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POLICE DEPARTMENT

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1789

BIAS MOTIVATED INCIDENTS GENERAL ORDER NO: 3.1.60

Issue Date: June 14, 2022	Effective Date: October 23, 2013
Revision Date: June 14, 2022	CALEA: N/A
Volume 3: Operations	Chapter 1: Patrol
Distribution: All Personnel	NYSLEAP: 40.2, 44.2,
Issuing Authority: Chief Eric Hawkins	Page: 1 of 5

PURPOSE: The purpose of this policy is to ensure a coordinated police response and a thorough investigation and analysis of all bias motivated incidents.

POLICY: It is the policy of the Albany Police Department to safeguard the rights of all individuals which are guaranteed by New York State law and the United States Constitution. Any offense or unlawful act motivated by hate or bias and designed to infringe upon the rights of others based on their actual or perceived race, religion, ethnicity, gender, gender identity, age, disability, or sexual orientation shall be thoroughly and vigorously investigated by this department.

DEFINITIONS: **Bias Incident** – Bias incident means any offense or unlawful act that appears to be is motivated ~~in whole or in substantial part~~ by a person’s, or a place’s identification with a particular age, race, creed, religion, national origin, ethnicity, gender, gender identity, ~~age,~~ disability, sexual orientation, marital or domestic partner status regardless of whether the belief or perception of the actor is correct. Ultimately, whether an individual was motivated by a bias intent and committed a hate crime will be decided in a court of law by a judge or jury.

Disability – Disability means the possession or perceived possession by a person of any of the following: a physical, medical, developmental, mental or psychological impairment or a history or record of such impairment. This includes the person sustaining any injury or damage to any system of the body including muscular, sensory, respiratory, speech, heart, reproductive, digestive, blood, immunity (e.g., AIDS) and skin. Also included among those who have a disability are recovering alcoholics and former abusers of drugs or other substances who currently are not abusing alcohol, drugs, or other substances.

I. NEW YORK STATE PENAL LAW, SECTION 485.05 – HATE CRIMES

A. A person commits a hate crime when he or she commits a specified offense and either:

1. Intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding race, color, national origin, ancestry,

gender, gender identity, religion, religious practice, age, disability, or sexual orientation of a person, regardless of whether the belief or

- perception is correct; or
2. Intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding race, color, national origin, ancestry, gender, gender identity, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.
- B.** Proof of race, color, national origin, ancestry, gender, gender identity, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden (under subsection 1 or 2 above).
- C.** A "specified offense" is an offense defined by any of the following provisions of the New York State Penal Law:
1. Penal Law 120.00 – Assault 3rd
 2. Penal Law 120.05 – Assault 2nd
 3. Penal Law 120.10 – Assault 1st
 4. Penal Law 120.12 – Aggravated Assault on Person Less than Eleven
 5. Penal Law 120.13 – Menacing 3rd
 6. Penal Law 120.14 – Menacing 2nd
 7. Penal Law 120.15 – Menacing 1st
 8. Penal Law 120.20 – Reckless Endangerment 2nd
 9. Penal Law 120.25 – Reckless Endangerment 1st
 10. Penal Law 120.45 – Stalking 4th
 11. Penal Law 120.50 – Stalking 3rd
 12. Penal Law 120.55 – Stalking 2nd
 13. Penal Law 120.60 – Stalking 1st
 14. Penal Law 121.12 – Strangulation 2nd
 15. Penal Law 121.13 – Strangulation 1st
 16. Penal Law 125.15 – Manslaughter 2nd (sub 1)
 17. Penal Law 125.20 – Manslaughter 1st (sub 1, 2, or 4)
 18. Penal Law 125.25 – Murder 2nd
 19. Penal Law 130.35 – Rape 1st (sub 1)
 20. Penal Law 130.50 – Criminal Sexual Act 1st (sub 1)
 21. Penal Law 130.65 – Sexual Abuse 1st (sub 1)
 22. Penal Law 130.67 – Aggravated Sexual Abuse 2nd (sub 1a)
 23. Penal Law 130.70 – Aggravated Sexual Abuse 1st (sub 1a)
 24. Penal Law 135.05 – Unlawful Imprisonment 2nd
 25. Penal Law 135.10 – Unlawful Imprisonment 1st
 26. Penal Law 135.20 – Kidnapping 2nd
 27. Penal Law 135.25 – Kidnapping 1st
 28. Penal Law 135.60 – Coercion 2nd
 29. Penal Law 135.65 – Coercion 1st
 30. Penal Law 140.10 – Criminal Trespass 3rd
 31. Penal Law 140.15 – Criminal Trespass 2nd
 32. Penal Law 140.20 – Burglary 3rd
 33. Penal Law 140.25 – Burglary 2nd
 34. Penal Law 140.30 – Burglary 1st
 35. Penal Law 145.00 – Criminal Mischief 4th

36. Penal Law 145.05 – Criminal Mischief 3rd
37. Penal Law 145.10 – Criminal Mischief 2nd
38. Penal Law 145.12 – Criminal Mischief 1st
39. Penal Law 150.05 – Arson 4th
40. Penal Law 150.10 – Arson 3rd
41. Penal Law 150.15 – Arson 2nd
42. Penal Law 150.20 – Arson 1st
43. Penal Law 155.25 – Petit Larceny
44. Penal Law 155.30 – Grand Larceny 4th
45. Penal Law 155.35 – Grand Larceny 3rd
46. Penal Law 155.40 – Grand Larceny 2nd
47. Penal Law 155.42 – Grand Larceny 1st
48. Penal Law 160.05 – Robbery 3rd
49. Penal Law 160.10 – Robbery 2nd
50. Penal Law 160.15 – Robbery 1st
51. Penal Law 240.25 – Harassment 1st
52. Any attempt or conspiracy to commit any of the aforementioned offenses.
53. Penal Law 240.30 – Aggravated Harassment 2nd (sub 1, 2, or 4).

II. INDICATORS OF A POSSIBLE BIAS INCIDENT OR HATE CRIME

A. Possible indicators may include, but are not limited to:

1. The display of symbols, words, or acts which are or may be offensive to an identifiable group (e.g., ethnic group, religious group, etc.);
2. The date, time, or circumstances of occurrence (e.g., religious holiday, gathering affiliated by ethnicity, religion, sexual orientation, etc.);
3. The victim's perception that they were selected because they are a member of an identifiable group;
4. Statements made by the perpetrator; or
5. Possession of hate literature by the perpetrator.

III. PROCEDURES

A. Patrol:

1. Upon arrival the responding officer(s) shall evaluate the condition and take police action appropriate for stabilization of the area, as necessary. This may include;
 - a. Requesting additional personnel, including a supervisor, if necessary;
 - b. Aiding the injured;
 - c. Protecting victims and witnesses; and
 - d. Detaining suspected perpetrators.
2. Conduct a preliminary investigation.
3. Determine if the possibility exists that the offense or unlawful act committed was motivated by bias or prejudice.
4. Patrol officers should always Request the patrol supervisor to respond if a bias incident or hate crime is suspected. Upon arrival of the patrol

supervisor, the patrol officer(s) should inform the supervisor of the nature of the bias motivated event as described by the victim or complainant.

5. Preserve the crime scene and any physical evidence.
6. Arrest perpetrator(s) if still on the scene and there is probable cause for the arrest.
7. Complete appropriate paperwork, e.g., Standardized Incident Report, Investigation Report, Field Interview Cards, arrest paperwork, etc.
 - a. In the event of a hate crime incident, reports shall:
 - i. Identify the victim's age, gender, gender identity, race, and ethnicity, as applicable.
 - ii. List the specified offense(s) on the report to include an "H" applied to the subdivision of the Penal Law Section, such as:
 - a) Assault 3rd: 120.00{01H}; or
 - b) In those cases where no subdivision exists, a double zero is used with the letter "H" - Criminal Trespass 2nd: 140.15{00H}.
 - iii. Identify the perpetrator's age, gender, gender identity, race, and ethnicity, if known.
 - iv. Denote in the narrative that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding the victim's race, religion, ethnicity, gender, gender identity, age, disability, or sexual orientation.
8. Officers shall recognize the particular fears, ~~and distress and trauma~~ typically suffered by victims of hate crimes, the potential for reprisal and escalation of violence, and the far-reaching negative psychological consequences and trauma of these incidents on the victim and the community. As such, officers shall always be mindful and particularly responsive to the concerns of victims, their families, and the community when investigating hate crimes.

B. Patrol Supervisor:

1. Determine if additional personnel are required to stabilize the situation.
2. Notify the shift lieutenant that the occurrence is a possible bias incident or hate crime.
3. Notify a detective supervisor. If no detective supervisor is available, notify the appropriate detective personnel and follow section III-D.
4. Ensure that the necessary preliminary investigation is complete.
5. Ensure that all appropriate paperwork has been completed.

C. Operations Lieutenant:

1. Request additional resources, as necessary, to stabilize the location or defuse the incident (NEU officers, Community Service Officers, additional Command Staff, District Attorney's Office, or other resources deemed necessary).
2. Notify appropriate Command Staff member.

D. Detective Supervisor:

1. Cause an immediate investigation to commence.
2. Inform the victim of the probable sequence of events in the investigation and prosecution.
3. Request response of Forensic Investigation Unit (FIU), if necessary.
4. If the incident is determined not to be a bias motivated incident or hate crime ensure the documentation of the set of facts and circumstances that led to the determination. This report shall be included with any investigation file maintained regarding the incident

E. NEU Lieutenant:

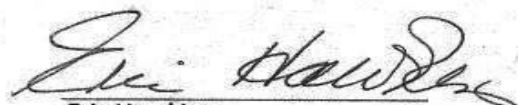
1. Ensure that NEU officers formally communicate with concerned community based organizations, civic groups, and religious institutions regarding the suspected or confirmed bias motivated incident or hate crime.

IV. REPORTING OF HATE CRIMES TO DIVISION OF CRIMINAL JUSTICE SERVICES

- A.** The Lieutenant of the Administrative Services Bureau shall ensure that the New York State Department of Criminal Justice Services (DCJS) Hate Crime Incident Report is completed each month and submitted to DCJS along with the UCR Crime Reports.

V. ADDITIONAL PROCEDURES

- A.** When completing a Court Information for a hate crime, the designated offense should be the specified offense alleged followed by the phrase "As a Hate Crime".
- B.** The Court Information should also include in the narrative section a concise factual statement of each count and that the suspect(s), or defendant(s) intentionally selected the person against whom the offense was committed or intended to be committed; or intentionally committed the act(s) constituting the offense based entirely or in substantial part, because of a belief or perception regarding the race, religion, ethnicity, gender, gender identification, age, disability, or sexual orientation.
- C.** The Hate Crimes Law is a sentencing enhancement statute. Thus, when the specified crime is a misdemeanor or a class C, D, or E felony, the hate crime shall be deemed to be one (1) category higher upon conviction and the sentence imposed will be based upon the sentencing range for that higher category. "A" and "B" felonies charged as hate crimes stay the same, but are subject to higher penalties.
1. Personnel are reminded that the District Attorney's Office will be responsible for increasing the criminal charges by one (1) class at the time of conviction. This should not be done at the time of arrest by personnel of this department.



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