian sentiment among youth. Describing a recent incident, Mr. Maldonado told the Committee that teenagers yelled expletives to tribal members who were congregating together to honor the deceased.<sup>59</sup> He reflected on that event and said, “[as a society,] we all have [a] serious responsibility to address [these incidents], to speak up, to speak out, but also to educate our young people and model what we call acceptable civil behavior.”<sup>60</sup> He suggested for decision makers to work with stakeholders to develop curriculum that teaches tolerance in schools.

## Hate Crime Reporting

Federal hate crime law allows for the collection and tracking of hate crime data. State, tribal, and local law enforcement agencies participating in the data collections authorized under the Hate

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<sup>56</sup> Savannah Maher, “Family, Community Members Call for Greater Transparency Into Anderson Antelope’s Death,” *Wyoming Public Media*, Dec. 13, 2019, <https://www.wyomingpublicmedia.org/post/family-community-members-call-greater-transparency-anderson-antelopes-death#stream/0>.

<sup>57</sup> Hillary D. McNeel, *Hate Crimes Against American Indians and Alaskan Natives*, 21(4) J. GANG RESEARCH 11 (2013), <https://ngcrc.com/journalofgangresearch/jgr.v21n4.mcneel.pdf>.

<sup>58</sup> See Barbara Perry’s quote in Cecily Hilleary, “Rise in Hate Crimes Alarms Native American Communities,” *VOA News*, Jun. 5, 2017, <https://www.voanews.com/usa/rise-hate-crimes-alarms-native-american-communities>.

<sup>59</sup> Maldonado Testimony, *Casper Briefing*, p. 18.

<sup>60</sup> *Ibid.*, 19.

Crime Statistics Act have two methods of reporting crime data through the Uniform Crime Reporting program: the Summary Reporting System; and the National Incident-Based Reporting System.<sup>61</sup> The aggregate hate crime data collected for each incident includes incidents and offenses by bias motivation; the types of victims, the number of offenders and when possible, their race and ethnicity of the offender or offenders as a group; location type; and hate crime by jurisdiction which includes data about hate crimes by state and agency. Law enforcement can also report incidents if they are single-bias and multiple-bias. Although the law serves to manage hate crime data collection, there is no requirement for cities to report hate crimes to the state and for the state to report to the FBI.<sup>62</sup> Considering this fact, aggregate data depicts a less accurate figures on the frequency and types of hate crimes committed against individuals and communities.

Data on hate crime is severely lacking in Wyoming, showing no change at a time where hate crimes across the U.S. have increased by double-digit margins in each of the last three years.<sup>63</sup> According to the FBI, 2017 saw 7,175 incidents, marking the highest year for reported incidents since the agency began collecting data in 1995. Meanwhile Wyoming – which lacks mandatory reporting requirements – counted just only incidents. Those four bias-motivated events in 2017 included two incidents that were motivated by sexual orientation; one was motivated by religion; and one was motivated by race, ethnicity or ancestry bias. All four of those events took place at the University of Wyoming. In 2016, the FBI reported only three incidents and in 2015, only two. It is also important to note that out of the 90 law enforcement agencies,<sup>64</sup> only 57 agencies participate in the FBI Uniform Crime Reporting program.<sup>65</sup>

Scott Levin, Mountain Regional States director at the Anti-Defamation League, acknowledged that despite Wyoming's small and less diverse population, he found it difficult to believe that there were only a limited number of incidents that had been reported up to the FBI because they recorded several incidents between 2017 and 2019. Based on their records, these instances include two white supremacist events, 26 distributions of white supremacist literature and propaganda around the state, and three anti-Semitic incidents. Most of the distributed literature came from Identity Evropa, a group that focuses on the preservation of the white American culture and the promotion of white European identity. Of those events, there was one incident that was especially concerning for Mr. Levin. In March of 2019, students at McCormick Junior

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<sup>61</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, *National Incident-Based Reporting System (NIBRS)*, <https://www.fbi.gov/services/cjis/ucr/nibrs>.

<sup>62</sup> Shepard Testimony, *Casper Briefing*, p. 4.

<sup>63</sup> John Eligon, "Hate Crimes Increase for the Third Consecutive Year, F.B.I. Reports," *New York Times*, Nov. 13, 2018, <https://www.nytimes.com/2018/11/13/us/hate-crimes-fbi-2017.html>.

<sup>64</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *2008 Census of State and Local Law Enforcement Agencies*, by Brian A. Reaves, Jul. 2011, <https://www.bjs.gov/content/pub/pdf/cslllea08.pdf>.

<sup>65</sup> Levin Testimony, *Casper Briefing*, p. 9.

High in Cheyenne created and distributed racist and anti-gay flyers to their peers.<sup>66</sup> He said “the fact that our youth have this kind of bias just doesn’t come from their own minds [-] it’s because of what’s out there.” He added:

We all did silly, stupid things when we were in junior high school, but I don’t know that in our quiver were these arrows that were so quite sharp against gays, against people of color, against Jews. And that’s what we really need to be working on.<sup>67</sup>

Michael McDaniel, creator of a Facebook page called Wyoming Hate Watch, also testified to the presence of bias in the state. Wyoming Hate Watch is dedicated to tracking instances of racism, sexism, homophobia, xenophobia and other biases it’s intent is to inform the general public of those around them who hold such ideologies for current and future protection. The motivation behind this page, according to Mr. McDaniel, was due to “a sudden increase in hateful rhetoric targeted at minority populations within the state of Wyoming, particularly within social-media discourse, political organizations’ online postings, and in public settings,”<sup>68</sup> said Mr. McDaniel. Posts include re-posts of public statements made by elected officials and office seekers who express bigoted views so that they can be held accountable. In gathering this information, he was also able to track the prevalence of hate groups in the state and alleged recruitment efforts.

Another panelist concluded that certain incidents were inaccurately accounted for as hate crimes. Kai Wiggins, policy analyst at the Arab American Institute, brought attention to the exclusion of multiple high-profile incidents from FBI reporting that occurred over the past few years that, on its face, were motivated by bias. These events include the murder of Heather Heyer in Charlottesville, Virginia on August 12, 2017; the murder of Srinivas Kuchibhotla in Olathe, Kansas, on February 22, 2017; and the murders of Ricky John Best and Taliesin Myrddin Namkai-Meche in Portland, Oregon, on May 26, 2017.<sup>69</sup>

In a similar sentiment, former president of NAACP Casper James Simmons, believes that when every crime is reported just as a crime, it whitewashes the existence of racism, signaling to the worst in society that their crimes – not their prejudice – is what society is rejecting. He said:

[I]t’s hard to legislate morality... I love Wyoming, I’ve been here 48 years, raised a family here. And I do it because I want to see Wyoming better. And to do that, we have to get stories like this out in the open.

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<sup>66</sup> Morgan Hughes, “Student Responsible for McCormick Flyers Identified, Substitute Teacher Likely to be Reinstated,” *Wyoming Tribune Eagle*, Apr. 2, 2019, [https://www.wyomingnews.com/news/local\\_news/student-responsible-for-mccormick-flyers-identified-substitute-teacher-likely-to/article\\_8f96e28e-c587-5dab-a973-2a34ddaefd8f.html](https://www.wyomingnews.com/news/local_news/student-responsible-for-mccormick-flyers-identified-substitute-teacher-likely-to/article_8f96e28e-c587-5dab-a973-2a34ddaefd8f.html).

<sup>67</sup> Levin Testimony, *Casper Briefing*, p. 11.

<sup>68</sup> McDaniel Testimony, *Casper Briefing*, p. 19.

<sup>69</sup> Maya Berry and Kai Wiggins, “Opinion: FBI Hate Crime Stats Are Scary. So Is What’s Missing,” *CNN*, Nov. 14, 2018, <https://www.cnn.com/2018/11/14/opinions/fbi-hate-crimes-data-whats-missing-berry-wiggins/index.html>.

Without mandatory reporting, Wyoming lacks the amount of data sufficient to develop proper understanding of the problem. The rise in reported hate crimes nationwide may be due to a greater willingness to report those crimes to law enforcement when they happen and/or a greater commitment by law enforcement to prosecute those crimes. However, panelists believe that those trends do not reflect the experience in Wyoming. Dennis Shepard, founder of the Matthew Shepard Foundation and father of Matthew Shepard said there are several reasons there why people fail to report such as fear of losing their job, fear of being revictimized, fear of being arrested and/or deported if citizenship is questionable, fear of law enforcement based on experiences from their country of origin, and doubt that law enforcement is supportive and serious about protecting them.<sup>70</sup>

For Karlee Provenza, executive director for the Albany County Center for Proper Policing, she believes victims of hate crime are less likely to report largely because of their fear of law enforcement and doubt that law enforcement would be helpful in protecting them. Furthermore, she believes that those who hate crime law intends to protect are less likely to report and that establishing a civilian oversight board to monitor law enforcement activity in the community is a more effective solution to addressing mistrust in the community.<sup>71</sup> At a time of dissolving trust between law enforcement and local communities over officer-involved shootings<sup>72</sup> and the revelation of law enforcement belonging to and participating in Facebook groups that promote extremist ideologies,<sup>73</sup> she believes these boards could keep law enforcement accountable in their actions, including investigating and reporting hate crimes.

Without a state hate crime law and mandatory reporting of hate crimes, panelists believe the state is missing the opportunity to reassure marginalized groups, such as LGBTQI individuals, that they are protected from discrimination and violence. Hannah Villnave, board member for Wyoming Equality, said that the LGBTQI community's concerns center around their safety and reporting harassment to law enforcement. She said that many in the LGBTQI community are concerned for their safety while accessing the outdoors and when they report harassment to law enforcement, they are worried that law enforcement will not take action because those types of harassment that is not protected by Wyoming Statute.<sup>74</sup> Additionally, Athne Machdane, a Casper resident, pointed out that on the federal and state level, there are no protections for LGBTQI in

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<sup>70</sup> Shepard Testimony, *Casper Briefing*, p. 5; Levin Testimony, *Casper Briefing*, p. 9.

<sup>71</sup> Provenza Testimony, *Casper Briefing*, p. 29.

<sup>72</sup> Andrew Graham, "Cops Investigating Cops: Tension Builds Over Officer-Involved Shootings." *Laramie Boomerang*, Jan. 15, 2020, [https://www.laramieboomerang.com/news/cops-investigating-cops-tension-builds-over-officer-involved-shootings/article\\_9d384903-022d-5bb3-8d3f-24ca44535bf4.html](https://www.laramieboomerang.com/news/cops-investigating-cops-tension-builds-over-officer-involved-shootings/article_9d384903-022d-5bb3-8d3f-24ca44535bf4.html).

<sup>73</sup> Will Carless and Michael Corey, "To Protect and Slur: Inside Hate Groups on Facebook, Police Officers Trade Racist Memes, Conspiracy Theories And Islamophobia," *Reveal*, Jun. 14, 2019, <https://www.revealnews.org/article/inside-hate-groups-on-facebook-police-officers-trade-racist-memes-conspiracy-theories-and-islamophobia/>.

<sup>74</sup> Villnave Testimony, *Casper Briefing*, p. 34.

housing and employment and said: “I live every day, every moment, under the specter of discrimination and bias for my gender identity and its expression.”<sup>75</sup>

Central to the discussion about the need for hate crime legislation and mandatory reporting was the business case for passing such legislation. Mr. Simmons described his meeting with an international oil and gas company that wanted to bring a diverse workforce into Wyoming. This representative relayed to him that they found Wyoming to be “incapable of diversity.”<sup>76</sup> Mr. Simmons encouraged the company to raise their concern with the Governor’s office, but the company’s representative feared they would be retaliated against if their opinion about the state was made public. Mx.<sup>77</sup> Villnave also said the most difficult thing for her to understand about the lack of protections for LGBTQI people is that the state is missing out on [their] economic and civic contributions.<sup>78</sup> Not only could the state miss out on the contributions of LGBTQI individuals, but also Mx. Villnave is concerned that more LGBTQI youth will leave Wyoming and that people will opt not to relocate to Wyoming and more people will be driven further into the closet.

We have an opportunity to shift that story that we tell, both within our own state and that we tell other people, about the kind of place that we live and that we want them to come and relocate their business and their family to. But that requires a lot of really hard work around recognizing the realities that we are living with, around how the institutions that we have do not currently equally serve all Wyomingites.<sup>79</sup>

## Training and Education

There was also discussion regarding the availability of training and education on how to identify and report hate crimes. Mr. Wiggins raised concern that only 15 states have mandatory laws that require basic police officer training that includes mandatory instruction related to investigating and reporting hate crime incidents.<sup>80</sup> Without a specific statutory requirement, only a handful of states appear to have developed polices or programs to deliver hate crime training to a significant

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<sup>75</sup> Machdane Testimony, *Casper Briefing*, p. 28.

<sup>76</sup> Simmons Testimony, *Casper Briefing*, p. 26.

<sup>77</sup> Mx. is a gender-neutral honorific for those who do not wish to be identified by gender.

<sup>78</sup> Villnave Testimony, *Casper Briefing*, p. 35.

<sup>79</sup> *Ibid.*, 36.

<sup>80</sup> Wiggins Testimony, *Casper Briefing*, p. 49; “Underreported, Under Threat, Hate Crime in the United States and the Targeting Of Arab Americans 1991-2016,” *Arab American Institute Foundation*, p. 9, [https://d3n8a8pro7vhmx.cloudfront.net/aaai/pages/14141/attachments/original/1534353696/Underreported\\_Under\\_Threat.pdf?1534353696](https://d3n8a8pro7vhmx.cloudfront.net/aaai/pages/14141/attachments/original/1534353696/Underreported_Under_Threat.pdf?1534353696).

percentage of law enforcement personnel within the state while the remaining states have looser standards.<sup>81</sup>

According to Jack McDevitt, Director of the Institute on Race and Justice at Northeastern University and a Professor in the School of Criminology and Criminal Justice, the FBI and state agencies used to offer more trainings for law enforcement and prosecutors when hate laws were just starting to pass in the 1990s. Offering such trainings, said Professor McDevitt, do not have to be specialized or costly for law enforcement agencies. Instead, it could be offered in a variety of ways such as a component to in-service training that is typically required of police officers, inserted into recruit academies, and/or offered to prosecutors as they onboard into their position. Despite the variety of ways to incorporate training on hate crimes, he believes that above all, the training should be codified in legislation.<sup>82</sup>

Because of the deficiency in available training, the Matthew Shepard Foundation aimed to fill the gap by offering training to federal, state, and local law enforcement agencies and stakeholders who are impacted by hate crimes. Since January 2018, the Matthew Shepard Foundation trained more than 18,000 different law enforcement agencies nationwide and 790 officers and prosecutors nationwide. Emphasizing how critical it is to provide hate crime training to law enforcement and the general public, Mr. Shepard noted:

[m]any have no idea that there is an expanded hate crime law, that training is available, that forms need to be modified and/or updated and that hate crime statistics should be reported to state and Federal agencies. Since early 2017, hate crime training on the Shepard-Byrd Act has come to a virtual standstill. Law enforcement agencies and prosecutors need this training if they are to protect and serve everyone.<sup>83</sup>

Professor McDevitt also said that specific training on how to report hate crime data is significantly important but is largely dependent on how legislation is written. Included in proposed hate crime legislation should specify which kinds of activities should be reported as a hate crime and how law enforcement should report it. He also suggested that if law enforcement agencies do not report these incidents, at the very least, they should be transparent with the community about how law enforcement handle bias-motivated incidents.<sup>84</sup>

Understanding why individuals commit hate crimes, according to Professor Brian Levin, director for the Center for the Study of Hate and Extremism at California State University, San Bernardino and Jack McDevitt, matters in identifying hate crimes and should be included in trainings. There are four typologies that describe the motivation of the offender. The first, and most common, is the thrill seeker. This individual or individuals leave their community in search

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<sup>81</sup> Wiggins Testimony, *Casper Briefing*, p. 49.

<sup>82</sup> Jack McDevitt, testimony, *Webinar Briefing before the Wyoming Advisory Committee to the U.S. Commission on Civil Rights*, Aug. 29, 2020, transcript, p. 7. (hereafter cited as *Hate Crimes Webinar*).

<sup>83</sup> Shepard Testimony, *Casper Briefing*, p. 6.

<sup>84</sup> McDevitt Testimony, *Casper Briefing*, p. 8.

of a victim and choose the victim because they are perceived as different from the offender. Secondly, defensive bias attackers are committed to protecting their neighborhood from those considered to be outsiders or intruders. The third typology is a retaliator. These individuals act in response to a hate crime committed against him or her or an individual in the group to which the offender belongs. Rumors circulated about hate crimes against the offender's group, sometimes fabricated, can also trigger retaliatory attacks.<sup>85</sup> Finally, the hate crime offenders are mission driven and formally belong to organized hate groups.

Testimony also indicated that leadership within law enforcement to support training makes is significant in reporting hate crimes. Ms. Provenza noted that the Laramie Police Department reported two of the four hate crimes reported to the FBI – not because she thinks Laramie is harboring most of the hate in the state – but because its chief of police implemented strategies that includes education on how to report hate crimes. She also believes that a civil oversight board can serve as an effective way to communicate to law enforcement agencies the severity of incidents that may rise to the level of a hate crimes.<sup>86</sup>

## Alternative Solutions to Addressing Hate Crime

While there was overall support from panelists on the need to pass hate crime legislation, especially one that imposes more severe penalties and extends protections to more categories of people, panelists testified that to alternative solutions. Nate Martin, executive director for A Better Wyoming said that he changed his position after writing an Op-Ed calling for Wyoming to pass hate crime legislation and thought more critically about another solution. He testified that it was an “incorrect prescription”<sup>87</sup> because hate crime law is centered around harsher sentences for offenders. Enacting hate crime laws with more severe penalties, he asserted, do not always act as a deterrent because those individuals would not be privy to the changes made by the legislature.<sup>88</sup>

One of his arguments against passing hate crime legislation centered around its potential to exacerbate other issues in the state such as mass incarceration and their severe budget crisis. According to Mr. Martin, the criminal justice system is ill equipped to confront hate because hate is learned and the criminal justice system lacks rehabilitative services to address bias in a meaningful way. He also noted that hate crime legislation could be misused by law enforcement and prosecutors to target minority populations and said cited the Lambda Legal Foundation who questioned the efficacy of hate crime legislation. Lambda Legal Foundation stated:

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<sup>85</sup> Jack McDevitt, Jack Levin, and Susan Bennett, *Hate Crimes Offenders: An Expanded Typology*, 58(2) J. SOC. ISSUES 303-317 (2002).

<sup>86</sup> Provenza Testimony, *Casper Briefing*, p. 30.

<sup>87</sup> Martin Testimony, *Casper Briefing*, p. 31.

<sup>88</sup> *Ibid.*, 32.

[by] [f]ocusing on prosecutions and enhanced penalties, rather [than] working to increase civil rights protections in response to violence is misguided and not in line with what LGBT communities and advocates demand.<sup>89</sup>

Based on these reasons, Mr. Martin felt that an alternative solution to passing hate crime legislation to address bias-motivated incidents and outright discrimination is to support a non-discrimination law instead. Such a law would address bias-motivated incidents because the “explicit legality of discrimination enables discriminatory culture.”<sup>90</sup> He said:

When it's codified into law that most people can live free of fear of discrimination, but some can't, it signals that this smaller group of people is lesser than, that our society doesn't consider them equal in worth. When a minority group is perceived as being worth less than the dominant group, they are vulnerable to all sorts of ills, including violence.<sup>91</sup>

Mr. Martin added that while towns and municipalities have passed resolutions, they are legally nonbinding and would still allow for discrimination. Athne Machdane (pronoun: they/them/theirs), a Casper resident added that they were recently laid off, but they were unsure if it was because they were gender non-conforming. They noted that because Wyoming does not have non-discrimination laws prohibiting discrimination in employment on the basis of gender identity and other protected areas, they are vulnerable to termination at any moment.<sup>92</sup> According to Mr. Martin, “this legalized discrimination creates a culture in which LGBTQ people are deemed lesser and portrayed as expendable, [and] [puts] them at risk of violence.”<sup>93</sup>

Another alternative solution to addressing hate crime, according to Reverend Steve Mack, is through public announcements issued by civil rights organizations. Reverend Steve Mack testified that the NAACP dealt with bias-motivated incidents by issuing a travel advisory in 2005 and 2012 because a people of color in Wyoming experienced discrimination, intimidation, and physical and/or verbal abuse. This announcement was meant to warn potential visitors about the risks of traveling to or through Wyoming because of those incidents.

## FINDINGS AND RECOMMENDATIONS

Among their duties, advisory committees of the U.S. Commission on Civil Rights are authorized to advise the Commission (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the

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<sup>89</sup> “Hate Crimes, Affirmative Steps to Inhibit Protections of LGBTQ People,” Lambda Legal, <https://www.lambdalegal.org/criminal-justice-initiatives/hate-crimes>.

<sup>90</sup> Martin Testimony, *Casper Briefing*, p. 33.

<sup>91</sup> Ibid.

<sup>92</sup> Machdane Testimony, *Casper Briefing*, p. 28.

<sup>93</sup> Martin Testimony, *Casper Briefing*, p. 34.

Federal Government with respect to equal protection of the laws and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>94</sup>

Below, the Committee offers to the Commission a summary of findings identified throughout the Committee's inquiry. Following these findings, the Committee proposes for the Commission to consider several recommendations for federal and state actors. In addition, the Committee offers an additional consideration for school districts.

## Findings

1. Because Wyoming, known as the Equality State, does not have a hate crime law or non-discrimination protections, there may be negative economic consequences in terms of attracting future businesses and residents with diverse backgrounds from moving to the state. On a philosophical level, it may demonstrate that the state tolerates discrimination against individuals regardless if whether they belong to a protected category.
2. Accurate and complete data regarding hate crimes and bias-motivated incidents impacting protected classes is critical to effectively addressing these issues. Because data is reported voluntarily by local law enforcement, there is a lack of information in determining the prevalence of these crimes against protected groups. In addition, there is concern about the inability to report hate crimes because incidents may be classified as other crimes such as assault or suspicious behavior without acknowledging the motivation of the perpetrator.
3. Many bias-motivated incidents, which do not rise in severity to the level of criminal activity, can still be concerning for law enforcement and community members alike. Balancing the need to protect free speech can be particularly difficult when such speech can result in consistent harassment or intimidation. It may also have the potential to escalate into or incite others to engage in actual violence.
4. Employment, housing, and public accommodation protections for the lesbian, gay, bisexual, transsexual, queer/questioning, and intersex (LGBTQI) community are seen as an effective method to addressing bias-motivated incidents and largely favored because hate crime legislation often includes increased penalties which may cause more financial strain on the state.
5. Hate crimes committed against the American Indian community go largely unnoticed and underreported. Testimony indicates there are several explanations for this such as the long history of prejudice and discrimination toward American Indian; law enforcement not taking the American Indian community's complaints seriously; fear of retaliation by

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<sup>94</sup> 45 C.F.R. § 703.2.

the alleged perpetrator if the individual reports the crime; and tribal, state, and federal agencies' lack of clarity as to what constitutes as a hate crime.

6. While the Constitution protects free speech, the prevalence of bias-motivated incidents such as circulating racist and anti-gay flyers that occurred in K-12 schools raises concerns about its potential impact on the youth as it may incite violence.
7. Testimony indicated that while hate crimes are reportedly low, there are many bias-motivated incidents that have occurred that raise concern about tolerance for discrimination. For instance, there was distribution of white supremacist and anti-LGBTQI propaganda in Cheyenne and Laramie, graffiti with anti-Catholic rhetoric spray painted on a Catholic church, anti-Semitic propaganda circulated throughout K-12 schools, and someone replaced the American flag with the flag of Nazi Germany at a local park. In addition, and there is a small number of hate groups that exist in Wyoming.

## **Recommendations**

1. Because of the lack of information discussing the impact and prevalence of hate crime on the American Indian community, the Committee recommends the U.S. Commission on Civil Rights to study this area of concern.
2. The U.S. Commission on Civil Rights should send this report and issue the following formal recommendations to the U.S. Department of Justice Federal Bureau of Investigation to:
  - a. The Bureau should make participation in the Uniform Crime Report data collection and reporting mandatory for all law enforcement agencies across the county.
  - b. As part of mandatory data collection and reporting requirements, the Bureau should require training for all state and local law enforcement on identifying and reporting hate crime.
3. The U.S. Commission on Civil Rights should send this report and issue the following formal recommendation to the U.S. Congress to:
  - a. Provide appropriations for state governments to transition to support data collection and reporting efforts.
4. The U.S. Commission on Civil Rights should send this report and issue recommendations to the Wyoming Legislature to:
  - a. Pass legislation to study the various hate crime policies and procedures used among major law enforcement agencies.

- b. Pass legislation requiring statewide training for all law enforcement agencies regarding identifying, responding to, and reporting hate crime.
    - c. Pass legislation that would enact a hate crime statute that prohibits a broad range of bias-motivated criminal conduct and offers inclusive protections for victims. Included in this legislation should also consider alternative sentencing provisions.
    - a. Pass legislation prohibiting discrimination of any based upon his or her actual or perceived sexual orientation or gender identity in employment, housing, and public accommodations similar to the ordinance enacted by the City of Laramie.
    - b. Establish a citizen oversight board to hold police accountable for misconduct.
5. The U.S. Commission on Civil Rights should send this report and issue the following formal recommendations to the Wyoming Governor to:
  - a. Require statewide training for all law enforcement agencies regarding identifying, responding to, and reporting hate crime.
  - b. Mandate schools to receive training on prevention of hate crimes by building a climate of inclusivity, how to identify such incidents, and how to appropriately respond.
6. The U.S. Commission on Civil Rights should send this report and issue the following formal recommendation to state law enforcement agencies to:
  - a. Designate an individual as a resident expert on hate crimes to assist law enforcement in determining if bias-motivated acts could be investigated as a hate crime.

***Considerations for School Districts***

School districts should implement clear policies and initiatives and partner with organizations that provide K-12 education on how to build inclusive and safe schools in which all students can thrive.

## **APPENDIX**

**August 29, 2019 Webinar Agenda & Minutes**

**August 29, 2019 Webinar Transcript**

**August 29, 2019 Webinar Presentation Slides**

**November 1, 2019 Briefing Agenda & Minutes**

**November 1, 2019 Briefing Transcript**

### **Written Testimony**

*Athne Macdane*

*Bruce Williams*

*Kai Wiggins, Policy Analyst, Arab American Institute Foundation*

*Michael McDaniel*

Materials can be found here:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dZL0hhdGUgQ3JpbWVz](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1dZL0hhdGUgQ3JpbWVz)

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**Wyoming Advisory Committee to the  
United States Commission on Civil Rights**



**U. S. Commission on Civil Rights**

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