

STRATEGIES FOR RESPONDING TO HATE CRIMES AND BIAS INCIDENTS



CIVIL RIGHTS DIVISION
OFFICE OF THE ATTORNEY GENERAL
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INTRODUCTION

Since 2016, hate crimes and hate bias incidents have risen sharply nationwide. According to the Federal Bureau of Investigation (“FBI”), 5,479 hate crimes were reported in 2014.¹ By 2018, this number had increased 30% to 7,120.² Maryland experienced a nearly 40% increase in reported hate crimes and hate bias incidents from 2016 to 2017, reaching a total of 398.³ Although the number of hate crimes and hate bias incidents reported dipped slightly in 2018, these events continue to impact a wide cross-section of Maryland residents. Verified incidents of mostly anti-black, anti-Jewish and anti-LGBTQ activity have occurred in the classrooms, workplaces and community spaces in 14 of 23 counties and Baltimore City.⁴

Maryland hate crime victims and offenders also vary widely by age. In January of this year, a white Baltimore County man was convicted of first-degree assault, attempted voluntary manslaughter, and hate crimes for shooting Elvis Smith, a 60-year old black male from the U.S. Virgin Islands after calling him the n-word and telling him to “go back to Africa.”⁵ Last year, in Montgomery County, a 13-year-old Jewish girl received several anti-Semitic texts that included “JNTD” — an acronym for “Jews Need to Die.”⁶ Of the 324 hate crimes and bias incidents

¹ See FBI Uniform Crime Report Statistics for 2014, available at <https://ucr.fbi.gov/hate-crime>.

² *Ibid.* for 2017.

³ *State of Maryland 2017 Hate/Bias Report*, Maryland State Police, available at <https://mdsp.maryland.gov/Document%20Downloads/State%20of%20Maryland%202017%20Hate%20Bias%20Report.pdf>.

⁴ *State of Maryland 2018 Hate/Bias Report*, Maryland State Police, pp. 5, 7, 10-11, available at <https://mdsp.maryland.gov/Document%20Downloads/State%20of%20Maryland%202018%20Hate%20Bias%20Report.pdf>, documenting 23 fewer incidents reported in 2018 compared to 2017, a decrease of 5.8%.

⁵ <http://www.baltimoresun.com/maryland/baltimore-county/cng-co-higgs-hate-crime-trial-20200129-snrnm3ul5yzb7zin66ifa64bhtm-story.html>

⁶ <http://www.baltimoresun.com/news/investigations/bs-md-two-years-of-hate-incidents-20180813-story.html> *

reported in 2018, approximately 16% of victims and offenders were identified as under 18 years old and around 2-3% were over the age of 65.

All Maryland citizens, residents, and visitors deserve to live without fear that they will be attacked or targeted because of their race, religion, sexual orientation, gender or other perceived personal characteristic or group membership. Left unchecked, hate crimes and bias incidents will continue to escalate, demoralizing victims and their families and causing anxiety and distrust within our communities. Law enforcement, prosecutors, advocacy organizations, community associations and other stakeholders must work together to ensure that hate bias incidents are properly reported, investigated, prosecuted or otherwise addressed by communities. The Maryland Office of the Attorney General (“OAG”) is committed to doing its part and offers this guidance to assist community members in understanding Maryland’s hate crimes laws, distinguishing hate crimes from hate bias incidents, encouraging the reporting of hate crimes and hate bias incidents, and developing successful community strategies for combating this activity.

HATE CRIME DEFINED

The FBI defines a hate crime as “a criminal offense against a person or property motivated in whole or in part by an offender’s bias against race, religion, sexual orientation, ethnicity, gender, or gender identity.”⁷ Maryland law similarly protects people from crimes threatened or committed against them because of their “race, color, religious beliefs, sexual orientation, gender, disability, or national origin, or because another person or group is homeless.”⁸ The statute criminalizes

⁷ <https://www.fbi.gov/investigate/civil-rights/hate-crimes>

⁸ Maryland Ann. Code, Criminal Law Article, §10-304. Sexual orientation is defined as including gender identity. Crim. Law Art., §10-301.

damaging, attempting to damage, destroying, or threatening to damage or destroy property used for a religious purpose, as well as obstructing others from exercising their religious beliefs by force or threat of force.⁹ Maryland law also prohibits damaging, burning, destroying or attempting or threatening to damage, burn or destroy the real or personal property of a person or group because of that person's or group's membership in a protected class.¹⁰ The law protects real or personal property connected to a building that is publicly or privately owned or used, "including a cemetery, library, meeting hall, recreation center or school."¹¹ Maryland's hate crime law is considered an enhancement statute in that it provides for heightened criminal penalties for crimes motivated by bias.

Maryland's hate crime laws have changed significantly since 1957, when the first hate crime statute was enacted. Frequently, changes were made to protect additional groups and add or clarify prohibited behaviors. In 2018, for example, the Maryland General Assembly extended the law's protection beyond crimes committed against individuals to also include those targeting

⁹ Crim. Law Art., §§10-302-3.

¹⁰ Crim. Law Art., §10-304.

¹¹ Crim. Law Art., §10-305.

groups.¹² During the 2019 legislative session, a *threat* to commit a hate crime was added to the list of punishable offenses.¹³

Key Provisions of Maryland’s Hate Crime Law

Characteristic	Maryland Law
Hate crime definition	A person may not commit a crime or threaten to commit a crime <i>because of</i> another person’s or group’s perceived personal characteristic or group membership as identified below
Protected categories	Race, color, religious beliefs, sexual orientation, gender, gender identity, disability, national origin, and/or because another person or group is homeless
Protections for Religious Worship	Prohibits damaging, attempting to damage, destroying, or threatening to damage or destroy religious property, as well as obstructing others from exercising their religious beliefs by force or threat of force.
Protections for Property	Prohibits damaging, burning, destroying or attempting or threatening to damage, burn or destroy the real or personal property of a person or group because of that person’s or group’s perceived characteristic or membership. Includes real or personal property connected to a building that is publicly or privately owned, such as a cemetery, library, meeting hall, recreation center, or school.
Penalties	Violations are considered misdemeanors subject to up to 3 years imprisonment and a \$5,000 fine unless: <ol style="list-style-type: none"> 1) Underlying crime was a felony (up to 10 years and \$10,000) 2) Crime resulted in the death of a victim (up to 20 years and \$20,000) The sentence imposed may run consecutive to or concurrent with the sentence for any underlying crime.

HATE CRIME V. HATE/BIAS INCIDENT

To be properly classified as a hate crime, the underlying behavior must already be criminalized under state or federal law (such as vandalism, intimidation, arson or assault). When the activity motivated by bias does not meet the definition of a crime under State or federal law, it is considered a hate/bias *incident*.¹⁴ A person who commits a bias incident is not subject to arrest or prosecution by law enforcement. However, a bias incident can be as frightening and demoralizing as a hate crime. Examples of bias incidents include the distribution of written materials promoting white nationalism and the use of racial or homophobic slurs.

Such incidents, while likely to be upheld as constitutionally protected exercises of free speech, still serve to generate fear and anxiety in those targeted. Moreover, people who engage in bias incidents may eventually escalate into criminal behavior. For these reasons, Maryland law enforcement agencies are required by law to record and report data on both hate crimes and bias incidents.¹⁵ Thus, those who believe they have been victims of a bias incident or hate crime should call 9-1-1 as soon as possible and report the hate bias conduct. Early intervention by law enforcement can help ensure that all related evidence is properly collected and preserved. Communities impacted by hate activity should work with their local law enforcement agencies and other community stakeholders to develop strategies for addressing bias incidents and hate crimes that are not resolved via criminal prosecution. Communities may consider, for example, the utility of restorative justice, which is discussed more fully below.

¹⁴ For clarity purposes, hate/bias incidents, as distinguished from hate crimes, are referred to as “bias incidents” for the remainder of this document.

¹⁵ Maryland Ann. Code, Public Safety Article, § 2-307,

REPORTING

Even as Maryland documents an increased level of hate activity, hate crimes remain vastly underreported. A 2017 report by the Bureau of Justice Statistics found that between 2011 and 2015, 54 percent of hate crime incidents were not reported to law enforcement.¹⁶ Reasons for nonreporting range from fear of retaliation to uncertainty around what constitutes a hate crime and skepticism that police will take the complaint seriously.¹⁷ However, reporting remains a critical first step to addressing hate crimes and bias incidents.¹⁸ We strongly encourage victims and witnesses to report all hate activity to their local or state law enforcement, including where there are no physical injuries or property damage. Reporting can help police identify patterns of conduct and assess where additional investigative and other resources should be assigned. Law enforcement should work collaboratively with community members and organizations to actively condemn hate crimes and bias incidents and encourage reporting. Likewise, communities should applaud law enforcement agencies who actively report, investigate, and engage the community in developing prompt and comprehensive responses to hate crimes and bias incidents.

Once reported, hate crime data is compiled and evaluated by the State. Maryland law requires that the Maryland State Police (“MSP”) “collect, analyze, and disseminate information about the incidence of crime” committed against individuals and groups because they fall within a protected class.¹⁹ Law enforcement agencies must complete the Maryland Supplementary Hate Bias Incident Report when they receive a call for service which may involve conduct motivated

¹⁶ https://www.bjs.gov/content/pub/pdf/hcv0415_sum.pdf

¹⁷ <https://www.propublica.org/article/confusion-fear-cynicism-why-people-dont-report-hate-incidents>

¹⁸ Recognizing the importance of monitoring hate crime activity, several organizations track national hate crime data. See e.g., the Southern Poverty Law Center at <https://www.splcenter.org/issues/hate-and-extremism> and Pro Publica’s Documenting Hate Project at <https://projects.propublica.org/graphics/hatecrimes>.

¹⁹ Md. Ann. Code, Public Safety Article, §2-307.

by bias toward one or more of the protected classes. MSP provides a monthly report of the data received from local law enforcement agencies to the Maryland Commission on Civil Rights (“MCCR”). The Maryland State Police, in conjunction with the Maryland Coordination & Analysis Center, issues an annual hate/bias report, which provides trends and statistical data regarding the number and type of incidents, victim and perpetrator demographics, and the location of incidents reported during the prior calendar year.²⁰ MCCR also issues a summary of the hate crime data it received from law enforcement agencies as part of its annual report.²¹

RESPONDING TO HATE CRIMES

A comprehensive response to hate crimes requires the entire village: law enforcement; prosecutors; residents; schools; religious institutions; and civil rights and community-based organizations. This collaboration is critical both before and after a crisis occurs. In their report, *Action Agenda for Community Organizations and Law Enforcement to Enhance the Response to Hate Crimes*, the International Association of Chiefs of Police and Lawyers’ Committee for Civil Rights Under Law identified the following five critical areas where stakeholders can work to enhance hate crimes response practices:

- Increasing Community–Law Enforcement Collaboration to Address Hate Crimes, Including Partnerships with Civil Rights and Community Organizations
- Enhancing Training and Education About Hate Crimes for Law Enforcement, Prosecutors, and Community Members
- Strengthening Data Collection, Reporting, and Analysis
- Improving Hate Incident and Crime Management Policies and Responses for Law Enforcement

²⁰ See e.g., note 3, *supra*.

²¹ See e.g., MCCR’s 2018 Annual Report, pp. 49-53, available at <https://mccr.maryland.gov/Documents/Annual%20Report%202018%20Final.pdf>.

- Role of Prosecutors: Early and Ongoing Communication with Law Enforcement, Proactive Engagement with Community, Development of Hate Crimes Expertise

The report is an essential tool for those committed to effectively addressing hate and bias-motivated crimes and we strongly encourage stakeholders to review it closely as they develop strategies for responding to hate crimes.²² The following recommendations are worth highlighting:

- Law enforcement agencies should appoint a Hate Crimes Liaison to serve as a point of contact for communities and advocates regarding reporting, investigations, data collection, and victim assistance and further strengthen community-police relations.
- Stakeholders should collaborate to develop law enforcement training on recognizing and classifying hate crimes, improving cultural competency, and avoiding bias and discriminatory stereotypes.
- Stakeholders should publicly support agencies that improve bias incident and hate crime reporting, especially if local officials are concerned that a reported increase in these incidents would be misinterpreted and reflect poorly on the community. Rather, a reported increase in hate crime may demonstrate that the jurisdiction is one in which community members trust law enforcement enough to report hate crimes and that the jurisdiction prioritizes combating hate.
- In those cases involving any evidence or suggestion of a hate crime, the response of law enforcement agencies should emphasize that hate and discrimination have no place in the community.

²² Report available at <https://lawyerscommittee.org/wp-content/uploads/2019/04/IACP.pdf>

- Communities should establish hate crimes task forces that meet on a regular basis to bring together law enforcement representatives, prosecutors, and community leaders before a crisis occurs. Collaborative efforts can help build relationships for more effective identification of hate incidents and crimes, better training, and improved preparation of prosecution cases.²³

RESTORATIVE JUSTICE

Both as an alternative to and in conjunction with criminal prosecution, restorative justice can provide redress for those affected by hate crimes in appropriate cases. The Centre for Justice & Reconciliation defines restorative justice as the “theory of justice that emphasizes repairing the harm caused by criminal behavior...through cooperative processes that include all stakeholders.”²⁴ It encourages victims, offenders and other impacted community members to meet, tell their stories, and describe how the crime or conduct affected them. The goal is to facilitate greater understanding and healing among the parties. Having built this foundation, victims and offenders can then negotiate the best way to repair the harm done, which may include an apology, community service, repairing or replacing damaged property, and other actions that promote changed behavior. Ideally, restorative justice also provides a path for victims and offenders –both of whom may feel stigmatized – to successfully reintegrate into the community.²⁵

In Maryland, several local law enforcement agencies have begun utilizing restorative justice to address hate activity. The Anne Arundel County Police Department, for example, employs the practice via its Crisis Intervention Team (“CIT”). In one incident, the CIT responded

²³ *See id.*

²⁴ <http://restorativejustice.org/>

²⁵ *See id.*

to a complaint against an 80-year old neighbor for repeatedly trespassing and using racial slurs by engaging the offender's adult children and meeting with him and his family regarding the impact of his behavior. The CIT maintained contact with the families of both the offender and victim and no further incidents were reported. The CIT has also been deployed for complaints regarding nooses, swastikas and social media bullying. Their strategies for repairing the harm caused included mediation between the victim and offender, sensitivity training for the offender, and letters of apology (public and private).

Restorative justice can be an especially effective tool for instilling conflict resolution techniques and curbing prejudices in children. Recently, Maryland law was amended to require that all local school systems implement regulations ensuring that their disciplinary practices are rehabilitative, restorative and educational.²⁶ Additionally, the Maryland State Department of Education, upon request, must provide technical assistance and training to local boards regarding the use of restorative approaches.²⁷ The restorative approaches employed in schools include conflict resolution, peer mediation, social emotional learning and rehabilitation.²⁸

RESOURCES

As noted above, the primary resource for victims or witnesses of hate crimes and bias incidents are their local law enforcement agencies. Additionally, victims and witnesses are encouraged to reach out to the Maryland Commission on Civil Rights, which enforces Maryland's anti-discrimination laws. The Office of the Attorney General also runs a Maryland Hate Crimes Hotline, which assists victims in identifying additional resources. The number is 1-866-481-8361.

²⁶ House Bill 725/Chapter 691 (2019).

²⁷ *See id.*

²⁸ For the full list of restorative approaches recognized by Maryland law, see Md. Ann. Code, Education Art., §7-306(a)(2).

A list of human rights and victim assistance agencies, many of which also provide resources and services for victims of hate crimes, is included for reference at the end of this document.

CONCLUSION

Effectively combatting hate crimes will require engagement from all sectors of our communities. It is imperative that law enforcement agencies, prosecutors, schools, religious institutions, residents and community and advocacy organizations work together to develop and employ strategies to strengthen data collection and reporting, enhance law enforcement and community response, and improve communications around acts of hate, bias, and prejudice. In support of this effort, the Office of the Attorney General has created an OAG Hate Crimes Task Force. The Task Force will engage a broad cross-section of the community to make recommendations regarding how to better respond to hate crimes and bias incidents. For more information regarding the OAG Hate Crimes Task Force, please contact Zenita Wickham Hurley, Chief Counsel for Civil Rights, at zhurley@oag.state.md.us.

RESOURCE LIST

Maryland State Police:

1-800-525-5555

Maryland Hate Crimes Hotline:

1-866-481-8361

Maryland Commission on Civil Rights:

William Donald Schaefer Tower

6 Saint Paul Street, Suite 900

Baltimore, MD 21202

Phone: 410-767-8600

TTY/TTD: 410-333-1737

Toll Free: 1-800-637-6247

ADL Washington, D.C.

Serving DC, MD, NC & VA

1100 Connecticut Ave. NW Suite 1020

Washington, DC 20036

<https://dc.adl.org/>

202-452-8310

American Civil Liberties Union (ACLU) of Maryland:

3600 Clipper Mill Road, Suite 350

Baltimore, MD 21211

443-524-2558

Anne Arundel County Human Relations Commission:

44 Calvert Street

Annapolis, MD 21401

410-222-1234

Baltimore City Office of Civil Rights:

City Hall - Room 250

100 N. Holliday St

Baltimore, MD 21202

410-396-3100

Baltimore County Human Relations Commission:

Drumcastle Government Center

6401 York Road, First Floor

Baltimore, Maryland 21212

410-887-5917

Baltimore Jewish Council:

5750 Park Heights Avenue
Baltimore, MD 21215
410-542-4850

Calvert County Commission on Human Relations:

P.O. Box 2081
Prince Frederick, MD 20678
410-535-1600

Carroll County Human Relations Commission:

c/o Virginia Harrison
P.O. Box 1665
Sykesville, MD 21784

City of Annapolis Human Relations Commission:

160 Duke of Gloucester Street
Annapolis, MD 21401
410-263-7997

City of Rockville Human Rights Commission:

111 Maryland Avenue
Rockville, MD 20850
240-314-8316

Circle of Angels Initiative:

7 Friendship Road,
Friendship, MD 20758
301-778-3848

Coalition Opposed to Violence Extremism:

P.O. Box 6996
Columbia, Maryland 21045
cove@mdcove.org
www.mdcove.org

Council on American-Islamic Relations (CAIR):

6120 Baltimore National Pike, Suite 2D
Baltimore, MD 21228
443-251-2132

Frederick County Human Relations Commission:

520 N. Market Street
Frederick, MD 21701
301-600-1109

FreeState Justice:
2526 St. Paul Street
Baltimore, MD 21218
410-625-5428

Harford County Human Relations Commission:
125 N. Main Street
Bel Air, MD 21014
410-638-3389

Howard County Office of Human Rights:
6751 Columbia Gateway Drive #239
Columbia, MD 21046
410-313-6430

Immigration Outreach Service Center:
5401 Loch Raven Boulevard
Baltimore, MD 21239
410-323-8564

Jewish Community Relations Council of Greater Washington:
6101 Executive Boulevard, Suite 300
North Bethesda, MD 20852
301-770-0881

Montgomery County Office of Human Rights:
21 Maryland Avenue # 330
Rockville, MD 20850
240-777-8450

National Association for the Advancement of Colored People (NAACP) National Headquarters:
4805 Mt. Hope Drive
Baltimore, MD 21215
410-580-5777

The Pride Center of Maryland:
2530 N. Charles Street, Third Floor
Baltimore, MD 21218
410-777-8145

Prince George's County Human Relations Commission:
14741 Governor Oden Bowie Drive, Suite L105
Upper Marlboro, MD 20772
301-883-6170