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GUIDANCE FOR LAW ENFORCEMENT OFFICIALS

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TO: Hate Crimes & Civil Rights Liaison Officers
FROM: Peter F. Neronha, Attorney General *PFN*
DATE: March 31, 2021
SUBJECT: Hate Crimes Reporting

Ensuring an effective response to hate crimes is imperative for law enforcement in Rhode Island. My Office remains grateful for all the work your departments already do – and for your appointment as a Hate Crimes & Civil Rights Liaison Officer – to ensure that community and law enforcement are aligned in the shared goal of reducing crime targeted at minorities and other vulnerable groups. The steps outlined below will build upon that foundation in addressing misconduct motivated by bias or bigotry and improve policing in our State.

A hate crime is any criminal act in which the perpetrator intentionally selects a victim because of his or her hatred or animus towards a person's protected trait (religion, race, sexual orientation, etc.). For additional information regarding hate crime investigations and prosecutions, please refer to my guidance of December 8, 2020, available at [http://www.riag.ri.gov/documents/Hatecrimesandcivilrightsliaisonguidance12.8 AG Redacted.pdf](http://www.riag.ri.gov/documents/Hatecrimesandcivilrightsliaisonguidance12.8%20AG%20Redacted.pdf). This Hate Crimes Reporting Guidance pertains only to the obligation of police departments to report alleged hate crimes to the Rhode Island State Police. That duty is separate and apart from my recommendation to notify my Office when a hate crime takes place so that we can provide assistance, if needed, and so that it can be appropriately prosecuted.

GUIDANCE FOR LAW ENFORCEMENT ON THE REPORTING OF ALLEGED HATE CRIMES

What is Rhode Island’s Hate Crimes Reporting Statute, and what does it do?

Under Rhode Island law, all police departments must report hate crime allegations to the State Police on a monthly basis. *See* R.I. Gen. Laws § 42-28-46. The State Police compiles these reported incidents as part of the Uniform Crime Reporting Program and, in turn, annually provides them to the Federal Bureau of Investigation (“FBI”).

What is a “hate crime” for the purposes of this statute?

“Any crime motivated by bigotry and bias, including, **but not limited to** threatened, attempted, or completed acts that appear after investigation to have been motivated by racial, religious, ethnic, sexual orientation, gender, gender identity or expression or disability prejudice or motivated by prejudice against a person who is homeless or is perceived to be homeless.” R.I. Gen. Laws § 42-28-46(a)(2) (emphasis added).

Does a perpetrator need to be arrested, charged or convicted in order to trigger the reporting requirement?

NO. Neither arrest nor conviction of the perpetrator is required for reporting. The presence of evidence alone is sufficient to trigger the reporting requirement, even if charges cannot be brought against an offender. For example, if bias-motivated graffiti is discovered but a perpetrator is never found or charged, reporting should still occur.

What does “appear after investigation” mean for the purposes of this statute?

Before reporting an incident as a hate crime, an investigator must ascertain the presence of sufficient objective facts to lead a reasonable and prudent officer to conclude that the offender’s actions were motivated, at least in part, by bias or bigotry. No single fact may be entirely conclusive, but the following indicators are supportive of a finding of bias:

- a) Bias-related oral comments (i.e., slurs) made by the offender which indicate his or her bias. For example, the offender shouted a racial epithet at the victim.
- b) Bias-related drawings, markings, symbols or graffiti were left at the crime scene. For example, a swastika was painted on the door of a LGBTQ+ center.
- c) *See* Federal Bureau of Investigation guidance at pp. 6-7 for additional indicators, available at <https://www.fbi.gov/file-repository/ucr/ucr-hate-crime-data-collection-guidelines-training-manual-02272015.pdf/view>.

At the point where sufficient facts have led a reasonable and prudent officer to conclude that the offender’s actions were motivated, at least in part, by bias or bigotry, then such conclusions will be considered to have “appeared after investigation.”

What is the burden of proof in the context of reporting?

Reporting is required where sufficient objective facts exist to lead an officer to conclude that the offender’s actions were motivated, at least in part, by bias or bigotry. Motivation is highly subjective and the burden reflects this ambiguity. Significantly, however, the burden of proof in the context of reporting is *not* the “beyond a reasonable doubt” standard. Thus, circumstances

could arise in which the hate crime reporting requirement is triggered, but in which there would be insufficient evidence to *convict* a defendant of a hate crime.

Does a hate crime have to be motivated solely by bigotry?

NO. Such crimes may involve mixed motives (i.e., targeting a person because of their race *and* because of some other reason). For this reason, reporting is required where bigotry or bias, in whole *or in part*, motivated an offender’s conduct. For example, two neighbors may profoundly dislike one another for reasons that have nothing to do with religion. If a crime is committed and there is evidence that it was, in part, motivated by religion (due to the presence of any indicators noted above), it should be reported as a hate crime.

Does the presence of certain symbols and/or speech automatically trigger the reporting requirement?

Certain symbols and/or speech are not *per se* required to be reported. Incidents must be evaluated holistically on a case-by-case basis. Thus, presence of a single hateful symbol or spoken word may or may not be sufficient to trigger reporting.

For purposes of reporting, a symbol does not need to be targeted at a particular individual to be considered a hate crime, so long as it is projected publicly at a protected class. For example, racist vandalism on public property should be reported, even if it is unclear exactly to whom in the community the graffiti it is directed.

Officers should consider the totality of the circumstances when deciding whether to report, including: the type of symbol or writing (e.g., KKK, a swastika); the location; whether it is prominently displayed; the size and number of the mark or marks; the perceived intent of the perpetrator; and/or the presence of other indicators noted above. For example, a tiny swastika on a park bench, without additional indicators, does not need to be reported under R.I. Gen. Laws § 42-28-46. However, if a park bench is covered in swastikas, or if a perpetrator writes “KKK” in large letters on the side of a school, the perpetrator’s intent to demonstrate bigotry to the community at large is clear and, therefore, these crimes should be reported.

What is the goal of hate crime reporting?

Accurate reporting leads to accurate statistics. The more accurate the data, the more effectively we can combat these crimes and understand the magnitude of the issue. Reporting to the State Police, however, does not in and of itself assist in the prosecution of hate crimes. For that reason, we recommend that you contact the Attorney General’s Office as soon as possible after a crime that appears after investigation to have been motivated by bigotry or bias occurs.

Additional Hate Crime Reporting Examples:

1. Two cars vie for a parking spot. One of the cars cuts off the other to claim the space. The driver of the unparked car jumps out and assaults the other driver. The offender screams racial slurs directed at the other driver as she assaults him. Should this be reported as a hate crime?

YES, the underlying offense is assault. The driver’s use of a slur shows bias towards a protected class. It appears that the attack was at least in part motivated by bias towards a protected class and should be reported. In order to sustain a prosecution of a hate crime,

additional facts might be needed, but for purposes of reporting, the burden of proof has been met.

2. Two men are walking down the street in opposite directions. As they walk by each other, one of the men, who is white, starts screaming the “N” word at the other man, who is black, and telling him he “doesn’t belong here.” The black man begins hurling insults back at the white man. Other pedestrians notice the tumultuous scene and flee. However, the black man ultimately walks away without any fight taking place. Should this be reported as a hate crime?

YES. This is disorderly conduct and an example of “fighting words.” Words that “by their very utterance, inflict injury or tend to incite an immediate breach of the peace” and are not protected by the First Amendment. Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). Therefore, it would be appropriate to report this as a hate crime.

3. A Jewish man walks up to an ATM to withdraw cash. As he pulls away from the ATM, another man appears and punches him, demanding that he turn over his cash and jewelry. The Jewish man complies and as his assailant turns to walk away, he says, “you Jews don’t need the money anyway.” Should this be reported as a hate crime?

YES, this robbery should be reported as a hate crime. While the robber’s primary motivation for the crime was likely to enrich himself, bigotry or bias need not be the *sole* motivation for a hate crime. Here, the offender’s bias toward the man’s religion appears to have, in part, motivated the robbery. Thus, this should be reported – even though additional facts may be necessary in order for a hate crime prosecution to proceed.

4. Homeowners fly a rainbow flag on their porch in support of LGBTQ+ rights. Police arrive after being notified that the flag has been burned in a fire that also scorched part of the home’s structure. There is some evidence that faulty wiring of a nearby exterior light could have sparked the fire, but there is also evidence of a near-empty gasoline can nearby and the smell of gasoline is in the air. Thus, this could have been arson. There are no suspects and there is no additional evidence. Should this be reported as a hate crime?

Unclear. If, after a reasonable investigation, it is unclear whether or not the incident appears to be a hate crime, notify the Rhode Island Attorney General’s Office or State Police for further guidance.