

## 2.07 Bias Crimes

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### BIAS CRIMES

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Chief Kenneth M. Paulhus			

## I. GENERAL CONSIDERATIONS AND GUIDELINES

This policy is designed to assist officers in identifying crimes motivated by bias toward an individual's race, religion, ethnicity, handicap, sexual orientation or gender and to define appropriate steps for assisting victims and apprehending suspects.

The key to a successful law enforcement response to bias crimes is building a partnership with victimized communities. Citizens need to be encouraged to come forward whenever a hate crime occurs and to have confidence that the police will handle these matters with the seriousness and concern they deserve.

Also, recognizing the particular fears and distress typically suffered by victims of these crimes, the potential for reprisal and escalation of violence, and the possible far-reaching negative consequences of these acts on the community and the department, particular attention shall be given to addressing the security and related concerns of the immediate victims as well as their families and others affected by the crime. See departmental policy on ***Victim/Witness Assistance***.

## II. POLICY

It is the policy of this department that:

- A. All personnel are committed to safeguard the state and federal civil rights of all individuals irrespective of their race, religion, ethnicity, handicap, sexual orientation or gender;

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- B. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes that are designed to infringe upon every person's civil rights will be treated seriously; and
- C. Bias crimes are viewed very seriously and will be given high priority. The department will use every necessary resource rapidly and decisively to identify the perpetrators, arrest and prosecute them, and take vigorous enforcement action.

### III. DEFINITIONS

- A. *Advocacy Organization*: Any non-profit or not-for-profit group which represents or serves constituencies targeted in hate crimes motivated by the forms of bias enumerated at 501 CMR 4.02(3); or gathers information relating to the incidence, circumstances, patterns, causes, or nature of hate crimes or incidents or any specific type(s) of hate crime or incidents.<sup>1</sup>
- B. *Bias Indicators*: Objective facts, circumstances, or patterns attending a criminal act(s) which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole or in part, by any form of bias enumerated at 501 CMR 4.02.<sup>2</sup>
- C. *Bias Motive*: Hatred, hostility, or negative attitudes towards, or prejudice against, any group or individual on account of race, religion, ethnicity, handicap, gender or sexual orientation, which is a contributing factor, in whole or in part, in the commission of a criminal act. A bias motive can be inferred from the presence of one or more bias indicators. A bias motive may also consist of intent to interfere with, disrupt, or deprive another person(s) of his/her constitutional rights by threats, intimidation, harassment, or coercion. The specific forms of bias covered by the Hate Crime Reporting Act are:<sup>3</sup>
  - 1. Racial/Ethnic/National Bias
    - a. Anti-Black
    - b. Anti-White
    - c. Anti-Asian
    - d. Anti-Hispanic
    - e. Anti-Arab
    - f. Anti-Other Racial/Ethnic/National Group
  - 2. Religious Bias
    - a. Anti-Jewish
    - b. Anti-Catholic

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- c. Anti-Protestant
- d. Anti-Islamic (Moslem)
- e. Anti-Other Religion
- 3. Sexual Orientation Bias
  - a. Anti-Gay (Male)
  - b. Anti-Lesbian (Female)
  - c. Anti-Other Sexual Orientation
- 4. Handicap Bias
  - a. Anti-Person with AIDS
  - b. Anti-Physically Disabled
  - c. Anti-Mentally Disabled (i.e., mental illness, mental retardation)
- 5. Gender Bias
  - a. Anti-Male
  - b. Anti-Female
  - c. Anti-Transgender Bias (as further defined by the Governor's Task Force on Hate Crimes).
- 6. *Crime Reporting Unit*: A joint project of the state police and the Criminal History Systems Board responsible for collecting incident reports submitted by law enforcement authorities and disseminating periodic reports analyzing and interpreting crime rates and trends in the Commonwealth.<sup>4</sup>
- 7. *Hate Crime*: Bias Crime - Any criminal act coupled with overt actions motivated by bigotry and bias including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by racial, religious, ethnic, handicap, gender or sexual orientation prejudice, or which otherwise deprives another person of his/her constitutional rights by threats, intimidation or coercion, or which seek to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation; and also includes violations of:<sup>5</sup>
  - a. M.G.L. c. 265, §37 (Violations of Constitutional Rights);
  - b. M.G.L. c. 265, §39 (Assault or Battery to Intimidate);
  - c. M.G.L. c. 266, §127A (Destruction of Place of Worship); or
  - d. M.G.L. c. 272, §92A (Advertisement, Book, Notice or Sign Relative to Discrimination).

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- D. Hate Crime Report:** An account of a hate crime from a law enforcement source received or collected by the Crime Reporting Unit.<sup>6</sup>
- E. Hate Group:** An organization, formal or informal, which promotes bias, animosity, hostility, or malice against persons belonging to a racial, religious, ethnic/national origin, handicap, sexual orientation or gender group (e.g., the Ku Klux Klan, American Nazi Party, etc.).<sup>7</sup>
- F. Hate Incident:** Any act whether consisting of conduct, speech or expression, to which a bias motive is evident as a contributing factor, without regard for whether the act constitutes a crime.<sup>8</sup>
- G. Hate Incident Report:** An account of a hate incident from a civil rights agency or advocacy organization received or collected by the Crime Reporting Unit.<sup>9</sup>

## IV. BIAS INDICATORS AND FACTORS

### A. Bias Indicators<sup>10</sup>

1. GENERALLY: The following criteria can assist law enforcement officers in determining whether a particular crime should be classified as a bias crime. These criteria are not all-inclusive, and each case must be examined on its own facts and circumstances. Common sense judgment should also be applied in making the determination whether a crime should be classified as a bias crime.
2. RACIAL, ETHNIC, GENDER AND CULTURAL DIFFERENCES
  - a. The offender and the victim were of different racial, religious, ethnic/national origin, handicap, and sexual orientation or gender groups. For example, the victim was black and the offenders were white.
  - b. The victim is a member of a racial, religious, ethnic/national origin, handicap, sexual orientation or gender group which is overwhelmingly outnumbered by members of another group in the area where the victim lives and the incident took place.
  - c. The victim was engaged in activities promoting a racial, religious, ethnic/national origin, and handicap, sexual orientation or gender group. For example, the victim is a member of the NAACP, participated in gay rights demonstrations, etc.
  - d. The incident coincided with a holiday relating to the victim's group (e.g., Martin Luther King Day, Rosh Hashanah, Gay/Lesbian Pride Day, etc.).
  - e. A historically established animosity exists between the victim's group and the offender's group.

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- f. The victim, although not a member of the targeted racial, religious, ethnic/national origin, handicap, sexual orientation or gender group, is a member of an advocacy group supporting the precepts of the victim group, or is friendly with members of a victim group.
  - 1) COMMENTS, WRITTEN STATEMENTS AND GESTURES: Bias-related oral comments, written statements, or gestures were made by the offender which indicate his/her bias. For example, the offender shouted a racial or anti-gay epithet at the victim.
  - 2) DRAWINGS, MARKINGS, SYMBOLS AND GRAFFITI: Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
- 3. ORGANIZED HATE GROUPS
  - a. Certain objects, items, or things which indicate bias were used (e.g., the offenders wore white sheets and white hoods) or left behind by the offender(s) (e.g., a burning cross was left in front of the victim's residence).
  - b. There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active in the neighborhood.
- 4. PREVIOUS EXISTENCE OF BIAS CRIME/INCIDENTS
  - a. The victim was visiting a location where previous hate crimes had been committed against other members of his/her racial, religious, ethnic/national origin, handicap, sexual orientation or gender group and where tensions remain high against his/her group.
  - b. Several incidents have occurred in the same locality, at or about the same time, and the victims are all of the same racial, religious, ethnic/national origin, handicap, sexual orientation or gender group.
  - c. The victim has received harassing mail or phone calls or has been the victim of verbal abuse based on his/her affiliation with a targeted group.
- 5. VICTIM/WITNESS PERCEPTION: Victims or witnesses perceive that the incident was motivated by bias.
- 6. MOTIVE OF SUSPECT
  - a. The offender was previously involved in a similar bias crime or is a member of, or associates with, an organized hate group.
  - b. The victim was in or near an area or place commonly associated with or frequented by a particular racial, religious, ethnic/national

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origin, handicap, sexual orientation or gender group (e.g., a gay bar).

- c. The victim was in the company of, or married to, a member of a targeted group.
  - d. The victim was perceived by the offender as violating or breaking from traditional conventions or working in a nontraditional employment.
7. LACK OF OTHER MOTIVES: There was no clear economic or other motive for the incident.

### ***B. Factors to Aid in Identifying Possible Bias Crimes/Incidents***

- 1. Officers must attempt to determine whether a particular crime or incident should be classified as a Bias Crime/Incident.
- 2. Officers must, therefore, evaluate the presence of the following factors:
  - a. The crime/incident involves an act, threat or attempt:
    - 1) That constitutes an expression of racial, religious, ethnic, or sexual orientation hostility; or
    - 2) To injure, intimidate, interfere with or oppress any person or group in the free exercise or enjoyment of any right or privilege secured to him/her by the constitution or laws of the Commonwealth or the United States;
    - 3) Against the person or property of another;
    - 4) By an individual or a group.
  - b. The crime/incident involves:
    - 1) Telephone calls or writings that contain racial, religious, ethnic/national origin, handicap, sexual orientation or gender slurs or epithets;
    - 2) Assaults or vandalism attributable to the victim's race, religion, ethnicity, handicap, sexual orientation or gender group; or
    - 3) Symbolic gestures, drawings, markings, or graffiti with racial, religious, ethnic/national origin, handicap, sexual orientation or gender connotations.

## **V. PROCEDURES**

- A. Patrol Officer Responsibilities:*** When an officer at the scene of an incident believes that it may have been motivated by racial, religious,

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ethnic/national origin, handicap, sexual orientation or gender bias, the officer shall take any preliminary actions necessary, such as:

1. Determining whether any perpetrators are present and, if so, taking appropriate enforcement measures;
2. Restoring order to the crime scene and taking any necessary actions to gain control of the situation;
3. Responding in a courteous, respectful and professional manner to the needs of the victim (see department policy on **Victim/Witness Assistance**);
4. Identifying any injured parties and taking steps to provide medical assistance;
5. Identifying any witnesses or others who have knowledge of the crime;
6. Protecting the crime scene;
7. Summoning a patrol supervisor to the scene; and
8. Conducting the preliminary investigation of the incident (see department policy on **Preliminary Investigations**), and filing a complete and detailed report according to department procedures.
  - a. Note any information that may indicate that it was a bias crime.
  - b. Note specifically in the title of the report that the incident appears to be a possible bias crime.

**B. Patrol Supervisor Responsibilities:** Upon responding to the scene of the incident, the patrol supervisor shall:

1. Confer with the initial responding officer;
2. Take measures to ensure that all necessary preliminary actions have been taken and inform his/her immediate supervisor of the incident;
3. Request any appropriate additional personnel necessary to complete the preliminary investigation and begin the follow-up investigation;
4. Provide immediate assistance to the crime victim(s), allowing them a period of time in which to express their feelings;
5. Assist the victim in identifying or contacting individuals or agencies that may provide support and/or assistance, such as family members, friends, clergy, and/or community service agencies;
6. Provide security and precautionary advice to the victim;
7. Supervise the preliminary investigation to include preliminary interviews of the victim and any witnesses to the incident; and

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8. Review incident and/or arrest report and make an initial determination as to whether the incident should be classified as a bias crime.

### ***C. Investigator Responsibilities***

1. When responding to the scene of an alleged bias crime and/or incident, investigators shall assume control of the follow-up investigation and shall:
  - a. Ensure that the scene is properly protected, preserved, and processed and that all physical evidence of the incident is photographed, collected, labeled, and submitted according to current departmental procedures;
  - b. Confirm that 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 remove such material as soon as possible once it has been photographed;
  - c. Conduct a comprehensive interview with all victims and witnesses at the scene, or as soon as possible thereafter, and canvass the neighborhood for additional personal sources of information;
  - 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. Work closely with the district attorney's office to ensure that a legally adequate case is developed for prosecution;
  - f. Coordinate the investigation with other appropriate law enforcement agencies in an effort to obtain an analysis of any discernible patterns, organized groups, and/or suspects potentially involved in the offense;
  - g. Make the final determination as to whether the incident should be classified as a bias crime or incident; and
  - h. Complete any reports necessary to comply with statistical reporting requirements for Hate Crimes.
2. Investigative officers shall also take the lead role in providing ongoing assistance to the crime victim, to include:
  - a. Providing ongoing information to the victim about the status of the criminal investigation; and,
  - b. Contacting the victim periodically to determine whether [s]he is receiving adequate and appropriate assistance.



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### ***D. Community Relations and Crime Prevention***

1. Hate crimes and incidents are viewed in the community not only as crimes against the targeted victim, but also as a crime against the victim's racial, religious, ethnic/national origin, and handicap, sexual orientation or gender group as a whole.
2. Working constructively with segments of this larger audience after such incidents is essential to help reduce fears, stem possible retaliation, help prevent additional bias crimes and/or incidents, and encourage any other previously victimized individuals to step forward and report those crimes.
3. Towards this end, the department's community relations function, or officers so assigned, shall take the following steps as appropriate:
  - a. Meet with neighborhood groups, residents in target communities, and other identified groups to allay fears, relay the department's concerns over and response to this and related incidents, reduce the potential for counter-violence and provide safety, security, and crime prevention information;
  - b. Provide direct and referral assistance to the victim and his/her family;
  - c. Conduct public meetings on racial, religious, ethnic, and sexual orientation threats and violence in general, and as they relate to specific incidents;
  - d. Establish a liaison with formal organizations and leaders;
  - e. Expand, where appropriate, existing preventive programs such as anti-hate seminars for school children; and
  - f. Create Memoranda of Understanding with community civil rights organizations and advocacy groups.

### ***E. Reporting***

1. It shall be the responsibility of the Lieutenant to ensure that all bias crimes are properly reported to the Crime Reporting Unit on a monthly basis.<sup>11</sup>
2. The Massachusetts Hate Crime Reporting Form shall be used to report Hate Crimes to the Crime Reporting Unit.<sup>12</sup>
3. If additional information becomes available, an amended report or additional data or information shall be submitted to the Crime Reporting Unit.<sup>13</sup>
4. Names of victims and perpetrators of bias crimes should not be reported to the Crime Reporting Unit on the prescribed form. Crimes shall be referenced and identified by the case number, the time and

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date of the incident, and other particularized information deemed relevant by the Crime Reporting Unit.<sup>14</sup>

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<sup>1</sup> 501 CMR 4.02.

<sup>2</sup> 501 CMR 4.02.

<sup>3</sup> 501 CMR 4.02.

<sup>4</sup> M.G.L. c. 22C, §32.

<sup>5</sup> M.G.L. c. 22C, §32.

<sup>6</sup> 501 CMR 4.02.

<sup>7</sup> 501 CMR 4.02.

<sup>8</sup> 501 CMR 4.02.

<sup>9</sup> 501 CMR 4.02.

<sup>10</sup> 501 CMR 4.04.

<sup>11</sup> 501 CMR 4.03.

<sup>12</sup> 501 CMR 4.03.

<sup>13</sup> 501 CMR 4.03.

<sup>14</sup> 501 CMR 4.08.