



UCPD Training

University of California Police Department, Berkeley

UCPD TRAINING BULLETIN #2017-002

HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS

August 22, 2017

PURPOSE

Please review this bulletin for information on the issue of hate crimes and hate incidents, and our department goals about handling these types of situations. Included within is guidance to help you identify reportable hate crimes and incidents, advice on interacting with victims of hate crimes, and resources that might be helpful with investigation and outreach. This bulletin updates previous versions, and is issued in accordance with UCPD General Order O-13. It is based on relevant law and policy, information provided by the U.S. Department of Justice Bureau of Justice Statistics, the Anti-Defamation League, the Federal Bureau of Investigation, and other training resources.

OVERVIEW

The University is well known for its diversity, which is a source of pride, and at times conflict, within the Berkeley community. While UC Berkeley is committed to creating an environment of civility and tolerance, it is important to recognize that individuals within our community do experience intolerance and crime based on their perceived or real identity/associations, particularly during periods of heightened sensitivity.

According to a recent U.S. Department of Justice Special Report on Hate Crime Victimization, which included data from the Bureau of Justice Statistics (BJS) National Crime Victimization Survey, there was an average of 250,000 hate crime incidents reported each year between 2004 and 2015 – yet a majority of the incidents were not reported to police. Between 2011 and 2015, 54 percent of hate crime incidents were instead handled privately or through a non-law enforcement entity (e.g. apartment manager or school official).¹

The Matthew Shepard Foundation, an advocacy organization based in Colorado, has recently tried to better understand why hate crimes go unreported. Some of the anonymous responses from an initial test pilot survey may offer a glimpse into why victims decide whether or not to report: confusion about the definition of hate crimes; victims thinking they will not be believed or taken seriously; skepticism about whether law enforcement will actively investigate; and fear of retaliation.²

UCPD recognizes our role in the proper response to bias-related incidents is a high priority. An ongoing conflict between different communities needs to be identified and handled with proper care both to reassure the victims and to help alleviate community tensions and fear. Our

¹ [Bureau of Justice Statistics \(BJS\) National Crime Victimization Survey \(NCVS\) Special Report, June 2017.](#)

² <http://www.businessinsider.com/why-people-dont-report-hate-incidents-2017-8>



HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS

effective response with appropriate sensitivity is essential to prevent erosion of public trust. Failure to do so can unnecessarily put our officers, the department or the University in the center of conflict. We must assure the campus community that hateful acts will not be tolerated while still protecting free speech and the rights of all persons.

DEFINITIONS

Hate Crime – A criminal act or attempted criminal act by a person or group of persons, directed against an individual, group of persons or property of another individual or group, where the perpetrator intentionally selects the victim because of the victim’s actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, or because of the victim’s association with a person or group with one or more of these actual or perceived characteristics.³

California Penal Code 422.55. For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

- (a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
 - (1) Disability.
 - (2) Gender.
 - (3) Nationality.
 - (4) Race or ethnicity.
 - (5) Religion.
 - (6) Sexual orientation.
 - (7) Association with a person or group with one or more of these actual or perceived characteristics.
- (b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.



Examples of Hate Crimes include:

- Acts that result in injury, no matter how slight the injury appears.
- Threats of violence that look like they can be carried out.
- Vandalism and other destructive acts, resulting in property damage.
- Any criminal act or attempted criminal act, including property damage, directed against public or private agencies.

³ California Hate Crime (And Related Laws), ADL pamphlet, Revised 2012

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

- Harassment, including anonymous telephone calls, threatening letters, and interruptions of religious services.
- Threats made verbally, in writing, and by means of electronic communication devices which can apparently be carried out. (Electronic communication device includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers.)
- Murder.

Hate Incident – (1) Non-criminal conduct that is motivated by hatred or bigotry and directed at an individual, group of persons, house of worship, institution or business; because of the victim's actual or perceived nationality, race or ethnicity, religion, sexual orientation, or because of the victim's association with a person or group with one or more of these actual or perceived characteristics. This may include hate speech (including the Internet), display of offensive materials on one's own property, or distribution or posting of hate literature that does not result in property damage; (2) Criminal conduct which may be motivated by bias but does not meet the burden of the criminal statute.⁴

Examples of Hate Incidents include:

- Epithets.
- Distribution of hate material in public places.
- Posting of hate material that does not result in property damage.
- The display of offensive material on one's own property.

FREQUENCY OF HATE CRIMES REPORTED

Persons in the United States and around the world are harassed, assaulted, and even killed simply because of their beliefs, their race, ancestry, national origin, sex, gender identity, sexual orientation, or disability. In 2015, there were 5,850 (as compared with 5,479 in 2014) hate crime events reported to the FBI by law enforcement agencies. California agencies reported 837 hate crime events that year – more than any other state, accounting for approximately 14% of events reported nationwide⁵.

Hate crimes and incidents reported to UCPD between July 1, 2016 and June 30, 2017, include for example:

#16-02009: Tuesday, September 6, 2016

Rules Violation – Hate Incident via chalking of anti-homosexual epithets, Sproul Plaza (Refer to related case #16-01961).

#17-00095: Monday, January 16, 2017

Suspicious Circumstance – Hate Incident involving anti-Semitic and anti-homosexual flyers received on campus network printers and fax machines, multiple locations (Refer to possible related cases #17-00100, #16-00674 and 16-01678).

#17-00272: Wednesday, February 1, 2017

422.6 (A) PC – Battery via spit and Hate Crime involving derogatory epithets directed at victim regarding physical abilities, sexual orientation and race, occurred between the area of Sather Gate and Le Conte Hall.

⁴ Ibid.

⁵ *FBI Hate Crime Statistics, 2015*: <https://ucr.fbi.gov/hate-crime/2015/>



HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS

#17-00327: Tuesday, February 7, 2017

594(b)(2)(A) PC –Vandalism via hate-related graffiti depicting a swastika, Upper Hearst Parking Structure.

#17-00874: Saturday, March 25, 2017

653(M)(A) PC – Annoying/threatening messages involving the use of racial epithets, via email.

Reported hate crime events by bias motivation, as of 2015:

| | United States | California | Alameda County ⁶ | UCPD Berkeley |
|-----------------------------|---------------|------------|-----------------------------|---------------|
| Race / Ethnicity / Ancestry | 3,310 | 427 | 16 | 0 |
| Religion | 1,244 | 191 | 16 | 2 |
| Sexual Orientation | 1,053 | 188 | 10 | 0 |
| Disability | 74 | 4 | 0 | 0 |
| Gender | 23 | 1 | 0 | 0 |
| Gender Identity | 114 | 26 | 1 | 0 |
| Multi-Bias | 32 | - | - | - |
| Total: | 5,850 | 837 | 43 | 2 |

Source: FBI Hate Crime Statistics, 2015

Statistics on hate crimes do not tell the whole story. Some law enforcement agencies do not participate in the hate crimes reporting program. We also expect that many hate events go unreported due to victim reluctance or fear. Other reported acts of hate might be classified differently due to differing local interpretations of law and policy. The Southern Poverty Law Center estimates that across the United States, more than four out of five hate crimes are inappropriately reported or not reported at all⁷.

IDENTIFYING BIAS

Consider the following factors when determining if hate-related bias (see Page 2) is present:

- Perception on the part of the victim or witness that the victim was selected by the perpetrator because of membership in or association with a protected class;
- The presence of symbols, words, or acts which are or may be offensive or hateful towards a specific race, ethnic group, religious group, gender, persons who have disabilities, or persons of a particular sexual orientation;

⁶ Ibid. Includes UC Berkeley and participating Cities of Alameda, Berkeley, Hayward, Livermore, Newark, Oakland, San Leandro, Fremont and Newark.

⁷ <http://www.splcenter.org>

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

- Statements, activities or actions of the victim(s) and other involved parties prior to, or during the event;
- Statements, activities or actions of the suspect(s) including admission of motive, or other indications the suspect has an understanding of the act's impact on the victim and group;
- Indication that the suspect(s) might be associated with an organized hate group;
- Recent publicity of similar crimes or incidents; prior acts of a similar nature against the victim or victim's group; or past or current organized hate group activity in the area;
- Event coincides with a day or anniversary that is of significance to the victim's protected class or of significance to the suspect(s)' organized hate group.

HATE CRIME vs. HATE INCIDENT

Criminal acts motivated in whole or in part by bias against a protected class (as defined above and in PC §422.55) are also *hate crimes*. Suspects should be charged with PC §422.6(a) or (b) as appropriate and in addition to any other relevant statutes. Even if PC §422.6 does not apply the crime may still be considered a hate crime (as defined by PC §422.55) and should be investigated and documented accordingly.

Hate crimes **must include a specific target**, such as an individual, residence, house of worship, religious or ethnic organization, or business. If the crime is graffiti, it must be racial, ethnic, religious or homophobic in nature, or involve other hate group symbols or the use of epithets.

Any assault against a person, in the absence of other apparent motivation, when initiated with bias-motivated epithets, will be considered to be a hate crime. Similarly, vandalism to a house of worship, or to the facility of an ethnic, religious, or Lesbian/ Gay/ Bisexual/ Transgender/ Queer/ Questioning/ Other (LGBTQQO) organization will be considered a hate crime in the absence of other motives. Other examples of hate crimes might include obscene or threatening phone calls, physical assaults, destruction of property, bomb threats or the disturbance of religious meetings.

Non-criminal acts motivated in whole or in part by bias against a protected class (as defined above and in PC §422.55) are *hate incidents*. The action or behavior in question might be motivated by bias, but is protected by the First Amendment right to freedom of expression and does not interfere with the rights of others. Although it may not be possible for officers to take any enforcement action against a perpetrator, **there might be other means of addressing the immediate problem**, including the application of University rules, requests for voluntary compliance, or referral to other resources or authorities. Victims might also have actionable civil claims they can pursue.

Examples of hate incidents might include: name calling (without threat of violence or apparent ability to carry out the threat), hate speech, display of offensive materials on one's property or person, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage (e.g. writing targeted epithets on a dry erase board).

Some criminal acts might involve bias but do not satisfy the elements of PC §422.6 or meet the technical definition of a hate crime under PC §422.55. These cases should be investigated as criminal but also documented as a *hate incident* and handled with appropriate sensitivity.

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

RESPONSE AND REPORTING

When a public safety dispatcher or police officer becomes aware of a possible or reported hate crime or hate incident, **he or she shall notify the on-duty patrol supervisor so they may respond to the scene and/or provide victim assistance. The supervisor shall notify the Patrol Captain (if on-duty) or on-call command staff.** Further notifications might be necessary depending on the situation. Within one week, a member from Senior Staff should visit with the victim (victim's family, etc.). Further, you may consider activating the Department of Justice Hate Crime Rapid Response Protocol for additional assistance when necessary (e.g. in cases involving GBI or death; arson or attempt arson; and/or use of explosives).

Detectives and/or members of the Threat Management Unit may be assigned to respond or follow up on the matter and should take steps to keep the unit manager regularly apprised of progress and any issues of concern. The Crime Prevention Officer should also be assigned to provide follow-up services and referrals to the affected victim and/or group.

Hate crimes and hate incidents should be documented on the appropriate report forms as dictated by the nature of the event. The reporting officer and the supervisor should ensure all applicable criminal statutes are listed for investigation and charging, the scope of the investigation is suitable, sufficient resources are dedicated, the content of the report is appropriate, the "hate crime" or "hate incident" box on the face page is selected, and the report is routed as necessary. Please review General Order O-13 and the report writing manual for a complete description of response and reporting duties.

VICTIM ASSISTANCE

The unique nature of hate crimes and hate incidents requires special handling from our agency. We have an obligation not only to investigate and attempt apprehension, but also to recognize and react in a supportive manner to the emotional trauma experienced by the victims, families, and citizens of the community who were targeted by the act. Victims need reassurance that we respect their perspective and sincerely want to help them determine how to respond and safeguard themselves against future attacks. Interaction with UCPD will be a significant factor in how the victims view and portray the University's response to reported hate crimes.

Unfortunately, it can be quite easy to unintentionally create the impression that you are not sympathetic to the victim of a hate crime. Make sure the victim understands we take their situation seriously, we do not condone acts of hate, and we will help them to the best of our ability whether or not a crime has been committed. You must place special emphasis on victim assistance and community cooperation in order to reduce victim/community trauma and fear. Officers should also refer victims to resources that will enable them to pursue remedies. Here are some strategies for effective interaction with a person reporting an act of hate:

- Approach victims in an empathetic and supportive manner. Recognize victims may be reluctant to cooperate in an investigation due to fear of retaliation, cultural or language barriers, or fear of being "outed";
- Allow the victim as much time as needed to explain the situation. **Avoid minimizing the trauma or offense by correcting the victim on the fact they have actually been the subject of a hate *incident* and not a hate *crime*;**
- Demonstrate concern and sensitivity. Reassure the victim(s) that UCPD and the University takes the situation very seriously;



HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS

- Keep questions simple and allow the victim to use his/her own words. Try to conduct your interview in a place that provides privacy and comfort;
- Reassure the victim that investigative and enforcement tools will be utilized by the police to identify and apprehend the person(s) responsible, and explain UCPD's next steps in the process;
- Take steps to enhance the safety of the victim(s) by recommending and providing extra patrol, and/or by providing prevention and precautionary advice (such as restraining order options);
- Tell the victim how to contact support agencies and other forms of assistance;
- **Provide the victim with the number for the Captain (643-9597)** for further information about recommended safety strategies and procedures.

ADDITIONAL RESOURCES

There are a variety of institutional, community and cultural-based resources available to provide information and assistance to you and/or the victims of hate crimes. Officers should take the time to identify those that might be appropriate and available in any given situation, including:

University-related resources:

- Diversity, Equity and Inclusion: <http://diversity.berkeley.edu/index.php>
- Principles of Community: <http://www.berkeley.edu/about/principles.shtml>
- Centers for Educational Justice & Community Engagement: <http://ejce.berkeley.edu/>
- University Health Services (*general number*) (510) 642-2000
- Counseling and Psychological Services (*students*) (510) 642-9494
- CARE services (*faculty/staff*) (510) 643-7754
- Social Justice and Violence Prevention (510) 643-9049
- Office of the Dean of Students (510) 642-6741
- UC Gender Equity Resource Center ⁸ (510) 642-4786
- GenEq Director Billy Curtis (510) 643-0788

Other resources:

- Alameda County Bar Association - Volunteer legal services (510) 302-2222
- Berkeley Center for Independent Living (*disability services*) (510) 841-4776
- City of Berkeley Mental Health (510) 981-5290
- Anti-Defamation League – SF office (415) 981-3500
- California Department of Fair Employment and Housing (DFEH) (800) 884-1684
- California Department of Justice – Attorney General: <https://oag.ca.gov/civil>
- Teaching Tolerance (Southern Poverty Law Center): <http://www.tolerance.org/>

Refer to the appendix of this bulletin (K:\BULLETINS\2017-002APDX.pdf) for State and Federal laws that may relate to hate crime and hate incident investigations.

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⁸ For advice on the subject of appropriate interaction with members of the LGBTQQO community (which includes principles that can be applied to other persons and situations) please refer to UCPD Training Bulletin #2007-03: LGBTIQ Awareness.