

CRIMINAL INVESTIGATIONS

STANDARD NO(S):

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I. OBJECTIVE:

To establish guidelines within the Seneca County Sheriff's Office for the conduct of criminal investigations.

II. POLICY:

Members of the SCSO shall at all times, while acting within the limits of their authority, protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce the laws of the United States, the State of New York, the County of Seneca, and the ordinances of the towns and villages of Seneca County over which the SCSO has jurisdiction.

III. DETAILS:

- A.** Pursuant to above policy, it is incumbent upon each member of the SCSO to undertake, or cause to be undertaken, a criminal investigation as soon as one becomes aware of a situation wherein there is reasonable suspicion to believe that criminal activity is involved. It is the responsibility of each member of the SCSO to take action to investigate any suspected or known criminal activity, report such action and information to their supervisor or other person in authority, and coordinate efforts with other members of the SCSO to insure the efficient, effective and thorough investigation and resolution of the suspected activity.
- 1. Upon the authority of the Sheriff of Seneca County, there is established within the SCSO a Criminal Investigations component (CID) which will be directly supervised by a Lieutenant in charge of the Division. The primary responsibility of CID shall be the investigation of felony class offenses which occur in the County of Seneca.

 - a. These investigations may be self-generated; or, based upon information and/or intelligence reported by other members of the SCSO; or, based upon information and/or intelligence received from other law enforcement agencies or sources.

- b. All investigations in which CID investigators participate must be approved by the CID supervisor.
 - c. Once a CID investigator is assigned to a case or other particular matter, that person shall be responsible for overseeing all aspects of the case, including investigation, interim and final reports, and in the event that an arrest is made subsequent to an investigation, the assigned investigator shall be responsible for assisting the District Attorney or other prosecuting attorney in the preparation and prosecution of the case in a court of law.
 - d. Investigators assigned to CID shall provide assistance to all SCSO members as requested or upon the direction of supervisory authority.
 - e. In addition to the investigation of suspected criminal activity as previously noted, investigators may be called upon to perform the following, included, but not limited to:
 - 1) Background investigations of prospective SCSO employees;
 - 2) Investigation of pistol permit applicants;
 - 3) Investigations into alleged welfare fraud and child abuse/neglect upon the request of the Department of Social Services;
 - 4) Investigations of reported criminal activity or unusual incidents occurring in the Seneca County Correctional Facility, including suicides or attempts, contraband, assaults upon inmates or staff, damage to property and other matters requiring prompt and thorough investigation by the SCSO;
 - 5) Investigations on behalf of the County Attorney in cases wherein the County may incur liability;
 - 6) Internal or personnel investigations undertaken to resolve complaints made against members of the SCSO;
 - 7) Teaching assignments at recruit or in-service schools and training upon the authority of the Sheriff; and
 - 8) Any other investigations by special requests made by competent authority, and with the approval of the Sheriff.
2. Case assignments to CID investigators are made and monitored by the CID Lieutenant. In some instances, more than one investigator may be assigned to a case.

- a. In cases where there is more than one investigator assigned, one investigator will be assigned the “lead investigator”, who will be responsible for the case as noted under paragraph A sub 2.
 - b. Investigators who respond to investigate a crime or incident while “on-call” shall be responsible for the full investigation of the case unless the case is otherwise later reassigned to another investigator by the CID Lieutenant.
 - c. Investigators, having acquired certain specialized training and experience in the investigation of certain criminal activity, such as welfare fraud, juvenile crime, sexual abuse, narcotics and dangerous drugs, hostage situations, and arson/fire investigations, may be assigned to investigate such criminal activity as a specialized field.
 - d. Assignments made to a specialized field of criminal activity may be for specific periods of time or on a permanent basis depending on the needs of SCSO.
3. Assigned cases are to be investigated as soon as practical. Upon assignment of a case to a CID Investigator, the CID Lieutenant will report such assignment in the narrative of the SPILLMAN report. The assigned investigator will acknowledge such assignment in the narrative of the SPILLMAN report. Follow-up reports will be submitted periodically throughout the investigation documenting the investigative steps taken. All CID cases will be reviewed on a regular basis with contact being made with the complainant to obtain any new information and to advise him/her of the progress in the case.
 - a. The CID Lieutenant will monitor cases assigned to CID investigators periodically for case progress and review purposes.
 - b. Copies of the entire CID case file will be forwarded to the Records Division upon approval by the CID supervisor or other authorized person.
 - c. Upon completion of an investigation and in any event, immediately following an arrest, an arrest report shall be submitted together with the completed case file to the CID supervisor for review and approval. In the event of an arrest, or if an indictment is to be sought, the District Attorney’s office will be given a copy of the complete case file, including all notes. This file will be delivered by the investigating officer to the District Attorney’s Office. Upon delivery to the District Attorney’s office, a representative of the DA’s office will sign for receipt of the packet on the prescribed form (SCSO-LE-100).

- d. SPILLMAN reports will have a designation of the case status noted in the appropriate case status box in the Administrative section of the SPILLMAN report
4. The proper maintenance of case files is essential to good case management, in addition to being an invaluable resource to investigators. CID files are to be maintained in the Criminal Investigation Division under secure conditions. All original reports and documents pertaining to an investigation will be kept in a secure location within CID and a copy of the entire case file will be forwarded to the Records Division. Each case, upon assignment to an investigator, shall be logged on the "CASE FILE LOG" kept in CID, noting the date received, complaint number, category of offense, complainant, town or village having jurisdiction and assigned investigator. This log will be kept up to date at all times.
- a. CID case files will consist of originals of all reports, statements, admissions, confessions, copies of teletypes, criminal history of defendant(s), property sheets, evidence logs, laboratory reports, original notes, and any other paperwork generated as a result of the investigation.
 - b. Digital photographs and audio recordings will be stored electronically on a SCSO electronic computerized system by case number under secure conditions monitored by the CID Lieutenant.
 - 1) All digital photographs and audio recordings taken by members of SCSO shall be monitored by the CID Lieutenant who shall be responsible to oversee its proper storage and filing.
 - 2) Outside requests for digital photographs taken by the SCSO CID will be directed to the CID Lieutenant for processing. The SCSO will charge a nominal fee for the processing of such requests. Fees for processing such requests will be turned over to the Fiscal Services Manager for deposit into the appropriate account.
 - c. All open and pending inactive case files are to be maintained within the CID office and shall be available to CID personnel with the exception of drug case files; which will be kept secured and accessible only to the investigator assigned to investigate drug cases and the CID supervisor.
 - d. Original accusatory instruments, statements, depositions and other relevant paperwork necessary for trial or Grand Jury shall be forwarded to the District Attorney's Office upon request.
 - e. All arrests made by CID members will be logged with the appropriate information on the "CID ARREST LOG".

- f. All stolen property recovered by CID members will be logged with the appropriate information on the “CID RECOVERED STOLEN PROPERTY LOG”.
- 5. As previously stated, all members of the SCSO bear a responsibility for undertaking an investigation into a suspected criminal activity. However, concerning the specific accountability for the stages of an investigation, insofar as they can be identified and described, the following procedures will be observed:
 - a. The preliminary investigation is usually handled by a member assigned to road patrol duties who is dispatched to or encounters an offense in one’s patrol area.
 - 1) The investigation shall consist of an inquiry of at least sufficient depth to permit the completion of a SPILLMAN report whether the offense is a felony, misdemeanor, or violation.
 - 2) A preliminary investigation may be commenced by a member who becomes aware of a criminal activity; however, such member must keep the supervisor advised of one’s activity and is subject to the latter’s approval to continue same.
 - 3) Any member shall conduct a preliminary investigation into any matter upon request of a supervisor.
 - b. Accountability for the follow-up criminal investigation is generally divided according to the level of the incident as follows:
 - 1) Members assigned to road patrol duties are accountable for follow-up investigations on violations, misdemeanors, property damage and personal injury motor vehicle accidents and deaths from apparent natural causes. Additionally, members of the road patrol shall be accountable for Felony DWI and AUO cases.
 - 2) Members assigned to CID are accountable for follow-up investigations on felonies, fatal motor vehicle accidents, and deaths where there are suspicious circumstances or where a natural death cannot be readily ascertained.
 - 3) There will be occasions when CID members are called upon to follow-up on non-felony offenses and other matters normally assigned to road patrol members, based upon the nature of the incident. Road patrol members may also be called upon to handle certain felony cases. These occasions will only be with the authority of the CID and Road Patrol Supervisors.
- 6. Although the SCSO does not use a formal “solvability worksheet”, there are criteria to be applied in making the determination whether to continue an

investigative effort. The first stage of such application occurs following the preliminary investigation conducted by either a member assigned to the Road Patrol Division or to the Criminal Investigation Division.

a. When the SPILLMAN report is reviewed by the appropriate supervisor, the following factors are considered:

- 1) Is there a continuing threat of danger to life;
- 2) Is there a continuing threat of danger to property;
- 3) Is there a possibility of an apprehension;
- 4) Is there a possibility of obtaining additional evidence;
- 5) Is there a connection with another ongoing case; and
- 6) Are potential witnesses likely?

b. The results of all preliminary investigations are reviewed by the CID Supervisor and Road Patrol Supervisor, any of whom may assign a follow-up investigation based on the above factors

7. As with the deployment of any SCSO resources, the decision to devote funds and manpower to a case on a continuing basis is made at the administrative level after receiving the recommendations of operational personnel. The decision to commit to a protracted investigation is reserved for the Sheriff or his designee following input by the appropriate Division Supervisors.

B. CONSTITUTIONAL SAFEGUARDS - Members of the SCSO shall at all times be aware of and protect the Constitutional rights of all whom they encounter, and especially so when conducting criminal investigations. Members must make every reasonable effort to keep abreast of court decisions and statutory law regarding:

1. **VOLUNTARINESS OF CONFESSIONS** – (See CPL 60.45) A good rule of thumb for a member to follow when contemplating an interrogation is to ask oneself, "Is what I am about to do or say apt to make an innocent person confess?"
2. **DELAY IN ARRAIGNMENT** – (See CPL 140.20) Note that questioning of a suspect during an investigative stop, for the purpose of resolving an ambiguous situation, does not constitute an arrest.
3. **FAILURE TO INFORM DEFENDANT OF HIS RIGHTS** - The "Miranda" warnings need only be given to a suspect who is in custody and who is subjected to interrogation. There is no "bright line" standard for determining exactly when an investigative detention becomes a custodial

arrest; however the courts have stated that an arrest has occurred when a reasonable man in the same circumstances of detention would consider himself under arrest and "not free to leave." Some of the factors to be considered in making this determination are:

- a. Has detainee been informed that he is under arrest?
- b. What was the amount of force used to affect the detention?
- c. Has detainee been moved or transported from the scene of the stop?

4. SCOPE OF THE "MIRANDA" WARNINGS - See Miranda v. Arizona 384 US 436.

- You have the right to remain silent and refuse to answer any questions.
 - Anything you do say may be used against you in a court of law.
 - As we discuss this matter, you have a right to stop answering my questions at any time you desire.
 - You have a right to a lawyer before speaking to me, to remain silent until you can talk to him, and to have him present while you are being questioned.
 - If you want a lawyer but you cannot afford one, a lawyer will be provided to you without cost.
 - Do you understand each of these rights that I have explained to you?
 - Now that I have advised you of your rights are you willing to answer my questions without an attorney?
- a. All of these points must be covered in such a way that the suspect clearly understands what he is being told.
 - b. If the suspect indicates at any time, or in any manner whatsoever, that he does not want to talk, the interrogation must cease. The interrogator is not permitted to "talk him out of" his refusal to submit to questioning. If the suspect says, at any time, that he wants a lawyer, the interrogation must cease until he has an opportunity to confer with a lawyer and no further questions may be asked of him outside the lawyer's presence or without the lawyer's permission. The interrogator is not permitted to "talk him out of" his decision to contact a lawyer.

5. DEPRIVATION OF COUNSEL - The following cases illustrate certain aspects of a defendant's rights regarding interrogation and access to an attorney:
- a. People v. Hobson (39NY2d 479 [1976]) - Once an attorney enters the criminal proceedings, defendant cannot waive his rights unless attorney is actually present during such waiver.
 - b. People v. Garofolo (46 NY2d 592 [1979]) - Attorney's telephone call to police station deemed entry to proceedings, even though the call was to the department switchboard and never reached the interrogating officers.
 - c. People v. Arthur (22 NY2d 325 [1968]) – Attorney's telephone call to the officer in charge of the investigation was sufficient to constitute entry of counsel.
 - d. People v. Cunningham (49 NY2d 203 [1980]) - Once a defendant in custody has asked for an attorney, he cannot change his mind about having counsel unless an attorney is physically present.
 - e. People v. Rogers (48 NY2d 167 [1979]) - Once an attorney enters the proceedings, a defendant in custody cannot be questioned in the absence of the attorney, even about charges which are unrelated to the charge for which defendant is being held; however, a defendant taken into custody on a new unrelated charge is free to waive counsel in the absence of counsel. (People v. Bing, 76 NY2d 331 [1990] overturned People v. Bartolomeo, 53 NY2d 225 [1981]).
 - f. People v. Skinner (52 NY2d 24 [1980]) - Defendant not in custody, cannot be questioned outside his attorney's presence even though the attorney had entered the proceedings 1 1/2 years earlier.
 - g. People v. Servidio (54 NY2d 951 [1981]) - Questioning of defendant was permitted where the police did not have actual knowledge that he was represented by an attorney on pending unrelated charges.
 - h. People v. Waterman (9 NY2d 561 [1961]) - Defendant who has been indicted cannot be questioned without an attorney.
 - i. People v. Meyer (11 NY2d 162 [1962]) – Defendant who has been arraigned cannot be questioned without an attorney.
 - j. People v. Samuels (49 NY2d 218 [1980]) - Once an accusatory instrument has been filed with the court, defendant cannot be questioned without an attorney.

- k. People v. Kazmarick (52 NY2d 322 [1981]) - A defendant in custody, for whom there is an outstanding warrant of arrest on pending but unrelated charges, and there is no attorney for those charges, could be questioned without an attorney, even though police knew about the unrelated charges.
 - l. Rhode Island v. Innis (446 US 291 [1980]) - Interrogation can be accomplished without actual questioning. If police conduct and actions are likely to elicit incriminating remarks, it must be considered to be interrogation.
6. Members of the SCSO shall make no statements to the media or others which will result in publicity tending to prejudice a fair trial for the defendant. See "Public Information & Community Relations" III (A) (5), this Manual.
 7. The Fourth Amendment to the United States Constitution requires that a warrant be obtained in order to conduct a lawful search, with the following possible exceptions:
 - a. Exigency - To prevent imminent danger to the officer or a third person; to prevent the destruction of evidence; or, in hot pursuit of a fleeing felon.

NOTE: The Court of Appeals, in People v. Sierra and People v. Robbins (both 83 NY2d 928 [1994]), differentiated circumstances wherein evidence was abandoned during flight from police.

In Sierra, evidence was admissible because the officers had reasonable suspicion to pursue the defendant; whereas in Robbins, abandoned evidence was suppressed because the facts did not justify police pursuit. In other words, a person's conduct must support the reasonable suspicion necessary for pursuit or for that matter any police attention, in order for evidence thereafter abandoned to be used against that defendant. The officer must be able to articulate the basis for reasonable suspicion.

- b. Incidental to arrest - To insure officer's safety and to prevent the destruction of evidence. Area to be searched limited to the extent of arrestee's reach.
- c. At the scene of a crime.
- d. Consent - Freely, voluntarily and knowingly given by one who is empowered to do so. The person giving such permission must be advised of his constitutional right to withhold his consent to search.

- 1) In 1992, the Court of Appeals, in People v. Saunders (79 NY2d 181 [1992]), excluded evidence seized in a consent search because the consent was obtained after improper police inquiry. The case concerned a defendant who was waiting in line for a bus at a New York City terminal. The defendant was carrying a gym bag. The police asked for his identification and destination and, based on defendant's "nervousness," asked for his consent to search his bag.
 - a) The Court held that by requesting consent to search, the matter was raised to the second level of a police-citizen encounter, but without the necessary "founded suspicion that criminal activity is afoot."
 - b) The Court ruled that police may not request consent to search a defendant's person, his belongings, his vehicle, or other property, unless such suspicion is justified by the facts present.
 - c) Consequently, any consent obtained will be invalid, even if voluntarily given, unless there is founded suspicion of criminality when the request is made.
- e. Vehicles - Provided there is articulable probable cause.
- f. Plain view - Provided the officer is lawfully present on the defendant's premises, such as by invitation or in connection with some other lawful activity. Plain view alone that is without exigent circumstances does not provide an exception to the requirement for a search warrant to enter and seize property. An officer, lawfully present, who observes evidence from a place not under the defendant's control, may use the observation to provide the probable cause needed to obtain a warrant. (Peo. v. Saurini, 1994)
- g. Inventory - In People v. Galak (80 NY2d 715 [1993]), the Court of Appeals stated that inventory searches are allowed to protect the defendant's personal property; to protect the police against the claims of loss or theft; and, to protect the police and others from dangerous instruments. These warrantless searches must be carried out in a consistent and reasonable manner and must not be an excuse for "general rummaging to discover incriminating evidence."
 - 1) The inventory search may be applicable to a vehicle that has been impounded or is otherwise within the legal custody and control of the SCSO.
 - 2) When exercised, the inventory must be made contemporaneously with the search and must include all personal property found, as well as an indication of the disposition of each item. See "Vehicles Seized/Towed and Impounded", this Manual.

- h. Administrative - Only by agencies having particular enforcement responsibilities such as fire, health or building departments. Not to be used by SCSO members as a subterfuge for a search without a warrant.

C. HATE CRIMES

Hate Crimes – Hate Crimes Act of 2000

Specific policy/procedures for hate crimes are designed to assist members in identifying and investigating hate crimes and assisting victimized individuals and communities. A swift and strong response by law enforcement can help stabilize and calm the community as well as aid in a victim's recovery.

1. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate and bias and designed to infringe upon the rights of individuals are viewed very seriously by the SCSO and will be given high priority. This office shall employ necessary recourses and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this agency shall be mindful of and responsive to the security concerns of victims and their families.
2. Members will be familiar with NYS Penal Law section 485.05 (Hate Crimes). The law designates certain crimes or attempts to commit those crimes as Hate Crimes when the primary motive for the crime is based on the victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

For the purpose of this section:

- a. The term "age" means sixty years old or more;
 - b. The tem "disability" means a physical or mental impairment that substantially limits a major life activity.
3. Penal Law section 240.31 Aggravated Harassment in the First Degree (E Felony) and section 240.30(3) Aggravated Harassment in the Second Degree (A Misdemeanor) are also Hate Crime statutes.

4. Hate Crime investigations pose a challenge for many agencies since they require establishment of a motive. Early identification and **supervisory notification** is crucial.
 - a. Officers will conduct a thorough and complete investigation in all suspected and confirmed hate crimes incidents and assist the District Attorney.
 - b. Officers should make every effort to become familiar with organized hate groups operating in the community and police contacts should be documented.
 - c. Initial response shall include those steps similar to other investigations; see “Road Patrol” III(A)(4) this manual. Specific to hate crime investigations officers will ensure supervisory personnel and investigators are notified and on scene as may be necessary, as well as:
 1. Stabilizing injured victims and request medical aid as well as providing victims with protection with increased police presence if necessary;
 2. Protection of the crime scene and summoning CID investigators to process scene;
 3. Identifying criminal evidence on the victim if applicable;
 4. Request the assistance of a translator or counselor when necessary;
 5. Record all relevant information including that which may indicate prior bias-motivated occurrences in the immediate area or against the same victim (check with Crime Analyst, NYSIC (518)786-2100 and or the Monroe County Crime Analysis Center.
 - d. Conduct interviews and attempts to establish motive;
 - e. Look for possible signs that incident may be a hate crime to include:
 1. The motivation of the perpetrator or lack of motive.
 2. Statements made by the perpetrator.
 3. The presence of multiple perpetrators.
 4. The display of offensive symbols words or acts.
 5. Was any hate literature found in the possession of the suspect?
 6. Is the victim the only person of a particular group at a park or facility?
 7. Is the victim from a different racial, ethnic, religious group than the perpetrator?
 - f. The mere mention of bias remark does not make an incident bias motivated, just the absence of a remark does not make an incident without bias. **Even the mere perception that the incident may be**

motivated by bias shall necessitate a notification of a patrol supervisor/investigator.

- g. Be cognizant of a dual motivation by some suspects. **Example:** A suspect may be looking to commit robberies but specifically targets elderly victims.
- h. Note that an attack against a transgender victim could be covered under sexual orientation or gender.

5. Supervisory Responsibilities – The supervisor shall confer with the initial responding officer(s), take measures to ensure necessary preliminary actions have been taken, and make appropriate departmental notifications as necessary. The supervisor shall request any appropriate additional personnel necessary to accomplish the following:

- a. Provide immediate assistance to the crime victim.
- b. Ensure that officers and investigators conduct a thorough preliminary investigation.
- c. Ensure that all relevant facts are documented on an Incident Report or Arrest Report or both and make an initial determination as to whether the incident should be classified as a hate crime.
- d. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- e. Take preventive measures to ensure the safety of the victim.

6. Investigator's Responsibilities – In responding to the scene of an alleged hate crime, investigators shall assume control of the follow-up investigations to include the following:

- a. Ensure that the scene is properly protected, preserved, and processed and that all physical evidence of the incident is removed as soon as possible after the offense is documented.
- b. Conduct a comprehensive interview with all victims and witnesses (and depose) at the scene, or as soon as possible thereafter, and canvas the neighborhood for additional sources of information.
- c. Work closely with the District Attorney's Office to ensure that a legally adequate case is developed for prosecution.
- d. Coordinate the investigation with state and regional crime analysis centers in an effort to develop any pattern, organized hate groups, and suspects potentially involved in the offense.

- e. Coordinate the investigation with other units of the agency and with outside agencies where appropriate.
- f. Maintain contact with the initial responding officer and keep him or her apprised of the status of the case.
- g. Recommend to the Commanding Officer whether the incident should be classified as a hate crime.
- h. Investigative officers shall take steps to ensure that the appropriate assistance is being provided to hate crime victims, to include the following measures:
 - 1. Contact the victim periodically to determine whether he or she is receiving adequate and appropriate assistance.
 - 2. Provide ongoing information to the victim about the status of the criminal investigation.
 - 3. Attempt, whenever possible, to conduct all interviews with the victims at their convenience and minimize, to the degree possible, interactions in which victims have to relate to the incident.

7. **Incident Report Preparation** – SPILLMAN Incident Reports should clearly indicate the following information:

Offense – Hate Crime designated Penal Law
Victim, age, gender, race and ethnicity

Offender age, gender, race and ethnicity (when available)

The narrative portion of the SJS Incident Report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation. The specific bias motivation of the perpetrator should be documented (Ex: selected victim because he was Hispanic, Jewish, Muslim, etc.);

8. **Arrest Processing** – The Hate Crime law is a sentencing enhancement statute. Thus, when the specific crime is misdemeanor or class C, D or E felony, the hate crimes stay the same but are subject to higher penalties. It is important to realize that a Class A misdemeanor charged as a hate crime is deemed a class E felony. This may affect the manner in which the case is handled (e.g. arraignment, bail, grand jury). **Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded.**

When an arrest is being processed for a hate crime, you are required to use the penal law code with the letter “H” to highlight and make the distinction. The letter “H” is applied to the subdivision of the PL section. In those cases where no subdivision exists, a double zero is used with the letter “H”. Use caution when using an automated booking system to ensure that the correct offense is being selected.

Examples:

PL section 120.00, sub 1 – Assault 3rd

120.00 (01H) – when it is a Hate Crime

PL section 140.15 – Criminal Trespass 2nd

140.15 (00H0 – when it is a Hate Crime

Note: Do not use the letter “H” when you are not charging a hate crime or the arrest will be reported as a hate crime to DCJS.

9. Accusatory Instrument -

- a. As the legislature made clear in the language of the Penal Law section 450.00, the victim of a hate crime is society as a whole. It is apparently for that reason that the hate crime statute does not require specification of any particular person, only “a person”. It is the attribute of the protected class (i.e. sex, race, sexual orientation, etc.), not the name of any particular individual member or members of that class which is of importance. Accordingly, the manner in which to allege a hate crime is to set forth the particular attribute of the protected class which claimed to have motivated the defendant, and not name any particular person or persons. The indictment can simply allege that the defendant committed the underlying crime in whole or in substantial part because of a belief or perception of the race, or sex, or sexual orientation, etc., of “a person”. Likewise, when alleging Aggravated Harassment in the First Degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.

- b. The accusatory paperwork filed with the court should also the “H” designator. The narrative portion or the accusatory instrument must include the elements and facts of the crime that demonstrate that the victim was intentionally selected or the act was intentionally committed because of a belief or perception regarding such person’s race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

10. Records Division –

- a. Assist department in complying with state hate crime reporting requirements:
 - 1. Submit all incidents or reported hate crimes to DCJS each month using the state Form 3294. **Forms must be submitted each month. If not hate crimes were reported, departments must complete the form by checking the “Nothing To Report (NTR) box.**

11. Community Relations and Crime Prevention –

Hate crimes are viewed in the community not only as a crime against the targeted victim(s), but also a crime against the victim’s identification group as a whole. Working constructively with segments of the larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report those crimes.

As stated in “Public Information & Community Relations”, “Victim Witness Assistance”, this manual, Sections 2-12- and 3-9 respectively, it is each member’s responsibility to provide for victims, including hate crime victims, protect their privacy, provide direct or referred assistance, meet with neighborhood groups, engage the media as partners, establish liaisons with and expand, where appropriate, preventative programs such as hate, bias, and crime reduction seminars for the community including school children.

D. MISSING VULNERABLE ADULTS

Missing Vulnerable Adult – Effective October 23, 2011, NYS enacted legislation creating the Vulnerable Adults Clearinghouse-integrates with the

Missing and Exploited Children Clearinghouse which will be the **Missing Persons Clearinghouse**.

A Missing Vulnerable Adult is an individual 18 years or older who has a cognitive impairment, mental disability, or brain disorder and whose disappearance has been determined by law enforcement to pose a credible threat of harm to such a missing individual.

a. **Mandated Law Enforcement Responsibilities** –

1. No criminal justice agency shall establish a waiting period before accepting and investigating a report of a missing vulnerable adult.
2. The SCSO will cause to be entered such report into the NCIC/DCJS files by the E-911 center when it has been determined that a person is a missing vulnerable adult or that an unidentified living person may be a missing vulnerable adult. The SCSO will cause the Clearinghouse to be notified when the missing vulnerable adult has been located and cause the cancellation of the NCIC/DCJS record.
3. Members of the SCSO will cause be included a description of the cognitive disorder, mental disability or brain disorder and an explanation of the risk of harm or endangerment in the miscellaneous field.
4. If it is believed that the person is traveling in a car and the registration information is known, the SCSO will cause that information to be entered in the record so that it will be cross-referenced. SCSO License plate readers shall include this information as soon as possible.
5. **Missing Adult Alert** – A method to disseminate information regarding a missing vulnerable adult to the general public, law enforcement and broadcast media.

Information about the missing person shall include –

- a. Name;
- b. description of the missing adult;
- c. other pertinent information including specific medical information which indicates a physical quality or behavioral trait that is readily apparent and contributes to a physical or behavior description of the missing vulnerable adult.
6. **Criteria for a Missing Adult Alert** –
 - a. The missing person must be 18 years of age or older who has a cognitive disorder, mental disability or brain disorder;
 - b. Law enforcement has determined that there is a risk of harm to such missing individual.

7. **To request a Missing Adult Alert –**
 - a. Call the Clearing house at: **1-800-346-3543**
 - b. Complete the Missing Adult Alert Submission form;
 - c. The missing individual must be entered into the NCIC/DCJS database with the Missing Person Condition of “Vulnerable Adult”;
 - d. Submit photograph of missing vulnerable adult to – missingperson@dcjs.state.ny.us
 - e. If a vehicle is involved and the use of NYSDOT and NYS T-Way messaging signs are requested –
 1. The SCSO must verify the vehicle and registration information;
 2. The SCSO must cause to be entered the vehicle information in the missing person record in the NCIC/DCJS database by the E-911 Center;
 3. The SCSO must cause to be issued a statewide BOLO to other law enforcement/911 centers
 - f. During consultation with Clearinghouse staff, determine appropriate activation regions/dissemination points – Seneca County is both regions 2 and 3 (consider LPR’s, hospitals, train/bus stations/TSA, etc).
- b. **Clearing House responsibilities include –**
 1. Create and oversee the Missing Adult Alert. (If it does not meet the criteria for an Alert, the case may be handled in accordance with the Clearinghouse procedures for non-urgent case dissemination.)
 2. Utilize available resources to duplicate photographs and posters of vulnerable adults reported as missing by the police and disseminate this information throughout the state.
 3. Assist federal, state and local law enforcement agencies in the investigation for cases involving missing vulnerable adults.
 4. Develop curriculum for the training of law enforcement personnel investigation cases involving missing adults, including recognition and management of vulnerable adults.
 5. Operate a toll-free, 24 hour hotline for the public to use to relay information concerning missing vulnerable adults, **1-800-346-3543**.
 6. Maintain and make available to appropriate state and local law enforcement agencies information that may assist in facilitating the recovery of missing vulnerable adults.
 7. Cooperate with the DOH, OMH, OPWDD, Office for the Aging, and other public and private organizations to develop education and prevention programs concerning the safety of vulnerable adults.
- c. **Summary –**

1. The Missing Vulnerable Adult Legislation establishes a Missing Vulnerable Adult Clearinghouse. (Missing Persons Clearinghouse) which will activate a Missing Adult Alert when appropriate.
2. Law enforcement agencies requesting an Alert will call the Clearinghouse, submit a request form, e-mail a photograph of the missing person and cause the entry of the person into NCIC. The guidelines for the NCIC entry will be followed: the missing person condition is “Vulnerable Adult:
3. There is no waiting period for police agencies to take a report on a missing vulnerable adult.
4. Police should be trained to recognize and manage cases of missing vulnerable adults.
5. Notify the Clearinghouse when the missing vulnerable adult has been located and cause the cancellation of the NCIC/DCJS record.