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**Anti-Defamation League
Foundation**

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National Director Emeritus
Abraham H. Foxman



November 20, 2017

Ms. Amy Blasher
Unit Chief
Federal Bureau of Investigations
Criminal Justice Information Services Division (CJIS)
Module E-3
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

Re: Comments Solicited under 82 FR 48848 Regarding Hate Crime Incidents Report

Dear Ms. Blasher:

On behalf of the Anti-Defamation League, we are writing in response to the Department of Justice's October 20, 2017 request for comments on the existing FBI Hate Crime Incident Report. We believe the FBI has done very fine work in implementing the Hate Crime Statistics Act (HCSA) of 1990.¹ We are committed to continuing to work with the Bureau to improve reporting and expand participation in the HCSA data collection initiative.

The Anti-Defamation League

Since 1913, the mission of ADL has been to "stop the defamation of the Jewish people and to secure justice and fair treatment for all." Dedicated to combating anti-Semitism, prejudice, and bigotry of all kinds, as well as defending democratic ideals and promoting civil rights, ADL is proud of its leadership role in developing innovative materials, programs, and services that build bridges of communication, understanding, and respect among diverse racial, religious, and ethnic groups.

Over the past three decades, ADL has been recognized as a leading resource on effective responses to violent bigotry, conducting an annual Audit of Anti-Semitic Incidents², and drafting model hate crime statutes for state legislatures.³ We were privileged to lead a broad coalition of civil rights, religious, educational, professional, law enforcement, and civic organizations working in support of the 2009 Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (HCPA)⁴ for more than a decade.

Background: The Impact of Hate Violence

All Americans have a stake in effective response to violent bigotry. These crimes demand priority attention because of their special impact. Bias crimes are designed to intimidate the victim and members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes, therefore, cannot be measured solely in terms of physical injury or

¹ 28 U.S.C. Section 534 Note

² <https://www.adl.org/news/press-releases/adl-data-shows-anti-semitic-incidents-continue-surge-in-2017-compared-to-2016>

³ <https://www.adl.org/adl-hate-crime-map>

⁴ <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-part1-chap13-sec249.pdf>

ADL Community Support Center

Anti-Defamation League, 605 Third Avenue, New York, NY 10158-3560 T 212.885.7700 www.adl.org

dollars and cents. By making members of minority communities fearful, angry, and suspicious of other groups – and of the power structure that is supposed to protect them – these incidents can damage the fabric of our society and fragment communities. The racism, anti-Semitism, and violent bigotry on display in Charlottesville last August is just one illustration that hate crimes are an urgent national problem. We believe the federal government has an essential leadership role to play in confronting acts of violence motivated by prejudice – and in promoting anti-bias initiatives for schools, communities, and law enforcement officials.

The HCSA: A Firm Foundation on which to Build

There is no doubt that the HCSA data collection and reporting program is necessary for the proper performance of core missions for the Justice Department and the FBI. Data must drive policy. The first step in addressing hate violence in America is to know its nature and magnitude.

ADL has worked closely with a broad coalition of civil rights, religious, education, professional, and law enforcement organizations to promote comprehensive hate crime data collection efforts. The FBI has worked hard to make the information reported to the Bureau accessible to researchers, law enforcement officials, civic leaders, and community relations professionals. The publication of the annual jurisdiction-by-jurisdiction report, *Hate Crime Statistics*, has been especially useful in helping to gauge the seriousness with which communities and police departments are approaching the federal hate crime data collection effort. The 2016 FBI HCSA report⁵ documented a five percent overall increase over the 2015 report in hate crimes on the basis of race, religion, sexual orientation, gender, and gender identity. Reported hate crimes against Muslims increased nineteen percent in 2016.

However, it is absolutely clear that the HCSA data we have now significantly understates the true number of hate crimes committed in our nation. On one hand, participation in the FBI’s reporting program (which, like the rest of the UCR Program, is voluntary) has increased over the years. In 2016, 15,254 federal, state, and local law enforcement agencies voluntarily reported hate crime data to the FBI. Yet, only a very small number, just 1,776 of these participating agencies – 12 percent – reported even a single hate crime to the FBI. That means that 88 percent of all “participating” police agencies affirmatively reported zero (0) hate crimes to the FBI (including at least 70 cities with populations over 100,000). And approximately 1,500 law enforcement agencies did not report (DNR) any data at all to the FBI (including 22 cities with populations over 100,000). The state of Hawaii did not participate in the HCSA program at all.⁶

Here is a list of the largest cities that did not report any data to the FBI for 2016:

City	Population (2016)	2016 Incidents	2015 Incidents
1 Honolulu, HI	995,572	DNR	DNR
2 Jacksonville, FL	880,557	DNR	DNR
3 Miami, FL	449,469	DNR	DNR
4 St. Petersburg, FL	259,510	DNR	DNR

Group 2-DNR 2016			
City	Population (2016)	2016 Incidents	2015 Incidents
1 Hialeah, FL	239,451	DNR	DNR

⁵ <https://ucr.fbi.gov/hate-crime/2016>

⁶ <https://ucr.fbi.gov/hate-crime/2016>

2	Columbus, GA	202,338	DNR	DNR
3	Montgomery, AL	199,565	DNR	0
4	Huntsville, AL	192,587	DNR	DNR
5	Tallahassee, FL	189,709	DNR	1
6	Port St. Lucie, FL	176,364	DNR	1
7	Fort Lauderdale, FL	178,598	DNR	DNR
8	Jackson, MS	170,508	DNR	DNR
9	Pembroke Pines, FL	169,156	DNR	2
10	Kansas City, KS	151,623	DNR	0
11	Hollywood, FL	149,822	DNR	DNR
12	Miramar, FL	138,330	DNR	DNR
13	Coral Springs, FL	131,159	DNR	1
14	Miami Gardens, FL	114,349	DNR	6
15	Clearwater, FL	113,904	DNR	2
16	Pompano Beach, FL	109,362	DNR	DNR
17	Lakeland, FL	105,766	DNR	DNR
18	Las Cruces, NM	102,349	DNR	DNR

Though clearly incomplete, the Bureau's annual HCSA report now provides the best single national snapshot of bias-motivated criminal activity in the United States. Importantly, the HCSA has also increased public awareness of the problem and sparked improvements in the local response of the criminal justice system to hate violence. For example, in recent years, dozens of law enforcement agencies across the country have promulgated new policies and procedures for addressing hate violence. Building on model policies drafted by, among others, the International Association of Chiefs of Police (IACP) and the National Organization of Black Law Enforcement Executives (NOBLE), departments have complemented their participation in the HCSA data collection initiative with the development of protocols for their officers on how to identify, report, and respond to hate violence. And recently, the US Conference of Mayors included efforts to improve hate crime reporting in their Mayor's Compact,⁷ developed in association with the Anti-Defamation League and announced after the Charlottesville white supremacist march and rallies:

Members will also encourage the collection of data on such crimes and the provision of the data to appropriate state authorities and the FBI in compliance with the Federal Hate Crime Statistics Act.

Even at a time of incomplete reporting, we strongly applaud the Bureau's receptivity to expanding the categories of crime victims on which law enforcement agencies are asked to provide specific reports. In 2015, in response to requests and evidence-based advocacy by Members of Congress and the broad coalition of community-based organizations that advocate for more effective response to hate violence, the FBI expanded their HCSA data collection to include anti-Sikh, anti-Arab, anti-Hindu and other religious-based hate crimes. The first two years of this data is very preliminary. ADL is working closely with coalition allies to promote reporting by members of these communities to improve reliability of the data. The 2015 FBI Hate Crime Training Manual is an excellent resource to help agencies understand these crimes and the importance of reporting them.⁸ The guide, which merits increased

⁷ <https://mayorscompact.org/compact/>

⁸ <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>. The FBI training manual is now the single most important, most inclusive hate crime training resource available for law enforcement officials.

attention and promotion, contains a special section on distinguishing between anti-Arab, anti-Hindu, anti-Muslim, and anti-Sikh hate crimes.

The Urgent Need to Address Incomplete HCSA Reporting

Led by the IACP and NOBLE, police have come to recognize the significant benefits of effectively tracking hate crimes, as well as preventing and responding to them in a priority fashion. Law enforcement officials now better understand that they can advance police-community relations by demonstrating a commitment to be both tough on hate crime perpetrators and sensitive to the special needs of hate crime victims. By compiling statistics and charting the geographic distribution of these crimes, police officials may be in a position to discern patterns and anticipate an increase in intergroup tensions in a given jurisdiction.

The IACP, in particular, has demonstrated tremendous leadership in promoting resources and training materials to address hate violence. The IACP recently updated its excellent Model Policy and Concepts and Issues Paper⁹ on hate crime for agencies as well as its handbook, *A Police Officer's Guide to Investigation and Prevention*.¹⁰ Effective policies and procedures and response can reduce crime while building public trust between police officials and the communities they serve and protect.

There are very real consequences to this lack of comprehensive reporting. It is well documented that victims are far more likely to report a hate crime if they know a special reporting system is in place and believe the police are ready and able to respond effectively. Yet, studies by NOBLE and others have revealed that some of the *most* likely targets of hate violence are the *least* likely to report these crimes to the police. In addition to cultural and language barriers, some immigrant victims, for example, fear reprisals or deportation if incidents are reported. Many new to America come from countries in which residents would never call the police – *especially* if they were in trouble. Gay, lesbian, and transgender victims, facing hostility, discrimination, and, possibly, family pressures, may also be reluctant to come forward to report these crimes. These issues present a critical challenge for improving law enforcement response to hate violence; implementing the HCSA in partnership with community-based groups should enhance police-community relations.

Addressing the Special Problem of Campus Hate Crime Underreporting

Every year, thousands of students are the victims of bias-motivated slurs, vandalism, threats, and physical assaults on college campuses. In 1998, to increase awareness of bias-motivated violence on college campuses, Congress enacted an amendment to the Higher Education Act (HEA) requiring all colleges and universities to collect and report hate crime statistics to the Office of Postsecondary Education (OPE) of the Department of Education. Unfortunately, the Department of Education's current hate crime statistics¹¹ reflect very substantial underreporting. Even worse, the limited available data is frequently inconsistent with campus hate crime information collected by the FBI under the HCSA – though, theoretically, they are reporting hate crimes under the same criteria.¹²

The Violence Against Women Reauthorization Act of 2013¹³ amended the Clery Act¹⁴ to require campus security and local law enforcement to identify, record, and effectively respond to incidents motivated by gender identity bias and national origin bias in addition to the longstanding requirements to report hate crime incidents based on race, gender, religion, disability, sexual orientation, or ethnicity bias.

⁹ <http://www.commandanswers.com/new-iacp-model-policies-available-iacp-net/>

¹⁰ <http://www.theiacp.org/ViewResult?SearchID=123>

¹¹ <https://ope.ed.gov/campusafety/#/>

¹² <https://ucr.fbi.gov/hate-crime/2015>

¹³ Public Law 113-4 (2013) <https://www.congress.gov/113/plaws/publ4/PLAW-113publ4.pdf>

¹⁴ Public Law 101-542 (1990) <https://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg2381.pdf>

Specific Recommendations for Improvements

In support of efforts to enhance the quality, utility, and clarity of the FBI's extensive hate crime data collection and reporting initiatives, we make the following specific recommendations:

1) The Department of Justice should incentivize and encourage state and local law enforcement agencies to more comprehensively collect and report hate crimes data to the FBI, with special attention devoted to large underreporting law enforcement agencies that either have not participated in the HCSA program at all or have incorrectly reported zero (0) hate crimes.

2) Immediately following the enactment of the HCPA in 2009, DoJ organized dozens of informational webinars and hate crime training seminars for several thousand law enforcement officers and members of the public to help them better identify and respond to hate crimes in their communities. In light of increasing hate crime reports, including the deeply disturbing number of homicides and violent crimes committed against transgender and gender non-conforming people, DoJ and the FBI should reinvigorate and expand their training and outreach initiatives.

The Department's initial focus should be on jurisdictions that appear to underreport hate crimes despite apparent increases in bias-motivated incidents. Focusing on jurisdictions where these discrepancies occur will enhance law enforcement's ability to recognize, investigate, and report accurate data on hate crimes, as well as to build community trust and help educate and engage the public in combatting hate crimes.

3) To create incentives for participation in the FBI's HCSA data collection program, certain DoJ funds should only be made available to agencies that are demonstrating credible participation in the HCSA program. Whether a specific state or local law enforcement agency is participating in the HCSA program should be included in the rating and scoring criteria as applications for Justice Department funding are considered.

4) DoJ must consider why victims of hate violence fail to report these crimes to the police. As the Department seeks to address hate violence, it is essential to underline the importance of ensuring that it is efficient and safe for all victims of hate crimes to contact the police. If marginalized or targeted community members – including immigrants, people with disabilities, LGBT community members, Muslims, Arabs, Middle Easterners, South Asians, and people with limited language proficiency – cannot report, or do not feel safe reporting, law enforcement cannot effectively address these crimes, thereby jeopardizing the safety of all.

Further, demands that local police enforce federal immigration laws have undermined community trust and created an environment in which individuals are increasingly unlikely to call on law enforcement for assistance in any situation. To effectively address hate crimes and promote improved community policing, DoJ must provide clarity on the role of local law enforcement in responding to 911 calls and other police interactions and issue clear guidance stating that local law enforcement will not enforce federal immigration law. As the lead federal law enforcement agency, DoJ should ensure that Department of Homeland Security officials understand how inappropriate demands that local law enforcement authorities become involved in federal immigration enforcement make it harder for local officials to do their job. In addition, the Department should convene regular meetings in local communities, bringing together a number of community stakeholders, including local law enforcement and community organizations, to address community tensions and build relationships. In the past, US Attorneys have very effectively been the convening authority for such meetings. Of course, these meetings can only be effective if communities feel safe engaging with government.

5) DoJ should provide a grant to the IACP to enable them to make their excellent Model Policy on Hate Crime publically available beyond just IACP members.

6) DoJ should collect data from every federal law enforcement agency. According to recent press reports, dozens of federal law enforcement agencies are not currently reporting hate crimes to the FBI at all.¹⁵

7) FBI Field Office and FBI Resident Agent offices should keep track of law enforcement agencies in their jurisdictions that are substantially underreporting hate crimes, communicate directly with them, and take more responsibility for their participation in the Bureau's HCSA program. The success of this outreach should be taken into account as part of a Field Office's evaluation, with recognition for improved reporting or ineffective cooperative communication with police departments on hate crime reporting factored in as part of the Special Agent in Charge's performance rating.

8) DoJ and the FBI should work cooperatively with police organizations and departments to promote and increase funding for the FBI's National Incident-Based Reporting System (NIBRS) crime reporting program. NIBRS reporting will permit more transparency and more granular information on specific populations that are being targeted and attacked.

9) The Department of Education and the Department of Justice should work with law enforcement organizations (including campus police) and civil rights and religious groups with interest and expertise in combating hate violence to do outreach and education, using the updated Clery Handbook¹⁶ to highlight the recently added issues of gender identity and national origin based hate violence. Coordination with relevant college and university offices in these efforts is essential.

10) To better understand police-community relations, which is critical for hate crimes prevention and enforcement, comprehensive data on police-community encounters must be provided. DoJ must ensure implementation and compliance with the Death in Custody Reporting Act. DoJ must also advance the FBI's National Use of Force database.

11) DoJ should undertake a comprehensive research study to understand gaps in hate crime reporting by law enforcement agencies, including why law enforcement agencies don't report, barriers to reporting by hate crime victims, and identification of best practices in hate crime training, data collection, and reporting.

12) The FBI should take specific actions designed to improve training and outreach for campus law enforcement authorities to help improve college and university HCSA reporting. As noted above, participation in the HCSA data collection effort by campus law enforcement authorities at some of the nation's best-know colleges and universities has been quite deficient over the past five years.

13) The Administration and Congress should take steps to ensure that DoJ and the FBI receives sufficient funding to continue to respond to requests for hate crime training from law enforcement agencies across the country, as well as funding to continue its own training and education outreach efforts for both new agents and in-service training for field agents at its Quantico training academy. The FBI has been receptive to requests for HCSA training for state and local law enforcement officials in the past. Groups with expertise in analyzing and responding to hate violence have participated in a number of these training seminars for state and local law enforcement authorities on how to identify, report, and respond to hate crimes.

¹⁵ <https://www.propublica.org/article/more-100-federal-agencies-fail-report-hate-crimes-fbi-national-database>

¹⁶ <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

14) Congress should provide additional funding for DoJ's Community Relations Service (CRS) to allow for the hiring of new professional to help mediate, train, and address tensions in the aftermath of hate crimes. And the Department of Justice should promote cultural competency trainings – such as the CRS roll call training video, *Law Enforcement and the Transgender Community*.¹⁷

15) In conjunction with DHS, the Justice Department should comprehensively implement the implicit bias training initiative announced in June 2016 for all federal law enforcement officials and federal prosecutors.¹⁸ The training should include how to recognize, investigate, and respond to hate crimes.

16) The Administration and the Justice Department should highlight and support best practices by US Attorneys, such as hate crime working groups composed of community-based organizations, civic leaders, and police officials.

Conclusion

We welcome the continuing efforts of the Bureau to spark improvements in the response to this especially impactful type of criminal activity. We cannot tabulate, regulate, legislate, or arrest our way to a healthier and more accepting society. The fundamental cause of hate crimes and other bias-motivated harassment, intimidation, and violence in the United States is the persistence of racism, anti-Muslim bigotry, homophobia, transphobia, and anti-Semitism. Unfortunately, there are no quick, complete solutions to these problems. Complementing state hate crime laws and prevention initiatives, the federal government should promote and fund improvements to make the FBI HCSA report as comprehensive and user-friendly as possible. In addition, the federal government has an essential leadership role to play in promoting and funding anti-bias, bullying prevention, and prejudice-reduction initiatives for schools and the community.

Ultimately, hate crime statistics do not speak for themselves – because behind each statistic is a victim injured or intimidated for no other reason than how they worship, who they love, who they are. The impact of all bias crime initiatives will be measured one, by one, by one – in the response of the criminal justice system to each individual act of hate violence.

We look forward to continuing our partnership with the FBI in support of education and outreach efforts to improve the response to hate violence in America.

¹⁷ <https://www.justice.gov/crs/video/law-enforcement-and-transgender-community-crs-roll-call-training-video>

¹⁸ <https://www.justice.gov/opa/pr/departments-justice-announces-new-department-wide-implicit-bias-training-personnel>