Investigation of Hate Crimes

Model Policy
Concepts & Issues Paper
Need to Know....

September 2016
Investigation of Hate Crimes

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. Therefore, a focused and consistent response to these crimes is crucial, not only to the victims, but also for maintaining legitimacy within the community.

- **Hate crimes** are those in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person.
- **Communicate** with concerned community-based organizations, civic groups, and religious institutions regarding the suspected or confirmed hate crime.
- To ensure that the investigation is as comprehensive as possible, **coordinate** with other units of this agency, as well as other local, state, and regional intelligence operations in order to identify any patterns, organized hate groups, and suspects potentially involved in the offense.
- Work with segments of the larger community after such crimes 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, especially if an upward trend has been identified.
- Engage the **media** as soon as possible as partners in restoring victimized communities through sensitive and accurate reporting. Information regarding hate crimes should be prepared for the media in an accurate and timely manner.
- Establish **liaisons** with formal community-based organizations and leaders to mobilize resources that can be used to assist victims and prevent future hate incidents and crimes.
- Accurately **report** any hate crimes on a regular basis – this includes providing the appropriate information to the state crime analysis center or central repository, the FBI, and making information available to the public, subject to confidentiality requirements.

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I. PURPOSE

The purpose of this policy is to establish guidelines for 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 agency and will be given high priority. This agency shall employ all 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 agency shall be mindful of and responsive to the security concerns of victims and their families.

This agency shall develop a standard system for collecting, analyzing, and reporting incidents of crime that are, in whole or in part, directed against individuals because of race, religion, ethnicity, gender, sexual orientation, gender identity, or disability.

III. DEFINITIONS

Bias: A preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

Hate Crime: A crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person. Most states and the District of Columbia also have hate crime laws. State statutes should be checked for relevant definitions and crime categories.

Hate Incident: Those actions by an individual or group that, while motivated by hate or bias, do not rise to the level of a criminal offense.

Hate Group: An organization whose ideology is primarily or substantially based on antipathy, hostility, or hatred toward persons of a different race, ethnicity, national origin, religion, disability, sexual orientation, gender, and/or gender identity.

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.

Ethnic Group: A group of persons whose members identify with each other through a common heritage, often consisting of a shared language, culture and/or ideology that stresses common ancestry.

Religious Group: A group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being. Examples include Catholic, Jewish, Protestant, Muslim, Sikh, Hindu, and atheist.

Sexual Orientation: A person’s physical, romantic, and/or emotional attraction to members of the same and/or opposite sex. Examples include homosexual, bisexual, and heterosexual.

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

Gender Identity: A person’s internal sense of being male, female, or a combination of both; this internal sense of gender may be different from physical gender at birth.

Footnotes:


3. Hate groups are tracked by the Southern Poverty Law Center, Anti-Defamation League, and the FBI.
Disability: A physical or mental impairment, whether temporary or permanent, that is due to conditions that are congenital or acquired by heredity, accident, injury, advanced age, or illness.

IV. PROCEDURES
A. Goals
1. Officers shall conduct a thorough, prompt, and complete investigation in all suspected and confirmed hate crimes and assist the local prosecutor. Evidence related to all hate incidents should be thoroughly documented.
2. All officers of this agency shall receive instruction on both hate crime investigation and community-police relations.
3. Investigators shall make every effort to become familiar with organized hate groups operating in the community.

B. Initial Response Procedures
Initial responding officers at the scene of a suspected hate crime shall follow this agency’s standard protocol for responding to a crime scene. In particular, officers shall:
1. Collect physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups, such as swastikas and crosses.
2. Recognize the potential need for and request the assistance of a translator, where necessary.
3. Notify a supervisor and brief him or her on actions taken thus far.
4. Ensure that all statements made by suspects are recorded verbatim; exact language is critical.
5. Identify prior bias-motivated occurrences in the immediate area or against the same victim.
6. Assist investigators in complying with any federal or state hate crime data collection reporting requirements.

C. Supervisory Responsibilities
The supervisor shall do the following:
1. Notify the chief executive or his or her designee and 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.
2. Provide updated information on the status of the investigation and the community impact within 48 hours.
3. Provide immediate assistance to the victim as outlined by this agency’s policy on victim response.

D. Investigator’s Responsibilities
The investigator shall follow this agency’s standard protocol for responding to a crime scene. In particular, investigators shall do the following:
1. If evidence of an inflammatory nature cannot be physically removed (e.g., painted words or signs on a wall), photographs should be taken and the owner of the property should be contacted to do all that is possible to ensure that the graffiti is removed as soon as possible. The investigator shall follow up to ensure that this is accomplished in a timely manner.
2. Work closely with the prosecutor’s office to ensure that a legally sound case is developed for prosecution.
3. Coordinate the investigation with other units of this agency, as well as other local, state, and regional intelligence operations in order to identify any patterns, organized hate groups, and suspects potentially involved in the offense.
4. Make a final determination based on evidence and facts as to whether the incident should be classified as a hate crime.
5. Determine the primary elements of the crime and obtain the information necessary to complete the federal and state hate crime data collection requirements.5

4 See the IACP Model Policy and Concepts and Issues Paper on Response to Victims.

5 Under the Hate Crime Statistics Act of 1990, as amended by the HCPA, the FBI’s UCR Program now collects and reports statistics on hate crimes directed at individuals because of race, religion, disability, sexual orientation, ethnicity, gender, or gender identity—as well as hate crimes committed by and directed against juveniles.
6. Request additional resources from the federal government as necessary and available.6
7. Take steps to ensure that appropriate assistance is being provided to hate crime victims.

E. Community Relations and Crime Prevention

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. Towards this end, this agency’s community relations function, or officers so assigned, shall perform the following:
1. Continue to provide assistance to the victim, including protecting his or her privacy and that of his or her family as much as possible.
2. Work with segments of the larger community after such crimes 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, especially if an upward trend has been identified.7
3. Especially in the most serious crimes, meet with neighborhood groups, residents in target communities, and other identified groups as soon as possible to allay fears; emphasize the agency’s concern over this and related incidents; reduce the potential for counter-violence and reprisals; and provide safety, security, and crime prevention information.
4. Engage the media as soon as possible as partners in restoring victimized communities through sensitive and accurate reporting. Information regarding hate crimes should be prepared for the media in an accurate and timely manner.
5. Conduct public meetings or forums designed to address the community-wide impact of hate crime and violence in general.
6. Establish liaisons with formal community-based organizations and leaders to mobilize resources that can be used to assist victims and prevent future hate incidents and crimes.
7. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.

F. Hate Crime Data Collection and Reporting

This agency shall do the following:
1. Submit a monthly report on all hate crime occurrences to the appropriate state crime analysis center or central repository;
2. Submit a monthly report to the FBI on all hate crime occurrences, in accordance with guidelines established pursuant to the federal Hate Crime Statistics Act.
3. Make information, records, and statistics collected available to any appropriate local or state agency and to the public, subject to all confidentiality requirements otherwise imposed by law.

Acknowledgment

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Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory group to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors. This document is not intended to be a national standard.

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6 Under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act (HPCA), at the request of a state, local, or tribal law enforcement agency, the attorney general may provide technical, forensic, prosecutorial, or any other form of assistance in hate crime investigations or prosecutions.
7 This is particularly important among marginalized minority groups who may be less likely to report hate crimes to the police, including members of LGBTQ communities and new immigrants. It is important to remember that all victims of hate crimes, regardless of immigration status, are entitled to full protection under the law.
IACP LAW ENFORCEMENT POLICY CENTER

Investigation of Hate Crimes

Concepts and Issues Paper
September 2016

I. INTRODUCTION

A. Purpose of Document

This paper was designed to accompany the Model Policy on Investigation of Hate Crimes developed by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements of the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model policy to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

Hate crimes and hate incidents are major issues for all law enforcement agencies because of their unique impact on victims as well as the community. A strong law enforcement response is necessary if the proper message is to be sent to the perpetrators of such crimes.

Hate crimes are not simply assaults, property damage, or violations of civil rights; they are crimes that specifically target a class of individuals within our society. As such, they not only affect the targeted victim, but also have far-reaching effects on large segments of the communities in which they take place. They provide fuel to the underlying prejudices and fears that trigger these crimes in the first place, thus continuing the cycle of hatred, prejudice, and bias.¹ The broad impact of hate crimes makes them a major concern for all law enforcement agencies. Though hate and its consequences have always been part of the human condition, humans are not born with prejudices or intolerance. These attitudes are learned, as are the behaviors that constitute hate crime. Social and demographic changes, particularly as rapid and pervasive as witnessed in 21st century America, can engender fear of being displaced and, in turn, bias-motivated attitudes and behavior. Most perpetrators of hate crime are steeped in the fear and anger that fuel prejudice.²

C. Hate Crime Defined

A hate crime, also known as a bias crime, is defined in federal law as "a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person."³

The concept of what entails a hate crime is often misunderstood. In many cases, there is confusion between hate incidents and hate crimes. Legally, a hate crime is any crime enumerated in a hate crime statute in which a perpetrator is subject to an enhanced penalty because the crime was motivated by bias, as defined by the statute. These criminal acts become hate crimes only when the perpetrator intentionally selects the victim or property on the basis of a personal characteristic, or if they place

¹ The term “bias” is defined as a preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, ethnicity, gender, or gender identity and is used interchangeably with hate throughout this document.


a potential victim in reasonable fear of physical injury. Arson, aggravated assault, and vandalism exemplify such crimes. Hate incidents are those actions by an individual that, while motivated by bias, do not rise to the level of a criminal offense. Hate incidents involve behaviors that, while motivated by bias, are not criminal acts.

D. Hate Crime Statutes

Further understanding of hate crimes can be found in the context of hate crime statutes. Such laws date to the Ku Klux Klan Act enacted by Congress in 1871. Since that time, federal and state legislators have recognized hate crimes as dangerous to our society and have passed numerous pieces of legislation designed to target enforcement efforts against perpetrators of such acts.

In addition, as of 2016, the federal government, 45 states, and the District of Columbia have enacted statutes that provide enhanced penalties for hate crimes. Hate crime definitions often encompass not only violence against individuals or groups, but also crimes against property, such as arson or vandalism, particularly those directed against community centers or houses of worship. Agencies should consult their legal counsel for definitions of hate crime in their jurisdictions.

A brief review of federal prohibitions will lay the framework for later discussion of the identification of hate crimes, criminal penalties associated with these incidents, and federal and state reporting requirements. It should be noted, however, that the vast majority of hate crime prosecutions are brought by state and local officials.

Hate crime prosecutions on the federal level frequently contain violations of one or more other crimes, such as the use of a firearm in the commission of a felony or obstruction of justice. State laws, similarly, provide for enhanced penalties when an underlying crime, such as assault, trespass, or destruction of property can be proved beyond a reasonable doubt to have been motivated by hate. Additionally, victims of hate crimes may also be able to pursue civil action under federal and some state statutes for both damages and injunctive relief.

On the federal level, Section 241 of Title 18 makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate an inhabitant of the United States in the free exercise or enjoyment of a right or privilege secured by the Constitution or laws of the United States. This statute requires only that a conspiracy be proven and does not require an act to take place in furtherance of that conspiracy. It also protects all inhabitants of the United States, whether or not they are citizens. An alien, even if he or she has entered the country illegally, would also receive the benefits and protection of this statute. Under the federal code, in order to invoke this statute, the perpetrators of the crime must be motivated by a desire to interfere with the rights of one of the victims.

The statute defining federally protected activities, 18 U.S.C. Section 245, is one of the two primary federal criminal civil rights statutes for bias-based violence cases that do not involve housing. Section 245 prohibits the use of force or threats of force against individuals because of their race, color, religion, or national origin, and because those individuals are engaged in federally protected activities. This includes interference in the right to enroll in public school or college; the right to participate in any benefit, service, or program administered by a state; employment by any private employer or state or local agency; travel in or use of a facility of interstate commerce; and enjoyment of goods or services of any place of public accommodation.

For example, one of the federally protected activities is enrolling in or attending public school or college. In a hypothetical case that may at first appear to involve a violation of this right under Section 245, a group of white youths and a group of black youths attending the same school engage in a brawl on school property. Investigation finds that the dispute between them, though racially motivated to a degree, grew out of an argument at football practice between a white youth and a black youth. In such a scenario, there is no federal violation because the motive for the fight had nothing to do with attendance at or enrollment in a public school.

This example illustrates that it is sometimes difficult to define a violation of this and other federal and state hate crime statutes. The true motivation of a defendant can be very difficult to prove even though criteria have been developed to define hate crime and bias.

U.S. law, in 18 U.S.C. Section 247, criminalizes attacks on religious property and obstructions of persons who are enjoying the exercise of their religious beliefs. This statute was amended by the Church Arson Prevention Act of 1996 [Public Law 104-155] that covers racially-motivated church burnings and bombings, as well as acts of desecration motivated by religious animus when the defendant has traveled in interstate commerce or has used a facility or instrumentality of interstate commerce.

The criminal portion of the Fair Housing Act of 1968, 42 U.S.C. Section 3631, prohibits housing-related violence on the basis of race, color, religion, sex, handicap, familial status, or national origin. The types of violence usually prosecuted under this section include cross burning, fire bombing, arson, gunshots, rock throwing, and vandalism; fact patterns that indicate attempts to intimidate residents into vacating their homes or property. The statute reaches all persons involved in any housing-related activity, including sellers, buyers, landlords, tenants, and real estate agents. Federal prosecutors have also used 18 U.S.C. Section 248, the Freedom of Access to Clinic
Entrances (FACE) Act [Public Law 103-259 (1994)], to combat violence or interference with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

Also on the federal level, in 1994 Congress enacted the Hate Crime Sentencing Enhancement Act. This provision requires the U.S. Sentencing Commission to increase the penalties for crimes in which the victim was intentionally selected because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person.

In 2009, Congress enacted the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act (HCPA), which complements existing hate crime laws and eliminates jurisdictional obstacles to federal involvement in these cases. The HCPA provides limited jurisdiction for federal law enforcement officials to investigate and prosecute certain violent hate-motivated crimes in which the victim was attacked because of his or her actual or perceived race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. In addition, under the HCPA, at the request of a state, local, or tribal law enforcement agency, the U.S. Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in hate crime investigations or prosecutions. Federal support—through training or direct assistance—can help ensure that hate-motivated violence is effectively investigated and prosecuted.

The HCPA does not punish thought or speech. In fact, the text of the HCPA emphasizes that nothing in the law should be inferred to restrict an individual’s freedom of speech. In 1993, in Wisconsin v. Mitchell, the U.S. Supreme Court unanimously upheld the constitutionality of the Wisconsin penalty-enhancement statute, effectively removing any doubt that state legislatures may properly increase the penalties for criminal activity in which the victim is intentionally targeted because of his or her race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. The Court found that the penalty-enhancement statute did not violate an individual’s First Amendment right to free speech, as the statute focuses not on a defendant’s prejudices, but rather on the defendant’s criminal actions, which were based upon those prejudices. While bigotry cannot be outlawed, hate crime statutes demonstrate an important commitment to confront criminal activity motivated by prejudice.7

However, not all states have comprehensive, inclusive coverage of all types of victims.8 Some state laws also prohibit more specific hate crime-related activities such as the burning of crosses, wearing of masks, and operation of secret societies.

E. Hate Crime Statistics

Over the years, one of the greatest barriers to confronting and overcoming hate violence on national, state, and local levels has been the lack of firm statistical data on the incidence and nature of those crimes. While several states had implemented programs to capture this information from local authorities, most law enforcement agencies previously had no reporting requirements of this type. On a national level, only the Anti-Defamation League (ADL) collected hate-related crime statistics and, in that case, only as it related to anti-Semitic incidents.

In response to a growing concern about hate crimes, Congress passed, and on April 23, 1990, President George H.W. Bush signed, the Hate Crime Statistics Act (HCSA) of 1990. Guidelines were developed as part of the FBI’s Uniform Crime Reporting (UCR) Program,9 to collect data “about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder; non-negligent manslaughter; forcible rape; aggravated assault; simple assault; intimidation; arson; and destruction, damage, or vandalism of property.”10 In 1994, Congress expanded coverage of the HCSA to require FBI reporting on crimes based on disability. The HCPA amended the HCSA to


8 Currently, only 30 states and the District of Columbia include sexual orientation-based crimes in their hate crime statutes; only 30 states and the District of Columbia include coverage of gender-based crimes; only 15 states and the District of Columbia include coverage of gender identity-based crimes, and only 31 states and the District of Columbia include coverage for disability-based crimes. Anti-Defamation League, State Hate Crime Statutory Provisions, http://www.adl.org/assets/pdf/combating-hate/ADL-updated-2016-Excel-State-Hate-Crime-Statistics.pdf (accessed August 1, 2016).


require FBI reporting on crimes based on gender and gender identity, as well as hate crimes committed by or directed against juveniles.

Many states and the District of Columbia require the collection of hate crime data. Participation in the FBI’s national reporting program, which—like the rest of the UCR Program—is voluntary, has increased over the years. As of 2014 (the most current year for which statistics are available), 15,494 state and local law enforcement agencies voluntarily reported 5,479 bias-motivated criminal acts to the FBI. The almost 15,500 federal, state, and local agencies represent the highest participation in the HCSA program since its inception. Yet, in spite of the progress that has been made in this reporting effort, measurement and reporting challenges make it impossible to determine, with any degree of certainty, the actual magnitude of hate crimes or whether the rate of these crimes has been rising or falling over the years. Indeed, a major challenge to the accurate reporting of hate crimes is the necessity for officers to determine offender motivation. Understandably, many officers and reporting agencies are reluctant to ascribe bias motivation to offenders until incidents can be thoroughly investigated or offenders apprehended. Nevertheless, the FBI suggests a protocol that law enforcement agencies can follow to determine whether bias motivation exists.

Another major problem in collection of statistical information is that many, if not most, victims do not report hate crimes to the police. Reasons for this include
• fear of revictimization or retaliation by the perpetrators;
• feelings of humiliation or shame about being victimized;
• fear of having privacy compromised;
• uncertainty about the responsiveness and concern of law enforcement and the justice system;
• mistrust or cultural fears of dealing with law enforcement;
• language barriers;
• fear of being deported on the part of undocumented aliens; and
• for homosexual, bisexual, or transgender people, a fear that their sexual orientation will be made known.

Considering these and other factors, UCR hate crime statistics undoubtedly underrepresent the actual occurrence of these crimes. But, from the data that are available, a basic profile of hate crime motivations can be estimated. Of the 5,479 single bias-motivated crimes reported in 2014, 46.9 percent were motivated by racial bias, 18.6 percent by sexual orientation bias, 18.5 percent by religious bias, 11.8 percent by ethnicity or national origin bias, and 1.5 percent by disability bias. In 2014, the second year the FBI collected gender and gender identity-based hate crimes from law enforcement agencies, 0.6 percent of the reported crimes were gender-based and 1.8 percent were hate crimes targeting transgender individuals.

Figures, as reported to the FBI, strongly suggest a serious undercounting of hate crimes in the United States—and the need for more training and education on the importance and utility of hate crime data collection as a tool for law enforcement in preventing these impactful community disturbances and advancing police-community relations.

F. Recent Trends in Bias-Motivated Crime

The United States has experienced a significant increase in acts of intimidation, vandalism, and violence towards Muslims. So, too, following the September 11, 2001, terrorist attacks, the nation witnessed a wave of attacks against Americans and others who appeared to be Muslim, Sikh, Middle Eastern, or South Asian. These incidents, many involving youthful offenders, included

12 A November 2005 report by Caroline Wolf Harlow for the Bureau of Justice Statistics entitled Hate Crime Reported by Victims and Police extrapolated that there was an annual total of 191,000 hate crimes. If true, this would indicate that the actual level of hate crimes is between 19 to 31 times higher than the level reported for the last 15 years. See http://www.bjs.gov/content/pub/pdf/hcrvp.pdf (accessed August 1, 2016.).
14 A report by the Organization of Chinese Americans, Responding to Hate Crimes: A Community Action Guide, 2nd ed., http://c.ymcdn.com/sites/www.ocanational.org/resource/resmgr/ocahatecrime2006.pdf and studies by the National Organization of Black Law Enforcement Executives (NOBLE) and others have revealed that some of the most likely targets of hate violence are the least likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new Americans come from countries in which residents would never call the police—especially if they were in trouble. Gay, lesbian, and transgender victims, facing hostility, discrimination; and, possibly, family pressures, may also be reluctant to come forward to report these crimes. These issues present a critical challenge for improving law enforcement response to hate violence.
15 FBI Director James B. Comey addressed this issue in an April 2014 speech to the Anti-Defamation League: “[W]e need to do a better job of tracking and reporting hate crime to fully understand what is happening in our communities and how to stop it. There are jurisdictions that fail to report hate crime statistics. Other jurisdictions claim there were no hate crimes in their community—a fact that would be welcome if true. We must continue to impress upon our state and local counterparts in every jurisdiction the need to track and report hate crime. It is not something we can ignore or sweep under the rug.” https://www.fbi.gov/news/speeches/the-abi-and-the-adl-working-toward-a-world-without-hate (accessed August 1, 2016).
vandalism, intimidation, assaults, and several murders at places of worship, schools, neighborhood centers, grocery stores, gas stations, restaurants, and homes. In 2000, out of 8,063 hate crime incidents reported to the FBI, 28 were motivated by an anti-Islamic bias. However, in 2001, that number jumped to 481 out of 9,730 total hate crime incidents. In addition, hate crimes committed because of the actual or perceived national origin of the victim increased from 911 in 2000 to 2,098 in 2001. Though the numbers of hate crime incidents motivated by an anti-Islamic or anti-Arab bias have diminished since 2001, the numbers remain significantly higher than they were before September 11.

In addition, members of South Asian communities remain frequent targets of hate violence. Over the past few years, there has been substantial evidence that these communities have been targeted for violence and vandalism because of their religious practices, appearance, and apparel—including distinctive beards, turbans, traditional forehead art, or head coverings. In response, civil rights and religious groups and members of Congress elevated their call for the FBI to collect data on Arab, Sikh, and Hindu victims of hate crimes. The FBI Hate Crime Statistics Act report including data collected in 2015 will be the first to include anti-Arab, anti-Sikh, and anti-Hindu hate crimes (and several other religious categories). The recently-updated FBI HCSA training manual includes a section called Special Considerations when Working with Victims from Arab, Hindu, Muslim, Sikh, and South Asian Communities.16

One by-product of the current national policy debate over immigration policy has been a sustained number of violent assaults and attacks against legal and illegal Hispanic immigrants, as well as Hispanic-American citizens, with crimes ranging from vandalism to brutal assaults and murders. Since 2000, the FBI has reported over 7,200 hate crimes directed at individuals on the basis of their Hispanic ethnicity. The level of violent attacks against Hispanic citizens, legal, and undocumented immigrants—and those perceived to be immigrants—over the past decade correlates closely with the debate over comprehensive immigration reform and an escalation in the level of anti-immigrant speech on radio, television, and the Internet.17 This has been exacerbated by the Syrian refugee crisis—and concerns about the possibility of the importation of terrorism from countries in the Middle East. The ADL has documented an increase in anti-immigrant speech and violent assaults committed against these individuals.18 It is important that law enforcement engage these communities and victims of hate crimes and let them know that they are entitled to full protection under the law, regardless of their immigration status.

The Internet provides extremists with an unprecedented ability to spread hate and recruit followers. Individual racists and organized hate groups now have the power to reach a global audience of millions and to communicate among like-minded individuals easily, cheaply, safely, and anonymously. Equally troubling, Internet users, particularly young people, have never been more exposed and vulnerable to the efforts of these extremists to influence, recruit, and intimidate. Moreover, there is significant evidence that the Internet is playing an increasing role in facilitating self-radicalization.

Although hate speech is offensive and hurtful, the First Amendment usually protects such expression. However, there is a growing trend to use the Internet to intimidate and harass individuals on the basis of their race, religion, sexual orientation, gender, gender identity, disability, or national origin. When speech contains a direct, credible threat against an identifiable individual, organization, or institution, it becomes criminal conduct. Regardless of the mode of delivery, hate speech containing criminal threats is not protected by the First Amendment. Existing federal and state hate crime laws make it illegal to target an individual for bias-motivated threats, intimidation, or harassment whether sent by mail, over the phone, or over the Internet.

Yet, hate crimes perpetrated over the Internet present a special challenge for investigators. The ease of sending Internet hate messages and threats across state lines can make perpetrators and victims difficult to identify and locate and creates special criminal jurisdictional issues. Criminal cases concerning hate speech on the Internet have, to date, been few in number. The Internet is vast and perpetrators of online hate crimes hide behind anonymous screen names, electronically garbled addresses, and websites that can be relocated and abandoned overnight.

It is imperative that law enforcement authorities keep pace with the vast changes brought on by this technology. Particularly important is the need to understand the


applicability of existing federal and state statutes to bias-motivated criminal acts committed over the Internet.

Law enforcement officials and prosecutors must respond appropriately to these hate-motivated criminal acts and be prepared to investigate these crimes under those laws.19

II. PROCEDURES

A. Initial Crime Scene Response

Law enforcement officers, investigators, and supervisors have important roles to play in response to hate incidents and crimes. By doing their jobs effectively and carefully, law enforcement officers can reinforce the message that hate crimes will be investigated promptly and aggressively, thus, enhancing the likelihood that the perpetrators will be apprehended and successfully prosecuted.

Many aspects of the initial law enforcement response to a suspected hate crime are like those in other crime response procedures. These include securing the crime scene, stabilizing the victim(s), requesting medical assistance if necessary, identifying witnesses and perpetrators, and similar requirements. However, there are some unique elements of these tasks that officers should be aware of in order to perform these and other preliminary tasks with maximum effectiveness. For example, because of the special nature and community impact of these crimes, the chief executive or his or her designee should be alerted when serious hate crimes occur.

For example, officers should recognize that a disproportionately high number of both hate crime perpetrators and victims are persons under the age of 21—and frequently these crimes are committed by youths acting in groups or gangs. Some of these may involve loose acquaintances of individuals while others may involve more formalized groups. These formalized gangs have been known to be heavily armed and should be considered dangerous.

Stabilizing hate crime scenes may also be more difficult where violence has been employed or the threat of violence has been made against individuals. Under these circumstances, victims, friends, neighbors, and sympathizers often have a tendency to congregate at the crime scene. Under these conditions, first responders should request supervisory assistance together with backup to be used in crowd control and related capacities. Tensions often run high in these situations, and talk or threats of retaliation or reprisals may be encountered. Protection of the crime scene and the safety of officers in these situations can be problematic without additional law enforcement personnel.

Officers should be particularly sensitive to the feelings and emotions of victims, as they typically suffer deep emotional distress and a sense of personal violation. The victims may fear for the safety of themselves and their families from renewed attacks or retaliation if they cooperate with law enforcement, or they may focus anger and hatred toward real or presumed perpetrators with the notion of seeking revenge.

These emotionally laden circumstances make the work of the first responder more difficult. The actions that these officers take can also have a lasting impact on the victims and the relationship of the law enforcement agency to the victim’s community. The assistance of supervisory personnel should be requested together with other resources such as translators, community relations officers, or victim advocacy workers. In some cases it may be best to assist the victim and his or her family by contacting a close family member or friend, social caseworker, or family clergyman to provide the support that he or she needs and to assist in gathering information.

Preservation and collection of evidence at the crime scene should be given high priority. If there are many individuals at the scene, the risks of interference with evidence collection or contamination of evidence is increased. The need to photograph and collect physical evidence is an immediate concern and may involve such items as hate literature, cans of spray paint, graffiti, threatening letters, and symbolic objects of hate groups such as swastikas or crosses. If the evidence cannot be physically carried away, for example in the case of graffiti, then the appropriate level of command should attempt to notify building property owners regarding the need for complete removal as soon as possible. The ADL has compiled a database to assist law enforcement with recognizing hate symbols and tattoos.20

The preliminary investigation should concentrate on developing any information concerning suspected perpetrators, identifying witnesses to include those who may no longer be at the crime scene, and establishing whether the victims received any threats prior to the occurrence or were previously the targets of any hate-related incidents and whether the neighborhood has experienced any hate incidents or crimes in the recent past. If a suspect or perpetrator made any statements to the victim(s), the exact wording should be recorded in as much detail as possible.

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For law enforcement officers, concern for victims of paramount importance when responding to crimes. For more information, officers should refer to the IACP Model Policy and Concepts and Issues Paper on Response to Victims. In particular to hate crimes, officers should not make assumptions about a victim’s culture, religion, sexual orientation, or lifestyle choices or allow personal values in these areas to affect their objectivity. Officers should also avoid the use of stereotyped or biased terms and criticism of the victim’s behavior.

Officers should ask the victims if they have any idea who the perpetrator(s) of the crime might be and if they have any idea why they were victimized. While a final determination of whether a crime is a bias crime can be made only by an informed and trained officer based on the totality of information gathered during the investigation, the perception of the victim is important.

Finally, initial responding officers should document the incident thoroughly on designated department report forms, noting any particular hate crime indicators. To evaluate a perpetrator’s motives, officers should consider the following signs of bias:

- perceptions of the victim(s) and witnesses about the crime;
- the perpetrator’s comments, gestures, or written statements that reflect bias, including graffiti or other symbols;
- any relevant differences between perpetrator and victim, whether actual or perceived by the perpetrator;
- similar incidents in the same location or neighborhood to determine whether a pattern exists;
- whether the victim was engaged in activities promoting his or her group or community, for example, by clothing or conduct;
- whether the incident coincided with a holiday or date of particular significance;
- involvement of organized hate groups or their members; and
- absence of any other motive for the crime, such as economic gain.

The presence of any of these factors does not confirm that the incident was a hate crime or incident but might indicate the need for further investigation into motive. It should be remembered that victims and perpetrators can appear to be from the same race, ethnicity, nationality, or religion, but it is the perpetrator’s perception of difference (whether accurate or not) motivating his or her criminal behavior that constitutes a hate crime.

B. Classification of Hate Crimes

Once a responding officer has completed his initial report and classified an incident as a suspected hate crime, the report should be forwarded to an investigative officer, immediate supervisor, or other “second judgment officer” who has received special training in classifying and dealing with hate crimes. Even in smaller agencies with limited resources, one individual should be specially assigned the responsibility for reviewing suspected hate crime incidents and making the final decision as to the existence or nonexistence of a bias motivation. This procedure is important for accurate statistical reporting of such incidents on the local, state, and national levels. Of equal if not greater importance, it is a critical means of accurately identifying the underlying reasons for these incidents so that they can be adequately addressed on enforcement and prosecutorial levels and perhaps prevented in the future.

As noted, it is often difficult to accurately identify hate-motivated crimes. Generally, no single factor is sufficient to make this determination. Rather, it is often the result of cumulative information that supports this finding. It is not enough, for example, to determine that the perpetrator was biased against the victim’s racial, religious, ethnic, sexual orientation, gender, gender identity, or disability group. A hate crime occurs only when the offender was motivated, in whole or in part, to act criminally on account of that bias. In sorting out the facts of a particular situation, an investigator may wish to seek answers to the following types of questions:

- Is the victim a member of a target racial, religious, ethnic or national origin, sexual orientation, gender, gender identity, or disability group?
- Were the offender and the victim of different racial, religious, ethnic or national origin, sexual orientation, gender, gender identity, or disability groups?
- Would the incident have taken place if the victim and offender were part of the same groups?
- Were biased oral comments, written statements, or gestures made by the offender that indicates his or her bias? (e.g., the offender shouted a racial epithet at the victim.)
- Were bias-related drawings, markings, symbols, or graffiti left at the crime scene? (e.g., a swastika was painted on the door of a synagogue.)
- Were certain objects, items, or things that indicate bias used (e.g., the offender wore a white sheet with a hood covering his face) or left behind by the offender (e.g., a burning cross was left in front of the victim’s residence)?
• Was the victim visiting a neighborhood where previous hate crimes had been committed against other members of his or her group and where tensions remain high against his group?
• Have similar incidents occurred in the same locality or at about the same time, and are the victims all of the same racial, religious, ethnic or national origin, sexual orientation, gender, gender identity, or disability group?
• Does a substantial portion of the community where the crime occurred perceive that the incident was motivated by hate?
• Was the victim engaged in activities or an event promoting his or her personal identity?
• Did the incident coincide with a holiday relating to, or a date of particular significance to a particular group (e.g., Martin Luther King, Jr. Day, Rosh Hashanah)?
• Was the offender previously involved in a similar hate crime or is he or she a member of a youth gang organized around shared personal characteristics?
• Were there indications that a hate group was involved? (For example, a hate group claimed responsibility for the crime or was active in the neighborhood.)
• Does a historically established animosity exist between the victim’s group and the offender’s group?
• Is this incident similar to other known and documented cases of bias, particularly in this area? Does it fit a similar modus operandi to these other incidents?
• Has the victim been previously involved in similar situations?
• Are there other explanations for the incident?
• Did the offender have some understanding of the impact his or her actions would have on the victim?

The investigating officer should ensure that continuous contact is maintained with the victim. Lack of information about case status can be one of the greatest sources of anxiety for victims. Those who have been subjected to hate crimes may be particularly sensitized to law enforcement’s response to their needs, both at the time of and immediately following the offense, as well as during the ongoing course of the investigation. Additionally, members of the victim’s racial, religious, national or ethnic origin, sexual orientation, gender, gender identity, or disability group are also keenly observant of law enforcement’s response to the victim and the crime. Law enforcement contact with community leaders among the victim’s community group, coupled with meetings with members of that group where necessary, can help to alleviate many potential fears and misgivings about the police response. It will also give the agency the opportunity to identify any other unreported incidents of a similar nature. Studies show that when citizens believe law enforcement will respond effectively to their problems, they are more likely to report crime.  

Finally, the investigating officer or other appropriate individual should coordinate the investigation with the agency’s intelligence function or, alternatively, their state and regional intelligence operation. This will be of particular assistance in linking the offense with any related activities of extremists and organized hate groups operating in the area.

The decision of law enforcement officials whether to classify a crime as a hate crime, and the separate decision of a local prosecutor whether or not to bring hate crime charges, can be complicated. The ADL and the Cook County, Illinois, State’s Attorney’s Office developed a Frequently Asked Questions document to address some of the basic legal and practical considerations involved in labeling and charging a hate crime.  

C. Data Collection and Reporting

Every agency should develop a standard system for collecting, analyzing, and reporting incidents of crime that are, in whole or in part, directed against individuals because of race, religion, ethnicity, gender, sexual orientation, gender identity, or disability.

Law enforcement investigations of hate crimes should seek to determine the primary elements of the incident and obtain the information necessary to complete the federal and state hate crime data collection requirements. The elements needed consist of the following:

- **Person(s) Targeted:** Name, address, telephone number, personal background, and other details.
- **Object Targeted:** Details on the type of premises, building, or institution against which the offense was committed. For instance, public property; private property; or premises primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, religion, sexual orientation, gender, gender identity, disability, or ethnicity.


• **How Targeted:** The way in which the person or property was attacked or damaged. For example, assaulted; put in fear of bodily violence; or by placing on public or private property a symbol, object, characterization, appellation, or graffiti that exposes another to threats of violence, contempt, or hatred on the basis of race, color, religion, ethnicity, sexual orientation, gender, gender identity, or disability.

• **Means of Attack:** The instrument, tool, device, or method by which the person or property was attacked or damaged.

• **Time and Date:** The time and date the offense was reported, as well as the time and date the offense took place.

• **Trademark:** The mode of operation or individual identifying characteristics of the bias incident that may serve to distinguish the offense from others committed in much the same fashion. This element is helpful in connecting a suspect if a series of incidents have occurred, and these investigative elements can be crucial in developing an operating pattern and in identifying participation of organized hate groups.

It is a best practice for every agency to submit monthly reports on all hate crime occurrences to the appropriate state crime analysis center or central repository—and to the FBI, in accordance with guidelines established pursuant to the HCSA. Further, agencies should make information, records, and statistics collected available to any appropriate local or state agency and to the public as quickly as possible, subject to all confidentiality requirements otherwise imposed by law.

**D. Prevention of Hate Crime Incidents**

As an organization with high visibility in the community, law enforcement agencies generally feel the brunt of collective frustrations and fears generated by these crimes. As such, there are a number of actions that should be taken to address these crimes and the community’s reaction to them and to help redirect community energies into constructive actions and strategies. Most of these measures are beyond the scope and purpose of this document. But, as examples, law enforcement agencies may want to consider the following:

• Establish a policy of zero tolerance for prejudice throughout the police department.

• Sponsor and participate in community events and activities that promote diversity, tolerance, bias reduction, and conflict resolution.

• Collaborate with community organizations, schools, and other public agencies to develop coordinated approaches to hate crime prevention and response.

• Engage the media as partners in restoring victimized communities and preventing bias-motivated incidents and crimes.

In addition, police agencies should not dismiss or diminish the significance of hate and bias symptoms within their communities. Organizations or loose confederations of individuals whose rhetoric or literature targets groups of individuals for discrimination and abuse can create an atmosphere that breeds more aggressive acts. Police and community indifference to hate-oriented groups and their doctrines of prejudice can inadvertently send the message that the community will not take a stand against them. In the twisted minds of perpetrators, it may even imply that their abhorrent behavior is condoned by other individuals or organizations within the community. Where hate-oriented speech, literature, symbols, and gatherings flourish unopposed, they can form the impetus for progressively more serious and illegal acts such as disturbing the peace, threats of violence, vandalism, assaults, violations of civil rights, arson, and even murder.

Working with victims and groups who share the personal characteristics of the victim in a constructive and professional manner to counter these threats is an important undertaking for individual police officers and the police agency as a whole. One cannot overemphasize the significance and impact of individual officers who initially respond to the scene of hate crimes and incidents and investigative officers who may conduct ongoing investigations of these incidents.

**Acknowledgment**

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Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory group to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors. This document is not intended to be a national standard.
RESOURCE GUIDE - ORGANIZATIONS

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN
1310 L Street NW
Suite 1000
Washington, DC 20005
(202) 785-7700
www.aauw.org

ANTI-DEFAMATION LEAGUE
National Office:
605 Third Avenue
New York, NY 10158
(212) 885-7700
www.adl.org

Washington Office:
1100 Connecticut Avenue NW
Suite 1020
Washington, DC 20036
(202) 261-4600

ASIAN AMERICANS ADVANCING JUSTICE
1620 L Street NW
Suite 1050
Washington, DC 20036
(202) 296-2300
www.advancingequality.org

HUMAN RIGHTS CAMPAIGN
1640 Rhode Island Avenue NW
Washington, DC 20036
Toll Free: (800) 777-4723
(202) 628-4160
www.hrc.org

LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS & THE LEADERSHIP CONFERENCE EDUCATION FUND
1620 L Street NW
Suite 1100
Washington, DC 20036
(202) 466-3311
www.civilrights.org

MATTHEW SHEPARD FOUNDATION
800 18th Street
Suite 101
Denver, CO 80202
(303) 830-7400
www.matthewshepard.org
SELECTED RESOURCES ON BIAS-MOTIVATED VIOLENCE AND COUNTERACTION

The Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act: Public Law 111-84, Division E
www.gpo.gov/fdsys/pkg/PLAW-111publ84/pdf/PLAW-111publ84.pdf

FEDERAL BUREAU OF INVESTIGATION

Hate Crime Statistics, 2014

Hate Crime Data Collection Guidelines and Training Manual

Director James B. Comey (speech, Anti-Defamation League National Leadership Summit, April 2014)

DEPARTMENT OF EDUCATION

Preventing Youth Hate Crime
www.ed.gov/pubs/HateCrime/start.html

DEPARTMENT OF EDUCATION/NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Protecting Students from Harassment and Hate Crime

DEPARTMENT OF JUSTICE

Launch of the Department of Justice Community Relations Service (CRS) Transgender Law Enforcement Training
www.justice.gov/iso/opa/dag/speeches/2014/dag-speech-140327.html and

Addressing Hate Crimes: Six Initiatives That Are Enhancing the Efforts of Criminal Justice Practitioners
www.ncjrs.gov/pdffiles1/bja/179559.pdf

Hate Crime Training: Core Curriculum for Patrol Officers, Detectives, and Command Officers

A Policymaker’s Guide to Hate Crimes
www.ncjrs.gov/pdffiles1/bja/162304.pdf

Hate Crime Victimization, 2004–2012 - Statistical Tables, February 2014
www.bjs.gov/content/pub/pdf/hcv0412st.pdf

Hate Crime in America: The Debate Continues
www.nij.gov/journals/257/hate-crime.html

Twenty Plus Things Law Enforcement Agencies Can Do to Prevent or Respond to Hate Incidents Against Arab-Americans, Muslims, and Sikhs
THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE

Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention
www.theiacp.org/Portals/0/documents/pdfs/HateCrimesBrochure.pdf

Hate Crime in America Summit Recommendations
www.theiacp.org/ViewResult?SearchID=140

NATIONAL DISTRICT ATTORNEYS ASSOCIATION

A Local Prosecutor’s Guide for Responding to Hate Crimes
www.ndaa.org/pdf/hate_crimes.pdf

ANTI-DEFAMATION LEAGUE

An Introduction to Hate Crime Laws

HCPA Coalition brief signed by 40 national organizations

Hate Crime Laws
www.adl.org/99hatecrime/intro.asp

Hate Crime Laws: Punishment to Fit the Crime

ADL 2014 Audit of Anti-Semitic Incidents

Scorecard on Hate Crime Response in the OSCE Region Too Many Countries Don’t Make the Grade
www.humanrightsfirst.org/sites/default/files/ADL-HRF-HateCrimes-Scorecard.pdf

HUMAN RIGHTS CAMPAIGN

A Guide to State-Level Advocacy Following Enactment of the Hate Crimes Prevention Act
www.hrc.org/resources/entry/a-guide-to-state-level-advocacy-following-enactment-of-the-matthew-she

LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

Confronting the New Faces of Hate: Hate Crimes in America 2009

ORGANIZATION OF CHINESE AMERICANS

PFLAG
Hate Crimes Prevention Guide & Toolkit
www.pflag.org/sites/default/files/Hate%20Crimes%20Guide%20%26%20Toolkit.pdf

NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS
Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2014

SOUTHERN POVERTY LAW CENTER
Ten Ways to Fight Hate: A Community Response Guide