

Policy on Bias or Hate Crimes

University Policy and Procedure

Definition of Bias or Hate Crimes

Bias crimes, also known as hate crimes, are unwelcome and unlawful activities motivated by the bias of a perpetrator toward another person(s) based upon personal characteristics which may be actual or perceived. Fisk University Policy and Federal Law prohibit crimes motivated by bias on the basis of race, ethnicity, color, gender, age, ancestry, national origin, disability, sexual preference or sexual orientation, religious or political belief, practice, or persuasion.

When the University receives a complaint related to bias or hate crime, the Dean of Student Engagement will designate a University Judicial Officer to investigate the matter, which includes witness interviews, and the collection of evidence or information pertinent to the report. In certain circumstances, the Office of Public Safety may refer the matter to the Metro Nashville Police Department.

If a member of the Fisk University community is a victim or witnesses a bias or hate crime, he/she should contact the Fisk University Office of Public Safety or the Office of Student Engagement. The Department of Public Safety can be reached by telephone at (615) 329-8777 and is located in the Lower Level of Carnegie Hall, or by using an Emergency Telephone on campus, or at mwest@fisk.edu to contact The Office of Public Safety by email.

The Office of Student Engagement can be reached by telephone at (615) 329-8597 and is located in the Lower Level of Spence Hall. To contact the Office of Student Engagement by email, please contact jmeriwether@fisk.edu.

Additionally, any student or member of the University Community who may have knowledge of any activities related to crimes of bias or hate may report the matter to the Office of Public Safety or the Office of Student Engagement.

Student Standards Regarding Bias or Hate Crimes

Each student and student group is responsible for refraining from any conduct that is detrimental to the Fisk University campus. It is the responsibility of each student to maintain a healthy and safe environment based upon individual actions while enrolled at Fisk University. Any choice made that upsets such an atmosphere may result in the exclusion of any individual or group from the University.

Each student and student group is responsible for conducting themselves in a manner that supports that academic and social environment of the campus in a way that supports learning while respecting the rights, dignity, and freedom of other members or groups of the Fisk University Community.

Any violation of University policies, rules or regulations, or violation of federal, state, or local law may result in a violation of the student code of conduct and may result in the exclusion of any individual or group from the University.

The following non-exhaustive list of provisions outlines conduct or behavior that may result in disciplinary action against any individual or group in relation to crimes of bias or hate. This includes, but is not limited to the following:

No student shall harass, threaten, coerce the harassment of, or otherwise intimidate another person or identifiable group of persons, in a manner that is unlawful, while on University owned or controlled property, based upon the person or group's race, ethnicity, color, gender, age, ancestry, national origin, disability, sexual preference or sexual orientation, religious or political belief, practice, or persuasion.

No student shall engage in any type of unlawful harassment or behavior leading to a hostile environment on University owned or controlled property
Unlawful harassment includes but is not limited to actions that are:

- (a) directed toward a particular person or persons;
- (b) based upon the person or group's race, ethnicity, color, gender, age, ancestry, national origin, disability, sexual preference or sexual orientation, religious or political belief, practice, or persuasion;
- (c) unwelcome;
- (d) severe, extreme, or pervasive;
- (e) objectively offensive or derogatory; and/or
- (f) unreasonable in nature and interferes with the victim(s) student status, employment, academic pursuits, or participation in University-sponsored activities which causes the denial of equal access to the University Community

Federal Implications

Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (the "Clery Act")

Fisk University is required to report incidence of occurrences of bias crimes on campus annually. This report is provided as part of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (the "Clery Act"). The Clery Act requires the University to report such incidents to the Tennessee Bureau of Investigation.

The Clery Act defines hate crimes as any of the crimes otherwise reportable under the Clery Act or any bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity or disability of the victim.

THE MATTHEW SHEPARD AND JAMES BYRD, JR., HATE CRIMES PREVENTION ACT OF 2009

The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009, **18 U.S.C. § 249**, was enacted as Division E of the National Defense Authorization Act for Fiscal Year 2010. Section 249 of Title 18 provides funding and technical assistance to state, local, and tribal jurisdictions to more effectively investigate and prosecute hate crimes. It also creates a new federal criminal law which criminalizes willfully causing bodily injury (or attempting to do so with fire, firearm, or other dangerous weapon) when (1) the crime was committed because of the actual or perceived race, color, religion, national origin of any person or (2) the crime was committed because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person and the crime affected interstate or foreign commerce or occurred within federal special maritime and territorial jurisdiction.

The newly enacted § 249 has three significant subsections. **Subsection (a)(1)** criminalizes violent acts (and attempts to commit violent acts undertaken with a dangerous weapon) when those acts occur because of the actual or perceived race, color, religion, or national origin of any person. This section of the statute has a broader reach than existing hate crime statutes. (18 U.S.C. § 245, for example, requires that government prove not only that the crime was motivated by animus but also because of the victim's participation in one of six enumerated federally protected activities). Section 249(a)(1) was passed pursuant to Congress's Thirteenth Amendment authority to eradicate badges and incidents of slavery. The government need prove no other "jurisdictional" element to obtain a conviction.

Subsection (a)(2) of § 249 protects a wider class of victims. Subsection (a)(2) criminalizes acts of violence (and attempts to commit violent acts undertaken with a dangerous weapon) when motivated by the actual or perceived gender, disability, sexual orientation, or gender identity of any person. It will also apply to violent acts motivated by animus against those religions and national origins which were not considered to be "races" at the time the Thirteenth Amendment was passed. This portion of the statute was passed pursuant to Congress's Commerce Clause authority. Thus, to obtain a conviction, the government must prove that the crime was in or affected interstate or foreign commerce. Subsection (a)(2)(B) of the statute contains a detailed description of the ways the commerce clause element may be fulfilled.

Subsection (a)(3) of § 249 provides for prosecution of crimes committed because of any of the characteristics defined in (a)(1) or (a)(2), whenever such crimes occur within the Special Maritime and Territorial Jurisdiction (SMTJ) of the United States.

The statute criminalizes only violent acts resulting in bodily injury or attempts to inflict bodily injury, through the use of fire, firearms, explosive and incendiary devices, or other dangerous weapons. The statute does not criminalize threats of violence. Threats to inflict physical injury may be prosecutable under other hate crimes statutes, such as 42 U.S.C. § 3631 or 18 U.S.C. § 245. Such threats may also be prosecutable under generally applicable federal laws preventing interstate communication of threats.