Committee on Public Safety:

Daniel Ades, *Senior Legislative Counsel*

Casie Addison, *Senior* *Policy Analyst*

Nevin Singh, *Financial Analyst*



**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE**

**GOVERNMENTAL AFFAIRS DIVISION**

**Jeffrey Baker, Legislative Director**

**Brian Crow, Deputy Director, Justice Division**

**COMMITTEE ON PUBLIC SAFETY**

**Hon. Donovan Richards, Chair**

**February 10, 2020**

**INT. NO. 1847** By Council Member Treyger, Rivera, Torres, Koslowitz

**TITLE:** A Local Law to amend the New York city charter, in relation to individualized responses to violent hate crimes

**NEW YORK CITY CHARTER:** Amends section 20-G

1. **INTRODUCTION**

On February 10, 2020, the Committee on Public Safety, chaired by Council Member Donovan Richards, will hold a hearing on Introduction Number 1847 (“Int. No. 1847”), a local law to amend the New York City Charter, in relation to individualized responses to violent hate crimes. Those expected to testify include representatives of the New York City Police Department (“NYPD”), advocates, and members of the public. The Committee previously held an oversight hearing on preventing hate crimes in NYC on November 19, 2018, and heard the bills that became Local Law 46 and 47 of 2019, which required the mayor to establish the Office for the Prevention of Hate Crimes.

1. **BACKGROUND**

In New York State, hate crimes are not defined as distinct penal law offenses. Instead, certain specified conduct that constitutes a penal law offense is designated a hate crime when the act is committed or the victim is selected because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person.[[1]](#footnote-1) A hate crime designation raises the level of the offense category, resulting in significantly higher potential jail sentence.[[2]](#footnote-2) For example, a person who commits assault in the second degree because he believes the victim to be Jewish has committed assault in the second Degree as a hate crime. While assault in the second degree is normally classified as a D violent felony punishable by a maximum of 7 years in prison, assault in the second degree as a hate crime is a class C violent felony and is punishable by a maximum of 15 years in prison. The list of 39 felonies and 13 misdemeanors that can be charged as hate crimes is attached as Appendix A.

Offenses that are charged as hate crimes do not always result in hate crime convictions. Part of the difficulty in establishing that a crime is motivated by bias is that offensive or discriminatory language may be used in the course of a crime or dispute that leads to a crime, even if the actions or the dispute did not originate from a belief about the victim. Out of 400 hate crime arrests that resulted in convictions and were reported to the New York State Division of Criminal Justice Services from 2012-2016, 123 resulted in convictions for hate crimes and 277 resulted in convictions for non-hate crimes.[[3]](#footnote-3)

Nevertheless, New York State Law deems crimes committed because of bias against members of the groups listed above as more serious in nature than other crimes, and there are thus important law enforcement interests in preventing these kinds of crimes. Similarly, the penal law contains provisions designating certain offenses as “violent”. A Judge has more discretion to impose a longer minimum sentence for a violent offense than a nonviolent offense of the same classification, and individuals with prior violent felony convictions are subject to higher mandatory minimum sentences for subsequent violent felonies.

1. **FIRST AMENDMENT PROTECTON OF HATE SPEECH**

The constitutional protections of an individual’s right to voice his or her views, no matter how offensive or distasteful, are fundamental. However, they also limit the legal measures governments can utilize to prohibit hate speech. The U.S. Supreme Court has repeatedly upheld First Amendment protections in cases of offensive speech, even when that speech includes statements that are perceived as vague threats against certain groups of individuals. In 1969, the Court protected a Ku Klux Klan member’s hateful speech directed toward African Americans and set forth the principle that “constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action”.[[4]](#footnote-4) In 1977, the Court upheld an appellate court decision allowing Neo-Nazis to march through Skokie, Illinois, a substantially Jewish town where Holocaust survivors lived.[[5]](#footnote-5) In 1992, the Court overturned the conviction of a teenager convicted of burning a cross on the law of an African American family’s home.[[6]](#footnote-6)

However, the First Amendment is not absolute. Speech that is likely to incite imminent violence is not protected, and conduct that is criminal is not made less criminal because the perpetrator expressed opinions that are otherwise protected under the First Amendment. One year after its decision overturning the conviction for cross burning in *R.A.V. v. City of St. Paul*, the Supreme Court upheld a Minnesota law similar to New York’s hate crime statute, which punishes hate crimes more harshly than comparable crimes that are not motivated by bias.[[7]](#footnote-7) The Court ruled that even though hate speech on its own cannot be criminalized, society may deem crimes motivated by bias to be more damaging to victims and society than other offenses and worthy of more severe punishment.

1. **NYC RESPONSE TO HATE CRIMES**

Pursuant to Local Law 46 of 2019 and Local Law 47 of 2019, the Mayor’s Office established the Office for the Prevention of Hate Crimes[[8]](#footnote-8), which operates within the Mayor’s Office of Criminal Justice. OPHC is charged with advising the mayor and coordinating between agencies that are involved in the prevention of and response to hate crimes, creating and implementing a coordinated system for the city’s response to hate crimes, reporting to the Council and the public on the prevalence of hate crimes, and studying the effectiveness of safety plans in neighborhoods that are particularly vulnerable to hate crimes, among other duties.[[9]](#footnote-9) OPHC coordinates the city’s efforts through an interagency committee that includes the NYPD, the City Commission on Human Rights, the Mayor’s Community Affairs Unit, the Department of Education, the Mayor’s Office to End Domestic and Gender-Based Violence, the Mayor’s Office of Immigrant Affairs, the Department of Health and Mental Hygiene, ThriveNYC, and the Department of Youth and Community Development.[[10]](#footnote-10)

The NYPD’s Hate Crime Task Force is a dedicated citywide team of investigators who are responsible for investigating all hate crimes and related incidents.[[11]](#footnote-11) The Unit is part of the Special Victims Division.[[12]](#footnote-12) Patrol Officers responding to the scene of crimes that may be the result of bias refer these cases to the Hate Crime Task Force. According to the Patrol Guide, the Commanding Officer of the Task Force then determines how an investigation of the incident should proceed.[[13]](#footnote-13) The investigation may be conducted wholly by the Task Force or precinct detectives or may be a joint investigation between the two.[[14]](#footnote-14) Pursuant to the guidelines in the Patrol Guide, officers investigating incidents of bias should include personal contact with the victims of the alleged bias incident.[[15]](#footnote-15) Investigators must make a determination of whether the incident was in fact bias motivated and issue a report within 10 days.[[16]](#footnote-16) Throughout this process, reports on the progress of the bias incident investigation are recorded on the following forms: Complaint Follow Up (PD313-081), Complaint Report (PD313-152), Complaint Report Worksheet (PD313-152A), and Unusual Occurrence Report (PD370-152).[[17]](#footnote-17)

The Hate Crime Task Force is also required to compile reports on bias related incidents and use this data to conduct analyses designed to assist the Department and the City in coordinating an appropriate response to these incidents.

In January 2020, NYPD Commissioner Dermot Shea announced a new unit called, the Racially and Ethnically Motivated Extremism Unit. According to the NYPD, this unit is based within the NYPD intelligence division and seeks to prevent crimes based on extremism by, for example, investigating the activities of white supremacist groups.[[18]](#footnote-18) According to John Miller, the Deputy Commissioner for Intelligence and Counterterrorism, “this new unit has about 25 NYPD personnel working side-by-side with members of the New Jersey, New York, and Pennsylvania state police and agents from federal Bureau of Alcohol, Tobacco, Firearms and Explosives. REME is specifically dedicated to investigating and stamping out violent bias crimes in and around the city before they occur by applying the same intelligence gathering techniques we use to thwart attacks by ISIS and al Qaeda and the lone wolves they inspire, and has already opened dozens of these investigations in the short time since it was formed.”[[19]](#footnote-19)

1. **RECENT HATE CRIME TRENDS**

 Several reports have shown a spike in hate crimes both nationally and locally. According to the Federal Bureau of Investigation’s (“FBI”) Uniform Crime Reporting Program, participating law enforcement agencies reported 7,120 hate crimes in 2018, a slight decrease from 7,175 in 2017.[[20]](#footnote-20) The 2018 incidents encompassed 8,327 total offenses and involved 8,646 victims. The motivations behind these hate crimes are consistent with prior years.[[21]](#footnote-21)

 Of the 8,646 victims of hate crimes in 2018, 57.5% were targeted base on their race/ethnicity, 20.2% were victimized because of bias against religion, and 17% were targeted because of bias against their perceived sexuality.[[22]](#footnote-22) Of the 4,954 reported racially bias hate crimes, 46.9% were motivated by anti-Black or African American bias. Similarly, of the 1,550 reported religious bias hate crimes, 57.8% were victims of crimes motivated by anti-Jewish bias.[[23]](#footnote-23)

 The NYPD is required to report hate crime complaints and arrests pursuant to Local Law 130 of 2016. The data shows that local trends mirror those at the national level. In 2019, 420 hate crimes were reported to the NYPD, an increase from 353 hate crimes in 2018. Of those 420 complaints, 133 arrests were made. 57% of reported hate crimes were motivated by anti-Jewish bias. Over the last 3 years, the number of anti-Jewish hate crime complaints has been consistently higher than all other bias motivations. In 2019, the second most reported hate crimes were motivated by anti-homosexuality bias, specifically of gay men.

1. **RECENT NOTABLE INCIDENTS**

The rise in hate crimes in New York City has had particular effects on certain communities, leading to growing fears and concerns about safety. These concerns have been further exacerbated by violent hate crimes that have occurred in Upstate New York and elsewhere around the country. In December 2019, man broke into the home of a Hasidic rabbi in Monsey, New York, stabbing and wounding five people as they celebrated Hanukkah.[[24]](#footnote-24) Just weeks prior two men opened fire at a kosher supermarket in Jersey City, killing 4 people, including a police officer.[[25]](#footnote-25) Thousands of people marched across the Brooklyn Bridge in a show of solidarity for New York’s Jewish community, in wake of several anti-Semitic hate crimes. According to the Center for the Study of Hate and Extremism (“CSHE”) at California State University, San Bernardino, reported anti-Semitic hate crimes in New York, Los Angeles, and Chicago are trending toward an 18-year peak.[[26]](#footnote-26)

Several notable anti-Jewish hate crimes have been committed around the City. In June, the phrase “Synogogue of Satan” was spray painted on a wall outside a Jewish school in Staten Island.[[27]](#footnote-27) The words “Hitler Is Coming” was written on a large interactive poster outside the Jewish Children’s Museum in Brooklyn, whose mission is to build bridge between Jewish and non-Jewish children.[[28]](#footnote-28) More recently, a woman was charged with federal hate crimes for slapping three orthodox Jewish women.[[29]](#footnote-29)

While anti-Semitic hate crimes account for a significant share of reported hate crimes, similar crimes against protected identities have also been increasing. In June anti-Muslim sentiments were spray painted on a school and a bus shelter in Brooklyn.[[30]](#footnote-30) At the beginning of Pride Month, which celebrates the LGBT community, two rainbow flags were set on fire outside Alibi Lounge in Harlem,.[[31]](#footnote-31) In September 2019, two people were verbally and physically attacked by a group of several men in Jackson Heights, Queens based on their sexual orientation.[[32]](#footnote-32)

1. **ANALYSIS OF INT. NO. 1847**

Int. No. 1847 would amend section 20-G of the New York City Charter, which requires the mayor to establish an office for the prevention of hate crimes. The bill would require the coordinated system for the city’s response to hate crimes to make provision for an individualized response to all alleged violent hate crimes. It would also require the OPHC to provide relevant information to the affected community within 24 hours of a determination that a violent hate crime has occurred, including the administration’s response to the alleged violent hate crime and the resources currently available to affected persons. The bill would also require the Coordinator to notify the mayor, Speaker, Public Advocate, and Council Member of the relevant district within 24 hours of a determination that a hate crime occurred.

Int. No. 1847

By Council Members Treyger, Rivera, Torres and Koslowitz

A LOCAL LAW

..Title

To amend the New York city charter, in relation to individualized responses to violent hate crimes

..Body

Be it enacted by the Council as follows:

Section 1. Section 20-g of the New York city charter, as amended by local law number 47 for the year 2019, is amended to read as follows:

§ 20-g. Office for the prevention of hate crimes. a. The mayor shall establish an office for the prevention of hate crimes. Such office may be established within any office of the mayor or as a separate office or within any other office of the mayor or within any department the head of which is appointed by the mayor. Such office shall be headed by a coordinator who shall be appointed by the mayor or the head of such department. For the purposes of this section only, “coordinator” shall mean the coordinator of the office for the prevention of hate crimes.

b. Powers and duties. The coordinator shall have the power and the duty to:

1. Advise and assist the mayor in planning and implementing [for] the coordination and cooperation among agencies under the jurisdiction of the mayor that are involved in the following: [prevention] preventing hate crimes, raising awareness of hate crimes, [investigation and prosecution] investigating and prosecuting hate crimes, and addressing the impact of hate crimes on communities [of hate crimes.];

2. Create and implement a coordinated system for the city’s response to hate crimes. Such system shall, in conjunction with the New York city commission on human rights’ bias response teams, the police department[,] and any relevant agency or office, coordinate responses to hate crime allegations. Such system shall make provision for an individualized response to all alleged violent hate crimes;

3. Review the budget requests of all agencies for programs related to hate crimes[,] and recommend to the mayor budget priorities among such[.] requests;

4. Prepare and submit to the mayor and the council and post on the city’s website by January 30 of each year an annual report of the activities of the office for the prevention of hate crimes, [regarding] the prevalence of hate crimes during the previous calendar year and the availability of services to address the impact of these crimes. Such report shall include but need not be limited to the following information: (i) identification of areas or populations within the city that are particularly vulnerable to hate crimes, (ii) identification and assessment of the efficacy of counseling and resources for victims of hate crimes, [making] and recommendations for improvements of the same, (iii) collation of city, state and federal statistics on hate crime complaints and prosecutions within the city, including incidents by offense, bias motivation[,] and demographic characteristics such as age and gender of offenders, (iv) the populations [to which] the division of educational outreach [addressed] engaged with, (v) the types of programs created or provided by the division of educational outreach and the names of the providers of such programs[,] and (vi) any other outreach, education[,] and prevention efforts made by the division of educational outreach[.];

5. Study the effectiveness of, and make recommendations with respect to, the expansion of safety plans for neighborhoods and institutions that are particularly vulnerable to hate crimes[,] and the resources available for victims. This paragraph [shall] does not require the disclosure of material that would reveal non-routine investigative techniques or confidential information or [where] when disclosure could compromise the safety of the public or police officers or could otherwise compromise law enforcement investigations or operations[.];

6. Serve as liaison for the city with providers of victim services, community groups[,] and other relevant nongovernmental entities and assist in the coordination among such entities on reporting and responding to allegations of hate crimes[,] to ensure that [city residents] affected persons have access to relevant services after hate crime events[.];

7. Provide relevant information to the affected community within 24 hours of a determination that a violent hate crime has occurred. Such information shall include how the administration is responding to the alleged violent hate crime and the resources currently available to affected persons. This paragraph does not require the disclosure of confidential information or any material that could compromise the safety of the public or police officers or could otherwise compromise law enforcement investigations or operations;

8. Within 24 hours of a determination that a violent hate crime has occurred, notify the mayor, speaker of the council, public advocate and council member of the district in which such violent hate crime occurred; and

[7.] 9. Perform other duties as the mayor may assign.

c. The coordinator shall establish a division of educational outreach. The division shall have the power and the duty to:

1. Ensure[, by such means as necessary, including coordination with relevant city agencies and interfaith organizations, community groups, and human rights and civil rights groups,] the provision of effective outreach and education on the impact and effects of hate crimes, including measures necessary to achieve greater tolerance and understanding, and including the use of law enforcement [where] when appropriate. Such outreach and education shall include coordination between relevant city agencies and interfaith organizations, community groups and human rights and civil rights groups;

2. Create a K-12 curriculum addressing issues related to hate crimes[,] in consultation with the department of education[.]; and

3. Perform other duties as the mayor may assign.

§ 2. This local law takes effect immediately.

AM

LS #13028

12/31/19

1. N.Y. Penal Law §§ 485.05, 485.15 [↑](#footnote-ref-1)
2. N.Y. Penal Law § 485.10 [↑](#footnote-ref-2)
3. <http://www.criminaljustice.ny.gov/crimnet/ojsa/hate-crime-in-nys-2016-annual-report.pdf> [↑](#footnote-ref-3)
4. *Brandenburg v. Ohio*, 395 U.S. 444 (1969) [↑](#footnote-ref-4)
5. *National Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977) [↑](#footnote-ref-5)
6. *R.A.V. v. City of St. Paul*, [505](https://en.wikipedia.org/wiki/List_of_United_States_Supreme_Court_cases%2C_volume_505) [U.S.](https://en.wikipedia.org/wiki/United_States_Reports) 377 (1992) [↑](#footnote-ref-6)
7. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) [↑](#footnote-ref-7)
8. <https://criminaljustice.cityofnewyork.us/programs/ophc/> [↑](#footnote-ref-8)
9. NYC Charter §20-G [↑](#footnote-ref-9)
10. <https://criminaljustice.cityofnewyork.us/programs/ophc/> [↑](#footnote-ref-10)
11. The Official Website of the New York City Police Department “Hate Crimes/Bias Incidents” *available at* <https://www1.nyc.gov/site/nypd/services/law-enforcement/hate-crimes.page> [↑](#footnote-ref-11)
12. The Official Website of the New York City Police Department “Hate Crimes/Bias Incident” *available at* <https://www1.nyc.gov/site/nypd/services/law-enforcement/hate-crimes.page> [↑](#footnote-ref-12)
13. *See* NYPD Patrol Guide “Bias Motivated Incidents” Section: Complaints Procedure No. 207-10 *available at* <https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg207-10-bias-motivated-incidents.pdf> [↑](#footnote-ref-13)
14. *See* NYPD Patrol Guide “Bias Motivated Incidents” Section: Complaints Procedure No. 207-10 *available at*  <https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg207-10-bias-motivated-incidents.pdf> [↑](#footnote-ref-14)
15. *See* NYPD Patrol Guide “Bias Motivated Incidents” Section: Complaints Procedure No. 207-10 *available at* <https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg207-10-bias-motivated-incidents.pdf> [↑](#footnote-ref-15)
16. *See* NYPD Patrol Guide “Bias Motivated Incidents” Section: Complaints Procedure No. 207-10 *available at* <https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg207-10-bias-motivated-incidents.pdf> [↑](#footnote-ref-16)
17. *See* NYPD Patrol Guide “Bias Motivated Incidents” Section: Complaints Procedure No. 207-10 *available at* <https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg207-10-bias-motivated-incidents.pdf> [↑](#footnote-ref-17)
18. Information provided to Council by the NYPD [↑](#footnote-ref-18)
19. Testimony Before the U.S. House of Representatives Committee On Homeland Security, Subcommittee on Intelligence and Counterterrorism, Wednesday January 15, 2020, provided to Council by NYPD. [↑](#footnote-ref-19)
20. *See* “2018 Hate Crime Statistics – Incidents and Offenses” Federal Bureau of Investigations *available at* <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses> [↑](#footnote-ref-20)
21. *See* “2018 Hate Crime Statistics – Incidents and Offenses” Federal Bureau of Investigations *available at* <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses> [↑](#footnote-ref-21)
22. *See* “2018 Hate Crime Statistics – Incidents and Offenses” Federal Bureau of Investigations *available at* <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses> [↑](#footnote-ref-22)
23. *See* “2018 Hate Crime Statistics – Incidents and Offenses” Federal Bureau of Investigations *available at* <https://ucr.fbi.gov/hate-crime/2018/topic-pages/incidents-and-offenses> [↑](#footnote-ref-23)
24. Liebson, Rebecca; Vigdor, Neil; Gold, Michael; Shapiro, Eliza “5 Wounded in Stabbing at Rabbi’s Home in N.Y. Suburb” December 28, 2019 New York Times *available at* <https://www.nytimes.com/2019/12/28/nyregion/monsey-synagogue-stabbing-anti-semitic.html> [↑](#footnote-ref-24)
25. Gold, Michael; Corasaniti, Nick; Rashbaum, William K “Jersey City Shooting Updates: 6 Killed, Including an Officer” New York Times December 10, 2019 *available at* <https://www.nytimes.com/2019/12/10/nyregion/jersey-city-shooter.html?module=inline> [↑](#footnote-ref-25)
26. Hassan, Adeel “A Differetn Era: Anti-Semitic Crimes, and Efforts to Track Them, Climb” New York Times January 3, 2020 *available at* <https://www.nytimes.com/2020/01/03/us/anti-semitism-hate-crimes.html> [↑](#footnote-ref-26)
27. Otterman, Sharon “Swatiskas and Burning Pride Flag: Hate Crimes Spike in N.Y.” New York Times June 5, 2019 *available at* <https://www.nytimes.com/2019/06/05/nyregion/hate-crimes-rise-nyc.html> [↑](#footnote-ref-27)
28. [↑](#footnote-ref-28)
29. Gajan, Mahita “Woman Accused of Slapping 3 Jewish Women in New York City Charged With Federal Hate Crimes. Her Case Raises Questions for New York’s Bail Reform Laws” TIME January 29, 2019 *available at*  <https://time.com/5773696/tiffany-harris-charged-anti-semitic-attacks/> [↑](#footnote-ref-29)
30. “Man Sought in Anti-Graffiti Attacks on School in Brooklyn” NBC New York June 19, 2019 *available at* <https://www.nbcnewyork.com/news/local/brooklyn-anti-muslim-graffiti-hate-crime/1643180/> [↑](#footnote-ref-30)
31. Otterman, Sharon “Swatiskas and Burning Pride Flag: Hate Crimes Spike in N.Y.” New York Times June 5, 2019 *available at* <https://www.nytimes.com/2019/06/05/nyregion/hate-crimes-rise-nyc.html> [↑](#footnote-ref-31)
32. “Anti-LGBT attack promots outrage, concern in Jackson Heights” ABC News September 24, 2019 *available at* <https://abc7ny.com/5564718/> [↑](#footnote-ref-32)