

Criminal Justice Data Brief

Department of the Attorney General

Crime Prevention & Justice Assistance Division

cpja.ag.state.hi.us

Mark J. Bennett, Attorney General

Richard T. Bissen, Jr., First Deputy Attorney General

Lari Koga, Administrator

April 2003

Hate Crimes in Hawaii, 2002

*Prepared by
The Research & Statistics Branch*

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

Definition and Background

In Hawaii, the term "hate crime" is legally defined 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, or sexual orientation of any person" (HRS §846-51). This definition is similar to many others adopted throughout the country, including 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 motivation is based upon a bias against one or more of the protected groups. However, they differ from most traditional offenses in the frequently complicated and inherently subjective process of determining whether or not a hate crime has, in fact, occurred. While several heinous and highly publicized hate crimes occurring nationally in recent years offer clear cut examples, far more common are thousands of comparatively low level offenses that exhibit certain hate crime characteristics (see next section), but where it is difficult to clearly determine the intent or motivation of the offenders. One of the great challenges in making determinations for these otherwise routine cases is in allocating the investigative resources required to

answer not only "who did what to whom?" but also "why did s/he do it?"

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. These same characteristics are also employed in Hawaii's 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, or not be, 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.
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 case information, as well as the requisite 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, that the police do not have sufficient resources to conduct special investigations into the interpersonal dynamics and intent behind a large number of relatively less serious types of offenses, particularly when an offender is not identified/arrested or when the "possible hate crime" aspects of an offense are, at best, ambiguous.¹ By placing the point of data collection at the prosecution level, Hawaii's program avoids "false positives" and is based on incidents that meet the state's legal definition of hate crimes, i.e., criminal

¹ Although many, if not most, "possible hate crimes" (i.e., cases that exhibit at least one of the 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 intent 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 and congregation member to seek revenge against her former lover.

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 generally not available in other jurisdictions.

The prosecutors' ability to make determinations of the intent behind possible hate crimes is dependent upon receiving preliminary information from the police. It is the police departments' responsibility to ensure that hate crime-related information, where applicable, is clearly and consistently included in the narrative section of their incident report form.

At the request of the state Department of the Attorney General, the FBI has provided hate crime training to Hawaii's police departments on several occasions over the last decade, and conducted specialized training sessions for the prosecutors in early 2002. The police also include a hate crime module in their training programs for officer recruits.

The state program's data elements generally parallel those utilized in the national program. It was necessary to modify some of the FBI 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 state program collects data on charge descriptions and dispositions. A completed hate crime report is due to the state 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).

Similar to the FBI's quarterly summary report, an annual summary report form requiring the respective county Prosecuting Attorney's (department head) signature is included in the state program. The annual summary provides the prosecutors' tally of hate crimes disposed and reported during the previous Calendar Year, and is primarily useful for verifying figures received by the state program. The completed annual summary report form is due to the state program no later than the last business day of January.

2002 Data

Two hate crimes were reported to the state program in 2002. Given that the program was initiated on January 1, 2002, and that the reporting point is when a case reaches its final disposition, it

is expected to take one more year to overcome this lag and provide a more accurate annual tally of hate crimes in Hawaii. In addition, more cases are likely to be reported as the police and prosecutors become increasingly familiar with the hate crime statutes and reporting requirements.

Both hate crimes occurred in the City & County of Honolulu during September 2002. In the first case, an assault that transpired in a university dorm, a male student harassed a fellow male student for "appearing homosexual," and then physically attacked another male student who intervened in the altercation. The second case involved a mentally ill female offender who verbally and physically threatened the life of a doctor while expressing prejudice against Caucasians and Japanese. The complete report forms appear at the end of this publication.

Additional research by the state program revealed that the offender in the first case had no prior criminal history, while the second offender had 15 prior arrests (including one felony charge) but no convictions; she was deemed not fit to proceed or acquitted by reason of insanity for most of these charges.

What is most interesting about these cases is that they could easily *not* be considered hate crimes, but rather as "hate-related crimes." The harassment of the first student in the university case did not by itself rise to the standard of a criminal offense, and the student who was subsequently assaulted was not the target of anti-homosexual derision. Thus, while the initial, non-criminal incident (the harassment) was clearly bias-motivated, the actual criminal aspect (the assault) may not have been bias-motivated.

The second incident is also problematic, as it is questionable whether or not someone who is legally insane (and apparently delusional) can demonstrate the type of calculated intent that is commonly ascribed to hate crime offenders.

In any event, both cases were accepted by the state program and included in the official hate crime tally for 2002. Nevertheless, these cases are perhaps more useful for demonstrating the difficulty and subjectivity that are intrinsic to making hate crime determinations.

Three other cases bear mention in this section. The first, a high profile incident involving several young male offenders who assaulted a group of homosexual campers on Kauai, occurred just prior to the adoption of Hawaii's hate crime statutes and the subsequent development of the statistics reporting program. The other two cases occurred on Maui in December 2002, and allegedly involved a group of young male offenders who, in separate and unprovoked incidents at beach parks, severely beat two homeless Caucasian men, critically injuring one of them. The offenders purportedly stated that it was "their beach" and they were "taking it back" (*Honolulu Star Bulletin*, 1/17/03). These cases are currently under investigation, and the extent to which a bias against race, homelessness, or some combination of both played a role in the attacks must be determined. If the offenders are charged and racial hostility was a key factor of their intent, then these cases will be reported to the state program upon reaching final dispositions.

Incident Report Forms

The following pages replicate the forms that were submitted for the two hate crimes reported for 2002. Notation is made where certain information was omitted that could otherwise have identified specific individuals.

References

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

Maui probes possible hate crimes (January 17, 2003, page A4). *Honolulu Star Bulletin*.

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

cpja.ag.state.hi.us

HATE CRIME REPORT

HNL	HAW	MAU	KAU
X			

Prosecutor Case Number: [withheld from publication]

Disposition Date (mm/dd/yyyy): 12/30/02

Police Report Number: [withheld from publication]

Incident Date (mm/dd/yyyy): 09/29/02

Charge Information

(List in order of most to least serious)

	Initial Charge (HRS & Description)	(HRS & Description)	Disposition	Felonies Only: Enhanced Sanction (Yes/No)	Sentence
1	707-712 Assault 3	707-712 Assault 3	NC		Deferral - one year
2					
3					
4					
5					
6					
7					
8					
9					
10					

Disposition Codes	Plead Guilty	Plead Guilty to Lesser Charge	Found Guilty	Found Guilty of Lesser Charge	Nolo Contendere	Not Guilty	Not Guilty – Insanity	Not Fit to Proceed
	PG	PGLC	FG	FGLC	NC	NG	NGI	NFTP

Bias Motivation

Religious

Anti-Jewish
Anti-Christian
Anti-Islamic (Moslem)
Anti-Hindu
Anti-Buddhist
Anti-Other Religion
Anti-Atheism / Agnosticism

Sexual Orientation

	Anti-Male Heterosexual
	Anti-Female Heterosexual
	Anti-Heterosexual (non-specific)
X	Anti-Male Homosexual
	Anti-Female Homosexual
	Anti-Homosexual (non-specific)
	Anti-Bisexual

Racial

Anti-White
Anti-Black
Anti-Asian / Pacific Islander
Anti-Amer. Indian / Alaskan Native
Anti-Multi-Racial Group

Chg #	Enter Bias Motivation if Different from Charge #1
2	
3	
4	
5	
6	
7	
8	
9	
10	

Ethnicity / National Origin

Anti-Hispanic
Anti-Other Ethn / Natl Origin
Specify: Anti-Japanese

Disability

Anti-Physical Disability
Anti-Mental Disability

COMPLETE SECOND PAGE

Incident Location

Location Type (check one for Charge #1)

Airport	Jail / Prison
Bank / Savings & Loan	Liquor Store
Bar / Night Club	Ocean / Waterway
Beach / Beach Park (not in ocean)	Office Building
Church / Synagogue / Temple	Park (not Beach Park)
Construction Site	Parking Lot / Garage
Convenience Store	Residence / Home
Department / Discount Store	Restaurant
Doctor's Office / Hospital / Drug Store	Scenic Point (not Beach or Beach Park)
Field / Woods	X School / College
Government / Public Building	Service / Gas Station
Grocery / Supermarket	Specialty Store (computer, jewelry, etc.)
Highway / Road / Alley / Street	Unknown
Hotel / Motel	Other Specify:

Chg #	Enter Location if Different from Charge #1
2	
3	
4	
5	
6	
7	
8	
9	
10	

Street Address / City / Zip Code for Charge #1 Location: Honolulu [address withheld from publication]

Victim Type

(For each charge listed above, check all applicable victim types)

Victim Type	Chg #1	Chg #2	Chg #3	Chg #4	Chg #5	Chg #6	Chg #7	Chg #8	Chg #9	Chg #10	Victim Type	Chg #1	Chg #2	Chg #3	Chg #4	Chg #5	Chg #6	Chg #7	Chg #8	Chg #9	Chg #10
Individual*	X										Religious Org.										
Business											Society / Public										
Financial Instit.											Other										
Govt.											Unknown										

* For "Individual" Victim Type only, list number of individual victims involved in the incident:

0 1

Defendant Information

SID: [withheld from publication]

Number of offenders involved in incident (use "00" for "Unknown"): 0 1

Primary Ethnicity / National Origin

<input type="checkbox"/>	Hispanic
X	Other Ethn / Natl Orgn - Specify: Unknown

Race	
X	White
	Black
	Asian / Pacific Islander
	Indian / Alaskan Native
	Multi-Racial
	Unknown

Gender	
X	Male
	Female

DOB
(mm/dd/yyyy)
01/04/83

Offense Description / Case Summary / Notes (attach extra sheets if necessary):

Victim was with male and female friends at university dorm. Defendant harassed male friend for appearing homosexual. Victim intervened and Defendant head-butted and punched Victim to face.

Prepared By (sign & print); Title

Administrator / Supervisor (sign & print); Title

Date

Date

HATE CRIME REPORT

HNL	HAW	MAU	KAU
X			

Prosecutor Case Number: [withheld from publication]

Disposition Date (mm/dd/yyyy): 11/21/02

Police Report Number: [withheld from publication]

Incident Date (mm/dd/yyyy): 09/18/02

Charge Information

(List in order of most to least serious)

	Initial Charge (HRS & Description)	(HRS & Description)	Disposition	Felonies Only: Enhanced Sanction (Yes/No)	Sentence
1	707-712 Terroristic Threatening 2	707-712 Terroristic Threatening 2	NFTP		Judgment of dismissal and civil commitment in lieu of criminal prosecution
2	708-823 Criminal Property Damage 2	708-823 Criminal Property Damage 2	NFTP		
3					
4					
5					
6					
7					
8					
9					
10					

Disposition Codes	Plead Guilty	Plead Guilty to Lesser Charge	Found Guilty	Found Guilty of Lesser Charge	Nolo Contendere	Not Guilty	Not Guilty – Insanity	Not Fit to Proceed
	PG	PGLC	FG	FGLC	NC	NG	NGI	NFTP

Bias Motivation

Religious

Anti-Jewish
Anti-Christian
Anti-Islamic (Moslem)
Anti-Hindu
Anti-Buddhist
Anti-Other Religion
Anti-Atheism / Agnosticism

Sexual Orientation

Anti-Male Heterosexual
Anti-Female Heterosexual
Anti-Heterosexual (non-specific)
Anti-Male Homosexual
Anti-Female Homosexual
Anti-Homosexual (non-specific)
Anti-Bisexual

Racial

X	Anti-White
	Anti-Black
	Anti-Asian / Pacific Islander
	Anti-Amer. Indian / Alaskan Native
	Anti-Multi-Racial Group

Ethnicity / National Origin

X	Anti-Hispanic
X	Anti-Other Ethn / Natl Origin Specify: Anti-Japanese

Disability

	Anti-Physical Disability
	Anti-Mental Disability

Chg #	Enter Bias Motivation if Different from Charge #1
2	
3	
4	
5	
6	
7	
8	
9	
10	

COMPLETE SECOND PAGE

Incident Location

Location Type (check one for Charge #1)

Airport	Jail / Prison
Bank / Savings & Loan	Liquor Store
Bar / Night Club	Ocean / Waterway
Beach / Beach Park (not in ocean)	Office Building
Church / Synagogue / Temple	Park (not Beach Park)
Construction Site	Parking Lot / Garage
Convenience Store	Residence / Home
Department / Discount Store	Restaurant
X Doctor's Office / Hospital / Drug Store	Scenic Point (not Beach or Beach Park)
Field / Woods	School / College
Government / Public Building	Service / Gas Station
Grocery / Supermarket	Specialty Store (computer, jewelry, etc.)
Highway / Road / Alley / Street	Unknown
Hotel / Motel	Other Specify:

Chg #	Enter Location if Different from Charge #1
2	
3	
4	
5	
6	
7	
8	
9	
10	

Street Address / City / Zip Code for Charge #1 Location: Waianae [address withheld from publication]

Victim Type

(For each charge listed above, check all applicable victim types)

Victim Type	Chg #1	Chg #2	Chg #3	Chg #4	Chg #5	Chg #6	Chg #7	Chg #8	Chg #9	Chg #10	Victim Type	Chg #1	Chg #2	Chg #3	Chg #4	Chg #5	Chg #6	Chg #7	Chg #8	Chg #9	Chg #10
Individual*	X	X									Religious Org.										
Business											Society / Public										
Financial Instit.											Other										
Govt.											Unknown										

* For "Individual" Victim Type only, list number of individual victims involved in the incident:

0 1

Defendant Information

SID: [withheld from publication]

Number of offenders involved in incident (use "00" for "Unknown"): 0 1

Primary Ethnicity / National Origin

<input type="checkbox"/>	Hispanic
X	Other Ethn / Natl Orgn - Specify: Korean

Race	
	White
	Black
X	Asian / Pacific Islander
	Indian / Alaskan Native
	Multi-Racial
	Unknown

Gender	
	Male
X	Female

DOB
(mm/dd/yyyy)
04/15/55

Offense Description / Case Summary / Notes (attach extra sheets if necessary):

Defendant repeatedly threatened to kill Dr. _____ while throwing and smashing objects in his office. She expressed her prejudice against Caucasians and Japanese, which the doctor related that the Defendant has historically expressed a prejudice against. She further threatened that the doctor should be dead and she would kill him. The defendant smashed two shells and brandished the sharp edge toward the doctor.

Prepared By (sign & print); Title

Administrator / Supervisor (sign & print); Title

Date

Date

Department of the Attorney General
Crime Prevention & Justice Assistance Division
235 S. Beretania Street, Suite 401
Honolulu, HI 96813