

MEMORANDUM

Date: January __, 2019
To: _____ Deputy State's Attorney/Deputy
From: _____ State's Attorney/Police Department Chiefs
Re: Hate Crimes and Bias Incident Reporting

Effective _____, this Office has agreed to follow the attached protocol guiding the reporting of hate crimes and other bias incidents in Vermont.

Bias Incidents. Whether rising to the level of a hate crime or not, bias incidents include events intended to threaten, offend or intimidate another because of the other's actual or perceived race, color, religion, age, disability, national origin, ancestry, sexual orientation, gender identity or service in the armed forces. Bias Incidents are a major concern for law enforcement because they include broad harms upon individual victims and communities. Perpetrators attack a victim's very identity, which can result in more severe, longer-lasting injury than if the crimes were committed for other reasons. If gone unaddressed, such crimes also spread fear in targeted communities and spawn concerns amongst victims that the broader community, including law enforcement, will not protect or support them.

It is therefore critical that all members of our law enforcement community have regular access to information regarding reported hate crimes in their community, so they can take swift, effective action to protect victims, apprehend perpetrators and prevent future crimes.

Civil Enforcement. Bias-motivated misconduct that does not constitute a crime—or that may not be provable beyond a reasonable doubt—may nonetheless be subject to civil enforcement by the Attorney General's Office (AGO), the Vermont Human Rights Commission (HRC) or federal authorities, including the U.S. Attorney's Office. For example:

- The AGO may seek a civil hate crimes injunction and compensatory damages, even if there is no criminal prosecution.
- The AGO, HRC and federal authorities may address non-criminal bias incidents under civil laws prohibiting harassment in (1) employment; (2) housing; or (3) places of public accommodation.

Protected Speech. Finally, some bias incidents do not involve either a criminal or civil violation but instead involve speech or expressive conduct that is constitutionally protected. Although enforcement action in response to such protected "hate speech" may not be possible, complaints of such incidents should be documented and taken seriously. The complaints may (1) relate to other actions that are unlawful; (2) identify community conflicts that may lead to unlawful activity; and (3) provide a basis for community outreach regarding positive, lawful responses to hate speech.