

## Hate Crimes

### 313.1 PURPOSE AND SCOPE

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.

#### 313.1.1 DEFINITIONS

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.

### 313.2 POLICY

The Town of Cheektowaga 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.

### 313.3 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:

- (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.

### 313.4 INVESTIGATIONS

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 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 should take reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.

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- (e) Depending on the situation, the assigned officers or supervisor may request assistance from investigators or other resources.
- (f) The assigned officers 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 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.
- (h) The assigned officers 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 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.

#### 313.4.1 DETECTIVE BUREAU RESPONSIBILITIES

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

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

#### 313.4.2 SPECIFIC NOTATIONS

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 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."

#### 313.4.3 ESTABLISHING MOTIVE

During an investigation, members should look for possible signs that the incident may be a hate crime:

- (a) The motivation of the perpetrator or lack of motive.
- (b) Statements made by the perpetrator.

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- (c) The presence of multiple perpetrators.
- (d) The display of offensive symbols, words, or acts.
- (e) Was any hate literature found in the possession of the suspect?
- (f) Social media activity that shows evidence of bias motivation.
- (g) Tattoos, clothing, paraphernalia, or jewelry suggesting identification by the perpetrators with an organized hate group.
- (h) Was the victim the only person of a particular group at a park or facility?
- (i) Was the victim from a different racial, ethnic, or religious group from the perpetrator?
- (j) The absence of any motive. The brutal nature of a particular incident could denote a hate crime, particularly when the perpetrator and victim don't know each other.
- (k) The perpetrator's perception of the victim, whether accurate or not.
- (l) The date, time, or circumstances of the occurrence, such as on a religious holiday or at a gathering of a group of people affiliated by ethnicity, religion, or sexual orientation.
- (m) Multiple incidents occurring in a short time period with all the victims from the same identifiable group.
- (n) Were the real intentions of the perpetrator racial, color, religious, or ethnic oriented, or were there other reasons such as pranks, unrelated vandalism, or a dispute arising out of a non-bias-related disagreement?
- (o) The incident occurred in proximity to an establishment that could be associated with one of the protected classes.
- (p) The perpetrator targeted a particular portion of the victim's body (e.g., Sikh victims forcibly having their hair cut, a victim targeted for their sexual orientation being attacked near or around their genitalia).
- (q) The victim's perception that they were selected because they are a member of an identifiable group.

### **313.5 TRAINING**

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:
  - (a) 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.

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- (b) 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.
- (c) An explanation of how enhanced sentences relate to the specified offenses on which they are based.
- (d) Related definitions, including age, disability, and gender identity or expression.
- (c) Supervisor notification.
- (d) Processing an arrest for a hate crime.