

# Criminal Justice Data Brief

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## *Hate Crimes in Hawaii, 2005*

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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 fourth annual publication and covers Calendar Year 2005.

One hate crime incident was reported to the Hawaii program in 2005, and two others are currently under investigation; 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 intent 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 1998<sup>1</sup> offer clear-cut examples, far more common are thousands of comparatively lesser offenses that exhibit at least one hate crime characteristic (see next section), but where it is difficult to determine the true motive and intent 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 heart and 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 emphasizes 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 minimum 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.

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<sup>1</sup> 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.<sup>2</sup>

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 clearly 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 yields important data 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

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<sup>2</sup> 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.

for enhanced sanctions against perpetrators of misdemeanor-level 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.

## 2005 Data

One hate crime incident was reported to the Hawaii program in 2005. This incident occurred at a beach park on the Kona side of Hawaii County during July, 2004, and involved multiple victims, offenders, and offenses. A group of five victims, including four White adult males and one East Indian adult male, was approached and assaulted by a group of nine offenders comprised of six adult males, one adult female, and two juvenile males. The racial/ethnic mix of the offenders included five part-Hawaiians, one Samoan, and three unspecified Asian/Pacific Islanders. The offenders shouted anti-White epithets before, during, and after the assaults. Victim injuries included black eyes and lacerations to the face and body. Property damages included the destruction of a truck and thefts from multiple vehicles. The offenders were arrested and booked on a total of 55 criminal charges, including 15 for which enhanced sanctions under Hawaii's hate crime law (HRS §706-662) were initially sought.

The cases against the offenders were individually concluded between January and July, 2005. As the result of plea agreements, the enhanced hate crime charges were dropped in all nine cases. The final dispositions included a total of 19 criminal convictions against the adult offenders and four delinquency adjudications against the juvenile offenders. The specific convictions/adjudications and sentences for each of the offenders are as follows:

*Offender #1:* "No contest" (*nolo contendere*) pleas for Assault 2, Assault 3 (two counts), Theft 2, and Criminal Property Damage 2. Sentenced to an indeterminate term of five years imprisonment.

*Offender #2:* "No contest" pleas for Assault 3, Terroristic Threatening, and Criminal Property Damage 2. Sentenced to five years of probation, deferred.

*Offender #3:* "No contest" pleas for Assault 3 (two charges) and Harassment. Sentenced to one year of probation, deferred.

*Offender #4:* Pleaded guilty to Theft 2 and Riot. Sentenced to five years of probation, deferred.

*Offender #5:* "No contest" pleas for Resisting Arrest and Disorderly Conduct. Sentenced to one year of probation, deferred.

*Offender #6:* Found guilty of Theft 2 and Unauthorized Entry into a Motor Vehicle. Sentenced to five years of probation, deferred.

*Offender #7:* "No contest" pleas for Assault 3 and Criminal Property Damage 2. Sentenced to five years of probation, deferred.

*Offender #8 (juvenile):* Admitted to reduced charges of Criminal Property Damage 3 and Disorderly Conduct. Sentenced to one year of probation.

*Offender #9 (juvenile):* Admitted to Assault 2 and a reduced charge of Criminal Property Damage 3. Sentenced to one year of probation.

Two other "possible hate crimes" were allegedly committed during 2005 and are currently under investigation by prosecutors in the City & County of Honolulu. The first case involves male wards incarcerated at the Hawaii Youth Correctional Facility, who allegedly sexually assaulted a fellow male ward that they believed to be a homosexual, while the second case involves the racial harassment of a White patron at a nightclub in Waikiki. If these offenses are officially determined to be hate crimes and are disposed during Calendar Year 2006, complete details will appear in the next annual edition of *Hate Crimes in Hawaii*.

## Reference

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

## Acknowledgment

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

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