

## Hate Crimes

### 338.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

#### 338.1.1 DEFINITIONS

**Hate crimes** - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
  - 1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
  - 2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
  - 3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
  - 4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

**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 (Penal Code § 422.56).

### 338.2 POLICY

The Palo Alto Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

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The Palo Alto Police Department hate crimes policy is drafted in accordance with the Santa Clara County Protocols. Personnel are required to read and follow the additional guidelines set forth in the Santa Clara County Protocols Section 10 - Santa Clara County Law Enforcement Policy Statement Regarding Hate Crimes.

### **338.3 PREVENTING AND PREPARING FOR LIKELY HATE CRIMES**

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Officers should make an affirmative effort to establish contact with persons and groups within the community, who are likely targets of hate crimes, to form and cooperate with prevention and response networks.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and follow-up as outlined below, including community follow-up.

#### **338.3.1 REPORTING**

Hate crime laws have been upheld by the United States Supreme Court as constitutional, and not a violation of one's first amendment right to speech, when the speech incites/encourages hate motivated violence or crime. Penal Code §415.3 also addresses the use of offensive words in public, which will provoke immediate violent reaction. The victims of bias related crime, and the communities we serve expect and deserve swift response, thorough investigation, apprehension of suspects, and prosecution of suspects, when it comes to reported bias incidents. Finally, even if no crime can be attached to reported biased related behavior, a hate incident investigation should be initiated, perpetrators and/or the group they are associated with should be identified, and a report should be completed. Hate crimes are important to document and to differentiate from other forms of crime because of their uniquely violent and assault characteristic, the trauma sustained by the victims, the threat they pose to community stability, and the potential for community unrest.

Other concepts to consider when investigating bias related incidents/crimes:

- (a) Bias related vandalisms must involve a specific target, such as an individual, property of an individual, or residence in order to charge Penal Code §422.6.
- (b) Vandalisms which are bias in nature associated with a private institution or public agency (houses of worship, religious/ethnic organizations or businesses, etc.) must be a felony (\$400.00) in nature for a hate crime to be charged. All other bias related vandalisms would be labeled hate related incidents.
- (c) Obscene or threatening phone calls when containing threats, derogatory content, slurs directed at one who is a member or suspected of being a member of a protected class as defined in the definition of hate crime in this general order are to be considered bias crimes.

When an incident is determined to be prejudice based in nature, the officer will list the offense as a Hate Crime. The classification will be one of the following: Interfere w/ another's civil rights,

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battery, assault w/ a deadly weapon, desecration, vandalism, other (incident in nature, leafleting w/out a permit, etc.)

### **338.4 INVESTIGATIONS**

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officer(s) will be promptly assigned to contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical
- (c) Once “in progress” aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects, etc.), the assigned officer(s) will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
  - 1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officer(s) will interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
  - 1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))
  - 2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officer(s) or supervisor may request additional assistance from detectives or other resources to further the investigation
- (g) The assigned officer(s) will include all available evidence indicating the likelihood of a hate crime in the relevant report(s). All related reports will be clearly marked as “Hate Crimes” and, absent prior approval of a supervisor, will be completed and submitted by the assigned officer(s) before the end of the shift
- (h) The assigned officer(s) will provide the victim(s) of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officer(s) should also make reasonable efforts to assist the victim(s) by providing available information on local assistance programs and organizations

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- (i) The assigned officer(s) and supervisor should take reasonable steps to ensure that any such situation does not escalate further (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

#### 338.4.1 INVESTIGATIVE SERVICES RESPONSIBILITY

If a case is assigned to the Investigative Services, the assigned detective will be responsible for following up on the reported hate crime as follows:

- (a) Coordinate further investigation with the District Attorney and other appropriate law enforcement agencies, as appropriate
- (b) Maintain contact with the victim(s) and other involved individuals as needed
- (c) Maintain statistical data on suspected hate crimes and tracking as indicated and report such data to the Attorney General upon request pursuant to Penal Code § 13023

#### 338.4.2 SUPERVISORS RESPONSIBILITY

Field Supervisors who respond to the scene of a reported or suspected hate or bias related crime should:

- (a) Notify the watch commander;
- (b) Ensure the elements of the crime/incident are present;
- (c) Supervise the preliminary investigation;
- (d) Coordinate scene security;
- (e) Coordinate plan of action with investigating officer to ensure a thorough investigation, interviews, and case completion;
- (f) Assist in the stabilization of victim(s), if necessary;
- (g) Take steps to insure that the incident does not escalate;
- (h) Take steps to insure that the victim and witness receive adequate neighborhood protection via TRO's, patrol checks, etc. when necessary;
- (i) Notify PIO. Approval should be obtained from a Captain or the Police Chief prior to the release of information;
- (j) Insure proper and thorough collection of evidence.

#### 338.4.3 RECORDS UNIT

The Records Unit insures that state and federal justice Departments receive reports of hate crimes and hate incidents, which occur within the jurisdiction of Palo Alto.

The Records Unit will maintain statistical data on suspected hate crimes and tracking as indicated and report such data to the Attorney General upon request pursuant to Penal Code § 13023.

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### **338.4.4 SUPERVISOR RESPONSIBILITY**

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.

### **338.5 TRAINING**

All members of this department will receive POST approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6.

### **338.6 POLICY ISSUE DATE**

Updated: 12-8-16