



# Frequently Asked Questions About the Disarm Hate Act

September 18, 2019

## What is the Disarm Hate Act?

The Disarm Hate Act, or H.R. 2708, would prohibit individuals who have been convicted of a misdemeanor-level hate crime from buying or possessing guns. The bill would also prohibit individuals who received an enhanced sentence for a misdemeanor-level offense after a judicial finding that the criminal conduct was motivated by bias from buying or possessing guns.

## What is a hate crime?

A hate crime is a criminal offense motivated by bias against a victim due to his or her actual or perceived race, religion, national origin, ethnicity, sexual orientation, gender, gender identity, or disability.<sup>1</sup>

In addition to the federal law, 45 states have enacted some type of hate crime law. These state laws vary in terms of the breadth of the protection offered and the categories of individuals who are covered.<sup>2</sup>

## What is a hate crime sentence enhancement?

State hate crime laws generally take two forms: 1) stand-alone substantive crimes that include hate or bias motivation as an element of the offense; or 2) a sentence enhancement for a crime found to have been committed with hate or bias motivation. Prior to imposing an enhanced sentence, a court must be presented with evidence and make a specific finding that the underlying crime was committed with the required bias against a protected class.

## Why is the Disarm Hate Act necessary?

Under current federal law, individuals convicted of felony-level offenses—including hate crimes—are prohibited from gun possession. However, the law contains a significant gap that allows individuals convicted of misdemeanor-level hate crimes to continue to legally buy and possess guns. A Center for American Progress analysis of state hate crime laws found that at least 30 states have a misdemeanor-level hate crime law or sentence enhancement on the books.<sup>3</sup>

This legislation would address a serious public safety concern. Violent extremists and other perpetrators motivated by hate pose a substantial threat to the safety of historically vulnerable communities that hate crime laws protect. Access to guns by these individuals makes it more likely that a hate crime will have a fatal outcome. In addition, even when these perpetrators do not pull the trigger, the use of guns to threaten and intimidate individuals and communities because of bias and hate toward of any of the protected categories represents a significant escalation of this hateful and dangerous conduct.

[Aren't misdemeanor-level hate crimes relatively minor offenses that do not justify forfeiture of the ability to possess guns?](#)

No. That a hate crime is classified as a misdemeanor-level crime should not be interpreted to minimize the seriousness of the offense. In some states—such as Alabama, Florida, Kentucky, Louisiana, Mississippi, Texas, and Virginia—certain types of assault and battery committed with bias motivation are classified as misdemeanor offenses.<sup>4</sup> Hate crimes involving threats and intimidation against a member of a protected class—including through the use of force—can be a misdemeanor-level offense, such as in Colorado and California.<sup>5</sup>

In addition, researchers have found that individuals who commit hate crimes often escalate their conduct, starting with relatively minor crimes and moving to more serious or violent conduct. Researchers from Northeastern University who specialize in hate crime explained:

*Defensive hate crimes are intended to send a message—for example that Blacks are not welcome on this block or Latinos should not apply for that promotion. As such, these crimes are in their intended effect very much like acts of terrorism, meant to send a signal by means of fear and horror. If the original criminal response fails to elicit the desired retreat on the part of the victim, then the offender frequently escalates the level of property damage or violence. A Black family moving into an all-White neighborhood is first warned; if they don't heed the warning, then their windows are broken; and if they still refuse to move out, their house may be firebombed, or worse.<sup>6</sup>*

[How often are guns used in the commission of hate crimes?](#)

A CAP analysis of data from the National Crime Victimization Survey found that from 2010 to 2016, 56,130 hate crimes were committed in the United States that involved the use of a gun.<sup>7</sup> These were not all shootings; rather, many of these incidents involved the use of a gun as a tool to threaten and intimidate.

[Are there any other categories of misdemeanor criminal convictions that result in the loss of gun rights?](#)

Yes. Under current federal law, individuals who are convicted of misdemeanor crimes of domestic violence are prohibited from buying and possessing guns.<sup>8</sup> In addition, according to an analysis by the Giffords Law Center to Prevent Gun Violence, at least 25 states and Washington, D.C., have enacted laws prohibiting individuals convicted of other types of misdemeanor crimes from gun possession.<sup>9</sup>

### Would the Disarm Hate Act have prevented any of the recent mass shootings?

No. None of the publicly available information about the perpetrators of mass shootings in the past few years suggests that any of the perpetrators had previously been convicted of a misdemeanor-level hate crime. However, this fact does not undermine the importance of this legislation. Lawmakers should not wait for an obvious gap in the law to be exploited by a mass murderer before taking action to address it. Individuals who have been convicted of hate crimes clearly pose a heightened risk to the safety of historically vulnerable individuals and communities who receive protection under hate crime laws and should not continue to have access to guns.

### Examples of misdemeanor hate crimes:

- In July 2019, a white father and son attacked a Black family on the Fourth of July in Sheboygan, Wisconsin, yelling racial slurs and participating in a larger group of people who attempted to drag a 17-year-old girl into a house after she attempted to park her car on their street, attacking the girl's father with a shovel and threatening to hang him from their tree. The son was charged with multiple misdemeanor hate crimes for his participation in this attack.<sup>10</sup>
- In January 2019, a man in Salem, Oregon, was charged with a misdemeanor hate crime and other charges after he attacked a Sikh store clerk because of the victim's perceived religion, pulling on his beard; trying to remove his head covering; and kicking and punching him.<sup>11</sup>
- In August 2018, a man was charged with a misdemeanor hate crime and other charges after shouting anti-gay slurs at attendees of a gay pride parade in Dover, Delaware, and punching one attendee in the face.<sup>12</sup>
- In November 2016, a man in Millbrae, California, was charged with a misdemeanor hate crime after yelling a racial slur and punching a Hispanic man in the chest.<sup>13</sup>
- In June 2016, a man in Racine, Wisconsin, was charged with a misdemeanor hate crime and other charges after yelling anti-gay slurs at a group of men because of their perceived sexual orientation and threatening them by saying that he had a gun in his car.<sup>14</sup>
- In October 2014, a man was charged with multiple misdemeanor hate crimes and other charges for attacking two men in New Orleans after he yelled racist and anti-gay slurs, followed the men, and attacked them, causing minor injuries.<sup>15</sup>
- In November 2013, three students at San José State University in California were charged with a misdemeanor hate crime and battery after harassing and threatening their Black roommate, locking a U-shaped bicycle lock around his neck, using racial slurs, and displaying a Confederate flag in their room.<sup>16</sup>

- In March 2007, a woman in San Mateo, California, was arrested for a misdemeanor hate crime and battery after throwing apples at a gay couple and yelling an anti-gay slur.<sup>17</sup>
- In May 1992, a man pleaded guilty to misdemeanor hate crime and battery charges after he attacked two women who he perceived to be gay, yelling anti-gay slurs, knocking one woman to the ground, and kicking the other.<sup>18</sup>

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## Endnotes

- 1 Legal Information Institute, "18 USC § 249: Hate crime acts," available at <https://www.law.cornell.edu/uscode/text/18/249> (last accessed September 2019).
- 2 Anti-Defamation League, "ADL Hate Crime Map," available at <https://www.adl.org/adl-hate-crime-map> (last accessed September 2019).
- 3 Chelsea Parsons, Eugenio Weigend Vargas, and Jordan Jones, "Hate and Guns: A Terrifying Combination" (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/guns-crime/reports/2016/02/24/131670/hate-and-guns-a-terrifying-combination>.
- 4 For example, see Code of Alabama § 13A-5-13, §13A-6-22; Florida Statute § 775.085, § 784.011; Kentucky Revised Statute § 532.031, § 508.030; Louisiana Revised Statute § 14:107.2, § 14:35; Mississippi Code Ann. § 99-19-301, § 97-3-7; Texas Penal Code § 12.47, Sec. 22.01; Virginia Code Ann. § 18.2-57.
- 5 California Penal Code § 422.6(a); Colorado Revised Statutes 18-9-121.
- 6 Jack Levin and Jack McDevitt, *Hate Crimes Revisited: America's War on Those Who Are Different* (New York: Basic Books, 2002), p. 79.
- 7 Center for American Progress analysis of the Bureau of Justice Statistics, National Crime Victimization Survey, 2010–2016 data, on file with the authors.
- 8 Legal Information Institute, "18 USC §922(d)(9), (g) (9)," available at <https://www.law.cornell.edu/uscode/text/18/922> (last accessed September 2019).
- 9 Giffords Law Center to Prevent Gun Violence, "Categories of Prohibited People," available at <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/categories-of-prohibited-people/> (last accessed September 2019).
- 10 WBAY.com, "Sheboygan father and son charged with hate crimes," August 14, 2019, available at <https://www.wbay.com/content/news/Sheboygan-father-and-son-charged-with-hate-crimes-542870061.html>.
- 11 Associated Press, "Man who attacked Sikh store clerk in Oregon charged with hate crime," NBC News, January 18, 2019, available at <https://www.nbcnews.com/news/asian-america/man-who-attacked-sikh-store-clerk-oregon-charged-hate-crime-n960316>.
- 12 Craig Anderson, "Dover man charged with hate crime at Pride Festival," Delaware State News, August 21, 2018, available at <https://delawarestatenews.net/news/dover-man-charged-with-hate-crime-at-pride-festival/>.
- 13 Kevin Kelly, "Redwood City: Man accused of hate crime gets 3 years probation," The Mercury News, December 16, 2016, available at <https://www.mercurynews.com/2016/12/16/redwood-city-man-accused-of-hate-crime-gets-3-years-probation/>.
- 14 Mark Feldmann, "Racine youth charged with hate crime for allegedly using anti-gay slurs at cinema," The Racine Journal Times, June 15, 2016, available at [https://journaltimes.com/news/local/crime-and-courts/racine-youth-charged-with-hate-crime-for-allegedly-using-anti/article\\_9b43d28a-d432-5200-a965-4166b4f87ca2.html](https://journaltimes.com/news/local/crime-and-courts/racine-youth-charged-with-hate-crime-for-allegedly-using-anti/article_9b43d28a-d432-5200-a965-4166b4f87ca2.html).
- 15 Jonathan Bullington, "One arrested, one at large in Canal Street hate crime, NOPD says," The Times-Picayune, October 18, 2014, available at [https://www.nola.com/news/crime\\_police/article\\_6ca4d80e-978c-524d-a509-86a3291dd9e5.html](https://www.nola.com/news/crime_police/article_6ca4d80e-978c-524d-a509-86a3291dd9e5.html).
- 16 Associated Press, "Three students charged with hate crimes at California college," Al Jazeera America, November 23, 2013, available at <http://america.aljazeera.com/articles/2013/11/23/three-students-chargedwithhatecrimesatcollege.html>.
- 17 Michael Manekin, "Police hope quick arrests send message," East Bay Times, May 2, 2007, available at <https://www.eastbaytimes.com/2007/05/02/police-hope-quick-arrests-send-message/>.
- 18 Thom Mrozek, "Probation in Beach Attack," *Los Angeles Times*, July 1, 1992, available at <https://www.latimes.com/archives/la-xpm-1992-07-01-me-1089-story.html>.