



TOWN OF MACEDON POLICE DEPARTMENT

General Order: 404	Effective Date: September 26, 2019
Subject: Hate Crimes	
Reference Standards: 44.2	
Rescinds:	
Page 1 of 8	Attachments: Appendix A- Specified Offenses List, (B) Victim Rights Form

I. Purpose

- A. The purpose of this policy is to assist members of the Macedon Police Department in identifying, investigating and reporting of hate crimes. In addition, members will be directed in assisting those individuals and communities that are victimized.

II. Policy

- A. It shall be the policy of the Macedon Police Department to investigate any acts or threats of violence, property damage, harassment, intimidation, or other crimes that are motivated by hate and bias and designed to infringe upon the rights of individuals. This agency shall employ all necessary resources and vigorous law enforcement actions to identify and arrest hate crime perpetrators.

III. Definitions

- A. New York State Penal Law § 485.05 Hate Crimes

1. A person commits a hate crime when he or she commits a specified offense and either:
 - a. 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
 - b. 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.

2. 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) of subdivision one of this section

3. Specified Offenses will be listed Appendix A of this order,

4. For purposes of this section:

- a. The term "age" means sixty years old or more
- b. The term "disability" means a physical or mental impairment that substantially limits a major life activity

- B. New York State Penal Law § 240.30 (3) Aggravated harassment in the second degree. A person is guilty of aggravated harassment in the second degree when:

3. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct;

Aggravated harassment in the second degree is a Class A Misdemeanor

- C. New York State Penal Law § 240.31 Aggravated harassment in the first degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises

exceeds fifty dollars; or

2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years.

3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;

4. Sets on fire a cross in public view; or

5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property.

Aggravated harassment in the first degree is a Class E Felony

D. Additional crimes that can be charged are listed in Appendix A.

IV. Procedures

A. Patrol response

1. Upon arrival at a reported incident, locate and stabilize any injured victims. If noticeable injuries exist, the responding officer should request medical attention. If the victim is requesting medical attention ambulances services should be summoned.
2. Locate and identify physical evidence that would suggest and/or support the commission of a hate crime such as hate literature or symbolic objects/graffiti (e.g., swastikas, crosses, etc.) used by hate groups exists. Be alert for and identify criminal evidence that may be on the victim. For example, a victim targeted for his/her sexual orientation being attacked around their genitalia. Another example would be a practitioner of the Indian religion of Sikh forcibly having his hair cut. In that religion the practice of growing one's hair out (Kesh) is a symbol of respect for the perfection of God's creation.

3. Protect the crime scene
4. Ensure the safety of the victim(s), witnesses and the perpetrator(s).
5. Request the assistance of translators when needed.
6. Identify the suspected perpetrator(s).
7. Identify witnesses, including those no longer at the scene, and complete a neighborhood canvass.
8. Verify that a hate crime has in fact been committed. The following are possible signs that an incident may be a hate crime:
 - a. The motivation of the perpetrator or absence of any other motive such as economic gain
 - b. Perceptions of the victim(s) and witnesses about the incident
 - c. Statements or gestures made by the perpetrator that reflect bias. Exact wording of statements is critical.
 - d. The presence of multiple perpetrators
 - e. The display of offensive symbols, words, or acts
 - f. Was any hate literature found in the possession of the suspect?
 - g. Is the victim from a different racial, ethnic or religious group than that of the perpetrator?
 - h. Are there any prior bias-motivated occurrences in the immediate area or against the same victim?
 - i. Whether the incident coincided with a specific holiday or date of particular significance.
 - j. Involvement of organized hate groups or their members.

- k. Are there any differences between the perpetrator and the victim, whether actual or perceived by the perpetrator?
 - l. Was the victim engaged in activities promoting his/her group or community?
9. Report the suspected hate crime to the Road Patrol Sergeant, or in his/her absence the Administrative Sergeant.
10. If physical evidence such as hate literature, spray paint cans, and symbolic objects/graffiti (e.g., swastikas, crosses, etc.) used by hate groups exists. The evidence will be photographed and collected due to the evidentiary value.
11. Arrest the perpetrator(s) if probable cause exists.
- a. Conduct an interview of the perpetrator to help establish a motive
 - b. Should any questions regarding proper charges or if the Hate Crime Statute applies, the On-Call ADA should be notified.
- B. After taking immediate action, police officers should:
- 1. Whenever practical, assign only one officer to interview the victim(s) in order to minimize trauma. Let the victim defer answering questions to a different time if they are too upset.
 - 2. Protect the anonymity of the victim(s) whenever possible.
 - 3. Explain to the victim(s) and any witnesses the likely sequence of events including contact with investigators and the possibility of media coverage.
 - 4. Refer victim(s) to support services in the community and provide written resource lists (e.g., New York State Crime Victims Board, Wayne County DA's Office Victim/Witness Assistance Bureau, Victim's Resources of the Finger Lakes, etc.) when possible.
 - 5. Provide the victim(s) with a Victim Rights Form (attachment B) and brief them on how they can obtain further information on the case.
 - 6. Document the incident thoroughly on a Standardized Incident Report, noting any particular hate crime indicators and quoting exact wording of statements made by the perpetrator(s).

7. If no Sergeant is on-duty notify the Road Patrol Sergeant, or in his/her absence the Administrative Sergeant.

C. Supervisor responsibilities

1. Provide further assistance to the crime victim(s) and take preventative measures to ensure their safety.
2. Ensure that any of the necessary steps of the initial patrol response are completed
3. Identify individuals or agencies that may provide support and assistance to the victim(s). These may include family members or close acquaintances, a family clergyman or departmental chaplain, as well as community service agencies that provide victim assistance, shelter, food, clothing, child care, or related services.
4. Gather all relevant facts and make an initial determination as to whether the incident should be classified as a hate crime.
5. Ensure that officers conduct a thorough preliminary investigation and if the need arises summon additional resources to the scene.
6. If there is not a suspect in custody, coordinate investigative efforts with other departments and make them aware of potential suspect or motive information that may be available.
7. Notify the Chief of Police or his/her designee.

V. Reporting

- A. Standardized Incident reporting will be utilized when there is no known domestic relationship between the parties. Should there be a known domestic relationship between the parties and it has been determined that a Hate Crime has occurred then the act will be documented on a NYS Standardized Domestic Incident Report.
 1. Hate crime “specified offenses” may be found in Article 485 of the New York State Penal Law. In determining if a criminal act qualifies as a hate crime, 485.05 subdivision 1 (a, b) and 2 must be carefully reviewed prior to making an arrest. A list of “specified offenses” that can be charged under the hate crime statute are listed in Appendix A.
 2. Remember, the narrative of the Standardized Incident or the NYS Standardized

Domestic Incident Report must include the elements and facts of the crime that demonstrate that the victim was an object of a hate crime. It shall show that the person became a victim because of a belief or perception regarding said person's race, color, national origin, ancestry, gender, religious practice, age, disability or sexual orientation.

VI. Accusatory Instrument preparation and arrest documentation:

- A. The accusatory paperwork filed with the Macedon Town Court should also list the "H" designator. Remember, the narrative of the accusatory instrument must include the elements and facts of the crime that demonstrate that the victim was an object of a hate crime. It shall show that the person became a victim because of a belief or perception regarding said person's race, color, national origin, ancestry, gender, religious practice, age, disability or sexual orientation.

1. Examples:

- a. NYSPL Section 120.00, subdivision 1 - Assault 3rd Degree would appear as 120.00 (01H) when designated as a hate crime.
 - b. NYSPL Section 140.15 - Criminal Trespass 2nd Degree would appear as 140.15 (00H) when designated as a hate crime.
2. The language in section 485.00 of the Penal Law is clear that the victim of a hate crime is society as a whole. For that reason, when completing the accusatory instrument for an alleged hate crime it is not necessary to specify a particular person or name an individual, only a person in the protected class. In addition, for the manner in which a hate crime is alleged, it is only necessary to articulate a particular attribute of the protected class which is claimed to have motivated the defendant to commit the act, and not name any particular person or persons.

- B. Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded. When an arrest is being processed as a hate crime, members 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".

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- a. NYSPL Section 120.00, subdivision 1 - Assault 3rd Degree would appear as 120.00 (01H) when designated as a hate crime.
- b. NYSPL Section 140.15 - Criminal Trespass 2nd Degree would appear as 140.15

(00H) when designated as a hate crime.

- C. The Hate Crimes Act is a sentencing enhancement statute. Therefore, when a specified offense 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, a "D" felony and if it is alleged that the assault was a hate crime, then upon a conviction the assault is deemed to be a "C" felony and the sentence imposed will be based upon the sentencing range for a "C" felony. "A" and "B" felonies charged as hate crimes are also subject to higher penalties.

VII. Records Clerk responsibilities

- A. A Hate Crime Incident Report DCJS 3294 (Appendix B) will be completed and forwarded to State of New York Division of Criminal Justice Services, Crime Reporting Unit, and 4 Tower Place - 8th Floor Albany, New York 12203, via fax 518-485-8039 or email infonysucr@dcjs.state.ny.us on a monthly basis by the Records Division.
- B. If no hate crimes were reported, the "Nothing to Report (NTR)" box on the Hate Crimes Incident Report DCJS 3294 shall be checked and forwarded using the above method.
- C. A duplicate copy of the Hate Crimes Incident Report DCJS 3294 shall also be forwarded to the Monroe Crime Analysis Center (MCAC) on a monthly basis.

By Order of the Chief of Police


John P Colella (Sep 30, 2019)

John P. Colella
Chief of Police
Dated this 26th day of September, 2019