



The California Attorney General's Guidance to Prosecutors on Hate Crimes



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Table of Contents

Introduction	1
A. Why Should Prosecutors Be Concerned About Hate Crimes?.....	2
B. Aims and Goals of this Guidance	2
II. Recommendations for Prosecutorial Agencies	3
A. Establish a Specialized Hate Crimes Unit in Your Prosecutorial Agency	3
B. Cooperate with Local, State, and Federal Law Enforcement	4
C. Implement Vertical Prosecution	5
D. Pursue and Facilitate Civil Legal Services for Hate Crime Victims	5
III. Victims’ Rights and Advocacy	5
A. Marsy’s Law	5
B. Victim Advocacy Services	5
C. Trauma-Informed Services	6
D. California Victim Compensation Board	7
E. Immigrant Protection (Pen. Code, § 422.93)	7
IV. California Hate Crime Statutes	8
A. Definitions.....	8
B. Hate Crimes Indicators	9
C. Hate Crimes and Aggravating Charges.....	10
D. Special Circumstances Allegations.....	15
E. Miscellaneous Penal Code Provisions Relating to Hate Crimes.....	15
V. Sentencing Considerations, Alternative Forms of Sentencing, and Restorative Justice Approaches	16
A. General Sentencing Considerations	16
B. Alternative Sentencing in Hate Crime Prosecutions	17
C. Restorative Justice Approaches to Hate Crimes	17
VI. California Civil Law Mechanisms to Combat Hate Crimes	18
A. The Ralph Civil Rights Act of 1976.....	18
B. The Tom Bane Civil Rights Act.....	19
Conclusion	20
Resources	21

Introduction

Crimes motivated by hate are not just attacks on individual people—they are attacks on our communities and the entire State. It is Attorney General Rob Bonta’s priority to combat hate crimes through building trust between law enforcement and communities, ensuring culturally competent victim services, and prosecuting violations to the fullest extent of the law while taking into account restorative practices in crafting penalties.

On January 26, 2021, against an alarming backdrop of a rising number of hate crimes and bias incidents against Asian Americans and Pacific Islanders, President Joe Biden issued his *Memorandum Condemning and Combating Racism, Xenophobia, and Intolerance Against Asian Americans and Pacific Islanders in the United States*.¹ On May 11, 2021, Attorney General Bonta similarly declared a “state of crisis” as heightened hate violence in Asian American and Pacific Islander communities reverberated (and continues to do so) across the State.² Meanwhile, in late 2020, California reported the highest number of hate crimes of any state, with 1,017 bias-motivated crimes against the victim’s race, ethnicity, ancestry, gender, gender identity, religion, disability or sexual orientation.³

Hate crimes are criminal acts where the victim is targeted because of their group identity or perceived identity (such as their race, national origin, religion or another group characteristic). Hate crimes thus convey the message to both the victim and their group or perceived group that they are not welcome and they are not safe. As such, hate crimes are an attack on fundamental rights and stand to divide communities. It is vital that prosecutors are equipped to recognize hate crimes and respond appropriately. An effective response from authorities when a hate crime occurs can alleviate some of the alienation for the victim and their community and can build cooperation within a community to deter future hate crimes.

This guidance aims to provide prosecutors with recommended best practices and resources for combating hate crimes. Section One begins with best practices for addressing hate crimes, such as establishing a dedicated and specialized Hate Crimes Unit, cooperating with local, state, and federal law enforcement, prosecuting hate crimes “vertically”—such that the same attorney is assigned to all stages of the case, and pursuing civil legal services for hate crime victims. This section provides concrete suggestions for community engagement and outreach resources for prosecutors to build trust with the local community, such as establishing a community advisory board, utilizing the media to engage with the public around hate crimes resources, and cultural sensitivity and other relevant training to help prosecutors connect with vulnerable communities. Section Two suggests a breadth of resources prosecutors can draw on to support victims of hate crimes as they work toward successful prosecutions, including best practices for communicating effectively with victims, and being aware of protections from reporting victims and witnesses of hate crimes to federal immigration authorities. Section Three delineates California statutory authority that prosecutors can use to identify and investigate hate crimes, listing particular criminal offenses that include bias as an element of crime as well as outlining hate crime indicators and sentencing enhancements based on hate-based

¹ The White House, *Memorandum Condemning and Combating Racism, Xenophobia and Intolerance Against Asian Americans and Pacific Islanders In the United States* (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-condemning-and-combating-racism-xenophobia-and-intolerance-against-asian-americans-and-pacific-islanders-in-the-united-states/>.

² Office of the Attorney General Press Conference, *Attorney General Bonta Announces New Initiatives at California Department of Justice and Efforts to Tackle Hate* (May 11, 2021), <https://oag.ca.gov/media/library>.

³ U.S. Department of Justice, *2019 Hate Crime Statistics*, <https://ucr.fbi.gov/hate-crime/2019/tables/table-13-state-cuts/california.xls>.

motivation. Section Four presents appropriate sentencing considerations, such as sentencing goals and aggravating factors. This section includes a discussion of alternative sentencing—encouraging prosecutors to make use of community-based programs that can be included in a sentence to address an offender’s underlying bias, as well as restorative justice approaches to hate crime prosecutions. Section Five provides background on California’s civil legal remedies to combat hate crimes—the Ralph Civil Rights Act and the Tom Bane Civil Rights Act—which both private parties and public prosecutors are empowered to enforce.

A. Why Should Prosecutors Be Concerned About Hate Crimes?

Hate crimes are underreported.⁴ For a variety of reasons, including apprehension to work with law enforcement, victims of hate crimes often do not report their victimization to local law enforcement.⁵ While local law enforcement agencies are required to report hate crimes data to the California Department of Justice (DOJ), underreporting results in an incomplete picture of the hate crimes committed against our communities across the State.⁶ Building relationships with the local community, disseminating information, and harnessing appropriate resources so that every community across the State feels safe and welcome is crucial to prevent, increase reporting of, and prosecute hate crimes.

Local prosecutors play a critical role in protecting our communities from hate crimes. Local prosecutors are well-positioned to build community relationships that will aid in the prosecution of hate crimes. The Attorney General strongly encourages the development and implementation of hate crimes protocols for all prosecutorial agencies. A hate crimes protocol, which some local agencies already have in place, is important to ensuring the dual goals of prevention and prosecution. The Attorney General offers this guidance to assist local prosecutors on this important issue.

B. Aims and Goals of this Guidance

Through this guidance the Attorney General hopes to begin a statewide dialogue to achieve the following goals:

- Properly identify and investigate hate crimes;
- Ensure fair and uniform application of hate crimes law;
- Increase the success of prosecution by ensuring more immediate and consistent contact with victims and affected communities;
- Identify best practices for effectively engaging with local communities to increase education and encourage the reporting of hate crimes;
- Provide resources for victims of hate crimes and hate incidents; and
- Offer alternative forms of sentencing or restorative justice approaches to hate crime prosecutions.

⁴ “On average from 2009 to 2011, about 69 percent of hate crime victimizations were not reported to police, compared to 44 percent on average from 2015 to 2017.” U.S. Department of Justice Hate Crimes Enforcement and Prevention Initiative, *Improving the Identification, Investigation, and Reporting of Hate Crimes*, at p. 24 (2020), <https://cops.usdoj.gov/RIC/Publications/cops-w0895-pub.pdf#page=35>.

⁵ Frank S. Pezzella, Matthew D. Fetzer, and Tyler Keller, “The Dark Figure of Hate Crime Underreporting,” *American Behavioral Scientist*, 2019.

⁶ Pursuant to Penal Code section 13023, California law enforcement agencies are required to report information on hate crimes to the DOJ. The US Department of Justice also collects hate crimes data through the Federal Bureau of Investigation’s (FBI) Uniform Crime Reporting (UCR) Program and also identifies criminal victimization incidents, including hate crimes, through the National Crime Victimization Survey.

The Attorney General's Office looks forward to an ongoing dialogue with local prosecutorial agencies to develop supplemental guidance for meeting specific challenges and to identify successful strategies and creative resources for prosecutors across the State, which we look forward to featuring in future updates to this guidance.

II. Recommendations for Prosecutorial Agencies

Effective community relations and expertise in the area of hate crimes are important tools to the successful prosecution of hate crimes. The following recommendations are designed to develop those tools:

A. Establish a Specialized Hate Crimes Unit in Your Prosecutorial Agency

To promote the accurate and consistent identification of hate crimes, it is recommended that, where possible, local prosecutorial agencies have a designated unit or deputy to review and/or prosecute all hate crimes. Having a designated unit or deputy assists affected communities because it conveys the importance of addressing hate crimes in the community. It also facilitates the reporting and investigation of hate crimes because there is a more easily identifiable point of contact who, optimally, is known to both local law enforcement and the community at large through engagement described below.

In addition to the prosecutorial function of the specialized Hate Crimes Unit or deputy, the specialized hate crimes unit should dedicate staff time to (1) community engagement, (2) media/communications, (3) victim support, and (4) training. This multi-prong strategy to combat hate crimes encourages the reporting of hate crimes and cooperation with hate crimes prosecution.

► *Community Engagement*

No effort to address hate crimes and incidents would be complete without increased communication and collaboration between law enforcement agencies and community-based organizations and other civil rights organizations, separate from responding to particular incidents. To devise an effective plan to engage with the community, prosecutors must first understand the dynamics of their particular communities, as every community is unique. What is common among them is that building trust requires sustained, thoughtful, and consistent interaction.

For example, prosecutors can ensure that the chief prosecutor, first assistant, or other high-ranking prosecutor is engaged and involved at important community events—particularly those focused on public safety (e.g., Nights Out; Neighborhood/Community Watch events)—as a visible demonstration of commitment to the community's safety and well-being. Prosecutors can create a hate crimes task force that meets regularly; incorporate a discussion of hate crimes into existing community meetings or engagements; and co-host outreach events that provide a platform for community members to ask questions or address concerns.

Prosecutors may establish a community advisory board to hear community concerns and discuss prosecutorial priorities, practices, and policies. It is advisable to invite community leaders to serve on the community advisory board and to participate in agency-sponsored events to create both formal and informal opportunities to engage with specific communities.

► *Media/Communications*

Media and communications can be powerful vehicles to educate the public about hate crimes. Prosecutorial agencies should have a dedicated section on their website that provides information

about what constitutes a hate crime, what to do if a person believes he or she is a victim of a hate crime, resources to help victims of hate crimes, and hate crime laws. The messaging and communication to the public and to individuals involved in cases should be accessible to those who are not English-proficient or who have disabilities.

A coordinated media effort can assist prosecutors' offices in establishing a presence within the community. Prosecutorial agencies can use both traditional and social media (e.g., Facebook; Twitter) to make announcements about events or initiatives, highlight successes, introduce prosecution staff to the public, and elicit information and assistance from the community.

Additionally, media can be a promising vehicle for mobilizing and communicating with the community following a hate crime. Prosecutorial agencies may use briefings and press releases to elicit community help in solving cases and identifying evidence and witnesses, as well as to provide critical public safety information. Prosecutors should take special care to publish public service announcements (PSAs) in local minority and community press, where appropriate.

► *Training*

Prosecutorial agencies are expected to engage, with cultural humility, the diverse communities served by the office, including ethnic/religious groups, tribal, LGBTQ+, and immigrant communities. To that end, it is recommended that prosecutorial agencies hire a multi-lingual and diverse staff with ongoing culturally-specific training and connections to vulnerable populations. Moreover, prosecutors should also offer their specialized Hate Crimes Unit or deputy cultural sensitivity and other relevant training to help prosecutors connect with vulnerable communities. Moreover, additional training will allow prosecutors to explore the role of potential implicit bias in prosecutorial decision-making. It is also a best practice to appoint community liaisons to ensure culturally appropriate responses and messaging.

► *Victim Support*

Victims should be apprised of charges and/or reasons for rejecting a hate crime case or charge in timely manner. If a court dismisses a case or an enhancement, this fact should be promptly communicated to the victim(s). A hate crime deputy should also be prepared to assist the victim(s) with appropriate community referrals. (See Section Two below for examples.)

B. Cooperate with Local, State, and Federal Law Enforcement

Local law enforcement agencies play a critical role in responding to hate crimes. As first responders to a possible hate crime, officers and victim/witness personnel can document overt signs of hate motivation and set the tone with victims and witnesses that can impact their cooperation. By working with local law enforcement, prosecutors can facilitate the proper documentation of hate crimes early in the investigation.

We also encourage local prosecutors to coordinate with the appropriate U.S. Attorney's Office and FBI to determine whether federal charges are better suited for a particular hate crime incident or to identify available investigative resources. Additionally, prosecutorial agencies should coordinate with all local, state and national hate crime data collection efforts to ensure the accuracy of published hate crime statistics.

C. Implement Vertical Prosecution

It is also recommended to prosecute cases vertically. Having the same deputy handle investigation, charging, and prosecution through sentencing promotes not only accurate and consistent prosecution but also, importantly, provides continuity for the victim of the hate crime. Any prosecutor assigned to hate crimes cases is expected to be sensitive to the customs and mores of the victim's racial, ethnic, religious, cultural or social group. The prosecutor should use all available resources to help the victim overcome obstacles to participation in the criminal justice process.

D. Pursue and Facilitate Civil Legal Services for Hate Crime Victims

There is a range of civil legal remedies that hate crime victims are entitled to pursue. In some instances, prosecutors can directly pursue these remedies on behalf of a victim under the Ralph Civil Rights Act and Tom Bane Civil Rights Act. In other areas, prosecutors can partner with local bar associations, civil legal organizations, and law schools to facilitate the procurement of civil legal services for victims/witnesses of hate crimes. These legal services can involve the pursuit of a civil legal claim under California law for the underlying hate crime or hate incident. (See Section Five below regarding the Ralph Civil Rights Act and Tom Bane Civil Rights Act.) The legal services can also pertain to landlord/tenant, child custody/visitation, immigration, employment-related, and other legal issues that may accompany victimization from a hate crime.

III. Victims' Rights and Advocacy

California law provides victims with certain basic rights. In addition to those basic rights, local prosecutor offices can adopt a number of practices that will enhance their relationship with victims and ensure that victims have adequate support and resources.

A. Marsy's Law

Marsy's Law provides specific rights to victims in California. Under Marsy's Law (Cal. Const., art. I, § 28, subd. (b)), victims are afforded enumerated rights related to, among other things, their treatment, protection, and entitlement to obtain and provide certain information during the entire criminal process.⁷ Victims must be informed of these rights.⁸

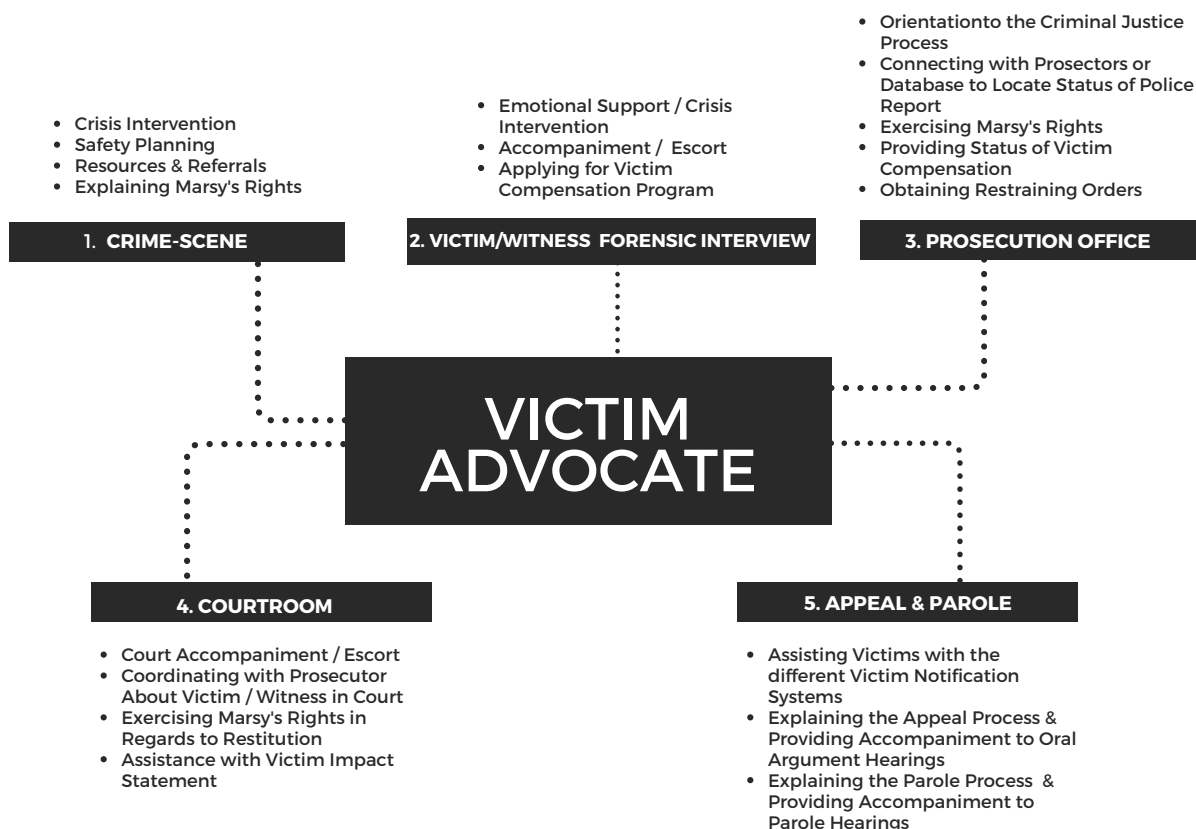
B. Victim Advocacy Services

Prosecutors and law enforcement are among the primary agencies that most commonly come into contact with victims at the crime scene or in court, accordingly, it is worthy to note that victim advocacy services are ideal in prosecutorial offices or law enforcement agencies. In vertical advocacy, victim advocates play a critical role in providing victims with wrap-around services that also provide consistency to the victim from start-to-finish. Vertical advocacy is derived from vertical prosecution and maintains the same goal of minimizing confusion and maintaining a victim-centered approach. It allows for a victim to have a point-of-contact, reduces repeating having to retell their experience to multiple individuals and provides them with an assigned victim advocate who can explain the criminal

⁷ More information, including a full copy of the text on the Victim's Bill of Rights Act of 2008: Marsy's Law Proposition 8, can be found at: www.oag.ca.gov/victimservices/content/bill_of_rights.

⁸ See <https://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9>.

justice process at every stage. Victim advocates, who are adequately trained and culturally competent in providing services inclusive to all communities they serve, can assist in the following ways:



Having victim advocates allows law enforcement to investigate the crime and the prosecutor to focus on their primary duties of reviewing the crime report when determining charges and/or prosecuting the case in court.⁹

C. Trauma-Informed Services

In the instance of hate crimes, it is incumbent upon prosecutors' offices to employ or provide trauma-informed services to victims that are sensitive to the victim's unique circumstances. For example, extra attention should be paid to selecting referrals that provide bilingual and disability-accessible services. Victims and family survivors may also benefit from trauma recovery services, including counseling, crisis intervention, emergency shelter, and emergency transportation.

It is advisable for prosecutors to also meet or contact local system-based victim advocates to establish an understanding of services available to victims and/or survivors and how they can assist in warm hand-offs to local resources including how they can benefit the victim after reporting a hate crime. Regular trainings surrounding services provided by victim service providers can assist prosecutorial agencies in making appropriate referrals.

⁹ See the National District Attorneys Association' *Victim Services and Victims' Rights: Elevating Victims' Voices at a Critical Time Best Practices Guide* (Apr. 2021), <https://ndaa.org/wp-content/uploads/WPS-Victim-Advocacy-Best-Practices-Guide-April-2021-FINAL.pdf>, for more best practices.

D. California Victim Compensation Board

Victims may need financial support for harm incurred in the course of the hate crime. Prosecutors should advise victims of any local, city, or county programs that offer compensation for victims. In addition, California Government Code section 13962, subdivision (b) states that every local law enforcement agency has the duty to inform crime victims about California Victim Compensation Board, which offers compensation for hate crimes for eligible expenses incurred by California residents or nonresidents victimized in California. Expenses that may be covered include, but are not limited to: medical and dental expenses; mental health counseling services; relocation costs; and income loss.¹⁰

E. Immigrant Protection (Pen. Code, § 422.93)

It is important that all community members feel safe to report hate crimes or incidents, whether as victims or witness. Hate crimes directed at particularly vulnerable groups such as immigrants can be difficult to identify and investigate due to the victims' fear of interactions with law enforcement because of their immigration status. To support reporting and participation in prosecution of hate crimes, California prohibits law enforcement from detaining or turning over an individual to federal authorities based on immigration status. (See Pen. Code, § 422.93.)

Fear of possible deportation is a significant obstacle to establishing trust between law enforcement and immigrant communities. Lack of legal immigration status in the United States, or exploitation of that fact by a perpetrator, may be among the reasons for some victims choosing not to come forward to work with law enforcement. Stabilizing victims' immigration status in the United States can be critical to providing victims of crime a greater sense of security that also makes it easier for them to assist you with your law enforcement and prosecutorial efforts. As a prosecutor, you play an important role in the application process for U nonimmigrant status (also known as a U visa) for victims of certain crimes and T nonimmigrant status (also known as a T visa) for victims of human trafficking.

The U visa is an immigration benefit for victims of certain crimes who meet eligibility requirements. In order to be eligible for a U visa, the victim must submit a U visa certification completed by a certifying agency or official. USCIS Form I-918, Supplement B (Form I-918B or certification) is the U visa certification that a prosecutor can complete for a victim who is petitioning USCIS for a U visa. The law enforcement certification explains the role the victim had, has, or will have in being helpful to the investigation or prosecution of the case.

The T visa is an immigration benefit for victims of human trafficking who meet certain eligibility requirements. The T visa declaration (Form I-914B) is supplementary evidence of a victim's assistance to law enforcement that a federal, state, local, tribal, and territorial law enforcement agency, prosecutor, judge, or other government official can complete for a T visa applicant. Form I-914B is not a required piece of evidence, but when provided, it is helpful evidence to demonstrate that (1) the victim is or was a victim of a severe form of trafficking in persons; and (2) the victim has complied with any reasonable requests from law enforcement in an investigation or prosecution of human trafficking.

For more information, you can review the DOJ's "Update to Information Bulletin No. 2015-DLE-04: New and Existing State and Federal Laws Protecting Immigrant Victims of Crime," issued on April 1, 2020, which is available at https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2020-dle-01.pdf.

¹⁰ More information can be found at: <https://victims.ca.gov/>. Fact sheets, first responder cards, and posters that can be shared with victims can be found at: <https://victims.ca.gov/for-law-enforcement/>.

IV. California Hate Crime Statutes

In keeping with its policy of inclusion and respect, California has enacted numerous statutes to address the issue of hate crimes, including expanding the characteristics protected under the statutes. Below we outline pertinent definitions, hate crime statutes, and potential aggravating circumstances that apply in the prosecution of hate crimes.

A. Definitions

The following is a discussion about the pertinent definitions under the California Penal Code:

1. Hate Crime (Pen. Code, § 422.55)

A “hate crime” is a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation, and (7) association with a person or group with one or more of these actual or perceived characteristics.

2. Relevant Hate Crime Terms (Pen. Code, § 422.56)

In order to qualify as a hate crime, the act(s) committed must be because of the actual or perceived characteristics of the victim, as defined in Penal Code section 422.56:

- (a) “Association with a person or group with these actual or perceived characteristics” includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime” under paragraphs (1) to (6), inclusive, of subdivision (a) of Section 422.55.
- (b) “Disability” includes mental disability and physical disability as defined in Section 12926 of the Government Code regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.
- (c) “Gender” means sex, and includes a person’s gender identity and gender expression. “Gender expression” means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.
- (d) “In whole or in part because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic.
- (e) “Nationality” includes citizenship, country of origin, and national origin.
- (f) “Race or ethnicity” includes ancestry, color, and ethnic background.
- (g) “Religion” includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

- (h) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.
- (i) "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

3. Hate Incident

A hate incident is distinguishable from a hate crime because it involves an action or behavior that, while motivated by hate, is legally protected by the First Amendment right to freedom of expression. Examples of hate incidents include:

- name-calling,
- insults,
- distributing hate material in public places, and
- displaying hate material on your own property.

The U.S. Constitution allows hate speech as long as it does not interfere with the civil rights of others. If a hate incident elevates to include threats to a person or property, it may become a hate crime.¹¹

B. Hate Crimes Indicators

In evaluating whether a crime is a hate crime, the following may provide circumstantial evidence that the defendant's conduct was "substantially motivated" in whole or in part by the victim's membership in a protected category under section 422.55. The list is not exclusive but illustrative.

1. The defendant and the victim were of a different race, religion, disability, sexual orientation, ethnicity, gender, and/or gender identity, or the defendant perceived them to be.
2. The defendant made bias-related oral comments, written statements, gestures or wore clothing or possessed objects reflecting bias.
3. The defendant has a prior hate incident or hate crime conviction or belongs to a hate group.
4. The presence of bias-related drawings, markings, symbols, or graffiti at the crime scene.
5. The victim belongs to a minority group in the neighborhood where the victim lives and the incident took place.
6. Crimes of violence in which the forced used is particularly gruesome.
7. Prior bias incident or crimes in the same locality and involving victims of the same race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.
8. A substantial portion of the community where the crime occurred perceived that the incident was motivated by bias.
9. The victim was engaged in activities related to their race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.
10. The incident coincided with a holiday or a date of significance to a particular race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

¹¹ See, e.g., *In re M.S.* (1995) 10 Cal.4th 698; *People v. Superior Ct. (Aishman)* (1995) 10 Cal.4th 735; and *Wisconsin v. Mitchell* (1993) 508 U.S. 476.

11. A historically-established animosity existed between the victim's and the defendant's groups.
12. The victim, although not a member of the targeted racial, religious, disability, sexual orientation, ethnicity, gender, or gender identity group, was a member of an advocacy group supporting the victim group.

C. Hate Crimes and Aggravating Charges

1. Threats and Vandalism to Interfere with Civil Rights (Pen. Code, § 422.6)

It is a misdemeanor to willfully injure, intimidate, interfere with, oppress, or threaten, by force or threat of force, another person's free exercise or enjoyment of their civil rights or knowingly deface, damage, or destroy their property because of that person's actual or perceived protected characteristic(s) as specified in Penal Code section 422.6, which provides:

- (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.
- (b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.
- (c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.
- (d) Conduct that violates this and any other provision of law, including, but not limited to, an offense described in Article 4.5 (commencing with Section 11410) of Chapter 3 of Title 1 of Part 4, may be charged under all applicable provisions. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, and the penalty to be imposed shall be determined as set forth in Section 654.

(*Id.*; see also CALCRIM Nos. 1350-1352.)

2. Allegation to Elevate Misdemeanors to a Wobbler (Pen. Code, § 422.7)

A charging allegation may convert a misdemeanor to a wobbler when it is proven that the

misdemeanor was motivated by bias under circumstances specified in Penal Code section 422.7, which provides:

Except when a person is punished under Penal Code section 422.6, this allegation enhances a misdemeanor to a wobbler if the crime is committed against the person or property of another, to intimidate or interfere with the victim's exercise or enjoyment of any rights secured by the California or U.S. Constitutions or laws, because of the victim's real or perceived status, as enumerated in Penal Code section 422.6, above, under any of the following circumstances, which shall be charged in the accusatory pleadings:

- (a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.
- (b) The crime against property causes damage in excess of (\$500) five hundred dollars.
- (c) The defendant has been previously convicted of Penal Code section 422.6(a) or (b), or a conspiracy to commit Penal Code section. 422.6(a) or (b).

(*Id.*; see also CALCRIM No. 1355.)

3. State Prison Enhancement (Pen. Code, § 422.75)

A charging allegation may enhance any felony if the prosecutor can prove that it was committed as a hate crime, in the following circumstances:

- (a) Except in the case of a person punished under Section 422, a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion;
- (b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony that is a hate crime, or attempts to commit a felony that is a hate crime, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.
- (c) For the purpose of imposing an additional term under subdivision (a) or (b), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.
- (d) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was a hate crime. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.
- (e) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(Pen. Code, § 422.75; see also CALCRIM No. 1354.)

4. Vandalism of a Place of Worship (Pen. Code, § 594.3)

A charging allegation may either elevate a misdemeanor vandalism to a wobbler or render a felony irreducible in the following specific circumstances:

- (a) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in a county jail for not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.
- (b) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery, which is shown to have been a hate crime and to have been committed for the purpose of intimidating and deterring persons from freely exercising their religious beliefs, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.

(Pen. Code, § 594.3.)

5. Disturbing Religious Meetings (Pen. Code, § 302)

It is a misdemeanor under Penal Code section 302 to intentionally disturb a group of people who have met to worship, whether such disturbance occurs within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, as follows:

- (a) Every person who intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship, by profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where the meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.
- (b) A court may require performance of community service of not less than 50 hours and not exceeding 80 hours as an alternative to imprisonment or a fine.
- (c) In addition to the penalty set forth in subdivision (a), a person who has suffered a previous conviction of a violation of this section or Section 403, shall be required to perform community service of not less than 120 hours and not exceeding 160 hours.
- (d) The existence of any fact which would bring a person under subdivision (c) or (d) shall be alleged in the complaint, information, or indictment and either:
 - (1) Admitted by the defendant in open court.
 - (2) Found to be true by a jury trying the issue of guilt.
 - (3) Found to be true by the court where guilt is established by a plea of guilty or nolo contendere.
 - (4) Found to be true by trial by the court sitting without a jury.
- (e) Upon conviction of any person under this section for disturbances of religious worship, the court may, in accordance with the performance of community service imposed under this section, consistent with public safety interests and with the victim's consent, order the defendant

to perform a portion of, or all of, the required community service at the place where the disturbance of religious worship occurred.

- (f) The court may waive the mandatory minimum requirements for community service whenever it is in the interest of justice to do so. When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(*Id.*)

6. Terrorizing Private Property (Pen. Code, § 11411)

To obtain a sentence enhancement for a bias-related property crime, a prosecutor must establish that one the following circumstances, specified in Penal Code section 11411, apply:

- (a) Any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of employment, or who is otherwise associated with the school, park, or place of employment, shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.
- (b) Any person who places or displays a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property shall be punished by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction and by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.
- (c) Any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by placing or displaying a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another on two or more occasions, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or three years, by a fine not to exceed ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment. A violation of this subdivision shall not constitute felonious conduct for purposes of Section 186.22.
- (d) Any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, on the private property of another without authorization for the purpose of

terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or three years, by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed five thousand dollars (\$5,000), or by both the fine and imprisonment for the first conviction and by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months or two or three years, by a fine of not more than ten thousand dollars (\$10,000), or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed fifteen thousand dollars (\$15,000), or by both the fine and imprisonment for any subsequent conviction.

- (e) As used in this section, "terrorize" means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(*Id.*; see also CALCRIM, Nos. 1303-1304.)

7. Religious Terrorism (Pen. Code, § 11412)

It is a felony to attempt to discourage religious activities by threats of violence as set forth in Penal Code section 11412.

Any person who, with intent to cause, attempts to cause or causes another to refrain from exercising his or her religion or from engaging in a religious service by means of a threat, directly communicated to such person, to inflict an unlawful injury upon any person or property, and it reasonably appears to the recipient of the threat that such threat could be carried out is guilty of a felony.

(*Id.*; see also CALCRIM No. 1305.)

8. Religious Terrorism by Destructive Device (Pen. Code, § 11413)

Under Penal Code section 11413, it is a felony to use a bomb against or to set on fire a place of worship or any private property if the property was targeted because of the protected characteristic(s) of the owner or occupant of the property and the purpose was to terrorize another or was in reckless disregard of terrorizing another:

- (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years, and a fine not exceeding ten thousand dollars (\$10,000).
- (b) Subdivision (a) applies to the following places: ... (2) Any church, temple, synagogue, mosque, or other place of worship ... (9) Any private property, if the property was targeted in whole or in part because of any of the actual or perceived characteristics of the owner or occupant of the property listed in subdivision (a) of Section 422.55.

...

- (d) As used in this section, “terrorizing” means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

(*Id.*)

D. Special Circumstances Allegations

There are also special circumstances allegations related to hate crimes that provide for life without the possibility of parole exclusively (Pen. Code, § 190.03) or provide for the death penalty (Pen. Code, § 190.2(a)(16)) when the crime falls within Section 422.55.

E. Miscellaneous Penal Code Provisions Relating to Hate Crimes

1. Protective Orders for Victims and Families

Penal Code section 136.2 – Provides protection against further harm. Once criminal charges are filed under any criminal statute, hate crimes victims have the right to a court order prohibiting any additional harassment during the pendency of the criminal proceeding.

Penal Code section 422.85 – As condition of probation, provides for a protective order for victim, known immediate family or domestic partner as well for court ordered civil rights training for and restitution by the defendant.

Penal Code section 422.88 – Provides that the court in which a criminal proceeding stemming from a hate crime or alleged hate crime is filed shall take all actions reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of the alleged victim, or of a person who is a victim of, or at risk of becoming a victim of, a hate crime.

Penal Code section 422.865, subd. (b) – Requires a protective order for the victim or known immediate family or domestic partner in cases where a defendant, who is committed to a state hospital or other treatment facility, is either placed on outpatient status or conditional release.

2. Supervised Release Condition from State Hospital or Treatment Facilities

Penal Code section 422.865, subd. (a) – In cases of bias motivated crimes, the court or community program director may order that the defendant be required as a condition of outpatient status or conditional release to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

To that end, it is the intent of the Legislature to encourage state agencies and treatment facilities to establish education and training programs to prevent violations of civil rights and hate crimes. (Pen. Code, § 422.865, subd. (c).)

3. Parole Condition

Penal Code section 3053.4 – Requires that as a condition of parole following a hate crime sentence, defendant must refrain from further acts of violence, threats, stalking, or harassment of the victim or victim’s family. “Stay away” conditions may also be imposed (additional requirement that the defendant maintain a certain physical distance from victim).

4. Possible Reward for Hate Crime Information

Penal Code section 1547, subdivisions (a)(12) & (13) – Authorizes the Governor to offer a reward for information leading to the arrest and conviction of any person who has committed certain hate crimes.

5. Unprotected Activity under the California Constitution

Penal Code section 11410 – States that the urging of violence where death or great bodily injury is likely to result is conduct not protected by the California Constitution; in this section the Legislature finds that it is the right of every person, regardless of actual or perceived race or ethnicity, religion, gender, gender identity, gender expression, nationality, disability, sexual orientation, or association with a person or group with these actual or perceived characteristics, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

V. Sentencing Considerations, Alternative Forms of Sentencing, and Restorative Justice Approaches

A. General Sentencing Considerations

1. Sentencing Goals (Pen. Code, § 422.86)

California has identified specific public policy goals for sentencing a hate crime defendant. When recommending any sentence to the trial court, prosecutors should have the following goals in mind:

- (1) Punishment for the hate crimes committed.
- (2) Crime and violence prevention, including prevention of recidivism and prevention of crimes and violence in prisons and jails.
- (3) Restorative justice for the immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes.

(Pen. Code, § 422.86, subd. (a); see also Cal. R. Ct., rules 4.427, 4.330.)

2. Aggravating Circumstances

Certain circumstances in aggravation may justify the implementation of a higher sentence with respect to hate crimes.

a. Place of Worship (Pen. Code, § 1170.8)

Penal Code section 1170.8 provides as an aggravating factor the fact that a robbery, arson, or assault with a deadly weapon or by means of any force likely to produce great bodily injury was committed upon a place of worship, or against a person while that person was within a place of worship:

- (a) The fact that a robbery or an assault with a deadly weapon or instrument or by means of any force likely to produce great bodily injury was committed against a person while that person was in a church, synagogue, or building owned and occupied by a religious educational institution, or any other place primarily used as a place of worship where religious services are regularly conducted, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.
- (b) Upon conviction of any person for a violation of Section 451 or 453, the fact that the person

intentionally burned, or intended to burn, a church, synagogue, or building owned and occupied by a religious educational institution, or any other place primarily used as a place of worship where religious services are regularly conducted, shall be considered a circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(*Id.*; see also Cal. Rules of Court, rule 4.421, subd. (a)(12 [referencing hate as an aggravating factor for sentencing where 1170.8 does not apply].)

b. Particularly Vulnerable Victim (Pen. Code, § 1170.85)

Penal Code section 1170.85, subdivision (b) provides that age or disability of a victim may be considered circumstances in aggravation if those characteristics render the victim particularly vulnerable or unable to defend himself or herself.

B. Alternative Sentencing in Hate Crime Prosecutions

On May 20, 2021, the federal COVID-19 Hate Crimes Act was signed into law. (Sen. 937, 117th Cong., 1st Sess. (2021).)¹² It amended Section 249 of title 18, United States Code to add the following:

- (e) Supervised Release.—If a court includes, as a part of a sentence of imprisonment imposed for a violation of subsection (a), a requirement that the defendant be placed on a term of supervised release after imprisonment under section 3583, the court may order, as an explicit condition of supervised release, that the defendant undertake educational classes or community service directly related to the community harmed by the defendant’s offense.

Although the bill is a federal law, it can be seen by California prosecutors as a model for restorative practices. Prosecutors should be cognizant of and familiar with all community-based programs to which defendants may be sentenced or referred to as a condition of probation or parole. In the context of hate crimes, prosecutors are encouraged to develop sentencing alternatives such as community-based programs where defendants can be referred to address the underlying biases of their hate crime. Such programs may include educational or experiential components that deal with addressing bias-motivated anti-social attitudes and behaviors. Prosecutors should leverage their partnerships with community-based entities to develop such sentencing programs or community-based programs.

C. Restorative Justice Approaches to Hate Crimes

Penal Code section 422.86, subdivision (a)(3) establishes that during sentencing prosecutors should have the goal of restorative justice in mind. Restorative justice provides an alternative way to address crime. It is an approach that focuses on people who have been harmed and their needs, while also holding people who have caused harm directly accountable for those needs. Restorative justice successes include reduced recidivism, high satisfaction rates from all participants, and cost savings.¹³

Different types of restorative justice models have been used in the criminal legal system to address

¹² <https://www.congress.gov/bill/117th-congress/senate-bill/937/text>.

¹³ Vera Institute for Justice, *How Can District Attorneys’ Offices Use Restorative Justice?* (2020), available at <https://www.vera.org/publications/how-can-district-attorneys-offices-use-restorative-justice>.

different kinds of harmful incidents. For example, community conferencing and restorative circles are voluntary processes in which a trained facilitator brings together all who have been affected by an incident to discuss what happened, how everyone has been impacted, and what the group would like to do about repairing the harm.¹⁴ After a facilitated process, the parties make an agreement to address the harm. Other processes include “victim-offender” dialogues, family group conferencing, and more.¹⁵ To find the best model for their needs, local prosecutors should contact existing restorative programs in their jurisdictions and involve community members in creation and implementation.

Prosecutors may offer restorative justice as an alternative to prosecution at different stages of a case—pre-charge, plea negotiations, sentencing, or as an alternative to incarceration. Eligibility for restorative approaches should be determined on a case-by-case basis working in collaboration with the law enforcement agency within whose jurisdiction the offense occurred.

VI. California Civil Law Mechanisms to Combat Hate Crimes

In addition to the Penal Code provisions discussed above, California has two civil code statutes—the Ralph Civil Rights Act of 1976 (Ralph Act) and the Tom Bane Civil Rights Act (Bane Act)—which were designed to provide further protection from, and remedies for, civil rights violations. Both statutes are versatile in application, though the Bane Act, which was subsequently enacted, is the broader of the two statutes. Vesting authority in both private parties and government attorneys to enforce their provisions, both statutes are key tools in shedding light on hate incidents and ensuring accountability.

A. The Ralph Civil Rights Act of 1976

The Ralph Act, as codified in Civil Code Section 51.7, aims to protect individuals with certain protected characteristics from violence or intimidation by the threat of violence. Such characteristics include, but are not limited to: sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, political affiliation, and position in a labor dispute. (Civ. Code, § 51.7, citing § 51, subs. (b), (e).)

District attorneys and city attorneys may bring a civil suit to enforce the Ralph Act. (Civ. Code., § 52, subd. (c).) Alternatively, individuals who believe they have been subjected to hate violence or the threat of violence may file a complaint with the California Department of Fair Housing and Employment (DFEH) or can choose to pursue a private cause of action through a civil proceeding. The Ralph Act has a three year statute of limitations. (*Id.*, subd. (b)(2).)¹⁶

To prevail in a Ralph Act lawsuit, the plaintiff must prove all of the following:

- That the defendant committed an act of violence (or threatened violence) against the plaintiff because of the plaintiff’s actual or perceived characteristic;
- That a substantial motivating reason for defendant’s conduct was the actual or perceived characteristic of the person;

¹⁴ *Id.*

¹⁵ U.S. Dep’t of Justice Office of Justice Programs, *Office for Victims of Crime, Guidelines for Victim-Sensitive Victim-Offender Mediation: Restorative Justice Through Dialogue* (April 2000), https://www.ncjrs.gov/ovc_archives/reports/restorative_justice/restorative_justice_ascii_pdf/ncj176346.pdf.

¹⁶ Complaints filed with DFEH must be filed within one year from the date the victim becomes aware of the perpetrator’s identity, but in no case more than three years from the date of harm. See https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/DFEH_RalphPoster_ENG.pdf.

- That the person was harmed; and
- That defendant's conduct was a substantial factor in causing the person's harm.

(Cal. Jury Instr. Civ. (2020), CACI Nos. 3063, 3064.) A defendant also may be liable under the Ralph Act if they "aid, incite, or conspire" in the denial of a right protected under Civil Code section 51.7. (Civ. Code, § 52, subd. (b).)

Civil remedies available for Ralph Act violations include:

- Restraining orders, violators of which can be fined or jailed.
- Actual damages, including the medical expenses, lost wages, property repair, or compensation for emotional suffering and distress. (Civ. Code § 52, subd. (b).)
- Punitive damages. (Civ. Code § 52, subd. (b)(1).)
- Civil penalties of up to \$25,000, including in actions brought by the Attorney General, any district attorney, or city attorney. (Civ. Code § 52, subd. (b)(2).)
- Attorney's fees. (Civ. Code § 52, subd. (b)(3).)

B. The Tom Bane Civil Rights Act

Similar to Penal Code section 422.6, the Bane Act, Civil Code section 52.1, is intended to prohibit individuals from interfering or attempting to interfere with others' civil rights, "whether or not under the color of law," by means of threats, intimidation, or coercion. Section 52.1 was enacted a decade after the Ralph Act, and it was intended to supplement the Ralph Act as an additional legislative effort to deter violence. The stated purpose of the bill was "to fill in the gaps left by the Ralph Act" by allowing the Attorney General, any district attorney or city attorney, or any individual "to seek relief to prevent the violence from occurring before it was committed and providing for the filing of criminal charges." (Civ. Code, § 52.1; *Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1447 [internal citation omitted].) The Bane Act was designed to allow individuals and local prosecutors "to bring an action to enjoin crimes of hate violence where they are threatened." (*Id.* [internal citation omitted].) "The Legislature enacted section 52.1 to stem a tide of hate crimes." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 338.)

Bane Act lawsuits may be brought against private citizens, corporations, and government entities (see e.g., *Jones v. Kmart Corp.* (1998) 17 Cal.4th 329; *Gatto v. County of Sonoma*, (2002) 98 Cal. App.4th 744; *Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 800 as modified (Nov. 17, 2017)). The elements of a claim are:

- By threats, intimidation, or coercion, the defendant caused a person to reasonably believe that if they exercised their civil rights, the defendant would commit violence against them or their property and that the defendant had the apparent ability to carry out the threats; or the defendant acted violently against a person or a person's property to prevent them from exercising their civil rights or retaliated against a person for having exercised their civil rights;
- The defendant intended to deprive a person of their enjoyment of the interests protected by their civil rights;
- A person was harmed; and
- The defendant's conduct was a substantial factor in causing the person's harm.

(CACI, No. 3066.) The Bane Act requires that the defendant have acted with specific intent. (*Cornell*, 17 Cal.App.5th at 803 [internal citations and quotations omitted].)

Though Bane Act claims can be brought, for example, by hate crime victims harmed due to their sexual orientation, national origin, or race, unlike the Ralph Act, anyone who has had their civil rights threatened can file a Bane Act claim, even if they are not part of a protected class. Further, “the statute does not require a plaintiff to allege the defendant acted with discriminatory animus or intent based upon the plaintiff’s membership in a protected class of persons.” (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 956.)

Speech alone is not sufficient to establish liability, unless the following elements are established: (1) the speech itself threatens violence against a specific person or group of persons, or a group of which plaintiff is a member; (2) the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property; and (3) that the defendant had the apparent ability to carry out the threat. (Civ. Code, § 52.1, subd. (k).)

Similar to the Ralph Act, remedies under the Bane Act include injunctive and declaratory relief, civil penalties (up to \$25,000), damages, and attorneys’ fees. (Civ. Code, § 52.1.) An action brought by the Attorney General, a district attorney or city attorney may seek a \$25,000 civil penalty. (Civ. Code, § 52.1, subd. (b).) If this civil penalty is requested, it may be assessed individually against each defendant and the penalty will be awarded to each person whose rights have been violated. (*Id.*)

Conclusion

The Attorney General’s Office is issuing this initial guidance with the goal of initiating an ongoing conversation with local prosecutors about best practices to prevent, investigate, and prosecute hate crimes, as well as to increase reporting. Proactive efforts to engage with local communities is a key component to achieve this endeavor. Local prosecutors are critical players in our pursuit to bring those responsible for perpetrating hate crimes to justice, while protecting vulnerable communities across the State. Together, we can make California a safer place for all.

Resources

A non-exhaustive list of resources that may aid prosecutors are found below:

State of California Department of Justice, *Hate Crimes*, <https://oag.ca.gov/hatecrimes>

This DOJ website contains tools and resources to aid and assist local, state, and federal law enforcement authorities in the investigation of possible hate crimes, including The Attorney General's Hate Crime Rapid Response Protocol, hate crimes brochures, hate crimes shareable graphics, public education materials, and annual hate crimes reports.

Commission on Peace Officer Standards and Training, *POST Hate Crimes Model Policy*, https://post.ca.gov/Portals/0/post_docs/publications/Hate_Crimes.pdf

Pursuant to Penal Code 422.87, effective January 1, 2019, any local law enforcement agency that updates an existing hate crimes policy, or adopts a new one, shall include the content of POST's model policy framework provided in this document as well as any revisions or additions to the model policy in the future. This model policy can aid prosecutors to identify best practices for the investigation of hate crimes with their law enforcement partners.

Paul Sheridan, Libby McInerney, and Michelle Gahee Kloss, *A Prosecutor's Stand: A Guide for Law Enforcement*, <https://cops.usdoj.gov/RIC/Publications/cops-p308-pub.pdf>

A Prosecutor's Stand is a documentary that examines three hate crime cases in San Francisco, California, exploring the nature of these crimes; common challenges in reporting, investigating, and prosecuting them; and the unique trauma faced by hate crime victims. This guide is designed to help facilitate discussions about the film. It contains sample discussion questions, important facts about hate crimes, a list of supplier...ental resources, and an evaluation survey.

American Prosecutor's Research Institute: *A Local Prosecutor's Guide for Responding to Hate Crimes*, <https://www.ojp.gov/pdffiles1/Digitization/182629NCJRS.pdf>

This Guide provides prosecutors with information to aid them in their prosecution of hate crimes, based on the different approaches used by prosecutors across the country and with input from a national advisory group of local prosecutors; local, state, and federal law enforcement representatives; victim advocacy groups; civil rights groups; and experts in the field of hate crime.

Hate Crime Data Collection Guidelines and Training Manual, <https://www.fbi.gov/file-repository/ucr/ucr-hate-crime-data-collection-guidelines-training-manual-02272015.pdf/view>

This publication assists law enforcement agencies in collecting and submitting hate crime data to the FBI UCR (Uniform Crime Reporting Program), as well as in establishing an updated hate crime training program for their personnel.