



INVESTIGATION OF HATE CRIMES

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| ✓ new: rescinds: amends: All previous | | cross-reference: |
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I. PURPOSE

The purpose of this Order is to assist Sheriff’s Office personnel in identifying and investigating hate crimes and assisting victimized individuals and communities. A swift and strong response by law enforcement can help stabilize and calm the community as well as aid in a victim’s recovery.

II. POLICY

Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate and bias and designed to infringe upon the rights of individuals are viewed very seriously by this Office and will be given high priority. This agency shall employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this Office shall be mindful of and responsive to the security concerns of victims and their families.

III. DEFINITIONS *Update July 2024*

Hate Crimes: A person commits a hate crime when one commits a specified offense and either targets a victim or commits a specified offense because of a perception or belief about the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether or not the perception or belief is correct. Hate crimes can be perpetrated against an individual, a group, or against public or private property. For example, hanging a noose or painting a swastika could be deemed hate crimes if the statutory criteria are otherwise met.

Bias: A negative opinion or attitude toward a person or group of persons based on their race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation.

Specified Offense: Any offense defined by the provisions of hate crime law.

Hate Group: An organization whose ideology is primarily or substantially based on antipathy, hostility, or hatred toward persons based on race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation of a person.

Age: Sixty years old or more.

Disability: A physical or mental impairment that substantially limits a major life activity.

Gender: Used synonymously with sex to denote whether an individual is male or female.

Gender Identity or Expression: A person's actual or perceived gender related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender

Race: A group of persons who possess common physical characteristics, for example, color of skin, eyes, and/or hair, facial features, and so forth, which are genetically transmitted by descent and heredity and that distinguish them as a distinct division of humankind. Examples include Asians, Blacks or African Americans, and Whites.

Sexual Orientation: Heterosexuality, homosexuality, bisexuality or asexuality, whether actual or perceived (as it pertains to this policy).

IV. **PROCEDURES**

A. Goals

1. Officers shall conduct a thorough and complete investigation in all suspected and confirmed hate crime incidents and assist the local prosecutor.
2. Officers should make every effort to become familiar with organized hate groups operating in the community and police contacts should be documented.

B. Initial Response Procedures

1. Initial responding officers at the scene of a suspected hate crime shall take preliminary actions deemed necessary, including, but not limited to, the following:
 - Secure the scene. Steps should be taken so that the initial situation does not escalate. This includes but is not limited to:
 - Stabilizing injured victims and requesting medical aid;
 - Providing protection to victims and witnesses by increased police presence.
 - Protecting the crime scene and any physical evidence for collection. (a) If evidence of an inflammatory nature cannot be physically removed, after it has been properly documented for investigatory purposes (e.g., painted words or signs on a wall), the owner of the property shall be contacted to

do all that is possible to ensure that the graffiti is removed as soon as possible.

- Identify criminal evidence on the victim if applicable.
- Notify and brief a supervisor, as soon as practicable, of any report of a suspected hate crime or activity that reasonably appears to be a hate crime. The mere perception that the incident may be motivated by bias should necessitate a notification to a supervisor.
- Request the assistance of a translator or counselor when necessary.
- Request the assistance of an investigator when necessary.
- Conduct a preliminary investigation and record information on:
 - The identity of suspected perpetrators;
 - The identity of witnesses, including those no longer at the scene;
 - Prior bias-motivated occurrences in the immediate area or against the same; victim. (check with Crime Analyst, NYSIC (518) 786-2100 and/or Regional Crime Analysis Center if one exists);
 - Statements made by suspects; exact language is critical.
- Arrest suspected perpetrators if probable cause exists.
- Conduct interview and attempt to establish motive.
- Consult with prosecutor if there is a question as to proper criminal charges.
- Take measures to ensure that necessary preliminary actions have been taken and brief the responding supervisor as to those action.
- During your investigation, look for possible signs that the incident may be a hate crime:
 - The motivation of the perpetrator or lack of motive.
 - Statements made by the perpetrator.
 - The presence of multiple perpetrators.
 - The display of offensive symbols, words or acts.
 - Was any hate literature found in the possession of the suspect?
 - Is the victim the only person of a particular group at the scene?
 - Is the victim from a different racial, ethnic, religious group than the perpetrator?

- The absence of any motive. The brutal nature of a particular incident could denote a hate crime, particularly when the perpetrator and victim don't know each other.
- The perpetrator's perception of the victim, whether accurate or not.
- The date, time or circumstances of the occurrence, such as on a religious holiday, or an event occurring at a gathering of a group of people affiliated by ethnicity, religion, sexual orientation, etc.
- Multiple incidents occurring in a short time period and all the victims were of the same identifiable group.
- Were the real intentions of the perpetrator racial, color, religious or ethnic oriented, or were there other reasons such as pranks, unrelated vandalism, or dispute arising out of a non-bias related disagreement?
- Incident occurred in proximity to an establishment that could be associated with one of the protected classes.
- The perpetrator targeted a particular portion of the victim's body; i.e. Sikh victims forcibly having his hair cut, or a victim targeted for his/her sexual orientation being attacked near or around his or her genitalia.
- The mere mention of a bias remark does not make an incident bias motivated, just as the absence of a remark does not make an incident without bias. Even the mere perception that the incident may be motivated by bias shall necessitate a notification to a patrol supervisor.
- Be cognizant of dual motivation by some suspects. Example: A suspect may be looking to commit robberies but specifically targets elderly victims.
- Note that an attack against a transgender victim could be covered under sexual orientation or gender.
- Attempt to establish the victim's perception as to why they believe the crime may have happened.
- The nature of a particular incident could denote a hate crime, even when the perpetrator and victim don't know each other. The perpetrator(s)'s perception of the victim (whether accurate or not) will be particularly relevant in a hate crime investigation.

C. Supervisory Responsibilities

1. The supervisor shall confer with the initial responding officer(s), take measures to ensure that necessary preliminary actions have been taken, and make appropriate departmental notifications as necessary. The supervisor shall request additional personnel as appropriate to accomplish the following:

- Provide immediate assistance to the crime victim. Express the law enforcement agency's official position on the importance of these cases, and describe the measures that will be taken to apprehend the perpetrators.
- Express the Office's interest in protecting victims' anonymity whenever possible.
- Allow the victim a period in which to express his or her immediate concerns and express his or her feelings.
- Communicate with concerned community-based organizations, civic groups, and religious institutions regarding the suspected or confirmed bias incident.
- Identify individuals or agencies that may provide support and assistance. These may include family members or close acquaintances, a family clergyman or departmental chaplain, as well as community service agencies that provide victim assistance, shelter, food, clothing, child care, or other related services. Provide information regarding the New York State Crime Victims Board.
- Tell the victim about the probable sequence of events in the investigation and prosecution. Explain security measures and precautions to the victim.
- Ensure that officers and investigator conduct a thorough preliminary investigation.
- Ensure that all relevant facts are documented on an incident or arrest report or both and make an initial determination as to whether the incident should be classified as a hate crime.
- Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- Take preventive measures to ensure the safety of the victim.

D. Investigators' Responsibilities

1. If responding to the scene of an alleged hate crime, investigators shall assume control of the follow-up investigation to include the following:
 - Ensure that the scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed (e.g., painted words or signs on a wall), the owner of the property shall be contacted to do all that is possible to ensure that the graffiti is removed as soon as possible. The officer or investigator shall follow-up to ensure that this is accomplished in a timely manner.
 - Conduct a comprehensive interview with all victims and witnesses (and depose) at the scene, or as soon as possible thereafter, and canvass the

neighborhood for additional sources of information.

- Work closely with the prosecutor's office to ensure that a legally adequate case is developed for prosecution.
- Coordinate the investigation with agency, state, and regional crime analysis centers. These sources shall provide the investigative officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
- Coordinate the investigation with other units of the agency and with outside agencies where appropriate.
- Maintain contact with the initial responding deputy and keep him or her apprised of the status of the case.
- Confer with the District Attorney's Office as to whether the incident should be classified as a hate crime.
- Investigative officers shall take steps to ensure that appropriate assistance is being provided to hate crime victims, to include the following measures:
 - Contact the victim periodically to determine whether he or she is receiving adequate and appropriate assistance.
 - Provide ongoing information to the victim about the status of the criminal investigation.
 - Attempt, whenever possible, to conduct all interviews with victims at their convenience and minimize, to the degree possible, interactions in which victims have to relate the incident.

E. Incident Report Preparation

- Incident reports should clearly indicate the following information:
 - Offense – Hate Crime designated Penal Law charge
 - Victim age, gender, race, and ethnicity (when victim(s) is an individual)
 - Offender age, gender, race, and ethnicity (when available)
 - The narrative portion of the Incident report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation. The specific bias motivation of the perpetrator should be documented (Ex: selected

victim because he was Hispanic, Jewish, Muslim, etc)

F. Arrest Processing

The Hate Crimes law is a sentencing enhancement statute. Thus, when the specified crime is a misdemeanor or a class C, D, or E, felony, the hate crime shall be deemed to be one category higher. For example, if a defendant is alleged to have committed and Assault in the second degree, which is a “D” felony and it is alleged that the assault was a hate crime, then upon conviction the assault is deemed to be a “C” felony and the sentence imposed will be based upon the sentencing for a “C” felony. “A” and “B” felonies charged as hate crimes stay the same but are subject to higher penalties.

It is important to realize that a class A misdemeanor charged as a hate crime is deemed a class E felony. This may affect the manner in which the case is handled (i.e. arraignment, bail, grand jury).

Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded.

When an arrest is processed for a hate crime, you are required to use the penal law code with the letter “H” to highlight and make the distinction. The letter “H” is applied to the subdivision of the PL section. In those cases, where no subdivision exists, a double zero is used with the letter “H”. Use caution when using an automated booking system to ensure the correct offense is selected.

Examples:

PL section 120.00, subdivision 1 – Assault 3rd

- 120.00(01**H**), when it is a Hate Crime

PL Section 140.15 – Criminal Trespass 2nd

- 140.15 (00**H**), when it is a Hate Crime

Note: Do not use the letter H when you are not charging a hate crime or the arrest will be reported as a hate crime arrest by DCJS.

G. Accusatory Instrument

1. As the Legislature made clear in the language of Penal Law section 485.00, the victim of a hate crime is society as a whole. It is apparently for that reason that the hate crime statute does not require specification of any particular person, only “a person.” It is the attribute of the protected class (i.e., sex, race, sexual orientation, etc.), not the name of any particular individual member or members of that class which is of importance. Accordingly, the manner in which to allege a hate crime is to set forth the particular attribute of the protected class which is claimed to have motivated the defendant, and not name any particular person or persons. The indictment can simply allege that the defendant committed the underlying crime in whole or in substantial part because of a belief or perception of the race, or sex, or sexual orientation, etc, of “a person.” Likewise, when alleging aggravated harassment in the first degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.

2. The accusatory paperwork filed with the court should also list the “H” designator. The narrative portion of the accusatory incident must include the elements and facts of the crime that demonstrate that the victim was intentionally selected or the act was intentionally committed because of a belief or perception regarding such person’s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

H. Victim *Update July 2024*

1. Provide immediate assistance to the crime victim utilizing a victim centered approach.
 - a. Express the law enforcement agency’s official position on the importance of hate crime cases and describe the measures that will be taken to apprehend the perpetrators.
 - b. Take preventive measures to ensure the safety of the victim. Express the office’s interest in protecting victims’ anonymity whenever possible. Explain any security measures and precautions to the victim.
 - c. Conduct all interviews with victims utilizing the principles of a trauma-informed approach that supports the immediate and long-term recovery of the victim by:
 - Allowing the victim the option to have a victim advocate or others present (including, for example, a family member);
 - Encouraging the victim to give a statement in their own words uninterrupted; use open ended questions
 - Employing trauma-informed questions using caution to not affect the victim’s account of the event; and
 - Providing an opportunity for follow-up questions.
 - d. Protect the privacy of the victim and their families as much as possible.
 - e. Provide the victim with community resources that may provide support and assistance such as advocacy, healthcare, civil legal services, and counseling services.
 - f. In cases where a police or peace officer is summoned for suspected criminal activity based on the belief or perception about the individual’s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation and a reasonable person would not suspect such violation, the supervisor should provide the victim with referral information for the New York State Division of Human Rights (DHR). For other civil matters where discrimination is alleged against an individual in areas such as employment, housing, credit, and places of public accommodation, refer the individual to DHR.
 - g. Provide victim(s) with a point of contact in the office to whom they can direct questions or concerns and explain that they have the right to be informed about the case status throughout the course of the investigation and prosecution

I. Community Relations and Crime Prevention

1. Hate crimes are viewed in the community not only as a crime against the targeted victim(s), but also as a crime against the victim's identification group as a whole. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report those crimes. This is particularly important if an upward trend has been identified in these crimes. Towards this end, these Offices' community relations function, or deputies so assigned, shall perform the following:
 - Provide victim(s) with a point of contact in the department to whom they can direct questions or concerns, and keep them informed of the case progress including the end result of the investigation or prosecution.
 - Protect the privacy of the victim and their families as much as possible. Provide any direct assistance reasonably possible and referral assistance to the victim and the family of the victim.
 - Meet with neighborhood groups, residents in target communities and other identified groups, to allay fears, emphasize the Office's concern over this and related incidents, reduce the potential for counter-violence and reprisals, and provide safety, security, and crime prevention information.

V. **TRAINING** *Update July 2024*

- A. Officers will be periodically trained on:
 1. The components of Penal Law § 485.05 and related case law;
 2. Familiarity with organized hate groups operating in the community;
 3. Response to a hate crime; and
 4. Arrest processing procedures for a hate crime.
- B. This policy is not intended to be a substitute for proper training in responding to or investigating hate crimes.

By Order Of



Derek Osborne
Sheriff