

Hate Crimes

307.1 PURPOSE AND SCOPE

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

307.1.1 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):

1. Disability
2. Gender/Gender Identity
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

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).

307.1.2 EXAMPLES OF HATE CRIMES

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 victims (Penal Code § 422.6(a)),
2. Defacing, damaging, or destroying 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).

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307.2 POLICY

The Orange County Sheriff's Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal Constitutions and incorporated in state and federal law.

307.3 PREVENTION AND PREPARATION

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:

1. 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.
2. Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
3. Providing victim assistance and follow-up as outlined below, including community follow-up.
4. Educating community and civic groups about hate crime laws.
5. Partner with the Orange County Human Relations Commission to facilitate Police/Community dialogue sessions that bring community members and law enforcement together to build understanding and trust.

307.4 DEPUTY RESPONSE

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

1. Assigned deputy(s) should promptly contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate.
 - (a) When documenting the potential hate crime, deputy(s) shall complete the Hate Crime Supplemental Report Form, or, if using FBR, check the Hate Crime Box and complete all related follow up questions.
2. A supervisor should be notified of the circumstances as soon as practical.
3. Once "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects, etc.), the assigned deputy(s) shall take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved
4. Based upon available information, the deputy(s) should take appropriate action to mitigate further injury or damage to potential victims or the community.
 - (a) Deputy(s) 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 deputy once the offense is documented.

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5. The assigned deputy(s) shall interview available witnesses, victims, and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
 - (a) 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 any actual or suspected immigration violation or reported or turned over to federal immigration authorities (Penal Code § 422.93(b)).
6. Depending on the situation, the assigned deputy(s) or a supervisor may request additional assistance from Investigations or other resources to further the investigation.
7. The assigned deputy(s) shall include all available evidence indicating the likelihood of a hate crime in the relevant report(s). All related reports shall be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, shall be completed and submitted by the assigned deputy(s) before the end of the shift.
8. The assigned deputy(s) shall provide the victim(s) of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures shall also be available to members of the general public upon request. The assigned deputy(s) should also make reasonable efforts to assist the victim(s) by providing available information on local assistance programs and organizations.
9. The assigned deputy(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).

307.4.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding deputy(s) to identify reasonable and appropriate preliminary actions. The supervisor should:

1. Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
2. 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.
3. Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning a deputy at specific locations that could become targets or increase neighborhood surveillance.

307.4.2 ADDITIONAL RESOURCES

Refer to Field Operations Manual (FOM) Section 52 for operational considerations, when responding to a hate crime.

307.4.3 CRIMINAL STATUTES

Penal Code § 422 - Prohibits verbal, written or electronically transmitted threats to commit great bodily injury or death to another or his/her immediate family.

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Penal Code § 422.6(a) - Prohibits the use of force or threats of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of rights and privileges secured by the Constitution or law because of the person's real or perceived characteristics listed in Penal Code § 422.55(a). Speech alone does not constitute a violation of this section except when the speech itself threatened violence and the defendant had the apparent ability to carry out the threat.

Penal Code § 422.6(b) - Prohibits knowingly defacing, damaging, or destroying the real or personal property of any person for any of the purposes set forth in Penal Code § 422.6(a).

Penal Code § 422.7 - Provides for other criminal offenses involving threats, violence, or property damage in excess of \$950 to become felonies if committed for any of the purposes set forth in Penal Code 422.6.

Penal Code § 422.56 - Defines gender for purposes of various hate crime statutes to mean the victim's actual sex or a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

Penal Code § 422.77 - Provides for the criminal enforcement of any order issued pursuant to Civil Code § 52.1.

Penal Code § 11411 - Prohibits terrorizing by placing or displaying any unauthorized sign, mark, symbol, emblem, or other physical impression including Nazi swastika, noose, or burning cross.

Penal Code § 11412 - Prohibits terrorizing threats of injury or property damage to interfere with the exercise of religious beliefs.

Penal Code § 594.3 - Prohibits vandalism to religious buildings, places of worship, or cemeteries.

Penal Code § 11413 - Prohibits use of explosives or other destructive devices for terrorizing another at health facilities, places of religion, group facilities, and other specified locations.

307.4.4 CIVIL STATUTES

Civil Code § 51.7 - All persons in this state have the right to be free from any violence or intimidation by threat of violence against their person or property because of actual or perceived race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. There is a narrow exception and this statute does not apply to statements made concerning positions in a labor dispute that are made during otherwise lawful labor picketing.

Civil Code § 52 - Provides for civil suit by individual, Attorney General, District Attorney, or City Attorney for violation of Civil Code § 51.7, including damages, Temporary Restraining Order, and injunctive relief.

Civil Code § 52.1 - Provides for Temporary Restraining Order and injunctions for violations of individual and Constitutional rights enforceable as criminal conduct under Penal Code § 422.77.

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307.5 TRAINING

All Members of this Department shall receive training on hate crime recognition and investigation consistent with Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.