

Hate Crimes

319.1 PURPOSE AND SCOPE

Best Practice NYSLEAP - 8.4 - 44.2

The purpose of this policy is to provide members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

319.1.1 DEFINITIONS

State NYSLEAP - 8.4 - 44.2

Definitions related to this policy include (Penal Law § 485.05):

Hate crime - A crime motivated by prejudice based on actual or perceived race, color, religion, religious practice, age, national origin, ethnicity, gender, sexual orientation, gender identity or expression, ancestry, or disability of the victim.

319.2 POLICY

Best Practice NYSLEAP - 8.4 - 44.2

The Auburn 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.

319.3 PREVENTION AND PREPARATION

Best Practice MODIFIED NYSLEAP - 8.4 - 44.2

Hate crimes are viewed in the community not only as a crime against the targeted victim(s), but also as a crime against the victim's identification group as a whole. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report those crimes. This is particularly important if an upward trend has been identified in these crimes. Towards this end, this agency's community relations function, or officers so assigned, shall perform the following:

- (a) Provide victim(s) with a point of contact in the department to whom they can direct questions or concerns, and keep them informed of the case progress including the end result of the investigation or prosecution.
- (b) Protect the privacy of the victim and their families as much as possible.
- (c) Provide any direct assistance reasonably possible and referral assistance to the victim and the family of the victim.
- (d) Meet with neighborhood groups, residents in target communities and other identified groups, to allay fears, emphasize the agency's concern over this and related incidents, reduce the potential for counter-violence and reprisals, and provide safety, security, and crime prevention information.

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- (e) Engage the media as partners in restoring victimized communities through sensitive and accurate reporting. Information regarding hate crimes should be prepared for the media in an accurate and timely manner.
- (f) Conduct public meetings or forums designed to address the community-wide impact of hate crime and violence in general.
- (g) Establish liaisons with formal community-based organizations and leaders to mobilize resources that can be used to assist victims and prevent future hate incidents and crimes.
- (h) Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.

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:

- (a) Making an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes, and forming networks that address prevention and response.
- (b) Providing victim assistance and community follow-up or identifying available resources to do so.
- (c) Educating community and civic groups about hate crime laws.

319.4 INVESTIGATIONS

Best Practice **MODIFIED** **NYSLEAP - 8.4 - 44.2**

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) Assigned officers and/or detectives should promptly 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 practicable.
- (c) Once the in-progress aspect of any such situation has been stabilized (e.g., treatment of victims or arrest of suspects at the scene), the assigned officers and/or detectives should take reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers and/or detectives should take appropriate action to mitigate further injury or damage to potential victims or the community.
- (e) Depending on the situation, the assigned officers or supervisor may request assistance from investigators or other resources.
- (f) The assigned officers and/or detectives should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
- (g) The assigned officers and/or detectives should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as required by the Victim and Witness Assistance Policy.

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- (h) The assigned officers and/or detectives should include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked "Hate Crime."
- (i) The assigned officers and/or detectives and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid.

Hate Crime Investigation Considerations

Incident Reports - Hate Crimes

319.4.1 RECOMMENDED STEPS WHEN SUSPECT NOT IN CUSTODY OR HAS NOT BEEN IDENTIFIED

Agency Content

- (a) Coordinate investigation with other department units
- (b) work with analyst or Regional Crime Analysis Center to research leads and prepare bulletin
- (c) Conduct extensive canvass and distribute bulletins in areas of the incident
- (d) Debrief individuals arrested in the area
- (e) Work with media to attempt to garner witnesses and investigative leads
- (f) Follow-up leads in a timely manner.

319.4.2 SUPERVISOR RESPONSIBILITIES

Agency Content

The supervisor shall confer with the initial responding officer(s), take measures to ensure that necessary preliminary actions have been taken, and make appropriate departmental notifications as necessary. The supervisor shall request any appropriate additional personnel necessary to accomplish the following:

- (a) Provide immediate assistance to the crime victim.
 - 1. Express the law enforcement agency's official position on the importance of these cases, and describe the measures that will be taken to apprehend the perpetrators.
 - 2. Express the department's interest in protecting victims' anonymity whenever possible.
 - 3. Allow the victim a period in which to express his or her immediate concerns and express his or her feelings.
 - 4. Communicate with concerned community-based organizations, civic groups, and religious institutions regarding the suspected or confirmed bias incident.
 - 5. Identify individuals or agencies that may provide support and assistance. These may include family members or close acquaintances, a family clergyman or departmental chaplain, as well as community service agencies that provide

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victim assistance, shelter, food, clothing, child care, or other related services. Provide information regarding New York State Crime Victims Board (Pages 8-9 of this PPM).

6. Tell the victim about the probable sequence of events in the investigation and prosecution.
 7. Explain security measures and precautions to the victim.
- (b) Ensure that officers and investigator conduct a thorough preliminary investigation.
 - (c) Ensure that all relevant facts are documented on an incident or arrest report or both and make an initial determination as to whether the incident should be classified as a hate crime.
 - (d) 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.
 - (e) Take preventive measures to ensure the safety of the victim.

319.4.3 DETECTIVE BUREAU RESPONSIBILITIES

State **MODIFIED** NYSLEAP - 8.4 - 44.2

If a hate crime case is assigned to the Detective Bureau, the assigned investigator will be responsible for:

- (a) Coordinating further investigation with other appropriate law enforcement agencies.
- (b) Maintaining contact with the victim and other involved individuals, as needed.
- (c) Investigate the matter further as circumstances dictate.
- (d) Maintaining statistical data and tracking of suspected hate crimes, as indicated or required by state law (Executive Law § 837).

319.4.4 RECORDS DEPARTMENT RESPONSIBILITIES

Agency Content

- (a) Assist department in complying with state hate crime reporting requirements
 1. Submit all incidents of reported hate crimes to DCJS each month using the E-Justice portal.
 - (a) If no hate crimes were reported, the "Nothing to Report" (NTR) box is checked.

319.4.5 SPECIFIC NOTATIONS

State **MODIFIED** NYSLEAP - 8.4 - 44.2

When a person is convicted of a hate crime and the specified offense is a misdemeanor or class C, D or E felony, the hate crime will be deemed to be one category higher than the offense actually committed (Penal Law § 485.10). Notice that the crime charged is a hate crime must be indicated on the accusatory instrument. The factual part of the instrument should contain facts supporting the determination the crime is a hate crime. The accusatory part of the instrument should give

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notice to the court by using an “H” designation at the end of the statute citation. For example, an accusatory instrument for criminal mischief in the fourth degree determined to be a hate crime would appear as Penal Law § 145.00(1 H) and cited as “Criminal mischief in the fourth degree as a Hate Crime.”

As the Legislature made clear in the language of Penal Law section 485.00, the victim of a hate crime is society as a whole. It is apparently for that reason that the hate crime statute does not require specification of any particular person, only "a person." It is the attribute of the protected class (i.e., sex, race, sexual orientation, etc.), not the name of any particular individual member or members of that class which is of importance. Accordingly, the manner in which to allege a hate crime is to set forth the particular attribute of the protected class which is claimed to have motivated the defendant, and not name any particular person or persons. The indictment can simply allege that the defendant committed the underlying crime in whole or in substantial part because of a belief or perception of the race, or sex, or sexual orientation, etc, of "a person." Likewise, when alleging aggravated harassment in the first degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.

The accusatory paperwork filed with the court should also list the "H" designator. The narrative portion of the accusatory incident must include the elements and facts of the crime that demonstrate that the victim was intentionally selected or the act was intentionally committed because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

319.5 TRAINING

State **NYSLEAP - 8.4 - 44.2**

All members of this department should receive training on hate crime recognition and investigation. Training should include:

- (a) Guidance for the investigation of hate crimes available through the New York State Division of Criminal Justice Services.
- (b) The components of Penal Law § 485.05 and Penal Law § 485.10 and related case law, including:
 - 1. Notice that the race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability, or sexual orientation of the suspect, the victim, or both the suspect and the victim does not, by itself, constitute legally sufficient evidence of a hate crime.
 - 2. Notice that the mere mention of a bias remark does not make an incident bias-motivated, just as the absence of a remark does not make an incident without bias.
 - 3. An explanation of how enhanced sentences relate to the specified offenses on which they are based.
 - 4. Related definitions, including age, disability, and gender identity or expression.

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- (c) Supervisor notification.
- (d) Processing an arrest for a hate crime.