

# Criminal Justice Data Brief

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March 2017

## *Hate Crimes in Hawaii, 2016*

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Hawaii Revised Statutes §846-51 through §846-54 require the Department of the Attorney General to develop, direct, and report annually on a statewide hate crime statistics reporting program. With input and assistance from Hawaii's county prosecuting attorneys and police departments, the state program was launched on January 1, 2002.

This fifteenth annual report covers hate crime cases that reached a final disposition during Calendar Year 2016. Three cases were reported to the program for this time period; details appear on page 3. Fifteen-year summary statistics are also included.

### Definition and Background

Similar to the federal definition, the term "hate crime" is legally defined in Hawaii as "any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person" (HRS §846-51). "Gender identity or expression" was added in Hawaii in 2003, but was not included at the federal level until 2013.

It is important to note that hate crimes are not new types of offenses, but rather are traditional offenses (e.g., assault, vandalism) for which an offender's intent is at least partially based upon a bias against one or more of the protected groups. However, they differ from most traditional offenses in the frequently complicated process of determining whether or not a hate crime has, in fact, occurred. While two heinous and highly publicized hate crimes that occurred nationally in 1998<sup>1</sup> offer clear-cut examples, far more common are thousands of comparatively lesser offenses that exhibit at least one hate crime characteristic (see next

section), but where it is difficult to determine the true motive and intent of the offenders. One of the challenges in these otherwise routine cases is in having sufficient investigative resources to definitively answer not only the standard question that the criminal justice system is designed to address, i.e., "Who did what to whom?" but also, "What were the offender's thoughts, biases, and motives – what was in his or her heart and mind at the time?"

The use of the term "intentionally" in Hawaii's hate crime definition adds further complication, as there are specific legal standards that must be met in order to establish criminal intent.

### Hate Crime Characteristics

The FBI's national program emphasizes a list of fourteen characteristics that should be considered when determining whether or not an offense is a hate crime (CJIS, 1999). These same characteristics are also utilized in the Hawaii program. A critical concept concerning these characteristics is that they are not stringent criteria, *per se* – there is no requirement as to certain key characteristics or the minimum number of characteristics that must be present in order for an offense to be determined a hate crime.

1. The offender and victim are of a different race, religion, disability, ethnicity/national origin, or sexual orientation (hereafter "group").
2. Bias-related oral comments, written statements, or gestures were made by the offender.
3. Bias-related drawings, markings, symbols, or graffiti were left at the crime scene.
4. Certain objects, items, or things which indicate bias were used.
5. The victim is a member of a group which is overwhelmingly outnumbered by other residents in the community where the crime took place.

<sup>1</sup> The truck-dragging murder of James Byrd, Jr. in Texas in June, and the fatal beating of Matthew Shepard in Wyoming in October.

6. The crime occurred in an area where other hate crimes against the victim's group have occurred, and where tensions remain high against this group.
7. Several incidents occurred in the same locality, at or about the same time, and the victims were all of the same group.
8. A substantial portion of the community where the crime occurred perceives that the incident was motivated by bias.
9. The victim was engaged in activities promoting his/her group.
10. The incident coincided with a holiday or a date of particular significance to the victim's group.
11. The offender was previously involved in a similar hate crime or is a member of a hate group.
12. There are indications that a hate group was involved.
13. A historically established animosity exists between the victim's and the offender's groups.
14. The victim, although not a member of the targeted group, was a member of an advocacy group supporting the precepts of the victim group.

## Hate Crime Statistics Reporting in Hawaii

Given a need for the most complete and accurate information, as well as the legal requirement to establish intent, Hawaii's hate crime statistics reporting program is set at the prosecution level. This avoids the pitfall that has occurred in many jurisdictions where the police report hate crime statistics. Specifically, the police are not able to investigate the interpersonal dynamics involved in a large number of relatively less serious offenses that exhibit at least one hate crime characteristic (especially as the overwhelming majority of these cases would *not* ultimately be determined to be hate crimes), particularly when an offender is not identified/arrested or when the "possible hate crime" aspects of an alleged incident are ambiguous.<sup>2</sup>

By placing the point of data collection at the prosecution level, Hawaii's program avoids false

positives, utilizes limited police resources much more efficiently, and is based on incidents that clearly meet the State's legal definition of hate crimes, i.e., criminal acts for which the intent of the perpetrator(s) is determined to be derived from hostility toward one or more of the protected groups. It also provides the ability to conduct statistical inquiries into case processing and outcomes, which yield important data that are generally not included in other jurisdictions' hate crime reporting.

The prosecutors' ability to make determinations of the intent behind possible hate crimes is dependent upon receiving good preliminary information from the police. In the Hawaii program, it is the police departments' responsibility to ensure that "suspected hate crime" information, when applicable, is clearly and consistently included in their incident reports.

At the request of this Department, the FBI provided hate crime recognition training to Hawaii's police departments on several occasions during the latter half of the 1990s, and conducted specialized training sessions for prosecutors in early 2002. The police also include a hate crime module in their training programs for officer recruits.

The Hawaii program's data elements generally parallel those utilized in the FBI's program (CJIS, 1999). It was necessary to modify some of the data elements in order to more appropriately reflect the uniqueness of Hawaii (e.g., "beach or beach park" was added as a location code). In addition, the Hawaii program collects data on charge descriptions and dispositions. A completed hate crime report is due to the program no later than the last business day of the month following one in which a case reaches its final disposition, regardless of whether or not there was a conviction. Although Hawaii law does not provide for enhanced sanctions against perpetrators of misdemeanor-level hate crimes, or against juvenile perpetrators of hate crimes, these cases must still be reported for statistical purposes.

Similar to the FBI's quarterly summary report, an annual summary report form requiring the respective Prosecuting Attorney's (department head) signature is included in the Hawaii program. The annual summary provides the prosecutors' tally of hate crimes disposed and reported, and is useful for verifying data received by the program earlier in the year.

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<sup>2</sup> Although most "possible hate crimes" (i.e., cases that exhibit at least one of the 14 characteristics) are not genuine hate crimes, they must be initially treated as such. Sometimes even seemingly obvious hate crimes may be invalidated upon thorough investigation.

## Case Details for 2016

A total of three hate crime cases, including two from Kauai County and one from the City and County of Honolulu, were reported to the Hawaii program for Calendar Year 2016.

The first incident occurred in Kauai County on July 24, 2015, and the case reached its final disposition on January 28, 2016. In this incident, the victims, an adult male and adult female, were in their store when the offender, a 71-year-old man of Japanese descent, attempted to forcibly enter. While uttering numerous epithets of a generally anti-Arab/Middle Eastern nature, the offender verbally threatened to shoot the victims' entire family and burn down their business and car. Responding police officers arrested the offender, who was charged with three felony counts of terroristic threatening in the second degree, plus one misdemeanor harassment charge. Enhanced hate crime sanctions were not sought for the felony charges. The offender, whose criminal history in Hawaii includes two felony convictions and 42 misdemeanor and petty misdemeanor convictions, pleaded "no contest" to one count of terroristic threatening and the harassment charge, and the other two charges were dismissed with prejudice. He was credited for time served in jail and required to pay a total of \$85 in crime victim fees.

The second incident also occurred in Kauai County, on January 1, 2016, and was disposed on June 21, 2016. In this incident, the victim, an adult male, exited his home to take a walk. The offender, a 52-year-old Caucasian male, was in close proximity and, according to the prosecutors' report, "blaring his music, yelling, and causing a disturbance." The victim asked the offender to turn down the volume, but the offender began chasing the victim and threatened to rob him, while repeatedly uttering anti-Caucasian epithets. Additionally, after responding police officers arrested the offender, the offender kicked and otherwise damaged the interior of the patrol car. The offender, whose criminal record in Hawaii includes one felony conviction and 17 misdemeanor and petty misdemeanor convictions, was charged for three misdemeanor offenses: harassment, disorderly conduct, and criminal property damage in the fourth degree. He pleaded "no contest" to the property damage charge, and the other two charges were dismissed with prejudice. He was fined \$150 plus a \$30 crime victim fee.

The third incident occurred in the City and County of Honolulu on February 2, 2016 and was

disposed on December 13, 2016. In this incident, the adult male victim was operating his taxi cab and picked up the offender, a 47-year-old Caucasian male, and an unidentified male as passengers. Upon hearing through conversation that the driver is from Tunisia, the offender asked what an "Arab" is doing in "his" country, and said that, "We are coming for you! I'm going to kill you! I'm serious!" The offender then threw a cup of unknown liquid in the driver's face. The driver pulled over, and then the offender shoved the driver's head. The driver stated that he was going to call "911" and reached for his cell phone, but the offender grabbed away the phone. The offender then exited the vehicle and assumed a fighting stance. The driver also exited and asked the offender to return the phone, and the offender attempted to punch the driver in the face with his fist closed around the phone. The driver ducked the punch, and the offender dropped the phone when his punch missed. The driver was able to retrieve his phone and flee on foot. Responding police officers arrested the offender, who was charged for the felony offense of interference with the operator of a public transit vehicle, and two petty misdemeanor offenses: interference with reporting an emergency or crime, and theft in the fourth degree. Enhanced hate crime sanctions were not sought for the felony charge. The court granted the offender, who has an out-of-state address and no prior criminal history in Hawaii, a deferred acceptance of "no contest" for all three charges.

## Summary Statistics, 2002-2016

A total of 27 hate crime cases were reported to the State Program during its first 15 years of operation (2002-2016), yielding an average of 1.8 cases reported statewide per year and 0.45 cases reported per participating agency per year. As such, data from Hawaii's hate crime statistics reporting program remain consistent with those from the FBI's program, in that an average of less than one case per participating agency per year is typically reported. The following table provides statewide and county tallies of hate crime cases reported annually to Hawaii's program:

Year	C&C Honolulu	Hawaii County	Maui County	Kauai County	State Total
2002	2	0	0	0	2
2003	1	0	0	0	1
2004	1	0	0	0	1
2005	0	1	0	0	1
2006	6	0	0	0	6
2007	1	0	0	0	1
2008	0	1	0	0	1
2009	0	0	1	0	1
2010	2	0	0	0	2
2011	1	0	0	0	1
2012	0	0	0	0	0
2013	0	1	0	3	4
2014	0	0	0	1	1
2015	0	0	0	2	2
2016	1	0	0	2	3
<b>Total</b>	<b>15</b>	<b>3</b>	<b>1</b>	<b>8</b>	<b>27</b>

Due to multiple biases expressed in some cases, the 27 hate crime cases identified above involved a total of 34 bias instances, as categorized below:

Bias Type	# of Bias Instances	% of Total Bias Instances	% within Bias Type
<b>Race/Ethnicity/Nat'l Origin</b>	<b>26</b>	<b>76.5</b>	
Anti-White	16	47.1	61.5
Anti-Arab/Middle Eastern	3	8.8	11.5
Anti-Black	3	8.8	11.5
Anti-Japanese	2	5.9	7.7
Anti-Filipino	1	2.9	3.8
Anti-Micronesian	1	2.9	3.8
<b>Sexual Orientation</b>	<b>5</b>	<b>14.7</b>	
Anti-Homosexual	5	14.7	100
<b>Religion</b>	<b>3</b>	<b>8.8</b>	
Anti-Jewish	2	5.9	66.7
Anti-Muslim	1	2.9	33.3

## Reference

Criminal Justice Information Services Division (October 1999). *Hate Crime Data Collection Guidelines*. U.S. Department of Justice: Federal Bureau of Investigation.

*This report can be downloaded in PDF format from the Crime Prevention & Justice Assistance Division web site:*

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