



Your Rights and Avenues of Action as a Victim of a Hate Crime

What is a Hate Crime?

A hate crime is traditionally anything that would normally constitute a crime, such as a physical assault or destruction of property, and is motivated by animus on the basis of race, color, national origin, religion, sex or ancestry. In some states this protection extends to persons attack because of their sexual orientation.

Federal Hate Crimes

The federal hate crimes statute is much more narrow than the hate crimes statutes of many states. The main federal hate crimes statute, 18 U.S.C. § 245 was enacted as part of the Civil Rights Act of 1968 in an attempt to deal with racial violence against civil rights workers. It prohibits the use of force, or threat of force, to injure, intimidate, or interfere with (or attempt to injure, intimidate, or interfere with) a person because of that person's race, color, religion, or national origin, and because of that person's participation in any one of six enumerated federally protected activities. The six federally protected activities are: (1) enrolling or attending public school; (2) participating in a service or facility provided by a state; (3) employment by any private or state employer; (4) service as a juror; (5) traveling in or using a facility of interstate commerce; and (6) enjoying the services of certain public establishments.

In other words, in order for a criminal act to be deemed a hate crime, the actor must attempt to injure, intimidate or interfere with another person based on their race, color, religion or national origin specifically because the person was engaging in a federally protected activity. This narrow definition, significantly limits those crimes which may be deemed a federal hate crime. For example, a person who is beaten up on the sidewalk because of their national origin will likely not be deemed to be conducting a federally protected activity.

What Should I Do If I Think I or Someone I Know May Have Been a Victim of a Federal Hate Crime?

The Civil Rights Division of the Department of Justice is authorized to investigate and initiate prosecution for hate crimes. Attorneys at the Department of Justice monitor the Sikh Coalition hate crimes report web page for incident that may meet bias crimes. To file a report go to <http://www.sikhcoalition.org/ListReports.asp>.

If you need an address to file your complaint directly to the Civil Rights Division go to: http://www.usdoj.gov/crt/legalinfo/howtofile_CRT.htm

The Civil Rights Division page does not include a complaint form, you will have to draft your complaint on your own. It is suggested that you file your complaint on the Sikh Coalition website since the Civil Rights Division views the Coalition website regularly. The Sikh Coalition has worked with the Civil Rights Division to gather more information in over 40 cases listed on the website.

New York State Hate Crimes

New York passed its' first hate crimes law in 2000. A person in New York commits a hate crime if they either: 1) intentionally select the person against whom the offense is to be committed because of "a belief or a perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age or sexual orientation and regardless of whether the belief or perception is correct or; 2) intentionally commit the act in whole or in substantial part "because of a belief or perception regarding

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the race, color, national origin, ancestry, gender, religion, religious practice... regardless of whether the belief or perception is correct." The offenses that qualify as hate crimes under either scenario above are: assault, aggravated assault, menacing, reckless endangerment, manslaughter, murder, stalking, rape, sodomy, sexual abuse, aggravated sexual abuse, unlawful imprisonment, kidnapping, coercion, criminal trespass, burglary, criminal mischief, arson, petit and grand larceny, robbery, harassment and aggravated harassment. Verbal harassment alone will not qualify as a hate crime in New York.

The penalty for committing a hate crime is enhanced sentencing. In other words, the person who commits a hate crime will spend a longer time in jail.

New Jersey State Hate Crimes

In New Jersey, any crime is given an enhanced penalty if "the defendant in committing the crime acted with a purpose to intimidate an individual or group of individuals because of race, color, gender, handicap, religion, sexual orientation or ethnicity." After a conviction, on application of the prosecutor, a judge (not the jury) must find by the preponderance of the evidence (a "more likely than not" standard) that a defendant convicted of a crime acted with a purpose to intimidate based on race, color, gender, handicap, religion, sexual orientation or ethnicity.

Note that the preponderance of the evidence standard for enhancing a criminal penalty for a crime of hate is lower than the beyond a reasonable doubt standard need to convict a person of a crime in general.

Also, in New Jersey law enforcement agencies are required to report bias incident offenses to the Division of State Police, Uniform Crime Reporting Unit, on a monthly basis.

What Should I Do If I or Someone I Know May Be a Victim of a Hate Crime in New York or New Jersey?

First, file a complaint with the police station in which the incident occurred. Make sure you get the telephone number of the person who will be investigating the complaint and a copy of the complaint. Next, call the investigator to check the status of the investigation and to find out whether the incident will be prosecuted.

In New Jersey, the Office of Bias Crime and Community Relations is required to monitor and assist local authorities in bias crime investigations and prosecution. The telephone number for the Office is: at 1-800-277-BIAS (2427).

In New York, there is no specific office in the state criminal division or the New York Attorney General's office to deal specifically with hate crimes. The general telephone number for the "Crime Victims Hotline" is: 1-800-771-7755

If you need assistance speaking to police officers or prosecutors, feel free to contact The Sikh Coalition at info@sikhcoalition.org.

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Your Rights and Avenues of Action as a Victim of Airport Profiling

What is a meant by Airport Profiling?

Airport profiling is causing a person to be searched, questioned, or harassed more than other air travelers by airport, airline or government personnel based on their race, color, religion, gender, ethnicity or national origin. With regard to Sikhs, this means being forced to submit to turban searches without cause; being searched (assuming it is not a random search) more than other air traveler; or being questioned more than other airline passengers.

What Laws Exist Against Airline Profiling and Who Enforces Them?

AIR-21 Act § 706 (2000) states that: "An air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry." Note that this provision applies to air carriers, it does not apply to security personnel who are not connected to an air carrier. The Federal Aviation Administration (FAA) is charged with enforcing the AIR-21 Act. The maximum penalty for each infraction by an air carrier of AIR-21 Act § is \$2500.

In addition, courts have held, that person can not be discriminated against or improperly profiled by a government agent. See *Choi v. Gaston*, 220 F.3d 1010, 1012 (9 th Cir. 2000). Furthermore, intentional discrimination and selective investigation by state actors against minorities because of their racial identities, especially where there is no particularized suspicion, violates the constitution. See, e.g., *Whren v. United States*, 517 U.S. 806, 813 (1996). These prohibitions may form the basis for a lawsuit against airlines, airports or security personnel that profile.

What About the New FAA Guidelines for Screeners?

On November 16, 2001, the FAA issued a "Guidance for Screeners and Other Security Personnel. " Though the Guideline do not have the force of law, violation of the procedure set forth in the guidelines may be the basis for asserting a violation of AIR-21 Act § 706 has occurred or the basis of a law suit.

The FAA Guidelines are very specific with regard to handling turban searches and kirpans. They clearly state that turban searches can not occur unless that is a reasonable suspicion for believing a dangerous object exists in a turban. This requires that a metal detector is set off and that a hand held metal detector is set off when is specifically over the turban and a pat down search indicates a dangerous object is in the turban. A turban can only be searched with the permission of a Sikh passenger and the passenger should be given the choice of public or private inspection and a mirror to retie the turban once the search is completed.

What Can I Do If Feel I Have Been the Victim of Airport Profiling?

You can contact the FAA about airport profiling at 202-366-2220, 24 hours a day. In addition, the FAA website includes a complaint form for discrimination by airlines. This can be found at: <http://www.dot.gov/airconsumer/disform.pdf>. Please note that this form is only for discrimination complaints against airlines, not airport of government employees.

Don't neglect to file you complaint on the website of The Sikh Coalition at <http://www.sikhcoalition.org/ListReports.asp>. As with the Justice Department, the Sikh Coalition works with attorneys and other personnel at the Department of Transportation. The Coalition can assist any persons who have been profiled in prosecuting their complaint with the Department of Transportation.

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