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**DAVID A. PATERSON
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**GALEN D. KIRKLAND
COMMISSIONER**

TO: Governor David A. Paterson
FROM: Commissioner Galen D. Kirkland
DATE: July 29, 2009
RE: Hate Crime Task Force Recommendations

Executive Summary

On November 4, 2008, four teens attacked a black Muslim teenager with a baseball bat while yelling “Obama” in Staten Island.

The following weekend, on November 8, Ecuadorian immigrant Marcelo Lucero was stabbed by a mob of teenagers in Patchogue, Long Island. The suspects later said they had driven into the village from out of town looking for Latinos to beat up.

Less than a week after that incident, Latiesha Green, a transgender person, was shot to death while she sat with her brother and a friend inside a car in Syracuse. The suspect allegedly shot her because he thought she was gay.

On December 8, as Ecuadorian brothers Jose and Romel Sucuzhanay were walking home from a bar in the Bushwick section of Brooklyn, three men jumped out of a sport utility vehicle and yelling anti-gay and anti-Hispanic slurs, attacked Jose with a bottle and a baseball bat. Five days later the father of two died in Elmhurst Hospital.

In May of 2009, four men were arrested in Orange County, New York for their part in an alleged terrorist plot that included planting a bomb outside of a synagogue in Riverdale, New York.

Governor David A. Paterson established the Hate Crime Task Force (HCTF) in January 2009 in response to appalling bias-motivated crimes in New York State. The goal of this interagency committee is to develop strategies to prevent hate crimes and to increase awareness among New

Yorkers at all levels of society so they can identify bias crimes and respond effectively. The Task Force is comprised of three subcommittees: the Subcommittee on Training chaired by Mary Kavaney from the Division of Criminal Justice Services, the Subcommittee on Education & Outreach, chaired by Linda Glassman from the Office of Temporary and Disability Assistance, and the Subcommittee on Immigration chaired by Secretary of State Lorraine Cortés-Vázquez.

Each subcommittee developed programs geared to fulfill the Task Force mission. The Subcommittee on Training developed a protocol for law enforcement that summarizes their responsibilities when dealing with a potential hate crime. The subcommittee on Education and Outreach has formulated guidelines to encourage and support the development of curricula on hate crimes for students and school staff and created a curriculum module on hate crimes to be incorporated into the existing Refugee School Impact Program. The Immigration subcommittee developed a protocol for state agencies and community-based organizations to provide services for victims and witnesses of hate crimes and proposed an Executive Order encouraging all residents of the state, regardless of citizenship, to utilize government services.

According to an annual Hate Crime Statistics Report released jointly by the Department of Justice and the Federal Bureau of Investigation, 2,025 law enforcement agencies reported 7,624 hate crime incidents involving 9,006 offenses in 2007 (the most recent year for which reporting is available). Additionally, an analysis of the 7,621 single-bias incidents reported in 2007 revealed the following:

- 50.8 percent were racially motivated
- 18.4 percent were motivated by religious bias
- 16.6 percent resulted from sexual-orientation bias
- 13.2 percent stemmed from ethnicity/national origin bias

In New York State, a total 645 hate crimes were reported statewide in 2007. The FBI is required to track hate crime statistics, but does not require state agencies to report them, causing major discrepancies in the number of crimes reported per state.

The following are the recommendations made by each subcommittee:

I. **Education and Outreach Subcommittee**

Recommendation: Encourage and Support the Development of Curricula on Hate Crimes for Students and School Staff

The Governor's Office will work with the State Education Department and the New York State United Teachers (NYSUT), to link trainers with schools and provide appropriate curricula to teachers and administrators. School districts will be encouraged to include such curricula as part of core staff development programming.

The HCTF, through the Education and Outreach Subcommittee, has reviewed three specific curricula for possible use and/or adaptation:

The Reduction of Stigma in Schools is being developed for the Syracuse City Schools to help promote understanding and acceptance of lesbian, gay, bisexual and transgendered youth by the school community. The proposed curriculum is provided as Attachment I. Developed by the Q Center, it also strives to provide specific hate crime information to school staff and to students who might be potential targets of such crimes.

The Office of Temporary and Disability Assistance (OTDA) Refugee School Impact Program provides orientation and training to school district teachers and staff on the cultural factors present with refugee students. The OTDA Bureau of Refugee and Immigrant Assistance (BRIA) manages school impact program contracts in five communities. In response to the recent hate crime-related incidents in New York State, OTDA has developed a curriculum module on Hate Crimes as an addition to the regular School Impact Program curricula. The Hate Crime Module provides helpful instruction on how to recognize inappropriate behaviors in ourselves and others, and how to respond to such behavior. The Hate Crime Module is provided as Attachment II. The professional development presentation on Refugee Students and Hate Crime is provided as Attachment III. The curriculum also includes two “Stop Hate Crimes” posters and two related 30-second PSA’s; these materials are specifically targeted separately to elementary and middle school/secondary students. Posters are provided as Attachment IV. The Module is now being incorporated into the Refugee School Impact Program for use this summer.

The Teach the Teachers Program is a series of conferences that train school administrators and teachers to identify and investigate incidents of bias-related bullying amongst their students. The goal of the conference is to empower the school staff to act promptly and effectively when discriminatory behavior occurs between students of different backgrounds. The conferences are composed of a lecture component and a workshop component. Participants receive training in both state and local anti-bias crime and anti-discrimination laws as well as their own administrative directives on the topic. Participants then put their knowledge into practice during the workshop component, where they are confronted with different reality-based scenarios involving student-on-student discriminatory conduct. The program was created by DHR in partnership with the New York City Department of Education, The NYPD Hate Crimes Taskforce, The Queens District Attorney’s Gang Violence and Hate Crimes Bureau, the New York City Commission on Human Rights, The Queens Borough President, Queens Borough Community College and the Kuperferburg Holocaust Resource Center. The Teach the Teacher Program is provided as Attachment V.

The HCTF has reviewed and endorses these curricula for use in appropriate settings. The Governor’s Office, the State Education Department and NYSUT should continue to work together on the use of these resources and on the development of additional resources, to be used in a variety of school settings. There are various potential target populations (parents, teachers, at-risk students, students at risk of perpetrating hate crimes, and the general school community). The Work Group has, for example, begun review of the Refugee Impact curriculum for use with the general immigrant population.

The HCTF also recommends that such curricula be added to teacher and school administrator certification criteria, or added to required staff development trainings, or both.

Recommendation: Review Existing State Government Agency Language Service Access

In order to promote access to services and benefits by Limited English Speaking populations (which would include the ability to provide outreach in multiple languages), state government agencies currently use their own methods to obtain translation and interpretation services. Factors contributing to the need for translation and interpretation services include legal mandates, need for public outreach in an understandable form that people can comprehend, the composition of populations that are most likely to be served, etc.

The Governor's Office will establish a Language Access Committee with members from the Governor's Office, the Division of the Budget, and several state agencies with significant language access needs. The Committee will be charged with making recommendations on the efficacy and feasibility of establishing a centralized Language Access service available to all state agencies and programs.

II. Immigration Subcommittee

Recommendation: Develop Protocols for State Agencies and Community Based Organizations Providing Services to Victims and Witnesses of Hate Crimes

The Immigration Subcommittee developed a "hate crime protocol" to provide a consistent approach to responding to victims of hate crimes that occur and to outline the provision of resources available to victims and witnesses. The proposed protocol was developed by examining the protocols in place for related areas of crime such as child abuse, domestic violence and sexual assault, elder abuse and human trafficking. As with these related crimes, the points of entry for victims who may not immediately seek the assistance of law enforcement include schools, churches, hospitals and community based organizations. In addition, for immigrant communities, points of entry also include the various Consulate General offices in New York. These points of entry were reviewed and discussed in the development of the proposed hate crime protocol. The proposed hate crime protocol is provided as Attachment VI.

It is important to note that the proposed hate crime protocol does not require additional resources or staff for agencies; utilizing systems that currently exist which serve related populations will strengthen and improve the opportunity for hate crime victims by encouraging these systems to be responsive and accountable. For example, many victims of crime have no knowledge of the existence of services provided by the New York State Crime Victims Board, any awareness of their

basic rights or the availability of victim assistance programs in their communities. To address this problem, several laws exist to ensure that crime victims are made aware of their rights and are informed about the existence of victims' services and programs: Police agencies are required to distribute information cards to all victims which inform crime victims of the CVB's locations, phone numbers, website address, services, basic victims rights and local victim assistance programs; All district attorney offices are required to distribute the CVB's The Rights of Crime Victims in New York State pamphlet to the victims they come into contact with; Every police station, precinct house or other appropriate location where a crime may be reported is required to have available informative booklets, pamphlets and other pertinent written information, including information cards, relating to the availability of crime victims compensation; and Every general hospital emergency room is required to prominently display posters giving notification of the existence and general provisions of compensation and crime victims' rights. Points of contact for hate crime victims must be consistently encouraged to follow approved protocols and legal requirements. The information cards are provided as Attachments VII.

The proposed hate crime protocol will complement the work already being done by agencies and fill in the gap in response to hate crime victims by providing additional tools and training. It is also important that those responsible for responding to the needs of hate crime victims and their families are coordinating their efforts to minimize the trauma to the victim. Developing step-by-step instructions for response to hate crimes is one way that these efforts can become better coordinated. Cross training between agencies is another way to improve the way victims of hate crimes and their families are treated when they are victimized.

The proposed hate crime protocol also provides instructions for victims and witnesses of hate crimes who may be undocumented residents. These separate but related instructions are necessary because oftentimes the fear of deportation or other immigration consequences cause victims or witnesses of hate crimes who may be undocumented to not risk being involved in the criminal justice system. To encourage victims of hate crimes and witnesses who may be undocumented to seek assistance and report hate crimes, the protocol suggests that agencies should not inquire about a person's citizenship or legal status in providing services or benefits and keep any information about a person's citizenship or legal status in the U.S. confidential.

Recommendation: Proposed Executive Order to Permit Members of Immigrant Communities to Access State Services Regardless of Citizenship

The proposed executive order was drafted to set forth the State's policy of encouraging all residents to utilize governmental services and to cooperate with law enforcement authority without regard to citizenship. The proposed executive order ensures there is an effective way to guide State agencies and law enforcement agencies in adhering to state and federal laws while protecting the safety and health of all members of the State's community. The proposed executive order is provided as Attachment VIII.

III. Training Subcommittee

Recommendation: Creation of a Hate Crimes Model Policy for Police Officers

The training subcommittee examined the International Association of Chiefs of Police Hate Crimes Model Policy. It then surveyed police departments from across the state and examined hate crimes policies currently in effect. After reviewing these policies and interviewing senior police officials, a proposed model policy was prepared that clearly outlines the duties and responsibilities of law enforcement when confronted with a potential hate crime. The policy captures best practices and includes applicable laws, response procedures, investigative steps, documentation, accusatory instrument preparation, reporting requirements, and community relations.

The Model Policy is being reviewed by stakeholders. Once completed, it will be presented to the Municipal Police Training Council (MPTC) for its review and envisioned implementation at the next meeting the first week in September 2009. Once approved by the MPTC, the Model Policy will be shared with police departments across the state. The MPTC training standards for the basic police course for police officers and the supervisor's course will also be modified to include identified best practices.

Recommendation: Incorporate Hate Crimes into Training Initiatives for Police Officers

In 2008 the Division of Criminal Justice Services co-sponsored training with the Anti-Defamation League on domestic extremism. Over 400 law enforcement officers from across the State received training. Topics covered included defining and identifying hate crimes, investigative steps, evidentiary issues, relevant New York State and Federal hate crime laws, offender profiles and typologies, and recruiting tactics of extremist groups. Training sessions were held in Elmira, Buffalo, Syracuse, Albany, and Suffolk and Rockland Counties over a four-month period.

The Division will continue its commitment to training law enforcement officers regarding hate crimes by incorporating this topic into training for the 17 Operation Impact jurisdictions. A representative from the Division is attending Operation Impact meetings throughout the State and will highlight the resources available to address hate crimes and the importance of recognizing, properly investigating, and correctly classifying bias-related incidents. Operation Impact meetings are attended by senior executives of local, state, and federal law enforcement agencies.

Recommendation: Incorporate the Hate Crime Model Policy and other MPTC Model Policies into the Literature Used to Formulate Test Questions for Future Civil Service Police Examinations and/or Examination Test Preparation Guides

The training subcommittee has approached personnel from the Department of Civil Service to discuss this proposal. The incorporation of the model policy protocol into the civil service exams will bring further emphasis to the investigation of hate crimes.

Recommendation: Strengthen Hate Crime Reporting

DCJS, who oversees the State's Uniform Crime Reporting program, has taken several steps to improve the Hate Crime reporting process and the quality of hate crime data. In 2009, a comprehensive data reconciliation project was initiated to validate hate crime data submitted by police departments for 2008. This information will be published in August in the Hate Crime statistical report prepared by DCJS. Other changes recently implemented include:

- DCJS improved the hate crime reporting forms and instructions.
- DCJS staff modified procedures and now review hate crime incident reports for completeness upon receipt, and immediately contact agencies for more information if needed.
- DCJS staff are regularly following up with reporting agencies to ensure that reports are submitted.

Recommendation: Provide Training Initiatives for Prosecutors

At the request of Deputy Secretary Denise O'Donnell, the New York Prosecutor's Training Institute (NYPTI) updated its hate crimes training materials and scheduled continuing legal education classes for prosecutors. Experienced prosecutors who have prosecuted hate crimes in Kings, Queens, and Monroe counties and an Inspector from the New York Police Department Hate Crimes Task Force provided a one-day training class. The training was held both in Albany and New York City. Topics included hate crimes investigation, charging decisions, issues before a jury, and how to work with community based organizations. In order to make this valuable training available to prosecutors all over the state, NYPTI has agreed to provide a DVD of the presentation to every District Attorney's Office in the State.

Penal Law Amendments: Two amendments to the Hate Crimes statute were recommended by prosecutors who made presentations at the NYPTI Hate Crimes Continuing Legal Education class. First, they recommended that Penal Law § 485.05(1) should be amended to add a new subdivision (c) to address property damage crimes 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 or entity associated with that property. This will clarify the law and make it easier to prove hate crimes committed, for example, against a building owned by a religious institution.

Second, prosecutors recommend that Penal Law § 485.05(1) be amended to permit a finding that the perpetrator committed the specified offense because of a belief or perception regarding "one or more of the enumerated protected classes." This addresses the situation where members of the jury, although agreeing that a hate crime occurred, may be inclined to

rely on different protected attributes of the victim in reaching its verdict (i.e., religion and religious practice; race and color; gender and sexual orientation).

Recommendation: Coordinate a Hate Crime Task Force Response

The Hate Crime Task Force Response Team has put in place a response protocol with the Department of Justice, United State Attorney’s Office. The Department of Justice Community Relations Service will notify an assigned representative from the Division of Human Rights when a hate crime in New York State comes to their attention. DHR will discuss the incident and then bring it to the attention of the Task Force when the case involves a homicide, serious physical injury, public alarm, community attention or considerable media attention. If deployed, the Task Force members will bring technical assistance and required services to the impacted area or individuals. The proposed Hate Crimes Task Force Response Protocol is provided as Attachment IX.

Recommendation: State agencies and authorities should inventory their public material to determine if the phrase illegal alien is used and replace it with undocumented person

The members of the HCTF believe the term illegal alien is offensive, degrading and dehumanizing. The Empire State should set the example for respect, understanding and humanity.

Members of the Hate Crimes Task Force

Chamber

Sylvia Hamer, Deputy Secretary for Technology, Operations and Gaming
Howie Katz, Special Assistant to the Governor
Duffy Palmer, Deputy Secretary for Education
Robin Forshaw, Assistant Counsel to the Governor
Steve Krantz, (former) Assistant Counsel to the Governor
Sarah Lewis, Assistant Secretary for Policy
Shammeik Barat, Assistant Secretary for Community Relations
Joseph Garba, Assistant Secretary for State Operations
Eileen Reyes, Assistant to the Governor for Community Affairs

Crimes Victim Board

Tina Stanford, Chairwoman

Division of Criminal Justice Services

Mary Kavaney, Deputy Commissioner and Counsel
Melvin Perez, Special Assistant

Division of Human Rights

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Department of Labor

Patricia Smith, Commissioner
Terri Gerstein, Deputy Commissioner of Labor
Maritere Arce, Director, Bureau of Immigrant Workers' Rights

Department of State

Lorraine Cortes-Vazquez, Secretary of State
Ricardo Aguirre, Counsel to the Secretary of State
Teneka Frost, Director, Affirmative Action Office

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Office of Temporary Disability Assistance

Linda Glassman, Deputy Commissioner, Center for Specialized Services
Laurence Frank, Manager/Newcomer Transition Unit
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