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Federal Hate Crime Statutes

Shepard/Byrd Hate Crime Prevention Act (18 U.S.C. § 249)

I. Elements & Who § 249 Covers:

- § 249(a)(1) "Racial" Hate Crimes
 - (1) The Defendant willfully caused bodily injury (or attempt, with a weapon)
 - (2) The Defendant acted because of *actual or perceived* race, color, religion or national origin

- § 249(a)(2) Non-Racial Hate Crimes
 - (1) The Defendant willfully caused bodily injury (or attempt, with a weapon)
 - (2) The Defendant acted because of *actual or perceived* national origin, religion, disability, sexual orientation, gender, gender identity
 - (3) Interstate commerce connection as enumerated by statute

- § 249(a)(3) Hate Crimes on Federal Property
 - (1) The Defendant willfully caused bodily injury (or attempt, with a weapon)
 - (2) The Defendant acted because of *actual or perceived* race, national origin, religion, disability, sexual orientation, gender, gender identity
 - (3) The crime occurred within special maritime and territorial jurisdiction

II. Elements Defined

- Because of Actual or Perceived Characteristic
 - o Doesn't have to be based on animus specifically (e.g. mentally disabled individuals victimized because they are easy targets, but defendants have no deep-seated hatred for individuals with disabilities.)
 - o Doesn't have to be due to victim's characteristic (e.g. assault on white man because he is married to a black woman)
 - o Defendant can be mistaken about characteristic (attack on heterosexual male who perpetrators mistakenly believe is gay)

III. Penalties – Always a Felony

IV. Applicability

- Race + injury or threat with weapon = 249(a)(1)
- Other protected characteristic + injury or attempt with weapon + interstate commerce = §249(a)(2)

Other Hate Crimes Statutes

18 U.S.C. § 241 (Civil Rights Conspiracy)

- If more than one person is involved

18 U.S.C. § 245 (Interference with Protected Rights)

- Covers threats where § 249 does not apply
- Can be a misdemeanor unless there is a felony factor (injury, weapon, fire, kidnapping, murder)
- Elements:
 - (1) The Defendant used force or threat of force
 - (2) The Defendant acted willfully
 - (3) The Defendant acted because of race, religion, color, or national origin
 - (4) The Defendant acted because the victim was enjoying a specifically listed federal right:
 - Right to attend public school; use state facility or program, employment; serve in court; use a facility of interstate transportation; use a facility of public accommodation

18 U.S.C. § 247 (Religious Property Arson)

- Defacing, damaging, destroying religious real property because of race, color, or ethnicity of congregation;
- Defacing, damaging, destroying religious real property because of religious character of property and there is an effect on Interstate Commerce
- Obstructing or attempts to obstruct, by force or threat of force, any person in the enjoyment of their free exercise of religious beliefs and there is an effect on Interstate Commerce.

42 U.S.C. § 3631 (Interference with Housing)

- Can be a misdemeanor unless there is a felony factor (injury, weapon, fire, murder – e.g. cross burning)
- Elements:
 - (1) The Defendant used force or threat of force
 - (2) The Defendant acted willfully
 - (3) The Defendant acted because of race, religion, color, national origin, sex, disability, family status
 - (4) The Defendant acted because the occupation of/use of/rental of a home