

A Model Hate Crime Protocol

SAN DIEGO COUNTY REGIONAL HATE CRIMES PROCEDURE MANUAL October 1999

The Law Enforcement Training Subcommittee of the San Diego (California) Hate Crimes Community Working Group created this procedure manual. They received help from many experts from the state of California and also borrowed materials from the hate crimes training manuals created by the United States Department of Justice and the training curricula created by the California Peace Officers Standards and Training Hate Crimes Committees.

This protocol, developed by the San Diego Hate Crimes Community Working Group, is provided as a useful model for agencies looking to develop policies and procedures for preventing and responding to hate crime. Agencies will find the information on prevention and on the roles of law enforcement officers particularly helpful.

(Note: This protocol has been reprinted here with permission of the Hate Crimes Unit of the County of San Diego Office of the District Attorney. Several sections on laws and definitions have been omitted here because they were specific to California law.)

Examples of Hate Crimes vs. Hate Incidents

Hate crimes are crimes motivated by bias against a victim based on his or her actual or perceived race, religion, sexual orientation, gender, ethnicity, national origin, or disability. **Hate incidents** are similarly motivated but lack the elements of damage to property, harm—or the immediate threat of harm—or violence. Examples of **hate incidents** as compared to **hate crimes** are as follows:

I. Example

A. Hate Incident

Three young male toughs purposely stand outside a convenience store in a residential section of town where young, professional gay men and lesbian women are known to live. As two men thought to be gay exit the store, all three toughs begin taunting the perceived gay men, calling them insulting and derogatory names. No physical contact or threats are made, but the humiliating verbal barrage does not end until the perceived gay men enter their vehicle and drive away.

(Officers shall complete an ARJIS 9 report and the additional victim/witness form.)

B. Hate Crime

Same facts as above, but as men perceived to be gay exit the store, they are approached by the same three toughs. Not satisfied with the response, the toughs' behavior escalates:

1. One of the toughs goes up to one of the men and points his finger at the victim and says, "I'm going to kick your ass, faggot."
(Please see P.C. § 422.6(a), a misdemeanor.)
2. One of the toughs pushes one of the perceived gay men to the ground, causing him to tear his suit pants and bruise his arm.
(Please see P.C. § 242 & 422.7, a felony.)

3. When neither of the gay men fight back but rather enter their car to depart the parking lot, a second tough produces a knife and slices the car's convertible top (on the side), causing damage.
(Please see P.C. § 422.6(b), a misdemeanor; if the damage exceeds \$500, please see 422.7, a felony.)
4. One of the toughs uses the same knife to violently stab the convertible top near the driver's side. The perceived gay men are afraid of being stabbed.
(Please see P.C. § 245(a)(1) and 422.75(c), a felony.)

II. Example

A. Hate Incident

When a bi-racial married couple, with two small children, move into a predominately Hispanic neighborhood, the new arrivals begin to hear graphically insulting comments regarding their respective races whenever they are seen outside their home. Although the comments are not specifically directed at them or their children, the new residents feel intimidated.

Two weeks after moving into the neighborhood, leaflets containing racist and sexually explicit derogatory graphics are found scattered on the streets in the neighborhood. When called, the police inform the couple that the leaflets are protected by the First Amendment to our Constitution.

(Officers shall complete an ARJIS 9 report and the Additional Victim/Witness form.)

B. Hate Crime

Same facts as above, however:

1. Six weeks after moving into their new home, a rock is thrown through the family's living room window.
(Please see P.C. § 422.6(b), a misdemeanor; if the damage exceeds \$500, please see 422.7, a felony.)
2. For three consecutive nights following the rock incident, random gun shots strike the garage door.
(If the suspects continue to "engage in a pattern of conduct for the purpose of terrorizing the owner," then this crime would be a felony under P.C. § 11411(b).)

III. Example

A. Hate Incident

Beginning one morning in early summer, residents of two different neighborhoods—one predominantly African-American, the other Jewish—awaken to find that their respective neighborhoods have been leafleted with the same flyers. The flyers are graphically anti-African-American and anti-Jewish in content and contain disgustingly graphic drawings depicting Jews and African-Americans in unflattering poses.

The flyers continue to appear in the same neighborhoods on random mornings over a six-month period. Not only are the flyers found on the

street, some are placed on the windshields of parked cars. Residents of both neighborhoods contact various police agencies to complain about the flyers and demand an investigation. The complainants are informed that the flyers are a form of free speech.

(Officers shall complete an ARJIS 9 report and the Additional Victim/Witness form.)

B. Hate Crime

One morning, a Jewish family awakens to find swastikas painted on their front door. An African-American family similarly awakens to find Ku Klux Klan graffiti painted on their driveway and spray-painted on their house.

(Please see P.C. § 422.6(b) and P.C. 11411, misdemeanors. However, if the suspects continue to “engage in a pattern of conduct for the purpose of terrorizing the owner,” then this crime could be a felony under P.C. § 11411(b).)

Prevention Efforts

Departments should develop and implement innovative strategies designed to prevent and reduce the spread of hate crimes and hate-motivated incidents within their communities. These programs should be consistent with each department’s mission and values statements. The programs should take an educational approach and be tailored to the needs of the community. Departments should engage community leaders and organizations in their prevention efforts.

Departments should consider developing prevention efforts that include, but are not limited to, the following:

- A. Designating a specific person(s) to deal with hate crimes and hate-motivated incidents as part of a regular assignment
- B. Providing community awareness and education regarding hate crimes and hate-motivated incidents
- C. Building partnerships with community leaders and their organizations before major hate-based incidents occur
- D. Collaborating with K–12 schools and institutions of higher education to develop proper prevention and response plans
- E. Educating the community about reporting procedures, legal proceedings, victims’ rights, and victim assistance programs offered by the department or other county support agencies
- F. Ensuring that public outreach literature is readily available in appropriate places within the community
- G. Having personnel assist during investigations to work as liaisons between the victim(s) and the department’s investigators(s)
- H. Participating in the collection and analysis of hate-based incident statistics compiled by the department and/or other county agencies
- I. Cooperating with law enforcement intelligence networks to better anticipate potential targets of hate-based incidents

Reporting

I. Communications Operators

Each agency is responsible for ensuring that its communications staff receive training to identify what constitutes a hate crime and a hate incident. This will help ensure an appropriate law enforcement response to reported hate crimes within each department's guidelines.

II. Responding Officer

When a responding officer determines that the acts complained of may constitute a hate crime, this officer is responsible for conducting a thorough preliminary investigation consistent with department policy. The fact that the suspect may be biased against the victim's race, religion, disability, ethnicity, national origin, gender, or sexual orientation does not mean that a hate crime occurred. Rather, the offender's criminal act must have been motivated, in whole or in part, by his or her bias to be considered a hate crime.

Because motivation is subjective, it is difficult to know with certainty whether a crime was the result of the offender's bias. Ideally, officers should locate **objective facts that would lead a reasonable person to conclude that the suspect's actions were motivated, in whole or in part, by bias.**

When completing the crime report, it is important that relevant information concerning the race, ancestry, national origin, religion, sexual orientation, gender, or disability of all persons involved be included in the report. Additionally:

- A. Mark "YES" in the Additional Offenses box.
- B. Circle "YES" in the Hate Crime box.
- C. Mark "OTHER" box in Suspect Actions category (Line 60) and write in the words "HATE CRIME."
- D. Enter the appropriate hate crime statute (e.g., P.C. § 422.6, P.C. § 422.7, or P.C. § 11411) in the Additional Offenses box (on Page 2).
- E. Complete narrative consistent with department policy.
- F. Remember that a victim may request non-disclosure of his or her name and address pursuant to P.C. § 6254(f). If so, state this fact in your report, do not disclose the victim's information on the face sheet of the report, and use a supplemental report to disclose the victim's name and address.

III. Reporting Procedures

Officers should forward a copy of all reports and "Field Identification" cards for any suspected hate crime or hate incident to their agency's or area's hate crimes detectives. (Please see list of investigative team members.)

IV. Reporting Hate Incidents

- A. All reported hate incidents not rising to the level of a hate crime **shall** be documented on an ARJIS 9 report.

- B. The report will contain information concerning the race, ethnicity, religion, gender, disability, or sexual orientation of the victim(s) involved.
- C. The ARJIS Additional Victim and/or Witness form will be used and attached to the ARJIS 9 report in order to capture accurately the identification of those persons involved as victims, witnesses, or suspects.
- D. These reports must be given an agency case number for tracking and retrieval purposes. They should be forwarded to the person designated by your agency to investigate, track, and monitor hate crimes.

These reports are extremely valuable when defendants are later prosecuted for actual hate crimes and claim not to have biases.

II. Dealing with a Victim of a Hate Incident

- A. Please see section on victim impact, Special Issues Regarding Victims.
- B. Explain to the victim the difference between a hate crime and a hate incident.
- C. Explain the department's policy on dealing with hate incidents (i.e., the incident will not be forgotten).
- D. Give the victim a list of resources in the community.
- E. Advise the victim to call your department in the event another hate incident occurs.
- F. For suggestions on preventing hate incidents, please see the Prevention Efforts section.

First Responder and Investigations

I. General Procedures

A. Pro-Arrest Policy

An arrest should be made in the event that there is reasonable cause to believe that a hate-related offense has occurred. The arrest may be for a felony or misdemeanor offense.

B. Felony Arrests

If an officer has reasonable cause to believe that a felony has occurred, an arrest **should** be made.

(Note: P.C. § 422.7 elevates certain misdemeanors to felonies when committed "because of" the victim's membership in a protected class.)

C. Misdemeanor Arrests

If there is reasonable cause to believe that a misdemeanor offense has been committed, an arrest **should** be made. A **misdemeanor** arrest can be made in any of the following ways:

1. Misdemeanor committed in an officer's presence

A suspect should be arrested in the event that a misdemeanor

hate-related incident occurs in an officer's presence. Such situations include, but are not limited to, an officer's witnessing the following:

- a. An act of violence against a person
- b. Any act of vandalism
- c. A direct threat against a victim in a protected classification
- d. Any violation of a restraining order

2. Misdemeanor committed outside an officer's presence

If a person commits a misdemeanor upon a person in a protected classification, a peace officer may arrest the person without a warrant if the victim or a witness is willing to make a private person's arrest.

3. Private person's arrest

Any time a peace officer is called out on a hate-related crime, the officer should inform the victim of his or her right to make a private person's arrest. This information shall include advising the victim how to safely execute the arrest. This discussion should be held out of the presence of the suspect whenever possible. An officer shall not dissuade complainants from making a private person's arrest.

II. Preliminary Response to Hate-Related Cases

The first responder is without doubt the most critical officer in the investigation of hate crimes. This officer's work at the scene of the hate crime will determine whether a suspect is ultimately apprehended, whether the victim feels protected or isolated, and whether the community can trust law enforcement to protect it.

The following steps should be included in an officer's investigation and subsequent report:

A. Arrival at Scene

1. Determine what, if any, crime has occurred.
2. Separate the victim, suspect, and witnesses.
3. Prevent communication between parties.
4. Remove victim and witnesses from suspect's line of sight and range of hearing.

B. Determining if a Hate Crime Occurred

The officer must look for **all** signs that may indicate that the crime was motivated, in whole or in part, by the defendant's bias against the victim because of the victim's membership in a protected class. The following are only signs. The officer must still conduct a case-by-case investigation.

1. Victim and suspect are members of **different groups**.
2. **Hate language** is said before, during and/or after the crime.
3. **Symbols of hate** are on or in clothing or personal possessions.
4. **Overly vicious injuries**, more than what you may normally see for the particular crime.

5. Gratuitous **damage to items of cultural or religious importance**.
6. **History of the area:** Other hate-related incidents have taken place there.
7. **Suspect's motive:** Suspect's prior similar acts.
8. A **relevant date** in the victim's or suspect's calendar.
9. Make-up of the victim's **community**.
10. **Lack of other motives:** Suspect does not know the victim.

If the incident does not constitute a specific crime, the report shall be titled "Hate Incident." (Please see Reporting section.)

III. Special Issues Regarding Victims

Once the responding officer determines that a hate crime occurred, officers need to be aware of the special impact hate crimes have on victims.

A. Primary Victim Impact

Stronger emotional trauma because the victim was selected due to a core characteristic of their identity that is immutable:

1. Extra dimension of fear
2. Will feel more vulnerable to a repeat attack
3. Loses trust of any member of offender's group
4. May reject the aspect of self that was the target of the attack
5. Assumptions about life may be shattered
6. Stronger likelihood of serious or lethal injuries

Follow-up contact for victims should be arranged either by the investigator of the case, a community relations officer, or a victim advocate. Witnesses may need to be treated in the same manner as victims because they may be affected emotionally by the crime.

B. Secondary Victim Impact

Refers to the victim's perceived rejection by the lack of expected support from the community or by the response provided by the criminal justice system.

1. Victim trauma may be exacerbated by the insensitivity of others:
 - a. Police officers
 - b. Media
 - c. Neighbors
 - d. Co-workers
 - e. Prosecutors
 - f. Judges
2. Victims may feel betrayed and hopeless when they confront what they perceive to be institutional prejudice.

C. Community Impact

When a hate crime occurs:

1. Victimization is projected outward to all members of the victim's wider community.
2. Other members of the same group feel victimized.
3. Members of other commonly targeted groups are reminded of their vulnerability to similar attacks.
4. The community is polarized into an "us-versus-them" mentality.
5. It impedes community spirit, morale, and growth.
6. Property values are lowered.
7. It increases security concerns at schools, churches, businesses, and private homes.

IV. Conducting the Interviews

First responders should be aware that most hate crimes go unsolved for lack of arrests. The services the victim receives on the field from you are likely to be the **only** services the victim will receive from the criminal justice system.

A. General Interview Considerations

1. Before conducting interviews of victims, witnesses, and suspects, officers need to know the elements of the hate crimes and know what the issues are likely to be. The most common issues in hate crimes are **identity, self-defense, and denials of bias**. Identify which one you have and solicit pertinent information from all people involved, including witnesses, the victim, and especially the suspects.
2. Provide extra security for the victim, if needed.
3. Remember that hate crimes may have a traumatic effect on all victims, which may not be readily understood by persons outside of that particular victim's community.
4. Obtain an interpreter (or, if time is of critical importance, use a family member or friend) to interpret for a victim who does not speak in a language understood by the officer.
5. Explain to the victim that your law enforcement agency takes hate crimes very seriously and will fully investigate the incident.
6. Explain to the victim what the likely course of the investigation will be, and prepare the victim for the possibility that a successful case may not be put together.
7. Protect the anonymity of the victim whenever possible. Anonymity is of significant importance for many victims of hate crimes, especially for gay and lesbian victims, particularly if the victim is in the military.

B. The Victim Interview

1. Note the victim's **physical condition**:
 - a. Show concern for the victim's safety.
 - b. Specifically look for injuries and describe them in detail.
 - c. Make every effort to **take pictures**.
 - d. Determine if medical treatment is necessary.
2. Note the victim's **emotional condition**:
 - a. Show concern for the victim's feelings by telling the victim that you are sorry the crime happened to him or her.
 - b. Be seen as a source of security and comfort.
 - c. Do not diminish the impact of the crime.
 - d. Allow the victim the opportunity to vent.
 - e. Display neutrality.
 - f. Be proactive and supportive.
 - g. Describe the victim's emotional state in your report.
 - h. Do not comment on the victim's judgment in terms of his/her own safety.
3. Determine the victim's **financial damages** (damages over \$500 dollars may rise the case from a misdemeanor to a felony):
 - a. Ask the victim how much it would cost to make him or her whole.
 - b. Describe the damages in detail.
 - c. Photograph damages.
 - d. If the damages involve graffiti, encourage the victim to remove the graffiti as soon as possible.
 - e. Ask the victim to save all receipts.
4. General pointers
 - a. Obtain emergency contacts, telephone number, and pager number of the victim.
 - b. Record any spontaneous statements of the victim.
 - c. Document any evidence of substance or chemical abuse by victim.
 - d. Do not allow personal value judgments of the victim's behavior, lifestyle, or culture to intrude on the professionalism of your investigation.
 - e. Keep in mind the likely issues of identity, self-defense, and denials of bias, as well as the issues presented by group crimes.
5. Specific questions:
 - a. Tell me what happened, in a narrative form. (*When the victim is finished, ask follow-up questions.*)
 - b. Tell me exactly what the suspect said *before, during, and after* the incident and how often.
 - c. Do you know why you were targeted?
 - d. Describe the suspect with as much detail as you can, including tattoos or clothing.

- e. How long have you lived in this area? Are you the only member (or one of a few) of [a protected class] who lives in the area?
- f. Have there been any prior incidents?
- g. Has there been any recent public activity that would make you a target?
- h. Have you been the victim of a hate crime in the past?

C. Cultural Barriers

1. Be aware that if the victims are from a background different from your own, you may not know what is accepted behavior in their culture. You may not understand the particular views of a minority person toward law enforcement.
2. Some victims may harbor feelings of fear or suspicion directed at law enforcement.
3. Do not allow your personal value judgements of the victim's behavior, culture, or lifestyle to intrude on the professionalism of your investigation.
4. Use appropriate terminology to describe minority groups. Be sensitive to the fact that particular individuals may be offended if they are described as belonging to a group with which they do not identify.

D. Undocumented Persons as Victims or Witnesses

Often migrant workers are victims or witnesses of hate crimes. Migrant workers may be in the country without proper documentation. As a result, some migrant workers feel that physical or verbal abuse can be attributed to the cost of doing business. Generally, they do not want to be involved in the criminal justice system for fear of deportation.

1. You may have to persuade the migrant worker to cooperate.
2. Stress that if the suspects are not stopped, their criminality will likely escalate. The suspect may hurt the migrant worker's friends or relatives in the future.
3. Get detailed information regarding their address or the address of people they stay in contact with, including friends or relatives living here or in their homeland.
4. Some migrant workers may give you a phony name. Therefore, it is a good idea to take their picture.
5. Inform the individual that you may be able to obtain a **federal parole** for them if they cooperate with the prosecution:
 - a. In some occasions, federal parole allows the parolee to stay in the country and work **legally**, until his or her case is over.
 - b. Other times, the parolee may have to exit the country after the case is over.
 - c. Or, the parolee may be allowed to return to his or her undocumented status.

E. Witnesses

1. Make every reasonable effort to find and interview all witnesses, including going door-to-door looking for witnesses. This sends a powerful message to the community and potential offenders that law enforcement does not tolerate such crimes.
2. Inquire from the neighbors as to the suspect's biased views or any other prior act that may indicate the suspect's bias.
3. Interview all witnesses separately.
4. Record names, addresses, phone numbers, and emergency contacts.
5. If an interpreter is used, jot down the interpreter's identifying information, the language used, and the interpreter's qualifications for that language.

F. Suspect Interview

This is a very important aspect of your investigation. You will probably never have a chance to speak with the defendant again.

1. Describe suspect's location on arrival.
2. Describe suspect's physical condition.
3. Describe suspect's emotional condition.
4. If there is evidence of substance abuse by suspect, document it and conduct an examination.
5. Some suspects may mistakenly assume that officers share their biased perceptions. Accordingly, sometimes law enforcement officers can simply encourage (of course, without the officer ever using hate language him or herself) suspects to talk about their feelings toward a particular minority group, including expressing his or her bias motivations.
6. Quote spontaneous statements and statements made during the investigatory stage (pre-Miranda).
7. Make a determination as to whether the suspect needs to be given the Miranda advisement (or if your questions are simply "investigatory"¹).
8. If necessary, admonish the suspect and get his or her side of the story.
9. Ask how he or she feels about people with the victim's characteristics.
10. Ask specific questions:
 - a. How would you like it if someone like the victim moved next door?
 - b. How do you feel about this victim?
 - c. What did this person say or do to make you mad?
 - d. How did the victim provoke you?
 - e. How do you feel about this person or group?

¹The suspect needs an advisement only if he or she is "in custody" and is being "interrogated."

- f. Did the victim just happen to cross your path?
 - g. What were you doing in that part of town?
 - h. Do you back your race?
 - i. Was this your idea?
 - j. Has the victim's group hurt you or your friends?
11. Confront the suspect with physical evidence.
 12. Confront the defendant with the witnesses and victim's statements.
 13. Remember you can catch more flies with honey ...

V. Collecting Evidence for Hate Crimes

Officers must look for **any** evidence that may help solve the probable issues of identity, self-defense, and denial of biased motive.

A. Identity

You might not get enough evidence to identify a suspect after one crime, but since hate offenders are often recidivists, the collection of as much identifying information as possible will lead to a quicker arrest.

1. Ask every victim and witness to describe the suspect, and everything related to the suspect, with as much detail as possible. For example: height; weight; hair color, length, and style; facial hair; young or older; heavy or thin; tattoos; scars; etc.
2. Since most people are bad at describing others, officer should ask the person giving the description to use him or herself as a reference point. (Was the suspect taller, heavier, balder, or older than the victim or witness?)
3. Get as much information as possible regarding any vehicles that the suspect(s) might have used.
4. Get as much information as possible regarding the defendant's companions.
5. Take pictures of a dark scene; that way, you document whether or not it was possible for the witnesses to see the defendant and his or her actions.
6. Ask the defendant if he or she has an alibi. If so, test it.

B. Self-Defense²

1. Describe crime scene.
2. Photograph crime scene, if applicable.
3. Determine if firearms or other weapons were present, and, if so, when the weapons were used.
4. Impound and photograph all weapons and other evidence, including all instrumentalities of the crime.

² This defense is inconsistent with the identity defense. If a suspect claims self-defense, then identity is no longer an issue. A self-defense case is easier to prosecute than an identity case.

5. Conduct a detailed physical examination of the suspect in search of injuries or the lack thereof.
6. Document and photograph these injuries **or the lack thereof**.
7. Note the victim's size and build.
8. **Victim's physical injuries:** Evidence depicting physical injuries is particularly critical. This evidence helps determine the charges, settlement positions, and sentencing goals. **In the event medical treatment is necessary:**
 - a. Transport victim, or have victim transported, to hospital.
 - b. Document complaints of pain and injuries.
 - c. Have the victim sign a medical records release form.
 - d. Interview treating physician and confirm nature and severity of injuries.

C. Denials of Bias

Even after officers have identified a suspect and determined that self-defense is not an issue, the prosecution must still prove that the crime was committed "because of" the victim's actual or perceived membership in a protected class.

1. Document the exact language used **before, during, and after** the commission of an alleged hate crime. Hate language is the most common way to determine whether the incident was motivated by bias.
2. It is important to recognize hate symbols.³
3. Seize **any** item that may go to bias (clothing, papers, pictures, etc.).
4. If appropriate, or necessary, ask for consent to search the defendant's property in order to search for evidence of bias or confirm any denials of non-bias.
5. Consider seeking a search warrant. Your local hate crime prosecutors will be eager to help you.
6. When dealing with a **threatening letter or a hate flyer:**
 - a. Collect it and preserve it as evidence.
 - b. If you are responding to a phone call from a person who has received a threatening letter, advise him or her to touch the letter as little as possible.
 - c. Do not fax or copy the document (to avoid contaminating fingerprint evidence).
 - d. Place the threatening letter in a paper (not a plastic) bag so as to best preserve fingerprints.
 - e. Arrange to have an officer promptly pick up the threatening letter, assuring that the chain of evidence is maintained.
 - f. Touch it as little as possible.

³ The Simon Wiesenthal Center publishes a useful resource on hate symbols called *The New Lexicon of Hate*.

7. **Racist tattoos:**

- a. Ask the suspect what the tattoo means.
- b. If in doubt as to the meaning of a tattoo, photograph it anyway.
- c. Try to get a close-up picture of each tattoo.

VI. Group Crimes

A. General Concepts

Two or more individuals often commit hate crimes. As such, the prosecution will often rely on conspiracy or aider-and-abettor theories of culpability.

1. Officers should try to figure out what each individual did.
2. Officers should try to determine the relationship amongst all the suspects to one another, for example:
 - a. how they know one another
 - b. how long they have known one another
 - c. whether they were wearing similar clothing
 - d. whether they have similar tattoos
3. Officers should try to get specific identifying features for each suspect.
4. If the whole group did not equally participate in the crime, officers should try to determine what the other suspects were doing at the time the crime was being committed. For example:
 - a. whether they acted as lookouts
 - b. whether they acted as back-up muscle
 - c. what they were doing or saying during the crime
5. If you actually have suspects detained, line them up side by side and take their photographs, depicting them from their front and back views.
6. If possible, ask the victim and witnesses to tell you at the scene exactly what each individual suspect said and did.

B. Elements Of Conspiracy

A conspiracy is:

1. An agreement
2. Entered into between two or more persons
3. With the specific intent to agree to commit a crime,
4. Followed by an **overt act** committed by one of the parties for the purpose of accomplishing the object of the agreement.

C. General Notes on Conspiracy

1. “Overt act” means any step taken or act committed by one or more of the conspirators that goes beyond mere planning or agreement to commit a crime and that is done in furtherance of the accomplishment of the object of the conspiracy.
2. It is not necessary for the defendant to personally commit the overt act if he or she was one of the conspirators when the alleged overt act was committed.

3. The “overt act” need not itself be a crime, or even an attempt to commit the crime that is the ultimate object of the conspiracy.
4. For example: Tom and Joe agree to burn a community center belonging to a minority group. They formulate a plan and buy the materials needed, but only Tom drives to the center with the explosives. If Tom is caught in the parking lot of the center, both Tom and Joe can be charged.

D. Elements of Aiding and Abetting

A person aids and abets when:

1. With knowledge of the unlawful purpose of the perpetrator;
2. With the intent or purpose of committing or encouraging or facilitating the commission of the crime, and
3. By act or advice aids, promotes, encourages, or instigates the commission of the crime.

E. General Notes on Aiding and Abetting

1. **Mere presence** at the scene of a crime, which does not itself assist the commission of the crime, does not amount to aiding and abetting.
2. **Mere knowledge** that a crime is being committed and the failure to prevent it does not amount to aiding and abetting.
3. For example: If Tom is committing a hate crime while Joe is being the lookout and encouraging Tom by yelling slurs to the victim, Joe is aiding and abetting Tom.

VII. Completing Crime Report

- A. Maintain objectivity in reporting.
- B. Avoid personal opinions.
- C. Ensure that elements of all involved crimes are included in report (remember, the prosecution will have to prove the crime plus the additional element of motive, all beyond a reasonable doubt).
- D. Document any injuries victim has sustained on the Hate Crime supplemental form.
- E. Document all evidence collected.
- F. Specifically quote any slurs made, as opposed to reporting “hate language” or “racial slurs.”
- G. Keep in mind that under Government Code § 6254(F), the victim’s name and address may be withheld.

VIII. Victim’s Rights/Officer’s Duty to Advise

Give the victim appropriate referrals:

- A. Explain the options available to the victim, including the private person’s

arrest process, temporary restraining orders (if applicable), and, in cases of arrest, the follow-up procedures and ensuing criminal proceedings.

- B. Advise the victim of available community resources and the state victim assistance program (Community-Based Organizations).
- C. Advise the victim about his or her privacy rights as per Government Code § 6254(F).

IX. Bail Issues

Consider requesting a bail enhancement in situations where the amount listed in the bail schedule is insufficient to ensure the victim's safety and the community's fears.

Remember that under P.C. § 422.7, violation of P.C. § 240, § 242, or § 417, or any vandalism with damage over \$500, can be charged as a felony. P.C. § 422.75(c) can add up to four years in state prison to a sentence.

Further Investigative Follow-up

I. Follow-up Investigations

A thorough follow-up investigation must be conducted consistent with department policy and procedure. Investigators should maintain liaisons with appropriate state, federal, and local law enforcement agencies for intelligence and information exchange and assistance, if applicable.

Please refer to suggestions made in the First Responders and Investigations section.

A. Report Writing and Documentation

Prompt preparation of **thoroughly written** reports of an investigation is of vital importance to the ultimate examination by prosecutors responsible for the filing of criminal charges against the perpetrator(s). Investigators should be aware that reports of hate crimes or hate incidents are forwarded to state and federal justice departments for documentation purposes, in addition to being entered into the ARJIS system countywide.

The referrals of reports of potential hate crimes to other enforcement agencies:

1. increase the chance of successful prosecution
2. enable law enforcement professionals to analyze patterns and trends of hate crimes or hate incidents in a community
3. may establish evidence linking a particular suspect to more than one hate crime

B. Situations with a Continuing Risk of Violence

Sometimes victims are in serious risk of further and repeat violence. This is particularly the case when there has been group or mob activity directed at minority individuals. **Persons who commit hate crimes tend to repeat and escalate their conduct unless they are stopped by law enforcement. Consequently, victims of hate crime may be at risk of continued harm.**

1. Assess the need for a continuing law enforcement presence in the neighborhood or at the residence or business of the victim.
2. Increasing law enforcement presence (as by scheduling more frequent patrols through a neighborhood) can send a strong deterrent message that further bias-motivated violence will be addressed.
3. Assess the need for sophisticated alarm systems to be provided to victims at their businesses or homes. Many law enforcement departments and agencies have alarm units, which can be placed into a person's home or business and activated by the person if he or she is in danger of attack.
4. Simple steps such as making sure that locks work and that outside areas are properly lighted can significantly increase security to an affected victim.
5. Consider holding community meetings to try to dispel anxieties and present accurate factual information, including differentiating an individual's act from a pattern of behavior that can create community polarization and conflict.
6. **Graffiti:**
 - a. Graffiti aimed at a particular group is a message, which constantly repeats itself to members of the affected group until the message is erased.
 - b. Encourage the property owner, perhaps with the help of community groups, to remove the graffiti.
 - c. However, caution against using unsupervised youths to remove graffiti, as they could be misconstrued as an opposing gang.
 - d. Some law enforcement departments and agencies have assumed the responsibility for removing graffiti by providing funds or personnel or by using community service hours.

C. Press and Community Relations

Hate crimes often are the focus of significant public and community attention. In dealing with the press and with community members, and **subject to departmental procedures on press relations**, the investigating officer should firmly and forthrightly confirm if your agency **is investigating** whether or not the alleged incident is a hate crime. The investigating officer should further state that his or her agency considers the investigation of hate crimes and apprehension of hate crime offenders to be of paramount importance. These types of strong public statements:

1. demonstrate to the entire community the commitment of law enforcement to stopping hate crimes, and
2. send a strong deterrent message to would-be perpetrators.

Remember that an inadvertent or casual comment minimizing the incident may cause deterioration in the relations between law enforcement and the community and may undermine any subsequent prosecution.

Conclusion

Hate crime victims are usually targeted not because of anything they have said or done to the suspects or for financial gain, but because of who they are or what they believe in. As such, hate crimes violate the very basic tenets of our democracy by targeting the right of every resident to be himself or herself and live safely and freely.

Perpetrators of hate crimes seek to send a message to the victim and his or her community that they are unwanted, that they do not belong, and that the community at large does not care about what happens to them. Although it is unrealistic to believe that we can eliminate all hate crimes, we in law enforcement can drastically diminish their impact by the approach we take when dealing with hate crimes. We can send an even stronger countermesssage. We should communicate to the victim, the community, and the defendant that we will do everything we can to apprehend those who seek to terrorize any member of our community.