



BIAS CRIMES CHARGES IN THE UNITED STATES

Bias homicides in the U.S. between 1990 and 2016

BACKGROUND

The Indiana General Assembly introduced 10 bills related to bias (or hate) crimes in the 2019 session. Indiana is 1 of 5 states in the U.S. without a bias crimes statute.¹ The 10 bills are similar in that each of them allows for a criminal penalty enhancement for bias crimes offenses. Penalty enhancement statutes enable courts to impose a longer sentence if the predicate crime—the underlying crime committed by an offender—is proven to have been motivated by bias as defined by the particular statute.²

Marginalized communities are convicted of predicate crimes at higher rates. Given that racial disparities also exist within sentencing decisions for equal crimes, there is evidence of discretion within the legal process that disproportionately (and negatively) impacts marginalized groups.³ The following brief presents an objective analysis of bias homicide charges in the U.S. with the goal of understanding possible policy implications of Indiana's proposed bias crimes legislation.

METHODOLOGY

Data from the Bias Homicide Database (BHDB) was used to analyze bias homicides that occurred in the U.S. between 1990 and 2016. For a homicide to be included in the BHDB, it must meet the following observable inclusion criteria: the felonious death of one or more persons, an identifiable offender, and indicators that the victim was selected because of their race, ethnicity, nationality, religious affiliation, sexual orientation, or gender identity.⁴ An analysis of 317 bias homicides, 567 offenders, and 411 victims

KEY FINDINGS

The occurrence of bias-motivated homicides in the U.S. from 1990 to 2016 reveals:

- Even in states where victim groups had equal statutory protection, prosecutors did not seek bias charges equitably among victim groups.
- A majority of bias homicides did not involve official bias crime charges.
 - Anti-sexual orientation/gender identity and anti-race/ethnicity account for the majority of bias homicides.
 - Anti-sexual orientation/gender identity homicides are disproportionately less likely than anti-race, anti-religion, and anti-nationality/immigrant homicides to be officially prosecuted as bias crimes.
- Bias crime charges are more likely to be sought in states with an existing bias crimes statute that specified the affected victim group.
 - However, bias charges are often not filed for bias homicides in states with an existing bias crimes statute.

The FBI defines a bias crime as a “criminal offense committed against a person, property, or society which is motivated, in whole or in part, by the offender’s bias against a race, religion, disability, sexual orientation, or ethnicity/national origin.”⁵

was performed to determine the extent to which bias charges are sought on behalf of protected groups.

FINDINGS

Bias charges were not filed for most of the 317 bias homicide cases that were reviewed. Nearly 70 percent of all bias homicides did not result in official bias crime charges (Figure 1). Less than one-third of the bias homicides analyzed were charged as bias crimes, despite the indication that the victim was likely selected because of the victim's social status or identity. The four types of bias included in Table 1 are common to a majority of the bills proposed in the 2019 session of the Indiana General Assembly. The filing of bias charges varied significantly by bias type (Figure 2). The probability that a bias homicide would not result in the filing of bias charges appeared to be high for all bias types except anti-religion.

SEXUAL ORIENTATION & GENDER IDENTITY

Anti-sexual orientation/gender identity and anti-race/ethnicity accounted for a majority (90.9 percent) of the bias homicides. Despite this, 70.1 percent of these homicides proceeded without official bias charges. Anti-sexual orientation/gender identity homicides accounted for 48.3 percent of all bias homicides. These cases represented only 35.4 percent of bias charges filed.

RACE & ETHNICITY

Anti-race/ethnicity homicides accounted for more than half of all the bias homicides for which charges were filed. These cases represented only 42.6 percent of all bias homicides.

EXISTING BIAS CRIME STATUTE

Prosecutors were more likely to pursue bias charges when there was an existing bias crimes statute (Figure 3). Of the 409 homicide victims for which the statutory protections could be determined, 81.9 percent were committed while a protective statute was in place (Table 2). However, prosecutors did not seek bias charges for 56.1 percent of the bias homicides in states where the specified victim groups had existing statutory protections. Although

prosecutors are less likely to seek bias charges in the absence of statutory protections, the mere presence of these protections does not ensure that bias homicides would be prosecuted under this category.

POLICY IMPLICATIONS

A review of the existing literature on bias crimes and bias crimes legislation in the U.S. yielded findings that policymakers should consider.

FURTHER EVALUATION NEEDED

The effectiveness of bias crime legislation should be further evaluated for impact and operation. The deterrent effect of bias crimes legislation on the commission of future bias crimes or the protection of marginalized groups continues to be the subject of scholarly debate.

COMPREHENSIVE DATA COLLECTION

Comprehensive bias crime data collection is crucial for improving the ability to accurately understand, prevent, and deter bias crimes. Bias crimes occur more often than official crime data suggests.¹ Such data collection is also necessary to objectively evaluate whether bias crimes legislation effectively achieves its goal.

SUPPORT FOR HATE CRIME VICTIMS

Prior research affirms greater negative consequences for victims of crimes motivated by bias than crimes without this motivation.⁶ Despite this research, "most statutes do little to support hate crime victims and witnesses".¹

RECOMMENDATIONS

Notwithstanding the challenges of establishing the effectiveness of bias crimes legislation, the following policy recommendations are presented if bias crimes legislation is to be implemented in Indiana.

EQUITABLE PURSUIT OF BIAS CRIMES CHARGES

Prosecutors should take steps to pursue bias crimes charges equitably to ensure equal statutory protection for victim groups and the equitable

BIAS HOMICIDES IN THE U.S. (1990-2016)

FIGURE 1. Bias charges for bias homicides in relation to total bias homicides

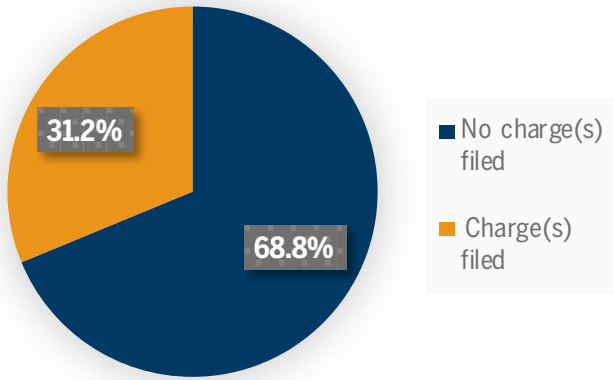


TABLE 1. Bias homicides by bias type

Bias type	No charge(s) filed	Charge(s) filed	Total
Anti-race/ethnicity	84	51	135
Anti-nationality/immigrant	11	5	16
Anti-sexual orientation/gender identity	118	35	153
Anti-religion	5	8	13
Total	218	99	317

FIGURE 2. Bias homicides by bias type and charges

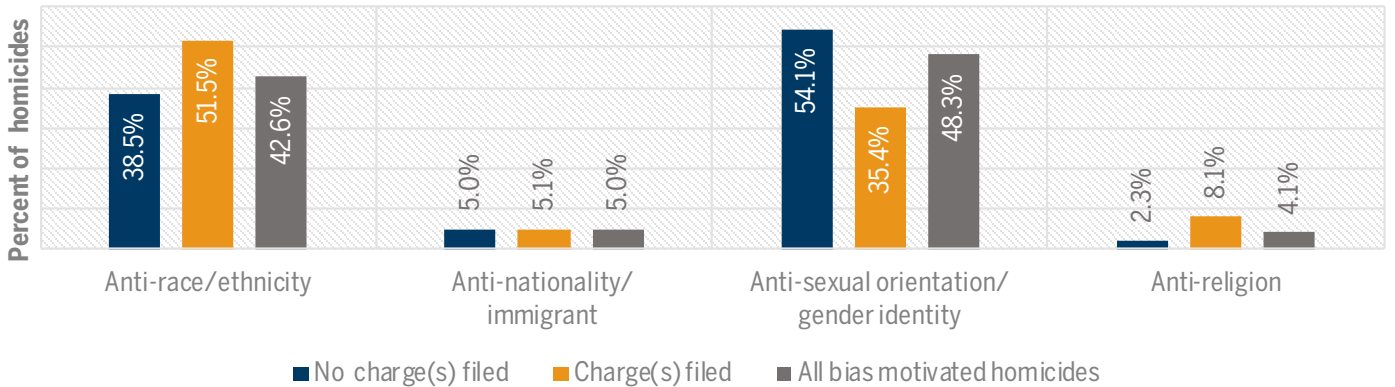
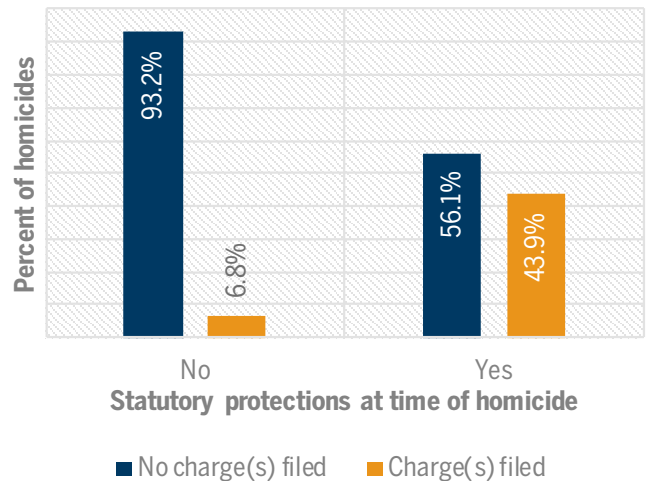


TABLE 2. Bias homicide charges by existence of statutory protections

Statutory protections at time of homicide	No charge(s) filed	Charge(s) filed	Total
No	69	5	74
Yes	188	147	335
Total	257	152	409

FIGURE 3. Bias homicide charges by existence of statutory protections



application of the law. Research findings on bias homicide reveal a considerable amount of discretion held by prosecutors. The inequitable application of bias crime charges outlined here is likely not random.⁷

DATA COLLECTION & EVALUATION PROVISIONS

Legislation should include provisions for more detailed and regular data collection to allow for a more accurate evaluation of bias crimes. Each of the 10 proposed bias crimes bills in the Indiana legislature strike down language that would require reporting on whether a crime was motivated primarily by bias. Policymakers should mandate the collection of relevant data and training for law enforcement personnel if they aim to protect marginalized communities and evaluate the effectiveness of bias crimes legislation.¹

The Bias Homicide Database (BHDB) was developed by Jeff Gruenewald, Ph.D., at the Paul H. O'Neill School of Public and Environmental Affairs at IUPUI.

Full report will be available online.

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