

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Edward Medrano, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>California laws that prohibit hate crimes and/or provide enhanced penalties for specified hate-related acts</p>	<p><i>No.</i></p> <p>2020-DLE-06</p> <p><i>Date:</i></p> <p>4/30/2020</p>	<p><i>Contact for information:</i></p> <p>Edward Medrano, Chief Division of Law Enforcement (916) 210-6300</p>

TO: ALL DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES

This bulletin is designed to ensure that state and local law enforcement officials across California have the necessary information and tools to continue to respond appropriately and swiftly to hate crime activity during the current COVID-19 crisis. Such events are damaging to the residents and communities we are entrusted to serve, particularly when they involve threats of violence.

As always, we in law enforcement should be aware of hate crime activity and be prepared to respond appropriately to those or any other crimes against vulnerable communities in California. A key element in our efforts to protect these communities is encouraging them to report all crimes, despite factors that might make them hesitant to approach law enforcement, such as immigration status. *See* Gov. Code § 7284.6, subd. (a)(1)(A) (prohibiting inquiry into immigration status unless necessary to certify the victim for a U or T visa); *see also* [2020-DLE-01](#).

Hate crimes are serious crimes that may result in imprisonment or jail time for offenders. The California Department of Justice (DOJ) provides this updated summary to local law enforcement agencies about the multiple California criminal laws that prohibit hate crimes and/or provide enhanced penalties for specified hate-related acts. This bulletin also briefly summarizes the Ralph Civil Rights Act and the Bane Act, which provide civil remedies for certain hate crime activity in California. Further, this bulletin identifies experts in civil rights enforcement and hate crime investigation and prosecution at the California Department of Justice who are available to provide technical assistance in your effort to enforce these laws in your jurisdiction.

For more information about Hate Crime statistics and trends in California, please visit the California Attorney General’s OpenJustice website at <https://openjustice.doj.ca.gov/data-stories/2018/hate-crime-2009-2018>. Thank you for your efforts to report hate crimes in your jurisdiction to DOJ, and all that you are doing to protect public safety in the face of the unprecedented public health crisis caused by COVID-19.

California Penal Code Sections on Hate Crimes

California law recognizes that certain crimes are more serious where a victim is singled out because of their actual or perceived disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. These offenses are referred to as hate crimes, and can serve as a **stand-alone crime** under California Penal Code section 422.6, as an **aggravating factor** under section 422.7, or as an **enhancement** under section 422.75.

§ 422.55 – Defines “hate crime” as a criminal act committed, in whole or in part, because of one or more of

the following actual or perceived characteristics of the victim: disability, gender, nationality, race or ethnicity, religion, sexual orientation; or because of the person's association with a person or group with one or more of these actual or perceived characteristics.

§ 422.6 – Makes it a **stand-alone crime** 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 (§ 422.6, subs. (a), (c)), or knowingly deface, damage, or destroy their property (§ 422.6, subd. (b)), because of that person's actual or perceived protected characteristic(s).

To prove interference with another's civil rights *by force* (§ 422.6, subd. (a)), a prosecutor must establish the following **elements**:

1. The defendant, *by force*, injured, intimidated, interfered with, oppressed, or threatened another person in the free exercise or enjoyment of any legally protected right or privilege.
2. The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s), or because of the other person's association with a person or group having one or more of these characteristics.
3. The defendant did so with the specific intent to deprive the other person of the free exercise or enjoyment of the legally protected right or privilege.

To prove interference with another's civil rights *by threat of force* (§ 422.6, subs. (a), (c)), a prosecutor must establish the following **elements**:

1. The defendant, *by threat of force*, injured, intimidated, interfered with, oppressed, or threatened another person in the free exercise or enjoyment of any legally protected right or privilege.
2. The threat of force, if consisting of speech alone, threatened violence against a specific person or group.
3. The defendant had the apparent ability to carry out the threat (the threat must be one that would reasonably tend to induce fear in the alleged victim).
4. The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s), or because of the other person's association with a person or group having one or more of these characteristics.
5. The defendant did so with the specific intent to deprive the other person of the free exercise or enjoyment of the legally protected right or privilege.

To prove interference with another's civil rights *by defacing, damaging, or destroying their property* (§ 422.6, subd. (b)), a prosecutor must establish the following **elements**:

1. The defendant knowingly defaced, damaged, or destroyed another person's real or personal property.
2. The defendant did so in whole or in part because of the other person's actual or perceived

protected characteristic(s), or because of the other person's association with a person or group having one or more of these characteristics.

3. The defendant did so with the specific intent to intimidate or interfere with the other person's free exercise or enjoyment of a legally protected right or privilege.

A conviction under section 422.6 is a **misdemeanor** that can be punished by up to a year in county jail and/or up to a \$5,000 fine, and up to 400 hours of community service. (Pen. Code § 422.6, subd. (c).)

§§ 422.7 and 422.75 – Provide that if a person commits a crime and is motivated in part by the fact that the victim has one or more of the protected characteristics in § 422.55, the criminal offense will be considered a “hate crime.”

§ 422.7 (penalty enhancement) – If the defendant is convicted of a misdemeanor that was motivated by bias, the prosecution may use this in aggravation and seek an enhanced punishment beyond those imposed for misdemeanors. The penalty enhancement shall be charged in the accusatory pleading, and may not be used in the case of a person being punished under Penal Code section 422.6. (Felony wobbler: 16 months, or two or three years in county jail and/or fine up to \$10,000; or one year in jail.)

A prosecutor must establish the following **elements**:

1. The defendant committed the underlying crime intending to interfere with another person's legally protected right or privilege.
2. The defendant did so in whole or in part because of the other person's actual or perceived protected characteristic(s).
3. The defendant either:
 - i. caused physical injury or had the ability at that time to cause a violent injury; OR
 - ii. caused property damage in excess of \$950; OR
 - iii. has been convicted *previously* under section 422.6, subdivision (a) or (b); OR
 - iv. has been convicted *previously* of a conspiracy to commit a crime described in section 422.6, subdivision (a) or (b).

§ 422.75 (felony enhancement) – Provides for an enhanced sentence for any felony if the prosecutor can establish that it was committed as a hate crime.

A prosecutor must establish the following **element**:

1. The defendant committed the underlying crime in whole or in part because of the alleged victim's actual or perceived protected characteristic(s), or association with a person or group having one or more of these actual or perceived characteristics.

A felony hate crime sentence enhancement can add an additional one, two, or three years in prison on top of any other sentence the defendant receives for the underlying felony. (§ 422.75, subd. (a).) If convicted of acting in concert with another person to commit the felony hate crime, the felony hate crime sentence enhancement increases to two, three, or four years in prison. (§ 422.75, subd. (b).) If convicted of committing a felony hate crime while using a firearm, the court may lengthen the sentence

at its discretion. (§ 422.75, subd. (c).) Prior felony hate crime convictions can add an additional one year in state prison for each prior conviction. (§ 422.75, subd. (d).)

Additional Crimes and Enhancements that Fall within the Hate Crimes Umbrella

In addition to §§ 422.7 and 422.75, other hate crime-related statutes prohibit or provide enhanced penalties for specified hate-related acts.

§ 190.2, subd. (a)(16) (Special Circumstances) – Provides a death penalty or sentence of life in prison without possibility of parole for murder motivated by a victim’s race, color, religion, nationality, or country of origin. A prosecutor must establish that the defendant intended to kill because of the deceased person’s real or perceived protected characteristic(s).

§ 190.03, subds. (a), (c) – Provides for life in prison without possibility of parole for first-degree murder motivated by a victim’s actual or perceived protected characteristic(s). The prosecutor must prove the defendant committed the murder, in whole or in part, because of the deceased person’s actual or perceived protected characteristic(s).

§ 302 – Establishes that it is a misdemeanor 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. (Penalty: up to one year in jail and/or up to a \$1,000 fine.)

§ 594.3, subd. (b) – Provides that it is a felony to knowingly vandalize a place of worship or a cemetery as a hate crime. (Penalty: 16 months, or two or three years in county jail.)

§ 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.

§ 1170.85, subd. (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.

§ 11411, subds. (a), (b) – Subdivision (a) provides that it is a misdemeanor to hang 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 them, or to hang a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at, or is otherwise associated with, the school, park, or place of employment. Subdivision (b) provides that it is a misdemeanor to cause a person to fear for their safety by placing or displaying a sign, mark, symbol, emblem, or other physical impression 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 them. (Penalty: up to one year in jail and/or a fine of up to \$5,000, with increased fine for subsequent convictions.)

A prosecutor must establish the following **elements**:

1. The defendant placed or displayed a sign, mark, symbol, emblem, or physical impression on the

private property of another person.

2. The defendant did not have authorization to place or display that sign, mark, symbol, emblem, or physical impression on the property.
3. The defendant intended to terrorize the owner or occupant of the property (or acted with reckless disregard of the risk of terrorizing the owner or occupant of the property).

§ 11411, subd. (c) – Provides that it is a misdemeanor or a felony to engage 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 a sign, mark, symbol, emblem, or other physical impression on that property on two or more occasions. (Felony wobbler: 16 months, or two or three years in county jail, and/or up to a \$10,000 fine; or one year in jail and/or up to a \$5,000 fine.)

§ 11411, subd. (d) – Provides that 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 or in reckless disregard of terrorizing them, 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, works at or is otherwise associated with the school shall be guilty of a felony or misdemeanor. (Felony wobbler: 16 months, or two or three years in county jail, and/or up to a \$10,000 fine; or one year in jail and/or up to a \$5,000 fine, as well as increased fines for subsequent convictions.)

A prosecutor must establish the following **elements**:

1. The defendant burned or desecrated a religious symbol on the private property of another; OR on the property of a school.
2. The defendant knew the object that they burned or desecrated was a religious symbol.
3. The defendant did not have authorization to burn or desecrate the religious symbol on the property.
4. The defendant intended (or acted with reckless disregard) to terrorize the owner or occupant of the property; OR intended to terrorize someone who attends the school, works at the school, or is associated with the school.

§ 11412 – Provides that it is a felony to attempt to discourage religious activities by threats of violence. (Penalty: 16 months, or two or three years in state prison.)

A prosecutor must establish the following **elements**:

1. The defendant caused or attempted to cause a person to refrain from exercising their religion (OR refrain from engaging in a religious service) by threatening injury upon any person or property.
2. The defendant directly communicated the threat to that person.

3. The person reasonably believed the threat could be carried out.
4. At the time the defendant made the threat, the defendant intended to cause the person to refrain from exercising their religion (OR refrain from engaging in a religious service).

§ 11413, subds. (a), (b)(2), (b)(9) – Provides that 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. (Penalty: three, five, or seven years in county jail, and a fine of up to \$10,000.)

A prosecutor must establish the following **elements**:

1. The defendant exploded or ignited (or attempted to explode or ignite) a destructive device or explosive, or committed arson, in or about a place of worship or private property.
2. The defendant committed the act with the intent to terrorize or with reckless disregard of terrorizing someone else.

Miscellaneous Penal Code Provisions Relating to Hate Crimes

§ 136.2 – Protective Orders – 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.

§ 422.87 – Requires any local law enforcement agency that updates an existing hate crime policy, or adopts a new hate crime policy, to include, among other things, the model policy framework developed by the Commission on Peace Officer Standards and Training (POST), information regarding bias motivation, a requirement that all officers be familiar with and carry out the policy, and information regarding the general underreporting of hate crimes, as well as a plan to remedy this underreporting.

§ 1547, subds. (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.

§ 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 you maintain a certain physical distance from victim).

§ 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.

§ 13023 – Subject to funding, requires the Attorney General to direct local law enforcement agencies to report to the California Department of Justice information relative to hate crimes.

§ 13519.6 – Requires POST to develop guidelines and training on addressing hate crimes. The guidelines must include a model policy framework that all state law enforcement agencies must adopt and that the commission shall encourage all local law enforcement agencies to adopt.

§ 13519.41 – Requires POST to develop and implement a course of training for law enforcement officers and dispatchers regarding sexual orientation and gender identity minority groups in the state.

California Ralph Civil Rights Act and the Bane Act

The Ralph Civil Rights Act, Civil Code section 51.7, provides that it is the right of every person in California to be free from violence or the threat of violence against their person or property because of their actual or perceived sex, race, color, ancestry, national origin, religion, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, immigration status, political affiliation, or position in a labor dispute. These listed characteristics are merely examples, and other bases for a discrimination claim exist under the Act. The Bane Act, Civil Code section 52.1, provides protection against interference or attempts to interfere by threat, intimidation, or coercion with a person's exercise or enjoyment of any constitutional or statutory rights. Remedies for violations of the Ralph Civil Rights Act or the Bane Act include restraining orders, injunctive relief, equitable relief to secure constitutional and statutory rights, actual damages, exemplary or punitive damages, a civil penalty of \$25,000, and attorney's fees.

Contact Information

The California Department of Justice takes great pride in assisting local law enforcement agencies in enforcing criminal and civil rights laws and protections. Should your agency or individual officers require technical assistance, please contact Division of Law Enforcement Chief Edward Medrano at (916) 210-6300 or Senior Assistant Attorney General Michael Newman in the Department's Civil Rights Enforcement Section at (213) 269-6280.