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January 20, 2023

The Honorable Ronald D. Kouchi
President and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Department of the Attorney General's Annual Report on Hate Crimes in Hawaii for Calendar Year 2021, as required by section 846-54, Hawaii Revised Statutes (HRS). In accordance with section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

All of our annual reports on hate crimes data are posted on our Crime Prevention and Justice Assistance Division's Research and Statistics Branch webpage. These reports date back to 2002, and can be viewed electronically at <https://ag.hawaii.gov/cpja/rs/>.

If you have any questions or concerns, please feel free to call me at (808) 586-1500.

Sincerely,

Anne E. Lopez
Attorney General

c: Josh Green, M.D., Governor
Sylvia Luke, Lieutenant Governor
Legislative Reference Bureau (Attn: Karen Mau)
Leslie H. Kondo, State Auditor
Luis Salaveria, Director of Finance, Department of Budget and Finance
Stacey A. Aldrich, State Librarian, Hawaii State Public Library System
David Lassner, Ph.D., President, University of Hawaii

Enclosure

Criminal Justice Data Brief

Department of the Attorney General

• Crime Prevention & Justice Assistance Division

• ag.hawaii.gov/cpja

Holly T. Shikada, Attorney General

Julie Ebato, Administrator
May 2022

Hate Crimes in Hawaii, 2021

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 2021. Three cases were reported to the program for this time period; details appear on page 3. Twenty-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 2002 and 2020. 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 2021

A statewide total of three hate crime incidents, including two 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 2021.

The first hate crime incident occurred in the City and County of Honolulu on March 13, 2021, and the case reached its final disposition on March 23, 2021. In this incident, the alleged offender, a 25-year-old (at the time of the incident) Black male, currently with no criminal convictions, was reported to have verbally threatened to shoot the victim following a traffic-related altercation, while also uttering an anti-White epithet. The alleged offender was arrested and charged with Terroristic Threatening in the Second Degree (a felony offense), but the case was declined by the county prosecuting attorney.

The second incident occurred in the City and County of Honolulu on March 21, 2021, and the case was disposed on August 31, 2021. In this incident, the alleged offender, a 61-year-old (at the time of the incident) male of Filipino descent, with a current criminal history record including seven felony convictions, 16 misdemeanor convictions, and nine petty misdemeanor or violation convictions, reportedly approached the victim at a bus stop and made anti-White comments before striking the victim in the face with an aluminum crutch. The alleged offender was arrested and charged with Assault in the Third Degree (a misdemeanor offense), but the case was dismissed by the court.

The third incident occurred in Kauai County on May 12, 2021, and the case was disposed on August 11, 2021. In this incident, the offender, a 20-year-old (at the time of the incident) Native Hawaiian male, with a current criminal history record including one misdemeanor conviction, was involved in a traffic-related altercation with the victim, whom he subsequently followed to a hotel. The offender approached the victim's car at the hotel, directed anti-White insults at the victim, and punched the driver side window twice while the victim was seated inside. The offender was arrested and charged with Disorderly Conduct (evidently at the violation level rather than the petty misdemeanor level), to which he pleaded "no contest" and received a \$75 fine.

Summary Statistics, 2002-2021

A total of 51 hate crime cases were reported to Hawaii's hate crime statistics reporting program

since its inception in 2002, yielding a 20-year average of 2.55 cases reported statewide per year and 0.64 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	4*	0	1	1	6
2019	7*	0	0	1	8
2020	3	0	1	0	4
2021	2	0	0	1	3
Total	32	3	3	13	51

* Revised July 2021

Due to multiple biases expressed in some cases, the 51 hate crime cases identified above involved a total of 59 bias instances, as categorized below:

Bias Type	# of Bias Instances	% of Total Bias Instances	% within Bias Type
Race/Ethnicity/Nat'l Origin	49	83.1	
Anti-White	24	40.7	49.0
Anti-Black	11	18.6	22.4
Anti-Arab/Middle Eastern	3	5.1	6.1
Anti-Filipino	3	5.1	6.1
Anti-Hispanic	3	5.1	6.1
Anti-Japanese	2	3.4	4.1
Anti-Chinese	1	1.7	2.0
Anti-Micronesian	1	1.7	2.0
Anti-Russian	1	1.7	2.0
Sexual Orientation	6	10.2	
Anti-Homosexual (non-specif.)	5	8.5	83.3
Anti-Female Homosexual	1	1.7	16.7
Religion	4	6.8	
Anti-Jewish	2	3.4	50.0
Anti-Muslim	2	3.4	50.0

Update on the National Incident-Based Reporting System (NIBRS) and Hate Crime Statistics Reporting in Hawaii

As part of a nationwide initiative, the City and County of Honolulu Police Department transitioned to the most current version of the FBI's Uniform Crime Reporting (UCR) Program, known as the National Incident-Based Reporting System (NIBRS), starting in January 2018. NIBRS requires FBI-style, police-level hate crime reporting, which Hawaii's county police departments did not previously provide. After developing a sophisticated electronic data repository as required for NIBRS, the state UCR program (which is also located at the Hawaii Department of the Attorney General) attained its own NIBRS certification in February 2019. The Kauai County Police Department attained certification in November 2021, and at the time of this report, the Hawaii County Police Department and the Maui County Police Department were starting the data testing and certification process. Hawaii's first police-level hate crime data (for the Honolulu Police Department for Calendar Years 2018-2020) are presented as a special section of the state UCR program's new online statistical dashboard for NIBRS crime data, available at nibrs.hawaii.gov. The dashboard will soon be updated to include the Kauai Police Department and both agencies' crime data for 2021, and will continue to be expanded and enhanced throughout the foreseeable future. NIBRS hate crime reporting is expected to eventually supersede Hawaii's current prosecutor-level reporting program. As noted earlier herein, police-level hate crime reporting includes incidents regardless of whether or not arrests were made, and the incidents are reported to the state program at the time of the initial police reports, rather than when the cases reach a final disposition.

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