

EMMETT TILL ANTILYNCHING ACT

OCTOBER 31, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 35]

The Committee on the Judiciary, to whom was referred the bill (H.R. 35) to amend section 249 of title 18, United States Code, to specify lynching as a hate crime act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for the Legislation	2
Hearings	5
Committee Consideration	5
Committee Votes	5
Committee Oversight Findings	5
New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate	5
Duplication of Federal Programs	5
Performance Goals and Objectives	5
Advisory on Earmarks	5
Section-by-Section Analysis	6
Changes in Existing Law Made by the Bill, as Reported	6

Purpose and Summary

H.R. 35, the “Emmett Till Antilynching Act,” would amend section 249 of title 18, United States Code, to specify lynching as a hate crime under federal law. The bill corrects a longstanding omission from Federal civil rights law.

Background and Need for the Legislation

Lynchings were violent and public acts of torture used for nearly a century to enforce racial segregation.¹ Despite claiming the lives of thousands of victims, the perpetrators of these acts of terror were never held accountable and official inaction has left lasting scars on impacted communities.² Despite enacting a broad range of civil rights protections, the Federal government has never specifically outlawed lynching, despite the unique damage it caused to the fabric of democratic society.

Lynching has been generally defined as a premeditated extrajudicial killing by a group.³ The term has been most often used to characterize informal public executions by a mob in order to punish an alleged transgressor or to intimidate a group. Lynching can also be employed as an extreme form of informal group social control, and often conducted with the display of a public spectacle for maximum intimidation. H.R. 35 is named in honor of Emmitt Till, a 14-year-old African American youth from Chicago who was lynched in 1955 while visiting an uncle in Mississippi.⁴

During the period between the Civil War and World War II, thousands of African Americans were lynched in the United States. Though lynching touched all races and religions, the practice was predominant in the South, and four out of five victims were African American. In 1892, the Tuskegee Institute began to record statistics of lynchings and reported that 4,742 reported incidents had taken place by 1968, of which 3,445 of the victims were African Americans.⁵ Through additional research, the Equal Justice Initiative (“EJI”) documented 4,075 “racial terror lynchings” in twelve Southern states between the end of Reconstruction in 1877 and 1950.⁶ These violent incidents profoundly impacted race relations and shaped the geographic, political, social, and economic conditions of African American communities in ways that are still evident today and were largely tolerated by state and federal officials.

By the end of the nineteenth century, Southern lynching had become a tool of racial control that terrorized and targeted African Americans and their communities for wider violence. Though the circumstances of the thousands of African Americans lynched between 1877 and 1950 differed in many respects, in most cases, their murders can be categorized as one or more of the following: (1) Lynchings that resulted from a wildly distorted fear of interracial sex; (2) lynchings in response to casual social transgressions; (3) lynchings based on allegations of serious violent crime; (4) pub-

¹Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror*, at 5 (3rd ed. 2017), <https://lynchinginamerica.eji.org/report-landing> (last visited Oct. 29, 2019).

²*Id.* at 4.

³See Amy Louise Wood, *Rough Justice: Lynching and American Society 1874–1947* (North Carolina University Press (2009)).

⁴At his mother’s insistence, Till received an open-casket funeral so that people could see how badly her son had been beaten, which galvanized the response of the African American community throughout the nation. The state of Mississippi tried two defendants for his murder, but they were acquitted by an *all-white jury*, and later admitted their guilt.

⁵See Tuskegee University Archives Repository, *Lynching, Whites & Negroes, 1882–1968*, retrieved at <http://archive.tuskegee.edu/archive/handle/123456789/51>; Jessie P. Guzman, *Negro Yearbook* (1952), at 275–279, <https://archive.org/details/negroyearbook52tuskrich> (last visited Oct. 29, 2019).

⁶See Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror*, at 5 (3rd ed. 2017), <https://lynchinginamerica.eji.org/report-landing> (last visited Oct. 29, 2019). EJI distinguishes “terror lynchings” from racial violence and hate crimes that were prosecuted as criminal acts, classifying the incidents as acts of terrorism because the murders were carried out with impunity, sometimes in broad daylight, often “on the courthouse lawn.”

lic spectacle lynchings; (5) lynchings that escalated into large-scale violence targeting the entire African American community; and (6) lynchings of sharecroppers, ministers, and community leaders who resisted mistreatment, which were most common between 1915 and 1940.⁷ EJI research revealed that lynchings peaked between 1880 and 1940, with Mississippi, Georgia, and Louisiana having the highest absolute number of African American victims during this period.

The antilynching movement set the stage for the creation of the civil rights movement that we recognize today. African-Americans undertook efforts to combat the terror of lynching and the threat of racial violence through grassroots activism and the founding of integrated social justice organizations. The work of the National Association for the Advancement of Colored People (“NAACP”) was pivotal in awakening the nation to the urgency of combatting lynching. Founded in 1909 as an interracial civil rights protest organization, the NAACP conducted thorough investigations of lynchings and other crimes committed against African Americans and issued regular reports concerning the incidents. In 1919 the NAACP published *Thirty Years of Lynching in the United States, 1889–1918*, which was a revelation of the causes of lynching and the circumstances under which the crimes occurred.⁸ Beginning in 1921, the NAACP also actively began endorsing antilynching legislation to make lynching a federal crime. Anti-lynching activists, like journalists Ida B. Wells and T. Thomas Fortune and Tuskegee sociologist Monroe Work, further harnessed the growing power of the black press to demand national accountability for racial violence.

The first federal antilynching legislation was introduced by Congressman George Henry White, then the only African American Member of Congress, in 1900 and referred to the Committee on the Judiciary.⁹ During the first half of the twentieth century, nearly 200 anti-lynching bills were introduced in Congress, but none were successful. Between 1920 and 1940, the House of Representatives passed three strong antilynching measures, the closest of which Congress came to enacting was sponsored by Congressman Leonidas C. Dyer in 1922. The Dyer Anti-Lynching Bill provided fines and imprisonment for persons convicted of lynching in federal courts, and fines and penalties against states, counties, and towns which failed to use reasonable efforts to protect citizens from mob violence. Although the bill was quickly passed by a large majority in the House of Representatives, and supported by then-President Warren G. Harding, it was prevented from coming to a vote in 1922, 1923, and 1924 in the Senate due to filibusters by the Southern Democratic bloc who claimed the legislation would be unconsti-

⁷*Id.* at 10.

⁸National Association for the Advancement of Colored People, *Thirty Years of Lynching in the United States 1889–1918* (Apr. 1919), <https://www.loc.gov/teachers/classroommaterials/primarysourcesets/naacp/pdf/lynching.pdf> (last visited Oct. 29, 2019).

⁹See Benjamin Justensen, *George Henry White and the Anti-Lynching Bill of 1900* (Sept. 17, 2016), <https://www.georgehenrywhite.com/single-post/2016/09/17/George-Henry-White-and-the-Anti-Lynching-Bill-of-1900> (last visited Oct. 29, 2019). Rep. White’s legislation was ultimately unsuccessful and would not be voted on by the House of Representatives before his departure from that body in 1901.

tutional and an infringement upon states' rights.¹⁰ However, the extensive debate on the bill, in combination with the 1919 NAACP report and the related National Conference on Lynching, moved local and state governments to take lynching more seriously, leading to a dramatic decrease of incidents after 1922.¹¹

The enactment of the Civil Rights Act of 1968 was the closest that Congress ever came in the post-Reconstruction era to enacting anti-lynching legislation. Codified at 18 U.S.C. §241, the civil rights conspiracy statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory, or district in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or the laws of the United States (or because of his or her having exercised the same) and further makes it unlawful for two or more persons to go in disguise on the highway or premises of another person with intent to prevent or hinder his or her free exercise or enjoyment of such rights.¹² Though section 241 does not specify the offense of lynching as a federal crime, this section has been used by the Department of Justice to prosecute civil rights era crimes and hate crimes that were described as lynching in public discourse.

Despite the existence of federal criminal enforcement against hate crimes, it remains important to enact federal antilynching legislation due to the historical context of these violent incidents. Lynching was a violent tactic of racial subordination and closely linked to the deprivation of freedmen's post-Reconstruction constitutional rights. The fear of lynching was also a major factor in the Great Migration to the North and changed the demographics of the nation. Politically, the terms of the lynching debate still echo through Congress and influence the debate around social justice policy. For that reason, in 2005, the Senate passed a resolution, sponsored by Senators Mary Landrieu and George Allen, apologizing for the Senate's failure to enact antilynching legislation as a Federal crime, with Senator Landrieu commenting that, "There may be no other injustice in American history for which the Senate so uniquely bears responsibility."¹³ Taking a further step to equal the record of the House of Representatives, the Senate voted unanimously in favor of the Justice for Victims of Lynching Act on December 19, 2018, putting to rest nearly a century of opposition to antilynching legislation in the that chamber.

¹⁰See *Office of the Historian, U.S. House of Representatives*, Office of the Historian, *Black Americans in Congress, 1870–2007, Anti-Lynching Legislation Renewed*, U.S. Government Printing Office (2008), <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Essays/Temporary-Farewell/Anti-Lynching-Legislation/> (last visited Oct. 29, 2019).

¹¹Southern white organizations also began to condemn lynchings during the two decades before World War II. Among them were the Commission for Interracial Cooperation, which did research and issued publications that provided additional facts on lynchings, and the Association of Southern Women for the Prevention of Lynching, which was founded in Atlanta in 1930. See Robert A. Gibson, *The Negro Holocaust: Lynching and Race Riots in the United States 1880–1950*, Yale-New Haven Teacher's Institute (2004) <http://teachersinstitute.yale.edu/curriculum/units/1979/2/79.02.04.x.html> (last visited Oct. 29, 2019).

¹²Depending upon the circumstances of the crime, and any resulting injury, the offense is punishable by a range of fines and/or imprisonment for any term of years up to life, or the death penalty. 18 U.S.C. §241.

¹³151 Cong. Rec. S6365 (daily ed. June 13, 2005) (statement of Sen. Landrieu); (Avis Thomas-Lester, *A Senate Apology for Lynching*, Washington Post, June 14, 2005, <https://www.washingtonpost.com/archive/politics/2005/06/14/a-senate-apology-for-history-on-lynching/324dade8-ec0e-46d9-9674-c81c247eb214/>).

Hearings

The Committee on the Judiciary held no hearings on H.R. 35.

Committee Consideration

On June 12, 2019, the Committee met in open session and ordered the bill, H.R. 35, favorably reported without amendment, by a voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 35.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 35 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 35 will increase public safety and heal past and present racial injustice.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 35 does not contain any congressional ear-

marks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the “Emmett Till Anti-lynching Act.”

Sec. 2. Findings. Section 2 sets forth a series of findings regarding: (1) the history and statistics of lynching incidents in the United States, (2) actions taken by citizen groups to advocate for antilynching legislation, and (3) the frequency, historical character, and legislative history of federal antilynching legislation.

Sec. 3. Specifying lynching as a hate crime act. Section 3 amends 18 U.S.C. § 249(a) to add a new subsection that designates lynching as a hate crime punishable by a prison term up to life, a fine, or both.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

PART I—CRIMES

* * * * *

CHAPTER 13—CIVIL RIGHTS

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§ 249. Hate crime acts

(a) IN GENERAL.—

(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

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

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

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—

(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

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

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

(I) death results from the offense; or

(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

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

(II) otherwise affects interstate or foreign commerce.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES.—Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) OFFENSES INVOLVING LYNCHING.—*Whoever, whether or not acting under color of law, willfully, acting as part of any collection of people, assembled for the purpose and with the intention of committing an act of violence upon any person,*

causes death to any person, shall be imprisoned for any term of years or for life, fined under this title, or both.

[(4)] (5) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys' Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(b) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) DEFINITIONS.—In this section—

(1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(3) the term “firearm” has the meaning given such term in section 921(a) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) STATUTE OF LIMITATIONS.—

(1) OFFENSES NOT RESULTING IN DEATH.—Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.

(2) DEATH RESULTING OFFENSES.—An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.