

# **Federal Hate Crimes:**

## **A Brief Overview**

**18 U.S.C. § 245:** Covers violent interference of federally-protected rights

**18 U.S.C. § 249:** Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 – covers bias-motivated violence against a person (and attempts with a weapon)

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Emmett Till Anti-Lynching Act of 2022 – covers death and conspiracies resulting from Shepard/Byrd Act crimes

**18 U.S.C. § 247:** Covers damage to religious property

**42 U.S.C. § 3631:** Fair Housing Act – covers bias-motivated violence affecting a person's right to housing

**18 U.S.C. § 875 and 876:** Covers threats via internet, text or mail - bias motivation not required but may be a sentencing enhancement

# 18 U.S.C. § 245: Violent Interference with Federally-Protected Rights

Requires defendant to:

- Use force or threat of force;
- Act willfully;
- Act because of race, religion, color, or national origin; and
- Act because victim was enjoying a specific right to:
  - attend public school,
  - use a state facility or program,
  - be employed/work,
  - serve in court,
  - travel, or
  - use a facility of public accommodation.

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

Requires defendant to:

- Cause bodily injury (or attempt to, with a weapon);
- Act willfully;
- Act because of the actual or perceived race, color, religion, national origin, disability, sexual orientation, gender identity, or gender of any person; and

LE can establish federal jurisdiction by:

- Protected class covered by the 13th Amendment to the Constitution (race, color, religion, or national origin); OR
- Affects interstate commerce (gender, sexual orientation, gender identity, or disability); OR
- Occurred on federal property (Tribal land, national parks, at sea, in post office, etc.)

# 18 U.S.C. § 249: Emmett Till Antilynching Act of 2022

If death or serious bodily injury results from the Shepard/Byrd Act crime, sentencing enhancement to 30 year prison sentence.

Conspiracies to commit Shepard/Byrd Act crimes, or offenses involving kidnapping (or attempt), aggravated sexual abuse (or attempt), or attempt to kill, sentencing enhancement to 30 year prison sentence.

# 18 U.S.C. § 247: Houses of Worship

Three types of activity covered:

- Defacing, damaging, destroying religious real property because of the race, color, or ethnicity of the congregation; or
- Defacing, damaging, destroying religious real property because of the religious character of property; or
- Obstructing or attempting to obstruct, by force or threat of force, including by threat of force against religious real property, any person in the enjoyment of those persons' free exercise of religious beliefs.

# 42 U.S.C. § 3631: Violent Interference with Housing Rights

Requires defendant to:

- Use force or threat of force;
- Act willfully to intimidate or interfere with a person's right to housing;
- Act on account of race, religion, color, national origin, sex, disability, family status;
- Act on account of the occupation of/use of/rental of a dwelling – selling/purchasing, renting, occupying.

Note:

A felony if caused bodily injury or involved the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire. Otherwise a misdemeanor.

# 18 U.S.C. § 875 and 876: Online, Phone, or Mailed Threats

Covers threats via internet, text or mail.

Elements:

- Defendant must threaten to kidnap or injure;
- Threat is “true threat” as defined by 9<sup>th</sup> Circuit (detailed, particularized; no imminence, planning, or substantial step required);
- Requests for ransom or extortion not required but enhances sentence;
- Bias motivation is not required but may be a sentencing enhancement.