

Major Findings

Hate Crimes Against People with Disabilities

- **Nearly one third (32%) say that people they know have made negative comments about people with disabilities**
-
- **In addition, 23% admit to having made such comments themselves**
-
- **Ridiculing someone with a disability behind their back is the most common occurrence, with 64% saying they have seen or heard it happen**
-
- **Nearly half of respondents (47%) say that they know people who would turn their backs on a hate crime against someone with a disability**
-
- **Overall, 17% say they know a victim of a hate crime because of a disability**
-

Major Findings

Gender Based Hate Crimes

- The data suggests that awareness and behavior related to gender-based hate crimes is different for non-students compared with students
- - While 23% of students say people they know have made negative gender-based comments, 42% of non-students say the same thing
 -
 - Furthermore, only 16% of students say they personally have made negative gender-based comments whereas 33% of non-students say they have
 -
 - *This could be due to a growing awareness of this issue among younger Americans or it could be that the problem becomes more prevalent as young people grow older*

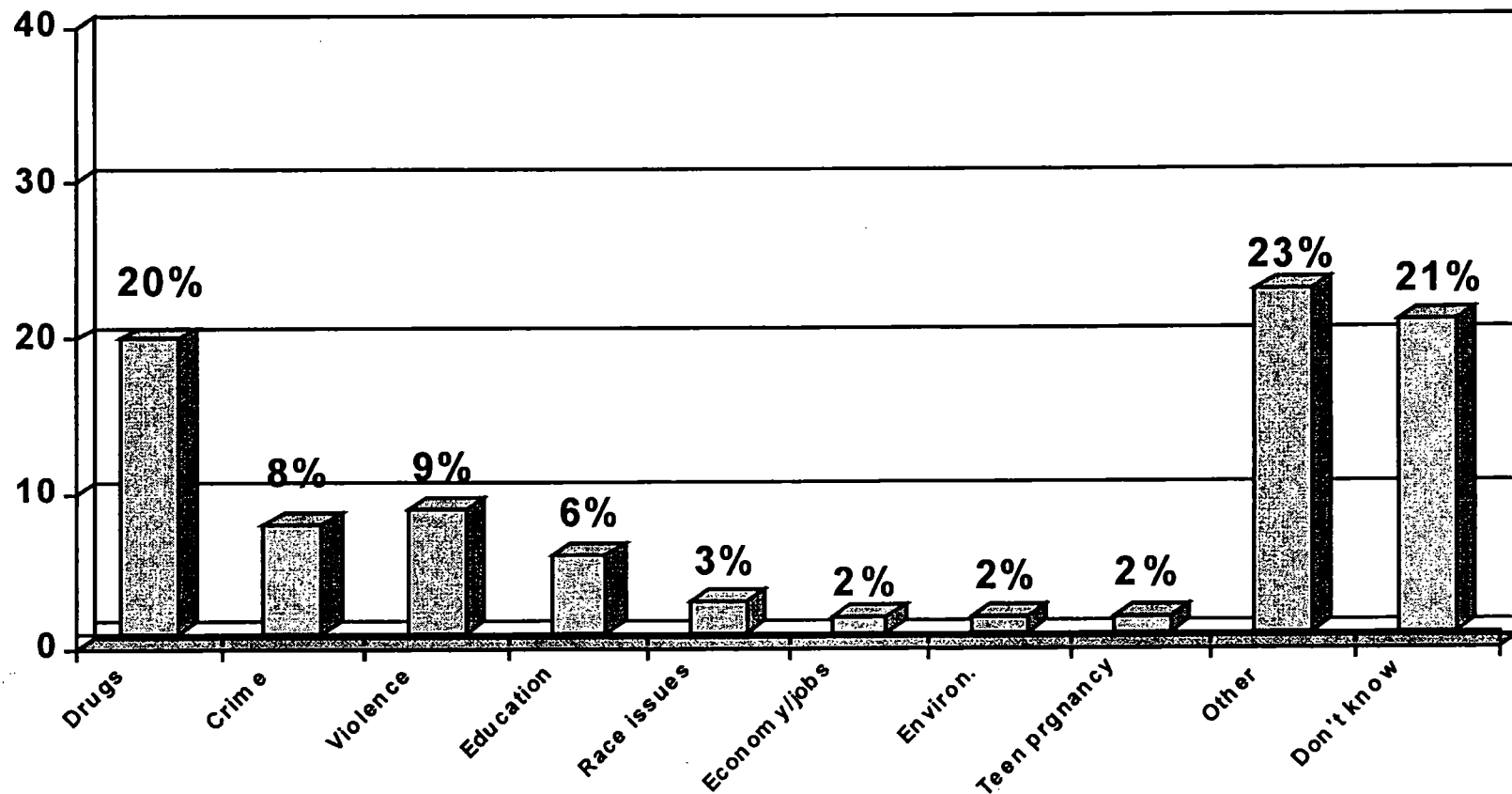
Major Findings

Gender Based Hate Crimes

- **The data also suggests that the nature of gender-based hate crimes is different for students and non-students**
 -
 - **While 22% of students say they have been worried that ridiculing could turn into something worse, 61% of non-students say the same thing**
 -
- **Overall, 17% say they know a victim of a gender-based hate crime**
-

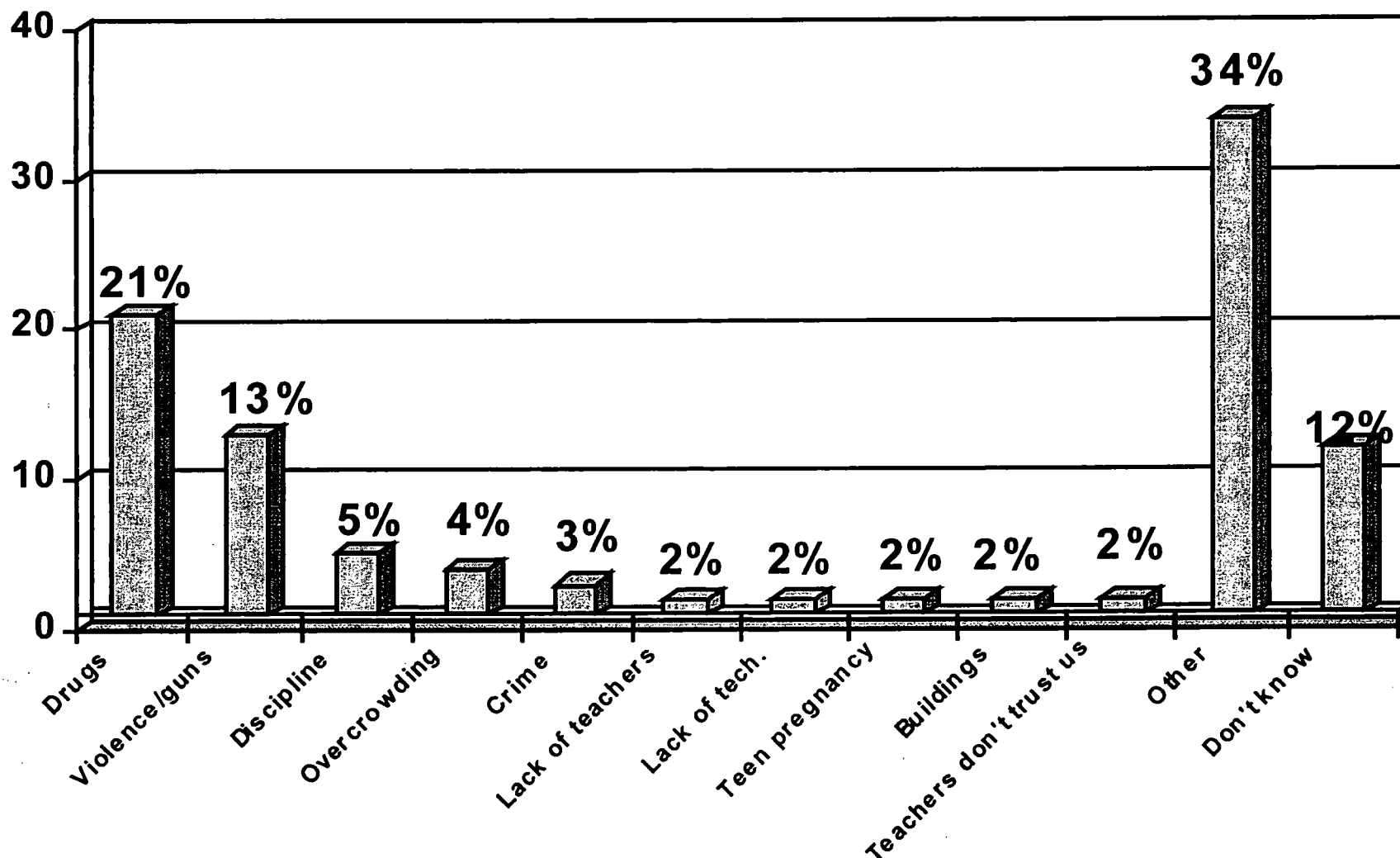
Most Important Problem: Community

What is the most important problem facing your community today?
Among all respondents

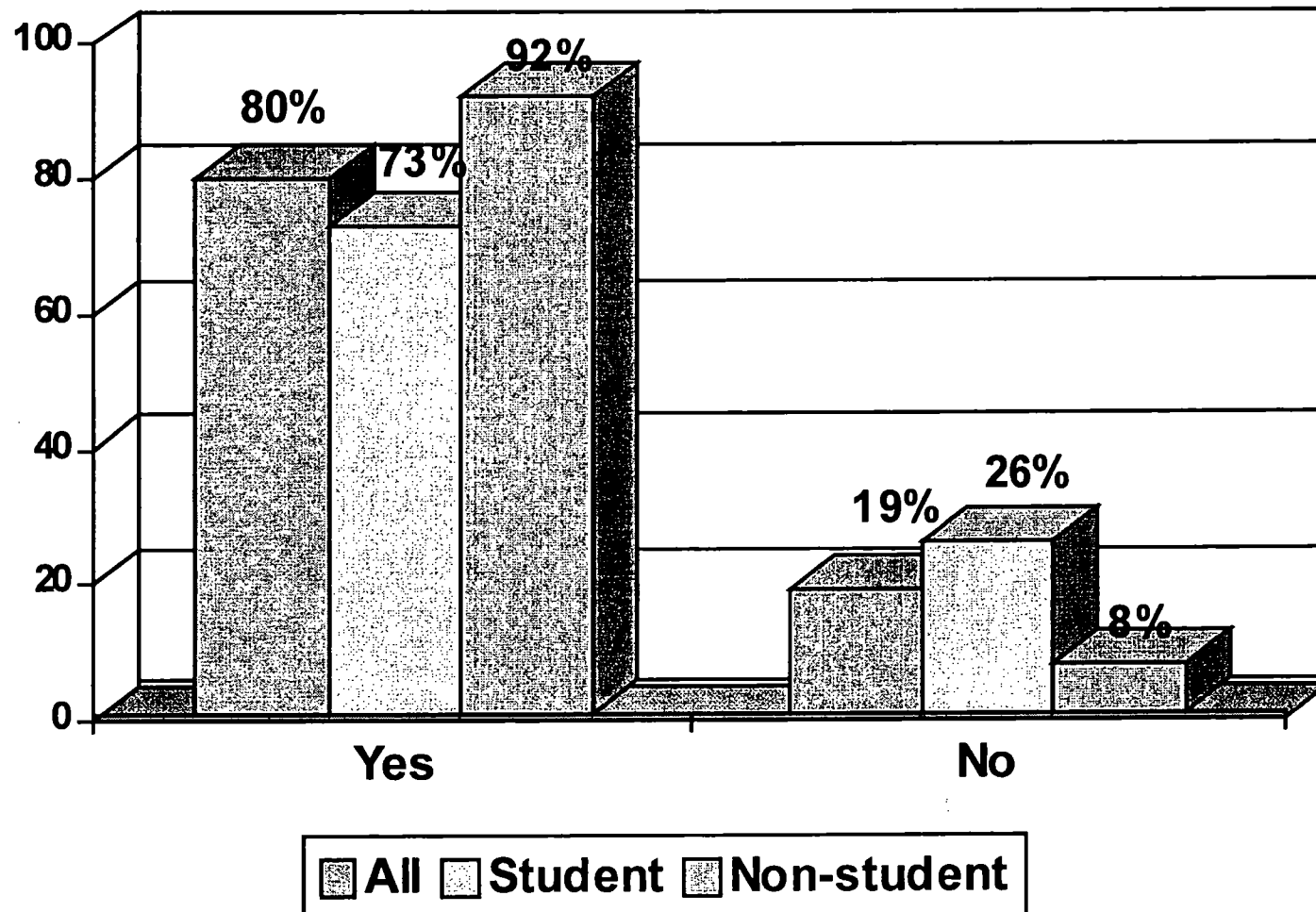


Biggest Problem In Your School

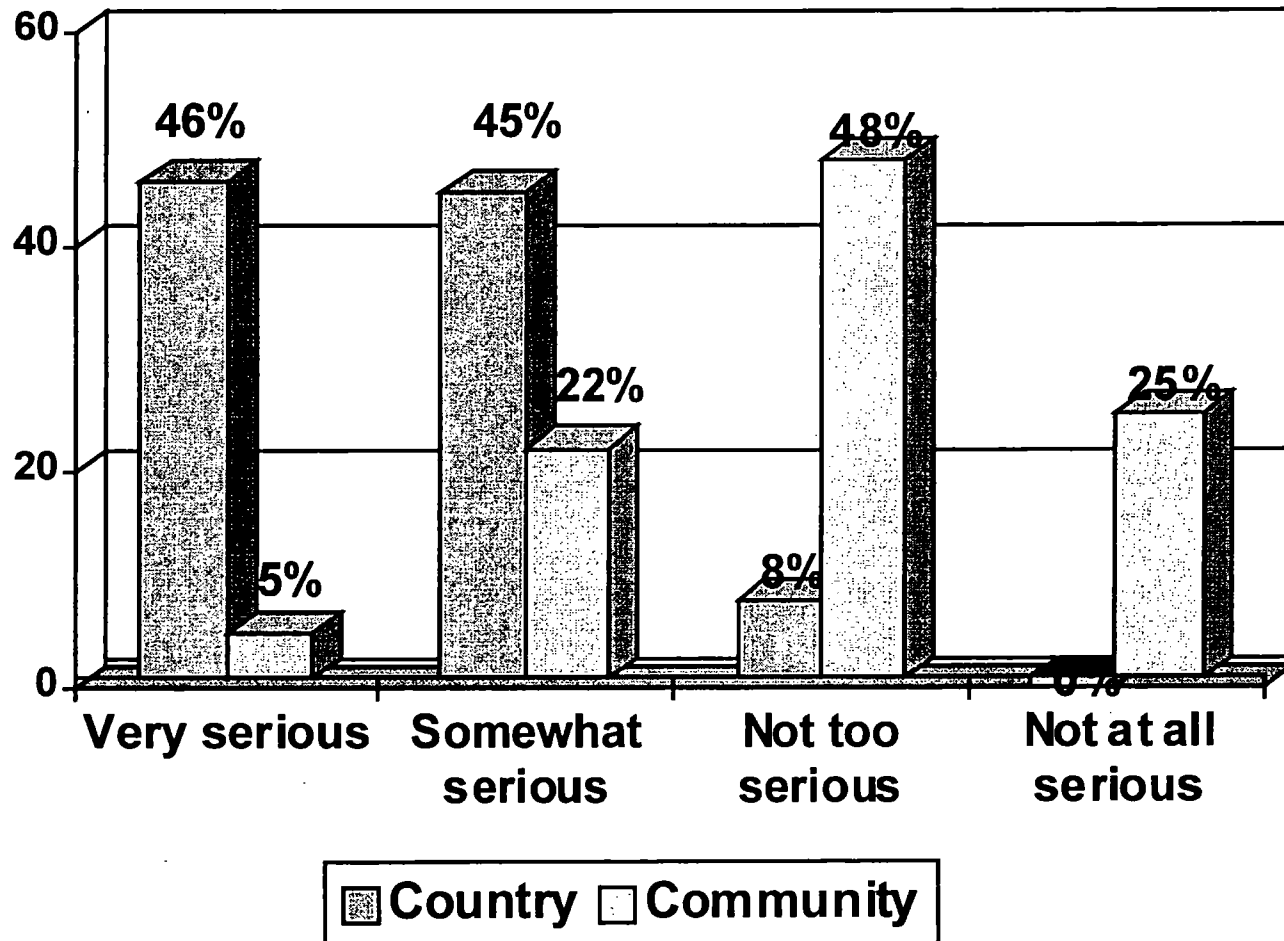
*What is the biggest problem in your school today?
Among Students*



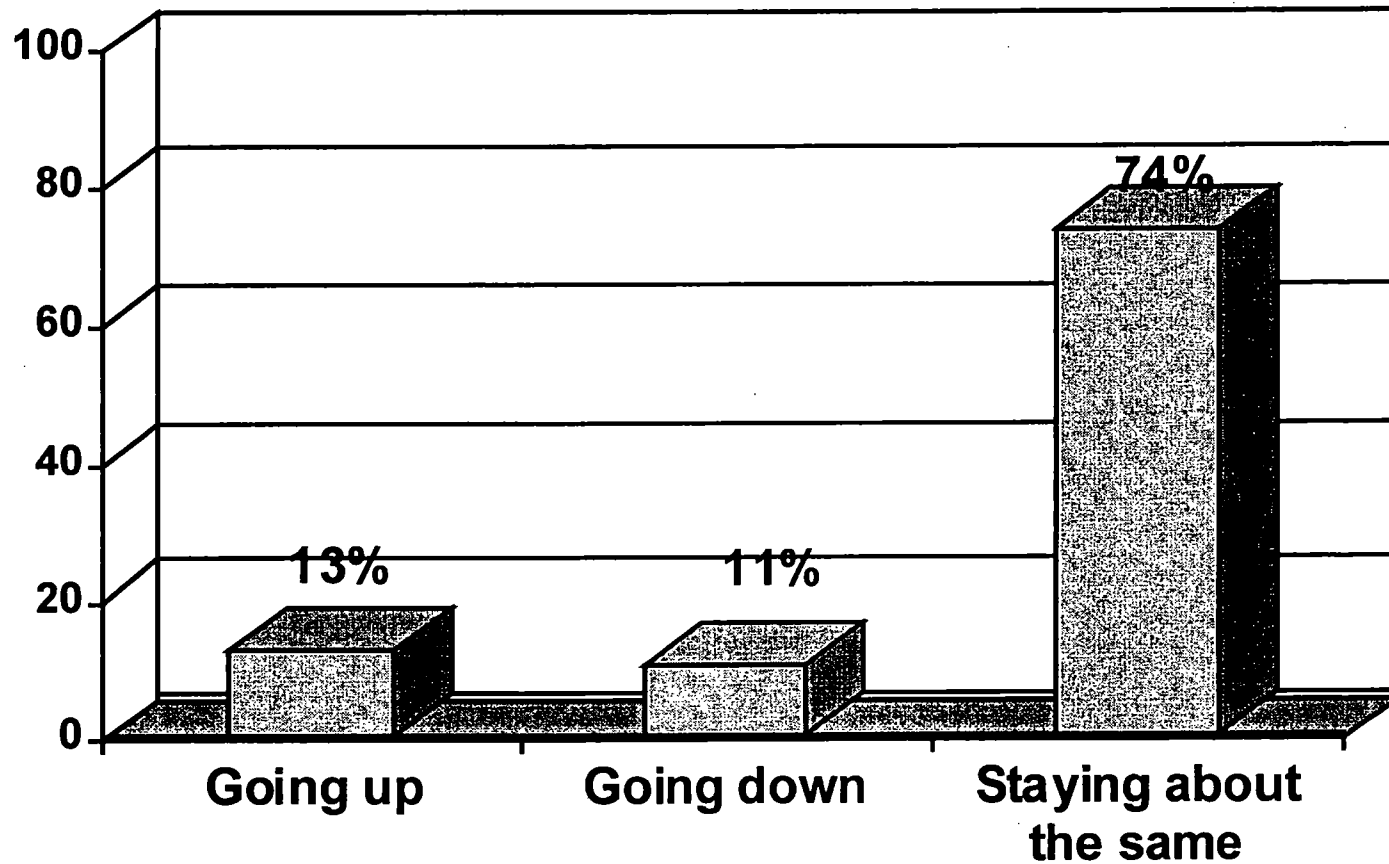
Have You Ever Heard Of “Hate Crimes”?



Seriousness Of Hate Crime Problem

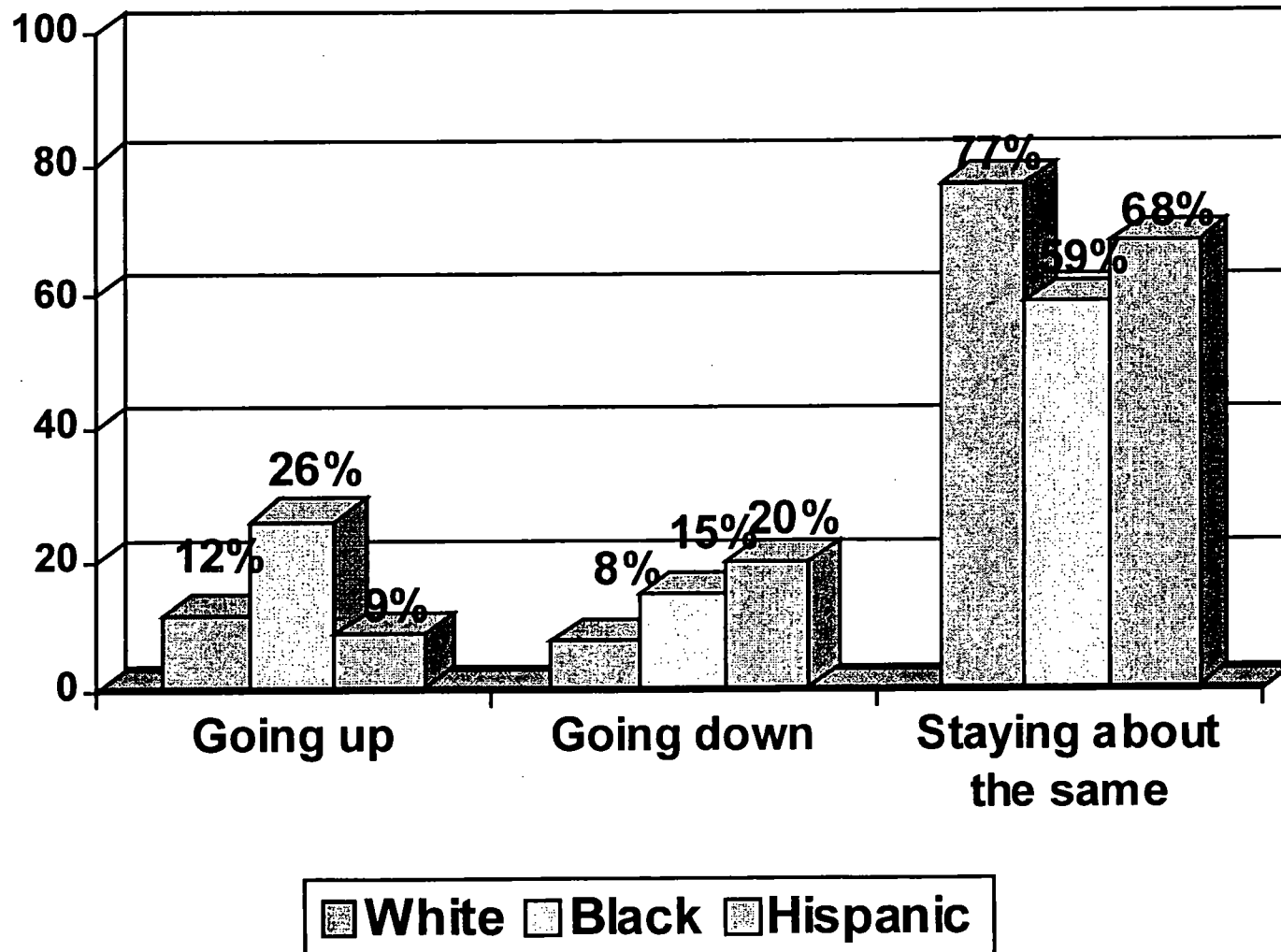


Hate Crimes In Community: Going Up, Going Down Or Staying About The Same?

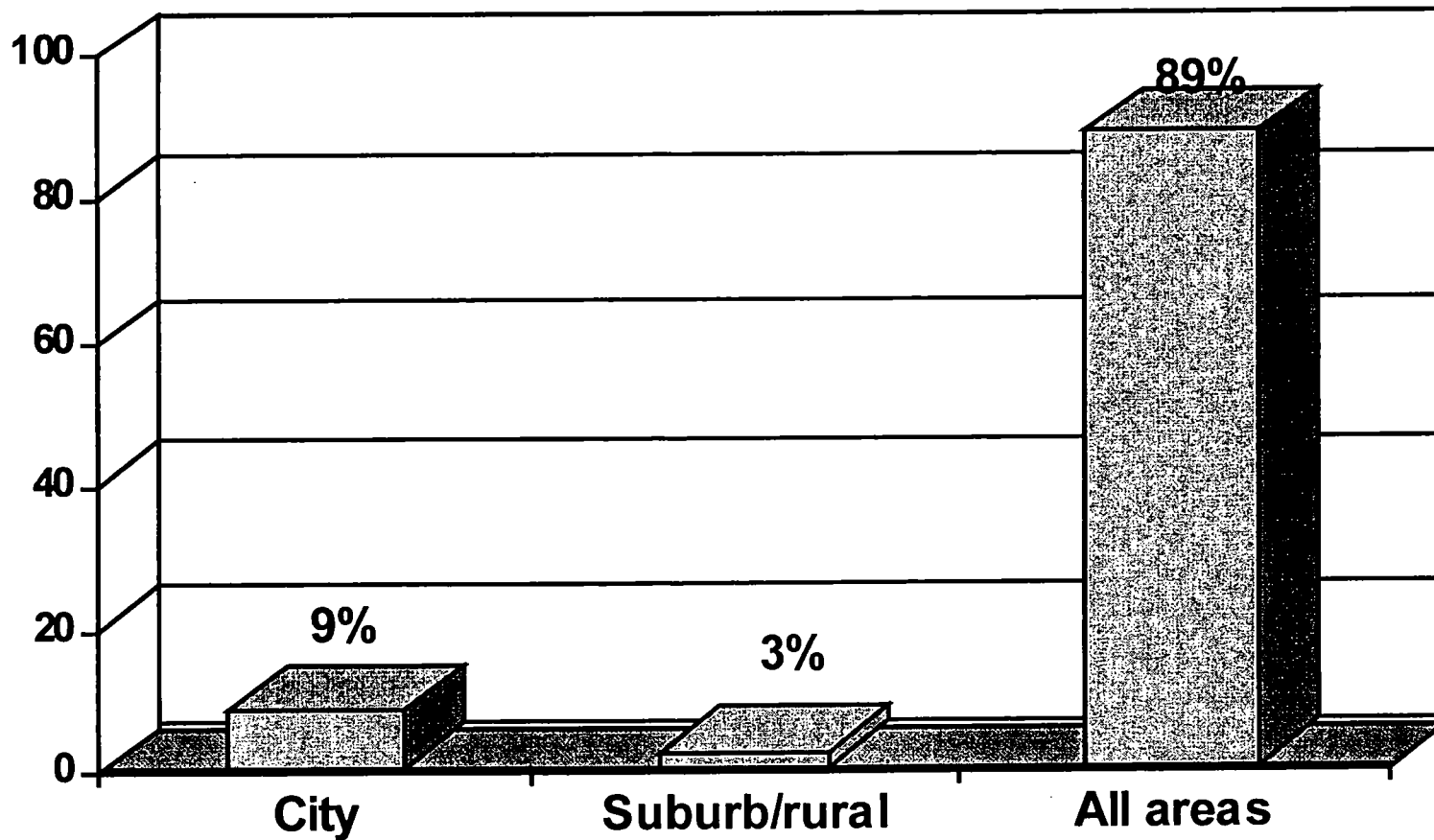


Hate Crimes In Community: Going Up, Going Down Or Staying About The Same?

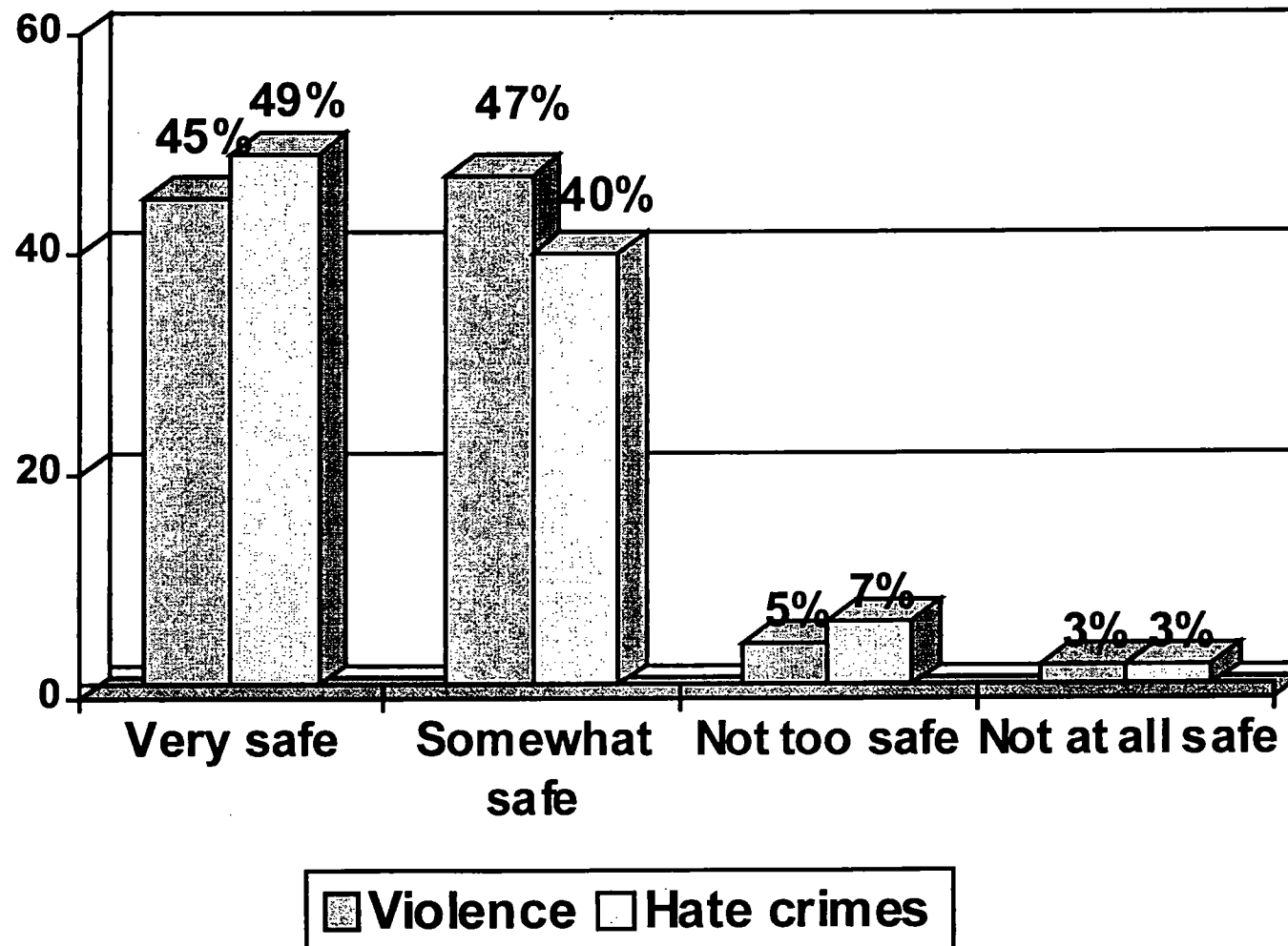
By race



Hate Crimes: Where's The Problem?

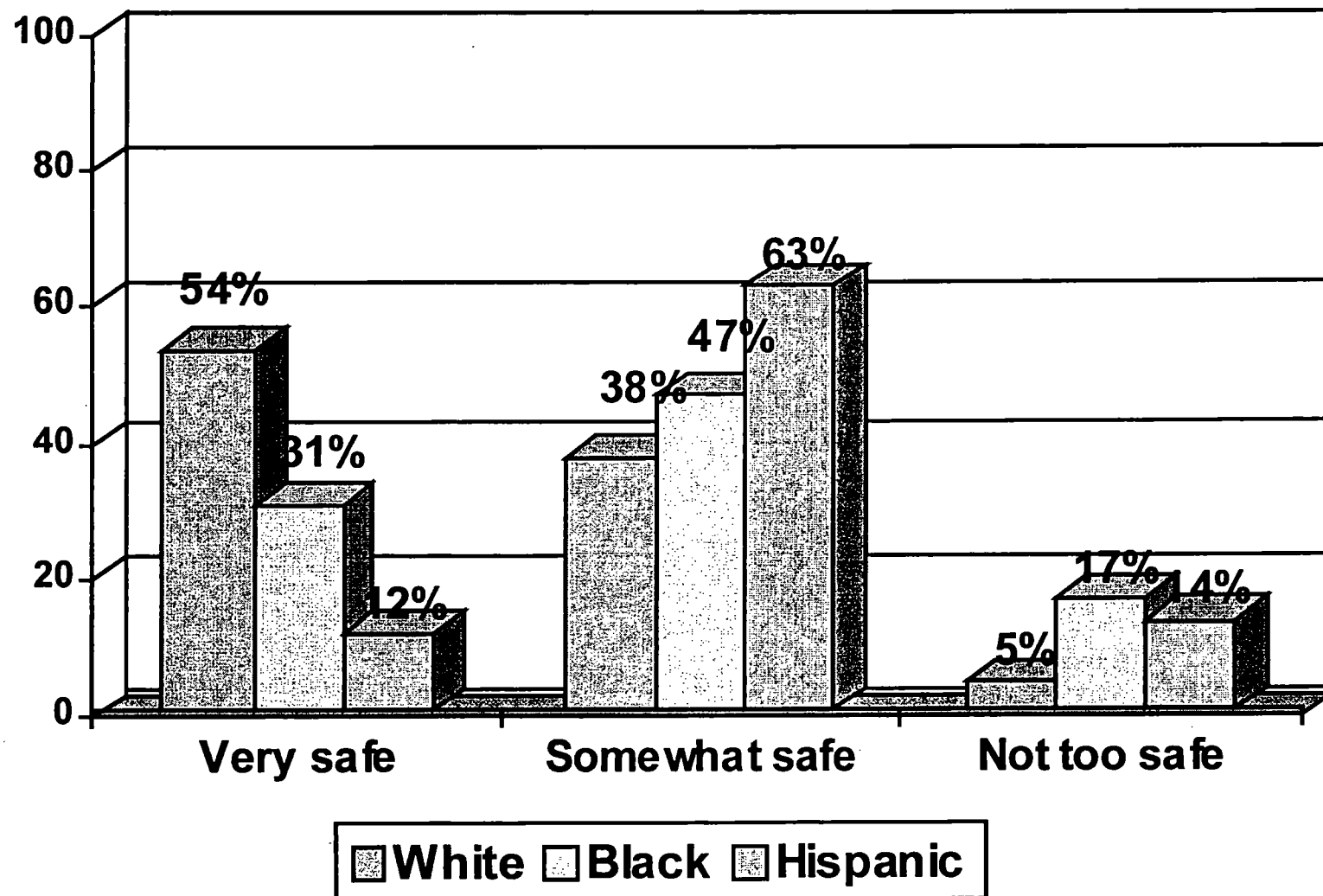


Safe From Violence/Hate Crime Violence?



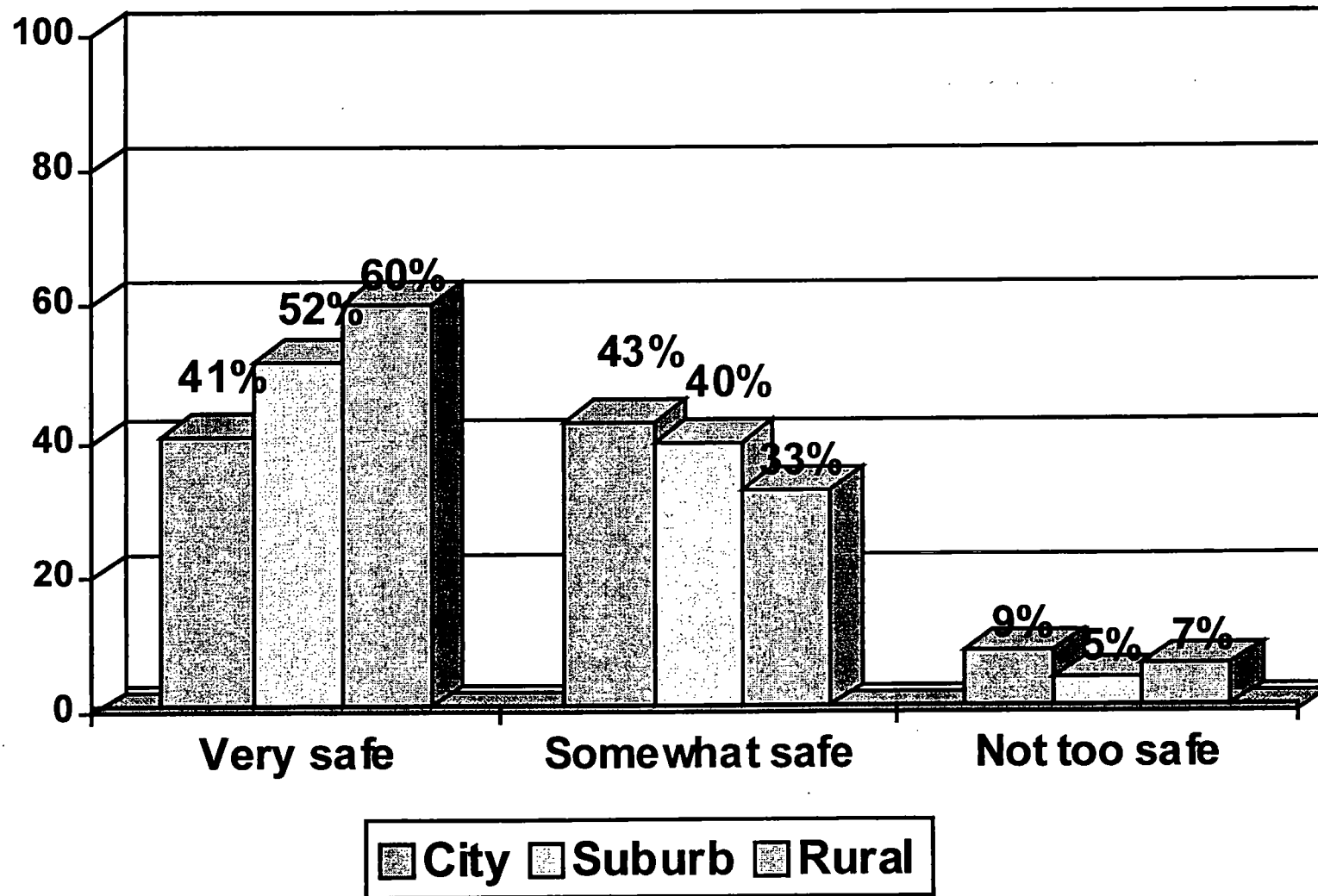
Safe From Hate Crime Violence?

By race



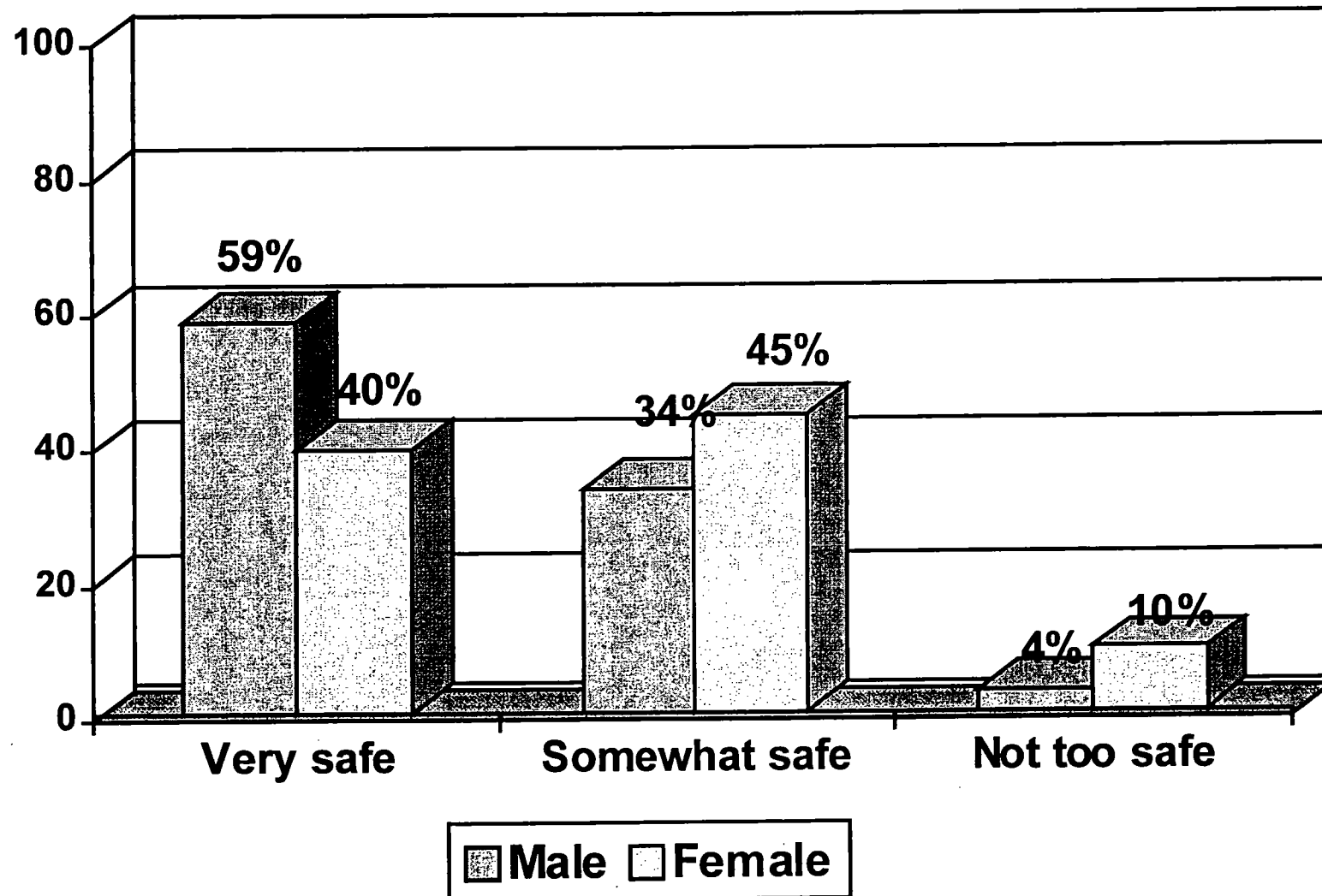
Safe From Hate Crime Violence?

By region

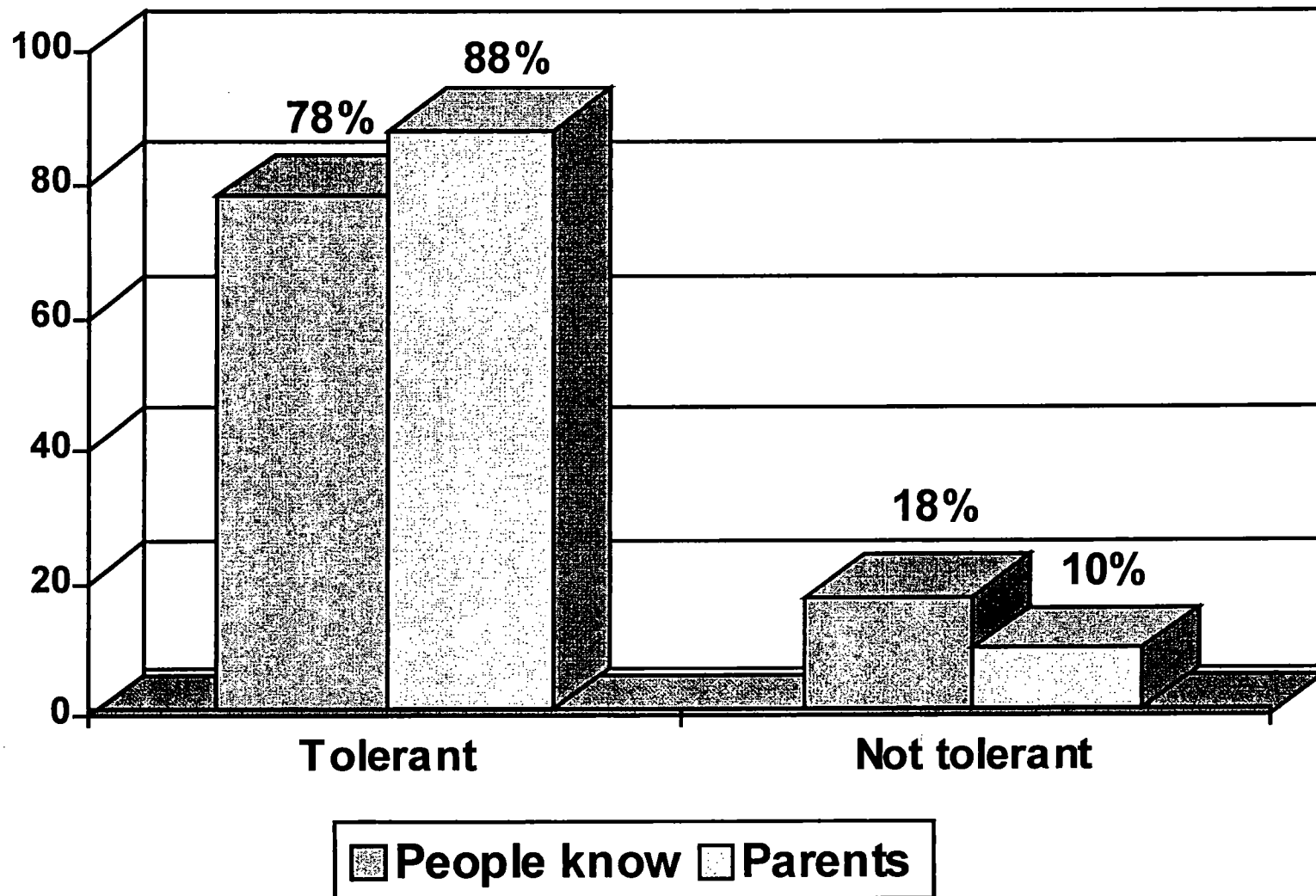


Safe From Hate Crime Violence?

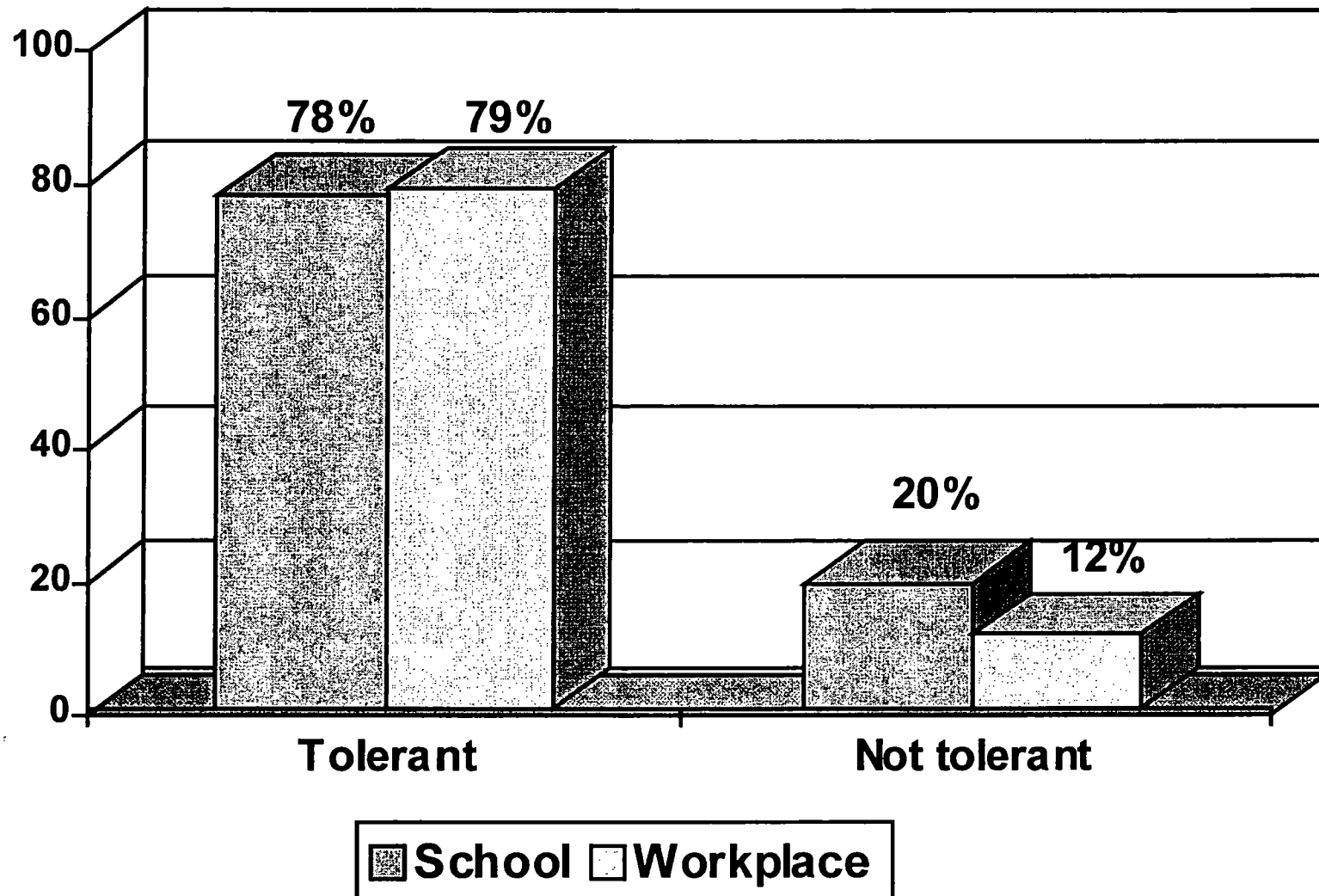
By gender



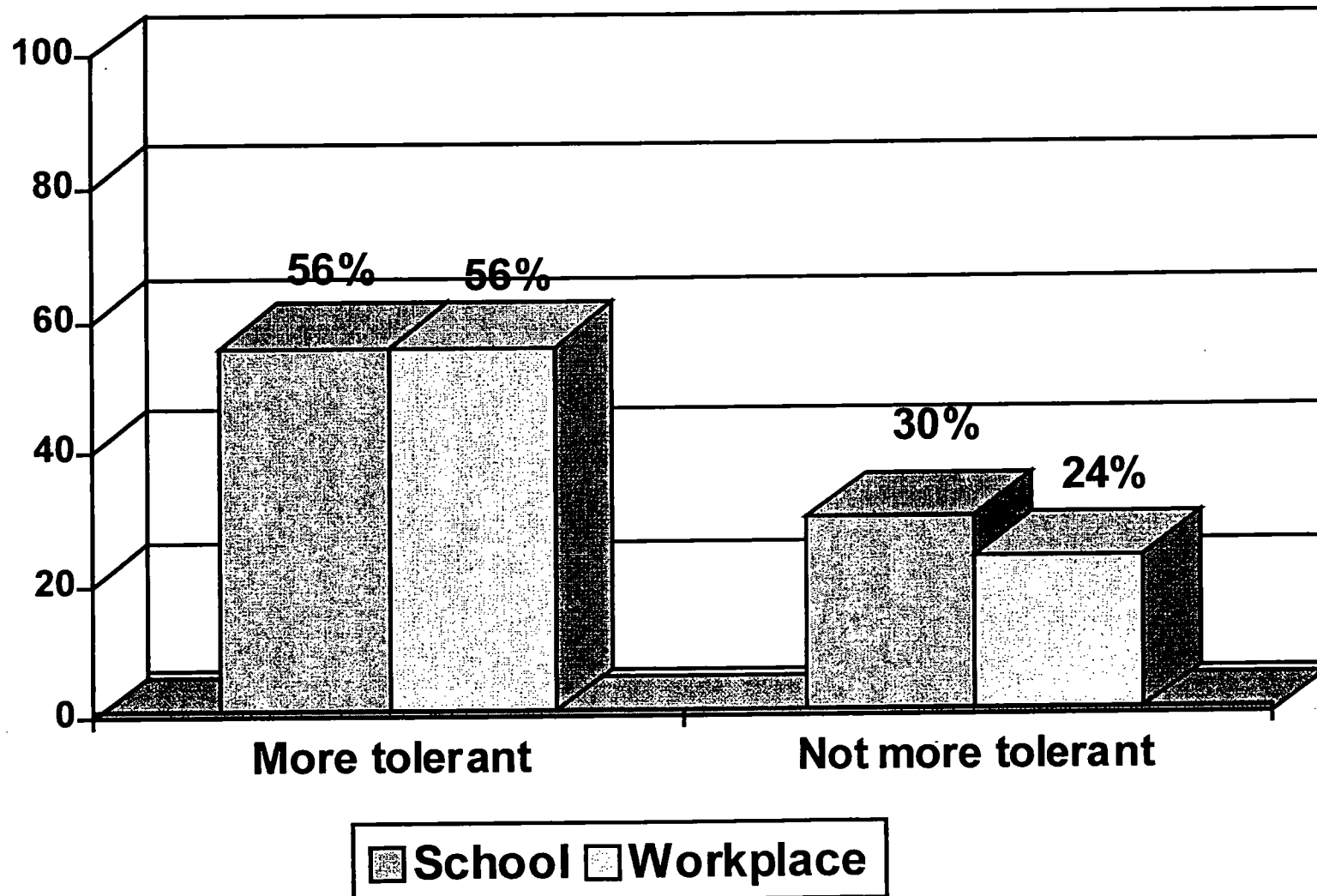
People You Know/Parents Tolerant?



School/Workplace Tolerant?



School/Workplace Becoming More Tolerant In Past Year Or Two?



Violence Against Gays And Lesbians

Hate Crimes Against Gays/Lesbians

% Saying "yes" to each question

By all/students/non-students

Gays/Lesbians	All	Students	Non-students
NEGATIVE COMMENTS			
People you know: Said anything bad/negative	45	46	44
You Personally: Said anything bad/negative	29	32	25

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against Gays/Lesbians

*% Saying "yes" to each question
By all/students/non-students*

Gays/Lesbians	All	Students	Non-students
<i>RIDICULING</i>			
Seen/heard ridiculing behind someone's back	61	68	50
Seen/heard ridiculing in front of person	37	41	31
Seen ridiculing turn into something worse	16	17	14
Worried that ridiculing would turn into something worse	52	69	27
Worried that ridiculing would be directed at you	N/A	N/A	12

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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Hate Crimes Against Gays/Lesbians

*% Saying "yes" to each question
By all/students/non-students*

Gays/Lesbians	All	Students	Non-students
VERBAL THREATS			
Seen/heard about verbal threats	20	19	22
Worried that verbal threats would turn into something worse	N/A	N/A	62
Worried that verbal threats would be directed at you	N/A	N/A	8
Verbal threats should be punished	N/A	78	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against Gays/Lesbians

*% Saying "yes" to each question
By all/students/non-students*

Gays/Lesbians	All	Students	Non-students
PHYSICAL THREATS			
Seen/heard about physical threats	13	13	12
Worried that physical threats would be directed at you	N/A	N/A	8
Physical threats should be punished	N/A	77	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against Gays/Lesbians

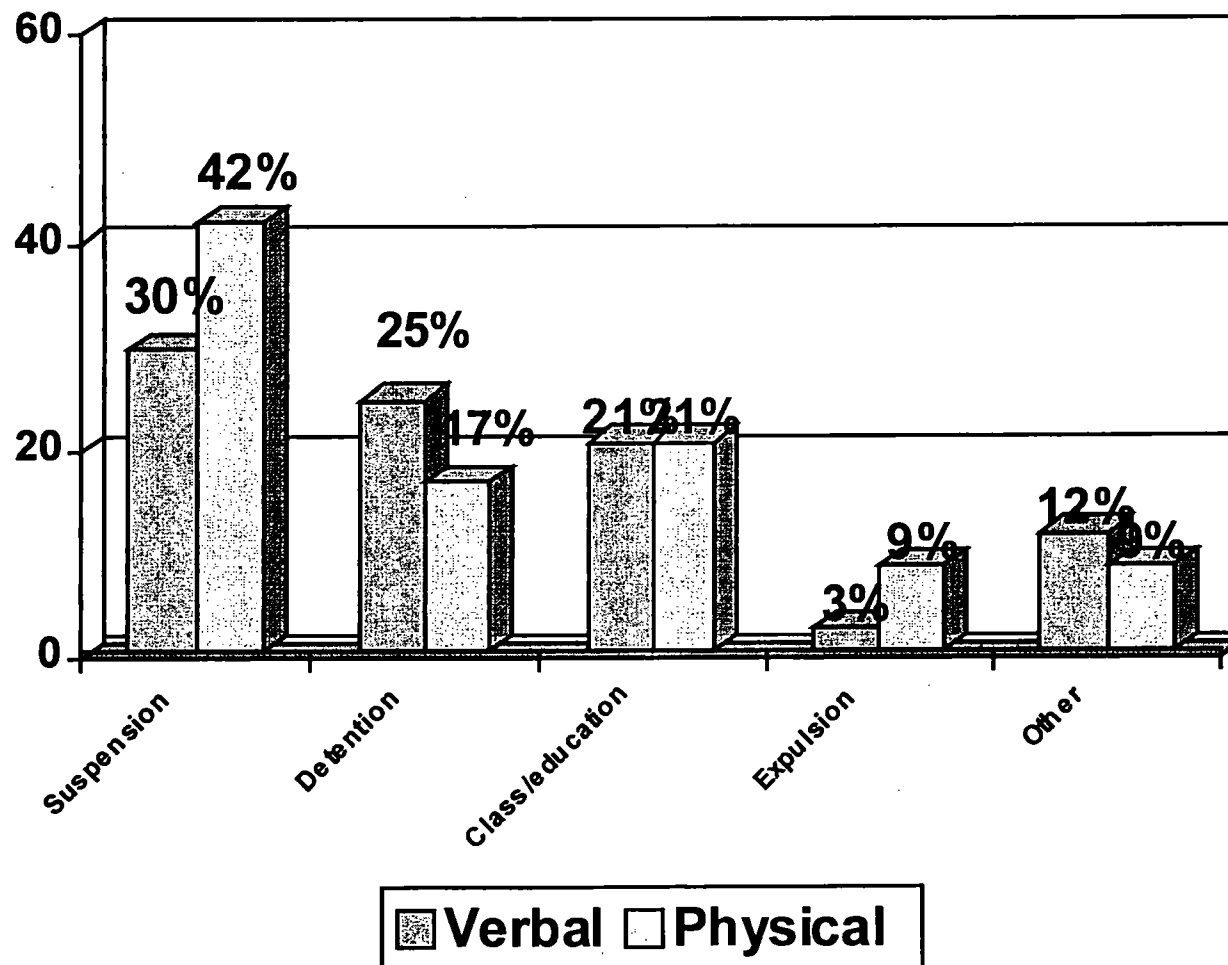
*% Saying "yes" to each question
By all/students/non-students*

Gays/Lesbians	All	Students	Non-students
HATE CRIMES			
People you know: capable of committing a hate crime/physical abuse	16	19	13
People you know: would turn backs/walk away if saw hate crime	53	55	51
Hate crimes should be punished	89	87	93
Know victim of hate crime	11	8	15

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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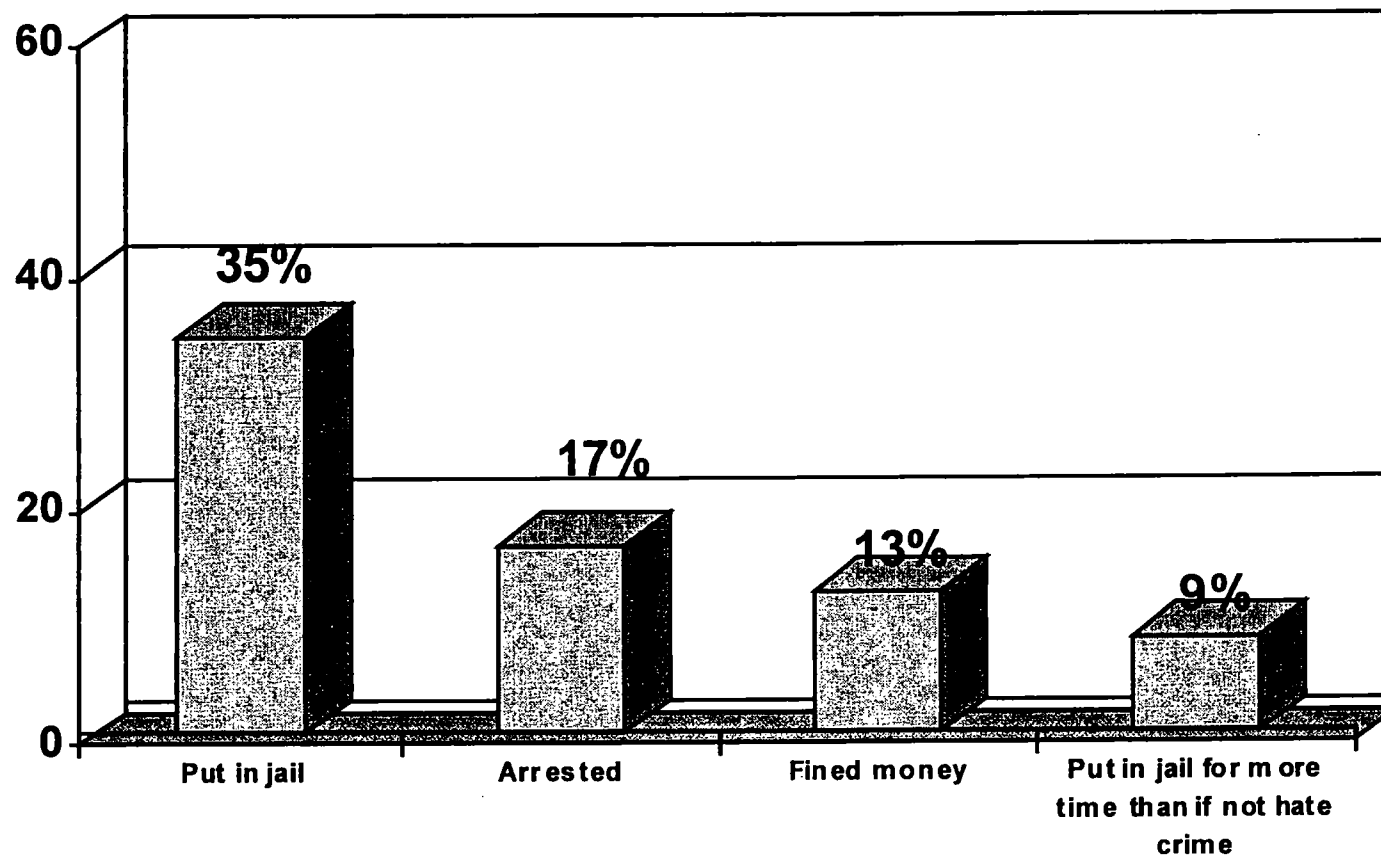
Punishment For Verbally/Physically Threatening Another Student For Being Gay

Among students



Punishment For Crimes Against Someone For Being Gay

Among all respondents



Violence Against Multirace Or Different Race People

Race Based Hate Crimes

% Saying "yes" to each question

By all/students/non-students

Multiracial/Different race	All	Students	Non-students
NEGATIVE COMMENTS			
People you know: Said anything bad/negative	45	47	43
You Personally: Said anything bad/negative	27	24	31

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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Race Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Multiracial/Different race	All	Students	Non-students
RIDICULING			
Seen/heard ridiculing behind someone's back	61	62	60
Seen/heard ridiculing in front of person	40	49	27
Seen ridiculing turn into something worse	25	27	23
Worried that ridiculing would turn into something worse	39	45	30
Worried that ridiculing would be directed at you	19	19	20

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Race Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Multiracial/Different race	All	Students	Non-students
VERBAL THREATS			
Seen/heard about verbal threats	30	36	21
Worried that verbal threats would turn into something worse	28	34	18
Worried that verbal threats would be directed at you	12	12	11
Verbal threats should be punished	N/A	81	N/A
Anyone been punished for verbal threats	N/A	29	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Race Based Hate Crimes

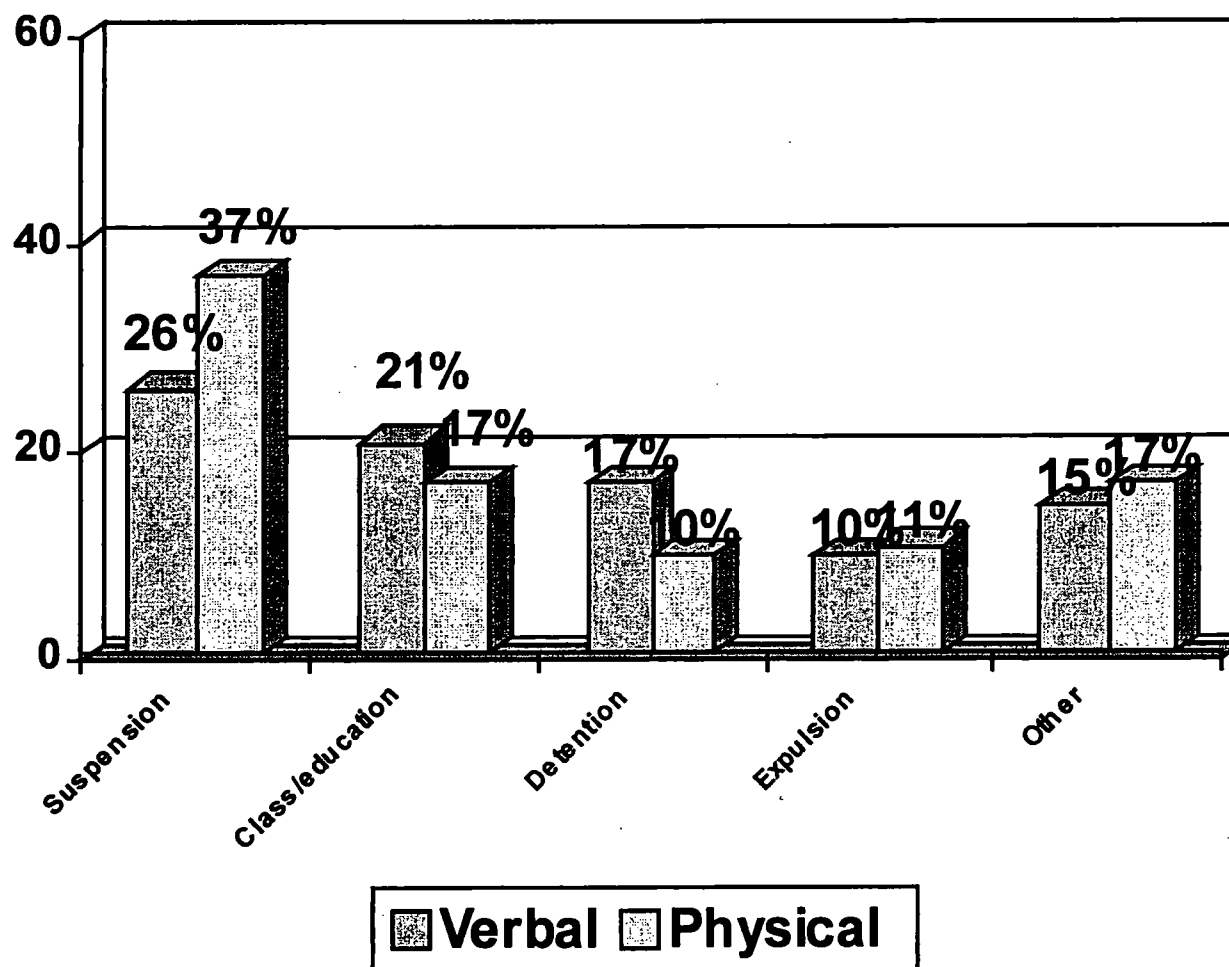
*% Saying "yes" to each question
By all/students/non-students*

Multiracial/Different race	All	Students	Non-students
PHYSICAL THREATS			
Seen/heard about physical threats	27	34	16
Worried that physical threats would turn into something worse	26	31	19
Worried that physical threats would be directed at you	10	12	8
Physical threats should be punished	N/A	87	N/A
Anyone been punished for physical threats	N/A	30	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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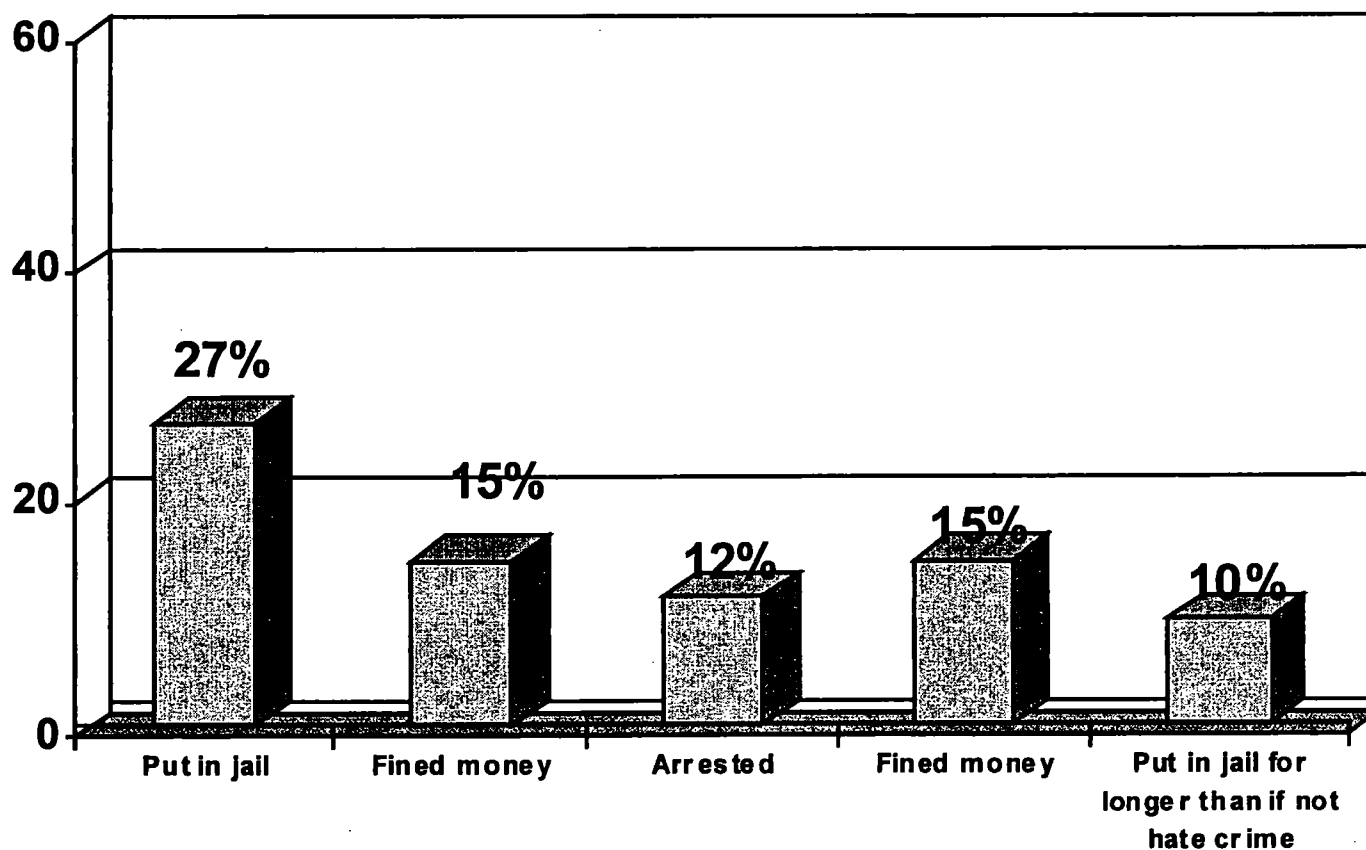
Punishment For Verbally/Physically Threatening Another Student For Being Multiracial/Different Race

Among students



Punishment For Crimes Against Someone For Being Multiracial/Different Race

Among all respondents



Violence Against People With Disabilities

Hate Crimes Against People with Disabilities

% Saying "yes" to each question

By all/students/non-students

Disability	All	Students	Non-students
NEGATIVE COMMENTS			
People you know: Said anything bad/negative	32	33	30
You Personally: Said anything bad/negative	23	22	24

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against People with Disabilities

% Saying "yes" to each question

By all/students/non-students

Disability	All	Students	Non-students
RIDICULING			
Seen/heard ridiculing behind someone's back	64	67	59
Seen/heard ridiculing in front of person	38	41	33
Seen ridiculing turn into something worse	19	21	15
Worried that ridiculing would turn into something worse	26	22	33
Worried that ridiculing would be directed at you	21	19	25

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against People with Disabilities

*% Saying "yes" to each question
By all/students/non-students*

Disability	All	Students	Non-students
VERBAL THREATS			
Seen/heard about verbal threats	23	25	20
Worried that verbal threats would turn into something worse	27	25	29
Worried that verbal threats would be directed at you	16	15	17
Verbal threats should be punished	N/A	85	N/A
Anyone been punished for verbal threats	N/A	23	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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Hate Crimes Against People with Disabilities

*% Saying "yes" to each question
By all/students/non-students*

Disability	All	Students	Non-students
PHYSICAL THREATS			
Seen/heard about physical threats	18	22	11
Worried that physical threats would turn into something worse	24	25	22
Worried that physical threats would be directed at you	24	32	12
Physical threats should be punished	N/A	92	N/A
Anyone been punished for physical threats	N/A	27	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Hate Crimes Against People with Disabilities

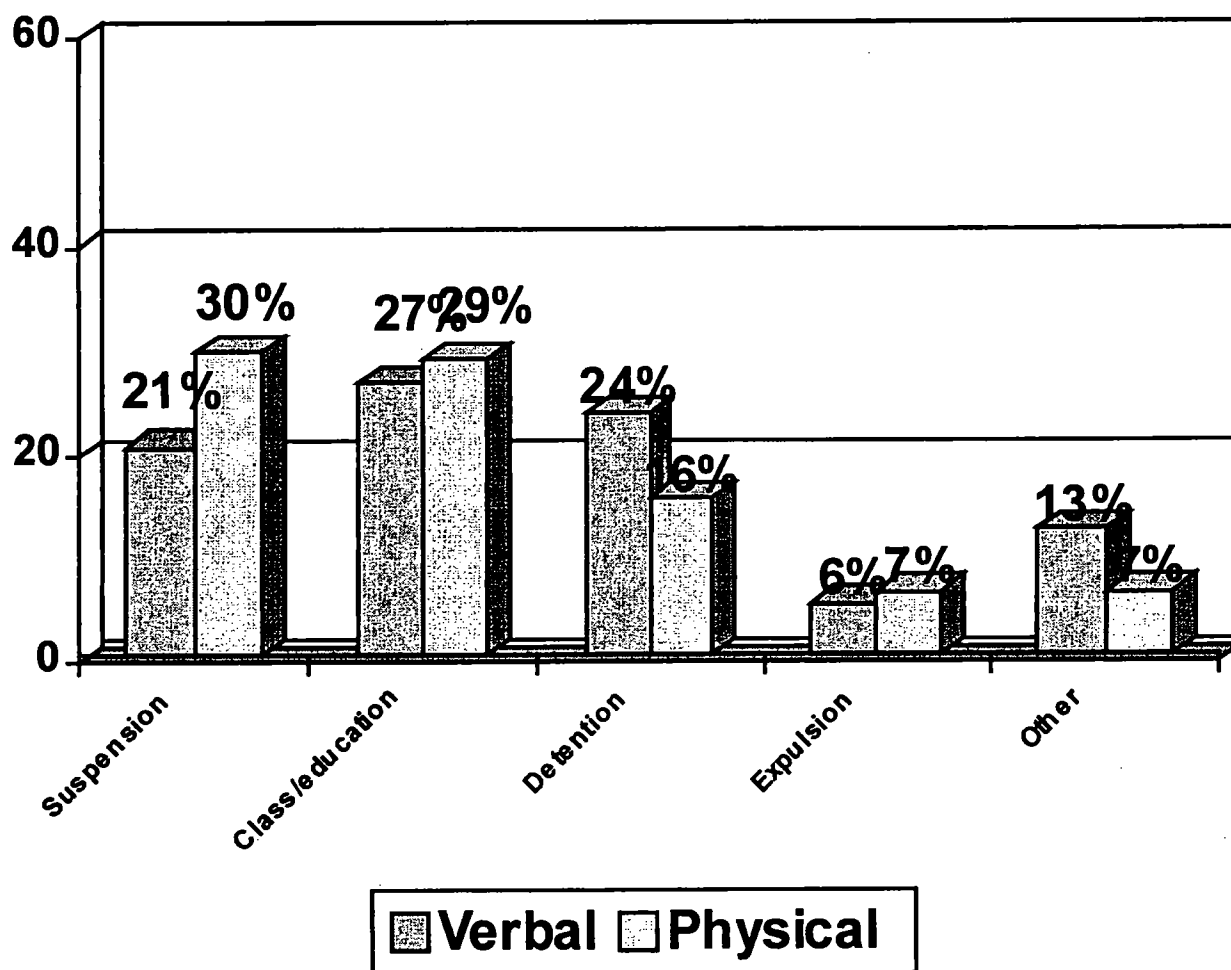
*% Saying "yes" to each question
By all/students/non-students*

Disability	All	Students	Non-students
HATE CRIMES			
People you know: capable of committing a hate crime/physical abuse	14	15	13
People you know: would turn backs/walk away if saw hate crime	47	56	34
Hate crimes should be punished	94	92	97
Know victim of hate crime	17	17	16

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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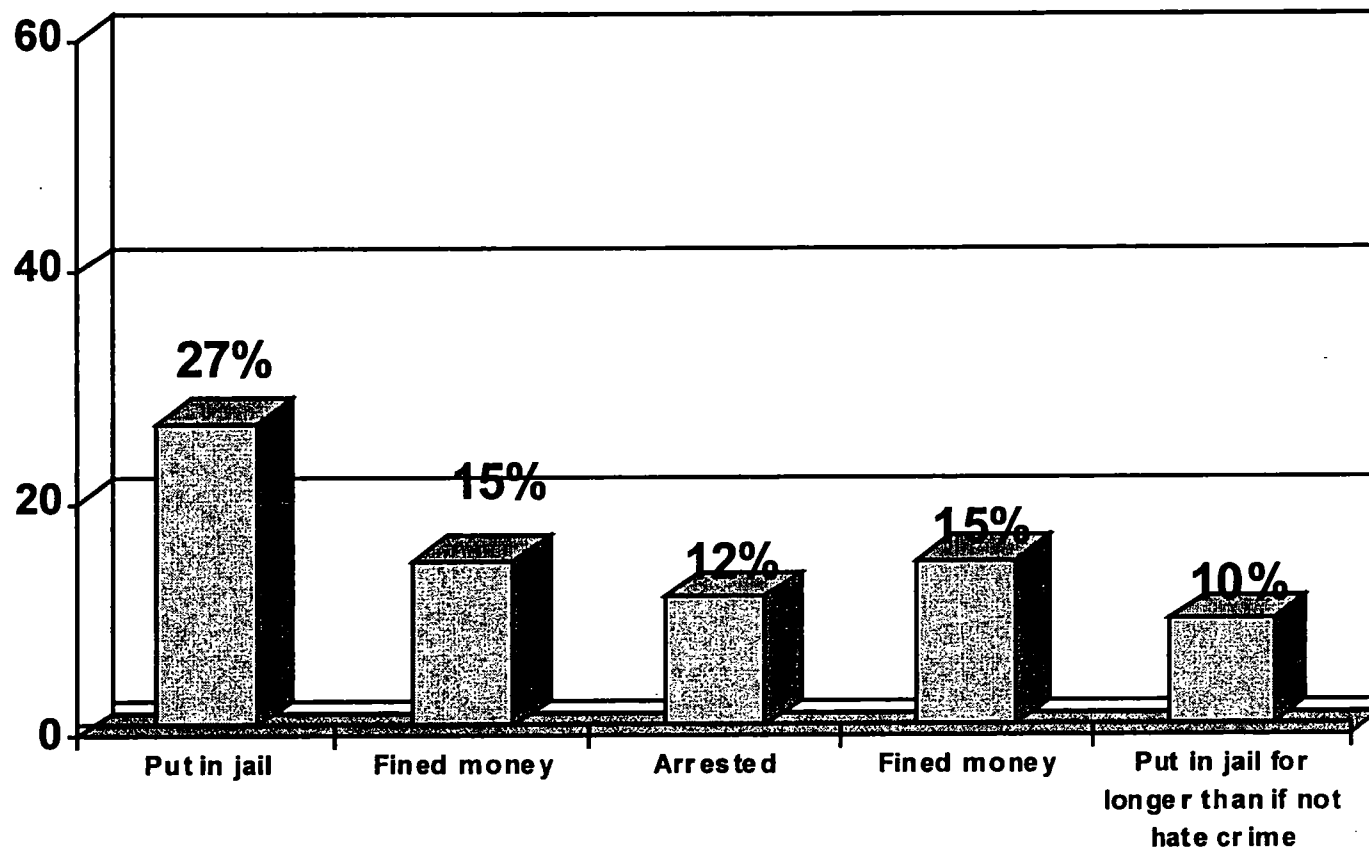
Punishment For Verbally/Physically Threatening Another Student For Having A Disability

Among students



Punishment For Crimes Against Someone For Being Multiracial/Different Race

Among all respondents



Violence Against People Because Of Their Gender

Gender Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Gender	All	Students	Non-students
NEGATIVE COMMENTS			
People you know: Said anything bad/negative	31	23	42
You Personally: Said anything bad/negative	23	16	33

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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Gender Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Gender	All	Students	Non-students
RIDICULING			
Seen/heard ridiculing behind someone's back	54	52	57
Seen/heard ridiculing in front of person	36	36	37
Seen ridiculing turn into something worse	32	35	27
Worried that ridiculing would turn into something worse	38	22	61
Worried that ridiculing would be directed at you	19	18	20

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Gender Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Gender	All	Students	Non-students
VERBAL THREATS			
Seen/heard about verbal threats	25	27	23
Worried that verbal threats would turn into something worse	26	28	22
Worried that verbal threats would be directed at you	12	11	13
Verbal threats should be punished	N/A	80	N/A
Anyone been punished for verbal threats	N/A	28	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
- *Also note that the All category is the estimated average of student and non-student responses to parallel questions with slightly different wording as described above; the All category includes 60% students and 40% non-students*

Gender Based Hate Crimes

*% Saying "yes" to each question
By all/students/non-students*

Gender	All	Students	Non-students
PHYSICAL THREATS			
Seen/heard about physical threats	31	39	18
Worried that physical threats would turn into something worse	27	33	19
Worried that physical threats would be directed at you	10	11	9
Physical threats should be punished	N/A	91	N/A
Anyone been punished for physical threats	N/A	34	N/A

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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Gender Based Hate Crimes

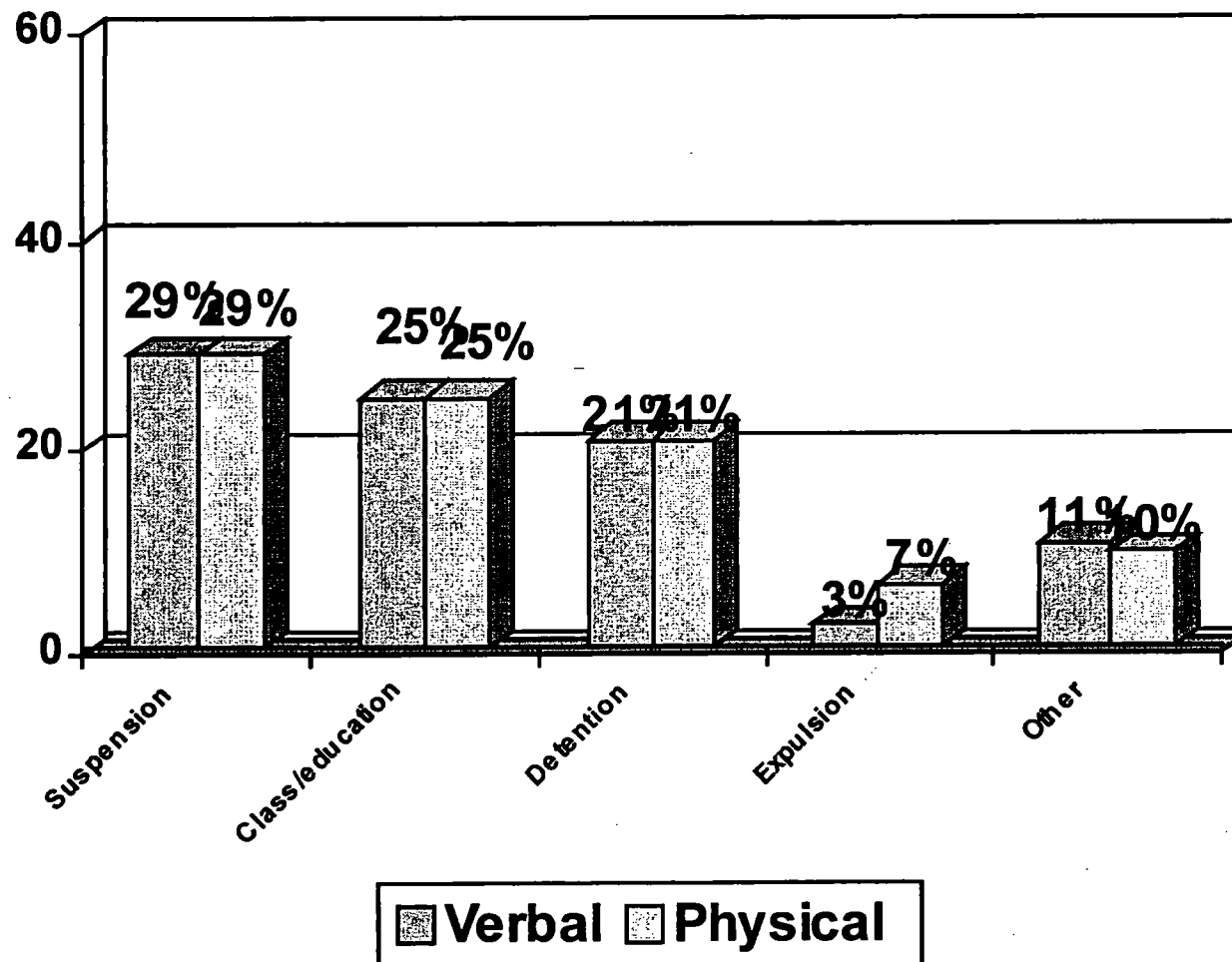
*% Saying "yes" to each question
By all/students/non-students*

Gender	All	Students	Non-students
HATE CRIMES			
People you know: capable of committing a hate crime/physical abuse	21	23	17
People you know: would turn backs/walk away if saw hate crime	44	52	33
Hate crimes should be punished	92	98	82
Know victim of hate crime	17	16	19

- *Note that for students the question was asked about people they go to school with, and for non-students questions were asked about people they know*
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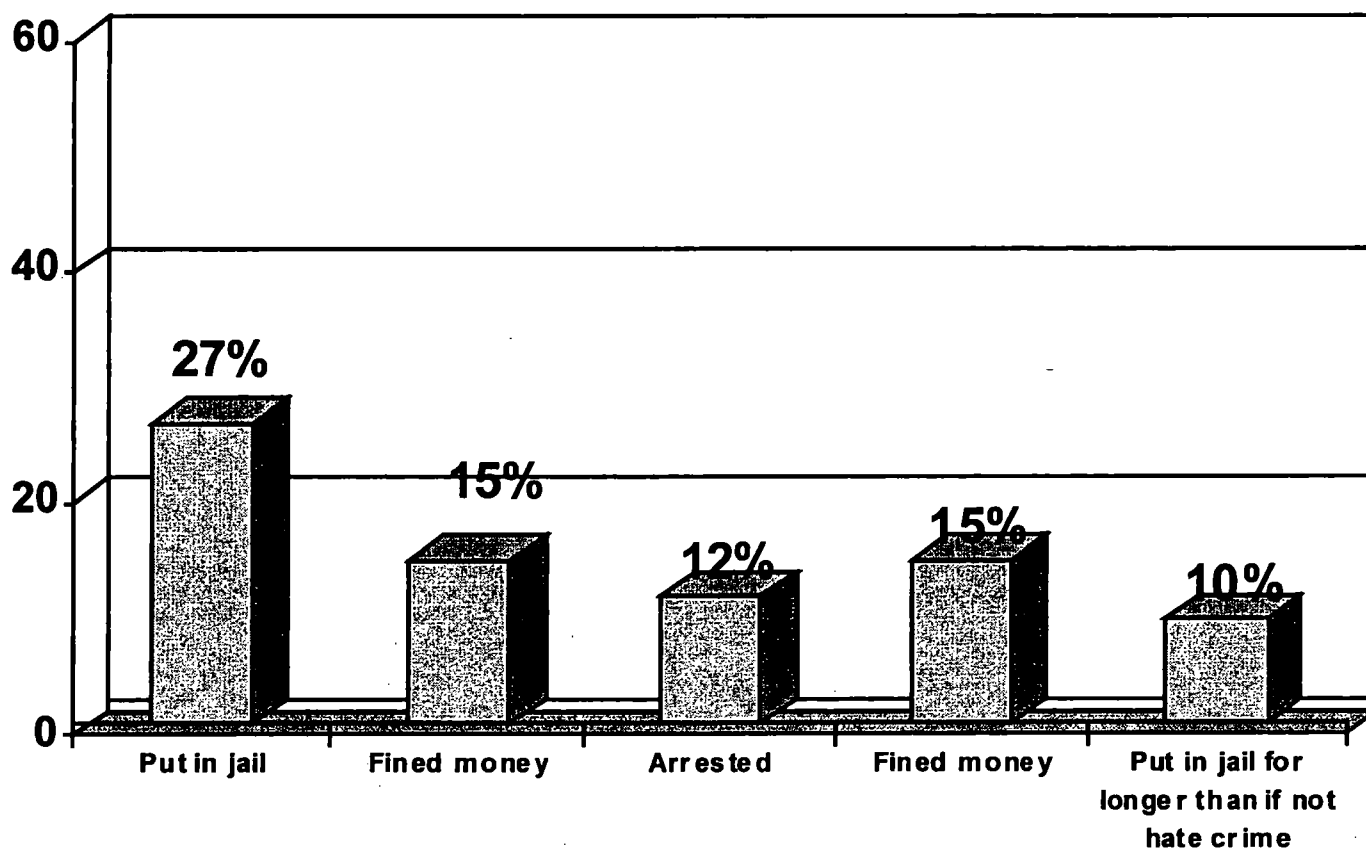
Punishment For Verbally/Physically Threatening Another Student Because Of Their Gender

Among students



Punishment For Crimes Against Someone For Being Multiracial/Different Race

Among all respondents



Reaction To Threats

Among all respondents

	Gay bashing	Race bashing	Bashing people with <i>disabilities</i>	Bashing because of <i>gender</i>
I was offended and wanted to walk away	31	37	42	37
I wanted to say something but I got too nervous	23	27	29	22
I didn't care	20	10	8	17
It was ok with me – I didn't do it or say it	11	11	5	7
I felt like the person deserved it	2	1	3	2

Reaction To Threats

By gender

	Gay bashing		Race bashing		Bashing people with disabilities		Bashing because of gender	
	Male	Female	Male	Female	Male	Female	Male	Female
I was offended and wanted to walk away	29	32	37	36	31	54	29	46
I didn't care	29	12	16	6	12	3	25	9
I wanted to say something but I got too nervous	19	27	21	32	29	29	20	25
It was ok with me – I didn't do it or say it	11	11	11	11	7	3	11	3
I felt like the person deserved it	1	3	0	1	5	1	3	2

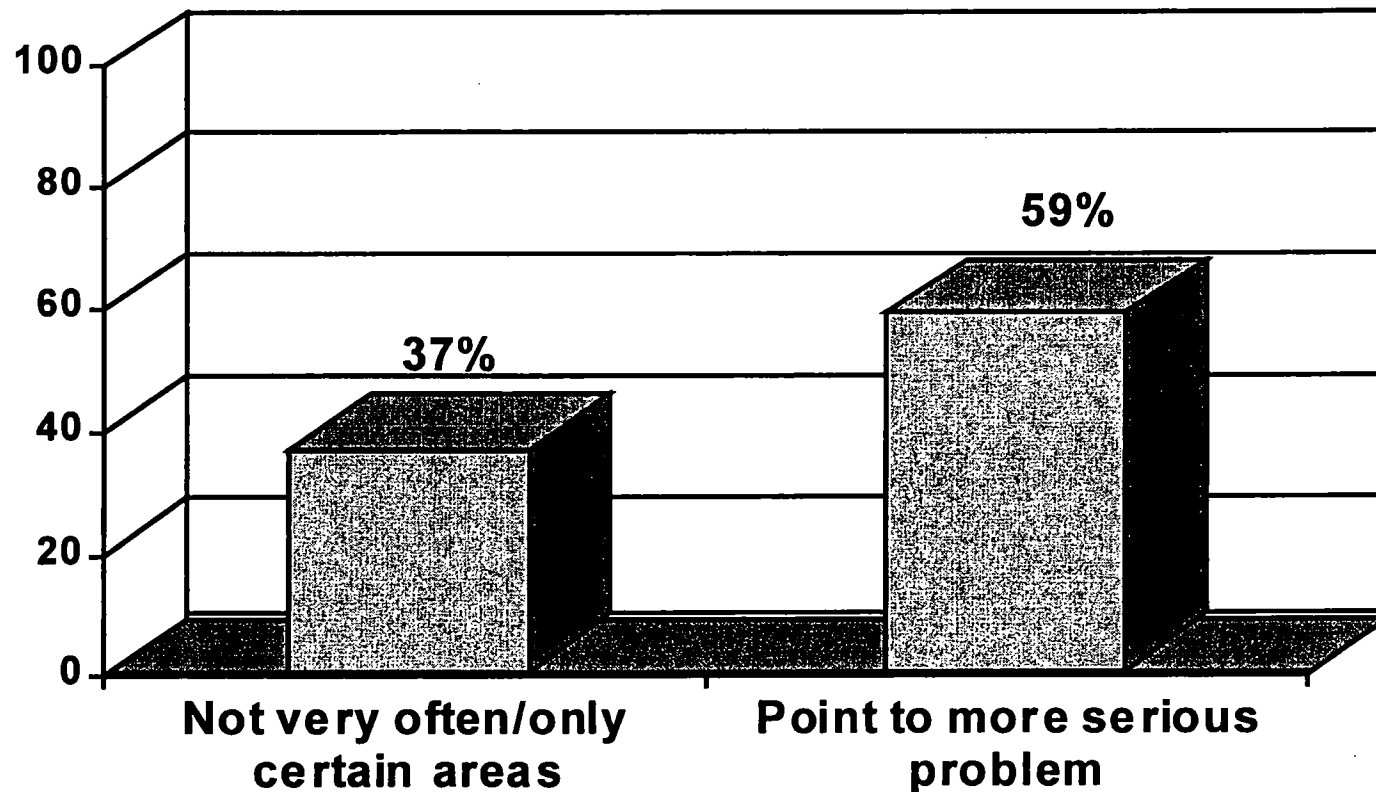
Reaction To Threats

By age

	Gay bashing		Race bashing		Bashing people with <i>disabilities</i>		Bashing because of <i>gender</i>	
	12-17	18-24	12-17	18-24	12-17	18-24	12-17	18-24
I wanted to say something but I got too nervous	31	15	34	18	41	19	30	16
I was offended and wanted to walk away	26	33	30	44	33	49	39	35
I didn't care	25	17	11	10	11	5	16	18
It was ok with me – I didn't do it or say it	11	12	11	11	5	5	4	10
I felt like the person deserved it	1	4	0	0	5	2	3	2

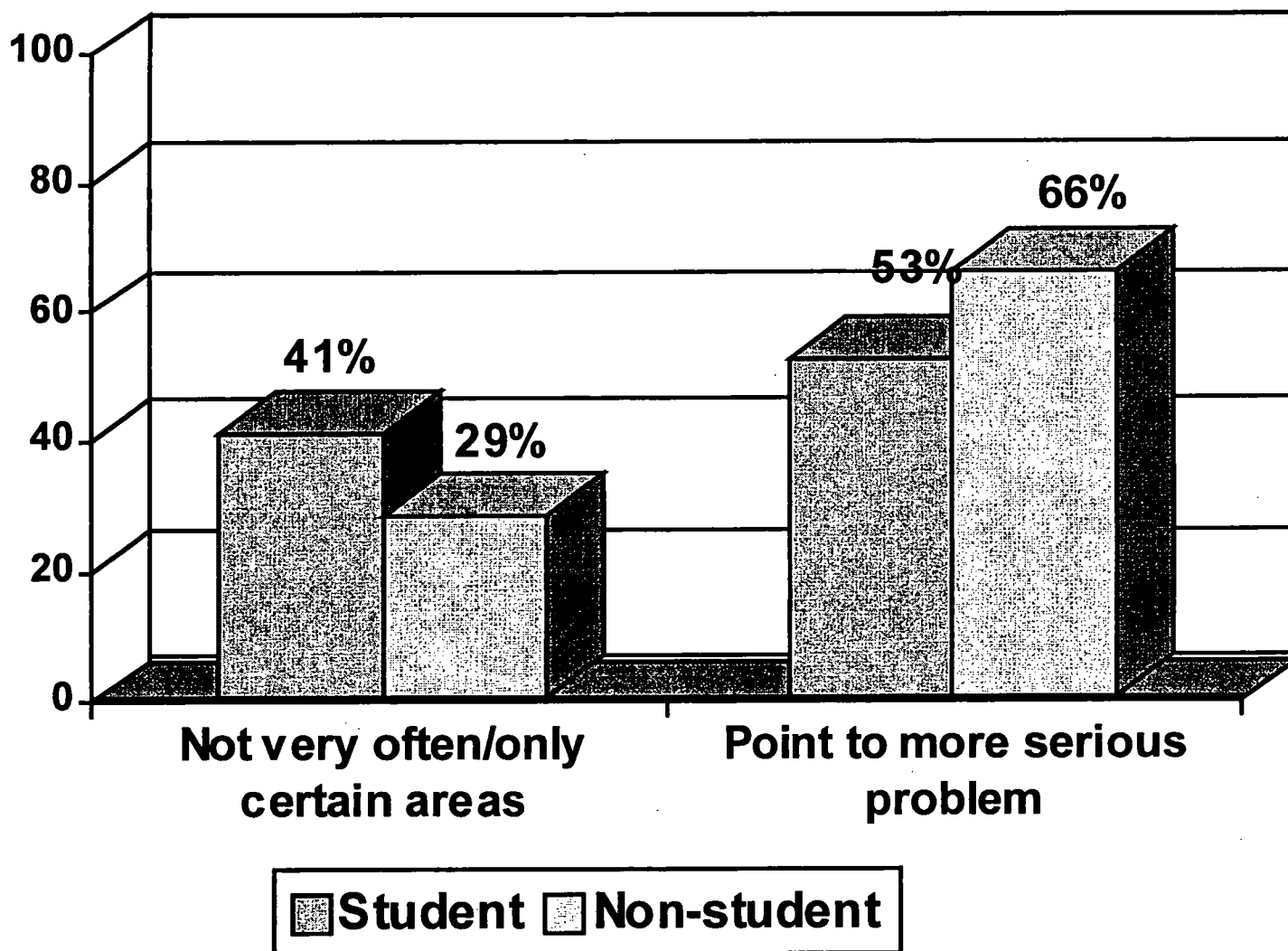
Recent Hate Crimes: Rare Vs. Point To More Serious Problem

Recently there have been incidents involving hate crimes, some of them with people who are around your age or maybe a little bit older. Do you believe these incidents happen not very often and only in certain areas, or do you believe they point to a more serious problem?



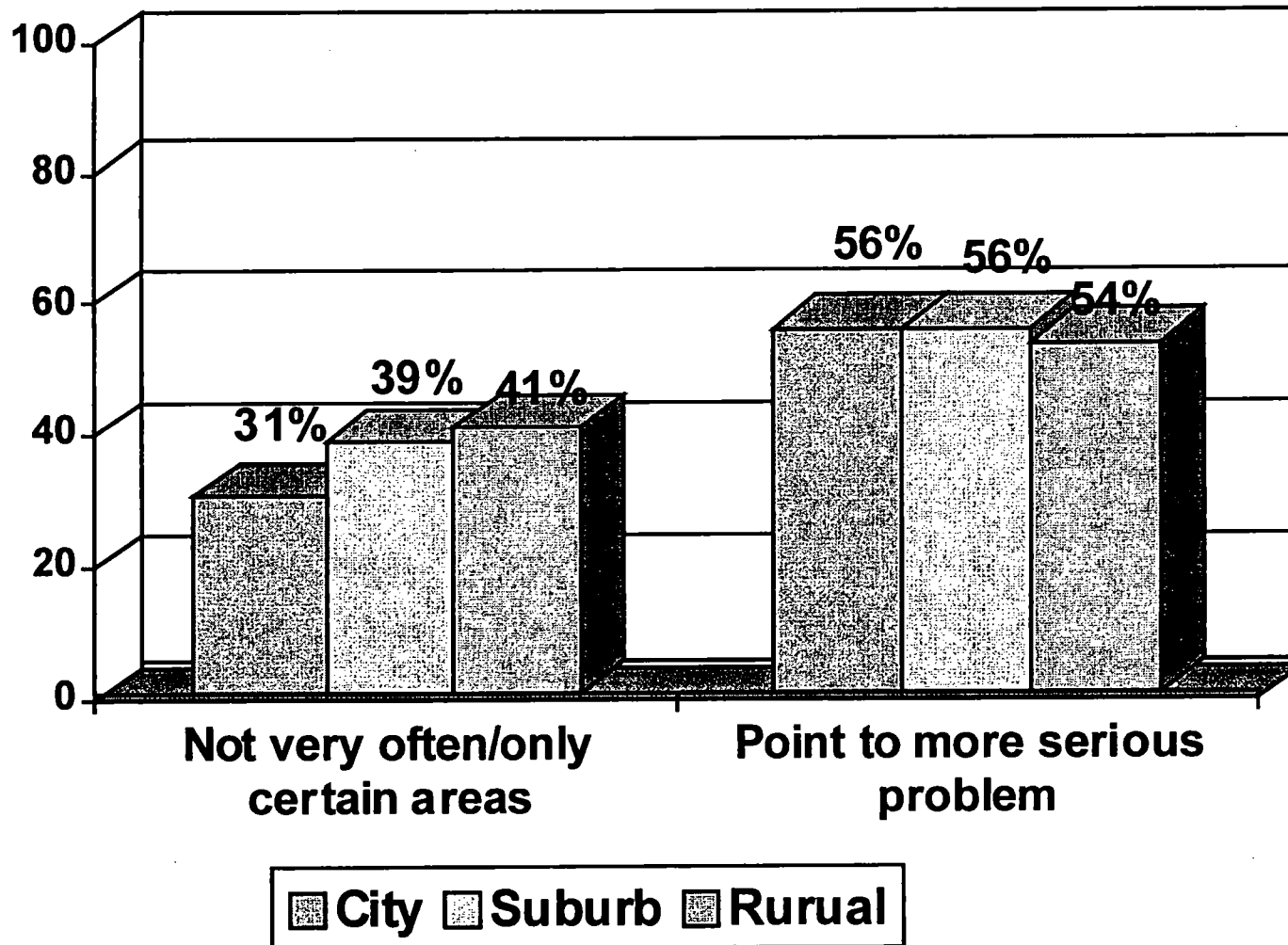
Recent Hate Crimes: Rare Vs. Point To More Serious Problem

By student/non-student



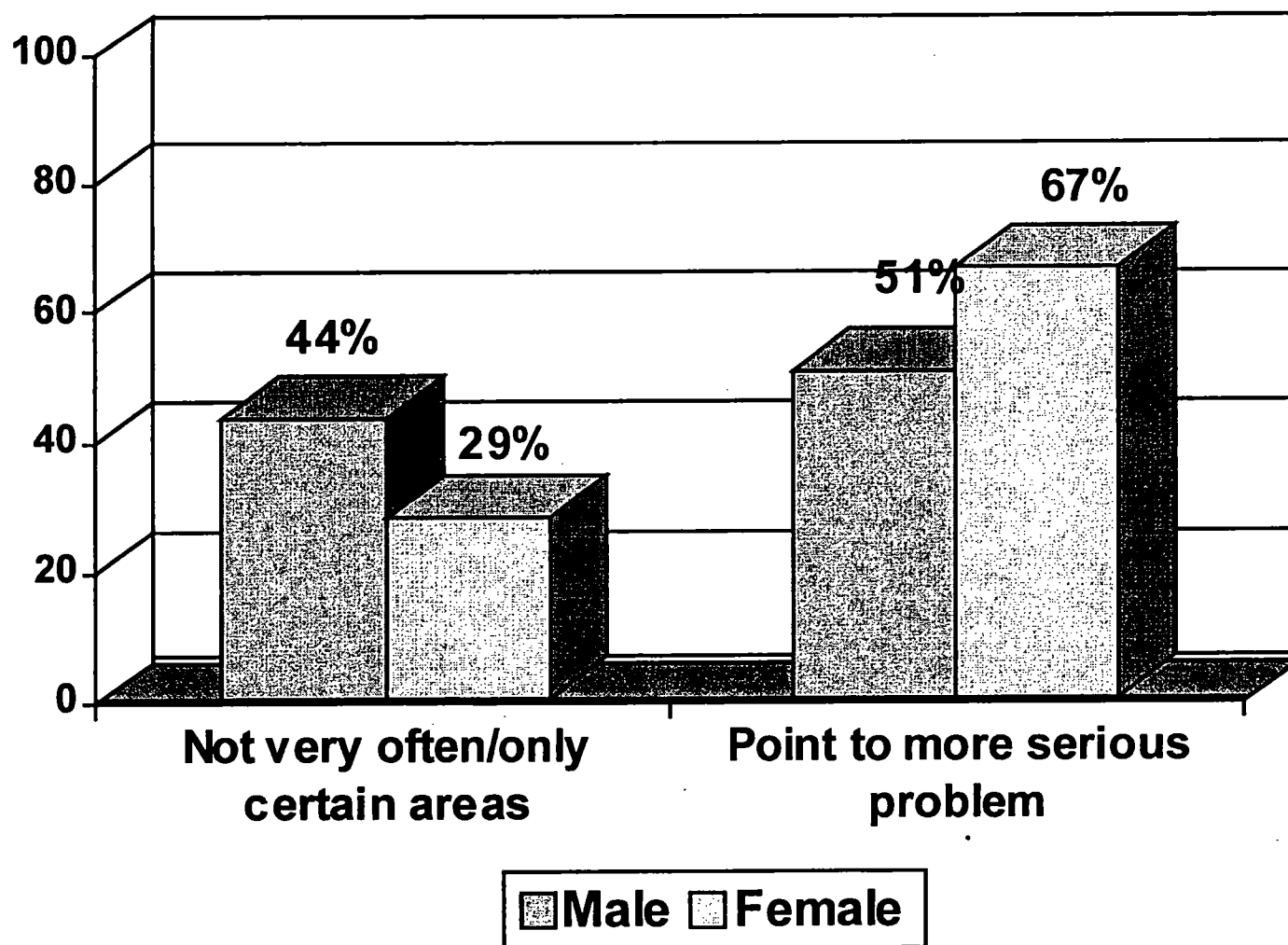
Recent Hate Crimes: Rare Vs. Point To More Serious Problem

By region

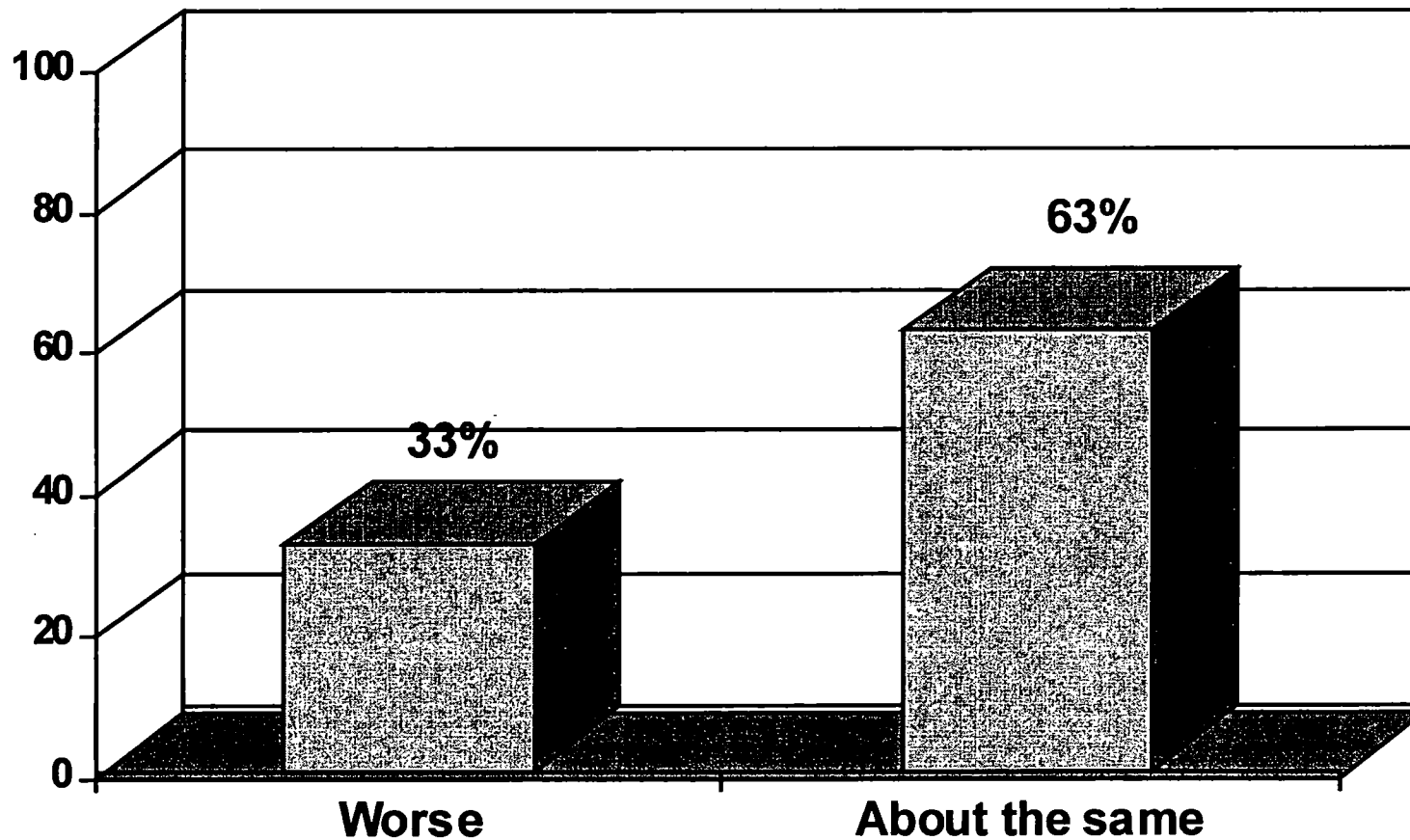


Recent Hate Crimes: Rare Vs. Point To More Serious Problem

By gender

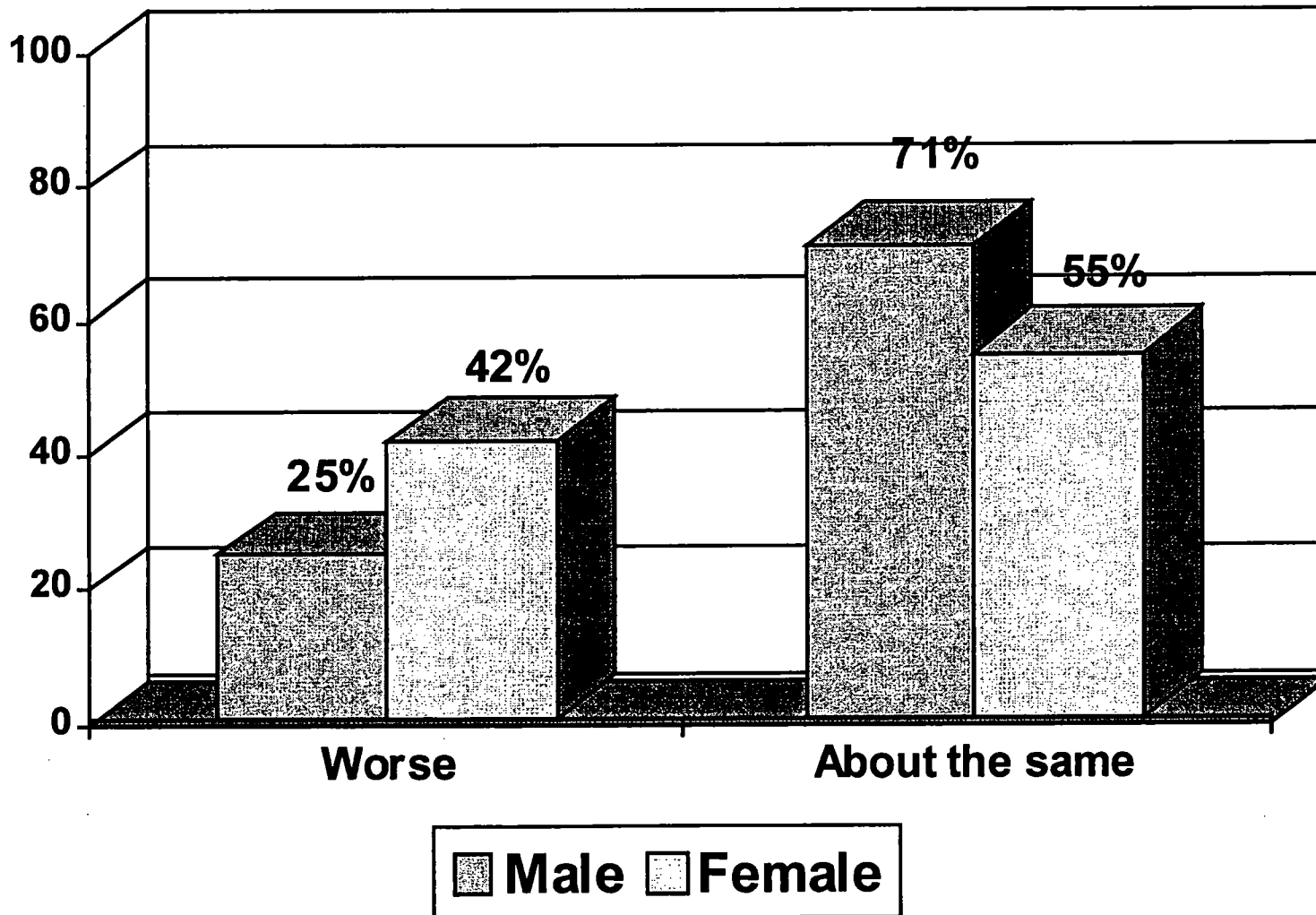


Recent Hate Crimes: Worse In The Past Few Months Or Stayed the Same?



Recent Hate Crimes: Worse In The Past Few Months Or Stayed the Same?

By gender

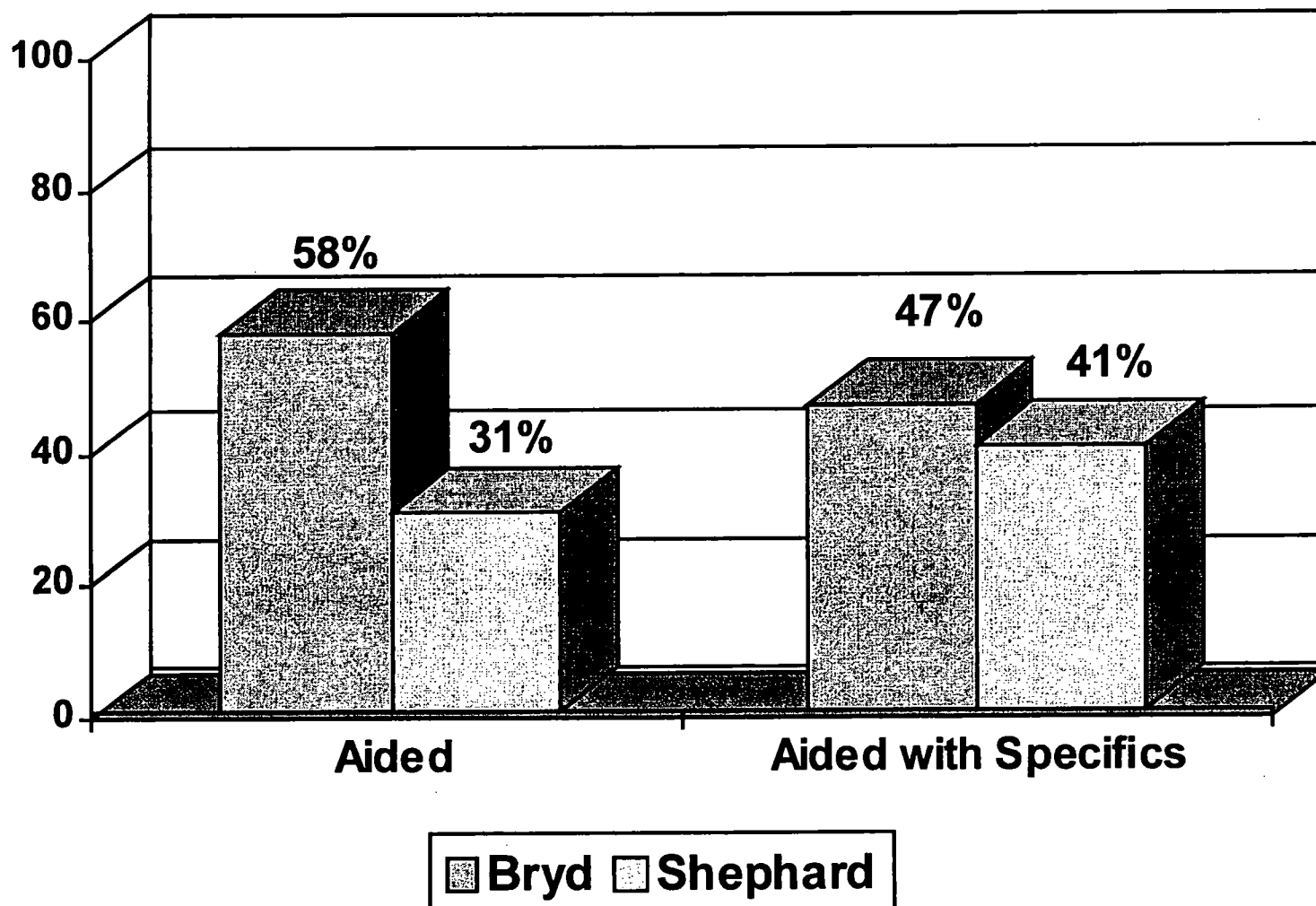


Awareness Of Recent Hate Crime Cases

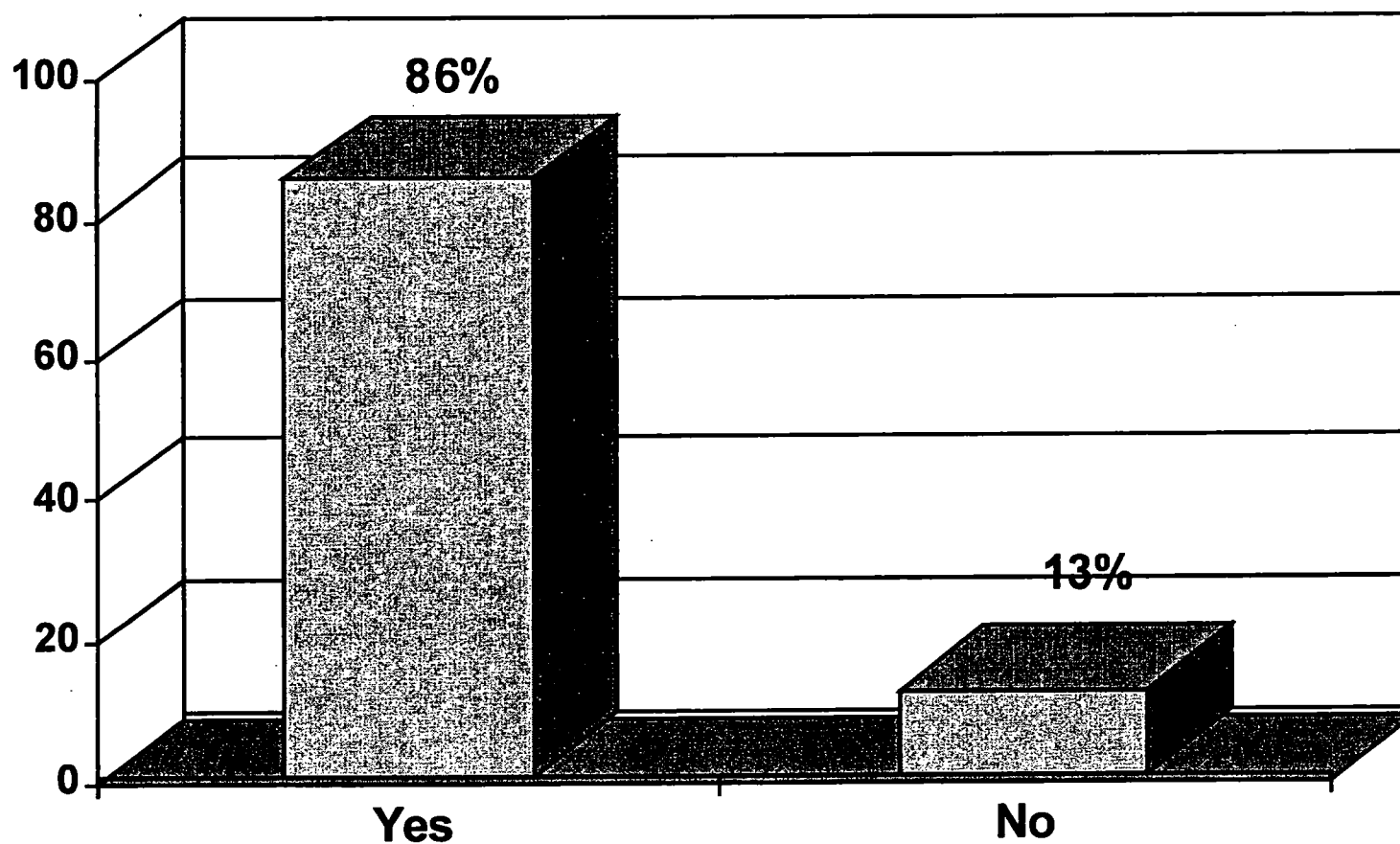
% Saying they have heard of each case.

“Aided” responses come from having been told the name of the person involved.

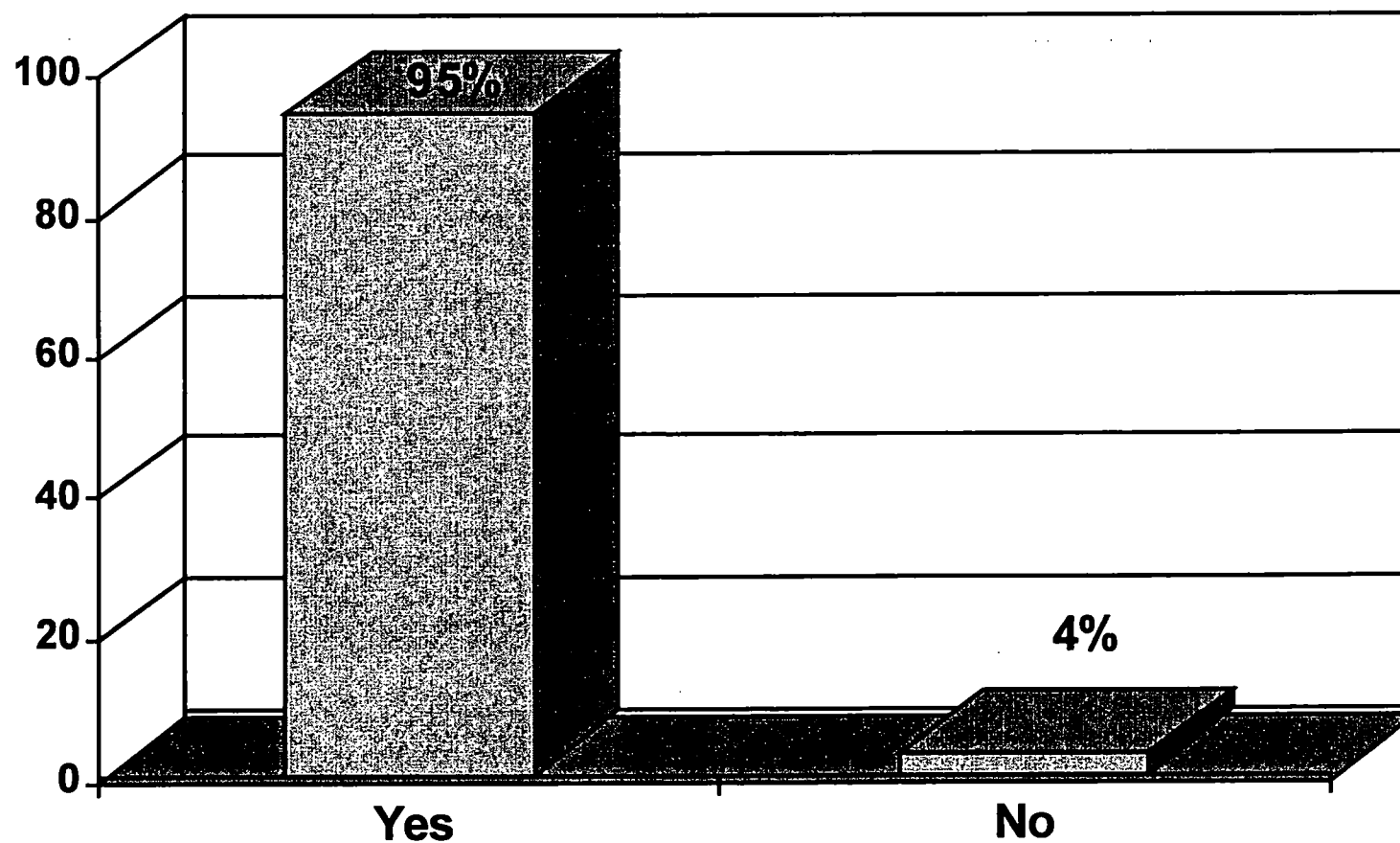
“Aided with Specifics” responses come from having been told the specifics of the case, and then asked if they have heard of the case.



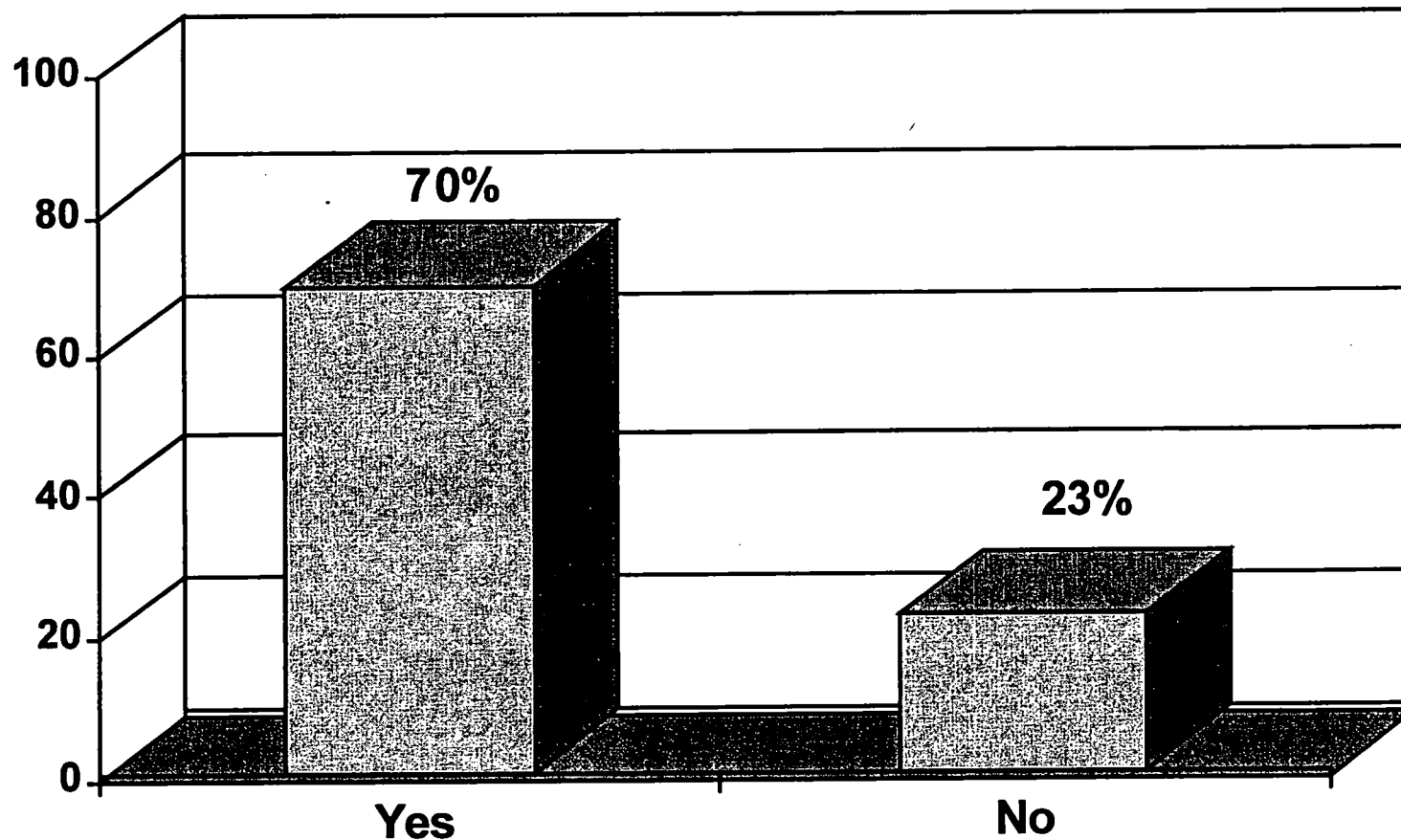
Aware That Hate Crimes Are Illegal?



Expanding Hate Crimes Law: Good Idea Or Bad Idea?

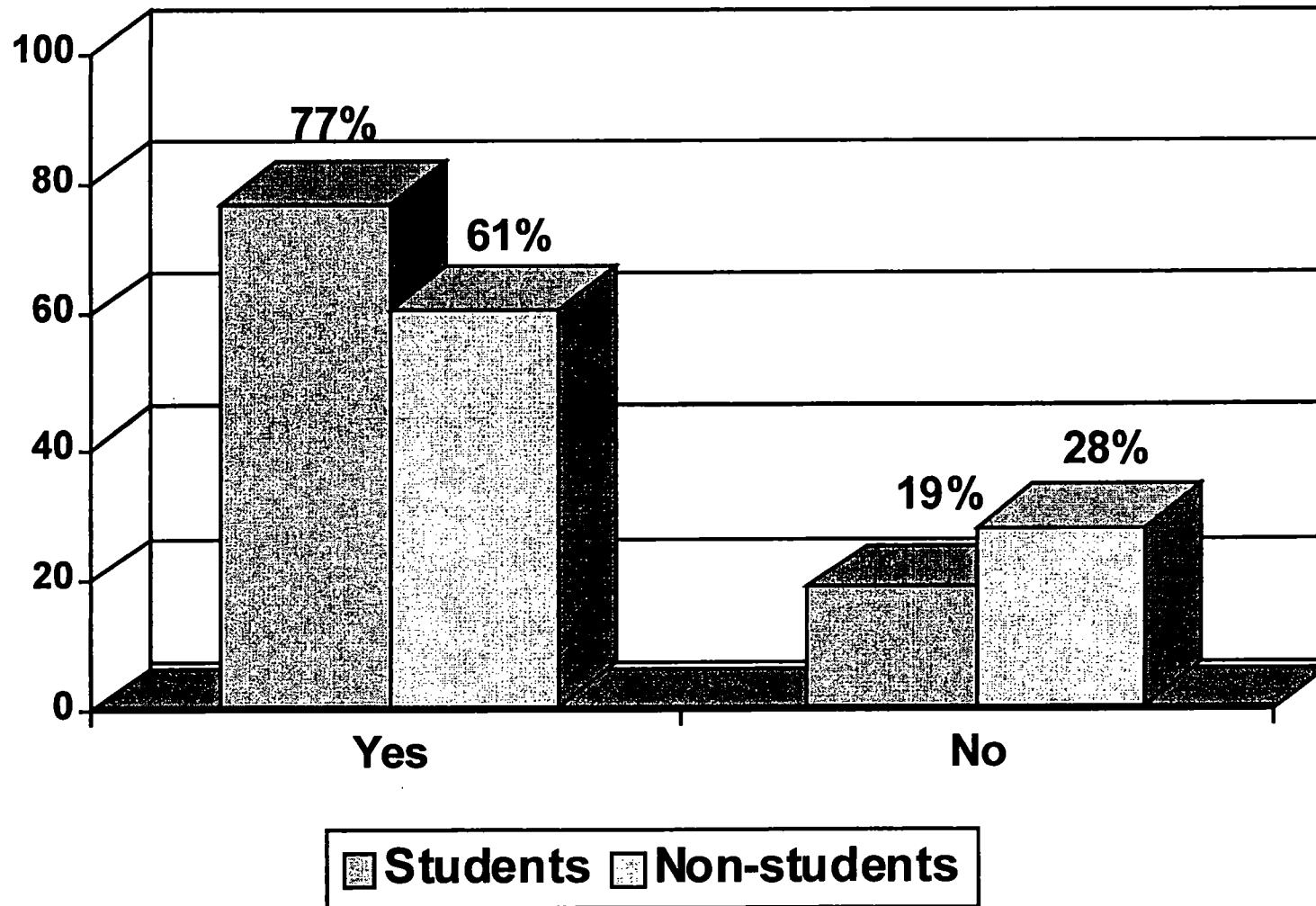


Expanding Law: Help Stop Hate Crimes?



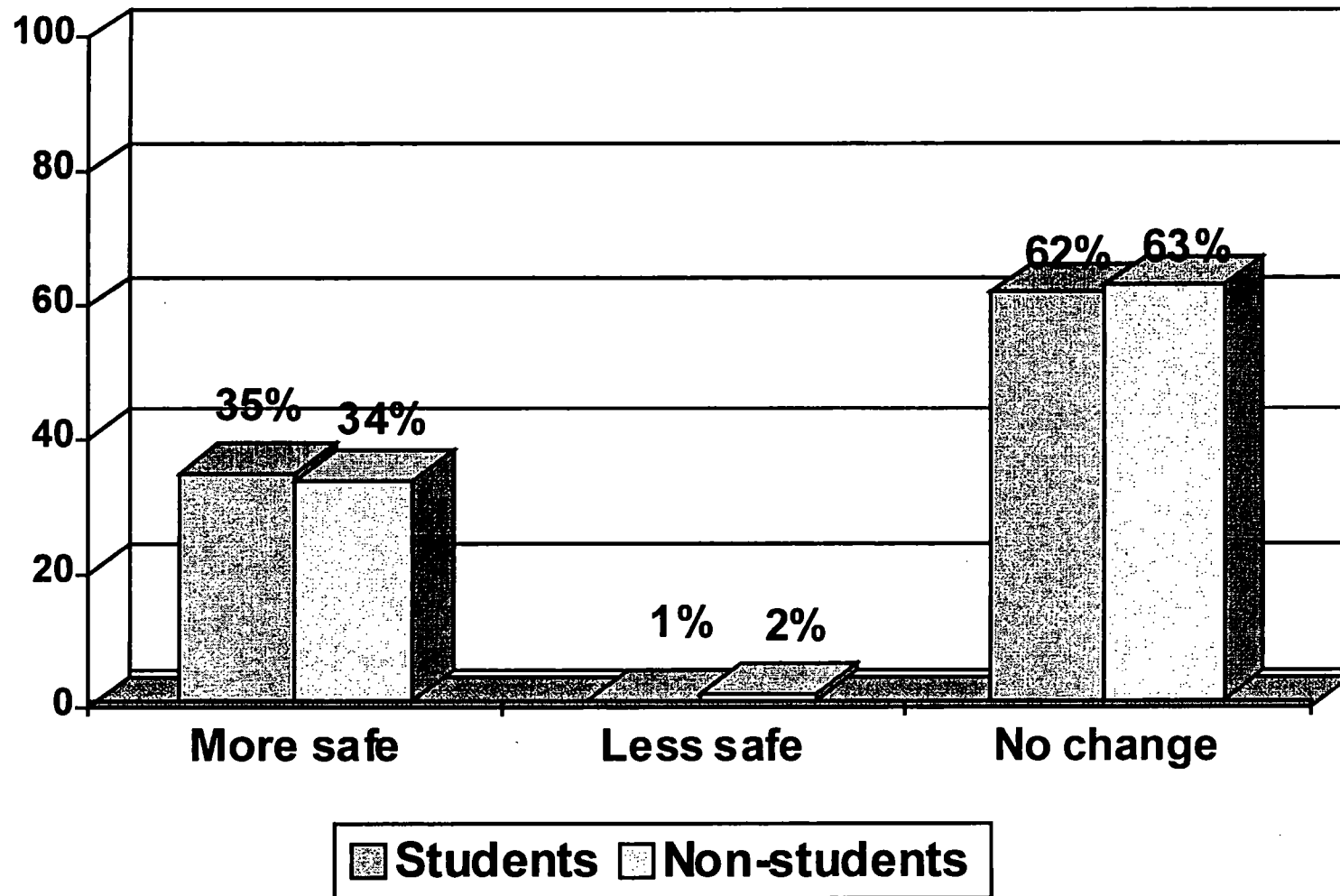
Expanding Law: Help Stop Hate Crimes?

By student/non-students

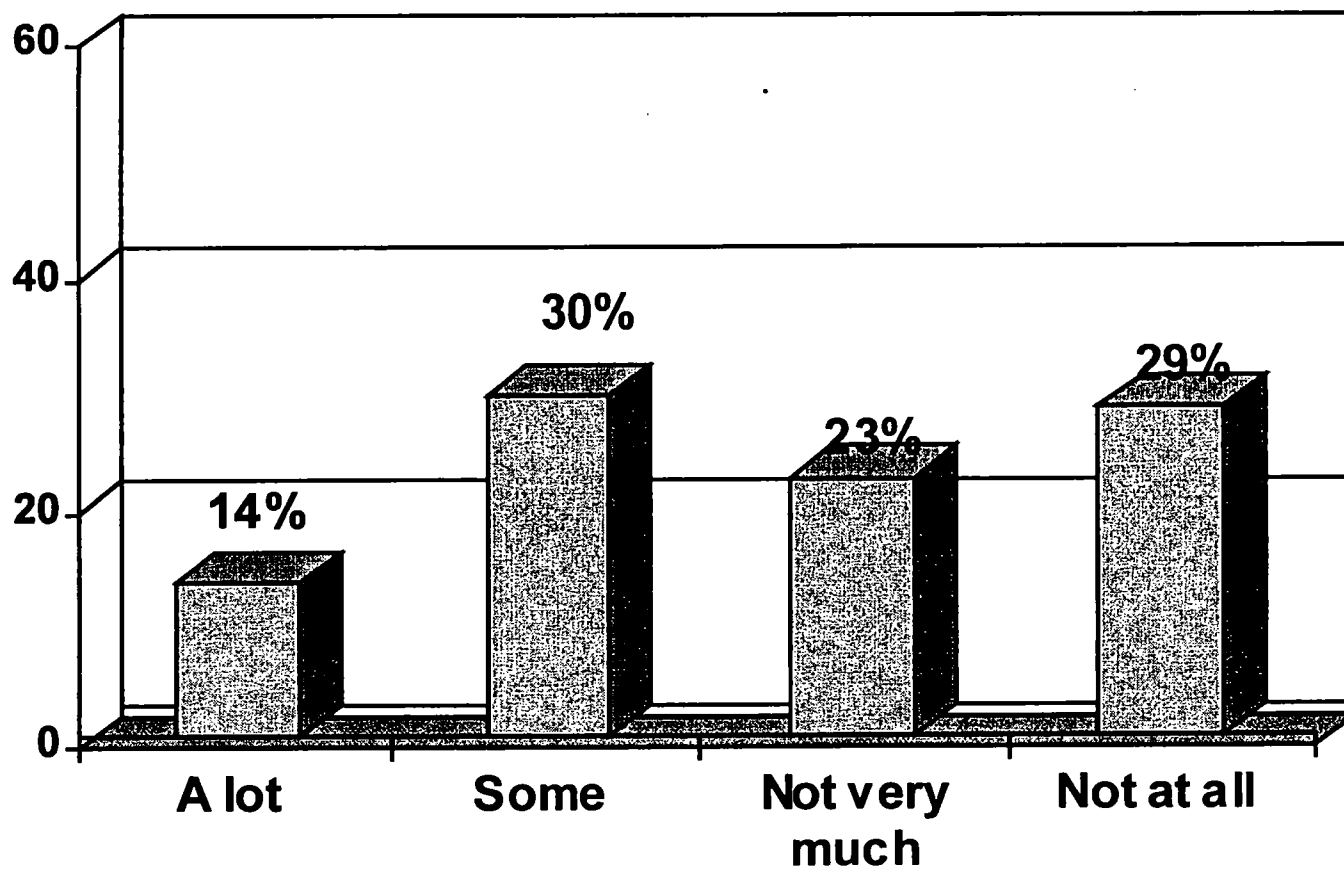


Expanding Law: Feel More Safe?

By student/non-students

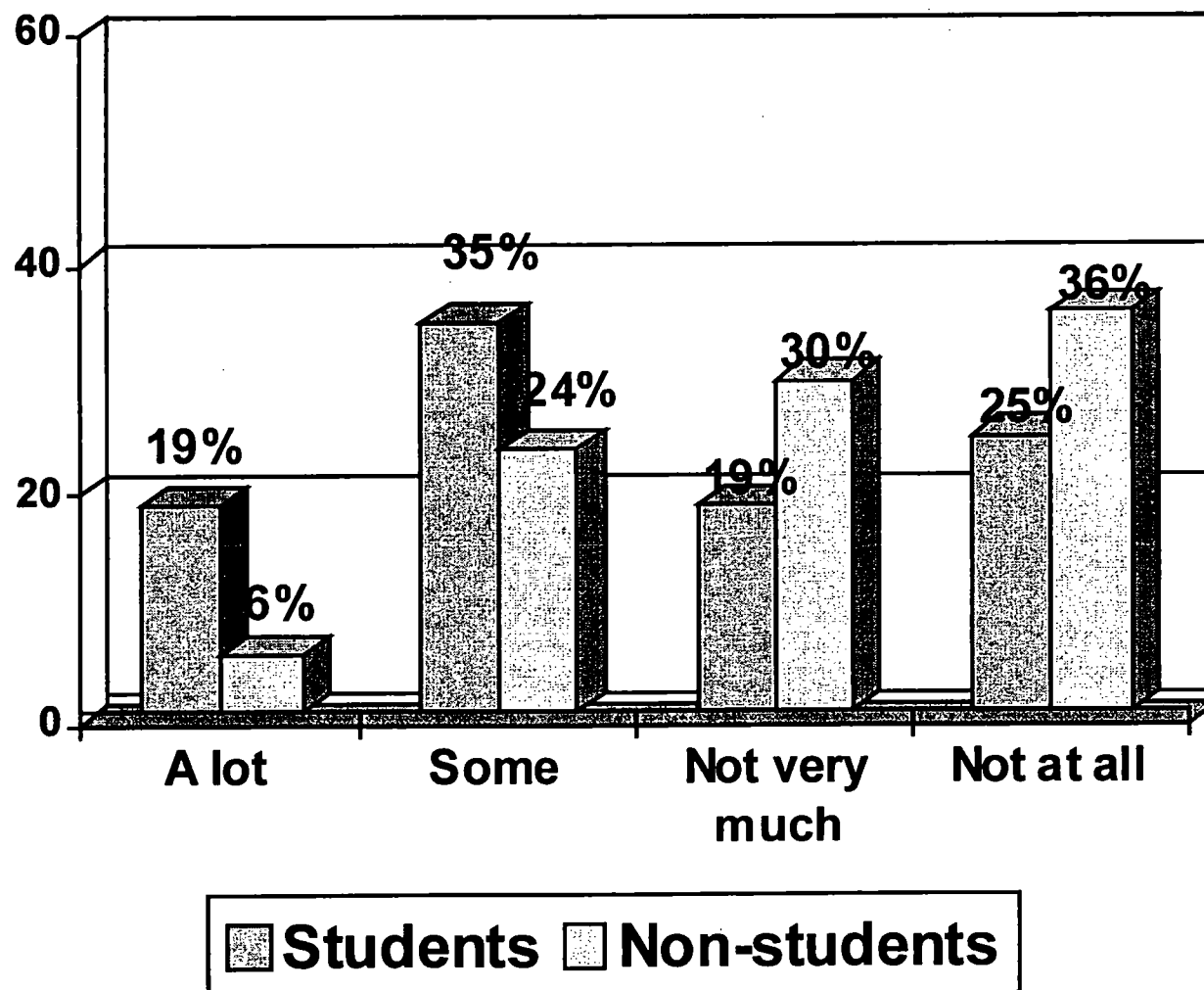


How Much Do You Watch MTV?

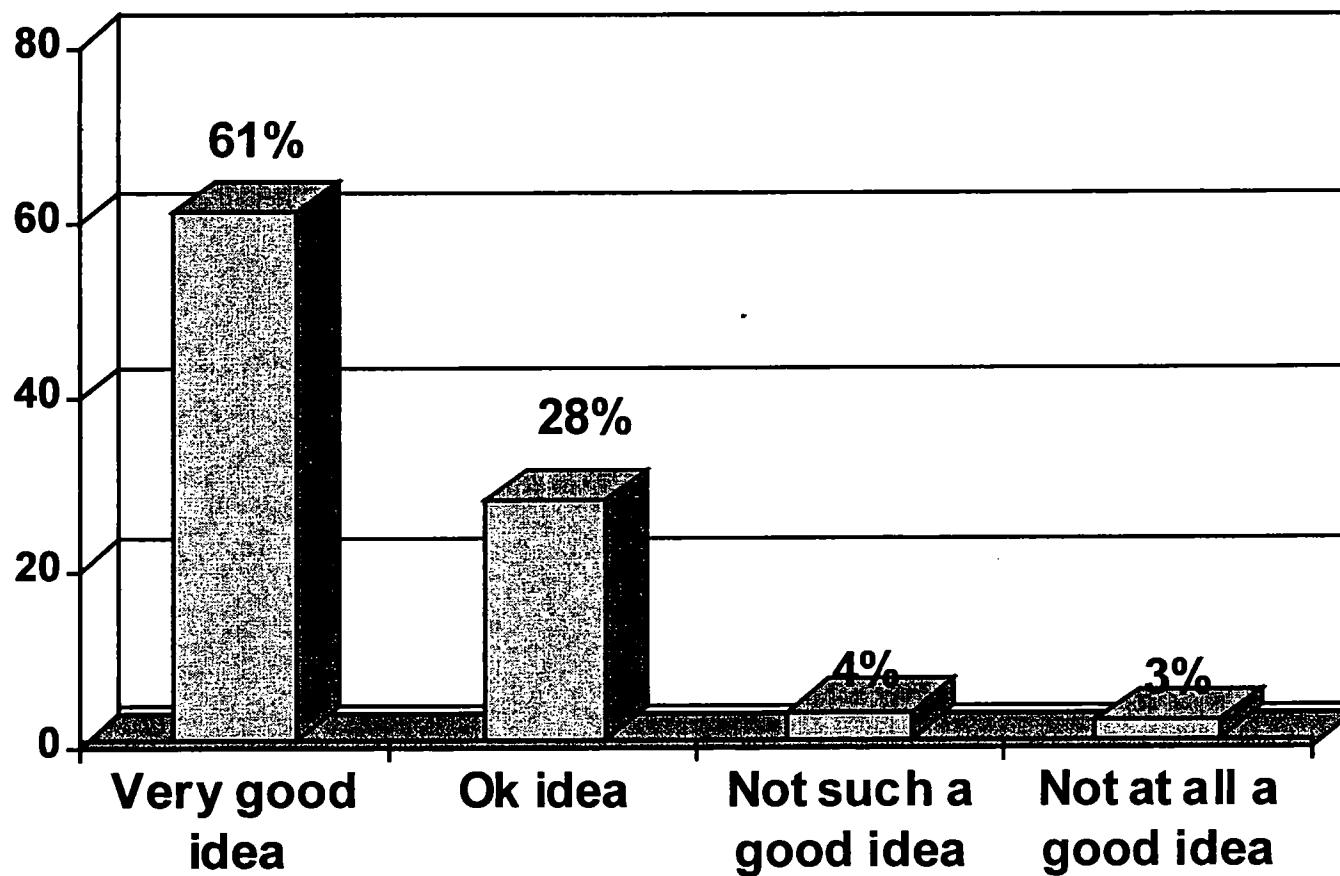


How Much Do You Watch MTV?

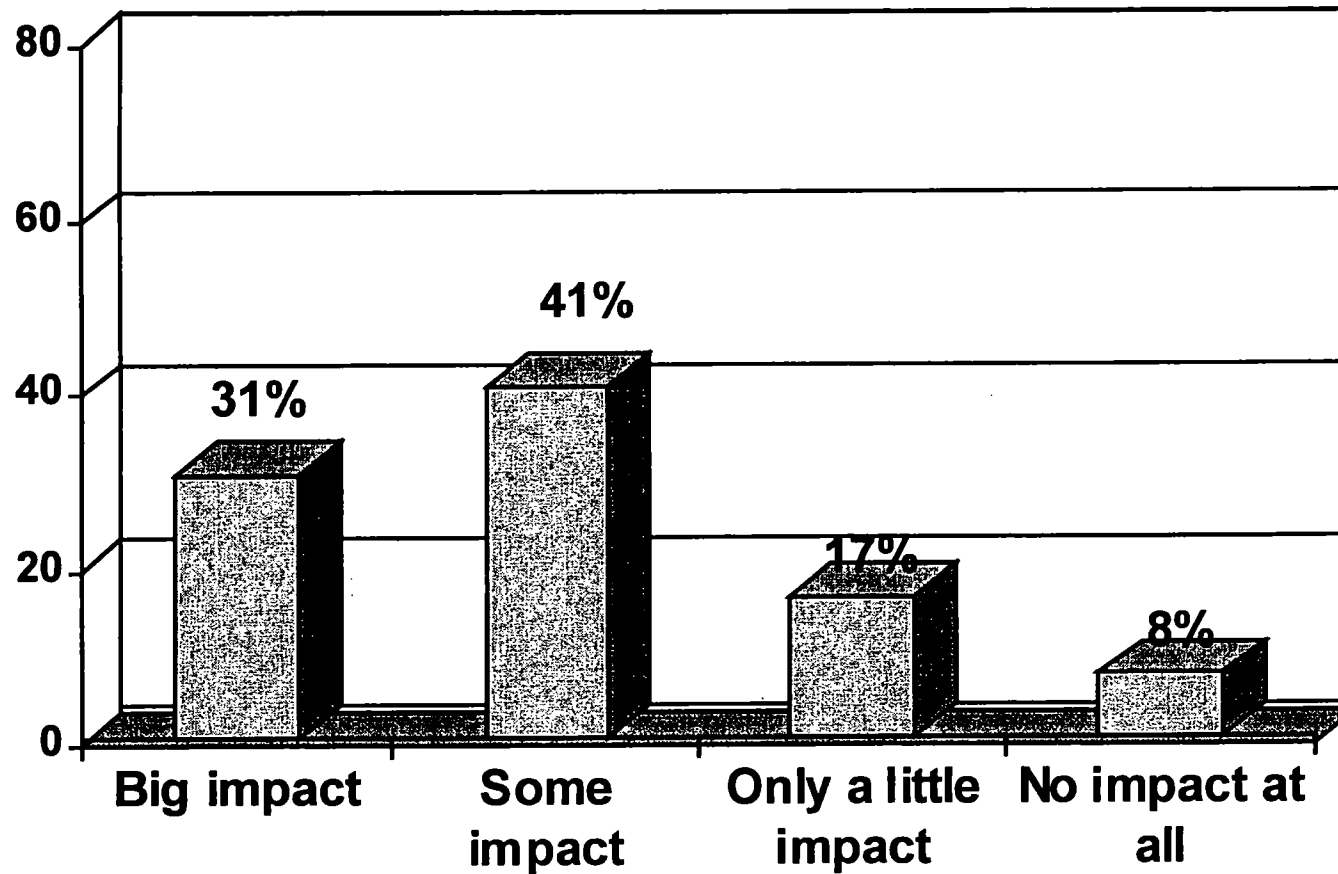
By student/non-students



MTV Involved With Hate Crime Prevention



MTV And Hate Crimes: Impact On Kids



MTV Statements

**% Saying strongly and strongly + somewhat agree with statement
Among all respondents**

	Strongly agree	Total agree
It makes a lot of sense for MTV to talk about issues like hate crime in schools because those are issues kids live with every day	62	92
MTV addresses issues in a way that makes kids take responsibility for the problems they face. It showed kids how to be responsible on issues like voting and safe sex, and now it can do the same thing with hate crimes, especially hate crimes in schools. After all hate crime in schools is about kids doing violence to other kids	38	86
MTV would only focus on hate crimes because it's in the news right now. MTV should have been working on this issue for several years, not just when it's looking for good Public Relations	37	75

HATE CRIMES PLANNING MEETING

March 26, 1999

AGENDA

1. Discussion of possible deliverables, announcements
2. Nature and outline of event: radio address or other event, meeting with groups
3. Broadening outreach
 - faith community; Easter proclamation
 - law enforcement
 - other
4. Guests, other speakers
5. Legislative involvement
6. MTV poll

① First-time
interviews.

Edward W. Correia

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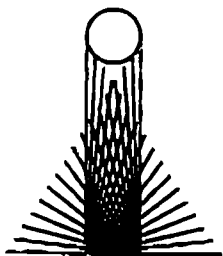
Record Type: Record

To: Mary E. Cahill/WHO/EOP, Richard Socarides/WHO/EOP, Thomas L. Freedman/OPD/EOP, Mary L. Smith/OPD/EOP

cc:

Subject: Hate Crimes Event

After discussions with DOJ about the possible appearance of the Byrd and Sheppard family with the President, this is the Counsel's Office position. If we want to invite the families, DOJ needs to consult first with the prosecutors in both cases to ensure that they do not believe it will create an issue in the prosecutions. If we do consult with them, we need to be prepared to be bound by their request, which may be that the families should not participate at all. If they do not object to the families attending an event, there still should not be a picture with the President and he should not comment specifically on the cases. The families, of course, could say what they want independently. An alternative, which we feel presents no problem, is to invite the Mayor of Jasper, TX, to come to talk about the moving story of taking down the fence in the town cemetery. That would fit with the reconciliation/tolerance Easter theme but could not be seen as prejudicing the defendants. Please think about how to proceed because, if DOJ is going to consult with the prosecutors, we need to get that process started.



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March, 1999

The Hate Crimes Prevention Act of 1999

AMENDS 18 U.S.C. § 245 TO INCLUDE GENDER-BASED BIAS CRIMES

Gender-based crimes currently are not included in the federal "hate crimes" law. The federal criminal civil rights law, 18 U.S.C. § 245, makes it a federal crime for private individuals to commit bias-motivated violence against persons engaging in certain federally-protected activities who are attacked on the basis of race, color, religion, or national origin. The current law excludes sexual orientation, disability and gender-based bias crimes. Current proposals to amend the law would permit the Department of Justice to assist local prosecutors and, where appropriate, to investigate and prosecute bias crimes based on gender, sexual orientation and disability.

Bias crimes, otherwise known as hate crimes, are crimes in which an offender intentionally targets a victim based on the victim's real or perceived membership in a protected class. Bias crimes hurt not only the intended victim, but also serve to intimidate and subjugate the entire group. Laws against bias crimes have been enacted to address this anti-social element and to send a message that such crimes against the community will not be tolerated. In addition, because crimes involving serious bodily injury can be treated as relatively minor offenses such as simple assault, naming the crime as a bias crime is essential to recognizing the true harm and ensuring that the crime will not go unpunished.

Currently, 20 states have laws against gender-based bias crimes. In a few of these states, courts have successfully identified and prosecuted gender-based bias crimes. These courts identified the crimes as gender-based bias crimes by analyzing factors like those identified by the FBI for Hate Crime Data Collection. In some cases, once a crime was identified as gender-based bias crime the state was able to treat the underlying offense more seriously.

New Hampshire: *Although convicted on five occasions for assaulting one woman, a batterer never served time for the assaults. Upon his next misdemeanor assault conviction, a superior court judge held that the batterer had a pattern of assaulting, terrorizing, and demeaning women and that his actions were motivated by a hostility towards women. The judge then used the state hate crime law to more than double the jail time the batterer must serve for his misdemeanor assault conviction. As a result, the man will now serve two to five years in jail.*

Maine: *A serial batterer was found to have violated that state's civil bias crime law for his bias crimes against women. Two former girlfriends and his ex-wife recounted his abuse, including severe physical battering, death threats, assault on his wife while she was pregnant, and constant slurs and profanities including calling the women "sluts," "bitches," and "whores" and telling them that they made him sick. He was ordered to stay away from the three women and to refrain from violence against other women.*

Massachusetts: *A Massachusetts state court found a serial batterer's abuse constituted bias crimes against women under the state's bias crime law. Four women testified that his abuse included severe physical battering, rape, death threats, unlawful restraint and constant verbal abuse. He called the women "whores", "bitches", and "sluts", and made derogatory comments that they and all women are weaker than men, and not as smart as men.*

Unfortunately, the majority of states do not have legislation outlawing gender-based bias crimes. And, of the states that have enacted these laws, many lack comprehensive penalties, procedures and enforcement. This federal amendment will provide a backstop to local law enforcement. It will authorize the federal government to assist local prosecutors and where appropriate to investigate and prosecute gender bias crimes. Twenty Two Attorney's General support amending 18 U.S.C. § 245 to include gender-bias crimes.

Congress has already acknowledged the existence of gender-based bias crimes and the connections among domestic violence, rape, and sexual assault and other hate crimes. In the Violence Against Women Act of 1994 (VAWA I), Congress created a civil remedy for gender-based violence. The 1993 Senate Report supporting the civil rights remedy of Violence Against Women Act (VAWA) stated:

"Whether the attack is motivated by racial bias, ethnic bias, or gender bias, the results are often the same. The victims of such violence are reduced to symbols of hatred; they are chosen not because of who they are as individuals but because of their class status. The violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated."

As the first cases are being litigated under VAWA's civil remedy, federal judges join Congress in recognizing the connection between gender-based bias crimes and other hate crimes.

Federal District Court: *Raped, restrained, battered, disfigured, threatened with a loaded shot gun, verbally threatened and harassed upon attempting to leave, a Washington woman sued her ex-husband under the VAWA civil rights remedy. The court found allegations of rape and sexual violence; gender-specific epithets; acts that perpetuated stereotypes of a woman's submissive role, severe and excessive attacks, especially during pregnancy, and acts of violence committed without provocation and at times when the plaintiff asserted her independence, were sufficient to conclude that the violence was gender motivated.*

The Federal Hate Crime Statistics Act, enacted by Congress in 1990, directs the Department of Justice to collect data from state law enforcement officials for crimes directed at individuals on the basis of their race, ethnicity, religion, sexual orientation, or disability. Because this Act excludes gender, the FBI keeps no records of gender bias crimes. Although there are no national surveys that track bias crimes against women, statistics gathered on the number of rapes and incidents of domestic violence in the United States demonstrate the pervasive nature of violence against women.

In some states, studies have attempted to identify violent assaults against women that may be motivated by bias. According to the Arkansas Women's Project, in Arkansas, a mostly rural state with a population of 2.3 million, 81 women were murdered in 1990 in cases where robbery was not a motive. Some were raped and killed, others were murdered with excessive cruelty and disfigurement. For example:

Arkansas: Two days after her second wedding anniversary, a woman was found stabbed approximately 130 times in the breasts, vagina, buttocks, eyes and forehead. Her husband has been charged with the murder.

Clearly, there is a shocking and widespread rate of violence against women, which may include many bias-motivated crimes. The lack of precise data only highlights the need for resources to study and track the problem. **Recognizing this, the Department of Justice supports amending 18 U.S.C. § 245 to include gender-bias crimes.**

Concerns that adding gender-based bias crimes to the federal hate crime legislation may overwhelm the system are misplaced. As with traditional bias crimes, gender bias crimes will only be charged in those cases that meet the criteria for a bias crime. Just as every criminal attack against an African-American is not now prosecuted as a racial hate crime, not every assault causing a woman serious bodily injury will be prosecuted as a gender-based crime. The FBI guidelines for distinguishing between crimes and bias crimes in hate crime data collection can successfully be applied to determine if a crime is based on gender-bias. *These factors can include a history of misogynistic behavior, a pattern of assaulting women, sexual violence, bias language, epithets, extreme brutality, mutilation and the seemingly motiveless cruelty that characterizes bias-related crimes.* As the state cases cited above demonstrate, it is possible to identify and prosecute cases of gender-based bias crimes.

For all of these reasons, 18 U.S.C. § 245 must be amended to include gender-based bias crimes

A more detailed memorandum further explaining why gender-based bias crimes should be recognized and how they should be evaluated is available from NOW LDEF. *For further information, contact Julie Goldscheid, NOW LDEF (212) 925-6635 or Pat Reuss, NOW LDEF (202) 544-4470. Reference Materials available upon request.*

Understanding Gender-Based Bias Crimes

Like bias crimes against individuals based on race, color, religion, ethnicity, disability and sexual orientation, bias crimes against women based on gender are a form of wrongful discrimination. In the past, society has erroneously viewed sexual assault, domestic violence, and other forms of violence against women as "private" or "family" matters outside the proper realm of law enforcement, or as the victim's own fault. Over the years, society has begun to recognize that this violence against women is not personal, but is targeted at women because of their gender, just as some violence is targeted at members of other groups because of their race, color, religion, ethnicity, disability, or sexual orientation.

Acts of gender-motivated violence reflect men's efforts to dominate and control women, and are fed by stereotypes of what women are and how women should act. These forms of violent domination and control serve to enforce the imbalance of power between men and women in our society and to reinforce women's traditionally subordinate and circumscribed roles. They are often intended to intimidate women into staying in or returning to their "place" -- subservience to men at home, in the workplace, and throughout society.

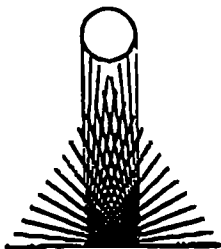
Like other forms of bias crime, gender-based bias crimes are attacks not only against the individual, but against her entire community. Individual bias-motivated attacks instill fear in all women, threatening and restricting women's lives. They limit where women work, live, study, and travel. As a noted report on gender-based bias crimes by the Center for Women Policy Studies explains, "[women -- whether they are white or women of color, heterosexual or lesbian, old or young -- know that they cannot go places men can go without the fear of being attacked and violated.]"

Florida: USA Today reports on a murderer hunts his prey, claiming victim after victim. One by one, the bodies of the murdered women are discovered, horribly mutilated. The media reports that the murderer "has a taste for petite brunettes". Women in the community are frozen with fear. Some begin sleeping in groups with guns. Women leave the town by the hundreds, many refusing to return. The murderer is eventually identified when his DNA matches semen left at the crime scenes.

Because women are a part of every community, they may be more likely to be intimately connected with the perpetrator of gender-based bias crimes. In other hate crimes, an attacker generally has to go at least outside his own home, if not outside his neighborhood, to find a target for his bias-motivated violence. For example, a white man may engage in violent acts against a family of color who moves into the neighborhood. In so doing, he sends a message that they, and those like them, are not welcome. In addition to attacks by strangers or relative strangers, women may also be victims of gender-based bias attacks by those they know intimately. As women live in practically every home in every neighborhood, a man who wishes to engage in gender-based bias violence will likely find a target for that violence at home. According to the Department of Justice, intimate partners perpetrate over one million rapes and assaults each year.

Michigan: A young bride is severely and repeatedly beaten by her husband. Eventually she divorces him and gets an order of protection. The police refuse to enforce the order. Her ex-husband stalks, harasses, threatens, and assaults her. One day he abducts her in public at gun point. He batters her, rapes her repeatedly, and attempts to take her across state lines. She escapes and her testimony gets him convicted. Four and one-half years later he is released from prison. Two weeks after that, he is back stalking, threatening, harassing her. The police admit "as soon as he has the opportunity he will kill her" and tell her that the law will not protect her. She sleeps with a loaded gun. Perhaps realizing that the law does not protect her and those like her, the commission grants her an unrestricted license to carry a concealed weapon.

Women of color, lesbians, and those who resist traditional roles experience bias crimes based on their gender as well as their race, color, religion, sexual orientation, disability, national origin, language, and immigration status. Violence targeted at these women may reflect intersecting forms of bias. Women are part of every community traditionally protected by civil rights laws, but without protections against gender-based attacks, their unique experience of intersecting forms of prejudice cannot be fully remedied.



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18 U.S.C. § 245 SHOULD INCLUDE GENDER-BASED BIAS CRIMES

Currently, Title 18, Section 245 of the United States Code makes it a federal crime for private individuals to commit bias-motivated violence against persons engaging in certain federally-protected activities (such as voting) who are attacked on the basis of race, color, religion or national origin. Proposals have been introduced to amend the law to extend protection beyond protected activities and to allow federal prosecutors to pursue bias crimes based on gender, sexual orientation or disability as well.

FEDERAL CRIMINAL LAW MUST RECOGNIZE GENDER-BASED BIAS CRIMES.

Bias-Motivated Crimes Against Women Are Forms of Sex-Based Discrimination. Bias crimes against women are directed at women because of their gender. Like bias crimes based on race, color, ethnicity, religion, sexual orientation, or disability, they are attacks against individuals that send a message to all women and make them afraid. They may include excessive brutality, mutilation, sexual violence and patterns of attacking women.

Women Need Uniform Protection Against Bias Crimes. While states hold primary authority for prosecuting gender-based hate crimes, federal authority to prosecute is needed to ensure that women in every state have uniform recourse against bias-motivated violence. As of 1998, only 19 states had laws addressing gender-based hate crimes.¹

Gender-based hate crimes frequently go unpunished by state authorities. As Congress recognized when it enacted the 1994 Violence Against Women Act (VAWA), state law enforcement systems still persist in treating crimes committed against women less seriously than comparable crimes affecting men.² In numerous cases of violence against women, serious violence, injury or death might have been prevented but for the negligence, inaction, bias or complicity of local police departments and local prosecutors.³

Outlawing gender-based bias crimes brings the United States into compliance with international law. As a signatory to the International Covenant on Civil and Political Rights ("ICCPR"), the United States is obliged to provide broad protection against gender-based violence.⁴

NOT EVERY ACT OF VIOLENCE AGAINST WOMEN WOULD BE COVERED.

Only crimes containing circumstantial evidence of gender-motivation would be covered. As with other bias crimes, not all violent crimes committed against women would be subject to federal prosecution. Generally accepted guidelines for identifying bias crimes direct courts to look at a range of factors, including language, severity of the attack, absence of another apparent motive, patterns of behavior, and "common sense."⁵ Congress recognized the applicability of those guidelines to gender-motivated crimes when it enacted the 1994 VAWA.⁶

Some examples of the types of crimes that constitute gender-based hate crimes include:

- In Massachusetts in 1994, a serial batterer was found to have violated that state's civil bias crime law for his bias crimes against women. Four women recounted his abuse, including severe physical battering, rape, death threats and constant verbal abuse. He called the women "whores," "bitches," and "sluts," and made derogatory comments that they and all women are weaker and less intelligent than men.
- In a brutal gang rape case pending under the Violence Against Women Act civil rights provision, two male Virginia Tech students repeatedly raped a female student. One of the perpetrators later bragged that he liked to get women drunk and sexually assault them.
- In Fresno, California, as many as 20 men and boys crowded into a motel room and repeatedly raped and assaulted a 12-year old girl and two 13 year old girls.

- In Maine, one man was accused of beating and verbally abusing the different women, in attacks marked with gender-based epithets and derogatory comments.

- An Arkansas woman was found stabbed approximately 130 times in the breasts, vagina, buttocks, both eyes and forehead, two days after her second wedding anniversary. Her husband was charged with the murder.

WOMEN LACK FEDERAL PROTECTION AGAINST BIAS CRIMES.

No Federal Criminal Laws. None of the federal criminal civil rights laws specifically include gender. Section 245 currently is limited to bias crimes based on race, color, religion or national origin. Other federal criminal civil rights laws (such as those applying to public officials) prohibit interference with constitutionally-protected rights, but the courts have not consistently treated civil rights violations against women as covered by existing federal criminal law.

VAWA Provides No Criminal Remedy. The 1994 VAWA's Civil Rights Remedy permits a woman to bring a civil lawsuit for a gender-based bias crime. VAWA's felony provisions only cover interstate domestic violence, interstate violation of a protective order, or interstate stalking. Women surviving gender-based hate crimes that occur solely within one state still have no federal criminal recourse even if their state law enforcement system has proven unable or unwilling to prosecute.

The Hate Crimes Statistics Act Excludes Gender. The HCSA documents bias crimes on the basis of race, ethnicity, religion and sexual orientation, but excludes bias crimes against women as a class. This hampers documentation of gender-based violence and effective training of law enforcement personnel.

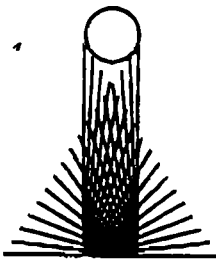
ADDING GENDER TO 18 U.S.C. § 245 PRESERVES AND STRENGTHENS STATE LAW ENFORCEMENT'S PRIMARY ROLE IN PROSECUTING CRIMINAL LAWS.

States retain primary authority to prosecute crimes of sexual assault and domestic violence. Section 245's certification requirement ensures that federal resources only will be invoked when the Attorney General has certified that a prosecution is "in the public interest and necessary to secure substantial justice."

■ For further information, contact Julie Goldscheid, NOW LDEF (212) 925-6635 or Pat Reuss, NOW LDEF (202) 544-4470.

Nov. 1998

1. Anti-Defamation League, Hate Crimes Laws, 19-20 (1997).
2. See, e.g., S. Rep. No. 103-138, at 49 (1993) (citing studies of state gender-bias task forces); S. Rep. 102-197, at 46-47 (1991) (same).
3. See, e.g., Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997) (batterer killed his two children and then himself after police, who were his friends, refused to arrest him despite mandatory arrest law), cert. denied, 118 S. Ct. 71 (1997); Navarro v. Block, 72 F.3d 712 (9th Cir. 1995) (batterer killed his wife and four others after police refused to respond to her call for help, even though she told dispatcher about restraining order and that he was headed to house to kill her); Pinder v. Johnson, 54 F.3d 1169 (4th Cir. 1995) (batterer burned former girlfriend's house, killing her three children, following battering incident, after which police assured her that he would be held in jail overnight but released him instead);
4. See International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, S. Treaty Doc. No. 95-2, 999 U.N.T.S. 171 (ratified by United States on June 8, 1992). International human rights standards recognize gender-based violence as an impermissible form of discrimination. See, e.g., Compilation of General comments and Recommendations Adopted by Human Rights Treaty Bodies, at General Recommendation 19, p. 112 U.N. Doc. NRI/GEN/1/Rev.2 (29 March 1996).
5. See U.S. Dep't of Justice, Federal Bureau of Investigation, Hate Crime Data Collection Guidelines 1-4; Northwest Women's Law Center et al., Gender Bias Crimes: A Legislative Resource Manual 12-14 (1994); Center for Women Policy Studies, Violence Against Women as Bias Motivated Hate Crimes: Defining the Issues 8-12 (1991). Decisions analyzing other civil rights laws, such as Title VII or 42 U.S.C. § 1985(3) also demonstrate how circumstantial evidence can establish bias motivation underlying violent acts.
6. See S. Rep. No. 103-138, at 53, n. 61 (1993).
7. 18 U.S.C. § 245(a)(1).

**NOW LEGAL DEFENSE****AND EDUCATION FUND** 119 CONSTITUTION AVENUE, N.E., WASHINGTON, D.C., 20002 (202) 544-4470 FAX (202) 546-8605

MEMORANDUM

To: Interested Parties

From: Julie Goldscheid, Martha Davis

Re: Adding gender to federal hate crimes legislation: 18 U.S.C. § 245

Date: November 5, 1997

In response to inquiries concerning proposals to amend 18 U.S.C. § 245 ("Section 245") to include gender, sexual orientation and disability, this memorandum addresses: 1) the justifications for adding gender to the statute; 2) how prosecutors and courts would determine that an act of violence was committed because of an individual's gender; and 3) how cases illustrating state law enforcement's failure to respond to gender-motivated crimes such as domestic violence, sexual assault and rape illustrate the need to amend federal law to authorize prosecutions based on gender-motivated bias crimes.

While this memorandum focuses on those issues, NOW Legal Defense and Education Fund ("NOW LDEF") also can provide materials that address the constitutionality of the proposed amendment to add gender to Section 245. The constitutional bases for the proposed Section 245 amendment closely resemble the bases for Congress' authority to enact the Civil Rights Remedy of the Violence Against Women Act, ("VAWA"), 42 U.S.C. § 13981 (1996) (the "Civil Rights Remedy"), namely the Commerce Clause and Section 5 of the Fourteenth Amendment ("Section 5"). We have submitted briefs, either as co-counsel or as *amicus curiae*, in VAWA civil rights remedy cases addressing the constitutionality of the Civil Rights Remedy under the Commerce Clause and under Section 5. Four of the five courts to address the question to date have upheld the law's constitutionality as a proper exercise of Congress' Commerce Clause authority, finding no need to address the scope of Section 5. NOW LDEF would be pleased to forward our briefs in any of the following cases upon request:

- Doe v. Hartz (pending in the Eighth Circuit Court of Appeals);
- Brzonkala v. Virginia Polytechnic (pending in the Fourth Circuit Court of Appeals),
- Crisonino v. New York City Housing Authority (pending in the Southern District of New York)

- Mattison v. Click Corporation (pending in the Eastern District of Pennsylvania)
- C.R.K. v. Martin (pending in the District of Kansas)
- Doe v. Doe (briefs submitted to the District of Connecticut and the Second Circuit Court of Appeals; case settled).

In addition, the Department of Justice has filed briefs in most of these VAWA Civil Rights Remedy cases, also urging the court to uphold the law's constitutionality. NOW LDEF has many of those briefs on file and would be pleased to forward them upon request as well.

1. Background: Why the amendment is needed

Adding gender to Section 245 provides a needed avenue of recourse for some women who otherwise would have been denied relief through the justice system. While much progress has been made in improving state law enforcement's responses to crimes such as domestic violence, rape and sexual assault, instances unfortunately still occur in which state police or prosecutors fail to respond vigorously and thoroughly, leaving battered women and survivors of rape and sexual assault vulnerable to further violence and sometimes death.

Similarly substantial strides have been made in federal law to address the problem of gender-based hate crimes, including the new criminal remedies and the civil rights remedy enacted as part of the 1994 Violence Against Women Act ("VAWA"). But those criminal remedies do not help in many instances because they apply only in cases of interstate domestic violence or interstate violations of a protective order. Women surviving gender-based hate crimes that occur solely within one state consequently have no federal recourse even if their state law enforcement system has proven unable or unwilling to prosecute the case. The VAWA civil rights remedy also represents a major legal advance and fills existing gaps because it allows a woman to recover her damages and to hold a perpetrator accountable, even when there has been no criminal prosecution. But a civil remedy is not a substitute for criminal prosecution in the aftermath of a violent crime.

The following are a few hypothetical examples that exemplify the types of cases in which survivors of gender-based bias crimes are left without a criminal remedy absent amendments to Section 245:

- A woman was battered by her husband for many years. He had battered his former wife and former girlfriends as well. He refused to allow his wife to work, stating that women belong in the home and that he wouldn't tolerate his wife working. She went to the police on numerous occasions, but they responded in only a perfunctory way because they were good friends with her husband. They repeatedly declined to arrest him even when she called the police after he violated the restraining orders she had obtained.
- A serial rapist was accused of raping several women. The crimes were characterized by extreme violence and mutilation of the women's genitals. He fled the state once he learned the local police had identified him as a suspect.

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- A woman alleged that she was gang raped by several men who uttered gender-based epithets such as "bitch" and "whore" as they raped her. They apparently were in town visiting a friend. Local law enforcement officials said they could not prosecute them because they lived out of state.

- A woman was sexually assaulted by another passenger while she was riding on a train from Florida to New York. During the assault, he berated her, told her that she was getting what she deserved for traveling alone as a woman, and that she should be at home raising her children. She had no idea which state the train was passing through at the time of the assault. The Florida and New York police apologetically said they could not prosecute as a result.

While most gender-based bias crimes should continue to be prosecuted at the state level, and while resources should continue to be directed to improving the formal and informal responses of local law enforcement officials, federal criminal intervention still may be required in appropriate cases such as those described above.

2. Determining gender-motivation

Assessing when acts of violence against women are gender-motivated is not a new inquiry, particularly for federal courts. If Section 245 is amended to include gender, prosecutors and courts evaluating gender-motivated bias crime allegations can employ the same analysis used in other contexts to determine whether a particular violent act was committed because of the victim's gender.

For example, in evaluating sexual harassment claims brought under Title VII of the Civil Rights Act of 1964 ("Title VII"), courts routinely analyze the totality of the circumstances to assess whether the offensive conduct was committed because of the victim's gender. See, e.g., Harris v. Forklift Sys., Inc., 114 S. Ct. 367 (1993); Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). Applying that test, courts have found certain conduct to be indicative of gender motivation in the context of workplace sexual harassment cases, including:

- repeated lewd or sexually suggestive comments. See EEOC v. Hacienda Hotel, 881 F.2d 1504, 1514-15 (9th Cir. 1989) (sexual remarks, vulgarities, requests for sexual favors and disparaging comments about pregnancy created a hostile environment); Bundy v. Jackson, 641 F.2d 934, 944-45 (D.C. Cir. 1982) (sexually stereotyped insults and demeaning propositions created a hostile environment);
- derogatory epithets or nicknames. See, e.g., Carr v. Alison Turbine, 32 F. 3d 1007, 1009 (7th Cir. 1994) (derogatory sexual remarks, sexual epithets, playing sex- or gender-related "pranks" contributed to hostile environment); EEOC v. A. Sam & Sons Produce Co., 872 F. Supp. 29, 34 (W.D.N.Y. 1994) (evidence included company vice-president's repeated references to female co-worker as a "whore");
- display of pornographic pictures that was part of a pattern of harassment. See, e.g., Andrews v. City of Philadelphia, 895 F. 2d 1469, 1482 n.3 (3rd Cir. 1990);
- comments reflecting negative and stereotypical views of women. See, e.g., Harris, 114

U.S. at 369 ("you're a woman, what do you know?"); cf. Price Waterhouse v. Hopkins, 490 U.S. 228, 235-36, 288 (1989) (sex discrimination case in which woman was charged with being "overly aggressive, unduly harsh," "macho" and directed to go to charm school because "it's a lady using foul language");

- patterns of similar conduct toward other women. See, e.g., Paroline v. Unisys Corp., 879 F.2d 100, 103 (1989), vacated in part on other grounds, 900 F.2d 27 (4th Cir. 1990) (several female clerical workers subjected to pattern of sexually suggestive remarks and unwelcome touching).

Looking at the totality of the circumstances, courts analyzing workplace sexual harassment cases also have concluded that rapes or sexual assaults at work may evince sufficient gender motivation to create a hostile environment. See, e.g., Brock v. United States, 64 F.3d 1421, 1423 (9th Cir. 1995) ("every rape committed in the employment setting is also discrimination based on the employee's sex"); Tomka v. Seiler Corp., 66 F.3d 1295, 1305 (2d Cir. 1995) ("even a single incident of sexual assault sufficiently alters the conditions of the victim's employment and clearly creates an abusive work environment"); Yaba v. Roosevelt, 961 F. Supp. 611, 620 (S.D.N.Y. 1997) (sexual assault and harassment by law firm partner created a hostile work environment); Al-Dabbagh v. Greenpeace, Inc., 873 F. Supp. 1105, 1110-11 (N.D. Ill. 1994) (pattern of sexual assaults at work created a hostile environment).

While violence against women undeniably is a pervasive problem of "epidemic" proportions, not all violent crimes against women would be subject to federal prosecution under Section 245 just as not all crimes committed against racial, religious or sexual minorities constitute bias crimes. See generally, Anti-Defamation League, Hate Crimes Laws 2-3 (1997); Northwest Women's Law Center et al., Gender Bias Crimes: A Legislative Resource Manual, at 12-14 (1994). As with those cases, generally-accepted guidelines for identifying bias crimes will prove useful in analyzing gender-motivated bias crimes. These guidelines direct courts to look at conduct similar to that analyzed in the sexual harassment cases cited above, including language, severity of the attack, absence of another apparent motive, patterns of behavior, and "common sense." See U.S. Dep't of Justice, Federal Bureau of Investigation, Hate Crime Data Collection Guidelines 1-4; Center for Women Policy Studies, Violence Against Women as Bias Motivated Hate Crime: Defining the Issues 8-12 (1991). Congress recognized the applicability of those guidelines to gender-motivated crimes when it enacted the 1994 VAWA. See S. Rep. No. 103-138, 103d Cong., 1st Sess. 53 n.61 (1993) ("1993 Senate Report"). Drawing from these guidelines, prosecutors and courts can evaluate the totality of the circumstances in gender-based bias crime allegations to determine which cases contain sufficient evidence that they were committed because of the victim's gender, and therefore, are subject to federal prosecution.

3. Federal action is needed to respond to state failures

As discussed above, federal intervention will be required principally in cases of gender-motivated crimes in which state law enforcement systems either could not or would not prosecute. Through the 1994 VAWA, Congress took an historic and substantial step toward ameliorating the

problem of formal and informal failings of state laws.¹ Unfortunately, state law enforcement's bias against gender-motivated crimes persists in posing substantial, and sometimes life-threatening obstacles for women.²

Reports of gender bias task forces issued since VAWA's passage reveal that these entrenched problems have not yet been eliminated. For example, the 1996 report of the North Dakota Commission on Gender Fairness in the Courts indicates that women are still subjected to victim blaming, trivialization and stereotyped views of their credibility in criminal and civil domestic violence proceedings. A Difference in Perceptions: The Final Report of the North Dakota Comm'n on Gender Fairness in the Courts, 72 N.D. L. Rev. 1113, 1208-12 (1996). In one instance, a judge informed a battered woman seeking a protective order that she would one day realize that it was all "her fault." *Id.* at 1208. A member of the Minnesota Supreme Court Gender Fairness Implementation Committee in 1997 reported that domestic assaults persistently are plea bargained down to disorderly conduct offenses and that the state law requiring presentence investigations in domestic assault situations is consistently ignored. Letter from Judge Mary Klas to National Assoc. of Women Judges of Aug. 26, 1997 (on file with NOW LDEF). She similarly noted that judges fail to apply appropriate sanctions for failures to comply with probation or treatment requirements in domestic violence cases. *Id.* at 2. See also Alaska Joint State-Federal Courts Gender Equality Task Force, Final Report 22, 44 (April 1996) (recognizing prevalence of gender bias and tendency of magistrates and judges to rely on subjective factors rather than evidence when deciding whether to issue domestic violence protective orders).

While many jurisdictions have begun the long process of changing entrenched attitudes, recent cases confirm that state judicial systems continue to doubly victimize women who have survived

¹ For VAWA's legislative history documenting Congress' recognition of state judicial systems' long histories of treating gender-based crimes less seriously than other crimes warranted federal intervention, *see, e.g.*, 1993 Senate Report, at 42. See also Staff of Senate Comm. on the Judiciary, 103d Cong., 1st Sess., The Response to Rape: Detours on the Road to Equal Justice 1-2 (Comm. Print 1993) ("1993 Response to Rape"); 1991 Senate Report, at 43-48.

² For example, in enacting VAWA Congress cited study after study concluding that crimes disproportionately affecting women are treated less seriously than comparable crimes affecting men. *See, e.g.*, 1993 Senate Report, at 49; 1991 Senate Report, at 46-47, 49 (citing studies of state gender-bias task forces). Congress also recognized that police, prosecutors, juries and judges routinely subject female victims of rape and sexual assault as well as domestic violence to unfair and degrading treatment that contributes to the low rates of reporting and conviction that characterize these crimes. *See, e.g.*, 1993 Response to Rape at 2-6; accord 1992 Violence Against Women Hearing, at 75 (statement of Margaret Rosenbaum, Assistant State Attorney and Division Chief, Domestic Crimes Unit, Miami, Florida) (recognizing that police officers persist in failing to treat domestic violence as a "real crime"); 1991 Senate Report, at 39; 1992 Violence Against Women Hearing, at 2, 70; Women and Violence: Hearing Before the Senate Comm. on the Judiciary, 101st Cong. 29-30 (June 20, 1990) (statement of Marla Hanson).

gender-motivated crimes and fail to take domestic violence and sexual assault seriously. See, e.g., State v. Peacock, No. 94-CR-0943 (Md. Cir. Ct. Oct. 17, 1994) (stating sympathy for defendant who pled guilty to the murder of his wife after finding her in bed with another man, and sentencing him to a minimal eighteen-month term to be served on work release). As Congress heard during testimony on VAWA: "One has only to count the number of women murdered in the past year by subjects of outstanding orders of 'protection' issued by local courts to realize the toothless quality of much state and local 'protection.'" 1993 Crimes of Violence Hearing, at 41 (statement of Burt Neuborne, Professor of Law, New York University).³

The need for federal jurisdiction as a remedy to states' failed responses to gender-based crimes starkly echoes the impetus for the passage of 18 U.S.C. § 245 in 1968. At that time, state criminal laws purportedly provided protection from bias-related violent crimes, but it became increasingly apparent that those laws were being unevenly enforced with respect to race. Those who enacted Section 245 recognized that "[under the Federal system, the keeping of the peace is, for the most part, a matter of local and not Federal concern."⁴ Yet, unchecked violence against African-Americans led Congress to enact a federal remedy. According to the Senate Report,

[L]ocal officials have either been unable or unwilling to solve and prosecute crimes of racial violence or to obtain convictions in such cases — even where the facts seem to warrant. As a result, there is need for Federal action to compensate for the lack of effective protection and prosecution on the local level.⁵

States' uneven and sometimes-incomplete responses to gender-based violent crimes similarly supports amending Section 245 today to permit federal prosecution of gender-based bias crimes.

The extensive body of case law addressing allegations that local law enforcement agencies failed to respond effectively to domestic violence allegations highlights why federal jurisdiction is needed. In case after case, women (and their representatives in cases in which the victim is deceased) have brought to the courtroom tragic stories about violence, injury and death that could have been prevented, but for the neglect, inaction, bias or complicity of local police and police department policies. Since these cases focus on the sufficiency of the police' response to allegations of domestic violence, the decisions do not describe the nature of the underlying domestic violence in enough detail to determine whether the domestic violence allegations would be sufficiently gender-motivated to warrant federal intervention under Section 245. Nonetheless, they document instances in which state law enforcement systems have failed battered women, and in which appropriate federal intervention might have saved lives. The following is a summary of some of these cases:

- Soto v. Flores, 103 F.3d 1056 (1st Cir. 1997), cert. denied, 66 U.S.L.W. 3255, No. 96-

³ See also Report On District Of Columbia Police Response To Domestic Violence (1990), reprinted in 1992 Violence Against Women Hearing 101.

⁴ S. Rep. No. 90-721, reprinted in 1968 U.S.C.C.A.N. 1837, 1839.

⁵ Id., reprinted in 1968 U.S.C.C.A.N. 1840.

1976 (U.S. Oct. 6, 1997). For ten years, Flor Maria Soto had been physically and emotionally abused by her husband. When she went to the local police department in 1991, she was greeted by an officer who told her that "he himself had domestic violence problems, and that his wife wanted him to be put in jail." He suggested that she "patch things up" with her husband, and he did not write up a domestic violence report. The police did not counsel Soto about the availability of shelters, or her ability to file for an order of protection, as they were required to do by state law. Local police officers, who were friends of the husband, failed to arrest the husband or protect Soto and her family despite the mandatory arrest law in effect in their jurisdiction. Indeed, the police told Soto's husband about her visit to the police station, even though they knew of the husband's threats to kill Soto if she ever went to the police. Three days later the husband turned violent, shooting and killing his two children, and then himself.

- Navarro v. Block, 72 F.3d 712 (9th Cir. 1995). Maria Navarro was celebrating her birthday with family and friends when she received a phone call from the brother of her estranged husband, Raymond, warning that Raymond was on his way to kill her. Maria phoned 911 and told the dispatcher that Raymond was subject to a restraining order and that she had been told he would soon arrive and attempt to kill her. The 911 dispatcher responded "the only thing to do is just call us if he comes over there . . . I mean, what can we do?" Fifteen minutes later, Raymond arrived at Maria's house, shooting and killing Maria and four others, and injuring two others as well.
- Pinder v. Johnson, 54 F.3d 1169 (4th Cir. 1995). After Carol Pinder's former boyfriend, Don Pittman, was released from prison for attempting to burn down her house, he returned to Pinder's home. He beat her, threw objects at her and threatened to kill her and her children. A neighbor called the police and Pittman was arrested. When Pinder asked the police if it was safe for her to go to work that evening, the officer assured her that Pittman would be held in jail overnight. In fact, Pittman was released on his own recognizance, and he returned to Pinder's home and set it on fire, killing Pinder's three children, who were asleep inside.
- Garrett v. Gilless, 47 F.3d 1168, No. 93-6197 (6th Cir. Jan. 17, 1995) (unpublished decision). Sheila Garrett was the wife of a deputy sheriff, Clyde Garrett. Sheila reported several incidents of abuse to the police department, and in 1989 separated from Clyde. After the separation, Clyde harassed and threatened to kill his wife and their daughter. In addition, he had broken into his wife's home, shot her automobile window, and flattened her tires. Garrett's superiors in the police department had been notified of these incidents and threats. In early 1990, Clyde drove to Sheila's house in a police department truck, entered with two guns in his hands, one of them a police department revolver, and shot his wife and two children. The police department had permitted Clyde to keep his gun despite his death threats and harassment of his wife.
- Eagleston v. Guido, 41 F.3d 865 (2d Cir. 1994). When Cecelia Eagleston served her husband with divorce papers, he responded by throwing objects at her, threatening her and breaking the walls of their home. Cecelia called the police, but they made no arrest. Cecelia filed ten reports with the police over the next two months about assaults, threats and harassment by her husband. Although the husband was violating an order of protection, and

the police department police required mandatory arrest in such circumstances, the only arrest made in any of the ten incidents was an arrest of both Cecelia and her husband together. Three days after Cecelia's tenth report to the police (based on an incident in which Cecelia's husband threw a rock through the front window of her residence) the husband attacked Cecelia with a carving knife, stabbing her thirty times.

- Ricketts v. City of Columbia, 36 F.3d 775 (8th Cir. 1994). After years of physical abuse and an incident in which her husband had broken her nose and threatened to kill her, Kimberly Roth obtained a protection order against her husband, Sonny. Soon thereafter, Sonny approached Kimberly at her residence and began yelling threats at her. Kimberly called the police, who failed to arrest Sonny, even after he produced a sawed-off shotgun and continued yelling threats. Over the next week, Sonny vandalized the property of Kimberly's family, and threatened to kill Kimberly if she did not return to him. Kimberly reported these threats to the police but Sonny was still not arrested.

Kimberly moved back in with Sonny in order to protect her family from his threats, but the abuse began again and Kimberly left Sonny and received another protective order. Again, Sonny harassed and threaten her. Kimberly reported repeated incidents to the police in late March and early April, 1987, but again no arrest was ever made. On April 7, 1987, Sonny entered the home of Kimberly's family, where Kimberly was staying. He shot Kimberly's mother, and took Kimberly to the nearby woods where he sexually assaulted her.

- Brown v. Grabowski, 922 F.2d 1097 (3d Cir. 1990). The victim, Deborah Evans, was abducted by her boyfriend and found frozen to death in the trunk of a car. Shortly before this crime, Deborah Evans had been held hostage by her boyfriend for three days, during which time she was repeatedly threatened and sexually assaulted. She was rescued only when her brother and sister happened to come by the house where she was being held. When Deborah Evans reported this abduction to the police, the police failed to inform of her of her rights under the state's Prevention of Domestic Violence Act, including her right to obtain a restraining order against her boyfriend. No police were assigned to protect her and no attempts were made to arrest the boyfriend. She was told to wait until Monday to file charges because it was a weekend. On that Monday, she left her home to file charges at the police station, and on the way, was abducted by her boyfriend, and killed.

- Raucci v. Town of Rotterdam, 902 F.2d 1050 (2d Cir. 1990). Kathie Raucci separated from her husband in March 1985. Kathie reported to the police multiple incidents in which her estranged husband, Joseph, had beaten her and threatened to kill her, and obtained an order of protection against Joseph. Kathie recorded conversations in which Joseph threatened to kill her and told her of his purchase of a gun. Kathie delivered the tapes of these conversations to the police on June 18, 1985, but still no arrest was made. On June 23, Kathie again went to the police station to report Joseph's attempt to break into her house and his threat "to blow her head off." Joseph was finally arrested, but as he was being arrested he told the arresting officer to contact three other police officers - including the Deputy Chief - who were his friends. Joseph was released the next day on minimal bail by a judge who had not been told by the prosecution or police about the events prior to June 23, or the recorded conversations containing threats on Kathie's life. On June 28, 1995, Kathie reported

continuing telephone calls and stalking behavior by her husband. No action was taken, and on June 30, Joseph attacked Kathie and her child, shooting and killing the child and shooting and injuring Kathie.

- Balistreri v. Pacifica Police Department, 901 F.2d 696 (9th Cir. 1988). Jena Balistreri was the victim of repeated harassment and threats which the police department refused to investigate. In 1982, Balistreri was severely beaten by her husband but the police refused to arrest the husband, stating that Balistreri "deserved" the beating. One officer pressured her not to press charges against her husband. Subsequent to this beating, Balistreri secured a divorce. At this time, Balistreri became the subject of hundreds of harassing phone calls and repeated incidents of vandalism. She suspected her ex-husband was responsible and reported these incidents to the police, who did not investigate her complaints despite the fact that several of the calls had been traced to the home of the ex-husband's family. Once, the husband was caught when he crashed a car into Balistreri's garage, but the police refused to arrest the husband or investigate the incident. Another time, a firebomb was thrown into Balistreri's house. The police took 45 minutes to respond to the 911 call on this occasion. In response to Balistreri's requests for further investigation, the police told her to hire a private investigator or move to another town.

- McKee v. City of Rockwell, 877 F.2d 409 (5th Cir. 1989). Gayla McKee was assaulted in her apartment by her boyfriend. Her boyfriend had disabled her car to prevent her escape, but she was able to phone the police from a local convenience store. According to her testimony, she told the police that her boyfriend had assaulted and threatened to kill her. The police would not arrest the boyfriend and suggested that she talk matters out with him. The police refused to take McKee to her parent's home, and refused to take her to the police station to file a complaint because she was "inappropriately dressed." They told her that after she calmed down she would probably change her mind about filing the complaint. After the police departed, the boyfriend followed McKee to a friend's house and attacked her with a knife, causing serious injury.

- Watson v. City of Kansas City, 857 F.2d 690 (10th Cir. 1988). Nancy Watson was married to Ed Watson, a police officer who physically abused her repeatedly. Nancy reported to the police one incident, in which Ed shook a knife at her, but was told by the Police Captain, "[I]f you ever call the police again, I will see to it that you are arrested and you will never see those two kids again." Nancy divorced Ed and remarried him in 1982. The abuse began again, and Nancy reported to the police incidents where Ed had beaten her severely and abused her child. Nancy requested Ed's arrest, but the matter was referred to the Police Department Internal Affairs Unit. This Unit, unlike the Criminal Investigations Unit, was supposed to investigate more minor complaints not involving possible criminal acts. The Unit took no action. Moreover, a social worker looking into the child abuse charges was told by the police department not to contact Ed Watson.

In 1983, Nancy filed for another divorce. Two weeks later, Ed took Nancy and her child hostage by holding a gun to her head. During this time he threatened to kill Nancy and himself. After three days, Nancy was able to call the police, but when they arrived they refused to arrest Ed or remove him from his old marital home. The officers refused Nancy's

request to investigate the incident because "it was a domestic disturbance, it was not classified as a forced entry."

One month later, Ed stalked Nancy at a grocery store. Nancy drove to the police station and informed an officer that Ed was following her and was told Ed would be detained. However, when Nancy returned home, Ed was there. He locked the doors, cut off the telephone lines, raped, beat and stabbed her. Nancy escaped by jumping through a picture window onto the front lawn, and a neighbor called the police. An officer who responded to the scene said the situation was Nancy's "fault" because she had married Ed. Furthermore, Ed was described by his supervising officer within the police department as "a time bomb waiting to go off."

- Smith v. City of Elyria, 857 F. Supp. 1203 (N.D. Ohio 1994). Karen Guerrant called the police department to request that they remove her divorced husband from the house. The ex-husband, who had previously been convicted for attacking Karen, had been staying at Karen's house with Karen's permission after he was released from jail. Karen became uncomfortable with her ex-husband's presence, and phoned the police to have him removed from the home. The police told Karen that this was "a civil matter, not a police matter," and refused to remove the ex-husband. Moreover, the police advised Karen's ex-husband that if Karen evicted him herself, he should just go back in. Immediately after the police left, Karen, her sister and her nine-year-old daughter repeatedly called the police over the next 30 minutes begging for assistance as a fight ensued between Karen and her ex-husband. When the police finally returned to the residence at the end of that 30 minutes, they found that Karen had been stabbed 12 times and killed, and her daughter and sister were stabbed and injured.

Conclusion

The failures of state law enforcement systems, and women's continued subjugation to gender-motivated bias crimes provides compelling justification to amend Section 245 to include gender in the protected categories. Similar issues not documented in this memorandum also support amending Section 245 to include bias crimes based on sexual orientation and disability. Existing case law and standards for federal prosecution of other bias crimes shows that discerning which of the violent crimes committed against women are committed because of the victims' gender is not a novel, unique, or overwhelming inquiry, but draws on analytical tools familiar to federal courts in similar contexts. Including gender in Section 245 will provide redress to women currently denied access to criminal justice and will substantially advance our country's efforts to fight this devastating epidemic.

Walt
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