DOCUMENTATION:

Recognizing and Recording Indicators of Bias

The ABA Justice Works Program aims to strengthen responses to bias-motivated violence based on sexual orientation, gender identity, or gender expression (SOGIE). To provide a practical tool for civil society organizations (CSOs), psychosocial support service providers, police officers, prosecutors, judges, lawmakers, and other stakeholders involved in responding to such violence, the Program created the Framework for Enhanced Responses to Bias-Motivated Violence Based on Sexual Orientation, Gender Identity, or Gender Expression (the Framework).

The Framework underscores that effective documentation is essential to monitoring and understanding the extent and typology of bias-motivated violence based on SOGIE, ensuring a survivor-centric response, and successfully criminally prosecuting the perpetrators. The Framework highlights for stakeholders the differences between documentation for these complementary purposes and also notes the common considerations for both state and non-state actors, including the importance of avoiding retraumatization, keeping personally identifying information confidential, and protecting survivors from reprisals.
Documentation of violence based on SOGIE involves recording indicators that the perpetrator acted based on the survivor’s real or perceived sexual orientation or gender identity, distinguishing the incident from other, non-bias-motivated violence.

**INDICATORS OF BIAS BASED ON SOGIE**
- The survivor’s perspective that the incident was motivated by bias
- Overt homophobic or transphobic statements during the violent incident
- Prior homophobic or transphobic statements by the offender
- The relationship between the survivor and the offender
- Levels of brutality, including the possible sexual nature of the violence
- Time and location of the incident
- Desecration of symbols, such as flags
- Absence of other motives

**DOCUMENTATION FOR EVIDENCE-BASED POLICY AND ADVOCACY: MONITORING BIAS-MOTIVATED VIOLENCE BASED ON SOGIE**

Incidents of bias-motivated violence should be recorded in a consistent, systematic way that captures the details of the incident and all indicators of bias based on SOGIE. Stakeholders should design a standardized form for all data collection in a jurisdiction.

All personally identifying information should be removed from the data collection form and de-linked from the survivor of the violent incident.

The purpose of collecting information to monitor bias-motivated violence based on SOGIE and the likelihood of a possible justice sector response should be explained to the survivor reporting the incident.

Government officials who collect data for monitoring should publish the data in official, publicly available reports and craft action plans, in coordination with CSOs that represent the LGBTI community, for responding to the violence documented in the report.

When CSOs collect data to monitor violence based on SOGIE, they should draft reports that identify trends in their jurisdictions and elevate their findings through media outlets.

CSOs that collect information about bias-motivated violence based on SOGIE should use their findings to advocate for law reform to better address the violence, such as sentence-enhancement and substantive offense hate crime statutes or data collection laws that require state actors to monitor violence through official channels.

The purpose of collecting information to monitor bias-motivated violence based on SOGIE and the likelihood of a possible justice sector response should be explained to the survivor reporting the incident.

**DOCUMENTATION FOR PROSECUTION: CREATING AN OFFICIAL RECORD**

Police officers responding to reports of violence should recognize and record indicators of bias based on SOGIE in their official files, as early as possible, to preserve the evidence of bias motivation. Official police crime scene documentation forms should have a section for indicators of bias.

Police officers or investigators should record evidence in as much detail as possible in the first instance to avoid the retraumatization that can occur when survivors recount incidents repeatedly.

Officers involved in documentation, in particular interviewing officers, should be culturally competent to discuss sexual orientation and gender identity in a professional and sensitive way so that a survivor is comfortable discussing all facts related to a violent incident based on SOGIE.

Justice sector actors, in coordination with CSOs, should establish protocols for receiving reports of violent incidents based on SOGIE and verifying the information through investigation.

All personally identifying information associated with an incident of bias-motivated violence based on SOGIE should be kept confidential to help protect survivors and other members of the LGBTI community from reprisals as justice sector actors investigate bias-motivated incidents.

Justice sector actors should be clear about the purpose of any information collected.

New technologies should be used when appropriate to enhance effective documentation of violent incidents based on SOGIE.

With the survivor’s permission, justice sector actors can share data about violence motivated by SOGIE with CSOs for the purpose of monitoring the extent and typology of such violence and trends.

You can find the full Framework and other stakeholder resources at ambar.org/justiceworks.