Hate Crimes in California

Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes

Report 2017-131

COMMITMENT

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May 31, 2018   2017-131

The Governor of California
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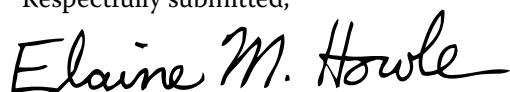
Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the implementation of hate crime law in California. This report concludes that although reported hate crimes have increased by more than 20 percent from 2014 to 2016, law enforcement has not been doing enough to identify, report, and respond to these crimes. State law defines hate crimes as criminal acts committed, in whole or in part, based on certain actual or perceived characteristics of the victim, referred to as protected characteristics.

Of the four law enforcement agencies we reviewed, three—the Los Angeles Police Department (LA Police), the San Francisco State University Police Department (SFSU Police), and the Orange County Sheriff's Department—failed to properly identify some hate crimes. For example, from 2014 through 2016, LA Police and SFSU Police failed to correctly identify 11 of the 30 cases we reviewed as hate crimes, even though they met the elements of those crimes. Officers at these law enforcement agencies may have been better equipped to identify hate crimes if their agencies had adequate policies and methods in place to identify hate crimes.

In addition to misidentifying hate crimes, we found underreporting and misreporting of hate crimes among law enforcement agencies. The California Department of Justice (DOJ) requires law enforcement agencies with peace officer powers, such as sheriff's departments and police departments, to submit information on all hate crimes occurring in their jurisdictions on a monthly basis. DOJ then transmits these data to the Federal Bureau of Investigation. However, we found that law enforcement agencies failed to report some hate crimes to DOJ. We found 97 instances of hate crimes that the agencies failed to report to DOJ, or roughly 14 percent of all hate crimes identified by the four law enforcement agencies we reviewed. Correct reporting to DOJ is essential to raising awareness about the occurrence of bias-motivated offenses nationwide, and to understanding the nature and magnitude of hate crimes in the State.

Finally, we found that while outreach by law enforcement agencies is seen as an important factor in encouraging individuals from vulnerable communities to report hate crimes to the police, over 30 percent of the law enforcement agencies who responded to our survey stated that they do not use any method to encourage the public to report hate crimes. We have made recommendations to the Legislature and DOJ to address the increases in reported hate crimes, including requiring DOJ to create and disseminate outreach materials so law enforcement agencies throughout the State can better engage with their communities.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Selected Abbreviations Used in This Report

DOJ	California Department of Justice
FBI	Federal Bureau of Investigation
MICR	Michigan Incident Crime Reporting
NIBRS	National Incident-Based Reporting System
POST	Commission on Peace Officer Standards and Training
SFSU	San Francisco State University

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Summary

Results in Brief

Reported hate crimes in the State increased by more than 20 percent from 2014 to 2016, from 758 to 931. Nonetheless, law enforcement has not taken adequate action to identify, report, and respond to these crimes. State law defines hate crimes as criminal acts committed, in whole or in part, based on certain actual or perceived characteristics of the victim, referred to as *protected characteristics*. These protected characteristics are disability, gender, nationality, race or ethnicity, religion, sexual orientation, and association with a person or group with one or more of those actual or perceived characteristics. According to the Office of the Attorney General, hate crimes are among the most dehumanizing of crimes because the perpetrators view their victims as lacking full human worth. In addition, hate crimes affect the entire groups to which the victims belong.

Of the four law enforcement agencies we reviewed, three—the Los Angeles Police Department (LA Police), the San Francisco State University Police Department (SFSU Police), and the Orange County Sheriff's Department (Orange County Sheriff)— failed to properly identify some hate crimes in the cases we reviewed. Our testing found that LA Police and SFSU Police misidentified some hate crimes as hate incidents. *Hate incident* is a term law enforcement agencies use to describe a situation that involves an element of hate, such as hate speech, but that does not include an underlying crime, such as an assault. From 2014 through 2016, LA Police incorrectly identified three of the 15 hate incident cases we reviewed—or 20 percent—as hate incidents rather than hate crimes. Similarly, from 2007 through 2016, SFSU Police failed to properly identify eight of the 15 hate incident cases we reviewed—or 53 percent—as hate crimes.[1] Our review of these 11 hate incidents at LA Police and SFSU Police found that in addition to an element of hate, an offense such as breaches of the peace or assault occurred, thus elevating these to hate crimes. Further, when we reviewed 29 crimes commonly associated with hate crimes, such as assaults, at the Orange County Sheriff, we found that it failed to identify a hate crime that occurred in one of its detention facilities. Because they failed to correctly identify these hate crimes, LA Police, SFSU Police, and the Orange County Sheriff did not report them as such to DOJ, thereby leading DOJ to underreport to the federal government and the public the number of hate crimes in California.

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[1] Because of the relatively few hate incident cases at SFSU Police, we tested cases from 2007 through 2016.

» *Of the 245 law enforcement agencies we surveyed, over 30 percent stated that they do not use any methods to encourage the public to report hate crimes.*

» *Because of its statutory responsibilities to collect, analyze, and report on hate crimes, DOJ is uniquely positioned to provide leadership for law enforcement agencies' response to hate crimes.*

Officers at these law enforcement agencies might have been better equipped to identify hate crimes if their agencies had implemented better methods for doing so and provided periodic training. For example, three of the four law enforcement agencies we reviewed did not have adequate policies and methods in place to identify hate crimes. SFSU Police's hate crime policy is outdated and does not adequately reflect the definition of a hate crime under state law. In addition, the Stanislaus County Sheriff's Department (Stanislaus County Sheriff) and the Orange County Sheriff do not use a supplemental hate crime report form that allows patrol officers to more easily identify different elements of a hate crime, such as the type of bias (for example, bias toward race, disability, or sexual orientation) and bias indicators (for example, hate speech, certain types of property damage, or symbols). According to the Office of the District Attorney of Orange County, information included in these reports, such as victim and suspect statements about what suspects said regarding certain protected characteristics, can be crucial when prosecuting hate crime cases. Until these three law enforcement agencies implement methods and policies to better identify hate crimes, the potential to misidentify these crimes remains high.

We also found that due to the difficulty of prosecuting hate crimes, prosecutors are successful in convicting defendants of hate crimes at only about half the rate at which they convict defendants for all felonies in the State. According to DOJ's annual survey of County District Attorneys' Offices, California prosecutors convicted 790 defendants of hate crimes during the period from 2007 through 2016. For an additional 748 cases that law enforcement agencies had initially referred to them as hate crimes, prosecutors ultimately convicted the defendants of crimes other than hate crimes, such as assaults. For the decade we reviewed, the conviction rates for hate crimes ranged from 40 percent to 51 percent per year. In comparison, during that same period, prosecutors statewide secured an 84 percent conviction rate for 2.4 million completed prosecutions for felonies.

Successful prosecutions of hate crimes are often hampered either by a lack of suspects or by the high standard of proof required. According to DOJ's hate crime data, one of the largest limiting factors for hate crime prosecution is a lack of identifiable suspects. Although law enforcement agencies in California reported more than 10,400 hate crimes from 2007 through 2016, more than 3,000 of those crimes lacked suspects to prosecute. Our review of cases at district attorney's offices also found that successfully prosecuting hate crimes is often difficult because the cases lack sufficient evidence to meet the high standard of evidence required to prove motive and secure a conviction on a hate crime charge. Our review of 100 hate crime cases in four jurisdictions found that

prosecutors often rejected the cases referred by law enforcement agencies because the prosecutors believed there was not sufficient evidence to obtain hate crime convictions. In fact, when we reviewed 51 hate crime referrals that prosecutors rejected, we found that the prosecutors rejected 37 due to a lack of evidence sufficient to prove beyond a reasonable doubt that a hate crime had occurred. These numbers suggest that a lack of suspects and the insufficiency of evidence provided by law enforcement were key factors that have limited prosecutions of hate crimes.

We also identified underreporting of hate crimes by law enforcement agencies. DOJ requires law enforcement agencies, such as the California Highway Patrol, sheriff's departments, police departments, and certain school district and college police departments, to submit information on all hate crimes occurring in their jurisdictions on a monthly basis. DOJ then transmits these data to the Federal Bureau of Investigation (FBI) and creates an annual report for the Legislature and the public. However, we found that law enforcement agencies failed to report some hate crimes to DOJ. Specifically, the four law enforcement agencies we reviewed failed to report 97 hate crimes, or about 14 percent of all hate crimes they identified, to DOJ. LA Police was responsible for the vast majority of these errors. Correct reporting to DOJ is essential to raising awareness about the occurrence of bias-motivated offenses nationwide and to understanding the nature and magnitude of hate crimes in the State.

Although DOJ guidance requires law enforcement agencies to submit hate crime information on a monthly basis, it has made no recent effort to ensure that all law enforcement agencies comply with this requirement. When we asked DOJ to provide us with a list of agencies that it requires to report information to its hate crimes database, we found that it did not maintain a complete or accurate listing of all law enforcement agencies in the State. Specifically, a number of law enforcement agencies were not present on the list, and much of the contact information on the list was incorrect. Moreover, DOJ does not verify that all law enforcement agencies it requires to report do so, nor does it review the data that the agencies submit to ensure its accuracy. DOJ's lack of proactive guidance and oversight of law enforcement agencies is contributing to the underreporting of hate crime information that it provides to the public, the Legislature, and the FBI.

In addition, law enforcement agencies need to improve their response to hate crimes by providing outreach that encourages individuals to report hate crimes. The U.S. Bureau of Justice Statistics estimates that from 2011 through 2015, about 54 percent of hate crimes were not reported to law enforcement agencies. According to a bureau chief of the Commission on Peace Officer

Standards and Training (POST), outreach by law enforcement agencies can encourage members of vulnerable communities to come forward if they witness or are the victims of hate crimes. However, two of the four law enforcement agencies we reviewed could not provide documentation of community outreach efforts that specifically addressed hate crimes. Although all four law enforcement agencies engaged with the public by discussing general public safety issues, only the Orange County Sheriff and LA Police provided community outreach activities that related specifically to hate crime issues. In contrast, SFSU Police and Stanislaus County Sheriff noted that agency staff might address hate crimes at outreach events but that hate crimes were not the events' primary focus. Moreover, when we surveyed 245 law enforcement agencies throughout the State, over 30 percent of the law enforcement agencies who responded to our survey stated that they do not use any methods to encourage the public to report hate crimes. Hate crimes are likely to continue to go underreported by victims and witnesses until law enforcement agencies effectively engage with vulnerable communities.

DOJ is uniquely positioned to provide leadership for law enforcement's response to the growing number of hate crimes in California because of its statutory responsibilities to collect, analyze, and report on hate crimes. Our survey of law enforcement agencies found that they appear receptive to DOJ providing additional training, outreach materials, and other types of assistance. However, to use its resources in this manner, DOJ may need a clear statutory mandate. Further, to provide law enforcement agencies with additional guidance, DOJ will need to revise the way it collects hate crime data. For example, DOJ could use its hate crime data to provide targeted outreach and assistance to individual law enforcement agencies that may be experiencing increases in hate crimes. However, DOJ's current hate crime reporting process does not capture the geographic location where each hate crime occurred; rather, it identifies only which law enforcement agency reported the hate crime. Capturing data like the geographic locations of crimes is critical to DOJ's ability to provide guidance to law enforcement agencies and provide accurate information to the Legislature and the public.

Selected Recommendations

Legislature

To address the increase in hate crimes reported in California, the Legislature should require DOJ to do the following:

- Add region-specific data fields to the hate crime database, including items such as the zip code in which the reported hate crimes took place and other fields that DOJ determines will support its outreach efforts.

- Create and disseminate outreach materials so law enforcement agencies can better engage with their communities.

- Analyze reported hate crimes in various regions in the State and send advisory notices to law enforcement agencies when it detects hate crimes happening across multiple jurisdictions.

DOJ

To ensure that it receives complete and accurate data, DOJ should, by May 2019, maintain a list of law enforcement agencies that it updates annually, obtain hate crime data from all law enforcement agencies, and conduct periodic reviews of law enforcement agencies to ensure that the data they report are accurate. It should also seek the resources to implement these efforts, if necessary.

To ensure that law enforcement agencies effectively engage with communities regarding hate crimes, DOJ should provide guidance and best practices for law enforcement agencies to follow when conducting outreach to vulnerable communities within their jurisdictions. It should seek the resources to implement these efforts, if necessary.

Law Enforcement Agencies

To ensure that they accurately identify and report hate crimes, SFSU Police and LA Police should update their hate crime policies and procedures, and the Orange County Sheriff and Stanislaus County Sheriff should implement supplemental hate crime reports and require officers to use them.

To ensure accurate and complete reporting, LA Police and SFSU Police should provide sufficient guidance and oversight to their officers and staff so that they report all hate crimes to DOJ.

Agency Comments

DOJ, SFSU Police, and Orange County Sheriff all agreed with our recommendations. LA Police disagreed with some of our findings and asserted that it has already implemented policies and procedures to address our recommendations. Further, POST did

not specifically address our recommendations in its response but offered clarifying comments. Finally, the Stanislaus County Sheriff did not submit a response to our report. Beginning on page 51 we provide our perspective on POST's and LA Police's responses to our report.

Introduction

Background

State law defines hate crimes as criminal acts committed, in whole or in part, because of the victim's actual or perceived protected characteristics. These protected characteristics are disability, gender, nationality, race or ethnicity, religion, sexual orientation, and association with a person or group with one or more of these actual or perceived characteristics.

When hate crimes are committed, law enforcement agencies investigate and report the crimes, as Figure 1 on the following page shows. Law enforcement agencies such as the California Highway Patrol, sheriff's departments, police departments, and certain school district and college police departments exercise their authority to enforce laws to protect the public by investigating hate crimes as part of their duties. When law enforcement officers are determining whether hate crimes have occurred, the Commission on Peace Officer Standards and Training (POST) recommends that they interview witnesses, take statements, and gather evidence. Additionally, state law requires that the Office of the Attorney General (Attorney General) direct local law enforcement agencies to report information on hate crimes to the California Department of Justice (DOJ) and that DOJ publish an annual report on hate crimes. DOJ submits the hate crime information it collects from law enforcement agencies to the Federal Bureau of Investigation (FBI).

In contrast, prosecutors review the evidence collected by law enforcement agencies and decide whether to prosecute hate crimes. Prosecutors proceed with hate crime prosecution when, in their professional judgment, sufficient evidence exists to prove beyond a reasonable doubt that a hate crime was committed. As the text box shows, if the motivation for a crime such as aggravated assault was animus toward the victim's race, for example, the prosecutor may charge the defendant with a hate crime sentencing enhancement, in addition to the aggravated assault charge. If a defendant who acted alone is convicted of a felony with a hate crime sentencing enhancement, state law requires that up to three years be added to the underlying felony sentence. Further, if the defendant voluntarily acted in concert with another person, the additional sentence could be up to four years. Some law enforcement agencies also track hate incidents,

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Hate Crimes and Hate Incidents

Hate Crimes

Hate crimes are criminal acts committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these characteristics. Law enforcement agencies must report hate crimes to DOJ. Hate crimes can be prosecuted in two ways:

1. The offense is charged as a separate type of crime, but because it was motivated in whole or in part by hate, an additional hate crime sentencing penalty is imposed.

   Example: An aggravated assault is motivated by animus towards the victim's sexual orientation. In this case, the prosecutor could charge the defendant with both aggravated assault and with a hate crime sentencing enhancement.

2. The offense is charged directly as a hate crime because it interfered or threatened to interfere with the civil rights of the victim or the victim's property was damaged or destroyed because the victim had one or more of the above-described characteristics. This is sometimes referred to as a stand-alone hate crime.

   Example: An individual provides inaccurate information at a polling place to Latino voters to prevent them from casting their ballots. In this case, the prosecutor could charge the defendant with a stand-alone hate crime.

Hate Incident

Hate incidents are noncriminal acts that are motivated by bias against the actual or perceived characteristics of the victims. Because they are not crimes, some law enforcement agencies do not track hate incidents. Law enforcement agencies do not report hate incidents to DOJ.

   Example: A student organization hosts a theme party that encourages people to wear costumes and act out in ways that reinforce stereotypes, thus creating a campus climate that is hostile to a racial or ethnic minority group.

Source: California State Auditor's analysis of California state law and selected law enforcement agencies' policies and procedures.

which occur when there is an element of hate, such as hate speech, but no underlying crime has occurred. Because there is no underlying crime, hate incidents are not prosecuted.

Figure 1
The Process for Investigating, Reporting, and Prosecuting a Hate Crime in California

A hate crime is committed

The hate crime is reported to a law enforcement agency

Hate Crime Investigation

The law enforcement agency investigates the hate crime

The law enforcement agency may not recommend the hate crime for prosecution if no suspect was apprehended, etc.

The law enforcement agency may recommend the hate crime to the county district attorney's office for prosecution

Hate Crime Reporting

The law enforcement agency submits the hate crime information to DOJ on a monthly basis

DOJ reports the hate crime information to the FBI

DOJ submits an annual report to the Legislature

Hate Crime Prosecution

The prosecutor may elect to prosecute the case as a hate crime

The prosecutor may decide not to prosecute for various reasons, including a lack of sufficient evidence to prove the occurrence of a hate crime beyond a reasonable doubt

The case ends in conviction, dismissal, or other disposition

Sources: California State Auditor's analysis of POST hate crime guidelines and DOJ.

Hate Crimes Are on the Rise in California

Hate crimes have made up a small percentage of total reported crimes in California—less than 0.1 percent of all crimes reported over the last 10 years—and the number of reported hate crimes in California steadily

decreased from 2007 through 2014. However, as Figure 2 shows, the number of reported hate crimes in California increased in 2015 and 2016. In fact, reported hate crimes increased by more than 10 percent in both of those years. By comparison, other crimes, such as property and violent crimes, increased by 8 percent in 2015 but saw a 1 percent decrease in 2016. According to the FBI, in 2016 California law enforcement agencies reported more hate crimes than any other state, accounting for more than 15 percent of all reported hate crimes nationwide despite the fact that California residents made up only 12 percent of the U.S. population. We provide an interactive map of the hate crimes reported in California by state Assembly district, state Senate district, and county over the past 10 years on our website: http://auditor.ca.gov/reports/2017-131/supplementalhatecrimes.html.

Figure 2
Reported Hate Crimes
2007 Through 2016
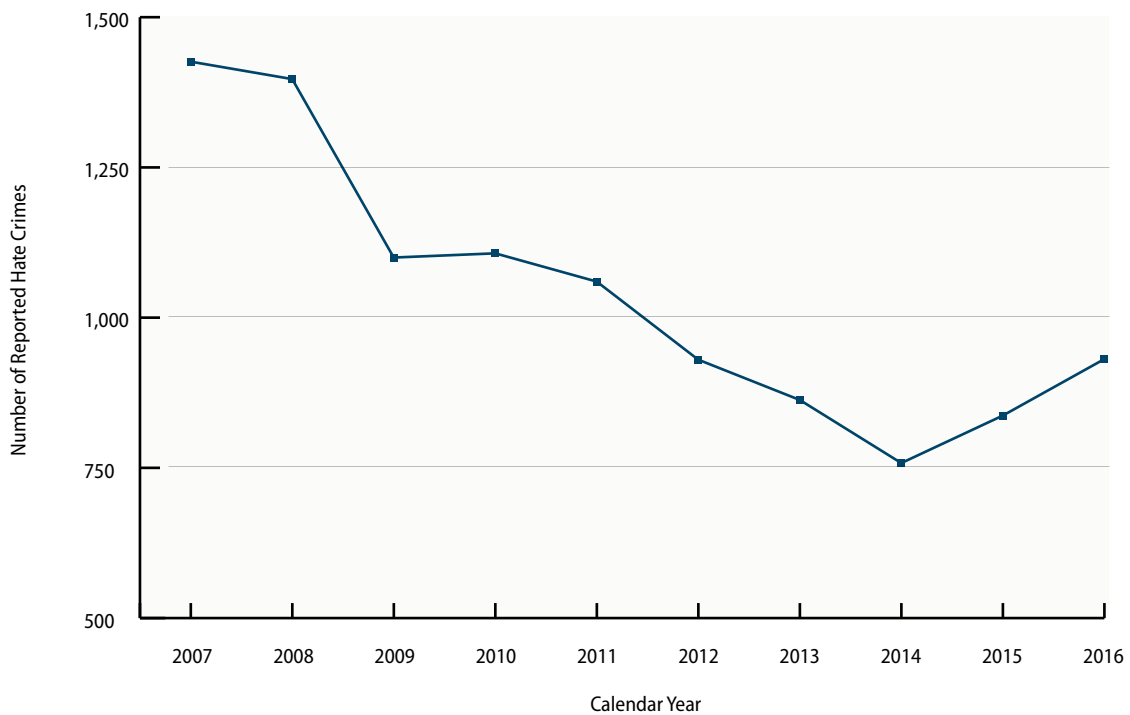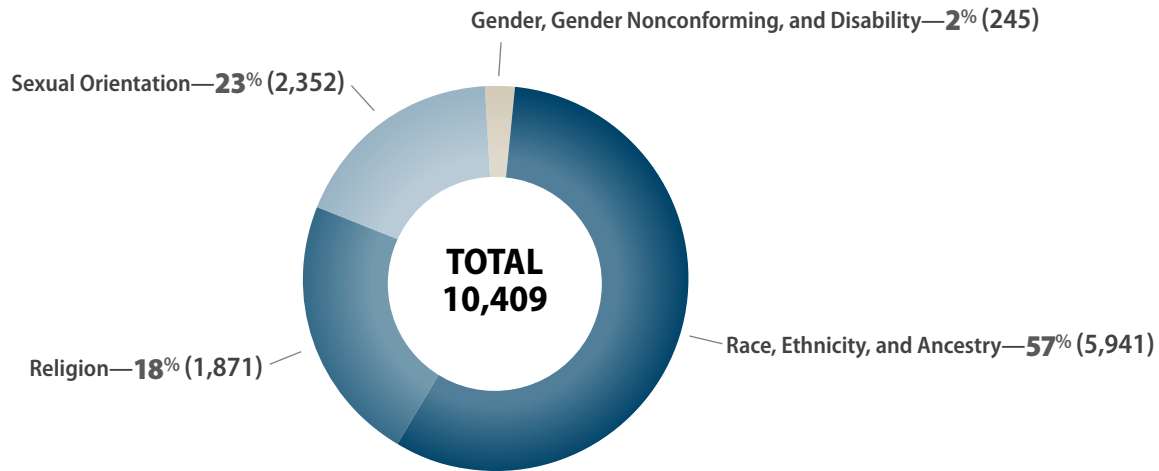

Source: DOJ hate crime database, 2007 through 2016.

DOJ data further indicate that hate crimes most often target minority racial groups and that, in many cases, persons unknown to the victims perpetrate these crimes. As Figure 3 on the following page shows, the most common targeted characteristics were race, ethnicity, and ancestry, accounting for more than half of all reported hate crimes.
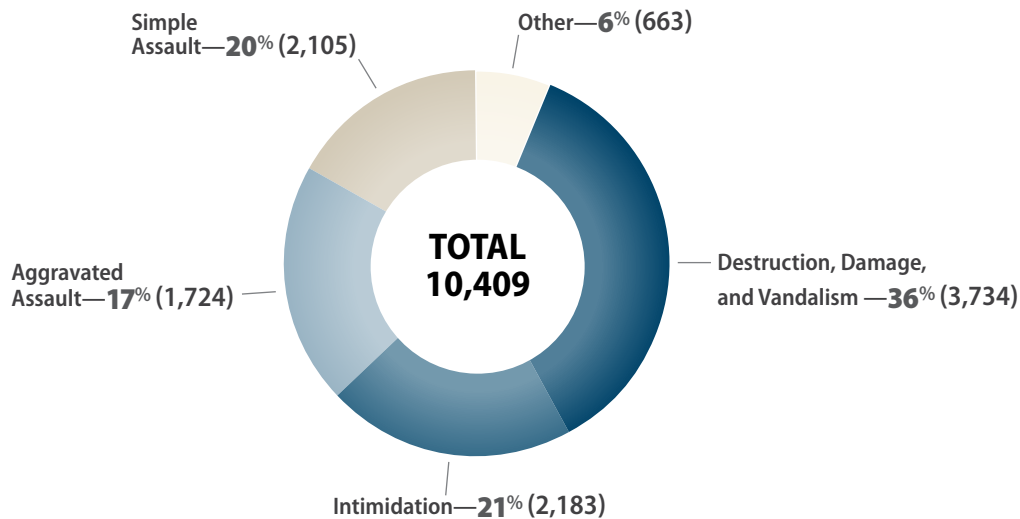
Additionally, Figure 4 shows that hate crime offenders targeted both property and individuals: the most common types of hate crimes were destruction of property, damage to property, and vandalism, followed by intimidation, simple assault, and aggravated assault. Finally, individuals with no known relationships to the victims committed 52 percent of reported hate crimes, and in 29 percent of reported hate crimes, no suspect was identified, as Figure 5 shows. Unknown suspects can make it difficult for law enforcement agencies and prosecutors to successfully investigate and prosecute hate crimes.

Figure 3
Reported Hate Crimes by Characteristic
2007 Through 2016

Gender, Gender Nonconforming, and Disability—**2**% (245)

Sexual Orientation—**23**% (2,352)

**TOTAL
10,409**

Race, Ethnicity, and Ancestry—**57**% (5,941)

Religion—**18**% (1,871)
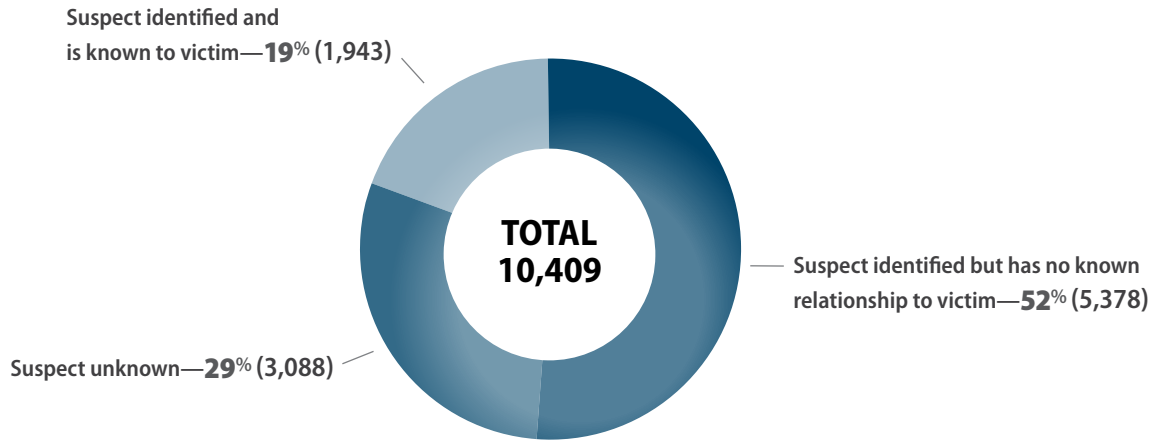
Source: DOJ hate crime database, 2007 through 2016.

Figure 4
Crimes Committed in Conjunction With Hate Crimes
2007 Through 2016

Simple Assault—**20**% (2,105)

Other—**6**% (663)

Aggravated Assault—**17**% (1,724)

**TOTAL
10,409**

Destruction, Damage, and Vandalism —**36**% (3,734)

Intimidation—**21**% (2,183)

Source: DOJ hate crime database, 2007 through 2016.

Figure 5
Relationship of Hate Crime Victims to the Suspects
2007 Through 2016

Suspect identified and
is known to victim—**19**% (1,943)

TOTAL
10,409

Suspect identified but has no known
relationship to victim—**52**% (5,378)

Suspect unknown—**29**% (3,088)

Source: DOJ hate crime database, 2007 through 2016.

Hate Crimes Have Significant Impact on the Groups They Target

Although hate crimes made up a small percentage of the crimes reported in California over the past decade, these crimes likely had a significant impact on the groups to which victims belonged. According to the American Psychological Association (association), victims of hate crimes are likely to experience more psychological distress than victims of other violent crimes, resulting in post-traumatic stress, depression, anger, and anxiety. In addition, the association states that hate crimes communicate to members of the victims' groups that they are unwelcome and unsafe in their communities. These sentiments were echoed by the former Attorney General, who indicated that hate crimes are among the most dehumanizing of crimes because the perpetrators view their victims as lacking full human worth and who further stated that hate crimes affect the entire groups to which the victims belong.

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor (State Auditor) to perform an audit to examine the State's status in implementing hate crime laws. Table 1 on the following page outlines the Audit Committee's objectives and our methods for addressing them.

Table 1
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws, rules, and other background materials related to hate crimes.
2	Identify and analyze policies, practices, and efforts at DOJ to provide oversight and guidance to state and local law enforcement agencies regarding hate crimes. Assess any efforts by DOJ to intervene in local law enforcement agencies' practices, when necessary, and to cooperate with local, federal, and other state agencies.	• Reviewed DOJ's policies, procedures, and practices related to its oversight and guidance of local law enforcement agencies regarding hate crimes. • Interviewed key staff and policy documents at DOJ to determine efforts it made to intervene with local agencies and to cooperate with local, federal, and other state agencies.
3	Review best practices at the federal level and in other states regarding preventing, reporting, and prosecuting hate crimes. Identify any best practices related to cooperation among local, state, and federal agencies.	• Interviewed key agency personnel and reviewed documentation from other states including Maine, Massachusetts, and Michigan, including best practices related to local law enforcement agency cooperation. • Reviewed documentation from the FBI and U.S. Department of Justice (US DOJ) on best practices for hate crime prevention, reporting, and prosecution.
4	For the hate crimes data DOJ collects from California law enforcement agencies, perform the following:	
	a. Determine whether DOJ's hate crimes reporting system complies with existing laws. Determine whether DOJ's reports include hate crime data reported by local law enforcement to federal agencies. To the extent possible, determine whether hate crimes in California committed based on, but not limited to, the victim's gender, disability, nationality, race or ethnicity, religion, and sexual orientation are underreported in DOJ's data.	• Obtained a copy of the DOJ hate crime database from 2007 through 2016. • Evaluated the DOJ hate crime database to ensure that it meets existing legal and regulatory requirements. • Analyzed the DOJ hate crime database for trends and information on groups that are the victims of hate crime, for which hate crimes are most common, and for the number of hate crimes over time. • Reviewed hate crime data submitted by the Los Angeles Police Department (LA Police), the Stanislaus County Sheriff's Department (Stanislaus County Sheriff), the Orange County Sheriff's Department (Orange County Sheriff), and the San Francisco State University Police Department (SFSU Police) to determine whether these law enforcement agencies were underreporting data to DOJ.
	b. Identify and analyze trends in reported hate crimes by type of criminal act and category of bias.	• Plotted the hate crimes throughout California over maps of state Assembly districts, state Senate districts, and counties obtained from the U.S. Census Bureau. We did not assess the reliability of the U.S. Census Bureau's data because it was obtained from a reliable source. Interactive maps are available on our website. • Analyzed the DOJ hate crime database to determine the most common criminal acts associated with hate crimes and the percent of hate crimes committed based on the category of bias.
	c. Analyze DOJ's efforts to address potential underreporting of hate crimes.	Interviewed key personnel at DOJ to determine what steps it has taken to address underreporting of hate crimes.

	AUDIT OBJECTIVE	METHOD
5	Determine whether the hate crime policy framework, guidelines, and training efforts of POST comply with relevant laws and regulations, as well as adequately recognize and respond to hate crimes involving the full range of victim characteristics in state law. Evaluate POST's current ability to measure and improve the effectiveness of its training regarding hate crimes.	• Reviewed relevant laws, regulations, and the hate crime policy framework and determined POST was complying with its statutory requirements. • Interviewed key personnel at POST to evaluate its ability to measure and improve the effectiveness of its training. • Reviewed POST's training materials for compliance with relevant laws and regulations. • Evaluated POST training against best practices at other state entities.
6	Survey all state and local law enforcement agencies regarding hate crime issues. The survey will include the California Highway Patrol, the California Department of Corrections and Rehabilitation, sheriff departments, police departments, district attorneys, and probation departments. The survey will include, but not necessarily be limited to, questions related those in the requesters' submitted questionnaire and will cover agencies' hate crime policies, training, reporting, and public education efforts.	• The original audit request was that the State Auditor survey all state and local law enforcement agencies regarding hate crime issues, including the California Highway Patrol, the California Department of Corrections and Rehabilitation, sheriff departments, police departments, district attorneys, and probation departments. However, during the August 30, 2017, Audit Committee hearing, the request was amended to require the survey of three law enforcement agencies in each assembly district. Using the DOJ hate crime database, we identified law enforcement agencies throughout the State. • Verified the headquarters' addresses of each law enforcement agency and plotted agencies into state Assembly districts. • For each state Assembly district in which there were at least three law enforcement agencies, we selected the law enforcement agencies with the most reported hate crimes and the fewest reported hate crimes and a third law enforcement agency for our survey. • For state Assembly districts that had two or fewer law enforcement agencies, we selected and surveyed each law enforcement agency in that district. We then picked additional law enforcement agencies from surrounding state Assembly districts to ensure that we selected the 240 local law enforcement agencies called for in the amended audit request. We also surveyed five state law enforcement agencies, for a total of 245 surveys.
7	For a selection of four law enforcement agencies—one municipal police department with a relatively large number of reported hate crimes, one medium-sized university police department, one sheriff's office with a relatively low number of reported hate crimes, and one large state or local correctional agency—determine the agencies' compliance with hate crime laws and regulations by performing the following:	
	a. For a selection of crimes at each agency, determine whether the agency properly identified the incidents as hate crimes and classified and reported those crimes accordingly.	• Reviewed the policies and procedures from LA Police, Stanislaus County Sheriff, Orange County Sheriff, and SFSU Police for identifying and reporting hate crimes. • Reviewed up to 17 hate crimes at each agency to determine whether the agencies classified them correctly. • Reviewed up to 15 hate incidents at LA Police and SFSU Police to determine whether the agencies classified them correctly. We could not complete similar testing at the Stanislaus County Sheriff and Orange County Sheriff because the agencies did not track hate incidents as a category. • Reviewed 29 files from each agency that law enforcement did not categorize as hate crimes but that included crimes commonly associated with hate crimes, to ensure that the agency made the correct assessment.

AUDIT OBJECTIVE	METHOD
b. For a selection of crimes the agencies reported to DOJ as hate crimes, determine the accuracy, completeness, and timeliness of the information reported.	• Compared the data elements for up to 29 hate crimes that each agency reported to the DOJ hate crime database to the respective data elements in the original case files to ensure that the agency reported the crimes accurately. • Compared the number of hate crime case files each agency identified in its internal database to the number of case files each agency reported to the DOJ hate crime database to determine whether each agency reported the crimes completely. • Assessed the timeliness of information reported to DOJ. We did not identify any issues.
c. Review the agencies' policies and procedures related to disseminating information on hate crimes—such as brochures—and to providing hate crime training and public outreach.	• Interviewed key personnel at each agency about the outreach and training performed by the agency related to hate crimes. • Reviewed at least 27 officer training profiles at each agency to ensure that officers were POST-certified and we found that all of them were. Reviewed available documentation of additional hate crime training at the three agencies that offered in-service training during the period from 2014 through 2016. • Reviewed the processes in place at each agency related to disseminating information related to hate crimes.
8 Review and assess any other issues that are significant to the audit.	• Reviewed documents and interviewed staff from the San Francisco County District Attorney's Office (San Francisco County District Attorney), Stanislaus County District Attorney's Office, Office of the District Attorney of Orange County (Orange County District Attorney), and the Los Angeles County District Attorney's Office to identify any issues related to the prosecution of hate crimes. • Reviewed hate crime cases referred for prosecution by law enforcement agencies to determine why prosecutors rejected cases for prosecution and the disposition of the cases they decided to prosecute. • Interviewed key staff at various public advocacy organizations about potential issues related to the underreporting of hate crimes.

Source: California State Auditor's analysis of the Audit Committee's audit request 2017-131, planning documents, and information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 2. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, or recommendations. Table 2 describes the analyses we conducted using data from these information systems, our methods for testing, and the results of our assessments. Although these determinations may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

Table 2
Methods Used to Assess Data Reliability

DATA SOURCE	PURPOSE	METHOD AND RESULT	CONCLUSION
LA Police Consolidated Crime Analysis Database from 2014 through 2016	Identify instances in which LA Police inaccurately identified a case with an underlying crime type often related to hate crimes (assault, intimidation, vandalism) as a crime other than a hate crime when information within the case file met the requirements to charge a hate crime under California law. Identify instances in which LA Police underreported or overreported hate crimes during the audit period. Create a selection of cases to review.	• Performed data-set verification procedures and electronic testing of key data elements, and we did not identify any significant issues. • To gain assurance of the completeness of the data, we verified they included case information for a selection of 29 assault, intimidation, and vandalism case files and found no exceptions. • To gain assurance over the accuracy of the data, we traced key data elements to source documentation for a sample of 29 assault, intimidation, and vandalism case files and found no exceptions.	Sufficiently reliable for the purposes of this audit.
Orange County Sheriff Records Management System from 2014 through 2016	Identify instances in which Orange County Sheriff inaccurately identified a case with an underlying crime type generally related to hate crimes (assault and vandalism) as a crime other than a hate crime when information within the case file met the requirements to charge a hate crime under California law. Identify instances in which Orange County Sheriff underreported or overreported hate crimes during the audit period. Create a selection of cases to review.	• Performed data-set verification procedures and electronic testing of key data elements, and we did not identify any significant issues. • To gain assurance of the completeness of the data, we verified they included case information for a selection of 29 assault and vandalism case files and found no exceptions. • To gain assurance over the accuracy of the data, we traced key data elements to source documentation for a sample of 29 assault and vandalism case files and found no exceptions.	Sufficiently reliable for the purposes of this audit.
SFSU Police Records Management System from 2007 through 2016	Identify instances in which SFSU Police inaccurately identified a case with an underlying crime type often related to hate crimes (assault and vandalism) as a crime other than a hate crime when information within the case file met the requirements to charge a hate crime under California law. Identify instances in which SFSU Police underreported or overreported hate crimes during the audit period. Create a selection of cases to review.	• Performed data-set verification procedures and electronic testing of key data elements, and we did not identify any significant issues. • To gain assurance over the accuracy of the data, we traced key data elements to source documentation for a sample of 29 assault and vandalism case files and found no exceptions. • Did not perform completeness testing on these data because physical source documents required for this testing were not maintained by the auditee for the years of our data reliability assessment period.	Undetermined reliability for the purposes of this audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

DATA SOURCE	PURPOSE	METHOD AND RESULT	CONCLUSION
Stanislaus County Sheriff Integrated Criminal Justice Information System from 2007 through 2016	Identify instances in which Stanislaus County Sheriff inaccurately identified a case with an underlying crime type generally related to hate crimes as a crime (assault, intimidation, or vandalism) other than a hate crime when information within the case file met the requirements to charge a hate crime under California law. Identify instances in which Stanislaus County Sheriff underreported or overreported hate crimes during the audit period. Create a selection of cases to review.	• Performed data-set verification procedures and electronic testing of key data elements, and we did not identify any significant issues. • To gain assurance of the completeness of the data, we verified they included case information for a selection of 29 assault, intimidation, and vandalism case files and found no exceptions. • To gain assurance over the accuracy of the data, we traced key data elements to source documentation for a sample of 29 assault, intimidation, and vandalism case files and found no exceptions.	Sufficiently reliable for the purposes of this audit.
DOJ Hate crime database from 2007 through 2016	Identify instances of hate crime misreporting or underreporting to DOJ by LA Police, Orange County Sheriff, SFSU Police, and Stanislaus County Sheriff.	• Performed data-set verification procedures and electronic testing of key data elements, and we did not identify any significant issues. • To gain assurance of the completeness of the data, we compared the total number of files that each law enforcement agency identified in its internal database to the number of case files the agency reported to the DOJ hate crime database. Our review found that the four agencies failed to report the following number of hate crimes to DOJ: LA Police: 89 of 622; SFSU Police: 6 of 17; Stanislaus County Sheriff: 1 of 18; and Orange County Sheriff: 1 of 23. • To gain assurance over the accuracy of the data, we compared key data elements from a sample of up to 29 case files that each agency reported to DOJ hate crime database to the respective data elements in the original case files at each agency. Our review found the following inaccuracies: LA Police: 2 of 29; SFSU Police: 2 of 11; Stanislaus County Sheriff: 4 of 17; and Orange County Sheriff: 5 of 8. In each case, some key data element reported in the law enforcement agency case file did not match the records reported in the DOJ hate crime database.	Not sufficiently reliable to identify all hate crimes. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.

Source: California State Auditor's analysis of the DOJ hate crime database and cases at the LA Police, Orange County Sheriff, SFSU Police, and Stanislaus County Sheriff.

Audit Results

Some of the Law Enforcement Agencies We Reviewed Did Not Correctly Identify Hate Crimes and Lacked the Tools and Training Necessary to Identify Hate Crimes Appropriately

LA Police, SFSU Police, and the Orange County Sheriff failed to properly identify some hate crimes in the cases we reviewed. The underidentification of hate crimes was due to several factors, including policies that did not accurately reflect state law and a lack of tools that patrol officers could use to identify hate crimes when first arriving at crime scenes. In addition, we found that two of the four agencies we reviewed did not offer adequate hate crime refresher training that would have reminded officers of how to correctly identify hate crimes.

Three of the Law Enforcement Agencies We Reviewed Did Not Adequately Identify Hate Crimes

Three of the four law enforcement agencies we reviewed failed to properly identify some hate crimes. For example, our testing at LA Police and SFSU Police indicated that they failed to appropriately identify some instances of hate crimes, misidentifying them instead as hate incidents.[2] As the Introduction discusses, *hate incident* is a term that law enforcement agencies use to describe a situation that involves an element of hate, such as hate speech, but does not include an underlying crime, such as an assault. As Table 3 on the following page shows, LA Police should have identified three of the 15 hate incident cases we reviewed—or 20 percent—as hate crimes. Similarly, SFSU Police should have identified eight of the 15 hate incident cases we reviewed—or 53 percent—as hate crimes.[3] In these misidentified cases, an offense such as breach of the peace or assault occurred in addition to an element of hate, thus elevating the cases to hate crimes. For example, LA Police investigated an assault that occurred at a school and improperly reported it as a hate incident. Although LA Police indicated that it did not consider the three incidents in question to be crimes, our review of incidents reported to LA Police clearly indicated that crimes had occurred. Similarly, SFSU Police indicated that several of the eight incidents it misidentified were not hate crimes because the victims or reporting parties did not positively indicate that they were the targets because of their identities, although no such legal requirement exists. As we discuss later,

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[2] We could not complete similar testing at the Stanislaus County Sheriff's Department and Orange County Sheriff because the agencies did not track hate incidents as a category.

[3] Because of the relatively few hate incident cases at SFSU Police, we expanded our testing time frame from 2007 through 2016.

because they misidentified these hate crimes as hate incidents, LA Police and SFSU Police failed to report the crimes, thereby leading DOJ to present incorrect information about the number of hate crimes in California.

Table 3

Accuracy of Local Law Enforcement Agencies in Identifying Hate Crimes

LAW ENFORCEMENT AGENCY	UNDERIDENTIFICATION		OVERIDENTIFICATION
	HATE CRIMES MISIDENTIFIED AS HATE INCIDENTS	ASSOCIATED CRIME REVIEW*	CASES IDENTIFIED AS HATE CRIMES
LA Police 2014 through 2016	3 errors of 15 files reviewed	0 errors of 29 files reviewed	0 errors of 15 files reviewed
Orange County Sheriff 2007 through 2016†	NA	1 error of 29 files reviewed	0 errors of 10 files reviewed
SFSU Police 2007 through 2016†	8 errors of 15 files reviewed	0 errors of 29 files reviewed	5 errors of 16 files reviewed
Stanislaus County Sheriff 2007 through 2016†	NA	0 errors of 29 files reviewed	0 errors of 17 files reviewed

Source: California State Auditor's analysis of cases at the LA Police, Orange County Sheriff, SFSU Police, and Stanislaus County Sheriff.

NA = Not applicable.

* We reviewed reports for arrests for crimes frequently associated with hate crimes and determined whether hate crimes had occurred.

† We expanded the period of review from 2014 through 2016 to 2007 through 2016 because of the relatively few hate crime cases referred to the Orange County Sheriff, SFSU Police, and Stanislaus County Sheriff. However, we conducted the associated crime review testing at these three agencies for the period from 2014 through 2016.

We also identified one case in which the Orange County Sheriff failed to identify a hate crime that occurred in its detention facility. State law requires law enforcement agencies to address hate crimes regardless of where they occur. Our testing of 29 Orange County Sheriff case files of crimes often associated with hate crimes, such as vandalism and assault, found one case in which the Orange County Sheriff documented that an assault and battery occurred in its detention facility but failed to identify the event as a hate crime even though the suspect noted that his motivation included a protected characteristic of the victim. When we discussed this incident with the Orange County Sheriff, the sergeant who had reviewed the file stated that she did not realize that the department needed to report the case to DOJ as a hate crime and described the problem as a result of a lack of training.

During our review, we also found instances of overidentification of hate crimes by SFSU Police. Specifically, when we reviewed 16 hate crime cases, we found five that SFSU Police identified as hate crimes but should have classified as hate incidents or non-hate crimes. According to SFSU Police's assistant police chief, it reported these instances to DOJ as hate crimes because of outdated policies and an overabundance of caution.

Some Law Enforcement Agencies We Reviewed Lacked the Policies and Tools to Identify Hate Crimes Appropriately

Three of the four law enforcement agencies we reviewed did not have adequate policies and methods in place to identify hate crimes. POST, a commission responsible for setting minimum selection and training standards for California law enforcement, encourages law enforcement agencies to have techniques or methods in place to identify and handle hate crimes, such as a supplemental hate crime report form that patrol officers can use to more easily identify hate crimes. A supplemental hate crime report allows patrol officers to identify different elements of a hate crime, such as the type of bias (for example, bias toward race, disability, or sexual orientation) and bias indicators (for example, hate speech, property damage, or symbols).

The Orange County Sheriff does not have a supplemental hate crime report form for first-responding officers but has begun drafting a version of the form based on those used at other law enforcement agencies across the State. In addition, the Stanislaus County Sheriff does not have a supplemental hate crime report form. According to the Orange County District Attorney, information included in these reports, such as victim and suspect statements about what suspects said regarding certain protected characteristics, may be crucial when prosecuting hate crime cases. Until both law enforcement agencies implement methods to better identify hate crimes, the potential to misidentify hate crimes remains high.

Further, SFSU Police's hate crime policy is outdated and does not correctly describe hate crimes committed as a result of an association with a victim with a protected characteristic. Rather, its hate crime policy incorrectly states that if a crime lacks a specific target or victim, it should be classified as a hate incident. However, state law indicates that officers investigating a hateful criminal act do not necessarily have to identify a clearly specified victim to consider the act a hate crime, as long as the crime was committed based on an association with a victim with a protected characteristic. For instance, statutory and case law make it a crime for someone to spray-paint a racially motivated hate symbol in a college classroom used by an instructor of a different race, under the theory that the classroom is associated with the victim. However, SFSU Police would have considered this a hate incident instead of a hate crime. The SFSU Police deputy chief acknowledged the limitations of its hate crime policy and plans to implement an ongoing training program on hate crime reporting for officers and applicable staff. In addition, SFSU Police have since updated its hate crime policies and procedures. Nevertheless, from

A supplemental hate crime report form allows patrol officers to more easily identify different elements of a hate crime, such as the type of bias—bias toward race, disability, or sexual orientation—and bias indicators—hate speech, property damage, or symbols.

2007 through 2016, SFSU Police misidentified eight hate crimes as hate incidents using a policy that did not follow state law, as we describe previously.

Periodic Hate Crime Refresher Training for Peace Officers Is Not Required by Law, Monitored at the State Level, or Evaluated for Effectiveness

Our review found that some law enforcement agencies have not provided refresher hate crime trainings that contain critical procedures for identifying hate crimes. Specifically, the Stanislaus County Sheriff does not have documentation of any hate crime refresher training from 2014 through 2016, and 85 of the 174 law enforcement agencies across the State that responded to our survey, or 49 percent, stated that they also did not offer refresher hate crime training during this period. Although the other three law enforcement agencies we reviewed provided some hate crime refresher training, it was not always to the majority of sworn officers. For example, Orange County Sheriff indicated that it provided refresher training to only 212 of its 1,950 officers from 2014 through 2016. We find this lack of training particularly problematic given that POST provides free hate crime training materials to POST-certified law enforcement agencies.

By providing periodic refresher hate crime training using POST's free training materials, law enforcement agencies could help law enforcement officers to properly identify hate crimes.

Although state law requires hate crime training during police officer academy training, state law does not require officers to take periodic hate crime refresher trainings, as it does with trainings on other topics, such as handling domestic violence complaints. A POST bureau chief noted that mandates for additional hate crime training would be beneficial, subject to the availability of funding. When we asked the Orange County Sheriff why it did not provide more extensive refresher hate crime training, a training division sergeant indicated that the small number of hate crimes reported in its jurisdiction did not warrant departmentwide refresher training, especially given the high costs of implementing new training mandates. A Stanislaus County Sheriff training division lieutenant also indicated that the lack of allocated funding for refresher training is a significant challenge. Nevertheless, by providing periodic refresher hate crime training using POST's free training materials, law enforcement agencies could help law enforcement officers to properly identify hate crimes.

Moreover, POST is unable to determine the effectiveness of its hate crime training because it does not conduct periodic evaluations of its hate crime training program. Although POST currently conducts annual reviews of POST-certified agencies to ensure that peace officers have met basic training requirements and completed any necessary refresher trainings, it does not conduct reviews of its hate crime trainings. Nonetheless, POST has noted that a program to

assess the quality of training delivery could improve law enforcement field performance and decision making. A POST bureau chief stated that POST would like to conduct evaluations of hate crime training at POST academies across the State, but more funding would be necessary. In fact, POST indicated that it requested funding for evaluating hate crime training for fiscal year 2017–18 but did not receive it, and it has also not been able to secure funding for a training assessment program for fiscal year 2018–19. A POST bureau chief stated that a limited program could cost $65,000, while a more robust program would cost $130,000 per year. Until POST obtains the necessary funds to evaluate the effectiveness of its hate crime training, there is no mechanism to ensure that the curriculum most effectively communicates important issues regarding hate crimes, including procedures to ensure that peace officers properly identify these crimes.

Hate Crimes Are Difficult to Prosecute

Due to the difficulty of prosecuting hate crimes, prosecutors are successful in convicting defendants of hate crimes at only about half the rate at which they convict defendants for all felonies in the State. During the period from 2007 through 2016, California prosecutors convicted 790 defendants of hate crimes, as Table 4 on the following page shows. For an additional 748 cases that had initially been referred to them as hate crimes, prosecutors ultimately convicted defendants of crimes other than hate crimes, such as assaults. Prosecutors convicted between 40 percent and 51 percent of defendants with hate crime charges during the years we reviewed. In comparison, in the past 10 years, prosecutors secured an 84 percent conviction rate for the 2.4 million completed prosecutions for felonies in California.

There are multiple explanations for the low rate of hate crime convictions compared to convictions for other crimes. For example, hate crime data from DOJ show that one of the largest limiting factors in hate crime prosecutions is a lack of identifiable suspects. Although law enforcement agencies reported more than 10,400 hate crimes from 2007 through 2016, more than 3,000 of those crimes lacked suspects to prosecute. It is sometimes difficult for police to identify a suspect for some types of hate crimes. For example, seven of the eight vandalism hate crimes at the four law enforcement agencies we reviewed lacked a suspect to prosecute.

Although law enforcement agencies reported more than 10,400 hate crimes from 2007 through 2016, more than 3,000 of those crimes lacked suspects to prosecute.

In addition, our review of cases at district attorney's offices found that successfully prosecuting hate crimes is often difficult because the cases lack sufficient evidence to meet the high standard of proof required to prove motive and secure a conviction on a hate crime charge. Specifically, we found that prosecutors reject some

hate crime cases referred by law enforcement agencies because they believe the evidence is insufficient to obtain hate crime convictions. As Table 5 shows, of the 51 hate crime referrals prosecutors rejected in the four jurisdictions we reviewed from 2014 through 2016, 37 were rejected due to a lack of sufficient evidence to prove beyond a reasonable doubt that a hate crime had occurred.[4] For example, the Orange County District Attorney rejected one hate crime referral in which a robbery suspect allegedly directed hateful speech to the victim because there was a lack of sufficient evidence to prove that the suspect spoke to the victim. According to the Orange County District Attorney, sufficient evidence needed to prove that hate was a motivating factor could include witness and suspect statements and social media postings. An Orange County senior deputy district attorney stated that because patrol officers, not detectives, generally respond to crimes, patrol officers must understand the nuances of hate crime prosecution to ensure that they corroborate the suspects' motives for the crimes. This corroboration can establish sufficient evidence for the intent element of a hate crime. A proper initial investigation of a hate crime relies on training and on tools, such as a supplemental hate crime report, which we discussed previously.

Table 4
The Conviction Rate of Hate Crimes Is Lower Than the Total Felony Conviction Rate

YEAR	HATE CRIME* CONVICTIONS (HATE CRIME REFERRALS WITH HATE CRIME CONVICTIONS)	ALL OTHER CONVICTIONS (HATE CRIME REFERRALS WITHOUT HATE CRIME CONVICTIONS)	NOT CONVICTED	TOTAL	HATE CRIME CONVICTION RATE
Prosecution of hate crime referrals by year					
2007	110	103	28	241	46%
2008	128	104	28	260	49
2009	131	92	34	257	51
2010	70	81	15	166	42
2011	74	80	7	161	46
2012	49	58	17	124	40
2013	68	76	9	153	44
2014	50	49	15	114	44
2015	59	60	19	138	43
2016	51	45	22	118	43
Totals	**790**	**748**	**194**	**1,732**	**46%**

YEARS	TOTAL FELONY CONVICTIONS	NOT CONVICTED	TOTAL	TOTAL CONVICTION RATE
Prosecution of all felonies				
2007 through 2016	1,997,513	392,915	2,390,428	**84%**

Sources: Unaudited DOJ prosecution survey and annual crime report.

* *Hate crimes* include both stand-alone hate crimes and hate crime sentencing enhancements.

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4   We expanded the period of review to 2007 through 2016 for the Stanislaus County District Attorney because of the relatively few hate crime case referrals it received.

Table 5

District Attorneys' Offices Rejected Most Hate Crime Referrals Due to Insufficient Evidence

	DISTRICT ATTORNEYS' OFFICE REVIEW PERIOD				
	FROM 2014 THROUGH 2016	FROM 2014 THROUGH 2016	FROM 2014 THROUGH 2016	FROM 2007 THROUGH 2016*	
	COUNTY				
	LOS ANGELES	ORANGE	SAN FRANCISCO	STANISLAUS	TOTAL
Cases we reviewed (hate crime referrals)†	30	31	30	9	100
Cases accepted for prosecution by the district attorney	15	16	12	6	49
Cases rejected for hate crime prosecution by the district attorney‡	15	15	18	3	51
• Cases rejected by the district attorney due to insufficient evidence	10	14	10	3	37 of 51

Source: California State Auditor's analysis of hate crime files obtained from the LA County District Attorney, Orange County District Attorney, San Francisco County District Attorney, and the Stanislaus County District Attorney.

* We expanded the period of review because of the relatively few hate crime cases referred to the Stanislaus County District Attorney.

† *Hate crimes* include both stand-alone hate crimes and hate crime sentencing enhancements.

‡ Includes cases that either were completely rejected or were rejected for hate crime prosecution but prosecuted for non-hate crime offenses.

Even when prosecutors are unable to achieve hate crime convictions, they are often able to attain convictions for the underlying crimes. Specifically, although prosecutors convicted between 40 percent and 51 percent of defendants charged with hate crimes from 2007 through 2016, the conviction rate for the defendants initially referred to prosecutors with hate crime charges increased to between 81 percent and 96 percent when also counting convictions for crimes other than hate crimes, such as assault or battery. Of the hate crime cases we reviewed that were referred by law enforcement agencies and accepted by district attorneys' offices, prosecutors convicted between 57 percent and 92 percent of the defendants of some type of crime, as Table 6 on the following page shows. The conviction rates for hate crimes in these cases were lower—between 15 percent and 72 percent—a disparity that occurred for several reasons, according to the prosecutors. An assistant district attorney for the San Francisco County District Attorney stated that because proving that a suspect's primary motivation for a crime was hate toward the victim's race or religion is sometimes difficult, it is often only possible to prove that the suspect had perpetrated the underlying crime, such as assault. Further, the assistant district attorney stated that sophisticated juries in the region expect the district attorney to present high-tech evidence, which is often not possible in hate crime trials. The San Francisco County District Attorney prosecuted 13 hate crime defendants but secured convictions for only two, with 10 of the remaining defendants instead convicted only of the underlying crimes.

Table 6

Hate Crime Conviction Rates for the Cases We Reviewed Varied From 15 Percent to 72 Percent

	DISTRICT ATTORNEYS' OFFICE REVIEW PERIOD			
	FROM 2014 THROUGH 2016	FROM 2014 THROUGH 2016	FROM 2014 THROUGH 2016	FROM 2007 THROUGH 2016*
	COUNTY			
	LOS ANGELES	ORANGE	SAN FRANCISCO	STANISLAUS
Defendants prosecuted for hate crimes†	19	18	13	7
Defendants convicted of any crime	16	15	12	4
Defendants convicted of hate crimes only	6	13	2	3
Defendants acquitted, dismissed, or case pending	3	3	1	3
Conviction rate—hate crimes only	32%	72%	15%	43%
Conviction rate—all crimes	84%	83%	92%	57%

Source: California State Auditor's analysis of hate crime files obtained from the LA County District Attorney, Orange County District Attorney, San Francisco County District Attorney, and Stanislaus County District Attorney.

Note: The number of defendants differ from the number of cases in Table 5 because some cases involved multiple defendants.

* We expanded the period of review because of the relatively few hate crime cases referred to the Stanislaus County District Attorney.

† *Hate crimes* include both stand-alone hate crimes and hate crime sentencing enhancements.
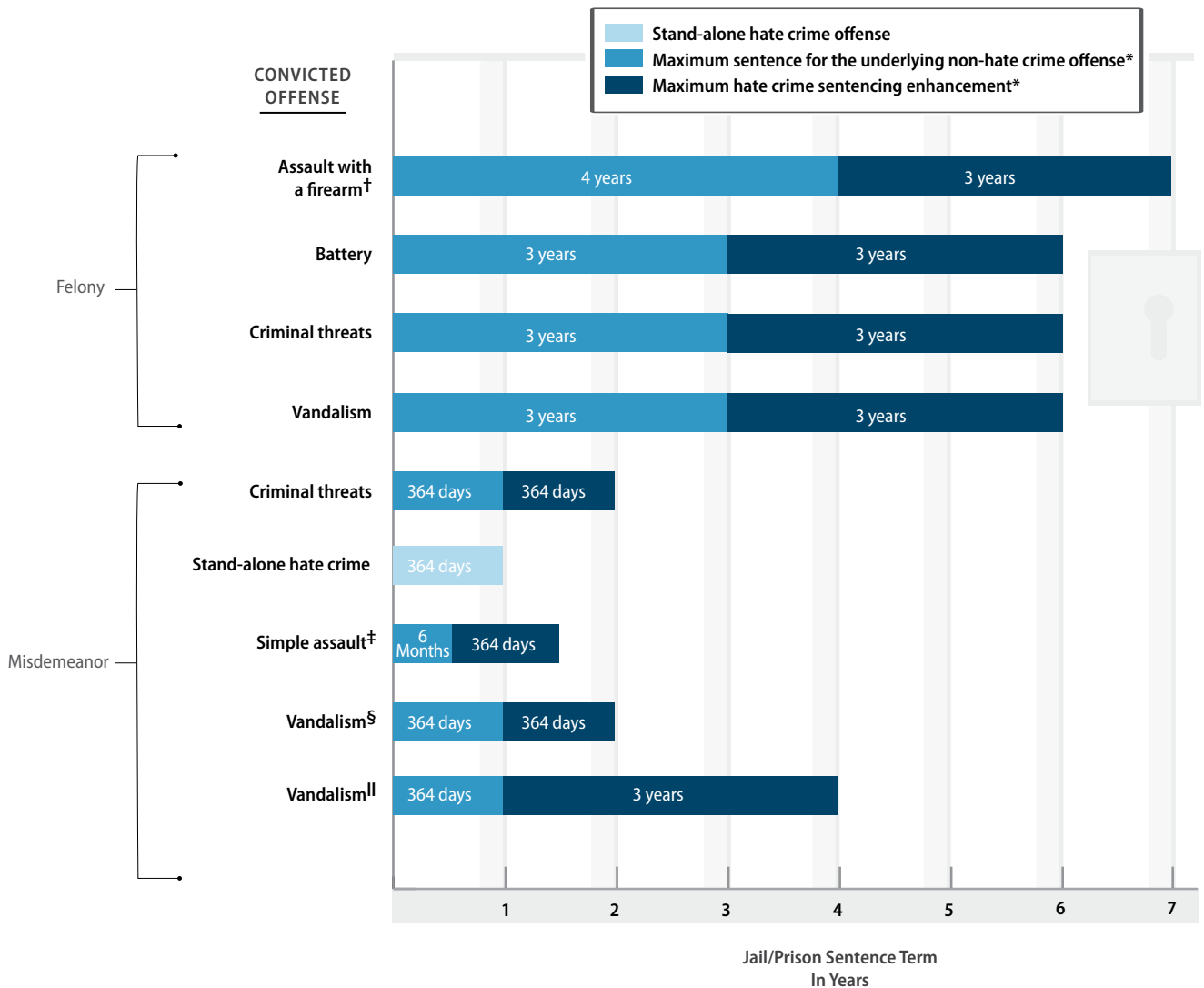
Being convicted of an offense with a hate crime sentencing enhancement can result in an addition to the defendant's overall sentence. According to state law, hate crime sentencing enhancement convictions can result in fines or additional sentences of up to four years, depending on whether the underlying crime is a felony or misdemeanor and on whether the defendant acted alone or in concert with another person. Conversely, assault with a firearm, battery, criminal threat, or vandalism without a hate crime sentencing enhancement could result in a maximum jail term of between six months and four years.[5] Figure 6 shows examples of sentences for stand-alone hate crimes and for offenses often associated with hate crimes, as well as the potential hate crime sentencing enhancements available for those associated crimes. For example, the Orange County District Attorney convicted a defendant of a stand-alone hate crime when the defendant repeatedly yelled racial slurs at multiple individuals passing by on the street, a violation of the pedestrians' civil rights. This defendant received a sentence of 115 days in jail for this stand-alone hate crime. Courts have discretion to determine which of the sentencing enhancements to impose. For the hate crime convictions we reviewed, the average jail term for all charges, including enhancements, was 8.8 months, and the average state prison term was 4.1 years.

Prosecutors we spoke with and law enforcement agencies we surveyed generally indicated that the hate crime law does not require amendment. When we questioned prosecutors about the hate crime conviction rate, they noted that although proving motive

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[5] Assault with a firearm means the least serious assault-related firearm charge.

beyond a reasonable doubt is a high prosecutorial burden to meet, the difficulty is appropriate given the gravity of the charges. Law enforcement agencies we surveyed overwhelmingly responded that no changes were needed to state hate crime law to allow them to identify, investigate, report, or mitigate hate crimes, with 93 percent of responding agencies indicating that the state law does not require amendment.

Figure 6
Maximum Conviction Sentences for Common California Hate Crimes

Legend:
- Stand-alone hate crime offense
- Maximum sentence for the underlying non-hate crime offense*
- Maximum hate crime sentencing enhancement*

CONVICTED OFFENSE

Felony:
- Assault with a firearm†: 4 years / 3 years
- Battery: 3 years / 3 years
- Criminal threats: 3 years / 3 years
- Vandalism: 3 years / 3 years

Misdemeanor:
- Criminal threats: 364 days / 364 days
- Stand-alone hate crime: 364 days
- Simple assault‡: 6 Months / 364 days
- Vandalism§: 364 days / 364 days
- Vandalism‖: 364 days / 3 years

Jail/Prison Sentence Term
In Years

Source: California Penal Code.

* *Maximum sentence* and *Maximum hate crime sentencing enhancement* refer to the longest sentence or sentencing enhancement provided by statute assuming no prior convictions, aggravating factors, or other non hate-related sentencing enhancements. The numbers we provide also assume that a person who commits or attempts to commit a felony that is a hate crime did not do so in concert with another person. If a person who commits or attempts to commit a felony that is a hate crime voluntarily acted in concert with another, then that person could receive a total of four years as a hate crime sentencing enhancement.

† *Assault with a firearm* means the least serious assault-related firearm charge.

‡ *Simple assault* means the least serious assault-related charge.

§ Crime did not cause property damage in excess of $950.

‖ Crime caused property damage in excess of $950.

Law Enforcement Agencies' Inadequate Policies and DOJ's Lack of Oversight Have Resulted in the Underreporting of Hate Crimes in the DOJ's Hate Crime Database

DOJ requires law enforcement agencies with peace officer powers to report all hate crimes, which it then transmits to the FBI.[6] The correct reporting of hate crimes to DOJ and subsequently the FBI is essential to identifying national and statewide hate crime patterns and to combating the negative effects that these types of crimes have on communities. Nonetheless, law enforcement agencies have failed to submit complete and accurate hate crime information to DOJ. Specifically, we found that the four agencies we reviewed, as well as many law enforcement agencies affiliated with educational institutions, have underreported hate crimes. At the local law enforcement agencies we reviewed, a lack of hate crime training and protocols, in addition to little proactive guidance and oversight from DOJ, have contributed to the underreporting of hate crimes.

Law Enforcement Agencies Have Underreported Hate Crimes to DOJ Due to Inadequate Policies

The four law enforcement agencies we reviewed, as well as other agencies throughout the State, have underreported hate crime information to the DOJ's hate crime database. DOJ requires law enforcement agencies with peace officer powers, such as the California Highway Patrol, sheriff's departments, police departments, and certain school district and college police departments, to submit information on all hate crimes occurring in their jurisdictions on a monthly basis. DOJ then transmits these data to the FBI and creates an annual report for the Legislature and the public. However, as Table 7 shows, we found that the four law enforcement agencies we reviewed failed to report to DOJ a total of 97 hate crimes, or roughly 14 percent of all hate crimes the agencies identified. LA Police committed the vast majority of the number of errors.

The four law enforcement agencies we reviewed failed to report to DOJ a total of 97 hate crimes, or roughly 14 percent of all hate crimes the agencies identified.

In addition to not reporting hate crimes, the four law enforcement agencies also reported incorrect information to DOJ. Specifically, when we reviewed 65 hate crimes that they reported to DOJ, we found that 13 contained errors, amounting to a 20 percent error rate. These errors often involved the type of bias or the type of hate crime committed. For example, four of the 17 hate crimes we reviewed at Stanislaus County Sheriff and five of the eight we reviewed at Orange County Sheriff had errors. LA Police and

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[6]   A peace officer is a person such as a sheriff, police, or marshal that has certain powers proscribed in state law, including the power to detain or arrest a suspect, conduct searches for weapons, and execute warrants.

SFSU Police stated that the errors we identified were the result of either improper training or a lack of guidance and oversight. For instance, SFSU Police did not adequately document proper hate crime reporting protocol in its policies and procedures manual. The quantity of the reporting errors at the four agencies we reviewed illustrates the extent to which underreporting and misreporting could exist at other agencies throughout the State.

Table 7
Hate Crimes Not Reported to DOJ by the Four Law Enforcement Agencies We Reviewed

LAW ENFORCEMENT AGENCY	YEARS REVIEWED	NUMBER OF HATE CRIMES NOT REPORTED TO DOJ	PERCENTAGE OF TOTAL HATE CRIMES NOT REPORTED TO DOJ
LA Police	From 2014 through 2016	89 of 622	14%
SFSU Police	From 2007 through 2016*	6 of 17	35
Stanislaus County Sheriff	From 2007 through 2016*	1 of 18	6
Orange County Sheriff	From 2014 through 2016	1 of 23	4
Totals		**97 of 680**	**14%**

Source: California State Auditor's analysis of information submitted to DOJ by LA Police, SFSU Police, Stanislaus County Sheriff, and Orange County Sheriff.

* We expanded the period of review because of the relatively few hate crime cases at SFSU Police and Stanislaus County Sheriff.

In our review of DOJ's other hate crime data, we also found that many law enforcement agencies affiliated with educational institutions have not reported hate crimes to DOJ. Like police and sheriff's departments, certain colleges and school districts have police departments that must report hate crimes that occur in their jurisdictions to DOJ on a monthly basis. We reviewed federally required annual crime reports from 56 postsecondary institutions' law enforcement agencies, such as the Stanford University Police, and identified a total of 36 hate crimes from 2014 through 2016 that the agencies included in their annual crime reports but did not appear to have reported to DOJ.[7] In fact, of the 56 institutions' law enforcement agencies we reviewed, 16 appeared to underreport hate crimes to DOJ, while five of these did not report any hate crimes to DOJ at all. When we expanded our review to include police departments at elementary and high school districts, we

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[7] The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act requires postsecondary institutions that participate in certain federal financial aid programs to publish annual security reports that disclose specific statistics on certain crimes—including hate crimes—that are committed on or near campus facilities.

identified six additional agencies that neither reported hate crimes to DOJ nor confirmed to DOJ that no hate crimes occurred from 2014 through 2016.

Finally, we asked respondents to our survey to report the number of hate crimes that occurred within their jurisdictions from 2012 through 2016. The total number of hate crimes the respondents reported in our survey was about 5 percent higher than the number of hate crimes they reported to DOJ, with more than two-thirds of the respondents reporting a different number of hate crimes to us than they reported to DOJ.[8] These discrepancies call into question how well law enforcement agencies are tracking and reporting hate crimes in their jurisdictions. Based on the collective evidence we reviewed, we believe the DOJ hate crime database understates the number of reported hate crimes in California, limiting the value of the information it provides to the FBI and the public. Correct reporting to DOJ is essential to raising awareness about the occurrence of bias-motivated offenses nationwide and to understanding the nature and magnitude of hate crimes in the State.

DOJ's Lack of Guidance and Oversight Has Contributed to Inaccuracies in Hate Crime Reporting

Although DOJ requires law enforcement agencies to submit hate crime information on a monthly basis, it has made no recent effort to ensure that all law enforcement agencies comply with this requirement. In our view, the first step to ensuring complete reporting of hate crimes in California is to know which agencies must report and to regularly follow up with those agencies that do not do so. However, when we asked DOJ to provide us with a list of agencies that are required to report, we found that it did not maintain a complete or accurate listing of all law enforcement agencies in the State. Specifically, we noted that a number of law enforcement agencies were not present on the list and that much of the contact information in the list was incorrect. For example, we found that over 40 percent of the law enforcement agency addresses were either missing or incorrect. When we questioned DOJ about these issues, it asserted that its outreach efforts were strong in the early 1980s and that it reached what it determined to be close to 100 percent reporting compliance from local law enforcement agencies at that time. Following that period, DOJ relied on newly established agencies to self-identify. The numerous reporting issues

DOJ does not maintain an accurate list of law enforcement agencies that are required to submit monthly hate crime information—over 40 percent of the agency addresses were either missing or incorrect.

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[8] The appendix includes law enforcement agencies' responses to selected questions from our survey.

we identified and described earlier demonstrate that DOJ's decision to rely on agencies to self-identify has not been effective and has led to the underreporting of hate crimes.

Furthermore, DOJ has not widely distributed guidance on hate crime reporting to law enforcement agencies. State law requires DOJ to prepare and distribute to law enforcement agencies the means of reporting data, to instruct them in the reporting of data, and to recommend the form and content of records in order to ensure the correct reporting of data. Although the program manager for the criminal justice statistics center stated DOJ has provided this guidance by distributing instructions on how to complete report forms and other support, 81 percent of surveyed law enforcement agencies indicated that they had not received hate crime related guidance from DOJ. We question whether DOJ could effectively distribute hate crime related materials given its incomplete list of law enforcement agencies that are required to report to DOJ. As we discuss later in this report, DOJ has conducted only a limited amount of outreach to law enforcement agencies related to hate crime reporting.

Although DOJ stated it has provided guidance on hate crime reporting to law enforcement agencies, 81 percent of the agencies surveyed indicated they had not received hate crime training materials from DOJ.

When we discussed these issues with DOJ, the program manager for the criminal justice statistics center stated that as part of its transition to the National Incident-Based Reporting System (NIBRS), DOJ plans to update its list of reporting agencies to ensure that all required agencies report hate crime information. The FBI is requiring that all states switch to NIBRS by 2021 to ensure uniformity in reporting and allow for more in-depth data collection. DOJ is still in the strategic planning process for this transition but anticipates developing a mechanism to ensure that all required law enforcement agencies report crime data as part of its transition. Until DOJ begins requiring and verifying data submissions from all applicable law enforcement agencies and conducts audits to ensure the accuracy of the information it collects, many of the reporting issues we identified will likely remain unmitigated.

At least one other state has already established oversight processes designed to remedy reporting issues like the ones we identified. Specifically, Michigan created the Michigan Incident Crime Reporting (MICR) unit to improve the accuracy of hate crimes reported by law enforcement agencies. The MICR unit receives all hate crime reports from law enforcement agencies and conducts monthly reviews by contacting the submitting agencies to confirm the validity of all the reported hate crimes. The MICR unit also conducts regular desk reviews of the data that law enforcement agencies submit to it. Michigan reported 399 hate crimes in 2016 and had more reported hate crimes per capita than California, with

4.05 hate crimes per 100,000 people compared to California's rate of 2.37 per 100,000 people. DOJ currently has no such program, and no requirement for it to develop such a program exists. However, DOJ indicates that it will begin auditing law enforcement agencies as part of its NIBRS transition.

Law Enforcement Agencies and DOJ Could Do More to Respond to Hate Crimes and Encourage Individuals to Report Those That Do Occur

Research suggests that hate crimes are dramatically underreported to law enforcement agencies, and these agencies have indicated that community outreach is an important way to ensure that victims and witnesses report hate crimes. Nonetheless, some California law enforcement agencies have not conducted sufficient outreach to vulnerable communities to encourage witnesses and victims to report hate crimes. Further, DOJ could do more to ensure that law enforcement agencies have the tools they need to reach out to communities and identify regional hate crime trends.

Law Enforcement Agencies Should Conduct More Hate Crime Outreach in Vulnerable Communities

Law enforcement agencies and community groups we interviewed noted that vulnerable communities likely underreport hate crimes and that outreach could encourage additional reporting.

Law enforcement agencies and community groups we interviewed noted that vulnerable communities likely underreport hate crimes and that outreach could encourage additional reporting. The U.S. Bureau of Justice Statistics estimates that about 54 percent of hate crimes were not reported to law enforcement agencies from 2011 through 2015. Although state law requires law enforcement agencies to make a hate crime brochure available to victims and members of the public, it does not require outreach specific to hate crimes. According to DOJ, victims may not report hate crimes due to feelings of shame about being victimized, language barriers, cultural barriers in dealing with the police, fear of having their privacy compromised, fear of retaliation, or—if the victims are undocumented immigrants—fear of deportation. POST recommends that law enforcement agencies hold public meetings about hate crimes and orientations with specific targeted communities, such as Muslims and immigrants. According to a POST bureau chief, this type of outreach can encourage members of vulnerable communities to come forward to law enforcement agencies.

However, two of the four law enforcement agencies we reviewed could not provide documentation of community outreach efforts that specifically addressed hate crimes. Although all four law enforcement agencies we reviewed engaged with the public by

discussing general public safety issues, only the Orange County Sheriff and LA Police engaged in community outreach activities that related specifically to hate crime issues. The other agencies noted that agency staff may have addressed hate crimes at various outreach events but that hate crimes were not the primary focus of any particular community forum or outreach effort.

Moreover, over 30 percent of the law enforcement agencies that responded to our survey stated that they had not used any method to inform the public about hate crimes. The community relations manager at the Orange County Sheriff noted that hate crimes are likely underreported in its jurisdiction and that fostering better relationships and communication between law enforcement officers and members of minority communities could alleviate underreporting of hate crimes. Similarly, the public information officer at the Stanislaus County Sheriff noted that it is possible that community members underreport hate crimes to the Stanislaus County Sheriff and that the department could potentially alleviate community underreporting of hate crimes by providing increased community outreach specifically focused on hate crimes. However, the Stanislaus County Sheriff captain stated that it does not provide specific hate crime outreach because it strives for more general outreach efforts meant to establish trust with the community. An SFSU Police lieutenant noted that when the department gives presentations to groups on campus that may be affected by hate crimes, the officers discuss the subject at length but also try to educate students on subjects including personal safety, property security, campus resources, and campus policies. Hate crimes are likely to continue to be underreported until law enforcement agencies effectively engage with vulnerable communities.

Furthermore, several advocacy groups and agencies we interviewed indicated that immigrant communities may underreport hate crimes due to a fear of deportation. State law prohibits law enforcement agencies from detaining hate crime victims and witnesses or from reporting or turning such individuals over to federal immigration authorities based exclusively on actual or suspected immigration violations, as long as such individuals are not charged with or convicted of certain crimes under state law. A POST bureau chief indicated that it is important for law enforcement agencies to conduct outreach to immigrant communities to communicate this law, noting that doing so is key to the successful prosecution of hate crimes. Outreach command staff at the Orange County Sheriff and LA Police and executive leadership at the Orange County Human Relations Commission and Orange County Communities Organized for Responsible Development have attributed underreporting of hate crimes in immigrant communities to a fear of being reported to federal

Several advocacy groups and agencies indicated that immigrant communities may underreport hate crimes due to a fear of deportation.

immigration authorities. Furthermore, a 2013 study found that in Los Angeles County, 44 percent of Latinos surveyed noted that they are less likely to report crimes to law enforcement officers because they are afraid the police will ask them or the people they know about their immigration status.

Although all four law enforcement agencies we reviewed had policies that prohibited inquiring about the immigration status of victims or witnesses, only SFSU Police and Orange County Sheriff conducted any targeted outreach to inform immigrant communities about their policies. For instance, although LA Police officers address immigration or deportation concerns if individuals ask about them at community forums, LA Police do not reach out to minority communities specifically to discuss this policy. Command staff from LA Police's Community Relationship Division stated that they do not conduct this type of outreach because interest in these forums has recently declined. However, law enforcement agencies could do more to ensure that immigrants feel safe coming forward to report hate crimes by conducting outreach in their communities.

The US DOJ notes that county human rights or human relations commissions can facilitate and coordinate discussions, training, and events on hate crime issues.

One of the ways law enforcement agencies can conduct hate crime outreach is by partnering with community groups. The US DOJ notes that county human rights or human relations commissions can facilitate and coordinate discussions, training, and events on hate crime issues. For example, the Orange County Sheriff maintains a partnership with the Orange County Human Relations Commission, which provides hate crime training to Orange County Sheriff recruits, offers services to hate crime victims, and conducts hate crime outreach to affected communities. Partnering with community organizations in this manner can be an effective way for law enforcement agencies to conduct hate crime outreach.

DOJ Should Provide More Guidance to Assist Law Enforcement Agencies With the Identification and Investigation of Hate Crimes, as Well as With Outreach to Vulnerable Communities

Because of its statutory responsibilities to collect, analyze, and report data on hate crimes, DOJ is uniquely positioned to provide leadership for law enforcement agencies' response to the growing number of hate crimes in California. Our survey of law enforcement agencies found that they appear to be receptive to receiving additional training, outreach materials, and other types of assistance from DOJ. However, to use its resources to provide law enforcement agencies with additional guidance, DOJ may need a clear statutory mandate and will need to make revisions to the way it currently collects hate crime data.

With regard to hate crimes, state law currently requires DOJ to do the following:

- Instruct law enforcement agencies on hate crime reporting.

- Collect, analyze, and interpret hate crime data provided by law enforcement agencies.

- Transmit data to the FBI and other federal agencies involved in the collection of national crime statistics.

- Publish an annual report on hate crimes.

- Periodically evaluate hate crime reporting and make recommendations as it deems necessary.

Although DOJ can make improvements in how it meets these responsibilities, as we describe in previous report sections, it has at least developed a framework for carrying out its duties. However, missing from these responsibilities is a requirement that DOJ provide guidance to other law enforcement agencies on how to prevent, identify, and appropriately respond to hate crimes.

According to the supervising deputy attorney general in the civil rights enforcement section, DOJ has participated in about 20 outreach events related to hate crimes over the last 10 years, a portion of which dealt specifically with identifying and reporting hate crimes. However, given the complex nature of hate crime enforcement and identification, which we discuss previously, additional training from DOJ focused more extensively on how law enforcement agencies can better prevent, identify, and respond to hate crimes appears to be warranted. In fact, staff from all four of the agencies we reviewed indicated that additional support from DOJ would be valuable. Further, 83 percent of our survey respondents stated that they would benefit from receiving additional DOJ hate crime training materials, and nearly every law enforcement agency surveyed noted that it would be beneficial for DOJ to send them public outreach materials related to hate crime categories occurring in their jurisdictions. A DOJ supervising deputy attorney general stated that while DOJ will continue to provide existing trainings to law enforcement, it will also work to determine the feasibility of offering more trainings, and whether funding is available.

DOJ could also use its hate crime data to provide targeted outreach and assistance to individual law enforcement agencies that may be experiencing an increase in hate crimes. To do so, DOJ would have to modify how it currently collects hate crime data. Specifically, DOJ's hate crime reporting process does not capture the geographic location where each hate crime occurred, only the law enforcement

DOJ's hate crime reporting process does not capture the geographic location where each hate crime occurred.

Until DOJ's hate crime database includes specific geographic information, law enforcement agencies, the public, DOJ, and the Legislature will not be able to access the data necessary to best prioritize the State's response to hate crimes.

agency that reported the hate crime. As a result, if several hate crimes occurred in the same geographic area but a number of law enforcement agencies handled the crimes, neither DOJ nor the law enforcement agencies involved would be aware of the full extent of the problem in that area. By collecting and analyzing hate crimes by location, DOJ could provide data and outreach materials that would help facilitate coordinated responses by the respective agencies. About 90 percent of our survey respondents stated that they would benefit from receiving notices about hate crimes occurring in the geographical areas covered by their sometimes-overlapping jurisdictions.

Further, the limitations of DOJ's current hate crime data do not allow it to map the frequency and type of hate crimes occurring within a particular law enforcement agency's jurisdiction. For example, using DOJ's current data, hate crimes that occur within LA Police's jurisdiction can be mapped only to the address of its central headquarters. However, LA Police's database contains more precise data pertaining to the location of hate crimes. We compare the map of hate crimes using DOJ's limited data to the map using LA Police's more comprehensive data as shown in Figure 7. Because the map using LA Police's data shows in better detail how hate crimes affect individual communities within LA Police's jurisdiction, we believe DOJ should expand this type of mapping statewide. When we asked DOJ about this issue, the program manager for the criminal justice statistics center indicated that as part of DOJ's NIBRS implementation, DOJ plans to require law enforcement agencies to include location information, such as zip codes, with every hate crime they report. However, DOJ has not yet finalized its plans for implementing NIBRS, as we previously discussed. Until DOJ's hate crime database includes specific geographic information, law enforcement agencies, the public, DOJ, and the Legislature will not be able to access the data necessary to best prioritize the State's response to hate crimes.

DOJ could also better publicize the assistance it can offer to local authorities when they are investigating and prosecuting certain hate crimes. Since 1999 DOJ has had a Hate Crime Rapid Response Team (response team) that consists of DOJ staff, including the chief deputy attorney general and the director of the bureau of investigation, among others. Once activated by a request for assistance from a local or federal law enforcement agency dealing with certain hate crimes, the response team can help with the identification, arrest, prosecution, and conviction of the perpetrators of hate crimes. In particular, it can assist law enforcement agencies that are combating a series of hate crimes or are not used to investigating this type of case. The team is meant to quickly respond to requests for assistance and then return to their normal duties. However, DOJ has not done enough to inform law enforcement agencies that the response team is available

to assist them. Due to a lack of sufficient information about the response team and the circumstances that would trigger it to assist with an investigation, such as a hate crime involving arson or the use of explosives, nearly half of the surveyed law enforcement respondents were unaware of the response team's existence and capabilities. In fact, according to the director of DOJ's bureau of investigation, it has never deployed the team.

Figure 7
DOJ Data Lacks Location Detail of Reported Hate Crimes
2014 Through 2016
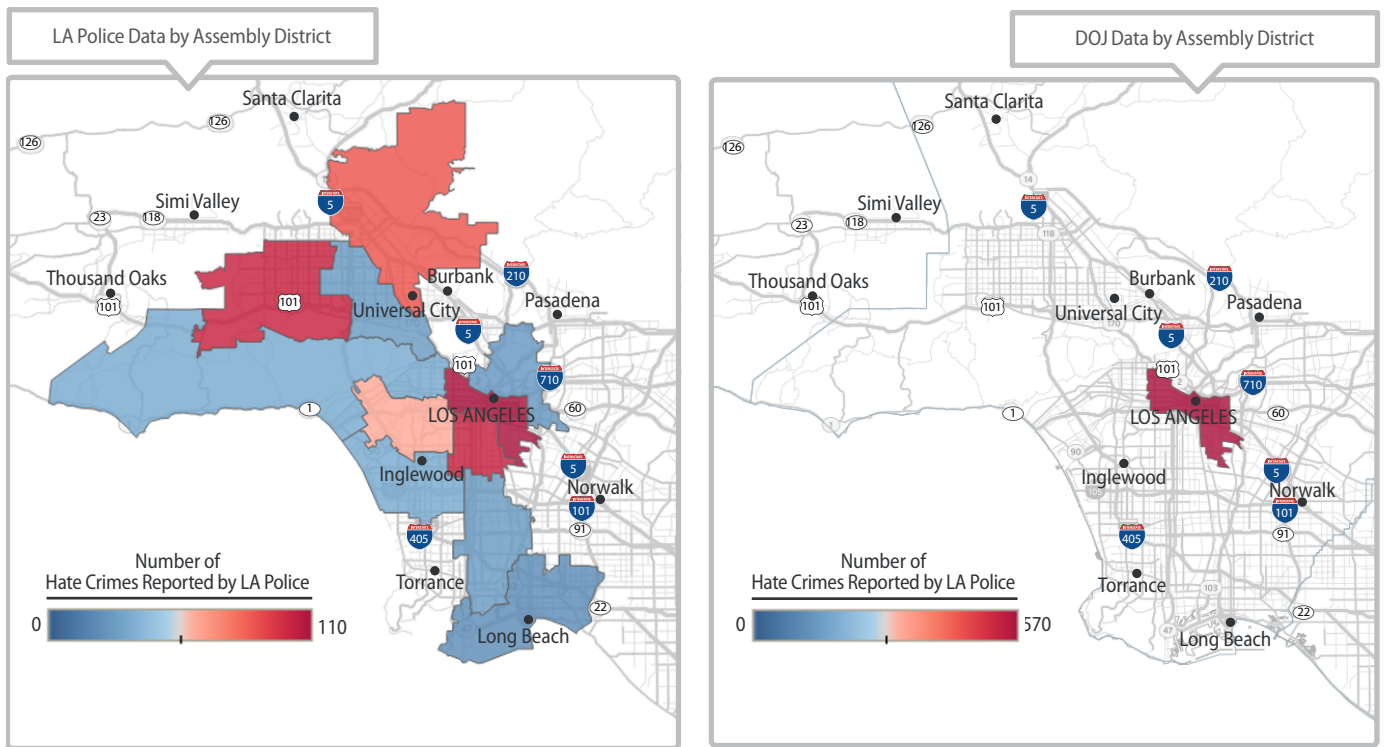
Source: California State Auditor's analysis of the U.S. Census Bureau's map and survey data, map data from openstreetmap.org, DOJ's hate crime database, and LA Police's hate crimes data.

Note: Due to limitations in the location data DOJ collects, we were unable to determine the precise locations where crimes occurred. Consequently, we plotted crimes to the Assembly district based on the address of the law enforcement agency that reported the crime to DOJ—LA Police, in this case. For the LA Police data, we plotted crimes to Assembly districts based on the LA Police division address.

In May 2018, DOJ reaffirmed its commitment to the response team and issued a press release that provided details about the response team. DOJ does not anticipate needing additional funds since it includes only existing staff. However, DOJ stated that it would require additional funds to provide more assistance to local law enforcement agencies if demand for the team increases. By raising

awareness about the existence of the response team and its capabilities, DOJ could provide law enforcement with resources to more effectively respond to hate crimes.

Finally, DOJ could enact programs that would improve California's ability to prevent the occurrence of hate crimes. The US DOJ highlighted one such program, Maine's Civil Rights Team Project (Civil Rights Project), which addresses hate crime prevention through a school-based program aimed at educating communities about the negative consequences of bias, prejudice, harassment, and violence. Administered through the Office of the Maine Attorney General, the Civil Rights Project helps to prevent hate crimes by engaging young people and communities in identifying and addressing issues of bias before those issues escalate to hate crimes. Students of all age levels at more than 150 of Maine's 600 public and private schools have participated in the Civil Rights Project. It engages with targeted populations to show concern for their safety, creates a structure for student response to public incidents of bias in the schools or communities, and improves communication and relationships between communities and law enforcement agencies.

Although DOJ has no such programs, its head of law enforcement stated that such a program might be a good idea and DOJ could have a role in providing guidelines for the curriculum. US DOJ provided funding for the pilot schools participating in Maine's program. However, according to Maine's Civil Rights Project director, programs like the Civil Rights Project do not require major funding, other than the costs for temporary substitutes for participating teachers and busing for participants, if there are dedicated members of the school and community who are willing to take part. Such a program could reduce the occurrence of bias-motivated incidents and hate crimes by teaching young people and their communities that actions directed at individuals or groups because of bias against protected characteristics has detrimental impacts.

Recommendations

Legislature

To address the increase in hate crimes reported in California, the Legislature should require DOJ to do the following:

- Add region-specific data fields to the hate crime database, including items such as the zip code in which the reported hate crimes took place as well as other fields that DOJ determines will support its outreach efforts.

- Analyze reported hate crimes in various regions in the State and send advisory notices to law enforcement agencies when it detects hate crimes happening across multiple jurisdictions.

- Create and disseminate outreach materials so law enforcement agencies can better engage with their communities.

- Create and make available training materials for law enforcement agencies on how best to identify and respond to hate crimes.

- Implement a school-based program, in conjunction with representation from local law enforcement agencies, aimed at educating communities to identify and confront issues of bias, prejudice, and harassment.

To ensure that hate crime training for law enforcement is effective, the Legislature should require POST to evaluate its hate crime training.

DOJ

To ensure that it receives complete and accurate data, DOJ should, by May 2019, develop and maintain a list of law enforcement agencies that it updates annually, obtain hate crime data from all law enforcement agencies, distribute additional guidance to those agencies on procedures for reporting hate crimes, and conduct periodic reviews of law enforcement agencies to ensure that the data they report are accurate. It should also seek the resources to implement these efforts, if necessary.

To ensure that all state law enforcement agencies are aware of the support available to help them investigate hate crimes, DOJ should engage in outreach efforts to increase awareness of its response team.

To increase the effectiveness of hate crime prevention and response efforts, DOJ should provide additional guidance to law enforcement agencies by doing the following:

- Add region-specific data fields to the hate crime database, including items such as the zip code in which reported hate crimes took place and other fields that DOJ determines will support its outreach efforts.

- Analyze reported hate crimes in various regions in the State and send advisory notices when it detects hate crimes happening across multiple jurisdictions. It should also seek the resources to implement these efforts, if necessary.

- Create and disseminate outreach materials so law enforcement agencies can better engage with their communities.

- Create and make available training materials for law enforcement agencies on how best to identify and respond to hate crimes.

To ensure that law enforcement agencies effectively engage with communities regarding hate crimes, DOJ should provide guidance and best practices for law enforcement agencies to follow when conducting hate crime outreach to vulnerable communities within their jurisdictions, such as collaborating with a county human rights commission. It should make the outreach materials available to law enforcement agencies and should include in them presentation materials for various types of communities, including immigrants and Muslims, among others. It should seek the resources to implement these efforts, if necessary.

Law Enforcement Agencies

To ensure that they accurately identify and report hate crimes, SFSU Police and LA Police should update their hate crime policies and procedures, and the Orange County Sheriff and Stanislaus County Sheriff should implement supplemental hate crime reports and require officers to use them.

To ensure accurate and complete reporting, LA Police and SFSU Police should provide sufficient guidance and oversight to their officers and staff so that they report all hate crimes to DOJ.

POST

To help ensure that officers can identify and document that hate crimes have occurred, POST should send training materials to all POST-certified law enforcement agencies in the State for these agencies to use in refresher training for their officers.

To ensure its hate crime training effectively communicates information essential to properly identifying and addressing hate crimes, POST should evaluate its hate crime courses periodically. It should also seek resources to implement these efforts, if necessary.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Date: May 31, 2018

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Appendix

We surveyed 245 law enforcement entities and received 174 verified responses. In Table A, we present aggregated responses to selected questions. The complete survey results are posted on our website, as well as hate crime policies and procedures if provided by the law enforcement agencies.

Nearly all responding agencies indicated that they have hate crime policies and that they track hate crime data in their jurisdictions. Most law enforcement entities responded that they had never requested or received DOJ assistance in investigating hate crimes or conducting outreach. However, nearly all agencies we surveyed expressed interest in working with DOJ to obtain outreach materials and notices for dealing with hate crimes.

Table A

Law Enforcement Agencies' Responses to Selected Questions From Our Survey

QUESTIONS ABOUT SURVEYED AGENCIES	RESPONSES	
Questions About Law Enforcement Agency		
Does your agency have a hate crime policy?	95.4%	Yes
	4.6	No
Does your agency collect hate crime data and track hate crimes in your jurisdiction?	100.0%	Yes
	0.0	No
Has your agency ever performed any data analysis on hate crimes within its jurisdiction to identify trends or conduct outreach?	34.5%	Yes
	65.5	No
If your agency has not performed data analysis on hate crimes, why not?	90.3%	This agency has not had enough hate crimes to perform data analysis
	8.8	This agency has never had a reported hate crime within its jurisdiction
	0.9	Other
Has your agency offered hate crime training to your sworn officers at any time from 2014 through 2016?	51.1%	Yes
	48.9	No
What methods does your agency use to inform members of the public of their rights as they relate to hate crimes and of other general information on hate crimes? (Multiple choice)	3.4%	Posters
	11.5	Supplied to community partners such as schools, places of worship, local community groups, or advocates for dissemination
	12.6	Other
	26.4	Online
	28.7	Information on agency website
	31.6	No method used
	39.1	Supplied to sworn officers to give to reporting parties
	48.3	Supplied at police/public safety stations
	52.9	Pamphlets

QUESTIONS ABOUT SURVEYED AGENCIES	RESPONSES	
Questions About DOJ		
Has your agency ever reached out to the DOJ for support in identifying or investigating a hate crime?	8.0%	Yes
	92.0	No
Has DOJ ever provided assistance to your agency during the investigation of a hate crime or hate incident?	5.2%	Yes
	94.8	No
Is your agency aware of DOJ's Hate Crime Rapid Response Team?	52.9%	Yes
	47.1	No
Has your agency ever solicited assistance from the Hate Crime Rapid Response Team?	0.0%	Yes
	100.0	No*
Does your agency receive hate crime training materials from DOJ?	19.0%	Yes
	81.0	No
Do you believe that your agency would benefit from receiving additional DOJ hate crime training materials?	83.3%	Yes
	16.7	No
Does your agency receive hate crime related outreach materials from DOJ?	8.6%	Yes
	91.4	No
Would your agency find it beneficial for DOJ to send notices to your agency about hate crimes?	90.2%	Yes
	9.8	No
Would your agency find it beneficial for DOJ to send public outreach materials to your agency related to categories of hate crimes occurring in your region?	98.1%	Yes
	1.9	No

Source: California State Auditor's survey of law enforcement agencies.

* If an agency answered *No* to the previous question, they were not asked this question.

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May 7, 2018

Elaine Howle
California State Auditor
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RE: State Auditor's Report on Hate Crimes in California

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the California State Auditor's (CSA) report and appreciates the opportunity to respond to the report.

DOJ agrees with the importance of accurate identification and reporting of hate crimes by Local Law Enforcement Agencies (LEAs) and encouraging community members to report these crimes to local law enforcement. Preventing and effectively responding to hate crimes and bias is critical to ensuring all Californians can live without fear of being targeted because of their race, ethnicity, religion, disability, gender, or sexual orientation.

This is why, despite the lack of any mandate or funding to audit LEAs or conduct community outreach or related activities regarding hate crimes, DOJ has made a concerted effort to help ensure hate crimes are investigated and prosecuted, and to support community responses to hate-based conflict.

In addition to prosecuting hate crimes when local agencies have had a conflict or otherwise needed assistance, DOJ provides crime lab services to assist LEAs in hate crimes cases. DOJ publishes an annual report regarding hate crimes in California, offers a range of resources for law enforcement and local communities on DOJ's website, has provided training and information to local law enforcement about California hate crimes laws and DOJ's system of reporting, and regularly meets with community organizations and other stakeholders.

Pursuant to Penal Code Section 13023, "[s]ubject to the availability of adequate funding," the Attorney General shall direct LEAs to report information to DOJ regarding hate crimes. While DOJ has not received direct funding for these efforts, it continues to collect and, to the extent possible with existing resources, analyze hate crime statistics and produces an annual report based upon the information reported. Prior to significant General Fund budget reductions, DOJ had a Crime and Violence Prevention Center (CVPC) that was able to conduct quality assurance checks and audits on the various data sets reported by local law enforcement to DOJ. Unfortunately, in FY 2008-09, DOJ suffered significant General Fund budget reductions, a part of which included a cut of $4.681 million from DOJ's budget and the elimination of 35.5 positions from the CVPC. This resulted in the complete dissolution of the CVPC program along

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with the cessation of a number of its functions, including the ability to do routine audits of data reported by local law enforcement. DOJ

strongly opposed these cuts when they were imposed due to their impact on important functions. DOJ therefore looks forward to working with the Legislature and Department of Finance to restore these funds and positions so that we can implement all of CSA's recommendations and improve the manner in which hate crimes are addressed in California.

In response to CSA's specific recommendations identified in the draft report. DOJ submits the following responses:

CSA Recommendations to the Legislature:

To address the increase in hate crime reported in California, the Legislature should require DOJ to do the following:
- *Add region-specific data fields to the hate crime database, including items such as zip code in which the reported hate crimes took place and other fields determined by DOJ to support its outreach efforts.*
- *Analyze reported hate crimes in various regions in the State and send advisory notices to law enforcement agencies when it detects hate crimes happening across multiple jurisdictions.*
- *Create and disseminate outreach materials so law enforcement agencies can better engage with their communities*
- *Create and make available training materials for law enforcement agencies in how best to identify and respond to hate crimes*
- *Implement a school-based program, in conjunction with representation from LEAs, aimed at educating the community to identify and confront issues, bias, prejudice, and harassment.*

DOJ Response:

DOJ agrees with these recommendations and looks forward to working with the Legislature and the Department of Finance to identify and obtain the additional resources and funding necessary for DOJ to implement the recommendations outlined in the CSA audit. DOJ believes that, with appropriate resources, it could be well positioned to provide community outreach and leadership to LEAs regarding the prevention, identification and investigation of hate crimes. As noted above, DOJ previously had a Violence Prevention Center program. In addition to the quality assurance work referenced above, the CVPC was responsible for developing effective crime prevention and education strategies for law enforcement and the public. The funding for this program was eliminated and the program was subsequently dismantled. If the Legislature is supportive of reestablishing the CVPC or otherwise supporting funding and resources for conducting additional hate crimes work, DOJ would be able to assume the responsibilities recommended by CSA. Until then, DOJ can continue to fulfill the following mandates:

- Instruct LEAs on the procedure for reporting hate crimes to DOJ;
- Collect and, to the extent possible with existing resources, analyze hate crime data provided by LEAs;
- Transmit data to the FBI and other federal agencies involved in the collection of national crime statistics;
- Publish an annual report on hate crimes; and

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- Periodically evaluate the hate crime reporting and make recommendations to the Legislature as DOJ deems necessary.

CSA Recommendations to DOJ:

1) **Complete and accurate data:**

To ensure that it receives complete and accurate data, DOJ should, by May 2019, maintain a list of law enforcement agencies that it updates annually, obtain hate crime data from all law enforcement agencies, distribute additional guidance to those agencies on procedures for reporting hate crimes, and conduct periodic reviews of law enforcement agencies to ensure that the data reported are accurate. It should also seek the resources to implement these efforts, if necessary

DOJ Response:

DOJ agrees with this recommendation. Currently, DOJ maintains a list of over 730 currently reporting LEAs. It has recently established a new procedure to actively search out new reporting agencies and to verify the contact information of each reporting agency. While there are many agencies that perform law enforcement duties, agencies must meet specific, exhaustive requirements to be considered reporting LEAs under parameters set by the FBI, such as being able to submit data on arrests, crimes and clearances, homicides, arson, among others. In cases where an agency does not meet all of the criteria, it usually reports data to a larger agency that fulfills the requirements to be a reporting LEA. DOJ will annually search for, engage with, and on-board as many non-reporting agencies who meet reporting criteria.

DOJ is actively reviewing its Hate Crime reporting and training materials. New and revised versions of reporting and training materials will be made electronically available. The new and updated materials will be posted on DOJ's California law Enforcement Website (CLEW), general website as appropriate, and distributed via email to all of our reporting agency contacts.

DOJ has revised its quality control process for hate crime submissions for the 2018 statistical year. Furthermore, an Information Bulletin is in process for instructing reporting LEAs to provide copies of their incident reports along with their Hate Crime submissions. Contingent upon additional resources, receiving the incident reports along with the standard submissions will allow DOJ staff to perform more in-depth data quality controls, identify training opportunities at the agency and state level, and, as necessary, develop additional materials to ensure proper and accurate reporting.

DOJ is committed to improving hate crime reporting. In order to truly ensure hate crime reporting in California is complete and accurate, training and auditing is necessary. While having materials readily available assists LEAs to accurately report, it does not serve as a comprehensive model to address the issues of non and underreported of hate crime incidents. DOJ will require additional resources to properly and regularly train and, as necessary, conduct audits of the more than 730 reporting agencies mentioned above. DOJ looks forward to working with the Legislature and the Department of Finance to identify and obtain the additional resources and funding necessary for DOJ to implement the recommendations outlined in the CSA audit.

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2)   **Increase awareness of available resources:**

To ensure that all state law enforcement agencies are aware of the support available to help them investigate hate crimes, DOJ should engage in outreach efforts to increase awareness of the response team.

DOJ Response:

DOJ agrees with this recommendation. DOJ recently updated its Hate Crime Rapid Response Protocol and will engage in outreach to law enforcement agencies, including District Attorneys,

City Attorneys, Chiefs of Police, Sheriffs, and State law enforcement agencies regarding the Protocol and other resources available to help them investigate hate crimes. Outreach will

include direct contact with agencies through CLEW, email distribution, distribution to statewide law enforcement professional associations, and through a media release.

3)   **Increase the effectiveness of hate crime prevention and responses:**

To increase the effectiveness of hate crime prevention and response efforts, DOJ should provide additional guidance to law enforcement by doing the following:

- *Add region-specific data fields to the hate crime database, including items such as the zip codes in which reported hate crimes took place and other fields determined by DOJ to support its outreach efforts.*

     DOJ Response:

     DOJ agrees with this recommendation. DOJ is in the process of transitioning from Summary UCR to incident based reporting though the FBI's National Incident Based Reporting System (NIBRS) by 2021. In doing so, DOJ has identified relevant data elements and values that the new California Incident based Reporting System (CIBRS) will collect. We anticipate the CIBRS will collect zip code and census tract data for each reported incident.

- *Analyze reported hate crimes in various regions in the State, and send advisory notices when it detects hate crimes happening across multiple jurisdictions. It should also seek the resources to implement these efforts, if necessary.*

     DOJ Response:

     DOJ agrees with this recommendation. With supplemented resources, DOJ could create specialized queries and reporting capabilities in the CIBRS to detect hate crimes taking place in multi jurisdictions. For example, DOJ analysts could use this new CIBRS functionality on a quarterly basis to identify potential patterns, hot spots, and cross-jurisdiction incidents and distribute notices to the relevant LEAs and elected officials.

Elaine Howle
May 7, 2018
Page 5 of 6

- *Create and disseminate outreach materials so law enforcement agencies can better engage with their communities.*

  DOJ Response:

  DOJ agrees with this recommendation. DOJ is making a concerted effort to engage in outreach and support despite receiving no funding to engage in these activities. With the transition to a new Attorney General's administration, DOJ has been updating relevant documentation to reflect the current structure of the office. This has included updating the Rapid Response Protocol discussed above, DOJ's hate crimes brochure, and resources available on DOJ's webpage. DOJ intends to raise awareness of the Protocol and distribute the brochure in multiple languages through targeted communication with both LEAs and advocacy groups. As noted above, with additional resources and funding, DOJ would be able to engage in additional activities. DOJ looks forward to working with the Legislature and the Department of Finance to identify and obtain the additional resources and funding necessary for DOJ to implement the recommendations outlined in the CSA audit.

- *Create and make available training materials for law enforcement agencies on how best to identify and respond to hate crimes.*

  DOJ Response:

  DOJ agrees with this recommendation. Despite no allocation of resources by the Legislature for any outreach activity regarding hate crimes and hate incidents, when possible, DOJ has provided training to local agencies and engaged in outreach to local human relations commissions and advocacy groups regarding hate crimes and hate incidents. DOJ welcomes opportunities to work with more LEAs and communities regarding preventing and responding to hate crimes and hate incidents. As noted above, with additional resources and funding, DOJ would be able to engage in these activities on a more regular basis. DOJ looks forward to working with the Legislature and the Department of Finance to identify and obtain the additional resources and funding necessary for DOJ to implement the recommendations outlined in the CSA audit.

4. **Community and Law Enforcement Education and Outreach:**

   To ensure that law enforcement agencies effectively engage with communities regarding hate crimes, DOJ should provide guidance and best practices for law enforcement agencies to follow when conducting hate crime outreach to vulnerable communities within their jurisdiction, such as collaborating with a county human rights commission. Outreach materials should be made available to law enforcement agencies and should include presentation materials fair various types of communities, including immigrants and Muslims, among others. It should also seek the resources to implement these efforts, if necessary.
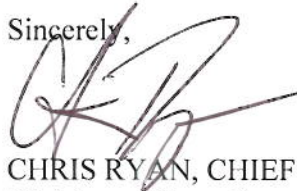
Elaine Howle
May 7, 2018
Page 6 of 6

DOJ response:

DOJ agrees with this recommendation. As noted above, when possible, DOJ has engaged in outreach and support with no supplemental funding to engage in these activities. With the transition to a new Attorney General's administration, DOJ has been updating relevant documentation – including DOJ's Hate Crime Rapid Response Protocol and DOJ's hate crimes brochure. DOJ intends to raise awareness of the protocol and distribute the brochure through effective communication with LEAs, advocacy groups, and the general public. As noted above, with additional resources and funding, DOJ would be able to engage in additional activities, including additional outreach efforts. DOJ looks forward to working with the Legislature and the Department of Finance to identify and obtain the additional resources and funding necessary for DOJ to implement the recommendations outlined in the CSA audit.

Again, thank you for the opportunity to review and comment on the draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,

CHRIS RYAN, CHIEF
Division of Operations

For   XAVIER BECERRA
Attorney General

Cc: Sean McCluskie, Chief Deputy Attorney General
       Chris Prasad, Director, Office of Program Oversight and Accountability

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

POST

EDMUND G. BROWN JR.
GOVERNOR

XAVIER BECERRA
ATTORNEY GENERAL

May 7, 2018

Elaine M. Howle
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: AUDIT RESPONSE TO 2017-131

Dear Ms. Howle:

In response to your audit titled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes" (2017-131), page 15, referring to POST's request for funding (middle page), the narrative could use some clarification.

The narrative should more accurately read:

Historically, POST utilized a Quality Assurance Program (QAP) to insure training courses ①
were contemporary, of a quality nature, and consistent with certified course outlines. POST reduced expenditures for the QAP program to $65,000 in Fiscal Year 2016/17, and due to increased budget challenges, eliminated the QAP program altogether in Fiscal Year 2017/18. The POST QAP program was used to audit training such as hate crimes instruction, but no longer exists. The POST bureau chief has stated that a limited program could cost $65,000, while a more robust program would cost $135,000 per year. Until ②
POST obtains the necessary funds to evaluate the effectiveness of its hate crimes training, there is no mechanism to ensure that the curriculum most effectively communicates important issues regarding hate crimes, including procedures to ensure that peace officers are properly identifying them when called to the scene of a crime.

Thank you in advance for your consideration.

Respectfully,

MANUEL ALVAREZ, Jr.

Executive Director

*   California State Auditor's comments appear on page 51.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

To provide clarity and perspective, we are commenting on the response to our audit report from POST. The numbers below correspond to the numbers we placed in the margin of POST's response.

In the past, POST has assessed some of its training courses. However, it does not conduct periodic evaluations of its hate crime training program, as we note on page 20.

①

A POST bureau chief stated that a more robust training assessment program would cost $130,000 per year, as we note on page 21. The bureau chief based the cost on a contract for a vendor to assess the training of another POST course. If POST now believes that a more robust training assessment program would cost $135,000 per year, it should ensure that it conducts an appropriate level of analysis before requesting those funds.

②

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LOS ANGELES POLICE DEPARTMENT

CHARLIE BECK
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, Calif. 90030
Telephone: (213) 486-6850
TDD: (877) 275-5273
Ref #: 8.6

May 7, 2018

Elaine M. Howle *
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Dear Ms. Howle,

I appreciate the opportunity to respond to the audit conducted by the California State Auditor titled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes."

I have reviewed the audit and identified two areas that cited deficiencies in the Los Angeles Police Department that were not accurately addressed in the audit. The identified areas are: ①

- Classification of Hate Crimes.

- The recommendation that the Los Angeles Police Department update its Policies and Procedures regarding the reporting of Hate Crimes.

Regarding each of the categories, I have included a response that details our position as to why the information in the audit was either incorrectly reported, or misrepresented the Los Angeles Police Department's position on that topic. ②

I am requesting that the information be reviewed for consideration and the audit be amended to reflect the findings of that review.

I appreciate your attention to this matter and would request that you direct any questions you might have regarding this matter to Captain William Hayes, Commanding Officer, Robbery-Homicide Division, at (213) 486-6850.

Very truly yours,

CHARLIE BECK
Chief of Police

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* California State Auditor's comments begin on page 61.

Page **1** of **6**

HATE CRIME UNIT – DOJ Audit Response

Background

The California State Auditor's Office (CSAO) conducted a "Hate Crimes in California" audit for the Department of Justice (DOJ). This audit covered reported hate crimes and hate incidents over a three-year period from 2014 to 2016. The audit included the Los Angeles Police Department (LAPD) and other agencies.

On May 1, 2018, the CSAO provided the LAPD with a draft copy of their audit. Two areas of concern were identified. First, there were three LAPD reports that were coded as "Hate Incidents" that the CSAO believed should have been coded as "Hate Crimes." Second, the CSAO recommended that the LAPD update their hate crime policies and procedures.

Response

The Los Angeles Police Department has provided the CSAO with copies of the three hate incident reports in question. Follow up reports and applicable California Penal Code sections were also included which justify the classifications of the reports as Hate Incidents as opposed to Hate Crimes. The following is a summary of the three LAPD reports (DR numbers):

③
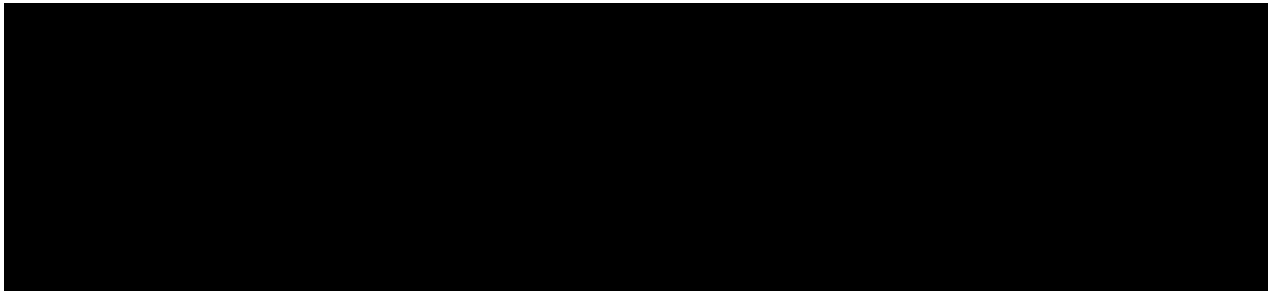
④ NOTE: The LADA CCM lists the elements for the crime of PC 240, Assault, as "unlawfully, having the present ability to do so, attempt to commit a violent injury on the person of another." In this instance, the acts of the suspects did not meet the elements of the crime of assault. There was no attempt to commit any injury on the victim.

⑤ The LADA CCM lists the elements for the crime of PC 422, Criminal Threats, as "willfully and unlawfully threaten to commit a crime which would result in death and great bodily injury to another, with the specific intent that the statement be taken as a threat. It is further alleged that the threatened crime, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to another a gravity of purpose and an immediate prospect of execution." In this instance, the acts of the suspects did not meet the elements to the crime of Criminal Threats. There was no threat of bodily injury to another.
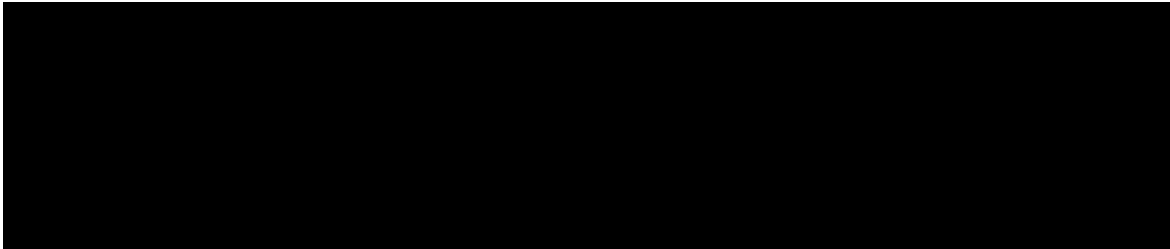
③

NOTE: The LADA CCM lists the elements of the crime of PC 653m(a), Annoying Telephone Calls, as "unlawfully and with intent to annoy make contact by means of an electronic communication device and address obscene language to another, and address threats to inflict injury to the person of and the property of another and the members of his/her family." In this instance, the acts of the suspect did not meet the elements to the crime of Annoying Telephone Calls. There were no threats to inflict injury on the person and property of another.

④

The LADA CCM lists the elements of the crime of PC 653m(b), Annoying Telephone Calls, as "unlawfully and with the intent to annoy and harass, make repeated telephone calls and repeated telephone calls and repeated, and make any combination of calls and contact to another person, by means of electronic device." In these instances, the acts of the suspects did not meet the elements to the crime of Annoying Telephone Calls. There were no repeated communications intended to annoy or harass another person.

⑥
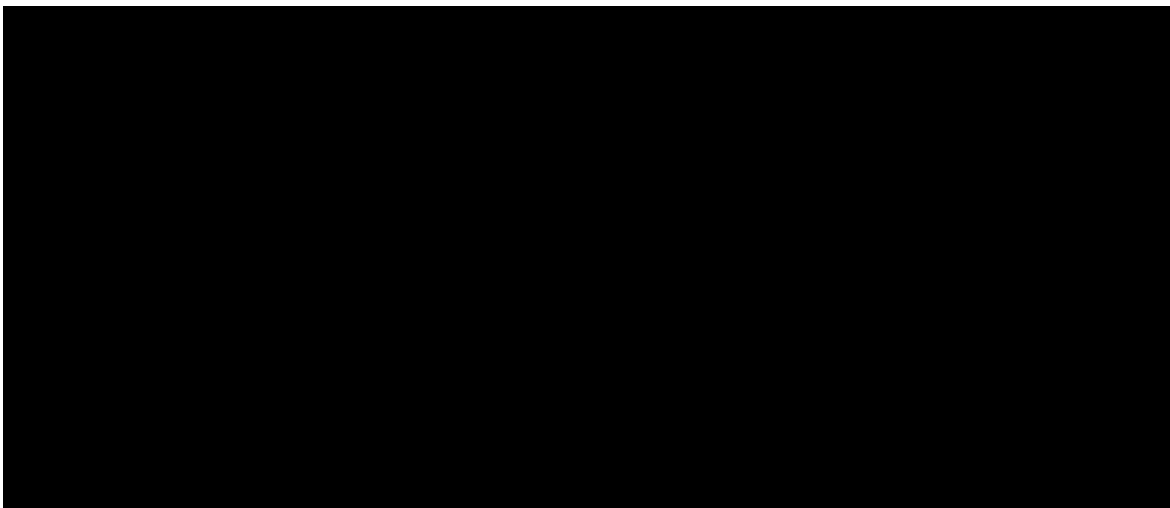
③

The LADA CCM lists the elements for the crime of PC 422, Criminal Threats, as "willfully and unlawfully threaten to commit a crime which would result in death and great bodily injury to another, with the specific intent that the statement be taken as a threat. It is further alleged that the threatened crime, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to another a gravity of purpose and an immediate prospect of execution." In this instance, the acts of the suspects did not meet the elements to the

⑤

Page **3** of **6**

crime of Criminal Threats. There was no immediacy of the threat, the threat was not unequivocal and was a vague inference of visiting the victim which was retracted later in the conversation. The suspect made the statements at 1050 hours and the victim contacted the police five hours later to complete a report. This would suggest the victim did not feel any immediacy to the threat.

④ The LADA CCM lists the elements for the crime of PC 653m(a), Annoying Telephone Calls, as "unlawfully and with intent to annoy make contact by means of an electronic communication device and address obscene language to another, and address threats to inflict injury to the person of and the property of another and the members of his/her family." In this instances, the act of the suspects did not meet the elements to the crime of Annoying Telephone Calls. The suspect did not make a threat to inflict injury on the person or the property of the victim.

⑥ The LADA CCM listed the elements of the crime of PC 653m(b), Annoying Telephone Calls, as "unlawfully and with the intent to annoy and harass, make repeated telephone calls and repeated telephone calls and repeated, and make any combination of calls and contact to another person, by means of electronic device." In these instances, the acts of the suspects did not meet the elements to the crime of Annoying Telephone Calls. The suspect and victim were involved in a specific telephone text message dispute and then the suspect stopped contacting the victim.

The above-sourced California PC sections and LADA CCM verify the correct coding of the three hate incident reports. The elements of the crimes in the above-mentioned reports do not meet legal standard for "Hate Crimes." In addition, the LAPD consulted with LADA Hate Crimes Unit, Deputy District Attorney (DDA) Richard Cebalos and reviewed each of the above cases cited. DDA Cebalos stated that the cases did not have the elements of a crime in each of the incidents and therefore would not meet the standard of being classified as a hate crime. It is the opinion of LAPD that the above-mentioned DR numbers are coded correctly as "Hate Incidents."

Page **4** of **6**

The CSAO audit also stated 89 out of 622 hate crimes were not reported to the DOJ and recommended training to department personnel. In 2016, the LAPD revamped its reporting requirements, updated its manuals, and revised its officer training to reflect these updates and changes. The LAPD also streamlined its hate crime reporting process to assist its officers in completing hate crime and hate incident reporting. The following procedures were put in place to ensure the proper reporting and classification on hate crimes and hate incidents:

1) LAPD Form 18.44.00, Hate Crime/Incident Guidelines, delineates the investigation for all field patrol officers and supervisors. It is included with all patrol notebook dividers, an LAPD resource for field investigations, which officers carry in the field to assist them and is also available online via the Department's intranet.

HATE CRIME/INCIDENT GUIDELINES
These guidelines shall be followed for investigations of Hate Crimes and Hate Incidents.

DEFINITIONS:

HATE CRIME
A Hate Crime is any criminal act or attempted criminal act directed against a person(s), public agency or private institution based on the victim's actual or perceived race, nationality, religion, sexual orientation, disability, or gender or because the agency or institution is identified or associated with a person or group of an identifiable race, nationality, religion, sexual orientation, disability, or gender. A Hate Crime includes an act which results in injury, however slight; a verbal threat of violence which apparently can be carried out; an act which results in property damage; and property damage or other criminal act(s) directed against a public or private agency.

HATE INCIDENT
A Hate Incident is any non-criminal act including words directed against a person(s) based on that person's actual or perceived race, nationality, religion, sexual orientation, disability or gender. Hate Incidents include, but are not limited to, epithets, distribution of hate material in public places, posting of hate material that does not result in property damage, and the display of offensive material on one's own property.

I. ARRIVAL AT SCENE
* Determine location/condition of victim;
* Obtain medical treatment as needed;
* Determine if suspect is still at scene;
* Locate and identify witnesses;
* Request witnesses remain for questioning; and,
* Determine if a Hate Crime or Hate Incident has occurred.

II. INVESTIGATIVE REPORT, FORM 03.01.00
* Investigate the crime or incident in a timely manner;
* Interview victims/witnesses separately;
* Notify the watch commander, Area of occurrence;
* Notify the Real-Time Analysis Critical Response (RACR) at (213) 978-6500 for inclusion of the crime or incident in the Chief of Police 24-hour occurrence log and document the notification in the related report;
* Complete the appropriate crime or arrest report(s) and check the "MOTIVATED BY HATRED/PREJUDICE" box;
* *Complete the Hate Crime Supplemental Report, Form 03.01.05, and attach it to the IR and/or Arrest Report as the last two pages of the report;*
* If the incident does not constitute a specific crime, the IR shall be titled "Hate Incident;"
* Collect all evidence including that which verifies motive; and,

18.44.00 (06/16)

* Provide support/resources for the victim.

III. INTERVIEW VICTIMS/WITNESSES
* Interview victims/witnesses separately;
* Establish the elements of the crime and other details relating to who, what, when, where, why and how; and,
* Questions to consider:
  ✓ Do you (victim/witness) perceive the action of the offender to be motivated by bias or bigotry (regardless of the victim's actual inclusion in that protected group), why?
  ✓ Do you think you were targeted, why?
  ✓ Who do you think is responsible, why?
  ✓ Were there any offensive symbols, words or acts associated with hate groups used?
  ✓ Are you the only member (or one of a few) of a protected class who lives in the area?
  ✓ Have there been any prior incidents?
  ✓ Has there been any recent public activity that would make you (victim) a target?
  ✓ Did the suspect carry any literature regarding a particular group?
  ✓ Did the incident occur on a holiday or day of significance to the victim's or offender's group?
  ✓ Did the suspect have tattoos or clothing that stand out in your mind?

Note: Victims may be reluctant to be identified with a protected group. Witnesses may fear retaliation and therefore feel fearful or hesitant to get involved.

IV. IF SUSPECT IS TAKEN INTO CUSTODY
* Prevent communication between suspect and victim/witnesses;
* Record spontaneous statements made by the suspect (many times hate crime suspects will be proud of their actions and anxious to talk);
* Administer Admonition of Rights; and,
* Questions to consider (only after Admonition of Rights):
  ✓ Why did you pick this person?
  ✓ How do you feel about this person/group?
  ✓ Did you go looking for this person or group?
  ✓ Did you select the victim at random?
  ✓ Do you belong to a group or organization?
  ✓ Are any others involved in the crime?
  ✓ Do they have a mission or agenda directed toward this person or a particular group?

V. EVIDENCE
* Photograph any evidence that substantiates the motive, e.g., hate graffiti, cross burning, swastikas, suspect's attire, etc.;
* Recover weapons and book or photograph; and,

* Identify, retrieve or photograph other evidence, e.g., bloody clothing, destroyed property, hate material, suspect's attire if appropriate, etc.

VI. COMPLETING CRIME REPORT
* Complete a Request for Confidentiality of Information, Form 03.02.00;
* Title the report according to the criminal violation and add "HATE CRIME" to the title, e.g., BATTERY/HATE CRIME;
* Check the "MOTIVATED BY HATRED/PREJUDICE" box in the MO section;
* *Complete the Hate Crime Supplemental Report, Form 03.01.05, and attach it to the IR and/or Arrest Report as the last two pages of the report;*
* Notify the Real-Time Analysis Critical Response (RACR) telephone (213) 978-6500 and enter the name of the person contacted in the notification box;
* Ensure that elements of all involved crimes are included in the report; and,
* Document the following in the narrative:
  ✓ Motivation or the lack of motivation;
  ✓ Any photographs that were taken;
  ✓ MT obtained;
  ✓ If the victims and suspects are members of different groups;
  ✓ Describe the manner and means of attack; and,
  ✓ Describe any relevant ongoing neighborhood events.

Note: In crime reports, Penal Code Section 422.6 or 422.7 will be identified as additional offenses. The underlying crime (i.e., battery, vandalism, assault, etc.) should be listed as the main offense.

VII. COMPLETING INCIDENT REPORT (NON-CRIMINAL INVESTIGATIONS)
* Officers shall complete an IR titled "HATE INCIDENT";
* Include the motivation of the suspect;
* Check the "MOTIVATED BY HATRED/PREJUDICE" box in the MO section;
* *Complete the Hate Crime Supplemental Report, Form 03.01.05, and attach it to the IR and/or Arrest Report as the last two pages of the report;* and,
* List persons possibly responsible for the incident in the "INVOLVED PERSONS" section of the IR as "witnesses".

Note: The unwillingness of the victim of an incident motivated by hatred or prejudice to sign a report, or the absence of a victim to an incident, does not exempt officers from the requirement to complete an IR, Form 03.01.00.

18.44.00 (06/16)

VII. FOLLOW-UP INVESTIGATIONS
Watch Commander
* Review all reports for completeness, including the notification to RACR and cause the reports to be distributed as soon as possible, but no later than the end of watch;
* Direct a sergeant to immediately respond to the scene of a major crime or incident motivated by hatred such as major property damage involved, injury to victim, or vandalism to a house of worship;
* Make an entry regarding the matter in the Watch Commander's Daily Report, Form 15.80.00; and,
* Forward a copy of the Watch Commander's Daily Report entry along with a copy of the Sergeant's log documenting the contact with the victim to the Community Police Station Hate Crime Coordinator.
Area Detectives
* Contact the victim within 10 calendar days of the crime or incident and assure the victim of the Department's interest in identifying the suspect and obtain follow-up information;
* Document any additional information on a Follow-up Investigation, Form 03.14.00;
* Present all felony hate crime investigations in which the suspect is identified to the District Attorney Hate Crime Suppression Unit and, as appropriate, to the Office of the United States Attorney, Civil Rights Liaison for filing consideration;
* Present all misdemeanor hate crime investigations in which the suspect is identified to the Special Enforcement Section, Office of the City Attorney, and as appropriate, to the Office of the United States Attorney, Civil Rights Liaison;
* Contact appropriate Victim Impact Program Coordinator if applicable per Operations Notice No. 2, dated 5/14/2002; and,
* Provide the command's Hate Crime Coordinator with a copy of all reports related to the incident within 10 working days of completion. This includes all reclassified reports.

POLICY STATEMENTS:
The City of Los Angeles values the great diversity of its people and recognizes that a threat against any portion of our community is truly a threat against our diverse way of life. Acts or threats of violence motivated by hatred or prejudice are serious acts, often vicious in nature, which tear at the fabric of our community. These occurrences generate fear and concern among victims as well as the entire community and have the potential of recurring, escalating and possibly causing counter-violence.

Page **5** of **6**

2) LAPD form 3.01.05, LAPD Hate Crime Supplemental Report, shall be completed with every Hate Crime report to assist the detectives with the investigation. This form is located at every area police station and is available online via the Department intranet.

3) LAPD form 15.91.00, LAPD Hate Crimes Resource Pamphlet, is provided to all field officers to present to the Hate Crime/Incident victims and witnesses and is available at all area police stations.

Page **6** of **6**

4) LAPD Hate Crime/Hate Incident Detective Report Review/Criteria Checklist form is completed with every Hate Crime and Hate Incident by the detectives assigned to the investigation. This form ensures that the reports are correctly coded, the victims are protected, and that the report is entered into the DOJ database. This form is located at every area police station and is available online via the Department's intranet.

⑧

These updated forms assist officers in completing thorough investigations, and aid in classifying the crimes/incidents correctly while assisting detectives in their follow up and investigative efforts.

Conclusion

Regarding the two areas of concern that arose from the CSAO audit: 1) It is the position of the LAPD that the three (3) mentioned hate incident reports were coded correctly. LAPD requests that the CSAO reconsider its assessment of that issue. 2) In 2016, LAPD identified the discrepancies with the non-reporting to the DOJ. Appropriate policies and procedures were adopted to minimize this issue as well as assist officers in identifying and investigating hate crimes. It is the LAPD's assertion that the documentation provided is sufficient evidence to support the request that the CSAO recognize the efforts the LAPD has taken to address the matter.

④ ⑤ ⑥

⑦ ⑧

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE LOS ANGELES POLICE DEPARTMENT

To provide clarity and perspective, we are commenting on the response to our audit report from LA Police. The numbers below correspond to the numbers we placed in the margin of LA Police's response.

We conducted this audit according to generally accepted government auditing standards and the California State Auditor's thorough quality control process. In following auditing standards, we are required to obtain sufficient and appropriate audit evidence to support our conclusions. Thus, we stand by our conclusions that LA Police misidentified three hate crimes and that LA Police needs to update its hate crime policies.

①

LA Police's response does not indicate how the audit misrepresents LA Police's positions. Moreover, as is our standard process, we met with LA Police staff on several occasions and informed them of our findings and recommendations, and obtained their perspective on those issues in writing. At no point did LA Police indicate that we had misrepresented its positions.

②

This portion of LA Police's response contains case information such as the report number and a description of the reported events. We have redacted this portion of LA Police's response as it contains confidential information and to protect the privacy of the persons described.

③

In making its assessments, LA Police relies on a crime charging manual (CCM), not the law, to determine whether an event constitutes a hate incident or a hate crime. When we compared the cited sections in the LA Police response to state law for purposes of our work, we found that the cited sections contain at least two errors that caused LA Police to improperly classify hate crimes as hate incidents. For example, we found that the CCM inaccurately describes a Penal Code section 240 crime because the CCM does not accurately reflect applicable case law. We discussed this issue with LA Police and provided the LA Police with the applicable case law, and also discussed other supporting evidence, such as official jury instructions, but LA Police insisted on relying on the erroneous manual. Further, the CCM states that, in order for an annoying phone call to constitute a crime under Penal Code section 653m(a), the perpetrator must have both addressed obscene language and made a threat to the victim. However, Penal Code section 653m(a) plainly states that an annoying phone call constitutes a crime if either

④

obscene language or a threat is addressed to a victim, assuming other required elements of the crime are also present. Thus, as we recommend on page 38, LA Police needs to update the policies and procedures it uses to determine whether a hate crime or hate incident has occurred.

⑤   We did not conclude that the referenced hate incident report constitutes a crime under Penal Code section 422. Thus, we did not have a finding in this regard.

⑥   We did not conclude that the referenced hate incident report constitutes a crime under Penal Code section 653m(b). Thus, we did not have a finding in this regard.

⑦   As we indicate in Table 7 on page 27, LA Police failed to report 89 hate crimes to DOJ. Some of these errors occurred after LA Police implemented its 2016 policy. Consequently, it is evident that LA Police's 2016 policy has not ensured that it properly reports hate crimes to DOJ. Furthermore, when we discussed the reporting errors with LA Police, it indicated that the errors we identified were the result of either improper training or a lack of guidance and oversight, which we also note on page 27. To address these issues, we recommend on page 38 that LA Police should update its hate crime policy and provide sufficient guidance and oversight to its officers and staff to ensure they accurately report hate crimes to DOJ.

⑧   LA Police indicates it has created a checklist for detectives to use when investigating hate crimes as a result of our audit findings. The checklist requires detectives to report hate crimes to DOJ. However, LA Police's hate crime policy does not require that detectives complete this checklist. Until LA Police updates its policy to require detectives to complete the checklist, it cannot ensure its officers are reporting all hate crimes to DOJ.

SAN FRANCISCO STATE UNIVERSITY

STUDENT AFFAIRS & ENROLLMENT MANAGEMENT
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Monday, May 07, 2018

California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Audit Draft- Report No. 2017- 131

Dear State Auditor

This letter is in response to Report No. 2017- 131, Hate Crimes in California. I have read and reviewed the report and agree with the following recommendations presented by the State Auditor.

Recommendations:

- To ensure that they accurately identify and report hate crimes, SFSU Police should update their hate crimes policies and procedures, and should implement supplemental hate crime reports and require officers to use them.

- To ensure accurate and complete reporting, SFSU Police should provide sufficient guidance and oversight to their officers and staff so they report all hate crimes to DOJ.

Sincerely,

Jason Wu
Assistant Vice President & Chief of Police

THE CALIFORNIA STATE UNIVERSITY: Bakersfield, Channel Islands, Chico, Dominguez Hills, East Bay, Fresno, Fullerton, Humboldt, Long Beach, Los Angeles, Maritime Academy, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, San Luis Obispo, San Marcos, Sonoma, Stanislaus

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ORANGE COUNTY
SHERIFF'S DEPARTMENT

OFFICE OF THE SHERIFF

**SHERIFF-CORONER
SANDRA HUTCHENS**

May 7, 2018

Ms. Elaine M. Howle, CPA[*]
California State Auditor
Transmitted via email to Aaron Fellner (aaronf@auditor.ca.gov)

Re: Draft Report titled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes"

Dear Ms. Howle,

The Orange County Sheriff's Department is in receipt of the above-referenced draft report. We appreciate the opportunity to review and provide a response.

As the draft report states, we have already taken steps to address the need for a supplemental hate crime report form. We agree a supplemental hate crime report form is necessary to enable our deputies to more easily identify different elements of a hate crime, such as the type of bias and bias indicators. We have also worked to improve our policies addressing hate crimes and hate incidents.

Please find attached our new Department Policy 307, revised Field Operations Manual Section 52, new supplemental report form, and a brochure from the Orange County Human Relations Commission. This brochure is provided by our deputies to victims, as referenced in our Department Policy, Field Operations Manual and supplemental report form. When our electronic Field-Based Reporting system is fully implemented, the data fields in the supplemental hate crime report form will be included, and deputies will enter the data into the system. We recognize the audit's reference to the one case in which the Department failed to identify a hate crime is one case too many. These policies and report forms will help ensure these crimes are not misidentified and the reporting of these crimes is thorough and accurate.

We agree with the statement in the draft report that immigrant communities may underreport hate crimes due to fear of deportation. Inaccurate media reports and rhetoric have misinformed the public and perpetuated a dangerous myth. I want to reiterate the public statement I made on February 25, 2017 (see attached media release), that as we carry out our patrol functions, the Sheriff's Department will not ask the immigration status of suspects, witnesses or those who call to report crimes. The Sheriff's Department is committed to providing for the safety of crime victims and will respond without concern for their immigration status.

Integrity without compromise • Service above self • Professionalism in the performance of duty • Vigilance in safeguarding our community

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[*] Orange County Sheriff provided additional documentation with its response. This documentation is available upon request.

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Thank you for recognizing our community outreach activities which relate specifically to hate crime issues. As we shared with your staff, we value our partnership with the Orange County Human Relations Commission. Additionally, the work done by the Sheriff's Interfaith Advisory Council has fostered a stronger understanding among law enforcement and the diverse faith communities of Orange County. Efforts such as these build trust and strengthen the bond between law enforcement and those we are sworn to protect and serve.

Orange County is one of our nation's safest communities, but we are not immune from those who seek to perpetrate hate or violence against others. I am proud of the commitment by the men and women of the Sheriff's Department to address hate and combat violence. The recommendation in your report will help us to refine these efforts and better capture the good work being done.

Sincerely,

Sandra Hutchens
Sheriff-Coroner