



Improving the Federal, State, and Local Response to Hate Crime

COUNTERACTING THREATS TO OUR COMMUNITIES

We must counteract the threat of hate crime against our communities. Regardless of race, religion, sexual orientation, gender, disability, or gender identity, Arab Americans have the right to live without fear of being targeted because of who they are or how they're perceived.

Hate crime is a direct threat to this fundamental right, one to which many communities across the United States, including Arab Americans, are susceptible.¹ For these reasons, the Arab American Institute has prioritized hate crime prevention in our policy work.

THE AAI APPROACH

Rooted in AAI's approach to hate crime prevention is a belief in criminal justice reform. Some of the communities most vulnerable to hate crime have suffered unjust treatment under the criminal justice system. Especially since the terrorist attacks on 9/11, Arab Americans have been subject to discriminatory profiling and surveillance in the name of "national security."²

These practices, whether at the hands of state, local, or federal authorities, have contributed to fear and distrust of law enforcement among Arab Americans and other "securitized" communities.³ As a result, some Arab Americans are reluctant to interact with police, even when they are the victims of a hate crime.

Given these concerns, AAI has focused on improving hate crime reporting, data collection, and law enforcement training to not only protect communities, but also encourage greater accountability, transparency, and

sensitivity to hate crime victims within the criminal justice system.

HATE CRIME AND HATE CRIME STATUTES

The term "hate crime" generally refers to a crime committed against a person or property because of someone's actual or perceived "protected characteristic," which may include race or ethnicity, color, religion, sexual orientation, gender, disability, or gender identity.⁴ Many states have criminal laws prohibiting hate crimes, which might also be called "bias crimes," "malicious harassment," or other terms depending on the state.

Some states do not have hate crime laws, which we tend to call "hate crime statutes," and others might only apply to certain kinds of offenses and offer limited protections.⁵ For example, while the state of Ohio has a hate crime statute, it covers a limited set of offenses, such as "menacing" and "telecommunications harassment," and does not include protections for sexual orientation, disability, gender, or gender identity.⁶

A final point of comparison is that between penalty enhancement and stand-alone criminal statutes. Under the penalty enhancement framework, which is available to sentencing judges or prosecutors in 31 states, defendants found to have committed crimes because of someone's actual or perceived protected characteristics may be subject to increased punishment beyond the presumptive range of the underlying offense. Of the 45 states with hate crime statutes, the remaining 14 treat hate crimes as a stand-alone criminal violation. In addition, Congress has enacted a suite of federal hate crime statutes.⁷

AAI supports the enactment of inclusive protections in hate crime statutes but has concerns regarding the potential unintended consequences of penalty enhancement. Reducing mass incarceration is a central aspect of criminal justice reform,⁸ and AAI wants to ensure that hate crime penalty enhancement is not enforced disproportionately against certain communities. This is one reason why AAI supports improved data collection on hate crime prosecutions and convictions, but our advocacy for better data does not end there.

REPORTING AND DATA COLLECTION

Under the Hate Crime Statistics Act, or HCSA, the Federal Bureau of Investigation collects data on hate crimes reported by law enforcement agencies participating in the Uniform Crime Reporting (UCR) program.⁹ According to the FBI, the total number of hate crime incidents reported nationwide increased 17 percent in 2017 over 2016 totals.¹⁰ This represents the largest single-year increase and the first three-year consecutive annual increase since 2001, when hate crimes targeting Arab Americans and American Muslims, and those perceived to be Arab or Muslim, surged in the aftermath of the terrorist attacks on 9/11.¹¹

Despite this reported increase, studies from the Justice Department suggest that a vast majority of hate crimes in the United States are not reflected in the annual FBI totals.¹² Whereas national survey data indicate that 250,000 hate crime victimizations occur each year on average in the United States, according to the FBI, just 7,175 hate crime incidents were reported in 2017.¹³ Among the incidents that appear not to have been reported in recent editions of FBI's annual statistics are several high-profile hate crime murders, including the killing of Khalid Jabara in Tulsa, Okla., on August 12, 2016, and the killing of Heather Heyer in Charlottesville, Va., exactly one year later.¹⁴

The provision of good data is essential to preventing hate crime in American communities, and so we are advocating improved reporting and data collection practices through both state and federal legislation. At the state level, we support laws requiring police to report hate crimes through the UCR system, as well as initiatives to modernize UCR data collections to promote more comprehensive, accessible, and detailed statistics.

At the federal level, we are working on legislation that

would require law enforcement agencies receiving federal funding to provide the Attorney General with information regarding their efforts to prevent hate crime, particularly as such activities relate to reporting and data collection through the UCR system.

These efforts will improve our official hate crime data while promoting increased transparency and accountability on the part of law enforcement. Equally important to hate crime prevention, however, is training.

LAW ENFORCEMENT TRAINING

Few states require universal, mandatory hate crime training for law enforcement. This must change, which is why AAI supports legislation that requires law enforcement personnel to receive training on investigating, reporting, and responding to hate crime in their jurisdictions. Decades of research and investigative reporting demonstrate that inadequate training limits the potential for law enforcement, policy makers, and communities to effectively respond to hate crime.¹⁵ In 2019, AAI is working with local advocates in multiple states to enact legislation requiring mandatory hate crime training for law enforcement certification.

Targeted or vulnerable communities have a stake in the training that law enforcement personnel receive to ensure their safety.¹⁶ Therefore, AAI promotes a framework that ensures stakeholder participation in the implementation and development of the required hate crime training. The most effective approach is one that brings communities to the table.

ENDNOTES

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- 2 American Civil Liberties Union, Discriminatory Profiling, <https://www.aclu.org/issues/national-security/discriminatory-profiling>.
- 3 U.S. Commission on Civil Rights, *Federal Civil Rights Engagement with Arab and Muslim American Communities Post 9/11* (Sept. 2014), available at https://www.usccr.gov/pubs/docs/ARAB_MUSLIM_9-30-14.pdf. See also U.S. Dep't of Justice, National Institute of Justice, *Policing in Arab-American Communities After September 11* (Jul. 2008), available at <https://www.ncjrs.gov/pdffiles1/nij/221706.pdf>.
- 4 Fed. Bureau of Investigation, Hate Crimes (accessed Apr. 28, 2019), <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.
- 5 Arab American Institute Foundation, *Underreported, Under Threat: Hate Crime in the United States and the Targeting of Arab Americans* (Jul. 2018), available at <http://www.aaiusa.org/hate-crimes>.
- 6 Ohio Rev Code § 2927.12. See Arab American Institute Foundation, *Underreported, Under Threat: Hate Crime in the United States and the Targeting of Arab Americans, Ohio* (Jul. 2018), available at http://www.aaiusa.org/ohio_rtr.
- 7 U.S. Dep't of Justice, Civil Rights Division, Hate Crime Laws (last updated Oct. 15, 2018), <https://www.justice.gov/crt/hate-crime-laws>.
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- 9 *About Hate Crime Statistics, Hate Crime Statistics, 2017*, Fed. Bureau of Investigation, Criminal Justice Information Services Division (Nov. 13, 2018), <https://ucr.fbi.gov/hate-crime/2017/resource-pages/about-hate-crime>.
- 10 David K. Li, *Hate Crimes in America Spiked 17 Percent Last Year, FBI Says*, NBC News (Nov. 13, 2018), <https://www.nbcnews.com/news/us-news/hate-crimes-america-spiked-17-percent-last-year-fbi-saysn935711?cid=related>.
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- 12 Madeline Masucci and Lynn Langton, *Hate Crime Victimization, 2004-2015*, U.S. Dep't of Justice, Bureau of Justice Statistics (Jun. 29, 2017), <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>.
- 13 *Incidents and Offenses, Hate Crime Statistics, 2017*, Fed. Bureau of Investigation, Criminal Justice Information Services Division (Nov. 13, 2018), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidentsand-offenses>.
- 14 Maya Berry and Kai Wiggins, *FBI Stats on Hate Crime 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>. See also Maya Berry, *Charlottesville Won't Show Up in Federal Hate Crime Stats*, Washington Post (Sept. 21, 2018), https://www.washingtonpost.com/outlook/2018/09/24/charlottesville-wont-show-up-federal-hate-crime-stats/?noredirect=on&utm_term=.61f14af115d0.
- 15 Jack McDevitt and Joan C. Weiss, *Improving the Quality and Accuracy of Bias Crime Statistics Nationally*, Center for Criminal Justice Policy Research/Justice Research Statistics Association (Jul. 2000), available at http://www.jrsa.org/pubs/reports/bjs_bias_crime_data.pdf. See also A.C. Thompson et al., *Hate Crime Training for Police is Often Inadequate, Sometimes Nonexistent*, ProPublica (Nov. 29, 2017), <https://www.propublica.org/article/hate-crime-training-for-police-is-often-inadequate-sometimes-nonexistent>.
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