

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> <b>California Laws That Prohibit Hate Crimes and/or Provide Enhanced Penalties for Specified Hate-related Acts</b></p>	<p><i>No.</i> 2023-DLE-04</p>	<p><i>Contact for information:</i> John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>
	<p><i>Date:</i> 06/26/2023</p>	

**TO: ALL DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES**

This bulletin is designed to ensure that state and local law enforcement officials across California have the necessary information and tools to continue to respond appropriately and swiftly to hate crime activity. Such events are damaging to the residents and communities we are entrusted to serve, particularly when they involve threats of violence.

Hate crimes are serious crimes that may result in imprisonment or jail time for offenders. The California Department of Justice provides this updated summary to local law enforcement agencies about the multiple California criminal laws that prohibit hate crimes and/or provide enhanced penalties for specified hate-related acts. This bulletin also briefly summarizes the Ralph Civil Rights Act and the Tom Bane Civil Rights Act, which provide civil remedies for certain hate crime activity in California. Further, this bulletin provides an overview of the statutory requirements for agency hate crimes policies and best practices for hate crimes investigations. Finally, this bulletin identifies experts in civil rights enforcement and hate crime investigation and prosecution at the California Department of Justice who are available to provide technical assistance in your effort to enforce these laws in your jurisdiction.

For more information about Hate Crime statistics and trends in California, please visit the California Attorney General’s OpenJustice website at <https://openjustice.doj.ca.gov/data>.

Thank you for your efforts to report hate crimes in your jurisdiction to DOJ, and all that you are doing to protect public safety.

**California Penal Code Sections on Hate Crimes**

California law recognizes that certain crimes are more serious where a victim is singled out because of their actual or perceived disability, gender, including gender identity and gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. These offenses are referred to as hate crimes, and can serve as a **stand-alone crime** under California Penal Code section 422.6, as an **aggravating factor** under section 422.7, or as an **enhancement** under section 422.75.

**§ 422.55 Definition of a Hate Crime** – Defines “hate crime” as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation; or because of the person’s association with a

person or group with one or more of these actual or perceived characteristics.

**§ 422.56 Relevant Hate Crime Terms** – Provides relevant statutory definitions, including that “gender” is defined as including “gender identity and gender expression;” “nationality” is defined as meaning “country of origin, immigration status, including citizenship, and national origin;” and “in whole or in part because of” is defined that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.

**§ 422.6 Threats and Vandalism to Interfere with Civil Rights** – Makes it a **stand-alone crime** to willfully injure, intimidate, interfere with, oppress, or threaten, by force or threat of force, another person’s free exercise or enjoyment of their civil rights (§ 422.6, subds. (a), (c)), or knowingly deface, damage, or destroy their property (§ 422.6, subd. (b)), because of that person’s actual or perceived protected characteristic(s).

To prove interference with another’s civil rights *by force* (§ 422.6, subd. (a)), a prosecutor must establish the following **elements**:

1. The defendant, *by force*, injured, intimidated, interfered with, oppressed, or threatened another person in the free exercise or enjoyment of any legally protected right or privilege.
2. The defendant did so in whole or in part because of the other person’s actual or perceived protected characteristic(s), or because of the other person’s association with a person or group having one or more of these characteristics.
3. The defendant did so with the specific intent to deprive the other person of the free exercise or enjoyment of the legally protected right or privilege.

To prove interference with another’s civil rights *by threat of force* (§ 422.6, subds. (a), (c)), a prosecutor must establish the following **elements**:

1. The defendant, *by threat of force*, injured, intimidated, interfered with, oppressed, or threatened another person in the free exercise or enjoyment of any legally protected right or privilege.
2. The threat of force, if consisting of speech alone, threatened violence against a specific person or group.
3. The defendant had the apparent ability to carry out the threat (the threat must be one that would reasonably tend to induce fear in the alleged victim).
4. The defendant did so in whole or in part because of the other person’s actual or perceived protected characteristic(s), or because of the other person’s association with a person or group having one or more of these characteristics.

5. The defendant did so with the specific intent to deprive the other person of the free exercise or enjoyment of the legally protected right or privilege.

To prove interference with another's civil rights *by defacing, damaging, or destroying their property* (§ 422.6, subd. (b)), a prosecutor must establish the following **elements**:

1. The defendant knowingly defaced, damaged, or destroyed another person's real or personal property.
2. The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s), or because of the other person's association with a person or group having one or more of these characteristics.
3. The defendant did so with the specific intent to intimidate or interfere with the other person's free exercise or enjoyment of a legally protected right or privilege.

A conviction under section 422.6 is a **misdemeanor** that can be punished by up to a year in county jail and/or up to a \$5,000 fine, and up to 400 hours of community service. (Pen. Code, § 422.6, subd. (c).)

**§§ 422.7 and 422.75 Allegations to Elevate Misdemeanors to a Wobbler** – Provide that if a person commits a crime and is motivated in part by the fact that the victim has one or more of the protected characteristics in section 422.55, the criminal offense will be considered a “hate crime.”

**§ 422.7 (penalty enhancement)** – If the defendant is convicted of a misdemeanor that was motivated by bias, the prosecution may use this in aggravation and seek an enhanced punishment beyond those imposed for misdemeanors. The penalty enhancement shall be charged in the accusatory pleading, and may not be used in the case of a person being punished under Penal Code section 422.6. (Felony wobbler: 16 months, or two or three years in county jail and/or fine up to \$10,000; or one year in jail.)

A prosecutor must establish the following **elements**:

1. The defendant committed the underlying crime intending to interfere with another person's legally protected right or privilege.
2. The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s).
3. The defendant either:
  - i. caused physical injury or had the ability at that time to cause a violent injury; OR
  - ii. caused property damage in excess of \$950; OR
  - iii. has been convicted *previously* under section 422.6, subdivision (a) or (b); OR
  - iv. has been convicted *previously* of a conspiracy to commit a crime described in section 422.6, subdivision (a) or (b).

**§ 422.75 (felony enhancement)** – Provides for an enhanced sentence for any felony if the prosecutor can

establish that it was committed as a hate crime.

A prosecutor must establish the following **element**:

1. The defendant committed the underlying crime in whole or in part because of the alleged victim's actual or perceived protected characteristic(s), or association with a person or group having one or more of these actual or perceived characteristics.

A felony hate crime sentence enhancement can add an additional one, two, or three years in state prison on top of any other sentence the defendant receives for the underlying felony. (§ 422.75, subd. (a).) If convicted of acting in concert with another person to commit the felony hate crime, the felony hate crime sentence enhancement increases to two, three, or four years in prison. (§ 422.75, subd. (b).) If convicted of committing a felony hate crime while using a firearm, the court may lengthen the sentence at its discretion. (§ 422.75, subd. (c).) Prior felony hate crime convictions can add an additional one year in state prison for each prior conviction. (§ 422.75, subd. (d).)

### **Additional Crimes and Enhancements that Fall within the Hate Crimes Umbrella**

In addition to sections 422.7 and 422.75, other hate crime-related statutes prohibit or provide enhanced penalties for specified hate-related acts.

**§ 190.2, subd. (a)(16) Special Circumstances** – Provides a death penalty or sentence of life in prison without possibility of parole for first-degree murder motivated by a victim's race, color, religion, nationality, or country of origin. A prosecutor must establish that the defendant intended to kill because of the deceased person's real or perceived protected characteristic(s).

**§ 190.03, subds. (a), (c) Relevant Factors for Determination of Penalty** – Provides for life in prison without possibility of parole for first-degree murder motivated by a victim's actual or perceived protected characteristic(s). The prosecutor must prove the defendant committed the murder, in whole or in part, because of the deceased person's actual or perceived protected characteristic(s).

**§ 302 Disturbing Religious Meetings** – Establishes that it is a misdemeanor to intentionally disturb a group of people who have met to worship, whether such disturbance occurs within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting. (Penalty: up to one year in county jail and/or up to a \$1,000 fine.)

**§ 594.3, subd. (b) Vandalism of a Place of Worship** – Provides that it is a felony to knowingly vandalize a place of worship or a cemetery as a hate crime. (Penalty: 16 months, or two or three years in county jail.)

**§ 1170.8 – Place of Worship Aggravating Circumstance** – Provides as an aggravating factor the fact that a robbery, arson, or assault with a deadly weapon or by means of any force likely to produce great bodily injury was committed upon a place of worship, or against a person while that person was within a place of worship.

**§ 1170.85, subd. (b) Particularly Vulnerable Victim Aggravating Circumstance** – Provides that age or

disability of a victim may be considered circumstances in aggravation if those characteristics render the victim particularly vulnerable or unable to defend himself or herself.

**§ 11411, subs. (b), (c) Terrorizing Private Property, Property of School, or Public Place** – Subdivision (b) provides that it is a felony or misdemeanor to hang a noose, knowing it to be a symbol representing a threat to life, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing them, or to hang a noose, knowing it to be a symbol representing a threat to life, on the property of a school, college campus, public place, place of worship, cemetery, or place of employment, for the purpose of terrorizing any person who attends or works at, or is otherwise associated with, the school, college campus, public place, place of worship, cemetery, or place of employment. Subdivision (c) provides that it is a felony or misdemeanor to place or display a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing them, or who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the property of a school, college campus, public place, place of worship, cemetery, or place of employment, for the purpose of terrorizing a person who attends, works at, or is otherwise associated with the school, college campus, public place, place of worship, cemetery, or place of employment. (Felony wobbler: 16 months, or two or three years in county jail, and/or a fine up to \$10,000, or up to one year in jail and/or a fine of up to \$5,000, with increased fine for subsequent convictions.)

A prosecutor must establish the following **elements**:

1. The defendant placed or displayed a sign, mark, symbol, emblem, or physical impression on the private property of another person, or on the property of a school, college campus, public place, place of worship, cemetery, or place of employment.
2. The defendant did not have authorization to place or display that sign, mark, symbol, emblem, or physical impression on the property.
3. The defendant intended to terrorize the owner or occupant of the property (or acted with reckless disregard of the risk of terrorizing the owner or occupant of the property) or intended to terrorize a person who attends, works at, or is otherwise associated with the school, college campus, public place, place of worship, cemetery, or place of employment.

**§ 11411, subd. (d) Desecration of a Religious Symbol** – Provides that any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of terrorizing the owner or occupant or in reckless disregard of terrorizing them, or who burns, desecrates or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a school, college campus, public place, place of worship, cemetery, or place of employment for the purpose of terrorizing any person who attends, works at, or is otherwise associated with the school, college campus, public place, place of worship, cemetery, or place of employment shall be guilty of a felony or misdemeanor. (Felony wobbler: 16 months, or two or three years in county jail, and/or up to a \$10,000 fine; or one year in jail and/or up to a \$5,000 fine, as well as increased fines for subsequent convictions.)

A prosecutor must establish the following **elements**:

1. The defendant burned or desecrated a religious symbol on the private property of another; OR on the property of a school, college campus, public place, place of worship, cemetery, or place of employment.
2. The defendant knew the object that they burned or desecrated was a religious symbol.
3. The defendant did not have authorization to burn or desecrate the religious symbol on the property.
4. The defendant intended (or acted with reckless disregard) to terrorize the owner or occupant of the property; OR intended to terrorize someone who attends, works at, or is associated with the school, college campus, public place, place of worship, cemetery, or place of employment.

**§ 11412 Religious Terrorism** – Provides that it is a felony to attempt to discourage religious activities by threats of violence. (Penalty: 16 months, or two or three years in state prison.)

A prosecutor must establish the following **elements**:

1. The defendant caused or attempted to cause a person to refrain from exercising their religion (OR refrain from engaging in a religious service) by threatening injury upon any person or property.
2. The defendant directly communicated the threat to that person.
3. The person reasonably believed the threat could be carried out.
4. At the time the defendant made the threat, the defendant intended to cause the person to refrain from exercising their religion (OR refrain from engaging in a religious service).

**§ 11413, subs. (a), (b)(2), (b)(9) Religious Terrorism by Destructive Device** – Provides that it is a felony to explode, ignite, or attempt to explode or ignite any destructive device or any explosive in or about, or to set on fire, a place of worship or any private property if the property was targeted because of the protected characteristic(s) of the owner or occupant of the property and the purpose was to terrorize another or was in reckless disregard of terrorizing another. (Penalty: three, five, or seven years in county jail, and a fine of up to \$10,000.)

A prosecutor must establish the following **elements**:

1. The defendant exploded or ignited (or attempted to explode or ignite) a destructive device or explosive, or committed arson, in or about a place of worship or private property.

2. The defendant committed the act with the intent to terrorize or with reckless disregard of terrorizing someone else.

### **Miscellaneous Penal Code Provisions Relating to Hate Crimes**

**§ 136.2 Protective Orders** – Provides protection against further harm. Once criminal charges are filed under any criminal statute, hate crimes victims have the right to a court order prohibiting any additional harassment during the pendency of the criminal proceeding.

**§ 422.87 Law Enforcement Agency Hate Crimes Policy** – Requires any local law enforcement agency that updates an existing hate crime policy, or adopts a new hate crime policy, to include, among other things, the content of the model policy framework developed by the Commission on Peace Officer Standards and Training (POST), information regarding bias motivation, a requirement that all officers be familiar with and carry out the hate crime policy, and information regarding the general underreporting of hate crimes, as well as a plan to remedy this underreporting.

**§ 13519.6 POST Hate Crimes Policy Guidelines** – Requires POST to develop guidelines and training, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, academic experts, and the California Department of Justice, addressing hate crimes. The guidelines must include a model policy framework that all state law enforcement agencies must adopt and that the commission shall encourage all local law enforcement agencies to adopt. Requires each peace officer to complete the training course within one year of it being made available, and must then be taken by in-service peace officers every six years.

**§ 422.92 Law Enforcement Agency Hate Crimes Brochure** – Requires every state and local law enforcement agency to make available a brochure on hate crimes to victims of these crimes and the public. In complying with this requirement, local law enforcement agencies may utilize the California Department of Justice’s standardized brochure, which is available at <https://oag.ca.gov/hatecrimes> in fourteen languages, and which allows for agencies to insert their own seal or graphic.

**§ 422.94 Hate Crimes Vertical Prosecution Pilot Grant Program** – Requires the California Department of Justice to award grants to prosecutorial agencies for the purpose of creating, supporting, or expanding vertical prosecution units for the prosecution of hate crimes, meaning having the same individual prosecutor assigned to a case from the initial criminal investigation through the sentencing of the offender. These units shall be primarily focused on better serving hate crime victims and achieving just, equitable, and appropriate resolutions to hate crime cases.

**§ 1547, subs. (a)(12) & (13) Possible Reward for Hate Crime Information** – Authorizes the Governor to offer a reward for information leading to the arrest and conviction of any person who has committed certain hate crimes.

**§ 3053.4 Parole Conditions** – Requires that as a condition of parole following a hate crime sentence, defendant must refrain from further acts of violence, threats, stalking, or harassment of the victim or victim’s family. “Stay away” conditions may also be imposed (additional requirement that you maintain a certain physical distance from victim).

**§ 11410 Unprotected Activity Under the California Constitution** – States that the urging of violence where death or great bodily injury is likely to result in conduct is not protected by the California Constitution; in this section the Legislature finds and declares that it is the right of every person, regardless of actual or perceived race or ethnicity, religion, gender, gender identity, gender expression, nationality, disability, sexual orientation, or association with a person or group with these actual or perceived characteristics, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

**§ 13023 Reporting to the Attorney General** – Subject to funding, requires the Attorney General to direct local law enforcement agencies to report to the California Department of Justice information relative to hate crimes, and local law enforcement agencies must post the information they report to the California Department of Justice on their internet websites on a monthly basis.

**§ 13519.41 POST Hate Crimes Training** – Requires POST to develop and implement a course of training for law enforcement officers and dispatchers regarding sexual orientation and gender identity minority groups in the state.

### **California Ralph Civil Rights Act and the Tom Bane Civil Rights Act**

The Ralph Civil Rights Act, Civil Code section 51.7, provides that it is the right of every person in California to be free from violence or the threat of violence against their person or property because of their actual or perceived sex, race, color, ancestry, national origin, religion, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, political affiliation, or position in a labor dispute. These listed characteristics are merely examples, and other bases for a discrimination claim exist under the Act. The Tom Bane Civil Rights Act, Civil Code section 52.1, provides protection against interference or attempts to interfere by threat, intimidation, or coercion with a person's exercise or enjoyment of any constitutional or statutory rights. Remedies for violations of the Ralph Civil Rights Act or the Tom Bane Civil Rights Act include restraining orders, injunctive relief, equitable relief to secure constitutional and statutory rights, actual damages, exemplary or punitive damages, a civil penalty of \$25,000, and attorney's fees. An action may be brought by the Attorney General, or any district attorney or city attorney, or by the individual harmed.

### **Statutory Requirements for Department Hate Crimes Policies and Investigative Best Practices**

As discussed above, pursuant to Penal Code sections 13519.6 and 422.87, all state law enforcement agencies must adopt a hate crimes policy, and all local law enforcement agencies that choose to adopt or update a hate crimes policy must include certain statutory elements.<sup>1</sup> The statutes require POST to create a

---

<sup>1</sup> The "Khalid Jabara and Heather Heyer National Opposition to Hate, Assault, and Threats to Equality Act of 2021" (part of the larger "COVID-19 Hate Crimes Act," Senate Bill 937, and known as the "Jabara-Heyer NO HATE Act") directs the U.S. Attorney General to create grants for state and local agencies to fund the creation of hate crime policies, the development of a standardized system of collecting, analyzing, and reporting the incidence of hate crimes, the establishment a unit specialized in identifying, investigating, and reporting hate crimes, trainings for agency personnel, and the engagement in community relations functions related to hate crime prevention and education. 34 U.S.C. § 30507(f)(2).

model policy including the required statutory elements.<sup>2</sup>

## **Statutory Requirements**

### Penal Code § 13519.6

Penal Code section 13519.6 sets out the required elements for a hate crimes policy for state law enforcement agencies and encourages local law enforcement agencies to adopt such policies. This includes, but it is not limited to, the following general elements: (1) a message from the law enforcement agency's chief executive officer concerning the importance of hate crime laws and the agency's commitment to enforcement; (2) the definition of "hate crime" in section 422.55; and (3) references to hate crime statutes including section 422.6.

The statute also sets out a title-by-title specific protocol that agency personnel are required to follow. This includes, but is not limited to, the following specific elements: (A) preventing and preparing for likely hate crimes by contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks; (B) responding to reports of hate crimes; (C) accessing assistance, including activating the Department of Justice hate crime rapid response protocol when necessary;<sup>3</sup> (D) providing victim assistance and follow-up, including community follow-up; and (E) reporting.

### Penal Code § 422.87

Penal Code section 422.87 expands upon the requirements of section 13519.6. It requires that any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy shall include certain specific elements. Some of these are duplicative of the requirements above, but include further specific requirements.

A new or updated agency policy must include specific definitions and information, including the definitions in sections 422.55 and 422.56 and the content of the POST model policy framework developed pursuant to section 13519.6.

The policy must also include information regarding bias motivation, which is defined as "a preexisting negative attitude toward actual or perceived characteristics referenced in section 422.55." Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, discriminatory selection of victims, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.

---

<sup>2</sup> The POST Hate Crimes Model Policy provides a detailed overview of policy purposes, the full model policy, and sample forms. It can be found at [https://post.ca.gov/Portals/0/post\\_docs/publications/Hate\\_Crimes.pdf](https://post.ca.gov/Portals/0/post_docs/publications/Hate_Crimes.pdf).

<sup>3</sup> For information see the California Department of Justice webpage or use the following link: <https://oag.ca.gov/system/files/media/ag-rapid-response-team-protocol-21.pdf>.

The statute specifically addresses the situation of suspected disability-bias hate crimes. The policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator’s motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

The statute also specifically addresses the situation of suspected religious-bias hate crimes. The policy shall advise officers to consider whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion or articles considered of spiritual significance to a particular religion.

Examples of religions and such symbols and articles include, but are not limited to: (i) in Buddhism, statues of the Buddha; (ii) in Christianity, crosses; (iii) in Hinduism, forehead markings, known as bindis and tilaks, Aum/Om symbols, and images of deities known as murtis; (iv) in Islam, hijabs; (v) in Judaism, Stars of David, menorahs, and yarmulke; (vi) in Sikhism, turbans, head coverings, and unshorn hair, including beards.

The policy must include information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes and a plan for the agency to remedy this underreporting, including a protocol for reporting suspected hate crimes to the Department of Justice pursuant to section 13023.

The agency must include a checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving the victims and any interested persons the agency’s hate crimes brochure, as required by Penal Code section 422.92.

The policy must include a specific procedure for transmitting the policy and related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed. Additionally, all officers must be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency.

Finally, the policy must include the title or titles of the officer or officers responsible for ensuring that the department has a hate crime brochure as required by Penal Code section 422.92 and ensuring that all

officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.

### **Investigative Best Practices**

The Penal Code requires POST to create a model hate crimes policy, which, along with other model policies including from the International Association of Chiefs of Police, provide examples of agency best practices for investigating potential hate or bias crimes. The below is a summary of best practices from these model policies for successful law enforcement agency work on suspected hate or bias crimes.

#### Initial response

The success of an agency's initial response to a suspected hate crime depends on officers evaluating the need for additional assistance, ensuring the crime scene is properly protected, preserved and processed, and providing support and information to victims.

Officers arriving at the scene of a suspected hate or bias crime should:

- Secure the crime scene and ensure the safety of victim(s), witnesses, and suspected perpetrator(s).
- Stabilize the victim(s) and request medical attention if needed.
- Ensure that the crime scene is properly protected, preserved, and processed, such that the nature and evidence is thoroughly documented. Collect and photograph physical evidence or indicators of hate crimes such as: hate literature, offensive graffiti, spray paint cans, threatening letters, symbols used by hate groups, other bias symbols. Only after complete documentation of the scene, so as to support future hate crime prosecution, should any physical evidence of the incident be removed. Evidence of an inflammatory nature that cannot be physically removed should be covered up and then removed when possible.
- Notify other appropriate personnel in the chain of command, including the supervisor on duty, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- Identify and photograph criminal evidence on the victim(s).
- Request the assistance of translators or interpreters when needed to establish effective communication with the victim(s) and witnesses.
- Conduct a preliminary investigation, recording information on the identity of the victim(s), the suspected perpetrator(s), and witnesses, as well as prior occurrences in the area or with the victim(s) or others who share protected characteristic(s) with the victim(s) or other protected characteristic(s).
- Ensure that the victim(s) receive an offer of victim confidentiality per Government Code section 7923.615, subd. (b)(1).
- Record statements made by suspected perpetrator(s) (exact wording is critical), as well as their gestures and any physical markings such as tattoos that could indicate a bias motivation.
- Consider assigning one officer with specialized training to interview and help victim(s) in

order to minimize trauma.

- Investigate whether bias was a motivation “in whole or in part” in the commission of the crime, pursuant to the definition of “bias motivation” in Penal Code section 422.56, discussed in detail above.
- Pursuant to Penal Code section 422.92, provide the agency’s Hate Crimes Brochure.
- Use proper techniques for interviewing people with disabilities and being aware of and providing appropriate accommodations (such as ADA standards, Braille, visuals, translators for the deaf or hard of hearing, etc.).
- Explaining the likely sequence of events to the victim(s), including contact with investigators, prosecutors, and the media.<sup>4</sup>
- Referring victim(s) to support and outreach services in the community.
- Giving victim(s) the best possible contact information for those handling the law enforcement investigation so that they are able obtain further information as the case develops.
- If necessary, and if the incident qualifies as a triggering event, contact the California Department of Justice and seek to have the Attorney General invoke the Department’s Hate Crime Rapid Response Protocol to provide aid to your jurisdiction.

### Investigation

Investigators at the scene of or while performing follow-up investigation on a suspected hate or bias crimes are a critical next step in a successful investigation. Best practices for continued investigation include the following elements:

- Consider typologies of perpetrators of hate crimes and incidents, including but not limited to thrill, reactive/defensive, and mission (hard core).
- Use investigative techniques and methods to handle hate crimes or hate incidents in a professional manner.
- Fully investigate any report of hate crime committed under the color of authority pursuant to Penal Code sections 422.6 and 13519.6.
- Provide victim assistance and follow-up.
- Canvass the area for additional witnesses, making use of bilingual officers or translators where necessary based on primary language(s) of individuals in the relevant geographic area.
- Document the circumstances and apparent motives surrounding the event.
- Review other law enforcement records and reach out to local non-law enforcement officials and organizations to find out if other bias motivated incidents have occurred in that area.
- Identify if the victim(s) engaged in activities that advocated for a certain racial, religious, ethnic/national, sexual orientation, gender group, or other issue.
- Determine whether the incident coincided with a holiday that could be linked to a bias motivation, such as a religious holiday or commemoration of a previous event or

---

<sup>4</sup> For further information regarding state and federal laws protecting immigrant victims of crime, refer to Law Enforcement Bulletin No. 2020-DLE-01, available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/info\\_bulletins/2020-dle-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2020-dle-01.pdf).

individual's death or birth.

- Determine if the suspected perpetrator(s) were previously involved with a bias crime or organized hate group.
- Examine suspected perpetrator(s) social media activity for potential evidence of bias motivation.
- Seek search warrants to examine contents of the suspected perpetrator(s) computer hard drive (if applicable) in order to determine if they are involved with hate groups.
- Appeal to witnesses to come forward with any information regarding the incident.
- Consider offering rewards for information leading to the capture and arrest of suspected perpetrator(s).
- Coordinate the investigation with agency, state, and regional intelligence operations. These sources can provide the investigating officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
- Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and/or hate incidents, and determine if organized hate groups are involved.

### Services for Victims of Hate Crimes

In addition to the victim-facing protocols discussed above, agencies should consider providing the following support and services for victims of hate crimes or incidents:

- Allow the victim(s) to express the intense feelings aroused by the hate crime or incident at the scene and during any follow-up investigation.
- Provide information to the victim(s) concerning the investigation and prosecution of their case, both about their case in particular and the system in general.
- Provide the victim(s) with a Marsy's Law card detailing their rights as a victim of crime.<sup>5</sup> Under Marsy's Law, California Constitution Article I, § 28, Section (b), every victim of crime has the right to receive a Marsy's Law card, setting forth their rights as a victim of crime. Encourage victim(s) to seek out more information about these rights through the local systems-based victim services agency for further follow-up and next steps in the criminal justice process.
- If available, request the assistance of a systems-based or community-based victim advocate. Certain victim advocates provide on-scene response to provide victims in-crisis with warm support, advocacy, crisis intervention, resources, and accompaniment during the initial crime scene response including the entire criminal justice process. Most system and community-based victim advocates function under the direction of the local District Attorney's Office, Law Enforcement Agencies, Probation Department, and in few instances under local non-profit agencies.
- Provide referrals for cross-cultural counseling for victims of hate crimes. Consider partnering with community organizations to provide such resources.
- Recognize the bias-motivated crime for the serious crime it is to the victim(s).
- Address the crisis of victimization as well as confront the obvious hate and prejudice

---

<sup>5</sup> The Attorney General's Marsy's Law card is available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/marsy\\_pocket\\_en\\_res.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/victimservices/marsy_pocket_en_res.pdf).

exhibited in the crime.

- Assist the victim(s) in completing and filing an application to the state's victim compensation fund, if applicable.

### Training

All staff, including dispatch, desk personnel, volunteers, records, support staff, officers, supervisors, and managers should be properly trained on the department's hate crimes policy. The agency should follow all legislatively mandated training requirements.

Pursuant to Penal Code section 13519.6, POST offers training and video courses to assist law enforcement in the identification, investigation, documentation, and reporting of hate crimes.<sup>6</sup> Trainers may also use other state and federal agencies that offer training courses, such as the U.S. Department of Justice, or community groups with expertise in hate crimes response.<sup>7</sup> The California Department of Justice lists hate crimes education and training resources on its website.<sup>8</sup>

### Reporting

Data collection, documentation, and reporting are critical to an agency's response to hate crimes. Best practices for reporting include the following:

- Ensure that hate crimes are properly investigated, documented, and reported to the California Department of Justice, pursuant to Penal Code section 13023, so that they may be reported by the State to the federal government.<sup>9</sup>
- When documenting incidents, ensure hate crimes are clearly flagged to allow for required reporting. This can be indicated by the title/penal code section identifying the report as a hate crime.
- The agency head or their designee should make a final determination as to whether the incident should be classified as a hate crime by the agency.
- Agencies shall develop procedures to preserve hate crime reports, ensure timely communication of crimes to prosecutors' offices, and comply with legally mandated reporting.

---

6 For more information on POST training opportunities and available videos, visit the POST website at [www.post.ca.gov](http://www.post.ca.gov).

7 The current list of resources available from the U.S. Attorney General is available at <https://www.justice.gov/hatecrimes/resources>. In California, the Museum of Tolerance, for example, provides law enforcement agency training regarding responding to hate crimes, with information available at <https://www.museumoftolerance.com/for-professionals/programs-workshops/tools-for-tolerance-for-law-enforcement-and-criminal-justice/hate-crimes/hate-crimes-courses-for-ca-agencies/>.

8 The current list of resources is available at <https://oag.ca.gov/civil/preveduc>.

9 See 34 U.S.C. § 41305 ("Hate Crime Statistics Act" gives the U.S. Attorney General authority to collect hate crime statistics but does not explicitly require reporting by state and local agencies).

### **Contact Information**

The California Department of Justice takes great pride in assisting local law enforcement agencies in enforcing criminal and civil rights laws and protections. Should your agency or individual officers require technical assistance, please contact Division of Law Enforcement Chief John Marsh at (916) 210-6300 or Senior Assistant Attorney General Michael Newman in the Department's Civil Rights Enforcement Section at [Michael.Newman@doj.ca.gov](mailto:Michael.Newman@doj.ca.gov) or (213) 269-6280.