

Hate Crimes Law Public Forum
10 a.m. Friday, June 14, 2013
Senate Hearing Room
250 Broadway, 19th Floor
New York City

Introduction

Good morning, my name is Adam Dean and I am Chief of the New York State Crime Reporting Program at the New York State Division of Criminal Justice Services (DCJS). Thank you for inviting me to be here today; my remarks will cover three areas:

- DCJS' role with regard to hate crime data collection;
- Preliminary 2012 data on hate crime incidents reported in New York State; and
- Steps taken to improve the reporting and response to hate crimes.

What We Collect/Data Sources

DCJS collects reported hate crime incident data from local police agencies as part of the FBI's Uniform Crime Reporting program. Incident level data is collected through this program and includes number of victims, type of victim, number of offenders, type of bias motivation, type of crime and crime location.

In addition to this data, DCJS collects demographic data on both victims and offenders. The agency also separately maintains information on arrests charged as a hate crime, and the dispositions of those arrests. This information is part of the criminal history repository maintained by the agency.

2012 Preliminary Data

DCJS will publish the 2012 annual Hate Crimes report this summer. Preliminary 2012 data shows 720 hate crime incidents were reported in New York State last year, compared with 554 in 2011. This year's increase is driven by an increase in anti-Jewish property crimes being reported by law enforcement. In the past five years, the number of total reported hate crime incidents has fluctuated between 554 and 772.

Although the 2012 report is not yet complete, some preliminary information can be shared.

- There were 405 anti-religious hate crimes reported in 2012; this included 332 anti-Jewish bias crimes. More than three-quarters (77 percent) of the anti-religious crimes were property crimes such as the defacement of property.
- A total of 215 anti-race hate crimes were reported in 2012. This included 135 anti-black bias crimes and 25 anti-Hispanic crimes.

- In 2012, there were 93 anti-sexual orientation hate crimes reported, with 69 anti-gay male bias crimes reported.

Efforts To Improve Hate Crime Reporting and Response

As the state agency with the responsibility to train law enforcement, DCJS has worked in partnership with police departments and sheriff's offices across the state to improve the identification and reporting of hate crimes.

To report a crime or charge an arrest, police agencies must document the elements of a crime. Hate crime is somewhat unique in that it is classified based on what motivated the crime, in addition to the elements of the crime. If the investigating officer does not identify a bias motivation, or does not reflect a bias motivation on the official incident report, the incident will not be reported to DCJS as a hate crime.

DCJS conducted a series of in-service trainings in the past several years, which included topics ranging from the history of hate crimes and the state's law to investigator responsibilities and arrest processing. More than 500 officers from 182 departments across the state completed the trainings.

The state-required basic officer training and supervisory officer training courses were updated in 2011 to include a hate crime component that focuses on identifying and responding to hate crime incidents. Since its inception in both curriculums, nearly 2,800 officers from 388 departments have completed the training.

New York State also implemented a hate crime model policy in 2009 that agencies can adopt as a best practice for responding to, and investigating, these incidents.

Finally, DCJS administers a voluntary law enforcement accreditation program, which is designed to help police agencies evaluate and improve their overall performance. Agencies that participate in the program must meet 133 standards in three categories: administration, training and operations.

As of January 2012, agencies seeking accreditation – and those seeking to be re-accredited – are required to have a written policy outlining their agency's response to hate crimes. There are 143 accredited agencies that must comply with this requirement; 50 percent of all law enforcement officers outside of New York City work for an accredited agency.

In addition to focusing on police response, the process for reporting hate crimes to DCJS was also improved in 2009. Reporting forms were modified to provide more consistent data and new data quality protocols were established. DCJS crime reporting staff members now review every hate crime incident report upon receipt. Forms are reviewed for accuracy, and police agencies are contacted to confirm or correct any information that is unclear or incomplete.

DCJS crime reporting staff members also follow up with all reporting agencies in an effort to ensure that hate crime reports are submitted. When agencies have no hate crimes to report, they are asked to complete a report form that indicates no hate crimes were reported during the specific reporting period. This ensures that agencies don't neglect to submit hate crime reports, and reduces the likelihood of underreporting.

Finally, to further reinforce proper reporting of hate crime incidents, DCJS offers a half-hour training video for law enforcement available on the DCJS website. This informational training video reviews the intent of New York State's Hate Crimes law, provides guidance in identifying a bias crime and walks through the reporting of a hate crime incident to DCJS.

These efforts have resulted in more consistent identification and reporting of hate crime incidents in New York State.

Thank you for the opportunity to speak with you today.

Testimony of Executive Assistant District Attorney

Charles M. Guria

Chief, of Civil Rights, Rackets Division

Office of Charles J. Hynes

Kings County District Attorney

June 14, 2013

Oral Testimony before the New York State Senate Committee on Investigations
and Government Operations

Re: Assessment of New York State's Hate Crime Law

June 14, 2013

Good morning, State Senator Brad Hoylman and members of the State Senate and Staff. On behalf of Kings County District Attorney, Charles J. Hynes, I would like to thank the State Senate Committee on Investigations and Government Operations for inviting us to present our views on combating hate crimes.

My name is Charles M. Guria and I am an Executive Assistant District Attorney and the Chief of the Civil Rights Bureau of the Kings County District Attorney's Office. The Civil Rights Bureau has the primary responsibility within the District Attorney's Office for investigating and prosecuting hate crimes occurring in the borough of Brooklyn.

The Civil Rights Bureau is part of District Attorney Charles J. Hynes' Rackets Division which consists of the special prosecutions units of the District Attorney's Office. The Kings County District Attorney's Civil Rights Bureau is currently headed by myself, a chief, with 23 years of prosecutorial experience and is staffed by four experienced assistant district attorneys. Prosecutors and personnel from the Rackets Division and other areas of the Kings County District Attorney's Office augment the staff of the Civil Rights Bureau as needed on a case by case basis.

District Attorney Charles J. Hynes was a pioneer in hate crimes prosecution. As a special prosecutor appointed by then Governor Mario Cuomo, Hynes led the successful investigation and prosecution of the racial assault in the original Howard Beach case ²⁷ twenty years ago. His investigation and prosecution has been a model for other hate crimes prosecutors to follow. Once elected to District Attorney, Joe Hynes created the first Civil Rights Bureau in a New York City District Attorney's Office more than 22 years ago.

The Kings County District Attorneys' Civil Rights Bureau prosecuted bias crimes approximately ten years before New York State had a hate crimes statute on the books. During that time, DA Hynes prosecuted bias cases, which included the 1989 shooting death of a African-American teenager in Bensonhurst and the 1997 stabbing death of a Hasidic Jewish man in Crown Heights. During this period, prior to the year 2000, prosecutors and law-makers endeavored to craft hate crimes legislation.

The Hate Crimes Act of 2000 (Chapter 107 of the Laws of 2000) was signed into law on July 20, 2000 and took effect October 8, 2000. This law added a new Article 485 to the Penal Law entitled "Hate Crimes" and provided that a person commits a hate crimes when he or she commits a "specified offense" (as defined by the law) and either intentionally selects a person and/or intentionally commits an act against a person in whole or in substantial part because they belong to or are perceived to belong to a particular race, color, natural origin, ancestry, sender, religion, religious practice are disability or sexual orientation, whether that belief or perception is correct.

When a person is convicted on a hate crime, pursuant to Article 485, the law provides for the level of the hate crimes to be deemed one category higher than the specified offense.

The legislative history of the law is clear: penalty enhancements are appropriate because hate crimes affect the entire community in profound ways: “crimes motivated by hatred towards particular groups not only harm individual victims, but send a powerful message of intolerance and discrimination to all members of the group to which the victim belong. Hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic process.”

Hate crimes laws recognize that we as a society value tolerance over intolerance. Yet the challenge for any hate crimes legislation is to protect the rights of those who may be victimized without trampling on the civil liberties of everyone else. Anyone has the right to express their likes, dislikes and opinions, no matter how offensive they may be to other. The hate crimes laws must not punish ideas or thoughts, but do punish hate-based actions, actions that should not be tolerated in any society. It is an important tool for law enforcement in the fight against hate crimes.

Since Penal Law 485 was passed in 2000, the New York Police Department Hate Crimes Task Force has investigated more than 2,000 crimes and determined that 95% of them were motivated by hate. This includes 20% that involved physical attacks.

Brooklyn is one of the most culturally diverse places in the world. In an extremely diverse city it stands as the most diverse borough. It is also the most populous with 2.5 million residents. Between the passing of the Hate Crimes Act in 2000 and the end of 2010 Brooklyn has led the state in Hate Crime convictions. The New York State Division

of Criminal Justice Services noted in 2011 that there were 106 hate crimes. While in many other parts of the state hate crime reported incidents do not result in arrests one out of every four hate crime incidents results in an arrest and prosecution. However, it should be noted that per capita basis Nassau County reports more hate crimes (32 cases over the past five years per 100,000 residents). Additionally, questions on how hate crimes are reported may affect the numbers.

Hate crimes may be more aggressively handled in Kings County but it also may be that there is a more efficient way of reporting or recording hate crimes incidents. According to the United States Justice Department the states of Mississippi and Alabama claimed no reported hate crimes for the entire year of 2004. I do not think there is anyone out there that seriously believes that those states did not have a single hate crime during that year. It may be a question of reporting procedures or a lack of confidence in how those matters will be handled. A clear message is necessary that we want hate crimes to be reported and that we will effectively investigate and prosecute those that are supported by the evidence.

There are some small indicators that successful prosecutions have sent a message that bias incidents will not be tolerated. The New York City Gay and Lesbian Anti-Violence Project noted a significant decline in violence against members of Brooklyn's Lesbian, Gay, Bisexual and Transgender community in 2006. There was a 13% drop in violence when compared to statistics collected in 2005. There were 566 violent acts against the LGBT Community in the New York area in 2005. According to the project,

16 percent occurred in Brooklyn. This is compared to Manhattan, where 50% of the attacks against the LGBT Community occurred during the same period.

The study shows that the number of victims fell by 14% - from 804 to 689- while the number of offenders only declined by 7%. The data collected by the Anti-Violence Project shows a decline in both the number of Hispanic and African-American victims. The number of reports fell 22 and 25% respectively, while the number of white victims fell only 2%. During a similar period, the number of Arab, Middle Eastern, and Asian victims rose, according to the study.

The year 2003 marked the highest increase in anti-LGBT violence with statistics reflecting a 26% bump from prior years. Experts say that while assaults are down over the past two years they are still 10% higher than ten years ago. Some note that 2002 was the year that a heightened atmosphere of violence for the LGBT community began in earnest.

Another reason that could account for the increase is that more members of the LGBT community are coming forward to report the violence. Members of LGBT community have long suffered from discrimination and often did not report bias attacks. Another group that we find under-reports incidents of hate crimes is members of the Muslim community. We have had a number anti-Muslim attacks on both Muslims and individuals perceived to be Muslims.

We need continued community support. The leaders of all communities have and will continue to play an important role in bringing these matters to our attention. The perpetrators of hate crimes against any group or community act in hate and ignorance and they rely on fear. Fear instilled in a victim or a witness not to come forward. Fear of

being judged for their lifestyle or for their religion. We are not here to judge our victims. We are here to help them. Yet, we cannot help a victim that we do not get to meet. We cannot prosecute an incident that we are not told about. Your help may be instrumental in helping victims and witnesses feel comfortable enough to come forward so that justice may be done.

The Kings County District Attorney's Office has long worked with members of the community and has made some inroads in getting victims of hate crimes to come forward. The Kings County District Attorney's Office has more victim counselors than any other district attorney's office in the country. These counselors work hand in hand with the Civil Rights prosecutors to create a supportive environment for the victims to go forward during the prosecution of these serious cases.

However, the most disturbing statistic related to hate crimes is regarding age. The average offender in a bias incident is between 13 and 22 years of age. In the past 15 years, more than 700 hate crimes were committed in New York City by children between the ages of 10 and 15. Many hate crimes offenders are not old enough to qualify for a New York State Driver's License, yet they may be involved in a hate crime. This is compared to about 300 hate crimes incidents committed by individual from the age 20 to 32.

Also, juveniles are more likely to become the victim of a hate crime. 81% of the juvenile victims were between 12 and 17. Males made up 69% of the victims of Hate Crimes.

In hate crimes that do not involve acts of violence we will attempt to have the defendant engage in community service, tolerance training, or some other program

designed to divert them from the criminal justice system. However, in cases of extreme violence the only appropriate course is criminal prosecution.

Cases

I cannot discuss pending cases. However, I will cite some of the more significant past prosecutions undertaken by the Kings County District Attorney's Office.

-One was the prosecution of Steven Pomie, for his 2005 attack on Devon Prince, outside the victim's home on 94th Street and Kings Highway. Prince was taking out his garbage outside his home on a June night, 2005 when several men, including Pomie, rolled up in a car and set upon their victim. The men hurled anti-gay epithet at Prince and punched and kicked him repeatedly. Pomie was identified as a key player in the vicious attack. He refused to name the other assailants. He stood trial and was convicted of Assault in the First Degree as a Hate Crime. He received the maximum 25 year sentence under the law.

-In June of 2006 four African-American teenagers got lost and rode their bikes into Gerritson Beach and got attacked by a group of White males. Eight males were arrested and seven were convicted in the assault. The ring leader, Joseph Jirovec received 1-1/2 to 4-1/2 years in state prison.

-Laquan Holloway made anti-LGBT slurs and shot his victim outside of a Brooklyn Club in 2007. The two were strangers and the defendant shot his victim for no other reason than he was a member of the LGBT community. The victim survived and Holloway was prosecuted for Attempted Murder as a Hate Crime. Holloway was convicted and received 15 years in state prison for his actions.

-Hate came to the Q Train in December of 2007 when a group of Jewish victims were attacked as they stated “Chanukah is when the Jews killed Jesus”. In addition to the Jewish victims a Bangladeshi Muslim was assaulted when he tried to stop the assault. The group of attackers included two women who witnesses indicate were the first to start the physical assault. Seven of the ten arrested were convicted in the hate crime assault.

-In 2007 Iwaylo Ivanov terrorized his Brooklyn Heights neighborhood by spray painted swastikas on cars, sidewalks, and buildings. He was then captured in 2008 with numerous pipe bombs and a handgun before he could continue his crime spree. Ivanov 18 years in state prison.

-Drew Allard, a law school graduate who menaced Muslims with a knife on the anniversary eve of 9/11 in the Fall of 2007 was tried and convicted of Menacing as a Hate Crime and is currently barred from practicing law.

Financial Crimes

Attorney Guy Guliano selected and preyed upon the elderly and fleeced a number of them for a total of more than 2.5 million dollars. In one of the three indictments he was charged with and plead guilty to Grand Larceny as a Hate Crime, in that he specifically targeted the elderly as part of his scheme to steal. Guliano plead guilty to all charges and was sentenced to 4 to 12 years in state prison.

Homicides

In two cases hate led to homicide.

In October of 2006 Michael Sandy was lured to a remote area of Plumb Beach by four defendants. He had been targeted because he was a member of the LGBT community and they lured him there to rob him. Sandy died trying to escape the attempted robbery. The four were prosecuted, all four were convicted and three were sentenced to ranges from 7 to 21 years in prison.

In the winter of 2008 Keith Pheonix and a co-defendant, Hakim Scott, attacked two brothers who they mistook as gay. They made anti-gay and anti-Hispanic slurs as they attacked the two brothers with a bottle and a baseball bat. One brother was able to get away from his attackers but the other Jose Sucuzhany was rendered helpless after he was struck by the bottle and then witnesses saw Phoenix beat his victim to death with a baseball bat. In a three month investigation which included the first wiretap used in a New York State Hate Crimes investigation resulted in the apprehension of the two defendants. Scott was convicted after trial of Manslaughter and received 37 years in state prison. Pheonix was convicted after trial of Murder as a Hate crime and is doing 37 years to life.

Conclusion

Prosecutions like the ones I have cited send a message that bias attacks will not be tolerated by the Chief Law Enforcement Officer of Kings County. Yet incidents like these still occur. Police and prosecutor will have to remain proactive in the area of dealing with hate crimes. A major component of the Civil Rights Bureau's response to hate crimes is community involvement and understanding. Myself and many of my staff appear regularly before community organization to speak on the subject of hate crimes. I

lecture regularly along with the NYPD Hate Crimes Task Force to community groups on this important subject.

These efforts are necessary due to the extensive impact of a bias crime on the public. Hate crimes go far beyond the criminal act itself. Becoming the victim of any crime is traumatic. However, if the act was committed because of who you are or what you believe in, the violation is even more senseless. When a hate crime is committed, the immediate victim is not just affected, but so is anyone who belongs to or identifies with the group that was targeted.

Yet if these crimes have such far reaching consequences are traditional concepts of prosecution and punishment enough. The answer is “no”. You can prosecute one who acts on hate, but one cannot remove hate simply through punishment alone. Hate is taught and education about bias crimes and their consequences must be a part of the war on hate. If 80% of the perpetrator of Hate Crimes are between the ages of 13 and 22 then we address this subject in our schools otherwise they will only be heard in our courtrooms.

District Attorney Charles J. Hynes has also pioneered programs like project Legal Lives where the young people of Brooklyn learn anti-drug and anti-bias messages from D.A.’s staff in classrooms all over the county. This successful program which has also been running for more than 20 years is now being replicated in other jurisdictions. Other programs that focus on providing an anti-hate message to our children must be developed is part of a multi-disciplined response to hate.

As prosecutors, we must include alternate sentencing programs designed to re-educate those youth who can be directed away from acting on their bias-based impulses.

These programs would not be for violent cases like Steven Pomie or Keith Pheonix but they may be useful with non-violent youthful offender with offenses mainly related to property damage. In Brooklyn we've had some success utilizing program like the Holucast Park Museum to supervise special community service sentences of young people convicted of hate crimes. The Anti-Defamation League has worked on similar projects to assist prosecutions bring youth back to the mainstream. While these programs may not be appropriate in every case it is an additional tool for prosecutions and courts to your youth involved in hate crimes.

The Local Law Enforcement Hate Crimes Prevention Act of 2007 (H.R. 1592) and the Matthew Shepard Local Law Enforcement Hate Crimes Prevention Act of 2007 (S.1105) would authorize the Attorney General of the United States to award grants to assist state and local programs designed to combat Hate Crimes committed by juveniles. These initiatives would make it possible to develop and fund youth programs to combat hate.

I hope the information that I have provided has been helpful to you in your important work for the State of New York. It is only through education and understanding, that of this subject that we will increase our ability to deal with the challenge in this important area.

COMMUNITY OFFICE
37-32 75TH STREET, 1ST FLOOR
JACKSON HEIGHTS, NY 11372
TEL: (718) 803-6373
FAX: (718) 803-9832

CITY HALL OFFICE
250 BROADWAY, RM 1821
NEW YORK, NY 10007
TEL: (212) 788-7066
EMAIL: dromm@council.nyc.gov



THE COUNCIL OF
THE CITY OF NEW YORK
DANIEL DROMM
COUNCIL MEMBER, 25TH DISTRICT, QUEENS

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TESTIMONY OF NEW YORK CITY COUNCIL MEMBER DANIEL DROMM

I am the New York City Council Member representing the 25th District, which includes Jackson Heights, Elmhurst, Corona, LeFrak City, Woodside, and Rego Park. The particularly heinous anti-gay murder of Julio Rivera in 1990 in Jackson Heights by a group of Neo-Nazi skinheads "hunting" (in their words) for either a "homeless person" or "homosexual" to kill spurred my start in activism, including my founding of the Queens Lesbian, Gay, Bisexual, and Transgender (LGBT) Pride Committee, which sponsors the annual Queens Pride Parade. My involvement in LGBT activism deepened when, as a gay teacher in District 24, I had to confront a virulently homophobic school board in the controversy over the *Children of the Rainbow* tolerance curriculum.

While this lesbian, gay, bisexual, and transgender Pride month should be a time of celebration, we are also reminded that much work remains to be done. The increase in LGBT visibility, which we have worked so hard to realize, also means that we are exposed to individuals who are all too ready to do us harm.

Most of these crimes appear to have been committed by young men who were not born with an all-consuming hatred for LGBT people. Rather, they *learned* to hate. They took cues from family members ostracizing LGBT relatives. They followed certain media outlets that portray LGBT characters as objects of derision. They listened to their friends tossing around anti-LGBT hate speech to prove their purported manliness. Most

disturbing, they listened as preachers invoked the name of the Almighty to justify dehumanizing LGBT lives.

When religious leaders, including from the Catholic Church, use terms like “disordered” and “intrinsic moral evil” to describe lesbian, gay, bisexual, and transgender people, they contribute to the hysteria around issues related to the LGBT community. When the Bronx Household of Faith, which worships in a public school, says on its website that there are two “evil practices” that must be eliminated – abortion and homosexuality – and says that being gay is “abhorrent to God,” this church contributes to an atmosphere of intolerance that wrongly allows young people to think that it is okay to attack LGBT people. These religious leaders need to immediately stop using such hate language to describe LGBT people and should practice a more Christian and pastoral approach to the issue of homosexuality.

Political leaders have an obligation to condemn those religious leaders who insist they have a right to continue to describe LGBT people in such ways. If we do not address the root causes of hate crimes, we can pass all the laws we want, but we will not make a difference in lowering the number of hate crimes against LGBT people. In all the years I have been engaged in the LGBT movement, I have never seen a Catholic priest attend a rally for any victim of an anti-LGBT hate crime, nor have I ever heard them speak out against such crimes. In fact, the Catholic Church continues to spend millions of dollars on lobbyists to defeat hate crimes legislation, LGBT civil rights legislation, school safety measures, and marriage equality. This sends a morally incorrect message to our youth.

As a twenty-five-year veteran New York City public school teacher, I believe the solution must start with strong educational initiatives. We must send an unequivocal message to our students, from a young age, that discrimination and violence against LGBT people is completely unacceptable. Anti-bullying and harassment programs in schools are important, but they must be implemented in every school in New York State.

It is critical that such programs explicitly and repeatedly use the words “lesbian,” “gay,” “bisexual,” and “transgender” in a positive context. Only through the constant and consistent use of these terms can a safe and affirming environment ever be firmly established.

When hate crimes do occur, the criminal justice system must intervene in a way that recognizes the distinctive issues involved with the prosecution of such crimes. Violent crime of all types tears at the fabric of communities; it leaves individuals traumatized, family ties damaged, and communities less safe. There is an additional layer of culpability in hate crimes since perpetrators target their victims to send a chilling message of fear to a historically oppressed group of people. To help ensure the system functions properly, especially when anti-LGBT crimes occur, Assemblymember Francisco Moya and I have been working for the passage of the Michael Sandy Act (A.7549). Assemblymember Moya has a history with these issues as one of the leaders advocating for justice after the anti-gay, anti-Latino, and anti-immigrant murder of José Sucuzhañay in Bushwick in 2008.

The Michael Sandy Act is named for a young man with a bright future ahead of him who in 2006 was killed in an anti-gay hate crime. At trial, one of the young men who had attacked Michael unexpectedly claimed that he was also gay and so could not have committed a hate crime against another gay person. The revelation that the defendant was purportedly gay was nothing more than a defense tactic, used in an attempt to confuse the jurors. Although the current hate crimes statute is written to make such defenses legally irrelevant, the defendant’s claim about his own sexual orientation could have unfairly biased the jury.

Since its enactment in 2000, the Hate Crimes Law has enabled prosecutors to pursue perpetrators who select their victims based upon the victim’s real or perceived sexual orientation, among other categories. Unfortunately, the law does not adequately

address situations in which the defendant presents a jury with evidence that he or she shares one or more of the characteristics for which the victim was allegedly selected.

The presentation of evidence of a shared characteristic is unduly prejudicial and frustrates the purpose of the Hate Crimes Law. The danger of undue prejudice among jurors is especially acute in cases concerning sexual orientation. Studies suggest that many perpetrators of anti-LGBT crimes may themselves be internally struggling with issues surrounding their own sexual orientation, and this inner turmoil may drive them to select victims based on their real or perceived sexual orientation. However, it is unrealistic to expect jurors to be able to understand this from their own various perspectives. Despite recent social and legal developments, the general population's understanding of non-heterosexual orientations is still low, especially when complex psychological and sociological issues are involved.

Under the Michael Sandy Act, judges at hate crimes trials will review evidence about the perpetrator and victim sharing the same protected characteristic and then make a determination whether it is in the interest of justice for the jury to hear this evidence. Such a measure is not without precedent and, in fact, is modeled on the state's rape shield law, which protects sex crime victims from defendants who might use the victims' past sexual history to impugn their character.

I thank Assemblymember Moya for his leadership on the Michael Sandy Act and encourage the Assembly to pass this timely legislation as soon as possible. I also encourage the State Senate to consider introducing its own version, to ensure that hate crime trials are run in the interest of justice. Thank you for the opportunity to speak on this important issue.



**THE ASSEMBLY
STATE OF NEW YORK
ALBANY**

JOAN L. MILLMAN
Assemblywoman 52nd District

**341 Smith Street
Brooklyn, NY 1231
718-246-4889
millmani@nysa.us**

CHAIR
Committee on Aging

COMMITTEES
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**New York State Senate Hearing on Hate Crimes Law
June 14, 2013
Assessment of New York State Crimes Law, Chapter 107, Laws of 2000**

I would like to thank Senator Brad Hoylman for the opportunity to submit testimony regarding hate crimes. There is no question that hate crimes continue to afflict and traumatize the LGBTQ community right here in New York City.

Since May 5, 2013, there have been at least nine suspected bias-motivated attacks against members of the LGBTQ community in Manhattan alone, including one murder. This is in addition to at least two recent incidents in Brooklyn. This recent and disturbing pattern of violence and hate is unacceptable and action must be taken.

New York has a proud history of being a welcoming state for everyone and New York City is known around the world as being one of the most progressive and accepting cities. I believe it is the duty of elected officials to work with state and local government agencies to implement and enforce the Hate Crimes Law, and if necessary, consider amendments to expand data collection, statistical reporting, law enforcement training requirements and/or any other initiatives to further the Law's goals.

Finally, I want to take time to discuss expanding protections in the Hate Crimes Law to cover gender identity and expression. I am a co-sponsor of the Gender Expression Non-Discrimination Act, which would outlaw discrimination based on gender identity or expression. This year, the legislation passed the Assembly for the sixth time. I call on Senators Skelos and Klein to bring this bill to the floor for an up-or-down vote before the end of the legislative session, scheduled on June 20. It is unacceptable that sixteen states and the District of Columbia have enacted anti-discrimination protections covering transgender people and New York still has not made this state law.

I am confident that our city and our state can work together to ensure that all New Yorkers are kept safe throughout the state.

Testimony of Erik Bottcher on behalf of Speaker Christine Quinn

First, I want to thank New York State Senator Brad Hoylman for his leadership on this important issue. Senator Hoylman represents the area in which many anti-LGBT hate crimes have occurred, as do I, and he has truly risen to the occasion.

The LGBT community stands in solidarity with all communities who are affected by hate crimes. We've seen anti-Muslim hate crimes after the bombing at the Boston marathon. We saw mezuzahs in Williamsburg being burned doorways under the cover of darkness.

I thank the Senate Committee on Investigations and Government Operations for taking this opportunity to examine our State's hate crimes law. Senator Hoylman knows that we must continually revisit the legislation to see if adjustments are necessary and I commend this effort.

Years ago many of us, Senator Hoylman included, fought hard for our state hate crimes law. Since its passage, the bill has been an essential tool in protecting communities across the state.

Wherever and whenever possible, the NYC Council has made efforts to improve the efficacy of our hate crimes laws.

For example, in 2010 the New York City Council passed a local law that required that information about hate crimes be reported on-line. The law passed by the Council required that the following information regarding hate crimes be posted: (1) the number of hate crimes; (2) the number of murders determined by the police department to be hate crimes; and (3) the number of felonious assaults determined by the Police Department to be hate crimes. For the purposes of the legislation, the term hate crime had the meaning ascribed to it by New York state law. The City's "Citywide Performance Reporting" or "CPR" website provides this information. It shows, for the City, the total number of hate crimes, the number related to murder, and the number related to felonious assault. The data is provided for the fiscal year to date and for the previous fiscal year. The variance between the two is also given.

While legislation is critically important, I have found since my days as the Executive Director of the Gay & Lesbian Anti-Violence Project that a multi-pronged approach is needed, and we must use every tool available and address the issue from every possible angle.

An essential tactic in fighting hate crimes is a visible, overwhelming response each and every time a hate crime occurs. This sends a powerful message to the public, isolating those who would commit crimes and making it clear that it is not acceptable and not to be emulated. That message was clearly on display on May 20th, when thousands of us marched through the streets of the Village to demand an end to hate crimes and honor the life of Mark Carson.

We must address the public safety needs of our community, and keep our community protected, particularly during Pride Month, when we traditionally see a rise in attacks. This month, at my request, the NYPD has increased police presence on Manhattan's West Side, where many of these incidents have taken place. Specifically, the NYPD has assembled an incident command post in the 6th precinct, and deployed additional personnel and critical response vehicles and mounted units to the area. These deployments will continue at least until the end of June and are a critical component of keeping our community safe.

In collaboration with the Center for Anti-Violence Education, the City Council is offering free self-defense classes to equip LGBT and non-LGBT New Yorkers with violence prevention strategies and tools to stay safe. And the City Council is a strong supporter of the Anti-Violence Project, and its Friday Community Safety Nights out initiative, in which teams do outreach in neighborhoods most affected by hate crimes to raise awareness about the impact, and frequency, of hate crimes.

We must continue a dialogue that changes the perceptions and attitudes that stand in the way of tolerance and acceptance. Working with members of the clergy and religious leaders, we have organized an Interfaith Weekend Against Hate, which will take place on June 21st through the 23rd, during which dozens of houses of worship have signed up to deliver coordinated messages against hate speech and violence.

And our efforts are not complete without engaging our youth. I recently stood with with Schools Chancellor Dennis Walcott to announce a citywide public safety and education initiative to combat hate crimes. As part of this initiative, schools across the City have incorporated lessons of acceptance and tolerance into end-of-year assemblies, programs, and curricula.

These efforts are only part of a sustained, ongoing effort that will be needed to end hate crimes. Those who attack us may believe that they will succeed in driving our community back into the closet. But we will not retreat in fear. What they don't know is that they are only strengthening our resolve to demand full equality and security.

I again thank Senator Hoylman for convening today's hearing and I look forward to working with him and all parties until no person anywhere is attacked because of who they are, where they're from, or who they love.



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CIVIL RIGHTS BUREAU

Testimony of Kristen Clarke
Bureau Chief
Civil Rights Bureau
Social Justice Division
New York State Attorney General's Office
Office of Attorney General Eric T. Schneiderman

New York State Assembly
Public Forum on Hate Crimes

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Introduction

My name is Kristen Clarke, Chief of the Civil Rights Bureau of the New York State Attorney General's Office. I am pleased to be here today on behalf of Attorney General Eric T. Schneiderman. As the chief law enforcement agent for the State of New York, Attorney General Schneiderman is deeply committed to combating discrimination and harassment faced by LGBT people. Through enforcement of federal, state and local civil rights laws, the New York State Attorney General's Office works to ensure equal access for all persons regardless of their LGBT status.

I thank the Committee for holding this very important and timely hearing. Over the past few weeks here in New York City, we have witnessed a double-digit wave of hate crimes against LGBT people, including the tragic killing of Mark Carson in Greenwich Village. For our Office, many of these incidents serves as a reminder of the continuing work that must be done to combat discrimination against and harassment faced by LGBT people, almost forty-four years after the neighborhood in which Mr. Carson died gave birth to an international movement for LGBT equality.

Strong legislative responses coupled with aggressive law enforcement is necessary to address the ongoing scourge of hate crimes in our society. As a state senator, Attorney General Schneiderman fought to pass the Hate Crimes Bill that increased penalties for more than fifty kinds of crimes if it is proven that the act was committed as a result of a victim's age, gender, religion, race, disability, ethnic background or sexual orientation. The Attorney General was also part of the coalition that passed the Sexual Orientation Non-Discrimination Act (SONDA), which expanded civil and human rights laws by making it illegal to discriminate against a person because they are gay, lesbian or bisexual. Most recently, the Attorney General has fought to pass the Gender Expression Non-Discrimination Act (GENDA), which will help to ensure that all New Yorkers are free from discrimination. The bill, now pending before the Senate, would strengthen the state's Human Rights Law by banning discrimination based upon gender identity and expression throughout New York State. If passed, New York will join 16 other states and the District of Columbia in outlawing discrimination based upon gender identity and expression.

The Attorney General is also keenly aware of the extent of the challenges faced by LGBT people, not only as evidenced by the headlines but also by broader empirical data. The FBI's Hate Crimes Statistics 2011 Report indicates that almost 21 percent – more than 1 in 5 – of the reported hate crimes for that year were the result of sexual orientation bias. The available data is similarly problematic in the educational setting, where a 2009 survey of middle and high school students found that 85 percent of LGBT students experienced harassment at school in the prior year and nearly two-thirds felt unsafe because of their sexual orientation. In 2011, UCLA's Williams Institute on Sexual Orientation Law and Public Policy aggregated numerous studies on workplace discrimination and harassment and found that as many as 43 percent of gay and transgender workers have experienced

some form of discrimination on the job, while as many as 30 percent of their heterosexual fellow employees have personally witnessed such discrimination against LGBT workers.

Recognizing the harm that comes to everyone – gay or straight – from the persistence of such bias, our Office has undertaken significant enforcement efforts to both eradicate discrimination in a number of contexts and change the way people think about LGBT people. We have cast a wide net with our efforts. For example, in 2010, we investigated allegations that American Eagle Outfitters was engaging in a pattern or practice of discrimination against transgender employees and applicants. As part of the settlement of that investigation, the retailer agreed to retain an independent monitor in order to assess its ongoing compliance with New York's Human Rights Law, as well as pay a significant fine to the state. More recently, the Attorney General's Office reviewed allegations that recruits at the National Football League's annual combine were being questioned about their sexual orientation. In response, the Attorney General contacted the NFL's Commissioner, and we began a dialogue with the league that led to the identification, development, and implementation of new measures to protect players from discrimination and harassment across the NFL. From the fitting room to the locker room, our Office has been and continues to be committed to fighting employment discrimination against LGBT New Yorkers.

The Attorney General has also been a strong advocate for marriage equality here in New York and nationally. After passage of the Marriage Equality Act in 2011, the law came under attack in the courts. Last fall, Attorney General Schneiderman urged the New York Court of Appeals to reject a challenge to the Act, and the court sided with our office. On the national stage, earlier this year the Attorney General led a coalition of more than a dozen states in filing a friend-of-the-court brief in *U.S. v. Windsor*, a case currently pending before the U.S. Supreme Court and challenging the federal Defense of Marriage Act. Since its passage in 1996, DOMA has limited the federal definition of marriage to a man and a woman, resulting in the government's refusal to recognize same-sex marriages valid under state law for purposes of all federal benefits. In the coalition's *amicus* brief, the Attorney General made the critical argument that DOMA undermines the efforts of states like New York to provide equal rights and protection under the law for same-sex couples. Since the filing of the Attorney General's brief earlier this year, three additional states have legalized same-sex marriage – Rhode Island, Delaware, and Minnesota – as our office awaits a decision by the Supreme Court on DOMA, expected later this month.

It has been the experience of our Office that, in response to such tragic events as the recent wave of anti-LGBT hate crimes, a strong legislative response is critical. In 2010, the New York legislature passed the Dignity For All Students Act, which is coming up on its first anniversary of full implementation. As the one-year mark approaches, our Office is committed to ensuring that school districts across the state have met the Act's requirements regarding the development of policies, staff training, and record-keeping aimed at preventing harmful bullying within New York schools. We are committed to investigating acts of bullying wherever they arise.

With problems as longstanding and endemic as discrimination against LGBT communities, the Attorney General's Office recognizes that all people – and all branches of our government – have a role to play in protecting our fellow citizens. Strong legislative responses to the problems of discrimination, harassment and bias, coupled with aggressive enforcement of existing laws is necessary to address the ongoing problem, and underlying roots, of hate crimes across New York State. The promise of equal opportunity, equal access, and equal rights has not yet been fulfilled for LGBT individuals, and the right to basic safety and physical integrity lies at the very core of equal citizenship. Our office will work tirelessly to continue its robust enforcement of civil rights laws until that promise becomes a reality for LGBT and all New Yorkers.

**TESTIMONY OF STATE SENATOR DANIEL SQUADRON AT THE PUBLIC FORUM
ON NEW YORK STATE'S HATE CRIMES LAW
June 14, 2013**

My name is Daniel Squadron and I represent the 26th District in the New York State Senate. My district includes the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, DUMBO, Fulton Ferry, Brooklyn Heights, Cobble Hill, Carroll Gardens and Gowanus, and the Manhattan neighborhoods of Tribeca, Battery Park City, the Lower East Side, Chinatown, the Financial District, Little Italy, SoHo and the East Village. Thank you for the opportunity to testify at this forum.

The recent series of bias-motivated assaults in New York City has added real urgency to the need to assess local and state hate crimes statutes, and I commend Senator Hoylman for convening this important forum today. There is much to say about the need to create a safe and tolerant New York and improve current regulations and government practices, but I would like to use this testimony to highlight one major gap in the state's hate crimes law: the absence of gender identity or expression within the list of offenses subject to treatment as hate crimes.

The bill that I carry along with Assemblymember Dick Gottfried, the Gender Expression Non-Discrimination Act (GENDA), would prohibit discrimination against transgender New Yorkers when it comes to housing, employment, education, credit, and public accommodations, while expanding New York's hate crime laws to include crimes against transgender and gender non-conforming individuals. It is unacceptable that it is still legal in New York for a person to lose their job, be denied health care, or be evicted from their home because of their gender identity. In addition, and of direct relevance today, the inclusion of gender identity and expression as a protected class in the state's hate crimes statute is long overdue.

New York City and other municipalities including the cities of Buffalo, Rochester, Albany, Syracuse, Ithaca, and Binghamton, as well as Westchester, Suffolk, Tompkins, and, as of Monday, Albany counties have had local gender identity and expression protections in place – many of them for a number of years. But New York State's hate crimes statutes, even if they are better enforced, will exclude many victims until we pass GENDA.

Fundamental civil rights should not be geographically arbitrary. The treatment of bias-motivated crimes should not be subject to which side of a city or county line they occur.

The need to pass GENDA becomes doubly important when we consider how often transgender and gender non-confirming individuals are victimized by bias attacks. In October of 2012, Assemblymember Gottfried and I convened a forum on GENDA, where the chiefs of police for the cities of Albany and Rochester testified that gender identity and expression protections have improved their ability to provide for the health and safety of their citizens. As legislators, it is

imperative that we provide law enforcement with the tools to foster a safe environment and send the message that discrimination based on gender identity and expression will not be tolerated.

Of course, while passing GENDA will close the gap, we should remain aware, as you point out, that the entire LGBT community is still a target and more must be done to prevent bias-motivated crimes such as those we have seen in recent weeks. If we are truly a state that embraces equality and promotes tolerance, we must work together to foster respect in our society, defeat bigotry wherever it occurs, and provide any policy and administrative solutions that will prevent attacks in the future.

Thank you again for your leadership and the opportunity to testify.