



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 42.12

TITLE: HATE CRIMES

EFFECTIVE: 05/07/2017

REVISED: Replaces Policy 338

PURPOSE

The purpose of this policy is to provide members of this Department with guidelines for identifying, preparing for, investigating, responding to, and preventing crimes committed against persons or their property that are motivated by an offender's hatred of a person based on the person's actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, gender identity, national origin, ethnicity or ancestry; the person's actual or perceived membership or service in, or employment with, an organization; or the person's actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel.

POLICY STATEMENT

1. The Department recognizes the particular impact hate crimes have including the 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 members of the targeted group and on the entire community. The Department shall be mindful of and respectful of the confidentiality, safety and privacy concerns of victims and their families.
2. This Department will give high priority to any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by an offender's hatred of a person based on the person's actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, gender identity, national origin, ethnicity or ancestry; the person's actual or perceived membership or service in, or employment with, an organization; or the person's actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel.
3. This Department shall employ all necessary resources to identify, investigate, respond to, and prevent hate crimes.
4. Members shall be mindful that hate itself is not a crime and that they have a duty to protect the freedom of speech and other civil liberties.
5. The Department's and officers' response to hate crimes is especially important to the community because it reassures vulnerable groups that they will be protected by the NOPD, which can in turn encourage reporting and thus make the community safer.

DEFINITIONS

Definitions relevant to this Chapter include:

Bias / hate—A preformed negative opinion or attitude toward a group of persons based on their actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, gender identity, national origin, ethnicity or ancestry; their actual or perceived membership or service in, or employment with, an organization; or their actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel. Hate itself is not a crime.

Gender— Refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behaviors that are viewed as incompatible with these cultural associations may be considered gender non-conforming.

Gender identity—A person's internal, deeply held sense of gender. This internal sense of gender may be different from the sex a person was assigned at birth or the person's physiology or biological sex (i.e., a person may have been assigned the gender of male at birth but may have an internal, deeply held sense of being female). Gender identity may or may not be visible to others or expressed outwardly through a person's chosen pronouns, clothing, haircut, behavior, voice, and body characteristics. Gender identity is an innate characteristic of each person's personality.

Hate crime—Any unlawful action designed to frighten, harm, injure, intimidate, or harass an individual because it is motivated, in whole or in part, by the person's actual or perceived race, age, gender, religion, color, creed, disability, sexual orientation, gender identity, national origin, ethnicity or ancestry; the person's actual or perceived membership or service in, or employment with, an organization; or the person's actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel.

Hate group—An organization whose ideology is primarily or substantially based on antipathy, hostility, or hatred toward persons of a different race, age, gender, religion, color, creed, disability, sexual orientation, gender identity, national origin, ethnicity or ancestry.

Hate incidents - actions that are directed at a particular person or group or people because of their actual or perceived membership in a protected class that do not rise to the level of a crime. While hate incidents may be offensive or hurtful to the targeted person and group, they are not illegal and may be specifically protected by the First Amendment.

FEDERAL JURISDICTION

6. Federal law prohibits discrimination-based crimes. The U.S. Department of Justice (DOJ) **may** obtain jurisdiction over crimes of violence in which the perpetrator has selected the victim because of the person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability (18 U.S.C § 245; 18 U.S.C. § 249 the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009).

LOUISIANA CRIMINAL STATUTES

7. State law creates penalty enhancements for identified crimes (including many violent crimes and sex offenses) motivated because of actual or perceived race, age, gender, color, religion, creed, disability, sexual orientation, national origin, or ancestry of the victim or victims or because of actual or perceived membership, service or employment with an organization, or actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel (La. R.S. 14:107.2). In addition,

other State statutes target specific crimes which qualify as hate crimes (such as La. R.S. 14:40.4, Burning Cross on Property of Another or Public Place; Intent to Intimidate).

MUNICIPAL OFFENSES

8. The Code of Ordinances, City of New Orleans, Article VI, Offenses Affecting the Public Generally, Section 54-380 – Hate Crimes specifically identifies a hate crime and directs that any offense of a city ordinance that constitutes a hate crime should be treated, investigated and reported as such. It identifies specifically the following provisions of the municipal code as possible hate crimes:
 - (a) Section 54-378 – Institutional vandalism
 - (b) Section 54-379 – Intimidation
9. The protected classes identified by municipal ordinance Section 54-380 – Hate Crimes, are the actual or perceived race, age, religion, color, creed, disability, gender, sexual orientation, national origin, or ancestry of that person or the owner or occupant of that property. Section 54-379 also includes gender identification.
10. Section 54-380 – Hate Crimes requires the Department to maintain statistical information on violations of municipal ordinances classed as a “hate crime” and report on them, at least quarterly, to The New Orleans Human Relations Commission, the Commission of Criminal Justice, the Criminal Justice Coordination Office and the City Council. It also requires the Department to provide both initial and ongoing training to employees in cultural sensitivity and in relation to the proper classification of any crimes classed as “hate crimes”.

IDENTIFYING HATE CRIMES

11. When identifying hate crimes, it is important to note that not all threats or actions motivated by hate or bias constitute hate crimes. The critical distinction is the lawfulness of the underlying behavior. **Hate crimes** are *unlawful* actions directed at a particular person or group or people because of their actual or perceived membership in a protected class. By contrast, **hate incidents** are actions that are directed at a particular person or group or people because of their actual or perceived membership in a protected class that do not rise to the level of a crime. While hate incidents may be offensive or hurtful to the targeted person and group, they are not illegal and may be specifically protected by the First Amendment.
12. The key criterion in determining whether a crime may be classified as a hate crime is the suspect’s motivation behind the act. A common-sense approach must be used to make this determination, however, the following factors should be considered when identifying a potential hate crime. The presence of any of these factors does not confirm that the incident was a hate crime, but may indicate the need to further investigate the motive:
 - Are the motives of the alleged suspect(s) known?
 - Was the incident known to have been motivated by hate?
 - Does the suspect perceive the victim to belong to a different group than he/she does?
 - Did the victim perceive the action or the suspect to be motivated by hate?
 - Did witnesses perceive the action or the suspect to be motivated by hate?
 - Were any remarks related to race, age, color, creed, religion, national origin, ancestry, ethnic background, gender, gender identity, disability or sexual orientation made by the perpetrator?
 - Do those remarks indicate the perpetrator’s motivation behind the act, or were

they unrelated to the act? For example, a perpetrator under the influence of alcohol runs his car into a building and is charged with criminal damage to property. The perpetrator's disparaging remarks about police officers during arrest or booking likely do not indicate that the perpetrator was motivated by hatred against police officers when he committed the property damage.

- Were any symbols, words, or acts known to be used by an identified hate group, or indicative of evidence of hatred of the victim or group present?
- Is there a history of similar incidents in the same area or against the same victim/group?
- Has the offender previously been involved in a hate group or in similar incidents?
- Did the crime coincide with a date or event of significance?
- Did the victim engage in activities promoting his/her membership in a protected class?

PROACTIVE STEPS TO PREVENT AND PREPARE FOR HATE CRIMES

13. While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by:
 - (a) Making an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes in order to form, and cooperate with, prevention and response networks;
 - (b) Providing victim assistance and follow-up, including community-based follow-up;
 - (c) Educating community and civic groups about hate crime laws; and
 - (d) Implementing appropriate training, including becoming familiar with the symbols and tactics used by hate groups, as described below.

INVESTIGATOR'S RESPONSIBILITIES

14. Investigators of the Investigations and Support Bureau/Specialized Investigations Division shall make every effort to become familiar with organized hate groups operating within the community. However, they shall keep in mind that membership in an organization or group identified as a hate group, by itself, is not a crime.
15. The initial identification and investigation of a crime as a hate crime is the responsibility of the investigating/responding officer. The investigating officer shall be sensitive to the victim and to members of the community during his/her investigation. Officers must rely on their investigative judgment, as well as probable cause standards, to assist them in determining whether a specific incident constitutes a hate crime.
16. The trauma experienced by a victim of a hate crime can inflict serious and lasting emotional and psychological harm on the victim and impair the victim's ability to participate in the investigation. Officers and detectives play a significant role in the victim's ability to cope with the emotional and psychological after-effects of the crime and willingness to participate in the investigation. It is imperative that officers responding to a potential hate crime are able to recognize, understand, and manage these effects for the benefit of the victim and the criminal investigation.
17. The investigating officer investigating a potential hate crime shall:
 - (a) Secure the scene, request medical assistance if needed and, if necessary, request additional assistance from investigators or other resources to further the investigation or protect witnesses and victims;
 - (b) Request the assistance of a translator, if necessary;
 - (c) Interview available witnesses, victims and others to determine what

circumstances, if any, indicate that the situation may involve a hate crime. (Witnesses and victims who are not charged with a crime under state law shall not be detained exclusively because of a suspected immigration violation. See **Chapter 41.6.1—Profiling-Immigration Status.**);

- (d) Once an officer determines that an incident constitutes a hate crime, he/she shall contact his/her immediate supervisor;
 - (e) Preserve and document all available evidence indicating the likelihood of a hate crime in the relevant reports, including objects used by hate groups, such as swastikas or crosses. All related reports will be clearly marked as "Hate Crime" by checking the appropriate box on the M.O. page and will be completed and submitted by the assigned officer before the end of their tour of duty;
 - (f) Record any statements made by suspects as reported by victims and witnesses precisely (The exact words used and the context are critical to the investigation.);
 - (g) Identify any prior hate crimes or hate incidents in the immediate area or against the same victim;
 - (h) Obtain all information necessary to complete federal and state hate-crime data collection requirements (offense type and its respective motivation; the location of the incident; the number, age and type of victims; the number of known offenders; the known offender's race and ethnicity, age, and gender at the time of the incident);
 - (i) Make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as required by **Chapter 55.1—Victim and Witness Assistance**; and
 - (j) Take reasonable steps to ensure that all victims are receiving appropriate assistance and to ensure that any such situation does not escalate further and provide information to the victim regarding legal aid (e.g., a possible Temporary Protective Order through the courts or District Attorney or City Attorney).
 - (k) Protect the confidentiality of victims to the maximum extent allowed by law and departmental policy.
18. The assigned officer and approving supervisor are responsible for notifying the Homeland Security Unit via Communications Services and providing that unit with a copy of the approved report(s) documenting a Hate Crime investigation within three working days after the report is approved by the supervisor.

SUPERVISOR RESPONSIBILITIES

19. A supervisor involved in the on-scene investigation and/or reviewing the incident report will verify the crime is properly classified as a Hate Crime. Supervisors shall:
- (a) Respond to the scene;
 - (b) Ensure the crime scene is protected, properly processed, and all relevant evidence is gathered and processed;
 - (c) Ensure that all physical evidence or materials (e.g. fliers, posters) are documented and removed after the scene has been processed. If the physical evidence cannot be removed immediately (e.g. painted hate symbol on wall), impress upon the building owner the need for removal as soon as possible;
 - (d) Request additional resources from the federal government as necessary and available, pursuant to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (28 U.S.C. § 249);
 - (e) Notify the Public Information Office and communicate with concerned community organizations or civic groups and religious institutions concerning the suspected hate crime;

- (f) Advise the victim of individuals or agencies that may provide support and assistance, such as family members, clergy, and community service agencies; and
- (g) When reviewing the report, ensure the report contains all necessary information, including a record of all relevant facts and a clear indication of the incident as a hate crime, a full description of the materials used (e.g. painted hate symbol, literature, written or recorded messages), the method of removal of the material, and the disposition of the evidence.

FOLLOW-UP RESPONSIBILITIES

- 20. The District Investigative Unit or another appropriate unit assigned by the investigating officer's Bureau Chief will conduct a follow-up investigation.
- 21. A copy of the report(s) documenting a Hate Crime investigation will be delivered to the Homeland Security Unit within three working days after the report is approved by a supervisor.

HOMELAND SECURITY UNIT

- 22. The Homeland Security Unit shall review the incident report(s) identified as hate crimes, and determine if the incident meets the Federal Uniform Crime Report standards to classify the incident as a Hate Crime for UCR purposes.
- 23. The Homeland Security Unit shall forward to the appropriate federal agency the required data on hate crimes. The periodic dates for submission are set by the federal agency responsible for the collection of the data (usually biannually).

FEDERAL AND STATE HATE CRIME REPORTING

- 24. Under the Hate Crime Statistics Act of 1990 (28 U.S.C. § 534) the FBI's Uniform Crime Reporting 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.
- 25. The Records Manager shall include Hate Crime data reporting within the National Incident Based Reporting System (NIBRS), Uniform Crime Report and Summary Reporting System reports pursuant to Records and Identification Section procedures and in compliance with 28 U.S.C. § 534(a) and the Louisiana Uniform Crime Reporting System as required under RS 15:1204.3 and 1204.4. The required forms under RS 15:1204.2 should include any additional information needed by federal agencies to develop national statistics.

EDUCATION AND TRAINING RESPONSIBILITIES

- 26. The Commander of the Education and Training Division shall ensure that all officers of this Department receive training on hate crime recognition and investigation and shall attend annual training that incorporates a hate crime training component, to include:
 - Definitions of hate crimes, hate incidents and protected characteristics;
 - Free speech protected by the First Amendment;
 - Classification of hate crimes;
 - The unique impact hate crimes, as opposed to other crimes, have on victims;
 - Information on patterns of recent hate crimes in the area;
 - An orientation on communities of specifically targeted victims;
 - Identification of hate symbols used by known local hate groups;

- The role of all department personnel as they relate to NOPD response to hate crimes;
- Law enforcement procedures for data collection/documentation and mandated reporting requirements;
- Techniques for communicating with victims by officers during the investigation;
- Changing case law (legal updates);
- Investigative techniques particular to hate crime;
- The Department's outreach to the community; and
- Community relations and media relations.