

CULTURAL DIVERSITY
BIAS RELATED INCIDENTS AND
SEXUAL HARASSMENT

PART 5 SECTION D (5 HOURS)

TOPIC DESCRIPTION

Instruction and discussion is intended to develop an awareness about cultural diversity, prejudice, discrimination, sexual harassment, biased policing and bias related (hate) incidents.

INSTRUCTOR QUALIFICATIONS

Instructors in this topic are generally expected to be those certified by the Municipal Police Training Council. They should be able to document this by producing a current certificate issued by the Council. This certificate should read the person is certified as a general topics instructor. Further, they should possess a background and experience in the topical area, as documented to the school director. This supporting documentation should remain a part of the course file in the academy, available for later inspection or audit.

If a school director believes an individual who is not certified is otherwise qualified for teaching this topic, they may ask in writing for approval for that person to teach. The OPS may, if finding the individual possesses a combination of an advanced degree and unique or qualifying experience, find the individual to be qualified and be approved to instruct. Those that are found qualified, are listed as approved instructors, and will have a letter issued to them indicating what they are approved to instruct in. The school director should keep a copy of the letter in the school file.

School directors should understand the Office of Public Safety can only examine complete applications for instructors that are filed in a timely manner. Generally, this instructor approval often requires time that is in addition to the requirements (45 days by the State Regulation, the Municipal Police Training Council and its Zone Coordinators) for police training approval. This time allows for proper review of curriculum, instructors, and the needs for training in a zone. Complete applications are those which include a properly completed Instructor Personal History Form, and documents supporting the facts contained therein.

TRAINING OBJECTIVES

At the completion of instruction, the student will be able to:

1. Identify strategies which increase the effectiveness of contacts between officers and individuals from other cultural backgrounds.
2. Identify the eight areas and related behaviors which can constitute sexual harassment.
3. Identify the possible ramifications of engaging in behavior which constitutes sexual harassment.
4. Define and identify the characteristics (indicators) of a “hate crime.”
5. Identify the proper procedures for handling a hate crime.
6. Define and identify the characteristics (indicators) of biased policing.

CURRICULUM OUTLINE

I. THE CULTURAL MAKEUP OF NEW YORK

A. What is culture?

1. Culture can be defined as the total “life way” of a people, a design for living and for coping with a particular society’s perceived environment.
2. It is a complete and more or less successful adaptive system.
3. “Culturally diverse” and “cultural diversity” can mean members of all racial and cultural groups and specifically include gender and sexual orientation.

B. How culture works.

1. Cultural/ethnic identify is an issue of pride.
 - a) The deep feelings related to shared beliefs, values, and customs.
 - b) The historical, cultural “roots” of people -- their consciousness.
 - c) The renewal and affirmation of a particular cultural identify amidst cultural pluralism.
 - d) Culture is a coping system.
 - e) It is an explanation system. It organizes our world into manageable, meaningful parts.
 - f) Culture defines behavior and establishes a social “comfort zone.”
 - g) Culture presents us with cultural “cues” -- common ground which allows for effective communication.
 - h) Culture gives us survival skills to manage difficult situations and manage stress.
 - i) Culture is an “idea map.”

- j) Culture provides a map of a people.
- k) The map shows where people “are headed” and their probable reactions.
- l) Culture includes groups, ideas, beliefs, core values, and behavior.
- m) Core values become keys to persuasion.

C. New York’s past. **Stress highlighted areas**

NOTE: Instructors should identify and discuss the historical influences of the numerous cultural groups who have impacted New York’s history. Although some groups are predominant, the reality is that a vast number of groups have shaped the character of New York State.

- 1. Identification of groups.
- 2. Contribution/impact of the groups.

D. New York’s present.

- 1. Cultural mapping of New York State.
 - a) Predominant cultural groups.
 - b) Current statistics.
 - c) Language profiles.
 - d) Transitions from past to present. **Stress highlighted areas**
 - (1) **Changes in ethnic distribution in a given geographical area traditionally occupied by one group.**
 - (2) **Changes in worker distribution occupying certain positions traditionally held by another ethnic group.**

(3) Increasing reflection of the social and economic conflicts, rather than biological aspects of race.

3. Emerging generational diversity.
 - a) There will often be significant differences in experiences, values, and language dependency between members of the same ethnic group who were born in this country versus those who immigrated.
- E. New York's future.
 1. State's evolving workforce.
 - a) The workforce of New York is changing to reflect the cultural diversity of the State.
 - b) Women currently comprise 46.5 percent of the total U.S. labor force. (*Source: U.S. Department of Labor*).
 - c) By 2020 the minority portion of the workforce is projected to double from 18% to 37% (*Source: The National Center for Public Policy and Higher Education, 2005*).
 - d) The cultural makeup of law enforcement agencies is also changing.
 2. Demographic shifts.
 - a) Today's minority is becoming tomorrow's majority.
 3. Shift in political influence.
 - a) Increased representation in political office.
 4. Economic realities.
 - a) Historically, minority groups have been disproportionately affected by rising unemployment or underemployment.
 - b) In October of 2009, the US unemployment rate among black workers in 2009 reached a 28-year high of 15.7 percent and the rate rose to 13.2 percent for Latino workers - both well above the

overall 10.2 percent national average. (Source: Boston Globe, November 21, 2009).

- c) With the increase of unemployment, service demands of public safety and law enforcement increase.
- F. Changing law enforcement service demands create a greater need for personnel to:
- 1. Intervene in conflicts between cultural groups.
 - 2. Communicate effectively with cultural groups. (key)
 - 3. Develop positive relationships with cultural groups. (key)
 - 4. Become integrated with the community they serve. (key)
- G. Changing law enforcement workforce.
- 1. The typical law enforcement agency is becoming more culturally diverse because it is a reflection of the community it serves.

II. THE BENEFITS OF VALUING DIVERSITY

- A. The professional benefits of valuing diversity both within the law enforcement organization and within the community it serves include the following:
- 1. Professional benefits.
 - a) Enhanced community support and improved public trust as the result of a positive relationship with the community served by the law enforcement organization.
 - b) Improved quality of service provided.
 - c) Reduced tension between law enforcement and specific cultural groups.
 - d) Increased access to cultural communities.
 - e) Ensured compliance with the letter and the spirit of the law.

2. Organizational benefits.
 - a) Reduction of personal and agency exposure to claims and litigation.
 - b) Improved morale, effectiveness, and professionalism within the department.
 - c) Positive impact on the image of law enforcement.
 - d) Reduction in the number of discourtesy complaints.
 - e) Improved ability in dealing with cultural and language barriers.
3. Personal benefits.
 - a) Positive impact on officer safety.
 - b) Career survival.
 - c) Ethical satisfaction.

III. HUMAN RIGHTS, PREJUDICE AND DISCRIMINATION

- A. Evolution of human rights in the United States.
 1. Constitutional tolerance of slavery (three-fifths of a person provision in Article 1).
 2. Removal of Native Americans from their lands to reservations.
 3. Introduction of the concept “separate but equal” - legal segregation of cultural groups.
 4. Historic separation of male and female roles and concurrent denial of full rights for women.
 - a) **NOTE: This issue provides the historic context for today’s male-female tension and for some of the difficulty society is facing in trying to adjust to a new value system that acknowledges women as full participants.**

5. Internment of American citizens of Japanese descent.
 6. Emergence of equal opportunity laws.
 7. Passage of civil rights legislation.
 8. Expansion of the human rights umbrella beyond ethno-cultural groups to:
 - a) Physically challenged (e.g., Americans with Disabilities Act).
 - b) Sexual orientation.
- B. Evolution to an era of valuing diversity.
1. Cultural groups may have experienced a variety of problems, controls, or denial of rights in their native countries.
 2. Repression of groups within their own country as a result of:
 - a) War conditions (e.g., Vietnam, El Salvador).
 - b) Martial law (e.g., Philippines).
 - c) Economic conditions (e.g., Russia, Mexico).
 - d) Political repression (e.g., Cuba, South Africa, Haiti).
 3. Repression of groups by law enforcement within their own country.
 - a) Incarceration because of a political viewpoint.
 - b) Feeling that law enforcement has to be bribed in order to obtain service or avoid enforcement.
 - c) ***NOTE: Instructor should highlight any specific examples from their own areas.**
- C. Prejudice.
1. Defined as:
 - a) A point of view.

- b) A prejudgment about a person or class of persons composed of opinion or bias.
 - c) Socially learned, and usually grounded in misconceptions, misunderstandings, and inflexible generalizations.
2. A common misunderstanding of prejudice and what can be done about it goes something like this: Prejudice is prejudging people. Therefore, effective counteraction involves learning about human differences and fostering opportunities for intergroup interaction.
3. *This common concept is at best simplistic and offers only limited prospects for overcoming prejudice. More helpful is to see the process of prejudice:
- a) **Prejudice is the result of psychological filtering and screening which every person uses all the time.**
 - b) **It is not a static attitude.**
4. Each person develops convenient and effective systems for simplifying and ordering the large amount of information and stimuli received daily. The systems help persons in making decisions, determining preferences, and selecting courses of action.
- D. Discrimination.
1. Discrimination defined.
- a) Discrimination is an action or behavior.
 - b) Discrimination is differential treatment based on unfair categorization.
 - c) It is denial of justice prompted by prejudice.
 - d) **When we act** on our prejudices, we engage in discrimination.
 - e) Discrimination often involves keeping people out of activities or places because of the group to which they belong.

- E. Differences between prejudice and discrimination.
 - 1. Because prejudice is a point of view it is difficult, if not impossible, to regulate.
 - 2. Discrimination is, however, a **behavior or an action** which can be addressed in law.

IV. PERCEPTIONS OF CULTURAL GROUPS

- A. Recent events can shape the perceptions of cultural groups regarding government and regarding law enforcement in particular.
- B. Local, regional or national events.
 - a) Civil unrest in recent years in New York City and Los Angeles is an example. Several events contributed to the situation including:
 - (1) Rodney King verdict.
 - (2) Crown Heights (and other high profile Jewish versus black confrontations) in NYC.
 - (3) Pre-existing tensions among cultural groups
 - (4) Same-sex marriage debate
 - (5) Media coverage.
 - (6) Discuss recent Hate Crimes in NYS. Reluctance of some groups to report them. Examples of recent Hate Crimes in NYS listed below.
 - (a) On November 4, 2008, four teens attacked a Black Muslim teenager with a baseball bat while yelling “Obama” in Staten Island.
 - (b) On November 8, 2008, Ecuadorian immigrant Marcelo Lucero was stabbed by a mob of teenagers in Patchogue, Long Island. The suspects later said

they had driven into the village from out of town looking for Latinos to beat up.

- (c) Less than a week after that incident, Latiesha Green, a transgender person, was shot to death while she sat with her brother and a friend inside a car in Syracuse. The suspect allegedly shot her because he thought she was gay.
- (d) On December 8, 2008, as Ecuadorian brothers Jose and Romel Sucuzhanay were walking home from a bar in the Bushwick section of Brooklyn, three men jumped out of a sport utility vehicle yelling anti-gay and anti-Hispanic slurs, and attacked Jose with a bottle and a baseball bat. Five days later the father of two died in Elmhurst Hospital.
- (e) In May of 2009, four men were arrested in Orange County, New York for their part in an alleged terrorist plot that included planting a bomb outside of a synagogue in Riverdale, New York.

C. International events.

- a) Gulf War (negative feelings toward Iraqis/Muslims).
- b) Hostage situation in Iran (negative feelings toward Iranians/Arabs).
- c) 911 – War in Iraq and Afghanistan

D. *The current economic recession.

- a) Negative feelings can be directed toward a particular immigrant group (e.g., scapegoating tendency).

E. Media coverage of current events.

- a) “Instant” access to information (e.g., Gulf War and Los Angeles riot brought into your living room. You tube videos, etc..).

- b) One small event can be instantly communicated worldwide and the magnitude of an event can be distorted.
- c) The media can distort reality (accidentally or deliberately).
 - (1) The coverage of an event by a small ethnic newspaper might be an example.
 - (2) Mainstream newspapers, radio, television, magazines may “sensationalize” their reports.
 - (3) NOTE: When possible, instructors are encouraged to use local examples including video clips obtained from local news stations.

F. *Why is it also important to understand the historical experience of a given cultural group?

- 1. Past experience of cultural group members shapes their attitude and expectations regarding governmental authority including the role of law enforcement.
- 2. The group may have experienced direct repression by law enforcement.
- 3. The group may have experienced law enforcement being controlled by and servicing only special interest groups.
- 4. NOTE: Relationships among cultural groups are very dynamic. Demographic shifts in communities, unstable political situations in homelands, economic opportunity conflicts, and other factors can cause significant intergroup conflict. Instructors may wish to cite local examples as a means of underscoring the relevancy of the curricula.

V. CULTURAL STEREOTYPING VERSUS PROFILING

- A. Stereotyping.
- B. A stereotype is a preconceived or oversimplified generalization involving negative or positive beliefs about a group.
- C. Stereotypes are often at the base of prejudice.

- D. The danger of stereotyping is that people are not recognized as individuals, but rather categorized as members of a group who all think and behave in the same way.
- E. We pick up these stereotypes from what we hear other people say, what we read, and what people around us believe (learned behavior).
- F. Instructors are encouraged to involve the students in a classroom discussion to identify typical stereotypes regarding a variety of groups, such as:
 - 1. African-American.
 - 2. Mexican-American.
 - 3. Asian-American.
 - 4. Anglo.
 - 5. Native-American.
 - 6. Gay and lesbian.
 - 7. Gender.
 - 8. Law enforcement.
- G. NOTE: The intention of this block is for the instructor to have the class identify commonly held cultural stereotypes. The discussion should include information as to where some of the stereotypes might have originated. A key learning point is for students to realize that although some stereotypes may have once contained a thread of truth, they are inaccurate exaggerations which can lead to discriminatory behaviors.
- H. Law enforcement profiling.
 - 1. Profiling criteria.
 - a) Knowledge-based information.
 - b) A set of articulatable facts.

2. Biased policing is the exercise of police authority to seize or detain an individual solely upon an individual's race, ethnic origin, religion, gender, age, sexual orientation, or income status.

I. Legal Aspects

1. The 4th Amendment of the U.S. Constitution provides protection against searches and seizures that are not based upon probable cause – “unreasonable search and seizure”. Similar protections are found in Article I, Section 12 of the New York State Constitution which provides “security against unreasonable searches, seizures and interceptions.”
2. The 14th Amendment of the U.S. Constitution provides the security of “equal protection” under law. Enforcement action cannot be based solely on a common trait of an individual. Similar protections are found in Article I, Section 11 of the New York State Constitution.
3. The public may often perceive criminal profiling as biased policing.
4. It is important to distinguish that there are significant and important differences between the two (e.g. criminal profiling can be defended as being based upon facts known to the officer).
5. No person should be singled out or otherwise treated differently solely on account of race, ethnic origin, gender, age, religion, sexual orientation, or income status.
6. Criminal profiling is an investigative method in which members through observation of activities and environment, identify suspicious people and develop legal grounds to stop them for questioning.
7. It is important to recognize that although a member of a cultural group may fit a defensible profile; the officer should consider the long and short term community impact which may result from his or her actions.
8. Racial profiling can leave persons of color with a sense of powerlessness, hostility, and anger towards the law enforcement community.
9. Aside from being morally and legally wrong, biased policing is not an

effective tool for law enforcement.

10. It can also have the damaging effect of creating an environment where members of the minority community are less likely to report crime, serve as jurors, or support the efforts of the countless officers who serve their community with honesty and integrity.

VI. STRATEGIES FOR EFFECTIVE CULTURAL CONTACTS

- A. **The most reliable strategy for successful public contacts is to treat all individuals and groups with dignity and respect.**
- B. Effective communication techniques must be employed during any public contact. These include:
 1. Patience.
 2. Effective listening.
 3. Clear, concise message.
 4. Testing for understanding.
 5. Effective nonverbal communication.
- C. Verbal communications factors which contribute to a negative response from the public must be avoided. Examples include:
 1. Profanity.
 - a) Not to be used.
 - b) Negative effect on the professional image of the officer.
 - c) Derogatory language.
 - d) Detracts from professional effectiveness.
 - e) Generates complaints.

- f) Makes people reluctant to cooperate.
 - g) Ethnically-offensive terminology.
 - h) “Turns people off.”
 - i) Demonstrates a lack of ethnic awareness.
 - j) Demonstrates a lack of sensitivity for the feelings of others.
2. Use of law enforcement jargon.
- a) Any use of jargon with the public is inappropriate.
 - b) The public does not understand jargon.
 - c) Use of jargon can confuse and demean.
- D. Nonverbal communication factors which contribute to a negative response from the public must be avoided. Examples include:
1. Officious and oppressive manner.
- a) Overbearing demeanor.
 - b) Using the badge to accomplish tasks.
 - c) Discouraging feedback.
2. Disrespectful attitude.
- a) Lack of understanding.
 - b) Lack of sympathy.
 - c) No cultural awareness.
 - d) Personal bias/prejudice.
3. Officious tone of voice.

- a) Not necessary to control a situation.
 - b) May be manifestation of insecurity or immaturity.
4. Inappropriate body language.
- a) Nonverbal cues.
 - b) Failing to establish a positive first impression.
 - c) General demeanor.
 - d) Inappropriate body distance.
 - e) NOTE: Although negative aspects are listed above, the instructor may wish to point out the positive aspects of effective nonverbal communications.

E. *Effective contacts with cultural groups.

1. The potential for a successful cultural contact is enhanced by the officer's level of knowledge concerning the following information:
 - a) History of the group.
 - b) Group customs.
 - c) Religious conventions.
 - d) Core values.
 - e) Language.
 - f) Group's attitude toward law enforcement.
2. Effective cultural contacts cannot be reduced to a "recipe style" approach for the following reasons:
 - a) Generalizations can be proven erroneous.

- b) Varying dimensions of diversity can exist among members of the same cultural group. These can include:
 - (1) Generational differences (first, second, third generations).
 - (2) Economic differences.
 - (3) Educational differences.
 - (4) Religious differences.
 - (5) Work background differences.
 - (6) Age differences (younger-older).
 - (7) Disabilities (physical or developmental).

- F. It will be valuable for the officer to understand how law enforcement and individual officers are perceived by the cultural group.
 - a) May be viewed as being repressive or brutal.
 - b) May be viewed as being corrupt or unprofessional.
 - c) May be viewed as being responsive and protective.

- G. It will be valuable for the officer to recognize any personal preconceptions that exist regarding a cultural contact or a particular cultural group. These may include:
 - a) Varying levels of fear or apprehension concerning the contact.
 - b) Personal prejudices.
 - c) Levels of experience in dealing with the cultural group.
 - d) Amount of prior training.
 - e) Negative experiences.

- (1) Personal assault by a member of a particular cultural group.
 - (2) Negative locker room talk or negative interpersonal relationships with peers.
 - (3) Negative stereotypes.
- f) Positive experiences:
- (1) Positive association(s) with a co-worker who belongs to a given cultural group.
 - (2) Successful work with a community group.
 - (3) Positive peer communication (e.g., sharing a positive experience).
 - (4) Positive characterizations.
- H. It is valuable for the officer to understand that cultural groups will differ in their opinion as to the “legality” of specific acts and behaviors or the authority of law enforcement to intervene. Examples could include:
- a) A given cultural group may believe that (substantive) corporal punishment to a child is a permissible and appropriate form of parental discipline.
 - b) A given cultural group may believe that forcible rape of a young woman by a young male member of the group constitutes an acceptable way to “claim” a potential bride.
 - c) A given cultural group may believe that criminal victimization should not be reported to the police, but should be handled strictly “within the group” or as a “family matter.”
- I. Stereotyping must be avoided.
- J. Officers should capitalize on the availability of language lines and translator services.
- K. Officers should capitalize on opportunities to interrelate with cultural groups in a

non-enforcement capacity by:

1. Spending time in the community getting to know the people.
 2. Establishing cultural building blocks between the officer and the cultural group.
- L. Fluency in the language of a given cultural group is an obvious advantage in prompting a successful contact.
- M. Participation in training opportunities (e.g., instruction regarding group history, customs, religious conventions, core values, and perceptions of law enforcement will all prove beneficial).

VII. THE IMPACT OF HATE CRIMES AND RESPONDING TO AND INVESTIGATING HATE CRIMES

- A. The changing demographics of New York State have resulted in an increase in intergroup conflicts. This has resulted in an increase of hate/bias crimes. Hate violence has occurred throughout the state and has affected nearly every social group. In addition to the effects these crimes have upon individual victims, they also cause:
1. Distrust between groups.
 2. Disharmony among communities.
 3. Tension between the community and public safety/law enforcement when incidents are not handled appropriately, thoroughly, or in a timely manner.
- B. Hate crimes have a devastating effect on victims, victim's families, and communities. Incidents often occur in neighborhoods, places of worship, schools, the victim's workplace, or other locations where the victim has established personal ties.
- C. Hate crimes are civil rights violations.
- D. Hate crimes are terrorist acts. The reason being that the crime is often committed in order to send a message to other members of a particular group.

- E. Among the effects of hate crimes on victims are:
 - 1. Strong emotional reactions including:
 - 2. Bitterness.
 - 3. Helplessness/frustration.
 - 4. Inability to affect the circumstances that led to their victimization.
 - 5. Feeling that they may not be able to report their victimization because they do not want to reveal information such as immigration status, sexual orientation, etc.
 - 6. Anger.
 - 7. Fear.
 - a) About future incidents.
 - b) About the safety of children and other family members.
 - 8. Strong psychological effects.
 - 9. Prolonged emotional trauma.
 - 10. Particularly strong impact upon child victims.
 - 11. Intimidation of other members of the same social group.
- F. Law enforcement responses to hate crimes
 - 1. A primary responsibility of any officer responding to a suspected hate crime is to provide assistance and appropriate support to victims.
 - 2. A thorough preliminary investigation should be conducted in an effort to determine whether or not a hate crime has occurred. Among the specific issues to be considered are:

- a) Preservation/collection of evidence substantiating that a hate crime has occurred.
 - (1) Photographs of injuries, graffiti, vandalism, etc.
 - (2) Collection of physical evidence such as:
 - (a) Hate/bias literature.
 - (b) Tape recordings (e.g., threat messages left on answering machines).

- b) Interviews of victims and other involved parties.
 - (1) Treat the victim(s) with dignity and respect.
 - (2) Recognize that victim(s) may direct their anger or frustration at responding officers.
 - (3) Permit the victim(s) to vent their emotions.
 - (4) Empathize.
 - (5) Maintain a non-critical, non-judgmental, attitude.
 - (6) The following types of questions may assist in establishing important elements:
 - (a) Why do you think you were attacked?
 - (b) Did you want to react? Fight or Flight?
 - (c) Where you afraid? Of what?
 - (d) Have there been any prior incidents?
 - (e) Have you been involved in any recent public activity that would make you a target?

- (f) Has there been any neighborhood problem(s) that you think could have spurred this incident?
 - (g) Did the perpetrators distribute or carry any literature?
 - (h) What is your perception of what happened?
- c) Interviews of witnesses.
- (1) A door-to-door or other area search for witnesses should be initiated.
 - (2) Ask witnesses why they think the incident occurred.
 - (3) Ask witnesses who they think is responsible for the incident and why (individuals and/or groups).
 - (4) Responding officers should be alert for any signs of bias shown by the witnesses.
- d) Interviews of suspects.
- (1) Many times hate crimes suspects are proud of their actions and will be anxious to talk.
 - (2) The following questions may be helpful in substantiating incident elements:
 - (a) Why did you pick this person?
 - (b) What was there about this person?
 - (c) How do you feel about (type of victim)?
 - (d) Did you go looking for (type of victim)?
 - (e) Did he/she just happen to cross your path?

- (f) Do you belong to any groups or organizations?
(Either general or specific).
- e) Generate a complete report.
 - (1) Although not all inclusive, the following considerations may be helpful in establishing essential elements:
 - (a) Could the act be retribution for some other conflict?
 - (b) Incident reports should clearly indicate the following information:
 - (i) Offense – Hate Crime designated Penal Law
 - (ii) Victim age, gender, race, and ethnicity
(when victim(s) is an individual(s))
 - (iii) Offender age, gender, race, and ethnicity
(when available)
 - (2) The narrative portion of the Incident report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation.
 - (3) The specific bias motivation of the perpetrator should be documented (Ex: selected victim because he was Hispanic, Jewish, Muslim, etc...)

VIII. LEGAL ASPECTS OF HATE (BIAS RELATED) CRIMES

- A. Defining a hate crime. New York State Penal Law 485.05
 - 1. A person commits a hate crime when he or she commits a specified offense and either:
 - (a) Intentionally selects the person against whom the offense is committed or intended to be committed in whole or in

substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or

- (b) Intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

- 2. Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

- (1) For purposes of this section:

- (a) The term "age" means **sixty years old or more**;

- (b) The term "disability" means **a physical or mental impairment that substantially limits a major life activity**.

- 3. The crimes that can be charged under the Hate Crime statute are listed in section 485.05 of the New York State Penal Code.

B. Indicators of hate crimes.

- 1. The following criteria should be considered in determining whether or not a hate crime has occurred:

- a) The crime must involve a specific target.

- (1) Individual (can be friends or support group).

- (2) Residence.

- (3) House of worship.

- (4) Religious or ethnic organization.
- (5) Business.
- b) If graffiti is involved, it must be:
 - (1) Racial.
 - (2) Ethnic.
 - (3) Religious.
 - (4) Homophobic.
- c) Bigotry, in whole, or in part, must be the central motive for the incident. There are hate crime cases that involve dual motivation. An example would be a robbery suspect that targets victims based on their race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.
- d) Assaults on persons appear to have been motivated by:
 - (1) Race.
 - (2) Color.
 - (3) National origin.
 - (4) Ancestry.
 - (5) Gender
 - (6) Religion.
 - (7) Religious practice.
 - (8) Age.
 - (9) Disability.
 - (10) Sexual Orientation.

- e) There is an absence of other motives and vandalism has occurred to a:
 - (1) House of worship.
 - (2) Ethnic organization.
 - (3) Religious organization.
 - (4) Gay or lesbian organization.

- f) Obscene or threatening telephone calls were involved which contain:
 - (1) Racial slurs.
 - (2) Ethnic slurs.
 - (3) Religious slurs.
 - (4) Homophobic slurs.

- g) The following inquiries may also assist in determining whether or not a crime was motivated by bias/hate:
 - (1) Was the incident known to have been motivated by racial, religious, ethnic, or sexual orientation bias?
 - (2) Does the victim perceive the action of the offender to have been motivated by bias?
 - (3) Were any racial, religious, ethnic, or sexual orientation bias remarks made by the offender?
 - (4) Were there any offensive symbols, words, or acts which are known to represent a hate group or other evidence of bias against the victim's group?

- (5) Did the incident occur on a holiday or other day of significance to the victim's group or the offender's group?
- (6) What do the demographics of the area reveal about the incident?
- (7) The motivation of the perpetrator or lack of motive. The brutal nature of an incident could denote a hate crime, particularly when the perpetrator and the victim don't know each other.
- (8) The perpetrator's perception of the victim, whether accurate or not.
- (9) Is the victim the only person of a particular group at a park or facility?
- (10) Did incident occur in proximity to an establishment that could be associated with one of the protected classes?

C. Legal rights of hate crimes victims.

1. Federal Criminal Statutes.

- a) 18 USC Section 241 (Conspiracy to interfere with civil rights).
- b) 18 USC Section 242 (Forcible interference with civil rights under color of authority).
- c) 18 USC 245 (Forcible interference with civil rights).
- d) 42 USC Section 3631 (Willful interference with civil rights under the Fair Housing Act). Federal civil statutes which provide causes for action for victims of racially motivated violence by private individual.
- e) 42 USC Sections 1981 and 1982.
- f) 42 USC Section 1985(3).
- g) 42 USC Section 3617.

- h) Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act
(*Public Law No. 111-84*)
2. State statutes. The Following offenses can be charged under New York States Hate Crime Statute:
- a) Aggravated Assault (person under 11)
 - b) Aggravated Harassment 2nd (subd. 1, 2 & 4th)
 - c) Aggravated Sexual Abuse 1st, 2nd
 - d) Arson 1st, 2nd, 3rd, 4th
 - e) Assault 1st, 2nd, 3rd
 - f) Burglary 1st, 2nd, 3rd
 - g) Coercion 1st, 2nd
 - h) Criminal Mischief 1st, 2nd, 3rd, 4th
 - i) Criminal Sexual Act 1st
 - j) Criminal Trespass 1st, 2nd, 3rd
 - k) Grand Larceny 1st, 2nd, 3rd, & 4th
 - l) Harassment 1
 - m) Kidnapping 1st, 2nd
 - n) Manslaughter 1st, 2nd
 - o) Menacing 1st, 2nd, 3rd
 - p) Murder 2nd
 - q) Petit Larceny
 - r) Rape 1st
 - s) Reckless Endangerment 1st, 2nd

- t) Robbery 1st, 2nd, 3rd
- u) Sexual Abuse 1
- v) Sodomy 1
- w) Stalking 1st, 2nd, 3rd, & 4th
- x) Unlawful Imprisonment 1st, 2nd
- y) Any attempt at the above
- z) Any conspiracy to commit any of the above
- aa) **§ 240.30 Aggravated harassment in the second degree.** A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she: 1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or (b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or 2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or 3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or 4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years. 5. For the purposes of subdivision one of this section, "form of written communication" shall include, but not be limited to, a recording as defined in subdivision six of section 275.00 of this part. Aggravated harassment in the second degree is a class A misdemeanor.

- bb) **§ 240.31 Aggravated harassment in the first degree.** A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she: 1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or 2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or 3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property; 4. Sets on fire a cross in public view; or 5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property. Aggravated harassment in the first degree is a class E felony.
- cc) **§240.21 Disruption, or disturbance of religious service** (Class A Misdemeanor). A person is guilty of aggravated disorderly conduct, who makes unreasonable noise or disturbance while at a lawfully assembled religious service or within one hundred feet thereof, with intent to cause annoyance or alarm or recklessly creating a risk thereof.

D. Arrest Processing

1. The Hate Crimes law is a sentencing enhancement statute. Thus, when the specified crime is a misdemeanor or a class C, D, or E, felony, the hate crime shall be deemed to be one category higher. For example, if a defendant is alleged to have committed an Assault in the second degree, which is a “D” felony and it is alleged that the assault was a hate crime, then upon a conviction the assault is deemed to be a “C” felony and the sentence imposed will be based upon the sentencing range for a “C” felony.
2. “A” and “B” felonies charged as hate crimes stay the same but are subject to higher penalties.
3. It is important to realize that a class A misdemeanor charged as a hate crime is deemed a class E felony. This may affect the manner in which the case is handled (e.g., arraignment, bail, grand jury).
4. Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded.
5. When an arrest is being processed for a hate crime, you are required to use the penal law code with the letter “H” to highlight and make the distinction. **The letter “H” is applied to the subdivision of the PL section.** In those cases where no subdivision exists, a double zero is used with the letter “H.”
 - a) **Use caution when using automated booking system to ensure that the correct offense is selected.**
 - (1) Examples:
 - (a) PL section 120.00, subdivision 1 – Assault 3rd - A misd.
 - (b) 120.00(01H), when it is a Hate Crime – E Felony
 - (c) PL Section 140.15 – Criminal Trespass 2nd – A misd.
 - (d) 140.15 (00H), when it is a Hate Crime – E Felony

- (e) Note: Do not use the letter H when you are not charging a hate crime or the arrest will be reported as a hate crime arrest by DCJS.

E. Accusatory Instrument

1. As the Legislature made clear in the language of Penal Law section 485.00, the victim of a hate crime is society as a whole. It is apparently for that reason that the hate crime statute does not require specification of any particular person, only “a person.” It is the attribute of the protected class (i.e., sex, race, sexual orientation, etc.), not the name of any particular individual member or members of that class which is of importance. Accordingly, the manner in which to allege a hate crime is to set forth the particular attribute of the protected class which is claimed to have motivated the defendant, and not name any particular person or persons.
2. The indictment can simply allege that the defendant committed the underlying crime in whole or in substantial part because of a belief or perception of the race, or sex, or sexual orientation, etc, of “a person.” Likewise, when alleging aggravated harassment in the first degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.
3. The accusatory paperwork filed with the court should also list the “H” designator. The narrative portion of the accusatory incident must include the elements and facts of the crime that demonstrate that the victim was intentionally selected or the act was intentionally committed because of a belief or perception regarding such person’s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

IX. HISTORY AND NATURE OF SEXUAL HARASSMENT

- A. Causes of sexual harassment. Gender issues (response differs by gender because of socialization.)
 1. Male messages.
 - a) Compete to win at any cost.
 - b) Decision maker.

- c) Protector/Provider.
- 2. Female messages.
 - a) Cooperate to avoid conflict.
 - b) Nurturing and responsibility for emotional care of family, pregnancy, childcare.
- 3. Extension to the law enforcement culture.
 - a) Changing role expectations.
 - b) Fear that women are competing for jobs traditionally thought of as men's jobs.
 - c) Confusion about the boundaries of proper conduct because of differences among work setting, social setting, and cultural factors.
 - d) Sexual jokes, touching, or other inappropriate behavior meant to show acceptance.
- 4. Power issues.
 - a) Using position to request date or sex.
 - b) Exclusion from work activities.
 - c) Subservient status.
 - d) Insensitive interruptions.
 - e) Failure to remove harasser from the situation after it is reported.
- B. Why is sexual harassment wrong?
 - 1. Disrespect.
 - 2. Counterproductive.
 - 3. Illegal.

X. LEGAL ASPECTS OF SEXUAL HARASSMENT

- A. State Laws.
- B. Federal Laws.
- C. What constitutes sexual harassment under the law?
 - 1. Unwelcome sexual conduct.
 - a) Physical.
 - b) Verbal.
 - c) Written.
 - d) Visual.
 - e) Others.
 - 2. Quid Pro Quo.
 - a) Submission or rejection of sexual conduct which is explicitly or implicitly made a term or condition of employment or an employment decision.
 - (1) Assignment.
 - (2) Promotion.
 - (3) Others.
 - 3. Hostile work environment.
 - a) Sexually harassing conduct, within the complainants immediate work environment, which is so pervasive as to interfere with his or her work performance.
 - b) Such conduct may or may not be directed at the complainant.

4. Retaliation.
 - a) Adverse action against the complainant.
 - b) Adverse action against witnesses.
5. False claims.

XI. UNDERSTANDING SEXUAL HARASSMENT

A. Examples of sexual harassment.

1. Verbal harassment.
 - a) Repeated, unsolicited, derogatory comments or slurs.
 - b) Continued requests for social or sexual contact after being advised that such is unwelcome (e.g., repeated phone calls).
 - c) Discussing sexual exploits.
 - d) Sexually patronizing comments (“Honey,” “Babe,” “Doll”).
 - e) Commenting on body parts.
 - f) Telling vulgar sexist jokes.
 - g) Making obscene or suggestive sounds or gestures.
 - h) Questions or comments about a person’s sexual practices.
 - i) Requesting employees wear sexually suggestive or demeaning clothing.
2. Physical harassment.
 - a) Physical interference or contact which impedes normal movement when directed at an individual.
 - b) Unwelcome touching (e.g., back rubs, brushing up against an individual, hugging, patting, kissing, and grabbing body parts).

3. Visual harassment.
 - a) Sexually offensive computer software, posters, cartoons, drawings, magazines, or objects.
 - b) Staring or leering.
 - c) Sexual gestures.
4. Writings.
 - a) Unwelcome notes.
 - b) Greeting cards.
 - c) Love letters.
 - d) Invitations.
5. Sexual favors.
 - a) Quid Pro Quo.
 - (1) Actual or perceived requests for sexual favors in exchange for employment benefits.
 - (2) Such may include, but are not limited to: offers of job assignments and promotions.
 - b) Request for sexual favors **without** threat to employment benefits.
6. Hostile work environment.
 - a) Any behavior or activity which discriminates by gender or sexual orientation.
 - b) Any of the above examples that are not directed toward the complainant but which the complainant is subjected to in his or her immediate work environment.

- c) Any of the above examples that are directed toward the complainant and are ongoing and pervasive.
7. Threats.
- a) Failure/refusal to provide timely backup.
 - b) Loss of assignment.
 - c) Loss of job status.
8. Force.
- a) Physical assault.
 - b) Threats of immediate use of force.

XII. RESPONDING TO SEXUAL HARASSMENT

- A. Recipients of perceived sexual harassment, when appropriate, should inform the harasser that the conduct is unwelcome, offensive, and should cease.
- B. Where the complainant is uncomfortable with a personal confrontation, he/she should contact any supervisor, manager, department head, or their equivalent.
- C. Where the complainant perceives that the department's internal environment is not conducive to making an internal complaint, they have the option of reporting the incident to an entity external to the department.
- D. Typical hierarchy might be:
 - a) Organization/Agency Administration.
 - b) Municipal office such as Affirmative Action Officer or equivalent office with special designated power to act.
 - c) State Agency.
 - d) Federal Agency.

2. NOTE: Many organizations are beginning to adopt “zero tolerance” policies regarding sexual harassment. In essence, this means that the organization will not tolerate any type of behaviors which could constitute sexual harassment under the law or which could contribute to an unprofessional business atmosphere.
- E. Supervisory/Management responsibilities.
1. Reactive.
 - a) Listen to the complaint.
 - b) Provide counsel regarding options.
 - c) Document the complaint.
 - d) NOTE: Instructors should discuss what comprises “documentation.”
 - e) Appropriate investigative actions.
 - f) NOTE: Instructor should discuss typical investigative actions which would occur (e.g., interviews of involved persons).
 2. Pro-active.
 - a) Acting upon inappropriate behaviors before a complainant comes forward.
 - b) On-going training of subordinates.
- F. Ramifications for the offender.
- a) Disciplinary action from verbal reprimand through termination.
 - b) Civil suit.
 - c) Criminal penalties.
 - d) Fines imposed.

- e) Negative impact on career, family, credibility, reputation, etc.
- G. Protection from retaliation.
- a) Illegality of retaliation under the law.
 - b) Protection of complainants and witnesses.