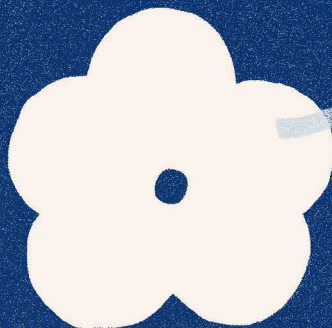




KNOW



YOUR

RIGHTS

ASIAN AMERICAN  
BAR ASSOCIATION  
OF NEW YORK



## WHAT IS AABANY?

The Asian American Bar Association of New York (AABANY) is a bar association of lawyers, legal professionals, and judges. Its mission is to improve the study and practice of law, and the fair administration of justice for all by ensuring the meaningful participation of Asian Americans in the legal profession.

## DISCLAIMER:

The information provided in this brochure is not legal advice. The brochure is for general informational purposes only. You should check official government sources for up-to-date information and any changes in policy and procedure. References to third-party sources are for your convenience and are not endorsements by AABANY or its members.

## WHAT IS THIS?

This brochure is intended to teach you about your legal rights if you experience a bias incident or potential hate crime. It is divided into three sections:

- I. A CRIMINAL LAW SECTION,
- II. A CIVIL LAW SECTION, and
- III. A NON-LEGAL SECTION.

## U.S. LEGAL SYSTEM 101

**What is a hate crime? What is a bias incident?** In New York, the hate crime statute requires the commission of a criminal act plus either (1) the intent to carry out the offense because of a belief or perception about an individual's race, color, national origin, ancestry, or gender or (2) selecting the victim because of a belief or perception about the victim's race, color, national origin, ancestry, or gender. There is another New York statute that also allows for punishment of an offense that involves "a belief or perception about an individual's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation," but it is not technically a "hate crime." If it is not possible to prove this belief or perception, incidents can be prosecuted as general crimes.

District Attorney's offices and the criminal justice system handle "offenses." Offenses include crimes and lower-level problems, such as "traffic infractions" and "violations." An offense is any conduct that could be punished with a term of

imprisonment or a fine. A bias incident is an umbrella term used to refer to acts that are motivated by race, color, national origin, ancestry, or gender of the victim, but do not rise to the level of an "offense" under the law and are therefore not prosecuted as such by the police or DAs.

**What is the difference between criminal and civil law?** Criminal law involves a district attorney (DA) who brings charges on behalf of the government against someone who may have committed a crime. That person, if convicted, can be ordered to pay a fine, go to jail, or lose some freedom. Civil lawsuits can be brought by you or an attorney on your behalf to compensate you in money damages for injuries you may have sustained or to stop people from doing certain things.

**What is the difference between the federal government and the state government?** Under the U.S. Constitution, the federal government (such as Congress and federal agencies) deals with particular national matters, such as ones involving national defense, foreign affairs, and commerce that crosses state lines. State or city governments handle most other issues and crimes, including hate crimes.

**What is the burden of proof in a criminal prosecution?** To win your case, you need to prove elements of a crime beyond a reasonable doubt. Beyond a reasonable doubt is a higher standard than "a preponderance of the evidence," which is the standard for civil cases. Even if an attack is motivated by racial hate, if the prosecutor cannot prove beyond a reasonable doubt that the attacker acted with that motivation, a criminal prosecution will not be successful. The prosecutor must also prove the other elements of the crime beyond a reasonable doubt. Failure to do so will lead to an unsuccessful prosecution; that is, the defendant (the attacker) will be acquitted (found not guilty).

**Why does all of this matter?** Just remember to ask yourself: "Do I have evidence that an attack was motivated by a *belief* or *perception* about an individual's *race, color, national origin, ancestry, or gender*?" Gather the facts about the incident, and let the DA focus on applying the law.

**What about my immigration status?** The New York Police Department (NYPD) will not ask about immigration status when you call or go to the police for help or to report a crime. To learn more about your rights as an immigrant, visit: <https://comptroller.nyc.gov/services/for-the-public/immigrant-rights-and-services/>.



## IF YOU ARE EXPERIENCING A BIAS INCIDENT

### ***Get to safety.***

***Seek emergency help if needed and call 9-1-1.*** If you do not speak English, clearly say at the start of the call what language you need the police to speak in. For example, you might start a call by repeating “Cantonese, Cantonese, Cantonese” and the NYPD will find somebody with the right language abilities. Do not just begin speaking in a foreign language.

The entire call to 9-1-1 will be recorded. If you are able to safely make this call while the incident is occurring, any statements made by the attacker during the incident will be recorded and this may later be used as evidence in a prosecution.

***Record and document information.*** To establish a racially-motivated crime, it is important to record however you can.

#### ***What do I need to do?***

- Document any information regarding the crime as soon as possible. Include details about the attacker’s physical appearance and clothes.
- Any sound or video recording helps. Even if the camera is pointed downwards, you can record words and sounds. Use your smart phone’s voice-activated features like “OK Google take a video.”
- Collect bystander witness contact information.

***What type of information is most important?*** Gather any information, documents, photos, and videos that show that the attacker had a belief or perception about somebody’s race, color, national origin, ancestry, or gender.

- Clearly document (1) physical injury and (2) property damage.
- Collect any information that shows the attack was done on purpose.

## AFTER YOU HAVE EXPERIENCED A BIAS INCIDENT

### ***I. CRIMINAL JUSTICE SYSTEM***

A district attorney can prosecute offenses. The NYPD and prosecutors investigate and decide what charges to bring.

***Preserve all documentation and recordings.*** Gather extra evidence if you can. This does not have to be related to the incident. Has the attacker said or done anything in the past that shows racial discrimination or hateful feelings?

### ***Report***

***Report the incident to the NYPD first.*** First, report the incident to the NYPD Hate Crime Task Force by calling 1-888-440-HATE or sending an email to [hctf@nypd.org](mailto:hctf@nypd.org). Ask for an officer with foreign language abilities, if needed, and for the crime to be reported as a hate crime. Take note of the responding officer’s name and badge number and your case number. You are entitled to a free copy of the police report.

Second, file a report with your local NYPD precinct. Find your precinct here: <https://www1.nyc.gov/site/nypd/bureaus/patrol/find-your-precinct.page>.

***Consider reporting to other groups and agencies.*** If you have not reported to the NYPD, you should do so first. NYPD and its Hate Crime Task Force will handle your specific case through the criminal justice system. After you have contacted the NYPD, you might consider contacting other groups that gather data and that might conduct their own investigations. For a list of these organizations and entities, visit AABANY’s Anti-Asian Harassment and Violence COVID-19 Resources Page at <https://www.aabany.org/page/933>.

If you require interpretation and translation services, contact AABANY at [main@aabany.org](mailto:main@aabany.org) or leave a voicemail at (718) 228-7206.

***Speak to your DA or AABANY*** If you were attacked or victimized because of your race, color, national origin, ancestry, gender, there may be a violation of the *Hate Crime Statute (NY PL 485.05)* or *Aggravated Harassment in the Second Degree (NY PL 240.30-3)*. Remember to ask yourself, “Do I have any evidence that the attacker had a belief or perception about somebody’s race, color, national origin, ancestry, or gender?” If so, contact the police and a DA will handle the legal details. AABANY can help guide you through this process.

*Restitution* orders require attackers to make their victims whole through compensation. Tell the prosecutor about your injuries or expenses and ask about whether you can receive restitution.

***Contact AABANY*** if you believe the DA or NYPD is not taking your case seriously. Email: [main@aabany.org](mailto:main@aabany.org) Phone: (516) 788-8820 (English), (516) 788-8821 (Mandarin), (516) 788-8822 (Cantonese), (516) 788-8825.

**Victim Assistance** Report the crime within *one week* to the police or another criminal justice agency. Then, follow 3 steps:

- Find a Victim Assistance Program near you: <https://ovs.ny.gov/locate-program>.
- Check your eligibility: <https://ovs.ny.gov/victim-compensation>.
- File a claim online: <https://vsp.ovs.ny.gov/> or call (800) 247-8035. You may also obtain an application from any police department or hospital emergency room.

**Ongoing safety.** If you are worried about your safety after the attack, ask the DA about a protective order. Crime victims have a right to be notified of criminal proceedings, an inmate's custody status or an offender's incarceration status. Call 888-846-3469 or visit: <https://vinelink.vineapps.com/search/NY>.

## II. CIVIL LAWSUIT

You or your lawyer can bring a private lawsuit against the attacker, for example for assault or battery.

- Civil lawsuits will take time, as there are required legal processes like filing documents and communicating with the court. You may also have to pay legal fees to retain an attorney if you do not qualify for free legal services.
- If you need a consultation or referral, contact AABANY at (516) 788-8820 (English), (516) 788-8821 (Mandarin), (516) 788-8822 (Cantonese), (516) 788-8825 (Korean).

## III. NON-LEGAL RESOURCES

**Report the incident.** If you do not wish to pursue a criminal or civil option, you can help the community by reporting online to the following organizations.

- *Asian American Federation.* The Asian American Federation tracks reported anti-Asian attacks to better advocate for the safety of the Asian American community. Visit <https://www.aafederation.org/aaf-safety-resources/>.
- *Stop AAPI Hate.* Available in multiple languages, reporting an incident to Stop AAPI Hate helps advocates understand what is happening and which policies should be supported. Visit <https://stopaapihate.org/>.

**Mental health.** If you are looking for mental health resources to deal with post-incident trauma, anxiety, or depression, consider contacting the New York Coalition for Asian American Mental Health Resources (NYCAAMH) at <http://www.asianmentalhealth.org/resources/> or the National AAPI Mental Health Association (NAAPIMHA) at <https://www.naapimha.org/resources>.

## IF YOU ARE UNSURE ABOUT NEXT STEPS, CONTACT AABANY

Consider reporting anti-Asian violence incidents to AABANY. A trained AABANY volunteer can guide you through the criminal justice process and explore potential ways to seek other forms of assistance. The information and guidance provided would not establish an attorney-client relationship and the volunteer would not be representing you as your personal lawyer.

EMAIL: [MAIN@AABANY.ORG](mailto:MAIN@AABANY.ORG)

PHONE: (718) 228-7206 (VOICEMAIL)

ASIAN AMERICAN  
BAR ASSOCIATION  
OF NEW YORK

