

1 not count against a ceiling on such transfers or  
2 reprogrammings under section 1001 of this Act or any  
3 other provision of law, unless such transfer or reprogram-  
4 ming would move funds between appropriation accounts.

5 (d) **APPLICABILITY TO CLASSIFIED ANNEX.**—This  
6 section applies to any classified annex that accompanies  
7 this Act.

8 (e) **ORAL AND WRITTEN COMMUNICATION.**—No oral  
9 or written communication concerning any amount speci-  
10 fied in a funding table referred to in subsection (a) shall  
11 supersede the requirements of this section.

12 **DIVISION** **E—MATTHEW**  
13 **SHEPARD AND JAMES BYRD,**  
14 **JR. HATE CRIMES PREVEN-**  
15 **TION ACT**

Sec. 4701. Short title.

Sec. 4702. Findings.

Sec. 4703. Definitions.

Sec. 4704. Support for criminal investigations and prosecutions by State, local,  
and tribal law enforcement officials.

Sec. 4705. Grant program.

Sec. 4706. Authorization for additional personnel to assist State, local, and  
tribal law enforcement.

Sec. 4707. Prohibition of certain hate crime acts.

Sec. 4708. Statistics.

Sec. 4709. Severability.

Sec. 4710. Rule of construction.

Sec. 4711. Guidelines for hate-crimes offenses.

Sec. 4712. Attacks on United States servicemen.

Sec. 4713. Report on mandatory minimum sentencing provisions.

16 **SEC. 4701. SHORT TITLE.**

17 This division may be cited as the “Matthew Shepard  
18 and James Byrd, Jr. Hate Crimes Prevention Act”.

1 **SEC. 4702. FINDINGS.**

2 Congress makes the following findings:

3 (1) The incidence of violence motivated by the  
4 actual or perceived race, color, religion, national ori-  
5 gin, gender, sexual orientation, gender identity, or  
6 disability of the victim poses a serious national prob-  
7 lem.

8 (2) Such violence disrupts the tranquility and  
9 safety of communities and is deeply divisive.

10 (3) State and local authorities are now and will  
11 continue to be responsible for prosecuting the over-  
12 whelming majority of violent crimes in the United  
13 States, including violent crimes motivated by bias.  
14 These authorities can carry out their responsibilities  
15 more effectively with greater Federal assistance.

16 (4) Existing Federal law is inadequate to ad-  
17 dress this problem.

18 (5) A prominent characteristic of a violent  
19 crime motivated by bias is that it devastates not just  
20 the actual victim and the family and friends of the  
21 victim, but frequently savages the community shar-  
22 ing the traits that caused the victim to be selected.

23 (6) Such violence substantially affects interstate  
24 commerce in many ways, including the following:

25 (A) The movement of members of targeted  
26 groups is impeded, and members of such groups

1           are forced to move across State lines to escape  
2           the incidence or risk of such violence.

3           (B) Members of targeted groups are pre-  
4           vented from purchasing goods and services, ob-  
5           taining or sustaining employment, or partici-  
6           pating in other commercial activity.

7           (C) Perpetrators cross State lines to com-  
8           mit such violence.

9           (D) Channels, facilities, and instrumental-  
10          ities of interstate commerce are used to facili-  
11          tate the commission of such violence.

12          (E) Such violence is committed using arti-  
13          cles that have traveled in interstate commerce.

14          (7) For generations, the institutions of slavery  
15          and involuntary servitude were defined by the race,  
16          color, and ancestry of those held in bondage. Slavery  
17          and involuntary servitude were enforced, both prior  
18          to and after the adoption of the 13th amendment to  
19          the Constitution of the United States, through wide-  
20          spread public and private violence directed at per-  
21          sons because of their race, color, or ancestry, or per-  
22          ceived race, color, or ancestry. Accordingly, elimi-  
23          nating racially motivated violence is an important  
24          means of eliminating, to the extent possible, the

1 badges, incidents, and relics of slavery and involun-  
2 tary servitude.

3 (8) Both at the time when the 13th, 14th, and  
4 15th amendments to the Constitution of the United  
5 States were adopted, and continuing to date, mem-  
6 bers of certain religious and national origin groups  
7 were and are perceived to be distinct “races”. Thus,  
8 in order to eliminate, to the extent possible, the  
9 badges, incidents, and relics of slavery, it is nec-  
10 essary to prohibit assaults on the basis of real or  
11 perceived religions or national origins, at least to the  
12 extent such religions or national origins were re-  
13 garded as races at the time of the adoption of the  
14 13th, 14th, and 15th amendments to the Constitu-  
15 tion of the United States.

16 (9) Federal jurisdiction over certain violent  
17 crimes motivated by bias enables Federal, State, and  
18 local authorities to work together as partners in the  
19 investigation and prosecution of such crimes.

20 (10) The problem of crimes motivated by bias  
21 is sufficiently serious, widespread, and interstate in  
22 nature as to warrant Federal assistance to States,  
23 local jurisdictions, and Indian tribes.

1 **SEC. 4703. DEFINITIONS.**

2 (a) AMENDMENT.—Section 280003(a) of the Violent  
3 Crime Control and Law Enforcement Act of 1994 (Public  
4 Law 103–322; 108 Stat. 2096) is amended by inserting  
5 “gender identity,” after “gender,”.

6 (b) THIS DIVISION.—In this division—

7 (1) the term “crime of violence” has the mean-  
8 ing given that term in section 16 of title 18, United  
9 States Code;

10 (2) the term “hate crime” has the meaning  
11 given that term in section 280003(a) of the Violent  
12 Crime Control and Law Enforcement Act of 1994  
13 (Public Law 103–322; 108 Stat. 2096), as amended  
14 by this Act;

15 (3) the term “local” means a county, city, town,  
16 township, parish, village, or other general purpose  
17 political subdivision of a State; and

18 (4) the term “State” includes the District of  
19 Columbia, Puerto Rico, and any other territory or  
20 possession of the United States.

21 **SEC. 4704. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**  
22 **PROSECUTIONS BY STATE, LOCAL, AND TRIB-**  
23 **AL LAW ENFORCEMENT OFFICIALS.**

24 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-  
25 ANCE.—

1           (1) IN GENERAL.—At the request of a State,  
2           local, or tribal law enforcement agency, the Attorney  
3           General may provide technical, forensic, prosecu-  
4           torial, or any other form of assistance in the crimi-  
5           nal investigation or prosecution of any crime that—

6                   (A) constitutes a crime of violence;

7                   (B) constitutes a felony under the State,  
8           local, or tribal laws; and

9                   (C) is motivated by prejudice based on the  
10           actual or perceived race, color, religion, national  
11           origin, gender, sexual orientation, gender iden-  
12           tity, or disability of the victim, or is a violation  
13           of the State, local, or tribal hate crime laws.

14           (2) PRIORITY.—In providing assistance under  
15           paragraph (1), the Attorney General shall give pri-  
16           ority to crimes committed by offenders who have  
17           committed crimes in more than one State and to  
18           rural jurisdictions that have difficulty covering the  
19           extraordinary expenses relating to the investigation  
20           or prosecution of the crime.

21           (b) GRANTS.—

22                   (1) IN GENERAL.—The Attorney General may  
23           award grants to State, local, and tribal law enforce-  
24           ment agencies for extraordinary expenses associated

1 with the investigation and prosecution of hate  
2 crimes.

3 (2) OFFICE OF JUSTICE PROGRAMS.—In imple-  
4 menting the grant program under this subsection,  
5 the Office of Justice Programs shall work closely  
6 with grantees to ensure that the concerns and needs  
7 of all affected parties, including community groups  
8 and schools, colleges, and universities, are addressed  
9 through the local infrastructure developed under the  
10 grants.

11 (3) APPLICATION.—

12 (A) IN GENERAL.—Each State, local, and  
13 tribal law enforcement agency that desires a  
14 grant under this subsection shall submit an ap-  
15 plication to the Attorney General at such time,  
16 in such manner, and accompanied by or con-  
17 taining such information as the Attorney Gen-  
18 eral shall reasonably require.

19 (B) DATE FOR SUBMISSION.—Applications  
20 submitted pursuant to subparagraph (A) shall  
21 be submitted during the 60-day period begin-  
22 ning on a date that the Attorney General shall  
23 prescribe.

1 (C) REQUIREMENTS.—A State, local, and  
2 tribal law enforcement agency applying for a  
3 grant under this subsection shall—

4 (i) describe the extraordinary pur-  
5 poses for which the grant is needed;

6 (ii) certify that the State, local gov-  
7 ernment, or Indian tribe lacks the re-  
8 sources necessary to investigate or pros-  
9 ecute the hate crime;

10 (iii) demonstrate that, in developing a  
11 plan to implement the grant, the State,  
12 local, and tribal law enforcement agency  
13 has consulted and coordinated with non-  
14 profit, nongovernmental victim services  
15 programs that have experience in providing  
16 services to victims of hate crimes; and

17 (iv) certify that any Federal funds re-  
18 ceived under this subsection will be used to  
19 supplement, not supplant, non-Federal  
20 funds that would otherwise be available for  
21 activities funded under this subsection.

22 (4) DEADLINE.—An application for a grant  
23 under this subsection shall be approved or denied by  
24 the Attorney General not later than 180 business

1 days after the date on which the Attorney General  
2 receives the application.

3 (5) GRANT AMOUNT.—A grant under this sub-  
4 section shall not exceed \$100,000 for any single ju-  
5 risdiction in any 1-year period.

6 (6) REPORT.—Not later than December 31,  
7 2011, the Attorney General shall submit to Congress  
8 a report describing the applications submitted for  
9 grants under this subsection, the award of such  
10 grants, and the purposes for which the grant  
11 amounts were expended.

12 (7) AUTHORIZATION OF APPROPRIATIONS.—  
13 There is authorized to be appropriated to carry out  
14 this subsection \$5,000,000 for each of fiscal years  
15 2010, 2011, and 2012.

16 **SEC. 4705. GRANT PROGRAM.**

17 (a) AUTHORITY TO AWARD GRANTS.—The Office of  
18 Justice Programs of the Department of Justice may  
19 award grants, in accordance with such regulations as the  
20 Attorney General may prescribe, to State, local, or tribal  
21 programs designed to combat hate crimes committed by  
22 juveniles, including programs to train local law enforce-  
23 ment officers in identifying, investigating, prosecuting,  
24 and preventing hate crimes.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as may be  
3 necessary to carry out this section.

4 **SEC. 4706. AUTHORIZATION FOR ADDITIONAL PERSONNEL**  
5 **TO ASSIST STATE, LOCAL, AND TRIBAL LAW**  
6 **ENFORCEMENT.**

7 There are authorized to be appropriated to the De-  
8 partment of Justice, including the Community Relations  
9 Service, for fiscal years 2010, 2011, and 2012 such sums  
10 as are necessary to increase the number of personnel to  
11 prevent and respond to alleged violations of section 249  
12 of title 18, United States Code, as added by section 4707  
13 of this division.

14 **SEC. 4707. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

15 (a) IN GENERAL.—Chapter 13 of title 18, United  
16 States Code, is amended by adding at the end the fol-  
17 lowing:

18 **“§ 249. Hate crime acts**

19 **“(a) IN GENERAL.—**

20 **“(1) OFFENSES INVOLVING ACTUAL OR PER-**  
21 **CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-**  
22 **GIN.—Whoever, whether or not acting under color of**  
23 **law, willfully causes bodily injury to any person or,**  
24 **through the use of fire, a firearm, a dangerous**  
25 **weapon, or an explosive or incendiary device, at-**

1       tempts to cause bodily injury to any person, because  
2       of the actual or perceived race, color, religion, or na-  
3       tional origin of any person—

4               “(A) shall be imprisoned not more than 10  
5       years, fined in accordance with this title, or  
6       both; and

7               “(B) shall be imprisoned for any term of  
8       years or for life, fined in accordance with this  
9       title, or both, if—

10              “(i) death results from the offense; or

11              “(ii) the offense includes kidnapping  
12             or an attempt to kidnap, aggravated sexual  
13             abuse or an attempt to commit aggravated  
14             sexual abuse, or an attempt to kill.

15              “(2) OFFENSES INVOLVING ACTUAL OR PER-  
16       CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-  
17       UAL ORIENTATION, GENDER IDENTITY, OR DIS-  
18       ABILITY.—

19              “(A) IN GENERAL.—Whoever, whether or  
20       not acting under color of law, in any cir-  
21       cumstance described in subparagraph (B) or  
22       paragraph (3), willfully causes bodily injury to  
23       any person or, through the use of fire, a fire-  
24       arm, a dangerous weapon, or an explosive or in-  
25       cendiary device, attempts to cause bodily injury

1 to any person, because of the actual or per-  
2 ceived religion, national origin, gender, sexual  
3 orientation, gender identity, or disability of any  
4 person—

5 “(i) shall be imprisoned not more  
6 than 10 years, fined in accordance with  
7 this title, or both; and

8 “(ii) shall be imprisoned for any term  
9 of years or for life, fined in accordance  
10 with this title, or both, if—

11 “(I) death results from the of-  
12 fense; or

13 “(II) the offense includes kidnap-  
14 ping or an attempt to kidnap, aggra-  
15 vated sexual abuse or an attempt to  
16 commit aggravated sexual abuse, or  
17 an attempt to kill.

18 “(B) CIRCUMSTANCES DESCRIBED.—For  
19 purposes of subparagraph (A), the cir-  
20 cumstances described in this subparagraph are  
21 that—

22 “(i) the conduct described in subpara-  
23 graph (A) occurs during the course of, or  
24 as the result of, the travel of the defendant  
25 or the victim—

1                   “(I) across a State line or na-  
2                   tional border; or

3                   “(II) using a channel, facility, or  
4                   instrumentality of interstate or for-  
5                   eign commerce;

6                   “(ii) the defendant uses a channel, fa-  
7                   cility, or instrumentality of interstate or  
8                   foreign commerce in connection with the  
9                   conduct described in subparagraph (A);

10                  “(iii) in connection with the conduct  
11                  described in subparagraph (A), the defend-  
12                  ant employs a firearm, dangerous weapon,  
13                  explosive or incendiary device, or other  
14                  weapon that has traveled in interstate or  
15                  foreign commerce; or

16                  “(iv) the conduct described in sub-  
17                  paragraph (A)—

18                         “(I) interferes with commercial  
19                         or other economic activity in which  
20                         the victim is engaged at the time of  
21                         the conduct; or

22                         “(II) otherwise affects interstate  
23                         or foreign commerce.

24                   “(3) OFFENSES OCCURRING IN THE SPECIAL  
25                   MARITIME OR TERRITORIAL JURISDICTION OF THE

1 UNITED STATES.—Whoever, within the special mari-  
2 time or territorial jurisdiction of the United States,  
3 engages in conduct described in paragraph (1) or in  
4 paragraph (2)(A) (without regard to whether that  
5 conduct occurred in a circumstance described in  
6 paragraph (2)(B)) shall be subject to the same pen-  
7 alties as prescribed in those paragraphs.

8 “(b) CERTIFICATION REQUIREMENT.—

9 “(1) IN GENERAL.—No prosecution of any of-  
10 fense described in this subsection may be undertaken  
11 by the United States, except under the certification  
12 in writing of the Attorney General, or a designee,  
13 that—

14 “(A) the State does not have jurisdiction;

15 “(B) the State has requested that the Fed-  
16 eral Government assume jurisdiction;

17 “(C) the verdict or sentence obtained pur-  
18 suant to State charges left demonstratively  
19 unvindicated the Federal interest in eradicating  
20 bias-motivated violence; or

21 “(D) a prosecution by the United States is  
22 in the public interest and necessary to secure  
23 substantial justice.

24 “(2) RULE OF CONSTRUCTION.—Nothing in  
25 this subsection shall be construed to limit the au-

1           thority of Federal officers, or a Federal grand jury,  
2           to investigate possible violations of this section.

3           “(c) DEFINITIONS.—In this section—

4                   “(1) the term ‘bodily injury’ has the meaning  
5                   given such term in section 1365(h)(4) of this title,  
6                   but does not include solely emotional or psycho-  
7                   logical harm to the victim;

8                   “(2) the term ‘explosive or incendiary device’  
9                   has the meaning given such term in section 232 of  
10                  this title;

11                  “(3) the term ‘firearm’ has the meaning given  
12                  such term in section 921(a) of this title;

13                  “(4) the term ‘gender identity’ means actual or  
14                  perceived gender-related characteristics; and

15                  “(5) the term ‘State’ includes the District of  
16                  Columbia, Puerto Rico, and any other territory or  
17                  possession of the United States.

18           “(d) STATUTE OF LIMITATIONS.—

19                   “(1) OFFENSES NOT RESULTING IN DEATH.—  
20                   Except as provided in paragraph (2), no person shall  
21                   be prosecuted, tried, or punished for any offense  
22                   under this section unless the indictment for such of-  
23                   fense is found, or the information for such offense  
24                   is instituted, not later than 7 years after the date  
25                   on which the offense was committed.

1           “(2) DEATH RESULTING OFFENSES.—An in-  
2           dictment or information alleging that an offense  
3           under this section resulted in death may be found or  
4           instituted at any time without limitation.”.

5           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
6           The table of sections for chapter 13 of title 18, United  
7           States Code, is amended by adding at the end the fol-  
8           lowing:

          “249. Hate crime acts.”.

9           **SEC. 4708. STATISTICS.**

10          (a) IN GENERAL.—Subsection (b)(1) of the first sec-  
11          tion of the Hate Crime Statistics Act (28 U.S.C. 534 note)  
12          is amended by inserting “gender and gender identity,”  
13          after “race,”.

14          (b) DATA.—Subsection (b)(5) of the first section of  
15          the Hate Crime Statistics Act (28 U.S.C. 534 note) is  
16          amended by inserting “, including data about crimes com-  
17          mitted by, and crimes directed against, juveniles” after  
18          “data acquired under this section”.

19          **SEC. 4709. SEVERABILITY.**

20          If any provision of this division, an amendment made  
21          by this division, or the application of such provision or  
22          amendment to any person or circumstance is held to be  
23          unconstitutional, the remainder of this division, the  
24          amendments made by this division, and the application of

1 the provisions of such to any person or circumstance shall  
2 not be affected thereby.

3 **SEC. 4710. RULE OF CONSTRUCTION.**

4 For purposes of construing this division and the  
5 amendments made by this division the following shall  
6 apply:

7 (1) IN GENERAL.—Nothing in this division shall  
8 be construed to allow a court, in any criminal trial  
9 for an offense described under this division or an  
10 amendment made by this division, in the absence of  
11 a stipulation by the parties, to admit evidence of  
12 speech, beliefs, association, group membership, or  
13 expressive conduct unless that evidence is relevant  
14 and admissible under the Federal Rules of Evidence.  
15 Nothing in this division is intended to affect the ex-  
16 isting rules of evidence.

17 (2) VIOLENT ACTS.—This division applies to  
18 violent acts motivated by actual or perceived race,  
19 color, religion, national origin, gender, sexual ori-  
20 entation, gender identity, or disability of a victim.

21 (3) CONSTRUCTION AND APPLICATION.—Noth-  
22 ing in this division, or an amendment made by this  
23 division, shall be construed or applied in a manner  
24 that infringes any rights under the first amendment  
25 to the Constitution of the United States. Nor shall

1 anything in this division, or an amendment made by  
2 this division, be construed or applied in a manner  
3 that substantially burdens a person's exercise of reli-  
4 gion (regardless of whether compelled by, or central  
5 to, a system of religious belief), speech, expression,  
6 or association, unless the Government demonstrates  
7 that application of the burden to the person is in  
8 furtherance of a compelling governmental interest  
9 and is the least restrictive means of furthering that  
10 compelling governmental interest, if such exercise of  
11 religion, speech, expression, or association was not  
12 intended to—

13 (A) plan or prepare for an act of physical  
14 violence; or

15 (B) incite an imminent act of physical vio-  
16 lence against another.

17 (4) FREE EXPRESSION.—Nothing in this divi-  
18 sion shall be construed to allow prosecution based  
19 solely upon an individual's expression of racial, reli-  
20 gious, political, or other beliefs or solely upon an in-  
21 dividual's membership in a group advocating or es-  
22 pousing such beliefs.

23 (5) FIRST AMENDMENT.—Nothing in this divi-  
24 sion, or an amendment made by this division, shall

1 be construed to diminish any rights under the first  
2 amendment to the Constitution of the United States.

3 (6) CONSTITUTIONAL PROTECTIONS.—Nothing  
4 in this division shall be construed to prohibit any  
5 constitutionally protected speech, expressive conduct  
6 or activities (regardless of whether compelled by, or  
7 central to, a system of religious belief), including the  
8 exercise of religion protected by the first amendment  
9 to the Constitution of the United States and peace-  
10 ful picketing or demonstration. The Constitution of  
11 the United States does not protect speech, conduct  
12 or activities consisting of planning for, conspiring to  
13 commit, or committing an act of violence.

14 **SEC. 4711. GUIDELINES FOR HATE-CRIMES OFFENSES.**

15 Section 249(a) of title 18, United States Code, as  
16 added by section 4707 of this Act, is amended by adding  
17 at the end the following:

18 “(4) GUIDELINES.—All prosecutions conducted  
19 by the United States under this section shall be un-  
20 dertaken pursuant to guidelines issued by the Attor-  
21 ney General, or the designee of the Attorney Gen-  
22 eral, to be included in the United States Attorneys’  
23 Manual that shall establish neutral and objective cri-  
24 teria for determining whether a crime was com-

1 mitted because of the actual or perceived status of  
2 any person.”.

3 **SEC. 4712. ATTACKS ON UNITED STATES SERVICEMEN.**

4 (a) IN GENERAL.—Chapter 67 of title 18, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

7 **“§ 1389. Prohibition on attacks on United States serv-  
8 icemen on account of service**

9 “(a) IN GENERAL.—Whoever knowingly assaults or  
10 batters a United States serviceman or an immediate fam-  
11 ily member of a United States serviceman, or who know-  
12 ingly destroys or injures the property of such serviceman  
13 or immediate family member, on account of the military  
14 service of that serviceman or status of that individual as  
15 a United States serviceman, or who attempts or conspires  
16 to do so, shall—

17 “(1) in the case of a simple assault, or destruc-  
18 tion or injury to property in which the damage or  
19 attempted damage to such property is not more than  
20 \$500, be fined under this title in an amount not less  
21 than \$500 nor more than \$10,000 and imprisoned  
22 not more than 2 years;

23 “(2) in the case of destruction or injury to  
24 property in which the damage or attempted damage  
25 to such property is more than \$500, be fined under