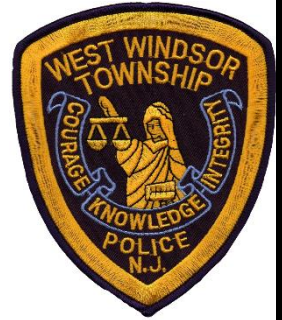


WEST WINDSOR POLICE DEPARTMENT

Policies and Procedures



SUBJECT:

Bias Incident Investigations

Number #

3:3

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Police Operations (Volume 3)

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10/07/2024 – Entire policy revised and reissued. Notification procedures and contact information updated. New chapter of guidelines for confirming bias incidents added.

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WEST WINDSOR TOWNSHIP POLICE DEPARTMENT

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BIAS INCIDENT INVESTIGATIONS (3:3)

I. PURPOSE

The purpose of this policy is to establish prescribed uniform guidelines for the response to, and investigation of, any suspected or confirmed bias incident as defined herein.

II. POLICY

It shall be the policy of the West Windsor Township Police Department that all suspected or confirmed bias incidents be quickly and thoroughly investigated in accordance with the New Jersey Attorney General's Bias Incident Investigation Standards and the procedures set forth below.

III. DEFINITION AND STATUTORY LANGUAGE

Bias Incident: For New Jersey law enforcement purposes, a bias incident is defined as any suspected or confirmed violation of N.J.S.A. 2C:16-1(a)(1) or (2).¹ Some suspected bias incidents may not clearly fit the described definition. In those cases, a common-sense approach to the incident must be used. If an incident appears to be bias-based, it should be investigated and reported as such. Verification of motive and intent can be made during the ensuing investigation.

N.J.S.A. 2C:16-1a (Bias Intimidation) - A person is guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense specified in chapters 11 through 18 of Title 2C of the New Jersey Statutes; 2C:28-4 (False Reports); 2C:33-4 (Harassment); 2C:39-3 (Prohibited Weapons); 2C:39-4 (Possession of Weapons for Unlawful Purposes); or 2C:39-5 (Unlawful Possession of Weapons),

(1) with a purpose to intimidate an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or

(2) knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

If relevant, separately consider N.J.S.A. 2C:33-3f (False Public Alarms) - A person is guilty of a crime of the third degree if the person knowingly places a call to a 9-1-1 emergency telephone system with purpose to intimidate or harass an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

¹ Subsection (3) was ruled unconstitutional in *State v. Pomianek*, 221 N.J. 66, 91 (2015).

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IV. PROCEDURE

A. Duties of the Responding Officer and Initial Investigation

When an officer responds to a suspected or confirmed bias incident, the following actions will be taken:

1. Apprehend the actor(s) when possible.
2. Provide assistance to the victim(s).
3. Protect the crime scene in preparation for the collection of evidence.
4. Conduct a preliminary investigation.
5. Conduct a neighborhood canvass to locate witnesses or others who are familiar with the circumstances of the incident.
6. Collect evidence as required.
7. Notify the patrol supervisor of the incident and request they respond to the scene, as appropriate.
8. Prepare an investigation report including the following information at a minimum:
 - a) Name, address, telephone numbers, and other information concerning the victim(s) and witnesses which may be appropriate to the investigation.
 - b) Indicate where the bias incident occurred.
 - c) Person or property targeted. Include background information of the person and/or details of the premises attacked, i.e. building primarily used for religious services or by persons of a particular race, color, or creed, etc.
 - d) How the person or property was targeted. This includes the way a person or property was attacked or damaged, i.e., graffiti, burning cross, etc.
 - e) Means of attack. This includes the instrument, tool, device or method by which the person or property was attacked.
 - f) Time of the incident.
 - g) Method of operation or trademark. Describe any identifying characteristics that may distinguish the offense from others committed.
 - h) Any and all other relevant information provided by the victim and witnesses.
9. Refer the victim and witness to the appropriate Office of Victim-Witness Advocacy as detailed in section E of this chapter.
10. Complete the State of New Jersey Supplementary Bias Incident Offense Report.
11. Ensure all necessary notifications are made as detailed in section D of this chapter.

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B. Duties of the Patrol Supervisor

Upon notification of or arrival at the scene of a suspected or confirmed bias incident, he or she shall:

1. Supervise the preliminary response and investigation.
2. Confer with the initial responding officer.
3. Assist in the stabilization of the victim as required.
4. Ensure that the crime scene is properly protected and preserved.
5. Take steps to ensure that the incident does not escalate.
6. Determine if additional personnel are required to provide complete public safety services.
7. Arrange for an immediate increase of patrols throughout the affected area, as appropriate.
8. If the potential exists for further acts of violence or damage to property, arrange for officers to be assigned to the location of the incident in a fixed post position.
9. Attempt to verify if the occurrence is a confirmed bias incident following the guidelines for confirming bias incidents listed in chapter V of this policy. Verification assistance should be provided by other levels of command and/or additional investigative personnel, as required.
10. Request that investigative personnel respond to the scene if a bias incident is suspected or confirmed.
11. Notify the communication center and other levels of command regarding the facts and circumstances surrounding the incident. Provide updated factual information, as needed.
12. Request a higher-ranking officer respond to the scene, as appropriate.
13. Ensure that the necessary basic information is obtained to sustain a follow-up investigation.
14. Ensure that all initial investigation reports are properly completed as soon as possible.
15. Ensure all necessary notifications are made as detailed in section D of this chapter.

C. Duties of the Detective for Follow-up Investigation

Detective bureau personnel shall respond to the scene of a suspected or confirmed bias incident as directed by supervisory personnel. When the detective arrives at the scene and determines that the situation may be a bias incident, he or she shall:

1. Assume control of the follow-up investigation.
2. Ensure that the scene is properly protected and preserved.
3. Conduct a thorough and comprehensive follow-up criminal investigation and continue bias incident verification procedures following the guidelines listed in chapter V of this policy, as necessary.
 - a) Detectives shall become familiar with the New Jersey Attorney General's Bias Incident Investigation Standards in order to

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- recognize those details that differentiate a bias incident from a simple offense such as harassment or criminal mischief.
- b) All suspected or confirmed bias incidents shall receive a timely and comprehensive follow-up investigation in accordance with chapter V of this policy.
4. Ensure that the scene is properly documented and searched, and evidence is gathered for analysis, as required. Documenting the crime should include taking samples of physical evidence, securing and transporting into custody related movable evidence, and photographing the crime scene, as appropriate.
 - a) Detectives should ensure that all physical remains of the incident are removed after crime scene processing is completed. If the remains cannot be physically carried away (example: paint on walls), the appropriate level of command should attempt to notify building or property owners regarding the need for complete removal as soon as possible after the crime scene has been fully processed.
 5. Interview all victims and witnesses.
 6. Canvass the community to identify other victims and witnesses. Conduct additional interviews, as necessary.
 7. Determine the primary elements of the incident/investigation which include:
 - a) Person(s) targeted - This includes the name, address, telephone number, personal background, and other details of the victim(s).
 - b) Object targeted – This includes details on the type of premises, building, or institution against which the offense was committed (private premises, public property, or property primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, religion, sexual orientation or ethnicity).
 - c) How targeted - This includes the way in which the person or property was attacked or damaged (assaulted, put in fear of bodily violence by placing on public or private property a symbol, an object, a characterization, an appellation or graffiti that exposes another to threats of violence, contempt or hatred on the basis of race, color, creed or religion, defacement or damage by placing of symbol, an object, a characterization, an appellation, or graffiti that exposes another to threat of violence, contempt or hatred on the basis of race, color, religion, sexual orientation or ethnicity).
 - d) Means of attack - This includes the instrument, tool, device, or method by which the person or property was attacked or damaged.
 - e) Time and date - This includes both the time and date reported and the actual time and date the offense was committed.
 - f) Trademark - This includes the *modus operandi* (M.O.), or individual identifying characteristics, of the bias incident, which

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may serve to distinguish the offense from others committed in much the same fashion. This element is helpful in connecting a suspect with past incidents.

- g) If a series of bias incidents has occurred, these investigative elements will be crucial in developing an operating pattern and in identifying suspects. This investigative process will also assist in identifying participation of organized hate groups.
- 8. Conduct surveillance and other appropriate investigative activities in order to obtain additional evidence and to identify suspects.
- 9. Contact other appropriate law enforcement agencies for assistance, as required.
- 10. Work closely with the Mercer County Prosecutor's Office to ensure that legally sufficient cases are presented for prosecution.
- 11. Assist any victim/witness in obtaining appropriate support services.
- 12. Prepare standard supplemental reports documenting the investigation, as appropriate.
- 13. Ensure that all necessary notifications are made as detailed in paragraph D of this chapter.
- 14. Assist with community relations activities and crime prevention programs, as appropriate.

D. Notification Requirements

1. Standard Notifications for All Bias Incidents

- a) All confirmed or suspected bias incidents shall be reported to the NJ State Police NIBRS as soon as is practicable, but not more than twenty-four (24) hours from the initial law enforcement response. This is accomplished by the records bureau utilizing the information contained on the Supplementary Bias Incident Offense Report. If no member of the records bureau is scheduled to work within the twenty-four (24) hour time frame, such as weekends or holidays, the unit's supervisor shall be contacted via telephone, at a reasonable time, to facilitate the completion of the task.
 - i. Information entered into the NIBRS system is automatically forwarded to the Bias Crimes Units at the Division of Criminal Justice and the Mercer County Prosecutor's Office, the New Jersey State Police National Incident Based Reporting Unit, and the New Jersey Office of Homeland Security and Preparedness.
- b) The Mercer County Prosecutor's Office Bias Crimes Unit shall also be notified within twenty-four (24) hours as described in paragraph E of this chapter.

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- c) The chief of police, the entire command staff, and the detective sergeant, who is designated as our bias liaison, shall be notified of all suspected or confirmed bias incidents. This can be accomplished through a detailed email sent by the patrol supervisor to all parties.
- d) In some cases, a bias incident may also constitute a violation of New Jersey's Law Against Discrimination (LAD), N.J.S.A. 10:5-1 et seq., investigated by the Division on Civil Rights (DCR). When confronted with a suspected or confirmed violation of the LAD, the victim(s) shall be informed of and referred to the DCR, if appropriate, and the DCR shall be contacted as described in paragraph E of this chapter.
 - i. The LAD is limited to addressing acts of bias, prejudice, discrimination, and harassment in:
 - 1. Employment;
 - 2. Housing and real estate;
 - 3. Credit and contracting; and
 - 4. Places of public accommodation, including schools, government buildings, restaurants, hotels, stores, hospitals, theaters, and other places open to the public.

2. Immediate Notifications for Emergent Incidents

- a) The Bias Crime Units of both the Division of Criminal Justice and Mercer County Prosecutor's Office shall immediately be notified, as described in paragraph E of this chapter, for all suspected or confirmed bias incidents involving:
 - i. The crimes of homicide, aggravated sexual assault, sexual assault, aggravated assault, or arson.
 - ii. A law enforcement officer as the alleged perpetrator.
 - iii. An organized hate group as the perpetrator.
 - iv. A potential to generate large-scale public unrest.
- b) The Chief of Police, the entire command staff, and the Detective Sergeant, who is designated as our bias liaison, shall also be immediately notified of all suspected or confirmed bias incidents involving the circumstances listed in subsection a of this paragraph.
- c) If a bias incident has a nexus to terrorism, such as when an organized hate group is involved, additional immediate notifications are required to the Mercer County Prosecutor's Office Terrorism Coordinator and the New Jersey Office of Homeland Security and Preparedness Counterterrorism Watch. Reference our Suspicious Activity and Threat Reporting policy (4:44) for further information and guidance.

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E. Contact Information

1. The Division of Criminal Justice Bias Crimes Unit can be contacted via the twenty-four (24) on-duty law enforcement cellular telephone number of (609) 273-9243. If unsuccessful, reference the current Division of Criminal Justice website for up-to-date contact information.
2. The Mercer County Prosecutor's Office Bias Crimes Unit on-call detective's name and cellular telephone number can be obtained through the Mercer County Emergency Services Communication Center via telephone number (609) 799-0110.
3. The Mercer County Prosecutor's Office of Victim Witness Advocacy can be contacted at (609) 989-6428. The State Office of Victim-Witness Advocacy can be contacted at (866) 326-7206 for any cases being handled by the Division of Criminal Justice. Reference the current State Office of Victim-Witness Advocacy or the Mercer County Prosecutor's Office websites for further up-to-date information.
4. A Law Against Discrimination complaint can be filed with the Division of Civil Rights via telephone number (833) 653-2748 or through the New Jersey Bias Investigation Access System (NJBIAS) located on the New Jersey Office of the Attorney General website.

V. Guidelines for Confirming Bias Incidents

To assist law enforcement officers in confirming whether a suspected bias incident is actually motivated by bias, the following criteria shall be applied. These criteria are not all-inclusive. Common sense judgment must also be applied in the final determination. If after applying these criteria and asking the appropriate questions, a suspected bias incident cannot be definitively determined to be any other type of incident or is a borderline case, it should be treated as a bias incident for continuing investigation purposes.

A. Motive

1. The absence of any other apparent motive for the bias incident.
2. Display of any bias symbols, words, graffiti, or other types of evidence.
3. Statements made by the suspects.
4. Statements made by the witnesses.
5. Prior history of similar incidents in the same area affecting the same victim or community group.
6. A common-sense review of the facts and circumstances surrounding the incident. Consider the totality of the circumstances.

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B. When the above criteria are applied, it may be helpful to ask the following questions:

1. Is the victim from one racial, religious, or ethnic group and the suspect from another?
 - a) The suspect and victim do not need to be from a different group or groups covered under the Bias Intimidation statute. The victim or suspect's actual membership in a particular group is not an element of the offense of Bias Intimidation. Also note that N.J.S.A. 2C:16-1(h) prohibits the defense of mistake.
2. Did the incident occur solely because of a bias against the victim by the actor involving a status or class protected under N.J.S.A. 2C:16-1, or for other reasons?
3. Is the victim the only member of a particular protected class or status under N.J.S.A. 2C:16-1 in the neighborhood, or one of a few?
4. Did the victim recently move into the area?
5. Is the victim acquainted with neighbors and/or associated with local community groups?
6. What was the trademark (M.O. of the actor)? Is it similar to other documented bias incidents?
7. Has the victim experienced past or repeated incidents of a similar nature?
8. Is there a connection between the date of the incident and holidays, school activities or other special public discussions or events?
9. Has there been prior or recent media coverage of similar incidents?
10. Is there an ongoing neighborhood problem that may have contributed to the event?
11. Does the M.O. signify a "copycat" of other incidents?
12. Is an organized hate group indicated in the incident?
 - a) Is hate literature involved? What type is it?
 - b) Is there any documented or suspected organized hate group activity in the area?
 - c) Was organized group involvement actually present or made to appear so?
13. Were the real intentions of the actor to commit a bias incident or were there other motives?
14. Does the actor have a true understanding of the impact of the bias incident on the victim?
15. Was the victim put in fear due to the incident?
16. Did the victim feel threatened due to the incident?