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Introduction

Hate crimes against LGBTQ individuals have received greater attention in light of the 2016 massacre at Orlando's gay club "Pulse"—one of the deadliest mass shootings in U.S. history. Despite this and other recent incidents of violence against the LGBTQ community, social science research on the prevalence and nature of hate crimes against LGBTQ persons remains limited. Similarly, the criminal justice system is not capable of effectively identifying and handling such crimes.

The LGBTQ-rights movement has made great strides over the decades, and especially since the 90s.[i] Most recently, the U.S. Supreme Court ruled that LGBTQ workers are protected by federal law forbidding discrimination, a decision that was embraced not only by the Court's so-called liberals but also by two conservative justices, Neil Gorsuch and John Roberts. By far, the biggest victory for the LGBTQ community is the steady yet dramatic shift in public sentiment. Gallup has been tracking public opinions about LGBTQ rights related to employment and same-sex relationships since 1977. In 2011, for the first time, a greater percentage of Americans supported the idea of gay marriage, than opposed it. Nine years later, in 2020, 67% of respondents believe that marriage between same-sex couples should be recognized as valid.[ii]

This positive picture nonetheless creates a false narrative that the era of anti-LGBTQ discrimination is behind us, and that queer individuals are accepted and embraced in the United States, at least within large metropolitan areas. Judging by law enforcement data, 15.9% of 7,106 hate crimes were motivated by victims' sexual orientation and 1.7% by gender identity, which suggests that there were only 1,250 anti-LGBTQ hate crimes nationally.[iii] In a country of nearly 330 million people, this number may feel like a needle in a haystack. If so, one should consider the following. First, LGBTQ individuals experience higher victimization rates than other minorities.[iv] Second, anti-LGBTQ hate crimes involve greater violence and serious injury, with transgender women of color being especially vulnerable.[vi] Third, these crimes are vastly underreported.[vii] **This research shows that 85% of incidents are never reported to law enforcement, and that nine out of 10 respondents thought that they were targeted because of their sexual orientation or gender identity**. These results suggest that the official hate crime statistics are deeply flawed, and that, in fact, they may do more harm than good in terms of protecting vulnerable populations. The solution to this problem should not, however, be abolishing hate crime data collection at the state and federal levels. The true solution lies in breaking the barriers to crime reporting, overcoming deep-rooted stigma against LGBTQ people that still prevails in the criminal justice system, and establishing a mechanism for compiling meaningful data on hate crimes.

This ambitious undertaking requires researcher-practitioner partnerships more than ever before. Criminal justice leaders are showing their interest in understanding the problems associated with hate crimes, underreporting such crimes, and their case processing and disposition. Many, just like our current partners, are willing to implement meaningful reforms to change the status quo. Such reforms do require community members and researchers at the table, as we all need to do our part to make a difference.

Partnering for Change

Safeguarding American Values for Everyone (SAVE / SAVE Foundation), the Miami-Dade State Attorney's Office, the Miami-Dade Police Department and Florida International University came together in 2018 to launch this project. With support from State Attorney Katherine Fernandez Rundle, FIU was able to secure a half-million-dollar grant from the National Institute of Justice to implement this groundbreaking work.

Over the past three years, we have worked together to collect and examine data, and to come up with an ambitious yet realistic plan to increase public safety and enhance the LGBTQ community's well-being. Achieving this important goal required an examination of victimization experiences, victim and offender characteristics, crime reporting outcomes, victimization consequences, case processing challenges, and the criminal justice system's opportunities for reform.

The project focuses on the hate crime victimization within **Miami's Latine LGBTQ community**.[viii] Yet the implications of this research go beyond this particular community and can help improve the criminal justice system's responses to hate crimes motivated by victims' race, religion, disability, or other identities.

This document captures key findings and corresponding recommendations to help police and prosecutors identify and investigate hate crimes, assist crime victims, and engage with the LGBTQ community. A larger technical report should be reviewed for additional information about the study.

Study Methodology

The study relies on the original data collected from victim interviews, prosecutorial case file reviews, and practitioner interviews.

1. LGBTQ Victim Interviews

The main data source for this study is the interview with 400 Latine LGBTQ individuals who have experienced what they perceived as a crime within the **five years** preceding the interview. To recruit the respondents, the study relied on the screener with six conditional questions. Specifically, only the respondents who (a) are 18 and older, (b) reside in Miami, (c) are Latine, (d) identify themselves as LGBTQ, (e) experienced victimization, and (f) have not had more than two drinks prior to the interview (as per the Institutional Review Board requirement) were selected for the full interview. Overall, there were 875 respondents screened, and 400 (45.7%) of them met the selection criteria and participated in an in-person interview. The interviews were carried out by five experienced interviewers, four of whom are Spanish-English bilingual. Overall, 89.5% of interviews were conducted in Spanish, which means that these respondents either had limited English proficiency or preferred to converse in Spanish. Interviews took approximately 20 to 45 minutes. Data were collected from October 2018 through December 2019. To encourage a higher response rate, respondents received a $40 gift card upon the completion of the interview.

Respondents were selected using a three-stage venue-based sampling. In stage one, a list of events and venues associated with Miami's LGBTQ community was constructed based on online search and with help from 20 key informants reflecting the socioeconomic, cultural, and "outness" diversity in this community. This process led to the identification of 58 venues and 17 upcoming events. In the second stage, the venues were confirmed by ethnographic observations. In stage two, research teams visited each venue at preset hours to count the number of individuals entering the venue, the times when most individuals enter, and individuals' observable characteristics. To characterize individuals likely to be attending a venue, two types of data were collected. This was done to gauge the probability of recruiting qualified respondents at a given venue. In stage three, a calendar of data collection dates at events and venues was constructed. Data from the stage two were used to determine which venues have sufficient numbers of persons attending the venue to make data collection feasible.

To conduct the interviews, research team members approached individuals entering an event or venue using a random number chart. If the individual did not engage or did not agree to complete the screener, the interviewers went on to the next randomly selected individual. Out of 5,072 individuals who had been approached by researchers, 875 (17.3%) completed the screener, and 400 (7.9%) participated in the interview. While the 17.3% response rate may be viewed low by social science standards, in light of the previous studies that utilized non-probability sampling approaches, which carry especially high risks of selection bias, this response rate represents an important advancement toward producing generalizable knowledge on hard-to-reach and hidden populations. Random selection of individuals and interviewing continued until the set number of interviews associated with a calendar date and event/venue was reached.

2. Prosecutorial Case File Review

The Miami-Dade State Attorney's Office provided access to prosecutorial case files for criminal cases processed as hate crimes in Miami between 2005 and 2019 (15 years). There were 23 criminal cases, which either were disposed of as hate crimes or for which a hate crime enhancer was a consideration at some point of cases processing. These 23 cases included those motivated by victims' race, religion, sexual orientation, and mental disability or homelessness. Among them, 11 involved crimes motivated by victims' sexual orientation. The information from case files was obtained and recorded following a standardized data collection tool, which allowed recording both qualitative and quantitative information. Then it was piloted with select case files and discussed with prosecutors, a process resulting in adding new fields, revising others, and dropping some.

3. Practitioner Simi-Structured Interviews

To gauge the criminal justice system's challenges and opportunities for reforming it, 10 practitioners were interviewed, all of whom were identified through a combination of key informants' referrals and snowball sampling. Although the small sample size and sampling method preclude a claim of representativeness, this design is consistent with previous qualitative research on prosecutorial perspectives about hate crimes. Moreover, the sample included all practitioners who had any direct experience with hate crime cases–five prosecutors who handle hate crime cases in the Miami-Dade State Attorney's Office, three detectives from the Miami-Dade Police Department, one victim liaison from the prosecutor's office, and one victim liaison from the police department. Each interview lasted between 40 and 95 minutes. The resulting transcript contains 84 single-spaced pages of notes. While a questionnaire was used to guide the interview, all of these interviews had a form of a discussion during which it was not uncommon for the respondent to ask questions, both clarifying and substantive, to the interviewer.

Key Research Findings

Victimization

- 48% of 875 screened respondents experienced victimization in Miami-Dade County (hereafter Miami) in prior five years
- An estimated 3,859 violent and property offenses are committed against LGBTQ persons in Miami annually
- 30% of 400 victimized respondents interviewed experienced physical or sexual assault
- 52% of physical assaults are perpetrated by non-strangers
- 95% of victims report being victimized because of their LGBTQ identity

Crime reporting and case processing

- 34% of respondents were concerned with crime reporting to the police
- 15% of all incidents—60 out of 400 incidents—were reported to police; 45% of violent and property crimes were reported
- 35% of reported incidents—21 out of 60 incidents—resulted in arrest
- 23% of reported incidents—14 out of 60 incidents—resulted in prosecution, but not necessarily as a hate crime
- *Friends' encouragement to report crime* is bar far the strongest predictor of crime reporting; it increases crime reporting at least tenfold

Consequences of victimization

- 13% of victims began to avoid LGBTQ venues or friends because of the incident
- 23% of victims had to change their housing because of the incident
- 35% of victims try to act more "straight" because of the incident
- Experiencing crimes involving *the use of a weapon* is the strongest predictor of forced relocation

Hate crime prosecution

- Out of 23 hate crimes processed by the Miami-Dade State Attorney's office in 2005-2019, 11 involved anti-LGBTQ bias, six were anti-Jewish or Islamophobic, five were motivated by racial or ethnic prejudice, and one was trigged by bias against a homeless person with mental health illness
- Victims of reported hate crimes tend to be younger, male, and black, while offenders are older and mainly "Hispanic" (as identified by the police)
- Most hate crime cases are initiated by law enforcement based on the media coverage of bias-motivated incidents
- Law enforcement over-relies on basic investigative tactics, while making almost no use of social media in identifying hate crimes and demonstrating the hate motive
- Police and victim testimony, confessions, offense location and symbols are commonly used as evidence of hate motive, with only one disposed case relying on evidence from a YouTube video
- Prosecutors struggle with victim engagement, especially when the victim is LGBTQ
- Crimes involving a physical manifestation of harm and ones perpetrated by strangers are markedly more likely to result in arrest and prosecution
- If evidence is strong and readily available, prosecutors are willing to use hate crime enhancement
- Hate crime enhancement is not used as a plea-bargaining chip

Hate crimes are more likely to be reported when the victim:

- is older

- is not Cuban (Columbian, Venezuelan, Puerto Rican, Honduran, etc.)

- has fewer years of education

- has lower income (as opposed to high income)

- is single

- is Transgender (as opposed to gay, lesbian, bisexual or GNC)

- is more likely to use drugs

- experienced violent/ property crime (as opposed to verbal assault only)

- experienced crime involving the use of a weapon

- has family who know about the crime

- has friends who encouraged crime reporting

- is not concerned about crime reporting

- avoids LGBTQ friends and venues because of

Policy Recommendations

This document outlines seven policy recommendations for the Miami-Dade State Attorney's Office (SAO) and the Miami-Dade Police Department (MDPD), as well as other law enforcement agencies in Miami-Dade. The breadth and depth of these recommendations are reflective of the severity of the problems with anti-LGBTQ hate crime prevalence, identification and case processing described in this report.

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The seven recommendations are designed to address:

1	Hate crime detection protocol
2	Specialized workforce development
3	Victim engagement in lieu of subpoena
4	Training of criminal justice practitioners
5	Changes in the hate crime statute
6	Data and research
7	Communication and awareness building

These recommendations stem from data analyses and the insights provided by local practitioners and advocacy groups (see the cover page). Furthermore, while these recommendations specifically aim to address anti-LGBTQ hate crimes, most of them are relevant to tackling hate crimes motivated by victims' race, ethnicity, religion, or other protected characteristics.

Recognizing that no single approach can make a meaningful improvement in hate crime detection, investigation, prosecution, and prevention, criminal justice agencies should consider implementing multiple recommendations simultaneously. Given that some of the recommendations will require resource reallocation, each agency should determine possible funding mechanisms, which in turn will have implications for the implementation timeline. Finally, the SAO and MDPD should assign responsibility and ownership for implementing these recommendations to a senior executive. In addition to managing ongoing logistics of this initiative, this person will also keep the agencies appraised of the progress in meeting the milestones.

Establish a hate crime detection protocol by requiring:

a)   *Emergency dispatchers* to ask a caller reporting physical assault, sexual assault, or intimidation/threat (i.e., the most common hate crime offenses), if they have been targeted because of their sexual orientation or gender identity.

b)   *Patrol officers* to ask:

> Do you think the incident was motivated by prejudice in any way?
>
>> If Yes:
>
> Was it because of your race, color, ancestry, ethnicity, religion, sexual orientation, gender identity, national origin, homeless status, or advanced age?[1]
>
>> If Yes:
>
> Which of these aspects of your identity served as a basis for prejudice? It can be your actual identity, or as perceived by the offender. It can also be one or more aspects of your identity.

The officers should be trained as per Recommendation 4.

c)   *Police detectives* to examine the social media postings by the suspect/defendant and victim, covering at least a three-month period preceding the incident when investigating physical assault, sexual assault, or intimidation/threat. Although, in some cases, the signs of hate crime can be on full display on social media, in most cases, the evidence of prejudice would not be readily available and will require further investigation. Community engagement and the development of the specialized workforce (as shown in Recommendation 2) will provide the insights about which social media platforms to examine more thoroughly (e.g., in addition to Facebook, include LGBTQ-specific social media platforms and apps).

d)   *Case screeners* at the State Attorney's Office (SAO) to ask the police officer about possible signs of prejudice, even if there was no indication in the arrest affidavit that the crime was motivated by homophobia or transphobia. This question should be asked for all person and property offenses. The SAO should develop the screening decision review protocol which would aim to identify when and why screeners may be overlooking red flags of bias motivation. This can be done by randomly selecting up to 100 cases annually, and having a dedicated hate crime prosecutor look for potential screening errors or oversights.

e)   *Prosecutors* to engage with the victim directly by asking if they are LGBTQ, and if the victim thinks that the crime was motivated by their sexual orientation or gender identity. Given that many, if not most, LGBTQ persons would not exhibit stereotypical signs of being LGBTQ[2], without asking a direct question, prosecutors would have no ability to flag the majority of bias-motivated offenses.

Rationale for Recommendation 1

Data show that 85% of incidents, perceived as crimes by LGBTQ respondents, go unreported. The earliest interactions the system has with the victims hold the greatest promise for detecting hate crimes. Victims are most likely to reveal details of victimization during the 9-1-1 call or first contact with the police, with many ultimately becoming reluctant to engage with the justice system. Note that 95% of LGBTQ victims report that they were victimized because of their sexual orientation or gender identity. Not asking a direct question about the possible hate motivation deprives law enforcement of an important opportunity to flag hate crimes and direct an investigation accordingly.

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[1] Note that "gender identity" is not currently covered by Florida's Hate Crime statute. See Recommendation 5.
[2] See for example, Moskowitz et al.'s (2013) research on physical, behavioral and psychological traits of gay men identifying as "bears" who tend to reject the normative idealized gay beauty. It is likely that law enforcement practitioners perceive individuals from this subgroup as straight. Moskowitz, D. A., Turrubiates, J., Lozano, H., & Hajek, C. (2013). Physical, behavioral, and psychological traits of gay men identifying as bears. Archives of Sexual Behavior, 42(5), 775-784.

Develop a specialized workforce to identify, tackle, and prevent hate crimes, by:

1. Establishing the **Miami-Dade Hate Crimes Collaborative (MDHCC)** which combines prosecutors, detectives, patrol officers, victim liaisons, emergency dispatchers, researchers, and community experts. The SAO, MDPD, and other large police departments should devote at least one full-time prosecutor and detective so that their sole focus is on developing and implementing strategies for hate crime awareness, prevention, detection, and prosecution. An important function of the MDHCC should be community engagement through daily outreach to various vulnerable groups to educate members of the community about their rights, and how to protect themselves without compromising on their identities. Proactive law enforcement will require direct and on-going partnerships with education and health services, among others, to gauge possible warning signs and target the conditions that foster hate offending. Whenever a crime is committed, the MDHCC should work with victims to ensure their safety, access to appropriate services, and encourage cooperation between victims and law enforcement. Through systematic and targeted community outreach efforts, law enforcement professionals will develop greater skills for victim engagement, which are key to successful prosecution. The oversight of the MDHCC should be established by an independent review panel, should Miami-Dade County establish one.

2. Creating a dedicated hate crime victim support center where hate crime victims can go to report crimes, seek help, and take part in depositions. This center should function as a satellite law enforcement office outside the SAO or police departmental headquarters. The decision about its site should be made in consultations with community groups. Central locations such as West Flagler or Little Havana (along SW 8th street) should be considered.

3. Recruiting police officers and prosecutors from the LGBTQ community, and ensuring their visibility, inclusion, comfort and safety in the workplace. To accomplish this task, the SAO and police departments should:

    ■ Advertise new positions via queer social media and networks.
    ■ Participate in local LGBTQ events and use these venues as an opportunity to demonstrate their commitment to preventing and effectively curtailing hate crimes.
    ■ Include language about equality and commitment to tackling hate crimes in their mission statement.
    ■ Develop clear anti-discrimination policies and oversee their enforcement.
    ■ Train all staff on diversity and inclusion (also see Recommendation 4), and train HR staff on how to identify and handle challenges faced by LGBTQ employees.
    ■ Build gender-neutral restrooms within the agencies and offices.
    ■ Display pro-LGBTQ symbols and signage in the agency.
    ■ Support and fund office-wide LGBTQ resources and affinity groups for their employees.
    ■ Invite inclusion and diversity experts to speak about LGBTQ issues and unconscious bias.[3]

4. Developing formal policies about how to affirm and support transgender coworkers and transgender victims or witnesses, and creating mechanisms for ensuring implementation of such policies.

Rationale for Recommendation 2

Data highlight the need for specialized hate crime workforce development with some staff being devoted solely to hate crime identification, prosecution, and prevention. Currently, hate crime prosecutors process all kinds of cases, in addition to hate crimes, which diminishes their ability to work with police, other government agencies and community groups to effectively detect, and prevent such incidents. A dedicated county-wide hate crimes collaborative will pull together necessary resources to address hate offending county-wide, and overcome marked inconsistencies in case detection, prioritization and investigation across Miami's multiple police departments. While swift and certain identification and prosecution of hate crimes should become even a greater priority, law enforcement agencies also need to better engage in proactive and community policing, as well as prosecution efforts. Closer ties with vulnerable communities would help prevent and successfully prosecute hate crimes. Such ties will also enable an increase in the current investigative and prosecutorial capacity. A complementary way to increase the current capacity to tackle hate crimes is by encouraging LGBTQ community members, and especially transgender persons, to apply for law enforcement positions, by hiring and empowering them, and ensuring their visibility and comfort within the agencies.

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[3] For more this topic, visit: www.payscale.com/compensation-today/2018/06/lgbtq-equality and https://www.hrc.org/resources/a-workplace-divided-understanding-the-climate-for-lgbtq-workers-nationwide

Recommendation 3: Victim Engagement in Lieu of Subpoena

The SAO should pursue alternatives to its current subpoena policies with respect to LGBTQ victims. Instead, it should use the Miami-Dade Hate Crime Collaborative to engage with victims and encourage their cooperation (see Recommendation 2). As soon as an incident becomes known to law enforcement, the police and prosecutors should develop a strategy for victim engagement which takes into account victims' level of outness, family dynamics, social network, and prior experience with the criminal justice system. The SAO should consider conducting victim interviews and depositions outside the SAO office which will increase the chances of victim cooperation.

Rationale for Recommendation 3

Case file data show that victim subpoenas have not been successful in terms of securing victim cooperation when processing criminal cases involving anti-LGBTQ hate crimes. Victims are often subpoenaed to answer questions at a deposition or to supply documents needed for investigation. Such subpoenas threaten victims with a fine or a jail sentence if they fail to appear for a criminal proceeding. The current practice is damaging the relationship with the LGBTQ community by deterring victims to report new crimes.

Recommendation 4: Training of Criminal Justice Practitioners

Conduct training of:

a) *Police patrol officers* to improve the techniques of victim engagement and hate crime detection. Effective training should be offered annually, and it should include the LGBTQ community members who can speak to the issues from their own experiences with violence and interactions with the criminal justice system, and/or advocacy groups that specialize in serving LGBTQ victims of crimes and discrimination. The use of case studies to provide visual demonstrations of positive and negative interactions with victims and community members is highly recommended. The training should focus on practical skill development, including how to observe, notice and document any evidence of possible prejudice, which will later assist detectives, prosecutors, and victim service providers with their respective efforts. The issues of misgendering and interviewing transgender victims/witnesses should be paid particular attention. The training should also include the presentation of research findings about the nature and prevalence of reported and unreported anti-LGBTQ hate crimes, as well as about the barriers to crime reporting. Another important goal of the training is to debunk the myths and stereotypes about the LGBTQ community and hate offending. For example, it should be made clear that asking the victim about sexual orientation or gender identity (using the wording described in Recommendation 1) is not an offensive question, although many practitioners continue to think it is. Also, training should include a section about the consequences of victimization, and it should clarify that verbal assaults and emotional harm can be as detrimental to victims as physical violence, although practitioners generally think that physical harm is an essential element of a crime. Furthermore, guessing one's sexual orientation or gender is not always possible, and the training should make it clear that gender stereotypes can be misleading and often result in law enforcement missing potential evidence of prejudice. Finally, the training should also include a section about identifying and handling homophobic and transphobic attacks and abuses by family and community members.[4]

b) *Police detectives* on the curriculum outlined for patrol officers, as described above. Additionally, detectives should be trained in evidence gathering, especially as it pertains to searching for relevant social media posts, interviewing witnesses, and utilizing community networks for identifying hate crimes. Special attention should be paid to properly recording and documenting evidence to ensure that prosecutors pick up on the information pertaining to bias motive.

c) *Case screeners* at the State Attorney's Office (SAO) regarding how to examine case complaint/arrest affidavits and supporting materials, inquire about possible evidence of hate motivation, and seek assistance from the hate crime prosecution unit. Case screeners should ask the police officer about possible signs of prejudice, even if there was no indication in the arrest affidavit that the crime was motivated by homophobia or transphobia. This question should be asked for all persons and property offenses screened. Another component of the training should aim at enhancing case screeners' ability to flag cases where the evidence of prejudice is not readily apparent, which is likely the vast majority of such cases.

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[4] Data showed that less than a half of hate crimes are perpetrated by strangers, although nearly all cases processed in Miami-Dade involve an offender who is a stranger. Practitioners commonly associated hate crimes with strangers.

d) *Prosecutors* on how to:

    i. detect the signs of prejudice, especially when the evidence is not readily apparent;
    ii. analyze the content of social media and traditional media in search of the evidence of prejudice;
    iii. build trust with victims to encourage their coming forward with personal information;
    iv. ask victims about their LGBTQ status and use correct pronouns;
    v. identify possible signs of intimidation or retaliation by a perpetrator and afford protection where feasible;
    vi. direct investigative efforts to ensure sufficient and timely evidence gathering;
    vii. negotiate pleas in cases with an enhancer;
    viii build a provable case with an element of prejudice;
    ix. overcome jury selection and instruction challenges; and
    x. present evidence at trial to maximize conviction with an enhancer.

The training should emphasize practical skills development and incorporate community prosecution principles. For example, trainees should be encouraged to identify potential community and government partners (e.g., department of health, homeless shelters and services, and educational institutions), and to develop a workplan for hate crime detection, victim engagement, and crime prevention. The SAO should continue its existing training on applicable laws, although this training should utilize real case scenarios and address how to overcome specific challenges of hate crime case identification and processing. Finally, while handling hate crimes should be a sole function of hate crime prosecutors, all prosecutors should receive some form of this training. The process of when and how a case should be transferred to the hate prosecution unit should be clearly explained during the training.

Rationale for Recommendation 4

Data show that some practitioners have limited understanding about crime reporting challenges faced by LGBTQ victims. As such, the burden of coming forward with evidence of prejudice is commonly placed on the victim. Police officers are uncomfortable with inquiring about victims' sexual orientation or gender identity, which further reduces the chances of hate crime detection. The capacity to identify hate crimes and engage with victims is vastly different across Miami-Dade's police departments, with the Miami Beach Police Department being the most focused on these issues. There is also a lack of consistency in screening for hate crimes at the SAO. Cases that go through the Felony Screening Unit are especially unlikely to be flagged as hate crimes because of the assembly-line screening process. Training on how to engage with LGBTQ victims, how to screen cases, and how to gather evidence, including from social media, will improve the system's ability to detect and effectively prosecute hate crimes.

Recommendation 5: Changes in the Hate Crime Statute

Work with advocacy groups and LGBTQ community members to educate and put pressure on state legislators to amend Florida's Hate Crime Statute (Article 775.085 - *Evidencing Prejudice While Committing Offense*) in two respects:

a) The statute currently excludes "gender identity" from the list of protected classes making it difficult for prosecutors to enhance penalties if the commission of a felony or misdemeanor evidences prejudice against transgender individuals.[5]

b) The wording of the statute reads as "the commission of such felony or misdemeanor evidences prejudice", which does not make it explicit that the statute covers crimes which in any way constitute an expression of hatred. Adding "in full or in part" within the statute language would make it clearer that crimes do not need to be fully motivated by hatred.

Rationale for Recommendation 5

Research suggests that transgender persons, and particularly transgender women of color, are disproportionately affected by discrimination and hate violence. Adding "gender identity" to Florida's Hate Crime statute will offer the transgender community the special protection it sorely needs. This will also make Florida's statute consistent with the 2009 Federal hate crimes law which includes "gender identity" among other protected categories. Furthermore, the current wording of the Florida statute does not make it explicit that offenses motivated "in part" by prejudice should be also reclassified as hate crimes. Its current wording creates obstacles for jury instructions and may even discourage some prosecutors from bringing cases with an enhancement to trial. The proposed changes will boost legal toolkits available to prosecutors to tackle hate crimes.

Recommendation 6: Data and Research

The Miami-Dade Hate Crimes Collaborative (MDHCC; see Recommendation 2) should collect the following data on a monthly, quarterly, and yearly basis:

1. Emergency dispatch calls flagged as a possible hate crime, by (a) hate crime category (race, color, ancestry, ethnicity, religion, sexual orientation, *gender identity* (see Recommendation 5), national origin, mental or physical disability, or advanced age of the victim), and (b) location (census block or neighborhood);

2. Emergency calls made by LGBTQ victims, by (a) gay, (b) lesbian, (c) bisexual, (d) transgender, and (e) gender non-conforming/queer victims;

3. Hate crimes reported to the police, by: (a) offense type, (b) hate crime category, (c) type of relationship between victim and offender, and (d) police department;

4. Hate crime cases initiated by victim complaint, by: (a) offense type, (b) hate crime category, and (c) police department;

5. Hate crime cases initiated based on the information provided through social media, by: (a) offense type, (b) hate crime category, and (c) social media outlet;

6. Hate crime cases initiated based on the information provided through the traditional media, by: (a) offense type, (b) hate crime category, and (c) traditional media outlet;

7. Hate crime cases initiated based on the information from investigative efforts, by: (a) offense type, and (b) hate crime category;

8. Hate crime cases referred to the SAO, by: (a) offense type, (b) hate crime category, and (c) police department;

9. Hate crime cases filed by the SAO, by: (a) offense type, (b) hate crime category, and (c) police department;

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[5] This list currently includes race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim.

10. Cases enhanced to hate crimes, by: (a) offense type, and (b) hate crime category;

11. Hate crimes in which the enhancement was considered, by: (a) offense type, and (b) hate crime category;

12. Cases in which the enhancement was dropped, by: (a) offense type, and (b) hate crime category;

13. Cases with an enhancer dismissed, by: (a) offense type, and (b) hate crime category;

14. Cases with an enhancer dismissed, by: (a) dismissal reason (e.g., lack of victim cooperation), (b) offense type, and (c) hate crime category;

15. Cases with an enhancer diverted, by: (a) offense type, and (b) hate crime category;

16. Cases with an enhancer disposed of through guilty pleas, by: (a) offense type, and (b) hate crime category;

17. Cases with an enhancer brought to trial, by: (a) offense type, and (b) hate crime category;

18. Cases resulting in trial conviction with an enhancer, by: (a) offense type, and (b) hate crime category;

19. Cases with an enhancer resulting in trial conviction, by: (a) offense type, and (b) hate crime category;

20. Convictions in which a custodial sentence was imposed, by: (a) sentence length, (b) offense type, and (c) hate crime category;

21. Potential hate crime cases in which prosecutors were unable to secure victim cooperation, by: (a) offense type, and (b) hate crime category.

The MDHCC should analyze these data to examine trends, improve hate crime detection and case processing practices, educate criminal justice practitioners and community members, and develop strategies for effective hate crime prevention and prosecution.

Rationale for Recommendation 6

Prosecutors and the police should have a better mechanism for recording data on hate crimes to enable an examination of crime trends and criminal justice decision making. This research showed that the current data collection capacity in the SAO and MDPD is lacking. It is nearly impossible to track hate crimes as the cases are processed through the criminal justice system. In compliance with the Hate Crime Reporting Act (877.19), Florida has committed to collecting and disseminating non-identifiable data on hate crimes based on the monthly statistics provided by Florida's law enforcement agencies, the resulting data do not show what happens to these crimes following a victim report or arrest.[6] Furthermore, given that an overwhelming majority of hate crimes are not reported, or if reported, are not flagged as hate crimes, the current law enforcement data can lead to misleading conclusions about hate crime prevalence.[7]

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[6] "All law enforcement agencies shall report monthly to the Florida Department of Law Enforcement concerning such offenses in such form and in such manner as prescribed by rules adopted by the department. Such information shall be compiled by the department and disseminated upon request to any local law enforcement agency, unit of local government, or state agency." (877.19 (2) of the Florida Statutes)

[7] As Clawson articulates: "A core responsibility of government, and specifically law enforcement agencies, is to protect the civil rights of its citizens and to ensure civil relations between various majority and/or minority groups. Identifying and monitoring hate crime activity can be an important component to government fulfilling these responsibilities. … The factors that one law enforcement officer may consider in determining whether a hate crime has occurred, another law enforcement officer may not think to consider such factors. Thus, the information or data that results from collecting the reported information tends to be disorderly, unmanageable, and nearly unusable. … Law enforcement personnel and agencies simply lack a process or mechanism by which to compile meaningful, useful data that may be reported and that can be used to develop a standard against which to measure and that can be used to track trends." (Clawson, J. J. (2014). Hate crime diagnostic and intervention tool for emergency dispatch. U.S. Patent No. 8,670,526. Washington, DC: U.S. Patent and Trademark Office. See para 3-5).

Engage in an effective communication and awareness-building campaign by:

a) Using traditional and social media platforms to communicate what specific steps your agency will be taking to address the problem of underreporting and under-detection of hate crimes (i.e., some crimes might be reported but not flagged as hate crimes). Specific messages should inform the general public and law enforcement that hate crimes are not always committed by strangers, and that verbal abuse and psychological pressure often experienced by LGBTQ victims can, in fact, constitute a criminal offense.

b) Implementing *"Tell Your Friend" and "Encourage Your Friend to Report Crime"* campaigns. The first campaign will reassure victims to speak out and tell their social network about their victimization experience, and the second campaign will inform the LGBTQ community that friends' encouragement to report a crime is by far the most powerful predictor of police notifications.

c) Publishing statistics on hate crime reporting and case processing outcomes (see Recommendation 6) on an annual basis. Such publications should have a clear disclaimer that these data capture only reported hate crimes, which does not represent all victimizations, many of which go unreported.

d) Giving detection, investigation, and prosecution of hate crimes the highest priority. This means rapid responses to crime reports and swift provision of victim services. Agency websites should have a dedicated tab on the main page or under the "services" tab which provides information about the hotline, what to expect after reporting a crime, and how to access services.

e) Forming formal partnerships with the local media and news outlets to help inform the community about hate crimes and to elicit tips from the media about possible hate crimes.

f) Empowering staff, rewarding good performance, and sending a consistent message across all levels of the office/agency about hate crime detection, investigation, and prosecution being a top priority.

g) Displaying LGBTQ-positive symbols such as rainbow decals on police cars and on the front doors of criminal justice agencies, and by encouraging police offices to wear flag pins or a pride patch on their uniform.

Rationale for Recommendation 7

An external and internal communications strategy can educate the general public, the LGBTQ communities, and practitioners about the prevalence, nature, and underreporting of hate crimes. The results of this study show that friends' encouragement to report a crime increases the probability of police notifications at least tenfold. As such, a dedicated communications strategy will improve crime reporting. Data also show significant gaps in the practitioners' understanding of the problem. To start with, the criminal justice system is fully dependent on victims' willingness to come forward, which happens rarely, resulting in the vast majority of crimes going undetected by the system. Understanding why victims may not be reporting crimes can lead to the development of more effective community and victim engagement practices. Practitioners also think that "real hate crimes" are perpetrated by strangers and such crimes should always manifest physical harm. This is contrary to research findings, which suggest that less than half of offenses are perpetrated by strangers and that psychological abuse can be as harmful to victims as physical assault. Through an internal communications strategy, the SAO and police departments can inform their staff about hate crime prevalence, reporting challenges, and consequences of victimization. Communications through social media and agency websites can be a powerful tool for awareness building. Currently, the Miami Beach Police Department website provides information about hate crimes being the agency's top priority; it also offers practical information about how to report such crime and where to seek help. Similar content should be developed on online platforms for all criminal justice agencies. Finally, encouraging the display of LGBTQ-affirming symbols will inform the victim about the office being a safe zone.

[i] CNN Editorial Research. (June 17, 2020). LGBTQ Rights Milestones Fast Facts. Available from https://www.cnn.com/2015/06/19/us/lgbt-rights-milestones-fast-facts/index.html

[ii] Gallup. (2020). Gay and Lesbian rights. Retrieved from: https://news.gallup.com/poll/1651/gay-lesbian-rights.aspx

[iii] FBI. (2017). 2017 Hate Crime Statistics. Retrieved from: https://ucr.fbi.gov/hate-crime/2017/hate-crime

[iv] Park, H., & Mykhyalyshyn, I. (2016). L.G.B.T. people are more likely to be targets of hate crimes than any other minority groups. The New York Times, retrieved from https://www.nytimes.com/interactive/2016/06/16/us/hate-crimes-against-lgbt.html

[v] Briones-Robinson, R., Powers, R. A., & Socia, K. M. (2016). Sexual orientation bias crimes: Examination of reporting, perception of police bias, and differential police response. Criminal Justice and Behavior, 43(12), 1688-1709.

[vi] James, S., Herman, J., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. A. (2016). The report of the 2015 US transgender survey. Retrieved from: https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf

[vii] Waters, E., Jindasurat, C., & Wolfe, C. (2016). Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-affected hate violence in 2015. National Coalition of Anti-Violence Programs. Retrieved from http://avp.org/storage/documents/ncavp_hvreport_2015_final.pdf

[viii] "Latine" is a gender-neutral term, preferred by the LGBTQ community.

[ix] McPhail, B., & Jenness, V. (2005). To Charge or not to Charge? - That is the question: The pursuit of Strategic Advantage in Prosecutional Decision-Making Surrounding Hate Crime. Journal of Hate Studies, 4(1), 89-119; King, R. D. (2008). Conservatism, institutionalism, and the social control of intergroup conflict. American Journal of Sociology, 113(5), 1351-1393.

For more information

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For more information on this study, please review the technical report – Anti-LGBTQ hate crimes in Miami-Dade County: Improving awareness, service delivery, reporting, investigation, and prosecution. The report is available from https://caj.fiu.edu/publications/reports/

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