

**REPORTING**

# **Hate Crimes**

**The California  
Attorney General's  
Civil Rights  
Commission on  
Hate Crimes**

**FINAL REPORT**

**BILL LOCKYER  
Attorney General**

# **Attorney General's Civil Rights Commission on Hate Crimes**

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# Summary

In early action as Attorney General, Bill Lockyer established a Civil Rights Commission on Hate Crimes with nationally recognized civil rights activist Fred Korematsu as honorary chair. As an initial mandate, the Commission was asked to make recommendations to:

- **Improve the reporting of hate crimes and hate incidents occurring in California's local communities;**
- **Improve the reporting of hate crimes and hate incidents occurring in schools; and**
- **Improve the reporting of hate crimes and hate incidents by law enforcement agencies.**

In undertaking this directive, members of the Commission visited nearly two dozen diverse communities in small and large cities throughout California, ranging from Ukiah in the North to Fresno in the Central Valley to San Diego in the South. The voices heard included those of students, seniors, people with disabilities, parents and working families.

From each of these forums, commissioners took away poignant stories that brought to life how hate crimes affect real people and ripple through our communities. While it was clear that many communities are responding and taking steps to address hate crimes, it also was clear that more needs to be done so California can truly reflect the wealth of its social and cultural diversity, and lead the way for a modern America.

The Commission found a variety of reasons why victims of hate incidents and hate crimes do not report to law enforcement or other public authorities. Some common themes emerged, however, such as a lack of awareness about hate crime laws and a fear of being re-victimized or of not being taken seriously by law enforcement or other public agencies. It also became evident that social and cultural barriers remain that discourage the reporting of hate crimes.

The Commission found major differences in the response to hate crimes between those communities that have active networks to address hate crimes and those communities where no such networks exist.

These differences included a wide gap in reporting and responding to hate crimes and intergroup conflicts on school and college campuses. Some problems stem from fear of adverse publicity. Other problems stem from a lack of adequate resources to develop effective hate incident and hate crime reporting and responses. There is confusion as well about the roles of school staff and law enforcement officers serving the campus in identifying, reporting and responding to hate incidents and hate crimes.

The Commission found credibility issues for law enforcement in the area of hate crime reporting and responses. 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.

The Commission also found serious gaps in the training of law enforcement officers that can contribute to uneven reporting of hate crimes. The California Commission on Peace Officer Standards and Training (POST) and the United States Department of Justice have designed curricula for identifying, reporting and responding to hate crimes. However, state law requires hate crime training only for law enforcement officers entering their respective law enforcement academy since 1993.

Several law enforcement agencies expressed confusion as to whether youth gang violence should be reported as a gang-related crime or a hate crime when it meets the general criteria for a hate crime. County probation officers and custodial officers at juvenile detention centers, jails, the California Youth Authority and Department of Corrections need training on how to identify and report hate crimes.

The Commission found that hate crimes based on gender are not reported generally. Hate crimes based on disability similarly appear to be underreported. Even when crimes against people with disabilities are reported, law enforcement is not adequately trained to make a determination whether these crimes should be charged as hate crimes.

There also are opportunities available to use technology as a crime-fighting tool. This technology can make it easier for victims to notify authorities about hate crimes and can assist law enforcement in the gathering and filing of data used to compile annual hate crime reports.

In response to these findings, the Commission developed the recommendations detailed in this report. First, to improve the reporting of

hate crimes and hate incidents occurring in California's local communities, the Commission recommends that the California Department of Justice design and launch a multi-lingual educational campaign to increase public awareness about hate crimes, hate incidents and available community resources. *[See Recommendation 1, page 23.]*

Further, the Commission recommends that the Department of Justice facilitate the reporting of hate crimes by establishing and publicizing a toll-free hotline and providing on-line hate crime reporting forms on the Attorney General's Web site. These hate crime reports should be referred to appropriate local enforcement agencies and victims should be referred to available local resources. *[See Recommendation 2, page 23.]*

The Commission also recommends that legislation be enacted to set standards for and provide financial support to city and county human relation commissions to sponsor hate violence prevention and response networks. *[See Recommendation 3, page 24.]*

Second, the Commission makes several recommendations to improve the reporting of hate crimes and hate incidents occurring in schools. Specifically, the Commission recommends that legislation be enacted to set standards and provide financial support for K-12 schools to respond to the concerns of a growing number of parents and students who feel their schools are not safe and that school staff is indifferent to hate incidents and hate crimes. This legislation should also add training in intergroup relations to the mandatory curriculum for an administrative credential. *[See Recommendation 4, page 25.]*

Further, the Commission recommends that the Attorney General work with state college and university leaders to identify and distribute policies for identifying and responding to hate incidents and hate crimes on campuses, and develop guidelines to enable post-secondary institutions to meet their obligations for identifying and reporting hate crimes. *[See Recommendation 5, page 29.]*

Third, the Commission makes several recommendations to improve the reporting of hate crimes and hate incidents by law enforcement agencies. Specifically, the Commission recommends that all levels of sworn peace officers and selected non-sworn personnel receive specified minimum hours of training on hate crime issues. This mandated training should be repeated at least every five years. *[See Recommendation 6, page 29.]*

The Commission further recommends that the California Commission on Peace Officer Standards and Training (POST) revise its training and

guidelines to provide special emphasis on gender-based crimes, disability-based violence, hate-motivated crimes involving gang members, the difference between a hate crime and a crime of opportunity, and identification of a hate crime where there are multiple motives for committing a crime. *[See Recommendation 7, page 30.]*

Additionally, the Commission recommends that law enforcement agencies be encouraged to partner with local government and community agencies to initiate programs to prevent and respond to hate crimes and hate incidents. Funding should be made available based on criteria that include the level of urgency in maintaining public safety and the magnitude of problems faced by a community. *[See Recommendation 8, page 32.]*

The Commission also recommends that the Attorney General convene a task force of representatives from law enforcement agencies and community organizations to draft policies, guidelines, and training to facilitate the reporting of and response to allegations of a hate incident or hate crime perpetrated by a law enforcement officer. *[See Recommendation 9, page 33.]*

The Commission further recommends that the Attorney General clarify the level of cooperation police are mandated to provide to the Immigration and Naturalization Service. Further, the Commission suggests that the Department of Justice ask 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 purpose of testifying at trial. *[See Recommendation 10, page 33.]*

The Commission recommends that the Department of Justice develop guidelines regarding the constitutional and legal limitations on the gathering and handling of information regarding hate incidents. These guidelines should apply to information placed in electronic databases that are utilized by law enforcement agencies investigating hate crimes. *[See Recommendation 11, page 33.]*

The Commission also recommends that youth and adult custodial officers and probation officers be trained to identify and report hate crimes. *[See Recommendation 12, page 34.]*

Additionally, the Commission recommends that the Attorney General broaden the use of his statewide Hate Crimes Database so law enforcement agencies can electronically file standardized hate crime reports, which currently are filed manually. In doing so, the Attorney

General should seek sufficient funding from the Legislature to fully implement the database as both an investigative tool and a way for law enforcement agencies to more readily submit required hate crime data. *[See Recommendation 13, page 34.]*

Further, the Commission recommends that the Attorney General ask the Commission to analyze the California Department of Justice's reporting procedures and format and develop recommendations for capturing hate crimes reported to community-based organizations. *[See Recommendation 14, page 35.]*

The Commission also recommends that the Attorney General consider expanding or encouraging district attorneys and city attorneys to expand or develop training for city and county prosecutors on the identification and prosecution of hate crimes, and on techniques for interacting with victims of hate crimes. District attorneys also should be encouraged, when justified by the size of the relevant jurisdiction, to designate a hate crime prosecution coordinator. *[See Recommendation 15, page 35.]*

Finally, the Commission believes there are additional issues and projects which it should address in the future. *[See Recommendation 16, page 36.]*

## Historical Perspective

Seventeen years ago, the Commission on Racial, Ethnic, Religious and Minority Violence (RERMV Commission), established by the California Attorney General's Office, found that hate-motivated harassment, intimidation, assaults and even murders were occurring on campuses and in communities in every region of the state. In 1984, however, there was no way to determine their nature and extent.

In its work, the RERMV Commission distinguished between hate incidents and hate crimes. It defined hate violence as being:

*. . . any act of intimidation, harassment, physical force or threat of physical force directed against any person, or family, or their property or their advocate, motivated either in whole or in part by hostility to their real or perceived race, ethnic background, national origin, religious belief, sex, age, disability, or sexual orientation, with the intention of causing fear or intimidation, or to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution or the laws of the United States or the State of California whether or not performed under color of law.<sup>1</sup>*

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<sup>1</sup> Attorney General's Commission on Racial, Ethnic, Religious and Minority Violence, *Final Report*, p. 4 (April 1986).

Hate crimes were defined as acts prohibited by penal codes, while hate incidents were defined to include violations of rights motivated by bigotry that were not punishable under criminal statutes.<sup>2</sup>

Prior to the enactment of hate crime laws, the public was largely unaware that intergroup conflicts and violent acts motivated by bigotry occurred in their own communities, except for those instances reported in the media. Police generally classified incidents of racial, ethnic and religious intimidation and harassment under the headings of “suspicious circumstances” or “malicious mischief.” As an example, a few years prior to the passage of hate crime laws, several African-American families living in a San Francisco East Bay community had racist graffiti drawn on their homes, ethnic slurs shouted at them by young people speeding by in cars, their children chased home from school by other students wielding baseball bats, and shots fired into one of their homes. No one but the victims and the officers who responded to the crimes were aware of this reign of terror because the incidents were listed as suspicious circumstances and malicious mischief. Further, police supervisors never reviewed the reports of these crimes because those classifications were not considered worth a second review. Sadly, what occurred in that community was not the exception, but rather the general practice.

Bill Lockyer, then a state Senator, recognized the importance of the RERMV Commission’s recommendations and co-authored California’s key hate crime legislation, which became law in 1984.<sup>3</sup> It is not surprising, therefore, that Attorney General Bill Lockyer made it one of his first orders of business to create a new commission to evaluate the effectiveness of hate crime laws and make recommendations to ensure the effectiveness of these laws.

Governor Gray Davis strongly shares Attorney General’s view on the importance of this issue to California. In 1999, Governor Davis established the Governor’s Advisory Panel on Hate Groups, which subsequently submitted its Final Report to the Governor.

## Overview

The Attorney General appointed 46 members representing a range of interests and expertise to his Civil Rights Commission on Hate Crimes. The Commission was asked to look at the issue of hate crime reporting because the information lays an important foundation for evaluating the effectiveness of hate crime laws and for developing:

- Appropriate support for the victim and those affected by the hate crime or incident;

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<sup>2</sup> [Final Report](#), p. 4.

<sup>3</sup> See Stats. 1987, Chap. 1277, section 3 [AB 63] (commonly known as the Bane Act).

- Intervention to prevent repetition of the crime or incident;
- Intervention to prevent the incident or crime from escalating;
- Data that can be used to identify public policies and practices that impact intergroup relations and incorporate those considerations into planning and decision-making; and
- Data that can be used to identify psychosocial indicators of a propensity to commit hate crimes and incorporate those considerations into planning, education and health decisions.

To carry out its mission, the Commission held 22 forums throughout the State and joined in the Attorney General's statewide conference on hate crimes held at California State Polytechnic University, Pomona, which provided some of the latest information on hate crimes. The Commission's community forums were held in the following areas:

- Fresno-Madera Counties
- Humboldt County
- Inland Empire
- Los Angeles County (five forums)
- Marin-Sonoma-Napa Counties
- Mendocino County
- Monterey County
- Orange County (two forums)
- Sacramento
- San Diego County
- San Francisco-Alameda Bay Area
- Santa Clara County (two forums)
- Shasta County
- Stanislaus-San Joaquin Counties
- Sutter-Yuba-Butte Counties
- Ventura-Santa Barbara-San Luis Obispo Counties

While reexamining the need for hate crime laws was not the task of the Commission, several presenters in local forums engaged in spirited debate on this issue. These individuals argued that hate crime laws violate constitutional guarantees of free speech, that they are anti-white, and that there is no need to differentiate hate crimes from other types of crimes.

The Commission did not find these arguments to be persuasive. Hate crime laws do not violate free speech. In order to avoid treading on the right to free speech guaranteed by the First Amendment of the United States Constitution, hate crime laws in California were carefully crafted to outlaw conduct rather than thought. They do not outlaw prejudicial beliefs, but do make illegal conduct that is motivated by specified types of prejudice. The distinction is important and one that has been long recognized in the United States.

For example, there are federal and state laws prohibiting discrimination in employment, housing and the provision of services.<sup>4</sup> Those laws do not violate the First Amendment because they outlaw conduct that is motivated by bias, as opposed to speech motivated by bias. Hate crime laws similarly prohibit conduct motivated by bias. As a result, the United States Supreme Court has held that hate crime laws similar to those in California are legal precisely because they outlaw conduct rather than speech.<sup>5</sup>

One argument raised at a local forum was that hate crime laws tend to stifle bigoted comments, which are protected by the First Amendment. Hate crime laws may indeed promote a public atmosphere of disapproval towards prejudicial viewpoints which may prevent some people from freely expressing their bias. However, the fact that people may feel uncomfortable exercising their legal right to express bigoted views does not present a persuasive argument for abandoning hate crime laws. The challenge of intergroup dynamics is to enhance free speech within the framework of civilized discourse, a social and political goal that is not hampered, but arguably enhanced, by hate crime laws.

Presenters at several local forums expressed the view that hate crime laws are racist and are intended to apply only to non-white victims. Hate crime laws are not anti-white. In the most recent national report on hate crimes, approximately 16% of hate crimes motivated by race or ethnicity were committed against whites.<sup>6</sup> Similarly, the Attorney General's 1999 Hate Crime Report reveals that approximately 11% of hate crimes in California motivated by race or ethnicity were committed against whites.<sup>7</sup>

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<sup>4</sup> See e.g., 42 U.S.C. section 2000 *et seq.* (Title VII of the Civil Rights Act of 1964, as amended); 42 U.S.C. section 12101 *et seq.* (The Americans With Disabilities Act); California Government Code section 12900 *et seq.* (The California Fair Employment and Housing Act); and California Civil Code section 51 *et seq.* (The Unruh Civil Rights Act).

<sup>5</sup> *Wisconsin v. Mitchell*, 508 U.S. 476 [124 L.Ed.2d 436, 113 S.Ct. 2194] (1993).

<sup>6</sup> *Hate Crime Statistics, 1998* (<http://www.fbi.gov/ucr/98.pdf>).

<sup>7</sup> *Hate Crimes in California 1999* (June 2000).

Neither law enforcement nor white victims who report these incidents are likely to subscribe to the notion that hate crime laws are anti-white. Rather than deepening divisions among the populace, hate crime laws deliver the message that artificial divisions based on bigotry are wrong and that crimes motivated by bigotry are subject to enhanced criminal sanctions.

Hate crimes are different than other crimes. Most crime victims, and those close to them, must have confidence that law enforcement is doing everything possible to apprehend the perpetrator. The impact of hate crimes not only affects the immediate victim but everyone who shares the identity that motivated the particular crime. For example, Jewish and Filipino communities throughout the state and nation were strongly impacted by the attack on the West Valley Jewish Community Center and the slaying of Joseph Iletto in the San Fernando Valley in the summer of 1999. The gay community was likewise impacted by the murders of Matthew Shepherd in Wyoming and Gary Matson and Winfield Mowder, a gay couple, in Redding, California in 1999.

Hate crimes require a strong response from the entire community, not just law enforcement and those sharing the victim's identity. It is important to reassure people that crimes perpetrated against those who share the victim's identity are not condoned by government or by other communities of people. This is necessary in order to avoid polarization, isolation and an escalation of hate-motivated violence in the name of self-defense.

Communities in Southern California's Antelope Valley learned that, when hate crimes are not responded to appropriately and immediately, further acts of violence might occur. Antelope Valley schools and communities were not prepared to react quickly in 1996 when young racist skinheads launched attacks (including assaults with machetes) on African American students. It was not long before other African American youth, who were not the immediate victims, felt so alienated and angry by the perceived lack of concern by the schools and others in the community that they, in turn, became hate crime perpetrators and began attacking white youth at random. The potential for continued racial violence between African Americans and whites alarmed the community and stirred people to action. Fortunately, Antelope Valley communities, law enforcement agencies and schools have now formed a network that is prepared to respond appropriately to hate crimes. It is highly doubtful whether any among them would give credence to the argument that hate crimes should be treated like any other crime.

Hate crime laws have been enacted by many states because they are recognized as a valuable tool for fighting bigotry that has turned to violent action. Arguments that hate crime laws do not work, that they violate free speech, and that they are anti-white and promote separatism may resonate with some, but experience and reality refute these arguments.

# Findings

- 1.** There are a number of reasons why victims of hate incidents and hate crimes do not report to law enforcement agencies or other public authorities. The reasons include, but are not limited to:
  - a) Lack of knowledge about what hate crimes are and how the laws are applied;
  - b) Denial by the victim(s) that a hate crime was perpetrated;
  - c) Fear of retaliation by the perpetrator for reporting;
  - d) Fear of being re-victimized by law enforcement or a belief that law enforcement does not want to address hate crimes;
  - e) Shame for being a victim of a hate crime;
  - f) Cultural or personal belief that one should not complain about misfortunes;
  - g) Fear of being exposed as being gay, lesbian, bisexual, or transgendered to one's family, employer, friends or the general public;
  - h) Lack of English language proficiency and knowledge of how to report hate crimes;
  - i) Fear of being identified as an undocumented immigrant and being deported;
  - j) Fear on the part of people with disabilities who use caregivers that the caregivers who have committed hate crimes against them will retaliate and leave them without life-supporting assistance; and
  - k) Inability of some people with disabilities to articulate when they have been a victim of a hate crime.

At local forums, victims and family members of victims of hate crimes testified that they knew nothing about hate crime laws and were not aware of the need to raise those issues when reporting a crime to law enforcement. Lack of awareness appears widespread among new immigrants and people who do not speak English.

For example, the sister of a Southeast Asian young man who was murdered because of his race and ethnicity gave emotional testimony about the impact of the crime on her family and their ignorance of hate crime laws when the tragedy struck them. A number of people who serve non-English speaking communities in California indicated that they frequently encounter hate crime victims who do not report these crimes because they are unaware of hate crime laws or the procedures for reporting them. The Asian Pacific American Legal Center in Los Angeles reported that, when it began implementing a hate crimes outreach project, the Center uncovered a number of unreported hate crimes that it was then able to report to law enforcement agencies.

Several people spoke about the fear of being retaliated against by the perpetrator for reporting a hate crime. Many indicated that they lacked confidence that the police would protect them or their families. Others alleged law enforcement officers perpetrated hate crimes themselves and bemoaned the absence of any viable means to safely report these incidents.

In certain communities not served by hate violence prevention networks, people of color described incidents where victims of hate crimes (who were people of color) were arrested rather than the perpetrators. Further, they felt they would be in peril if they reported a hate crime. These persons, as well as some law enforcement officials, testified that it was difficult to overcome the fear some people have of law enforcement based on past experiences. In one city, a police captain was appalled by allegations made by several African Americans against the actions of a few of the department's officers in responding to hate crimes. He expressed the desire to begin a dialogue with the community and made arrangements for follow-up meetings after the forum. In other cities, police chiefs and administrators indicated that many victims did not report hate crimes because they feared, or did not trust, law enforcement.

Several representatives of organizations serving refugees in various parts of the state spoke of the terror their clients faced at the hands of the army and the police in their countries of origin, and their desire to avoid any contact with police at all costs. In some communities served by hate violence prevention networks, representatives of organizations serving refugees indicated that they were beginning to overcome their

fear and mistrust by conducting outreach in partnership with the police to help educate the refugees about the role of law enforcement in the United States.

Testimony received by the Commission indicated that some victims of hate crimes based on gender and gender identity<sup>8</sup> have low self-esteem and do not report hate crimes because they feel they somehow bear responsibility for the crime. Representatives of some Latino and Asian community organizations explained that there are some cultural barriers to reporting hate crimes in their communities. They expressed the notion that self-sufficiency and stoicism are important cultural values and that to complain or to ask for help is considered undignified. They indicated it would be difficult to overcome these barriers without peer-based outreach.

Several people spoke to the Commission about gays, lesbians, and transgendered people refusing to report hate crimes because of the fear of having their sexual orientation or gender identity exposed. They also expressed their fear of repercussions at work, at school and from neighbors. In one case, the Commission heard about a gay man who was robbed and severely beaten but did not report the incident to the police because he feared his children would be harassed if his sexual orientation became known. He chose instead to report the incident to the county's hate crime prevention network. Representatives of the Los Angeles Gay and Lesbian Center, which received a grant from the Los Angeles County Commission on Human Relations to conduct outreach, reported that it discovered a sizeable number of people who had not reported hate crimes for similar reasons.

Representatives of organizations working with immigrants, and others who work on hate crime reporting issues, indicated that immigrants are frequently deterred from reporting hate crimes because they fear they will be deported if they do submit a report. Some recommended that the Commission consider drafting recommendations that would enable an undocumented immigrant to report a hate crime without facing possible deportation.

Some individuals with disabilities and disability rights advocates testified that people who are abused by their caregivers do not report the crimes because they fear retaliation by the caregiver or abandonment. They pointed out that few, if any, hate crimes against people with disabilities are reported in California.

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<sup>8</sup> For purposes of this report, "gender identity" refers to a person's internal, deeply felt sense of being either male or female, or something other or in between. Because gender identity is internal and personally defined, it is not visible to others.

## **2. There is a wide gap in responding to hate crimes between those communities that have active networks<sup>9</sup> to address hate crimes and those communities where no such networks exist.**

There were dramatic differences in what was reported to the Commission in communities with hate crime prevention networks compared to what was reported in communities without them. Participants at community forums not served by networks reported distrust and even hostility towards law enforcement and school administrators, and expressed the belief that there was little interest on the part of schools, law enforcement or local government to eliminate the bigotry underlying hate crimes. However, police, school and community organization representatives in areas with networks described how they work together to conduct outreach and improve hate crime identification, reporting, and responses, and engage religious institutions and community-based organizations in the effort.

The working relationships among community-based organizations, law enforcement and schools in communities with hate crime prevention networks appear to play a major role in overcoming mistrust, fear and anger between people of color, members of the gay, lesbian, bisexual and transgendered communities and the institutions that are designed to serve them. There is no indication that the networks are responsible for reductions in hate-motivated violence or hate crimes. However, based on comments made at the community forums, their work to minimize the impact of hate crimes on victims and to prevent isolation and alienation of segments of the population appears to have been successful.

## **3. Although there are some common features shared by community-based networks that report hate crimes, there is a wide variance in their methods and operations.**

Hate crime prevention networks work to improve reporting through public education and outreach, and by improving the way law enforcement and schools identify and report hate crimes and hate incidents.

These community-based networks (which include public and private agencies serving both specific segments of the population and the

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<sup>9</sup> A “network” is defined as a group of law enforcement officials, community-based organizations, educators and community members that collaborates on ideas on how to deal with hate crimes and hate incidents in their communities. Networks provide a forum for law enforcement, school and community advocacy groups to testify on the occurrences of hate crimes and the effect these crimes have on their communities.

general population as a whole) have a major impact on the identification and reporting of hate crimes and hate incidents. Services provided by networks include:

- Developing resources for providing counseling, legal representation and other assistance to victims of hate incidents and hate crimes;
- Conducting programs designed to educate the public about hate incidents and hate crimes and how to report them;
- Training faith and community-based organizations who serve diverse constituencies in the area to take reports and provide assistance to victims of hate incidents and hate crimes;
- Partnering with county sheriff and police departments and other law enforcement agencies such as school police, housing authority police and the like to improve staff training and develop policies and procedures for responding to and reporting hate incidents and hate crimes;
- Partnering with schools to improve staff training and develop policies and procedures for responding to and reporting hate incidents and hate crimes;
- Establishing and operating community and school-based programs to prevent hate incidents and hate crimes;
- Drafting and implementing procedures for coordinating responses to high profile hate crimes in collaboration with public officials, law enforcement, schools, the media and community and faith-based organizations; and
- Serving as a central repository for data regarding hate incidents and hate crimes, analyzing trends and patterns regarding this data and issuing periodic reports.

However, there are no uniform standards or training to guide these networks. Networks vary widely in their methods and operations. Some use billboards, public service ads and other communication mediums to convey their message. Others directly fund outreach projects of community organizations serving constituencies that are likely victims of hate crimes. Still others concentrate on developing accurate reporting mechanisms.

Additionally, some networks are apparently well-funded and staffed. Others, however, depend entirely on the cooperation of other agencies and organizations to carry out their work.

**4. There is a wide variance in the ways administrators and teachers in K-12 schools respond to hate incidents and hate crimes. People living in a number of communities reported they were worried about the physical and psychological safety of their children and complained that school administrators attempted to minimize hate incidents and did not report hate crimes.**

Unfortunately, horrific tales of hate crimes and hate incidents being perpetrated against youngsters attending school were recounted at some of the community forums. Of greater concern, however, were allegations of seeming indifference and insensitivity on the part of school staff.

In one community, an African American woman recited several incidents of hate violence perpetrated on the children of her African American friends. She announced that she would be moving out of the area because her son was nearing school age and she wanted to protect him from the bigotry facing African Americans in the city's public schools.

In another community, an African American woman related an account of her grandson being burned on his face by white youngsters because he was African American. As horrified as she was about the incident, she was more upset with one of the school administrators, who allegedly told her that her grandson needed to expect those things to happen to him because of his race. People of color in a number of communities complained that school staff and administrators said that what befell their children was to be expected because of their race or ethnicity.

In one community, a teacher listening to allegations of racist graffiti at the school where he taught advised the parents to report these incidents to him instead of the principal because the principal would not respond appropriately. Representatives from Muslim organizations reported that Muslim students are subjected to harassment and intimidation in schools, and that such activity escalates when international conflicts involve the United States and Muslim nations.

School administrators at a few forums indicated that the demands on them were such that they had neither the time nor the resources to adequately address hate incidents or hate crimes. They also stated that most school administrators and teachers have no guidelines or training that would facilitate better responses to hate crimes.

School administrators at a number of forums also cautioned that there are strong disincentives to report hate incidents and hate crimes.

These include: the school and administrator might come under public criticism because hate incidents and hate crimes occurred on the campus; parents might withdraw students from the school; media attention directed at the school might foster disruption; and disciplinary action might be taken against the administrator. They recommended that the Commission consider ways to provide training and resources to schools that identify hate incidents and hate crimes.

The Commission identified several things that would help schools identify and report hate incidents and hate crimes:

- a. Access to facilitators and speakers who can generate support from school officials, the Board of Education, public officials, and the community at large for efforts to identify, report, prevent and respond to hate incidents and hate crimes so that a school would not be criticized when hate crimes are reported;
- b. Assistance in identifying and procuring funding and resources to support technical assistance, training, and programs to enable school staff to develop effective hate incident and hate crime reporting and response methodologies;
- c. Technical assistance to develop campus policies, procedures and forms for identifying, reporting and responding to hate incidents and hate crimes;
- d. Training for staff who in turn could train staff and students on how to distinguish between hate incidents, hate crimes and crimes motivated by the victim's vulnerability;
- e. Assistance in clarifying the respective roles of school staff and law enforcement officers serving the campus in identifying, reporting and responding to hate incidents and hate crimes;
- f. The formation of working relationships with appropriate community-based organizations to implement programs designed to reduce intergroup tensions and respond to hate incidents and hate crimes;
- g. Assistance in developing a curriculum that is relevant to the diverse populations represented in the student body;
- h. Access to resources and assistance for responding to media inquiries relating to intergroup tensions, hate incidents and hate crimes;
- i. Access to legal counsel on issues relating to hate incident and hate crime responses.

**5. Representatives from community colleges, state universities, and the University of California report a lack of guidance for designing procedures to identify, report and respond to hate crimes. Representatives from several of the post-secondary institutions participating in the forums indicated that their campuses had never reported a hate crime.**

A few public post-secondary educational institutions, and at least one private university, Stanford University, have designed special programs to educate students regarding how to report hate incidents and hate crimes, and have created ad hoc committees to review these programs. However, representatives indicated that these programs were developed in response to particular needs of the particular campus and were created without the benefit of guidelines or technical assistance.

Several police departments of post-secondary educational institutions also have adopted policies and protocols for identifying hate crimes. However, despite these efforts, the Commission learned that hate crimes occurring on campus, if identified, are likely to be addressed internally and not reported to the community at large or to the California Department of Justice in accordance with state law.

**6. In some communities, public officials and business leaders tend to discourage law enforcement officers from reporting hate crimes for fear of adverse publicity.**

A number of law enforcement officials and some representatives working in hate violence prevention networks indicated that chambers of commerce, city officials, developers, and others sometimes attempt to discourage police and the media from reporting hate crimes for fear of tarnishing their community's image. A number of people working with networks suggested that offering resources to law enforcement agencies to enable them to aggressively identify and report hate crimes might result in improved reporting.

**7. 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 in some communities.**

While the Commission is unaware of any instance where a law enforcement officer has been charged with committing a hate crime, it heard significant community skepticism about law enforcement's

commitment to preventing and responding to hate crimes. People of color and advocates for gay, lesbian, bisexual and transgendered people in many of the local community forums held by the Commission indicated they did not believe law enforcement was concerned about hate crimes. They 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.

A number of people complained they had no viable way to report hate incidents and hate crimes perpetrated by law enforcement officers. All law enforcement agencies have procedures for making complaints against law enforcement officers. However, there are no special provisions for filing a complaint against an officer for committing a hate crime. Several persons also indicated that members of their communities fear retaliation if they use the existing complaint system to report a hate incident or hate crime perpetrated by a law enforcement officer.

## **8. The California Commission on Peace Officer Standards and Training (POST)<sup>10</sup> and the United States Department of Justice have designed curricula for identifying, reporting and responding to hate crimes. However, state law requires hate crime training only for law enforcement officers entering their respective law enforcement academy since 1993. This has created several problems:**

- Many law enforcement supervisors and administrators who entered police service prior to 1993 hold positions that influence how their departments identify, report and respond to hate crimes. However, many have received no hate crime training;
- The number of hours and quality of hate crime training an officer receives at a police academy depends upon which academy the officer attends. There is no minimum standard or uniformity;
- Dispatchers and other non-sworn law enforcement staff who should be aware of hate crime policies and procedures may receive no training on them.

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<sup>10</sup> POST sets standards for peace officer training. POST certification of training allows for different levels of support to help defray the costs of law enforcement personnel participating in the training. POST has adapted a federal hate crime training course to make it applicable to California. POST is currently prepared to offer either a four-hour or eight-hour course to line officers, who are the first to respond to crime scenes.

Law enforcement officers and city and county officials at many of the forums asked the Commission to bring uniformity to hate crime training. They testified about a lack of guidance regarding the proper identification and reporting of hate crimes and suggested that the Commission find ways to get law enforcement, members of the community, and school staff “on the same page” when defining a hate crime. A number of law enforcement administrators and several representatives from various district attorneys’ offices complained about the potential for generating hostility by not classifying an incident as a hate crime when it is perceived as one by members of the affected community.

**9. There is confusion among several law enforcement agencies as to whether youth gang violence should be reported as a gang-related crime or a hate crime when it meets the general criteria for a hate crime.**

Some people working in hate crime prevention networks and several law enforcement supervisors and administrators complained about the lack of guidance as to when a violent incident between gangs of different racial and/or ethnic groups should be classified as a hate crime. Some supervisors and officers indicated that their internal routing procedures are different for hate crimes and gang-related crimes. As a result, they cannot classify an incident as both a hate crime and a gang-related crime, but rather must choose between the two categories. Another issue on which they sought clarification was whether violent incidents between youth who share the same ethnicity but who are immigrants from different countries should be classified as hate crimes.

**10. Hate crimes based on gender are generally not reported.**

Several law enforcement officials indicated that they generally did not identify or report gender-based hate crimes unless the perpetrator made a specific comment about hating women. They testified that they receive no guidelines or training to help them determine whether a rape or attempted rape, a domestic violence incident, or other crime commonly perpetrated on the basis of gender or associated with gender should be considered a hate crime.

## **11. Hate crimes based on disability are generally not reported.**

The Commission heard moving testimony about the particular difficulty some people with disabilities have in reporting hate crimes. A person who suffers physical or sexual abuse at the hands of a caregiver is in a particularly vulnerable position. This person must feel safe reporting the crime and must be assured that the care he/she depends on for his/her very existence is not threatened. However, even when crimes against people with disabilities are reported, law enforcement is not adequately trained to make a determination whether it should be charged as a hate crime.

## **12. County probation officers and custodial officers at juvenile detention centers, jails, the California Youth Authority and Department of Corrections need training on how to identify and report hate crimes.**

Some representatives from probation departments complained about the lack of policies, guidelines and training to guide probation staff in identifying, reporting and responding to hate crimes. The Commission also learned that training on identifying and reporting hate crimes is not included in the training given employees at the California Youth Authority and the California Department of Corrections.

## **13. Greater awareness about civil remedies for hate incidents and hate crimes may improve reporting.**

California's Bane Civil Rights Act<sup>11</sup> and Ralph Civil Rights Act<sup>12</sup> allow victims of hate crimes and hate incidents to obtain restraining orders against and recover monetary compensation from perpetrators whom they can identify. The California Department of Fair Employment and Housing is charged with investigating alleged violations of the Ralph Civil Rights Act.<sup>13</sup> District and city attorneys and the Attorney General also have the authority to enforce the Bane and Ralph Acts. Federal fair housing laws, administered by the U.S. Department of Housing and Urban Development, also provide remedies for victims of hate crimes who are attacked at their residences.<sup>14</sup> Representatives from both of the above federal and state agencies suggested that hate incident and hate crime reporting might improve if their services are

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<sup>11</sup> California Civil Code section 52.1.

<sup>12</sup> California Civil Code section 51.7.

<sup>13</sup> California Civil Code section 52, subdivision (f); Government Code sections 12948, 12960.

<sup>14</sup> 42 U.S.C. section 3617.

known. However, they cautioned that the processing of complaints is currently a lengthy process; such complaints would need to be given priority if they were to be considered a responsive resource.

**14. The current method utilized by law enforcement agencies to report hate crimes to the California Department of Justice can be improved.**

Currently, local law enforcement agencies are required to report each hate crime committed within their jurisdictions to the Department of Justice by completing and submitting a standardized written paper form. This method is not the most efficient for reporting hate crimes to the California Department of Justice. There is available technology that can be used to allow law enforcement agencies throughout the state to submit the standardized form electronically.

At the Attorney General's Hate Crimes Conference held on May 18, 2000, Attorney General Lockyer unveiled the new Hate Crimes Database being developed by the California Department of Justice. This database is an investigative tool for law enforcement agencies to use when investigating hate crimes.

When fully operational, law enforcement agencies throughout the state will be able to input information about hate crimes that have been committed within their jurisdictions. These agencies will also be able to access all information inputted into the database to help them solve hate crimes they are investigating. During the presentation of the database, the Commission learned that the database could be adapted to also allow law enforcement agencies to submit standardized hate crime reporting forms electronically.

# Recommendations

## General

- 1. The California Department of Justice should design and launch a multilingual public education campaign to inform people about hate crimes and hate incidents (using understandable definitions that can be uniformly applied) and to make them aware of community resources and criminal and civil remedies.**

Community members attending the first forum set a theme that was repeated several times in subsequent forums, particularly in communities without hate crime prevention networks. Specifically, they wanted to know what constituted a hate crime and how they were different from other crimes. Representatives of organizations serving new immigrants and others who may not fully comprehend English-language media explained that their clients had not been exposed to the notion of hate crimes, how to identify them or the need to report them.

Implementing a multilingual public education campaign and providing support to appropriate community-based organizations to educate the various communities of people in California will greatly improve the identification and reporting of hate crimes. The California Department of Justice should spearhead this campaign.

- 2. The California Department of Justice should establish and publicize a toll-free hotline number for reporting hate incidents and hate crimes, and should post an incident reporting form on its Web site ([www.caag.state.ca.us](http://www.caag.state.ca.us)), which can be completed on-line. The California Department of Justice should then facilitate the reporting of the incident to the appropriate local law enforcement agency and refer the victim to the appropriate local resources.**

The Commission heard from the general public, police and school administrators that people lack sufficient trust to report hate crimes to local authorities in a number of communities. The Commission believes that a toll-free California Department of Justice phone number

dedicated to allowing victims and witnesses to report hate crimes will help overcome the hesitancy of victims and witnesses who distrust or harbor fears of local school and local law enforcement officials. The number(s) should be accessible to people with disabilities and those who cannot speak English.

California Department of Justice staff who receive reports on the proposed toll-free number should be trained to take reports from victims and be made aware of resources that are available to help the victim or witness in all areas of California. A protocol should be designed that includes, but is not limited to:

- a) Ensuring the immediate safety of the victim and witness;
- b) Facilitating the reporting of the crime to the appropriate local law enforcement agency;
- c) Assessing the needs of the victim and making referrals to appropriate local resources; and
- d) Following up to ensure that the needs of the victim(s) and witness(es) are being addressed.

## Community

3. **The California Attorney General, in consultation with the Governor and existing networks, should draft legislation that would set standards and provide financial support to city and county human relation commissions to sponsor hate violence prevention and response networks. This legislation could be referred to as the “Community Intergroup Relations Act.”**

This proposed legislation should establish criteria for networks to be eligible to receive financial support. These criteria should include, but not be limited to:

- Adoption of California Department of Justice guidelines for hate crime prevention and response networks to ensure accessibility to network services and uniformity in identifying and reporting hate incidents and hate crimes; and
- A written agreement between public agencies such as law enforcement agencies, prosecutors, the probation department and school districts and a sponsoring human relations commission to collaborate with community-based organizations and religious institutions

to prevent, identify, report and respond to hate incidents and hate crimes. The agreement should set forth the respective responsibilities of the network members.

Support for the network should include, but not be limited to funding for:

- a) Training for network participants;
- b) The development of a standardized directory of services for victims of hate crimes and hate incidents;
- c) Report collection and analyses;
- d) Administrative and operational expenses, using a formula that takes several factors into consideration including, but not limited to:
  - 1) The level of urgency for maintaining public safety, based on reported hate crimes and hate incidents in relation to the size of the population of the area served;
  - 2) The capacity of the network to address the need; and
  - 3) The inclusion of community organizations and religious institutions in the network that represent the diversity of the population in the area to be served.

The Commission notes that conflict resolution training is subsidized by court filing fees and that police officer and sheriff training is subsidized by penalties for criminal offenses. The Commission suggests that the California Department of Justice consider similar potential revenue streams to subsidize the costs that would be incurred by enacting this legislation.

## Educational Institutions

4. **The California Attorney General, in consultation with other state agencies and stakeholder groups with expertise in education and human relations, should draft legislation that could be referred to as the “School Intergroup Relations Act” to provide needed training and resources.**

This proposed legislation would:

- Allocate \$500,000 per year for three years to the School Law Enforcement Partnership program to provide K-12 schools with the

tools they need to institute programs for preventing, identifying, reporting and appropriately responding to intergroup tensions, hate incidents and hate crimes;<sup>15</sup>

- Require that three units of training on school intergroup relations be added to the required curriculum for an administrative credential; this curriculum must be developed within two years;
- Provide additional funding to: 1) allow all schools to administer the core module (Form A) of the California Healthy Kids Survey, with passive parental consent; and 2) expand the Attorney General's biennial statewide California Student Survey in order to gain information about students' perceptions of the occurrence of harassment on school property based on race, ethnicity, religion, gender, sexual orientation or disability.
- Provide resources to schools which demonstrate, through the reporting of hate incidents and hate crimes, the need for additional support to respond to such incidents and crimes; and
- Evaluate the effectiveness of efforts to reduce intergroup tensions and eliminate hate incidents and hate crimes in K-12 schools.

The California Healthy Kids Survey (CHKS) is currently a voluntary survey administered annually to 400,000 students in grades 5, 7, 9, and 11. Over 600 school districts, whose total enrollment represents 87 percent of California's school population, participate. School districts are not required to administer the survey, but it is a requirement if districts want to be considered for additional federal funding through Title IV of the Improving America's Schools Act (IASA). The core module for 7<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> grade students includes a question about how many times in the past 12 months the student has been harassed on school property because of race, ethnicity, gender, sexual orientation, or disability.

The 5<sup>th</sup> grade survey would need to be revised to include a similar question; religion would also have to be added to the modules. In addition, the Attorney General's Office administers the legislatively mandated "Biennial Survey of Drug and Alcohol Use Among 7<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Grade Students," which is also known as the California Student Survey (CSS). This is a collaborative effort between the Attorney General's Office, the California Department of Education, the Department of Alcohol and Drug Programs and the Department

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<sup>15</sup> In the context of discussing educational institutions, the term "hate-motivated violence" is used synonymously with the term "hate incidents."

of Health Services. The survey project collects, analyzes and disseminates state level data. Three years ago, several questions were added to determine students' perceptions of violence and school safety. With additional resources, another module could be designed to also gain students' perceptions of harassment based on race, ethnicity, religion, gender, sexual orientation, or disability.

Also, the law currently requires the school district to have positive parental consent for the student to participate in the survey. This requirement has led to difficulties in administering the survey as students do not always return the consent form to the school and, therefore, cannot participate in the survey. Passive parental consent would allow the student to participate unless the parent signs a form prohibiting participation.

The Commission heard from parents numerous complaints that teachers and school administrators were not addressing hate incidents and hate crimes. Particularly troubling were reports of school staff compounding the impact of an act motivated by bigotry by their insensitivity and lack of respect for students and their parents. In several communities, parents complained that teachers do not intervene when students use racist, sexist and homophobic slurs to harass others.

At several forums, teachers and school administrators lamented that they lacked the training, time or capacity to address hate-motivated violence and hate crimes on K-12 campuses. They make persuasive arguments that, before they are held accountable for reporting hate incidents and hate crimes:

- Teachers and administrators must be trained to address intergroup tensions, hate-motivated violence, and hate crimes as well as how to respond to racist, sexist and homophobic comments;
- Teachers and administrators must be trained on how to identify and report a hate crime and hate-motivated violence; and
- Resources must be made available for schools that report hate-motivated violence and hate crimes.

At several forums, the Commission heard reports of tension developing between students and parents and school staff. Unless significant action is taken, these tensions are likely to increase as demographic shifts within the state continue.

Some parents stated that they often do not report hate crimes or hate

incidents because their children are worried they will be re-victimized by indifferent school staff or by other students. However, a number of positive steps have been taken to address this problem and deserve recognition.

First, the United States Department of Education and the National Association of Attorneys General have drafted model guidelines, policies and procedures for schools to identify and respond to hate crimes and hate incidents. These have been distributed to every school district in the nation.

Second, the School Law Enforcement Cadre, sponsored by the California Attorney General and the California Department of Education, funds the Alameda County Office of Education to provide voluntary training on hate crime and hate incident policies and protocols to a limited number of school districts in California each year.

Third, several school districts in California have adopted guidelines and procedures to identify and report hate crimes and hate incidents occurring in K-12 schools within their jurisdiction. However, there is no uniformity in their procedures.

Fourth, in 2000 the Governor signed AB 1785, which requires schools to identify and report hate-motivated violence and hate crimes as part of the California Safe Schools Assessment report. Finally, schools are required to note on reports to the California Department of Education when hate-motivated violence is a basis for expulsion.

Unfortunately, based on what the Commission heard in community forums held throughout California, these efforts are unlikely to have a significant impact on the way most K-12 schools address hate-motivated violence and hate crimes unless there is more support for schools to report such violence and crimes and to improve training of school staff and administrators. If credence is given to the reports of parents and students who attended the community forums, the right of students to attend safe schools<sup>16</sup> is often being ignored.

The Governor, Superintendent of Public Instruction, Attorney General and others must work together to enact legislation that will enable K-12 schools to better address intergroup relations. The Commission believes the legislation it is recommending is urgently needed to respond to the concerns of a growing number of parents and students who feel their schools are not safe and that school staff is indifferent to hate incidents and hate crimes.

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<sup>16</sup> See California Constitution, article I, section 28, subdivision (c).

- 5. The Attorney General should collaborate with the California State University Board of Trustees, the Regents of the University of California, the Board of Governors of the California Community Colleges and administrators from community colleges, state universities and the University of California to (1) identify and distribute policies for identifying and responding to hate incidents and hate crimes on campuses; and (2) develop guidelines to enable post-secondary institutions to meet their obligations for identifying and reporting hate crimes.**

The Commission found that staff and students in a few post-secondary institutions were profoundly concerned about hate incidents or sexual assaults occurring on campus. These institutions developed their own mechanisms to ensure that these incidents and assaults were reported internally and responded to appropriately. However, many of these same institutions have never reported a hate crime to official law enforcement agencies. Although effective internal responses to hate incidents and hate crimes are commendable, they do not allow communities outside of the campus to identify where conflict is occurring and to institute actions designed to ease tensions on a broader level. If sexual assaults are a major problem on campuses throughout the state, for example, and all of the campuses deal with them internally without reporting them to anyone outside the campus, it is unlikely there would be support for state action to address the problem. Post-secondary institutions are mandated to report hate crimes, and those responsible for administering the institutions should work together to ensure conformance with the law.

The Commission learned of ad hoc programs that could serve as models for use by other post-secondary institutions. Effective responses to hate crimes may be enhanced by allowing other campuses to learn of these successful programs.

## Law Enforcement

- 6. A minimum of four hours of POST-certified training on identifying, reporting and responding to hate crimes and hate incidents should be required for all levels of sworn staff and selected non-sworn personnel such as dispatchers, community service officers and others who answer calls for service or information. An advanced POST-certified course consisting of a minimum of eight hours should be required for field training officers, investigators and others involved in responding to, investigating, or charging hate crimes. Roll call training should**

**be provided as needed to keep appropriate law enforcement staff aware of changes in the hate crime laws. This mandated training should be repeated at least every five years.**

Law enforcement administrators and officers at several of the community forums complained about the lack of clear guidance on how to report hate crimes. They asked the Commission to consider recommending uniform training that would help law enforcement agencies throughout the state approach the identification and reporting of hate crimes in a uniform fashion. Some also suggested that a pocket guide, similar to the one used by the Los Angeles County Sheriff's Department, be made available to officers responding to hate crimes. POST has already adapted federally-recommended hate crime training to meet the needs of peace officers in California. The training was designed not only for these responding officers, but for supervisors as well. The Commission believes that requiring relevant law enforcement staff to take POST-certified training will result in uniform training. Uniform training, in turn, should help to standardize the identification and reporting of hate crimes.

**7. POST should revise its training and guidelines in order to provide special emphasis on the following issues, which cause confusion for law enforcement and for organizations working in the hate crime field:**

- Gender-based crimes;
- Disability-based violence;
- Hate-motivated crimes involving gang members;
- The difference between a hate crime and a crime of opportunity; and
- Identification of a hate crime where there are multiple motives for committing the crime.

Although POST has drafted guidelines and designed a curriculum for identifying and responding to hate crimes, it apparently has not resolved confusion over the classification of gender-based hate crimes, disability-based hate crimes, and hate crimes perpetrated during gang conflicts.

The confusion regarding gender-based and disability-based hate crimes can, in part, be explained by a shift in the philosophy behind

hate crime laws. When hate crime laws were first introduced, they were designed as a tool to uncover reports of intergroup conflict that were indistinguishable from other types of crimes. The first version of hate crime laws, therefore, focused on crimes based on race, ethnicity, religion and sexual orientation.

However, advocates for women and for people with disabilities put forth the notion that hate crimes are a means to stress the societal value of protecting people from intimidation, harassment, and violence perpetrated against them because of their innate identity or immutable characteristics. It should be noted that advocates representing other groups of people have adopted this broader philosophical basis for hate crimes and feel other groups of people should be included under their aegis.

An issue which must be clarified regarding gender-based violence is whether every gender-based crime that meets the standard criteria of a hate crime should be classified as one. For example, should a forcible rape by an individual who demonstrates hate against women by using gender-based slurs during the commission of the crime and who would not be perpetrating the act against someone of another gender be classified as a hate crime? Arguments against reporting rapes, attempted rapes and other sexual assaults as hate crimes are that penalties are already available for some of those crimes. Concerns have also been raised that reporting gender-based crimes as hate crimes would draw attention away from racial and ethnicity-based hate crimes, because there are likely to be at least ten times the number of gender-based crimes as all other hate crimes combined.

An issue that must be clarified regarding disability-based crimes is whether crimes that are motivated by the victim's vulnerability, rather than hostility towards the victim because of his or her identity, should be classified as a hate crime. For example, should the thief who steals money from a blind vendor, because he believes the vendor will not be able to identify him, be charged with a hate crime?

Law enforcement representatives reported that there is a great deal of confusion as to when a hate-motivated crime committed by a gang member should be classified as a gang-related crime or as a hate crime. Several law enforcement officials stated their department's procedures precluded them from having the option to charge a crime as both a hate crime and a gang-related crime.

Lastly, POST training and guidelines should be revised to clarify when to charge a hate crime in situations where the perpetrator had more than one motive for committing the crime. The California Supreme Court

has held that “[w]hen multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the crime.”<sup>17</sup>

POST frequently convenes experts in a given field to establish guidelines and develop training curricula to ensure law enforcement has the knowledge and skills necessary to meet those guidelines. The lack of progress in these fields suggests that POST needs to convene a panel of experts to revisit hate crime guidelines as they apply to gender-based and disability-based crimes, as well as gang-related crimes. POST should also design training to ensure law enforcement appropriately reports hate crimes in these areas, and that law enforcement is given sufficient guidance in determining whether to charge a hate crime as a mixed motive crime.

**8. Funding should be made available to encourage law enforcement agencies to partner with local government and community agencies to initiate programs to prevent and respond to hate crimes and hate incidents. Funding should be based on the following criteria:**

- a. The level of urgency in terms of maintaining public safety; and**
- b. The magnitude of problems faced by a community. In determining the magnitude of the problem, the number of hate crimes reported (in terms of the number of people affected in either absolute terms or in relation to the size of the community’s population) should be considered.**

The creation of effective partnerships between local government, community organizations and law enforcement agencies will increase accuracy in the identification and reporting of hate crimes. Community-based organizations assist people who may be hesitant to report hate crimes to the police. In turn, law enforcement agencies can work with these organizations to build trust with persons who may otherwise be reluctant to contact them.

Public funds should be devoted to encourage and facilitate the development of these partnerships. However, these public funds should be used strategically to ensure that the programs that are funded work and have a significant impact in reducing and responding to hate crimes. Funds should be directed only to those communities where the number of hate crimes justifies the need for concerted action and where there is a demonstrated commitment to identify and report hate crimes.

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<sup>17</sup> *In Re M.S.* (1995) 10 Cal.4th 698, 719.

- 9. The Attorney General should convene a task force of representatives from law enforcement agencies and community organizations to draft policies, guidelines and training to facilitate the reporting of and response to allegations of a hate incident or hate crime perpetrated by a law enforcement officer.**

The Commission recognizes that existing citizen complaint processes may be used as a tool to report hate crimes and hate incidents. However, the Commission is also unaware of any report of a peace officer having committed a hate crime. A special task force, consisting of people who represent communities concerned with reporting hate incidents and hate crimes perpetrated by officers, as well as people familiar with law enforcement procedures for receiving and responding to complaints against officers, should look further into this issue and develop model policies and procedures.

- 10. The California Attorney General should clarify the level of cooperation police are mandated to provide to the Immigration and Naturalization Service. The California Department of Justice should 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 purpose of testifying at trial.**

The Commission and 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 in the United States. At the community forums, representatives of organizations serving immigrants indicated that immigrants who are concerned about their legal status in the United States tolerate harassment, assaults and other attacks rather than risk deportation. Obstacles that prevent hate crimes involving undocumented immigrants from being reported should be removed to the extent allowed under current laws.

- 11. The California Attorney General should draft guidelines regarding the constitutional and legal limitations on gathering and handling information regarding hate incidents. These guidelines should apply to information placed in electronic databases that are utilized by law enforcement agencies investigating hate crimes.**

Comments by a representative of the American Civil Liberties Union (ACLU) at one of the forums bear consideration. He argued that the

gathering of information about hate incidents by law enforcement agencies violates the free speech guarantees of the United States Constitution. The Commission recognizes that law enforcement agencies are being encouraged to gather information about hate incidents. However, they have not been offered guidance on how to classify or use that information in a way that is consistent with free speech protections. The Attorney General can resolve this concern by issuing an opinion or offering guidelines to help law enforcement gather information about hate incidents in a constitutional manner.

**12. The California Attorney General should recommend that the California Department of Corrections, the California Youth Authority and the Board of Corrections California Training Center design programs to train youth and adult custodial officers and probation officers to identify and report hate crimes.**

The media occasionally reports race riots in jails and prisons. However, county youth camps and youth and adult correctional institutions appear to have no formal system for reporting hate crimes. The nature and extent of hate incidents and hate crimes occurring in these camps and institutions is unknown; such incidents and crimes are likely to be ignored unless they are reported. A hate crime is a hate crime whether it occurs in the community, on a campus, in a jail, in a juvenile detention facility or in a state-administered youth or adult penal institution. The Commission believes that staff at these institutions should not be exempted from reporting hate crimes.

Probation officers and custodial staff in county and state institutions need training and procedures for identifying and reporting hate crimes. POST has worked on developing guidelines and training for peace officers for several years and has valuable insights it can provide to those responsible for drafting guidelines and training.

**13. The Attorney General should broaden the application of his new investigative tool, the Hate Crimes Database, to allow local law enforcement agencies to electronically submit the standardized hate crime reporting form to the California Department of Justice through the database. The Legislature should appropriate sufficient funds to fully implement the database as both an investigative tool and as a vehicle through which local law enforcement agencies may electronically submit hate crime reporting forms.**

The Commission believes that adapting the Attorney General's Hate Crimes Database to provide for electronic reporting not only would make it easier for law enforcement agencies to submit required hate crime reporting forms, but would result in more accurate reporting of hate crimes to the Department of Justice. However, it is imperative that adequate funding be made available to the department to support the full implementation of the database as both an investigative tool and as a means of facilitating the reporting of hate crimes to the California Department of Justice.

## Additional Recommendations:

- 14.** **The California Attorney General should direct the Commission to analyze the California Department of Justice's reporting procedures and format and to make recommendations for improvements that include, but are not limited to, a method for capturing hate crimes reported to community-based organizations.**

The Commission heard testimony that the current California Department of Justice report on hate crimes does not provide enough information to assist communities in understanding the dynamics of hate crimes occurring in their communities because it does not identify who is committing hate crimes against what victim group. It also does not include reports of hate crimes reported to community-based organizations that may not have been reported to law enforcement. Several experts believe the report should be modified with a view towards providing information that would help communities identify where assistance is needed so that they may reduce intergroup tensions and examine possible causal effects of those conflicts.

- 15.** **The California Attorney General should encourage district attorneys and city attorneys to develop training for city and county prosecutors on the identification and prosecution of hate crimes, and on techniques for interacting with victims of hate crimes. When justified by the size of the jurisdiction, district attorneys should designate an individual to serve as the hate crime prosecution coordinator.**

California district attorneys and city attorneys need training on the filing of hate crime charges. The Commission found tension between members of the public and district attorneys in some of the communities where it held forums. Prosecutors must be able to clearly articulate the criteria for determining whether to file a hate crime charge reported to

them by local law enforcement. They must also be able to clearly convey how those criteria were applied to cases that are being followed by the community.

**16. In the future, the Attorney General’s Civil Rights Commission on Hate Crimes should address the following concerns:**

- **Economic, political, social, and psychological causes of hate crimes;**
- **Needs of the victims;**
- **Community hate crime prevention and response networks;**
- **Constituent-based responses to hate crimes and hate incidents;<sup>18</sup>**
- **Training, policies and procedures for law enforcement, correctional facilities, and the judiciary;**
- **K-12 and post-secondary educational institution policies, programs and procedures for preventing and responding to hate crimes and hate incidents;**
- **The role of religious organizations which provide support to hate crime victims and witnesses;**
- **Conflict resolution, restorative justice, alternative sentencing and diversion programs;**
- **The role of the media, the Internet, and other vehicles of communication; and**
- **Social action research to evaluate the impact of efforts to reduce prejudice, hate incidents, and hate crimes that may not be effectively measured using quantitative analysis tools.**

Examples of projects which may be considered by the Attorney General’s Civil Rights Commission on Hate Crimes may include, but should not be limited to:

- **Recommending a list of criteria to guide consideration of requests for**

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<sup>18</sup> The inclusion of groups such as rape crisis centers, disability advocates, as well as racial, ethnic, and religious-based organizations should help establish a dialogue and find solutions that incorporate all types of hate crimes.

expanding the coverage of our hate crime laws. This Commission notes that when hate crime legislation was first introduced in California, it did not cover gender-based or disability-based hate crimes. These laws were later amended to include them.

There are now calls to expand the coverage of our hate crime laws to include age, economic status and crimes against people who work in abortion clinics. Hate crime legislation is in danger of becoming more confusing to the general public unless easily understandable criteria are developed for determining what should and should not be classified as a hate crime;<sup>19</sup>

- Proposing mechanisms to educate the diverse populations of California about hate crimes and hate incidents;
- Evaluating the impact of methods used by law enforcement, schools, and community networks and organizations to prevent and respond to hate crimes and hate incidents and to make recommendations for improving their effectiveness;
- Compiling a directory of local, state and federal resources for preventing and responding to hate incidents and hate crimes and distributing this directory to law enforcement, schools, and community-based networks that respond to hate incidents and hate crimes.

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<sup>19</sup> For example, the argument has been made that all crimes that result from animus against a person or persons as members of a class are important to track because they are often targeted by extremist groups that target those protected by hate crime laws. People who support this view suggest that law enforcement should be required to report anti-reproductive-rights crimes, anti-government crimes, and crimes against “non-traditional” groups such as the homeless to the California Department of Justice.

# Conclusion

The Commission's many local forums provided a valuable opportunity to gather information from communities throughout the state for use in formulating public policy as it relates to the reporting of hate crimes. There were too many sad and poignant moments during the forums to describe them all; a few are described below to provide the reader of this report with a sense of the deleterious effect hate crimes have on real people:

- A white high school student in a small community in northern California pled for help after she testified to being taunted for both her sexual orientation and her mental disability by other young people;
- A young Asian American woman spoke about the confusion that befell her family after her brother was murdered because of his ethnicity, and how it led her to a career of conducting research on hate crimes;
- An African American mother of a four-year old son said she felt she had to flee from the rural community where she lived because racism was so pervasive at the local schools she could not subject her child to it; and
- An African American grandmother described how the anguish she experienced when her grandson was tortured by other children who tried to whiten his skin by burning his face with matches turned to shock and anger when the school principal tried to dismiss the incident as something that is likely to happen when children are "different" from their peers.

These sad moments were tempered by the positive descriptions of citizen-initiated programs in areas throughout California where law enforcement, schools and community-based organizations have come together to identify, prevent and respond to hate crimes.

The Commission is pleased to report that hate crimes are not being ignored in most communities. The Commission heard of concerted

efforts to address hate crimes from hundreds of law enforcement, school, and community representatives. Good things are happening in many communities. But there is much left to do.

Hate-motivated crimes have been part of the human existence for too long. The challenge to prevent and control them may be eternal, just as is the challenge to prevent all human suffering, but the terrible impact of hate crimes demands that we continue to find ways to reduce and prevent them. This Commission sincerely hopes that this report will help in that effort.

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