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Criminalizing Hate Crimes is Only Part of the Solution

In a Nutshell

- Hate crimes are on the rise and have a considerable impact on the physical and mental well-being of victims and their communities.
- Criminal hate crime statutes that enhance sentences for bias-motivated crimes do not serve as a sufficiently effective deterrent.
- A broader, public health-based approach to hate-motivated acts that tries to reduce bias before it turns violent should be part of the state’s efforts to reduce hate crimes.

Introduction

There has been a documented rise in hate-based incidents and hate crimes across the country. While hate-based acts are difficult to track, hate crimes recorded by law enforcement have increased. The U.S. Department of Justice documented over 11,000 incidents involving over 13,000 victims in 2022. In Michigan, the number of hate crimes increased from 2020 to 2021, and the vast majority of these were crimes committed against people, as opposed to property or society at large. Both nationally and in Michigan, the largest proportion of hate crimes are motivated by bias against race, ethnicity, or ancestry, followed by bias against religion and sexual orientation.

Beyond the statistical data, accounts of hate-based incidents are popping up more and more, both in the media and in affected communities. The statistical rise in incidents along with the heightened visibility of hate-motivated acts have motivated policymakers to act. The policy focus in many states, including Michigan, has been stricter and more expansive criminal hate crime statutes. While these efforts may be part of the solution to hate-based incidents, governments should consider a broader, public health approach to combating hate-based violence and intimidation. Public health policies, combined with or instead of criminalization, have already been implemented to tackle other social public health issues, including drunk driving and smoking cessation.

Hate Crime Laws

Hate crimes and hate-based incidents are generally defined as acts motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender identity, or disability. While most states have implemented hate crime laws, they vary widely in their scope and implementation. Most commonly, these laws impose harsher punishments for certain acts that may or may not be already criminalized if they are motivated by bias against the person’s identity. The laws often create distinct crimes with their own criminal penalties on top of the penalty for the underlying offense, but some laws use general sentencing statutes to include the bias or motivation for an underlying crime to justify enhanced sentencing.

Michigan's "Ethnic Intimidation" statute creates a distinct hate crime law. Currently, to convict someone of a hate crime in Michigan, the prosecution must show that an individual had malicious intent to intimidate or harass a person because of that person's race, color, religion, gender, or national origin when doing the following acts:

- Causing physical contact with another person
- Damaging, destroying, or defacing any real or personal property of another person
- Threatening, by word or act, to do any of the above if there is reasonable cause to believe that the act will occur.
- Ethnic intimidation is a felony punishable by imprisonment or fine and creates a separate right to civil action.

Legislation has passed the Michigan House of Representatives that would significantly expand the current statute. The law would broaden the list of protected classes to include sex, sexual orientation, gender identity or expression, physical or mental disability, age, and association or affiliation with an individual or group based on a protected class. The law also adds intimidation to the punishable acts, defined as the "willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable individual to feel terrorized, frightened, or threatened, and that actually causes the victim to feel terrorized, frightened, or threatened." The bill package also includes a prohibition on institutional desecration and makes complementary changes to the associated sentencing guidelines.

Effectiveness of Hate Crime Laws

Advocates for hate crime laws point to the need to legally respond to hate-based violence and hold offenders accountable. In addition, hate crime laws that require mandatory reporting – which Michigan enacted in 1991 – are necessary to accurately track and collect data on hate-based incidents.

However, there is very little evidence to show that hate crime laws' harsher punishments deter hate violence in any meaningful way, although this lack of evidence may stem from inconsistent data collection and selective enforcement more than the statutes themselves. That said, research about crime in general typically finds that enhancing punishments does little to deter criminal behavior. Further, others argue that criminalization is generally dangerous for marginalized communities and these laws do little to combat the underlying factors that contribute to hate crimes.

While statutes that enhance penalties for hate crimes may serve a variety of functions and should not be abandoned, the increased prevalence of hate-based incidents shows that these laws alone do not sufficiently deter hate-motivated acts and a broader set of solutions is needed. Specifically, it is important to recognize hate-based violence and intimidation as not just a matter of public safety, but as a matter of public health.

Hate-Motivated Acts as a Public Health Problem

The idea that racism and other forms of hate are public health concerns has taken hold in recent years. Certainly, hate-motivated acts have consequences for the health of the victims and their communities. Aside from any direct physical harm, there is evidence that hate crimes have enduring psychological effects beyond what is experienced by victims of non-hate-motivated crimes. But it is not just the consequences of hate-motivated acts that should be seen as a public health problem; the source of hate-motivated violence and intimidation should also be treated as a public health issue. A myriad of research points to individual psychological traits, interpersonal dynamics, and structural issues that produce prejudice, and ultimately hate-based actions.

Many states and the federal government have declared racism and/or discrimination to be a public health issue and have called on policymakers to take action. This type of approach broadens the scope of the issue to focus on and address the root causes. In the case of hate-motivated acts, a public health approach would attempt to minimize violent acts not just by punishing the hate crimes but by reducing the hateful motivations

that fuel them.

Components of a Public Health Approach to Hate-Motivated Acts

Health researchers favor examining the sources of hate-motivated acts through a “social-ecological model” that recognizes the complex individual, interpersonal, and structural forces that shape human behavior. As a result, no one solution can reduce hate-motivated acts, but tackling the problem from multiple angles that address the different levels at which prejudice operates could make a dent. Certainly, there is broader work to be done on reducing the structural factors that lead to an unequal society and can perpetuate prejudice and bias. Along with general policies aimed at social equality, governments at all levels can support a wider set of strategies that can work toward a reduction in hate-motivated acts.

One set of strategies focuses on reducing individual prejudice and bias. These types of efforts could include the following:

- School-based interventions, such as bullying prevention programs and social-emotional learning programs, can be an effective tool at reducing bias and discrimination. The U.S. Department of Justice offers a toolkit and review of research of specific programs that have been implemented around the country.
- Efforts to aid self-regulation skills have also been shown to have value in reducing prejudice. The Michigan Department of Education already implements the state’s anti-bullying law but could provide school districts in Michigan with model curricula and guidelines about how to implement preventative anti-hate measures that target bias reduction.
- Evidence-based public awareness campaigns designed to reduce prejudice and bias have worked in a variety of other contexts. The Michigan Department of Civil Rights provides some resources on this topic, but a broader campaign partnering with the Michigan Department of Health and Human Services would fit with their efforts to target health inequities.

Another set of strategies attempts to alleviate the impact of existing prejudice. This includes community-policing strategies, such as implementing community needs surveys and training law enforcement to work with community leaders, which aim to reduce intergroup tensions that often lead to hate-motivated violence. Michigan recently received a federal grant to defend migrant and seasonal farmworkers from hate, but broader efforts would be beneficial. The Michigan State Police and the Michigan Commission on Law Enforcement Standards can play a role by putting together a toolkit and training for local agencies and officers seeking to implement these approaches. Other potential policy efforts in Michigan could include the following:

- Connecting law enforcement to community resources can enable better data collection on the prevalence of hate-motivated behavior and provide insight into the specific community factors that may contribute to increasing violence.
- Offering technical assistance by the State Police to local agencies seeking to better collect and analyze the relevant data.
- Providing bystander intervention training can empower others to de-escalate hate-motivated behavior as it emerges. Existing bystander intervention efforts have often focused on sexual assault prevention at universities, but building on those programs at universities and through similar law enforcement training programs coordinated by the state would be a step forward.

A key strength of these strategies is that they are not one-size-fits-all. The state, local units of government, school districts, individual schools, community organizations, and other groups can all engage in this work without definitive state mandates. The state could certainly offer grants to fund school-based programs and local law enforcement initiatives as it does for many other health and safety issues, but perhaps more importantly, the state should take an active role as a clearinghouse for resources and best practices so that governments, schools, agencies, and organizations that want to take part in these efforts have the information necessary to do so.

Similarly, the state can also become a central repository for information about these kinds of initiatives to develop better evidence on the utility of these programs. As noted, the state has a law in place requiring law

enforcement agencies to track hate and bias motivated crimes, but the state would be providing an important service if that data could be linked with data on other efforts to combat the problem, as many of these best practices are based on research that would benefit from broader replication.

Conclusion

Hate-motivated acts are on the rise and receiving considerable public attention. The impact of hate-motivated acts on the victims and their communities is significant, but much of the policy response focuses on combating hate crimes via criminal deterrence. This approach has only limited utility, and a broader effort to reduce hate-motivated acts with other tools is necessary.

No single policy will solve the problem of hate-motivated acts in Michigan, as hate-based violence and intimidation has a long history and is rooted in structural factors in society. However, there are many options policymakers can consider supporting to reduce incidents of hate-motivated acts. Stakeholders at every level can play a part in implementing these programs, with the key role for the state being its ability to coordinate a diverse and disparate effort.

ABOUT THE AUTHOR

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