

Criminal Justice Data Brief

Department of the Attorney General

Crime Prevention & Justice Assistance Division

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Hate Crimes in Hawaii, 2004

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Hawaii Revised Statutes §846-51 through 846-54 require the Department of the Attorney General to develop, direct, and report annually on a state-wide hate crime statistics reporting program. With input and assistance from the police departments and prosecutors, the Hawaii program was developed during the fall of 2001 and launched on January 1, 2002. This report is the third annual publication and covers Calendar Year 2004.

One hate crime incident was officially reported to the Hawaii program in 2004, and two other incidents are being tracked; details appear on page 3. Data from Hawaii's proprietary program remain consistent with those from the FBI's national program, in that an average of less than one hate crime incident per participating agency per year is typically reported.

Definition and Background

Similar to the federal definition, the term "hate crime" is legally defined in Hawaii as "any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person" (HRS §846-51). "Gender identity or expression" was added in Hawaii in 2003, but is not included at the federal level.

It is important to note that hate crimes are not new types of offenses, but rather are traditional offenses (e.g., assault, vandalism) for which an offender's motive is at least partially based upon a bias against one or more of the protected groups. However, they differ from most traditional offenses in the frequently complicated process of determining whether or not a hate crime has, in fact, occurred. While two heinous and highly publicized

hate crimes that occurred nationally in 1998¹ offer clear cut examples, far more common are thousands of comparatively low level offenses that exhibit at least one hate crime characteristic (see next section), but where it is difficult to determine the true motive of the offenders. One of the challenges in these otherwise routine cases is in having sufficient investigative resources to definitively answer not only the standard question that the criminal justice system is designed to address, i.e., "Who did what to whom?" but also, "What were the offender's thoughts, biases, and motives – what was in his or her mind at the time?"

The use of the term "intentionally" in Hawaii's hate crime definition adds further complication, as there are specific legal standards that must be met in order to establish criminal intent.

Hate Crime Characteristics

The FBI's national program stresses a list of fourteen characteristics that should be considered when determining whether or not an offense is a hate crime (CJIS, 1999). These same characteristics are also utilized in the Hawaii program. A critical concept concerning these characteristics is that they are not stringent criteria, *per se* – there is no requirement as to certain key characteristics or the total number of characteristics that must be present in order for an offense to be determined a hate crime.

1. The offender and victim are of a different race, religion, disability, ethnicity/national origin, or sexual orientation (hereafter "group").
2. Bias-related oral comments, written statements, or gestures were made by the offender.
3. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene.

¹ The truck-dragging murder of James Byrd, Jr. in Texas in June, and the fatal beating of Matthew Shepard in Wyoming in October.

4. Certain objects, items, or things which indicate bias were used.
5. The victim is a member of a group which is overwhelmingly outnumbered by other residents in the community where the crime took place.
6. The crime occurred in an area where other hate crimes against the victim's group have occurred, and where tensions remain high against this group.
7. Several incidents occurred in the same locality, at or about the same time, and the victims were all of the same group.
8. A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.
9. The victim was engaged in activities promoting his/her group.
10. The incident coincided with a holiday or a date of particular significance to the victim's group.
11. The offender was previously involved in a similar hate crime or is a member of a hate group.
12. There are indications that a hate group was involved.
13. A historically established animosity exists between the victim's and the offender's groups.
14. The victim, although not a member of the targeted group, was a member of an advocacy group supporting the precepts of the victim group.

Hate Crime Statistics Reporting in Hawaii

Given a need for the most complete and accurate information, as well as the legal requirement to establish intent, Hawaii's hate crime statistics reporting program is set at the prosecution level. This avoids the pitfall that has occurred in many jurisdictions where the police report hate crime statistics. Specifically, the police are not able to investigate the interpersonal dynamics involved in a large number of relatively less serious offenses that exhibit at least one hate crime characteristic (especially as the overwhelming majority of these cases would *not* ultimately be determined to be hate crimes), particularly when an offender is not

arrested or when the "suspected hate crime" aspects are ambiguous.²

By placing the point of data collection at the prosecution level, Hawaii's program avoids false positives, utilizes limited police resources much more efficiently, and is based on incidents that solidly meet the State's legal definition of hate crimes, i.e., criminal acts for which the intent of the perpetrator(s) is determined to be derived from hostility toward one or more of the protected groups. It also provides the ability to conduct statistical inquiries into case processing and outcomes, which are important analyses that are generally not included in other jurisdictions' hate crime reporting.

The prosecutors' ability to make determinations of the intent behind possible hate crimes is dependent upon receiving good preliminary information from the police. In the Hawaii program, it is the police departments' responsibility to ensure that "suspected hate crime" information, when applicable, is clearly and consistently included in the narrative section of their incident report forms.

At the request of this Department, the FBI provided hate crime recognition training to Hawaii's police departments on several occasions during the latter half of the 1990s, and conducted specialized training sessions for prosecutors in early 2002. The police also include a hate crime module in their training programs for officer recruits.

The Hawaii program's data elements generally parallel those utilized in the FBI's program (CJIS, 1999). It was necessary to modify some of the data elements in order to more appropriately reflect the uniqueness of Hawaii (e.g., "beach or beach park" was added as a location code). In addition, the Hawaii program collects data on charge descriptions and dispositions. A completed hate crime report is due to the program no later than the last business day of the month following one in which a case either concludes the sentencing phase (for convictions) or reaches its final disposition (for non-convictions). Although Hawaii law does not provide for enhanced sanctions against perpetrators of

² Although most "possible hate crimes" (i.e., cases that exhibit at least one of the 14 characteristics) are not genuine hate crimes, they must be initially treated as such. Even seemingly obvious hate crimes may be invalidated upon thorough investigation. To illustrate the complexity of determining the motivation behind possible hate crimes, the FBI makes reference to a case in which a synagogue was vandalized and defaced with anti-Semitic graffiti. After an arrest was made and all of the facts surrounding the case emerged, the incident was determined to not be a hate crime, but rather an attempt by the rabbi's jilted mistress, who was herself a congregation member, to seek revenge against her former lover.

misdemeanor hate crimes, these offenses must still be reported for statistical purposes.

Similar to the FBI's quarterly summary report, an annual summary report form requiring the respective Prosecuting Attorney's (department head) signature is included in the Hawaii program. The annual summary provides the prosecutors' tally of hate crimes disposed and reported, and is primarily useful for verifying data received by the program earlier in the year.

2004 Data

One hate crime incident was officially reported to the Hawaii program in 2004. The incident involved a single victim and multiple offenders and offenses, and occurred in March at a beach park on the windward side of the City & County of Honolulu. The victim, an adult White male, verbally intervened to try to save a dog that was being beaten and drowned by its owner, an adult Hawaiian male (Offender #1). Offender #1 responded with anti-White remarks and shoved the victim twice. A scuffle ensued and the victim subdued Offender #1, but then released him when an onlooker stated that the dog was dead. Offender #1 dragged away the dog's carcass and located his son and two of his son's friends (Offenders #2, 3, and 4, respectively, all of whom are adult Hawaiian males). The group returned to the beach park, where a witness heard Offender #2 shouting anti-White epithets. The offenders found the victim in the parking lot and collectively beat him, inflicting eight broken ribs and several lacerations. All four offenders were arrested and charged. Enhanced sanctions under Hawaii's hate crime law (HRS §706-662) were not sought in these cases.

Offender #1 (the father) was found guilty of assault in the first degree and cruelty to animals, and a separate charge of assault in the second degree was dropped. On May 12, 2004, he was sentenced to a five-year probation term with special conditions including one year in jail, restitution of \$256, and mental health treatment. He had one prior arrest and conviction (for a felony offense in 1973).

Offender #2 (the son) was found guilty of assault in the first degree, and a separate charge of assault in the second degree was dropped. On May 12, 2004, he was sentenced to a 10-year prison term to be served concurrently with a federal sentence relating to another matter. He was also ordered to pay restitution of \$256. As of April 2005, Offender #2's criminal record shows a total of 19

arrests (including 12 felony arrests) and 14 convictions (including 10 for felony offenses).

Offender #3 (the first of the son's friends) pled guilty to assault in the first degree, and a separate charge of assault in the second degree was dropped. On June 22, 2004, he was sentenced to a five-year probation term to be served concurrently with a sentence relating to another matter, with special conditions including one year in jail (with credit for time served), restitution of \$256, and substance abuse and mental health treatment. As of April 2005, Offender #3 had a total of 12 arrests (including five felony arrests) and three convictions (including two for felony offenses).

Offender #4 (the second of the son's friends) was charged with assault in the first degree but was found guilty of the lesser charge of attempted assault, and a charge of assault in the second degree was dropped. On May 12, 2004, he was sentenced to a 10-year prison term plus restitution of \$268. As of April 2005, Offender #4's criminal record shows a total of 49 arrests (including 12 felony arrests) and 26 convictions (including five for felony offenses).

A second hate crime incident occurred in July. This Hawaii County case involved a group of individuals described as "locals," who allegedly victimized a group of White campers by driving through campsites, smashing vehicles, and assaulting people. Anti-White comments were reportedly made during the incident. The first of several trials relating to this incident was held in early 2005; complete details will appear in next year's edition of *Hate Crimes in Hawaii*.

A "suspected hate crime" occurred in September when two unidentified adult males approached an adult female outside of a well known homosexual bar in the City & County of Honolulu. The men allegedly asked the victim about her sexual orientation, and when she replied that she was a homosexual, one of the offenders hit her in the face, causing substantial injuries. The case remained under investigation at the close of 2004.

Reference

Criminal Justice Information Services Division (October 1999). *Hate Crime Data Collection Guidelines*. U.S. Department of Justice: Federal Bureau of Investigation.

This report can be downloaded in PDF format from the Crime Prevention & Justice Assistance Division web site:

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