



UCPD Training

University of California Police Department, Berkeley

UCPD TRAINING BULLETIN #2013-02

HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS

August 30, 2013

PURPOSE

Please review this bulletin for information on the issue of hate crimes and hate incidents, and our department goals about handling these types of situations. Included within is guidance to help you identify reportable hate crimes and incidents, advice on interacting with hate crime victims, and resources that might be helpful with investigation and outreach. This bulletin updates previous versions, and is issued in accordance with UCPD General Order O-13. It is based on relevant law and policy, information provided by the Anti-Defamation League and the Federal Bureau of Investigation, and other training resources.

OVERVIEW

The University is home to students, staff and faculty with a broad spectrum of backgrounds, cultures, religions, characteristics and origins. This well-known diversity is a source of strength and pride but it is an error to assume that tolerance and civility are universal behaviors, even within our welcoming climate. Portions of our community experience intolerance and crime, particularly during times of heightened emotions and sensitivity. Victims might be targeted specifically because of their perceived or real identity or associations. Most persons who engage in social activism on the Cal campus express themselves peacefully, but some occasionally resort to or are subjected to acts of incivility, violence and other crimes. Ongoing conflict between different communities might include a series of incidents that, if not identified or handled with proper care, could escalate or come to focus on the University itself.

The Berkeley campus recognizes a responsibility to encourage peaceful discourse to resolve bias-related conflict, and has taken a firm stance against these types of deplorable acts:

... for all of us to thrive and succeed, our campus must be safe and welcoming, and disagreements need to be managed in a respectful and civil manner. At Berkeley, we are passionate about the matters that shape our world; debate, free speech, and political activism are proudly defining characteristics of our campus. But we must also ensure that debates and advocacy take place in a reasoned and civil way that increases understanding and does not promote intolerance and hate. . . Physical assault and violence are never acceptable. We as a campus will not tolerate such incidents and reiterate our condemnation of them.

(November 17, 2008 – joint statement by Chancellor Robert Birgeneau, ASUC President Roxanne Winston, Vice Chancellor Gibor Basri & Vice Chancellor Harry LeGrande)

In recent years we have seen a number of bias-related crimes and incidents occur within the University of California system, which drew attention from national media and members of the State legislature. In March 2010, UC President Yudof addressed these concerns as part of his opening remarks at the UC Board of Regents:

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

... We must — and we will — deal with the causes of the offending behaviors, both the immediate and the underlying. We will address the campus climates that gave rise to these actions. And while we must not and will not abandon fair process, in those instances where policies or laws have been violated, the perpetrators in each instance will face appropriate consequences.

(March 24, 2010 – President Yudof's opening remarks, UC Board of Regents)

Proper response to hate crimes and incidents is a high priority for UCPD. Not only do these events harm the specific victim, but also the community to which that person belongs. Our efficient response with appropriate sensitivity is essential to prevent erosion of public trust, and failure to do so can unnecessarily put our officers and department in the center of conflict. We must assure the campus community that hateful acts will not be tolerated while still protecting free speech and the rights of all persons.

DEFINITIONS

Hate Crime – A criminal act or attempted criminal act by a person or group of persons, directed against an individual, group of persons or property of another individual or group, where the perpetrator intentionally selects the victim because of the victim's actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, or because of the victim's association with a person or group with one or more of these actual or perceived characteristics.¹

California Penal Code 422.55. For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

- (a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
 - (1) Disability.
 - (2) Gender.
 - (3) Nationality.
 - (4) Race or ethnicity.
 - (5) Religion.
 - (6) Sexual orientation.
 - (7) Association with a person or group with one or more of these actual or perceived characteristics.
- (b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.

Hate Incident – (1) Non-criminal conduct that is motivated by hatred or bigotry and directed at an individual, group of persons, house of worship, institution or business; because of the victim's actual or perceived nationality, race or ethnicity, religion, sexual orientation, or because of the victim's association with a person or group with one or more of these actual or perceived characteristics. This may include hate speech (including the Internet), display of offensive materials on one's own property, or distribution or posting of hate literature that does not result in property damage; (2) Criminal conduct which may be motivated by bias but does not meet the burden of the criminal statute.²

¹ *California Hate Crime (And Related Laws)*, ADL pamphlet, Revised 7/9/07

² *Ibid.*

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS****FREQUENCY OF HATE CRIMES REPORTED**

Persons around the world are harassed, assaulted, and even killed simply because of their beliefs, their race, ancestry, national origin, sex, gender identity, sexual orientation, or disability. Unfortunately the United States is no exception. In 2011, there were 6,222 hate crime events reported to the FBI by local agencies. California law enforcement agencies reported 1,040 hate crime events that year – more than any other state, accounting for approximately 17% of events reported nationwide³.

Reported hate crime events by bias motivation, 2011:

	United States	California	Alameda County ⁴	UCPD Berkeley
Race	2,917	415	10	0
Religion	1,233	202	5	1
Sexual Orientation	1,293	246	5	3
Ethnicity / National Origin	720	170	3	0
Disability	53	7	0	0
Multi-Bias	6	-	-	-
Total:	6,222	1,040	23	14

Source: FBI Hate Crime Statistics, 2011

Statistics on hate crimes do not tell the whole story. Some law enforcement agencies do not participate in the hate crimes reporting program. We also expect that many hate events go unreported due to victim reluctance or fear. Other reported acts of hate might be classified differently due to differing local interpretations of law and policy. The Southern Poverty Law Center estimates that across the United States, more than four out of five hate crimes are inappropriately reported or not reported at all⁵.

Hate crimes & incidents reported to UCPD between July 1, 2012 and June 30, 2013 include:

#12-03774: Thursday, August 9, 2012
422.55 PC – Threat w/ Intent to terrorize

#12-04121: Tuesday, August 28, 2012
422.6(a) PC – Hate crime, Bear's Lair

³ *FBI Hate Crime Statistics, 2011*: <http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011>

⁴ *Ibid*. Includes UC Berkeley and Cities of Alameda, Albany, Berkeley, Emeryville, Fremont, Livermore, Newark, Oakland, San Leandro, & Union City.

⁵ <http://www.splcenter.org>

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

#12-05914: Tuesday, November 20, 2012
594 PC – Vandalism, Sather Gate

#13-00139: Saturday, January 12, 2013
594 PC – Vandalism, Li Ka Shing

#13-01966: Monday, April 29, 2013
Civil Advice - Hate Incident

#13-02407: Sunday, June 2, 2013
245 PC – Assault with a Deadly Weapon, Grizzly Peak

IDENTIFYING BIAS

Hate crimes and hate incidents are acts by persons, **motivated in whole or in part** by bias against **real or perceived characteristics** – specifically: race, ethnicity, ancestry, national origin, gender, religion, sexual orientation, or disability (physical or mental). The following issues may be relevant in determining if bias is present:

- Perception on the part of the victim or witness that the victim was selected by the perpetrator because of membership in or association with a protected class;
- The presence of symbols, words, or acts which are or may be offensive or hateful towards a specific race, ethnic group, religious group, gender, persons who have disabilities, or persons of a particular sexual orientation;
- Statements, activities or actions of the victim(s) and other involved parties prior to, or during the event;
- Statements, activities or actions of the suspect(s) including admission of motive, or other indications the suspect has an understanding of the act's impact on the victim and group;
- Indication that the suspect(s) might be associated with an organized hate group;
- Recent publicity of similar crimes or incidents;
- Prior acts of a similar nature against the victim or victim's group;
- Event coincides with a day or anniversary that is of significance to the victim's protected class;
- Past or current organized hate group activity in the area.

HATE CRIME vs. HATE INCIDENT

Criminal acts motivated in whole or in part by bias against a protected class (as defined above and in PC §422.55) are also *hate crimes*. Suspects should be charged with PC §422.6(a) or (b) as appropriate and in addition to any other relevant statutes. Even if PC §422.6 does not apply the crime may still be considered a hate crime (as defined by PC §422.55) and should be investigated and documented accordingly.

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS**

Hate crimes **must include a specific target**, such as an individual, residence, house of worship, religious or ethnic organization, or business. If the crime is graffiti, it must be racial, ethnic, religious or homophobic in nature, or involve other hate group symbols or the use of epithets.

Any assault against a person, in the absence of other apparent motivation, when initiated with bias-motivated epithets, will be considered to be a hate crime. Similarly, vandalism to a house of worship, or to the facility of an ethnic, religious, or Lesbian/ Gay/ Bisexual/ Transgender/ Intersex/ Queer/ Asexual organization will be considered a hate crime in the absence of other motives. Other examples of hate crimes might include obscene or threatening phone calls, physical assaults, destruction of property, bomb threats or the disturbance of religious meetings.

Non-criminal acts motivated in whole or in part by bias against a protected class (as defined above and in PC §422.55) are *hate incidents*. The action or behavior in question might be motivated by bias, but is protected by the First Amendment right to freedom of expression and does not interfere with the rights of others. Although it may not be possible for officers to take any enforcement action against a perpetrator, **there might be other means of addressing the immediate problem**, including the application of University rules, requests for voluntary compliance, or referral to other resources or authorities. Victims might also have actionable civil claims they can pursue.

Examples of these kinds of hate incidents might include: name calling (without threat of violence or apparent ability to carry out the threat), hate speech, display of offensive materials on one's property or person, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage.

Some criminal acts might involve bias but do not satisfy the elements of PC §422.6 or meet the technical definition of a hate crime under PC §422.55. These cases should be investigated as criminal but also documented as a *hate incident* and handled with appropriate sensitivity.

RESPONSE AND REPORTING

When a public safety dispatcher or police officer becomes aware of a possible or reported hate crime or hate incident, he or she shall notify the on-duty patrol supervisor. The supervisor shall ensure that the Patrol Lieutenant (if on-duty) or on-call command staff is notified. The patrol supervisor should also respond to the scene and/or provide assistance to ensure that the situation is handled appropriately and with sensitivity. Further notifications might be necessary depending on the situation.

Detectives and/or members of the Threat Management Unit may be assigned to respond or follow up on the matter and should take steps to keep the unit manager regularly apprised of progress and any issues of concern. The Crime Prevention Unit should also be assigned to provide follow-up services and referrals to the affected victim and/or group.

Hate crimes and hate incidents should be documented on the appropriate report forms as dictated by the nature of the event. The reporting officer and the supervisor should ensure all applicable criminal statutes are listed for investigation and charging, the scope of the investigation is suitable, sufficient resources are dedicated, the content of the report is appropriate, the "hate crime" or "hate incident" box on the face page is selected, and the report is routed as necessary. Please review General Order O-13 and the report writing manual for a complete description of response and reporting duties.

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS****VICTIM ASSISTANCE**

The unique nature of hate crimes and hate incidents requires special handling from our agency. We have an obligation not only to investigate and attempt apprehension, but also to recognize and react in a supportive manner to the emotional trauma experienced by the victims, families, and citizens of the community who were targeted by the act. Victims need reassurance that we respect their perspective and sincerely want to help them determine how to respond and safeguard themselves against future attacks. Interaction with UCPD will be a significant factor in how the victims view and portray the University's response to reported hate crimes.

Unfortunately, it can be quite easy to unintentionally create the impression that you are not sympathetic to the victim of a hate crime. Some victims are predisposed to believe that they are not likely to be treated with proper respect and care. The victim might also have a non-technical understanding of the law and certain expectations about the ideal police response to their situation. For example, if you quickly correct a victim on the fact that they have actually been the subject of a hate incident and not a hate crime, you might unintentionally create the impression that you are minimizing the trauma or offense that the victim feels. Not only could this make the person unwilling to talk to you further, but it might also damage the reputation of UCPD as an institution that handles these events with concern and sensitivity.

Before you apply a label to the victim's situation, make sure they understand we take their situation seriously, we do not condone acts of hate, and we will help them to the best of our ability whether or not a crime has been committed. You must place special emphasis on victim assistance and community cooperation in order to reduce victim/community trauma and fear. Officers should also refer victims to resources that will enable them to pursue remedies.

Here are some recommended methods for interaction with a person reporting an act of hate:

- Approach victims in an empathetic, supportive and calming manner;
- Allow the victim as much time as needed to explain the situation;
- Demonstrate concern and sensitivity. Reassure the victim(s) that UCPD and the University takes the situation very seriously;
- Keep questions simple and allow the victim to use his/her own words. Try to conduct your interview in a place that provides privacy and comfort;
- Reassure the victim that investigative and enforcement tools will be utilized by the police to identify and apprehend the person(s) responsible, and explain UCPD's next steps in the process;
- Take steps to enhance the safety of the victim(s) by recommending and providing extra patrol, and/or by providing prevention and precautionary advice (such as restraining order options);
- Tell the victim how to contact support agencies and other forms of assistance;
- Provide the victim with the number for our Crime Prevention Sergeant (643-8988) for further information about recommended safety strategies and procedures.

**HATE MOTIVATED CRIME AND INCIDENT INVESTIGATIONS****ADDITIONAL RESOURCES**

There are a variety of institutional, community and cultural-based resources available to provide information and assistance to you and/or the victims of hate crimes. Officers should take the time to identify those that might be appropriate and available in any given situation. This might include:

University-related resources:Diversity, Equity and Inclusion: <http://diversity.berkeley.edu/index.php>Principles of Community: <http://www.berkeley.edu/about/principles.shtml>University Hate Crime web site: http://geneq.berkeley.edu/hate_crimesUniversity Health Services (*general number*) (510) 642-2000Counseling and Psychological Services (*students*) (510) 642-9494CARE services (*faculty/staff*) (510) 643-7754

Social Justice and Violence Prevention (510) 643-9049

Office of the Dean of Students (510) 642-6741

UC Gender Equity Resource Center⁶ (510) 642-4786

GenEq Director Billy Curtis (510) 643-0788

Other resources:

Alameda County Bar Association - Volunteer legal services (510) 302-2222

Berkeley Center for Independent Living (*disability services*) (510) 841-4776

City of Berkeley Mental Health (510) 981-5290

Anti-Defamation League – SF office (415) 981-3500

California Department of Fair Employment and Housing (DFEH) (800) 884-1684

Teaching Tolerance (Southern Poverty Law Center): <http://www.tolerance.org/>

Refer to the appendix of this bulletin (K:\BULLETINS\2012-02APDX.pdf) for State and Federal laws that may relate to hate crime and hate incident investigations.

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⁶ For advice on the subject of appropriate interaction with members of the LGBTIQ community (which includes principles that can be applied to other persons and situations) please refer to UCPD Training Bulletin #2007-03: LGBTIQ Awareness.