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CPRC REPORT

Hate Crime Policing in California

Valerie Jenness and Ryken Grattet

Policy Research Program



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The California Policy Research Center (CPRC) is a University of California program that applies the extensive research expertise of the UC system to the analysis, development, and implementation of state policy as well as federal policy on issues of statewide importance. CPRC provides technical assistance to policymakers, commissions policy-relevant research, oversees legislatively mandated research projects, and disseminates research findings and recommendations through publications and special briefings.

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The interpretations and recommendations expressed in this report are those of the authors and do not necessarily reflect those of the California Policy Research Center or the Regents of the University of California.

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Executive Summary

In the past decade, hate crime policing has emerged as a major issue for policymakers throughout the United States. Leading the nation in efforts to respond to bias-motivated conduct, California enacted criminal hate crime statutes and laws mandating the collection of hate crime data under both Republican and Democratic administrations. However, little is known about how these laws have been implemented, the factors that influence their implementation, or the consequences of implementation on police procedures or crime control.

To find out, we designed research to focus on four interrelated questions: (1) What steps have California law enforcement agencies taken to enforce hate crime law? (2) Are the hate crime policies adopted throughout the state's agencies relatively uniform or variable? (3) What determines whether or not agencies develop hate crime policies that direct rank-and-file officers to take action in a specific way? (4) Do these hate crime policies affect what rank-and-file officers actually do?

To address these questions, we collected information on the hate crime policy orders for all 339 municipal police and all 58 sheriff agencies in California, and conducted interviews with officials from law enforcement agencies to understand how departments write, implement, and use these policies. We also collected data from a number of sources: organizational data provided by the U.S. Bureau of Justice Statistics; demographic and socioeconomic data from the U.S. Census Bureau and *California Cities, Towns, and Counties*; and hate crime reporting data provided by the California Department of Justice.

Agencies with Hate Crime Orders

Ninety percent (356 of the 397 police and sheriff agencies) responded to our request to see their general orders (formal rules/guidelines) related to hate crimes. Of those, nearly 41% (161) do not have a hate crime policy. Their reasons included lack of need; an administrative delay in developing a (much-needed) hate crime policy; an ability to enforce hate crime law with existing policy; or administrative oversight.

In general, the 41 nonresponding agencies were located in communities with low percentages of college graduates and white-collar workers, and with high unemployment—all measures of a community's socioeconomic condition. Because these characteristics are associated with communities whose law enforcement agencies lack a hate crime order, we surmise that most of these agencies probably lack hate crime orders.

The Content of Hate Crime Orders

Although hate crime general orders vary immensely, they contain similar components and frequently follow the same structure as other general orders.

The majority of the orders (75%) start with a section that describes the purpose of the policy. Nearly a third of the orders (30.3%) justify law enforcement's responsibility to enforce hate crime law by simply referencing the state law and/or the U.S. Constitution. Close to half (42.6%) also reference the importance of responding to moral threats and community strife as a justification for enforcing hate crime law.

The most common definitions of hate crime in these policies relate to "intimidation, harassment, or threats," which 64 agencies use. Twenty-two agencies use the broad concept

of “prejudice-based incidents,” defined as “violence or intimidation by threat of violence against the person or property of another.” A handful of others highlight particular examples, such as “firebombing, cross-burning.”

The categories of persons covered by hate crime orders also vary across definitions. Those included most frequently are race, religion, and sexual orientation. Between 94% and 99% of the definitions reference these categories, which serve as proxies for nonwhites, non-Christians, and nonheterosexuals. Other categories included frequently are disability and gender, as well as alternative ways of referencing race and ethnicity. Those included least frequently are age, political affiliation, position in a labor dispute, and “other bases of discrimination.”

All but one of the general orders include official procedures for responding to potential hate crime. These procedures vary immensely, from simply directing officers to take a report, to precisely specifying the duties, responsibilities, and timelines for processing a potential hate crime from the moment it comes into the dispatcher to the moment the district attorney decides to press charges. Seven percent of the general orders direct officers to report the incident, but do not indicate any duties beyond reporting.

Finally, hate crime general orders vary in the degree to which they require the provision of services to victims and engaging with the community as part of their enforcement efforts. Almost half of the orders (47.2%) direct law enforcement personnel to meet with community groups not only to investigate hate crimes, but to respond to community demands and needs in light of hate crimes.

Combined, these policy directives require law enforcement personnel to engage with victims and the larger community in ways that extend

beyond the immediate goal of responding to a crime, solving it, and forwarding it to the prosecutor. Such orders signify a commitment to a larger view of policing, informed by community-policing philosophy and the goals of the crime-victim movement.

Community Factors Affecting Enforcement

Although law enforcement agencies share common federal and state laws, each agency decides autonomously how to respond to the law, develop enforcement policy, and actually enforce the law. Such autonomy grants each agency significant freedom to develop its own approach to crime control based on its assessment of the nature of its community.

We had expected to find more frequent adoption of hate crime policies in large cities with dense populations because of the volume and variety of crimes in such areas, including violent crimes, but that was not the case. Nor did the amount of governmental resources available to state-funded law enforcement agencies appear to increase the odds that a hate crime order will be adopted.

Two demographic factors do affect the probability that an agency will adopt a hate crime order: the community’s degree of racial and ethnic heterogeneity and its socioeconomic conditions.

Increased heterogeneity in a jurisdiction significantly increases the probability that an agency will have a hate crime policy. Likewise, the community’s socioeconomic conditions affect the probability that a law enforcement agency will have a hate crime order. Specifically, wealthier communities are more likely to have a hate crime order than poorer ones.

The presence of active and vocal citizens who organize to demand recognition of their policy preference(s) is a good determinant of

innovative crime-control policy. For example, the presence of a human rights organization committed to using the law to combat inequality in general and discriminatory violence in particular significantly increases the probability that the community's law enforcement agency will have a hate crime policy.

Community and Organizational Factors

We also assessed the degree to which hate crime policies reflected the interdependence between community and organizational characteristics. Our findings suggest the following:

- ▶ Community characteristics affect the attributes of law enforcement agencies within a locality, and those agency factors ultimately shape the probability of having a hate crime order.
- ▶ Heterogeneous and affluent communities are more likely to have law enforcement agencies that rely on the kind of community reciprocity embodied in citizen surveys, meetings with community groups, and community policing practices.
- ▶ Heterogeneous and affluent communities are more likely to have a human relations commission than more homogeneous and less affluent communities. In turn, communities with such a commission are more likely to have an agency with a hate crime order.
- ▶ Community heterogeneity strongly influences workplace heterogeneity, and the more heterogeneous police forces are found in more heterogeneous communities.
- ▶ The probability that a community will have a hate crime order is not affected by how liberal the community is or how much violent crime it experiences or the size or resource capacity of its law enforcement agency.

Conclusions and Recommendations

Our findings indicate that formal policies positively influence police behavior. Having a hate crime policy may increase an agency's propensity to report hate crime by as much as 25%. Hate crimes are underreported and hate crime law is not fully enforced in jurisdictions that lack policies for responding to them.

California needs to ensure that law enforcement agencies establish feasible hate crime policies within a reasonable time. The Attorney General's office should identify law enforcement agencies that have yet to develop policies, provide examples of commendable and workable policies, and encourage the development of hate crime policies.

We recommend requesting agencies to develop policies that include at least five components:

- ▶ references to California hate crime statutes
- ▶ a clear description of the policy's purpose
- ▶ a definition of hate crime that matches state laws
- ▶ specific protocols for handling potential hate crimes, and
- ▶ a description of how to deal with victims and targeted communities.

We also recommend encouraging agencies to enact principles of community policing and take affirmative steps to increase personnel diversity, both of which have been shown to facilitate the implementation of hate crime policy.

Our research shows that implementation of hate crime policies to respond to bias-motivated conduct depends on two sets of factors: the characteristics of law enforcement agencies and the communities in which those agencies reside.

Hate Crime Policing in California

Valerie Jenness and Ryken Grattet

Introduction

The Nature of Hate Crimes

Hate crimes, or violence motivated by bigotry, have received increasing attention and calls for action in the United States since the 1970s, when the term was introduced.

Whether or not the United States is actually experiencing greater levels of hate crimes than it had in the past, one legal scholar surmised that the 1990s may go down in history as the “decade of hate—or at least of hate crime.”¹

Throughout the 1980s and 1990s, both federal and state policymakers passed legislation that defined the parameters of hate crime law and its enforcement, which include enhanced penalties for perpetrators of hate crimes. Appellate court judges have upheld both the laws and their means of enforcement, and now some of the most visible crimes in the country are recognized as hate crimes by the media, government officials, and laypeople alike. Hate crime has become part of the legal and policy landscape in Britain, Africa, Germany, and Australia as well.

In the United States recently, both the state and federal governments have focused on the critical role of law enforcement in combating bias-motivated violence. For example, in 2000 the U.S. Attorney General’s office published a

U.S. Department of Justice report on hate crime prevention that notes the pivotal role of “law enforcement agencies . . . in responding to, investigating, prosecuting, and preventing hate crime.”²

California’s Hate Crime Laws

California arguably has the nation’s most comprehensive system of hate crime laws, dating from passage of the Ralph Civil Rights Act in 1976. This act reads:

All persons within the jurisdiction of this state have the right to be free from any violence or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex or position in a labor dispute.³

The Ralph Act is a civil statute that makes it possible to recover damages for crimes and criminal threats aimed at persons because of their status characteristics (e.g., race, color, religion). Although it adds financial penalties for bias-motivated offenses, it does not create a new category of crime or enhance existing sentences. As such, it represents a precursor to the hate crime laws that came later. The centerpiece of California’s criminal hate crime laws was passed in 1987. This law, the Bane Civil Rights Act, specifies that:

Along with expanded definitions, the state has acted to improve the quality of hate crime policing.

No person, whether or not under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or the laws of the United States because of the other person's race, color, religion, ancestry, national origin, or sexual orientation.⁴

Since the passage of these laws, California has expanded its hate crime laws to include provisions for both disability and gender, and to cover acts committed because the perpetrator "perceives that the other has one or more of these characteristics."⁵

Along with expanded definitions, the state has acted to improve the quality of hate crime policing. In 1992 the legislature mandated the development of policing guidelines and a course of instruction and training to teach law enforcement officers to identify, report, and respond to hate crime.⁶ This law led to the development of a hate crime curriculum by the California Commission Peace Officer Standards and Training (POST).⁷

In 2000, Governor Davis's Blue Ribbon Panel on Hate Crime in California, headed by former U.S. Secretary of State Warren Christopher and former California Governor George Deukmejian, affirmed this understanding and specifically highlighted the role of law enforcement in responding to bias-motivated crime:

Law enforcement is on the front lines of the battle against hate groups when the activity of those groups threatens the

public's safety and well-being. Law enforcement, including police officers, prosecutors, and corrections personnel must be in a position to identify and effectively enforce those laws and prevent the manifestation of these acts of hate.⁸

In 2001, Attorney General Bill Lockyer formed his own hate crime commission to examine issues related specifically to reporting and to emphasize law enforcement training. Clearly, the enforcement of hate crime laws is on the agenda of top governmental officials in California.

Implementation Questions

The few studies available about enforcing these laws demonstrate that officers use discretion when defining what qualifies as a hate crime; that they are influenced by the social organization of law enforcement agencies and their community's structure; and that there are significant differences in enforcement across types of police personnel, policing units, jurisdictions, and polities.

To study how police and sheriff departments translated legal codes into concrete law enforcement practices we focused on the following questions:

- ▶ What are California police and sheriff agencies doing to combat hate crime and enforce hate crime law?
- ▶ What types of law enforcement policies have these agencies embraced? Additionally, are they relatively uniform or variable?
- ▶ What factors determine whether agencies develop policies that direct rank-and-file officers to take action in a specified way?
- ▶ Do hate crime policies affect what officers actually do?

Study Design and Methods

We examined California police and sheriff department policies on hate crime law enforcement; organizational data provided by the U.S. Bureau of Justice Statistics (Law Enforcement Management and Administrative Statistics); demographic data from the U.S. Census Bureau and *California Cities, Towns, and Counties*; ⁹ original interview data collected for this study; and state Department of Justice data on hate crime reporting.

General Orders on Hate Crime

We requested the policy orders on hate crimes for all the municipal police and county sheriff departments in California. These documents, called general orders, codify an agency's official policy on a particular law enforcement matter. For example, law enforcement agencies have orders regarding such things as the use of force, high-speed pursuit, and how to catalog evidence in drug crimes.

General orders on hate crimes provide the department's definition of hate crime as well as its protocol for dealing with hate crime incidents. In addition, they often signal to officers what qualifies as a hate crime, identify who hate crime victims are, why the department is committed to enforcing hate crime law, and what the department's responsibilities to the community entail.

General orders are a critical link in the policy chain, connecting state statutes to frontline officers, and also provide a crucial communication link in the chain of command, from management-level officers to beat cops. General orders are made available to all frontline officers, who can be subjected to disciplinary procedures if they are unaware of the orders or fail to comply with their dictates.

General orders are a critical link in the policy chain, connecting state statutes to frontline officers.

Existing research suggests that hate crime guidelines tend to be followed closely, and in some cases dramatically alter officers' actions. General orders also provide a benchmark to document the stated goals and practices of law enforcement agencies and personnel.

With this in mind, from 1999 through 2001 we requested general orders on hate crime from California's 339 municipal police and 58 sheriff agencies (henceforth called police or law enforcement agencies), and contacted nonresponders by letters and phone calls. As each agency is responsible for developing its own response to hate crime, these data were used to provide not only a picture of how individual agencies are responding to hate crimes, but also an aggregate picture of how the state is responding to statutory mandates to regulate bias-motivated conduct.¹⁰

Organizational and Community Data

To account for variation in the presence of general orders, we gathered organizational and community data. The community-level data, such as the size, density, socioeconomic conditions, racial and ethnic heterogeneity, violent crime rates, and percent of Democratic voters, were drawn from the 1990 U.S. Census, the 1990 Uniform Crime Reports, and *California Cities, Towns, and Counties*. In addition, we gathered data from the California Association of Human Relations Organizations on the distribution of human rights and human relations organizations in municipalities.

The organizational data on California law enforcement agencies comes from a 1997 survey conducted by the U.S. Bureau of

Many interviewees conceded that officers rarely consult the California Penal Code, and get their understanding of the law from a variety of sources, including general orders.

Justice Statistics (the Law Enforcement Management Administrative Statistics survey). Respondents consist of all medium and large agencies, plus a representative sample of agencies with fewer than 100 personnel. Although this sample of 158 agencies is weighted toward medium and larger departments, these agencies cover 85% of California's population.

Interview Data

We also interviewed 12 law enforcement officials from nine agencies in order to understand how hate crime policies are written, circulated, and used. Interviewees included a lieutenant in charge of a bias crime unit in a large city, a high-ranking officer responsible for delivering hate crime training materials to all levels of personnel, a police chief and a captain from two different mid-size law enforcement agencies, a chief of a small law enforcement agency, and seven sworn officers from a variety of police agencies.

Many of the interviewees conceded that officers rarely consult the California Penal Code, and get their understanding of the law from a variety of sources, including general orders. Thus, general orders both distill and transmit legal knowledge and professional protocol.

Hate Crime Data

We collected official hate crime data gathered by the California Department of Justice (DOJ) since 1995, in the form of incident reports that all municipal law enforcement agencies forward to the DOJ. From 1995 to 2001, 13,569 hate crimes were reported

statewide, 99.3% from police and sheriff agencies. (We excluded incidents reported by other agencies, such as the Highway Patrol or campus, park, transit, or harbor police.)

Analytical Methods

We used conventional social science techniques for analyzing quantitative and qualitative data, including frequency distributions (to discuss the content and distribution of statewide hate crime policy); logistic regression analyses (to assess the degree to which community and agency factors shape policy implementation); both pooled, cross-sectional time-series analysis and hierarchical linear modeling, which enabled us to assess the effect of hate crime orders on the reporting of hate crimes while controlling for variables related to time and magnitude. (Readers may contact the authors for copies of all the statistical tables that support our general conclusions.)

The Distribution and Content of Hate Crime Orders

Our requests generated a 90% response rate. Only 39 of California's 397 police agencies failed to respond. Generally, the nonresponding agencies were located in communities with low percentages of college graduates, low percentages of white-collar workers, and high unemployment—all measures of a community's socioeconomic conditions. Because these characteristics usually were associated with communities whose law enforcement agencies lack a hate crime order, we surmise that most of them probably lack hate crime orders. We found no other significant differences between responders and nonresponders.

Twenty-four agencies with general orders omitted the adoption date of the orders. The remaining 173 agencies created orders

between 1986 and 2002, with most instituting them after 1996.

In this section we describe which law enforcement agencies have hate crime orders and how officials explained their positions; the variation in the content of those orders; and how community and organizational factors shape the probability that a law enforcement agency has a hate crime order.

The Distribution of Hate Crime Orders

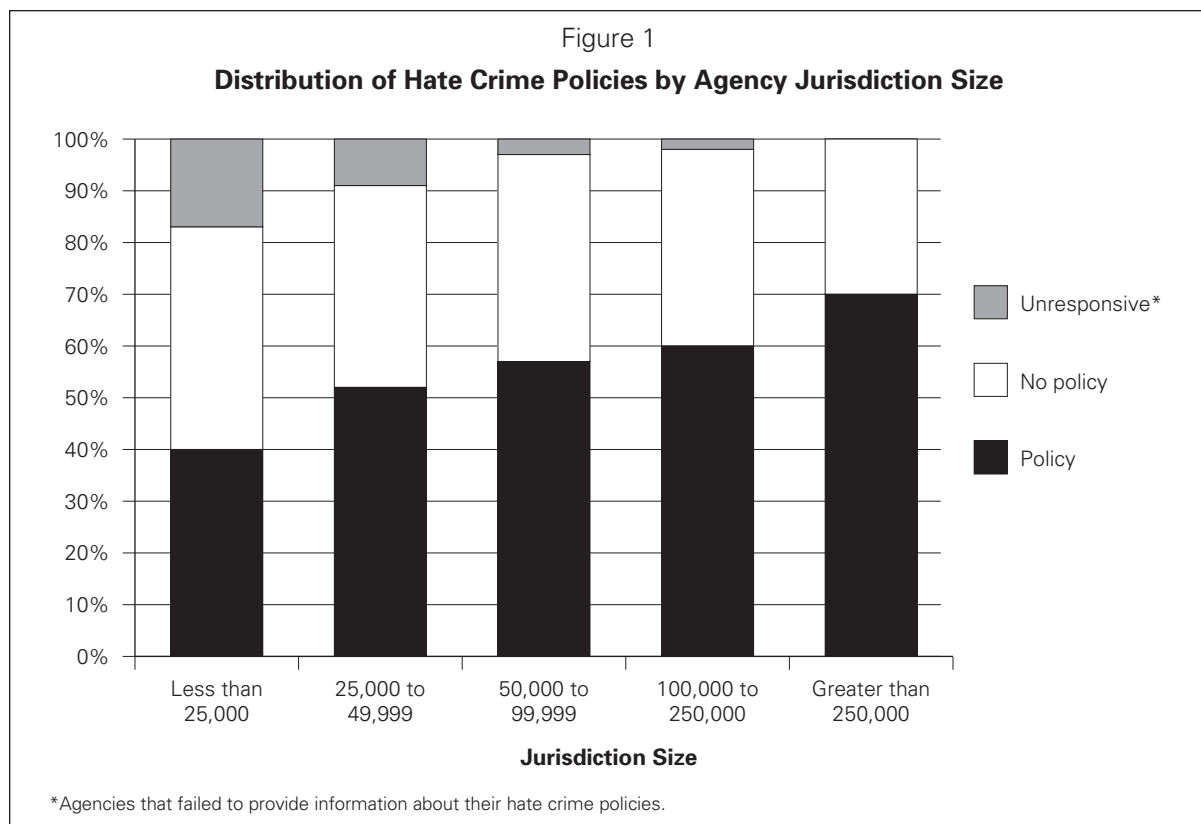
As shown in Table 1, nearly 41% of the responding police agencies (161, or 40.6%) reported they do not have a hate crime policy. Their reasons included lack of need, administrative delays as well as oversights in developing a (much-needed) hate crime policy, and ability to enforce hate crime law with existing policy.

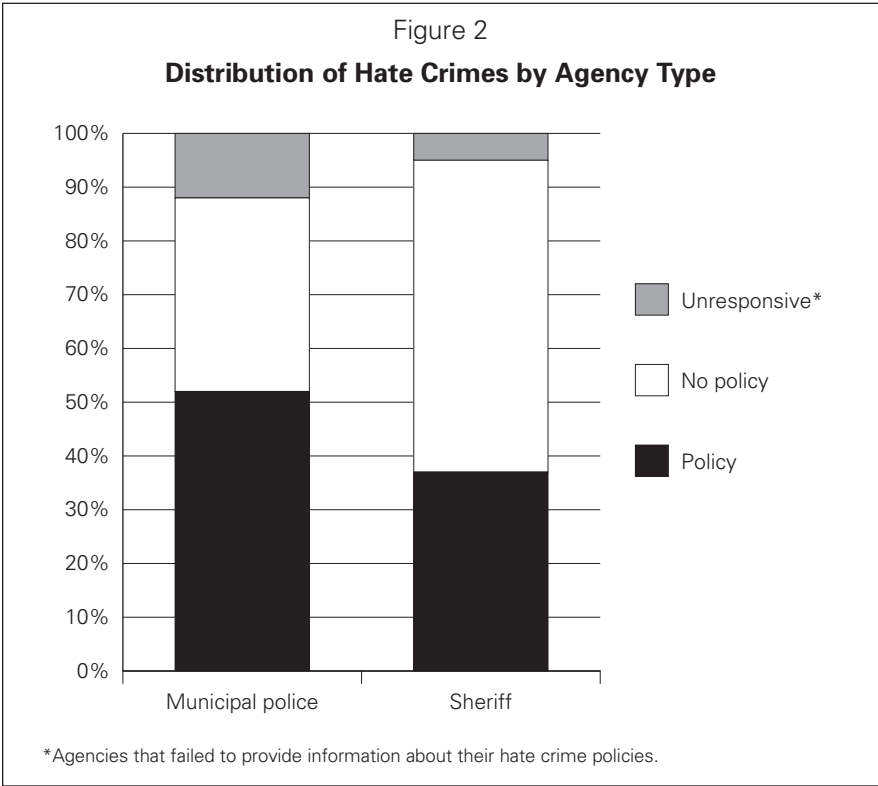
Table 1
Distribution of Hate Crime General Orders in California

Agency Type	Policy	No Policy	No Response	Total
Police	176	127	36	339
Sheriff	21	34	3	58
Total	197	161	39	397

Almost half of California's 397 law enforcement agencies (197, or 49.6%) provided a copy of their general order. These agencies have jurisdiction over the majority of the state's population (68%). Our results show that California law enforcement agencies are above the national average reported in the only published study documenting the prevalence of hate crime policies in the United States.¹¹

Figure 1 shows the relationship between agency size and the distribution of policies, and the frequency of responses to our requests





for information. Clearly, larger agencies were more likely to respond to our requests and were more likely to have a hate crime policy. Figure 2 shows the relationship between agency type and the distribution of policies, and the agency responses. Sheriff departments were more likely to respond but less likely to have a hate crime policy.

The Content of Hate Crime Orders

California’s hate crime orders vary immensely, but contain similar components and frequently follow the same structure as other general orders.

The majority (75%) start with a section that describes the policy’s purpose. Close to one-third (30.3%) simply reference state law and/or the U.S. Constitution to justify their responsibility to enforce hate crime law. Nearly half of the general orders (42.6%) refer to the importance of responding to moral threats and community strife to justify

enforcement of hate crime law. For example, one police department in a small border town states the purpose of enforcing hate crime law as follows:

It is the Department policy to ensure that the rights of all people guaranteed by the Constitution and the State of California are protected. Acts or threats of violence and damage to property motivated by hatred or prejudice are serious. They generate fear and concern among victims and the public in general, and have the potential of reoccurring and escalating. When such rights are infringed the Department will use every necessary resource to identify suspects, arrest them, and bring them to justice.

This matches the language used by interest groups promoting the passage of hate crime laws, suggesting that their philosophies have been institutionalized in some law enforcement organizations. Almost a quarter of the general orders (24.1%) specifically elevate hate crime law enforcement to a “priority 1 call.”

Definitions of Hate Crime

In the majority of general orders, the justification for enforcing hate crime law is followed by the definition of the crime officers are supposed to use when enforcing hate crime law. These definitions vary considerably in terms of the conduct covered by hate crime law, the terminology used, the motivation/mental state of the perpetrator, and the categories of persons covered.

The type of conduct defined as a hate crime ranges from broad to the quite specific. For example, seven agencies define hate crimes as “acts directed at an individual, business, or

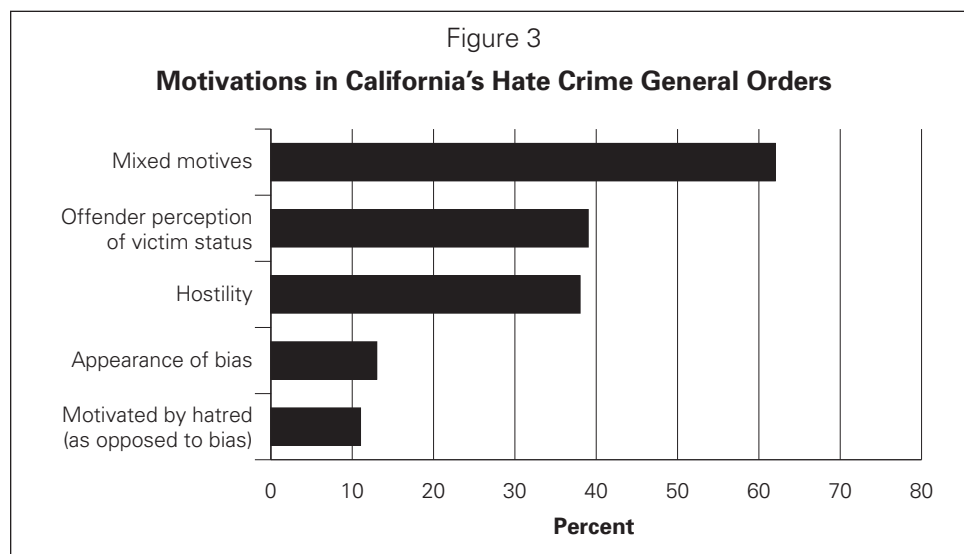
institution because of race, religion, ethnicity . . .” This definition might cause an officer to wonder what kinds of acts the policy excludes, as the phrasing does not distinguish between acts that are criminal and those that are not.

Other agencies are more careful to define the conduct as criminal.

Forty-six agencies use broad definitions that include terms like “acts designed to frighten or produce emotional suffering.” Of course, not all acts that produce emotional suffering may be criminal. Nonetheless, the wording of this definition might cause an officer to focus on the victim’s emotional reaction to an incident to determine how it should be classified. Such language promotes an expansive interpretation of the law and could lead to overreporting of hate crime.

The most common definition of a hate crime (67 agencies) refers to “intimidation, harassment, or threats,” which relates to California Penal Code §13519.6 . Officers who are not familiar with California court rulings that this portion of the law applies only to “true threats” rather than all, might classify as hate crimes acts that do not meet this strict requirement.

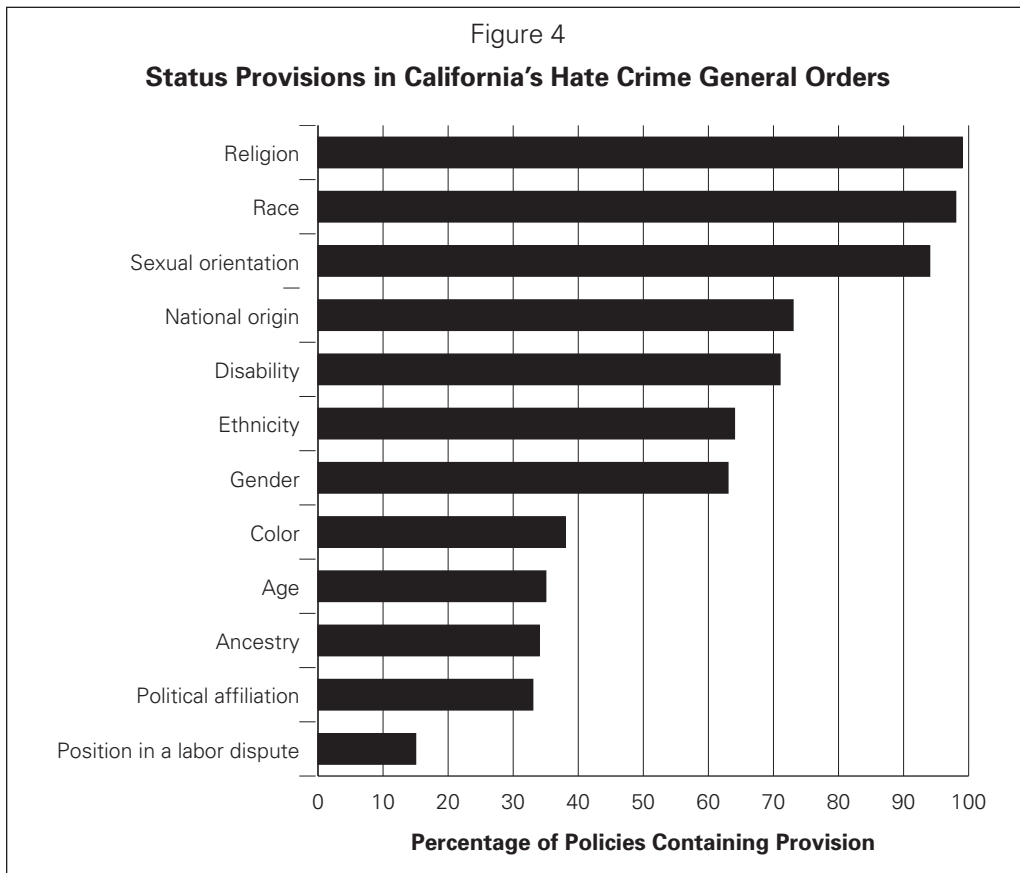
Some agencies (n = 21) use the broad concept of “prejudice-based incidents,” defined further as “violence or intimidation by threat of violence against the person or property of another.” A handful of others highlight particular examples, like “firebombing, cross-burn- ing.” This approach could narrow an officer’s



understanding of the applicability of hate crime law to the extent that the examples evoke stereotypical scenarios that do not fit a particular hate crime. Such cases might lead to an underreporting of hate crime.

The perpetrators’ motivation/mental states referenced in orders also varies, as shown in Figure 3. All of the orders we examined direct officers to discern certain mental states in the perpetrator, and 123 explicitly direct officers to recognize that bias can be one of multiple different motives for a hate crime. Nonetheless, some research shows that officers tend to rule out hate crime charges when multiple motives exist.

The real status of the victim does not rule out a hate crime classification in 77 agency orders. Thus, acts can be considered hate crimes even when the offenders wrongly perceive the victims’ status. For 74 agencies, hostility needs to be a motivating factor for an act to be considered a hate crime, which seems to require officers to assess the emotional state of perpetrators. Any crime that has the “appearance of bias” is classified as a hate crime by 25 agencies—which promotes an expansive view of the law. Hatred, rather than bias, is a determining factor for another 22 agencies.



The categories of persons covered also vary in hate crime definitions. Those included the most frequently are race, religion, and sexual orientation (see Figure 4). Between 94% and 99% of the definitions reference these categories. The next categories referred to most frequently (roughly two-thirds of the orders) are disability and gender, as well as other ways of referring to race and ethnicity. Gender is often a proxy for girls and women. The categories referenced least frequently are age, political affiliation, position in a labor dispute, and “other bases of discrimination.”

Distinguishing Between Hate Crimes and Hate Incidents

Nearly half of the general orders (48.7%) make a distinction between hate crimes and hate incidents. For example, one of California’s largest police departments defines a hate

crime as “any criminal act or attempt directed against a person(s), public agency or private institution . . . which results in injury, however slight; a verbal threat of violence which apparently can be carried out; an act which results in property damage; and, property damage or other criminal act(s) directed against a public or private agency.”

The department defines a hate incident as any noncriminal act directed against a person, including “epithets, distribution of hate material in public places, posting of hate material that does not result in property damage, and the display of offensive material on one’s own property.”¹² Officers are directed to respond to both hate crimes and incidents, and to keep this distinction in mind.

Despite their variations, definitions of hate crimes are not entirely unstructured, and appear to follow certain patterns. Of the 197

Source	No.	Conduct	Motive	Target
Ripon PD	17	unlawful action designed to frighten, harm, injure, intimidate, or harass	designed to frighten, harm, injure, intimidate or harass an individual, in whole or in part, because of bias motivation against the actual or perceived <race, religion, sexual orientation, etc.>	individual
Ralph Act	21	violence or intimidation by threat of violence	when the motive is hatred or when one or more of the personal characteristics of the victims includes, but is not limited to <race, religion, sexual orientation, etc.>	person or property of another
Hate Crimes Training Law (and thereafter POST)	65	intimidation, harassment, physical force, or threat of physical force	motivated in whole or in part by hostility to their (the victim's real or perceived) <race, religion, sexual orientation, etc.> or to deter the free exercise or enjoyment of any rights or privileges secured by the constitutions or laws of the U.S. or State of California	person, family, or group, or their property
Federal Bureau of Investigation	11	any criminal offense	motivated, in whole or in part, by bias	person or property
LA County Hate Crimes Task Force	7	acts	because of <race, religion, sexual orientation, etc.>	individual, institution, or business
Los Angeles Police Department	16	crime: injury, however slight; a threat of violence which apparently can be carried out	based on <race, religion, sexual orientation, etc.> actual or perceived; identified with or associated with (a particular group)	property, person, private institution; includes public and private agencies
National Organization of Black Law Enforcement Executives	10	an act or a threatened or attempted act	may in any way constitute an expression of hostility or bias	the person or property of another individual or group
California Bureau of Criminal Justice Statistics	29	a reportable crime is any act or attempted act to cause physical injury, emotional suffering, or property damage	appears to be motivated, all or in part by <race, religion, sexual orientation, etc.>	[none given]
Note: Nineteen agencies created their own anomalous definition of hate crime, and two agencies did not include a definition of hate crime in their order.				

agencies with these general orders, 178 rely on one of eight definitional models, 17 created their own definition, and two included no definition at all. The eight definitional models are shown in Table 2.

The most common approaches to preparing hate crime general orders are reported in Table 2.¹³ Sixty-seven or 34% of law enforcement agencies use the definition of hate crime contained in the hate crimes training law and thereafter adopted by POST.

All but one of the general orders for law enforcement agencies include official procedures for responding to potential hate crime.

Many agencies rely on definitions that originated in another California department, in various parts of the California Penal Code, or in model orders prepared by the International Association of Chiefs of Police, the Federal Bureau of Investigation, or by several different sources. Because of multiple copying, sometimes agencies have no knowledge of the original source. Most strikingly, no agency bases its definition of hate crime on the language of the actual criminal law statutes.

Potential Hate Crimes

All but one of the general orders for law enforcement agencies include official procedures for responding to potential hate crime. These vary immensely, from simply directing officers to take a report to precisely specifying the duties, responsibilities, and timelines for processing a potential hate crime from the moment the dispatcher answers to the moment the district attorney decides to press charges.

More than 7% of the general orders direct officers to report the incident, but indicate no duties beyond reporting. In sharp contrast, the police department of one large northern California city has a 15-page protocol that spells out the policy background and analysis; defines hate crimes and hate-motivated incidents, as well as key terms (bias, motivation, race, etc.); gives an inventory of relevant civil and criminal law, the criteria for reporting hate-motivated incidents, and procedural guidelines for communications personnel, beat cops, district sergeants, area lieutenants, unit commanders, press information officers,

community services officers, and victim-assistance personnel.

Finally, hate crime general orders vary in the degree to which they mandate agencies to provide services to victims and engage with the community as an integral part of enforcing hate crime law. More than half (51.3%) of the general orders we received mandate provision of law enforcement services to the victim at the time of the crime or shortly thereafter, as well as follow-up contact with the victim.

For example, one of California's largest police departments directs community relations officers to "make a follow-up visit to assure the victim that the police are doing everything possible to eliminate the fear factor and apprehend the suspects." Moreover, the policy includes a list of victim-assistance organizations in the community, which officers are instructed to relay to victims so they are aware of available services.

More broadly, almost half of the orders (47.2%) direct law enforcement personnel to meet with community groups not only to investigate hate crime, but to respond to community demands and needs in light of such incidents.

For example, the policy of a sheriff's department in one of the state's most densely packed counties specifies: "The crime prevention sergeant shall ensure that hate motivated crime information is incorporated into all Neighborhood Watch Group meetings and/or into any crime prevention programs that pertain to community awareness." Similarly, a police department in one of California's fastest-growing cities directs its officers to "identify impacted groups to allay fears and relay the department's concern over and response to this and related incidents." A small-town police department goes further by explaining why officers are required to

contact community members not directly related to the crime:

The department firmly believes that meeting with group representatives often provides positive mutual confidence, through which rumor can be quelled with factual information. This trust is crucial to preventing community unrest, which is often based on misinformation or lack of information. [Thus], immediate contact with community leaders is essential to maintaining order.

These kinds of policy directives require law enforcement personnel to engage with victims and the larger community in ways that extend beyond the immediate goal of responding to a crime, solving it, and forwarding the case to the prosecutor. They reflect a commitment to a larger view of policing, informed by community policing philosophy and the goals of the crime-victim movement.

Factors Related to the Adoption of Hate Crime Orders

To examine what determines the probability that law enforcement agencies will develop and enforce hate crime policies, we looked at both community and agency features and assessed interdependencies between them to understand how community and organizational interaction shapes the adoption of hate crime policies.

Community Factors

The decentralized system of U.S. policing ensures that law enforcement policies are rooted in particular community environments. Although law enforcement agencies share common federal and state laws, each decides autonomously how to develop enforcement policy and carry it out based on its assessment

Some policy directives reflect a commitment to a larger view of policing, informed by community policing philosophy and the goals of the crime-victim movement.

of the nature of specific community problems. The jurisdiction's structural composition as well as social pressures affect an agency's receptivity to the adoption of hate crime laws.

Logically, large cities with dense populations would be good candidates for innovative hate crime policies because they tend to have a wide array of crime problems, including hate crime, and a more demonstrable need for these policies. Surprisingly, however, hate crime orders are not more likely to be found in highly populous or dense jurisdictions. Similarly, the odds that a hate crime order will be adopted do not appear to increase with greater amounts of governmental resources available to ensure public safety, or in communities with high levels of violent crime.

Both high and low hate crime rates have been used to justify the creation of a hate crime policy. With regard to the latter, one chief of a small police department explained that the very low rates of hate crime reported in his community did not discourage him from developing hate crime policies. He explained that the lack of reporting indicated his department's failure to effectively detect hate crime and thus pointed to the need for an official policy.

Two characteristics that affect an agency's probability of adopting a hate crime order are the community's degree of racial and ethnic heterogeneity and its socioeconomic conditions. Increased heterogeneity significantly elevates the probability that an agency will have a hate crime policy. Similarly, wealthier

Arguably, the degree to which a law enforcement agency is attentive to community concerns is a crucial determinant of adopting a hate crime policy.

communities are more likely to have a hate crime order than poorer ones.

Community demand factors are direct or indirect pressures that lead to and/or support calls for law enforcement agencies to take action on specific issues of concern. We found that hate crime orders are not more likely to be adopted by law enforcement agencies in liberal communities. However, a good determinant of an innovative crime-control policy is the presence of an active and vocal group of citizens who organize to demand formal recognition for their policy preference(s). For example, the presence of a human rights or human relations organization committed to using the law to combat inequality in general and discriminatory violence in particular significantly increases the probability that the community's law enforcement agency will have a hate crime policy.

Agency Organizational Factors

Arguably, the degree to which a law enforcement agency is attentive to community concerns is a crucial determinant of adopting a hate crime policy. (We call this organizational susceptibility; see Figure 5.) To assess the degree to which this is true, we examined two features of law enforcement agencies: whether or not agencies annually survey their citizens, and the number of community groups with which they interact regularly.

We found that both variables affect the likelihood that an agency has created a hate crime general order. Law enforcement agencies that demonstrate police/community reciprocity

are more likely to be amenable to the development of new policies, such as those regarding hate crime.¹⁴

We also assessed the degree to which an agency's existing organizational practices and the values of its personnel need to be aligned in order for a hate crime policy to be adopted (see policy alignment in Figure 5). To test this we asked two questions: Are hate crime policies more likely to be adopted in departments with a demonstrated commitment to community policing? Are agencies that have more heterogeneity (defined in terms of gender, race, and ethnicity) more likely to have a hate crime policy?

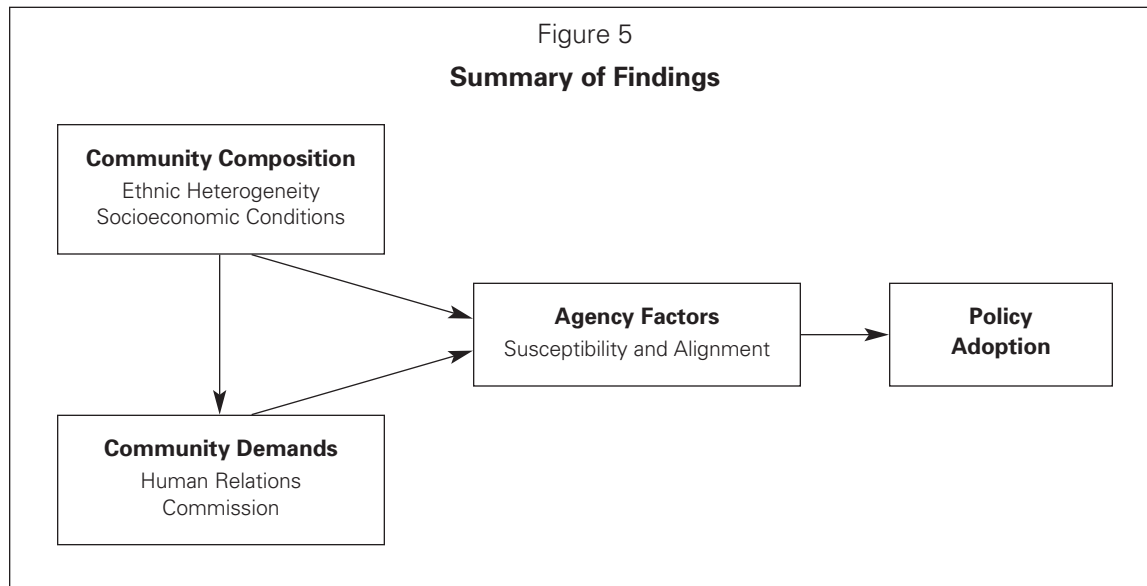
We found that both factors mattered. Agencies that have a measurable commitment to community policing and those with a diverse corps of officers are more likely to have adopted a hate crime general order.

We also examined organizational capacity to see whether that affected an agency's ability to develop a policy once an organizational commitment to doing so exists. We found little support for the idea that organizations with greater capacities—as measured by the number of employees, the proportion of administrative personnel, and the amount of agency expenditures—had a greater propensity to craft a hate crime order. The same can be said for an organization's wealth or the size of its administration.

Community/Organizational Interaction

When we assessed the interdependence between community and organizational effects we discovered the following relationships:

- Community characteristics affect the attributes of law enforcement agencies that arise within a particular locality, and those agency factors ultimately shape the probability that a hate crime order exists.



- Heterogeneous and affluent communities are more likely to have law enforcement agencies that rely on the kind of community reciprocity embodied in citizen surveys, meetings with community groups, and community policing practices. Community composition thus has an indirect effect on the development of a hate crime order, mediated by attributes of the local law enforcement agency.
- Heterogeneous and affluent communities are more likely to have a human relations commission than other communities, and these in turn are more likely to have an agency with a hate crime order.
- Community heterogeneity strongly influences the heterogeneity of the law enforcement agency; the more heterogeneous police forces are found in more heterogeneous communities.
- The size of an agency, its resource capacity, how liberal its community is, and the community's amount of violent crime do not affect the probability that it will have a hate crime order.

These findings are summarized in Figure 5, which shows that community effects on hate

crime policies are mediated by attributes of local law enforcement agencies.

The Impact of Hate Crime Orders on Policing

Symbolic vs. Instrumental Law

In order to understand the effect of hate crime policies once they are developed, authorized, and put in place, we examined whether such policies influence how law enforcement officers actually respond to hate incidents. In particular, we examined whether having a hate crime policy affects the rate at which officers report hate crime.

Although some people think hate crime policy is merely symbolic—that once the law is passed, little is done to ensure significant enforcement—a growing number of recent studies suggest otherwise. Despite the ordinary discretion involved in police work and what some see as ambiguity in the concept of hate crime, policing of hate crime is not impossible or unpatterned but is highly contingent upon predictable personnel and organizational characteristics.

Table 3

Hate Crime Reports Filed by California Law Enforcement Agencies

Average Annual Reports Filed	Number of Agencies	Percent of Agencies
None	104	26.2
More than 0, but less than or equal to 5	239	60.2
More than 5, but less than or equal to 10	30	7.6
More than 10, but less than or equal to 20	12	3.0
More than 20	12	3.0
Total	397	100.0

For example, in places where there is a high degree of organizational commitment to enforcing hate crime law and a set of routines for detecting and processing these cases, hate crimes are much more likely to be recognized, verified, and classified as such. In contrast, in places where there is less commitment to enforcing hate crime law and few or no enforcement routines, police are less likely to identify hate crime or forward cases for prosecution. Evidence also shows that the organizational commitment among police departments generally has increased in recent years.

The Relationship Between Policies and Reporting Practices

We focused on the reporting of hate crimes for two reasons: 1) law enforcement officers are responsible for documenting reports of hate crime and forwarding reports to other officials, most notably to the District Attorney's Office and the California Department of Justice; 2) these reports are the crucial first step in a larger process that can lead to the prosecution and sentencing of perpetrators of hate crimes. Law enforcement begins with reporting.

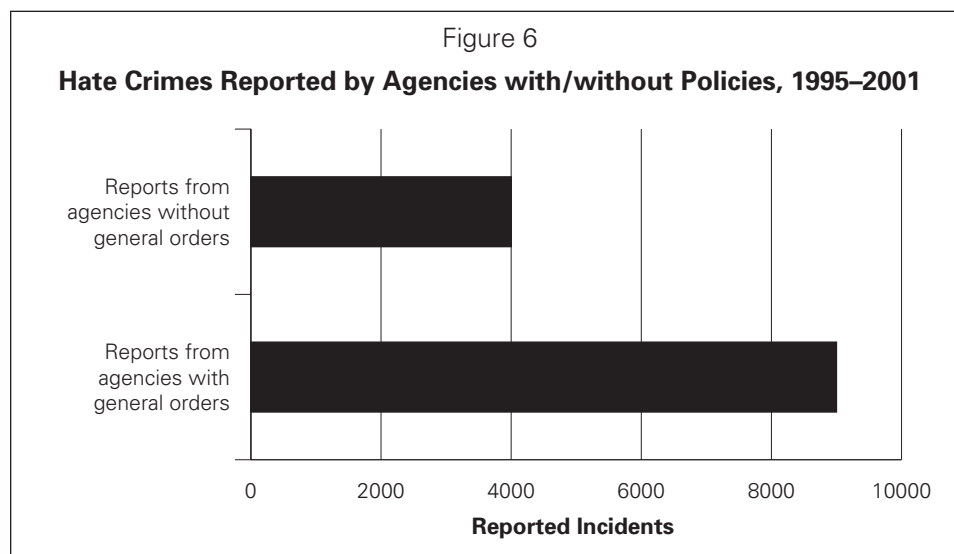
From 1995 through 2001, California police and sheriff agencies reported 13,485 hate crimes. That number is slightly lower than the overall total for the state because other

agencies (such as campus and park police, as well as the California Highway Patrol) contributed a few additional hate crime reports during the period observed. Overall, however, police and sheriff agencies accounted for 99.3% of the total number of California's reported hate crimes. Table 3 reveals the distribution of reporting across agencies. Most of these incidents were reported by only a handful of agencies.

Several researchers and commentators have hypothesized that having an official policy in place increases officer awareness and provides welcome guidelines about how to handle such cases. The signal to the community that the department cares about the issue may have an indirect impact on victims' willingness to cooperate with law enforcement in properly classifying an incident.

Some *prima facie* evidence suggests that hate crime orders positively affect reporting (see Figure 6). Agencies without orders reported 4,047 hate crime incidents from 1995 through 2001, indicating that orders are by no means necessary for officers to recognize and report incidents as hate crime. However, agencies that had orders contributed 70% of the reported number of hate crimes in California.

The presence of hate crime general orders appears to lead to a 25% rise in the average rate of hate crime reporting, holding constant



other factors that might affect the reporting rate (see Table 4). This difference is especially pronounced for agencies in larger jurisdictions. (These results should be viewed with caution until further analyses are completed, however, because we did not control for community factors that may affect both the creation of a general order and the hate crime incident rate.) As we noted earlier, because a number of interrelated community and agency factors combine to shape the creation of hate crime orders, changing one factor does not guarantee a particular outcome.

Recommendations for Improved Enforcement

Many social observers, criminologists, civil rights activists, and policymakers have claimed that hate crime laws are not being enforced. Our findings suggest that the state’s implementation of three major recommendations would lead to even better enforcement.

- The Attorney General’s Office should identify law enforcement agencies that have yet to develop hate crime policies, provide examples that are commendable and workable, and request their adoption.

Table 4

Predicted Number of Annual Hate Crime Reports by Jurisdiction Size

Population Size	Policy	No Policy
20,000	1.9	1.5
50,000	2.2	1.8
100,000	2.8	2.2
250,000	6.0	4.8
500,000	20.8	16.6
1,000,000	253.9	202.4

Agencies without these general orders should be encouraged to develop policies that include at least five components: 1) references to California hate crime statutes; 2) a clear description of the policy’s purpose; 3) a definition of hate crime that matches state’s criminal hate crime law; 4) specific protocols for officers to follow when handling potential hate crimes; and 5) a description of how to deal with victims and targeted communities. This kind of model standardizes the policy components, while enabling individual agencies to tailor the content to their needs and resources.

Such measures may result in two desirable outcomes: a 50% to 90% increase in the number of law enforcement agencies with hate

crime policies within a few years, and the ability for agencies to customize their policies in ways that suit their unique organizational and community circumstances while complying with a more general state policy.

- Encouraging law enforcement agencies to engage with the citizens they police (and to whom they are accountable), and to enact principles of community policing, which would facilitate the implementation of hate crime policy. Applauding or publicly recognizing law enforcement agencies that increase their employee diversity also would facilitate the implementation of hate crime policy.

The community factors that facilitate the development of hate crime policy, most notably affluence and diversity, are not easily subject to policy intervention. Decades of social policies targeting community-level change have had little impact on reducing

inequality and diversifying communities.

However, the organizational factors that facilitate the development of hate crime policy—especially law enforcement’s engagement with community members via annual citizen surveys and meetings with advocacy groups, as well as agency promotion of community policing and personnel diversification—are more easily subject to successful intervention.

- Designing effective policies is a necessary first step if elected officials, law enforcement officials, and members of the community are committed to identifying, responding to, and taking seriously the problem of bias-motivated conduct.

We have seen that agency policy positively influences the actions of officers. The fact that hate crime general orders increase the average rate of reporting these crimes justifies the development of more hate crime policy.

NOTES

1. Rovella. 1994:A1.
2. U.S. Department of Justice. 2000:1.
3. California Civil Code 51.7.
4. California Penal Code 422.6.
5. See, for example, California Penal Code 422.7.
6. California Penal Code 13519.6.
7. California Commission on Peace Officer Standards and Training. 1995.
8. Office of the Governor. 2000:16.
9. Horner. 2000.
10. Office of the Governor. 2000:21.
11. Walker and Katz. 1995.
12. In the case of hate incidents, orders typically instruct officers to take a report and nothing more. These incident reports, however, are not included in any subsequent crime reports to the state.
13. California Penal Code 13519.6.
14. Skolnick and Bayley. 1986:212. According to the authors, “police–community reciprocity means that police must genuinely feel, and genuinely communicate a feeling, that the public they are serving has something to contribute to the enterprise of policing.”

REFERENCES

- California Commission on Peace Officer Standards and Training. Guidelines for Law Enforcement's Design of Hate Crimes Policy and Training. 1995. Sacramento: State of California.
- Horner, Louise (ed.). 2000. *California Cities, Towns, and Counties: Basic Data Profiles for All Municipalities and Counties*. Palo Alto, California: Hornwood Press.
- Office of the Governor. 2000. "Governor Davis Releases Findings from Blue Ribbon Panel on Hate Crimes: Calls for Omnibus Anti-Hate Crime Legislation to be Introduced this Year." Sacramento, California.
- Rovella, David E. 1994. "Attack on Hate Crime Enhancement." *National Law Journal* 16(52):A1.
- Skolnick, Jerome H. and David H. Bayley. 1986. *The Thin Blue Line: Police Innovation in Six American Cities*. New York: The Free Press.
- U.S. Department of Justice. 2000. *Addressing Hate Crimes: Six Initiatives that are Enhancing the Efforts of Criminal Justice Practitioners*. Washington, D.C.: Bureau of Justice Assistance.
- Walker, Samuel and Charles M. Katz. 1995. "Less Than Meets the Eye: Police Department Bias-Crime Units." *American Journal of Police* 1:29-48.

STATUTES CITED

California Civil Code 51.7: Freedom from violence

California Penal Code 422.6: Injury or threat to person or damage to property because of specified beliefs or characteristics; Punishment

California Penal Code 422.7: Additional punishment of felony of intimidation because of specified beliefs or characteristics

California Penal Code 422.9: Punishment for violation of order prohibiting injury, threats, or property damage to another because of specified beliefs or characteristics

California Penal Code 1170.75: Commission of felony because of specified belief or characteristics of victim as aggravating circumstance

California Penal Code 13023: Reports by local enforcement agencies on motivations for crimes

California Penal Code 13519.6: Hate crimes training

