



CONNECTICUT HATE CRIMES ADVISORY COUNCIL
<https://portal.ct.gov/hatecrimes>

Dear Alex,

On behalf of the Governor's Hate Crimes Advisory Council (Council or HCAC), we respectfully request the Connecticut State Sentencing Commission undertake a thorough review of the criminal statutes on hate crimes as further described in the HCAC's legislative priority below. We also request the commission investigate what standards other states are using with regard to hate crimes. Particularly, we are interested in knowing what the *mens rea* requirements are in such hate crimes statutes.

In addition, the Council requests the Connecticut State Sentencing Commission consider consulting with the Governor's Hate Crimes Advisory Council, community groups, or other organizations that may not be represented on the commission to complete this project thoroughly.

Members of the Council are happy to discuss this request with you or other members of the Connecticut State Sentencing Commission. This review by the commission would be in lieu of the HCAC seeking legislation on this matter.

If you have any questions, please feel free to contact us.

Sincerely,

Judge Douglas S. Lavine and Amy Lin Meyerson, Esq.
Co-chairs, Connecticut Hate Crimes Advisory Council

cc:

Chief State's Attorney Patrick Griffin

Michael Bloom, Chair, HCAC Legislative Priorities Committee

Tom Scanlon, Deputy Director, Boards and Commissions, Governor's Office

Connecticut Hate Crimes Advisory Council
Legislative Priority

Convene A Working Group to Review Hate Crimes Statutes

Background

The HCAC found that one of the main impediments to law enforcement reporting and charging hate crimes is the ambiguous intent standard in the Connecticut General Statutes (CGS). We, therefore, recommend that the Legislature, with advice from the Chief State's Attorney's Office, undertake a thorough review of the statutes on hate crimes to simplify and clarify the intent standard and other provisions in Connecticut's hate crime laws.

Recommendation

The HCAC strongly urges the Legislature to convene a working group, with advice from the Chief State's Attorney's Office, to undertake a thorough review of the criminal statutes on hate crimes and present revisions to such statutes to simplify and clarify the intent standard and other provisions in these statutes to facilitate the investigation and prosecution of hate crimes within Connecticut.

Connecticut Data

The HCAC Hate Crimes and Reporting Subcommittee heard evidence from Connecticut law enforcement about ambiguities in the statutes that hinder reporting and investigation of hate crimes. The boundary between three particular adjacent categories is unclear: hate crimes as defined in statutes, crimes that have bias elements, but these are insufficient to classify them as hate crimes, and bias incidents that do not rise to the level of crimes. The public is usually not aware of the distinction between hate crimes and hate speech, nor informed of the fact that not all slurs, even when committed in the course of an offense, constitute hate crimes. Both law enforcement and public awareness would benefit from clearly distinguishing between statutory hate crimes, crimes with bias elements, and bias incidents that may be serious and are worthy of monitoring, but that do not constitute actual crimes.

Codifying the definitions of "Crimes with Bias Elements" and "Non-Criminal Bias Incidents" in POST-C policy provides agility in subsequent modification as circumstances evolve. This agility would not be present were the definitions to be codified in statute. In formulating these definitions, the Subcommittee draws from the experience of the Bias Crime Unit of the Seattle Police Department which has developed a sophisticated model of hate crimes reporting, investigation, and data analysis.ⁱ

Best practices in hate crimes reporting recommend "establishing a common, simple and comprehensive definition of hate crime."ⁱⁱ Currently, the opaque intent language of the CGS hinders police identification of hate crimes and may discourage a prosecutor from pursuing hate crimes charges. The subjective elements of bias crimes such as Intimidation in the First, Second, and Third Degree in CGS § 53a-181j-l are not fully consistent with federal hate crimes statutes.ⁱⁱⁱ This difference between Connecticut and federal hate crime statutes may potentially obstruct the reporting and prosecution of hate crimes. For instance, CGS § 53a-181j-k requires three subjective elements: malicious intent, "specific intent," and that the crime is motivated "in

whole or in substantial part” by bias or bigotry. This is confusing and also creates an unduly high evidentiary threshold of intent. Therefore, the removal of the words “maliciously,” “specific” and “substantial” in § 53a-181j-k, and “substantial” in § 53a-181l would establish a more reasonable general intent burden and bring Connecticut statutes into line with the federal intent standard of “motivated in whole or in part” by bias or bigotry. Clarifying the intent language is necessary to achieve consistency with and across federal and Connecticut hate crime laws.

ⁱ Bias Crime Unit, SEATTLE POLICE DEPARTMENT (last accessed July 13, 2022) <https://www.seattle.gov/police/information-and-data/bias-crime-unit>.

ⁱⁱ Organization for Security and Co-operation in Europe (OSCE), *Hate Crimes Data-Collection and Monitoring Mechanisms: A Practical Guide* (2014), at 7.

ⁱⁱⁱ See 18 U.S.C.A. § 249 (federal hate crime acts language pertaining to *mens rea* differs significantly from that of Connecticut statute); see also *Hate Crimes, Defining a Hate Crime*, FBI, <https://www.fbi.gov/investigate/civil-rights/hate-crimes> (FBI defines hate crime as needing only be “motivated in whole or in part by an offender’s bias”).