



# Learnings from Approaches to Hate Crime in Five Jurisdictions

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*December 2020*

# Foreword

I am glad to share this research report which brings together learnings from other jurisdictions approaches to hate crime legislation along with an examination of the current thinking of policy makers and academics working in this area.

The effects of hate crime echo and ripple out through communities and down through generations. Its impact is often deeply felt by those it touches, with victims experiencing more harm than would otherwise be the case such as heightened physical, psychological and emotional traumas. The harm caused by hate crime however is not solely limited to those directly targeted; it also serves to undermine the core social value that all of us have the right to be treated with dignity and respect. In seeking to take action to tackle hate crime, we not only show our solidarity with those vulnerable groups it impacts most, we also help protect and safeguard society as a whole.

Ireland is fortunate to have a pool of expertise and experience on these issues, both in our academic institutions and in our civil society groups. In parallel with this research project, the Department's consultation on incitement to hatred has sought to capture some of the wealth of information available in Ireland itself, among individuals and communities living with the effects of hate crime, and among the experts and professionals working with these issues every day.

The Department has been developing its capacity to match our commitment to evidence-based decision making and these findings will help inform the legislative development process. As part of this commitment, we have already published a number of research reports over the last year. These cover victims' interactions with the criminal justice system,

confidence in the criminal justice system, recidivism, threats and responses to cyber-crime and most recently two research papers on the topic of spent convictions.

This report was designed to draw out specific threads of learning from the literature and experiences of other jurisdictions who, like Ireland, are seeking out effective ways to tackle the difficult and emotive issues of hate, prejudice and intolerance. The criminal law can only ever be one aspect of our response, but effective criminal law to deal with hate crime can provide the foundations for a safe and fair response to this serious issue.



**Oonagh McPhillips**

**Secretary General, Department of Justice**

# Table of contents

<b>1. Executive summary.....</b>	<b>5</b>
<b>2. Introduction.....</b>	<b>10</b>
2.1 Background to the project	10
2.2 Research aims	10
2.3 Overview of report	11
2.4 International frameworks on hate crime	13
<b>3. Legislative approaches to combatting hate crime in other jurisdictions..</b>	<b>16</b>
3.1 England and Wales	16
3.2 Canada	28
3.3 Sweden	36
3.4 Germany	41
3.5 Australia	49
<b>4. Learning from approaches in other jurisdictions: Key considerations.....</b>	<b>57</b>
4.1 Why legislate for hate crime?	57
4.2 Defining Hate Crime	58
4.3 Assessing the impact of hate crime legislation	60
4.4 Factors to consider for developing effective legislation to combat hate crime	61
<b>5. Conclusion.....</b>	<b>69</b>
References	71

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# 1. Executive summary

This report focuses on five jurisdictions in their approach to tackling hate crime, particularly from a legislative perspective. The primary goal of the research is to help develop learnings in order to provide key considerations to inform the development of hate crime legislation in Ireland.

The research sought to answer the following key questions: how do other countries legislate for hate crime; how is hate crime measured; how effective is legislation at tackling hate crime; and, what key considerations should inform the potential development of legislation or other measures in Ireland?

For the purposes of this research five jurisdictions were selected for detailed examination. Selected jurisdictions included, England and Wales, Canada, Sweden, Germany and Australia. These jurisdictions were chosen on basis of: their combined history and experience of tackling hate crime; legal similarities in the case of England and Wales, Canada and Australia; and Sweden and Germany in terms of other EU Member States approaches to tackling hate crime from a civil law perspective.

In addition to researching these jurisdictions a review of the international frameworks concerning hate crime was conducted as was an examination of the wider hate crime literature. For the purposes of gaining a more in-depth understanding a number of experts in the field of hate crime were also interviewed either in person or by phone. These interviews were crucial to clarifying and deepening the researchers' understanding of this often complex and contested topic.

## **International frameworks on hate crime**

Numerous international institutions including the United Nations (UN), the Council of Europe's (CoE), European Commission against racism and intolerance (ECRI), the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the European Union (EU) have developed frameworks for monitoring hate crime, identifying data gaps and improving the recording of hate crime. In addition the principles of equality and non-discrimination are outlined in numerous international documents. Focusing on protecting individuals and groups from discrimination.

These frameworks highlight the need not only to have the necessary laws in place to tackle hate crime and protect victims but also the need for a consistent and thorough approach to monitoring hate crime in addition to a number of other measures such as training for law enforcement, prosecutors etc.

Overall there is a clear consensus that hate crime recording and data collection methods need to be improved.

### **Legislative approaches to hate crime**

An examination of how five different jurisdictions have sought to tackle hate crime from a legislative perspective has identified differing approaches to legislating for and recording hate crime.

All five jurisdictions examined have legislation criminalising hate crime either in the form of aggravated sentencing as in Germany, Sweden and Australia or a combination of aggravated sentencing along with substantive offences as in the case of England, Wales and Canada. All jurisdictions employ an animus approach in their respective legislative models. The animus model of legislating for hate crime places the perpetrator's hostile motivation towards a group of the victims at the core of the offence. Recording of hate crime is normally carried out by the police. It is notable that recording of hate crime is a challenge for all jurisdictions particularly in terms of underreporting and complexities of the police recording of hate crime. Another issue for some but not all jurisdictions is a lack of thorough data on courts outcomes. A summary of these is given below.

Country	LEGISLATION				STATISTICS	
	Legislation		Grounding of Legislation		Hate Crime Recording	Source of Official Statistics
	<i>Aggravated/enhanced sentencing</i>	<i>Substantive offences</i>	<i>Animus</i>	<i>Group Selection</i>		
<b>England and Wales</b>	Yes	Yes	Yes	No	Police recorded hate crime, Prosecution statistics, Court statistics	Home Office / CSEW
<b>Canada</b>	Yes	Yes	Yes	No	Police recorded hate crime	Statistics Canada
<b>Sweden</b>	Yes	No	Yes	No	Police recorded hate crime, Prosecution statistics	National Council for Crime Prevention
<b>Germany</b>	Yes	No	Yes	No	Police recorded hate crime	Police at the state and federal levels and the Federal Statistics Office
<b>Australia</b>	Yes	No	Yes	No	Police recorded hate crime	Australian Bureau of Statistics

There is a consistent approach across the jurisdictions featured in this report concerning characteristics protected by law, the most common being race, religion, sexual orientation, gender identity and disability.

Hate crimes involving race and religion seem to be the most common types of hate crimes reported or recorded across the jurisdictions reviewed. In England and Wales the most prevalent types of hate crime involve race, sexual orientation and religion. Similarly in Sweden hate crimes involving race and sexual orientation are the most prevalent. While in Germany and Canada the most prevalent form of hate crime involve race and anti-Semitism.

Most jurisdictions have some level of statistical output with England and Wales having the most detailed data available, however a lack of data on court outcomes is a shortcoming in the jurisdictions examined. The most common means of recording hate crime is through police recording though most jurisdictions also carry out victimisation surveys such as the Crime Survey for England and Wales and the General Social Survey - Canadians' Safety (GSS), in Canada.

Challenges tackling hate crime include communication between law enforcement and prosecutors, underreporting of hate crime, the complexity that hate crime investigations and cases can involve, difficulties in monitoring hate crime and the conflation of hate crime and hate speech.

### **Factors for consideration**

An examination of several jurisdictions and the wider literature shows that many states have enacted various forms of hate crime legislation to combat acts of violence and/or intimidation directed towards marginalised groups. This research found that legislative approaches to tackling hate crime normally involved enhanced sentencing, substantive offences or a combination of both. Broadly similar characteristics are protected across jurisdictions with religion, race and sexual orientation being among the most common. It is notable that many jurisdictions encounter challenges when seeking to record and monitor hate crime, particularly concerning court outcomes. While not being the focus of the research, it was found that non legislative approaches, such as well-developed administrative policies and procedures, for example national action plans, law enforcement strategies and cooperation, can play an important role in tackling hate crime.

Aside from considerations concerning the effectiveness of legislative responses, the literature also highlights other reasons for having laws of this type, including:

- Addressing the additional harm caused by hate crime
- Protecting the values of an inclusive society
- Supporting marginalised groups



- Providing an evidence base for policy makers and others through the recording and monitoring hate crime

In legislating against hate crime, the literature notes that there are several key factors that should be weighed carefully so as to better ensure that any future laws are both workable and effective. Factors to be considered carefully include:

- The definitional complexity of hate crime
- The types of legislation that are widely used (i.e. enhanced sentences and substantive offences) and the suitability of these to the Irish context
- How approaches to tackling hate crime can be grounded in legislation (i.e. Animus and group selection models) and the implications involved
- The setting of legal thresholds for proving hate crime
- The importance of wording for hate crime offences
- What characteristics should be protected and why
- The importance of non-legislative factors in combatting hate crime

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## 2. Introduction

### 2.1 Background to the project

This report examines various legislative approaches which have been taken in other countries to combat hate crime. Both common law and civil law jurisdictions were selected on the basis of their history and experience in tackling hate crime. This research was undertaken to help inform Ireland's reform and development of its legislative approach to hate crime and to determine how Ireland can best meet its international obligations in dealing with the issue.

### 2.2 Research aims

This study focused on four major research questions:

- How do other countries legislate for hate crime?
  - Does the legislation provide for substantive offences, aggravated sentencing, a combination of both, or does it take a different approach?
  - What types of characteristics are protected by the legislation?
- How do other jurisdictions measure hate crime?
  - Has the legislation facilitated the measurement of the incidence of hate crime?
  - How is hate crime recorded?
  - Which organisations record hate crime – police, other state bodies, NGOs, International Organisations etc.?
  - What issues have there been regarding how hate crime is recorded and how these issues have been addressed?
- How effective is legislation at tackling hate crime?
  - What is the extent of successful prosecutions and or convictions?
  - What other measures of effectiveness have been identified?
- What learning can be provided to inform the potential development of legislation or other measures in Ireland?

- What approaches used in other jurisdictions could be useful in Ireland?
- How transferrable are such approaches to the Irish context?

## 2.3 Overview of report

The report responds to the research questions in three sections. Firstly, the report provides an overarching context with a summary of the international frameworks and examining some of the major international instruments on hate crime.

The following section profiles five jurisdictions exploring their legislative and non-legislative approaches to combatting hate crime. This includes:

- definitions of hate crime
- how hate crime is legislated for
- other relevant policies
- recording of hate crime data
- an overview of hate crime statistics
- challenges tackling hate crime
- recent developments

Thirdly the report looks at the learnings taken from the review of the selected jurisdictions covering six key themes:

- reporting and recording of hate crime
- the rationale for introducing hate crime legislation
- defining hate crime and identifying the characteristics which require protection
- the different types of hate crime legislation
- the impact of hate crime legislation
- issues with the effectiveness of hate crime legislation

Finally, findings are concluded and the factors to be considered when legislating for hate crime are summarised.

## 2.4 International frameworks on hate crime

The United Nations (UN), the Council of Europe's (CoE) European Commission against Racism and Intolerance (ECRI) and the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) all monitor human rights violations, including hate crime and report regularly on gaps and progress related to hate crime recording and data collection.<sup>1</sup>

At EU level, the Council framework decision 2008/913/JHA identifies a common EU criminal law approach to countering severe manifestations of racism and xenophobia. It requires that national law treat racist motivation as an aggravating factor of other already established offences.<sup>2</sup>

The specific protection needs of hate crime victims have been recognised by Article 22 of the European Union Directive 2012/29/EU, the Victims of Crime Directive, which specifically identifies victims of hate crimes as especially vulnerable and outlines their entitlement to specialist support and special protection measures. This Directive also recognises that adequate statistical data collection is essential for effective policy making and it requires that member states communicate to the European Commission relevant statistical data from a variety of public bodies, including law enforcement.<sup>3</sup>

The 2013 Council conclusions on 'combating hate crime in the EU' highlight the need for an efficient collection of reliable and comparable data on hate crimes, including, so far as possible, the number of such incidents reported by the public and recorded by the authorities and the bias motive behind these crimes.<sup>4</sup>

In its regular country reports, the CoE's human rights monitoring body, the ECRI identifies gaps and recommendations for improvements in recording and collecting data on hate crime.

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<sup>1</sup> European Agency for Fundamental Rights (2018) Hate Crime Recording and Data Collection practice across the EU,

<sup>2</sup> Council of the European Union (2008), Council Framework Decision 2008/913/JHA Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ 2008 L 328.

<sup>3</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive).

<sup>4</sup> On data protection issues related to gathering and publishing demographic information in the context of hate crime, see OSCE, ODIHR (2014), Hate Crime Data-Collection and Monitoring: A Practical Guide, 29 September 2014, p. 18.

The principles of equality and non-discrimination are outlined in numerous international documents, including the Universal Declaration of Human Rights; the International Covenant of Civil and Political Rights; the International Convention of the Elimination of all forms of Racial Discrimination (CERD); and the European Convention on Human Rights (ECHR).<sup>5</sup>

Article 4 of CERD requires ratifying states to ‘declare an offence punishable by law [...] all acts of violence [...] against any race or group of persons of another colour or ethnic origin’. The Committee on the Elimination of Racial Discrimination monitors the convention and also makes recommendations.<sup>6</sup>

Article 14 of ECHR states that ‘the enjoyments of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

OSCE commitments on hate crime<sup>7</sup> call on States to:

1. Collect, maintain and make public, reliable data and statistics in sufficient detail on hate crime and violent manifestations of intolerance.
2. Enact, where appropriate, specific, tailored legislation to combat hate crime’.
3. Encourage victims to report hate crime, recognising that underreporting of hate crime prevents States from devising efficient policies. This may include measures for facilitating the contribution of civil society to combat hate crimes.
4. Introduce or further develop professional training and capacity building activities for law enforcement, prosecution and judicial officials dealing with hate crime.
5. Explore ways to provide victims of hate crime with access to counselling, legal and consular assistance and effective access to justice.
6. Promptly address hate crime and ensure that the motives of those convicted of hate crime are acknowledged and publicly condemned by the relevant authorities and by the political leadership.
7. Ensure co-operation where appropriate, at the national and international level, including with the relevant international bodies and between police forces, to combat violent organised hate crime.

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<sup>5</sup> Manual on Joint Hate Crime training for police and prosecutors OSCE/ODIHR

<sup>6</sup> Reports can be accessed here: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=29](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=29).

<sup>7</sup> OSCE Ministerial Council Decision No. 9, “Combating Hate Crimes”, Athens, 2 December 2009, <https://www.osce.org/cio/40695>.

8. Conduct awareness-raising and education efforts particularly with law enforcement authorities, directed towards communities and civil society groups that assist victims of hate crimes.

Based on the ECHR, the European Court of Human Rights (ECtHR) has developed some principles that are binding for all ratifying states. Excerpts from rulings refer to the duty on all states to 'take all reasonable steps to unmask any racist motive' when investigating violent incidents<sup>8</sup> and that 'state authorities are responsible for objectively investigating bias indicators'.<sup>9</sup> The ECtHR has also stated that national legislation did not need to contain specific hate crime provisions for states to investigate and prosecute hate crimes.<sup>10</sup> The Court also ruled that 'not only acts based solely on a victim's characteristic can be classified as hate crimes. For the Court, perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitudes towards the group the victim belongs to'.<sup>11</sup> In another judgement, the ECtHR ruled that 'some hate crime victims are chosen not because they possess a particular characteristic, but because of their association with another person who actually or presumably possess the relevant characteristic'.<sup>12</sup>

There is variation in the depth and breadth of hate crime recording and data collection mechanisms in EU Member States, as evidence gathered by the European Union Agency for Fundamental Rights (FRA); the Office for Democratic Institutions and Human Rights (ODIHR); and the ECRI shows. There is consensus across a broad range of international organisations that hate crime recording and data collection methods needs to be improved.

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<sup>8</sup> *Angelova and Iliev v. Bulgaria*, ECtHR application no. 55523/00, para. 15, 26 July 2007.

<sup>9</sup> *Nachova and others v. Bulgaria*, ECtHR applications nos. 43577/98 and 43579/98, para. 157, 6 July 2005.

<sup>10</sup> *Angelova and Iliev v. Bulgaria*, ECtHR application no. 55523/00, para. 104, 26 July 2007.

<sup>11</sup> *Balázs v. Hungary*, ECtHR application no. 15529/12, para. 70, 14 March 2016.

<sup>12</sup> *Škorjanec v. Croatia*, ECtHR application no. 25536/14, para. 66, 28 March 2017.

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## 3. Legislative approaches to combatting hate crime in other jurisdictions

For the purposes of this research, 5 jurisdictions were selected for examination including England and Wales; Canada; Sweden; Germany and Australia. These jurisdictions were chosen on the basis of their combined history and experience of tackling hate crime, legal similarities in case of England and Wales, Canada and Australia. Sweden and Germany were explored in terms of other EU Member States approaches to tackling hate crime from a civil law perspective.

### 3.1 England and Wales

#### **Definition of hate crime**

##### *Legislative provisions*

Hate crime is legally defined under sections 28-32 of the Crime and Disorder Act 1998<sup>13</sup> and sections 145 and 146 of the Criminal Justice Act 2003<sup>14</sup>

##### *Operational definition*

The police and the Crown Prosecution Service (CPS) have agreed the following definition for identifying and flagging hate crimes:

*"Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity."<sup>15</sup>*

It should be noted that, as there is no legal definition of hostility, the CPS use the everyday understanding of the word which includes ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike.

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<sup>13</sup> <http://www.legislation.gov.uk/ukpga/1998/37/section/28?view=extent>

<sup>14</sup> <https://www.legislation.gov.uk/ukpga/2003/44/section/145>

<sup>15</sup> <https://www.cps.gov.uk/hate-crime>



## **Protected Characteristics**

In England and Wales protected characteristics include:

- Race
- Religion
- Disability
- Sexual orientation
- Transgender identity

## **How is hate crime legislated for?**

### *Substantive and aggravated offences*

Legislation provides for a combination of both substantive offences and aggravated sentencing. In terms of substantive offences, the Crime and Disorder Act, 1998 (CDA) establishes aggravated versions of pre-existing offences such as grievous bodily harm, criminal damage and harassment amongst others. These offences apply in the context of an offender having demonstrated hostility or having been motivated by hostility based on race or religion. These aggravated offences carry stiffer penalties compared with their non-aggravated versions (see table 1).

Some crimes which might appear to merit consideration as an aggravated offence, for example manslaughter, are not aggravated by the 1998 Act as they already carry a maximum sentence.

**Table 1. Basic offences compared with aggravated offences<sup>16</sup>**

<b>Basic offences compared with aggravated offences</b>		
	<b>Maximum penalty</b>	
<b>Criminal offence</b>	<b>Basic offence</b>	<b>Aggravated offence</b>
Malicious wounding	5 years	7 years
Actual bodily harm	5 years	7 years
Common assault	6 months	2 years
Criminal damage	10 years	14 years
Fear or provocation of violence	6 months	2 years
Harassment alarm or distress	Fine up to £1,000	Fine up to £2,500
Causing intentional harassment, alarm or distress	6 months	2 years
Offence of harassment or stalking	51 weeks	2 years
Putting people in fear of violence and stalking involving fear of violence or serious alarm or distress	10 years	14 years

In regard to aggravated or enhanced sentencing, sections 145 and 146 of the Criminal Justice Act, 2003 (CJA) allow for hostility to be taken into consideration as an aggravating factor at the sentencing stage. Sections 145 and 146 of the CJA require sentencing judges to consider hostility on the basis of race, religion, disability, sexual orientation or transgender identity as an aggravating factor which goes to the seriousness of the offence and which can, therefore, attract a higher penalty. Section 145 of the Act uses identical language to

<sup>16</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316103/9781474104852\\_Print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316103/9781474104852_Print.pdf)

section 146 and covers all criminal offences aggravated by racial or religious hostility that are not specified under sub section 28-32 of the CDA. Both sub section 145 and 146 apply to any criminal offence and are applicable at sentencing only. This means that only those offences covered by the CDA can be classified in criminal law as “aggravated offences” (e.g. “racially aggravated assault”), while those covered by the sentencing provision will be recorded in law as the basic offence (e.g. an assault).

The CJA is therefore more far-reaching, covering all five hate crime strands – race, religion, sexual orientation, disability and transgender identity – for all types of offence, while the CDA covers only race and religion in relation to specific categories of crime.

### **Recording of hate crime**

#### *Recording mechanisms*

While no single crime recording system is in use across the UK, a universally accepted and used hate crime recording policy is well established. A great deal of effort has been made by several different criminal justice bodies and police organisations in setting out this definition and establishing counting rules concerning hate crime.

#### *Official sources of data*

The official statistics relating to crime and policing in England and Wales are maintained by the Home Office. The official statistics relating to sentencing, criminal court proceedings, offenders brought to justice, the courts and the judiciary are maintained by the Ministry of Justice.

The 3 primary sources of statistics include

- Crime Survey for England and Wales<sup>17</sup>
- Police data
- Crown Prosecution Service and sentencing data
  - Pre-charge decisions and prosecution outcomes
  - Sentencing outcomes

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<sup>17</sup>  
<https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/crimesurveyforenglandandwales#what-is-the-crime-survey-for-england-and-wales>

### *NGO data sources*

Data-sharing schemes between the police and some NGOs - including Tell MAMA (an organisation that supports victims of anti-Muslim hate and measures and monitors anti-Muslim incidents); the Community Security Trust; and GALOP - have been established for sharing information about incidents involving anti-Muslim and anti-Semitic hate. They also share information about homophobic and transphobic hate crime respectively.<sup>18</sup>

### **Overview of hate crime statistics**

There is no definitive source of hate crime statistics in England and Wales. However, in comparison to other jurisdictions, England and Wales have the most comprehensive data on hate crime from reporting to court outcomes. The main sources used to record crimes in England and Wales are the Crime Survey of England and Wales (CSEW) which has national statistical status, the Police Recorded Crimes series and the statistics produced by the Crown Prosecution Service (CPS).

### *Crime Survey of England and Wales (CSEW)*

The CSEW is considered to be a more reliable indicator of long-term crime trends than the police recorded crime series, particularly for the more common types of crimes experienced by the public. Not all categories of crime are captured by the CSEW. For example, it does not cover crimes against businesses or those not resident in households, and also excludes homicide and crimes often termed as “victimless” (for example, possession of drugs). In addition the survey is primarily focused on adults, whilst recorded crime statistics would include children. A significant advantage of the CSEW is that it is not reliant on a crime being reported to the police. Therefore, it is not surprising to find that the number of hate crimes recorded by the CSEW exceeds those reported in the police statistics. This points to a dark figure of hate crime which goes unreported. An overview of hate crime figures from the CSEW from 2007 to 2018, shows that there was a 40% reduction in recorded hate crime over the reporting period. This figure is seemingly at odds with data recorded by the police which shows that hate crime has been increasing. A probable explanation for this inconsistency stems from improvements made by the police in recording hate crime.

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18. [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-hate-crime-recording\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf)

**Table 2. Hate crimes recorded by Crime Survey of England and Wales<sup>19</sup>**

	Years			
	2007/08- 2008/09	2009/10- 2011/12	2012/13 – 2014/15	2015/16- 2017/18
<b>Type</b>				
Race	151	149	106	101
Religion	38	51	38	39
Sexual orientation	69	42	29	30
Disability	81	63	70	52
Gender identity	N/A	N/A	N/A	N/A
<b>Total</b>	<b>307</b>	<b>266</b>	<b>222</b>	<b>184</b>

*Police recorded hate crime*

Figures for police recorded hate crime for all strands are available from 2011/12.

Police recorded hate crime statistics differ from the CSEW figures in that they are available annually. They also cover all ages of the population (not just adults) and, unlike the CSEW, cover public order offences which make up the majority of hate crime offences recorded.

However, police recorded hate crime has some limitations. For example, information on hate crime recorded by the police is reliant on public reporting. This is problematic as not all such incidents are reported to the police, particularly non-physical forms of hate crime such as racial slurs. There is also the issue as to whether the police properly record such offences. This was the source of discussions around the definition of institutional racism where the focus is on how the individual perceives the incident.

An examination of police recorded hate crime figures shows that hate crime reporting has been rising almost year on year. As previously mentioned, this is seemingly contrary to figures from the CSEW which suggests the opposite is the case.

<sup>19</sup> Hate Crime Statistics, House of Commons Library, Number 8537, 28 October 2019

**Table 3. Hate crimes recorded by the police, 2013/13 to 2017/18<sup>20</sup>**

<i>Numbers and percentages</i>		<b>England and Wales, recorded crime</b>					
<b>Hate crime strand</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>	<b>% change 16/17 - 17/18</b>
<b>Race</b>	35,845	37,575	42,862	49,419	62,685	71,251	14
<b>Religion</b>	1,572	2,264	3,293	4,400	5,949	8,336	40
<b>Sexual orientation</b>	4,241	4,588	5,591	7,194	9,157	11,638	27
<b>Disability</b>	1,911	2,020	2,515	3,629	5,558	7,226	30
<b>Transgender</b>	364	559	607	858	1,248	1,651	32
<b>Total number of motivating factors</b>	43,933	47,006	54,868	65,500	84,597	100,102	18
<b>Total number of offences</b>	42,255	44,577	52,465	62,518	80,393	94,098	17

*Interpreting the CSEW and the police statistics*

The CSEW and police recorded hate crime seem to suggest conflicting trajectories for instances of hate crime. The set of figures that offer the truer picture is difficult to say. Both sets of figures have their limitations. However, the rise in police recorded hate crime is at least partially attributable to an improvement in the recording of these crimes over the last number of years.

*Outcomes of reports to the police*

Data for 2017/18 from 31 police force areas concerning the outcome of hate crime flagged offences show that 13% of such offences ended with a charge or summons. Of the remainder, 74% of cases did not result in further action due to a lack of evidence, the victim did not want to pursue further action or a suspect was not identified. Seven per cent of cases were either settled out of court, further investigation or action was deemed to not be in the public interest or action was taken by another body or agency. Six per cent of offences were waiting to be assigned an outcome.

<sup>20</sup> House of Commons Library (2019). Hate Crime Statistics, Number 8537, 28

When compared to non-hate crime offences, hate crime offences are more likely to lead to a charge or summons.

**Table 4. Percentage of selected offences dealt with by a charge/summons, offences recorded in 2017/18, 31 forces<sup>21</sup>**

England and Wales, recorded crime	
	Charge/summons
<b>Hate crime flagged</b>	Percentage
Criminal Damage and Arson	8
Public order offences	13
Violence against the person	12
<b>Non-hate crime flagged</b>	
Criminal Damage and Arson	6
Public order offences	10
Violence against the person	11
<i>Prosecutions and Convictions</i>	

The Crown Prosecution Service (CPS) prosecutes cases referred to it by the police. Table 5 below shows the level of conviction versus non-conviction for hate crime. The conviction rate has remained relatively stable over the last several years with a conviction rate in excess of 80% for cases prosecuted by the CPS. This is in line with the general conviction rate.<sup>22</sup> It should be noted that the CPS have reported a decline in the number of cases referred to it by the police despite the number of reports of hate crime recorded by the police increasing. Research is currently underway as to why this is occurring.

<sup>21</sup> Police recorded crime, Home Office Data Hub

<sup>22</sup> <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-2017-18.pdf>

**Table 5. Completed hate crime prosecutions by outcome<sup>23</sup>**

	2013–14		2014–15		2015–16		2016–17		2017–18	
	Vol	%	Vol	%	Vol	%	Vol	%	Vol	%
Convictions	11,915	84.7	12,220	82.9	12,846	83.2	12,072	83.4	11,987	84.7
Non-convictions	2,159	15.3	2,518	17.1	2,596	16.8	2,408	16.6	2,164	15.3

*Impact of hate crime*

Aside from providing an indication of general trends, the CSEW also provides some insight into the impact crime has on victims' mental wellbeing. According to the CSEW, combined figures for the 2015/16 to 2017/18 surveys, victims of hate crime were more likely to be impacted emotionally and psychologically following a crime than victims of all crime. For instance, 40% of victims of hate crime felt a loss of confidence or vulnerable following the crime compared with 18% of those for all crimes; Twenty-seven per cent of hate crime victims had difficulty sleeping following the crime in comparison to 13% for all crimes; while 36% of hate crime victims suffered from anxiety or panic attacks compared with 13% for all crimes. Concerning feelings of depression, 23% of hate crime victims felt this way after the attack compared with eight per cent of victims of all crimes.

**Challenges tackling hate crime***Communication*

Proving the hostility element in hate crime cases is vital for a successful prosecution.<sup>24</sup> There are a number of ways this can be demonstrated, although proof is usually seen in terms of verbal utterances by the accused during the commission of the hate crime. Therefore, the existence of good communication between the police and prosecutors is crucial for getting the necessary evidence to court. When charging advice is not sought, or CPS prosecutors fail to seek this type of information from the police, this can result in police officers failing to collect sufficient evidence in hate crime cases. Further problems arise when police fail to identify hate

<sup>23</sup> <https://www.report-it.org.uk/files/cps-hate-crime-report-2018.pdf>

<sup>24</sup> <https://www.cps.gov.uk/sites/default/files/documents/publications/Hate-Crime-what-it-is-and-how-to-support-victims-and-witnesses.pdf>



crime cases early enough and consequently do not gather the necessary evidence for a successful prosecution in hate crime cases.

### *Complexity*

While hate crime legislation was enacted more than 20 years ago and notwithstanding the experience developed by the police and prosecutors, the complexity of hate crime legislation and the accompanying policies continues to cause some confusion and uncertainty, with the potential for inconsistent practices and unfair outcomes (Walters et al, 2017). This is evident not only in relation to charging decisions and the trial process, but also in relation to the interpretation of hate crime laws, as detailed in the following excerpt from an interview with a District Judge.

*“The legislation is certainly complicated. You’ve got lots of different permutations or combinations available to you by virtue of the legislation ... In any particular case you might have a religiously aggravated offence, you might have a racially aggravated offence, you might have a s. 145 or s. 146 ... aggravation. And there are knock-on legal consequences as a result of that. You might be looking at alternative charges in some cases and not alternative charges in other cases. Within the cases that are charged you might be looking at what I call the first limb of racial or religious aggravation, or the second limb which is the displaying of hostility or the motivation. Or both. So there are lots of bits and bobs you’ve to think about ... It’s certainly a complicated picture to consider. I wouldn’t say it would give me necessarily problems, but complexity tends to create error or misunderstanding as a general principle, and therefore there’s always a possibility in a complex environment of somebody in the process making a mistake that is not made in a more straightforward environment.”* (Interview District Judge in Walter et al, 2017)

### *Interpreting hostility*

Research conducted by Walters (2017) indicates that there may be differing opinions and practices regarding the interpretation of hostility in the courts. Walters notes that “while the upper courts have emphasised that demonstrating hostility is an objective “outward manifestation” of hostility, which does not require an appraisal of the inner thinking of the defendant, in practice, prosecutors, barristers, judges, and perhaps most importantly, juries,

are rejecting evidence of what might be considered an “objective” demonstration of hostility, having inquired into the defendant’s true intentions” (Walters 2017,130). Walters goes on to state that there is “a need for further guidance as to when, or if at all, an objective demonstration of hostility is, in actuality, an expression of identity-based prejudice that is deserving of the label “hate crime” (Walters, 2017, 130).

*Two tier hate crime system: Substantive offences versus sentencing uplift*

Based on the findings of research conducted by Walters in 2017 there appears to be a number of issues with having hate crime dealt with under 2 separate pieces of legislation.

Firstly, in terms of the severity of sentences for hate crime offences, the dedicated sentences under the Crime and Disorder Act 1998 (CDA) are more punitive than those available under the Criminal Justice Act 2003 (CJA). This in turn has the effect of creating a disparity between hostility based on nationality and/or religion (covered under the CDA) and other hate crime streams covered under the CJA.

Secondly, while the CDA and the CJA are in theory mutually exclusive of each other, some confusion appears to arise in instances where the CDA could have been preferred, but was not, is a cause of debate confusion amongst the judiciary and prosecutors.

Thirdly, having substantive offences on one hand and a sentence uplift on the other can have an impact on the recording of hate crime. Walters notes in his research on hate crime and the legal process, that several interviewees suggested that given that sexual orientation, disability and transgender offences are not proscribed in law as “substantive offences meant that they were less likely to be investigated as “hate crimes”, and evidence of hostility and prejudice was, therefore, less likely to be presented to the CPS and pursued in court (Walters 2018).

### **Recent developments**

At the time of writing, hate crime legislation in England and Wales was being reviewed by the Law Commission. The basis of the reviews centres around the growing concern about whether a sufficient range of characteristics are protected by the hate crime legislation and the extent to which different characteristics are afforded equal protection.

The Commission has also recommended that the Sentencing Council provide formal sentencing guidance for hostility-based offending under the CDA and for enhanced sentencing under the CJA (ss. 145-146).<sup>25</sup> Furthermore, the Commission recommended that all types of hate crime should be recorded on the Police National Computer and noted on the offender's criminal record.<sup>26</sup>

### **Other initiatives undertaken to combat Hate Crime**

There is support among commentators, academics and civil society organisations for the use of restorative justice as one alternative approach to transforming the behaviours of hate crime offenders (Walters, 2014). It is suggested that restorative justice offers a means to breakdown cultural and social barriers between offenders and victims thereby reducing the harm caused by hate crime and addressing its underlying causes. This is a small but burgeoning area of study.

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<sup>25</sup> Chara Bakalis, 'Legislating against hatred: the Law Commission's report on hate crime' [2015]

<sup>26</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/316103/9781474104852\\_Print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/316103/9781474104852_Print.pdf)

## 3.2 Canada

### **Definition of hate crime**

#### *Legislative provisions*

Hate crime is defined in the Criminal Code of Canada in sections 318, 319, 430(4.1). Although hate crime is not a specific offence, hateful motivation as an aggravating factor to an existing crime has been ratified in the Criminal Code (Statistics Canada, 2001). Hate crimes are defined as criminal incidents that are found to have been motivated by hatred toward an identifiable group.

#### *Other definitions*

Barbara Perry of the University of Ontario, has developed a definition of hate crime which is now widely cited in the sociological literature (Perry, 2001). She defines hate crime as being directed toward already stigmatised and marginalised groups, noting that it is a mechanism of power, intended to reaffirm the precarious hierarchies that characterise a given social order. It attempts to recreate simultaneously that threatened (real or imagined) power of the perpetrator's group and the 'appropriate' subordinate identity of the victim's group (Perry, 2001). She argues that this definition is useful as it describes the power relations endemic to the act, recognising that hate crime is a structural rather than an individual response to difference.

The Hate Crimes Community Working Group was set up to advise the government on an overall strategy to address individual and community-based victimization and related issues arising from hate crime. The Working Group was also tasked with the responsibility of recommending ways to improve services for victims of hate crime and to prevent further victimization. Their 2006 report defines hate crime as 'incidents that are also criminal offences committed against a person or property and motivated, in whole or in part, by bias or prejudice based on real or perceived race, national or ethnic origin, language, colour, religion, gender, age, mental or physical disability, sexual orientation or any other similar factor.' (The Ontario Hate Crimes Community Working Group (2006) pg.18). These are distinct from hate incidents that it defines as 'expressions of bias, prejudice and bigotry that are carried out by individuals, groups, organisations and states, directed against stigmatised and marginalised groups or communities and intended to affirm and secure existing

structures of domination and subordination'. (The Ontario Hate Crimes Community Working Group (2006) pg.18).

### **Protected characteristics**

According to the Criminal Code of Canada, protected characteristics cover:

- race
- national or ethnic origin
- language
- colour
- religion
- sex
- age
- mental or physical disability
- sexual orientation or
- gender identity or expression
- or on any other similar factor

### **How is hate crime legislated for?**

In Canada, legislation provides for a combination of both substantive offences and aggravated sentencing. As noted previously, 'hate crime' is not a specific offence in Canada rather, hateful motivation as an aggravating factor to an existing crime has been ratified in the Criminal Code (Statistics Canada, 2001). A uniquely identified offence - Mischief Relating to Religious Property (s430(4.1)) - is defined as damage against a property that is "primarily used for religious worship, including a church, mosque, synagogue or temple, or an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery ..." (Criminal Code of Canada, 1985 c-46 Section 430 (4.1)).

Of note also, hate propaganda, the promotion of hatred against identifiable groups, became a criminal offence in Canada in 1970, when the hate laws were adopted as amendments to the Criminal Code. Section 318 of the Criminal Code of Canada prohibits 'advocating genocide against an identifiable group' and Section 319 prohibits 'publically inciting hatred'

and 'wilfully promoting hatred' against an identifiable group (Criminal Code of Canada, 1985 c-46 Section 318 (1) pg. 345).

Any criminal act has the potential to be a hate crime if the hate motivation can be proven. In 1996, an amendment to the Criminal Code made hate motivation an aggravating factor as it related to sentencing, enshrining in law the precedent that hate motivation makes a crime more serious. Section (718.2(a)(i)) states that 'a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing, evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor' (Criminal Code of Canada, Section (718.2(a)(i))).

In addition, Canada has ratified the UN International Convention on the Elimination of All Forms of Racial Discrimination in 1970. The Canadian Human Rights Act and the various provincial human rights codes also address the issue of hate. In addition, both the Canadian Bill of Rights (1960) and the Charter of Rights and Freedoms (1982) clearly outline a vision of a multicultural society.

### **Overview of hate crime statistics**

In Canada, police-reported hate crime data are collected by Statistics Canada, the national statistical agency. In addition, Canada conducts regular victimisation surveys to measure unreported hate crime.

#### *Police reported hate crime*

Police-reported hate crimes refer to criminal incidents that, upon investigation by police, are found to have been motivated by hatred toward an identifiable group, as defined in subparagraph 718.2(a)(i) of the Criminal Code of Canada. An incident may be against a person or property and may target race, colour, national or ethnic origin, religion, sexual orientation, gender identity or expression, language, sex, age, or mental or physical disability, among other factors. In addition, there are four specific offences listed as hate propaganda offences or mischief motivated by hate in relation to religious property.

Police determine whether or not a crime was motivated by hatred and indicate the type of motivation based on information gathered during the investigation and common national

guidelines for record classification. Depending on the level of evidence at the time of the incident, police can record it as either a "suspected" or "confirmed" hate-motivated crime. The hate crime is classified by the perception of the accused not by the victim's characteristics. As more information is gathered, incidents are reviewed and verified and their status may be reclassified.

The collection of police-reported hate crime data occurs at the time the incident is reported. Police-reported hate crimes have been collected since 2004 through the Uniform Crime Reporting (UCR) Survey. There are three databases for this survey - the incident file, the accused and the victim file. A detailed analytical article is also produced every year about the hate crime data.

In 2017, the definition of founded incidents was amended to include third party reporting. An incident is "founded" if, after police investigation it is determined that the reported offence did occur or was attempted (even if the charged/suspect chargeable is unknown), or if there is no credible evidence to confirm that the reported incident did not take place. This includes third party reports that fit these criteria.

### *Overview of statistics*

Since 2009, the number of police-reported hate crime has ranged from 1,167 incidents in 2013 to 2,073 in 2017. This 2017 figure was an increase of 47% (+664 incidents) when compared with 2016. This increase in the total number of reported incidents was mainly attributed to an increase in religious motivated hate crime (+383 incidents compared with 2016) and race/ethnicity (+212 incidents compared with 2016). In 2018, the number of police-reported hate crimes decreased by 13% to 1,798. It is important to note these reports generated by Statistics Canada are based only on those incidents that are reported to police and are subsequently classified as motivated by hate. Incidents that do not meet the classification criteria are not included in the statistics.

Several other trends have been identified upon analysis of Canada's hate crime statistics (see Table 6 below). In 2018, the vast majority of police reported hate crime was motivated by race/ethnicity (43%) or religion (35%). Most recent figures from 2018 show that the Jewish community is the most frequent target of religious motivated hate crime. Fifty three per cent of religious motivated hate crime reported in 2018 was against the Jewish community. The Black community is most frequently targeted when the motivation is hatred

based on race or ethnicity. Fifty per cent of race/ethnicity motivated hate crime reported in 2018 was against the Black community. Two hundred and three such incidents were reported, representing a decrease of 12% in comparison with 2017. In 2017, 10% of reported hate crimes were motivated by sexual orientation and the number of these incidents increased by 16% from 2016. It is found that hate crimes experience by the LGBTQSI community tend to be the most violent offences. Fifty three per cent of hate crimes motivated by sexual orientation and sex/gender were violent crimes.

**Table 6. Police Reported hate crime by type of motivation, Canada (selected police service)** <sup>27</sup>

Type of motivation	2014	2015	2016	2017	2018
	Number				
Total police-reported hate crime	1295	1362	1409	2073	1798
Race or ethnicity	611	641	666	878	780
Religion	429	469	460	842	639
Sexual Orientation	155	141	176	204	173
Language	12	18	13	23	14
Disability	10	8	11	10	5
Sex	22	12	24	32	49
Age	6	4	5	4	10
Other similar factor	27	44	35	48	93
Unknown Motivation	23	25	19	32	35

### **Challenges tackling hate crime**

#### *Underreporting*

The 2004 General Social Survey (GSS) on Canadians' Safety (Victimization) showed that two thirds of people who said they have been victims of hate-motivated incidents did not report the incidents to the police. It also showed that an estimated 88% of sexual assaults are not reported to police. It is suggested that there may be differences in the reporting of

<sup>27</sup> Includes data from municipal and provincial police services as well as the Royal Canadian Mounted Police (RCMP) covering 99.8% of the Canadian population. Hate crime data for Calgary Police Service were not available in 2018, and therefore have been estimated based on data from 2017. As a result, these data should be interpreted with caution. Revised 2018 data will be available in 2020.



hate crimes by various targeted communities with (McDonald and Hogue, 2007). In 2004, only nine per cent of victims sought assistance from a formal help agency (victim services, crisis centres, help lines, health or social services). It seems that the vast majority of victims turn to informal support for help – a friend, neighbour, or family. The reasons given for non-reporting included that they believed that the incident was “not important enough”; they did not want the police involved; they felt it was a private matter and they felt the police would not be able to do anything about it. Victims also chose not to report both because they believed that the police would not help and because they feared reprisals by the offender(s). (ibid). The recommendations coming out of this study were to: support training for victim services on a nation-wide basis, fund proposals that aim to reduce barriers to accessing services for victims of hate crimes and also support proposals to develop training for those who work with victims of hate crimes.

### **Recent developments**

The Alberta Hate Crime Committee is a Canadian Partnership initiative established in 2002. Their aim is to promote awareness about issues related to hate crime incidents, address the needs of victims and enhance government and community responses. The Committee has purposefully extended its membership to community leaders, minority group organisations as well as law enforcement. In 2017, the Committee launched a website ([www.stophateab.ca](http://www.stophateab.ca)) to document the hate related incidents (non-criminal action committed against a person or property) across the province by type, time and location. In 2019, the Alberta government announced plans to create a provincial hate crime unit consisting of specialist police, law enforcement officials, including crown prosecutors to specifically fight hate crimes and extremism. This unit was recommended by the government’s 2018 report ‘Taking action again racism report’.<sup>28</sup>

### **Other initiatives undertaken to combat hate crime**

Several Canadian law enforcement agencies have attempted to address law enforcement's lack of knowledge or experience in identifying and investigating hate crime. Many agencies have created or adopted standardised procedures for investigating hate crime including guidelines on such issues as first responder’s responsibilities, victim support, identification of

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<sup>28</sup> <https://open.alberta.ca/dataset/74c63cfa-ebb9-40ae-8116-31e10ba2144a/resource/17bce968-6618-4b17-b114-958b5ad704f6/download/anti-racismfinal.pdf>

indicators of bias and securing evidence. The Ontario Police College has published a guide to responding to hate crime which includes a discussion on why hate crime are significant, definitions of hate crime and guidelines for investigating hate crime. It also includes a series of indicators that may signify an incident is hate motivated including the 'perceptions of the victims and witnesses about the crime.'<sup>29</sup>

Dedicated bias crime units are another component of police response to hate crime. Most large regional police agencies in Canada, including Toronto, Edmonton, Vancouver, have dedicated hate crime units. These are comprised of 2-4 officers and in some places, civilian researchers and analysts. Perry (2010) outlines the key characteristics of successful bias crime units, highlighting that they must have full investigative and intelligence gathering capacity with the capacity to carry out research and fact finding. It is not sufficient to limit the units to providing guidance to front line officers or engaging in community outreach to enhance public reporting of hate crime. Perry highlights that effective units must be able to monitor the contexts in which hate crime might emerge, using the internet to monitor the planned activities of organised hate groups. The unit must be able to connect with communities most vulnerable to hate crime. Since 1993, the Toronto Police Service's Hate Crime Unit (HCU) has been collecting and publishing data on reported hate/bias crime, officers have also had access to a civilian research assistant and an intelligence analyst. Individual Divisional Hate Crime Coordinators in each of the divisions also track and investigate hate/bias crimes within their respective divisions. The coordinators are encouraged to forward all suspected hate/bias motivated occurrences to the HCU for review. The HCU also works with members of other law enforcement agencies involved in the investigation of hate/bias crimes and provides training and education to the community and police officers (Perry, 2010).

The British Columbia (B.C.) Hate Crime Team is a multi-agency unit created to improve the effective identification, investigation and prosecution of hate crimes. It is mainly composed of law enforcement representatives, including those from the criminal justice branch, police services branch, the municipal police and the Royal Canadian Mountain Police. Some of the main actions from the team include: providing training for law enforcement on hate/bias crime, organising hate crime conferences (provincial and national), creating a victim pamphlet (translated into seven plus languages) with a telephone hotline, creating a hate crime investigation pocket guide for police officers, attending community meetings around

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<sup>29</sup> <http://www.opconline.ca/res/HateCrimes/final%20online%20PDF-English.pdf>

the province to present and discuss ways of address hate crime incidents in the communities concerned. The B.C. model has been criticised by media and community leaders as being inaccessible and not engagement with the community to get their inputs and guidance (Perry, 2010).

The Against Violent Extremism network in Canada has developed the 'Communities Project' with the goal of strengthening individuals and communities through social interdependence, active citizenship, dialogue and youth leadership. This project focuses on the needs of diverse communities and is now present in Montreal, Ottawa, the Greater Toronto area, London, Calgary, Edmonton and Vancouver (Sdrivens and Perry, 2017).

### 3.3 Sweden

#### **Definition of hate crime**

##### *Legislative provisions*

Sweden's hate crime laws are comprised of a general penalty-enhancement provision. This can be found in Chapter 29, Section 2(7) of the Swedish Criminal Code (CC).<sup>30</sup> It states that:

*“In assessing penal value, the following aggravating circumstances shall be given special consideration in addition to what is applicable to each and every type of crime:.... whether a motive for the crime was to aggrieve a person, ethnic group or some other similar group of people by reason of race, colour, national or ethnic origin, religious belief or other similar circumstance”.*

##### *Operational definition*

While there is no specific criminal code for hate crime, when police officers record an offence on the police electronic recording system, a tick box option is available for the purposes of noting that the crime was motivated by hatred. This operational definition closely matches Swedish legislation.

A hate crime consists of:

- *agitation against a population group: Criminal code Ch. 16 § 8*

- *unlawful discrimination: Criminal code Ch. 16 § 9*

- *and all other crimes where a motive has been to aggrieve a person, a population group or another such group of persons because of race, colour, national or ethnic origin, creed, sexual orientation or another similar circumstance (as per the penalty enhancement rule in Criminal code Ch. 29 §2 point 7).*<sup>31</sup>

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<sup>30</sup> <https://www.government.se/contentassets/5315d27076c942019828d6c36521696e/swedish-penal-code.pdf>

<sup>31</sup> <https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/>

An example of another similar circumstance, as expressed in the penalty enhancement rule, could be transgender identity or expression. The victim does not need to belong to any of the protected groups listed in the penalty enhancement rule. It is sufficient that the perpetrator perceives that the victim belong to or represent such a group. This operational definition helps to better ensure that the hate element is not mistakenly overlooked by police.

### **Protected characteristics**

Protected characteristics include

- race
- colour
- national or ethnic origin
- creed
- sexual orientation or other similar circumstance (e.g. transgender identity).

Other circumstances are not specifically defined, however in the preparatory work for the provision Swedish lawmakers mention transgender identity or expression as an example of 'other similar circumstance'.<sup>32</sup>

### **Recording of hate crime**

In Sweden, there are no particular crime codes for hate crime. However, when the details of an offence are recorded on the electronic police recording system a tick box option is available, which is used to indicate a potential hate crime. The recording system will also provide a definition of what a hate crime is in addition to access to web-based hate crime training materials for police officers.

Flagging potential hate crimes is compulsory and integrated in the general crime reporting form.

#### *Quality control measures*

Hate crime data are collected by the Swedish National Council for Crime Prevention. Police reports are searched for key words along with an examination of narrative texts. Since 2012, the keyword search is applied to a 50% sample of reports. Reports considered to display a

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<sup>32</sup> Hate crime recording and data collection practice across the EU, European Union Agency for Fundamental Rights, 2018

hate crime motive contain details such as motive, location and relationship between offender and victim, coded in before producing population-level estimates, which compensates for the 50% sample. These estimates subsequently make up the hate crime statistics.

#### *Official sources of data*

Hate crime data in Sweden are based on police reports. However, as detailed above the data is collected and reported by the Swedish National Council for Crime Prevention.

Figures show an increase in hate crime recorded by the police between 2014 and 2018.<sup>33 34</sup>

The number of prosecutions has declined overall during the reporting period. For the purposes of clarity, numbers concerning hate speech, discrimination and other related offences have been removed from these statistics. Based on data available from the OSCE website for 2018, the vast majority of hate crime are motivated by racism (3962) with bias related to sexual orientation and gender identity (663) comprising the second largest though much smaller group.<sup>35</sup>

**Table 11. Overview of hate crime statistics**

<b>Hate crimes recorded by police</b>			
<b>Year</b>	<b>Number recorded</b>	<b>Prosecuted</b>	<b>Sentenced</b>
2018	5858	218	Not available
2017	Not available	Not available	Not available
2016	4862	257	Not available
2015	4859	255	Not available
2014	4258	279	Not available

<sup>33</sup> <https://hatecrime.osce.org/sweden>

<sup>34</sup> <https://hatecrime.osce.org/sweden>

<sup>35</sup> <https://hatecrime.osce.org/sweden>

## **Challenges tackling hate crime**

Sweden is similar to a number of other jurisdictions in terms of the difficulties it encounters when operationalising policies, procedures and legislation.

### *Recording of hate crime by police*

As in other jurisdictions, there is an understandable tendency for police to focus more on the primary offence rather than the hate motive that may lie behind it. This can lead to a number of problematic issues such as insufficient evidence being gathered from the crime scene concerning the potential hate motive or hate crime being incorrectly identified when there is no evidence of such. In an effort to address these challenges, police in Sweden place an increased focus on the perpetrators background and other factors such as the wearing of racist symbols etc. This, however, has resource implications for the police and the approach of focusing on background and similar factors is not without its critics. Police investigation are vital to the future success of court cases as failure at the early stages of an investigation to properly document evidence of a hate crime can place prosecutors at a disadvantage when later trying to prove hate motivation in court (Granstrom & Astrom, 2017).

### *Prosecuting hate crime*

Swedish prosecutors have noted that they face a dual challenge when pursuing hate crime in the court. Firstly, they must prove the original offence in addition to the hate element and secondly, they must prove the hate motivation, which is seldom visible (Granstrom & Astrom, 2017).

Both defence lawyers and prosecutors agree that it is easier for the defence to deny being motivated by hate than it is for the prosecution to prove it. It is not enough for the prosecutor to prove intent, they must also be able to show beyond a reasonable doubt that a racial slur is linked to an assault. The question as to when the hate motivation is raised by the prosecution is also important. Despite the existence of set procedures, there seem to be some disagreements between judges, lawyers and prosecutors as to how this happens in practice. Having hate motivation introduced at the later stages of a trial has implications for the defence's ability to refute such claims. In some instances, a trial may need to be postponed to allow the defence time to respond (Granstrom & Astrom, 2017).

### *Sentencing*

Sweden, as with many other jurisdictions, uses an aggravated sentencing model to punish hate crime. However, it has been noted that it is difficult to discern the actual impact of sentence aggravation has on the severity of sentencing because of the lack of data on court outcomes (Granstrom & Astrom, 2017). This raises issues for validating the work of prosecutors and for demonstrating to victims that justice has been done. It also creates challenges for the collection and publication of data on sentencing.

### **Other initiatives undertaken to combat hate crime**

The Swedish police hold regular national and local consultative forums with civil society and key stakeholders to coordinate its action against hate crimes. This consultative approach has helped the police identify potential new developments in hate crime.

The Swedish National Council for Crime Prevention also consults with civil society organisations when proposing substantial changes to the statistics.



## 3.4 Germany

### **Definition of hate crime**

*Legislative provisions: Criminal Code of Germany (1998, as amended 2015)*

Germany's criminal code contains a sentencing provision applicable to any crime in the code. Section 46 of the German Criminal Code (CC) states explicitly that 'when weighing the seriousness of the offence, courts shall give particular consideration to the motives and aims of the offender, particularly where they are of a racist or xenophobic nature or where they otherwise show contempt for human dignity'.<sup>36</sup>

### *Operational definition*

Hate crimes are defined as follows for reporting purposes: "Hate crime comprises politically-motivated crimes, when – in recognition of the circumstances of the offence and/or the attitude of the offender – there are indications that the offence has been directed against a person because of his/her nationality, ethnicity, race, skin colour, religion, origin, appearance, disability, sexual orientation or social status. The act has to be committed in a cause-effect relationship with one of these motives, and be directed against an institution or an object."<sup>37</sup>

### **Protected characteristics**

Politically-motivated crimes, under which hate crimes fall, are assigned to five categories relating to the presumed motivation of the perpetrator:

- right-wing politically-motivated crimes
- left-wing politically-motivated crimes
- crimes motivated by foreign ideology
- religious motivated crimes
- and politically-motivated crimes that cannot clearly be assigned to any of these categories

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<sup>36</sup> <https://dejure.org/gesetze/StGB/46.html>

<sup>37</sup> <http://hatecrime.osce.org/germany>

Hate crime is considered a “thematic field” (Themenbereich) within politically-motivated crimes. Hate crimes are defined as those targeting a person on the basis of:

- nationality
- ethnic origin
- skin colour
- religion
- social status
- physical or intellectual disability or impairment
- sexual orientation and/or sexual and gender identity or
- external appearance <sup>38</sup>

### **How is hate crime legislated for?**

As specified in Section 46 of the German Criminal Code, the hate crime element of an offence is considered during sentencing. When weighing the seriousness of the offence, courts give particular consideration to the motives and aims of the offender, particularly where they are of a racist or xenophobic nature or where they otherwise show contempt for human dignity.<sup>39</sup>

### **Recording of hate crime**

#### *Recording mechanisms*

In Germany, hate crimes are recorded as a separate category within the framework of statistics for “politically-motivated crime” (see categories above). Politically-motivated crimes - including hate crimes - are recorded from the first moment by the frontline police officers, with a dedicated form. There is a specific “Criminal Police Reporting Service – Politically-motivated Crime” which applies uniformly throughout Germany.

The dedicated form contains information on, for example, the victim’s sex, nationality, asylum status, status as a victim or injured party, and, where relevant to the offence, other victim-specific characteristics. It also includes information on:

- the legal basis

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<sup>38</sup> <https://polizei.nrw/sites/default/files/2017-11/Definitionssystem%20PMK.pdf>

<sup>39</sup> <https://dejure.org/gesetze/StGB/46.html>

- a description of the incident
- time and place of the crime and
- characteristics of the perpetrators or suspects, including membership of specific groups or organisations

In addition, the crime is assigned to the following subcategories of bias motivation:

- racism
- xenophobia
- antisemitism
- religion
- anti-Islamism
- anti-Christianism
- antiziganism
- disability
- sexual orientation and sexual and gender identity
- social status and
- other ethnicity

### *Quality control measures*

In order to ensure consistent recording, internal guidelines have been produced by the Federal Criminal Police Office and the Criminal Police Offices of the Länder explaining in detail which data have to be included in the 14 fields of the dedicated form.

Local police report politically-motivated crimes to the Länder Criminal Police Offices. The specialists of the Criminal Police Offices of the relevant Länder check the information and clarify any possible open questions with the responsible local police stations. After this initial quality control process, the information is passed on to the Federal Criminal Police Office (BKA). The BKA collates, evaluates and analyses the nationwide data and return the results of the analysis to the different Länder. Within 31 days of the end of the year, the reported figures can still be corrected and changes resulting from findings by the prosecution services or the courts factored in. This may be the case, for example, if it transpires that a bias motivation cannot be proven or if the police identify the hate element of a crime at a later stage of an investigation. The main purpose of this data collection activity is to help public authorities to make strategic, evidence-based decisions on how to prevent hate

crimes. The criteria used for defining politically-motivated criminal offences and the catalogue of thematic areas for Politically-motivated Crimes are regularly reviewed and, where appropriate, adjusted.

#### *Official sources of data*

Based on the hate crime data it collects, the Federal Ministry of Interior publishes annual statistics on its website, synthesising the main figures and trends of general criminal statistics, of politically-motivated crimes and also specifically of hate crimes.

Data on hate crimes are broken down by bias motivation (xenophobic, anti-Semitic, racist, religion, social status, sexual orientation and gender and sexual identity, disability) and by violent/nonviolent crimes. In addition, crimes against reception facilities for asylum seekers, crimes in the context of political confrontation, crimes with an extremist background or crimes with Islamic background are also covered.

#### *Overview of hate crime statistics*

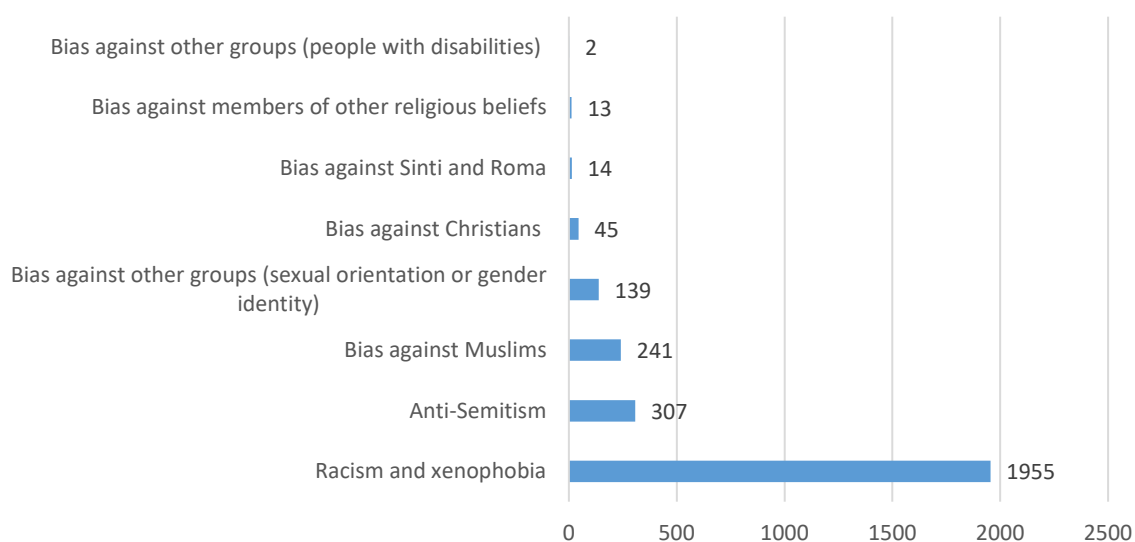
Information provided by the OSCE on hate crime recorded by police in Germany demonstrates the difficulties in sometimes obtaining accurate statistics on hate crime. From a cursory examination of the figures in Table 12 below, there appears to have been a significant increase in the number of hate crimes recorded by the police over recent years. A closer examination instead shows that much of the evident variation is due to changes in how hate crime is recorded, particularly the amalgamation and or separation of hate crime from hate speech offences. For example, figures for 2018 suggest an increase in the number of hate crimes recorded, but rather this is a result of the amalgamation of hate crime with hate speech offences. Similarly, the figure for 2017 also suggest an increase, however this increase can be partly explained by methodological changes in how data is collected.

**Table 12. Hate crime recorded by police in Germany**

Hate crime recorded by police in Germany			
Year	Number of hate crimes recorded	Prosecuted	Sentenced
2018	8113	Not available	Not available
2017	7913	Not available	Not available
2016	3598	Not available	Not available
2015	3046	Not available	Not available
2014	3059	Not available	Not available

An examination of 2018 police recorded figures (see Figure 1 below) shows that when hate speech related offences are filtered out, the number of recorded hate crime drops significantly. Of the recorded hate crimes that remain, racism and xenophobia is the largest group, followed by hate crimes related to anti-Semitism.

**Figure 1. Police recorded hate crime in Germany 2018 by type of hate crime** <sup>40</sup>



<sup>40</sup> <https://hatecrime.osce.org/germany>

## **Challenges tackling hate crime**

An examination of other jurisdictions and the wider literature shows that the difficulties experienced in Germany regarding the operation of hate crime legislation are similar to those encountered in other countries. Nonetheless, improvements have been evident over the last number of years in several areas, including data collection and the prosecution of hate crime.

### *Conflation of hate crime and politically-motivated crime*

Similar to other jurisdictions, where hate crime is dealt with under different guises, confusion can arise between politically-motivated crimes and hate crime. This would not be entirely unexpected given that hate crime is recorded as a politically-motivated crime. In some instances, when the ideological motivations of the perpetrator are unclear, the crime may not be recorded as a hate crime (Human Rights Watch, 2011).

### *Failure to investigate the hate element of a crime*

As in other jurisdictions, police can sometimes fail to investigate or record the hate element of a crime focusing instead on the principal offence (Human Rights Watch, 2011).

Improvements have been noted over the last number of years, particularly in police forces with community liaison officers. Similarly, a lack of trust and suspicion of the police among some sections of the community can hinder the reporting and therefore the investigation of hate crime (Human Rights Watch, 2011).

### *Prosecuting hate crime*

The manner in which hate crime has been dealt with by the courts has improved over the past number of years with states now having specialised prosecutors trained in politically-motivated cases. Nevertheless, because of the large number of cases, non-specialised prosecutors can be required to take on hate crime cases (Human Rights Watch, 2011).

In order for the hate element of an offence to be successfully pursued by the prosecution evidence of the hate element needs to have been investigated, recorded and communicated by the police. Failure of the police to document hate crime at the outset of the investigation

can have implications for court cases as the prosecution is not likely to pursue the hate aspect of the case. If the hate aspect does not arise during a prosecution, it is unlikely to be taken into account during sentencing.

Germany has only recently begun collecting and publishing judicial data regarding court outcomes for cases with a hate crime element.

### **Recent developments**

#### *Changes to data collection and reporting*

A working group comprised of federal and Länder representatives and also including experts from academia and civil society have reviewed the system used for defining politically-motivated crimes in order to establish whether changes are required. It concluded its work in November 2015. Agreement was reached that anti-Islamic, anti-Christian and antiziganistic offences should be recorded as separate subcategories of hate crimes in future. The Conference of German Interior Ministers adopted these changes, which entered into force on 1 January 2017 (FRA, 2018).

#### *Research on cooperation with NGOs*

The Federal Ministry of the Interior commissioned research to better understand and evaluate the range of cooperation on hate crime between civil society organisations and the police at the local, regional and federal levels in Germany. Entitled “Best practice in LEA - NGO cooperation in the field of prejudice-related crime”, the research examines the situation in Germany and beyond and conducts surveys and expert interviews with public authorities and NGOs. Overall, the study aims to identify best practice approaches and to develop recommendations for further action. In particular, the study seeks to understand what strengthens cooperation between the police and civil society organisations in recording prejudice-related crime, and intervening against it.

### *Judicial statistics*

As of January 2018, the first Länder Judicial Administrations began collecting statistical data on hate crimes. It is intended that the Länder will transmit their data to the Federal Office of Justice, which will aggregate the figures for the whole of Germany. For statistical purposes, it was proposed that criminal offences would be classified as hate crime if, upon assessing the circumstances of the offence and/or the attitude taken by the perpetrator, there are indications that they are directed against a person on the basis of: that person's actual or assumed nationality, ethnic origins, skin colour, religion, beliefs, physical and/or psychological disability or impairment, sexual orientation and/or sexual identity, political position, political views and/or political involvement, appearance or status in society. This data was unavailable for review at the time of writing.



## 3.5 Australia

### **Definition of hate crime**

#### *Legislative definition/other definitions*

In Australia hate crime is considered an aggravating factor rather than a specific crime.

Hate crime is generally understood as crime and abuse that is motivated or shaped by prejudice or group hatred. This tends to include prejudice on the grounds of race, religion, ethnicity, gender, sexuality and disability. Hate crime is also referred to as targeted crime, bias crime and prejudice-related crime. The victim is targeted because of an aspect of their identity (Mason, 2010).

It is also referred to as bias-motivated crime, i.e. when a person is attacked for being associated with a certain social, ethnic, or religious organisation, or for their sexual orientation, nationality, physical appearance, handicap, or gender identity (Mason, 2010). The New South Wales Police Force (NSWPF) define bias crime as a crime that is motivated by prejudice, bias or hatred towards a presumed characteristic of the victim. It is a criminal offence that is 'motivated, in whole or in part, by an offender's bias against an individual's or groups characteristic whether actual or perceived.

Hate crime is distinguished from hate speech as it involves conduct that is criminal irrespective of the expression of prejudice. Several states in Australia have discrimination statutes which criminalise hate speech (Mason, 2010).

### **Protected characteristics**

Hate crimes involve a diverse number of groups and hate crime legislation varies across Australia's six legal jurisdictions i.e. New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania (NSWPF Standard Operating procedures (n.d.))

In New South Wales protected characteristics include:

- race
- religion
- ethnic/national origin
- sex/gender
- gender identity
- age
- disability status
- sexual orientation or
- homelessness status

### **How is hate crime legislated for?**

Australia adapts a sentence enhancement approach to tackling hate crime. While there is significant variation in the legislative approach taken by different jurisdictions, all approaches focus on specifically and publically targeting crime that is motivated by, grounded in or aggravated by prejudice by imposing heavier sanctions than those applicable to parallel non-hate related offences. As previously highlighted, various states in Australia have discrimination statutes, which include specific offences of serious vilification which criminalise hate speech (conduct that promotes, incites or is motivated by prejudice or group hate) (Mason, 2010).

Western Australia is the only Australian jurisdiction to have enacted penalty enhancement provisions relating to hate crime. This approach imposes an additional maximum or minimum penalty on specific pre-existing offences if there is a bias motive. For example, the maximum term of imprisonment for an offence of common assault in Western Australia is 18 months, while the maximum penalty for the same offence committed in circumstances of racial aggravation is three years imprisonment. Importantly, however, the only ground covered is race.

In 2003, New South Wales (NSW) introduced hate crime provisions via a sentence aggravation model under s21A(2)(h) of the Crimes (Sentencing Procedure) Act 1999 (NSW). Indeed, NSW has the largest body of case law on hate crime provisions in Australia. Sentence aggravation model has also been in place in the Northern Territory since 2006. In this model, the bias motive is taken into account at sentencing, giving judges more

discretion. However, the power conferred on the sentencing court is discretionary and although such an aggravating factor must be taken into account the court is not required to increase the sentence if such a motive is established (unlike the penalty enhancement model described above).

In Australia, as is seen internationally, there is little consistency as to the evidence that is required to prove the bias component of an offence. Sentence aggravation provisions in NSW apply to an offender who is “motivated by hatred for or prejudice against ‘the specified victim groups’” (Mason, 2010). In Western Australia, penalty enhancement provisions specify that an offence will be racially aggravated if “the offence is motivated, in whole or part, by hostility towards persons as members of a racial group”. Western Australia laws also allow for elevation of an offence (attracting a more severe penalty) if, at the time of committing the offence (or immediately before or after), the offender demonstrates hostility towards the victim based on their membership of a racial or religious group. It is not necessary to establish that the offender was motivated by prejudice or that they intentionally selected the victim on the basis of a particular identity characteristic. Spoken and written racial or religious insults during the commission of an offence is held to be sufficient evidence of such hostility (Mason, 2010).

### **Recording of hate crime**

As mentioned above, there are no separate hate crime offences in Australia, making it difficult to track hate crime incidents within and between jurisdictions (Mason et al., 2017).

In 1991, a national inquiry into racist violence in Australia recommended that police develop systems for recording and monitoring bias crime (Human Rights and Equality Opportunity Commission Report 1991). NSWPF first began recording particular forms of bias crime (homophobic and anti-Semitic violence) in the early 1990s. This included the options of third party reporting through community organisations. In 2007, following racially driven riots in the city of Sydney, the NSWPF bias crime function was broadened to address multiple forms of bias crime, formalised through the establishment of a Bias Crime Coordinator. This role was left vacant between June 2009 and September 2012. In 2015, further concerns about public disorder and organised extremism prompted the NSWPF to expand this role into the Bias Crime Unit (BCU). The function of the BCU is to monitor and review reports of bias crime, deliver training and provide intelligence to local area commands. This unit was staffed by several intelligence, analyst and policy officers. The unit is supported by the counter-terrorism and special tactics command intelligence unit and every officer has training and understanding of bias crime (Mason, 2019).

In May 2017, the BCU was relocated to the newly established Fixated Persons Investigation Unit which seeks to pre-empt threat of extremism and radicalisation and is part of the Counter Terrorism and Special tactics Command. The functions of the BCU are also to engage in community consultation, monitor hate groups, liaise with external agencies and enhance the capacity of the NSWPF to respond to bias crime (Dalton and de Lint, 2018). Standard operating procedures (SOP) were approved in 2015 to provide guidance for identifying and investigating bias crime. Officers are advised to flag a 'bias motivation' associated factor when recording suspected bias crime events. The BCU then reviews each record, categorises the bias (e.g. race or religion), assesses the evidence and determines further actions. As described above, bias motivation is not an element of any offence in NSW, however, it is an aggravating factor at sentencing, this places an obligation on police to collect evidence of bias crime (New South Wales Police Force Standard Operating Procedures).

The BCU applies a schedule of 10 indicators to evaluate whether an incident should be classified as:

1. bias crime - sufficient evidence beyond reasonable doubt that the offenders were at least partially bias motivated
2. suspected bias crime – insufficient evidence but reasonable grounds to suggest that the offenders were at least partially bias motivated
3. bias incident – incident does not amount to a criminal offence but sufficient evidence it was bias motivated
4. not a bias crime – no or insufficient evidence that the incident of criminal offence was bias motivated

#### *Overview of hate crime statistics*

In Australia, a series of crime and victimisation studies and government inquiries over the last twenty years have documented the characteristics and prevalence of hate crime, which ranges from homicide to assault to intimidation, vandalism and graffiti. This research suggests that the primary targets of hate crime in Australia are members of minority groups including the Jewish, Muslim, Arab, Asian, Aboriginal, gay/lesbian, transgender and disabled communities (Mason, 2010). The group that attracts the highest rate of negative attitudes is Muslim Australians (31.5%) (Kamp et al. 2017). In 1991, a national inquiry into racist violence was the first comprehensive investigation of any form of bias crime in Australia. The

most vulnerable groups at that time were Indigenous, Vietnamese and Middle Eastern people (Human Rights and Equality Opportunity Commission Report, 1991). In 2005, a victimisation survey further confirmed that Vietnamese and Middle Eastern people were over represented as victims of such crimes (Johnson, 2005). A 2015 survey of LGBTI Australians found that almost 75% of respondents reported bullying, harassment or violence at some point during their lives due to their sexuality or gender identity (Australian Human Rights Commission Report, 2015).

Research shows that minority groups tend to have less confidence in police and lower levels of trust than non-minorities, particularly in communities with histories of over-policing or recent experiences of abuse of authority. This includes indigenous people, racial and religious minorities, recent immigrants and LGBTI communities. This mistrust translates to members of minority groups being less likely to report victimisation (Murphy and Cherney, 2011). Importantly, research also shows that police continue to hold negative perceptions, suspicions and stereotypes about some minorities (Miles-Johnson and Pickering, 2018).

Each state within Australia has a different methodology and classification process, which make it very difficult to compare crime rates, although the Australian Bureau of Statistics does provide some comparative breakdowns in general terms.<sup>41</sup>

Review of the current literature identified a notable knowledge gap around the analysis of court outcomes in relation to hate crime cases. More statistical studies on court outcomes, particularly in terms of how sentence enhancement increased the severity of sentences are needed to evaluate the effectiveness of hate crime legislation.

## **Challenges tackling hate crime**

### *Underreporting*

There is a substantial body of research which suggests that underreporting is a challenge to efforts to combat hate crime. Australian research suggests that ethnic minorities display low levels of confidence and trust in the police, resulting in less voluntary cooperation (Cherney and Chui (2009). Sargeant et al. (2014) look at the relationship between procedural justice, police performance, trust in the police and the willingness to cooperate with the police, and found that procedural justice is less important for cooperation with police for Vietnamese and Indian ancestral groups compared with the general population in Australia. In contrast, police

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<sup>41</sup> <https://www.whoishostingthis.com/resources/hate-crime/>

performance was more effective in promoting trust in the police. It is accepted that indigenous Australians have specific barriers when reporting a crime. As well as cultural and language barriers, members of Indigenous communities especially those in isolated communities, fear negative repercussions, stigmatisation and banishment. This group may also experience a lack of victim supports, services (government and non-government) and police resources. All of these issues are barriers to crime reporting (Willis, 2011).

A recent study has examined the importance of perceptions of police legitimacy in the decisions to report hate crime incidents in Australia. This study analysed the 2011-2012 National Security and preparedness survey (NSPS) and examined the differences between hate crime and non-hate crime reporting and how individual characteristics and perceptions of legitimacy influence decisions about reporting crime to police. (Wiedlitzka, 2018). The findings of the study suggest that hate crimes are less likely to be reported to police in comparison with non-hate crime but more positive perceptions of police legitimacy and police cooperation are significantly associated with hate crime reporting behaviour (Wiedlitzka, 2018).

The authors of this study argue that local law enforcement can play a crucial role in fostering perception of legitimacy and cooperation with the most vulnerable groups in our communities to encourage connection and inclusion. This is critical for hate crime victims. Suggestions made include more engagement with minority community groups, incorporating diversity awareness and the importance of police legitimacy and cooperation into police training and recruiting more persons from minority groups into the police force (Wiedlitzka, 2018).

Similar results on underreporting were found by Mason and Moran, 2019) who presented the first empirical study of bias crime policing in NSW. This study involved carrying out interviews with key informants employed by the NSW police service who had experience with the agency's approach to bias crime policing. This study looked to identify the challenges involved in implementing a bias crime initiative in the New South Wales Police Force and advance understanding of the impediments to sustained reform in bias crime policing. Nearly all respondents believed that under reporting of bias crime was a significant problem. NSWPF crime data shows that between July 2007 and January 2017, 1,818 reported cases were categorised as bias crime or suspected bias crime. This is an average of just 24.9 reports each month for the whole state. Respondents consistently referred to underreporting as a sign of lack of trust that minority communities have in the NSWPF. Half of respondents attributed this lack of trust prejudice or unconscious bias among police

personnel at all levels of the organisation which, they said, was evident in the ways that police treat members of some minority communities (Mason and Moran, 2019).

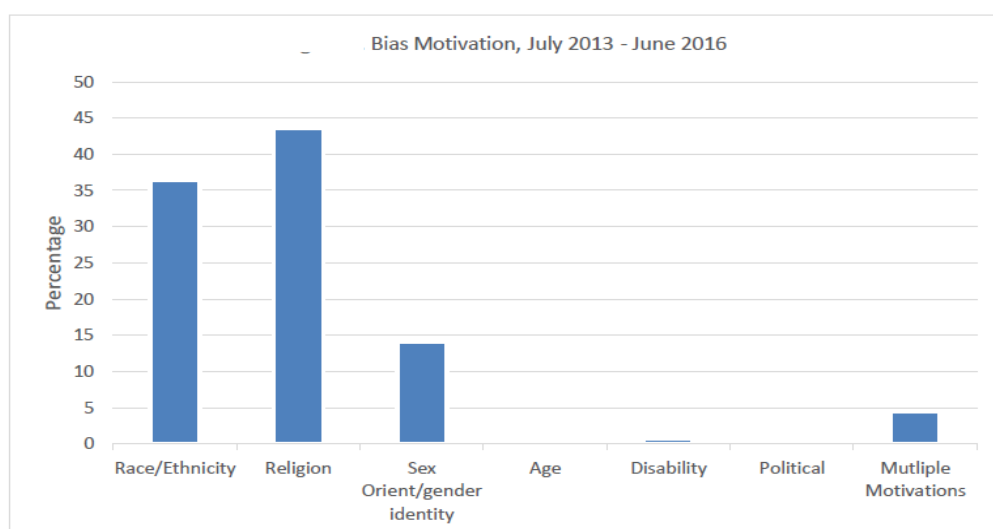
### *Lack of understanding*

The Mason and Moran (2009) study also found that lack of understanding of hate crime among law enforcement was also an issue. The NSWPF Standard Operating Procedures state that the essence of bias crime is 'the motivation or intent of the offender and not necessarily the perception or belief of the victim'. Respondents believed that this approach is deliberately strict and requires firm evidence of a biased motive on the part of the offender in order for it to be investigated as a bias crime. In addition, a majority of respondents believed that inability of front line officers to identify bias crime was a major barrier to both reporting and recording. This was evident from some of the respondents who failed to identify incidents involving mixed motives or opportunism as 'real' bias crime. Many respondents believed this lack of understanding was due to a lack of systemic training (Mason and Moran, 2019).

### **Recent developments**

A study by Mason (2019) has undertaken the first analysis of official records of bias crime held by the NSWPF. It has revealed the prevalence of race and religion-based hate crimes (Figure 2), and that people of Asian, Indian/Pakistani and Muslim backgrounds are the most frequent victims. By far the most common offence type for a hate crime was assault (approximately 28%), this was followed by street offences (17.5%) (Mason, 2019).

**Figure 2. Bias motivation**



The study concludes that police play an indispensable role in recording and monitoring bias crime and a well-resourced bias crime capacity is essential for all police forces in Australia. The results of this study suggest that bias crime is underreported and under-recorded. It is suggested that this can be partly attributed to a lack of trust minority communities place in police and the fact that many people were more comfortable reporting victimisation to civil society organisations than to police.

It is important to note that analysis is constrained by the categories adopted by the NSWPF to record and review bias crime. It is not always clear how categories are distinguished from each other, e.g. Asian, Indian/Pakistani and Middle Eastern are all categories, but it is unclear how the unit makes a determination to record a victim's race. Individual discretion and professional judgement also play a role in the categorisation process (Mason 2019).



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## 4. Learning from approaches in other jurisdictions: Key considerations

### 4.1 Why legislate for hate crime?

At the outset it may legitimately be asked if hate crime laws are required. There already exists a wide body of criminal justice legislation prohibiting assault, criminal damage, public order offences etc. By creating hate crime legislation are we adding another element, i.e. bias, hatred or prejudice and one that is not necessarily beneficial particularly when considered from the perspective of creating a successful prosecution case? Introducing a hate element into a criminal case, whether at the outset if the defendant is charged with a substantive offence or during sentencing in the case of sentence aggravation, undoubtedly introduces an additional issue for consideration. It may be argued, that in legal terms simple is beautiful, as the burden of having to prove the primary offence along with the hate aspect makes the task of the prosecution more difficult. (Owusu-Bempah, 2019).

Conversely, researchers have argued that there are a number of compelling reasons why hate crime legislation, under whatever guise, should be introduced..

#### *Hate crime causes additional damage compared to the primary offence alone*

Hate crimes are often “message crimes” which are aimed at inflicting harm not just directly on an individual victim but on entire groups of people who share the same or similar identity characteristics to that of the victim (Iganski, 2001; Weinstein, 1992). Furthermore, victims themselves can experience more harm than would otherwise be the case such as heightened physical, psychological and emotional traumas (Iganski, 2001) and generally a reduced quality of life (Chakraborti, Garland, Hardy, 2014).

### *Hate crime undermines the values of an inclusive society*

Iganski, notes that hate crimes are as much of an attack on social values as they are on individuals (2001). This is because hate crime undermines the rights of individuals to be free from targeted abuse and more generally undermines the rights of persons to be treated with dignity or respect. In this sense hate crime laws have an educational basis as they are a signal to those members of society who engage in this behaviour that it is unacceptable.

### *Hate crime laws demonstrate the states support for marginalised groups*

Hate crime laws can be an important message to marginalised groups that the State supports them. Alon Harel and Gideon Parchomovsky (1999) refer to this approach as the “fair protection paradigm”, which requires the state to take account of groups within society who are particularly vulnerable to targeted victimisation.

### *Hate crime laws provide the basis for recording and monitoring hate crime*

Having hate crime laws enacted places an onus on police and other criminal justice agencies to investigate and pursue any reported hate-motivated crimes. This in turn better ensures that hate crime is recorded and monitored. Conversely, without hate crime having a basis in law, hate crime can disappear from view (Schweppe et al. 2018).

## 4.2 Defining Hate Crime

In a very broad sense, hate crimes are acts of violence and/or intimidation directed towards marginalised groups, and/or communities or both (Perry, 2001). Hate crime laws can be seen as the State’s attempt to address the wide range of criminal manifestations of prejudice by creating criminal offences that are comprised of 2 essential elements (i) a criminal act (ii) committed with a bias motive. As such, hate crime is best understood as a concept rather than a specific legal offence.

This can be clearly seen in the Organisation for Security and Co-operation in Europe (OSCE) definition of hate crime:

*“... criminal acts committed with a bias motive. It is this motive that makes hate crimes different from other crimes. A hate crime is not one particular offence. It could be an act of intimidation, threats, property damage, assault, murder or any other criminal offence. The term “hate crime” or “bias crime”, therefore, describes a type of crime, rather than a specific offence within a penal code” (OSCE, 2009).*

While the present research examined a small number of jurisdictions, a review of the wider literature shows that a large number of jurisdictions have hate crime type laws. This aligns with Manson’s description of hate crime being a particular social problem which demands its own label of criminality and punishment (Mason 2015).

However, finding a simple universal definition of hate crime is highly problematic.

Chakraborti (2015) states that hate crime is a social construct which has multiple meanings to different actors and which is subject to a myriad of interpretations. Based on the variation found in how different jurisdictions legislate and develop policies to tackle hate crime, this is certainly evident. Even within a single jurisdiction there can be a notable variation between how hate crime is legislated for and how practitioners record hate crime, England and Wales being a good case in point.

According to the OSCE definition, the factor that turns an ordinary crime into a hate crime is the perpetrator’s selection of a victim based on a bias or prejudice about the group to which the victim belongs. Bias though, is a rather loose term that can be defined in a number of ways often without specific reference to hate. In fact, the term hate crime itself can be misleading, in that it implies that hatred of an individual or group must either be a motivating factor or demonstrated during the commission of the criminal act. When legislating for hate crime, different jurisdictions use terms such as hostility, ill will, prejudice, intolerance rather than hate. In some jurisdictions hate crime is very broadly defined and can encompass anti-discrimination provisions, as is the case in Sweden, or it can be seen in the context of politically-motivated crime, as is the case in Germany. Furthermore, jurisdictions whose hate crime legislation is based on a ‘group selection model’ rather than an ‘animus model’, penalising crimes where the victim is *selected* due to their group characteristic rather than a hate based motivation.<sup>42</sup> Unsurprisingly then, it was found that the terms hate crime, bias

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<sup>42</sup> <https://www.osce.org/odihr/prosecutorsguide?download=true>

motivated crime, or discriminatory crime are often used throughout the literature interchangeably while referring to the same subject.

All the variation evident in the concept of hate crime creates challenges when seeking to compare and contrast different jurisdictions in their efforts to combat hate crime as like is not always compared with like. Nevertheless, much can be gleaned from examining how other jurisdictions tackle hate crime in terms of legislative models, the legal tests used and the wording of the hate element of the legislation in addition to non-legislative matters that while not within the brief of policy makers also needs to be considered. The not insignificant challenge for policy makers is to create a workable definition of hate crime that has real world benefits.

### 4.3 Assessing the impact of hate crime legislation

As noted earlier, the definition and conception of hate crime can vary widely from jurisdiction to jurisdiction. This can be further complicated when jurisdictions mix hate crime statistics with other related but distinct issues such as discrimination as is the case with Sweden for example. From the point of view of making comparisons this creates significant challenges as like is not being compared with like. Furthermore, there are a number of other important factors besides the legislative models in place that contribute to effectiveness, for example, the policies and procedures of law enforcement agencies, training and well established and reliable recording systems.

Nevertheless, as one expert noted,<sup>43</sup> some inference as to the effectiveness of a particular legislative approach may be drawn from the number of hate crimes detected, number of prosecutions and successful convictions. It should be noted that few jurisdictions provide statistics on court outcomes. England and Wales is perhaps a good example as it has higher levels of reporting of hate crime than other jurisdictions while also having higher levels of successful prosecutions and convictions compared with countries with larger populations. In 2017, police in the UK recorded (the vast majority of which is accounted for England and Wales) 95,552 hate crime while Germany recorded 7,913 and Canada 207.<sup>44</sup>

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<sup>43</sup> Comment made by Mark Walters in 2019 during a phone interview regarding measuring the effectiveness of hate crime laws.

<sup>44</sup> <http://hatecrime.osce.org>

It should be noted that this is a rather simple measure and is open to a range of interpretations. For example, it may be argued that England and Wales has simply more hate crime than other jurisdictions and this explains why they have higher detection rates.

However, it is likely England and Wales appear to do better than other jurisdictions because they have a combination of reasonably good legal provisions, combined importantly with an active policy and practitioner domain amongst police and prosecutors in particular. This involves training, awareness raising, action planning, recording, monitoring and public reporting on case outcomes. Also their conviction rates across a range of hate crimes is higher than other jurisdictions where such data is available.<sup>45</sup>

## 4.4 Factors to consider for developing effective legislation to combat hate crime

### **Types of hate crime legislation**

In considering the introduction of legislation to combat hate crime it is important to consider which type of legislation is likely to be both beneficial and workable in this jurisdiction. Based on the review of other jurisdictions and on the wider literature, there are three primary means of legislating against hate crime each of which has advantages and disadvantages. It should also be noted, that these means of legislating for hate crime are not mutually exclusive as some jurisdictions utilise substantive offences alongside sentence enhancement. An important consideration in this regard is parity of penalties across different types of legislation.

#### *Sentence enhancement*

The sentence enhancement model is the most widely used method for legislating against hate crime in EU member states and further afield. Under this model, the offender is charged with the basic offence and then, during the sentencing part of the trial, the bias element of the offence is introduced as an aggravating factor allowing for a stiffer penalty to be imposed.

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<sup>45</sup> *ibid*

In terms of advantages, the sentence enhancement model is easy to understand and implement and it is said to have the advantage of allowing any criminal offence to become a hate crime (Granstrom and Astrom, 2018).

In terms of disadvantages, the sentence enhancement model may be unsuitable for criminal legal systems that have narrowly-defined sets of offences with slender ranges of sentencing bands for them, as this will not allow for much sentence enhancement (Walters 2018). Also it may be unfair to raise the issue of hate or bias at such a late stage in a trial as the defendant might perceive they are being charged with one offence but sentenced for another. Another difficulty with the sentence enhancement approach is that, in many jurisdictions in which this approach is used, there is often no requirement to record the hate element of the offence which means that this information may not be passed from police to prosecutors and so may not be pursued in court. Therefore, under the sentence enhancement approach, the hate or bias element of the offence may be more likely to vanish as the case proceeds through the system. Based on the review of jurisdictions using this approach, with Germany and Sweden being cases in point, it was often difficult to uncover statistics on court outcomes particularly in terms of how sentence enhancement increased the severity of sentences.

#### *Substantive offences*

Some other jurisdictions, most notably England and Wales, have substantive hate crime offences in addition to sentence enhancement. These are essentially enhanced versions of certain pre-existing offences such as assault, property damage etc. that carry stiffer penalties than their non-enhanced counterparts.

Having substantive offences helps to focus the attention of police and law enforcement agencies on the hate or bias aspect of the offence as under this model it forms an essential part of the offence itself rather than being a peripheral consideration as may occur with sentence enhancement. Research by Walters and colleagues (2017) indicated that this can increase the likelihood of these offences being applied (see also Home Office, 2018). Importantly, having substantive offences also increases the likelihood that hate crime will be better recorded and monitored as law enforcement are legally obliged to recognise and attend to the hate element of the offence. Recording of hate crime has other additional benefits such as identifying repeat offenders, showing targeted communities that justice is being done and assisting post-sentence measures.

However, substantive offences are more complex than their non-enhanced equivalents which in turn can increase the burden on police during investigations and on prosecutors

during a trial as they must prove the basic offence alongside the bias element. Owusu-Bempah et al (2018) notes that cases involving hate crime in the UK can turn into trials of the defendant's character, i.e. whether they are racists. In such instances, if the hate element of the offence is disproved this can have the effect of undermining the entire case.

### *Hybrid systems*

An alternative approach to both of these established means of legislating for hate crime is often referred to as the "hybrid model". This approach is used in Scotland. Under the hybrid model, rather than creating new substantive offences with new maximum sentences for each offence, the Scottish legislation simply allows prosecutors to add the hate element to the basic offence which must then be proved at trial. If proved, the judge must then apply a sentence uplift during sentencing. This means that aggravation can be added to all criminal offences. The key distinction between sentence enhancement and the hybrid model is that the offence is re-labelled in law upon conviction and must be recorded as such.

The hybrid approach has the benefits of the other two means of legislating for hate crime while also avoiding some of their shortcomings.

However, the hybrid approach is rather new in comparison to either substantive offences or enhanced sentencing and is not widely used and, as such, there is less literature available. It may also be the case that judges are constrained by the maximum sentence available in the primary offence.

## **Models for grounding hate crime in legislation**

Based on the review of other jurisdictions and on the wider literature, there are two primary approaches for grounding approaches to tackling hate crime in legislation, though these are not necessarily exclusive of each other.

### *The Animus model*

In the "animus model", a hate crime occurs if there is an element of prejudice or hatred in the motivation for an offence. This is the approach used for example in England and Wales. The English definition requires that the offence has been (wholly or partly) "motivated by hostility", or that the perpetrator "demonstrated hostility" towards the victim, based on a characteristic such as their race or religion etc.

This approach closely aligns with a more instinctual approach to how hate crime is conceived, i.e. that hate crime laws are intended to protect vulnerable minorities from targeted criminal acts. The animus approach focuses on the moral culpability of the perpetrator/s. It applies where the perpetrator either intended the harm or was knowingly indifferent to the harm they might cause. This fits well with the individual responsibility that underpins most criminal legal systems.

One of the main difficulties with the animus model is that proving hatred, bias or prejudice - can be difficult (Schweppe et al., 2018) where legislation is solely based on motivation as opposed to some combination of motivation and demonstration. Much depends on the threshold for proving hate. For example in the Northern Territory, Australia the aggravation of an offence cannot be proven unless it is motivated by hate. As motivation is hard to prove this is a very high threshold. Unsurprisingly, the Northern Territory has few reported cases of hate crime. Therefore, the effectiveness of the animus model appears to be highly dependent on whether it incorporates not solely hostile motivation, but also the demonstration of hostility.

#### *The group selection model*

In the “group selection” model, all that needs to be shown is that the offender selected the victim “because of” or “by reason of” a protected characteristic. This approach is one that is favoured by several US states. Whether or not the perpetrator feels some sort of prejudice or hatred, the impact on the victim and on those who fear falling into that victim’s group may be just as severe and likewise the threat to public order.

The group selection approach focuses on the impact on the victim and on the reasoning of the perpetrator in selecting the victim, and so can be seen as more victim orientated than the animus model. It has been asserted that the group selection model helps to recognise the structural aspects of targeted victimisation (Wang, 2000). The argument here is that the targeted victimisation of already marginalised social groups, regardless of the perpetrator prejudice, is inherently a biased and discriminatory act and serves to compound the social disadvantage of these groups.

Nevertheless, this approach to legislating for hate crime is deemed to be problematic by some commentators primarily because the scope of the group selection model can be broader than crimes involving hate. The group selection model may also capture crimes based on the deliberate targeting of a victim’s vulnerability or some other characteristic.



While such crimes are certainly opportunistic and reprehensible in their choice of victim and are no doubt made more serious due to the targeting of vulnerability, this is not necessarily congruent with an understanding of a hate crime as grounded in and motivated by intolerance and hostility toward a marginalised group. As such the group selection may capture those whose motivations are not hate based. Goodall (2013) argues that the group selection model is more suited to civil law than criminal law as it recognises the flaws of a society which places the victim at a disadvantage. Furthermore, many have also argued that the public labelling of certain groups as inherently vulnerable may serve to perpetuate a false representation of such persons as innately weak and this is in and of itself a form of prejudice (Walters et al., 2017). Such debates are reflective of the broader discourses surrounding what is meant by hate crime.

### **Legal thresholds for proving hate**

Careful consideration of the legal threshold for proving hate, bias or prejudice is very important, particularly in the context of the animus approach to legislating.

Generally speaking, legal thresholds which are based solely on proving hate-based motivation on the part of the perpetrator are problematic as proving motivation is extremely difficult. The motivation test is very rarely used. It can be extremely difficult to prove (Law Commission, 2014: 2.33). It is safe to say, based on a review of jurisdictions included in part two and in the wider literature that those whose legislation is based primarily or solely on proving hate-based motivations are less successful at pursuing hate crime through the criminal justice system with Canada and some Australian States being cases in point. It should also be considered that perpetrators may have more than one motivation for a crime which may cause difficulties if proving hate crime is solely based on having a hate-based motivation.

Alternatively, jurisdictions whose threshold relies on demonstrations of hatred are more successful in terms of the level of prosecutions and convictions. England and Wales is an interesting case in point as their legislation covers both motivation and demonstration of hatred as the threshold for proving hate crime. Notably, the motivation test is hardly ever relied upon, rather the focus of the prosecution falls on the easier to prove demonstration of hostility aspect of the threshold (Walters et al 2017). England and Wales have a good success rate at pursuing hate crime and while there are a number of reasons for this, their success may be partly attributed to the legal threshold used in hate crime cases (Walters et

al 2017). One of the difficulties however in relying on outward manifestations of hatred is that defendants may utter a slur in the heat of the moment out of anger rather than hostility.

### **Wording of the hate element**

Some consideration should be given to the wording of the hate element of the offence. As per the earlier discussion concerning definitions, hate crime can be broadly defined and may not require reference to the word hate. In fact, it might be argued that hate is such an extreme word that it may not be entirely suitable for capturing all of the types of behaviour that fall under prejudiced-based offending. It is notable that the Northern Territory in Australia uses the word hate in its legislation and has relatively few convictions for hate crime. Other jurisdictions use a variety of terms including; hostility (England and Wales), prejudice (Canada, some Australian Territories), and bias (Canada). Careful consideration should be given to any pre-existing legal meaning of terms used.

Furthermore, dictionary or common sense definitions of phrases such as hostility can be very broad and may encompass issues that do not instinctively fall under hate crime. As a case in point, the Crown Prosecution Service guidance on hate crime notes that the word “hostility” should be given a literal definition and include “ill-will, ill-feeling, spite, prejudice, unfriendliness, antagonism, resentment, and dislike” (CPS, nd). However, the Law Society in Scotland noted in their response to recommendations made by Lord Bracadale to adopt the word “hostility” in Scots law (thereby replacing the current words “malice” and “ill-will”) was that a literal interpretation of this word that includes “unfriendliness” is too broad, and may not align with the policy aim of combating prejudice-based offending in society (Law Society of Scotland, 2017). Careful consideration should be given to what might work best in the Irish context.

### **Protected Characteristics**

A review of the jurisdictions in part two of this report and those covered in the wider literature shows that there are a number of characteristics which are frequently protected regardless of how legislation is framed these include race (often interpreted to include ethnicity, nationality and citizenship), religion (including non-believers), and increasingly, sexual orientation (often confined to heterosexuality, homosexuality and bisexuality). More recently, gender identity and gender expression (i.e., protecting individuals who identify as

transgender) and disability have been included in a number of jurisdictions (Schweepe, 2018).

However, the question as to why some groups should be protected and not others is far more challenging to answer and indeed is the subject of debate and disagreement among experts in the area of hate crime.<sup>46</sup> It is difficult to determine what precise rationale lies behind the selection of protected groups and by all appearances the inclusion of some and not others has been done on a piecemeal basis. Potentially, hate crime legislation could cover a very large number of groups, with jurisdictions such as England and Wales at the time of writing considering whether to add to its list of protected characteristics. On the other hand, a number of authors have expressed concerns about expanding protected status to ever larger number of groups as this may dilute the concept of hate crime to such a degree as to make it meaningless (The Law Commission, 2014). An interesting case in point, is the question of whether gender should be a protected characteristic. Some authors argue that because of the misogynist nature of sexual and domestic violence gender should be a protected characteristic while others argue that including gender would swamp other hate crime offences and it is better addressed under criminal laws already developed for this purpose (Gelber, 2002; Lunny, 2011).

Nevertheless, there are a number of principles which are useful to consider. Firstly, it might be considered if a group has a history of marginalisation, secondly whether the characteristic in question is immutable or fundamental to the persons identify, thirdly whether there is evidence of hostility against said group. Other considerations also include reference to relevant pre-existing legislation such as equality legislation, international instruments and the extent to which groups might already be protected under existing measures. This is by no means an exhaustive list and there are many other factors that may help inform deliberations in this regard.

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<sup>46</sup> See, for example, N Hall, *Hate Crime* (2nd ed 2013), in which it is argued that one of the most contentious issues in current hate crime theory is which characteristics should be included in the formal legislative response. For a lucid account of the problem see the recent article by G Mason, "Victim Attributes in Hate Crime Law: Difference and the Politics of Justice" (2014) 54 *British Journal of Criminology* 161. See also the Theory Paper (fn 4 above) at paras 201 to 218, and the sources cited there. See also H Mason-Bish, "Future Challenges for Hate Crime Policy: Lessons from the Past" in N Chakraborti (ed) *Hate Crime: Concepts, Policy, Future Directions* (2010), p 66.

### **Non legislative considerations**

While not the primary focus of this examination of hate crime legislation, there are a number of other important factors that have a role in ensuring effective action against hate crime is taken. As previously mentioned, the recording of hate crime by criminal justice agencies is important in monitoring trends and demonstrating that the state supports vulnerable communities and groups. Training and bias awareness across the all of the agencies with responsibility for hate crime is also important for ensuring that hate crime can be recognised and dealt with appropriately. National strategies/action plans are also helpful in bringing together a wide range of stakeholders including state bodies, NGOs and academics for the purposes of providing a unified response to hate crime.

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## 5. Conclusion

Overall our research aimed to focus on:

- How do other countries legislate for hate crime?
- How do other jurisdictions measure hate crime?
- How effective is legislation at tackling hate crime?
- What learning can be provided to inform the potential development of legislation or other measures, in Ireland?

This report has focused on five jurisdictions detailing how they legislate for hate crime, how they measure hate based criminal activity including the challenges involved in recording offences, prosecutions and convictions and how effective legislative approaches are seen to be. Learnings from each of these country reviews and a broader review of hate crime literature have been summarised to provide key considerations to inform the development of hate crime legislation.

An examination of several jurisdictions and the wider literature shows that many states have enacted various forms of hate crime legislation to combat acts of violence and/or intimidation directed towards marginalised groups. This research found that legislative approaches to tackling hate crime normally involved enhanced sentencing, substantive offences or a combination of both. Broadly similar characteristics are protected across jurisdictions with religion, race and sexual orientation being among the most common. It is notable that many jurisdictions encounter challenges when seeking to record and monitor hate crime, particularly concerning court outcomes. While not being the focus of the research, it was found that non legislative approaches, such as well-developed administrative policies and procedures can play an important role in tackling hate crime.

Aside from considerations concerning the effectiveness of legislative responses, there are compelling reasons for having laws of this type these include:

- Addressing the additional harm caused by hate crime
- Protecting the values of an inclusive society
- Supporting marginalised groups

- Providing an evidence base for policy makers and others through the recording and monitoring hate crime

In legislating against hate crime, there are several key factors that should be considered carefully to ensure that any future laws are both workable and effective. These factors include:

- The definitional complexity of hate crime
- The types of legislation that are widely used (i.e. enhanced sentences and substantive offences) and the suitability of these to the Irish context
- How approaches to tackling hate crime can be grounded in legislation (i.e. Animus and group selection models) and the implications involved
- The setting of legal thresholds for proving hate crime
- The importance of wording for hate crime offences
- What characteristics should be protected and why
- The importance of non-legislative factors in combatting hate crime

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