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S.L.C.

PENDING

AMENDMENT NO. _____

Calendar No. _____

Purpose: To provide Federal assistance to States and local jurisdictions to prosecute hate crimes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 2400
AMENDMENT No. 3183

By Smith - Kennedy

To S. 2400

Refer _____

15
Page(s)

AMENDMENT intended to be proposed by Mr. SMITH (for himself and Mr. KENNEDY)

Viz:

1 At the end of the bill insert the following:
2 **Title _____—LOCAL LAW ENFORCE-**
3 **MENT ENHANCEMENT ACT.**

4 **SEC. ____01. SHORT TITLE.**

5 This title may be cited as the "Local Law Enforce-
6 ment Enhancement Act of 2004".

7 **SEC. ____02. FINDINGS.**

8 Congress makes the following findings:

9 (1) The incidence of violence motivated by the
10 actual or perceived race, color, religion, national ori-

1 gin, gender, sexual orientation, or disability of the
2 victim poses a serious national problem.

3 (2) Such violence disrupts the tranquility and
4 safety of communities and is deeply divisive.

5 (3) State and local authorities are now and will
6 continue to be responsible for prosecuting the over-
7 whelming majority of violent crimes in the United
8 States, including violent crimes motivated by bias.
9 These authorities can carry out their responsibilities
10 more effectively with greater Federal assistance.

11 (4) Existing Federal law is inadequate to ad-
12 dress this problem.

13 (5) The prominent characteristic of a violent
14 crime motivated by bias is that it devastates not just
15 the actual victim and the family and friends of the
16 victim, but frequently savages the community shar-
17 ing the traits that caused the victim to be selected.

18 (6) Such violence substantially affects interstate
19 commerce in many ways, including—

20 (A) by impeding the movement of members
21 of targeted groups and forcing such members to
22 move across State lines to escape the incidence
23 or risk of such violence; and

24 (B) by preventing members of targeted
25 groups from purchasing goods and services, ob-

1 taining or sustaining employment, or partici-
2 pating in other commercial activity.

3 (7) Perpetrators cross State lines to commit
4 such violence.

5 (8) Channels, facilities, and instrumentalities of
6 interstate commerce are used to facilitate the com-
7 mission of such violence.

8 (9) Such violence is committed using articles
9 that have traveled in interstate commerce.

10 (10) For generations, the institutions of slavery
11 and involuntary servitude were defined by the race,
12 color, and ancestry of those held in bondage. Slavery
13 and involuntary servitude were enforced, both prior
14 to and after the adoption of the 13th amendment to
15 the Constitution of the United States, through wide-
16 spread public and private violence directed at per-
17 sons because of their race, color, or ancestry, or per-
18 ceived race, color, or ancestry. Accordingly, elimi-
19 nating racially motivated violence is an important
20 means of eliminating, to the extent possible, the
21 badges, incidents, and relics of slavery and involun-
22 tary servitude.

23 (11) Both at the time when the 13th, 14th, and
24 15th amendments to the Constitution of the United
25 States were adopted, and continuing to date, mem-

1 bers of certain religious and national origin groups
2 were and are perceived to be distinct “races”. Thus,
3 in order to eliminate, to the extent possible, the
4 badges, incidents, and relics of slavery, it is nec-
5 essary to prohibit assaults on the basis of real or
6 perceived religions or national origins, at least to the
7 extent such religions or national origins were re-
8 garded as races at the time of the adoption of the
9 13th, 14th, and 15th amendments to the Constitu-
10 tion of the United States.

11 (12) Federal jurisdiction over certain violent
12 crimes motivated by bias enables Federal, State, and
13 local authorities to work together as partners in the
14 investigation and prosecution of such crimes.

15 (13) The problem of crimes motivated by bias
16 is sufficiently serious, widespread, and interstate in
17 nature as to warrant Federal assistance to States
18 and local jurisdictions.

19 **SEC. ___03. DEFINITION OF HATE CRIME.**

20 In this title, the term “hate crime” has the same
21 meaning as in section 280003(a) of the Violent Crime
22 Control and Law Enforcement Act of 1994 (28 U.S.C.
23 994 note).

1 **SEC. ____04. SUPPORT FOR CRIMINAL INVESTIGATIONS AND**
2 **PROSECUTIONS BY STATE AND LOCAL LAW**
3 **ENFORCEMENT OFFICIALS.**

4 (a) ASSISTANCE OTHER THAN FINANCIAL ASSIST-
5 ANCE.—

6 (1) IN GENERAL.—At the request of a law en-
7 forcement official of a State or Indian tribe, the At-
8 torney General may provide technical, forensic, pros-
9 ecutorial, or any other form of assistance in the
10 criminal investigation or prosecution of any crime
11 that—

12 (A) constitutes a crime of violence (as de-
13 fined in section 16 of title 18, United States
14 Code);

15 (B) constitutes a felony under the laws of
16 the State or Indian tribe; and

17 (C) is motivated by prejudice based on the
18 race, color, religion, national origin, gender,
19 sexual orientation, or disability of the victim, or
20 is a violation of the hate crime laws of the State
21 or Indian tribe.

22 (2) PRIORITY.—In providing assistance under
23 paragraph (1), the Attorney General shall give pri-
24 ority to crimes committed by offenders who have
25 committed crimes in more than 1 State and to rural
26 jurisdictions that have difficulty covering the ex-

1 traordinary expenses relating to the investigation or
2 prosecution of the crime.

3 (b) GRANTS.—

4 (1) IN GENERAL.—The Attorney General may
5 award grants to assist State, local, and Indian law
6 enforcement officials with the extraordinary expenses
7 associated with the investigation and prosecution of
8 hate crimes.

9 (2) OFFICE OF JUSTICE PROGRAMS.—In imple-
10 menting the grant program, the Office of Justice
11 Programs shall work closely with the funded juris-
12 dictions to ensure that the concerns and needs of all
13 affected parties, including community groups and
14 schools, colleges, and universities, are addressed
15 through the local infrastructure developed under the
16 grants.

17 (3) APPLICATION.—

18 (A) IN GENERAL.—Each State that desires
19 a grant under this subsection shall submit an
20 application to the Attorney General at such
21 time, in such manner, and accompanied by or
22 containing such information as the Attorney
23 General shall reasonably require.

24 (B) DATE FOR SUBMISSION.—Applications
25 submitted pursuant to subparagraph (A) shall

1 be submitted during the 60-day period begin-
2 ning on a date that the Attorney General shall
3 prescribe.

4 (C) REQUIREMENTS.—A State or political
5 subdivision of a State or tribal official applying
6 for assistance under this subsection shall—

7 (i) describe the extraordinary pur-
8 poses for which the grant is needed;

9 (ii) certify that the State, political
10 subdivision, or Indian tribe lacks the re-
11 sources necessary to investigate or pros-
12 ecute the hate crime;

13 (iii) demonstrate that, in developing a
14 plan to implement the grant, the State, po-
15 litical subdivision, or tribal official has con-
16 sulted and coordinated with nonprofit, non-
17 governmental victim services programs
18 that have experience in providing services
19 to victims of hate crimes; and

20 (iv) certify that any Federal funds re-
21 ceived under this subsection will be used to
22 supplement, not supplant, non-Federal
23 funds that would otherwise be available for
24 activities funded under this subsection.

1 (4) DEADLINE.—An application for a grant
2 under this subsection shall be approved or dis-
3 approved by the Attorney General not later than 30
4 business days after the date on which the Attorney
5 General receives the application.

6 (5) GRANT AMOUNT.—A grant under this sub-
7 section shall not exceed \$100,000 for any single ju-
8 risdiction within a 1 year period.

9 (6) REPORT.—Not later than December 31,
10 2005, the Attorney General shall submit to Congress
11 a report describing the applications submitted for
12 grants under this subsection, the award of such
13 grants, and the purposes for which the grant
14 amounts were expended.

15 (7) AUTHORIZATION OF APPROPRIATIONS.—
16 There is authorized to be appropriated to carry out
17 this subsection \$5,000,000 for each of fiscal years
18 2005 and 2006.

19 **SEC. ___05. GRANT PROGRAM.**

20 (a) AUTHORITY TO MAKE GRANTS.—The Office of
21 Justice Programs of the Department of Justice shall
22 award grants, in accordance with such regulations as the
23 Attorney General may prescribe, to State and local pro-
24 grams designed to combat hate crimes committed by juve-
25 niles including programs to train local law enforcement

1 officers in identifying, investigating, prosecuting, and pre-
2 venting hate crimes.

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as may be
5 necessary to carry out this section.

6 **SEC. ____06. AUTHORIZATION FOR ADDITIONAL PER-**
7 **SONNEL TO ASSIST STATE AND LOCAL LAW**
8 **ENFORCEMENT.**

9 There are authorized to be appropriated to the De-
10 partment of the Treasury and the Department of Justice,
11 including the Community Relations Service, for fiscal
12 years 2005, 2006, and 2007 such sums as are necessary
13 to increase the number of personnel to prevent and re-
14 spond to alleged violations of section 249 of title 18,
15 United States Code, as added by section ____07.

16 **SEC. ____07. PROHIBITION OF CERTAIN HATE CRIME ACTS.**

17 (a) IN GENERAL.—Chapter 13 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 **“§ 249. Hate crime acts**

21 (a) IN GENERAL.—

22 “(1) OFFENSES INVOLVING ACTUAL OR PER-
23 CEIVED RACE, COLOR, RELIGION, OR NATIONAL ORI-
24 GIN.—Whoever, whether or not acting under color of
25 law, willfully causes bodily injury to any person or,

1 through the use of fire, a firearm, or an explosive
2 or incendiary device, attempts to cause bodily injury
3 to any person, because of the actual or perceived
4 race, color, religion, or national origin of any
5 person—

6 “(A) shall be imprisoned not more than 10
7 years, fined in accordance with this title, or
8 both; and

9 “(B) shall be imprisoned for any term of
10 years or for life, fined in accordance with this
11 title, or both, if—

12 “(i) death results from the offense; or

13 “(ii) the offense includes kidnaping or
14 an attempt to kidnap, aggravated sexual
15 abuse or an attempt to commit aggravated
16 sexual abuse, or an attempt to kill.

17 “(2) OFFENSES INVOLVING ACTUAL OR PER-
18 CEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEX-
19 UAL ORIENTATION, OR DISABILITY.—

20 “(A) IN GENERAL.—Whoever, whether or
21 not acting under color of law, in any cir-
22 cumstance described in subparagraph (B), will-
23 fully causes bodily injury to any person or,
24 through the use of fire, a firearm, or an explo-
25 sive or incendiary device, attempts to cause

1 bodily injury to any person, because of the ac-
2 tual or perceived religion, national origin, gen-
3 der, sexual orientation, or disability of any
4 person---

5 “(i) shall be imprisoned not more
6 than 10 years, fined in accordance with
7 this title, or both; and

8 “(ii) shall be imprisoned for any term
9 of years or for life, fined in accordance
10 with this title, or both, if—

11 “(I) death results from the of-
12 fense; or

13 “(II) the offense includes kid-
14 naping or an attempt to kidnap, ag-
15 gravated sexual abuse or an attempt
16 to commit aggravated sexual abuse, or
17 an attempt to kill.

18 “(B) CIRCUMSTANCES DESCRIBED.—For
19 purposes of subparagraph (A), the cir-
20 cumstances described in this subparagraph are
21 that—

22 “(i) the conduct described in subpara-
23 graph (A) occurs during the course of, or
24 as the result of, the travel of the defendant
25 or the victim—

1 “(I) across a State line or na-
2 tional border; or

3 “(II) using a channel, facility, or
4 instrumentality of interstate or for-
5 eign commerce;

6 “(ii) the defendant uses a channel, fa-
7 cility, or instrumentality of interstate or
8 foreign commerce in connection with the
9 conduct described in subparagraph (A);

10 “(iii) in connection with the conduct
11 described in subparagraph (A), the defend-
12 ant employs a firearm, explosive or incen-
13 diary device, or other weapon that has
14 traveled in interstate or foreign commerce;
15 or

16 “(iv) the conduct described in sub-
17 paragraph (A)—

18 “(I) interferes with commercial
19 or other economic activity in which
20 the victim is engaged at the time of
21 the conduct; or

22 “(II) otherwise affects interstate
23 or foreign commerce.

24 “(b) CERTIFICATION REQUIREMENT.—No prosecu-
25 tion of any offense described in this subsection may be

1 undertaken by the United States, except under the certifi-
2 cation in writing of the Attorney General, the Deputy At-
3 torney General, the Associate Attorney General, or any
4 Assistant Attorney General specially designated by the At-
5 torney General that—

6 “(1) he or she has reasonable cause to believe
7 that the actual or perceived race, color, religion, na-
8 tional origin, gender, sexual orientation, or disability
9 of any person was a motivating factor underlying the
10 alleged conduct of the defendant; and

11 “(2) he or his designee or she or her designee
12 has consulted with State or local law enforcement of-
13 ficials regarding the prosecution and determined
14 that—

15 “(A) the State does not have jurisdiction
16 or does not intend to exercise jurisdiction;

17 “(B) the State has requested that the Fed-
18 eral Government assume jurisdiction;

19 “(C) the State does not object to the Fed-
20 eral Government assuming jurisdiction; or

21 “(D) the verdict or sentence obtained pur-
22 suant to State charges left demonstratively
23 unvindicated the Federal interest in eradicating
24 bias-motivated violence.

25 “(c) DEFINITIONS.—In this section—

- 1 (1) ensure that there is reasonable consistency
2 with other Federal sentencing guidelines; and
3 (2) avoid duplicative punishments for substan-
4 tially the same offense.

5 **SEC. ___09. STATISTICS.**

6 Subsection (b)(1) of the first section of the Hate
7 Crimes Statistics Act (28 U.S.C. 534 note) is amended
8 by inserting "gender," after "race,".

9 **SEC. ___10. SEVERABILITY.**

10 If any provision of this title, an amendment made by
11 this title, or the application of such provision or amend-
12 ment to any person or circumstance is held to be unconsti-
13 tutional, the remainder of this title, the amendments made
14 by this title, and the application of the provisions of such
15 to any person or circumstance shall not be affected there-
16 by.