

April 20, 2021

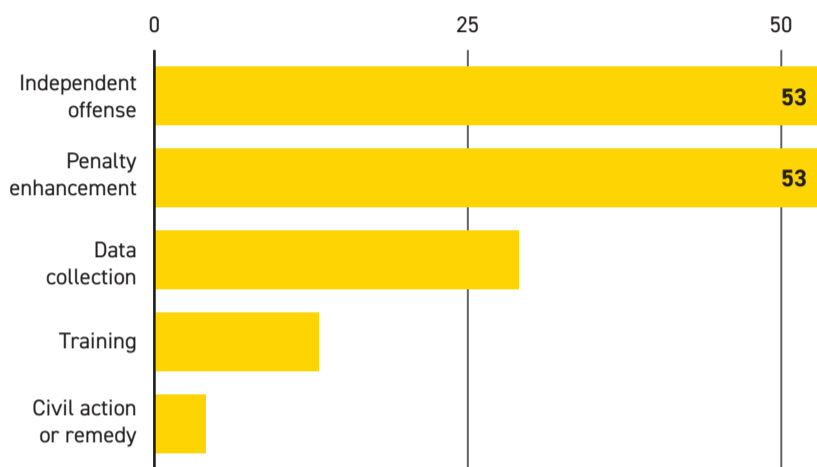
Beyond race and religion, hate crime laws vary by state

Hate crime laws exist to establish when a person commits a crime against a person — or in other cases, against property or places like churches, synagogues or cemeteries — due to a protected characteristic. The federal government has passed several hate crime laws, notably the 1968 Civil Rights Act, signed by former President Lyndon B. Johnson, and the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, signed by former President Bill Clinton. These laws established protected classes based on race, color, religion or national origin and extended protected classes to cover sexual orientation and gender identity, respectively.

States have passed their own hate crime laws protecting a range of Americans. Components of these laws and protected classes vary by state. A report by the Brennan Center for Justice entitled “Fighting Far-Right Violence and Hate Crimes” details hate crime laws across U.S. states and territories, including information on what types of laws are established and who they protect.

Components of state hate crime laws

NUMBER OF LAWS THAT INCLUDE SPECIFIC COMPONENTS



Independent offenses, penalty enhancements most common components of hate crime laws

The Brennan Center broke down state hate crime laws by describing components of each law. These components include independent offenses, in which a hate crime is in and of itself an offense; penalty enhancements, in which a person is not charged with a separate offense but instead can be used to adjust sentencing for a crime; data collection on these crimes; and definitions of hate crimes.

Among the state laws assessed in the Brennan Center’s report, the most common components are independent offenses and penalty enhancements, which are each included in 53 current laws on the books.

Two components are not shown in the bar chart at left: definitions and commissions. Based on the Brennan Center analysis, these components appeared in only one state law each.

Patchwork of protected statuses by state

In addition to legislating how hate crimes can be prosecuted or tracked, states also vary in what they consider to be a hate crime. Many states protect across some common categories, such as religion, race, ethnicity, gender and sex, sexual orientation and disability.

Race and ethnicity is the most common protected category across state hate crime laws. Five states do not consider race a protected class or do not have any hate crime laws: Arkansas, Georgia, North Dakota, South Carolina and Wyoming. Georgia had a penalty enhancement hate crime law which was ruled unconstitutionally vague.

States that do consider race and ethnicity to be protected categories list a range of categorizations, from “race” and “ethnicity” to “national origin,” or enumerate specific groups of people. For example, Washington state specifically lists African Americans and people of “Jewish ancestry” as protected categories in their laws regarding malicious harassment. Washington, D.C., and Puerto Rico also list race as a protected category in their hate crime laws.

Thirty-three states, Washington D.C., and Puerto Rico list **sexual orientation** as a protected class. Thirty-two states list **sex, gender or gender identity** as a protected class in their hate crime laws. Kentucky and Indiana stand out among this subset. Gender and sex are covered by the Kentucky’s data collection law,

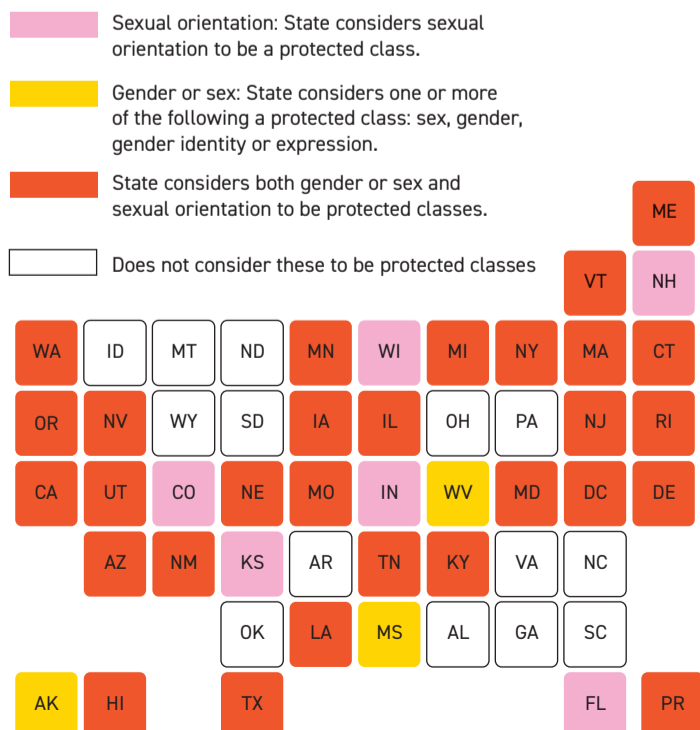
which directs law enforcement to collect data on crimes that appear to be hate crimes, but sex, gender or gender identity are not considered a protected class in Kentucky’s other hate crime laws. Indiana only lists protected classes in its data collection law; in fact, the Brennan Center does not consider Indiana’s penalty enhancement law to be a criminal hate crime law because it does not list protected classes.

Five states — Kentucky, Louisiana, Mississippi, New Hampshire and Utah — consider **law enforcement and correctional officers** to be a protected class, and also extend varying protections to emergency responders, medical care providers and members of fire departments. Utah and Vermont consider members of the **U.S. armed forces** to be a protected class.

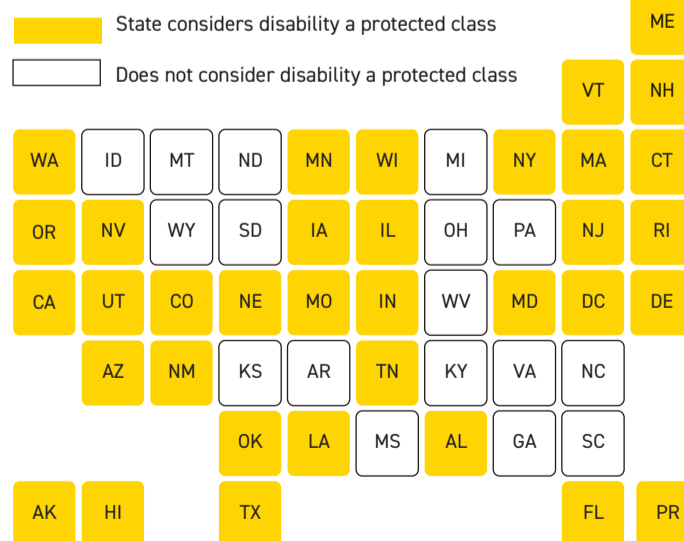
Montana classifies **civil rights workers** as a protected class, and Oregon considers those working both **for and against labor organizations** to be a protected class.

Fifteen state laws across 14 states and Washington, D.C., explicitly mention **cross-burning** in hate crime laws. Burning crosses has historically been used in the U.S. by hate groups, including the Ku Klux Klan, to intimidate African Americans and Jewish people. Washington state’s law specifically defines cross burning as a crime if the victim is or is perceived by the perpetrator to be **African American or Jewish**.

14 states do not consider gender, sex or sexual orientation to be protected classes



33 states, D.C., Puerto Rico consider disability a protected class



Sources: Brennan Center for Justice; Department of Justice

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