

Identifying and Reporting Hate Crime Incidents 10/30/2015

S1: Identifying and Reporting Hate Crime Incidents

S2: Topics Covered – This training reviews the following topics: Hate Crime Data Collection Requirements, the New York State Hate Crime Definition in Penal Law 485.05, identifying hate crimes, and reporting hate crime incidents through the Uniform Crime Reporting program.

S3: New York State Data Collection Requirements & Hate Crime Definition

S4: NYS Executive Law Section 837 (4)(c) Data Collection Requirements - New York State Executive Law requires DCJS to collect and analyze statistical and all other information and data with respect to the number of *hate crimes* reported to or investigated by the division of state police and all other police or peace officers. This data must include the number of persons arrested for committing hate crimes, as well as the offense for which the person was arrested.

S5: NYS PL 485.05 Hate Crime Definition - A person commits a hate crime when he or she “commits a specified offense and either: 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 the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct ...”

S6: PL 485.05 Hate Crime Definition cont’d – “intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.”

S7: “regardless of whether the belief or perception is correct” – Under the hate crime law, a perpetrator just has to believe the victim belongs to a designated group. The victim does not actually have to belong to that group. Perpetrators have been successfully arrested and prosecuted in instances where a victim was mistakenly targeted.

Consider the following example. A man wearing a turban is walking to his car when he is approached by another man who punches him while shouting anti-Arab epithets.

The man in the turban explains he is not of Arabic ancestry, but the assailant continues punching him.

Investigation confirms the perpetrator attacked the victim believing he was an Arab. The victim is not an Arab, but is actually a member of the Sikh religion, which requires male members to cover their hair with a turban.

In this circumstance it would be appropriate to charge the assailant with a hate crime.

S8: Why do law enforcement professionals need to know the law? - It is important to understand New York State’s Hate Crime law for a variety of reasons.

-Successful implementation of the law is a crucial step toward protecting people’s rights.

-Crimes motivated by hatred toward particular groups not only harm individual victims but send a powerful message of intolerance and hostility to all members of the group to which the victim belongs.

-Properly identifying and documenting hate crimes improves the accuracy of crime reporting, facilitates the development of related cases, and increases the efficacy of criminal prosecution.

Identifying and Reporting Hate Crime Incidents 10/30/2015

S9: (Section Title) *Identifying Hate Crimes*

S10: *Bias motivated action* - When considering hate crime incidents, it is helpful to first look at bias-motivated action. Bias-motivated action can be either criminal or non-criminal conduct that is motivated by hatred, prejudice, or bigotry. It may be directed at an individual or group of individuals, a structured group, property, or at non-members who associate with or advocate on behalf of members of a structured group.

S11: *Bias-motivated action is not necessarily a hate crime* – It is important to distinguish between criminal and non-criminal bias-motivated action.

Examples of non-criminal bias motivated action include using hate speech, displaying offensive materials on one's own property, distributing hate literature, and posting hate material that does not result in property damage. These actions taken by themselves are considered constitutionally protected free speech.

In order for bias motivated action to be considered criminal, it must accompany one of the penal laws specified in the New York State Hate Crime Law.

S12: *Designated Hate Crimes in PL 485.05* – The NYS Hate Crime Law designates specific penal laws as hate crimes when their commission is motivated by bias against a designated group, or when victims are targeted due to their association with a designated group.

S13: *Factors to consider when identifying hate crimes* – There are a number of factors to consider when identifying potential hate crimes.

Statements made by the suspect – Bias statements alone should not be used to classify an offense as a hate crime. It is important that investigators consider the motivation behind bias statements and how these statements, in conjunction with other factors, define the events of an incident.

The display of offensive symbols or words - A Swastika, a noose, and identity-oriented graffiti indicate possible bias-motivation.

Patterns of victimization - Are certain individuals or groups repeatedly targeted by a suspect?

Date, time, and circumstances – Does an incident occur on a religious holiday, or at an event involving a group of people affiliated by one of the protected classes?

Location of the incident – Did the incident occurred in proximity to an establishment associated with a designated bias-type?

The victim's perception – Does the victim believe bias was a factor in his victimization?

S14: *Identity-Oriented Slurs/Insults* – The use of an identity-oriented slurs or insults does not necessarily indicate an offense is a hate crime.

Consider this example. A Black man and a White man in a parking lot are arguing over who had the right of way. The White man refers to the Black man using an anti-Black epithet and punches him. A passing police officer witnesses the incident and arrests the White man. To determine whether an incident of this type is a hate crime the FBI suggests asking whether the incident would have occurred if the victim and offender were members of the same group. If the incident would most likely have occurred if both men were of the same race, then the incident should not be classified as a hate crime.

Identifying and Reporting Hate Crime Incidents 10/30/2015

S15: Documenting a Hate Crime – When documenting a hate crime, investigators should always:

-Elevate the charge. The Class, Category, and Degree are increased one level and the law section is followed by the letter “H”.

-Provide victim and suspect demographic information. Collection of demographic information is critical to monitoring the demographic makeup of people involved in crimes and enables law enforcement to identify patterns of bias-motivation.

-Indicate the bias-motivation. Each hate crime must have a bias-motivation type.

Agency incident reports are the primary source of data for the UCR Hate Crime Report, so it is crucial that officers properly document bias-motivated incidents.

S16: (Section Title) **Reporting Hate Crime Incidents through UCR**

S17: Classes of Bias Motivation - The New York State Hate Crime Law identifies 7 classes of bias-motivation: gender, age, race/color, religion/religious practice, ethnicity/national origin/ancestry, sexual orientation, and disability.

S18: UCR Bias Motivations – The FBI divides these classes into more specific bias-motivation types including: anti-male, anti-female, anti-gender-identity expression, anti-60 years old or more, anti-White, anti-Black, anti-American Indian/Alaskan Native, anti-Asian, anti-multi-racial groups, anti-Jewish, anti-Catholic, anti-Protestant, anti-Islamic, anti-multi-religious groups, anti-religious practice, anti-other religion, anti-Hispanic, anti-Arab, anti-other ethnicity/national origin, anti-gay, anti-lesbian, anti-homosexual (both gay and lesbian), anti-heterosexual, anti-bisexual, anti-physical disability, and anti-mental disability.

S19: Additional Bias Motivations – In 2013, the FBI modified Hate Crime Reporting procedures to include several additional bias motivations. Starting in 2015, agencies in New York State may also report the following bias motivations: anti-transgender, anti-gender-non-conforming, anti-Native Hawaiian/Pacific Islander, anti-Buddhist, anti-Eastern Orthodox, anti-Hindu, anti-Jehovah’s Witness, anti-Mormon, anti-Other-Christian, anti-Sikh, and anti-Not-Hispanic.

S20: Picture of link to form on DCJS website - Updated Hate Crime Incident Report forms are available on the DCJS website, in the crime reporting suite, under *UCR Forms and Instructions*.

S21: Picture of form w/creation date – Please check the month and year listed in the lower right hand corner of your form. If you are using a form created prior to 2015, please download an updated form.

S22: Picture of IJ Portal Data Entry Screen – All agencies may enter the monthly Hate Crime Report directly through the eJustice IJ Portal. Agencies that submit through the portal, no longer need to send report forms to DCJS. All previously submitted reports may be viewed through the IJ Portal.

S23: Picture of DCJS website IJ Portal Instructions - Instructions for submitting Hate Crime Reports through the IJ Portal are available on the DCJS website. If you need further assistance, please contact the Crime Reporting Unit.

S24: Nothing to Report Submission - If there are no hate crime incidents during a report month, please notify DCJS that there is nothing to report using one of the following options.

Identifying and Reporting Hate Crime Incidents 10/30/2015

S25: Picture of NTR Check Box on form - If you use the Hate Crime Incident Report form, check the *Nothing to Report* box in the upper right hand corner.

S26: Picture of NTR on Return A - If you submit Return A, check off *Nothing to Report* in the *Additional Reports Required* box.

S27: Picture of IJ Portal NTR Submission Status Table - If you submit through the IJ Portal, select *Hate Crime Report* and check the *Nothing to Report* box in the *Submission Status Table* on the *UCR Report Submission page*. Please note, any agency that receives grant money from DCJS is contractually required to submit all UCR, IBR, and Supplemental Reports through the IJ Portal.

S28: Completing the Hate Crime Incident Report - When completing the *Hate Crime Incident Report*, please provide the *Incident Date*, *Agency Case Number*, *Hate Crime Incident Classification*, *Bias Motivation*, *Location of Hate Crime*, *Type of Victim*, and *Victim and Offender Demographics*.

S29: Picture of Hate Crime Penal Law Reference Table - The New York State Hate Crime Statute specifies which offenses may be reported as hate crimes. If you use the Hate Crime Incident Report form, please refer to the *Hate Crime Penal Law Reference Table* on the second page for a complete list of hate crime specific penal laws.

S30: Picture of Hate Crime Penal Law dropdown menu – If you submit through the IJ portal, please use the *Law Lookup* button to access a list of hate crime specific penal laws. In this example, the *Hate Crime Incident Classification* is Penal Law 120.00 H reflecting the charge *Assault 3rd as a Hate Crime*.

S31: Picture of Bias Motivation on form - Bias motivation is any identity-based motivation. In this example, the “Bias Motivation” is code 41 - Anti-Gay.

S32: Picture of Bias Motivation dropdown menu - In the IJ Portal *Hate Crime Report Data Entry Screen*, bias motivations are listed in a dropdown menu.

S33: Location of Hate Crime - Each hate crime incident must have a reported location. The *Location of Hate Crime* may be: place of worship, other property owned or operated by a targeted group, public property, business, residence, or other location.

S34: Type of Victim - Each hate crime incident must indicate the *Type of Victim*. *Individual* should be used when the victim is either an individual or an informal group of individuals. *Structured Group/Organization* should be used when the target is a formal group of people defined by their collective similarity where no one individual is specifically targeted. For example, when a public restroom is vandalized with Swastikas and anti-Jewish epithets, but no specific individual or individuals are targeted.

Property-related hate crimes are frequently directed at a structured group. In these instances it is important to distinguish the victim from the complainant reporting the incident. A maintenance worker reporting bias motivated vandalism to the previously mentioned restroom should not be reported as a victim, unless he was specifically targeted.

S35: Entering Victim Demographics - If the *Type of Victim* is *Individual*, enter demographic information for each victim. If the *Type of Victim* is *Structured Group* or *Organization*, victim demographics should be left blank.

S36: Entering Offender Demographics - Please enter all demographics for each known offender. If an offender is unknown, leave *Age* blank, and enter “U” for the *Sex*, *Race*, and *Ethnicity*.

Identifying and Reporting Hate Crime Incidents 10/30/2015

S37: Race - The UCR Crime Reporting Program uses four race categories: White, Black, American Indian/Alaskan Native, and Asian/Pacific Islander. These classifications were adopted from the Office of Management and Budget's 1997 Revision to the Standards for the Classification of Federal Data on Race and Ethnicity.

Sometimes law enforcement personnel mistakenly count Hispanic as a 5th race category, however, Hispanic is an ethnicity and should always be counted separate from race.

S38: Ethnicity – The UCR program breaks *Ethnicity* into 2 categories: *Hispanic* and *Non-Hispanic*. *Hispanic* should be used to classify any person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish speaking culture, regardless of race. All other people should be classified as Non-Hispanic.

Please include both race and ethnicity in the *Victim and Offender Demographic Information* sections. In instances where a victim or offender are known, but do not provide race or ethnicity data, it is appropriate for an investigator to use her best judgement to infer the unspecified race or ethnicity. Providing this information is critical to monitoring bias-related crime and can help law enforcement identify patterns of bias-motivated victimization.

S39: Picture of UCR Reporting Alerts Page - The reporting of Hate Crime incidents is crucial to New York State's effort to better understand and respond to bias-motivated crime. In 2009, DCJS issued a reporting alert to all crime reporting agencies, outlining modifications made in the reporting of hate crimes through the Uniform Crime Reporting Program. Please review this and other reporting alerts available on the DCJS website. The UCR Reporting Alert page includes memos on a variety of crime reporting topics.

S40: Picture of IBR Reporting Alerts Page - There is also an IBR Reporting Alerts page. Please check back periodically to stay abreast of the latest UCR and IBR related news.

S41: DCJS Crime Reporting Unit Contact Information – For more information on UCR and IBR related issues, please contact the DCJS Crime Reporting Unit.