

SAN JOSE POLICE DEPARTMENT  
HATE CRIME INVESTIGATION POLICY



July 2018

# **SAN JOSE POLICE DEPARTMENT HATE CRIME INVESTIGATIONS POLICY**

(Revised July 2018)

## **BACKGROUND**

The investigation of hate crimes and hate-motivated incidents is a priority for the San Jose Police Department. It is the policy of the Department to ensure every person in San Jose enjoys the right to be free of any crime committed with the intent of intimidating or interfering with the free exercise or enjoyment of any right secured to him or her by the Constitution and laws of the state or the Constitution and laws of the United States due to the person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Hate crimes have the capacity to polarize communities and must be swiftly and effectively investigated. The effective prevention and prosecution of hate crimes requires the combined efforts of all Department personnel.

The role of the Department is to address the on-going safety of victims, their families, and others who are affected by hate crimes. The following procedures are designed to facilitate a coordinated Department-wide response to such crimes.

## **ANALYSIS**

The Assaults Unit Hate Crime Detail was established in 1993. A hate crime, also known as a bias crime, is a criminal offense committed against a person, property, or society that is motivated, in whole or in part, by the offender's bias against a race, religion, disability, sexual orientation, or ethnicity/national origin. The Hate Crime Detail works with all Department members to ensure the Department properly responds to, investigates, reports, and tracks crimes of hate. The Hate Crime Detail coordinates its efforts with other law enforcement agencies, including the Santa Clara County District Attorney's Office. The Hate Crime Detail also collaborates with community-based organizations to develop educational programs targeting hate crime prevention, deter retaliation, and encourage the cooperation to prosecute those accused of committing hate crimes.

All acts of hate crime violence or threats will be viewed as serious. Such acts generate fear and concern in victims and the public, and have the potential for recurring, escalating, and possibly causing retaliation. Therefore, investigations related to hate crimes will be given priority attention.

## **DEFINITIONS**

**Hate Crime:** A hate crime is any criminal act or attempted act intended to frighten, harm, injure, intimidate or harass an individual, in whole or in part, because of the victim's actual or perceived disability, gender, nationality, race, ethnicity, religion, or sexual orientation. This act can be directed against a public agency or private institution which is motivated because the agency is identified or associated with person(s) with an identifiable protected characteristic (i.e., disability, gender, nationality, race, ethnicity, religion or sexual orientation).

Hate crimes, as listed in Penal Code Sections 422.55 to 422.93, are considered to be a criminal civil rights violation. A hate crime is any criminal act against a person or property of another, committed because of the victim's actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation (Penal Code Section 422.55(a)(1)-(6); this includes committing a criminal act against a victim based on the actual or perceived association of the victim with a person or group based upon the actual or perceived disability, gender, nationality, race, ethnicity, religion or sexual orientation of the associated person or group (Penal Code Section 422.55(a)(7). A hate crime also includes any violation of Penal Code Section 422.6, which is defined within this Policy (Penal Code Section 422.55(b)).

**Hate-Motivated Incident:** A non-criminal act, including words, directed at a person(s), motivated, in whole or in part, by the one of the characteristics listed above.

**Disability:** Includes mental disability and physical disability, as defined in Section 12926 of the Government Code.

**Gender:** As defined in Penal Code Section 422.56(c), "gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior regardless of the person's assigned sex at birth.

**Nationality:** Includes citizenship, country of origin, and national origin.

**Race/Ethnicity:** Includes ancestry, color, and ethnic background (Penal Code Section 422.56(f)).

**Religion:** Includes all aspects of religious belief, observance, and practice, and includes agnosticism and atheism.

**Sexual Orientation:** Sexual orientation means heterosexuality, homosexuality, or bisexuality.

**Victim:** Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

## **CALIFORNIA PENAL CODE SECTIONS ON HATE CRIMES**

California law recognizes certain crimes are more serious where a victim is singled out because of his or her disability, gender, nationality, race or ethnicity, religion, or sexual orientation. These offenses are commonly referred to as hate crimes, and can serve as a **standalone crime** under California Penal Code Section 422.6 (interfering with the civil rights of another), as an **aggravating factor** under § 422.7, or as an **enhancement** under § 422.75.

**§ 422.55** – Defines “hate crime” as a criminal act committed, in whole or in part, because of one or more 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.

**§ 422.6** – Makes it a **standalone crime** to willfully interfere, by force or threat of violence, with someone else’s civil rights (§ 422.6, subds. (a), (c)), or knowingly damage or destroy their property (§ 422.6, subd. (b)), because of that person’s actual or perceived protected characteristic(s).

**§§ 422.7 and 422.75** – 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 § 422.55, the criminal offense will be considered a “hate crime.”

**§ 422.7 (sentence enhancement)** – If the defendant is convicted of a misdemeanor that was motivated by bias and the misdemeanor caused the victim to suffer an injury, or the defendant had the ability to violently commit injury, or the misdemeanor caused property damage in excess of \$950, the prosecution may use this in aggravation and charge the misdemeanor as a felony. (Felony wobbler: 16 months, or two or three years in county jail and/or fine up to \$10,000; or one year in jail.)

**§ 422.75 (felony enhancement)** – Provides for an enhanced sentence for any felony if the prosecutor can establish it was committed as a hate crime.

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

**§ 190.03, subd. (a)** – Provides for life in prison without possibility of parole for first-degree murder motivated by a victim’s 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** – Establishes a misdemeanor to intentionally disturb a group of people who have met to worship. (Penalty: up to one year in jail and/or up to a \$1000 fine.)

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

**§ 1170.8** – 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 within a place of worship.

**§ 1170.85, subd. (b)** – Provides that age or disability of victim may be circumstances in aggravation.

**§ 11411, subds. (a), (b)** – Subdivision (a) provides that it is a misdemeanor to hang a noose, knowing it to be a symbol representing a threat to life, on the private property of another and on public property, 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. Subdivision (b) provides that it is a misdemeanor to cause a person to fear for his or her safety by displaying racist signs 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.

**§ 11411, subd. (c)** – Provides that it is a misdemeanor or a felony to engage in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property by placing a racist symbol on that property on two or more occasions. (Felony wobbler: 16 months, or two or three years, and/or up to a \$10,000 fine; or one year in jail and/or up to a \$5,000 fine.)

**§ 11411, subd. (d)** – 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 primary school, junior high school or high school, for the purpose of terrorizing any person who attends, works at or is otherwise associated with the school 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.)

**§ 11412** – 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.)

**§ 11413, subds. (a), (b)(2), (b)(9)** – Provides that it is a felony to use a bomb against 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 state prison, and a fine of up to \$10,000.)

**§ 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.

**§ 1547, subds. (a)(12) & (13)** – 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** – 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** – States that the urging of violence where death or great bodily injury is likely to result is conduct not protected by the California Constitution; in this section the Legislature finds that it is the right of every person, regardless of actual or perceived race or ethnicity, color, creed, religion,

gender, gender identity, gender expression, national origin, 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 – Requires the Attorney General to collect statistical information on hate crimes.

§ 13519.6 – Requires Peace Officers Standards and Training Commission to offer training on hate crimes enforcement.

### **Criteria for Reporting Hate-Motivated Crimes and Incidents**

The following criteria are to be used in determining if an incident is biased in nature. Some incidents may not clearly fit a specific definition. In those cases, a common-sense approach must be used. If it appears an incident is motivated by bias or perceived bias based upon one's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, it shall be reported and investigated as such.

A. **A criminal act** directed against persons or groups because of their race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or perceived to have one or more of those characteristics **may include any of the following:**

1. Burning cross or religious symbol
2. Explosives
3. Bomb threats
4. Destroying, injuring property of another
5. Assault
6. Interrupting or disturbing religious meetings
7. Vandalism to public property

B. **A non-criminal act or incident is completed** when a bias exists towards a person based upon their actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation combined with the apparent intention to do any one or combination of the following:

1. Harass
2. Intimidate
3. Threaten
4. Retaliate
5. Create conflict

**Reports of such incidents are taken because there is potential for reoccurrence and/or escalation into a criminal act.** The motivation behind the incident is the key criterion in determining if any crime or incident fits into the definition of bias. Was the act done because of the person's actual or perceived race, color, religion, ancestry, national origin, disability, gender, or sexual orientation?

## **PROCEDURAL GUIDELINES**

### **BUREAU OF TECHNICAL SERVICES - COMMUNICATIONS:**

- A. Call taker verifies if the incident meets the criteria of a possible hate crime or hate incident.
- B. Call taker notifies the Communications Senior or Supervisor.
- C. Senior or Supervisor notifies the district sergeant and area commander.
- D. Beat officer is dispatched as soon as reasonably practical, in accordance with BTS Communications procedures.
- E. Dispatcher will dispatch the possible hate crime or hate incident over the MDT and not the radio.
- F. If there is a question of whether or not the incident meets the criteria of a hate crime, the Communications Senior or Supervisor may contact the Hate Crime Detail during regular business hours and the Night Detective or On-Call BOI Detective during non-business hours.

### **BUREAU OF FIELD OPERATIONS:**

- A. Beat Officer responds without delay to initiate a thorough preliminary investigation, which should take into consideration the following factors:
  - 1. Is the motivation of the offender known?
  - 2. Are the victim and the offender of different race, color, religion, ancestry, national origin, gender, sexual orientation, or is the victim targeted because of their disability?
  - 3. Were any bias remarks made by the offender concerning the victim's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation?
  - 4. Were there any offensive symbols, words, or acts that are known to represent a hate group or other evidence of bias against the victim's group?
  - 5. Does the victim perceive the action of the offender to have been motivated by bias?
  - 6. Did the incident occur on a holiday or other day of significance to the victim's group or the offender's group?
  - 7. Is there no other clear motivation for the incident?
- B. When the officer determines a hate crime or incident has occurred, the officer will:

1. Apprehend and process the perpetrator(s), if applicable.
  2. Request a District Sergeant respond to the scene.
  3. Provide assistance to stabilize the victim.
  4. Conduct a thorough, preliminary investigation consistent with Department policy and procedure.
  5. Provide the victim with referral information regarding victim support services, safety options, and follow-up investigative procedures.
  6. Investigate regardless of victim cooperation.
  7. Collect relevant physical evidence.
  8. Take photographs.
  9. Conduct an area canvas for witnesses.
  10. Provide the victim with a Victim Right to Confidentiality Form (200-45V) and advise him/her of the option to keep his/her name and address confidential per 293 PC.
  11. Complete a General Offense (G.O.) report checking the appropriate BIAS category and include in the G.O. report the exact language and/or actions used by the suspect.
  12. Complete a G.O. report when a non-criminal act or incident is committed due to a person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation with the apparent intention to harass, intimidate, threaten retaliate or create conflict. Reports of such incidents shall be taken due to the potential for escalation into a criminal act. Officers shall not label the report as "Informational Only," but should list the most applicable crime type.
  13. The patrol officer will coordinate with the investigative unit assigned to the case to ensure symbols of an inflammatory nature are removed as soon as possible after they are properly collected for evidence or recorded. If it cannot be physically removed (e.g., painted words or signs on a wall), the owner of the property, or the appropriate City Department shall be contacted to expedite the removal of such material as soon as possible.
- C. District Sergeants: Upon being notified of a possible hate crime or incident, the District Sergeant shall:
1. Respond to the scene and confirm if a hate crime or incident has occurred.
  2. Ensure assistance is provided to the victim.
  3. Supervise the investigation.
  4. Take whatever steps are necessary to ensure the situation does not escalate.
  5. Update the Area Commander and the appropriate investigative unit.



6. Complete the Watch Commanders Report entry for a hate incident or a hate crime.
  7. Review and sign-off report.
- D. Area Lieutenant
1. Maintain responsibility for the preliminary investigation.
  2. Ensure the responsibilities of the beat officer and sergeant are completed.
  3. Notify the On-Duty Captain in cases where notification is immediately required and a BFO Info Report is not sufficient.
  4. Ensure the notification of the Assaults Unit or Assaults Unit Commander
  5. Complete a BFO Info report for a verified hate crime. A BFO Info report can be completed by the lieutenant for a hate incident at his or her discretion.
  6. Contact the Hate Crime Detail during regular business hours and the Night Detective or On-Call BOI Detective during non-business hours to notify them of the investigation and seek investigative guidance as needed.
  7. The Hate Crime Detail will be notified of all major Hate Crime investigations.
  8. Notify the Media Relations Unit (in aggravated circumstances). When the Media Relations Unit is unavailable to write a press release, the Assaults Unit Commander will be responsible for the press release.

**BUREAU OF INVESTIGATIONS:**

- A. The Assaults Unit Commander, the Captain, and Deputy Chief assigned to BOI will be notified without delay via the chain of command.
- B. The unit responsible for the investigation of the resulting criminal offense(s) (sexual assault, robbery, etc.) shall be responsible for the primary investigation and associated hate crime enhancements, and shall respond to the scene of any hate crime investigation deemed a major case.
- C. Investigators shall conduct follow-up investigations on hate crimes and contact the victim(s) as soon as possible upon receipt of the case.
- D. Unit Commanders shall work together to resolve any case-assignment conflict.
- E. The Assaults Unit Commander shall assist the investigator assigned the case and act as an information resource and/or liaison with the District Attorney's Office.
- F. Once the investigation is prepared for DA review, the case shall be presented to the Assistant District Attorney in charge of hate crimes.
- G. When the investigation is completed through the court process, or sooner if a prosecution does not materialize, a copy of the completed investigation shall be delivered to the Assaults Unit Commander.

- H. If a case is assigned to the Assaults Unit, the lieutenant is responsible for maintaining a copy of the hate crime investigation conducted by Department personnel, and will coordinate with the Crime Analysis Unit for compiling statistical data related to Hate Crimes.
- I. At the Assaults Unit Commander's discretion, a copy of the report may be routed to the Intelligence Unit.
- J. All BOI personnel will ensure victims of hate crimes are provided appropriate care and directed to available public and private resources (victim/witness, shelters, etc.).
- K. Press and media inquiries will be directed to the Media Relations Unit (MRU), or the Unit Commander of the Unit in charge of the case if the MRU is unavailable.
- L. Temporary Restraining Orders: Protective orders are available from the court having jurisdiction over the criminal case pursuant to 136.2 P.C. Violation of the order can be a misdemeanor, or felony if accompanied by force or threat of force.
- M. Preliminary and Permanent Injunctions: Injunctions may be obtained by the State Attorney General, any District Attorney, City Attorney, or private attorney independent of a criminal proceeding. The Attorney General's Civil Rights Enforcement Unit is experienced in this type of law and may be contacted by law enforcement for assistance any time after a police investigation has begun. They may also be of assistance when there is not enough evidence to meet the criminal standard of "beyond a reasonable doubt," but there may be enough evidence to attach civil sanctions or monetary relief. Victims should not be referred directly to the Attorney General's Office.

Injunctions provide protection from interference by threats, intimidation, or coercion or from attempts to interfere with someone's state or federal statutory or constitutional rights (these include association, assembly, due process, education, employment, equal protection, expression, formation and enforcement of contracts, holding public office, housing, privacy, speech, travel, use of public facilities, voting, worship and protection from bodily restraint or harm, from personal insult, defamation, and from injury to personal relations. Speech alone is not sufficient to support an injunction under the Bane Act, unless the speech threatens violence, the victims reasonably fear the violence will be committed against them and the person threatening violence has the apparent ability to carry out the threat.

#### **BUREAU OF FIELD OPERATIONS - CRIME PREVENTION UNIT**

- A. Bureau of Field Operations will collaborate with the Bureau of Investigations and the Training Unit to provide training in the recognition and investigation of hate crimes as mandated by 13519.6 PC, *Standards and Training of Local Law Enforcement Officers*.
- B. The Crime Prevention Unit will work collaboratively with other Department members and Bureau of Investigations personnel to involve other City departments, schools, and community-based organizations, when participating in the response to aggravated hate crime incidents. Consideration must be given to holding public meetings concerning the crime or incident to defuse tensions, provide crime prevention information, and/or ask for community assistance in solving the crime.

#### **BUREAU OF TECHNICAL SERVICES - CRIME ANALYSIS UNIT**

- A. The Crime Analysis Unit will compile statistics to comply with the Congressional Hate

Crime Statistics Act (Public Law 101-275) and 13023 P.C.

- B. The Crime Analysis Unit will collaborate with the Hate Crime Detail to validate reported hate crime incidents.
- C. Analysts will track hate crimes by victim, suspect, and crime types and will report all hate crime/incidents stats to the Assaults Unit Commander on a monthly basis.
- D. The Crime Analysis Unit will collaborate with the Assaults Unit Commander to produce quarterly and annual Hate Crime Summary Reports.
- E. The Crime Analysis Unit will forward statistical analysis to the Federal Bureau of Investigation.
- F. The Crime Analysis Unit will forward Hate Crime statistics to the California Attorney General's office on a yearly basis as mandated by 13023 PC.

### **VICTIM ASSISTANCE**

- A. The Department is obligated not only to investigate the criminal offenses and incidents, but to recognize and react in a positive manner to the emotional trauma experienced by the victim(s), family(s), and member(s) of the public, who have witnessed/suffered such crimes or incidents.
- B. Special emphasis should be placed on victim assistance and community cooperation to reduce victim/community trauma and fear. Therefore, officers should:
  - 1. Approach victims in an empathic and supportive manner. Demonstrate concern and sensitivity.
  - 2. Attempt to effectively calm the victim and reduce the victim's alienation.
  - 3. Reassure the victim that a comprehensive investigation will be conducted by the police to find and prosecute the person(s) responsible for the crime.
  - 4. Consider the safety of the victim(s) by recommending and providing extra patrol, and/or providing prevention and precautionary advice.
  - 5. Provide referral information such as counseling and other appropriate public support and assistance agencies.
  - 6. Advise the victim of criminal and civil options.

## **VICTIM REFERRALS**

The San Jose Police Department has compiled a list of public assistance agencies available to provide assistance to victims of racial, religious, and ethnic incidents:

Santa Clara County Victim Witness Assistance Center

<https://www.sccgov.org/sites/da/VictimServices/VSU/Pages/default.aspx>

(408) 295-2656

American Civil Liberties Union of Santa Clara County

<http://acluscvc.org/>

(415) 621-2488 or (415) 621-2493

B'Nai B'Rith Anti-Defamation League (ADL) for Northern California

<http://sanfrancisco.adl.org/about/>

(415) 981-3500

California Attorney General's Civil Rights Enforcement Unit

<https://oag.ca.gov/civil>

(916) 322-3360 or (800) 952-5225 (For Public Use)

(916) 324-5765 (For Law Enforcement Use Only)

California Department of Fair Employment and Housing

<https://www.dfeh.ca.gov/>

(800) 884-1684

Fair Housing "Project Sentinel" (Santa Clara & San Mateo Counties)

<http://housing.org/>

(650) 321-6291

City of San Jose Human Services Commission

<http://www.sanjoseca.gov/index.aspx?NID=371>

(408) 535-3500

National Association for the Advancement of Colored People (NAACP)

<http://www.sanjosenaacp.org/>

(800) 622-2799 or (408) 295-3394

Gardner Health Center

Asian and Spanish (Centro De Bienestar) Support Teams

<https://gardnerfamilyhealth.org/>

(408) 200-2291

Alum Rock Counseling

<http://www.alumrockcc.org/>

(408) 294-0500 Counseling Line

(408) 294-0579 Juvenile Crises