

Hate Crimes

338.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

338.1.1 DEFINITIONS

Hate crimes - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
 - 1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
 - 2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
 - 3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
 - 4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

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 the offense (Penal Code § 422.56).

338.2 POLICY

The Milpitas 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.

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338.3 PREVENTION AND PREPARATION

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community, who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and follow-up as outlined below, including community follow-up.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

338.4 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officer(s) will be promptly assigned to contact the victim, witness, or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical
- (c) Once “in progress” aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of present suspects, etc.), the assigned officer(s) will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
 - 1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officer(s) will interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
 - 1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))

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2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officer(s) or supervisor may request additional assistance from detectives or other resources to further the investigation
- (g) The assigned officer(s) will include all available evidence indicating the likelihood of a hate crime in the relevant report(s). All related reports will be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, will be completed and submitted by the assigned officer(s) before the end of the shift
- (h) The assigned officer(s) will provide the victim(s) of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officer(s) should also make reasonable efforts to assist the victim(s) by providing available information on local assistance programs and organizations
- (i) The assigned officer(s) and supervisor should take reasonable steps to ensure that any such situation does not escalate further (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

338.4.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify 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) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems (see Criminal Organizations Policy).

338.4.2 DETECTIVE BUREAU RESPONSIBILITY

If a case is assigned to the Detective Bureau, the assigned detective will be responsible for following up on the reported hate crime as follows:

- (a) Coordinate further investigation with the District Attorney and other appropriate law enforcement agencies, as appropriate.
- (b) Maintain contact with the victim(s) and other involved individuals as needed.

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- (c) Maintain statistical data on suspected hate crimes and tracking as indicated and provide to the Records Supervisor or designee for required reporting to the Attorney General (Penal Code § 13023). See the Records Bureau Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate (see Criminal Organizations Policy).
- (f) Provide the supervisor and the Public Information Officer (PIO) with information that can be responsibly reported to the media.
 - 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

338.5 TRAINING

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.