

## 5-09/510.01 - Hate Crime and Hate Incidents - Definitions

### Hate Crime

Pursuant to Penal Code Sections 422.55 and 422.56, a hate crime is any criminal act or attempted criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- Disability - Includes mental or physical disability regardless of whether the disability is temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness;
- Gender - Means sex and includes a person's gender identity and gender expression (such as a transgender person). "Gender expression" means a person's gender-related appearance and behavior regardless of whether it is stereotypically associated with the person's assigned sex at birth;
- Nationality - Means country of origin, immigration status (including citizenship), and national origin;
- Race or Ethnicity - Includes ancestry, color, and ethnic background;
- Religion - Includes all aspects of religious belief, observance, and practice, including agnosticism and atheism;
- Sexual Orientation - Means heterosexuality, homosexuality, or bisexuality;
- Association with a person or group with one or more of the above actual or perceived characteristics. This includes advocacy for, identification with, or being on the premises owned or rented by, or adjacent to, a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of the characteristics listed above.

A victim of a hate crime may be a person, group, or place. Penal Code Section 422.56(i) states a victim includes, but is not limited to a:

- Community center;
- Educational facility;
- Entity;
- Family;
- Group;
- Individual;
- Office;

- Meeting hall;
- Person;
- Place of worship
- Private institution;
- Public agency;
- Library; or
- Other victim or intended victim of a hate crime.

### Bias Motivation

A “bias motivation” is a preexisting negative attitude toward actual or perceived characteristics (disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these characteristics). A bias motivation may include, but is not limited to:

- Hatred;
- Animosity;
- Discriminatory selection of victims;
- Resentment;
- Revulsion;
- Contempt;
- Unreasonable fear;
- Paranoia;
- Callousness;
- Thrill seeking;
- Desire for social dominance;
- Desire for social bonding with those of one’s “own kind;” or
- A perception of vulnerability of the victim due to the victim being perceived as being weak, worthless, or “fair game” because of a protected characteristic or characteristics, including, but not limited to,

disability or gender.

Penal Code section 422.55 uses the phrase “in whole or in part because of” in the definition for a hate crime. As defined in Penal Code section 422.56(d), the bias motivation must be a cause in fact of the crime, whether or not other causes also exist. Where multiple or concurrent factors or motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias motivation be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. A “hate crime” need not be motivated by hate but may be motivated by any bias against a protected characteristic.

Department members will classify reports as motivated by hate or bias when evidence of such motivation, whether direct or circumstantial, is present. If a Department member is unclear as to whether a hate crime or incident has occurred, the Department member shall contact their supervisor, or a hate crime coordinator for direction.

A “hate crime” includes, but is not limited to, a violation of California Penal Code section 422.6.

#### Hate Incident

A hate incident is any non-criminal act, including words, directed at a person(s), and motivated by bias against a person, group, or place because of the actual or perceived characteristics referenced in Penal Code Sections 422.55 and 422.56. A hate incident is an action or behavior motivated by hate or bias against a protected class even if it is legally protected by the First Amendment right to freedom of expression.

Hate incidents include, but are not limited to, the following:

- Utterance of epithets, such as the use of hate speech;
- Distribution of hate materials in public places;
- Posting of hate materials without causing property damage; and
- The public display of hate materials on one’s own property.

A non-criminal hate incident, when committed in conjunction with a crime, follows all the same policies and laws as described in a hate crime.

#### Hate Speech

The First Amendment to the U.S. Constitution protects most speech, even when it is disagreeable, offensive, or hurtful, and directed against a protected characteristic. The following types of speech are generally not protected: fighting words, true threats, perjury, blackmail, incitement to lawless action, criminal conspiracy, and solicitation to commit a crime.

#### Disability Bias

In compliance with California Penal Code section 422.87, Department members shall specifically consider and evaluate the following when investigating a crime or incident of suspected disability bias:

- Whether there is any indication the suspect was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.
- Whether there is any indication the suspect perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes, but is not limited to, if a suspect targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons or persons with perceived disabilities different than those of the victim. Any of those circumstances could be evidence that the suspect’s motivation included bias against persons with the perceived disability of the victim and that the crime shall be reported as a suspected hate crime and not a mere crime of opportunity.

#### Religious Bias

In compliance with California Penal Code section 422.87, when investigating a crime or incident of suspected religious bias, Department members shall specifically consider and evaluate whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion or articles considered of spiritual significance in a particular religion. Symbols that should be considered of religious significance for the purpose of determining religious bias as stated in California Code section 422.87(D) include, but are not limited to:

- In Buddhism, statues, or images of the Buddha;
- In Christianity, crosses;
- In Hinduism, forehead markings, known as bindis and tilaks, Aum/Om symbols, and images of deities known as murtis;
- In Islam, hijabs;
- In Judaism, Stars of David, menorahs, and yarmulke; and
- In Sikhism, turbans, head coverings, and unshorn hair, including beards.

#### Gang-Related Hate Crimes

All hate crimes and non-criminal hate incidents should be considered gang-related when the suspect or victim, acting individually or collectively, is believed to be a gang member or gang affiliate. When the suspect is unknown, a hate crime or non-criminal hate incident should be considered gang-related when:

Manual of Policy and Procedures : 5-09/510.01 - Hate Crime and Hate Incidents -  
Definitions

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- The victim(s) and/or suspect(s) was wearing or using common gang identifying signs, symbols, or colors; or
- The circumstances of the crime or the expert opinion of a gang investigator indicates the incident is gang-related.

Reports of gang-related hate crimes and hate incidents will be handled in accordance with the procedures outlined in section 4-10/005.00 "Gangs" and 4-11/012.00 - "Hate Crimes."

**NOTE:** A gang-related hate crime should not be confused with a gang-motivated crime. Gang motivation is used for investigative and prosecutorial purposes only. "Gang-motivated" is a state of mind that must be proven in a court of law by the totality of circumstances or by statements.

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