

## States Act to Protect Cops With Hate Crime Laws

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Raul Delatoba was drunk, for sure. Banging on the windows of the Royal Sonesta Hotel in the middle of the New Orleans French Quarter, Delatoba smelled like a distillery, wobbled as he slurred profanities and, at 5 a.m., wouldn't stop the hammering even as hotel security confronted him.

Instead, he called the security officer the “n” word.

Delatoba, 35 years old and homeless, was arrested on that fall morning last year, and when he was hauled into the New Orleans Police station in the 8th District, his verbal assault continued. He called the female officer booking him the “c” word and once again used the “n” word to describe the officer preparing to escort him to a cell.

With those comments, Delatoba ingloriously became the first person in the U.S. charged under a state's “Blue Lives Matter” law, which extends hate crime protection to police. As a result, he was facing not just a misdemeanor charge, of criminal damage to property, but a felony, and staring at an extra six years in prison.

Hate crimes usually involve race, gender, religion, disability or sexual orientation. But three states – Louisiana, Mississippi and Kentucky – have expanded them to include law enforcement officers and other first responders including firefighters and emergency medical workers. So far this year, similar bills have been offered in 22 other states, both red and blue.

The proposed measures are not uniform. In Missouri, hate crimes are limited to violent offenses. In Texas and Maryland, they cover property crimes against police, including arson and vandalism. In California, a far-reaching bill made any crime, except resisting arrest, into a hate crime “if it was committed in whole or in part because of the victim's status as a peace officer.” All include charging or sentencing enhancements.

A few of the bills, including the California measure, have been defeated. Most are awaiting action or stalled in legislative committees. But it is not unusual for novel proposals to face questions and obstacles out of the gate only to eventually become law. The fact that three states have already adopted such hate crime measures is far more telling.

This concerns proponents of free expression, who argue they are an unwarranted expansion of laws originally intended to bolster the struggle for long-denied civil rights, by punishing bigotry in deed, thought and speech. By enshrining a new class of protected victims, they further complicate an area of jurisprudence long beset by doubts about the fairness of qualifying objective crimes with subjective judgments of the intent behind the acts.

The potential for abuse of such laws is quite high, said Jonathan Blanks, a research associate at the Cato Institute's Project on Criminal Justice. "And we have not seen any instances in which police are lacking protection in the first place," he added. Most states already have enhanced sentencing and offense levels for attacks against law enforcement and other public servants, providing for higher fines or longer prison sentences.

The move to create another special, protected class comes in response to a surge in protests, threats and violence against police officers following the deaths of unarmed black men at the hands of police, including the shooting of Michael Brown, in Ferguson, Mo., in 2014. The FBI reports that officer deaths rose 64 percent last year, after declining in 2014 and 2015.

"In the last few years, ambush attacks aimed to kill or injure law enforcement officers have risen dramatically," Fraternal Order of Police National President Chuck Canterbury said in a statement endorsing new hate-crime efforts. "Nineteen percent of the fatalities by firearm suffered by law enforcement in 2014 were ambush attacks."

But name-calling by a distraught, inebriated, or mentally impaired suspect is hardly in the same category as an ambush killing by an assassin. The drive behind making police and other first responders a protected class appears to have at least as much to do with political clout as with ensuring safety. "The real motivation behind these bills is that police are at the top of institutions with public support," said Cato's Blanks, who is also the managing editor of [policemisconduct.net](http://policemisconduct.net), which tracks misdeeds committed by law enforcement officers. "They form a formidable political support group financially."

Police unions sink hundreds of thousands of dollars into local, state and federal elections each cycle to help candidates from both parties. Republicans seek to draft on the image of law and order while Democrats curry the favor of police unions.

Good politics, however, can make bad law, and critics argue that applying hate laws to police officers is problematic. To begin, it contradicts a primary rationale – and the central limiting principle -- for such protections: the concept of "immutability." This holds that it is especially wrong to injure someone because of some aspect of their identity they cannot change. People do not choose their race, gender or sexual orientation. But no one is born a police officer; that is a choice.

In addition, most hate crime laws are built on the premise of one person or group exerting their power over a presumably weaker person or group -- the victim. Police officers are rarely at such a disadvantage.

Finally, hate crime laws discount the fact that police interactions are almost by nature unintended and antagonistic. Determining whether harsh language or behavior is the result of a pre-existing bias or just temporary frustration is extremely difficult. Is it a really hate crime to call a police officer a name in the heat of the moment? While the arresting officers in New Orleans thought so, American hate-crime law gives a wide berth to freedom of speech.

"Other countries have hate speech legislation, but we do not," said Jeannine Bell, a law professor at Indiana University in Bloomington, who has studied hate crime laws. With free speech prohibitions -- as is the case in, for example, much of Britain -- "hate crimes are easier to charge and less controversial."

Republican state Rep. Kevin Bratcher of Kentucky said he had long questioned the necessity of hate crime laws. “As a conservative I was buying the argument that all crime is a hate crime,” he said.

Then in May 2013, Jason Ellis, a seven-year veteran of the Bardstown, Ky., police department, was shot to death while removing debris from a roadway. Police say he was ambushed by whoever placed the detached tree branches on the road, and his killer was never found. Bratcher said that death brought him around to the police view that “there is a general disrespect for law and order” that needed to be addressed. After Louisiana passed its hate crime protections, he decided to introduce his own bill.

Bratcher still has some reservations about applying hate crime charges. “If you start digging deep into it, you see the whole hate crime standard can be on shaky ground,” he said. Bratcher added that Louisiana has served as both an inspiration and cautionary tale for his Kentucky measure, which – like the one in Mississippi – takes effect July 1.

Shortly after Delatoba’s arrest in New Orleans on Sept. 5, police dropped the felony hate crime charge against him along with a disturbing the peace charge, but would not explain why. Most of his \$15,000 bail was connected to the felony hate crime count.

“There is a lack of training as to what this new legislation means,” said Lindsey Hortenstine, a spokeswoman for the Orleans parish Public Defender’s office, which represented Delatoba.

Freed on bond, Delatoba pleaded not guilty to criminal damage and went into drug rehab. In April, he failed to show up for a court date and a warrant was issued for his arrest.

More uncertainty was evident months later when Frenwick Randolph became the second person charged under the new law. On the morning of Oct. 26 he allegedly told a 911 operator he “was going to shoot and kill any officer that responded to the call,” according to reports. Tracking the cellphone call, police apprehended the unarmed Randolph without incident and charged him with felony terrorizing and a felony hate crime.

Several days later, the hate crime charge was dropped without explanation, making New Orleans police 0 for 2 by forfeit in using the new statute.

Such apparent miscues won’t be the last. The first-responder protection bills being considered across the country augur a vast expansion of hate crime law. And there’s no telling where efforts to protect classes of people seen as vulnerable will end.

“It doesn’t seem to be a rational approach,” said Kevin Baker, legislative director for the California ACLU, which opposed the state’s failed measure to extend protection to first responders. “If we are worried about ensuring the safety of police officers and think we should do more, we should do that.”

But Baker wondered, where would it stop? “If we start protecting occupations, lawyers and journalists would be at the top.”