

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: March 20, 2015
NUMBER: 6.26 – PATROL
SUBJECT: HATE CRIMES
RELATED POLICY: 6.26
ORIGINATING DIVISION: OPERATIONAL SUPPORT
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 6.26 – 10/10/2012

I. PURPOSE

This Department procedure establishes guidelines for the definition, enforcement posture, and investigative responsibilities associated with hate crimes.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The San Diego Police Department takes a proactive role in promoting peace and harmony within the community and in ensuring that rights guaranteed by state laws and the US Constitution are protected for all citizens regardless of their race, religion, national origin, ethnicity, sexual orientation, disability, or gender (to include gender identity and gender expression). When such rights are infringed upon by violence, intimidation, threats, or other harassment, based upon traits described in the preceding sentence, the Department will investigate, document, and attempt to identify the perpetrators, arrest them, and bring them before the courts.

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IV. DEFINITIONS

- NEW
- A. A "hate crime" is any act of intimidation, harassment, physical force, or threat of physical force directed at an individual, institution, or business expressly because of race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression), or any act of vandalism (including graffiti), damage or destruction of property, motivated either in whole or part by hostility to their real or perceived race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression), with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution or laws of the United States or the State of California whether or not performed under color of law.
- B. A hate crime can include threatening phone calls, hate mail, physical assaults, vandalism, cross burnings, firebombing, or destruction of other religious symbols. This list is not all-inclusive and personnel are referred to section V. below which contains criteria for determining if an incident is or is not a hate crime. Some incidents may not clearly fit a specific definition. In those cases, a common-sense approach must be used.
- C. A hate crime can be any crime against a person, in the absence of other apparent motivation (e.g., robbery, when initiated with racial, ethnic, religious, or homophobic epithets will be considered to be a hate crime.) Many hate crimes may have additional motivation, such as robbery; yet, if there is clear and convincing evidence of hate crimes motivation as well, it should be reported as such.
- D. A non-criminal act may still require a police response when members of a particular group(s) feel threatened or intimidated. It is important to note that name-calling and epithets not combined with other crimes are not considered criminal acts. However, Penal Code Section 422.6(c) reads, in part, "...no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat."
- E. Though not a hate crime, an arrest can be made charging PC Section 415 (3) in cases where PC Section 422.6 does not apply. PC Section 415 (3) states, "...any person who uses offensive words in a public place, which are inherently likely to provoke an immediate violent reaction" (i.e., a suspect calls a victim a derogatory name with the intent to berate the victim). The key is offensive words that inherently provoke a person to violence. PC Section 415 (3) does not mandate that the victim respond physically to the words.

F. Although the following are of concern because they may reflect inter-group tension, they are not considered hate crimes because they are not aimed at a specific target:

1. Graffiti on freeway overpasses, public phone booths, etc.;
2. "Punk rock" or gang graffiti, even if accompanied by a swastika;
3. Interracial crimes, such as robbery, assault, or rape, which are not motivated by race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression);
4. Intra-group acts, regardless of graffiti. This includes gang graffiti and other gang acts; and,
5. Ku Klux Klan (KKK), Nazi, other hate crime rallies, leafleting, or recruiting drives, though reprehensible, are not hate crimes.

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V. CRITERIA FOR DETERMINING HATE CRIMES

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Hate crimes are defined as acts directed at an individual, institution, or business expressly because of race, ethnicity, religion, or sexual orientation, disability or gender (to include gender identity and gender expression). Definitive guidelines for hate crime determination are:

- A. The hate crime must involve a specific target, such as an individual, residence, house of worship, religious or ethnic organization, or business.
- B. Graffiti must be racial, ethnic, religious or homophobic in nature, such as swastika, KKK, Nazi, or other hate group symbols or slogans, or involve the use of epithets.
- C. Bigotry must be the central motive for the attack, rather than economics, revenge, etc., as in other kinds of crime.
- D. A specific name and address, and description of the hate crime must be on file with the law enforcement agency or other organization handling the complaint.
- E. Any crime against a person, which is, or appears to have been motivated, all or in part, by that person's race, ethnicity, religion, sexual preference, gender (to include gender identity and gender expression), or disability will be considered to be a hate crime per 422.6 (a) PC.
- F. Vandalism to a house of worship, or ethnic, religious, or gay and lesbian organizations will be considered a hate crime in the absence of evidence of other motives (422.6(b) PC) (594.3 PC).

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- G. Obscene or threatening phone calls, when containing racial, ethnic, religious, or homophobic slurs, are considered hate crimes.

VI. PROCEDURES

A. Reporting

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1. Whenever responding officers determine that the acts complained of constitute a hate crime, the assigned officer shall complete a crime report using the Department-approved format. When completing a crime report, it is important that relevant information concerning race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression), of all persons involved be indicated in the crime report.
2. California Penal Code sections 422.6 and 422.7 addresses hate crimes. If an officer has determined that a crime was committed in violation of these sections, the following procedures must be followed in completing the crime report (ARJIS-2) to collect the hate crime information:
 - a. Mark "YES" in the ADDITIONAL OFFENSES box;
 - b. Circle "YES" in the HATE CRIME box;
 - c. Mark the "OTHER" box in SUSPECT ACTIONS category (Line 60) and write in the word "HATE CRIME";
 - d. Enter "422.6 PC" in the ADDITIONAL OFFENSES box (on Page 2); and,
 - e. Provide details in the narrative.
3. Penal Code section 422.6 is intended to be used in conjunction with another criminal charge (e.g., 242 PC Battery, and 594 PC Vandalism). Investigators or the District Attorney's Office will decide whether 422.7 PC is a more appropriate charge.
4. A hate crime information sheet is available to assist officers with hate crime investigations. It can be located on the LAN system at F:\ How To\ Hate Crimes Information.
5. Other reported incidents not amounting to a crime shall be documented on an ARJIS-9. A copy of the ARJIS-9 should be forwarded to the area hate crimes investigator, Records Division, and the Criminal Intelligence Unit. The same relevant information concerning race, religion, national origin,

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ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression) of the persons involved must be included in the report. This information will be utilized for follow-up and appropriate referral to mutually concerned agencies.

B. Response

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When an officer on the scene makes a determination that an incident is an act of bias due to race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression), the following procedures shall be followed. To achieve a thorough investigation and a sensitive response to the victim(s) and community, responsibilities shall be as follows:

1. Field officers shall:
 - a. Respond in a manner sensitive to the feelings and needs of the victim(s). Officers should consider the use of Crisis Intervention volunteers;
 - b. Preserve the crime scene and evidence, if the incident constitutes a definable crime;
 - c. Immediately take all appropriate investigative and enforcement action;
 - d. Prepare a detailed crime report;
 - e. Ensure that all appropriate investigative personnel have been notified if their presence would serve the best interest of the investigation;
 - f. Refer the victim(s) to the Community Relations Storefront Office in your area command for security information (e.g., Neighborhood Watch and home security); and,
 - g. Refer to specialized support agencies listed below.
2. The field supervisor shall:
 - a. Notify the Watch Commander as soon as possible in circumstances that are motivated by race, religion, national origin, ethnicity, sexual orientation, disability or gender (to include gender identity and gender expression), and involve serious injury, significant destruction of property, or potential for additional unrest. The field supervisor will provide the following information:

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- (1) The type of vandalism and the materials involved;
 - (2) The exact time and location of the incident;
 - (3) The type of neighborhood (racial, ethnic, and socio-economic make-up); and,
 - (4) Whether arrests are imminent, and/or the name, address, date of birth, sex, and race of any person arrested.
- b. Specifically assign a unit to the location as an option if, in the judgment of the field supervisor, there still exists the potential for further acts of violence;
 - c. Ensure that all remains of physical evidence at the incident are removed after processing is completed. If the remains cannot be removed (e.g., paint on walls), the supervisor shall attempt to impress upon building or property owners the need for complete restoration as soon as possible;
 - d. Ensure that the crime report contains full data on the materials used (e.g., cross, literature, or paint, including size, construction, wrapping, messages), and note the method of removal and the disposition of the remains;
 - e. Ensure that a copy of the crime case or ARJIS-9 report is sent to the Criminal Intelligence Unit as soon as practical for tracking purposes; and,
 - f. Maintain contact with community leaders at the scene concerning the progress of the investigation (when appropriate).
3. Investigative personnel shall:
 - a. Generate appropriate and necessary supplemental investigative reports;
 - b. Contact appropriate state and/or local law enforcement agencies for assistance with serious cases [e.g., Human Relations Commission, State Attorney General, and the Federal Bureau of Investigations (FBI)];
 - c. Maintain liaison with the Criminal Intelligence Unit for intelligence information exchange;

- d. Ensure that victims and other concerned parties are informed of a case's status/disposition;
- e. Notify the City Attorney and District Attorney's Hate Crimes Units advising them on the status of the case. (The DA's office has assigned special Deputy DAs to prosecute hate crimes.);
- f. Forward a copy of the crime case to the Criminal Intelligence Unit for tracking purposes; and,
- g. Conduct all follow-up investigations related to the case necessary to ensure successful prosecution.

4. Community Relations Officers shall:

- a. Meet and work with the Chief of Police, community leaders, and responsible civil rights advocates to assist, coordinate, and facilitate efforts to prevent reoccurrences of hate crimes on a routine basis;
- b. Make a follow-up visit to assure the victim that the Department is doing everything possible to eliminate the fear factor and apprehend the suspect(s);
- c. Maintain contact with community leaders concerning the progress of the investigation; and,
- d. Conduct community meetings (if applicable) in areas of high tension due to hate-motivated crimes only after conferring with the respective commanding officer.

NOTE: The San Diego Police Department firmly believes that meetings with group representatives often quell rumors by providing factual information on crimes and investigations. These meetings also produce trust in the Police Department, which is crucial to prevent community unrest produced by misinformation or lack of information. Immediate contact with community leaders is essential to maintaining order.

5. The Criminal Intelligence Unit shall:

- a. Maintain a copy of all hate crime, crime cases received from area investigation units;
- b. Review submitted crime cases for possible hate crime series that may be developing; and,

- c. Provide information to area command (patrol/investigation) on any potential series.

C. The following agencies may be able to provide additional information or assistance to victims of hate crimes.

1. The City of San Diego Human Relations Commission
1200 Third Avenue, Suite 916
San Diego, CA 92101
(619) 236-6420
2. The Anti-Defamation League
4950 Murphy Canyon Rd. #250
San Diego, Ca 92123
Phone (858) 565-6896
Fax (858) 565-4907
3. The Lesbian and Gay Men's Community Center
3909 Centre St
San Diego, CA 92103
(619) 692-2077