

# **Protecting Californians from Hate Crimes: A Progress Report**



**California Senate Office of Research**

**August 2004**

August 2004

Dear Senate and Assembly Colleagues:

Hate crimes, like any form of terrorism, are triply harmful.

- They hurt the immediate victims by inflicting loss and pain, the same as any violent crime.
- They attack the immediate victim's very identity, often causing more severe and longer-lasting trauma than similar violent crimes committed for other reasons.
- They terrorize everyone in the communities they target. We saw this most clearly on September 11, 2001 – the day of what probably was the largest single hate crime in United States history, attacking and traumatizing all Americans because of our identity.

This report gives us a picture of hate crime in California today and the extensive and continuing steps we have taken against it. We learn that our state is a national leader in fighting hate crimes, and that our efforts have produced significant, measurable successes. We also learn about our sometimes major failures and continuing problems, and are presented with a wide variety of concrete options for action.

Please join me in weighing the evidence and options – and taking action to expand our efforts to protect all Californians from hate crimes.

Sincerely,

Sheila James Kuehl  
Senator, 23<sup>rd</sup> District

# **Protecting Californians from Hate Crimes: A Progress Report**

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## ***Preface***

On June 19, 1999, two brothers with white-supremacist, anti-Semitic, anti-government, and anti-abortion views who lived near Redding set fire to Congregation B'nai Israel, Congregation Beth Shalom, and Keneset Israel Torah Center in the Sacramento area. On July 1, the same men, James Williams and Benjamin Williams, killed a gay couple, Gary Matson and Winfield Mowder, near Redding. The next day, the Williams brothers set fire to the Sacramento office of the Choice Medical Group, which provides abortions. Both pleaded guilty to federal arson charges in the synagogue and clinic attacks. Benjamin Williams, who confessed the murders and synagogue arsons to a reporter, committed suicide while awaiting trial on state murder and hate-crime charges. James Williams pleaded guilty to murder, hate-crime, and arson charges and is serving a life sentence.

On August 10, 1999, a member of a white-supremacist, anti-Semitic, anti-government, anti-abortion group from Washington state shot three children and two adults at the North Valley Jewish Community Center in Granada Hills near Los Angeles. The shooter, Bufford Furrow, later said that he then went looking for a nonwhite person to murder. He shot and killed Joseph S. Iletto, a Filipino-American from nearby Chatsworth. The fact that the victim was a government employee – a Postal Service letter-carrier – made him a doubly appealing target, Furrow said. Furrow pleaded guilty to 16 federal charges including terrorism and murder, with hate-crime sentence enhancements, and is serving a life sentence.

In the nine weeks following the September 11, 2001, terrorist attacks, California and the rest of the country suffered what may have been the most widespread and prolonged wave of targeted, violent hate crimes since the end of widespread lynchings of African-Americans.<sup>1</sup> The targets of post-9/11 attacks typically were both U.S.-citizen and foreign-national

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<sup>1</sup> Six reported lynchings of African-Americans in 1946 generally marked the end of that horrible phase of American history, in which a reported 3,445 African-Americans were murdered nationwide, including two in California. There also were isolated lynchings reported through 1981 and some suspected since then. (Brian Levin, Center for the Study of Hate and Extremism, California State University, San Bernardino, personal communication, Oct. 28, 2003.)

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Arabs and Muslims, but also Sikhs, South Asians, and Latinos who the criminals apparently misperceived as members of the targeted groups.

The American Arab Anti-Discrimination Committee collected news media and personal accounts of more than 700 incidents of violence and threats nationwide, including 75 in California.<sup>2</sup> State Department of Justice data indicate that this California figure, at least, was a significant undercount. The state in 2001 reported 428 hate crimes in the subcategory that includes Arab and other Middle Eastern victims, a 345.9 percent increase over 2000, and 79 anti-Islamic hate crimes, a 2,333.3 percent increase, which the Department of Justice attributes to “post-9/11 hate crime activity.”<sup>3</sup> These official figures omit five homicides in California in the first five weeks after 9/11, and a sixth death a year later, that may have been hate-crime murders.<sup>4</sup>

Reacting to these 1999 and 2001 hate crimes, the Legislature and executive branch responded with strong public statements, new and strengthened laws and programs, and high-level studies of what more should be done. Community groups, local governments, and schools throughout California initiated or redoubled cultural-diversity, human-relations, and hate-prevention efforts. Law-enforcement agencies at every level increased training, community policing, and enforcement.

These responses built on a history of state action dating at least to 1978, when California voters adopted the country’s first law to define and counter discrimination-based violence. The state remains a national leader in the fight against hate crimes.<sup>5</sup>

While the highly visible 1999 and 2001 hate crimes received great public and official attention, there are indications that crimes against African-Americans, gay men and boys, and persons with disabilities remain more numerous.

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<sup>2</sup> Anne Stewart, *Report on Hate Crimes and Discrimination Against Arab Americans: The Post-September 11 Backlash*, American Arab Anti-Discrimination Committee, Washington, D.C., 2003 <[http://www.adc.org/hatecrimes/pdf/2003\\_report\\_web.pdf](http://www.adc.org/hatecrimes/pdf/2003_report_web.pdf)>

<sup>3</sup> *Hate Crime in California 2002*, Department of Justice, Sacramento, June 2003, p. 16 <<http://caag.state.ca.us/cjsc/publications/hatecrimes/hc02/preface.pdf>>

<sup>4</sup> Amardeep Singh, “‘We Are Not the Enemy’: Hate Crimes Against Arabs, Muslims, and Those Perceived to be Arab or Muslim after September 11,” *Human Rights Watch*, Vol. 14, No. 6(G), Washington, D.C., Nov. 2002, pp. 17-19 <<http://www.hrw.org/reports/2002/usahate>>; Bob Cuddy et al., *Caught in the Backlash: Stories from Northern California*, American Civil Liberties Union of Northern California, San Francisco, Nov. 13, 2002, p. 6 <<http://acluweb.best.vwh.net/911/backlash>>; and A. Stewart, *op. cit.*, p. 70.

<sup>5</sup> Warren Christopher and George Deukmejian (co-chairs), “Letter from the Panel to the Governor,” *Governor’s Advisory Panel on Hate Groups: Final Report*, Governor’s Office, Sacramento, Jan. 2000 <[http://www.ca.gov/govsite/pdf/press\\_release/report3.pdf](http://www.ca.gov/govsite/pdf/press_release/report3.pdf)>; and Valerie Jenness and Ryken Grattet, *Hate Crime Policing in California: A Research Report*, Berkeley: California Policy Research Center, University of California, Aug. 30, 2003, p. 3.

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Perhaps as a result of the efforts of state officials as well as countless individuals and groups throughout California, reported hate crimes dropped in 2002 and 2003 by 23.8 percent compared with the year before the 9/11 spike.<sup>6</sup> While there is wide agreement that official figures under-report the problem, there is some evidence that both the spike and the drop represent actual trends.

This report looks at the successes and failures of California's recent efforts to combat hate crime.

The Appendix contains a list of state laws addressing the problem.

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<sup>6</sup> *Hate Crime in California 2003*, Department of Justice, Sacramento, July 2004, p. 16  
<<http://caag.state.ca.us/cjsc/publications/hatecrimes/hc03/crime.pdf>>.

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## ***Executive Summary***

Hate crimes in California rose to record highs in 2001, the year of the terrorist attacks on the World Trade Center and Pentagon. Most of the increase reflected a wave of violence after September 11 against people perceived to be Arabs or Muslims. Crimes that targeted Arabs and other Middle Easterners jumped 346 percent that year, local law enforcers reported to the California Department of Justice. Reported crimes against Muslims skyrocketed 2,333 percent.

In the two years after 2001, however, reported hate crimes in California fell to record lows, dropping by 26.6 percent in 2002 and 10 percent in 2003. Overall, they plunged a net of 24 percent between 2003 and 2000, the year before the attacks of 9/11. A hate-crime hotline established by the Department of Fair Employment and Housing recorded 233 calls in the six months after 9/11. It received just nine in the six months from October 2002 to March 2003.

Perhaps these declining reports of crimes of bias reflect the attention that California has placed in recent years on fighting hate crimes through public statements that help create a climate of acceptance and increased enforcement of hate-crime laws, even as its population has grown increasingly diverse.

Historically each year, including in 2001, the greatest numbers of hate crimes have been reported against African-Americans and male homosexuals.

Hate crimes by legal definition are committed wholly or partly because of a victim's ancestry, race, ethnicity, nationality, religion, sexual orientation, gender, or disability. Laws against these crimes essentially are aimed at protecting anyone from being attacked on motives of prejudice. A defendant need not actually hate a victim to be convicted of committing a so-called hate crime. The perpetrator only must select the victim because of discrimination against one or more of the victim's protected characteristics.

Victims of hate crimes may feel intensely vulnerable, angry or depressed and may experience future difficulties with interpersonal relationships. These effects, considered symptoms of post-traumatic stress disorder, may last as long as five years. In contrast, victims of other kinds of crimes typically experience a decrease in psychological problems related to their ordeals within two years. Like others who suffer post-traumatic

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stress, hate-crime victims may heal more quickly if they receive appropriate support and resources soon after the crimes.

Understanding the definitions and descriptions of hate crimes identified in California statutes is crucial for ensuring the statutes are enforced. Law-enforcement personnel must know what constitutes a hate crime for such crimes to be successfully reported, charged and prosecuted and for victims to be appropriately counseled and/or compensated. Yet only 49.1 percent of nearly 400 city police departments and county sheriffs' offices in California had hate-crime policies and protocols in place in 2002, according to a University of California study.

University of California researchers Valerie Jenness and Ryken Grattet found that hate-crime guidelines for officers increased a law-enforcement agency's likelihood of reporting such crimes to the state by 25 percent. Without policies to guide peace officers, they determined, offenses motivated by bias are far less likely to be reported or prosecuted as hate crimes. As explained in Chapter I, six studies in the last four years have found significant undercounting of hate crimes in California and nationwide.

Rarely are crimes based on gender or disability reported as hate crimes. Yet significant research suggests that those with disabilities are targeted for violent crime at much higher rates than the general population. Just nine crimes of gender bias were reported in California in 2003 and only one crime of prejudice based on disability.

California keeps no hate-crime records on the significant racial and ethnic gang violence among inmates or youthful wards behind bars or on crimes against mentally-ill prisoners that may qualify as hate offenses. Crimes against immigrants are not defined as hate crimes unless based on race, ethnicity or nationality. However, the Southern Poverty Law Center reported a rise in offenses against documented and undocumented immigrants throughout the country in 2001.

Despite the state's many protective laws against hate crimes, as discussed in Chapter III, relatively few defendants are prosecuted or convicted of violating them. California law-enforcement agencies reported nearly 1,500 hate offenses against 1,815 victims in 2003. Of those, district attorneys filed 304 hate-crime complaints and obtained just 128 hate-crime convictions. Most offenders aren't caught, many who are arrested may not be charged with hate crimes and, to convict suspects, prosecutors have the difficult task of proving specific intent.

Chapter IV notes efforts by the executive branch in recent years to discourage offenses based on bias and assist victims. Governor Gray Davis in 1999 appointed former U.S. Secretary of State Warren Christopher and former California Governor George Deukmejian to chair an advisory commission on hate groups. Although the panel determined that "California's laws addressing hate-motivated behavior are among the

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most comprehensive in the nation,” it identified further steps to “help turn the tide against hate groups.”

Attorney General Bill Lockyer in 2000 created a Civil Rights Commission on Hate Crimes. It reported the following year that many senior supervisors and administrators in law enforcement lack training in identifying and handling hate crimes. As of June 2003, 43 percent of the state’s peace officers had received a four-hour course on hate crimes offered by the Commission on Peace Officer Standards and Training. In addition, the Department of Justice has created a hate-crime database that is expected to become available this year to all law-enforcement agencies in California.

Hate-crime victims in California are eligible for up to \$70,000 from the State Victims Compensation Program to help reimburse out-of-pocket costs. The Department of Fair Employment and Housing may award victims damages of up to \$150,000 for emotional distress and losses.

This report explores what is known about hate crimes based on the research of experts. It also examines what has been done to define, punish and discourage offenses motivated by bias and hatred in the Golden State. Chapter I explores the statutory definitions of hate crimes. Chapter II reviews statistics and trends. Chapter III discusses recent legislation and its implementation, while Chapter IV looks at the role the executive branch has played in combating these crimes. Chapter V concludes with an overview of emerging issues. In exploring these, it notes that disparities continue in the enforcement of laws that seek to protect Californians from crimes based on who they are.

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## **Chapter I:** **What is a Hate Crime?**

### ***Discrimination, Not Hate, Is Required for a “Hate” Crime***

The key element that generally distinguishes a hate crime from any other crime under federal and most states’ laws is that the perpetrator commits the crime wholly or partly because of an actual or perceived protected characteristic of the victim -- typically disability, gender, nationality, race or ethnicity, religion, or sexual orientation. This requirement of specific intent is in addition to, not instead of, the requirement of a prohibited action; hate-crime laws do not criminalize mere thought.<sup>7</sup>

Contrary to what one might expect of the definition of a “hate” crime, the perpetrator under most hate-crime laws needn’t express or even feel hate toward the victim.<sup>8</sup> In upholding a hate-crime law that omits a requirement for hate, the Florida Court of Appeals reasoned that, from the victim’s viewpoint, the perpetrator’s hate – or lack of it -- is irrelevant:

*[I]t does not matter why a woman is treated differently than a man, a black differently than a white, a Catholic differently than a Jew; it matters only that they are.... It doesn’t matter that [the defendant] hated Jewish people or why he hated them; it only matters that he discriminated against [the victim] by beating him because he was Jewish.<sup>9</sup>*

Hate-crime laws of this type require proof of intentional, discriminatory selection of the victim because of a protected characteristic. It is the

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<sup>7</sup> Ryken Grattet and Valerie Jenness, *Policy Responses to the Victimization of Persons with Disabilities: An Assessment of the Viability of Using Hate Crime Law to Enhance the Status and Welfare of Persons with Disabilities*, presented at the National Academy of Sciences annual meeting, Oct. 1999, pp. 8-9.

<sup>8</sup> Many authors refer to hate crimes, perhaps more accurately, as “bias crimes” or “discrimination crimes.”

<sup>9</sup> *Dobbins v. State* (1992) 605 S. 2<sup>nd</sup> 922.

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perpetrator's act of discrimination, not hate or hate speech, that is punishable.<sup>10</sup> The U.S. Supreme Court has upheld this approach.<sup>11</sup>

***California Hate-Crime Laws***

California has three types of hate-crime laws:

- Statutes that make certain discriminatory actions a crime. All of these statutes follow the discriminatory-selection model that the courts have upheld, as discussed above.
- Statutes that prescribe additional penalties for certain other crimes when they are committed because of bias. The sentence enhancements range from racial-sensitivity training classes to the death penalty.
- Statutes that require reporting of hate crimes, require training of police and school personnel on hate crimes, require public-information efforts to combat such crimes, protect certain hate-crime victims from discrimination in insurance coverage, and provide rewards for information on hate crimes.

These state laws include a wide variety of definitions of "hate crime," and of crimes that commonly are called hate crimes. In addition, other agencies and groups have adopted multiple definitions that depart from these statutory definitions. The Commission on Peace Officer Standards and Training has adopted a definition in its basic hate-crime training curriculum for law-enforcement officers, the California District Attorneys Association has a definition in its prosecutor hate-crime training publication, several other state agencies define the term in various ways in various publications, and the federal government and private anti-hate groups have adopted definitions that many individual law-enforcement agencies have used to craft their own working definitions.

Most of the state's statutory definitions – and all of those that create crimes or that increase penalties for other crimes – say that the perpetrator's intent must be to commit the crime *because of, by reason of, or motivated by* the victim's real or, in some cases, perceived protected characteristic.<sup>12</sup> One states that "because of" means that "the bias motivation must be a cause in fact of the offense, whether or not other causes also exist." It goes on to require, "When multiple concurrent

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<sup>10</sup> Scott Phillips and Ryken Grattet, "Judicial Meaning-Making, and the Institutionalization of Hate Crime Law," *Law & Society Review*, Vol. 34, No. 4, 2000, p. 584.

<sup>11</sup> *Wisconsin v. Mitchell* (1993) 508 U.S. 476.

<sup>12</sup> Education Code Sections 233, 48990.3 and 67380; Insurance Code Section 676.10; and Penal Code Sections 190.03, 190.2, 422.6, 422.7, 422.75, 594.3, 1170.75 and 13023.

motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.”<sup>13</sup>

Two sections concerning school hate-crime reporting<sup>14</sup> and one concerning the Commission on Peace Officer Standards and Training, however, use a definition requiring *hostility* based on the protected characteristics.<sup>15</sup>

All of California’s statutory definitions identify certain real and, in some cases, perceived characteristics of victims for protection. Various statutes use these terms to describe the protected characteristics: *age, ancestry, color, creed, disability, ethnic background, ethnicity, gender, handicap* (sic), *national origin, nationality, race, religion, religious belief*,<sup>16</sup> and *sexual orientation*. Two also protect the characteristics of being *identified*<sup>17</sup> or *associated with* or *an advocate for*<sup>18</sup> persons with another protected characteristic.

Since all persons have these characteristics, the hate-crime laws protect everyone.<sup>19</sup> The statutes don’t create “protected classes.”

Some California statutes require that the perpetrator’s action also meet certain other criteria to fit the definition. For example, the principal section creating a hate crime<sup>20</sup> states that no person 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 laws of this state or by the Constitution or laws of the United States* because of the victim’s real or perceived protected characteristics.

Interestingly, the law requiring schools to report “hate crimes” to the state for statistical purposes,<sup>21</sup> the law guiding the Commission on Peace Officer Standards and Training’s “hate crime” training,<sup>22</sup> and the law against discrimination in providing insurance to “hate crime” victims<sup>23</sup> don’t explicitly require that the covered acts of hate actually be crimes. These three definitions are so broad they may cover some non-criminal

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<sup>13</sup> Penal Code Section 422.75.

<sup>14</sup> Penal Code Sections 628.1, 628.2.

<sup>15</sup> Penal Code Section 13519.6.

<sup>16</sup> The state Department of Justice interprets “anti-religion” to include “anti-atheism/agnosticism, etc.” In the last nine years, two hate crimes have been reported in this subcategory (*Hate Crime in California 2003*, Department of Justice, Sacramento, July 2004, p. 42  
<<http://caag.state.ca.us/cjsc/publications/hatecrimes/hc03/preface.pdf>>

<sup>17</sup> Penal Code Section 422.75(b).

<sup>18</sup> Penal Code Section 13519.6.

<sup>19</sup> For example, the state Department of Justice reported 85 anti-white crimes in 2003, the fourth largest number of any subcategory of race/ethnicity hate crimes (*Hate Crime in California 2003*, *op. cit.*, p. 6).

<sup>20</sup> Penal Code Section 422.6(a).

<sup>21</sup> Penal Code Section 628.1.

<sup>22</sup> Penal Code Section 13519.6.

<sup>23</sup> Insurance Code Section 676.10.



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acts that are more commonly considered “hate incidents” or “hate-motivated incidents.”<sup>24</sup>

Finally, California has several statutes prohibiting acts such as cross burning on another person’s property and protecting adults with disabilities, religious worshippers, and places of worship from various criminal acts, with no requirement that the criminal have a specific intent to harm a person or property because of a protected characteristic. These laws generally aren’t considered hate-crime laws because of the lack of such a specific-intent requirement, though they include some of the same protected characteristics and are directed at some of the same behavior as hate-crime laws.

Please see the Appendix, page 61, for a list of California’s hate-crime and related statutes.

***Law-Enforcement Agencies’ Definitions***

Law-enforcement agencies often adopt written policies, usually called general orders, instructing officers how to carry out their responsibilities. The policies often include working definitions of legal terms. These policies are key to front-line officers’ understanding and enforcement of the law, a 2003 University of California report finds.<sup>25</sup> The report observes that “there is growing evidence that general orders shape the practice of policing,” noting that three studies have found that when a specific hate-crime policy exists, officers tended to follow the guidelines closely.<sup>26</sup> In some cases, according to a fourth study, policies “alter dramatically” what officers do.<sup>27</sup>

The university researchers interviewed 12 California law-enforcement officers ranging from patrol officers to police chiefs. They found that “officers rarely consult the California [Penal] Code; instead, they get their

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<sup>24</sup> “Hate motivated incident” means an act or attempted act which constitutes an expression of hostility against a person or property or institution because of the victim’s real or perceived race, religion, disability, gender, nationality, or sexual orientation. This may include using bigoted insults, taunts, or slurs, distributing or posting hate group literature or posters, defacing, removing, or destroying posted materials or announcements, posting or circulating demeaning jokes or leaflets” (Penal Code Section 628.1(b)(1)).

<sup>25</sup> V. Jenness and R. Grattet, *op cit*, p. 3.

<sup>26</sup> James J. Nolan and Yoshio Akiyama, “Assessing the Climate for Hate Crime Reporting in Law Enforcement Organizations: A Force-field Analysis,” *The Justice Professional*, 2002; Jennifer Balboni and Jack McDevitt, “Hate Crime Reporting: Understanding Police Officer Perceptions, Department Protocol, and the Role of the Victim: Is There Such a Thing as a Hate Crime?” *Justice Research and Policy*, 2001; and Susan Martin, “A Cross-Burning is Not Just an Arson: Police Social Construction of Hate in Baltimore County,” *Criminology*, 1995; cited in *Ibid*, pp. 11-17.

<sup>27</sup> Chuck Wexler and Gary T. Marx, “When Law and Order Works: Boston’s Innovative Approach to the Problem of Racial Violence,” *Crime and Delinquency*, 1986, cited in *Ibid.*, p. 10.

understanding of the law from a variety of sources, including the general orders....”<sup>28</sup>

As of 2002, 49.1 percent of California’s 397 city police departments and county sheriff’s offices, covering 70 percent of the state’s population, had adopted their own general orders or other formal policies on hate crimes, according to the study.<sup>29</sup> The local law-enforcement agencies’ policies, in the report’s words, “vary immensely”:<sup>30</sup>

*Some definitions appear to be overly-inclusive, while others are comparatively vague.... The truly amazing thing is that no agency in the state directly relies on the actual criminal statutes for definition.*<sup>31</sup>

Demonstrating the variation in the policies of the local law-enforcement agencies, the University of California report finds that:

- 70 agencies inaccurately tell their officers that “hostility” is an element that must be present for a crime to be a hate crime.<sup>32</sup> Another 64 require “intimidation, harassment, or threats,”<sup>33</sup> while another 40 require actions “designed to frighten or produce emotional suffering,”<sup>34</sup> which in fact most laws don’t require.
- 113 accurately use definitions that explicitly direct officers to recognize circumstances involving mixed motives as hate crimes if at least one of the motivations meets the hate-crime definition. The rest omit this fact.<sup>35</sup>
- 99 accurately inform officers that the actual status of the victim is not a factor that excludes an act from being classified as a hate crime. The rest omit this fact.<sup>36</sup>
- Almost all of the 49.1 percent that have policies accurately include race, religion, and sexual orientation as protected characteristics.<sup>37</sup> Only about two-thirds of the 49.1 percent accurately include gender and disability.<sup>38</sup>

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<sup>28</sup> V. Jenness and R. Grattet, *op cit.*, p. 24.

<sup>29</sup> *Ibid*, p. 28.

<sup>30</sup> Of the 194 agencies that have general orders, 165 base their definitions on those developed by a variety of sources including state agencies, national law-enforcement and anti-hate groups, and other law-enforcement agencies; 22 created their own definitions; and 7 use no definition. (*Ibid*, pp. 33, 75.)

<sup>31</sup> *Ibid*, p. 29, 33.

<sup>32</sup> *Ibid*, p. 32.

<sup>33</sup> *Ibid*, p. 31.

<sup>34</sup> *Ibid*, p. 30.

<sup>35</sup> *Ibid*, p. 31.

<sup>36</sup> *Ibid*, p. 31.

<sup>37</sup> *Ibid*, p. 32.

<sup>38</sup> *Ibid*, p. 32.

### **Police Desire a Clearer Definition**

While examining the official definitions of any crime is necessary, examining how front-line officers interpret them and carry them out is also essential. This is especially true with hate crimes. As the Department of Justice's Criminal Justice Statistics Center tells law-enforcement agencies in its training materials on reporting hate crimes, "The peace officer's professional judgment is the basis for determining whether or not an incident is reported as a hate crime."<sup>39</sup> One recent study notes:

*[H]ate crimes are different from other crimes in that they give more power to police.... [S]ince most bias-motivated incidents are first placed in other criminal categories such as battery, assault, and vandalism, bias crimes do not exist in practice until police say they do [emphasis added].<sup>40</sup>*

Two state commissions that listened to law-enforcement officers found that the officers desired more clarity:

- The Christopher-Deukmejian Commission reported: "The representatives interviewed from law-enforcement agencies believe that it would be beneficial to develop statewide guidelines and a standardized definitional system with respect to hate crimes and hate groups."<sup>41</sup>
- The Attorney General's Civil Rights Commission on Hate Crimes conducted 22 public forums across the state in 2000 and heard from law-enforcement officers and many others. According to that commission's report, these officers "testified about a lack of guidance regarding the proper identification and reporting of hate crimes and suggested that the commission find a way to get law enforcement, members of the community, and school staff 'on the same page' when defining a hate crime."<sup>42</sup>

Thus, while the courts have spelled out constitutionally permissible outlines of hate-crime laws and California criminal statutes appear to follow the courts' guidance, there are a wide variety of specific definitions used in the field that appear to cause significant law-enforcement confusion and could cause inconsistent reporting, prosecution, and punishment of hate crimes.

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<sup>39</sup> "Peace Officer Judgment," *Hate Crimes Statistics Program*, Department of Justice, Sacramento.

<sup>40</sup> Jeannine Bell, *Policing Hatred: Law Enforcement, Civil Rights, and Hate Crime*, New York: New York University, 2002, pp. 2-3.

<sup>41</sup> W. Christopher and G. Deukmejian, *op cit.*, p. 56.

<sup>42</sup> *Reporting Hate Crimes: The California Attorney General's Civil Rights Commission on Hate Crimes: Final Report*, Department of Justice, Sacramento, 2001, p.14  
<http://caag.state.ca.us/publications/civilrights/reportingHC.pdf>.

## **Chapter II:** **Hate-Crime Statistics and Trends**

### **Reported Hate Crimes Drop in 2002, 2003**

Statute requires local law-enforcement agencies to submit hate-crime reports to the state Department of Justice.<sup>43</sup> The department's Criminal Justice Statistics Center reviews the police reports. When the center finds that report is incomplete or doesn't contain sufficient information to be classified as a hate crime, such as failing to list a protected characteristic, or it appears that the crime may be a hate crime, the center sends that law-enforcement agency a form letter. The law-enforcement agency then can either provide additional information or agree with the center's determination that it isn't a hate crime. The center compiles annual statistics from the reports that pass this process.<sup>44</sup>

The annual report for 2003 finds that reported hate crimes in California rose to record-high levels in 2001 and fell to record-low levels in the following two years by many measures. Reported hate-crime events (many of which involved multiple offenses) were up 15.5 percent in 2001 and down 26.6 percent in 2002 and 10.1 percent in 2003 -- a net drop of 23.8 percent in 2003 compared with 2000.<sup>45</sup> (See Figure 1, page 8.)

Almost all of the 2001 increase reflected a nationwide hate-crime wave against actual and perceived Arabs and Muslims -- including Sikhs, South Asians, and Latinos -- following September 11, 2001. The number of reported hate-crime events in the "anti-other ethnicity/national origin" subcategory, which includes "anti-Arab/Middle Eastern" hate crimes, increased 345.8 percent in 2001. The number reported in the anti-Islamic subcategory increased 2,333.3 percent.<sup>46</sup>

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<sup>43</sup> Penal Code Section 13023.

<sup>44</sup> *Hate Crime in California 2003*, *op cit.*, p. 52.

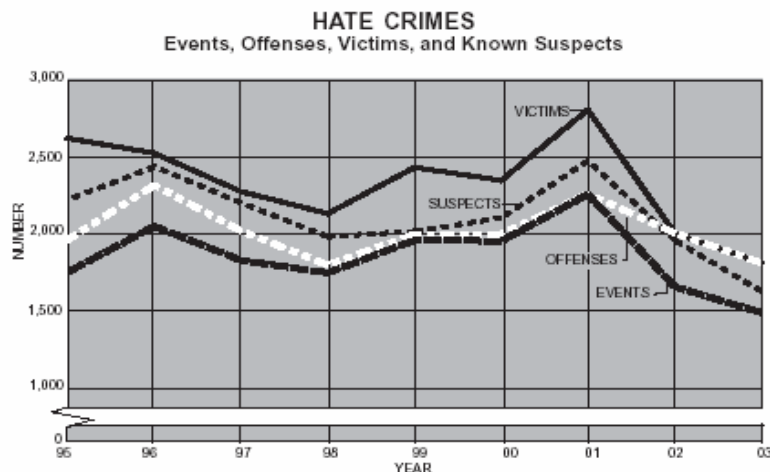
<sup>45</sup> *Ibid.*, p. 16.

<sup>46</sup> *Ibid.*, p. 42.

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Most of the state's overall 2002 and 2003 decreases represent a decline in anti-Arab/anti-Islamic crimes, although reports of hate crimes in those subcategories continued to be much higher than pre-2001 levels.<sup>47</sup>

**Figure 1**



**EVENTS, OFFENSES, VICTIMS, AND KNOWN SUSPECTS**  
**1995-2003**

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Events .....	1,754	2,054	1,831	1,750	1,962	1,957	2,261	1,659	1,491
Offenses .....	1,965	2,321	2,023	1,801	2,001	2,002	2,265	2,009	1,815
Victims .....	2,626	2,529	2,279	2,136	2,436	2,352	2,812	2,007	1,815
Known Suspects .....	2,225	2,441	2,206	1,985	2,021	2,107	2,479	1,963	1,629

Source: California Department of Justice

In 2003, California law-enforcement agencies reported a total of 1,491 hate-crime events against 1,815 victims.<sup>48</sup> The 2003 state Department of Justice figures also show:<sup>49</sup>

- Violent offenses decreased 17.5 percent (1,252 in 2003 vs. 1,517 in 2002).
- Property offenses, chiefly destruction and vandalism, increased 14.4 percent (563 in 2003 vs. 492 in 2002).

<sup>47</sup> Reported "anti-other-ethnicity/national-origin" crimes totaled 193 in 2003 vs. 96 in 2000, up 101 percent. Reported anti-Islamic crime totaled 19 in 2003 vs. 3 in 2000, up 533.3 percent. (*Ibid*, p. 43.)

<sup>48</sup> *Ibid*, p. 3.

<sup>49</sup> *Ibid*.

- Race/ethnicity/national-origin-bias and sexual-orientation-bias offenses continued to be the first- and second-largest categories of hate crimes.
- Anti-black and anti-male-homosexual offenses continued to be the first- and second-largest subcategories.
- As in the past, relatively few suspects were arrested, charged, or convicted of hate crimes. District attorneys filed 304 hate-crime complaints and obtained 197 convictions, 128 of them for hate crimes.
- As in the past, few gender-bias hate-crime events were reported – in 2003, only 9.<sup>50</sup>
- Also consistent with past reports, even fewer disability-bias hate-crime events were reported – in 2003, only 1.<sup>51</sup>

### ***Underreporting Appears to be Significant***

The California Department of Justice trains law-enforcement officers and agencies to collect data from victims and report them to the state.<sup>52</sup> This is in addition to training developed by the Commission on Peace Officer Standards and Training.

However, the 2003 University of California report presents evidence that the half of local law-enforcement agencies without formal hate-crime policies underreport hate crimes significantly: “[Having] a hate crime policy in place increases an agency’s propensity to report hate crime by approximately 25 percent,” the university researchers found.<sup>53</sup>

Likewise, the Christopher-Deukmejian Commission stated that “law enforcement estimates that a great number of hate crimes go unreported.”<sup>54</sup>

The statistics also underreport hate crimes by an unknown but potentially significant amount by omitting offenses that happen in federal, state, and local prisons, jails, and juvenile detention facilities, except when the jailers report the crimes to local law-enforcement agencies. The state keeps no statistical records specifically of:

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<sup>50</sup> *Ibid*, p. 6.

<sup>51</sup> *Ibid*.

<sup>52</sup> The Department of Justice’s Criminal Justice Statistics Center provides law-enforcement agencies with the Commission on Peace Officer Standards and Training hate-crime guidelines, the FBI hate-crime data-collection guidelines, and a computerized visual presentation on the state reporting requirements. It issues Information Bulletins when the reporting law changes. It requires all agencies to report monthly and requests additional information when reports are incomplete.

<sup>53</sup> V. Jenness and R. Grattet, *op cit.*, p. 3.

<sup>54</sup> W. Christopher and G. Deukmejian, *op. cit.*, p. 29.

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- Ethnic gang violence behind bars that meets the definition of hate crime. Such violence occurs “every day” in California Department of Corrections and California Youth Authority institutions, according to a Youth and Adult Correctional Agency spokesman.<sup>55</sup>
- Crimes against mentally-ill prisoners that also may meet the hate-crime definition. A 2003 Human Rights Watch report documents how some inmates often abuse and sexually assault mentally-ill inmates.<sup>56</sup> Two other reports find that prisoners with mental disabilities are at significantly higher risk of violence behind bars than other inmates.<sup>57</sup>

The state statistics also underreport hate crimes to an unknown extent because federal law-enforcement agencies, including the Federal Bureau of Investigation, the U.S. Border Patrol, and the agencies that enforce laws on federal lands such as defense bases, and some state law-enforcement agencies, don’t report hate crimes in their jurisdictions to the state Department of Justice.<sup>58</sup>

Four national studies in the last four years also found significant hate-crime undercounting.<sup>59</sup>

In early 2000 Attorney General Bill Lockyer appointed an Attorney General’s Civil Rights Commission on Hate Crimes to make recommendations for correcting underreporting. The commission conducted public forums throughout the state and the attorney general

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<sup>55</sup> Steve Green, Youth and Adult Correctional Agency, Sacramento, personal communication, Oct. 3, 2003.

<sup>56</sup> Sasha Abramsky and Jamie Fellner, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, Human Rights Watch, New York, Washington, London and Brussels, Oct. 2003 <<http://www.hrw.org/reports/2003/usa1003>>.

<sup>57</sup> Harry E. Allen and C.E. Simonsen, *Corrections in America*, New York: Macmillan Publishing Company, and Dick Sobsey, *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance*, Baltimore: Paul H. Brooks Publishing Company, cited by Joan Petersilia, *Doing Justice: The Criminal Justice System, and Offenders with Development Disabilities*, California Policy Research Center, University of California, May 2000, pp. 28, 29 <[http://www.seweb.uci.edu/users/joan/Images/offenders\\_with\\_dd.pdf](http://www.seweb.uci.edu/users/joan/Images/offenders_with_dd.pdf)>

<sup>58</sup> The California Highway Patrol reports hate crimes to the Department of Justice, although no law requires it. (Leonard Marowitz, Manager, Statistical Research Center, Department of Justice, Sacramento, personal communication, Nov. 2003.)

<sup>59</sup> David Neiwert, *Death on the Fourth of July: Hate Crimes and the American Landscape*, New York: Palgrave/St. Martin's, 2004, pp. 336-342; Jack McDevitt et al, *Bridging the Information Disconnect in National Bias Crime Reporting: Final Report*, Northeastern University, Boston <[http://www.cj.neu.edu/pdf/final\\_report\\_post\\_BJS\\_III.pdf](http://www.cj.neu.edu/pdf/final_report_post_BJS_III.pdf)>; “Discounting Hate” and “What Can Be Done?,” *Intelligence Report*, No. 104, Southern Poverty Law Center, Montgomery, AL, Winter 2001 <<http://www.splcenter.org/intel/intelreport/intrep.jsp?iid=11>>; and Jack McDevitt, Jennifer M. Balboni, and Susan Bennett, *Improving the Quality and Accuracy of Bias Crime Statistics Nationally: An Assessment of the First Ten Years of Bias Crime Data Collection*, Northeastern University, Boston, July 2003 <[http://www.cj.neu.edu/pdf/BJS\\_1\\_execSummary.pdf](http://www.cj.neu.edu/pdf/BJS_1_execSummary.pdf)>.

released its report in March 2001.<sup>60</sup> It examines the lack of reporting both to and by law-enforcement agencies. The report finds “common themes” explaining why victims don’t report hate crimes, including lack of awareness of the laws, fear of being re-victimized for reporting, fear of not being taken seriously by police or other public agencies, and various social and cultural barriers.<sup>61</sup>

Examining law-enforcement reporting and response, the commission found major differences between communities that have active networks to address hate crimes and those where no such networks exist.<sup>62</sup> It also found “serious gaps in the training of law enforcement officers.”<sup>63</sup>

The commission was particularly concerned with a lack of reporting of hate crimes based on gender, which it said are “not reported generally,” and those based on disability, which it said “similarly appear to be underreported.” Even when crimes against persons with disabilities are reported to police, “law enforcement is not adequately trained to make a determination whether these crimes should be charged as hate crimes,” it found.<sup>64</sup>

Finally, the commission found that “in some communities the absence of reports of hate crimes perpetrated by law enforcement officers has diminished the credibility of law enforcement efforts to prevent and respond to hate crimes.”<sup>65</sup> The commission reported that “people of color and advocates for gay, lesbian, bisexual and transgender people in many local community forums ... argued that if law enforcement cared about preventing and responding to hate crimes they would do a better job of addressing hate crimes committed by law enforcement officers themselves.” However, the commission added that it was “unaware of any incident where a law enforcement officer has been charged with committing a hate crime.”<sup>66</sup>

### ***Underreporting Appears to Mean Under-Enforcement***

Law-enforcement underreporting appears to indicate under-enforcement. The 2003 University of California study finds that “the production of official reports of hate crimes is the necessary and crucial first step in a larger process that can lead to the prosecution and sentencing of hate

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<sup>60</sup> *Reporting Hate Crimes, op cit.*; “Attorney General Lockyer Issues Report by Civil Rights Commission on Hate Crimes: Recommendations for Improving Reporting by Communities, Law Enforcement, Schools,” Department of Justice, Sacramento, March 29, 2001 <<http://caag.state.ca.us/newsalerts/2001/01-032.htm>>.

<sup>61</sup> *Reporting Hate Crimes, op cit.*, p. 1.

<sup>62</sup> The University of California report reached a somewhat similar conclusion, finding that such a community network is a predictor of a local law-enforcement agency having a formal hate-crime policy, which in turn is a predictor the agency reporting more hate crimes. (V. Jenness and R. Grattet, *op cit.*, p. 3.)

<sup>63</sup> *Reporting Hate Crimes, op cit.*, p. 1.

<sup>64</sup> *Ibid*, p. 2.

<sup>65</sup> *Ibid*, p. 2.

<sup>66</sup> *Ibid*, pp. 18-19.



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crime perpetrators. In other words, without hate crime reporting [by law enforcement], hate crime law goes unenforced” [emphasis in original].<sup>67</sup>

***Do the Statistics Show a Real Trend?***

Department of Justice staff believe that, regardless of the extent of underreporting discussed above, the statistics are representative of actual trends because the reporting guidelines to law-enforcement agencies have remained consistent.<sup>68</sup>

This conclusion may be supported by figures from Los Angeles County -- California’s most populous county, with 28 percent of the state’s total population, which reportedly has “one of the most developed systems of hate crime reporting and response in the country.”<sup>69</sup> The county Commission on Human Relations collects hate-crime reports from law-enforcement agencies, as the state does, but also from community groups, some school districts, and some victims themselves. Los Angeles County’s figures show hate crimes up 10 percent in 2001 and down 22 percent in 2002, for a two-year drop of 13.8 percent<sup>70</sup> -- roughly the same trend as the Department of Justice’s statewide figures show.

Based on the post-2001 drop in state and Los Angeles County figures, and though the underreporting may be unchanged, there may be reason for hope that California’s efforts against hate crimes -- including strong public statements and other efforts that accompanied and followed the 2001 anti-Arab/anti-Islamic hate-crime wave -- have had positive results.

On the other hand, one leading hate-crime researcher called the state and Los Angeles County trend data “reliable but not necessarily valid.” Many factors besides the consistent state guidelines may influence the number of reports, and some of these factors may change from year to year for reasons unrelated to any real increase or decrease in hate crimes, this researcher noted. The same caveat applies to many government statistics, he added.<sup>71</sup>

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<sup>67</sup> V. Jenness and R. Grattet, *op cit*; p. 54.

<sup>68</sup> Jack Scheidegger, Assistant Chief, Criminal Justice Statistics Center, Department of Justice, Sacramento, personal communication, Oct. 7, 2003.

<sup>69</sup> Robin S. Tuma, *Improving Reporting of Hate Crimes: Analysis and Recommendations to the Board of Supervisors*, Los Angeles County Commission on Human Relations, Feb. 7, 2000.

<sup>70</sup> *2002 Hate Crime Report*, Los Angeles County Commission on Human Relations, Los Angeles, Dec. 17, 2003, p.13

[http://lahumanrelations.org/Our\\_publications/index.htm](http://lahumanrelations.org/Our_publications/index.htm).

<sup>71</sup> Ryken Grattet, University of California, Davis, personal communication, Aug. 2, 2004.

### ***Chapter III: Recent Legislation and Its Implementation***

In recent years, the Legislature and Governors Pete Wilson and Gray Davis enacted a variety of bills to protect Californians from hate crimes. This chapter covers several significant hate-crime related problems, the provisions of bills from 1997 to 2003 addressing these problems, and the bills' implementation.

#### ***Gender-Bias Crimes***<sup>72</sup>

Assembly Bill 1999 (Kuehl), Chapter 933 of 1998, includes gender as a protected characteristic in most hate-crime laws.

In the five years that AB 1999 has been law, law-enforcement agencies have submitted and the Department of Justice has accepted reports of a total of 76 gender-bias offenses for the department's annual hate-crime statistics. Of these, 65 were anti-transgender and 11 anti-female.<sup>73</sup> The Attorney General's Commission found this to be an undercount, without explaining why it believed this underreporting exceeds overall hate-crime underreporting.<sup>74</sup>

If gender-bias crime is undercounted more than other hate crimes, one reason may be because the term "gender" is open to more interpretations than the terms that describe other protected characteristics. Statute and Department of Justice and Commission on Peace Officer Standards and Training publications offer law-enforcement agencies several differing definitions and explanations of "gender." Department of Education and Department of Fair Employment and Housing publications include no definition or explanation of the term.

AB 1999 defines "gender" broadly as:

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<sup>72</sup> For further discussion of gender-discrimination crime, see "Gender-Based Hate Violence," *Representing Victims of Hate Violence in Civil Proceedings*, State Bar of California, Oct. 2000.

<sup>73</sup> *Hate Crime in California 2003*, *op cit.*, p. 42.

<sup>74</sup> *Reporting Hate Crimes*, *op cit.*, p. 2.

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*the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.*

Shortly before AB 1999 took effect, Attorney General Daniel Lungren issued an Information Bulletin<sup>75</sup> to all law-enforcement agencies and prosecutors that explained the new law, instructed them to include gender-bias crimes in their regular hate-crime reports to the Department of Justice, and suggested agencies review the law before updating their hate-crime procedures. The bulletin includes the caveat that “[d]omestic violence and sex-related crimes should not be reported as anti-gender hate crimes unless the victim was specifically targeted because of his or her actual or perceived gender.”

Following enactment of AB 1999, the Department of Justice forms for reporting hate crimes require a law-enforcement agency to check “anti-female,” “anti-male,” or “anti-transgender” when reporting a gender-bias crime.<sup>76</sup>

The 2000 Commission on Peace Officer Standards and Training guidelines add gender to the list of protected characteristics. However, the commission’s various publications may leave law-enforcement officers unclear about the term:

- The guidelines define “gender” specifically as “male, female, or transgender.” They define “transgender” as “persons who are pre- or post-operative in the transition from male to female or female to male.”<sup>77</sup>
- The commission’s current hate-crime basic course of instruction uses the broad statutory definition of gender with no explanation.<sup>78</sup>
- The commission’s hate-crime investigator training document lists one example of a gender-discrimination crime: anti-female.<sup>79</sup>
- The commission offers a hate-crimes telecourse produced in 2000 that lists gender as a protected characteristic without defining it. Most of the telecourse consists of acted scenarios demonstrating hate

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<sup>75</sup> *Information Bulletin: Hate Crime Reporting*, Department of Justice, Sacramento, Nov. 20, 1998.

<sup>76</sup> *2003 Hate Crime Reports*, Department of Justice, Sacramento, Oct. 1, 2003.

<sup>77</sup> *Guidelines for Law Enforcement’s Design of Hate Crime Policy and Training 2000*, *op. cit.*, p. 26.

<sup>78</sup> *Session D: Legal Issues, Legislation, and Statutes*, Commission on Peace Officer Standards and Training, Sacramento.

<sup>79</sup> *ICI Hate Crime Investigator Class*, Commission on Peace Officer Standards and Training, Sacramento.

crimes and hate incidents based on all of the protected characteristics -- except gender.<sup>80</sup>

Assembly Bill 208 (Knox), Chapter 566 of 1999, provides a penalty of life in prison without possibility of parole for first-degree murder because of actual or perceived gender, sexual orientation, or disability.

In spite of these new laws and the efforts to implement them, the recent University of California report finds that, of the 49.1 percent of local law-enforcement agencies with formal hate-crime policies, only about 60 percent refer to gender as a protected characteristic.<sup>81</sup> Thus, only about one in three agencies have formal policies that call their officers' attention to the fact that a gender-discrimination crime is a hate crime. Most of the local policies that mention gender don't define the term, according to one of the researchers. Of those that do, most use the specific definition from the Commission on Peace Officer Standards and Training's guidelines rather than the broader statutory definition.<sup>82</sup>

Assembly Bill 1928 (Jackson), Chapter 824 of 2002, creates a civil remedy for injuries that result from acts of "gender violence," which is defined as: "(1) One or more acts that would constitute a criminal offense under state law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, committed at least in part based on the gender of the victim," or "(2) A physical intrusion or physical invasion of a sexual nature under coercive conditions." In either case, the law applies "whether or not those acts have resulted in criminal complaints, charges, prosecution, or conviction."

The state Department of Education includes gender- and disability-discrimination hate behavior in the training it conducts for local school personnel, but omits these two characteristics from three out of the four lists in the training guidelines that include all other protected characteristics.<sup>83</sup> The chapter on "Understanding Hate-Motivated Behavior and Crime" in the department's guidelines contains only one reference to "gender." The term is undefined, like the other terms in the list of characteristics<sup>84</sup> -- which, however, may have more self-evident meanings.

Likewise, the most recent hate-crime publication from the state's principal civil-rights agency, the Department of Fair Employment and Housing, lists gender as one of the victims' characteristics that the hate-

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<sup>80</sup> *Hate Crimes: A Proactive Approach*, California POST Television Network, Sacramento, Sept. 2000.

<sup>81</sup> Jenness and Grattet, *op cit.*, p. 32.

<sup>82</sup> V. Jenness, private communication, Oct. 1, 2003.

<sup>83</sup> *Bullying at School*, Department of Education, Sacramento, 2003, pp. 24, 26, 28  
<http://www.cde.ca.gov/spbranch/ssp/Bully.pdf>.

<sup>84</sup> *Ibid*, p. 26.

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crime laws protect – but also mentions it less often than other hate crimes, and never defines the term “gender.”<sup>85</sup>

Finally, there is the question of whether, or in what cases, sexual assaults are covered by the discriminatory-selection standard that California law uses to define hate crimes. A similar question arises concerning crimes against persons with disabilities. See “*Crimes Against Persons with Disabilities*,” page 27.

One of the state’s leading hate-crime prosecutors surveyed how his colleagues interpret the law. He reported that, if a criminal selects a victim because the criminal perceives that a protected characteristic such as gender or disability makes the victim more vulnerable, it “technically qualifies” as a hate crime -- but a district attorney generally wouldn’t prosecute it as such except against a serial perpetrator. This prosecutor knew of only one such prosecution in California.<sup>86</sup>

The Commission on Peace Officer Standards and Training, too, is grappling with this issue in developing a hate-crime course that individual law-enforcement agencies can provide to their officers. The draft curriculum includes a scenario of a male serial rapist of women and asks, “Is rape a hate crime?” It states:

*This is a complex issue. Experts recognize the substantial motivating factor for this crime [rape] is dominance and control over another through sex and violence. Rape is not normally considered a hate crime; however, in extreme cases, with other corroborating evidence, hate enhancements can be considered. For example, during a search of suspect’s residence you find anti-women literature, snuff videos,<sup>87</sup> extreme bondage or material that promotes violence against women. And/or the suspect inflicted injuries to the victim during the rape, which was consistent with evidence of rage or hatred toward women. This could strengthen the case for a hate enhancement.*<sup>88</sup>

The commission’s draft notes to the course facilitators go on to suggest that a rapist’s gender and sexual orientation may determine whether the rape is a hate crime:

*Students may pose that the suspect targets only women; therefore all rapes are hate crimes. Refer to the concept that to be a hate crime the suspect would be able to select his victims from all*

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<sup>85</sup> *Responding to Hate: Rights, Remedies, Prevention Strategies*, op. cit.

<sup>86</sup> David Rubin, San Diego County District Attorney’s Office, personal communication, Dec. 19, 2003.

<sup>87</sup> A “snuff” video purports to show an actual murder.

<sup>88</sup> “Facilitator Notes,” *Hate Crimes Curriculum, Draft Copy*, Commission on Peace Officer Standards and Training, p. 20.

*possible classes (men, children, etc.). If the rapist is heterosexual he would not perceive that he had others to choose from.<sup>89</sup>*

A California Women's Law Center spokesperson calls this interpretation "problematic because it suggests that rape is motivated by a desire to have sex with someone."<sup>90</sup>

*[S]tudies have found that that the majority of men who rape other men identify themselves as heterosexual with regard to their consensual sexual relationships.<sup>91</sup> Thus, the suspect's sexual orientation should not be a focus of analysis. Since rape is about power and control, the suspect [in the commission's scenario] did have other options in the victims he targeted. He could have chosen to carry out his aggression against a child or another man. Instead, he chose to single out female victims.<sup>92</sup>*

There are no known California appellate court decisions or attorney general's opinions clarifying the law on these points.

### ***Hate Crimes and Hate Incidents in the Schools***

Just as mainstream society encourages schools to teach students acceptance of others, the Christopher-Deukmejian Commission found that organized hate groups target students to teach hate.

*Increasingly, hate groups direct their message to school-aged youth, and the influence of hate groups on school campuses is growing. Whereas 20 years ago high school students would almost never have come in contact with anyone belonging to a hate group, today, by the time they leave high school, most students will have had direct contact with a hate group, or know someone who had such contact.<sup>93</sup>*

The Attorney General's Commission, based on its public forums throughout the state, found "numerous complaints" by parents "that teachers and school administrators were not addressing hate incidents and crimes. In several communities, parents complained that teachers didn't intervene when students used racist, sexist and homophobic slurs to harass others."<sup>94</sup> Likewise, teachers and school administrators told the

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<sup>89</sup> *Ibid*, p. 20.

<sup>90</sup> Marci Fukuroda, California Women's Law Center, Los Angeles, Memorandum to Jennifer Richard, Senator Kuehl's Office, March 31, 2004, p. 1.

<sup>91</sup> D. Isly and D. Gehrenbeck-Shim, "Sexual Assault of Men in the Community," *Journal of Community Psychology*, 1997, and Michael Scarce, *Male on Male Rape: The Hidden Toll of Stigma and Shame*, Insight Books, 1997, cited in *Ibid.*, pp. 1-2.

<sup>92</sup> *Ibid*, pp. 1-2.

<sup>93</sup> W. Christopher and G. Deukmejian, *op cit.*, p. 30.

<sup>94</sup> Like much of the literature on schools, the Attorney General's Commission report deals concurrently with two conceptually different but closely related behaviors: hate crimes; and non-criminal hate incidents, such as bullying and harassment committed because of the hate-crime laws' protected characteristics.

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commission that that they lacked the training, time or capacity to deal with hate crimes.<sup>95</sup>

Schools (including colleges) have been the No. 3 location where hate crimes have been reported, after residences and streets/roads, since the state started collecting such data in 1995.<sup>96</sup> The Los Angeles County Commission on Human Relations' 2002 report finds schools to be the No. 4 location for reported hate crimes, after residences, public places, and businesses. Los Angeles County reported a 21.5 percent increase in school hate crimes in 2002.<sup>97</sup>

The most recent (2001-02) California Student Survey of public school students in the 7<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> grades may shed light on hate crimes and non-criminal hate incidents – though it made no effort to distinguish between the two. The survey found that more than 24 percent said they had been harassed or bullied at school at least once in the preceding year due to their race, ethnicity, national origin, gender, religion, disability, or real or perceived sexual orientation. This was about twice as many as those who reported harassment for non-discrimination reasons.<sup>98</sup>

While the California Student Survey makes no effort to distinguish between hate crimes and non-criminal discrimination-related harassment, the related 2001-02 California Healthy Kids Survey found that students who reported discrimination-related harassment were twice as likely as non-harassed students to also report their property stolen or damaged and more than four times as likely to report being threatened or injured with a weapon. Of the reasons for harassment cited in the California Healthy Kids Survey, the most frequent was race/ethnicity/national origin, 14 percent. Next were gender (10.3 percent), religion (9.1 percent), actual or perceived sexual orientation (7.5 percent), and disability (4.9 percent). Students who reported harassment due to sexual orientation or disability were more likely than other discrimination-related harassment victims to report having been harassed more than four times in the year.<sup>99</sup>

Assembly Bill 1756 (Havice), Chapter 317 of 1998, establishes the School Community Policing Partnership Act of 1998 and provided grants to school districts and county offices of education up to \$320,000 over

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<sup>95</sup> *Reporting Hate Crimes, op. cit.*, pp. 27-28.

<sup>96</sup> *Hate Crime in California 2003, op cit.* p. 45.

<sup>97</sup> *2002 Hate Crime Report, op cit.*, p. 8.

<sup>98</sup> Rodney Stager and Gregory Austin, Project Directors, "Violence and Safety," *2001-2002 California Student Survey*, WestEd, Los Alamitos, for California Attorney General's Crime and Violence Prevention Center, Sacramento, p. 1  
<<http://safestate.org/documents/factsheet-violence&safety.pdf>>

<sup>99</sup> K.E. Heck, S.T. Russell, M. O'Shaughnessy, C. Laub, C. Calhoun, and G. Austin, *Bias-Related Harassment Among California Students, 2001* (California Healthy Kids Factsheet 4), West Ed, Los Alamitos, for California Attorney Generals' Crime and Violence Prevention Center, Sacramento, 2004, pp. 1-2.

three years to develop school-community policing strategies.<sup>100</sup> Some 102 funded grant programs are operating,<sup>101</sup> including 35 awarded in 2002-03,<sup>102</sup> the last year in which the Legislature provided funding. The Department of Education has a contract with California State University, Sacramento, to evaluate the grant programs.<sup>103</sup> The department has no information on how many of the strategies address hate crimes.<sup>104</sup>

Senate Bill 1404 (Johnston), Chapter 414 of 1998, adds public schools to a statute outlawing the cross burning, or the desecration or destruction of a religious symbol, on private property of others. While this law addresses the same kind of behavior as typical hate-crime laws, it includes no requirement that the crime be committed because of a protected characteristic.

Assembly Bill 1785 (Villaraigosa), Chapter 955 of 2000, requires the Department of Education to include reported hate crimes and incidents on the California Safe School Assessment crime-reporting form. It also requires the state Board of Education to include human-relations education in the state curriculum frameworks with the aim of fostering an appreciation of the diversity of California's population and discouraging the development of discriminatory attitudes and practices.

Assembly Bill 1931 (Scott), Chapter 959 of 2000, requires the Department of Education to train school personnel to identify hate violence and report it on the California Safe School Assessment forms. The department did so, but the Legislature, at Governor Davis's and Governor Schwarzenegger's request, suspended the California Safe School Assessment in 2002-03, 2003-04, and 2004-05 through a budget cut.

While the Davis and Schwarzenegger administrations' requests to suspend the California Safe School Assessment reporting were based on budget considerations, Department of Education staff concurred on policy grounds:

*Hate crime reporting is notoriously inaccurate, even when police agencies with lots of training are doing it. It is one of those issues where agencies that are working on the problem pay more attention to reporting and therefore have misleading high numbers of reported incidents, while agencies that have real problems that they are*

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<sup>100</sup> Chuck Nichols, Consultant, Safe and Healthy Kids Office, Department of Education, Sacramento, personal communication, Jan. 5, 2004.

<sup>101</sup> Steve Jefferies, Department of Education, Sacramento, personal communication, Nov. 2003.

<sup>102</sup> *Funded Grantees for FY 02-03*, School Community Policing Partnership Program, Department of Justice and Department of Education, Sacramento  
[http://www.safestate.org/documents/funded\\_grantees\\_fy\\_2002-03.pdf](http://www.safestate.org/documents/funded_grantees_fy_2002-03.pdf).

<sup>103</sup> S. Jefferies, *op.cit.*

<sup>104</sup> C. Nichols, personal communication, Nov. 19, 2003.



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*ignoring have low stats. I believe that what already exists in the [California Healthy Kids Survey] is as good as anyone can do.<sup>105</sup>*

An Anti-Defamation League spokesperson disagreed, arguing that “though clearly incomplete, data collection efforts are essential.”

*First, they provide a measure of accountability for reporting agencies. Civil rights organizations and hate crime analysts can frequently gauge the degree to which an agency is taking hate crime response seriously by the effort they make to collect and report hate crime statistics.*

*Second, over the course of the 12-year history of the federal Hate Crime Statistics Act (HCSA), we have seen dramatic improvements in the ability of law enforcement agencies to identify, report, and respond to hate violence. Far more than mere statistics, the HCSA has also increased public awareness of this national problem.*

*Third, studies have demonstrated that victims are more likely to report a hate crime if they know a special reporting system is in place. Police officials have come to appreciate the law enforcement and community benefits of tracking hate crime and responding to it in a priority fashion. Law enforcement officials can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims. By compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in racial tensions in a given jurisdiction.<sup>106</sup>*

Since Fall 2003, the Department of Education has required every school district that receives federal Safe and Drug Free School funds to administer the California Healthy Kids Survey to its students in the 5th, 7th, 9th, and 11th grades every two years. It is not a representative statewide sample, but its results are consistent by grade with those from the California Student Survey. The two surveys use the same form, avoiding the need for some schools to survey their students twice.<sup>107</sup>

The Attorney General’s Commission proposed two revisions in the California Healthy Kids Survey:

- Add a discrimination-related harassment question to the 5th-grade survey that now appears only on the surveys for 7th, 9th, and 11th grades.

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<sup>105</sup> C. Nichols, personal communication, Dec. 2004.

<sup>106</sup> Michael Lieberman, Anti-Defamation League, Washington, D.C., personal communication, Aug. 3, 2004.

<sup>107</sup> K.E. Heck, et al., *op. cit.*, p. 3.

- Allow students to participate unless parents object. Students now need active parental consent to participate.<sup>108</sup>

Senate Bill 257 (Kuehl), Chapter 890 of 2001, requires school districts to include hate-crime reporting procedures in their school-safety plans. The bill also expands the duties of the School/Law Enforcement Partnership,<sup>109</sup> a joint project of the Department of Education and the Department of Justice, to include establishing interagency safe-school plans that address hate crimes.

The Department of Education, under the aegis of the School/Law Enforcement Partnership, contracts with 11 local school agencies throughout the state to train school districts to prepare their safe-school plans. The 2002 planning guide<sup>110</sup> lists hate crimes as one element that schools' plans must include.

The law requires schools to make their safe-school plans readily available for public inspection<sup>111</sup> and submit them to their school districts or county offices of education for approval.<sup>112</sup> The Department of Education reports that it spot checks some district and county offices for compliance when possible.<sup>113</sup>

However, the department doesn't systematically check the plans in the consolidated compliance review that it conducts under the federal No Child Left Behind program,<sup>114</sup> there is no requirement that all schools send their plans to the department, and there have been no known surveys since enactment of SB 257 to determine how many comply with that bill's requirement to include a discrimination and harassment policy or cover hate crimes and other offenses.<sup>115</sup> The last known survey of districts' plans, in 1999, found that "many are not comprehensive in nature and do not encourage community participation."<sup>116</sup>

While the department continues to offer training to prepare the safe-school plans, budget cuts forced it to stop offering two other training programs:

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<sup>108</sup> *Reporting Hate Crimes, op. cit.*, pp. 26, 17.

<sup>109</sup> <http://www.cde.ca.gov/spbranch/safety/slep/partnership.asp>.

<sup>110</sup> *Safe Schools: A Planning Guide for Action*, Department of Education, Sacramento, 2002  
<http://www.cde.ca.gov/spbranch/safety/SafeSchoolGuide/ssg.asp>.

<sup>111</sup> Education Code Section 35294.2(e).

<sup>112</sup> Education Code Section 35294.2(f).

<sup>113</sup> Louise Chiatovich, Health Education Consultant, Department of Education, personal communication, Oct. 2003.

<sup>114</sup> Karen Lowrey, Department of Education, Sacramento, personal communication, Nov. 2003.

<sup>115</sup> L. Chiatovich, *op cit.*

<sup>116</sup> *School Violence Prevention & Response: Final Report*, California School Violence Prevention and Response Task Force, Sacramento, April 10, 1999, p. 13  
[http://www.ocjp.ca.gov/publications/pub\\_schv.pdf](http://www.ocjp.ca.gov/publications/pub_schv.pdf).

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- *Hate Motivated Behavior*,<sup>117</sup> which the department offered through at least March 2003,<sup>118</sup> and
- *Bullying at School*, including a section on “Understanding Hate-Motivated Behavior.”<sup>119</sup> While the department no longer conducts this training, it continues to distribute the guidelines document.<sup>120</sup>

The state doesn’t provide for systematic evaluation of the effectiveness of the various programs to combat hate crimes, hate incidents, or other violence in the schools.

Likewise, the state’s School Violence Prevention and Response Task Force in 1999 found that many school districts’ general violence-prevention programs “lack outcome data and evaluations to determine what works best.”<sup>121</sup> Bullying prevention is one of the few programs to have been evaluated and found effective in reducing bullying among students.<sup>122</sup> Yet some California school districts don’t use bullying-prevention programs.<sup>123</sup>

***Hate Crimes Against Asians and Pacific Islanders***

Assembly Bill 1312 (Nakano), Chapter 566 of 2001, establishes an Asian Pacific Islander Anti-Hate Crimes Program to create publications and seminars for Asian-Pacific-Islander communities that explain how to report hate crimes and offer community strategies for responding to them.

The Attorney General’s Crime and Violence Prevention Center has printed its hate-crimes prevention brochure in languages that include Arabic, Armenian, Chinese, Hindi, Korean, Punjabi, and Vietnamese. The Department of Justice has been unable to carry out the other provisions of the bill because of budget limitations.<sup>124</sup>

***Multi-Mission Extremist Crime***

A 2001 Senate Office of Research report found a large body of literature and other evidence indicating that some extremists advocate and, in

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<sup>117</sup> Sherry McLaughlin, *Hate-Motivated Behavior in Schools: Response Strategies for School Boards, Administrators, Law Enforcement, and Communities*, Alameda County Office of Education and California Department of Education, 1997.

<sup>118</sup> *Hate-Motivated Behavior Prevention Workshops*, Department of Education  
<http://www.cde.ca.gov/spbranch/safety/trainings/hatecrime.asp>.

<sup>119</sup> *Bullying at School*, *op cit*.

<sup>120</sup> V. Linfor, personal communication, Oct. 28, 2003.

<sup>121</sup> *School Violence Prevention & Response*, *op cit.*, p. 19.

<sup>122</sup> D.S. Elliot, *Blueprints for Violence Prevention: Ten Exemplary Violence Prevention Programs*, Center for the Study and Prevention of Violence, Institute of Behavioral Science, University of Colorado, Boulder, Colorado, 1999, cited in *Ibid*, p. 19.

<sup>123</sup> *School Violence Prevention & Response*, *op cit.*, p. 19

<sup>124</sup> Ann Kelly, Attorney General’s Crime and Violence Prevention Center, Sacramento, private communication, 2003.

some cases, commit two or all three of the following types of violent crimes: certain hate crimes (chiefly against gays, non-white persons, and Jews); anti-reproductive-rights crimes;<sup>125</sup> and anti-government crimes. Some such crimes evidently have resulted from affiliations between groups that originally had separate extremist missions, and others have resulted from extremist groups or individuals adopting multiple missions.<sup>126</sup>

Typical of many multi-mission extremist crimes, the two 1999 California crime sprees discussed in the Preface to this report were committed by small numbers of persons. Also typically of persons who commit multi-mission extremist crimes, those criminals engaged in extreme violence.<sup>127</sup>

Similarly, after the 9/11 terrorist attacks, a national group with open supporters in California that advocates and sometimes practices violent anti-gay and anti-reproductive-rights crimes -- including murder -- also began supporting violent anti-Islamic hate crimes.<sup>128</sup>

Two cases that have come to light recently indicate that some multi-mission extremists advocate and, in some cases, practice a fourth category of crime -- murder of persons because they are homeless. (Please see "Crimes Against Homeless Persons," page 24.)

Senate Bill 780 (Ortiz), Chapter 899 of 2001, states the Legislature's intent that the Commission on Peace Officer Standards and Training include information on multi-mission extremist crimes in two of its law-enforcement training courses -- its telecourse on anti-reproductive-rights crime and its basic hate-crime course.

Complying with the legislative intent, the commission included information in the telecourse, which it made available to all law-enforcement agencies in February 2003.<sup>129</sup> In October 2004, the

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<sup>125</sup> "Anti-reproductive-rights crime' means a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant." (Penal Code Section 13776(a).)

<sup>126</sup> Gregory deGiere, "A Look at Threats and Trends," *Crimes Against Reproductive Rights in California*, Senate Office of Research, Sacramento, May 2001, revised Jan. 2002 <[http://www.sen.ca.gov/sor/reports/REPORTS\\_BY\\_SUBJ/PUBLIC\\_SAFETY\\_JUDICIARY/REPROCRISES.HTM](http://www.sen.ca.gov/sor/reports/REPORTS_BY_SUBJ/PUBLIC_SAFETY_JUDICIARY/REPROCRISES.HTM)>.

<sup>127</sup> One person committed the Los Angeles-area shootings and murder, and two committed the Sacramento-Redding-area arsons and killings. While the Los Angeles-area murderer was a member of, and the Sacramento Valley killers were influenced by, national extremist groups, they apparently committed their crimes alone.

<sup>128</sup> The Army of God, whose self-avowed members have been convicted of numerous violent crimes, including three murders of abortion providers. Another self-declared member currently faces federal charges including murder of a physician and law-enforcement officer in attacks on two Alabama women's health clinics, an Atlanta gay bar, and the Atlanta Olympic Games park <<http://www.armyofgod.com>>.

<sup>129</sup> *Anti-Reproductive Rights Crimes*, California POST Television Network, Sacramento, Feb. 2003.

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commission is scheduled to adopt a curriculum for an eight-hour hate-crime course that individual law-enforcement agencies can offer to their officers,<sup>130</sup> and the curriculum includes more information on multi-mission extremist crime.<sup>131</sup> The commission has yet to revise its basic four-hour hate-crime course to include the information.

***Crimes Against Homeless Persons***

Homelessness isn't a protected characteristic under hate-crime laws. However, crimes against homeless persons committed wholly or partly because of the victims' physical or mental disabilities are hate crimes.

Assembly Bill 2521 (Napolitano), which the Legislature passed in 1994, would have added homelessness and immigration status to the list of protected characteristics under hate-crime laws; Governor Wilson vetoed the bill. Senate Resolution 18 (Burton), which the Senate passed in 2001, asked the Department of Justice to assess whether anti-homeless crime should be defined as a hate crime; the department reported that its findings didn't support such a redefinition. The National Coalition for the Homeless currently is campaigning to make housing status a protected characteristic under hate-crime laws.

SR 18 also asked the Department of Justice to assess the extent of crimes against homeless persons and recommend remedies. The department's resulting 2002 report paints a grim picture of violence:

- 66 percent of homeless persons surveyed said they were victimized in 2001, "suggesting an estimate of over 66,000 homeless persons victimized in California in 2001." Of these, 72 percent said they were victimized more than once and 31 percent said they were victimized more than five times.
- 75 percent of the victims said they were assaulted, including 23 percent who said they were raped. Of assault victims, 76 percent said it happened more than once.
- 75 percent said they didn't report the crimes to police. Those who didn't report said there had been occasions when they had perceived that a law-enforcement officer didn't believe they had been victimized and/or a law enforcement officer didn't care about the victimization.<sup>132</sup>

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<sup>130</sup> A. Deal, personal communication, 2004.

<sup>131</sup> "Facilitator Notes," *op cit*, p. 60; and "Multi-Mission Criminal Extremism," Resource Book (for draft hate-crime curriculum), Commission on Peace Officer Standards and Training, Sacramento.

<sup>132</sup> Pamela R. Mallory, *Special Report to the Legislature on Senate Resolution 18: Crimes Committed Against Homeless Persons*, Department of Justice, Sacramento, Oct. 2002, pp. v-vi <<http://caag.state.ca.us/cjisc/publications/misc/SR18net/preface.pdf>>.

Similarly, a 2004 National Coalition for the Homeless report finds that “[o]ver the past five years (1999-2003), advocates and homeless shelter workers from around the country have seen an alarming increase in reports of homeless men, women and even children being killed, beaten, and harassed.”<sup>133</sup> The coalition compiled news-media and shelter-operator accounts of violent crime against homeless persons and found 281 attacks, including 131 homicides.<sup>134</sup> In California, the coalition’s reports cite 39 incidents resulting in 17 deaths.<sup>135</sup>

Two brutal murders -- one in California,<sup>136</sup> the other in Washington state, allegedly by members of a gang that also is active in California<sup>137</sup> -- have come to light recently, indicating that some multi-mission extremist criminals now target homeless persons.

The department’s SR 18 report, evidently the first of its kind, is based on interviews with 105 homeless persons, 25 advocates, 17 law-enforcement

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<sup>133</sup> *Hate, Violence, and Death: A Report on Hate Crimes Against People Experiencing Homelessness 2003*, National Coalition for the Homeless, Washington, D.C., June 2004, p. 5 <<http://www.nationalhomeless.org/hatecrimes/index.html>>.

<sup>134</sup> *Ibid*, p. 9.

<sup>135</sup> *Ibid*, pp. 11, 13; and *Hate, Violence, and Death: A Report on Hate Crimes Against People Experiencing Homelessness from 1999-2002*, National Coalition for the Homeless, Washington, D.C., April 2003, pp. 6, 12.

<sup>136</sup> Four skinheads, including an admitted white-supremacist who police called the ringleader, were convicted of the beating murder of James R. Clark, a homeless man, in Oak View, California, in 2001. Prosecutors said the ringleader led the attack because he viewed the homeless victim as a weak member of the white race. (Aron Miller, *White Supremacist’s Murder Trial Begins*, Ventura County Star, Sept. 27, 2002; *Lawyer: Coffman Murdered Man*, Oct. 10, 2002, and *Life Term in Fatal Beating*, Ventura County Star, Jan. 28, 2003.) An openly racist, anti-gay, anti-immigrant, anti-Islamic group that claims allies throughout California now praises the ringleader for the murder and has issued a thinly veiled call for more violence against homeless persons. “[The murder ringleader] was sentenced to twenty-five years, but may well see society turn against bums on the streets and misfits in society, knowing that his travail had helped to better his country. As [the ringleader] undoubtedly knows, however, ‘conspiracy’ laws prevent the advocating or endorsing of violence. But while necessarily condemning violence, so as not to be busted for ‘hate,’ many Skinheads make clear that the desperate conditions which drive desperate youth to desperate acts are in need of being opposed and remedied, as well.” (*Coffman Changing the Lexicon: Skinhead Calls a Bum a Bum*. <<http://www.skinheadz.com/news/articles/2003/feb/coffman.html>>.)

<sup>137</sup> Four men are charged with the beating murder of Randall M. Townsend, a homeless man, in Tacoma in 2003. Prosecutors said the defendants acted as part of a white-supremacist gang initiation. (*Last of 4 Men Pleads Innocent in Fatal Beating of Transient*, Associated Press, Tacoma, WA, May 4, 2003.) One of the suspects reportedly writes on two racist Web sites. (Tracy Vedder, *Neo-Nazi Violence on the Rise*, KOMO, Tacoma, Washington, April 24, 2003 <<http://www.komotv.com/news/story.asp?ID=24473>>.) Three reportedly have swastika tattoos and have admitted involvement in the white-supremacist movement, and court documents say that the gang rewards skinheads who assault “parasites,” evidently including homeless white persons. (*White Supremacists Charged in Brutal Tacoma Murder*, Anti-Defamation League, May 1, 2003. <[http://www.adl.org/learn/news/tacoma\\_Murder.asp](http://www.adl.org/learn/news/tacoma_Murder.asp)>.) The gang also is anti-abortion and active in California. (*Volksfront California*, <<http://volksfrontinternational.com/socal>>.)

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officers, and 15 prosecutors in seven Northern California cities, supplemented by a review of the scant existing research.

Homeless persons and their advocates surveyed for that report indicated higher frequencies of homeless victimization than did law-enforcement officers and prosecutors. Likewise, most officers and prosecutors said that current apprehension and prosecution strategies are effective irrespective of housing status, while on the other hand homeless persons and advocates reported a need for increased law-enforcement surveillance and problem-oriented policing in the homeless community.<sup>138</sup>

The homeless persons and their advocates answered one survey question quite differently from one another. The homeless persons reported no crimes motivated by discrimination against them because of their homelessness. The homeless persons interviewed answered that question in the same way as the law-enforcement officers and prosecutors, and differently from the advocates, who reported regular victimization of homeless persons because of anti-homeless bias. The report offers no explanation of this difference between the responses of homeless persons and their advocates, but cites the homeless persons' responses as the reason why the results don't support expanding the definition of hate crimes to include committed because the victim is homeless.<sup>139</sup>

The report recommends a statewide system to track crimes against homeless persons, law-enforcement training by the Commission on Peace Officer Standards and Training about increasing law-enforcement access to homeless victims and victim follow-up, and further study to develop effective prevention strategies.<sup>140</sup>

In response to the recommendations, the Commission on Peace Officer Standards and Training reported it will produce a law-enforcement training telecourse on homeless issues and report on "best practices" employed by agencies around the state. The telecourse should be available to law-enforcement agencies throughout the state in 2004 - 05.<sup>141</sup>

***Victim Compensation and Tolerance-Promotion Grants to Counties***

Senate Bill 551 (Machado), Chapter 346 of 2001, authorizes the Victim Compensation and Government Claims Board to reimburse persons affected by 9/11, including victims of hate crimes sparked by the terrorist attacks. The Victims Compensation and Government Claims

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<sup>138</sup> P.R. Mallory, *op cit.*, p. vi.

<sup>139</sup> P.R. Mallory, *op cit.*, p. vii.

<sup>140</sup> *Ibid.*, p. vii.

<sup>141</sup> A. Deal, personal communication, Oct. 8, 2003.



Board has paid more than \$188,000 to 81 hate-crime victims in the last three fiscal years, including to 25 September 11-related victims.<sup>142</sup>

The bill also creates a fund that county boards of supervisors could tap for mental-health counseling to those traumatized by terrorism and for promoting tolerance of individuals whose national origin or religion can make them targets of discrimination related to terrorism. The counties of Amador, Fresno, Kings, Los Angeles, Madera, Marin, Napa, Orange, Placer, Riverside, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Sonoma, Tulare, Tuolumne, and Yolo received \$666,176 for tolerance-promotion programs before a July 2002 application deadline. The Claims Board reverted nearly \$2 million that remained to the Restitution Fund.<sup>143</sup>

### **Crimes Against Persons with Disabilities**

Just one hate crime against a person with a disability was officially reported in California in 2003.<sup>144</sup> Some advocates argue that this is a grossly inaccurate reflection of the actual number of disability-discrimination crimes -- which they call "an invisible epidemic," comparable to crimes of domestic violence a few decades ago.<sup>145</sup> The Attorney General's Commission, too, found that hate crimes based on disability appear to be underreported for a variety of reasons.<sup>146</sup>

A large body of research indicates that, throughout the country, persons with disabilities are victimized by violent crime at much higher rates than the general population and that the large majority of these crimes go unreported.<sup>147</sup> Comparing the results of this research to the lack of

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<sup>142</sup> Fran Clader, Victim Compensation and Government Claims Board, Sacramento, personal communications, Oct.-Nov. 2003.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Hate Crime in California 2003*, *op. cit.*, p. 27.

<sup>145</sup> Daniel D. Sorensen, California Coalition on Crime Against People with Disabilities, *Hate Crimes Against People with Disabilities*, Sacramento, May 18, 2001, p. 1.

<sup>146</sup> *Reporting Hate Crimes*, *op. cit.*, p. 2.

<sup>147</sup> S. Anderson, *Sexual Abuse of the Developmentally Disabled* (Cassette Recording No. L-172-14), Seattle Rape Relief Crisis Center, Seattle, Washington; P.E. Brookhouser, P. Sullivan, J.M. Scanlan, and J. Garabino, "Identifying the Sexually Abused Deaf Child: The Otolaryngologist's Role," *Laryngoscope*, 96, 1986, pp. 152-158; H. Brown, and J. Stein, "Sexual Abuse Perpetrated by Men With Intellectual Disabilities: A Comparative Study," *Journal of Intellectual Disability Research*, 41(3), 1997, pp. 215-224; H. Brown and V. Turk, "Sexual Abuse in Adulthood: Ongoing Risks For People With Learning Disabilities," *Child Abuse Review*, 3(1), 1994, pp. 26-35; M. Carmody and J. Bratel, "Vulnerability and Denial: Sexual Assault of People with Disabilities," in J. Breckenridge and M. Carmody (eds.), *Crimes of Violence: Australian Responses to Rape and Child Sexual Assault*, Sydney: Allen and Unwin, 1992, pp. 207-218; L. Chenowith, "The Mask of Benevolence: Cultures of Violence and People with Disabilities," in J. Bressant, K. Carrington, and S. Cook (eds.), *Cultures of Crime and Violence: The Australian Experience*, La Trobe: La Trobe University Press, 1995, pp. 36-44; L. Chenowith, "Sexual Abuse of People with Disabilities," in J. Bressant and S. Cook (eds.), *Thousand Oaks*: Sage, 1996, pp. 21-39; C. Cross-Drew, "Violent Crime Victimization of Dually Diagnosed Clients," *Performance Outcomes Update*, August 2000; C. Cross-Drew, "Property Crime Victimization of Dually Diagnosed Clients,"



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reports of disability-discrimination *hate crimes* in particular, it appears that, to the extent the California criminal-justice system deals with crimes against these victims, it does so almost entirely using laws other than the hate-crime statutes.

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*Performance Outcomes Update*, September 2000; L.A. Goodman et. al., "Episodically Homeless Women With Serious Mental Illness: Prevalence of Physical and Sexual Assault," *American Journal of Orthopsychiatry*, 65(4), October 1995, pp. 468-478; S. Hard, *Sexual Abuse of the Developmentally Disabled: A Case Study*, paper presented at the National Conference of Executives of Associations for Retarded Citizens, Omaha, Nebraska, 1986; *Healthy People 2000*, Public Health Services, U.S. Department of Health and Human Services, Washington, D.C., 2000; Helm, R., "Study Finds Abusers of Disabled Often Their Helpers," *The Edmonton Journal*, October 27, 1990, C3; A. Jacobson and B. Richardson, "Assault Experiences Of 100 Psychiatric Inpatients: Evidence For The Need For Routine Inquiry," *American Journal of Psychiatry*, 144(7), 1987, pp. 908-913; *National Crime Victimization Survey*, U.S. Bureau of Justice Statistics, Washington, D.C., 1999; D. Kilpatrick, C. Edmunds, and A. Seymore, "Rape in America: A Report To The Nation," *The National Women's Study*, 1992; J. Lam and R. Rosenheck, "The Effects of Victimization on Clinical Outcomes of Homeless Persons with Serious Mental Illness," *Psychiatric Services*, Vol. 49. No. 5, 1998, pp. 678-683; A. Lehman and L. Linn, "Crimes Against Discharged Mental Patients in Board-and-Care Homes," *American Journal of Psychiatry*, 141:2, 1984, pp. 271-274; J. A. Marley and S. Buila, "When Violence Happens to People With Mental Illness: Disclosing Victimization," *American Journal of Orthopsychiatry*, 69(3), July 1999, pp. 398-402; P. Mullan and S. Cole, "Health Care Providers' Perceptions of the Vulnerability of Persons With Disabilities: Sociological Frameworks and Empirical Analyses," *Sexuality and Disability*, Vol. 9. No. 3, 1991; M. Murry, "Disabled Abused 'Almost Daily,' Group Charges," *Toronto Star*, May 2, 1990, p. A9; J. Petersillia, *Written Presentation to the California State Senate Public Safety Committee*, January 15, 1998, p. 4; J.L. Powers, A. Mooney, and M. Nunno, "Institutional Abuse: A Review of the Literature," *Journal of Child and Youth Care*, 4, 1990, pp. 81-95; Roerher Institute, *Vulnerable: Sexual Abuse and People with Intellectual Handicaps*, 1988; Roerher Institute, *Answering the Call: the Police Response to Family and Care-giver Violence Against People with Disabilities*, 1993; M. Sherry, *Don't Ask, Tell or Respond: Silent Acceptance of Disability Hate Crimes*, University of California, Berkeley, 2002; D. Sobsey, *Violence and Abuse in the Lives of People With Disabilities: The End of Silent Acceptance?* Baltimore: Paul H. Brooks, 1994; D. Sobsey, *Relative Victimization Risk Rates: People with Intellectual Disabilities*, unpublished manuscript, 1996; D. Sobsey and T. Doe, "Patterns of Sexual Abuse and Assault," *Journal of Sexuality and Disability*, 9(3), pp. 243-259; D. Sobsey, W. Randall, and R.K. Padilla, "Gender Differences in Abused Children Without Disabilities," *Child Abuse and Neglect*, Vol. 21, No. 8, 1997, pp. 707-270; D. Sobsey, and S. Mansell, "The Prevention Of Sexual Abuse Of Persons With Developmental Disabilities," *Developmental Disabilities Bulletin*, 18, 1990, pp. 51-65; D. Sobsey, and C. Varnhagen, "Sexual Abuse and Exploitation of Disabled Individuals," *Child Sexual Abuse: Critical Perspectives on Prevention, Intervention, and Treatment*, C.R. Bagley and R.J. Thomlinson, Editors, Wall & Emerson, Inc., Toronto, 1991; L. Stinson and M. Best, *Courage Above All*, Disabled Women's Network, 1991; M.M. Stromsness, "Sexually Abused Women With Mental Retardation: Hidden Victims, Absent Resources," *Women and Therapy*, 14, 1993, pp. 139-152; P.M. Sullivan and J. Knutson, "Maltreatment and Disabilities: A School Based Epidemiological Study," *Child Abuse & Neglect*, Vol. 24, No. 10, 2000, pp. 1257-1273; P.M. Sullivan, M. Vernon, and J.M. Scanlan, "Sexual Abuse of Deaf Youth," *American Annals of the Deaf*, No. 132, No. 4, 1987, pp. 256-262; D. Charinger, C.B. Horton, and S. Millea, "Sexual Abuse and Exploitation of Children and Adults With Mental Retardation and Other Handicaps," *Child Abuse & Neglect*, 14, 1990, pp. 301-312; C. Wilson, and N. Brewer, "The Incidence of Criminal Victimization of Individuals With an Intellectual Disability," *Australian Psychologist*, 27(2), 1992, pp. 114-117.

Before examining what proportion of crimes against persons with disabilities are hate crimes, it is worthwhile to look at the stark picture of repeated violent crime against these often-vulnerable persons that the research literature reports. Here are five examples:

- Four California agencies with mandates under the federal Developmental Disabilities Assistance and Bill of Rights Act<sup>148</sup> recently found that “Californians with developmental disabilities are victimized at a much higher rate (four to 10 times more frequently) than other people, are at a higher risk for re-victimization, and are most frequently victimized in their residences by persons they know and who may be responsible for their services and support.”<sup>149</sup>
- The California Department of Mental Health in 2003 found in a survey of its clients that the rate of violent crime victimization for adults with severe and persistent mental illness was 1,970 percent that of the general population. The rate for clients diagnosed with both mental illness and substance abuse was 6,300 percent that of the general population.<sup>150</sup>
- Two California studies and one national study indicated that 32 percent to 54 percent of men with developmental disabilities, and 80 percent to 86 percent of women with developmental disabilities, have been sexually abused.<sup>151</sup> Of those who have been sexually assaulted, one study found 80 percent had been assaulted more than once and 49.6 percent at least 10 times.<sup>152</sup> If these numbers are representative of the entire population, then among those with developmental disabilities, about two out of 10 men and four out of 10 women have been sexually abused at least 10 times.
- A Human Rights Watch study found that some prisoners often assault and sexually abuse mentally ill inmates, whom they call “bugs.”<sup>153</sup> Some other research indicates that prisoners with mental

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<sup>148</sup> 42 U.S.C. 15002(23).

<sup>149</sup> *Abuse and Neglect of Adults with Development Disabilities: A Public Health Priority for California*, Protection and Advocacy, Inc., State Council on Developmental Disabilities, the University of Southern California Affiliated Programs, and Tarjan Center for Development Disabilities at the University of California at Los Angeles, Aug. 2003, p. vii <<http://www.pai-ca.org/pubs/701901.pdf>>.

<sup>150</sup> Candice Cross-Drew, “Violent Victimization of Dually Diagnosed Clients,” *Performance Outcomes Update, 2000*, cited by Daniel D. Sorenson, “The Invisible Victims,” *Tash Connections*, July 8, 2003, p. 3.

<sup>151</sup> S. Hard, *Sexual Abuse of the Developmentally Disabled: A Case Study*, presented at the National Conference of Executives of Associations for Retarded Citizens, Omaha, Nebraska, 1986, cited by D.D. Sorenson, “The Invisible Victims,” *op cit.*, p. 2; and M.M. Stromsness, “Sexually Abused Women With Mental Retardation: Hidden Victims, Absent Resources,” *Women and Therapy*, 14, 1993, pp. 139-152.

<sup>152</sup> D. Sobsey and T. Doe, “Patterns of Sexual Abuse and Assault,” *Journal of Sexuality and Disability*, 9(3), pp. 243-259.

<sup>153</sup> S. Abramsky and J. Fellner, *op cit.*

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disabilities are at significantly higher risk of violence behind bars than other inmates.<sup>154</sup>

- A study of seriously mentally ill, episodically homeless women found that their lifetime risk of violent victimization was 97 percent.<sup>155</sup>

With few exceptions, the research reports don't examine whether these crimes are committed wholly or partly because of the victims' disabilities, which would make them hate crimes. Most don't even mention the fact that disability-discrimination crimes are hate crimes.

California prosecutors – while accepting that if a criminal selects a victim because the criminal perceives that a protected characteristic such as disability makes the victim more vulnerable, it “technically qualifies” as a hate crime – generally wouldn't charge them as such, according to one leading hate-crime prosecutor who surveyed his colleagues throughout the state on the subject. The prosecutor said that a district attorney probably would pursue a hate-crime charge against a serial perpetrator, such as someone who robs blind persons because their disability makes them easier targets, but the prosecutor knew of only one such prosecution in California.<sup>156</sup>

A University of California assessment of research on the motivations for crimes against persons with disabilities suggests that criminals select these victims for one or both of these reasons:<sup>157</sup>

- Hostility, occasioned by factors such as dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore “deserving victims,” fear of persons whose visible traits are perceived as disturbing to others, and resentment of those who require and increasingly demand alternative physical and social accommodations.<sup>158</sup>

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<sup>154</sup> J. Petersilia, *op cit.*, pp. 28, 29.

<sup>155</sup> Lisa A. Goodman et. al., “Episodically Homeless Women With Serious Mental Illness: Prevalence of Physical and Sexual Assault,” *American Journal of Orthopsychiatric*, 65(4), October 1995, pp. 468-478; and L.A. Goodman et. al., “Episodically Homeless Women With Serious Mental Illness: Prevalence of Physical and Sexual Assault,” *American Journal of Orthopsychiatric*, 65(4), October 1995, pp. 468-478.

<sup>156</sup> D. Ruben, *op cit.*

<sup>157</sup> R. Grattet and V. Jenness, *op. cit.*, pp. 34-35.

<sup>158</sup> H. Hahn, “Civil Rights for Disabled Americans: The Foundation of a Political Agenda,” in A. Gartner and T. Joe (eds.), *Images of the Disabled, Disabled Images*, New York: Praeger, 1987; I. Katz, *Stigma: A Social Psychological Analysis*, New Jersey: Lawrence Erlbaum Associates, 1981; I. Katz, D.C. Glass, D.J. Lucindo, J., Farber, “Ambivalence, Guilt, and the Denigration of a Physically Handicapped Victim,” *Journal of Personality* 45(3), 1977, pp. 419-429; P. Longmore and E. Bouvia, “Assisted Suicide and Social Prejudice Issues,” *Law and Medicine* 3(2), 1987, pp. 141-161; Joseph Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement*, New York: Random House, 1993; and Barbara Faye Waxman, “Hatred: The Unacknowledged Dimension in Violence Against Disabled People,” *Sexuality and Disability* 9 (3), 1991, pp. 185-199; cited in *Ibid*, pp. 34-35.

- Belief that the victims are especially vulnerable because of their disabilities.<sup>159</sup> According to one report, persons with developmental disabilities are perceived to be, in the words of one sexual predator reported by an Atascadero State Hospital clinician, “easy pickings.”<sup>160</sup>

The University of California assessment comments that, because either set of motivations appears to meet the discriminatory-selection model that most laws use to define hate crimes, “these various ways of envisioning the parameters of motivation or bias intent may prove to be a distinction without a difference.”<sup>161</sup>

In other words, if the research that the assessment cites is accurate and complete, the vast majority of crimes against persons with disabilities are hate crimes.

Whether or not future research, appellate court decisions, or attorney general’s opinions support such a broad conclusion, there is no known evidence to cast doubt on the findings of the Attorney General’s Commission and on the assertions by the advocates cited above that there are many more hate crimes against persons with disabilities than the official statistics reveal.

Therefore, to assess California’s progress in this area, it’s necessary to look at all the state’s efforts to protect persons with disabilities from crime, not only the efforts that rely on hate-crime laws in particular.

In recent years, the Legislature and Governors Wilson and Davis have enacted several laws attacking the problem of crimes against persons with disabilities, in some cases explicitly including hate crimes. Several state agencies, in addition to acting to implement these bills, also have taken other steps beyond those required by law.

Assembly Bill 2877 (Thomson), Chapter 93 of 2000, authorized the Crime Victims with Disabilities Initiative,<sup>162</sup> administered by the Department of Mental Health. The bill allowed the department to use the Restitution Fund, generated from criminal fines, to address the problem of unequal protection for, and unequal services to, crime victims with disabilities. The Legislature appropriated \$739,000 annually to the initiative in 2000-01, 2001-02, and 2002-03. The program included:

- Grants in six counties for specialists on crime victims with disabilities. These competitive grants went to the Center for Independent Living in Fresno, the University of Southern California’s

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<sup>159</sup> Cheryl Guidry Tyiska, *Working with Victims of Crime with Disabilities*, Office of Justice Programs, Office for Victims of Crime, U.S. Department of Justice, 1998, cited in *Ibid*, p. 34.

<sup>160</sup> D.D. Sorensen, “The Invisible Victims,” *TASH Connections*, August. 2003, Sacramento, July 8, 2003, p. 6.

<sup>161</sup> R. Grattet and V. Jenness, *op. cit.*, p. 35.

<sup>162</sup> Initiated by Health and Human Services Secretary Grantland Johnson.

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Affiliated Program in Los Angeles, the Community Access Center in Riverside, Easter Seals Superior California in Sacramento, the Siskiyou County District Attorney's Office, and the Ventura County District Attorney's Office. The specialists assisted victims and service providers in identifying and reporting crimes, and assisted the criminal justice system during investigations, prosecutions, and trials.<sup>163</sup>

- Training for 220 executive staff from the state Health and Human Services Agency, Department of Mental Health, Department of Developmental Services, Department of Rehabilitation, Department of Social Services, Department of Aging, and Department of Alcohol and Drug Programs, and 51 Sacramento County local program staff. The Department of Rehabilitation also produced a training video.<sup>164</sup>
- A public information campaign consisting of 89 speeches and presentations to more than 4,450 persons; booths and other direct contact with more than 1,800 persons; contributions to 21 newspaper stories, two television news stories, and six magazine and journal articles; and a State Library collection and on-line bibliography.<sup>165</sup>

University of California, Irvine and the University of Connecticut researchers in 2003 evaluated the program as a success:

*Overall the [Crime Victims with Disabilities Initiative] was successful in increasing awareness of the needs of crime victims with disabilities, increasing the number of reports of crimes against people with disabilities, and increasing the number of prosecutions and convictions involving crime victims with disabilities.*<sup>166</sup>

The university researchers<sup>167</sup> recommended that the state:

- Require law-enforcement agencies to gather data on the number of crime victims with disabilities and the disposition of their cases, and reward agencies that dedicate adequate resources to pursuing these crimes.

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<sup>163</sup> Daniel D. Sorensen, Department of Mental Health, Sacramento, personal communication, Nov. 2003; and Jocelyn Wiener, "A Voice Silenced: Funds Run Out for Advocate for Disabled Victims of Abuse," *Sacramento Bee*, Jan. 11, 2004.

<sup>164</sup> D.D. Sorsesen, Department of Mental Health, *op cit.*

<sup>165</sup> *Ibid*; and

[http://www.lib.state.ca.us/Web2/tramp2.exe/authority\\_hits/A03f8vq0.001?server=1home&item=1](http://www.lib.state.ca.us/Web2/tramp2.exe/authority_hits/A03f8vq0.001?server=1home&item=1).

<sup>166</sup> Valerie Jenness and Nancy Naples, *Crime Victims with Disability Specialists Program: A Report Prepared for the California Department of Mental Health*, University of California, Irvine, Nov. 2003, p. 2.

<sup>167</sup> V. Jenness and N. Naples, *op cit.*, p. 2.

- Develop and implement training programs for health care workers, educators, social workers, and bank personnel to improve the reporting and investigation of these crimes.
- Fund crime-victim specialists across the state in a way that recognizes training, time and emotional work involved in this unique form of service and advocacy.

However, due to the state budget crisis, the Legislature accepted Davis administration proposals to eliminate funding of the Crime Victims with Disabilities Initiative in the 2003-04 budget<sup>168</sup> and repeal its statutory authorization.

None of the Crime Victims with Disabilities Initiative materials on the Web mention that disability-discrimination crime is a hate crime,<sup>169</sup> although that fact reportedly was integrated into the initiative's programs.<sup>170</sup>

Assembly Bill 1718 (Hertzberg), Chapter 200 of 2000, requires the Commission on Peace Officer Standards and Training to establish a continuing-education course, optional for law enforcement, on law-enforcement interaction with persons with mental and developmental disabilities. This is in addition to the six hours of basic instruction that all officers are required to attend. The bill encourages law-enforcement agencies to train their officers using the new course. It requires the commission to report on the development and utilization of the new course by October 1, 2003. Assembly Bill 1102 (Yee), Chapter 269 of 2003, extends the report date to October 1, 2004, and requires the report to analyze the Police Crisis Intervention Training Program used by the San Francisco and San Jose police departments and compare it with the state commission's courses.

In compliance with AB 1718, the commission produced an eight-hour course for police response to persons with mental and developmental disabilities in January 2002.<sup>171</sup>

In 2002, the Department of Justice and the commission produced a law-enforcement training telecourse on crime victims with disabilities.<sup>172</sup> While the tone of the telecourse is respectful of persons with disabilities, it includes no information on crime victims with mental illness and

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<sup>168</sup> D.D. Sorenson, Department of Mental Health, personal communication, Nov. 2003

<sup>169</sup> "Crime Victims with Disabilities Home Page," Department of Mental Health, Sacramento <<http://www.dmh.cahwnet.gov/CVDI/default.asp>>.

<sup>170</sup> D.D. Sorenson, Department of Mental Health, personal communication, Nov. 2003.

<sup>171</sup> *Police Response to People with Mental Illness or Developmental Disabilities: A Field Guide*, Commission on Peace Officer Standards and Training, Sacramento, Jan. 2002.

<sup>172</sup> *Crime Victims With Disabilities*, California POST Television Network and Department of Justice, Sacramento, Feb. 2002.

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makes no mention of the fact the disability-discrimination crimes are hate crimes.

The Legislature has paid particular attention in recent years to crimes against the residents of the seven facilities operated by the Department of Developmental Services that house and serve about 4,000 Californians with the most acute developmental disabilities.

In September 2002, the state Department of Justice and the California District Attorneys Association published a guide for prosecuting crimes – explicitly including hate crimes -- against victims with disabilities.<sup>173</sup> The guide includes the Penal Code sections that enhance sentences for hate crimes, including disability-discrimination crimes.

Of the 49 percent of local law-enforcement agencies with formal hate-crime policies, 70 percent include “disability” in the definition of hate crimes.<sup>174</sup> This means, in effect, that more than 65 percent of local law-enforcement agencies either have no reported hate-crime policies or have policies that omit disability-discrimination crimes.

As reported above, the state Department of Education includes disability-discrimination behavior in the hate-motivated-behavior training material it provides to local school districts, but mentions it less often than other hate-crime categories. (See “Gender-Bias Crimes,” page 13.) Likewise, the Department of Fair Employment and Housing’s most recent hate-crime publication lists disabilities as a protected characteristic, but mentions it less often than other hate crimes.<sup>175</sup>

In addition to California’s efforts cited above, the four-agency report<sup>176</sup> discusses recent advances including:

- The State Council on Developmental Disabilities funded a statewide conference in September 2002 titled “Striving for Justice -- Enhancing Services for Crime Victims with Developmental Disabilities,” organized by the Ventura County District Attorney’s Office and attended by more than 150 law-enforcement, prosecution, and care-providing personnel in addition to clients and their families.
- The Department of Developmental Services instituted a \$12 million community-based risk mitigation and management system in 2002.
- Some regional centers have created criminal-justice projects that provide resources such as victim-recovery services to crime victims with disabilities.

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<sup>173</sup> *Crime Victims with Disabilities: A Prosecutor’s Guide to the California Statutes*, Department of Justice, Sacramento, Sept. 2002.

<sup>174</sup> V. Jenness and R. Grattet *op. cit.*, p. 36.

<sup>175</sup> *Responding to Hate, op. cit.*

<sup>176</sup> *Abuse and Neglect of Adults with Developmental Disabilities, op. cit.*, p. 39.

However, sections of the 2003 four-agency report and the 2003 University of California, Irvine/University of Connecticut evaluation of the Crime Victims with Disabilities Specialist Program cite numerous failings in California's efforts.

The four-agency report finds that "the current system of protections is inadequate for victims with developmental disabilities" and cites numerous specific problems.<sup>177</sup> It concludes that "the current system of protections is inadequate for victims with developmental disabilities because it results in the underreporting of abuse, neglect, and victimization in this population; fails to collect valid, reliable data concerning the scope of the problem; is complex and confusing to victims and mandated reporters; and is generally unsuccessful in prosecuting perpetrators."<sup>178</sup>

Likewise, the university researchers' evaluation finds "numerous challenges,"<sup>179</sup> including these:

- The criminal-justice system often fails to pursue cases because its personnel think the victims' disabilities make them non-credible.
- The system fails to investigate cases because of jurisdictional issues.
- The system drops cases because of mistakes during the investigation process.
- There often are limited supports for crime victims with disabilities. For example, there are no domestic-abuse shelters for victims who are unable to perform the chores associated with shelter residency.
- Laws and vendor contracts don't require agencies providing supportive living services to persons with disabilities in the clients' homes to do background checks on caregivers or other employees.
- There is lack of systematic data collection to reveal the extent of crimes against victims with disabilities or their need for special services.

Thus, while California has made many recent efforts to protect persons with disabilities from crime and two 2003 studies find some progress, the same studies cite numerous major problems. Finally, there is no evidence that California's limited efforts to use hate-crime laws in particular to protect these persons have had any effect.

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<sup>177</sup> *Abuse and Neglect of Adults with Developmental Disabilities*, *op. cit.*, p. 28.

<sup>178</sup> *Ibid*, p. vii.

<sup>179</sup> V. Jenness and N. Naples, *op. cit.*, pp. 87-89.



***Legislation on Other Hate-Crime Issues***

Assembly Bill 51 (Murray), Chapter 740 of 1997, permits enhancement of the penalties for arson against a church or synagogue by including places of worship among the types of institutions against which certain hate crimes are committed.

Assembly Bill 1450 (Shelley), Chapter 850 of 1998, requires mandatory community service, in addition to the existing criminal penalties, for ruining the real or personal property of a person victimized because of a protected characteristic.

Assembly Bill 715 (Firebaugh), Chapter 626 of 2000, adds “national origin” to the list of victims’ protected characteristics in hate crimes that local law-enforcement agencies must report to the Department of Justice.

Assembly Bill 1193 (Steinberg), Chapter 253 of 2001, prohibits insurers from canceling or refusing to renew policies held by religious, educational, or other nonprofit organizations solely because the policyholders had filed claims for damages from hate crimes.

Senate Bill 780 (Ortiz), Chapter 899 of 2001, provides one-year misdemeanor jail terms and stiff civil penalties for injuring, intimidating, interfering with, or obstructing a person exercising the right of religious freedom at a place of worship, and for intentionally damaging the property of a place of worship. The bill also covers other subjects, including multi-mission extremist crimes, as discussed above.

Assembly Bill 2145 (Chu), Chapter 1134 of 2002, is intended to stop persons from inserting hate materials into free publications. It expands the misdemeanor crime of advertising theft -- or placing unauthorized material into a newspaper -- by including other types of publications such as magazines and rental guides.

Assembly Bill 2653 (Chu), Chapter 788 of 2002, assists prosecutions of hate crimes by providing that, if a prosecutor is unable to go to trial because he or she has been assigned to a proceeding in another courtroom, the court shall grant a one-time continuance of up to 10 days in the hate-crime prosecution.

## ***Chapter IV: Executive-Branch Actions***

The administration of Governor Gray Davis, the Department of Justice under Attorney General Bill Lockyer, and the Commission on Peace Officer Standards and Training headed by Executive Director Kenneth O'Brien have taken steps in recent years intended to protect Californians from hate crimes. This chapter discusses some of those actions and those of the Schwarzenegger administration to the limited extent it has had time to take action on the problem since assuming office in November 2003.

### ***Davis Administration***

As mentioned in Chapter I, Governor Davis in 1999 appointed former U.S. Secretary of State Warren Christopher and former California Governor George Deukmejian to chair a Governor's Advisory Panel on Hate Groups.<sup>180</sup>

In February 2000, the governor released the Christopher-Deukmejian Commission's report, which determined that "California's laws addressing hate-motivated behavior are among the most comprehensive in the nation," but found a need for further steps to "help turn the tide against hate groups."<sup>181</sup> Davis declared that he would sponsor "omnibus anti-hate crime legislation this year that will incorporate several of the recommendations of the blue ribbon panel."<sup>182</sup> Davis didn't do so, but did sign Assembly Bill 178 (Villaraigosa), Chapter 955 of 2000, and Assembly Bill 1931 (Scott), Chapter 959 of 2000, introduced prior to release of the commission's report, which took actions similar to some recommended by the commission.<sup>183</sup>

Also in August 1999, Governor Davis announced a question-and-answer page dealing with civil rights on the Department of Fair Employment and

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<sup>180</sup> *Press Release: Governor Davis Announces Formation of Panel to Combat "Hate Groups,"* Office of the Governor, Aug. 26, 1999.

<sup>181</sup> W. Christopher and G. Deukmejian, *op cit.*, pp. 5, 8.

<sup>182</sup> *Press Release: Governor Davis Releases Findings From Blue-Ribbon Panel on Hate Crimes,* Office of the Governor, Feb. 21, 2000.

<sup>183</sup> *Press Release: Governor Davis Signs Civil Rights Legislation,* Office of the Governor, Oct. 1, 2000.

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Housing's Web site.<sup>184</sup> It contains information about the laws enforced by the department, how to file complaints, pre-complaint questionnaires, the department's most frequently asked questions, procedures for obtaining the department's publications, and a toll-free number for reporting hate violence (now disconnected).

Following the September 11, 2001, terrorist attacks, Governor Davis spoke out for ethnic and religious understanding and against hate, as did President George W. Bush and many other American leaders.<sup>185</sup>

When a crime wave materialized, the governor announced that hate-crime victims in California are eligible for up to \$70,000 from the State Victims Compensation Program to help reimburse for the costs of medical and dental services, mental-health counseling, wage or income loss, relocation, home security, and funerals and burials.<sup>186</sup>

The governor's press release also noted that the Department of Fair Employment and Housing may award hate-violence victims damages up to \$150,000 for emotional distress, property damages, lost wages, and medical expenses. The department may also seek restraining orders, civil fines up to \$25,000, and payment of the victims' attorney's fees.<sup>187</sup>

At the same time, the Department of Fair Employment and Housing held meetings with human relations commissions, religious leaders, and community-based organizations in Los Angeles, Orange County, San Francisco, and San Jose to plan additional outreach. These led to the following steps, which the governor announced on October 4, 2001:<sup>188</sup>

- Callers with civil claims were scheduled for appointments in the department's closest district office.
- The department referred hate-crime reports to the local district attorneys.
- The department translated informational materials into Middle Eastern and South Asian languages to facilitate distribution of the new toll-free number and to disseminate general information about California laws regarding hate crimes.

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<sup>184</sup> <[www.dfeh.ca.gov](http://www.dfeh.ca.gov)>.

<sup>185</sup> *Press Release: Governor Davis Urges Tolerance in the Wake of Terrorism*, Governor's Office, Sacramento, Sept. 12, 2001; *Press Release: Statement of Governor Davis Following the Speech of the President*, Governor's Office, Sacramento, Sept. 20, 2001.

<sup>186</sup> *Press Release: Governor Davis Announces New State Program to Help Victims of Hate and Bias Crimes*, Governor's Office, Sacramento, Sept. 26, 2001.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Press Release: Governor Announces Initiative to Assist Victims of Terrorism-Related Hate Crimes*, Governor's Office, Sacramento, Oct. 4, 2001.

The hate-crime phone number received 233 calls in the six months following September 11, 2001. The number dropped to 9 in the six months from October 2002 to March 2003.<sup>189</sup>

Reasons for that drop may include relatively little publicity,<sup>190</sup> the line rang eight times before a recorded message answered,<sup>191</sup> and the recorded message may have been difficult or impossible for limited-English or hearing-impaired persons to understand.<sup>192</sup> The recording's initial reference to the Department of Fair Employment and Housing also may have deterred some callers because, while the department is the state's principal civil-rights agency, its name doesn't fully reflect its mission. The state's reported net decline in hate crimes may also have contributed to the decline in hot-line calls, though the decline in reported crimes (down 34 percent in 2003 compared with 2001<sup>193</sup>) is much less than the decline in calls (down 96.1 percent in October 2002-March 2003 compared with September 2001-March 2002).

Also in the weeks following 9/11, the Department of Fair Employment and Housing, the Fair Employment and Housing Commission, and several local bar associations collaborated on victim-assistance training sessions throughout the state in the fall of 2001 for attorneys, community-based organizations, religious groups and others.

In January 2003, the department issued a publication, *Responding to Hate: Rights, Remedies, Prevention Strategies*. While the publication is thorough, it contains statements that a protected characteristic must be "one of the main reasons" for a crime to be classed as a hate crime and that "if the attack would have been carried out regardless of the victim's [protected characteristic] it would still be a crime, but it would not be a hate crime." Contrary to these statements, the leading California Supreme Court hate-crime decision<sup>194</sup> finds that the protected characteristic under the hate-crime statutes need only be "a substantial

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<sup>189</sup> *Press Release: Governor Davis Announces Drop in Hate Violence Calls as Second Anniversary of September 11<sup>th</sup> Approaches*, Governor's Office, Sacramento, Sept. 10, 2003.

<sup>190</sup> While in 2001 the department publicized the hate-crime number widely, in 2003 we found no references to it outside the department's own literature.

<sup>191</sup> Three tests by this author, Oct.-Nov. 2003.

<sup>192</sup> "You have reached the California Department of Fair Employment and Housing's victims of hate crime toll-free hot line. If you have an emergency, please hang up and call 911 and/or contact your local law enforcement agency. If you have been a victim of an act or threat of hate violence, please leave your name and telephone number along with the area code, and we will return your call during our normal business hours, 8 a.m. to 5 p.m. Monday through Friday. If you have reached this recording during normal business hours, all of our lines are busy at the moment. Please leave a message after the beep, and someone will get back to you. Thank you."

<sup>193</sup> *Hate Crime in California 2003*, *op cit.*, p. 16.

<sup>194</sup> *In re M.S.*(1995) 10 Cal 4<sup>th</sup> 698.

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factor in the commission of the [hate] crime”<sup>195</sup> and that “nothing in the text of the statute suggests that the Legislature intended to limit punishment to offenses committed exclusively or even mainly because of the prohibited bias.”<sup>196</sup> The same court ruling rejected a defendant’s contention that the hate-crime law “must be read to require proof that the victim would not have been selected but for his or her protected characteristic [emphasis in original].”<sup>197</sup>

***Schwarzenegger Administration***

The Department of Fair Employment and Housing disconnected the hate-crime reporting number in April 2004 due to the small number of calls and budget limitations. The department reports that it continues to accept hate-crime reports at its main statewide toll-free number, 800-884-1684.<sup>198</sup>

However, that main number’s recorded message refers hate-crime callers back to the disconnected number.<sup>199</sup> Department staff said they will correct this oversight.<sup>200</sup>

***Department of Justice*** <sup>201</sup>

Upon assuming office in 1999, Attorney General Bill Lockyer more than doubled the Department of Justice’s staff resources devoted to civil-rights enforcement. The Civil Rights Enforcement Section’s duties include training law-enforcement personnel and community organizations and their members on hate-crime laws and prevention.

In October 1999, the attorney general issued a rapid-response protocol. The protocol’s goal is immediately assisting local and federal law-enforcement agencies with Department of Justice resources in the investigation, identification, arrest, prosecution, and conviction of perpetrators of major hate crimes.<sup>202</sup> Senior Department of Justice personnel activate the protocol at the request of local law enforcement, and they have activated it only once.

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<sup>195</sup> *Ibid.*, p. 7; Penal Code Section 422.75(i)(1) adopts this language and states that is declaratory of existing law under this court decision and *People v. Superior Court (Aishman)*, 10 Cal. 4th 735, 1995.

<sup>196</sup> *Ibid.*, p. 9.

<sup>197</sup> *Ibid.*, pp. 7, 8.

<sup>198</sup> Jacqueline Wagner, Department of Fair Employment and Housing, Sacramento, personal communication, July 21, 2004.

<sup>199</sup> Author’s tests, July 20 and Aug. 5, 2004.

<sup>200</sup> J. Wagner, personal communication, July 21, 2004.

<sup>201</sup> Information in this section is from Zeny M. Agullana, Special Assistant to the Attorney General, Department of Justice, Sacramento, personal communications, Oct.-Dec. 2003, except as otherwise noted.

<sup>202</sup> *Attorney General’s Hate Crime Rapid Response Team: Protocol for Deployment of Department of Justice Resources*, Department of Justice, Sacramento, Oct. 5, 1999,

As previously discussed, Attorney General Lockyer in 2000 created a Civil Rights Commission on Hate Crimes, which reported its recommendations in March 2001. The Department of Justice added a hate-crime prevention specialist to the Attorney General's Crime and Violence Prevention Center in 2000, and hate-crime prevention materials now are available in Arabic, Armenian, Chinese, English, Hindi, Korean, Punjabi, Spanish, and Vietnamese.

Also in 2000, the attorney general sponsored a hate-crime conference in Pomona, at which panels of experts and victims discussed reporting and underreporting, anti-immigrant crimes, law-enforcement investigations, prosecution and impacts on victims.<sup>203</sup> At that conference, the Department of Justice unveiled a prototype hate-crime database that law enforcement can access to track these crimes and suspects as soon as local agencies enter them via a statewide computer network. It now is used by the Los Angeles Police Department, the Sacramento County Sheriff's Department, and the Department of Justice itself. The Department of Justice expects to make the database available to all California law-enforcement agencies in 2004.<sup>204</sup>

In early 2001, the Department of Justice and the U.S. attorney for the Eastern District of California hosted day-long briefings on anti-reproductive-rights crimes in Fresno and Sacramento. These training sessions also included a presentation on multi-mission extremist crimes.

After 9/11, the California attorney general was the nation's "most aggressive in collecting data on September 11-related hate crimes and widely publishing it," according to Human Rights Watch.<sup>205</sup> Attorney General Lockyer in 2001 created the California Community Relations Service, which provides voluntary, confidential and impartial mediation to help peacefully resolve local conflicts related to race, color, and national origin. He listed conflicts such as "crises in the schools, allegations of excessive force by law enforcement, racial tensions that arise in connection with housing issues, [and] hate crimes" as examples of the issues he intended the Community Relations Service to address.

Several branches of the Department of Justice participate regularly in hate-crime task forces in Los Angeles County, Orange County, the San Francisco Bay Area, the San Diego region, and the Sacramento area. The department's Criminal Justice Statistics Center anticipates completing a study this year of local law-enforcement agencies' records in reporting and prosecuting hate crimes.<sup>206</sup>

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<sup>203</sup> *Prosecuting Hate Crimes 2000 Conference*, Department of Justice, Sacramento, May 18, 2000.

<sup>204</sup> Irene Smith and Donna Isley-Robinson, Department of Justice, personal communication, Dec. 16, 2003.

<sup>205</sup> A. Singh, *op. cit.*, p. 37.

<sup>206</sup> Leonard Marowitz, Department of Justice, Sacramento, personal communication, Oct. 2002.

**Commission on Peace Officer Standards and Training<sup>207</sup>**

The commission, an independent body in the Department of Justice, produced its first hate-crime training telecourse and made it available to more than 400 law-enforcement agencies throughout the state in 1992. It produced a second telecourse in 2000,<sup>208</sup> still available to the law-enforcement agencies. There are no estimates of how many officers have seen these telecourses.

Responding to the mandate of Assembly Bill 3407 (Klehs), Chapter 1239 of 1992, the commission made its first legislatively mandated hate-crime training course available and added it to its basic academy curriculum in June 1994. The commission revised the course curriculum and developed an instructor's manual in January 2001. Ten law-enforcement agencies, two colleges, and one community-based organization are approved to present this training. As of June 2003, a reported 33,349 out of 77,434 California peace officers, excluding correctional officers, had received this four-hour basic course – approximately 43 percent of the state's peace officers.

As part of complying with that AB 3407 mandate, the commission also published *Guidelines for the Development of Law Enforcement Agency Hate Crime Policy and Hate Crime Orientation Training*. It updated the guidelines in 2000,<sup>209</sup> and distributed the document to every law-enforcement agency statewide.

The commission is developing an additional hate-crime in-service training course that any law-enforcement agency will be able to present to its officers. Commission staff expect the commission to adopt the new curriculum in October 2004.<sup>210</sup>

In 1996, the commission certified a course in diversity and tolerance offered by the Museum of Tolerance at the Simon Wiesenthal Center in Los Angeles. The course includes an optional one-to-two-hour segment on hate crimes. By April 2003, the museum had trained 26,744 peace officers, 8,716 law-enforcement academy students, and 10,605 civilian employees of law-enforcement agencies, but most in-service personnel opt for a segment on a different topic, so it's impossible to say how many of them were exposed to the hate-crime segment.<sup>211</sup>

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<sup>207</sup> Information in this section is from Alan Deal, Commission on Peace Officer Standards and Training, Sacramento, personal communications, Aug.-Oct. 2003, except as otherwise noted.

<sup>208</sup> *Hate Crime: A Proactive Approach*, *op. cit.*

<sup>209</sup> *Guidelines for Law Enforcement's Design of Hate Crime Policy and Training 2000*, *op. cit.*

<sup>210</sup> A. Deal, personal communication, June 2003.

<sup>211</sup> Sunny Lee, Museum of Tolerance, Los Angeles, personal communication, Oct. 30, 2003.

In 2001, the commission developed a 40-hour hate-crimes investigation course and added it to its Robert Presley Institute of Criminal Investigation's course catalog. Approximately 125 investigators have attended this training.

Also in 2001, the commission certified two one-day briefings on anti-reproductive-rights crime that included some information on multi-mission extremist crime, mentioned above. About 70 officers attended the two briefings.<sup>212</sup>

The commission also has produced three other telecourses that include information on hate crimes, although there are no estimates on how many officers or dispatchers have seen them:

- Responding to one of the requirements of Senate Bill 780 (Ortiz), Chapter 899 of 2001, the commission in February 2003 made a telecourse on anti-reproductive-rights crime available to all law-enforcement agencies in California.<sup>213</sup>
- The commission also has produced two telecourses for law-enforcement agency dispatchers, both including hate-crime training.

The Attorney General's Commission report found several problems with the commission's hate-crimes training, including:

- Because state law has required hate-crime training in law-enforcement academies only since 1993, many senior law-enforcement supervisors and administrators may have received no hate-crime training.<sup>214</sup> (The commission's Alan Deal responded that this is "probably correct.")
- Dispatchers and other non-sworn law enforcement staff who should be aware of hate-crime policies and procedures may receive no training at all.<sup>215</sup> (Alan Deal responded that this statement is "not entirely true." The required basic academy course for dispatchers includes four hours on the combined subjects of cultural diversity and hate crimes, he said. In addition, the California POST Television Network offers two, two-hour telecourses for dispatchers, each including some information on hate crimes, though the state does not require a dispatcher to enroll in either.)

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<sup>212</sup> Author's estimate based on personal observation.

<sup>213</sup> *Anti-Reproductive-Rights Crimes*, California POST Television Network, Sacramento, February 2003. The 2003 telecourse complies with SB 780's stated intent that it include "information on crimes, including antigovernment extremist crimes and certain hate crimes motivated by hostility to real or perceived ethnic background or sexual orientation, commonly committed by some of the same persons who commonly commit anti-reproductive-rights crimes of violence."

<sup>214</sup> *Reporting Hate Crime*, *op. cit.*, p.19.

<sup>215</sup> *Ibid*, p. 19.



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Of the 57 percent of peace officers who haven't taken the basic hate-crime course, there are no hard statistics available on how many have received any other hate-crime training. Commission staff estimate that roughly 70-80 percent of officers have received at least some. The courses and course segments available to these officers are each two hours at most.

The state hasn't provided for comprehensive evaluation of the effectiveness of its training efforts concerning either hate crimes or other subjects. There is no evident way to measure in the aggregate what information officers learn or retain, or how the training affects their job performance.

## ***Chapter V: Emerging Issues***

This section discusses other issues related to hate crimes that may be emerging and deserving of the Legislature's consideration.

### ***Victim Support and Assistance***

Hate crimes can cause intense feelings of vulnerability, anger and depression, physical ailments, learning problems, and difficult interpersonal relations, all symptoms of post-traumatic stress disorder. Hate-crime victims need as much as five years to overcome these effects of their ordeal. By contrast, victims of non-bias crimes experience a decrease in crime-related psychological problems within two years. Like post-traumatic-stress victims, hate-crime victims may heal more quickly when they receive appropriate support and resources soon after the crimes.<sup>216</sup>

As one effort to provide that support, state law requires every law-enforcement agency to make a hate-crime brochure available to victims and the public.<sup>217</sup> There is no requirement that law-enforcement agencies provide these to any state or independent agency, and there have been no known efforts to survey law-enforcement agencies to try to determine the brochures' content or how many comply with this requirement.

The 2000 Commission on Peace Officer Standards and Training telecourse and the commission's basic hate-crime training course both stress the need for victim support, including quick police response.

The telecourse notes that, since most hate criminals are never arrested, the law-enforcement officer who first responds to the crime may be the only person associated with the criminal-justice system who ever talks to the victim. It draws officers' attention to the danger of victims being "revictimized" by official hostility or indifference.<sup>218</sup>

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<sup>216</sup> *Hate Crime Today: An Age-Old Foe in Modern Dress*, American Psychological Association, 1998; p. 2.

<sup>217</sup> Penal Code Section 13873.

<sup>218</sup> *Hate Crime: A Proactive Approach*, *op cit*.

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The basic course notes that hate-crime victims often feel “isolated,” “degraded,” “frightened/terrified,” “suspicious of others,” “powerless,” “depressed, and “in denial/shock.”<sup>219</sup>

It lists the responding officer’s first responsibilities as “respond promptly” and “stabilize the victim by providing physical and emotional first aid” and discusses the need for the officer to “be supportive throughout the process,” “maintain a non-critical and nonjudgmental attitude,” “allow the victim to express his/her feelings,” and “provide the victim with information (including telephone numbers) about appropriate community organizations, advocacy groups, victim witness programs, and local Human Relations Commissions.”

In addition, the curriculum devotes one session entirely to “victim trauma.”<sup>220</sup> This session includes a segment on secondary victimization, “the victim’s perceived rejection by and lack of expected support from the community,” and how the officers can understand and mitigate it.<sup>221</sup>

Likewise, the commission’s hate-crime investigators’ course includes a segment on dealing with victims, with instruction on these points: “professional attitude,” “you represent the Department,” “you are their hope,” “compassionate,” and “sensitive.”<sup>222</sup>

The commission’s hate-crime guidelines for local law-enforcement agencies include an “Expanded Course Outline for Instructors,” supplementing the basic hate-crime course curriculum. The expanded outline, like the curriculum itself, includes victim assistance. As a sample hate-crime policy, the guidelines also include the Los Angeles Police Department’s Special Order 38. It includes no specified first-responding officers’ responsibilities toward victims, but requires a specified supervisor to “assure that an appropriate response is provided to each victim including, but not limited to,” 10-day followup by a detective.<sup>223</sup>

Of the 49 percent of local law-enforcement agencies that have formal hate-crime policies, 86.2 percent include response procedures.<sup>224</sup> There are no data available on how many of these place victim-assistance responsibilities on the first-responding officers, as the commission guidelines also recommend.

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<sup>219</sup> *Session G: Victim Trauma*, Commission on Peace Officer Standards and Training Sacramento.

<sup>220</sup> *Ibid.*

<sup>221</sup> *Session A: Introduction and Overview of Hate Crime: Defining the Challenge*, Commission on Peace Officer Standards and Training, Sacramento, and *Session E*, *op cit.*

<sup>222</sup> *ICI Hate Crime Investigators Class*, *op cit.*

<sup>223</sup> *Ibid.*

<sup>224</sup> V. Jenness, private communication, Oct. 2003.

Among these 49 percent of agencies with formal policies, 51 percent call for follow-up with victims.<sup>225</sup> Thus, only about one of four agencies require any victim follow-up, as the commission guidelines recommend.

There are no known data on whether, or how many, other law-enforcement agencies without formal policies nonetheless provide such victim services.

Thus, the effectiveness of the state's efforts to assist hate-crime victims is unmeasured.

### **Crimes Against Immigrants**

Immigration status isn't a protected characteristic under California hate-crime laws. Assembly Bill 2521 (Napolitano), which the Legislature passed in 1994, would have added immigration status and homelessness to the list of protected characteristics. Governor Wilson vetoed the bill. However, crimes against immigrants committed because of the victims' ethnicity or nationality are hate crimes.

The Southern Poverty Law Center in 2001 reported increasing bias crimes against both documented and undocumented immigrants throughout the country.<sup>226</sup>

While most of these anti-immigrant crimes, like most hate crimes, appear to be committed by unaffiliated individuals, the center's report details how white-supremacist groups point to non-white immigration to fuel racist fears, recruit to their movements, and promote violence. A quote from one neo-Nazi gives the flavor of many more that the report cites:

*This is a precise situation that can start a race war.... All it takes is for bodies to show up, and for the Mexicans in L.A. to start reprisals against Whites in California. Many wars have started over a single shot. I seriously urge any lone-wolf to leave a few bodies in the desert to get things warmed up.*<sup>227</sup>

California to date has avoided that neo-Nazi's brutal fantasy. One neighboring state has been less fortunate.<sup>228</sup>

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<sup>225</sup> *Ibid.*

<sup>226</sup> "Blood on the Border," *Intelligence Report*, Southern Poverty Law Center, Mobile, Alabama, Spring 2001. pp. 6-18.

<sup>227</sup> *Ibid.*, p. 8.

<sup>228</sup> Arizona police said a Mexican man found shot to death in a rural area outside Phoenix on March 5, 2003, appeared to be the ninth victim in a string of execution-style murders of undocumented immigrants. (*Slain Immigrant Called 9th Victim in Arizona Spree*, Reuters, Phoenix, March 5, 2003.) A subsequent Anti-Defamation League report documented a rising tide of organized anti-immigrant violence in Arizona. (*Border Disputes: Armed Vigilantes in Arizona*, Anti-Defamation League, May 2003 <<http://dev.adl.org/extremism/arizona/arizonaborder.pdf>>.)

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The California Attorney General's Commission found several reasons why some immigrants in California who are victims of hate crimes, and other crimes, hesitate to report them to police. These include cultural beliefs ("one should not complain about misfortunes"), desire to avoid any contact with police due to government-sanctioned terror in their countries of origin, limited English, lack of knowledge of how to report, and fear of being identified as an undocumented immigrant and being deported.<sup>229</sup>

The commission noted that "a number of law enforcement agencies believe the identification and arrest of perpetrators of hate crimes are public safety issues that outweigh any objection to the continued presence of an undocumented immigrant." It recommended that the attorney general "clarify the level of cooperation police are mandated to provide to the Immigration and Naturalization Service" and "request prosecutors to adopt a policy of requesting 'parole' for undocumented immigrants who are victims of or witnesses to hate crimes to allow them to continue to remain in the United States for the purposes of testifying at trial."<sup>230</sup>

Postponing crime victims' or witnesses' deportations to allow them to testify often persuades them to cooperate with law enforcement, according to an experienced prosecutor who served on the Attorney General's Commission.<sup>231</sup>

Others in law enforcement argue that state and local law enforcement shouldn't report undocumented immigrants to federal authorities at all if the immigrants commit no crimes under state law<sup>232</sup> and cooperate with local law-enforcement and prosecution efforts.<sup>233</sup> The Anaheim, Los Angeles, Sacramento, San Diego, and Stockton police departments and the San Joaquin and Ventura county sheriffs have adopted this policy, according to the National Immigration Forum.<sup>234</sup>

On the other hand, many persons who are concerned about what they see as homeland-security risks and other problems caused by undocumented immigrants want state and local law-enforcement agencies to detain and turn them over to federal authorities for deportation. For example, members of Congress in 2003 proposed the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act, which

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<sup>229</sup> *Reporting Hate Crimes, op. cit.*, p. 11.

<sup>230</sup> *Ibid.*, p. 33.

<sup>231</sup> Hector M. Jimenez, San Diego County District Attorney's Office, personal communications, 2000 and 2003.

<sup>232</sup> Entering the United States without proper documents isn't a crime under California law. Status violations, such as overstaying a visa, aren't crimes under state or federal law.

<sup>233</sup> Adrian Garcia, Houston Police Department and National Latino Peace Officers Association, personal communication, 2001.

<sup>234</sup> *Background: From Community Policing to Community Profiling*, National Immigration Forum, Washington, D.C., May 22, 2002 <<http://www.ilw.com>>.

would require state and local law-enforcement agencies to enforce federal civil immigration laws or lose federal funding.

Congress didn't pass the bill, perhaps partly because of law-enforcement opposition. The California Police Chiefs Association wrote:

*We believe that the proposed CLEAR Act will undermine our fundamental mission of protecting the public... [F]or local and state law enforcement organizations to be effective partners in their communities, it is imperative that they not be placed in the role of arresting and detaining individuals based solely on a change in their immigration status. Most agencies in California already routinely refer illegal immigrants who have committed other criminal violations to the [U.S. Immigration and Naturalization Service] and will continue to do so.... The unintended consequence of this bill will be to chill the willingness of immigrants to come forward and report crimes and other suspicious activities.*<sup>235</sup>

### **Anti-Arab and Anti-Islamic Crime**

While the United States has a history of anti-Arab/Middle Eastern crime waves,<sup>236</sup> an extensive 2002 report by Human Rights Watch finds that the 2001 wave was unique both in extent and ferocity.<sup>237</sup>

California's reported hate-crime totals rose to record highs in 2001, almost entirely because of:

- A 345.8 percent increase (428 vs. 96) in "anti-other ethnicity/national origin" crimes, which includes "anti-Arab/Middle Eastern" crimes, and
- A 2,333.3 percent increase (73 vs. 3) anti-Islamic crimes.<sup>238</sup>

(Please see Figure 2, page 51.)

The Human Rights Watch report notes that "general fear of government," which many Muslim and Arab immigrants share with other immigrants from nations with repressive governments, is "aggravated by the detention and deportation of Muslims and Arabs by the federal government after September 11 and by fears that reporting hate crimes would draw attention to non-citizens who had violated terms of their visas."<sup>239</sup>

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<sup>235</sup> Rick TerBorch, president, California Police Chiefs Association, Sacramento, letter to U.S. Senator Dianne Feinstein, Sept. 19, 2003  
[http://www.immigrationforum.org/currentissues/articles/Letter\\_CAPoliceChief.pdf](http://www.immigrationforum.org/currentissues/articles/Letter_CAPoliceChief.pdf)

<sup>236</sup> A. Singh, *op. cit.*, pp. 10-13.

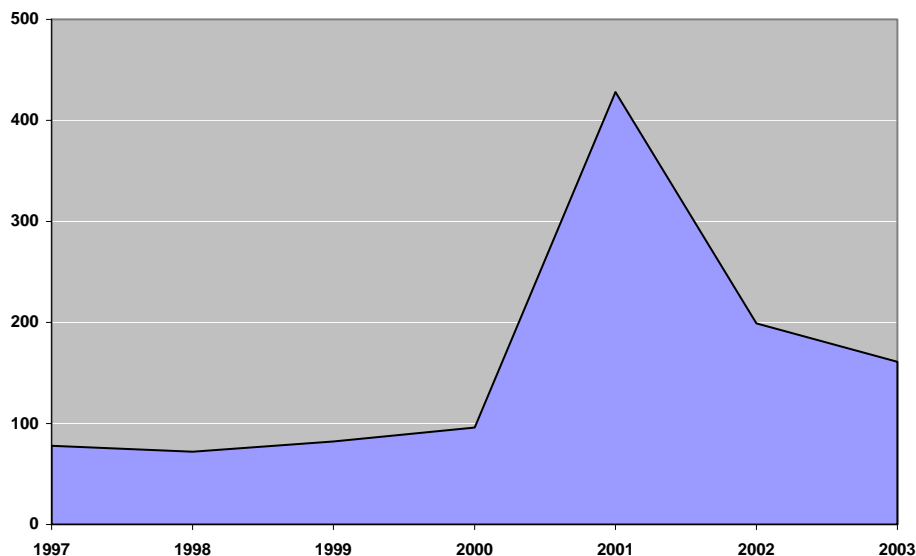
<sup>237</sup> *Ibid*, pp. 13-14.

<sup>238</sup> *Hate Crime in California 2003*, *op cit*, p. 42.

<sup>239</sup> A. Singh, *op. cit.*, p. 33.

**Figure 2**

**Anti-Other-Ethnicity/National-Origin Hate Crimes**



Anti-other ethnicity/national origin hate crime offenses increased each year from 1998-2001, then decreased in 2002 and 2003. These crimes increased 345.8 percent in 2001 as a result of post-9/11 hate crime activity.

Source: California Department of Justice

As the Northern California American Civil Liberties Union report notes, “Fear is not surprising when many immigrants have seen their neighbors disappear.”<sup>240</sup> A 2004 Senate Office of Research report, for example, found that American and immigrant Muslims’ perceptions of the USA PATRIOT Act and associated federal post-9/11 actions created fear that gripped those communities. The report details many reported cases of Muslims rounded up, detained, and held incommunicado, including one in which the subject was detained after reporting a crime.<sup>241</sup>

The Human Rights Watch report finds that areas in which law-enforcement agencies had strong pre-existing relationships with the Arab and Islamic communities experienced the fewest post-9/11 hate crimes. Cities such as Los Angeles, where police had no strong pre-existing relationships with those communities, also had success in preventing hate crimes by quickly deploying officers to vulnerable areas. The report

<sup>240</sup> B. Cuddy, *op. cit.*, p. 2.

<sup>241</sup> Max Vanzi et al, *The PATRIOT Act, Other Post-9/11 Enforcement Powers and the Impact on California’s Muslim Communities*, Senate Office of Research, May 2004 <[http://www.sen.ca.gov/sor/reports/REPORTS\\_BY\\_SUBJ/PUBLIC\\_SAFETY\\_JUDICIARY/PATRIOTACT.PDF](http://www.sen.ca.gov/sor/reports/REPORTS_BY_SUBJ/PUBLIC_SAFETY_JUDICIARY/PATRIOTACT.PDF)>.

recommends 13 steps that police, prosecutors, and communities can take to prepare for and deal with such large-scale hate-crime waves.<sup>242</sup>

Similarly, the California Association of Human Relations Organizations offered law enforcement suggestions, many of which also focus on establishing relations with potential target communities before crimes occur.<sup>243</sup> The Commission on Peace Officer Standards and Training intends to include these suggestions in material distributed to officers taking its new eight-hour hate-crime course.<sup>244</sup>

The conditions that made the anti-Arab/anti-Islamic crime wave possible included ethnic and religious hostility, which the American Arab Anti-Discrimination Committee report argues were fueled by the public statements of many prominent persons.<sup>245</sup> In recent U.S. history, anti-Arab/anti-Islamic crime rampages have been triggered by terrorist attacks and by hostilities in the Middle East.<sup>246</sup> If these conditions haven't changed and if further triggering events occur, there appears to be no reason not to predict further anti-Arab/anti-Islamic hate-crime waves.

Assembly Joint Resolution 64 (Chu), Resolution Chapter 93 of 2004, declares the Legislature's concern about the number of bias-motivated crimes against Arab-Americans, Muslim-Americans, South Asian-Americans, Sikh-Americans, and other Americans in recent months and calls on local, state, and federal law-enforcement authorities to work to prevent, investigate, and prosecute vigorously all such crimes.

### ***False-Identity Hate E-mail ("Spoofing")***<sup>247</sup>

In April 2002, Arab-American and American Muslim activists and persons perceived as their supporters began to experience a new form of harassment – finding their names and return addresses forged on mass e-mails expressing inflammatory anti-Israeli, anti-Semitic, and anti-American opinions. This harassment goes by the trivial-sounding name of "e-mail spoofing." The results have included damaged reputations, suspension of e-mail accounts, fear of more violent hate crimes, and one reported termination of employment as described below.

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<sup>242</sup> A. Singh, *op. cit.*, pp. 3-5.

<sup>243</sup> *Twenty-five-Plus Things that Law Enforcement Agencies Can Do to Prevent or Respond to Anti-Arab and Anti-Muslim Acts*, California Association of Human Relations Organizations, Laguna Hills, CA.

<sup>244</sup> Janice Bullard, Commission on Peace Officer Standards and Training, personal communication, 2004.

<sup>245</sup> A. Stewart, *op cit*, pp. 119-131.

<sup>246</sup> A. Singh, *op. cit.*, pp. 10-13.

<sup>247</sup> Information in this section is from Anick Jesdanum, Associated Press, New York, April 20, 2003, except as otherwise noted <<http://www.crime-research.org/eng/news/2003/04/Mess2805.html>>.



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- The name and return e-mail of Laura Drake, a Middle East scholar and adjunct professor of international service at American University in Washington D.C., appeared on an inflammatory anti-Israeli mass e-mail in September 2002.<sup>248</sup> The university administration e-mailed everyone on the original hoax e-mail list, distancing the university from the statements. The administration's e-mail referred to her as a "former" adjunct professor -- the first she said she heard that her contract hadn't been renewed for the 2002-03 academic year, in spite of what she says was an oral agreement to renew it.<sup>249</sup> The administration denied there ever was an agreement to renew her contract, and never reversed its decision not to extend it.<sup>250</sup> It also never retracted its own e-mail falsely attributing the original inflammatory statements to her.<sup>251</sup> The university's e-security director traced the hoax to an e-mail network in the Los Angeles area, but could get no further without a search warrant.<sup>252</sup>
- There were similar attacks on faculty of the University of Michigan, which traced the attacks to a different alleged perpetrator in the Los Angeles area. Michigan law enforcement asked the California Department of Justice for assistance. The state Department of Justice found the alleged perpetrator but was unable to take action against him because there was no crime under California law.<sup>253</sup>
- The Los Angeles office of the Muslim Public Affairs Council was the target of similar attacks, resulting in hundreds of angry e-mail responses. The group was unable to find a perpetrator.<sup>254</sup>

E-mail spoofing exploits the openness of the Internet e-mail protocol. Several Web sites even automate the process by creating Web-based forms for sending the fake e-mails. Because e-mail spoofing, in itself, isn't a crime, police cannot use law-enforcement tools such as search warrants to find the perpetrators unless they first find evidence of associated crimes, in which case Penal Code Sections 1524(a)(7), 1524.2, and 1524.3 allow them to seek search warrants covering Internet service providers. Current law doesn't allow search warrants covering the

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<sup>248</sup> Megan Rooney, "Anti-Israel E-Mail Message Was a Hoax; Scholar Isn't Happy with American U.'s Response," *Chronicle of Higher Education*, Sept. 18, 2002; Sally Acharya, "E-Mail Diatribe that Faked AU as Its Source is Traced to L.A.," *American Weekly*, American University, Washington, D.C., Sept. 24, 2002 <<http://veracity.univpubs.american.edu>>; Evan Wagner, "Professor Impersonated in Malicious E-Mail," *The Eagle*, American University, Washington, D.C., September 17, 2002 <<http://www.evanwagner.com/articles/drake.html>>; and Laura Drake, Belmont, California, personnel communication, June 2003.

<sup>249</sup> M. Rooney, *op cit*.

<sup>250</sup> M. Rooney, *op cit*.

<sup>251</sup> M. Rooney, *op cit*.

<sup>252</sup> Jim Root, California Department of Justice, Los Angeles, personal communications, June and Oct., 2003.

<sup>253</sup> *Ibid*.

<sup>254</sup> Kamal Abu-Shamsieh, Muslim Public Affairs Council, Los Angeles, personal communication, June 2003.

personal computers of suspects except in cases of felonies and a few other cases, making apprehension and prosecution of the criminals additionally difficult.<sup>255</sup>

Sending such mass false-identity hate e-mail messages almost certainly is a common-law tort -- a form of invasion of privacy called "false light in the public eye," involving "publicity falsely attributing to the plaintiff some opinion or utterance" that is "objectionable to the ordinary reasonable man under the circumstances."<sup>256</sup> The victims can sue the perpetrators and likely win -- if they can find them, which they generally cannot because they lack tools such as search warrants.

### ***Hate Crimes Behind Bars and by Former Prisoners***

The Christopher-Deukmejian Commission found that a racially charged atmosphere in state prisons "creates an ideal recruiting ground for hate groups," which spread as their members serve their sentences and are released. Hate-group leaders who are sentenced to prison also bring their recruiting efforts with them.<sup>257</sup>

Likewise, the Anti-Defamation League in 2002 found that prisons are a major recruitment target for racist and other violent extremist groups, and detailed links between groups in and out of prison.<sup>258</sup>

The Christopher-Deukmejian Commission reported that the Department of Corrections takes a "proactive stance against prison gangs, inmates and parolees who espouse a racist philosophy." However, the report recommends that the department's correctional officers receive additional training.<sup>259</sup>

It goes on to note that California Youth Authority officers "do not receive any formal training on hate groups and hate crimes." It says the Youth Authority "does not work with community organizations to track hate groups, and while they participate in street-gang task forces to share information with police, prosecutors, and parole officers, no hate group equivalent exists."<sup>260</sup>

Actually, however, hate-crime task forces in Los Angeles County, Orange County, the San Francisco Bay Area, the San Diego region and the

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<sup>255</sup> Bud Frank, California Department of Justice, personal communication, March 17, 2004.

<sup>256</sup> William L. Prosser, "Privacy," *California Law Review*, Vol. 48, No. 4, August 1960, p. 398.

<sup>257</sup> W. Christopher and G. Deukmejian, *op. cit.*, p. 25.

<sup>258</sup> *Dangerous Convictions: An Introduction to Extremist Activities in Prisons*, Anti-Defamation League, New York, 2002, p. 52  
[http://www.adl.org/learn/Ext\\_Terr/dangerous\\_convictions.asp](http://www.adl.org/learn/Ext_Terr/dangerous_convictions.asp).

<sup>259</sup> *Ibid*, p. 25.

<sup>260</sup> *Ibid*, p. 28.

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Sacramento area are equivalent to street-gang task forces in which the Department of Corrections and Youth Authority could participate.

Likewise, the Attorney General's Commission found that county probation officers and officers of the Department of Corrections, Youth Authority, county jails and juvenile detention facilities lack – and need – hate-crime training.<sup>261</sup>

The Commission on Correctional Peace Officer Standards and Training (a separate agency from the Commission on Peace Officer Standards and Training) doesn't offer any courses on hate crimes, though its basic academy training for the Department of Corrections and Youth Authority includes four hours on cultural diversity.<sup>262</sup>

The Anti-Defamation League study called for prison officials to devote more resources “to better police America's penal institutions and to deal with those groups and individuals who pose security threats.”<sup>263</sup>

“Perhaps more importantly,” the league's report states, “Americans need to pay more attention to those people behind bars, in order to offer genuine support and hope for the future to inmates that might cancel out or at least offer an alternative to the message of racist, anti-Semitic and other extreme groups and movements. Human nature being what it is, such endeavors will never be completely successful, but the alternative is worse: to lose by default.”<sup>264</sup>

***Law-Enforcement Agency Policies and Protocols***

The law directs the Commission on Peace Officer Standards and Training to “develop guidelines ... addressing hate crimes” in addition to the basic course of instruction.<sup>265</sup> The Commission's *Guidelines for Law Enforcement Policy and Training 2000* comply with both requirements, and suggest “the primary elements that law enforcement executives should incorporate into their agencies' hate crime policies and operational programs.”<sup>266</sup>

The Christopher-Deukmejian Commission report finds “great disparities” in the way local agencies respond to hate crimes.

*Some departments, for instance, have created detailed procedural formats for responding to hate crimes, response task forces, and sophisticated computer tracking systems. Others have not even*

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<sup>261</sup> *Reporting Hate Crimes, op cit.*, p. 34.

<sup>262</sup> Douglas Peterson, Commission on Correctional Peace Officer Standards and Training, Elk Grove, personal communication, Oct.. 3, 2003.

<sup>263</sup> *Dangerous Convictions, op cit.*, p. 52.

<sup>264</sup> *Ibid*, p. 52.

<sup>265</sup> Penal Code Section 13519.6.

<sup>266</sup> *Guidelines for Law Enforcement Policy and Training 2000, op cit.*, p. 5.

*identified a specific officer to contact in their departments with respect to hate crimes, either because of limited resources, a limited amount of hate activity in their jurisdiction, or out of mere reluctance.*<sup>267</sup>

The disparity “has impeded statewide coordination of efforts,” the commission found.<sup>268</sup> It recommended the state “establish a working panel of law enforcement groups, prosecutors, school officials, community groups, the Department of Fair Employment and Housing, and others to create statewide guidelines for standardized responses to hate groups and hate crimes.”<sup>269</sup>

The commission’s report also recommends additional law-enforcement training, a statewide database such as the Department of Justice is in the process of implementing, and a “hate crime management team,” including a trained victim advocate in each law-enforcement and prosecutorial agency.<sup>270</sup>

Similarly, the 2003 University of California report found that 194 of 397 (49 percent) of local police and sheriff agencies had formal hate-crime policies as of 2002, and that “the content of these policies, where they exist, varies significantly in terms of the definitions of hate crime employed and the procedures prescribed.” It makes a preliminary finding, dependent on further analysis, that “having a hate crime policy in place increases an agency’s propensity to report hate by approximately 25 percent. In other words, formal policy influences police behavior in a positive way.” Its recommendations, too, are similar to those of the Christopher-Deukmejian Commission.<sup>271</sup>

Thus, the Legislature, the Commission on Peace Officer Standards and Training, the Christopher-Deukmejian Commission, and the University of California researchers all recognize the desirability of developing formal hate-crime policies and protocols that include specific elements.

### ***Punishment and Restorative Justice***

California’s prison system is expensive<sup>272</sup> and, according to some experts, ineffective at preventing crime by its inmates after their release.<sup>273</sup> Imprisonment may tend to increase hate crimes. (Please see “Hate

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<sup>267</sup> W. Christopher and G. Deukmejian, *op. cit.*, p.21.

<sup>268</sup> *Ibid*, p. 21.

<sup>269</sup> *Ibid*, p. 8.

<sup>270</sup> *Ibid*,. p. 8.

<sup>271</sup> V. Jenness and R. Grattet, *op. cit.*, pp. 3-4.

<sup>272</sup> The youth and adult corrections budget went from \$1,046,210,000 in 1984-85 to a projected \$6,214,000,00 in 2004-05, a 493.9 percent increase. (*State of California Expenditures, 1984-85 to 2004-05*, Legislative Analyst’s Office, May 2004 [http://www.lao.ca.gov/LAOMenus/lao\\_menu\\_economics.aspx](http://www.lao.ca.gov/LAOMenus/lao_menu_economics.aspx).)

<sup>273</sup> Cover Letter, *Back to the Community: Safe and Sound Parole Polices*, Little Hoover Commission, Sacramento, Nov. 2003, pp. 1-2 <http://www.lhc.ca.gov/lhcdir/172/report172.pdf>.

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Crimes Behind Bars and by Former Prisoners,” page 53.) For reasons including these, the Legislature has been somewhat conservative about increasing prison sentences.

The Christopher-Deukmejian Commission recommended prison sentence increases for certain violent hate crimes:

*Penalty enhancements of one, three or five years are available for certain, particularly heinous crimes, including murder, mayhem, rape, lewd acts on a child, carjacking, and others. These penalty enhancements should also be available for imposition on perpetrators of hate violence.*

*Making penalty enhancements available for defendants convicted of hate crimes serves two purposes. First, it provides greater deterrence to would-be perpetrators of hate crimes. Second, it shows the state’s dedication to addressing the problems hate groups present in California today.<sup>274</sup>*

As an alternative to further lengthening prison terms, a California Council of Churches spokesperson who served on the Attorney General’s Commission<sup>275</sup> advocated hate-crime sentencing with a goal of restorative justice.<sup>276</sup>

*In dealing with hate crimes, sentence enhancements are crucial. These types of crimes send lasting messages designed to terrify both the object of the initial act plus families and others in the same targeted category. Those messages are designed to stop victims and others from exercising their rights. That being said, the most critical forms of punishment must incorporate restorative justice.*

*If we are to stop hate crimes, we cannot just incarcerate the angry with others of like mind who justify and expand the rage and upgrade the tactics. Restorative justice demands restitution, but more important, it works to eliminate the hate, the bigotry, and the fury. It works to bring people out of jail who won’t see others as the enemy and seek further revenge against the victims. Observations*

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<sup>274</sup> W. Christopher and G. Deukmejian, *op cit*, p.51.

<sup>275</sup> Elizabeth Sholes, Public Policy Director, California Council of Churches, Sacramento, personal communication, July 2004.

<sup>276</sup> “Restorative justice is a systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders and communities caused or revealed by the criminal behaviour [cq]. Practices and programs reflecting restorative purposes will respond to crime by: (a) identifying and taking steps to repair harm, (b) involving all stakeholders, and (c) transforming the traditional relationship between communities and their governments in responding to crime. Some of the programmes [cq] and outcomes typically identified with restorative justice include: Victim offender mediation; Conferencing; Circles; Victim assistance; Ex-offender assistance; Restitution; Community service.” (Centre [cq] for Justice and Reconciliation, International Prison Fellowship, Washington, D.C.  
<http://www.restorativejustice.org>.)

*of parole data show that if we do not incorporate elements of true hate eradication, if we don't include the entire community in changing the perspective of those who hate, especially the young, we will just have more crimes, more violence, and better-prepared perpetrators. That helps no one.*<sup>277</sup>

The California Judicial Council has no Rule of Court specific to hate-crime sentencing.<sup>278</sup>

### **Prevention**

Rigorous research demonstrating the effectiveness of strategies to prevent hate crimes is scant.

- A 2003 American Journal of Psychiatry literature review found that “little has been done” to evaluate the hate-crime prevention and intervention strategies employed throughout the nation.<sup>279</sup>
- A congressionally mandated study of the effectiveness of the more than \$3 billion annually that the U.S. Department of Justice gives state and local law enforcement and communities for crime prevention found no evaluations of hate-crime-prevention programs.<sup>280</sup>
- The National Crime Prevention Council lists and discusses what it considers to be 14 tested, effective strategies for racism and bias-crime prevention.<sup>281</sup> However, to be included in a model program in the council's Effective Strategies Database, a program must “provide specific, measurable, and non-anecdotal achievement in a minimum of three of [22] programmatic outcomes” – only one of which is “reduced crime.”<sup>282</sup>
- The U.S. Department of Justice, which funded the Education Development Center's former National Center for Hate Crime Prevention<sup>283</sup> to produce two hate-crime-prevention publications,

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<sup>277</sup> E. Sholes, *op cit*.

<sup>278</sup> June Clark, Judicial Council, Sacramento, personal communication, Nov. 2003.

<sup>279</sup> Annie Steinberg, Jane Brooks, and Tariq Remtulla, “Youth Hate Crimes: Identification, Prevention, and Intervention,” *American Journal of Psychiatry*, Vol. 60, Issue 5, American Psychiatric Association, May 2003, pp. 979-989.

<sup>280</sup> Lawrence W. Sherman, Denise Gottfredson, Doris MacKenzie, John Eck, Peter Reuter, and Shawn Bushway, *Preventing Crime: What Works, What Doesn't, What's Promising*, University of Maryland, College Park, Maryland, 1997.  
<<http://www.ncjrs.org/works>>.

<sup>281</sup> “Racism and Bias Crime,” *Effective Strategies*, National Crime Prevention Council, Washington, D.C.  
<<http://www.ncpc.org/ncpc/ncpc/?pa=resCenter&sa=searchResults&topicId=228>>.

<sup>282</sup> *Effective Strategic Database Criteria*, National Crime Prevention Council, Washington, D.C.

<sup>283</sup> National Center for Hate Crime Prevention <<http://main.edc.org>>

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never approved them for publication.<sup>284</sup> In any case, these publications weren't intended as rigorous evaluations of hate-crime prevention programs, but as "a tool for communities to use in response to hate crimes in their area and ideas for youth activism."<sup>285</sup>

- The California School Violence and Prevention Response Task Force in 2000 found that "much of what is known about the impact of violence prevention programs in school is anecdotal and has not been rigorously evaluated."<sup>286</sup> The task force didn't address hate crimes in particular.
- The California Attorney General's Commission strongly supported creation of community "hate crime prevention and response networks" to increase hate-crime identification, law-enforcement response, reporting, and victim support. However, the commission frankly admitted that there is "no indication that the networks are responsible for reductions in hate-motivated violence or hate crimes."<sup>287</sup>

Nonetheless, there is some solid research on the subject.

One publication<sup>288</sup> summarizing two studies<sup>289</sup> reports that "people who witness others expressing non-prejudiced attitudes (such as the calls for unity that were frequently made after September 11) are less likely to show bias themselves."

One study of the rates of and motivations for antigay harassment and violence among otherwise non-criminal community-college students in the San Francisco Bay Area suggests that antigay harassment and violence is widespread and that that many young adults believe it is socially acceptable.<sup>290</sup> While the study doesn't measure actual outcomes of any prevention efforts, it predicts that "because antigay behaviors are culturally normative and usually go unreported, educational outreach to adolescents and preadolescents is likely to be a more effective prevention strategy than criminal prosecutions under special hate crime laws."<sup>291</sup>

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<sup>284</sup> Karen McLaughlin, Education Development Center, Boston, personal communication, Nov. 10, 2003.

<sup>285</sup> Jennifer Wiley-Cordone, Education Development Center, Boston, personal communication, Nov. 9, 2003.

<sup>286</sup> *School Violence Prevention and Response*, *op. cit.*, p. 69.

<sup>287</sup> *Reporting Hate Crimes*, *op. cit.*, p. 14.

<sup>288</sup> Phyllis B. Gerstenfeld, "A Time to Hate: Situational Antecedents of Intergroup Bias," *Analysis of Social Issues and Public Policy*, 2000, pp. 61-67.

<sup>289</sup> F.A. Blanchard, T. Lilly, and L.A. Vaughn, "Reducing the Expression of Racial Prejudice," *Psychological Science* 2(2), 1991, pp. 101-105; and M.H. Monteith, N.E. Deneen, and G.D. Tooman, "The Effects of Social Norm Activation on the Expression of Opinions Concerning Gay Men and Blacks," *Basic and Applied Social Psychology*, 18, 1996, pp. 267-288.

<sup>290</sup> Karen Franklin, "Antigay Behaviors Among Young Adults," *Journal of Interpersonal Violence*, 15 (4), April 2000, pp. 339-362.

<sup>291</sup> *Ibid*, p. 339.

Finally, as reported earlier in this chapter, a Human Rights Watch report published after the post-9/11 hate-crime wave finds that areas in which law-enforcement agencies had strong pre-existing relationships with the Arab and Islamic communities experienced the fewest post-9/11 hate crimes. Los Angeles and other cities where police had no strong pre-existing relationships with those communities nonetheless had success in preventing hate crimes by quickly deploying officers to vulnerable areas.<sup>292</sup>

With the recent formation of a Hate Crime Research Network based at Portland (Oregon) State University,<sup>293</sup> academic researchers' interest in hate-crime prevention has increased, which may result in more rigorous research.<sup>294</sup>

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<sup>292</sup> A. Singh, *op. cit.*, pp. 3-5.

<sup>293</sup> <http://www.hatecrime.net>.

<sup>294</sup> Brian Levin, Center for the Study of Hate and Extremism, California State University, San Bernardino, personal communication, 2004.





## **Appendix:** **California Hate-Crime and Related Statutes**

Following are California's hate-crime and related statutes as of August 2004. The complete texts of the state's legal codes are available on the California legislative information Website, [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

- **Laws that make certain biased actions crimes:** Penal Code Section 422.6(a), (b) and (c); and Penal Code Section 11413(a), (b)(2) and (9), (d), and (e).
- **Laws that provide for harsher penalties for certain bias crimes:** Penal Code Section 190.03(a); Penal Code Section 190.2(a); Penal Code Section 422.7; Penal Code Section 422.75(a), (b), (c), (e), and (i)(16); Penal Code Section 422.95; Penal Code Section 594.3(b); and Penal Code Section 1170.75.
- **A law that defines "gender" for most purposes:** Penal Code Section 422.76.
- **Laws concerning hate crimes and hate incidents in the schools:** Education Code Section 233(a)(1), (4) and (7), and (e); Education Code Section 48900.3; Education Code Section 67380;<sup>295</sup> Penal Code Section 628; Penal Code Section 628.1;<sup>296</sup> and Penal Code Section 628.2(a) and (b).
- **Laws that provide law-enforcement hate-crime training, reporting, and public information:** Penal Code Section 13023; Penal Code Section 13519.6(a); Penal Code Section 13778; Penal Code Section 13873; and Chapter 899 of 2001, Section 1.<sup>297</sup>
- **A law that protects hate-crime victims from insurance discrimination:** Insurance Code Section 676.10.
- **A law that provides rewards for information on hate crimes:** Penal Code Section 1547(a)(7) and (13), (c), (d), (e) and (f).

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<sup>295</sup> The Postsecondary Education Commission hasn't implemented this section's reporting requirements due to budget limitations. Instead, the commission Web site provides links to similar information that colleges and universities report to the U.S. Office of Postsecondary Education.

<http://www.cpec.ca.gov/links/LinksSubPage.ASP?37>.

<sup>296</sup> Governor Davis and the Legislature suspended operation of this section due to budget limitations before the Department of Education started compiling these statistics.

<sup>297</sup> Uncodified statutes such as this are available through the Senate's Web site. (Statutes [http://info.sen.ca.gov/cgi-bin/pagequery?type=sen\\_statutes&site=sen&title=Statutes&sb=y](http://info.sen.ca.gov/cgi-bin/pagequery?type=sen_statutes&site=sen&title=Statutes&sb=y).)

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- **Laws creating civil remedies for similar offenses:** Civil Code Section 51; Civil Code Section 51.5; Civil Code Section 51.7; Civil Code Section 51.8; Civil Code Section 52; Civil Code Section 52.1; and Civil Code Section 52.4; Civil Code Section 53.
- **Other criminal laws that protect adults with disabilities:** Penal Code Section 368; Penal Code Section 13515; Penal Code Section 13515.25; Welfare and Institutions Code Section 4427.5; Welfare and Institutions Code Section 4640.6(g)(1); Welfare and Institutions Code Division 9, Part 3, Chapter 11, commencing with Section 15600; Welfare and Institutions Code Division 9, Part 3, Chapter 12, commencing with Section 15700; and Welfare and Institutions Code Division 9, Part 3, Chapter 13, commencing with 15750.
- **Other criminal laws that protect religious worshippers and places of worship:** Penal Code Section 302; Penal Code Part 1, Title 111.7, commencing with Section 423; Penal Code Section 594.3(a); Penal Code Section 1170.8; and Penal Code Section 11412.
- **A criminal law on cross-burning and other symbols that terrorize:** Penal Code Section 11411.

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