



# STATE OF RHODE ISLAND

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### **Procedure for Joint Investigation of Hate Crimes, Police Misconduct cases & Related Civil Rights Violations**

**December 9, 2020**

This memorandum concerns the procedure by which the Civil and Criminal Divisions investigate allegations of hate crimes, police misconduct cases, and related civil rights violations (collectively referred to as “civil rights violations”). Because such violations, whether pursued criminally or civilly, implicate substantial and unique considerations, and are likely to garner substantial public interest and scrutiny, the Office believes that the newly created Civil Rights Prosecution Unit (CRPU) in the Criminal Division and Office of the Civil Rights Advocate (CRA) in the Civil Division should coordinate the investigation and, where appropriate, prosecution of such matters wherever possible. The CRPU and CRA will be jointly referred to as the Civil Rights Team (CRT) in this memo.

Misconduct that is motivated in whole or in part by hatred or animus against a protected group may be actionable pursuant to a hate crime sentencing enhancement under Rhode Island Gen. Laws § 12-19-38, if it is criminal, or pursuant to the Civil Rights Advocate statute under Rhode Island Gen. Laws § 42-9.3-2, or both. The Office typically learns of such misconduct in three primary ways: first, the CRA takes complaints from individual complainants or organizations on behalf of complainants; second, police departments may call our Office to advise us of recent crimes (whether misdemeanors or felonies) that appear, after some level of investigation, to have been motivated by bigotry; third, the Intake Unit may identify a case that was potentially bias motivated during the screening process. All such cases should be handled through the joint investigation model.

#### **Procedure**

When any attorney in the Office learns of a case that raises the prospect of a hate crime, police misconduct or civil rights prosecution, the matter should be immediately referred to the Chief of the CRPU or the CRA.<sup>1</sup> They, in turn, will advise the Criminal and Civil Chiefs, the Deputy Attorney General and the Attorney General of the complaint. If it is immediately apparent that no criminal offense has occurred, the CRA will follow up on the complaint as he currently does, including referring the complainant to other state

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<sup>1</sup> Presently, the Chief of the Civil Rights Prosecution Unit is Assistant Attorney General Daniel Guglielmo and the Civil Rights Advocate is Special Assistant Attorney General Keith Hoffmann.

agencies as appropriate.<sup>2</sup> Where additional investigation is needed to determine whether criminal prosecution and/or a hate crime enhancement may be appropriate, the CRPU Chief will assign the case within his unit and the assigned prosecutor will coordinate the follow-up investigation with the CRA. Where a criminal charge has already been filed, or where criminal charges will likely be filed, the assigned CRPU attorney will lead the investigation. The CRT will meet on a bi-weekly basis to review and discuss pending matters.

No matter the source of a complaint, additional investigation will often be necessary to determine whether criminal or civil action should be brought. Typically, the arresting police department will provide the necessary investigative support. If additional investigation is necessary, investigators from this Office may be tasked with further information-gathering. If the matter involves police misconduct, the CRPU should follow the [Attorney General's Use of Force Review Protocol](#) and coordinate with either the professional responsibility unit of the local police department or with the RISP as called for by the Protocol.

In every case where a hate crime sentencing enhancement may be brought, the lead attorney shall discuss its applicability (or lack thereof) with the complainant and obtain the complainant's views prior to filing the sentencing notice. The complainant must be advised of the likelihood that he/she would have to testify at trial or at a sentencing hearing. The Office will typically not seek an enhancement without the victim's assent. Once filed, an enhancement should not be withdrawn unless the victim refuses to testify, new evidence that undermines the application of the enhancement comes to light, or some other unforeseen circumstances occur. (In other words, the enhancement may not be withdrawn solely for the purpose of obtaining a plea.)

The CRPU and CRA should ensure that all steps in the investigation occur as quickly as possible, given the sensitive nature of the misconduct at issue. To that end, the lead attorney should collect all witness statements and other available evidence as quickly as possible and direct additional investigative steps as necessary. In police misconduct cases, the CRPU should pay particular attention to the application of the *Garrity* doctrine and ensure that no member of the prosecution team has access to compelled statements by the target of the investigation. While it is expected that the assigned CRPU attorney will take the lead in the criminal investigation and prosecution of hate crimes and police misconduct cases, the CRA attorney should be apprised of significant investigative developments and charging decisions in a timely manner such that the CRA has a meaningful opportunity to provide input into charging decisions and declinations.

At the conclusion of the joint investigation, the CRT will make a prosecutorial decision. It is anticipated that where criminal prosecution will move forward with a notice of a hate crime sentencing enhancement, a civil rights action under the CRA statute will not be necessary. In some cases, however, a civil action may be brought in lieu of criminal prosecution or parallel to such prosecution where an enhancement has not been filed.

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<sup>2</sup> The CRA will continue to track the disposition of civil rights complaints by the OCRA and will share that information with the CRT, DAG and AG on a regular basis.

Where there is disagreement within the CRT regarding disposition of a particular matter, this disagreement will be promptly brought to the attention of the Criminal and Civil Chiefs, DAG and AG for decision.

The joint investigation procedure is an appropriate and efficient way to undertake civil rights investigations by this Office.<sup>3</sup> There is significant overlap in the elements of the hate crime sentencing enhancement and the Civil Rights Advocate statute in cases that involve criminal misconduct, but a hate crime prosecution affords more sweeping sanctions than could be obtained through a civil action. Thus, a parallel civil action is generally of no value.<sup>4</sup> While our Office has more expansive enforcement authority over civil rights violations and hate crime prosecutions than do most other attorneys general, the joint investigation model comports with the approaches of both the Maine and Massachusetts Attorneys General, where staff attorneys coordinate investigation of bias-motivated misconduct with police departments, investigators within the offices of the Attorneys General, and other enforcement agencies.

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<sup>3</sup> The joint investigation model is similar to the parallel civil and criminal investigations model used by the United States Department of Justice. “The Supreme Court has held that the government may conduct parallel civil and criminal investigations without violating the due process clause, so long as it does not act in bad faith.” *United States v. Stringer*, 535 F.3d 929, 936 (9th Cir. 2008) (citing *United State v. Kordel*, 397 U.S. 1, 11 (1970)). Indeed, a number of courts have held that parallel civil and criminal prosecutions are not just appropriate, but desirable. Courts have recognized that “[t]here is nothing improper about the government undertaking simultaneous criminal and civil investigations” provided that we use those proceedings and associated investigative tools for their proper purposes and in appropriate ways.” *United States v. Stringer*, 535 F.3d 929, 933 (9th Cir. 2008); *see also United States v. Kordel*, 397 U.S. 1, 10 (1970) (“It would stultify enforcement of federal law to require a government agency ... invariably to choose either to forego recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the outcome of a criminal trial.”).

<sup>4</sup> In the event that the Team for some reason determines that a hate crime sentencing enhancement should *not* be sought, but that a civil rights action *should* be even while the Office prosecutes the perpetrator for an underlying crime, the Team could contemplate a parallel civil action. Pursuant to the federal cases cited above, the civil and criminal actions would have to be brought in good faith, and secrecy of grand jury materials, and discovery issues, would have to be carefully considered. *See Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceeding* (January 30, 2012) available at <https://www.justice.gov/jm/organization-and-functions-manual-27-parallel-proceedings>.