**ORLEANS COUNTY SHERIFF’S OFFICE**

**GENERAL ORDER**

**SUBJECT: INVESTIGATION OF HATE CRIMES**

**STANDARD: 44.2**

**GO# 205B**

**EFFECTIVE DATE:**

**SHERIFF: CHRISTOPHER M. BOURKE**

**AMENDED DATE: 07/07/2020**

1. **POLICY:**

It is the policy of the Orleans County Sheriff’s Office to identify and investigate hate crimes in accordance with the Hate Crimes Act of 2000. 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 viewed very seriously by this agency and shall be given high priority. This agency shall employ necessary law enforcement resources to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences on the community.

1. **PURPOSE:**

The purpose of this General Order is to assist members in identifying and investigating hate crimes.

1. **PROCEDURE:**
2. **Definitions**
3. New York State Penal Law section 485.05 defines Hate Crimes.
4. A person commits a hate crime when he or she commits a specific offense and either:
5. 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
6. 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.
7. 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 (a) or (b) above.

For purposes of this section:

1. The term “age” means 60 years old or older;
2. The term “disability” means a physical or mental impairment that substantially limits a major life activity.
3. Specified offenses (crimes that can be charged under the Hate Crime statute) are listed in section 485.05, subdivision 3 of the New York State Penal Law.

**B. Procedures**

1. Initial responding officers at the scene of a suspected hate crime shall take preliminary actions deemed necessary, including, but not limited to the following:
   1. Secure the scene. Steps should be taken so that the initial situation does not escalate. Assistance shall be rendered to any victims, including medical aid, if necessary.
   2. Request a supervisor respond to the scene.
   3. Request an investigator to the scene, when appropriate.
   4. Photograph and collect all physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups such as swastikas and crosses.
   5. Identify criminal evidence on the victim, if applicable.
   6. Conduct a thorough and complete investigation and look for signs that the incident is a hate crime, including but not limited to:
      1. Motivation of the perpetrator(s).
      2. Statements made by the perpetrator(s).
      3. Display of offensive symbols, words or acts.
      4. Hate crime literature at scene.
      5. Is the victim from a different racial, ethnic, religious group than the perpetrator(s)?
      6. The absence of any motive.
      7. 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.
      8. The perpetrator’s perception of the victim, whether accurate or not.
      9. Were the real intentions of the perpetrator(s) racial, color, religious or ethnic oriented?

**C. Supervisor Responsibilities**

1. The supervisor shall confer with the initial responding officer(s) and take measures to ensure that necessary preliminary actions have been taken.

2. Notify the Chain of Command.

3. Request any appropriate additional personnel necessary.

4. Make notification to the District Attorney.

**D. Incident Reports**

1. Incident reports should clearly indicate the following information:

* + - * 1. The offense is a Hate Crime.
        2. The victim’s age, gender, race and ethnicity.
        3. The offender’s age, gender, race and ethnicity (when available).
        4. The narrative portion of the Incident Report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim’s race, color, natural origin, ancestry, gender religion, religious practice, age, disability, or sexual orientation. The specific bias motivation of the perpetrator(s) should be documented (ie: because selected victim was Hispanic, Jewish, Muslim, etc.).

**E. Elevation of Charge**

1. The Hate Crimes Law is a sentencing enhancement statute. Thus, 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 an Assault in the Second Degree, which is a “D” felony and it is alleged that the assault was a hate crime, then upon a conviction, the assault is deemed to be a “C” felony. “A” and “B” felonies charged as hate crimes stay the same, but are subject to higher penalties.
2. 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, etc.).

**F. Arrest Processing**

1. Reporting of hate crime arrests is statutorily required. It is important that if an individual is being charged with a hate crime, the arrest is properly coded.
2. 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 Penal Law 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 (01**H**), when it is a Hate Crime

PL section 140.15 – Criminal Trespass 2nd 140.15 (00**H**), when it is a Hate Crime

**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.**

**G. Accusatory Instrument**

1. As the Legislature made it clear in the language of Penal Law section 485.00, the victim of a hate crime is society as a whole. It is apparently 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 (ie: 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 accusatory instrument 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, or sexual orientation, etc., of “a person”. Likewise, when alleging aggravated harassment in the first degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.
2. The accusatory instrument filed with a court should also list the “H” designator. 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, religious practice, age, disability or sexual orientation.

**H. Records Management**

1. It is the responsibility of Records to assist with complying state hate crime reporting requirements.

* 1. All incidents of reported hate crimes are to be submitted to DCJS each month using State form 3294.
  2. If no hate crimes are reported for the month, the box marked “Nothing to Report” (NTR) is to be checked.

ORDER BY THE SHERIFF

