

Criminal Justice Data Brief

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Clare E. Connors, Attorney General

Julie Ebato, Administrator
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Hate Crimes in Hawaii, 2019

*Prepared by
Paul Perrone, Chief of Research & Statistics*

Hawaii Revised Statutes §846-51 through §846-54 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 county prosecuting attorneys and police departments, the state program was launched on January 1, 2002.

This annual report covers hate crime cases that reached a final disposition during Calendar Year 2019. Two cases were reported to the program for this time period; details appear on page 3. Eighteen-year summary statistics are also included.

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 was not included at the federal level until 2013.

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 1998¹ 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.
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.

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

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 the 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 identified/arrested or when the "possible hate crime" aspects of an alleged incident 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 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 yield 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 their incident reports.

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 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 reaches its final disposition, regardless of whether or not there was a conviction. Although Hawaii law does not provide for enhanced sanctions against perpetrators of misdemeanor-level hate crimes, or against juvenile perpetrators of hate crimes, these cases 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 useful for verifying data received by the program earlier in the year.

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. Sometimes even seemingly obvious hate crimes may be invalidated upon thorough investigation.

Case Details for 2019

A statewide total of two hate crime incidents, including one from the City and County of Honolulu and one from Kauai County, were reported to Hawaii's hate crime statistics reporting program for Calendar Year 2019.

The first hate crime incident occurred in the City and County of Honolulu on January 31, 2017 and the case reached its final disposition on April 2, 2019. In this incident, the offender, a 26-year-old (at the time of the incident) White male, with a current criminal history record including one felony conviction, two misdemeanor convictions, and one petty misdemeanor or violation conviction, followed the victim into an alley and without provocation or other interaction, stabbed the victim three times from behind before the victim's two friends pulled away the offender, who then ran off. The victim survived but sustained serious injuries that required surgery. The victim and both friends are part-Black, and one of the friends stated that two days prior to the stabbing incident, the offender had attempted to pick an unprovoked fight with him and uttered anti-Black epithets. The friend stated that he had never seen the offender prior to this first altercation. In addition, the offender was involved in an entirely separate criminal case that occurred approximately four months prior to the stabbing incident, during which the offender approached a Black male who was publicly preaching, and without provocation or other interaction, yelled profanities at the preacher and then punched him in the face. The totality of this information suggested to the deputy prosecuting attorney handling the stabbing case that it was a racially-motivated offense. The offender was charged with Attempted Murder in the Second Degree and pleaded guilty to the lesser charge of Assault in the First Degree. Enhanced hate crime sanctions were not sought, and the offender was sentenced to an indeterminate 10-year term of imprisonment.

The second hate crime incident occurred in Kauai County on January 17, 2019 and the case was disposed on August 7, 2019. In this incident, the offender, a 40-year-old (at the time of the incident) male of Filipino descent (per state criminal history records), with a current record including 10 misdemeanor convictions and 18 petty misdemeanor and/or violation convictions, harassed the victim after the victim asked the offender to leave a restaurant, due to the offender smoking marijuana in said establishment. The offender reportedly yelled that while he is Hawaiian (despite what official records reveal), the victim is Mexican, and he

then uttered an anti-Mexican insult against the victim. (The insult also included an anti-male-homosexual epithet, though the specific phrasing and intent were unclear.) Police officers responding to the disturbance arrested the offender, who was charged with Harassment, Disorderly Conduct, Promoting a Dangerous Drug in the Third Degree, Promoting a Detrimental Drug in the Third Degree, and three counts of Prohibited Acts Related to Drug Paraphernalia. He pleaded "no contest" to the Promoting a Dangerous Drug and Harassment charges, and the rest of the charges were dismissed with prejudice. For the Promoting a Dangerous Drug charge, the offender was sentenced to four years of probation, 120 days in jail, a mental health assessment, a substance abuse evaluation, and various fees totaling \$855. For the Harassment charge, he was sentenced to six months of probation, five days in jail, and a fee of \$30. Harassment was the charge directly associated with the hate crime aspect of the incident, and it is a misdemeanor offense, for which the possibility of seeking enhanced sanctions is not applicable.

Summary Statistics, 2002-2019

A total of 34 hate crime cases were reported to the State Program since its inception in 2002, yielding an 18-year average of 1.9 cases reported statewide per year and 0.5 cases reported per participating agency per year. The following table provides statewide and county tallies of hate crime cases reported annually to Hawaii's program:

Year	C&C of Honolulu	Hawaii County	Maui County	Kauai County	State Total
2002	2	0	0	0	2
2003	1	0	0	0	1
2004	1	0	0	0	1
2005	0	1	0	0	1
2006	6	0	0	0	6
2007	1	0	0	0	1
2008	0	1	0	0	1
2009	0	0	1	0	1
2010	2	0	0	0	2
2011	1	0	0	0	1
2012	0	0	0	0	0
2013	0	1	0	3	4
2014	0	0	0	1	1
2015	0	0	0	2	2
2016	1	0	0	2	3
2017	1	0	0	2	3
2018	0	0	1	1	2
2019	1	0	0	1	2
Total	17	3	2	12	34

Due to multiple biases expressed in some cases, the 34 hate crime cases identified above involved a total of 42 bias instances, as categorized below:

Bias Type	# of Bias Instances	% of Total Bias Instances	% within Bias Type
Race/Ethnicity/Nat'l Origin	34	81.0	
Anti-White	17	40.5	50.0
Anti-Black	7	16.7	20.6
Anti-Arab/Middle Eastern	3	7.1	8.8
Anti-Hispanic	2	4.8	5.9
Anti-Japanese	2	4.8	5.9
Anti-Filipino	1	2.4	2.9
Anti-Micronesian	1	2.4	2.9
Anti-Russian	1	2.4	2.9
Sexual Orientation	5	11.9	
Anti-Homosexual	5	11.9	100
Religion	3	7.1	
Anti-Jewish	2	4.8	66.7
Anti-Muslim	1	2.4	33.3

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:

ag.hawaii.gov/cpja