

# NIAGARA FALLS POLICE DEPARTMENT

## GENERAL ORDER

EFFECTIVE DATE: 09/19/2013	SUBJECT: <b>Hate Crimes Investigation</b>	Number: 316.00 (NYSLEAP O-44-2)
RESCINDS: 01/18/2011		Number of pages: 12

### I. PURPOSE:

- A. This policy is designed to assist employees in identifying and investigating hate crimes and assisting victimized individuals and communities. A swift and strong response by law enforcement can help stabilize and calm the community as well as aid in a victim's recovery.

### II. POLICY:

- A. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate and bias and designed to infringe upon the rights of individuals are viewed very seriously by this agency and will be given high priority. This agency shall employ necessary 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 agency shall be mindful of and responsive to the security concerns of victims and their families.

### III. DEFINITIONS:

- A. New York State Penal Law §485.05 Hate crimes.
  - 1. A person commits a hate crime when he or she commits a specified offense and either:
    - (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or

(b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

2. Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

For purposes of this section:

(a) the term "age" means sixty years old or more;

(b) the term "disability" means a physical or mental impairment that substantially limits a major life activity.

The crimes that can be charged under the Hate Crime statute are listed in attachment A.

B. Penal Law § 240.31 Aggravated harassment in the first degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or

3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;
4. Sets on fire a cross in public view; or
5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

Aggravated harassment in the first degree is a class E felony.

C. Penal Law § 240.30(3) Aggravated harassment in the second degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, he or she:

(3) Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct.

Aggravated harassment in the second degree is a class A misdemeanor.

The additional crimes that can be charged under the Hate Crime statute are listed in Attachment A.

IV. PROCEDURES:

A. Goals:

1. Officers shall conduct a thorough and complete investigation in all suspected and confirmed hate crime incidents and assist the local prosecutor.

2. Officers should make every effort to become familiar with organized hate groups operating in the community and police contacts should be documented.
- B. Initial responding officers at the scene of a suspected hate crime shall take preliminary actions deemed necessary, including, but not limited to, the following:
  1. Secure the scene. Steps should be taken so that the initial situation does not escalate. This includes but is not limited to:
    - a. Stabilizing injured victims and requesting medical aid.
    - b. Providing protection to victims and witnesses by increased police presence.
    - c. Protect the crime scene and have technician collect and photograph physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups, such as swastikas and crosses.
  2. Identify criminal evidence on the victim if applicable.
  3. Request the assistance of a translator or counselor when necessary.
  4. Request the assistance of an investigator and supervisor.
  5. Conduct a preliminary investigation and record information on;
    - a. the identity of suspected perpetrators,
    - b. the identity of witnesses, including those no longer at the scene,
    - c. prior bias-motivated occurrences in the immediate area or against the same victim. (check with NFPD Crime Analyst and/or NYSIC (518) 786-2100,
    - d. statements made by suspects; exact language is critical.
  6. Arrest suspected perpetrators if probable cause exists.
    - a. Conduct interview and attempt to establish motive

- b. Consult with prosecutor if there is a question as to proper criminal charges
7. Take measures to ensure that necessary preliminary actions have been taken and brief the responding supervisor as to those actions.
  - a. During your investigation, look for possible signs that the incident may be a hate crime:
    - The motivation of the perpetrator or lack of motive.
    - Statements made by the perpetrator.
    - The presence of multiple perpetrators.
    - The display of offensive symbols, words or acts.
    - Was any hate literature found in the possession of the suspect?
    - Is the victim the only person of a particular group at a park or facility?
    - Is the victim from a different racial, ethnic, religious group than the perpetrator?
    - 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.
    - The perpetrator's perception of the victim, whether accurate or not.
    - The date, time or circumstances of the occurrence, such as on a religious holiday, or an event occurring at a gathering of a group of people affiliated by ethnicity, religion, sexual orientation, etc.
    - Multiple incidents occurring in a short time period and all the victims were of the same identifiable group.

- 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?
- Incident occurred in proximity to an establishment that could be associated with one of the protected classes.
- The perpetrator targeted a particular portion of the victim's body; i.e. Sikh victims forcibly having his hair cut, or a victim targeted for his/her sexual orientation being attacked near or around his or her genitalia.
- The victim's perception that he/she was selected because they are a member of an identifiable group.

8. 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. Even the mere perception that the incident may be motivated by bias shall necessitate a notification to a patrol supervisor.
9. Be cognizant of dual motivation by some suspects. Example: A suspect may be looking to commit robberies but specifically targets elderly victims.
10. Note that an attack against a transgender victim could be covered under sexual orientation or gender.

C. Supervisory Responsibilities:

1. 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.
  - b. 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.

- c. Express the department's interest in protecting victims' anonymity whenever possible.
- d. Allow the victim a period in which to express his or her immediate concerns and express his or her feelings.
- e. Communicate with concerned community-based organizations, civic groups, and religious institutions regarding the suspected or confirmed bias incident.
- f. 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 victim assistance, shelter, food, clothing, child care, or other related services. Provide information regarding New York State Crime Victims Board.
- g. Tell the victim about the probable sequence of events in the investigation and prosecution.
- h. Explain security measures and precautions to the victim.

2. Ensure that officers and investigator conduct a thorough preliminary investigation.
3. 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.
4. 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.
5. Take preventive measures to ensure the safety of the victim.

D. Investigators' Responsibilities:

1. In responding to the scene of an alleged hate crime, investigators shall assume control of the follow-up investigation to include the following:
  2. Ensure that the scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented. If evidence of an inflammatory nature cannot be physically removed (e.g., painted words or signs on a wall), the owner of the property shall be contacted to do all that is possible to ensure that the graffiti is removed as soon as possible. The officer or investigator shall follow-up to ensure that this is accomplished in a timely manner.
  3. Conduct a comprehensive interview with all victims and witnesses (and depose) at the scene, or as soon as possible thereafter, and canvass the neighborhood for additional sources of information.
  4. Work closely with the prosecutor's office to ensure that a legally adequate case is developed for prosecution.
  5. Coordinate the investigation with agency, state, and regional crime analysis centers. These sources shall provide the investigative officer with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
  6. Coordinate the investigation with other units of the agency and with outside agencies where appropriate.
  7. Maintain contact with the initial responding officer and keep him or her apprised of the status of the case.
  8. Recommend to Commanding Officer whether the incident should be classified as a hate crime.
  9. Investigative officers shall take steps to ensure that appropriate assistance is being provided to hate crime victims, to include the following measures:
    - a. Contact the victim periodically to determine whether he or she is receiving adequate and appropriate assistance.
    - b. Provide ongoing information to the victim about the status of the criminal investigation.

- c. Attempt, whenever possible, to conduct all interviews with victims at their convenience and minimize, to the degree possible, interactions in which victims have to relate the incident.

**E. Recommended Steps When Suspect is Not in Custody or Has Not Been Identified:**

1. Coordinate investigation with other department units.
2. Work with Analyst or Regional Crime Analysis Center to research leads and prepare bulletins.
3. Conduct extensive canvass and distribute bulletins in area of the incident.
4. Debrief individuals arrested in the area.
5. Work with media to attempt to garner witnesses and investigative leads.
6. Follow-up leads in timely manner.

**F. Incident Report Preparation:**

1. Incident reports should clearly indicate the following information:
  - Offense – Hate Crime designated Penal Law
  - Victim age, gender, race, and ethnicity
  - Offender age, gender, race, and ethnicity
2. The narrative portion of the Incident report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation. The specific bias motivation of the perpetrator should be documented (Ex: selected victim because he was Hispanic, Jewish, Muslim, etc.)

**G. Arrest Processing:**

1. The Hate Crimes law is a sentencing enhancement statute. Thus, when the specified crime is a misdemeanor or a class C, D, or E, felony, the hate crime shall be deemed to be one category higher. For example, if a defendant is alleged to have committed an Assault in the second degree, which is a "D" felony and it is alleged that the assault was a hate crime, then upon a conviction the assault is deemed to be a "C" felony and the sentence imposed will be based upon the sentencing range for a "C" felony. "A" and "B" felonies charged as hate crimes stay the same but are subject to higher penalties.
2. It is important to realize that a class A misdemeanor charged as a hate crime is deemed a class E felony. This may affect the manner in which the case is handled (e.g., arraignment, bail, grand jury).
3. Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded.
4. When an arrest is being processed for a hate crime, you are required to use the penal law code with the letter "H" to highlight and make the distinction. The letter "H" is applied to the subdivision of the PL section. In those cases where no subdivision exists, a double zero is used with the letter "H". Use caution when using automated booking system to ensure that the correct offense is selected.

**Examples:**

PL section 120.00, subdivision 1 – Assault 3rd  
120.00(01H), when it is a Hate Crime

PL Section 140.15 – Criminal Trespass 2nd  
140.15 (00H), when it is a Hate Crime

**Note:** Do not use the letter H when you are not charging a hate crime or the arrest will be reported as a hate crime arrest by DCJS.

**H. Accusatory Instrument:**

1. 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.

2. 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.
3. 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.

I. Records Management Section:

1. Assist department in complying with state hate crime reporting requirements.
  - a. Submit all incidents of reported hate crimes to DCJS each month using the State form 3294. Forms must be submitted each month. If no hate crimes were reported, departments must complete the form by checking the “Nothing to Report (NTR)” box.
  - b. Report monthly, by submitting a duplicate copy of form 3294, to the Regional or County Crime Analysis Center in accordance with any county or local laws.

J. Community Relations and Crime Prevention:

1. 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:

2. 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.
3. Protect the privacy of the victim and their families as much as possible.
4. Provide any direct assistance reasonably possible and referral assistance to the victim and the family of the victim.
5. 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.
6. 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.
7. Conduct public meetings or forums designed to address the community-wide impact of hate crime and violence in general.
8. 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.
9. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.