



Justice for Victims of Hate Crimes Act

Introduction

The Justice for Victims of Hate Crimes Act, S. 3228, was introduced by Senator Amy Klobuchar and Senator Lisa Murkowski on 28 January 2020 and has been referred to the Judiciary Committee. The purpose of the bill was to amend the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act of 2009, 18 U.S.C. 249 (Shepard-Byrd), to clarify the motive requirement.

Background of the Bill

The Shepard-Byrd law states in relevant part that a hate crime is committed when someone “willfully causes bodily injury to any person...because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person...” The “*because of*” phrase is what is at issue. An early interpretation of “*because of*” by the government in a case in the Northern District of Ohio stated that the “*because of*” requirement could be proved by showing that the victim’s religion was a “significant motivating factor” for the defendant to have committed the crime. The Supreme Court ruled later in an unrelated case that “*because of*” meant that the defendant would not have committed the crime “but for” the victim’s protected status.

We know that in many bias-motivated crimes the perpetrator attacks the victim because of the victim’s affiliation with a certain religion, or because the victim identifies as a member of the LGBTQ+ community, for example. We also know, however, that the perpetrator could have a second reason for attacking the victim, like the victim’s participation in a Black Lives Matter march. If Shepard-Byrd’s motive requirement is defined using the “*significant motivating factor*” definition, the Department of Justice will have greater leeway to pursue hate crime cases that involved multiple motives or mixed motives like the Black Lives Matter example.

Summary of S. 3228

The purpose of S. 3228 was to codify the original interpretation of the phrase “*because of*”. If enacted into law S. 3228 will modify Shepard-Byrd to specifically define “*because of*” to mean that the actual or perceived characteristic of the victim was a “substantially motivating factor in the offense.”

Conclusion

The Matthew Shepard Foundation supports S. 3228, and we urge you to contact your congressional representatives and share your support of this historic legislation.