

# Hate Crimes

## 307.1 PURPOSE AND SCOPE

Message from the Sheriff:

Hate Crimes convey a message of terror and exclusion, not just to the immediate victims but to entire communities. They often target victims who are least able to defend themselves. They cause trauma that is more extreme and longer lasting than similar crimes committed for other motivations. They can spark retaliatory crimes, escalating the cycle of crime and violence. If not addressed professionally and thoroughly, they may undermine public confidence in law enforcement.

Crimes motivated by hate are not simply assaults, property damage, or violations of civil rights. They are crimes that specifically target individuals with particular characteristics. As such, they provide fuel for the prejudices and fears that underline these crimes; thus, continuing the cycle of hatred, prejudice, and bias. Enforcement of hate crime laws are important because they send a clear message to would-be perpetrators that hate crimes do not just affect the intended victim and that law enforcement, and the communities that we serve, will not tolerate these types of crimes. The broad impact of hate crimes makes them a major concern for all law enforcement agencies.

The Orange County Sheriff's Department Vision Statement reflects, "A community where every person feels safe and valued." It is essential that our Department address hate crimes in a manner that most effectively accomplishes prevention and rapid apprehension of perpetrators.

This policy is designed to assist in identifying and handling crimes motivated by hate or other bias toward individuals and groups with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for prevention, response, accessing assistance, victim assistance and follow-up, and reporting as related to law enforcement's role in handling hate crimes. It also serves as a declaration that hate crimes are taken seriously and demonstrates how the Department may best use its resources to investigate and solve an offense, in addition to building community trust and increasing police legitimacy (Penal Code § 13519.6; Penal Code § 422.87).

### 307.1.1 DEFINITIONS AND LAWS

In accordance with Penal Code § 422.55, Penal Code § 422.56, Penal Code § 422.6, and Penal Code § 422.87, for purposes of all other state laws, unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

**Bias motivation** - Bias motivation is a pre-existing negative attitude toward actual or perceived characteristics referenced in Penal Code § 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, discriminatory selection of victims, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including but not limited to, disability or gender.

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Disability - Disability includes mental disability and physical disability as defined in Government Code § 12926, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.

Disability bias – Disability bias is a preexisting negative attitude towards persons with perceived or actual disabilities. In recognizing suspected disability bias hate crimes, consider whether there is any indication that the perpetrator:

- Was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations; and/or
- Perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in disability bias. This includes, but is not limited to, situations where a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons, such as inebriated persons or persons with perceived disabilities different from those of the victim. Such circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

Gender - Gender means sex and includes a person's gender identity and gender expression.

Gender expression - Gender expression means a person's gender-related appearance and behavior, regardless of whether it is stereotypically associated with the person's assigned sex at birth.

Gender identity - Gender identity is a person's sense of being male, female, some combination of male or female, or neither male nor female. (15 CCR § 1006.)

Hate crime - Hate crime includes, but is not limited to, a violation of Penal Code § 422.6, and 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:

"Association with a person or group with one or more of these actual or perceived characteristics" includes advocacy for, identification with, or being on the premises owned or

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rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of the characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of Penal Code § 422.55(a).

Note: A hate crime need not be motivated by hate but may be motivated by any bias against a protected characteristic.

Hate incident - Per the California Attorney General, a hate incident is an action or behavior motivated by hate or bias but which, for one or more reasons, is not a crime. Examples of hate incidents include:

- Name-calling
- Insults and epithets
- Displaying hate material on your own property
- Posting hate material that does not result in property damage
- Distribution of materials with hate messages in public places

Hate speech - The U.S. Constitution allows hate speech as long as it does not interfere with the civil rights of others. While these acts are certainly disagreeable, offensive or hurtful, they do not rise to the level of criminal violations and thus may not be prosecuted. However, these incidents have a traumatic impact on the victims as well as on the community at large:

- Fighting words
- True threats
- Perjury
- Blackmail
- Incitement to lawless action
- Conspiracy
- Solicitation to commit any crime

In whole or in part because of - "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that a crime would not have been committed but for the actual or perceived characteristic.

Nationality - Nationality means country of origin, immigration status, including citizenship, and national origin.

Race or ethnicity - Race or ethnicity includes ancestry, color, and ethnic background.

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Religion - Religion includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

Religion bias - A negative attitude towards persons based upon their perceived or actual religious beliefs, lack of beliefs, membership, or lack of membership in a faith group. In recognizing suspected religion-bias hate crimes, consider whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion or articles considered of spiritual significance in a particular religion.

Examples of religions and such symbols and articles include, but are not limited to:

- In Buddhism; statues of the Buddha
- In Christianity; crosses
- In Hinduism; forehead markings, known as bindis and tilaks, Aum/Om symbols, and images of deities known as murtis
- In Islam; hijabs
- In Judaism; Stars of David, menorahs, and yarmulke
- In Sikhism; turbans, head coverings, and unshorn hair, including beards

Sexual orientation - Sexual orientation means heterosexuality, homosexuality, or bisexuality.

Victim - Victim includes but is not limited to:

- Community center
- Educational facility
- Entity
- Family
- Group
- Individual
- Office
- Meeting hall
- Person
- Place of worship
- Private institution
- Public agency
- Library
- Other victim or intended victim of the offense

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### **307.2 POLICY**

It is the policy of the Orange County Sheriff's Department to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This Department will employ reasonably available resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this Department should take all reasonable steps to attend to the security and related concerns of the immediate victims and their families as feasible.

All Department Members are required to be familiar with the policy and use reasonable diligence to carry out the policy unless directed by the Sheriff or designee to whom the Sheriff formally delegates this responsibility.

### **307.3 PREVENTION AND PREPARATION**

In order to facilitate the guidelines contained within this policy, Department Members will continuously work to build and strengthen relationships with the community, engage in dialogue, and provide education to the community about this policy. Department Members are also encouraged to learn about the inherent issues concerning their communities in relation to hate crimes.

Although hate incidents are not criminal events, they can be indicators of, or precursors to, hate crimes, and should be documented for informational purposes.

Hate crimes are not only a crime against the targeted victim(s) but also have impacts on the victim's family and community. Working constructively with segments of this larger community, after such crimes helps to reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report such crimes.

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### 307.3.1 HATE CRIMES COORDINATOR

The Captain of the Counter Terrorism Bureau, appointed by the Sheriff or their authorized designee, shall assume the role of Hate Crimes Coordinator. The Hate Crimes Coordinator will be responsible for ensuring the following functions are completed, consistent with Penal Code § 422.87.

1. Developing and maintaining relationships with targeted communities through the Sheriff's interfaith and community councils to engage them in ongoing meetings focused on hate crime activity, trends and the importance of reporting hate crimes and hate incidents. These meetings are generally held in collaboration with nonprofits or community organizations focused on the prevention of hate activity.
2. The OCIAC will establish and maintain relationships with formal community-based organizations and leaders through public outreach and in coordination with the Public Affairs and Community Engagement Division.
3. The Orange County Intelligence Assessment Center (OCIAC) will monitor open-source intelligence and public social media sources in order to find and evaluate possible hate crimes. Intelligence and social media sources will be analyzed for possible hate crime suspects and suspect information will be provided to the appropriate law enforcement agency having jurisdiction.
4. The Hate Crimes Coordinator is responsible for ensuring the Victim Assistance Information card and Hate Crimes brochure are up to date and available to Department personnel for distribution. The Coordinator is also responsible for ensuring that all sworn members are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.
5. The Hate Crimes Coordinator will review the California Attorney General's latest opinion on hate crime statistics and targets, as well as the Orange County Hate Crime Report produced by the Orange County Human Relations Commission, in order to identify trends in hate activity and plan outreach efforts to targeted communities, such as such as immigrant, Muslim, Arab, LGBTQ, Black or African- American, Jewish, and Sikh persons and persons with disabilities.
6. Where appropriate, coordinate providing orientation of and with communities of specific targeted victims such as immigrant, Muslim, Arab, LGBTQ, Black or African-American, Jewish, and Sikh persons and persons with disabilities.
7. Verify hate crime data is provided to the Records Division through Departmental reports for mandated reporting to the Department of Justice.
  - (a) Ensure the Department's hate crime data is posted monthly on the Department's website [OCSheriff.gov](http://OCSheriff.gov) (Penal Code § 13023).
8. Report any suspected multi-mission extremist crimes to the OCIAC.

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9. Revise the Department's hate crime brochure. Ensuring the brochure is readily available on the Department's intranet website (Penal Code § 422.92; Penal Code § 422.87).
10. Submit required hate crime materials to the California Department of Justice in the manner prescribed by the Attorney General and in accordance with the timeline established by state law (Penal Code § 13023).
11. An annual review of this policy, including:
  - (a) POST model policy framework for hate crimes for revisions or additions, including definitions, responsibilities, training resources, the supplemental hate crime report, and planning and prevention methods.
  - (b) Analysis of the Department's data collection as well as the available outside data (e.g., annual California Attorney General's Report on Hate Crime) in preparation for and response to future hate crimes.
  - (c) An annual meeting with Department stakeholders will be established to review current practices and procedures to ensure they meet California best practices (Penal Code § 13519.6(b)(8)).

### 307.3.2 RELEASE OF INFORMATION

The benefit of public disclosure of hate crime incidents includes:

1. Dissemination of correct information.
2. Assurance to affected communities or groups that the matter is being properly and promptly investigated.
3. The ability to request information regarding the commission of the crimes from the victimized community.

Information or records relating to hate crimes subject to public disclosure shall be released as provided by Policy 805 - Records Maintenance and Release or as allowed by law. In accordance with Policy 340 - News Media Relations, the Public Affairs and Community Engagement (P.A.C.E.) Division should be provided with information that can be responsibly reported to the media. When appropriate, the Department spokesperson should reiterate that hate crimes will not be tolerated, will be investigated seriously, and will be prosecuted to the fullest extent of the law.

The Department should consider the following when releasing information to the public regarding hate crimes and hate incidents that have been reported within the jurisdiction:

- Inform community organizations in a timely manner when a community group has been the target of a hate crime.
- Inform the community of the impact of these crimes on the victim, the victim's family, and the community, and of the assistance available to victims.
- Inform the community regarding hate crime law and the legal rights of, and remedies available to victims of hate crimes.

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- Provide the community with ongoing information regarding hate crimes and/or hate incidents.

#### **307.4 RESPONSE, VICTIM ASSISTANCE, AND FOLLOW-UP**

##### **307.4.1 INITIAL 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 shall 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. Assigned deputy(s) shall conduct a preliminary investigation and record pertinent information including, but not limited to:
  - (a) Prior occurrences, in this area or with this victim.
  - (b) Statements made by suspects; exact wording is critical.
  - (c) The victim's protected characteristics and determine if bias was a motivation "in whole or in part" in the commission of the crime.
5. 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 attempt to 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.
6. 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. Request the assistance of translators or interpreters when needed to establish effective communication, including the use of appropriate accommodations for people with disabilities (e.g., Braille, visuals).
  - (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)).
7. Offer of victim confidentiality per Government Code § 7923.615.

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8. Depending on the situation, the assigned deputy(s) or a supervisor may request additional assistance from Investigations or other resources to further the investigation.
9. 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. Evidence may include:
  - (a) Hate literature
  - (b) Spray paint cans or markers
  - (c) Threatening letters
  - (d) Symbols used by hate groups
  - (e) Desecration of religious symbols, objects, or buildings
10. The assigned deputy(s) shall provide the victim(s) of any suspected hate crime with a link for victim assistance, which includes a brochure in digital format 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.
11. 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).

#### 307.4.2 INVESTIGATION

Investigators at the scene of, or performing follow-up investigation on, a suspected hate or bias crime should take all actions deemed reasonably necessary, including but not limited to the following:

1. Consider typologies of perpetrators of hate crimes, including, but not limited to thrill, reactive/defensive, and mission (hard core).
2. Utilize investigative techniques and methods to handle hate crimes in a professional manner.
3. Provide victim assistance and follow-up.
4. Canvass the area for additional witnesses.
5. Examine suspect's social media activity for potential evidence of bias motivation.
6. Coordinate the investigation with department, state, and regional intelligence operations. These sources can provide the investigator with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
7. Take reasonable steps to provide appropriate assistance to hate crime victims, including the following measures:

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- (a) Contact victims periodically to determine whether they are receiving adequate and appropriate assistance.
  - (b) Provide ongoing information to victims about the status of the criminal investigation.
  - (c) Provide victims and any other interested persons the brochure on hate crimes per Penal Code § 422.92 and information on any local advocacy groups (if asked).
8. Document any suspected multi-mission extremist crimes.
  9. Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and determine if organized hate groups are involved.

### 307.4.3 SUPERVISOR RESPONSIBILITY

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

1. Ensure that hate crimes are properly investigated, documented, and reported. Ensure hate crimes are properly labeled and flagged in the FBR system after being reviewed by a supervisor. The Hate Crimes Coordinator should make the final determination as to whether the incident should be classified as a hate crime.
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. Notify the Hate Crimes Coordinator and Department Commander of the incident who will then confirm a notification has been made to the Investigative Sergeant and PIO.
4. 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.
5. Initiate the investigation into any report of a hate crime committed under the color of authority per Penal Code § 422.6 and § 13519.6.

### 307.4.4 ADDITIONAL RESOURCES

Refer to Patrol Operations Manual (POM) Section 52 for operational considerations when responding to a hate crime.

If additional assistance is necessary for the investigation, activate the California Department of Justice Hate Crime Rapid Response Protocol. While all hate crimes should be investigated and prosecuted to the fullest extent by the local law enforcement agencies with jurisdiction, the Rapid Response Protocol is designed to be invoked in response to the most complex and significant hate crime incidents, such as the following:

1. Hate crimes resulting in a death, especially in jurisdictions with fewer resources available to address the investigation and prosecution of a homicide or a hate crime;
2. Acts of arson resulting in significant damage;

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3. Use of explosives; and/or
4. A mass casualty incident.

### **307.5 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.

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 the purpose of intimidating or interfering with 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).

Penal Code § 422.7 - Provides for other criminal offenses involving threats, violence, or property to become felonies if committed for the purpose of intimidating or interfering with the free exercise or enjoyment of rights and privileges secured by the Constitution or law if the property damage exceeds \$950, the crime includes the present ability to commit a violent injury or causes actual physical injury, or the person charged has previously been convicted of violating or conspiring to violate Penal Code 422.6.

CPC 422.55 - Provides general definition of hate crimes in California.

CPC 422.56- Provides definitions of terms included in hate crimes statutes.

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 arson or use of explosives or other destructive devices for terrorizing another at health facilities, places of religion, locations where activities or information-sharing related to abortion take place, bookstores or libraries, courthouses, homes of judicial officers, county probation department locations, public or private schools for kindergarten or

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grades 1-12, and private property targeted because of the actual or perceived characteristics of the owner or occupant listed in Penal Code § 422.55(a).

### **307.6 CIVIL STATUTES**

Civil Code § 51.7 (Ralph Civil Rights Act of 1976) - 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, medical condition, genetic information, marital status, citizenship, primary language, immigration status, 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 (Tom Bane Civil Rights Act) - Provides for civil action for injunctive relief and civil penalties by an individual, the Attorney General, District Attorney, or City Attorney for interference by threat, intimidations, or coercion with the exercise or enjoyment of rights secured by the Constitution or law. Violation of a Temporary Restraining Order or injunction issued pursuant to this section constitutes criminal conduct under Penal Code § 422.77.

### **307.7 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 (Penal Code § 422.87):

1. Recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group, including disability bias, gender bias, and religion bias.
2. Information regarding the general underreporting of hate crimes, including the more extreme underreporting of anti-disability and anti-gender hate crimes.
3. Distribution of hate crimes brochures to victims of hate crimes and hate incidents as well as all other interested persons.

### **307.8 TRAINING REQUIREMENT**

Sworn Members and Sheriff's Special Officers will complete a POST-certified training course on Hate Crimes every six years beginning July 1, 2024. When notified by the Training Division, required personnel will be instructed on when and how to access and document the completion of the required Hate Crimes Training. The Training Division will utilize the POST Commissions Hate Crimes training video which meets the requirements for Hate Crime Training in accordance with PC § 13519.6. The video training will be available to stream via the POST learning portal.

Beginning July 1, 2024, all Members shall review the Department's Hate Crimes Policy and acknowledge on LEXIPOL that they have read and understood it.

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Department Members can access the policy via the LEXIPOL website using Department computers and Department-issued cell phones. Updates and notifications regarding the policy are transmitted through LEXIPOL as needed to ensure Members are informed of any changes.