



San Diego County Sheriff

Training Bulletin

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HATE CRIMES

DEFINITION

A Hate Crime is a crime committed against a person, or a person's property, where the substantial motivation of the offender is a bias against a person's race, ethnicity, nationality, religion, sexual orientation, gender or disability. Thus, anyone can be a victim of a Hate Crime.

It is important to document and prosecute Hate Crimes because these types of attacks are often committed by groups, are usually more violent than most crimes, and the victims are more severely traumatized. Hate Crimes are often intended to be message crimes to an entire community and can tear a community apart. An immediate and aggressive response by law enforcement and the entire community is of utmost importance. Failure to recognize a problem can cause lack of trust towards law enforcement.

VICTIM CHARACTERISTICS PROTECTED IN CALIFORNIA'S HATE CRIMES LAWS

1. Race/Ethnicity/Nationality
2. Religion
3. Sexual Orientation
4. Gender or Gender Identity
5. Disability
6. Association with a person or group based on one of the above characteristics

Often overlooked is the final group – victims who associate with another person or group and are victimized because of that association. If an offender has an LGBT bias, and commits a crime against a straight ally who is marching in the Pride Parade or doing work on behalf of

LGBT rights, and we can prove that the offender's substantial motivation for committing that crime was that LGBT bias, that should be classified as a hate crime.

Also, a mistaken belief about one of the victim's characteristics is not a defense to California's Hate Crimes laws. For instance, suppose an offender has a bias against African Americans. The offender sees a dark skinned male that he believes to be African American, but isn't. The offender uses racially derogatory slurs towards the victim before assaulting him. This offense should be classified as a hate crime.

HATE INCIDENTS

Generally, speech is not enough to charge a Hate Crime. To charge a Hate Crime, speech must threaten violence, target a specific person or group, and the perpetrator must have the apparent ability to carry out the threat. Speech that does not meet these criteria, however ugly, intimidating, and upsetting, still does not meet criminal behavior. Behavior that may cause an individual to feel like a victim of a Hate Crime can be documented as a "Hate Incident."

For example:

An African-American family lives in a neighborhood near a high school. Every day after school, a truck full of Caucasian students drives by their house. They give a straight-armed salute and yell "White Power!" at the African-American family. This upsets the family and they call the Sheriff's Department. There is no behavior other than the salute and yelling.

Has a crime been committed?

No, but a Hate Incident has occurred. The best way to document these types of incidents is to write a short "Hate Incident" report or deputy's report. This will document and capture the behavior of the suspects and give detectives history for future behavior when a crime actually occurs. This will also create a positive bond between law enforcement and the community. This type of tracking of the Hate Incidents will also give the district attorney the needed history to prove a Hate Crime at a later date.

PROSECUTION AND EVIDENCE

A Hate Crime requires the prosecution to prove the suspect's bias was a substantial motivation for the crime. The prosecution does not need to prove that the bias was the only motivation, nor even the primary motivation, for the crime. Some crimes may start out as non-bias incidents, but then turn into a Hate Crime. For example, a Hispanic security guard sees a transient suspect trespassing at a business. The security guard approaches the suspect and tries to eject him from the property. The suspect mocks the security guard for not being

a “real police officer.” The security guard then tells the suspect that he is going to call the police. The suspect launches into a tirade about the security guard being an illegal alien, uses slurs derogatory to Hispanic people, and says the security guard should be deported. The suspect then pulls out a knife and assaults the security guard. In this case, there are two substantial motivations for why the suspect committed the assault: anger over getting ejected from the property and the race/ethnicity/nationality of the security guard. This should be classified as a Hate Crime.

Evidence of bias can be found in the words or slang terms that the suspect may yell out during the attack. If a derogatory term is yelled at the victim, get that victim or witnesses to tell you the exact words the suspect used. Quote the slurs in your report whenever possible. Document whether the slurs were used before, during, or after the crime.

If you arrest a suspect of a Hate Crime, collect any and all descriptions of that suspect. Tattoos can be excellent proof of a suspect’s bias. Tattoos such as swastikas, “SS” bolts, or any type of skinhead tattoo can be used to prove that suspect’s bias. Clothing such as boots with white or red laces and suspenders are also significant. For many white supremacist groups, red laces mean they have brought blood for their cause, the cause being the preservation of the White race. White laces generally mean they are prospects who have not brought blood.

Photograph any and all evidence. Document the tattoos by photographing them, since this is extremely relevant to the prosecution’s case on the issue of motive.

Since many Hate Crime offenders are complete strangers to the victim/witnesses and occur quickly, it is crucial to focus on identification evidence, such as anything affecting the eyewitness’ ability to accurately ID the suspect, i.e.: available lighting, distances, use of intoxicating substances, eyesight etc.

Additionally, because the prosecution has to prove the motivation, it is possible to obtain a search warrant for the suspect’s residence and/or social media accounts to prove his bias. These warrants are not only used to look for weapons, but for evidence of the suspect’s bias. We search for clothing, books, pictures, and computer information that show the suspect has biased beliefs. Sometimes we are looking for the association or membership in racist or White supremacist gangs.

This bulletin is not to say that all Hate Crimes are committed by skinheads. A Hate Crime is based on bias. Anyone can have biased feelings. There are “hate groups” other than skinheads. However, Southern California has been determined to be a hot-bed of emerging skinhead and White supremacist groups.

LAWS

Depending on what the underlying crime is, different allegations or enhancements may be alleged. If the underlying crime is a felony and there is only one offender, 422.75(a) PC would apply. This allegation adds 1, 2, or 3 years to the maximum sentence the offender could receive.

If the underlying crime is a felony, and there are more than one offenders acting in concert who participated in the hate crime, 422.75(b) should be alleged. This allegation adds 2, 3, or 4 years to the maximum sentence the offender could receive.

If an offender has a prior hate crime conviction, 422.75(d) PC Prior Hate Crime adds 1 year.

Other specific felony hate crimes laws are also available. It is a felony to burn a cross on the private property of another with intent to terrorize (11411(d) PC).

Some misdemeanors can be upgraded to felonies if a 422.7(a) PC Hate Crime allegation is added to a misdemeanor such as a simple battery, assault, or brandishing of a weapon. This section applies when a substantial motivation of bias can be proved, along with any physical injury or ability to commit a violent injury. The physical injury can be minor, such as a single laceration or bruise. Group attacks can be arguably enough to satisfy the element of “ability to commit a violent injury.”

There are also stand-alone misdemeanor Hate Crimes against persons (422.6(a) PC), property (422.6(b) PC), hanging a noose with intent to terrorize (11411 PC), and for displaying a terrorizing symbol, i.e.: swastikas (11411(b) PC).

RESOURCES

Anti-Defamation League website: www.adl.org

The information in this Training Bulletin was provided by Detective Roysdon and Deputy District Attorney Leonard Trinh and edited for distribution by the In Service Training Unit. If you have expertise in a particular subject and would like to write a training bulletin, please contact Corporal Brent Longfellow at [REDACTED]