

Appendix A: *Hate Crimes vs. Vulnerable Victim Status*

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Introduction: Hate Crime

Beginning in the late 1970s major metropolitan areas and various states began to address hate violence not only through new criminal laws but also through the formation of data collection, specialized police units, and new policies starting with Massachusetts.

In recent years, a debate has intensified about whether the criminal law should include targeted violence against the homeless in state and federal hate crime statutes and data collection efforts. Currently, almost half a dozen states include homeless status in their hate crime laws, although attempts at the federal level and in other states have stalled (Stoops, 2014). Hate crimes are discriminatory criminal acts committed because of an individual's actual or perceived membership in a particular socially identifiable status group. Status characteristics are those material attributes, like race or sexual orientation, common to a socially identifiable class of people. While hate crime laws and other modern legal protections on the basis of status are relatively recent enactments, their roots extend to the post-civil war era constitutional amendments.

Federal Law

The federal government does not protect the homeless in hate crime law (18 U.S.C. 249) or enumerate anti-homeless bias incidents in its related annual hate crime data collection, it does have a definition of homelessness and a numerical estimate of people affected by it. In its 2014 Annual Homeless Assessment Report to Congress, the Department of Housing and Urban Development estimates that there are 578,424 homeless individuals nightly, with 31% of those or 177,373 being unsheltered, compared with 69% residing in shelters (Henry, Cortes, Shivji, & Buck, 2014). The U.S. population is 319 million (U.S. Census Bureau, 2015).

Appendix A: *Hate Crimes vs. Vulnerable Victim* (cont.)

Federal law has defined homelessness in part as those without a “fixed, regular and adequate nighttime residence” that may include shelters and hotels as well as vehicles or public places not designed for housing, such as campsites, parks, or transportation facilities (The McKinney-Vento Homeless Assistance Act, 2009).

The overall rate of criminal victimization for these homeless Americans is staggering, far exceeding that of other groups. A series of state and local studies and surveys cited in Senate testimony showed annual criminal victimization rates for the homeless between 34% and 81.9% (“Crimes Against America’s Homeless,” 2010). In contrast, in 2013 the National Crime Victimization Survey showed the overall housed population 12 years and older faced an annual rate of victimization of 1.2% for violent crime and 0.4% for serious violent crimes (Truman & Langton, 2014).

Vulnerable Victim and Hate Crime Approaches

While there is little debate about the fact that the homeless face targeted violence, there are vastly differing views about how to address the problem. The NCH and other homeless advocates in the past promoted the inclusion of the homeless as a protected and enumerated category in hate crime laws and data collection initiatives, while others believe such efforts are misplaced. Prejudice and stereotypes against the homeless, and the apparent role these biases play in many violent attacks, are a strong foundational argument for their inclusion in hate crime laws, supporters contend.

Oppression and prejudice against them as a socially identifiable class Identical offenders such as bigoted skinheads, neighborhood defenders protecting their turf, as well as young male thrill offenders who share identifiable characteristics and motivations Identical methods of attack that revolve around personal or imprecise weapons that cause substantial suffering frequently hostile or ineffective legal response to protect them. Steiner (2009), observes,

Thus assuming homelessness were included as a prohibited bias motivation, the prosecutor would be required to show that the victimization occurred not merely because the victim was homeless, but rather because of a pre-existing negative attitude toward homelessness, a high standard to be sure. (p. 38)

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In contrast, federal vulnerable victim sentencing law's broad range arguably could already cover homelessness:

"Vulnerable victim" means a person (A) who is a victim of the offense of conviction . . . and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct. (U.S.S.G. § 3A1.1, comment, [n.2])

Still, the most legally unambiguous wording would be a specific statutory enumeration of homelessness as a protected status in vulnerable victim law. Such inclusion only requires a showing that the victim was homeless when targeted, without the necessity of delving into motive at all. Alaska is the only state to address the issue in this way:

5)the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, homelessness, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance . . . (Alaska Stat. § 12.55.155)

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