



Hate and Guns

A Terrifying Combination

By Chelsea Parsons, Eugenio Weigend Vargas, and Jordan Jones

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Introduction and summary

On the evening of June 17, 2015, Dylann Roof opened fire on a Bible study group at Emanuel African Methodist Episcopal Church in Charleston, South Carolina, killing nine congregants and injuring one additional person.¹ Roof fled and, after being on the run for 16 hours, was ultimately apprehended by law enforcement.² It quickly became clear that this was not another episode of the random mass violence that occurs much too often in the United States: Roof is a white supremacist who targeted the historic black church out of racially motivated malice.³

The massacre at this historic church—known as Mother Emanuel and home to the largest and oldest black congregation in the South⁴—is not the only recent example of a public or mass shooting motivated by bias or hate. Just three years earlier, a similarly motivated attack occurred at a Sikh temple in Oak Creek, Wisconsin. On August 5, 2012, Wade Michael Page—a white supremacist with long-standing ties to several neo-Nazi organizations—attacked the temple, fatally shooting six people and wounding four others before committing suicide.⁵

Instances of hate-motivated individuals terrorizing communities with guns are not limited to high-profile cases involving multiple fatalities. Violent extremists and hate criminals often use guns as a tool to threaten and intimidate members of historically vulnerable or marginalized communities. In doing so, they inflict serious harm without ever pulling the trigger. New analysis of National Crime Victimization Survey data by the Center for American Progress reveals that between 2010 and 2014, roughly 43,000 hate crimes were committed in the United States that involved the use or threat of a gun.

Hate crimes and acts of violent extremism have a pernicious impact on the targeted communities—not just the most proximate victim of a particular crime but the broader community of which the victim is a member. Indeed, that is precisely the purpose of these acts in the minds of the perpetrators: to threaten, intimidate, and terrorize not just an individual but the entire membership of a historically vulnerable community with a message of fear and hatred. The use of guns by these

perpetrators compounds the harm done to the victimized community by introducing a uniquely lethal instrument. The threat of a gun from dangerous extremists sends a clear message that they not only harbor feelings of bias or hate against a particular group, but also that they are willing to kill in service of this ideology.

Keeping guns out of the hands of individuals who perpetrate hate crimes is therefore a crucial measure to help ensure the safety of groups that have historically been targeted because of their race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, or disability. Yet under federal law and the law in most states, individuals who have been convicted of hate crimes remain free to buy and possess guns.

This report explores the history of hate crime laws in the United States, the gaps in those laws that contribute to sporadic and inconsistent reporting, and the challenges involved in successfully prosecuting these cases. It then considers the nexus between guns and hate crimes and the frequency with which criminals motivated by bias and hate use guns to threaten and harm their victims. Finally, it proposes a new measure to help keep guns out of the hands of violent extremists: state and federal legislation that prohibits individuals convicted of misdemeanor hate crimes from buying or possessing guns.

History of hate crime laws in the United States

The roots of modern hate crime laws can be found in the Civil Rights Act of 1968—the first piece of federal legislation to distinguish criminal activity motivated by bias against victims due to their actual or perceived race, religion, or national origin.⁶ Concern over hate crimes in the 1980s and 1990s led to the passage of additional federal legislation. In 1990, President George H.W. Bush signed the Hate Crime Statistics Act, which requires the U.S. Department of Justice to monitor and record data on crimes committed because of bias due to race, religion, sexual orientation, or ethnicity.⁷ This law was amended in 1994 through the Violent Crime Control and Law Enforcement Act, which increased penalties for perpetrators of bias-motivated crimes and expanded data collection to crimes motivated by bias toward actual or perceived disability.⁸ The most recent update to federal hate crime laws came in 2009 with the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which expanded the protections of the Civil Rights Act to include gender, gender identity, sexual orientation, and disability.⁹

In addition to federal law, nearly every state has enacted some type of hate crime law. Washington and Oregon were the first states to pass hate crime legislation in 1981.¹⁰ To date, only five states have failed to enact any type of hate crime law: Arkansas, Georgia, Indiana, South Carolina, and Wyoming.¹¹ State laws, however, vary widely in terms of the breadth of the protection and who is covered. The Anti-Defamation League has evaluated each state's laws and found that while 45 states have at least some type of hate crime law on the books, only 14 states have laws that can be characterized as comprehensive, meaning that they provide protection for a broad group of classes, including race, religion, ethnicity and national origin, sexual orientation, gender, gender identity, and disability.¹² In addition to criminalizing this conduct, some state-level hate crime laws also mandate data collection and training for law enforcement.¹³

Heightened criminal penalties for hate crimes under state and federal law notwithstanding, there are still substantial challenges to fully enforcing these laws. Between 2009—when the Matthew Shepard and James Byrd, Jr. Hate Crimes

Prevention Act was enacted—and June 2015,¹⁴ there were only 29 convictions in federal court for hate crimes.¹⁵ This number fails to account for any convictions for hate crimes at the state level; however, it illustrates one of the key challenges inherent in hate crimes legislation: ensuring robust enforcement.

While the availability of hate crime charges provides a useful tool for prosecutors, the increased burden of proof—demonstrating that the defendant not only engaged in certain conduct, but also did so with a particular motivation—can pose a challenge for prosecutors. Benjamin Wagner, U.S. attorney for the Eastern District of California, described the difficulty of prosecuting a hate crime: “Because establishing motive is a key aspect to proving the crime, investigations often must range far beyond the criminal act itself to locate evidence relevant to the defendants’ state of mind before and during the crime.”¹⁶ Federal prosecutors declined to prosecute 87 percent of hate crimes cases referred to their offices between 2009 and June 2015, primarily because of “insufficient evidence, lack of evidence of criminal intent, and weak or insufficient admissible evidence.”¹⁷

Prevalence of hate crimes in the United States

The exact number of hate crimes committed in the United States each year is difficult to determine. Although federal law mandates that the Federal Bureau of Investigation, or FBI, collect data on incidents involving bias-motivated crimes against protected classes, participation in this data collection program on the part of state and local law enforcement agencies is voluntary, and many have declined to participate in a comprehensive way.¹⁸ Additionally, because many victims of hate crimes are members of vulnerable communities that historically have a tense relationship with local law enforcement, many victims do not report these incidents or do not report that their victimization was the result of hate or bias. There may also be cultural or language barriers to the accurate reporting of these crimes.¹⁹

Frequently criticized as a substantial undercount, the FBI's limited data on hate crimes nonetheless present a disturbing picture of the extent of the problem.²⁰ From 2010 to 2014, local law enforcement agencies reported 30,014 single-bias hate crime incidents—meaning incidents that were reportedly motivated by one type of bias—that involved 34,941 offenses and 32,708 victims.²¹ Nearly half of these incidents, 48 percent, were motivated by racial bias; of those incidents, 67 percent were motivated by bias against African Americans.²²

Minneapolis protest shooting

On November 23, 2015, five activists were injured after four men allegedly opened fire at a Black Lives Matter demonstration. The four suspects, all white, were arrested in the Minneapolis metropolitan area. One of the suspects, Allen Lawrence Scarsella, reportedly posted an image of the Bonnie Blue Flag, a Confederate banner, on his Facebook page the day after the shooting.²³

The second-most common type of bias crimes reported to the FBI are those motivated by a victim's sexual orientation or religion.²⁴ From 2010 to 2014, 20 percent of single-bias hate crime incidents reported to the FBI involved bias due to sexual orientation, and 58 percent of those incidents involved anti-gay male bias.²⁵

Another 19 percent of single-bias cases involved bias against religion; 63 percent of those incidents involved anti-Jewish bias.²⁶

Cincinnati shooting

Gregory Beauchamp was shot and killed on December 31, 2002. Beauchamp was standing outside a store with a friend when a car full of people stopped at the stop light, yelled a homophobic slur, and threw a can of soda at the pair.²⁷ When Beauchamp began to throw the can back at the car, one of the passengers fatally shot him. In 2009, Jerry Jones was convicted of Beauchamp's murder. During the trial, one person testified that Jones had confessed to killing a "[homophobic slur]."²⁸ Jones was sentenced to 25 years to life.²⁹

A second data source assessing the prevalence of hate crimes in the United States reveals substantially larger numbers, suggesting that hate crimes are as much as 25 times to 40 times more common than the FBI data indicate.³⁰ The National Crime Victimization Survey, or NCVS, is an annual survey of 90,000 households across the country that asks questions about "the frequency, characteristics, and consequences of criminal victimization in the United States."³¹ Unlike data reported to the FBI, which counts only cases that are reported to local law enforcement, the NCVS data are drawn from surveys of individuals about their experience with crime, regardless of whether they have reported an incident to police.³² The NCVS defines hate crime as "crimes that manifest evidence of prejudice based on race, gender or gender identity, religion, disability, sexual orientation, or ethnicity."³³ According to the NCVS, there were 215,011 hate crimes in the United States in 2014, including both interpersonal and property crimes.³⁴ From 2010 to 2014, there were more than 1.2 million hate crimes.³⁵

Data from the NCVS again show that the majority of hate crimes were motivated by animus due to a victim's perceived race and/or ethnicity. From 2010 to 2014, 51 percent of hate crimes reported through the NCVS were racially motivated while 33 percent were due to bias against a person due to their perceived ethnicity. These categories are not mutually exclusive; a victim can report that a crime was due to both race and ethnicity.³⁶ Religion, sexual orientation, and gender were the next most prevalent categories of hate crimes, according to the NCVS.³⁷

Isla Vista, California, rampage

On May 23, 2014, six people were killed and 14 others wounded when Elliot Rodger went on a rampage in Isla Vista, California. Rodger fatally stabbed three people in his apartment before driving to a sorority house and shooting three women standing outside, killing two of them. He then continued on to ultimately fire more than 55 rounds, killing another person and wounding 13 others before fatally turning the gun on himself.³⁸ Prior to the shooting, Rodger posted an extensive misogynistic manifesto online vowing revenge on the women of Isla Vista. He had also demonstrated an extreme interest in Nazi figures Joseph Goebbels and Heinrich Himmler.³⁹

Research from other organizations also helps illustrate the prevalence of hate crimes. The Southern Poverty Law Center estimates that there are 892 hate groups currently operating in the United States, a number that has increased 14 percent since last year.⁴⁰ Organized groups, however, appear to account for a minority of bias-motivated crimes; rather, individuals who commit hate crimes tend to be “lone wolves,” often with an ideology influenced by a particular hate group but without formal ties to that group.⁴¹

There has also been an increase in hate and bias-motivated crimes against particular protected groups. A review by the Human Rights Campaign, or HRC, and the Trans People of Color Coalition, or TPOCC, found a dramatic increase in fatal hate crimes against transgender people: There were more fatalities in the first six months of 2015 than during all of 2014.⁴² There is also evidence of an increase in anti-Muslim crimes, which increased 14 percent between 2013 and 2014, according to FBI data.⁴³ Similarly, the Center for the Study of Hate and Extremism noted an uptick in hate crimes against Muslims in the immediate aftermath of the terror attacks in Paris on November 13, 2015, and the mass shooting in San Bernardino, California, on December 2, 2015. In the month after the Paris attacks, reported incidents with an apparent anti-Muslim motivation tripled in the United States.⁴⁴

Hazelwood, Pennsylvania, shooting

On November 26, 2015, a Muslim taxi driver was shot after his passenger began asking questions about his background. Upon arriving at the passenger's home, the passenger went inside, came back out with a gun, and began shooting as the taxi drove away.⁴⁵ Prior to the shooting, the passenger disclosed that he had spent time in prison and began to angrily discuss the Islamic State of Iraq and al-Sham, or ISIS.⁴⁶

Meriden, Connecticut, mosque attack

On November 14, 2015, a man in Meriden, Connecticut, who had previously expressed anti-Muslim sentiments, fired shots from an assault rifle into an empty mosque after he learned of the terror attacks in Paris. He was arrested on December 18, 2015, and charged with a hate crime.⁴⁷

Use of guns in the commission of hate crimes

One disturbing trend is the use of guns by individuals who commit hate and bias-motivated crimes. According to data from the NCVS, there were roughly 43,000 hate crimes committed in the United States between 2010 and 2014 that involved a gun.⁴⁸ Of these incidents, the majority involved bias due to race, ethnicity, or a combination of the two: 56 percent of victims of hate crimes involving a gun reported bias due to race, and 48 percent reported bias due to ethnicity.⁴⁹

Racist leader arrested in Albany, New York

After purchasing fully automatic machine guns from an undercover FBI agent on August 6, 2015, Shane Robert Smith told the agent he was part of a hit group and wanted the weapons to “execute minorities.”⁵⁰ On November 30, 2015, he was indicted in federal court.⁵¹ Prior to this incident, Smith was arrested in June 2014 for painting racially charged graffiti.⁵²

Other research provides a similar picture of the intersection between gun violence and hate crimes in the United States. An analysis of 8,132 hate crimes reported to the FBI through the National Incident-Based Reporting System, or NIBRS, between 2011 and 2013—performed by researchers at the John Jay College of Criminal Justice and news organization The Trace—found that 207 of those incidents involved guns.⁵³ This analysis also found that among hate crimes committed with a gun, black victims were targeted more often than any other racial group and that anti-black bias was, by far, the most common motivation for these attacks.⁵⁴ Of the 21 transgender people murdered during the first half of 2015 according to the HRC and TPOCC study, 11 were killed with guns.⁵⁵

Spokane, Washington, attempted murder

On September 12, 2012, Jimmy J. Blackburn approached three black teens. He allegedly yelled racial slurs at them and challenged them to a fight.⁵⁶ After he threatened the teens with a gun, they ran away while Blackburn pursued them. He fired at least one shot, which was recovered by police. The next day he was arrested and charged with attempted second-degree murder.⁵⁷

Oakland County, Michigan, threats

On March 8, 2013, an African American woman driving in Oakland County, Michigan, with her two children was threatened by a white passenger in a neighboring car who pointed a handgun while the driver screamed racial epithets.⁵⁸

Similar trends have emerged in domestic terror attacks, many of which are committed by lone wolf actors motivated by ideologies of hate. The Southern Poverty Law Center found that 59 percent of domestic terrorist attacks carried out between April 1, 2009, and February 1, 2015, were perpetrated with a gun.⁵⁹ An additional 25 percent involved explosives, while 5 percent of attacks in that time period involved both firearms and explosives.⁶⁰ A report by the Anti-Defamation League examining incidents of fatal domestic terrorism and extremism in 2015 found that 48 of the 52 individuals killed in these incidents were murdered with a gun.⁶¹

Seattle LGBT attack

On June 28, 2015, following the gay pride parade in Seattle, Washington, a man wearing rainbow colored beads was accosted by a perpetrator who held a gun to his stomach and used homophobic slurs.⁶² The man was arrested on a hate crimes charge.⁶³

This represents a new trend in the instrumentality of domestic terrorism. Lone wolf terrorists have traditionally used explosives in their attacks; since 2001, however, these individuals have increasingly turned to high-powered guns as their weapon of choice.⁶⁴

Proposal: Federal and state legislation to keep guns out of the hands of hate criminals

Despite this growing reliance on guns as the preferred tools of violence and intimidation by individuals who commit hate crimes and acts of domestic terrorism, many individuals who have been convicted of these crimes remain free to buy and possess guns under both federal and state law. Under federal law, individuals convicted of any felony—including felony-level hate crimes—are prohibited from buying and possessing guns.⁶⁵ However, this prohibition does not cover all individuals who have been convicted of hate crimes. Many states have misdemeanor-level hate crimes laws as well, and the vast majority of people convicted under these laws remain free to buy guns.

These state misdemeanor hate crime laws generally take two forms: stand-alone hate crimes that criminalize certain conduct committed with bias motivation or sentence enhancements for other misdemeanor crimes that may be applied when a court finds that the defendant committed the crime with a hate or bias motivation. A Center for American Progress analysis of state hate crime laws reveals that at least 30 states have a misdemeanor hate crime or sentence enhancement on the books.

These crimes should not be mistaken for low-level or nonviolent offenses that do not warrant serious concern. In fact, many of these crimes and sentence enhancements cover threatening and dangerous conduct. In some states, including Alabama, Florida, and Texas, certain types of assault and battery committed with bias motivation are misdemeanor offenses.⁶⁶ Hate crimes involving threats and intimidation against a member of a protected class—including through the use of force—is often a misdemeanor-level offense, such as in Colorado and California.⁶⁷

One example of a particularly violent misdemeanor hate crime case occurred at San Jose State University in California in November 2013. Three students harassed and threatened their black roommate, locking a U-shaped bicycle lock around his neck, using racial slurs, and displaying a Confederate flag in their

room, leading to charges of misdemeanor hate crime and battery.⁶⁸ And many hate crimes that involve damage, destruction, or defacement of property—typically nonviolent offenses that nonetheless have a significant negative impact on the targeted community—are often classified as misdemeanors.⁶⁹

Additionally, researchers have found that individuals who commit hate crimes tend to escalate their conduct in order to ensure their message is received by the targeted individual or community. Jack Levin and Jack McDevitt, researchers from Northeastern University who specialize in hate crimes, explained this phenomenon as follows:

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.⁷⁰

This pattern of escalation demonstrates the need to ensure that individuals who have been convicted of hate crimes—even at the misdemeanor level—are prevented from buying and possessing guns.

Many states, driven by research demonstrating that individuals convicted of certain violent misdemeanors pose an increased risk of committing future acts of violence, have enacted laws prohibiting them from gun possession.⁷¹ According to the Law Center to Prevent Gun Violence, 23 states and the District of Columbia prohibit individuals convicted of specified misdemeanor offenses from buying and possessing guns.⁷² The vast majority of states, however, have not enacted laws to prevent convicted misdemeanor hate criminals from having easy access to guns. A CAP analysis of state laws finds that only three states—Minnesota,⁷³ Oregon,⁷⁴ and New Jersey⁷⁵—specifically bar individuals convicted of misdemeanor hate or bias-motivated crimes from buying and possessing guns. Three other states—Delaware,⁷⁶ Maryland,⁷⁷ and Massachusetts⁷⁸—have laws barring individuals convicted of certain misdemeanor crimes from gun possession that would apply to at least some misdemeanor convictions for hate crimes.

Legislators at the federal and state level should close this loophole by passing laws that prohibit people convicted of misdemeanor hate crimes from being able to buy and possess guns. Doing so would ensure that such individuals do not have easy access to guns and that both state and federal law enforcement would have the ability to investigate and prosecute violations of those laws.⁷⁹

This legislation would address a serious public safety concern: Hate-motivated criminals and violent extremists armed with guns pose a substantial threat to the safety of historically vulnerable communities that are protected by hate crime laws. Access to guns by these perpetrators makes it more likely that a hate crime will have a fatal outcome. But 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 on the basis of any of the protected classes—race, ethnicity, religion, gender, gender identity, sexual orientation, national origin, or disability—represents a significant escalation of this hateful conduct.

Lawmakers have already determined that certain individuals should not be permitted to possess guns because their previous criminal history makes them more likely to pose a future risk to public safety, and the Supreme Court has consistently upheld such laws as consistent with the Second Amendment.⁸⁰ Barring individuals convicted of misdemeanor hate crimes from possessing firearms would fall well within the type of reasonable restrictions the Supreme Court has indicated do not violate the Constitution.⁸¹

Legislation barring individuals convicted of misdemeanor hate crimes from being able to buy and possess guns would also create a new incentive for prosecutors to pursue these cases. Because they involve an additional evidentiary burden, prosecuting hate crimes is notoriously difficult. Prosecutors may be more likely to expend the time and resources necessary to prosecute misdemeanor hate crimes if they knew that a conviction would prohibit dangerous individuals from accessing firearms.

Conclusion

Law enforcement and targeted communities have been grappling with the unfortunate legacy of hate crimes in the United States for decades, if not longer, and recent trends suggest such violence may be on the rise. Many policy changes could help prevent hate crimes and protect vulnerable communities. These include improving the collection of data on these crimes to produce an accurate picture of the scope and character of hate crimes, expanding the coverage of hate crime laws, and enhancing law enforcement's ability to bring appropriate charges against the perpetrators of bias-motivated crimes.

The use of guns by violent extremists and bias-motivated criminals, however, presents an additional, urgent challenge: ensuring that individuals who have demonstrated that they pose a unique threat to targeted communities are prevented from accessing guns. New legislation to prohibit individuals convicted of misdemeanor hate crimes from buying and possessing guns would not stop every hate-motivated shooting. It would, however, be a strong step toward keeping guns out of the hands of individuals who have proven themselves to be uniquely dangerous to historically vulnerable communities.

About the authors

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