

Fall 2022

U.S. Hate Crime Trends: What Disaggregation of Three Decades of Data Reveals About a Changing Threat and an Invisible Record

Brian Levin

California State University - San Bernardino

James Nolan

West Virginia University

Kiana Perst

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>



Part of the [Law and Society Commons](#)

Recommended Citation

Brian Levin, James Nolan, and Kiana Perst, *U.S. Hate Crime Trends: What Disaggregation of Three Decades of Data Reveals About a Changing Threat and an Invisible Record*, 112 J. CRIM. L. & CRIMINOLOGY 749 (2023).

<https://scholarlycommons.law.northwestern.edu/jclc/vol112/iss4/3>

This Article is brought to you for free and open access by Northwestern Pritzker School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern Pritzker School of Law Scholarly Commons.

U.S. HATE CRIME TRENDS: WHAT DISAGGREGATION OF THREE DECADES OF DATA REVEALS ABOUT A CHANGING THREAT AND AN INVISIBLE RECORD

BRIAN LEVIN,* JAMES NOLAN, & KIANA PERST*****

When prejudice-related data are combined and analyzed over time, critical information is uncovered about overall trends, related intermittent spikes, and less common sharp inflectional shifts in aggression. These shifts impact social cohesion and grievously harm specific sub-groups when aggression escalates and is redirected or mainstreamed. These data, so critical to public policy formation, show that we are in such a historic inflection period now. Moreover, analysis of the latest, though partial Federal Bureau of Investigation hate crime data release, when overlaid with available data from excluded large jurisdictions, reveals hate crimes hit a record high in 2021 in the United States that previously went unreported. This Essay analyzes the most recent national data as well as various numerical and policy milestones that accompanied the historic, yet incomplete, implementation of hate crime data collection and related statutes over recent decades. This analysis of emerging trends in the United States is undertaken in the context of bigoted aggression broken down over time.

* Brian Levin, J.D. is founder and director of the Center for the Study of Hate & Extremism at California State University, San Bernardino where he is a professor in the School of Criminal Justice. Special thanks to Lisa Nakashima, Andrew Thompson, John Reitzel, Clive Tan, and these researchers from the National Contagion Research Institute: Cristian Ramos, Joel Finkelstein, and Alexander Goldenberg whose efforts contributed to this analysis. We are also grateful to the staff of the *Northwestern Journal of Criminal Law and Criminology*.

** James J. Nolan is a Professor in the Department of Sociology and Anthropology at West Virginia University. He is also a member of the department's Research Center on Violence. His research and teaching focuses on hate crimes, police reform, crime measurement, and equity and inclusion in higher education.

*** Kiana Perst is a Computer Science major in the Rutgers class of 2023. Interested in data science, they have used textual analysis, web scraping, and various data visualization tools to contribute to projects developed by NCRI. Some of these projects concern topics related to authoritarianism, Iranian influence operations, and hate crime reporting.

INTRODUCTION	750
I. RECENT TREND SUMMARY	759
II. HISTORY OF HATE CRIME DATA COLLECTION EFFORTS	
IN THE UNITED STATES	764
A. The Hate Crime Statistics Act and the FBI's Uniform Crime Reporting	764
B. Bureau of Justice Statistics	767
C. Other Reporting Efforts: State and Local	767
III. CHARACTERISTICS, FREQUENCY, AND TYPES OF HATE CRIME VARY OVER TIME	769
A. Words Matter Too.....	776
B. Election 2016.....	778
IV. THE CHANGING NATURE OF HATE OFFENDERS.....	789
A. Mission Offenders as Terrorists.....	793
V. NATIONAL INCIDENT-BASED REPORTING SYSTEM HATE CRIME	793
A. Findings	794
VI. POLICY PROPOSALS	797
CONCLUSION.....	799

INTRODUCTION

As the nation becomes increasingly polarized, social science, digital, and police data reveal key information respecting the evolving dynamics of intergroup conflict—including our area of focus: hate crime and expressions of bigotry online. Retrospective analysis of three decades of national hate crime and newer-but-related online data collected by the Federal Bureau of Investigation (FBI) and other researchers uncovered key facts not only about long-term incremental changes respecting offense, offender, and victim type, but also about the multiple episodic instances of precipitous shifts and increases—particularly a 2021 record left unidentified in the FBI's most recent incomplete report.

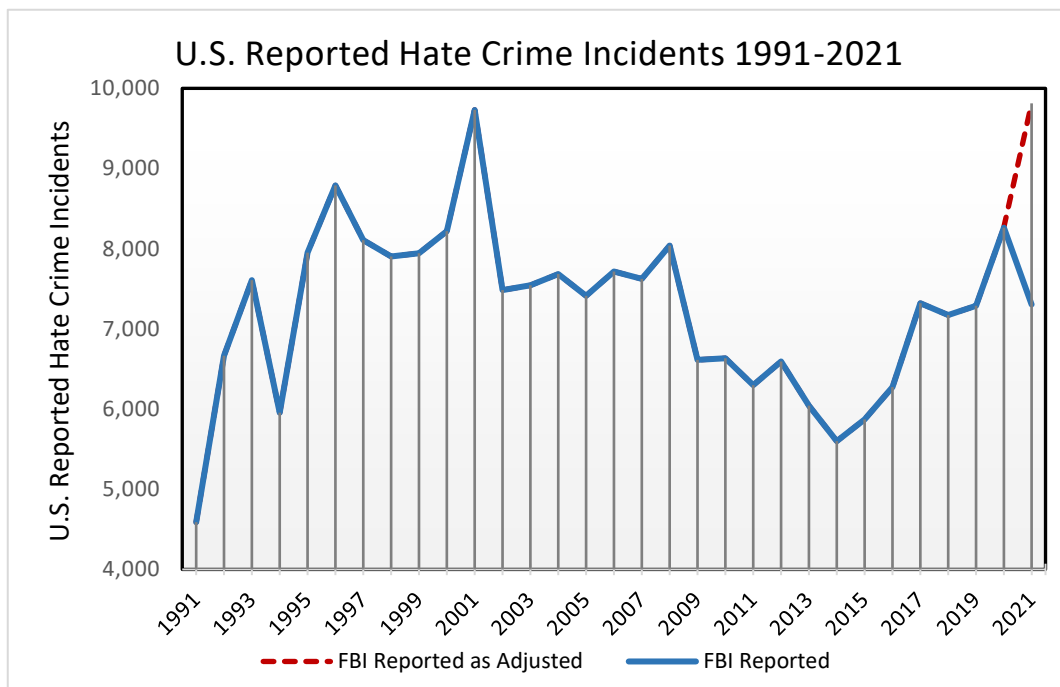
Over the decades, catalysts for these types of hate crime spikes have included not only highly charged national elections and related political events, but also violent police-citizen interactions, terrorist attacks, the COVID-19 pandemic, tumultuous international conflicts, and domestic court verdicts. The 2020 FBI crime data indicate a historic recent precipitous shift to violent racial hate crime, with spikes beginning around the COVID-19

pandemic in March 2020 and the historic social justice protests following the George Floyd murder only months later. More recent but separately collected police data from the Center for the Study of Hate and Extremism (CSHE) indicate an increase in the largest American cities in 2022, but a far more mixed outcome overall. Anti-Asian American hate crimes remained at elevated levels, after peaking at an apparent record the year before in 2021.

Our analytics disaggregate multiple decades of FBI data by month, day, and year to reveal critical facts as to the timing and severity of historic shifts and increases. From the mid-1990s until 2014, hate crime laws in the United States saw near universal adoption (though with very uneven enforcement and low prosecution rates), and reports of these crimes had been generally declining overall. The decline was briefly, though severely, interrupted by a record 9,730 criminal incidents in 2001, many after the September 11, 2001 (9/11) terror attacks and by other periodic increases during national elections *inter alia*.¹ However, after 9/11, FBI hate crime totals quickly reverted to levels lower than those seen in the years just before 2001. Anti-Muslim crimes dropped, but never reverted to pre-9/11 annual levels. Overall, FBI totals remained in the 7,500 per year range for around a half-decade until rising to 8,039 in the 2008 election year when President Obama was elected, not breaking that level again until 2020.²

¹ See BRIAN LEVIN, ANALISA VENOLIA, KIANA PERST & GABRIEL LEVIN, REPORT TO THE NATION: 2020S – DAWN OF A DECADE OF RISING HATE, CAL. STATE UNIV., SAN BERNARDINO CTR. FOR THE STUDY OF HATE AND EXTREMISM 28 (Aug. 4, 2022), <https://www.csusb.edu/sites/default/files/2022-08/Report%20To%20The%20Nation8-4-22.pdf> [<https://perma.cc/SEH6-DTMJ>] (summarizing hate crime incident data published by the Federal Bureau of Investigation’s Crime Data Explorer); see also *Crime Data Explorer*, FED. BUREAU OF INVESTIGATION, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home> [hereinafter FBI Crime Data Explorer] (last visited Aug. 8, 2022).

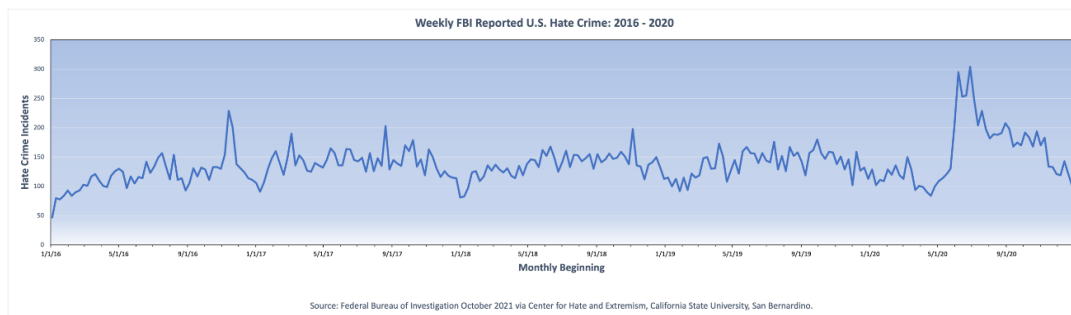
² LEVIN ET AL., *supra* note 1.

Figure 1: Total FBI Hate Crime by Year 1991–2021

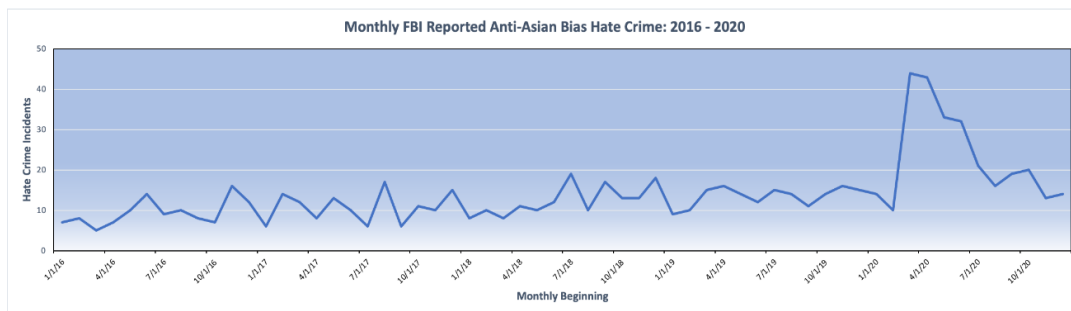
While annual FBI totals hit a multi-decade low in 2014, hate crimes and related mass casualty events have increased since then. These intermittent increases are often precipitated by a catalytic event, followed by a precipitous but short-lived spike in bigoted aggression, both online and terrestrially.³ In 2016, such a spike occurred directly after the election in November, with hate crimes hitting their highest monthly level in over a decade before dropping soon after. Hate crimes rose the following year, but levels plateaued and stabilized in the low 7,000 annual range. Other peak times in that period were in August 2017, when white supremacists descended on Charlottesville and President Trump uttered his “very fine people” statement days later, and right before the 2018 contentious mid-term elections.⁴

³ LEVIN ET AL., *supra* note 1, at 12, 22–24.

⁴ FBI Crime Data Explorer, *supra* note 1; BRIAN LEVIN & LISA NAKASHIMA, CAL. STATE UNIV., SAN BERNARDINO CTR FOR THE STUDY OF HATE AND EXTREMISM, REPORT TO THE NATION: 2019 FACTBOOK ON HATE & EXTREMISM IN THE U.S. & INTERNATIONALLY, 14 (July

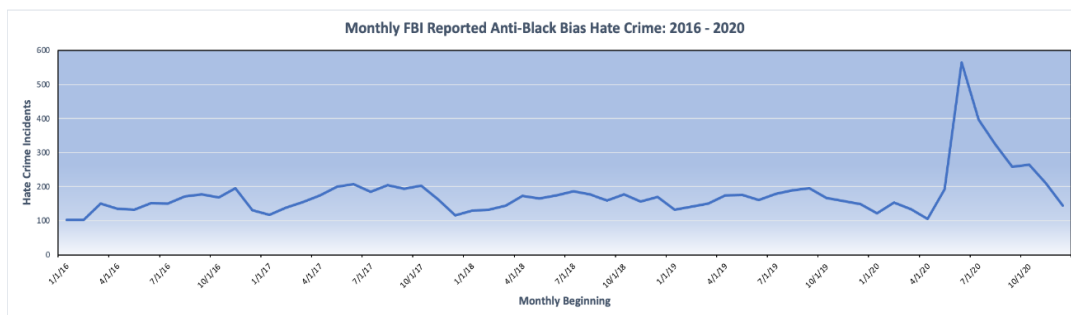
Figure 2: Weekly FBI Hate Crime 2016–2020⁵

This annual numeric plateau ended in 2020 amid historic new spikes that remained elevated for far longer than seen in previous sharp upturns. Event-driven racial targeting fueled the highest number of annual hate crimes since the record year of 2001.

Figure 3: Anti-Asian Hate Crime, Monthly: 2016–2020

29, 2019), https://www.csusb.edu/sites/default/files/CSHE%202019%20Report%20to%20the%20Nation%20FINAL%207.29.19%2011%20PM_0.pdf [https://perma.cc/S299-QYWR]; Glenn Kessler, *The Very Fine People at Charlottesville: Who Were They?*, WASH. POST (May 8, 2020), <https://www.washingtonpost.com/politics/2020/05/08/very-fine-people-charlottesville-who-were-they-2> [https://perma.cc/5E7Q-N9U4].

⁵ FBI Crime Data Explorer, *supra* note 1.

Figure 4: Anti-Black Hate Crime, Monthly: 2016–2020

By 2020, a rotation occurred targeting negatively stereotyped groups, such as Asians due to unfounded projections of blame for the COVID-19 pandemic and, months later, Black Americans during the protests in response to the deaths of Black Americans at the hands of police officers. The reach of bigotry, misinformation, and conspiracy theories into mainstream virtual gathering places has grown in part because of the efforts of various domestic and sometimes foreign malefactors on social media and elsewhere. The circulation of derisive stereotypes expanded to encompass memes, gaming, audio, and video across a range of platforms to increasingly include smaller, less-regulated, encrypted, and affinity-based spaces.⁶

Table 1: Representative Sample of Major U.S. Cities: Official Preliminary Hate Crime Data, 2021

US City Population & Rank (Top 50 Numbered)	Total Hate Crimes 2020	Total Hate Crimes 2021	% Change for Total Hate Crimes 2020-2021	
1. New York City, NY	8,804,190	275	532*	+93%
2. Los Angeles, CA	3,979,537	359	567*	+58%
3. Chicago, IL	2,693,959	77	104	+35%
4. Houston, TX	2,304,580	45	47	+4%
5. Phoenix, AZ	1,608,139	204	140	-31%
6. Philadelphia, PA	1,590,000	44	121*	+175%
7. San Antonio, TX	1,434,625	37	65*	+76%
8. San Diego, CA	1,386,932	25	46	+84%
9. Dallas, TX	1,304,379	40	33	-17.5%

⁶ See Helen Lewis, *How Memes, The Joke's on Us*, ATLANTIC (Oct. 4, 2020, 4:00 AM), <https://www.theatlantic.com/international/archive/2020/09/how-memes-lulz-and-ironic-bigotry-won-internet/616427> [<https://perma.cc/4FZE-2P75>].

10. San Jose, CA	1,013,240	90	116*	+29%
Top 10 U.S. Cities / 1 Million+ Population		1196	1763	+47.4%
11. Austin, TX	961,855	25	29*	+16%
13. Fort Worth, TX	928,000	14	11	-21%
14. Columbus, OH	905,748	110	114	+4%
15. Indianapolis, IN	890,000	23	38	+65%
17. San Francisco, CA	873,965	56	112	+100%
18. Seattle, WA	753,675	139	140	+0.7%
19. Denver, CO	715,522	71	68	-4%
20. Washington, DC	689,545	132	149	+13%
23. El Paso, TX	682,000	3	3	-
24. Boston, MA	675,647	146	148	+1.4%
25. Portland, OR	652,503	55	50	-10%
26. Las Vegas, NV	642,000	82	155	+89%
29. Louisville, KY	617,630	32	36	+12.5%
35. Sacramento, CA	524,943	10	53	+430%
U.S. City Sample 500K to 999K Population		898	1106	+23%
46. Minneapolis, MN	430,000	27	27	-
Santa Ana, CA	335,000	17	19	+12%
Henderson, NV	318,000	7	9	+29%
St. Paul, MN	311,000	32	35	+9.4%
Cincinnati, OH	309,317	45	32	-29%
Pittsburgh, PA	303,000	8	27	+238%
Jersey City, NJ	292,000	2	2	-
Toledo, OH	270,000	5	6	+20%
Fort Wayne, IN	268,000	8	15	+87.5%
Fremont, CA	251,000	4	6	+50%
Salt Lake City, UT	200,000	2	7	+250%
Fort Lauderdale, FL	183,000	3	8	+167%
Garden Grove, CA	172,000	9	8	-11%
Bellevue, WA	152,000	18	11	-39% (Through 11/21)
U.S. City Sample 150K to 499K Population		185	2205	+11%
Total		2275	3083	+35.5%

* Multi-decade high

While the currently available FBI data extends to the end of 2021, the 2021 report alone is incomplete with respect to the analysis of annual trends.⁷ However, other available data indicate that the United States experienced a significant increase in hate crimes in 2021, not the decline shown in the FBI data. First, hate crime continued a multi-year upward trend according to the Center for the Study of Hate and Extremism (CSHE). CSHE reported a 35% increase across dozens of cities in 2021 and a 21% increase across various states, while in 2022 a smaller sample remained virtually unchanged, although significant increases were reported among the very largest cities.⁸ The latest analysis confirms both (1) an increasing diversification and rotation of victim targets overall and (2) spikes in the months of, and directly before, consequential events such as national elections, terrorist incidents, and domestic social unrest. Additionally, CSHE analysis further reveals that 2021 was a record year for hate crime overall and for hate crimes committed against Asian Americans when 2021 FBI and independently collected, though mostly excluded, cases from California, New York State, and Chicago are added in.⁹ When the 7,303 hate crimes reported by the FBI in its incomplete 2021 report include the 1,690 missing cases from California, the 716 unreported cases from New York State, and the 104 unreported cases from Chicago, the adjusted total exceeds 9,800, establishing a record since national data collection commenced in 1991.¹⁰

The increasing diversification and rotation of victim-group targeting that is seen nationally can also be influenced locally by regional demographics. When a city has a larger representation of a scapegoated

⁷ 2021 *Hate Crime Statistics*, DEP'T OF JUST., <https://www.justice.gov/crs/highlights/2021-hate-crime-statistics>

⁸ See *supra* Table 1; LEVIN ET AL., *supra* note 1, at 2, 3, 4.

⁹ LEVIN ET AL., *supra* note 1, at 2; FBI Crime Data Explorer, *supra* note 1 (reporting 7,303 hate crime for 2021, and showing 0 for Chicago, 73 for CA, and 62 for NY State).

¹⁰ FBI Crime Data Explorer, *supra* note 1 (reporting 7,303 hate crime for 2021, and showing 0 for Chicago, 73 for CA, and 62 for NY State); ROB BONTA, CAL. DEP'T OF JUST., CRIM. JUST. STAT. CTR., 2021 HATE CRIME IN CALIFORNIA (reporting 1,763 hate crimes in California, though FBI only showed 73); *Governor Hochul Announces Nearly \$16 Million to Improve Safety and Security of Organizations at Risk of Hate Crimes*, N.Y. STATE (Apr. 13, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-nearly-16-million-improve-safety-and-security-organizations-risk> (reporting 778 hate crimes in New York, though FBI only showed 62); *Hate Crime Dashboard*, CHI. POLICE DEP'T, <https://home.chicagopolice.org/statistics-data/data-dashboards/hate-crime-dashboard/> (reporting 104 hate crimes in Chicago, though FBI only showed 0) (choose "criminal" from the second dropdown box on the right hand side of the webpage).

group than the national average, such as Jewish Americans during conflicts in the Middle East or Asians during COVID-19 spikes, it often corresponds with a higher reporting of hate crimes against those groups.¹¹

Census data indicate that larger cities grew more diverse over the last decade and the data here show that those more densely populated and diverse places report more hate crimes.¹² The ten U.S. cities of over one million residents reported a 47% increase, while those under 500,000 residents reported only about an 11% rise.¹³ A separate CSHE multi-state survey found a smaller increase of 21%.¹⁴ In 2022, preliminary CSHE data found a 9.2% projected increase in the ten largest cities, but a smaller increase of 6% across a larger multi-city sample.¹⁵

**Table 1A: Preliminary Totals/Projections for Overall Hate Crime 22
Major U.S. Cities 2022¹⁶**

City	2023 Population (Thousands)	2021	2022	% Change
New York, NY	8,993	531	607*	+14%
Los Angeles, CA	3,931	615	686*	+12%
Chicago, IL	2,762	104	191*	+84%
Houston, TX	2,366	49	62*	+27%
Phoenix, AZ	1,657	140	61	-56%
Philadelphia, PA	1,627	121	157*	+30%
San Antonio, TX	1,467	63	42	-33%
San Diego, CA	1,411	46	38	-17%

¹¹ *Id.* at 4–15.

¹² William H. Frey, *2020 Census: Big Cities Grew and Became More Diverse, Especially Among Their Youth*, BROOKINGS (Oct. 28, 2021), <https://www.brookings.edu/research/2020-census-big-cities-grew-and-became-more-diverse-especially-among-their-youth> [<https://perma.cc/8UXW-VKXN>] (“[W]hen looking at the 2010-2020 decade, many major cities grew faster than the previous decade and most registered increased racial diversity.”).

¹³ *See supra* Table 1.

¹⁴ *See infra* Table 1B.

¹⁵ *See infra* Table 1A.

¹⁶ As this article went to press on March 13, 2023 the FBI supplemented its incomplete 2021 report with revised multiple bias incident totals rising 31% to a new modern record of 10,840. If final national 2022 hate crime totals rise, as the city totals in Table 1A have, that would be a new record and fourth consecutive increase. *See* FBI Crime Data Explorer, *supra* note 1.

Dallas, TX	1,336	17	27	+59%
San Jose, CA	1,033	116	108	-7%
Total 10 Largest Cities	26,583	1,802	1,979	+10%
Austin, TX	1,013	29	45*	+55%
Fort Worth, TX	972	11	12	+9%
Columbus, OH	941	84	82	-2%
San Francisco, CA	895	112	44	-61%
Seattle, WA	776	140	121	-14%
Denver, CO	750	74	84	+14%
Washington, DC	716	149	129	-13%
Boston, MA	693	148	159	+7%
Las Vegas, NV	659	134	139	+4%
Sacramento, CA	542	62	79	+27%
Mesa, AZ	524	16	19	+19%
Kansas City, MO	523	31	41	+32%
Colorado Springs, CO	498	16	21	+31%
Cleveland, OH	365	74	98	+32%
Irvine, CA	336	15	17	+13%
Henderson, NV	336	9	7	-22%
Newark, NJ	322	16	5	-69%
Santa Ana, CA	306	18	34	+89%
Jersey City, NJ	306	10	4	-60%
Pittsburgh, PA	302	27	17	-37%
Ft. Lauderdale, FL	188	8	16	+100%
Salt Lk. Cnty., UT	1,232	37	47	+27%
Total	39,778	3,022	3,199	+6%

* Multi-decade high

Table 1B: CSHE 2021/2020 Hate Crime Totals by State/District

State/Rank	Population	Hate Crime 2020 State Reported	Hate Crime 2020 FBI Reported	Hate Crime 2021 State Reported	Hate Crime 2021 FBI Reported	%Change State Reported
1. California	39.7M	1,339	1,339	1,763	73	+32.6%
2. Texas	30M	463	406	512*	542	+10.6%
4. New York	19.2M	497	463	778	62	+56.5%
5. Pennsylvania	12.8M	81	81	108	172	+33%

7. Ohio	11.7M	538	538	530	498	-1.5%
8. Georgia	10.9M	195	195	233*	238	+19.5%
11. New Jersey	8.9M	1,447	389	1,871*	220	+29.3%
12. Virginia	8.6M	190	147	123	108	-35%
13. Washington St.	7.9M	468	451	592*	576	+26%
14. Arizona	7.4M	285	285	246	93	-13.7%
16. Massachusetts	6.9M	386	310	406	407	+4.4%
17. Indiana	6.8M	219	186	328*	132	+49.8%
19. Missouri	6.1M	127	115	219*	194	+59%
21. Colorado	5.8M	343	281	369*	285	+7.6%
27. Oregon	4.2M	351	280	296	267	-16%
30. Utah	3.4M	72	44	135*	109	+87.5%
33. Nevada	3.2M	167	113	191*	219	+14.4%
38. Idaho	1.8M	54	43	47	42	-13%
51. Wash., DC	0.9M	132	132	149	64	+13%
Total: 18 States/ DC 196.2M		7,351	5,798	8,896	4,301	+21%

I. RECENT TREND SUMMARY

Until 2021, the FBI and municipal hate crime data reporting had limitations and gaps but was still a longstanding source of data with a relatively stable set of thousands of agencies submitting reports of suspected hate crimes annually—although most report none. The collapse of FBI reporting in 2021 to 11,834 agencies from over 15,000 the year before, led the agency to caution that “data cannot reliably be compared across years.”¹⁷ The FBI stated further that “[a]s a result of the shift to NIBRS-only data collection, law enforcement agency participation in submitting all crime statistics, including hate crimes, fell significantly from 2020 to 2021.”¹⁸

After the passage of the Hate Crimes Statistics Act of 1990 (HCSA),¹⁹ the FBI’s Uniform Crime Reporting Program (UCR) prepared uniform partial annual national summaries of hate crime data from 1991 until 2019,

¹⁷ 2021 Hate Crime Statistics, DEP’T OF JUST., <https://www.justice.gov/crs/highlights/2021-hate-crime-statistics>

¹⁸ *Id.*

¹⁹ 34 U.S.C. § 41305.

after which a new FBI system was implemented.²⁰ Because official government police data on hate crime now extends back three decades, both overall trends and episodic sharp hate crime fluctuations are observable when the data is disaggregated or combined with other statistics. The most recent multi-year trends showed the following shifts:

- (1) Offenses materially shifting away from property crime to person-directed crimes with intermittent mass homicides, primarily by white supremacist “mission offenders”;
- (2) Vastly uneven or absent reporting by police, indicating that victims in wide swaths of the nation are being neglected.

Among the most significant realignments has been a sharp historic shift in racial hate crime in 2020. Disturbingly, these new spikes in racial hate crime levels have remained elevated longer in the case of Black Americans in 2020, or in a higher resurgence spike in early 2021 respecting Asian Americans correlating with an increase in COVID hospitalizations.²¹ In recent years, spikes routinely appear accompanied by an increased use of derisive epithets online and manipulation around catalysts like the COVID-19 pandemic, policing conflicts, politics, terror attacks, and other facts, with a probable shift to “defensive/reactive” offenders. Additionally, along with an overall multi-year rise, there were significant recent realignments respecting a surge in racial and other hate crimes that occurred in 2020, according to FBI data. In a separate survey, that overall upward trend continued in major U.S. cities.²² In 2021 there was another increase of 35% in large cities, with attacks against Asians increasing the most precipitously with a rise of 224%.²³

In 2020, pursuant to the HCSA, the FBI enumerated 8,263 hate crime incidents reported to police, a 13% increase over the 2019 total of 7,287. The 2020 rise in FBI hate crime, after multiple annual increases, was almost 50% above 2014’s twenty-first century low of 5,599 and marked the highest level since 2001’s peak of 9,730.²⁴ Disturbingly, 2020 also saw the highest amount of violent offenses like assaults and “intimidation” threats—“person-directed

²⁰ See *About the Crime Data Explorer*, FED. BUREAU OF INVESTIGATION, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/about> [<https://perma.cc/3967-FDXU>].

²¹ LEVIN ET AL., *supra* note 1, at 10, 14, 22.

²² See *id.* at 4.

²³ See *supra* Table 1; *Id.* at 2, 4.

²⁴ *Id.* at 2.

hate crimes”—since national reporting commenced.²⁵ FBI-enumerated hate homicides, even with the paucity of mass killings (possibly influenced by COVID-19-based gathering restrictions), hit their third-highest level ever, while assaults and intimidation broke modern records.²⁶

Figure 5: ACLED Social Justice Protests

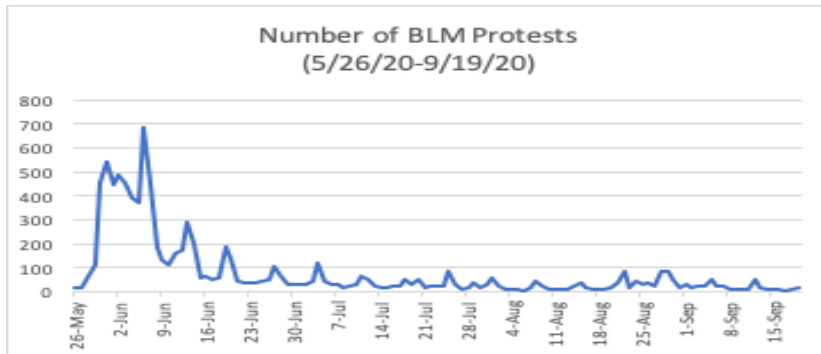
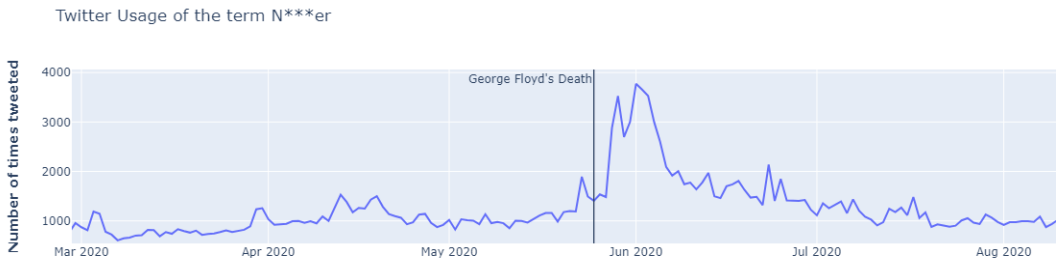


Figure 6: Use of the N-Word on Twitter, 2020



The month of June 2020, when racial justice protests took place across the nation, was the second highest month overall for hate crimes committed since FBI enumeration commenced in 1991, and the highest since the record month of September 2001.²⁷ The period also saw a rise in anti-Black epithets

²⁵ *Id.* at 28.

²⁶ See FBI Crime Data Explorer, *supra* note 1.

²⁷ *Id.*

online.²⁸ June 2020 was also the highest month ever recorded for anti-Black hate crime (though, of course, recorded history for this metric is quite recent and excludes vast historic periods where atrocities were not officially recorded) while anti-white hate crime hit its highest levels since 1992.²⁹ Anti-Asian hate crime peaked in March and April of 2020—its highest level since 2001.³⁰

Figure 7: FBI Reported U.S. Anti-Black Hate Crime Incidents, 1991-2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1991	88	103	116	107	141	115	180	178	170	189	138	99	1,624
1992	197	201	210	186	254	185	171	207	189	197	168	147	2,312
1993	245	222	213	253	276	215	257	282	206	253	214	187	2,823
1994	159	148	199	185	186	183	198	214	195	219	153	139	2,178
1995	199	224	262	226	208	274	255	289	309	349	219	175	2,989
1996	285	268	332	303	313	341	377	325	327	309	293	203	3,676
1997	234	208	297	273	304	280	256	284	292	313	220	185	3,146
1998	202	238	261	226	272	299	284	245	281	272	202	184	2,966
1999	216	231	262	272	280	269	279	253	234	282	218	188	2,984
2000	226	246	288	263	248	233	246	261	283	258	218	167	2,937
2001	229	208	303	299	269	274	263	239	271	218	191	156	2,920
2002	193	173	242	235	222	226	223	231	217	230	181	133	2,506
2003	185	155	195	226	244	236	225	268	229	255	197	157	2,572
2004	183	217	271	251	270	211	238	231	231	289	206	160	2,758
2005	209	182	225	254	233	227	236	251	238	247	212	155	2,669
2006	178	188	219	251	235	217	255	223	229	254	210	172	2,631
2007	188	161	207	235	237	253	241	229	255	268	208	191	2,673
2008	193	223	245	262	268	240	256	265	282	287	245	185	2,951
2009	172	175	195	189	211	213	199	231	217	211	160	124	2,297
2010	137	161	210	224	200	196	204	191	220	190	154	115	2,202
2011	158	137	184	187	198	172	192	209	187	174	159	142	2,099
2012	159	171	206	188	210	159	200	206	162	164	124	110	2,059
2013	135	129	162	173	177	180	203	199	159	155	137	99	1,908
2014	112	124	124	142	156	139	148	167	142	161	114	118	1,647
2015	125	112	131	157	166	172	181	175	152	141	141	103	1,756
2016	102	102	151	136	132	152	151	172	177	169	196	131	1,771
2017	118	139	155	174	200	207	185	205	194	203	163	116	2,059
2018	129	132	144	173	166	175	187	178	159	178	156	170	1,947
2019	132	141	151	174	176	161	179	189	195	167	158	149	1,972
2020	122	153	134	106	193	565	397	324	259	264	210	144	2,871
Total	5,210	5,272	6,294	6,330	6,645	6,769	6,866	6,921	6,661	6,866	5,565	4,504	73,903

Recent problems with FBI-collected data illustrate that it is far from an error-free or comprehensive account of hate crimes in the United States. A sometimes-uneven transition by police to a new federal reporting system combined with recurring lapses in training and clear policies have led to

²⁸ LEVIN ET AL., *supra* note 1, at 20–21.

²⁹ *Id.* at 13, 22.

³⁰ *Id.* at 9.

various inconsistencies and misreporting in federally collected hate crime data.³¹ Like the FBI's overall crime enumeration efforts, the national FBI hate crime program is going through a period of change from the traditional UCR system to the more modern and detailed National Incident Based Reporting System (NIBRS) collection platform.

Moreover, the FBI effort is impacted by long-standing voluntary and uneven agency participation.³² Of the 15,138 participating agencies in 2020, only 2,389 or 15.8% reported at least one hate crime. Interestingly, the number of participating agencies actually reporting instances of hate crimes was the highest in decades, while the number of overall participating agencies was the lowest since 2015. One example of how these limitations impact national data is evident in the South, a region with the highest proportion of Black Americans but—with certain exceptions—the lowest reporting rates. This impacts data not only regionally but racially as well—not to mention disastrously impacting hidden victims whose victimizations are never formally recorded or addressed institutionally.³³

While individual agencies do change policies, these broad overall data efforts are considered valid *indicators* of hate crime trends because collectively, local reporting practices tend to remain stable over time. This is despite the fact that reported cases can rise when individual agencies improve policies, intake practices, and training. Still, with thousands of agencies reporting across the nation, important conclusions can be drawn.

Many factors affect whether victims report crimes and whether the police record them. The Bureau of Justice Statistics' (BJS) most recent research shows that a slight majority of victims report their victimization, but

³¹ See, e.g., *2021 Hate Crime Statistics*, *supra* note 7 (“As a result of the shift to NIBRS-only data collection, law enforcement agency participation in submitting all crime statistics, including hate crimes, fell significantly from 2020 to 2021.”); David Nakamura, *Ohio Submits Updated Hate-Crime Figures to FBI that Would Make 2020 U.S. Tally Highest Since 2001*, WASH. POST (Sept. 10, 2021), https://www.washingtonpost.com/national-security/ohio-hate-crime-data-us/2021/09/10/8f18fb28-1261-11ec-882f-2dd15a067dc4_story.html [<https://perma.cc/T8MX-XX7C>] (reporting that Ohio state authorities blamed a 2020 undercount to the FBI of bias crimes on a “technical glitch”).

³² Ken Schwencke, *Documenting Hate: Why America Fails at Gathering Hate Crime Statistics*, PROPUBLICA (Dec. 4, 2017, 8:00 AM), <https://www.propublica.org/article/why-america-fails-at-gathering-hate-crime-statistics> [<https://perma.cc/DDP4-E4MP>] (reporting a historical low participation rate of local law enforcement agencies and a high percentage of agencies reporting zero hate crimes, 88% reported zero hate crimes in 2016).

³³ See FBI Crime Data Explorer, *supra* note 1.

this generalization does not extend to certain communities.³⁴ There are also many local and departmental factors that affect whether the police accurately classify crimes when victims report. This is seen in crime reporting generally with older traditional offense categories, as similar but distinct offenses are sometimes not correctly categorized in reports (such as aggravated assaults versus simple assaults or theft versus burglary).³⁵ Similarly, many diverse factors affect whether the police detect a bias motivation and classify the crime accordingly.³⁶ Thus, these dispersed stable data sets are far more valid as indicators of trends—particularly with regard to shifts and targeting—than as accurate estimates of volume.

While the absence of various agency reports impacts overall numbers, these nationally dispersed data, especially when combined with other social science data, provide insight about the state of social cohesion. More specifically, the data also offers insight about specific emerging community vulnerabilities and intergroup fault-lines.

II. HISTORY OF HATE CRIME DATA COLLECTION EFFORTS IN THE UNITED STATES

A. THE HATE CRIME STATISTICS ACT AND THE FBI'S UNIFORM CRIME REPORTING

The oldest national crime tally comes from the FBI's Uniform Crime Reporting Program (UCR), which has compiled crime data on selected offenses since the 1930s and on hate crimes since the early 1990s, following the passage of the Hate Crime Statistics Act (HCSA).³⁷ The HCSA was

³⁴ GRACE KENA & ALEXANDRA THOMPSON, U.S. DEP'T OF JUST., HATE CRIME VICTIMIZATION, 2005-2019 6, 19 (2021).

³⁵ James J. Nolan, Stephen M. Haas & Jessica S. Napier, *Estimating the Impact of Classification Error on the "Statistical Accuracy" of Uniform Crime Reports*, 27 J. QUANT. CRIMINOLOGY 497, 510 (2011).

³⁶ James J. Nolan, Stephen M. Haas, Erica Turley, Jake Stump & Christina R. LaValle, *Assessing the "Statistical Accuracy" of the National Incident-Based Reporting System Hate Crime Data*, 59 AM. BEHAV. SCIENTIST 1562, 1567–68 (2015); JEANINE BELL, *POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIME* 12–27 (2002) (analyzing the constitutional and practical challenges faced by police officers in deciding what may constitute evidence for bias motivation).

³⁷ Hate Crimes Statistics Act of 1990, 34 U.S.C. § 41305; *Crime/Law Enforcement Stats (Uniform Crime Reporting Program)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr> [<https://perma.cc/6SD4-Q4HS>]; *Hate Crime Statistics*, FED. BUREAU OF

signed into law by President George Bush in April 1990.³⁸ The HCSA set into motion the development of the first national hate crime data collection system through the FBI's UCR Program.³⁹

We define hate crimes as criminal events where the target is selected because of their actual or perceived group status. The FBI definition is “a committed criminal offense motivated in whole or in part by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.”⁴⁰ The HCSA initially required the Attorney General to collect data voluntarily submitted by the states on crimes motivated by race, religion, sexual orientation, and ethnicity, with an amendment to add disability later in the 1990s.⁴¹

Federal hate crime protections and data collection were significantly expanded with the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, signed by President Obama in October 2009.⁴² The criminal provision improved on the existing criminal civil rights statute,⁴³ passed in 1968, by expanding both the groups protected and civil rights covered. The Shepard–Byrd Act punishes violence and attempted violence—subject to certain federal jurisdictional requirements—involving bodily injury through firearms, fire, explosives, and other dangerous devices. With respect to data collection, the Act also expanded the mandate of the HCSA to cover additional categories such as gender and gender identity which were added in 2013. In 2015, the UCR also further subdivided various religious and ethnic subcategories into a total of thirty-four victim groups.⁴⁴ In the decades since the HCSA was passed, the DOJ has invested in research

INVESTIGATION, <https://www.fbi.gov/how-we-can-help-you/need-an-fbi-service-or-more-information/ucr/hate-crime> [<https://perma.cc/G3WY-HLS3>].

³⁸ Remarks on Signing the Hate Crimes Statistics Act, 1 Pub. Papers 547–48 (April 23, 1990).

³⁹ James J. Nolan, III, Yoshio Akiyama & Samuel Berhanu, *The Hate Crime Statistics Act of 1990: Developing a Method for Measuring the Occurrence of Hate Violence*, 46 AM. BEHAV. SCIENTIST, 136, 137 (2002).

⁴⁰ DEP'T OF JUST., CRIM. JUST. INFO. SERVS., HATE CRIME DATA COLLECTION GUIDELINES AND TRAINING MANUAL, 9 (2022).

⁴¹ *Id.* at 1–3.

⁴² Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249.

⁴³ *See* 18 U.S.C. § 245.

⁴⁴ UNIF. CRIME REPORTING PROGRAM, FED. BUREAU OF INVESTIGATION, 2015 HATE CRIME STATISTICS: TABLES AND DATA DECLARATIONS (2016).

and adopted policies aimed at improving participation in the program and the accurate reporting of hate crimes by local police.⁴⁵

More recently, the FBI developed a comprehensive program within the UCR program that collects additional descriptive information on an expanded number of offenses.⁴⁶ This new and more detailed data collection system, NIBRS, which also covers hate crimes, replaced the older UCR. NIBRS data on hate crime from various states first became available in 2001 for the three-year period from 1997-1999 and the transition from the UCR to the NIBRS was required of agencies in 2021.⁴⁷

In 2021, the COVID-19 Hate Crime Act, which also incorporated a previous hate crime bill, was enacted to enhance victim hate crime reporting through local outreach and expanded multilingual programs and grants.⁴⁸ The law also requires the DOJ to create a position to specifically address hate crimes related to the COVID-19 pandemic.⁴⁹ In California, legislation in recent years has provided for audits of police reporting programs, the creation of a Commission on the State of Hate, and a proposal to mandate policies and guided reporting forms across the state.⁵⁰

⁴⁵ See, e.g., Shea W. Cronin, Jack McDevitt, Amy Farrell & James J. Nolan, III, *Bias-Crime Reporting: Organizational Responses to Ambiguity, Uncertainty, and Infrequency in Eight Police Departments*, 51 AMER. BEHAV. SCI. 213–31 (2007) (analyzing case studies funded by a grant from the Department of Justice’s Bureau of Justice Statistics to explore reporting structures implemented by local police departments and assess how likely they are to produce accurate statistics).

⁴⁶ *National Incident-Based Reporting System (NIBRS)*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/nibrs> [<https://perma.cc/8LJB-RYAD>] (last visited Sept. 6, 2022) (explaining that NIBRS goes much deeper than UCR by providing circumstances and context for crimes).

⁴⁷ *Id.*; KEVIN STROM, U.S. DEP’T OF JUST., HATE CRIME REPORTED IN NIBRS, 1997–99, (2001).

⁴⁸ COVID-19 Hate Crimes Act, Pub. L. No. 117-13, § 5, 135 Stat. 265, 266–67 (2021) (incorporating Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act of 2021, 34 U.S.C. § 30507); see also Barbara Sprunt, *Here’s What the New Hate Crimes Law Aims to Do as Attacks on Asian Americans Rise*, NPR (May 20, 2021, 4:32 PM), <https://www.npr.org/2021/05/20/998599775/biden-to-sign-the-covid-19-hate-crimes-bill-as-anti-asian-american-attacks-rise> [<https://perma.cc/SP4M-JH9R>] (“The legislation . . . aims to make the reporting of hate crimes more accessible at the local and state levels by boosting public outreach and ensuring reporting resources are available online in multiple languages.”).

⁴⁹ COVID-19 Hate Crimes Act, Pub. L. No. 117-13, § 3, 135 Stat. 265, 265–66 (2021).

⁵⁰ See Cal. Leg., Assemb. B. 1947, 2021–22 Reg. Sess. (Cal. 2022) (mandating guided policies and required reporting forms throughout the state and currently awaiting California

B. BUREAU OF JUSTICE STATISTICS

The second official government data set to include hate crimes is the complementary National Crime Victimization Survey (NCVS), which started in 1973.⁵¹ Conducted by the Bureau of Justice Statistics, the NCVS employs a vastly different methodology from that of the FBI, which relies only on official police reports voluntarily submitted by agencies. In contrast, the NCVS quantifies a comprehensive national sampling of residents who are questioned about criminal victimizations, excluding homicides and crimes against children under twelve years of age, among others.⁵² The NCVS compliments crime data reported to police by including projections for both reported and unreported crimes. Hate crime questions were added to the NCVS over a decade ago.⁵³

C. OTHER REPORTING EFFORTS: STATE AND LOCAL

Currently, hate crime statistics come from several sources: the government, academic and corporate research, the media, and private monitoring groups. In addition to federal sources, various states and municipalities publish their own reports, which sometimes vary in their definitions of hate crimes and group coverage.

In 1978, before any fixed national reporting commenced, the Boston Police Department became the first major police agency in the United States to develop a hate crime unit and data collection protocol.⁵⁴ This was followed in the 1980s by other large agencies, including the New York City Police Department and Maryland State Police. By 1985, various states, mostly in the northern part of the country and on the West Coast, enacted laws that punished crimes committed on the basis of race, national origin/ethnicity, and

Senate passage); Cal. Leg., Assemb. B. 1126, 2021–22 Reg. Sess. (Cal. 2021) (establishing a Commission on the State of Hate after being signed into law on Oct. 8, 2021).

⁵¹ See *National Crime Victimization Survey (NCVS)*, BUREAU OF JUST. STAT., U.S. DEP'T OF JUST. (May 18, 2009), <https://bjs.ojp.gov/data-collection/ncvs> [<https://perma.cc/H2M7-R3ZW>].

⁵² *Id.*

⁵³ See *id.*; LYNN LANGTON & MICHAEL PLANTY, BUREAU OF JUST. STAT., HATE CRIME, 2003–2009 (2011).

⁵⁴ GALYE OLSON-RAYMER, CAL. OFFICE OF CRIM. JUST. PLAN., EMERGING CRIMINAL JUSTICE ISSUE: WHEN HATE COMES TO TOWN - PREVENTING AND INTERVENING IN COMMUNITY HATE CRIME 8 (1989); Brian Levin, *Bias Crimes: A Theoretical and Practical Overview*, 4 STAN. L. & POL'Y REV. 165, 174–75 (1992–1993).

religion, with some also covering disability and creed.⁵⁵ At the decade's close, shortly before the HCSA enactment, nine states—mostly in the Mid-Atlantic and Northeast—had begun compiling data.⁵⁶

While the HCSA provided a system for voluntary reporting, many states and prosecutors delayed further legislative and enforcement action until the constitutionality of hate crime laws was finally approved by the Supreme Court.⁵⁷ In 1992, the Court invalidated a St. Paul city ordinance on First Amendment grounds, as it improperly criminalized selected viewpoints by banning the use of certain symbols and the expression of certain group prejudices, but not others.⁵⁸ In the landmark 1993 decision of *Wisconsin v. Mitchell*, the Court upheld penalty enhancement laws for hate crimes where a crime victim is discriminatorily selected based on group status.⁵⁹ Specifically, the Court upheld increased punishment for those who intentionally select a crime victim or property based on characteristics such as race, religion, color, national origin, and ancestry.⁶⁰

After the Supreme Court's approval, it was up to legislatures to decide which groups were covered by state criminal statutes. FBI data collection does not vary depending on which groups are covered under state law, but as a practical matter, local law enforcement action appears to be influenced by that coverage. Following *Mitchell*, more states enacted narrowly drawn penalty enhancements for hate crimes that were sidelined during prior appeals.⁶¹ In 1988, only nineteen states had hate crime laws, with the number rising to forty-one by 1999.⁶² By 2020, only three states lacked a broadly

⁵⁵ Levin, *supra* note 54, at 174.

⁵⁶ *Id.* at 175 & n.93.

⁵⁷ *Wisconsin v. Mitchell*, 508 U.S. 476, 476 (1993) (holding that enhanced penalties for hate crimes do not violate First Amendment).

⁵⁸ *R.A.V. v. City of St. Paul*, 505 U.S. 377, 377–88 (1992).

⁵⁹ *Mitchell*, 508 U.S. at 476.

⁶⁰ *Id.*; see also Brian Levin, *Hate Crimes: Worse by Definition*, 15 J. CONTEMP. CRIM. JUST. 6, 10 (1999) (“The characteristics covered by [the penalty enhancement] law included race, religion, color, national origin, and ancestry.”).

⁶¹ Levin, *supra* note 60, at 11.

⁶² VALERIE JENNESS & RYKEN GRATTET, *MAKING HATE A CRIME: FROM SOCIAL MOVEMENT TO LAW ENFORCEMENT* 94 (2001) (“By the end of 1988, nineteen states had adopted bias-intent hate crime laws By the end of 1998, however, forty-one states had passed hate crime laws.”); see also Levin, *supra* note 60, at 11 (explaining the historical background of the passage of state laws).

applicable hate crime law: South Carolina, Arkansas, and Wyoming, though many other state laws are weak or narrow in coverage and enforcement.⁶³

III. CHARACTERISTICS, FREQUENCY, AND TYPES OF HATE CRIME VARY OVER TIME

Recent government data show not only current characteristics, but changes over time. A BJS NCVS residential victimization study found that from 2015 to 2019, 90% of hate crimes were person-directed “violent” crimes and 62% were simple assaults.⁶⁴ Simple assault hate crime rates rose in the most recent three years compared to a slight decline in aggravated assault rates.⁶⁵ BJS further found that overall hate crime rose from 173,600 incidents in 2016 to 305,390 in 2019, a 76% increase.⁶⁶

The BJS report observed, “[o]verall, hate crime victimizations accounted for 1.6% of the total victimizations captured by the NCVS in 2019, up from 0.9% in 2005.”⁶⁷ In 2019, violent hate crime victimizations constituted 4.4% of all violent victimizations, a rise from 2.9% in 2005.⁶⁸ By 2019, 58% of victims reported hate crimes to police. Almost 40% of those who did not report a hate crime stated that the police would not or could not help or that it was not important enough.⁶⁹ In comparison to crime in general, BJS found that from 2015 to 2019, hate crimes were more likely to involve multiple offenders, strangers, and offenders over thirty years old.⁷⁰ Anti-Latino and gender-related hate crime took up a larger share of victimizations in the BJS report than in complementary FBI data.⁷¹

In 2020, the total reported hate crimes in the FBI report rose 13%.⁷² The 2020 FBI data also indicated a material shift toward racial hate crime, longer sustained periods of elevation, and the continuing trend of elevated person-directed hate crime. These hate crimes, which consist mostly of threats and

⁶³ LEVIN, ET AL., *supra* note 1, at 41–42.

⁶⁴ KENA & THOMPSON, *supra* note 34, at 4.

⁶⁵ *Id.* at 1.

⁶⁶ *Id.* at 3.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 6.

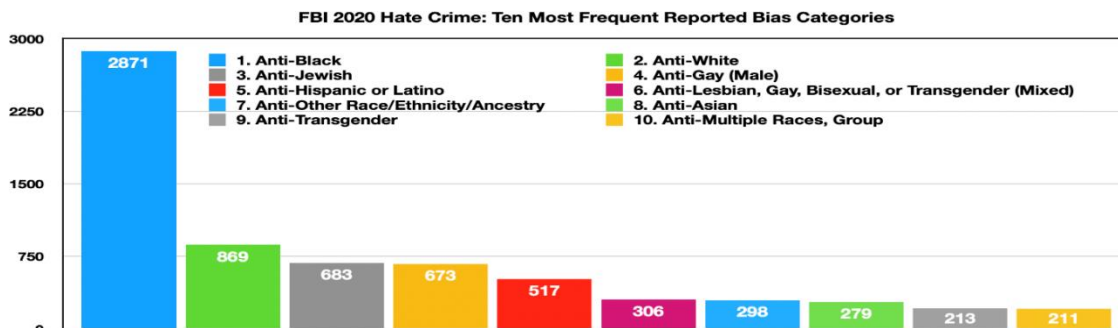
⁷⁰ *Id.* at 10.

⁷¹ *See id.* at 5, 8; FBI Crime Data Explorer, *supra* note 1.

⁷² FBI Crime Data Explorer, *supra* note 1.

assaults, rose to the highest level since 2001.⁷³ Person-directed crimes accounted for over two-thirds of all 2020 FBI enumerated hate crimes.⁷⁴

Figure 8: FBI Ten Most Frequent Reported Bias Categories, 2020



In 2020, the most frequently targeted groups in the U.S. were Black Americans (35%); the LGBTQ+ community (13%); whites (11%); Jews (8%); and Latinos (6%). Similarly, over the last few decades, more than three-quarters of FBI reported hate crimes were perpetrated against five groups: Black Americans, Jews, whites, gay males, and Latinos. While race and ethnicity were also the most common bias in the latest BJS survey, representing just under 60% of violent hate crime victimizations, gender was second, with over 25%, followed by sexual orientation and disability, indicating a significant divergence from the FBI's very low number of reports of gender- and disability-motivated hate crimes.⁷⁵

In 2020, Black, Asian, disability, transgender, Sikh, Catholic, and white hate crimes increased, with declines in Jewish and Muslim hate crimes. Anti-Muslim hate crimes, which hit a decade high in 2016, fell 65% from that level in 2020, following a head-and-shoulders multi-year peak over recent years.⁷⁶

Hate crime targeting patterns over the past decade further diverged from that of earlier patterns. Racial hate crimes previously hovered around a 60%

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See KENA & THOMPSON, *supra* note 34, at 5 tbl.3; *see also id.*

⁷⁶ FBI Crime Data Explorer, *supra* note 1.

of the total share of hate crimes.⁷⁷ However, this multi-decade-long trend of a shrinking proportion of hate crimes targeting Black Americans ended in 2020, with 35% of hate crimes targeting them that year. In 1996, 42% of hate crimes targeted Black Americans, but by 2019 it had declined to 27% before resurging.⁷⁸

To understand how impactful the rise of hate crimes was in 2020, we examined other turbulent periods, particularly over the last two decades. To do so, we readjusted our methodology to find the highest volume days and months for hate crime overall, and then further broke down the data across different targeted bias groups. Because of inconsistencies in different FBI data files, we also adjusted 2019 and 2020 master file figures down to correct for the overcounting of incidents that diverged from the “official” totals reported by the FBI in another (though less detailed) data set.⁷⁹

⁷⁷ *See id.*; *see also* KENA & THOMPSON, *supra* note 34, at 5 tbl.3.

⁷⁸ FBI Crime Data Explorer, *supra* note 1.

⁷⁹ *See id.*

Figure 9: FBI Reported U.S. Hate Crime Incidents, 1991–2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1991	302	287	287	309	371	363	461	511	485	510	399	304	4,589
1992	495	514	615	608	830	546	492	561	479	569	525	433	6,667
1993	634	596	571	686	690	651	718	680	624	662	617	479	7,608
1994	406	455	613	541	502	461	509	533	552	585	418	379	5,954
1995	584	573	711	671	565	715	719	691	756	857	586	522	7,950
1996	692	682	757	786	764	792	815	764	777	761	652	548	8,790
1997	558	599	740	717	794	714	719	683	703	769	589	522	8,107
1998	606	606	665	671	717	697	741	668	675	784	569	503	7,902
1999	566	645	637	778	741	638	708	718	690	720	596	507	7,944
2000	567	639	757	759	705	664	672	705	762	891	615	483	8,219
2001	625	546	726	798	737	755	687	711	1,966	1,048	621	510	9,730
2002	546	517	705	711	670	668	651	637	762	653	539	426	7,485
2003	528	491	684	678	703	653	644	677	684	692	624	487	7,545
2004	521	630	683	711	747	658	673	632	651	717	587	475	7,685
2005	547	550	648	697	715	614	636	653	627	701	573	450	7,411
2006	549	535	638	730	704	682	744	641	688	698	611	495	7,715
2007	550	482	630	678	718	683	686	657	748	740	572	481	7,625
2008	577	614	693	698	745	689	714	693	708	737	686	485	8,039
2009	479	491	565	549	615	591	557	639	594	628	500	405	6,613
2010	474	437	600	664	614	538	559	619	657	635	474	362	6,633
2011	438	386	518	544	593	557	560	576	555	588	482	502	6,299
2012	560	544	589	577	629	571	612	568	590	518	465	371	6,594
2013	404	400	483	529	569	574	604	584	518	526	445	408	6,044
2014	327	390	441	489	520	511	513	562	509	559	385	393	5,599
2015	410	364	438	515	563	562	594	542	482	475	466	460	5,871
2016	382	384	496	489	495	541	613	522	537	567	759	491	6,276
2017	552	582	649	572	661	654	614	680	647	645	584	481	7,321
2018	485	499	549	552	651	628	662	644	637	691	585	588	7,171
2019	475	451	611	599	669	645	657	662	668	681	577	592	7,287
2020	502	516	517	412	620	1,179	927	870	764	805	626	525	8,263
Total	15,341	15,405	18,216	18,718	19,617	19,194	19,461	19,283	20,495	20,412	16,727	14,067	216,936

The period after the 9/11 attacks not only set a modern record of 9,730 hate crimes in a year in the United States, but it also impacted a variety of other records. September and October 2001 were two of the three highest months for hate crime in history, with 1,966 and 1,048 incidents respectively. The underlying daily numbers were similar: 9 of the 10 worst days for hate crime overall in the United States came within ten days of the attack and 16 of the 20 worst days on record fell in either September or October of 2001. The 8 worst days for hate crime ever and the only days numbering over 100 all immediately followed the terrorist attack.⁸⁰ Outside of the 9/11 period, other periods registering with alarmingly high rates of hate crime were around the acquittals of Los Angeles Police Department officers in the Rodney King case in 1992, elections, a violent insurgency during the 2003

⁸⁰ *Id.*

Iraq War, the 1995 O.J. Simpson acquittal, and the aftermath of the George Floyd murder by police in 2020.⁸¹

Figure 10: FBI Reported Hate Crime, Monthly 1991-2020 (with labels)

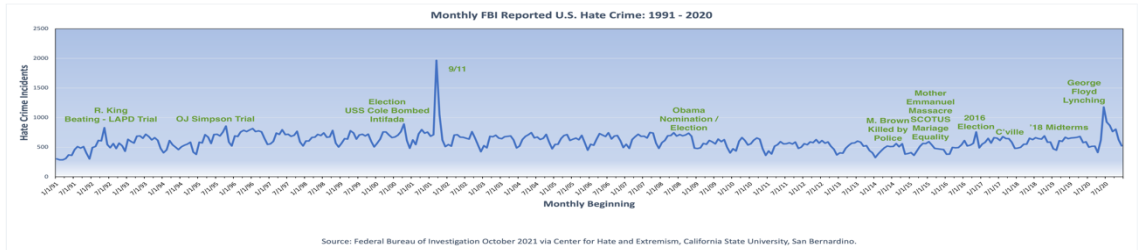


Table 2: Highest Months of FBI Reported Hate Crime

1.	2001 Sept.	1966	9/11
2.	2020 June	1179	George Floyd murder/social justice protests
3.	2001 October	1048	9/11
4.	2020 July	927	George Floyd murder/social justice protests
5.	2000 October	891	USS Cole/Second Intifada/ U.S. election race
6.	2020 August	870	George Floyd murder/social justice protests/Kenosha
7.	1995 October	857	O.J. Simson acquitted/Million Man March
8.	1992 May	830	LAPD acquittals in Rodney King case/LA riots
9.	1996 July	815	Welfare reform bill/Olympic Centennial Park bombing
10.	2001 April	809	Riots after OH inter-racial police shooting leaves unarmed black man dead
11.	October 2020	805	Presidential election season

⁸¹ LEVIN, ET AL., *supra* note 1, at 21; *see also* Seth Mydans, *The Police Verdict; Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES (Apr. 30, 1992), <https://www.nytimes.com/1992/04/30/us/the-police-verdict-los-angeles-policemen-acquitted-in-taped-beating.html>; N.R. Kleinfeld, *U.S. Attacked; Hijacked Jets Destroy Twin Towers and Hit Pentagon in Day of Terror*, N.Y. TIMES (Sept. 12, 2001), <https://www.nytimes.com/2001/09/12/us/us-attacked-hijacked-jets-destroy-twin-towers-and-hit-pentagon-in-day-of-terror.html>; Nell Henderson & Marc Fisher, *O.J. Simpson Acquitted*, WASH. POST (Oct. 3, 1995), <https://www.washingtonpost.com/archive/politics/1995/10/03/oj-simpson-acquitted/3307d174-cbe2-46c5-80c6-0d0b90a0d889>; Sarhang Hamasaeed & Garrett Nada, *Iraq Timeline: Since the 2003 War*, U.S. INST. OF PEACE (May 29, 2020), <https://www.usip.org/iraq-timeline-2003-war> [<https://perma.cc/9NJC-GGMX>].

12. 2001 April	798	Unrest after OH police shooting leaves unarmed black man dead
13. 1997 May	794	OKC bomber Timothy McVeigh trial
14. 1996 June	792	FBI-MT Freeman standoff
15. 1996 April	786	Israel/Lebanon violence
16. 1999 April	778	Columbine school massacre/U.S. & Allies bomb Serbs
17. 1998 October	784	Matthew Shepard killed/ Impeachment controversy/U.S. Budget
18. 1996 Sept.	777	U.S. Bombs Iraq/Welfare Law Controversy/ Tupac Killed
19. 1997 October	769	International Financial Crisis
20. TIE 2020 Sept.	764	Protests/ COVID Resurgence/Ginsburg
20. TIE1996 Aug.	764	Welfare Reform Act Passes/Campaign

These 9/11 era victimizations were borne disproportionately by certain groups. The 330 anti-Muslim hate crimes in September 2001 alone were not only the highest ever monthly total, but also more than the total of any other full year.⁸² Of the year's record 499 anti-Muslim hate crimes, over 460 occurred in the last four months of 2001, following the 9/11 attacks.⁸³ Ethnic and national origin crimes more than doubled from the previous year, driven by a 324% rise from 354 to 1,501 in anti-Arab hate crimes, which at that time were classified in the more amorphous "non-Hispanic ethnic/nationality" category.⁸⁴ The anti-ethnic non-Hispanic hate crime spike after 9/11 was numerically more than double that of anti-Muslim crimes, which also increased.⁸⁵ Similar increases, though far less dramatic, emerged more recently when hate crimes against Muslims spiked around the December

⁸² LEVIN, ET AL., *supra* note 1, at 27.

⁸³ *Id.*

⁸⁴ Compare UNIF. CRIME REPORTING PROGRAM, FED. BUREAU OF INVESTIGATION, 2000 HATE CRIME STATISTICS 7 (2001) (reporting 911 ethnicity/national origin crimes and 354 anti-other ethnicity/national origin crimes), with UNIF. CRIME REPORTING PROGRAM, FED. BUREAU OF INVESTIGATION, 2001 HATE CRIME STATISTICS 9 (2002) (reporting 2,098 ethnicity/national origin crimes and 1,051 anti-other ethnicity/national origin crimes).

⁸⁵ LEVIN & NAKASHIMA, *supra* note 4, at 32.

2015 San Bernardino Terror attack and Muslim Ban proposal, the 2016 election, and the June 2016 Pulse night club massacre.⁸⁶

In the week before the 9/11 terror attacks, there were five anti-Muslim and seven “anti-Ethnic, non-Hispanic” crimes.⁸⁷ In the week of the 9/11 attacks, from September 11 through September 17, there were 503 anti-ethnic, non-Hispanic hate crimes and 197 anti-Muslim crimes.⁸⁸

Table 3: FBI Anti-Muslim Hate Crime by Day, September 2001

9/11	46	9/16	20	9/21	13
9/12	50	9/17	23	9/22	10
9/13	27	9/18	19	9/23	12
9/14	16	9/19	9	9/24	10
9/15	15	9/20	9	9/25	6

Even for Latinos, September 2001, with seventy-seven criminal incidents, was the second worst month ever, perhaps arising from perpetrators who confused them with Arabs, or because of a possible rise in xenophobia overall.⁸⁹ All other months in the top five for anti-Latino hate crime were in the spring or summer from 2006 to 2008 during a time of increased Latino immigration and political debate on the topic.⁹⁰

For Jewish people who, along with Israelis, were falsely implicated in bigoted conspiracy theories about the 9/11 terror attacks, September 2001 ended up being the third worst month of the decade with 126 incidents.⁹¹ For the other traditionally frequently targeted victim groups of hate crime, September 2001 was not even in the ten worst months. For 9/11, the historic overall hate crime spike was driven by attacks against Arabs and Muslims and, to a lesser extent, Jews and Latinos, while for other groups, like the LGBTQ+ community, hate crimes declined in September from a previous spike.⁹²

⁸⁶ LEVIN, ET AL., *supra* note 1, at 27; LEVIN & NAKASHIMA, *supra* note 4, at 19.

⁸⁷ FBI Crime Data Explorer, *supra* note 1.

⁸⁸ LEVIN & NAKASHIMA, *supra* note 4, at 32.

⁸⁹ FBI Crime Data Explorer, *supra* note 1.

⁹⁰ *Id.*; LEVIN & NAKASHIMA, *supra* note 4, at 15 (arguing that political debates on the topic can lead to increase in anti-Latino hate crimes).

⁹¹ FBI Crime Data Explorer, *supra* note 1.

⁹² *Id.*

A. WORDS MATTER TOO

Analysis of disaggregated FBI hate crime data highlights the wave of anti-Muslim hate crime following the 9/11 terrorist attacks. After President Bush made statements of tolerance at a Washington, D.C. mosque on September 17, 2001, anti-Muslim hate crimes reversed course and dropped dramatically across the country the very next day. For the seven days commencing on 9/11 and ending on September 17, 2001, there were a total of 197 anti-Muslim hate crimes, compared to only eighty-two in the following week, for a 58% decline.⁹³

During the late 2015 portion of that presidential campaign season, something different happened. Leading candidates aggressively argued for, and sometimes backtracked on: shuttering mosques; registering Muslims in databases or increasing surveillance for adherents; killing relatives of terrorists; denying entry to orphan refugee children; promoting waterboarding; creating a government agency to promote Judeo-Christian values; and establishing religious tests for refugee admission, election to the presidency, and appointment to the Supreme Court.⁹⁴ Hate crimes against Muslims steadily climbed for the last four months of the year as issues relating to refugees and violence overseas became the subject of debate.⁹⁵ December 2015 was the third highest month for anti-Muslim hate crimes since 1992, and the annual total hit its highest level since 2001.⁹⁶

⁹³ LEVIN & NAKASHIMA, *supra* note 4, at 32.

⁹⁴ *Id.* at 33–34.

⁹⁵ *Id.*

⁹⁶ FBI Crime Data Explorer, *supra* note 1.

Figure 11: Reported U.S. Anti-Muslim Bias Hate Crime Incidents, 1991–2020

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1991	1	3	-	-	2	2	-	1	1	-	-	-	10
1992	-	2	1	-	1	2	1	2	4	1	-	1	15
1993	-	-	1	2	1	-	-	2	2	2	1	2	13
1994	2	1	2	-	2	-	2	-	2	1	2	3	17
1995	3	2	1	10	-	2	-	6	1	2	1	1	29
1996	-	2	4	3	14	1	1	1	-	-	1	-	27
1997	-	1	5	6	1	4	2	1	2	4	-	2	28
1998	4	2	1	4	3	2	-	1	2	1	-	1	21
1999	4	6	1	-	2	2	1	5	4	3	1	3	32
2000	2	2	3	1	1	1	3	1	4	8	2	1	29
2001	1	1	2	2	5	2	5	3	330	94	25	29	499
2002	13	9	14	10	16	12	17	11	26	8	11	9	156
2003	11	7	21	21	16	12	8	15	19	6	7	5	148
2004	8	12	9	12	29	15	10	7	18	21	7	10	158
2005	11	3	9	12	15	14	16	12	16	7	14	9	138
2006	7	6	13	14	11	12	18	19	16	15	13	12	156
2007	12	13	7	16	12	7	11	6	13	10	2	6	115
2008	7	11	8	10	11	8	13	6	6	10	10	5	105
2009	9	9	6	6	8	4	12	14	9	9	14	7	107
2010	9	10	14	14	17	11	12	14	18	21	10	10	160
2011	10	6	11	18	15	14	14	22	20	8	13	11	162
2012	17	8	10	7	12	18	10	15	20	6	17	8	148
2013	3	8	12	17	18	4	16	15	16	10	9	10	138
2014	7	7	14	13	6	12	14	16	29	18	13	7	156
2015	17	16	12	18	21	18	17	8	13	21	30	69	260
2016	23	14	30	23	20	33	29	25	19	25	40	29	310
2017	27	29	28	27	21	19	28	17	15	23	28	15	277
2018	15	18	22	22	17	17	13	13	14	19	7	14	191
2019	7	7	24	20	20	23	12	13	18	11	14	11	180
2020	8	16	9	11	7	6	11	8	10	9	8	7	110
Total	238	231	294	319	324	277	296	279	667	373	300	297	3,895

On December 2, 2015, during the presidential campaign, the most fatal terrorist attack since 9/11 in the United States struck San Bernardino, California, killing fourteen Americans and wounding twenty-two more.⁹⁷ Candidate Trump first proposed his “Muslim Ban” on the internet and later at a nationally televised evening rally on December 7, 2015, five days after the San Bernardino terror attack, and almost a month after another attack struck Paris.⁹⁸

We compared various post-San Bernardino attack daily averages to the daily average from earlier in the year: January 1, 2015 to December 1, 2015. Our investigation examined Anti-Arab and Anti-Muslim hate crime trends for these same time periods since we were interested in how Muslims and Arabs might be specifically targeted for retaliation after high-profile terrorist attacks. We found that this was likely the case, with the daily average more

⁹⁷ LEVIN & NAKASHIMA, *supra* note 4, at 33.

⁹⁸ *Id.*; FBI Crime Data Explorer, *supra* note 1.

than tripling.⁹⁹ In the five days after the San Bernardino attack, the daily anti-Muslim/anti-Arab hate crime average spiked by 318%, going from 0.67 hate crimes per day to 2.80 hate crimes per day.¹⁰⁰

However, during the eleven days following the Muslim Ban announcement, hate crimes against Muslims rose to 3.5 per day, or 415% above the previous daily average. The rise immediately following Trump's announcement was a 23% additional increase over the elevated levels on the five previous days after the San Bernardino attack. The five worst days for anti-Muslim hate crime in 2015, though, occurred during the two weeks following the Muslim Ban announcement—not during the initial period following the attack.¹⁰¹

As with anti-Asian hate crime in early 2020, total hate crime averages declined in December 2015 amid a sharp increase directed at a newly targeted and negatively stereotyped sub-group. Anti-Muslim (and Arab) hate crime rose during that period, making December 2015 the third worst month for hate crime against Muslims ever. December 2015 also exhibited a 20% increase for all hate crime over the previous three-year average for December. While the full month of December 2015 was slightly down from November 2015 for overall total hate crime, anti-Muslim hate crime rose 130%, from 30 to 69 incidents over the previous month for a total not seen since 2001 or since.¹⁰²

B. ELECTION 2016

The end of the campaign season in November 2016 was particularly violent. It was the worst month for hate crime in fourteen years and unlike the previous December where Muslims and Arabs bore the brunt, these increases were more widely dispersed. Our analysis of the updated FBI archive data sets shows that November 2016 (at 759 hate crimes) was the highest monthly overall total since September 2002—the first anniversary of the 9/11 attacks. It was also the worst November going back to 1991 when systemic national record keeping began. The fourth quarter of 2016, which encompassed election time, was the worst fourth quarter to date for hate

⁹⁹ LEVIN & NAKASHIMA, *supra* note 4, at 33.

¹⁰⁰ *Id.*

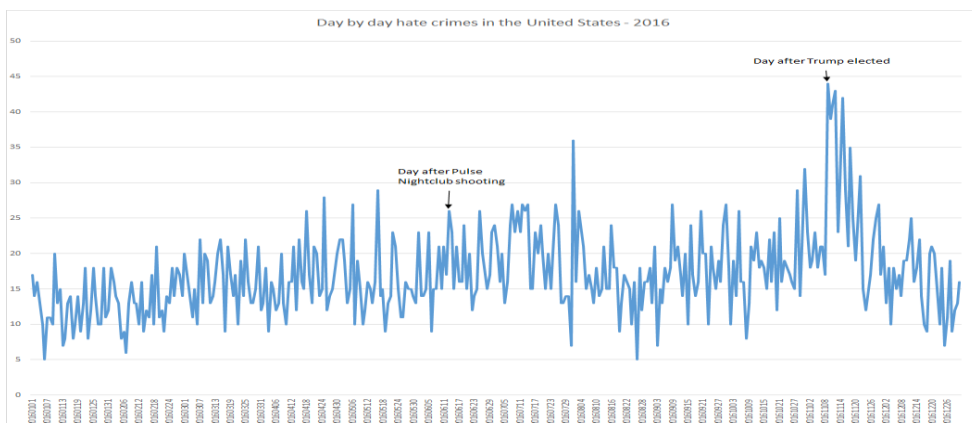
¹⁰¹ *Id.*

¹⁰² FBI Crime Data Explorer, *supra* note 1.

crime since 2008 when President Obama was elected, a year with far more hate crime overall: 8,039 incidents compared to 2016's 6,276.¹⁰³

Further, we found that hate crimes more than doubled to forty-four on November 9, 2016, the day after the election, and a large daily spike occurred in the two weeks following the election. The day after the elections recorded the highest number of hate crimes of any day that decade, the second highest in the fifteen years since the post-9/11 period and was among the fifty highest days ever.¹⁰⁴

Figure 12: FBI Hate Crime by Day 2016



Previously, non-governmental organizations (NGOs), like the Alabama-based Southern Poverty Law Center (SPLC), found significant increases in bigoted incidents of all kinds during that period. The SPLC data set does not provide a systemic overall breakdown of criminal incidents because the intake is primarily through a publicly accessible, but somewhat unvetted web portal.¹⁰⁵ In addition, there were no previous SPLC data sets to make chronological comparisons.¹⁰⁶

¹⁰³ *Id.*

¹⁰⁴ *Id.*

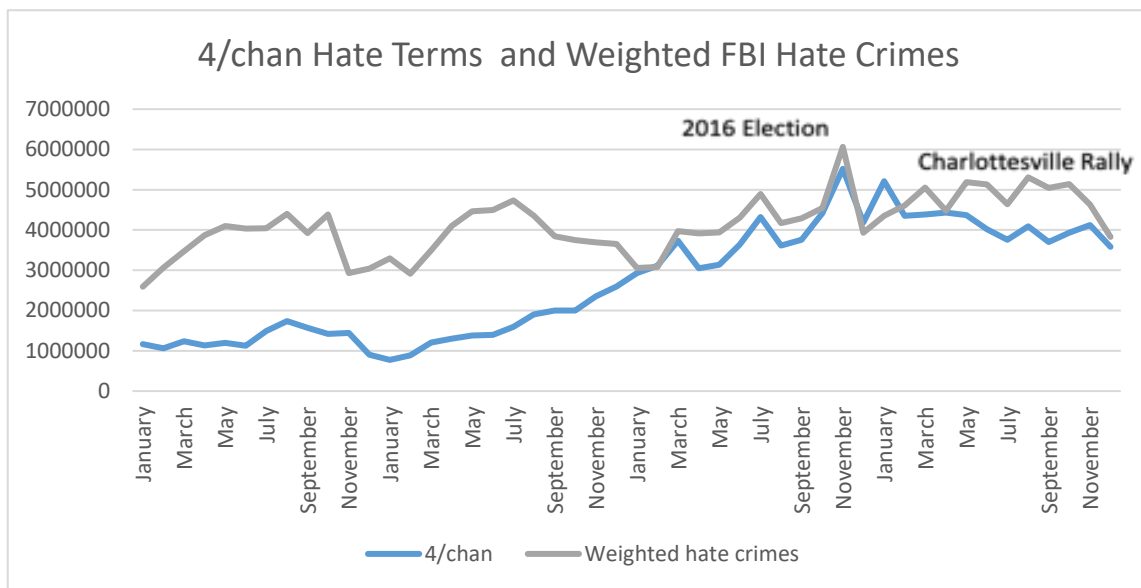
¹⁰⁵ Hatewatch Staff, *Update: 1,094 Bias-Related Incidents in the Month Following the Election*, S. POVERTY L. CTR. (Dec. 16, 2016), <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election> [<https://perma.cc/A4E6-JQHF>].

¹⁰⁶ *Id.*

Wil Carless' analysis of Pro Publica's Documenting Hate database found over 300 mostly non-criminal incidents out of 4,700 incidents tracked in thirty-nine states, where hate speech also invoked the president's name or slogan. One example of non-criminal incident on the day after the 2016 election was this invective directed at a Black woman departing a San Diego grocery store by a white motorist: "F**k you, n*****, go back to Africa. The slave ship is loading up . . . Trump!"¹⁰⁷

What was also particularly noteworthy, however, was not only the increase, but how broad it was across a wide range of victim groups that do not typically experience a correlative rise in hate crime. We measured a two-week spike in overall hate crime totals beginning with the 2016 Presidential Election on Tuesday, November 8, 2016. The spike was driven in large part by several increases within specific bias-type subgroups, including anti-race (particularly anti-Black, but also anti-Latino), anti-gay, and anti-religious (anti-Jewish and anti-Muslim).¹⁰⁸

Figure 13: 4Chan Hate Terms and FBI Hate Crime, 2014–2017



¹⁰⁷ Will Carless, *They Spewed Hate. Then They Punctuated It with the President's Name*, SALON (May 7, 2018) https://www.salon.com/2018/05/07/they-spewed-hate-then-they-punctuated-it-with-the-presidents-name_partner [<https://perma.cc/W2LZ-B2YQ>].

¹⁰⁸ FBI Crime Data Explorer, *supra* note 1; LEVIN & NAKASHIMA, *supra* note 4.

Hate crimes, along with various specific bias categories, spiked after the election. Prior to the election, hate crime incidents averaged slightly over sixteen per day; however, in the two weeks following the election, the average increased 92% to slightly over thirty-one hate crimes per day. Disaggregating total hate crimes by bias types revealed that anti-Hispanic/Latino hate crimes comprised the largest percentage increase, rising 176% after the election, from an average of 0.88 to 2.43 hate crimes per day. This was followed by hate crimes against Muslims or Arabs, which had the second highest percentage increase at 78%, going from 0.92 hate crimes before the election to 1.64 hate crimes per day in the two weeks after the election. Hate crimes against Black Americans spiked by 77% after the election; however, anti-Black bias incidents had higher daily averages before and after the election compared to any other group, going from 4.72 to 8.36 hate crime victimizations per day. This comports with FBI hate crime data showing that hate crimes against Blacks are persistently the most frequent among all bias types nationally. Hate crimes against whites followed a similar pattern, increasing 62% after the election, going from a daily average of 1.92 to 3.21.¹⁰⁹

In May 2018, USA Today published a content analysis of 3,517 Facebook ads placed by the indicted Russian Internet Research Agency (IRA) from June 2015 through August 2017 that were released by the House Permanent Select Committee on Intelligence.¹¹⁰ The analysis found “the [IRA] consistently promoted ads designed to inflame race-related tensions. Some dealt with race directly; others dealt with issues fraught with racial and religious baggage such as ads focused on protests over policing, the debate over a wall on the U.S. border with Mexico and relationships with the Muslim community.”¹¹¹ Specifically, the analysis found that the majority of ads (approximately 1,950 or 55%) “made express references to race” and made twenty-five million “ad impressions.”¹¹² The number of race-related ads significantly increased in the fourth quarter of 2016, a time that the nation

¹⁰⁹ FBI Crime Data Explorer, *supra* note 1; LEVIN & NAKASHIMA, *supra* note 4.

¹¹⁰ Nick Penzenstadler, Brad Heath & Jessica Guynn, *We Read Every One of the 3,517 Facebook Ads Bought by Russians. Here’s What We Found*, USA TODAY (July 9, 2020, 6:31 PM), <https://www.usatoday.com/story/news/2018/05/11/what-we-found-facebook-ads-russians-accused-election-meddling/602319002> [<https://perma.cc/UCA3-8JQZ>].

¹¹¹ *Id.*

¹¹² *Id.*

saw its worst quarter for hate crime in nine years, the worst November ever recorded, and a 26% increase over the same quarter in 2015.¹¹³ The increases in these ad buys correlated to hate crime increases the following month.¹¹⁴

As bad as the 2016 election and the period after the 9/11 attacks were, the period starting in 2020 featured its own distinct fissures. First, for overall hate crime in 2020, there was a broad shift to racial attacks that remained elevated for longer periods. The initial period of narrow targeting toward Asians starting in March and then a bifurcated increase in June included a sharp rise in anti-Black and anti-white hate crime. However, anti-Black hate crime rose more and stayed elevated for longer, so much so that those increases elevated overall hate crime totals for months.¹¹⁵ It took six months, until December, for overall monthly totals to get below May 2020 averages, prior to the initial surge month of June 2020 (George Floyd was murdered on May 25th).¹¹⁶ As Maya Berry, co-chair of the Hate Crime Task Force of the Leadership Conference on Civil and Human Rights and Executive Director of the Arab American Institute, told the Senate, “Crucially, the serious increase of anti-Black and anti-AAPI hate crimes reported in 2020 coincided with nationwide protests in defense of Black lives following the murder of George Floyd and rampant discrimination against AAPI communities during the COVID-19 pandemic.”¹¹⁷

Table 4: Top 10 Days with the Most FBI Hate Crime Incidents from 2016-2020

		Year	Date	Number of Incidents
1	G. Floyd Lynching/Protests	2020	06/01	57
2	G. Floyd Lynching/Protests	2020	06/02	52
3	G. Floyd Lynching/Protests	2020	06/27	52
4	G. Floyd Lynching/Protests	2020	05/30	47

¹¹³ *Id.*; LEVIN & NAKASHIMA, *supra* note 4, at 14.

¹¹⁴ Penzenstadler et al., *supra* note 110; LEVIN & NAKASHIMA, *supra* note 4, at 14.

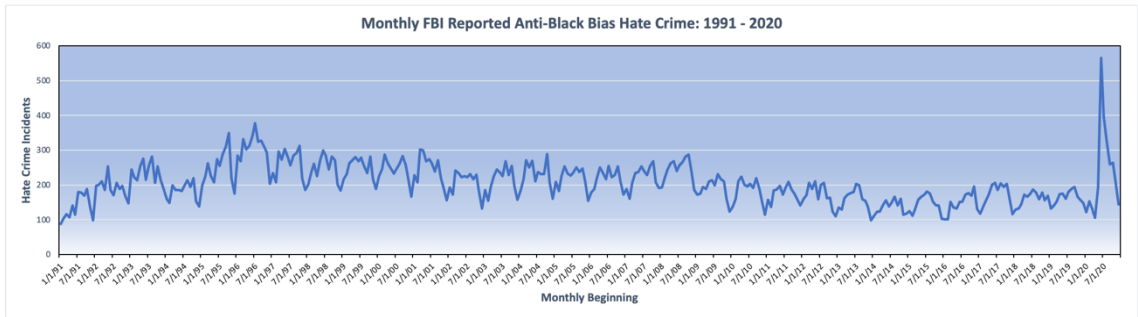
¹¹⁵ FBI Crime Data Explorer, *supra* note 1.

¹¹⁶ *Id.*; Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed In Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

¹¹⁷ Maya Berry, *Written Testimony of Maya M. Berry* “Combating the Rise in Hate Crimes,” ARAB AM. INST. (Mar. 8, 2022), <https://www.judiciary.senate.gov/imo/media/doc/Berry%20Testimony.pdf> [<https://perma.cc/PF38-NEXA>].

5	G. Floyd Lynching/Protests	2020	06/21	47
6	G. Floyd Lynching/Protests	2020	06/05	46
7	G. Floyd Lynching/Protests	2020	06/22	46
8TIE	Day after Pres. Donald Trump Elected	2016	11/09	44
8TIE	Week of Donald Trump Election	2016	11/12	44
8TIE	POTUS Impeachment Announcement	2019	12/06	44

Figure 14: Anti-Black Hate Crime, 1991-2020



In contrast, the precipitous spike in November 2016, which produced the highest daily total in thirteen years, and highest monthly total in fourteen years, was short-lived. There was a return below pre-surge levels the next month. Even after 9/11, hate crimes dropped to pre-surge levels by November.¹¹⁸

Not only did catalytic events influence initial sharp spikes, but there were also subsequent reverberations. Anti-Asian hate crimes drifted lower after peaking in March and April of 2020, after the initial COVID-19 hospitalization spike decelerated, with the downward trend in hate crime lasting right into the end of the year before reversing sharply weeks later. FBI data paused with 2020, but a separate 2021 CSHE study found that anti-Asian hate crime rose 189% in the first quarter of 2021 as the COVID-19 surge intensified into the new year. The early 2020 spike in anti-Asian hate crime,

¹¹⁸ FBI Crime Data Explorer, *supra* note 1.

at least in major U.S. cities, was initially followed by declines that sharply and abruptly reversed in 2021 before receding in early 2022.¹¹⁹

Figure 15: FBI Hate Crime, CDC Covid Hospitalizations & Anti-Asian Epithets Online

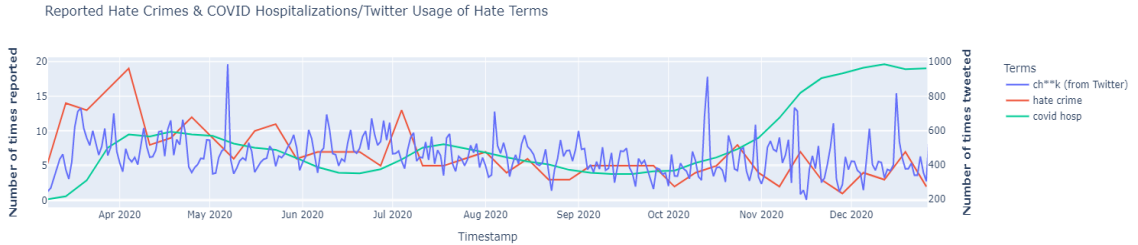


Table 5: 2021 Anti-Asian Hate Crime in Major U.S. Cities

U.S. City	Population	Hate Crimes 2020	Hate Crimes 2021	% Change 2020-2021
New York, NY	8,804,190	30	133	+343%
Los Angeles, CA	3,979,537	15	41	+173%
Chicago, IL	2,693,959	2	9	+350%
Houston, TX	2,304,580	2	1	-50%
Phoenix, AZ	1,608,139	3	3	0%
San Antonio, TX	1,434,625	0	3	-
San Diego, CA	1,386,932	1	3	+200%
Dallas, TX	1,304,379	1	1	0%
Salt Lake Metro	Countywide	0	6	-
San Jose, CA	1,030,000	17	9	-89%
Columbus, OH	905,748	1	4	+300%
San Francisco, CA	873,965	9	60	+567%
Seattle, WA	753,675	14	19	+36%

¹¹⁹ LEVIN ET AL., *supra* note 1; *Covid Data Tracker "New Hospital Admissions,"* CTR. FOR DISEASE CONTROL (Sept. 6, 2022), <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions> [<https://perma.cc/8YCC-LGXB>].

Denver, CO	715,522	3	5	+67%
Washington, DC	689,545	3	23	+667%
Boston, MA	676,000	14	24	+71%
Portland, OR	652,503	1	3	+300%
Las Vegas, NV	632,000	2	4	+100%
Minneapolis, MN	430,000	2	8	+300%
Cincinnati, OH	309,317	1	0	-100%
Bellevue, WA	152,000	1	2	+100% (thru 11/21)
Total		114	369	+223.7 %

Anti-Asian hate crime increased 224% in 2021 according to the latest twenty-one city municipal agency sample, with a total of 369 incidents just for those cities, exceeding both the FBI national figures in 2020, and the record of 355 incidents in 1996.¹²⁰ In 2020, there was a 124% rise in the major city sample, while the 2020 FBI national data found a smaller 76% increase in anti-Asian hate crime.¹²¹ Stop AAPI Hate's (SAH) web reporting page, where victims can input transgressions, revealed 10,370 "hate incidents" from March 2020 to September 2021, 16% of which were physical assaults, with 56% occurring in 2021.¹²² For 2020, the reported assaults alone to SAH were greater than all the anti-Asian hate crimes that were reported to the FBI, indicating a high number of unreported serious anti-Asian hate crimes. One of the most common offenses in reported anti-Asian hate crime are assaults. An SAH survey found 20% of AAPI respondents experienced a hate incident the previous year.¹²³

The CSHE study found a 35% increase in hate crime overall in 2021 across dozens of the largest American cities, with four of the ten largest cities hitting twenty-first century highs, while initial 2022 multi-city data totals remain virtually unchanged. Anti-Latino hate crime rose 41% with increases in Los Angeles, San Antonio, and New York City, while anti-Black hate crime rose 16% and anti-Semitic hate crimes surged 59% in major cities after declining for most of 2020. This increase was likely caused by more severe

¹²⁰ LEVIN ET AL., *supra* note 1; FBI Crime Data Explorer, *supra* note 1.

¹²¹ LEVIN ET AL., *supra* note 1; FBI Crime Data Explorer, *supra* note 1.

¹²² AGGIE J. YELLOW HORSE, RUSSELL JEUNG & RONAE MATRIANO, STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT 1, 2 (Nov. 11, 2021), <https://stopaapihate.org/wp-content/uploads/2021/11/21-SAH-NationalReport2-v2.pdf> [https://perma.cc/3Y2T-UY7].

¹²³ LEVIN ET AL., *supra* note 1; FBI Crime Data Explorer, *supra* note 1; *Id.*

gathering restrictions in densely-populated cities where Jewish people are more clustered.¹²⁴ In 2020 FBI national data, drops occurred in both anti-Semitic and anti-Muslim hate crime (which descended to near post-9/11 lows), while anti-Sikh and anti-Catholic crimes rose.¹²⁵ Anti-Semitic hate crime tripled, however, in the second quarter of 2021 in New York and Los Angeles as compared to the first quarter, during and after May's deadly three-week Gaza War, which disproportionately saw more Palestinian deaths.¹²⁶

Table 6: Hate Crimes in Major American Cities by Bias Target, 2021

New York City, NY	Anti-Jewish 196	Anti-Asian 133	Anti-Gay Male 75	Anti-Black 38	Anti-Gender Identity 21
Los Angeles, CA	Anti-Black 148	Anti-Gay 108	Anti-Hispanic 101	Anti-Jewish 80	Anti-Asian 41
Chicago, IL	Anti-Gay 26	Anti-Black 21	Anti-Asian 9	Anti-Jewish 8	Anti-Transgender 7
Houston, TX	Anti-Black 15	Anti-Hispanic 8	Anti-Gay (Male) 7	Anti-Gender Non-Conf. 6	Anti-White 5
Phoenix, AZ	Anti-Black 69	Anti-Gay (Male) 14	Anti-Hispanic 12	Anti-White 12	Anti-Jewish 8
San Antonio, TX	Anti-Black 24	Anti-LGBTQ+ 10	Anti-Hispanic 9	Anti-White [TIE] 5	Anti-Lesbian 5
San Diego, CA	Anti-Sexuality 12	Anti-Black 8	Anti-Religion 7	Anti-Hispanic 4	Anti-Asian 3
Dallas, TX	Anti-Black 9	Anti-LGBTQ+ 6	Anti-Hispanic 5	Anti-Gay (Male) 4	Anti-Transgender 3
San Jose, CA	Anti-Black 36	Anti-Hispanic 28	Anti-Asian 17	Anti-Gay (Male) 14	Anti-Other Race 5
Austin, TX	Anti-Black 9	Anti-Gay (Male) 9	Anti-Jewish 2	Anti-Hispanic 2	Anti-Transgender 2

¹²⁴ LEVIN ET AL., *supra* note 1.

¹²⁵ FBI Crime Data Explorer, *supra* note 1.

¹²⁶ *Id.*

		9	5		2
Columbus, OH	Anti-Black 22	Anti-LGBTQ+ 15	Anti-White 8	Anti-Sikh [TIE] 5	Anti-American Indian/Alaskan Native 5
San Francisco, CA	Anti-Asian 60	Anti-LGBTQ+ 15	Anti-Black 14	Anti-Jewish 8	Anti-Hispanic 6
Seattle, WA	Anti-Black 46	Anti-Asian 19	Anti-Gay (Male) 17	Anti-White 13	Anti-Hispanic 7
Las Vegas, NV	Anti-White 61	Anti-Black 33	Anti-Hispanic 18	Anti-Gay 16	Anti-Asian 4
Boston, MA	Anti-Black 46	Anti-Gay 28	Anti-Asian 24	Anti-Hispanic 11	Anti-Jewish 9
Pittsburgh, PA	Anti-Black 13	Anti-Jewish 9	Anti-White 2	TIE: 1 each anti-Gay, Arab & Immigrant	

Table 6A: Hate Crimes in Major American Cities by Bias Target, 2022

New York City, NY	Anti-Jewish 261	Anti-Asian 83	Anti-Gay Male 73	Anti-Black 53	Anti-Ethnic 39
Los Angeles, CA	Anti-Black 180	Anti-Gay (Male) 93	Anti-Jewish 89	Anti-Hispanic 83	Anti-Asian 32
Chicago, IL	Anti-Black 41	Anti-Jewish 33	Anti-White 19	Anti-Gay (Male) 17	Anti-Latino 16
Houston, TX	Anti-Black 15	Anti-Hispanic 11	Anti-Gender Non-Conforming 7	Anti-LGBT (Mixed) 6	Anti-Gay Male 5
Phoenix, AZ [Through 9/30/22]	Anti-Black 13	Anti-Hispanic 8	Anti-Gay (Male) 6	Anti-LGBT (Mixed) 4	Anti-Jewish 3
Philadelphia, PA	Anti-Black 61	Anti-White 30	Anti-Gay 16	Anti-Asian 14	Anti-Transgender 10
San Antonio, TX	Anti-Black 13	[TIE]Anti-LGBTQ+ 7	Anti-Hispanic 7	Anti-Lesbian 5	TIE Anti-Transgender Anti-White

					3
San Diego, CA [Through 10/15]	Race 23	Sex 11	Anti- Religion 2		
Dallas, TX	Anti- LGBTQ+ 4	[TIE] Anti- Black 3	Anti-Asian 3	Anti-Gay (Male) 3	Anti-Transgender 3
San Jose, CA	Anti-Black 28	[TIE] Anti- Asian 18	Anti-Gay (Male) 18	Anti- Hispanic 14	Anti-White 8
Austin, TX	Anti-Gay (Male) 8	Anti-Black 7	Anti- Hispanic 6	[TIE] Anti- Jewish 4	Anti-LGBT (Mixed) 4
Columbus, OH	Anti-Gender Non- Conforming/ Trng 17	Anti-White 16	Anti-Black 13	[TIE] Anti- LGBTQ+ 7	Anti-Gay (Male) 7
San Francisco, CA [Through 9/30/22]	Anti-Asian 11	Anti- LGBTQ+ 9	Anti-Gay Male 3	Anti- Transgender 3	[TIE]Anti- Hispanic, Black & Jewish 2 Each
Washington, DC	Sexual Orientation 45	Ethnicity/Nat'l Origin 30	Gender Id/ Expression 22	Race 20	Religion 4
Seattle, WA	[TIE] Anti- Black 22	Anti-Asian 22	Anti- Homeless 15	Anti-Gay (Male) 9	Anti-Hispanic 8
Las Vegas, NV	Anti-White 56	Anti-Black 21	Anti- Hispanic 14	Anti-Gay 9	Anti-LGBT (Mixed) 7
Boston, MA	Anti-Gay 41	Anti-Black 39	[TIE] Anti- Asian 14	Anti-Jewish 14	Anti-Hispanic 12
Pittsburgh, PA	Race 7	Sexual Orient. 3	Anti-Ethnic 3	Anti- Religion 2	Anti- Religion/Ethnic 1

IV. THE CHANGING NATURE OF HATE OFFENDERS

Northeastern University professors Jack Levin and Jack McDevitt first formulated hate crime offender categories in the early 1990s and contend hate offenders are motivated by different goals with differing depths of prejudice.¹²⁷ Levin and McDevitt, among others, further contend that both catalytic events and the promotion of negative stereotypes in sociopolitical rhetoric can spur all types of offender groups to action.¹²⁸ They found that although all hate crimes involve bias of some sort, there seemed to be three distinct reasons offenders commit hate crimes: psychological thrill and group bonding (thrill-seeking offenders), fear and anger triggered by a perceived attack (defensive offenders), and to rid the world of groups deemed evil (mission offenders).¹²⁹

The most recent data from New York City reveals another type of offender, not included in the Northeastern study, but one with a profound impact on policy: the mentally ill offender.¹³⁰ The NYPD reported that by May 2021, 48% of those arrested for anti-Asian hate crime in the city that year had a documented history of psychiatric disturbance.¹³¹ By May 2022, the NYPD reported that 47 of 100 arrestees for hate crime were classified as an “Emotionally Disturbed Person.”¹³²

Our research also identified shifts within the traditional offender categories, including a shift to older defensive offenders reacting to catalytic

¹²⁷ Jack Levin & Jack McDevitt, *Hate Crimes: An Updated Offender Typology*, in HATE CRIMES: TYPOLOGY, MOTIVATIONS, AND VICTIMS 34 (Robin Maria Valeri & Kevin Borgeson eds., 2018) [hereinafter Levin & McDevitt, *Updated Typology*].

¹²⁸ *Id.* at 43–44.

¹²⁹ JACK LEVIN & JACK MCDEVITT, HATE CRIMES: THE RISING TIDE OF BIGOTRY AND BLOODSHED 65, 75, 89 (1993) [hereinafter LEVIN & MCDEVITT, RISING TIDE].

¹³⁰ Thomas Tracy, *Half of Suspects Arrested in NYC Anti-Asian Attacks are Mentally Ill: Officials*, DAILY NEWS (May 15, 2021), https://www.nydailynews.com/new-york/nyc-crime/ny-nyc-crimes-mental-illness-20210516-xqa4gvmjpnhsxbas7umw2i_rbni-story.html [<https://perma.cc/X8GB-W8MQ>] (reporting that half of the suspects arrested in NYC for anti-Asian attacks are mentally ill); Nicole Hong, Ashley Southall & Ali Watkins, *He Was Charged in an Anti-Asian Attack. It Was His 33rd Arrest*, N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/06/nyregion/nyc-asian-hate-crime-mental-illness.html> (“Many of the people charged recently with anti-Asian attacks in New York City have also had a history of mental health episodes.”).

¹³¹ Tracy, *supra* note 130.

¹³² Ari Feldman, *Half of People Arrested in Connection with a Hate Crime are Mentally Ill, NYPD officials say*, NY1 SPECTRUM NEWS (May 3, 2022), <https://www.ny1.com/nyc/all-boroughs/news/2022/05/03/half-of-people-arrested-in-connection-with-a-hate-crime-are-mentally-ill--nypd-officials-say> [<https://perma.cc/AB72-XNHV>].

events, among others. After a catalytic incident or an extended period of public derision towards a particular group, twenty-first century thrill-seeking offenders now rely, not only on a specific anchored prejudice, but an adaptive pragmatism. These offenders flexibly direct aggression to those “outsiders” they perceive as not only deserving of aggression, but who appear easier to victimize because of perceived leniency in legal or social consequences. Would-be contemporary thrill-seeking offenders, who generally have more shallow prejudices and are more flexible respecting target interchangeability, may target those who are both proximate and more prominently derided and stereotyped at the time.

Professors Levin and McDevitt, like others, also maintain that sustained derisive political rhetoric may impact hate crime targeting particular groups. Specifically, they point to sustained, though uneven, increases in anti-Latino hate crime toward the end of this century’s first decade occurring alongside a rise in anti-immigrant rhetoric and legislative activity. Furthermore, among the extremists who comprise the most bigoted and homicidal domestic “mission” offenders, Latinos, Blacks, and Jews, are among those groups most targeted by a racial- and xenophobic based hatred that is key to “mission offenders” folklore and conspiracies.

Even during recent consecutive annual increases this past decade, property-directed hate crime—often committed by young thrill-seeking offenders—has declined, possibly due to greater demographic diversity among youth or a shift to online aggressions.¹³³ Levin and McDevitt contend that thrill-seeking offenders, once the most common category, have declined, as the next-most common offender categories increased: “[S]ince the [September 11] terrorist attack and continuing in this century, however, defensive and retaliatory hate crimes in response to the perception of group threat have apparently increased substantially.”¹³⁴

Something changed after September 11, 2001. What is important to consider is that, although all hate crimes are rooted in bigotry, there appears are differences in the depth of that bigotry and what prompts offenders to action.¹³⁵ Thrill seekers, with more shallow prejudices, are motivated by excitement and belonging, where defensive offenders are angry and feel

¹³³ See FBI Crime Data Explorer, *supra* note 1.

¹³⁴ See Levin & McDevitt, *Updated Typology*, *supra* note 127, at 37.

¹³⁵ *Id.* at 34–37.

threatened by the presence or activity of the other group.¹³⁶ Mission offenders are angered by what they believe is a conspiracy against them or their way of life, and they desire revenge.¹³⁷ Mission and defensive offenders tend to be older than thrill seekers and more likely to work alone rather than in a group.¹³⁸ Defensive offenders are also more likely to attack someone in the region where they live rather than travel to a distant place in search.¹³⁹ And mission offenders, who now are the leading hate-homicide offenders, are more likely to target many victims who share the characteristics they despise.¹⁴⁰

While the depths of these prejudices vary among offenders, all offenders share a reliance on similar negative stereotypes, which influences where their aggression manifests once triggered. Stereotypes are broad, fixed overgeneralizations, often negative, that are used to categorize and isolate individuals from other groups, particularly in the absence of meaningful contact or knowledge.¹⁴¹

In their book *Hate Crimes: The Rising Tide of Bigotry and Bloodshed*, Levin and McDevitt introduced the findings of their research on hate crime offenders. Their study involved a systematic review of hate crime investigations by the Boston Police Department between 1991 and 1992 with an eye on the offender's motivation.¹⁴² They found that thrill-seeking offenders—who constituted two-thirds of all of the hate crimes in their initial study—were usually young males acting out of boredom and looking to have some fun at someone else's expense.¹⁴³ They noted that thrill-seeking offenders did not seem to be hard-core bigots (who were often swayed into action by a leader of a social group who was bigoted).¹⁴⁴ When thrill-seeking offenders would go along with a leader, it's because they feared rejection by the group, and they benefited from bragging rights following these

¹³⁶ *Id.* at 34–36.

¹³⁷ LEVIN & MCDEVITT, *RISING TIDE*, *supra* note 129, at 89.

¹³⁸ *Id.* at 74; Levin & McDevitt, *Updated Typology*, *supra* note 127, at 36.

¹³⁹ LEVIN & MCDEVITT, *RISING TIDE*, *supra* note 129, at 75.

¹⁴⁰ *Id.* at 89.

¹⁴¹ *Id.* at 21–23.

¹⁴² Jack McDevitt, Jack Levin & Susan Bennett, *Hate Crime Offenders: An Expanded Typology*, 58 J. SOC. ISSUES 303, 306 (2002).

¹⁴³ LEVIN & MCDEVITT, *RISING TIDE*, *supra* note 129, at 65–66.

¹⁴⁴ *Id.* at 66.

terrorizing events.¹⁴⁵ Thrill-seeking offenders would sometimes go outside of their own neighborhoods and communities to find the targeted “other,” by targeting gay bars or minority neighborhoods for example.¹⁴⁶ Victims were selected almost solely by their (real or perceived) characteristic, *inter alia* race, religion, or sexual orientation.¹⁴⁷ Thrill-seeking offenders, who had more shallow prejudices, also had greater flexibility with respect to which out-group was ultimately targeted, as social engagement among peers is key, making a wide range of outsiders potential targets.¹⁴⁸

Next were those who committed hate crimes for defensive or reactive reasons, such as in response to a terrorist attack or even a person of a different race moving into their neighborhoods.¹⁴⁹ Terrorist attacks and rapidly changing local housing patterns have correlated with temporary spikes in hate crime from these two similar offenders. The last, and by far the smallest, cohort of assailants is the mission offender, the hard-core hatemonger, who in the past might have joined a hate group, but now is increasingly likely to radicalize or engage with proximate peers or those now “virtually” available over the internet through various hub platforms (which first appeared in 1995).¹⁵⁰

What all these offenders share is a reliance on underlying negative stereotypes that label certain groups as inferior, violent, morally deficient, or a threat.¹⁵¹ In doing so, these stereotypes also direct where aggressive behavior is targeted. For the thrill offender, the desire for camaraderie and excitement, often aided by intoxicants, elevates latent and shallow prejudices into a tool to achieve in-group bonding among peers.¹⁵² For defensive and reactive offenders, deep-seated fears, anger, or a desire for revenge might activate the stereotypes.¹⁵³ For the mission offender, the stereotypes are consistently prominent, as these assailants view the world through a fanatical

¹⁴⁵ *Id.* at 66.

¹⁴⁶ *Id.* at 65.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 67.

¹⁴⁹ *Id.* at 75–77.

¹⁵⁰ See generally Brian Levin, *Cyberhate: A Legal and Historical Analysis of Extremists' Use of Computer Networks in America*, 45 AM. BEHAV. SCIENTIST 958 (2002) (reporting the increasing popularity of internet among extremists and the history of hate crime on the internet, including the establishment of the first major hate site in 1995).

¹⁵¹ See LEVIN & MCDEVITT, *RIISING TIDE*, *supra* note 129, at 43, 48.

¹⁵² *Id.* at 65–75.

¹⁵³ *Id.* at 75–88.

and conflictual prism where they are under attack by out-groups.¹⁵⁴ Mission offenders frequently have violent antisocial predispositions generally, and as such often expand their violence beyond out-groups to peers, coworkers, and family members.¹⁵⁵

A. MISSION OFFENDERS AS TERRORISTS

Mission offenders, while the least common in both total number and offenses committed, are the most steeped in hatred, and define themselves as warriors for their causes, relying on a defining—often conspiratorial—narrative, history, and folklore.¹⁵⁶ While mission offenders are routinely and disproportionately represented in hate homicides, their engagement in mass homicides—of which there are comparatively few relative to thousands of other hate offenses—have disturbingly risen in recent years.¹⁵⁷ Various lethal multi-casualty events were carried out by mission offenders, including the most recent 2022 anti-Black domestic terror attack in Buffalo and earlier terror attacks at an El Paso Walmart in 2019, the Tree of Life Synagogue in Pittsburgh in 2018, a Sikh Gurdwara in Wisconsin in 2012, and the historic Mother Emanuel African American church in 2015.¹⁵⁸

As we will show below, there may be a way to know something about the motivations of hate crime offenders that can be inferred from the national data. We are specifically interested in how hate crime offending overall might have changed since September 11, 2001.

V. NATIONAL INCIDENT-BASED REPORTING SYSTEM HATE CRIME

As the name suggests, the National Incident-Based Reporting System (NIBRS) is the latest incident-level database for crimes in the United States. The incomplete transition to NIBRS materially affected accuracy of initial 2021 FBI hate crime reporting. According to the FBI, NIBRS, a rich source of information on each criminal incident, has replaced the Summary UCR program just recently. These more detailed reports provide an opportunity to

¹⁵⁴ *Id.* at 89.

¹⁵⁵ *Id.* 89–98.

¹⁵⁶ *Id.*

¹⁵⁷ LEVIN ET AL., *supra* note 1, at 18.

¹⁵⁸ See *The Decade's Top 10 Incidents of Hate*, ANTI-DEFAMATION LEAGUE (Dec. 19, 2019), <https://www.adl.org/resources/reports/the-decades-top-10-incidents-of-hate>; Audra D. S. Burch & Luke Vander Ploeg, *Buffalo Shooting Highlights Rise of Hate Crimes Against Black Americans*, N.Y. TIMES (May 16, 2022), <https://www.nytimes.com/2022/05/16/us/hate-crimes-black-african-americans.html>.

explore the changing nature of hate crime offenders, especially post-September 11, 2001.

Prior to conducting our analysis of the NIBRS hate crime reports, we partitioned the data into three categories based on the time period of the reports. Time One included the earliest reports available via NIBRS starting in January 1995 and continuing through September 10, 2001. Time Two included the period September 11, 2001, through December 31, 2007. Time Three included the period from January 1, 2008, through December 31, 2016. We added this third time period to see if any of the initial changes in offender types following 9/11 might have changed over time.

The NIBRS variables we used to assess offender type included offender age (0 = under forty and 1 = over forty), whether the offender was alone or with others (0 = in a group, 1 = working alone), whether the victim or offender resided in the jurisdiction where the crime occurred (0 = not a resident, 1 = resident), and whether there were multiple offenders or victims in the incident (0 = one offender or one victim, 1 = multiple offenders or victims). According to Levin and McDevitt's work, one would expect defensive and mission offenders to be older and working alone.¹⁵⁹ An increase in defensive offenders in Time Two and Time Three might be reflected by an increase in the odds that the offender and victim lived in the jurisdiction where the crime occurred. Also, an increase in mission offenders in Time Two and Time Three would likely appear as an increase in the odds of single incidents with multiple victims.

A. FINDINGS

Using binomial logistic regression, we compared the odds from Time One of offenders being over forty years old, working alone, and living in the jurisdiction where the crime occurred, victims living in the jurisdiction where they were attacked, and whether the incidents involved multiple victims, with the odds for these variables in Time Two and Time Three. Table 7 is a summary of our findings.

¹⁵⁹ See LEVIN & McDEVITT, *RISING TIDE*, *supra* note 129, at 89–98; Levin & McDevitt, *Updated Typology*, *supra* note 127, at 36.

Table 7: Comparing Offender Characteristics Before September 11, 2001, with Two Later Time Periods*

Offender Characteristics in NIBRS	Time Period 2: 9/11/2001–12/31/2007	Time Period 3: 1/1/2008–12/31/2016
Over forty years of age (Defensive and Mission)	20% higher odds	66% higher odds
Lone offender rather than group (Defensive and Mission)	10% higher odds	19% higher odds
Offender lived in jurisdiction where crime occurred (Defensive)	30% higher odds	52% higher odds
Victim lived in area where hate crime occurred (Defensive)	49% higher odds	48% higher odds
Multiple victims (Mission)	10% higher odds	18% higher odds

**All estimates of increased odds were statistically significant at $p < 0.05$.*

Our analysis found significant differences in the odds that offenders would be over forty years old following September 11, 2001, (20% higher in Time Two and 66% higher in Time Three). Similarly, the risk of incidents bearing the other characteristics of defensive and mission offenders has continued well beyond the initial period post-9/11 (Time Two) and into the current time (Time Three).

We believe this overall shift from younger, thrill-seeking offenders to older, defensive, and mission offenders is significant, although in other data we also uncovered a disturbing subset of young adult terrorist mass killers armed with assault-style rifles. We know now that terrorist events like 9/11 and divisive rhetoric and stereotyping present in the 2016 and 2020 presidential elections correlate to spikes in the occurrence of hate crimes over time. But it appears these events also generate the kind of fear and anger associated with defensive and mission offenders reacting to a real or perceived threat who are arguably more dangerous because they view their status as tenuous and are not likely to stop until the threat is gone.¹⁶⁰ These shifts involving various types of sometimes-dangerous offenders signal a greater need for prevention and also caution respecting a range of post-offense responses. While not technically a hate crime, the Capitol

¹⁶⁰ Levin & McDevitt, *Updated Typology*, *supra* note 127, at 87.

insurrection also included older offenders with a median age of 39 years old, similar responding to a catalytic event of a lost election.¹⁶¹

While non-carceral alternatives are preferable in many circumstances for less violent lower-risk offenders, there are also more dangerous offenders across a range of types and situations.¹⁶² There are no studies that generally establish the effectiveness of non-carceral responses under the American system, though limited offender evidence indicates psychological assistance would positively impact some offenders.¹⁶³ When racial violence spiraled across Boston in the 1970s, for example, a new police unit was created which first enforced existing laws before later civil rights provisions were enacted.¹⁶⁴ After increased enforcement by the “Community Disorders Unit,” hate crimes decreased by two-thirds from the highest level ever recorded for an American city (though many offenders then acted on more shallow “thrill-motivated” prejudices).¹⁶⁵

The recent expansion, splintering, and subsequent manipulation of digital media by malefactors has materially impacted social relations, politics, commerce, and information delivery.¹⁶⁶ The tactical promotion and manifestation of bigotry online is also mutating transnationally.¹⁶⁷ Future assessments will have to account for the negative consequences of both actual triggering events and the effects of more recent disinformation efforts: intentional online divisive manipulations. Relatedly, communities and law enforcement are increasingly utilizing social media to enhance reporting, investigations, and community outreach, and to post specific, updated interactive hate crime data platforms called dashboards.¹⁶⁸

¹⁶¹ *Capitol Hill Siege: Demographics Tracker*, GEO. WASH. UNIV., PROGRAM ON EXTREMISM (Jan. 6, 2022), [https://extremism.gwu.edu/Capitol-Hill-Siege_\[https://perma.cc/7L3C-X8FJ\]](https://extremism.gwu.edu/Capitol-Hill-Siege_[https://perma.cc/7L3C-X8FJ]) (reporting that the median age at arrest of January 6 Capitol attack participants is 39 years old).

¹⁶² LEVIN ET AL., *supra* note 1.

¹⁶³ *Id.*

¹⁶⁴ Chuck Wexler & Gary T. Marx, *When Law and Order Works: Boston's Innovative Approach to the Problem of Racial Violence*, 32 CRIME & DELINQ. 205, 205–23 (1986).

¹⁶⁵ *Id.*

¹⁶⁶ LEVIN & NAKASHIMA, *supra* note 4.

¹⁶⁷ *Id.*

¹⁶⁸ *See, e.g., Hate Crime Dashboard*, CHI. POLICE DEP'T, https://home.chicagopolice.org/statistics-data/data-dashboards/hate-crime-dashboard_

VI. POLICY PROPOSALS

Our study sought to address a variety of different issues respecting rising hate crime trends in the United States, probable precipitating events, and the expansion of hate crime data collection efforts as they emerged following the introduction of Boston's pioneering efforts decades ago. The investigation of how various catalytic events, and people's frequent misinterpretation of them, precipitate rising hate crime is particularly important in our internet-dependent world, and researchers should further examine this phenomenon. The rising violence necessitates better and more timely data collection, as well as using these data to enhance and tailor community response.

In examining policing history, we investigated a wide divergence between reported and unreported hate crimes, as well as reporting between agencies. It is important to mention that the implications for this divergence have real-world consequences since there are far more unreported criminal-bias incidents uncovered in the BJS National Crime Victimization Survey than in the FBI's Uniform Crime Reports. Adding to this divergence is the reality that hate crime enforcement and data collection varies considerably by jurisdiction. As the Anti-Defamation League's study revealed, there were at least fifty-nine police agencies in cities of 100,000 residents or greater in the United States that reported zero hate crimes or did not participate in the FBI's hate crime data collection effort at all in 2020.¹⁶⁹

Moreover, similar to the way other criminal prosecutions vary across states and local jurisdictions, prosecution of alleged or potential hate crimes is low but varies considerably. This is a result of several factors including state laws, local laws, and prosecutorial decision-making in charging offenders.¹⁷⁰ Among the issues affecting the low level of prosecutions are

¹⁶⁹ These include Miami, Florida; Kansas City, Kansas; Tucson, Arizona; Newark, New Jersey; Maui, Hawaii; Anaheim, California; St. Petersburg, Florida; Jackson, Mississippi; Little Rock, Arkansas; Montgomery, Alabama; Tallahassee, Florida; and Des Moines, Iowa. *FBI 2020 HCSA Did Not Report (DNR) and Zero Reporting Cities*, ANTI-DEFAMATION LEAGUE (Nov. 2021), <https://www.adl.org/sites/default/files/pdfs/2022-05/FBI%20Hate%20Crime%20Statistics%20DNR%20and%20Zero-Reporting%20U.S.%20Cities%202013-2020.pdf> [<https://perma.cc/3G2N-A6FB>].

¹⁷⁰ LEVIN & NAKASHIMA, *supra* note 4.; *see also Few Federal Crimes Referrals Result in Protection*, TRAC Reports (Aug. 12, 2019), <https://trac.syr.edu/tracreports/crim/569/>.

lack of evidence even when hate crimes are reported, young offenders, and offenders with mental illness.¹⁷¹

While decades ago laws and policies focused on punishing hate crime, newer attempts would be well served to consider the following, with a particular focus on victim accessibility, prevention, community resilience, and coordinated implementation:

1. Make police hate crime data collection, training, investigation protocols, and policies mandatory under state and federal law, and provide incentives for reporting data, including preferences for grants.¹⁷² In addition the FBI should issue an amended updated version of their 2021 hate crime statistics.
2. Bolster alternatives for victim reporting to include non-law-enforcement entities and non-criminal incidents.
3. Enforce and enact red-flag laws, higher age restrictions on arms sales, and restrict access to assault weapons and related gun conversion tools popular among some firearms enthusiasts.
4. Bolster alternatives regarding victim care to include social workers, local human relations commissions, other civic organizations, and mental health professionals.
5. Bolster alternatives to prosecution for appropriate hate crimes that do not involve serious physical injury, particularly for those offenders who are young or suffer from mental illness.
6. Establish independent state and regional commissions and working groups to address hate, extremism, and resilience in a whole-of-society approach.
7. Enhance practices to prevent hardened bigots and other problematic individuals from joining police agencies or transferring among them.

¹⁷¹ ROB BONTA, CAL. DEP'T OF JUST., 2021 HATE CRIME IN CALIFORNIA, (2021) <https://oag.ca.gov/system/files/attachments/press-docs/Hate%20Crime%20In%20CA%202021%20FINAL.pdf> [<https://perma.cc/H456-U2MS>]; MARK MOTIVANS, U.S. DEP'T OF JUST., FEDERAL HATE CRIME PROSECUTIONS, 2005–19, 6 (July, 2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fhcp0519.pdf> [<https://perma.cc/L7N4-M8HC>]; Feldman, *supra* note 132.

¹⁷² *Cf.* Uniform Federal Crime Reporting Act of 1988, 34 U.S.C. § 41303 (mandating crime reporting for federal agencies only).

8. Make hate crime data more accessible through online dashboards with quarterly updates at the local level, and issue biennial updates nationally.
9. Expand legislation and policies, when applicable, to include actual or offender-perceived gender, gender identity, disability, housing, and immigration status. This wording takes into account those offenders who misperceive the group status of a targeted victim.
10. Expand programs and security grants to institutions such as houses of worship, secondary schools, and universities, where targeted violence often occurs.¹⁷³
11. Enact the Domestic Terrorism Prevention Act that, *inter alia*, refocuses administrative and agency responses to the most prominent terror threats and establishes enhanced reporting of federal counterterrorism threats and efforts while not criminalizing any new behavior. Due to concerns about governmental overreach impinging on protected civil liberties, particularly towards those in historically oppressed groups, we do not support new broad classes of offenses relating to domestic terrorism.¹⁷⁴

CONCLUSION

As hate crimes increase and grow more violent in a decade fraught with polarization, it is critical to not only analyze these offenses but make these findings more prominent in civic and legislative discussions on how best to address the scourge of violent bigotry. However, the incomplete 2021 FBI hate crime data release demonstrates both the necessity of mandatory police agency participation and the continued utility of overlapping independent monitoring efforts by academia, NGOs, and the states. In addition, a multiplicity of offender and victim types require a wide-ranging set of reforms relating not only to police training, outreach, and protocols, but to other services for survivors and communities. Moreover, non-carceral reforms, responses and alternatives must be pursued and include voices from

¹⁷³ See, e.g., *Justice Department Will Award More Than \$21 Million to Prevent and Respond to Hate Crimes*, DEP'T OF JUST. (Oct. 28, 2021), <https://www.justice.gov/opa/pr/justice-department-will-award-more-21-million-prevent-and-respond-hate-crimes>; *OJJDP Symposium to Address Identity-Based Bullying and Hate Crimes by Youth*, DEP'T OF JUST. OFF. OF JUV. JUST. & DELINQ. PREVENTION (Oct. 5, 2021), <https://ojjdp.ojp.gov/newsletter/ojjdp-news-glance-septemberoctober-2021/top-story-ojjdp-symposium-address-identity-based-bullying-and-hate-crimes-youth>.

¹⁷⁴ Domestic Terrorism and Hate Crimes Prevention Act, S. 963, 117th Cong. (2021).

a variety of stakeholders with an expanded focus on prevention, mental health, restorative justice, community resilience, survivors, and the role that increasingly caustic politics and social media play. As we have seen with other societal ills, we cannot simply incarcerate our way out of this problem, and reliable research will be key to assessing both the extent of hate crime and the efficacy of new alternatives proposed to stem its rising tide.