

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

December 9, 2019

To All Law Enforcement Agencies and County Attorneys:

Re: Protocols for Identifying, Investigating, and Reporting Hate Crimes and Civil Rights Violations

Attached with this letter is a memorandum from this Office's Civil Rights Unit that outlines new protocols designed to help law enforcement to identify and report hate crimes and civil rights violations in New Hampshire. The purpose of the memorandum and protocols is to enhance the collaboration between this Office, the county attorneys, and state and local law enforcement in responding to bias incidents, hate crimes, and civil-rights violations.

Law enforcement must be aware of and prepared to identify and respond appropriately to hate crimes along with non-criminal civil-rights violations and bias incidents. Even non-criminal incidents motivated by bias or prejudice can have significant impacts upon the victims and others who share the victims' identity. Bias incidents, hate crimes, and civil-rights violations cause victims and those who share the victims' identity to feel unwelcome and unsafe in their communities. Such incidents can also be a prelude to more serious or more violent activity fueled by bias or hate. Law enforcement should respond to such acts before they can escalate.

This Office's Civil Rights Unit has the authority to bring enforcement actions under the state's Civil Rights Act. That act prohibits one person from interfering with the rights of another person through actual or threatened physical violence, property damage, or property trespass based upon race, color, religion, national origin, ancestry, sexual orientation, gender, or disability. The Civil Rights Unit can pursue fines and injunctive relief that can help prevent bias- and hate-motivated incidents from escalating into criminal acts. Thus, it can serve as a powerful resource for law enforcement in protecting our communities.

These protocols were not the work of one individual. We would like to thank former Assistant Attorney General Elizabeth Lahey, Chief Paul Dean from the University of New Hampshire, Chief Matthew Canfield from Laconia and Chief Tara Laurent from Greenland for their hard work in developing these protocols. We also thank Chief Mark

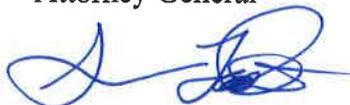
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Chase, past President of the New Hampshire Association of Chiefs of Police for his assistance in coordinating this effort.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gordon J. MacDonald".

Gordon J. MacDonald
Attorney General

A handwritten signature in blue ink, appearing to read "Sean R. Locke".

Sean R. Locke
Director, Civil Rights Unit

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LAW ENFORCEMENT MEMORANDUM

To: All New Hampshire Law Enforcement Agencies
All County Attorneys

From: Gordon J. MacDonald, Attorney General

Re: Protocol for Identifying, Investigating, and Reporting Hate Crimes and Civil Rights Violations

Date: December 9, 2019

Bias incidents and hate crimes are underreported and under-identified nationwide each year. While the United States Bureau of Justice Statistics receives over 200,000 reports of hate crimes and incidents from the public annually,¹ local law enforcement reports on average 7,500 of such crimes and incidents to the FBI Uniform Crime Reporting Program.² In 2017, state and local police departments in New Hampshire reported 13 hate crimes.³ No jurisdiction reported more than one hate crime, and 147 cities and towns reported no hate crimes.⁴ Approximately 48 local police departments did not submit any information to the FBI related to hate crimes.

¹ Bureau of Justice Statistics, Hate Crime Statistics 2009 through 2017, *available at* <https://www.bjs.gov/index.cfm?ty=tp&tid=37> (last viewed Dec. 6, 2019).

² *Id.*; see FBI: UCR, Hate Crime, *available at* <https://ucr.fbi.gov/hate-crime> (total reported crimes included in Table 1 for each year) (last viewed Dec. 6, 2019).

³ FBI: UCR, 2017 Hate Crime Statistics: New Hampshire Table 13, *available at* <https://ucr.fbi.gov/hate-crime/2017/tables/table-13-state-cuts/new-hampshire.xls> (last viewed Dec. 6, 2019).

⁴ *Id.*; FBI: UCR, 2017 Hate Crime Statistics: New Hampshire Table 14, *available at* <https://ucr.fbi.gov/hate-crime/2017/tables/table-14-state-cuts/new-hampshire.xls> (last viewed Dec. 6, 2019).

The purpose of this memorandum is to enhance the collaboration between the Attorney General, the county attorneys, and state and local law enforcement in responding to bias incidents, hate crimes, and civil-rights violations; to develop a protocol for identifying, investigating, and reporting bias incidents, hate crimes, and civil-rights violations; and to ensure the accuracy of this State's reporting of hate crimes and incidents to the FBI Uniform Crime Reporting Program.

OFFICE OF THE ATTORNEY GENERAL, CIVIL RIGHTS UNIT

The Civil Rights Unit at the New Hampshire Attorney General's Office ("AGO") was created in December 2017. The Civil Rights Unit primarily enforces two state anti-discrimination and civil-rights laws, the New Hampshire Law Against Discrimination and the New Hampshire Civil Rights Act. To this end, the Unit:

- Investigates complaints of actual or threatened physical violence, property damage, and property trespass that was motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, gender identity, or disability;
- Investigates complaints of discrimination in employment, housing, and places of public accommodation based on age, sex, sexual orientation, gender identity, race, color, marital status, familial status, physical or mental disability, religion, or national origin;
- Brings civil actions for injunctive relief to protect individuals who have been subjected to bias-motivated actual or threatened violence, property damage, and property trespass;
- Brings enforcement actions under state and federal laws that prohibit discrimination in areas such as employment, housing, and public accommodation;
- Serves as a resource to local law enforcement related to the investigation and/or prosecution of hate crimes; and
- Engages in community outreach and education regarding civil rights.

BIAS INCIDENTS, HATE CRIMES, AND CIVIL-RIGHTS VIOLATIONS UNDER STATE AND FEDERAL LAW

New Hampshire law addresses hate- and identity-motivated incidents criminally and civilly. County attorneys generally prosecute hate crimes, which are crimes that the offender was “substantially motivated to commit . . . because of hostility towards the victim’s religion, race, creed, sexual orientation as defined in RSA 21:49, national origin or sex.” RSA 651:6, I(f). A crime constitutes a hate crime even if the offender incorrectly perceives the victim to be a member of intended target group. *State v. Costella*, 166 N.H. 705, 713 (2014) (“[W]e hold that pursuant to RSA 651:6 the State must prove only that a defendant was substantially motivated to commit a crime because of his hostility towards the victim’s perceived religion, race, creed, sexual orientation . . . , national origin or sex, and that it need not prove the actual status of the victim.”). Defendants are subjected an extended term of imprisonment if convicted of a hate-motivated crime.

The Attorney General may also initiate a civil action to address hate- and identity-motivated incidents pursuant to the New Hampshire Civil Rights Act. RSA 354-B. One commits a Civil Rights Act violation when they use actual or threatened physical force or violence, or damage to or trespass on property to interfere or attempt to interfere with another’s lawful activities and/or exercise of rights when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, or disability. RSA 354-B:1. Courts may remedy such violations by imposing a monetary civil penalty, injunctive relief, and equitable relief, including restitution. RSA 354-B:3.

These state statutory definitions of hate crimes and civil-rights violations are largely consistent with the federal Hate Crime Statistics Act, 28 U.S.C. § 534, which requires the United States Attorney General to collect data “about crimes that manifest evidence of prejudice based

on race, religion, sexual orientation, or ethnicity.” The United States Attorney General fulfills this obligation through the FBI’s Uniform Crime Reporting (“UCR”) Program. The FBI UCR Program collects hate crime data from voluntary submissions from law enforcement agencies in the Summary Reporting System (“SRS”) or through the National Incident-Based Reporting System (“NIBRS”). For purposes of its program, the FBI’s UCR Program defines hate crime as a committed criminal offense which is motivated, in whole or in part, by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity. As under New Hampshire law, the offense is a hate crime even if the offender was mistaken in their perception that the victim was a member of the group against whom they were acting.

While not proscribed by law, law enforcement should nonetheless be aware of bias incidents, which include conduct, speech, or expression motivated, in whole or in part, by bias or prejudice toward race, color, religion, national origin, ancestry, sexual orientation, gender, gender identity, or disability that do not constitute a crime or civil-rights violation. Bias-motivated incidents can have a strong impact on victims and can send a message to entire communities that they do not have the right to be part of society. Such incidents may require a response, even if they are not criminal in nature. Bias incidents also often precede hate crimes and civil-rights violations. Therefore, law enforcement should respond to acts of bias and hate before they escalate to criminal acts.

THREE-TIERED PROTOCOL

To further the purposes stated above, law enforcement agencies should adopt the following protocol with regard to bias incidents, hate crimes, and civil-rights violations. The protocol establishes a three-tiered approach that parallels, in some ways, the development of a criminal investigation and prosecution. Each tier addresses one phase of the investigatory and enforcement process. The First Tier provides guidance to responding police officers as they carry out the initial investigation. The Second Tier defines the role of the civil-rights designee, an officer who will serve as the direct contact to the AGO's Civil Rights Unit on matters related to bias incidents, hate crimes, and civil-rights violations, and provides guidance to that designee. The Third Tier briefly describes the actions that prosecutors or the AGO's Civil Rights Unit may take in response to bias incidents, hate crimes, and civil-rights violations. A copy of this protocol is also attached to this memorandum.

A. First Tier: Responding police officers

Responding officers and investigators often have the first, and sometimes only contact, with victims of bias incidents, hate crimes, and civil-rights violations. Therefore, first responders play the most important role in identifying these incidents, crimes, and violations, collecting evidence, and delivering the message hate crimes and civil-rights violations will be investigated thoroughly, thus enhancing the likelihood of a successful prosecution.

A responding officer must first assess whether there is any evidence that the incident was or may have been motivated in whole or in part by bias, the victim's identity, or hostility toward the victim's identity.⁵ If there is any evidence that an incident or alleged conduct may have been

⁵ This role is distinct from determining whether the incident is a hate crime or a civil-rights violation, which is a decision that will be made later.

bias-, hate-, or identity-motivated, the responding officer must collect, preserve, and document all supporting evidence in their notes and/or reports in a precise and detailed manner.

A list of bias-, hate-, and identity-motivation indicators is attached to this memorandum. The list is not intended to be exhaustive. The absence of a listed indicator does not confirm the absence of bias. Likewise, the presence of a listed indicator does not necessarily confirm the presence of bias. If responding officers have questions related to determining the presence of absence of bias during or after an initial investigation, the officers should consult with their department's civil-rights designee.

A responding officer must also be sensitive to the effects that an alleged or suspected bias incident or hate crime may have on the victim, the victim's community, and others who share the victim's identity. Victims of bias incidents, hate crimes, and civil-rights violations have been chosen from the rest of the population to be victimized for no other reason than their identity—their race, religion, disability, gender, gender identity, ethnicity/national origin, or sexual orientation. A responding officer should be aware of this fact and assess whether additional resources are needed on the scene, such as interpreters, the victim's friends or family, community members or representatives, and/or members of the clergy.

Once the responding officer has secured the scene and/or thoroughly undertaken an initial investigation, they must then promptly notify their department's civil-rights designee of the potential hate crime or civil-rights violation, including forwarding copies of all notes and reports.

B. Second tier: Civil-rights designee

Each local police department should select at least one person to serve as its civil-rights designee. Police chiefs should provide to the Attorney General by letter the name and contact information of their civil-rights designee(s). The civil-rights designate(s) will serve as the direct

contact between the AGO Civil Rights Unit and the local department on matters related to bias incidents, hate crimes, and civil-rights violations.

When a civil-rights designee receives a report of a potential bias incident, hate crime or civil-rights violation from a responding officer, the designee should promptly notify the AGO Civil Rights Unit, and provide copies of all notes and reports. The designee should then review the evidence, determine whether further investigation is necessary, and in collaboration with the county attorney and/or AGO Civil Rights Unit as necessary, determine whether the incident constitutes a hate crime or civil-rights violation. The civil-rights designee and AGO Civil Rights Unit should also collectively determine what additional victim and community support and outreach, including victim/witness services, are necessary to respond to the incident.

The civil-rights designee should also track and document all reported and confirmed bias incidents, hate crimes, and civil-rights violations within their jurisdiction. Civil-rights designees should document bias incidents even if they ultimately determine that the incident does not constitute a hate crime or civil-rights violation. The documented information should include the victim’s protected identity characteristic(s) (whether actual or perceived), a brief description of the incident, and a statement regarding the ultimate disposition of the case, as indicated below:

Identity characteristic	Description of incident	Hate- or identity-motivation confirmed	Resolution
Sexual orientation	Offender assaulted victim by punching him in the face outside of a PRIDE event; Offender heckled victim and directed anti-gay slurs at him prior to assault	Yes; defendant used anti-gay slurs, targeted a PRIDE event, and previously made statements that he would attack gay men	Case forwarded to county attorney with hate-crime enhancement; defendant pled guilty

The civil-rights designee should also ensure that their respective police department reports the appropriate hate crimes to the FBI Uniform Reporting Program each year.

C. Third tier: Attorney General and County Attorney

The AGO Civil Rights Unit and the county attorneys will work collaboratively to resolve, through prosecution or otherwise, hate crimes and civil-rights violations.

NEXT STEPS

The Attorney General and members of local law enforcement are preparing training opportunities and materials designed to aid in the implementation of the above-described protocol. These opportunities will include additions to the Police Academy curriculum, and online and/or in-person trainings for chiefs of police, civil-rights designees, and veteran officers.

PROTOCOL FOR IDENTIFYING, INVESTIGATING, RESPONDING TO, AND REPORTING HATE AND BIAS CRIMES AND INCIDENTS

I. First tier: Responding officers

1. Determine whether there is any evidence that an incident or potential crime is or may be bias-, hate-, or identity-motivated.
2. If yes:
 - a. Collect all evidence of bias, hate, or identity motivation that is immediately available;
 - b. Identify the incident or crime as a “potential bias incident or crime” in prepared reports and/or notes; and
 - c. Promptly notify the civil-rights designee within your own department of the potential bias incident or crime.
3. Determine whether additional resources are needed on the scene, such as interpreters, community affairs/relations representatives, mental/physical health professionals, and/or the clergy, to support the victim.

II. Second tier: Civil-rights designee

1. Promptly notify the Attorney General’s Office (“AGO”) Civil Rights Unit and the applicable county attorney of the potential bias incident or crime, and provide copies of all available notes and reports;
2. Ensure that the local police department works with the AGO Civil Rights Unit to determine any need for additional investigation;
3. Work with the AGO Civil Rights Unit and county attorney’s office to determine whether the incident at issue constitutes a hate crime and/or a civil rights violation;
4. Serve as direct contact between the AGO Civil Rights Unit and the local department; and
5. Track all bias incidents, hate crimes, and civil-rights violations, and ensure that the department reports all to the FBI annually.

III. Third tier: AGO Civil Rights Unit and County Attorneys

1. AGO Civil Rights Unit and/or county attorneys will work collaboratively to resolve and/or prosecute civil-rights violations and crimes with bias-motivation enhancement.

**CITY/TOWN POLICE DEPARTMENT
HATE CRIME AND CIVIL-RIGHTS VIOLATION SUPPLEMENTAL FORM**

OFFICE	Date/Time Reported: _____ Report Date/Time: _____ Reporting Officer: _____	Incident No. _____ Call No. _____
	<p align="center"><u>VICTIM TYPE</u></p> <input type="checkbox"/> Individual Legal Name: _____ Other Names: _____ Address: _____ <input type="checkbox"/> School, business, organization, faith-based org. Name: _____ Address: _____ _____	<p align="center"><u>TARGET OF CRIME (CHECK ALL THAT APPLY)</u></p> <input type="checkbox"/> Person <input type="checkbox"/> Private Property <input type="checkbox"/> Public Property <input type="checkbox"/> Other: _____ <p align="center"><u>NATURE OF CRIME/INCIDENT (CHECK ALL THAT APPLY)</u></p> <input type="checkbox"/> Bodily injury <input type="checkbox"/> Property damage <input type="checkbox"/> Property trespass <input type="checkbox"/> Threat of violence (to person or property) <input type="checkbox"/> Other: _____
VICTIM	<p align="center"><u>SUSPECT</u></p> <input type="checkbox"/> Known <input type="checkbox"/> Unknown If Suspect known: Legal Name: _____ Alias(es): _____ Date of birth: _____ If unknown, please provide detailed description of Suspect and surrounding facts in narrative report	Known prior criminal history <input type="checkbox"/> Yes <input type="checkbox"/> No Prior bias-motivated conduct <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Affiliated/associated with known hate group/ideology <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <p align="center">If yes to any, describe in narrative report.</p>
	<p align="center"><u>RELATIONSHIP BETWEEN SUSPECT & VICTIM</u></p> Suspect known to victim <input type="checkbox"/> Yes <input type="checkbox"/> No Nature of relationship: _____ _____ Length of relationship: _____ _____ If yes, describe in narrative report	<p align="center"><u>HISTORY WITH SUSPECT</u></p> Prior reported incidents with Suspect Total # _____ Prior unreported incidents with Suspect Total # _____ Restraining order <input type="checkbox"/> Yes <input type="checkbox"/> No <p align="center">If yes, describe in narrative report</p>
SUSPECT		
SUSPECT/VICTIM HISTORY		

ADDITIONAL QUESTIONS FOR VICTIM	<u>ADDITIONAL QUESTIONS FOR VICTIM</u>
	Has Suspect ever harmed you? <input type="checkbox"/> Yes <input type="checkbox"/> No Has Suspect ever threatened you? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Are you afraid for your safety? <input type="checkbox"/> Yes <input type="checkbox"/> No Does Suspect possess/have access to a firearm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Why do you think you were targeted: _____
	What do you think motivated the Suspect to commit this crime/incident: _____
	Resources offered at scene <input type="checkbox"/> Yes <input type="checkbox"/> No
Describe all responses in narrative report	

TYPE OF BIAS (CHECK ALL THAT APPLY)

- Race Color Religion National origin Ancestry Disability Sexual orientation
 Gender identity Sex Other: _____

Describe all checked boxes in narrative report

BIAS INDICATORS

- The race, religion, ethnicity/national origin, disability status, gender, or sexual orientation of victim differs from that of the suspect.
- Bias-related comments, written statements, or gestures were made by the suspect.
- Bias-related drawings, markings, symbols, or graffiti were left at the scene.
- Objects or items that represent the work of organized hate groups (e.g., white hoods, burning crosses, noose, hate graffiti) were left at the scene of the incident.
- Suspect was previously involved in a similar incident or is a member of, or associates with members of, an organized hate group.
- Suspect has a history of incidents and crimes with a similar modus operandi and involving other victims of the same race, religion, ethnicity/national origin, disability, sexual orientation, or gender.
- Suspect engages in in hate activity in person and/or online.
- No clear economic or other motive for the incident exists.
- The victim was engaged in activities promoting their group at the time of the incident.
- The victim, although not a member of the targeted group, is a member of an advocacy group that supports the victim's group, or the victim was in the company of a member of the targeted group.
- Victim previously received harassing mail or phone calls or had experienced verbal abuse based on his or her affiliation with a targeted group.
- Victims and/or witnesses perceive that the incident was motivated by bias.
- The incident coincided with a holiday or date of particular significance to the victim's group.
- The victim was in or near an area or place commonly associated with or frequented by members of a particular race, religion, ethnicity/national origin, disability, sexual orientation, or gender (e.g., a gay bar).

Describe all checked boxes in precise detail narrative report

BIAS

BIAS INDICATORS¹

A. Racial, Ethnic, Gender, and/or Cultural Differences

- The race, religion, ethnicity/national origin, disability status, gender, or sexual orientation of the victim differs or is perceived to differ from that of the offender.
- Historically, animosity exists between the victim's group and the offender's group.
- The victim is a member of a group that is overwhelmingly outnumbered by members of another group in the area where the incident occurred.
- The victim was engaged in activities promoting their group.
- The incident coincided with a holiday or date of particular significance to the victim's group.
- The victim, although not a member of the targeted group, is a member of an advocacy group that supports the victim's group, or the victim was in the company of a member of the targeted group.

B. Comments, Written Statements, or Gestures

- Bias-related comments, written statements, or gestures were made by the offender.

C. Drawings, Markings, Symbols, or Graffiti

- Bias-related drawings, markings, symbols, or graffiti were left at the scene of the incident.

D. Organized Hate Groups

- Objects or items that represent the work of organized hate groups (e.g., white hoods, burning crosses, hate graffiti) were left at the scene of the incident.
- There are indications that a hate group was involved; for example, an organized hate group claimed responsibility for the crime or was active in the neighborhood.

¹ FBI Hate Crime Data Collection Guidelines and Training Manual, *available at* <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf> (last viewed May 3, 2018).

E. Previous Bias Crimes or Incidents

- Victim was visiting a location where previous bias crimes had been committed against members of the victim's group.
- Several incidents occurred in the same area, and the victims were members of the same group.
- Victim had received previous harassing mail or phone calls or had experienced verbal abuse based on his or her affiliation with a targeted group.
- Recent bias incidents or crimes may have sparked a retaliatory hate crime.

F. Victim/Witness Perception

- Victims and/or witnesses perceive that the incident was motivated by bias.

G. Motive of Offender

- Offender was previously involved in a similar incident or is a member of, or associates with members of, an organized hate group.
- The offender has a history of previous crimes with a similar modus operandi and involving other victims of the same race, religion, ethnicity/national origin, disability, sexual orientation, or gender.
- The offender engages in in hate activity in person and online.

H. Location of Incident

- The victim was in or near an area or place commonly associated with or frequented by members of a particular race, religion, ethnicity/national origin, disability, sexual orientation, or gender (e.g., a gay bar).
- The incident occurred at or near a house of worship, religious cemetery, or home or establishment of a group considered a minority or "outsider" in a given neighborhood (e.g., a Korean store in an African American neighborhood, a gay bar, or an African American home in a predominately Irish American neighborhood).

I. Lack of Other Motives

- No clear economic or other motive for the incident exists.