	SUBJECT	GENERAL ORDER NUMBER
	Hate Crimes	**444.20**
	DCJS STANDARDS	EFFECTIVE DATE
	44.2	**6/1/18**
	APPROVAL	REVISION DATE
	Daniel M. Vasile, Chief of Police	**2/5/24**

This directive is modeled after the *Investigation of Hate Crimes Model Policy* published by the International Association of Chiefs of Police. While a large majority of the information/requirements in that policy was used, this directive has been crafted to reflect the requirements of the University Police Department at SUNY Brockport.

A. Policy: The SUNY Brockport University Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law. 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 taken very seriously by the University Police Department and will be given high priority. The University Police Department shall employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. University Police will be cognizant of 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. The University Police Department will also be mindful of and responsive to the security concerns of victims and their families.

B. Purpose: This directive is designed to assist members of the SUNY Brockport University Police Department in identifying and investigating hate crimes and assisting victimized individuals and communities. A swift and strong response by University Police can help stabilize and calm the community as well as aid in a victim's recovery.

C. Definitions: Definitions related to this directive include those listed below.

1. Hate Crime: A specified offense, as defined in Penal Law Section 485.05, committed or intended to be committed in whole or substantial part because of a belief or perception regarding the race, color, religion, national origin, gender, sexual orientation, gender identity, disability, ancestry, religious practice or age of a person, regardless of whether that belief or perception is correct.

2. Bias Incident: Refers to language and/or behaviors which demonstrate bias against persons or groups because of factors (actual or perceived) such as: race, ethnicity, national origin, religion, creed, age, sex, gender, gender identity, gender expression, sexual orientation, medical condition, disability, marital status, familial status, pregnancy, predisposing genetic

characteristics, veteran status, domestic violence victim status, ex-offender status and/or socioeconomic status.

3. Age: At least 60 years old.

4. Disability: A physical or mental impairment that substantially limits a major life activity.

D. New York State Penal Law Section 485.05 Hate Crimes: A person commits a hate crime when they commit a specified offense and either

1. 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

2. 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.

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 1 or 2, above.

The crimes that can be charged under the Hate Crime statute are listed in the chart in Attachment A: Hate Crime Penal Law Reference Table.

E. Penal Law § 240.31 Aggravated Harassment, 1st degree: Aggravated Harassment in the 1st degree is a Class E felony. 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, they

1. Damage 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 § 240.30 of the Penal Law 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 § 240.30 of the Penal Law or they have 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.

F. Penal Law § 240.30(3) Aggravated Harassment, 2nd degree: Aggravated Harassment in the 2nd degree is a Class A misdemeanor. A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, they strike, shove, kick, or otherwise subject 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.

G. Guidelines and Responsibilities/Procedures: Officers shall conduct a thorough and complete investigation in all suspected and confirmed hate crime incidents and assist the local prosecutor. Officers should make every effort to become familiar with organized hate groups operating in the community and police contacts should be documented.

1. Responding Officers Responsibilities: Initial responding officers at the scene of a suspected hate crime shall take preliminary actions deemed necessary including, but not limited to, the following.

a. Secure the scene. Steps should be taken so that the initial situation does not escalate. This includes, but is not limited to:

i. Stabilizing injured victims and requesting medical aid.

ii. Providing protection to victims and witnesses by increased police presence.

iii. 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.

b. Identify criminal evidence on the victim if applicable.

c. Request the assistance of a translator or counselor when necessary.

d. Request the assistance of the shift supervisor (if deemed necessary and appropriate). The shift supervisor may request assistance from an outside agency.

e. Take measures to ensure that necessary preliminary actions have been taken and brief the responding supervisor as to those actions.

f. Conduct a preliminary investigation and record information on

i. the identity of suspected perpetrators;

ii. the identity of witnesses, including those no longer at the scene;

iii. prior bias-motivated occurrences in the immediate area or against the same victim. Resources to be used to check on these instances would include the New York State Intelligence Center (NYSIC) (518) 786-2100 and/or the Monroe Crime Analysis Center (M-CAC) at 585-428-6654 or MCAC@CityofRochester.gov; and

iv. statements made by suspects; exact language is critical.

g. During the investigation, look for possible signs that the incident may be a hate crime, such as

i. the motivation of the perpetrator or lack of motive;

ii. statements made by the perpetrator;

iii. the presence of multiple perpetrators;

iv. the display of offensive symbols, words or acts;

v. was any hate literature found in the possession of the suspect?

vi. is the victim from a different racial, ethnic, religious group than the perpetrator?

vii. the absence of any motive. The brutal nature of a particular incident could denote a hate crime, particularly when the perpetrator and victim do not know each other;

viii. the perpetrator's perception of the victim, whether accurate or not;

ix. 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.;

x. multiple incidents occurring in a short time period and all the victims were of the same identifiable group;

xi. 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?

xii. the incident occurred in proximity to an establishment that could be associated with one of the protected classes;

xiii. the perpetrator targeted a particular portion of the victim's body; i.e., Sikh victims forcibly having their hair cut or a victim targeted for their sexual orientation being attacked near or around their genitalia;

xiv. the victim's perception that they were selected because they are a member of an identifiable group.

h. Arrest suspected perpetrators if probable cause exists.

i. Conduct interview and attempt to establish motive.

ii. Consult with the District Attorney's Office if there is a question as to proper criminal charges.

i. 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 the shift supervisor (Lieutenant or Senior Officer). The College's Bias Response and Reporting System should also be utilized.

j. Be cognizant of dual motivation by some suspects. Example: A suspect may be looking to commit robberies but specifically targets elderly victims.

k. Note that an attack against a transgender victim could be covered under sexual orientation or gender.

l. Ensure that appropriate assistance is being provided to hate crime victims to include giving them the Office of Victim Services brochure and the contact information for the Counseling Center, the Title IX Officer, and the Bias Reporting Team

2. **Supervisor Responsibilities:** The shift supervisor (Lieutenant or Senior Officer) shall confer with the initial responding officer(s), ensure that necessary preliminary actions have been taken, and make appropriate department notifications as necessary. The shift supervisor shall request any appropriate additional personnel necessary to accomplish the following:

    a. Provide immediate assistance to the crime victim.

        i. Express the University Police Department's official position on the importance of these cases and describe the measures that will be taken to apprehend the perpetrators.

        ii. Express the University Police Department's interest in protecting victims' anonymity whenever possible.

        iii. Allow the victim an opportunity to express their immediate concerns and feelings.

        iv. In accordance with General Order 228.10 (Public Information Function and Media), notify the Office of College Communications with respect to the incident/crime in order for that office to make the necessary and appropriate notifications to any external agencies.

        v. Inform the victim about the probable sequence of events in the investigation and prosecution.

        vi. Explain security measures and precautions to the victim

    b. Ensure that the officers conduct a thorough preliminary investigation.

c. 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), Facilities and Planning will be immediately contacted to do all that is possible to ensure that the graffiti is removed as soon as possible. The supervisor or delegated officer shall follow up with Facilities and Planning to ensure that this is accomplished in a timely manner.

d. Conduct a comprehensive review with all victims and witnesses (and depose) at the scene or as soon as possible thereafter. Canvass the area for additional sources of information. Whenever possible attempt to conduct all interviews with victims at their convenience and minimize, as much as reasonably possible, interactions in which victims have to relate the incident.

e. Consult with the Chief of Police and District Attorney's Office as to whether the incident should be classified as a hate crime.

f. Work closely with the District Attorney's Office to ensure that a legally adequate case is developed for prosecution.

g. Coordinate the investigation with other agencies for an analysis of any patterns, organized hate groups and suspects potentially involved in the offense.

h. Ensure that all relevant facts are documented in the RMS Report, all supporting documentation is included in that report, and make an initial determination as to whether the incident should be classified as a hate crime.

i. Any possible hate crime demands immediate notification to the Chief of Police so that they may make any further notifications as deemed necessary and appropriate.

j. Take preventive measures to ensure the safety of the victim.

3. Recommended Steps When Suspect is Not in Custody or Has Not Been Identified

a. Coordinate investigation with other department units.

b. Work with New York State Intelligence Center (NYSIC) and/or the Monroe Crime Analysis Center (M-CAC) to research leads and prepare bulletins.

c. Conduct extensive canvass and distribute bulletins in area of the incident.

d. Debrief individuals arrested in the area.

e. Working through the Office of College Communications, seek assistance from the media to attempt to garner witnesses and investigative leads.

f. Follow up on leads in timely manner.

4. **Incident Report Preparation:** The RMS Report should clearly indicate the following information:

   a. Offense – hate crime designated Penal Law.

   b. Victim age, gender, race and ethnicity [when victim(s) is/are an individual(s)].

   c. Offender age, gender, race and ethnicity (when available).

   d. The narrative portion of the RMS Report should document that the victim(s) was/were 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 (i.e., selected victim because they were Hispanic, Jewish, Muslim, etc.).

5. **Arrest Processing:** The Hate Crimes law is a sentencing enhancement statute. Therefore, the following will apply:

   a. 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 Assault in the 2nd Degree, which is a "D" felony, and it is alleged that the assault was a hate crime, upon 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.

   b. 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).

c. 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.

d. 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 an automated booking system to ensure that the correct offense is selected.

Examples:
PL section 120.00, subdivision 1 -Assault 3rd ⟶ 120.00(0IH), when it is a Hate Crime

PL Section 140.15 - Criminal Trespass 2nd ⟶ 140.15 (OOH), when it is a Hate Crime

IMPORTANT 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.

6. Accusatory Instrument

a. 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 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. 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, sex, sexual orientation, etc. of "a person." Likewise, when alleging Aggravated Harassment in the 1st Degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.

b. The accusatory instrument filed with the court should also list the "H" designation. The narrative portion of the accusatory instrument 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.

7. **Records Management and Reporting Requirements:** In complying with state hate crime reporting requirements

   a. The assigned Lieutenant will submit all incidents of reported hate crimes to DCJS each month using the NYS DCJS Form 3294 (Attachment B). If no hate crimes were reported, the form must still be filed by checking the "Nothing To Report (NTR)" box.

   b. The assigned Lieutenant will submit a duplicate copy of NYS DCJS Form 3294 to the New York State Intelligence Center (NYSIC) and the Monroe Crime Analysis Center (M-CAC).

8. **Community Relations and Crime Prevention:** 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 the 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, and in accordance with General Order 229.10 Responsibility of Personnel and Crime Prevention, the Department's community relations function, or officer(s) so assigned, shall perform the following:

   a. 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 result of the investigation or prosecution.

   b. Protect the privacy of the victim and their families as much as possible.

   c. Provide any direct assistance reasonably possible along with referral assistance to the victim and their family.

   d. In accordance with General Order 228.10 Public Information Function and Media, collaborate with the Office of College Communications to decide what group(s), if appropriate, to meet with to allay fears, emphasize the Department's concern over this and related incidents, reduce the potential for counter-violence and reprisals, and provide safety, security, and crime prevention information.

e. In collaboration with the Office of College Communications, 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.

f. Through the University Police Department Community Policing Program, offer campus meetings or forums designed to address the community-wide impact of hate crime and violence in general.

g. If appropriate and through collaboration with the Office of College Communications, 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.

Sources:

International Association of Chiefs of Police (IACP) Model Policy
New York State Police Policy
Clinton County Sheriffs Department General Order
State of New York Attorney General's Hate Crime: Manual for Prosecutors
Nassau County Police Department Procedure
New York City Police Department Hate Crimes Task Force
Westchester County Department of Public Safety Crime Analysis Unit Section 273.01 (3) of the Laws of Westchester County
New York City Anti-Violence Project
Westchester District Attorney's Office

Appendix A.

N.Y. Penal Law § 485.05 Hate crimes.

A "specified offense" is an offense defined by any of the following provisions of this chapter:

- section 120.00 (assault in the 3rd degree)
- section 120.05 (assault in the 2nd degree)
- section 120.10 (assault in the 1st degree)
- section 120.12 (aggravated assault; person < than 11 years old)
- section 120.13 (menacing in the 1st degree)
- section 120.14 (menacing in the 2nd degree)
- section 120.15 (menacing in the 3rd degree)
- section 120.20 (reckless endangerment in the 2nd degree)
- section 120.25 (reckless endangerment in the 1st degree)
- section 121.12 (strangulation in the 2nd degree)
- section 121.13 (strangulation in the 1st degree)
- subdivision one of section 125.15 (manslaughter in the 2nd degree)
- subdivision 1, 2 or 4 of section 125.20 (manslaughter in the 1st degree)
- section 125.25 (murder in the 2nd degree)
- section 120.45 (stalking in the 4th degree)
- section 120.50 (stalking in the 3rd degree)
- section 120.55 (stalking in the 2nd degree)
- section 120.60 (stalking in the 1st degree)
- section 145.10 (criminal mischief in the 2nd degree)
- subdivision one of section 130.35 (rape in the 1st degree)
- subdivision one of section 130.50 (criminal sexual act in the 1st degree)
- subdivision one of section 130.65 (sexual abuse in the 1st degree)
- section 135.05 (unlawful imprisonment in the 2nd degree)
- section 135.10 (unlawful imprisonment in the 1st degree)
- section 135.20 (kidnapping in the 2nd degree)
- section 135.25 (kidnapping in the 1st degree)
- section 135.60 (coercion in the 3rd degree)
- section 135.61 (coercion in the 2nd degree)
- section 135.65 (coercion in the 1st degree)
- section 140.10 (criminal trespass in the 3rd degree)
- section 140.15 (criminal trespass in the 2nd degree)
- section 140.17 (criminal trespass in the 1st degree)
- section 140.20 (burglary in the 3rd degree)
- section 140.25 (burglary in the 2nd degree)
- section 140.30 (burglary in the 1st degree)
- section 145.00 (criminal mischief in the 4th degree)
- section 145.05 (criminal mischief in the 3rd degree)
- section 145.12 (criminal mischief in the 1st degree)
- paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the 2nd degree)
- paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the 1st degree)
- section 150.05 (arson in the fourth degree)
- section 150.10 (arson in the third degree)
- section 150.15 (arson in the second degree)
- section 150.20 (arson in the first degree)
- section 155.25 (petit larceny)
- section 155.30 (grand larceny in the fourth degree)
- section 155.35 (grand larceny in the third degree)
- section 155.40 (grand larceny in the second degree)
- section 155.42 (grand larceny in the first degree)
- section 160.05 (robbery in the third degree)

• section 160.10 (robbery in the second degree)
• section 160.15 (robbery in the first degree)
• section 240.25 (harassment in the first degree)
• subdivision 1, 2 or 4 of section 240.30 (aggravated harassment in the 2nd degree)
• section 490.10 (soliciting or providing support for an act of terrorism in the 2nd degree)
• section 490.15 (soliciting or providing support for an act of terrorism in the 1st degree)
• section 490.20 (making a terroristic threat)
• section 490.25 (crime of terrorism)
• section 490.30 (hindering prosecution of terrorism in the 2nd degree)
• section 490.35 (hindering prosecution of terrorism in the 1st degree)
• section 490.37 (criminal possession of a chemical weapon or biological weapon in the 3rd degree)
• section 490.40 (criminal possession of a chemical weapon or biological weapon in the 2nd degree)
• section 490.45 (criminal possession of a chemical weapon or biological weapon in the 1st degree)
• section 490.47 (criminal use of a chemical weapon or biological weapon in the 3rd degree)
• section 490.50 (criminal use of a chemical weapon or biological weapon in the 2nd degree)
• section 490.55 (criminal use of a chemical weapon or biological weapon in the 1st degree) ;or any attempt or conspiracy to commit any of the foregoing offenses.