

PREJUDICE-BASED INCIDENTS HATE CRIMES

6.1301 PURPOSE

This order specifies what action the Department will take to comply with the Ralph Civil Rights and Bane Acts, which establishes protocols and guidance for identifying, responding to, and penalties for prejudice-based conduct. The order outlines investigating hate crimes and non-criminal hate incidents, and reporting procedures along with the duties of the patrol supervisor and the lieutenant. It outlines the Department's framework for prevention, response, reporting, training, and community outreach.

6.13.02 DEFINITIONS

- A. Hate Crime** – PC §422.55(a) A criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
1. **Disability** – PC §422.56(b)
 2. **Gender** – PC §422.56(c)
 3. **Nationality** – PC §422.56(e)
 4. **Race or Ethnicity** – PC §422.56(f)
 5. **Religion** – PC §422.56(g)
 6. **Sexual Orientation** – PC §422.56(h)
 7. **“Association with a Person or Group with these Actual or Perceived Characteristics”** – PC §422.56(a)
- B. Bias Motivation** – A preexisting negative attitude toward actual or perceived protected characteristics (PC §422.87(a)(3)(B)).
- C. “In whole or in part because of”** means that bias is one of the motivations for committing the crime, even if there are other motives. Bias doesn't have to be the primary reason, but must be a substantial factor (PC §422.56(d)).
- D. 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 and public agency, library, or other victim or intended victim of the offense (PC §422.56(i)).
- E. Threats and Vandalism to Interfere with Civil Rights** – It is a stand-alone crime to willfully injure, intimidate, interfere with, oppress, or threaten, by force or threat of force, another person's free exercise or enjoyment of their civil rights, or knowingly deface, damage, or destroy their property, because of that person's actual or perceived protected characteristic(s) (PC §422.6)

6.13.03 POLICY

Members will enforce hate crime laws with fairness, sensitivity, and respect.

Pursuant to PC §422.87(a)(9), members shall follow this policy at all times unless directed by the Chief of Police or their Command-level designee.

- ~~A. It is the policy of the San Francisco Police Department to ensure that rights guaranteed by the constitutions and laws of the United States and the State of California are protected for all citizens regardless of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute. These eleven groups listed are only examples of the classes of victims protected.~~
- ~~B. The Department will take a proactive role to protect all citizens against prejudice-based conduct by promoting peace and harmony among the diverse groups living and working within the City and County of San Francisco.~~
- ~~C. The Department will investigate all reported prejudice-based incidents and support vigorous prosecution of those apprehended for such acts.~~
- ~~D. Studies have shown that hate crime victims are more severely traumatized than victims of opportunistic crimes. Therefore, officers shall be courteous and sensitive to the needs of hate crime victims and refer them to the Hate Crimes Unit where they can receive referral to community organizations.~~

~~H. GUIDELINES~~

- ~~A. A. By enacting the Ralph and Bane Civil Rights, which added Sections 51.7 and 52.01 to the Civil Code and Section 422.6, et seq. to the Penal Code, the legislature sought to discourage criminal and noncriminal incidents motivated by hatred or prejudice by creating civil and criminal penalties for such conduct. Refer to Penal Code Sections 422.6 (a) and (b).~~

~~B. IDENTIFYING PREJUDICE-BASED INCIDENTS~~

~~Prejudice-based incidents include violent or threatening acts directed at the person or property of any listed or similar individual or group. They include, but are not limited to, acts such as threatening phone calls, physical assaults, destruction of property, bomb threats and disturbance of religious meetings. Also included are non-criminal acts such as name calling done with the apparent motive to harass, intimidate, threaten, retaliate or create conflict between groups having different personal characteristics such as race, religion, ethnicity or sexual orientation.~~

- ~~1. MOTIVATION. The motivation behind the act determines whether an incident is prejudice-based. When determining motivation, an officer must ask:~~

- a. ~~Why does the victim believe he/she was victimized?~~
- b. ~~Were words or symbols (e.g., burning cross, swastika) used or acts performed which are or may be considered to be offensive to the victim or a particular group?~~
- c. ~~Is there a history of similar acts or crimes directed against the same individual or group, or against the person(s) with whom the victim is associated?~~
- d. ~~Does a meaningful portion of the community perceive the incident as prejudice-based?~~
- e. ~~If all the parties involved were of the same race, ethnicity, etc., would the incident still have occurred?~~
- f. ~~Has an injunction been issued in related cases?~~

6.13.04 III. PROCEDURES

A. INVESTIGATING AND REPORTING/DUTIES OF REPORTING OFFICER Patrol Response

1. NOTIFICATION. **Hate Crime Incident** – Requires both an underlying criminal act (assault, battery, threats of violence, vandalism, harassment, stalking, etc.) **and** is motivated by bias against a protected characteristic.
 - a. Consider whether indicators of Disability-bias or Religion-bias are present (PC § 422.87(a)(3)(C-D).
 - b. Notification:
 - i. If an incident appears to be prejudice-based, protect the crime scene and notify your supervisor and the Hate Crimes Unit of the Special Investigations Division (SID);
 - ii. After hours and weekends; ~~or the Department~~ Operations Center after 1700 hrs. and on weekends.
 - c. Determine if any additional resources are needed on scene to assist the victim.
 - d. Provide victim the Hate Crimes Brochure, Marsy's card, and other appropriate forms.
 - e. Offer victim confidentiality.
 - f. Determine if a restraining order (GVRO, TRO, EPO) is appropriate.
 - g. ~~2. Incident Report Requirements. After conducting a preliminary investigation:~~
 - i. **Type of Incident (Primary Code):** Use the underlying criminal act (assault, battery, vandalism, etc.)
 - ii. **Type of Incident (Secondary Code):** Hate Crime
 - iii. ~~a. Indicate in your report that the incident is prejudice-based by~~ Checking the appropriate box and write "Prejudice-Based" box
 - iv. ~~Assign the case to 5S200, SID~~
 - v. ~~b. Narrative: Document the bias motivation and include facts that support your conclusion in the narrative and include~~

~~verbatim any statements made by the suspect prior to or during the incident. e. Indicate the relevant protected characteristics, such as race, ethnicity, sex, religion or sexual orientation of the victim and the suspect (if known).~~

2. **Non-Criminal Hate Incident** – Bias-motivated conduct or expression without an underlying criminal act is generally protected under the First Amendment. These incidents do not meet the legal threshold for a hate crime because they lack a criminal act.

- a. Examples include:
 - i. A person uses hate speech, offensive speech, slurs or name calling in public, but does not make threats or engage in criminal behavior.
 - ii. Displaying offensive material on private property with permission from the owner (i.e. not vandalism).
 - iii. Displaying offensive symbols or flags in public, at demonstrations, on clothing, or on vehicles.
 - iv. Distributing flyers or materials with hate messaging or symbols in public.
 - v. Bias-inspired or mocking gestures.
- b. Types of speech generally not protected under the First Amendment – fighting words, credible threats, perjury, blackmail, incitement to lawless action, and/or solicitation to commit any crime.
- c. Incident Report Requirements
 - i. Officers should use their discretion on whether a report should be written, as these are non-criminal events. A person who is confronted and berated by a stranger because of their protected characteristics may merit a suspicious occurrence report. Offensive signs or clothing at a demonstration would not merit a report.
 - ii. **Type of Incident (Primary Code):** Suspicious Occurrence or Miscellaneous Investigation
 - iii. **Type of Incident (Secondary Code):** Do not select Hate Crime.
 - iv. Check the **Prejudice-Based** box
 - v. Assign to: CED-Community Engagement Division

~~3. RESOURCES AND REFERRALS. Prejudice-based incidents are traumatic not only to the victim and his/her family, but to the entire community. Therefore, you should provide reassurance and information on resources not only to the victim, but to others affected.~~

~~B. MISDEMEANOR ARRESTS. Make an arrest whenever you have reasonable cause to believe a misdemeanor has occurred in your presence. When a misdemeanor has occurred, but not in your presence, tell the victim (preferably in private) that she/he~~

may make a private person's arrest (see DO 5.04, Arrests by Private Persons). After making the arrest, tell the victim to call the Hate Crimes Unit the next business day.

~~C. COURT PROTECTIVE ORDERS. Court protective orders are issued by a civil or criminal court and may prohibit an individual from contacting, harassing or molesting the applicant. Read all court orders carefully to determine their specific terms. All types of orders are valid throughout California, and violation of any term of a court protective order is a misdemeanor.~~

B. ~~D. DUTIES OF THE~~ Patrol Supervisor Duties:

1. Initial Response to the scene and Notification
 - a. Provide supervision as required.
 - b. Notify the Lieutenant and other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
 - c. Respond to and investigate any take measures to prevent the situation from escalating. Ensure that the reports are accurate, complete and submitted by the end of the tour of duty of hate crimes committed under the color of authority (PC §422.6).

~~E. DUTIES OF THE LIEUTENANT. After being notified of a serious prejudice-based incident or an incident with a potential for escalation or retaliation, immediately notify the Hate Crimes Unit of the Special Investigations Division or the Operations Center after 1700 hrs. or on weekends. Also attempt to notify the district captain.~~

C. Community Engagement Division (CED) Duties

1. Upon notification, provide referral assistance to the victim and their family as appropriate.
2. Meet with residents in target communities to allay fears; reduce the potential for counter-violence, and; provide safety, security, and crime prevention information.
3. Conduct public meetings on hate crime threats and violence in general.

D. Special Investigations Division Duties

1. Coordinate with other local law enforcement agencies in the area to assess patterns of hate crimes and/or incidents and determine if organize hate groups are involved.
2. Contact the California Department of Justice Hate Crime Rapid Response Unit when it has been determined that a triggering event has occurred, if appropriate (PC §13519.6 (c)(4)(C)).
3. Make the final determination as to whether the incident should be classified as a hate crime.
4. Collaborate with the Training Division and Terrorism Liaison Unit to periodically train and update Department members on hate crimes, trends, and the under-reporting of anti-disability and anti-gender crimes, etc. (PC §422.87(a)(4)).

5. Ensure the Hate Crimes brochure is accessible to officers to distribute to victims of hate crimes and all other interested people (PC §422.87(a)(8)).
6. Share hate crime data on a quarterly basis (S.F. Admin Code §96A.5(b))
7. Report hate crimes to the California Department of Justice as required by the Attorney General (PC §422.87(a)(5)).
8. Report suspected multi-mission extremist crimes to the Homeland Security unit.

6.13.05 TRAINING

All members will be trained in the Hate Crimes policy. The Department will issue updates to policy and law via Department Notices.

References

Hate Crimes and the Victim, A Guide to the Legal Process, SFPD