

AMENDED IN ASSEMBLY APRIL 21, 2021

AMENDED IN ASSEMBLY MARCH 30, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 28**

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**Introduced by Assembly Member Chau**

December 7, 2020

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An act to amend Sections ~~422.55, 422.56, 422.6, 422.7, and 422.87~~ of, and to add Sections 422.58 and 422.72 to, of the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 28, as amended, Chau. Hate crimes.

Existing law defines “hate crime” as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. *Existing law defines, “in whole or in part because of” as meaning that the bias motivation must be a cause in fact of the offense.* Existing law provides ~~punishments for hate crimes that range from misdemeanors with specified penalties to felonies with additional terms of one to 3 years in the state prison, depending on the underlying criminal act and other circumstances: that the punishment for misdemeanor hate crimes is imprisonment in a county jail not to exceed one year or a fine of up to \$5,000, or both imprisonment and that fine. Under existing law, hate crimes with specified underlying acts or other circumstances are punished by imprisonment in a county jail for not more than one year or for 18 months, or 2 or 3 years, or by a fine of up to \$10,000, or by both imprisonment and that fine.~~

~~This bill would make a criminal act committed, in whole or in part, because of actual or perceived characteristics of a person other than the victim a hate crime. By expanding the definition of a crime, this bill would impose a state-mandated local program.~~

~~This bill would deem a person to have acted in whole or in part because of the perceived characteristic of the victim or other person when the person has taken specified actions, including using a slur based on the actual or perceived characteristic, vandalizing property using words or symbols commonly associated with a hate group or that show bias motivation based on the actual or perceived characteristic, selectively targeting victims or others based on the actual or perceived characteristic, or posting on social media or other media blaming the group with the actual or perceived characteristic for a societal problem.~~

~~*This bill would define “bias motivation” for this purpose as a preexisting negative attitude toward actual or perceived characteristics, including discriminatory selection, as defined. The bill would provide examples of acts that would demonstrate bias motivation, including use of a slur based on the actual or perceived characteristic of the victim, that occurred at, or shortly before or after, the time of the crime, and that was directed at the victim or at a person who shares the actual or perceived characteristic with the victim.*~~

~~This bill would impose additional increase the fines for a person who is convicted of a hate crime, as specified. The bill crime by \$2,500 and would require those funds to be used, upon appropriation, to fund classes or programs on racial or ethnic sensitivity, or other similar training in the area of civil rights, as specified.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~no.

*The people of the State of California do enact as follows:*

1 SECTION 1. ~~Section 422.55 of the Penal Code is amended to~~  
2 read:

1 422.55. ~~For purposes of this title, and for purposes of all other~~  
2 ~~state law unless an explicit provision of law or the context clearly~~  
3 ~~requires a different meaning, the following shall apply:~~

4 (a) ~~“Hate crime” means a criminal act committed, in whole or~~  
5 ~~in part, because of one or more of the following actual or perceived~~  
6 ~~characteristics of the victim or other person:~~

7 (1) ~~Disability.~~

8 (2) ~~Gender.~~

9 (3) ~~Nationality.~~

10 (4) ~~Race or ethnicity.~~

11 (5) ~~Religion.~~

12 (6) ~~Sexual orientation.~~

13 (7) ~~Association with a person or group with one or more of these~~  
14 ~~actual or perceived characteristics.~~

15 (b) ~~“Hate crime” includes, but is not limited to, a violation of~~  
16 ~~Section 422.6.~~

17 ~~SEC. 2.~~

18 *SECTION 1.* Section 422.56 of the Penal Code is amended to  
19 read:

20 422.56. For purposes of this title, the following definitions  
21 shall apply:

22 (a) “Association with a person or group with these actual or  
23 perceived characteristics” includes, but is not limited to, advocacy  
24 for, identification with, ~~observing~~ *participating in* an event  
25 concerning, or being on the ground owned or rented by, or adjacent  
26 to, any of the following: a community center, educational facility,  
27 family, individual, office, meeting hall, place of worship, private  
28 institution, public agency, library, or other entity, group, or person  
29 that has, or is identified with people who have, one or more of  
30 those characteristics listed in the definition of “hate crime” under  
31 paragraphs (1) to (6), inclusive, of subdivision (a) of Section  
32 422.55.

33 (b) “Bias motivation” means a preexisting negative attitude  
34 toward actual or perceived characteristics referenced in Section  
35 422.55 and includes discriminatory selection. Depending on the  
36 circumstances of each case, bias motivation may include, but is  
37 not limited to, hatred, animosity, resentment, revulsion, contempt,  
38 unreasonable fear, paranoia, callousness, thrill-seeking, desire for  
39 social dominance, desire for social bonding with those of one’s  
40 “own kind,” perception that the person is responsible for a social

1 ill because of the protected characteristic, or a perception of the  
2 vulnerability of the victim due to the victim being perceived as  
3 being weak, worthless, or fair game because of a protected  
4 characteristic, including, but not limited to, disability or gender.

5 *Bias motivation may be demonstrated by any of the following acts:*

6 (1) *The use of a slur based on the actual or perceived*  
7 *characteristic of the victim, that occurred at the time of, or shortly*  
8 *before or after, the crime, and that was directed at the victim or*  
9 *at a person who shares the actual or perceived characteristic with*  
10 *the victim.*

11 (2) *Vandalism of property that occurred at the time of, or shortly*  
12 *before or after, the crime, that used words or symbols that show*  
13 *bias against people who share the victim's actual or perceived*  
14 *characteristic, including, but not limited to, words, phrases, or*  
15 *symbols commonly associated with a hate group.*

16 (3) *Posts on social media or other media, shortly before or after*  
17 *the crime, that blame the group that shares the victims actual or*  
18 *perceived characteristic for a societal problem, including, but not*  
19 *limited to, causing illness, crime, or economic harm.*

20 (c) "Disability" includes mental disability and physical disability  
21 as defined in Section 12926 of the Government Code, regardless  
22 of whether those disabilities are temporary, permanent, congenital,  
23 or acquired by heredity, accident, injury, advanced age, or illness.  
24 This definition is declaratory of existing law.

25 (d) "*Discriminatory selection*" means to specifically choose to  
26 target a victim, or series of victims, based on the actual or  
27 perceived characteristic of the victim when committing a crime,  
28 when there were other targets available and the only apparently  
29 discernable difference in choosing the victim was the actual or  
30 perceived characteristic.

31 ~~(d)~~

32 (e) "Gender" means sex, and includes a person's gender identity  
33 and gender expression. "Gender expression" means a person's  
34 gender-related appearance and behavior whether or not  
35 stereotypically associated with the person's assigned sex at birth.

36 ~~(e)~~

37 (f) "In whole or in part because of" means that the bias  
38 motivation must be a cause in fact of the offense, whether or not  
39 other causes also exist. When multiple concurrent motives exist,  
40 the bias motivation must be a substantial factor in bringing about

1 the particular result. There is no requirement that the bias  
2 motivation be a main factor, or that the crime would not have been  
3 committed but for the actual or perceived characteristic. This  
4 subdivision does not constitute a change in, but is declaratory of,  
5 existing law under *In re M.S.* (1995) 10 Cal.4th 698 and *People*  
6 *v. Superior Court (Aishman)* (1995) 10 Cal.4th 735.

7 ~~(f)~~

8 (g) “Nationality” includes citizenship, country of origin, and  
9 national origin.

10 ~~(g)~~

11 (h) “Race or ethnicity” includes ancestry, color, and ethnic  
12 background.

13 ~~(h)~~

14 (i) “Religion” includes all aspects of religious belief, observance,  
15 and practice and includes agnosticism and atheism.

16 ~~(i)~~

17 (j) “Sexual orientation” means heterosexuality, homosexuality,  
18 or bisexuality.

19 ~~(j)~~

20 (k) “Victim” includes, but is not limited to, a community center,  
21 educational facility, entity, family, group, individual, office,  
22 meeting hall, person, place of worship, private institution, public  
23 agency, library, or other victim or intended victim of the offense.

24 ~~SEC. 3.— Section 422.58 is added to the Penal Code, to read:~~

25 ~~422.58.— A person may be deemed to have acted in whole or in~~  
26 ~~part because of the perceived characteristic of the victim or other~~  
27 ~~person for purposes of this title when the person has done one or~~  
28 ~~more of the following:~~

29 ~~(a) Used a slur based on the actual or perceived characteristic.~~

30 ~~(b) Vandalized property using words or symbols commonly~~  
31 ~~associated with a hate group or that show bias motivation based~~  
32 ~~on the actual or perceived characteristic.~~

33 ~~(c) Selectively targeting victims or others based on the actual~~  
34 ~~or perceived characteristic.~~

35 ~~(d) Posting on social media or other media blaming the group~~  
36 ~~with the actual or perceived characteristic for a societal problem,~~  
37 ~~including, but not limited to, causing illness, crime, or economic~~  
38 ~~harm.~~

39 ~~SEC. 4.~~

40 ~~SEC. 2. Section 422.6 of the Penal Code is amended to read:~~

1 422.6. (a) A person, whether or not acting under color of law,  
2 shall not, by force or threat of force, willfully injure, intimidate,  
3 interfere with, oppress, or threaten any other person in the free  
4 exercise or enjoyment of any right or privilege secured by the  
5 Constitution or laws of this state or by the Constitution or laws of  
6 the United States in whole or in part because of one or more of the  
7 actual or perceived characteristics of the victim ~~or another person~~  
8 listed in subdivision (a) of Section 422.55.

9 (b) A person, whether or not acting under color of law, shall  
10 not knowingly deface, damage, or destroy the real or personal  
11 property of any other person for the purpose of intimidating or  
12 interfering with the free exercise or enjoyment of any right or  
13 privilege secured to the other person by the Constitution or laws  
14 of this state or by the Constitution or laws of the United States, in  
15 whole or in part because of one or more of the actual or perceived  
16 characteristics of the victim ~~or another person~~ listed in subdivision  
17 (a) of Section 422.55.

18 (c) (1) A person convicted of violating subdivision (a) or (b)  
19 shall be punished by imprisonment in a county jail not to exceed  
20 one year, or by a fine not to exceed ~~five seven~~ thousand *five*  
21 *hundred* dollars ~~(\$5,000)~~, (\$7,500), or by both the above  
22 imprisonment and fine, and the court shall order the defendant to  
23 perform a minimum of community service, not to exceed 400  
24 hours, to be performed over a period not to exceed 350 days, during  
25 a time other than the person's hours of employment or school  
26 attendance. However, a person shall not be convicted of violating  
27 subdivision (a) based upon speech alone, except upon a showing  
28 that the speech itself threatened violence against a specific person  
29 or group of persons and that the defendant had the apparent ability  
30 to carry out the threat.

31 (2) *Up to two thousand five hundred dollars (\$2,500) of any*  
32 *fine received pursuant to paragraph (1) shall be placed in the Trial*  
33 *Court Trust Fund and may be used, upon appropriation of the*  
34 *Legislature, to fund classes or programs on racial or ethnic*  
35 *sensitivity, or other similar training in the area of civil rights, as*  
36 *provided in paragraph (1) of subdivision (a) of Section 422.85.*

37 (d) Conduct that violates this and any other law, including, but  
38 not limited to, an offense described in Article 4.5 (commencing  
39 with Section 11410) of Chapter 3 of Title 1 of Part 4, may be  
40 charged under all applicable provisions. However, an act or

1 omission punishable in different ways by this section and other  
2 provisions of law shall not be punished under more than one  
3 provision, and the penalty to be imposed shall be determined as  
4 set forth in Section 654.

5 ~~SEC. 5. Section 422.72 is added to the Penal Code, to read:~~

6 ~~422.72. (a) In addition to all other fines and penalties, the court~~  
7 ~~shall impose an additional fine on a person who is convicted of a~~  
8 ~~violation of Section 422.6 or 422.7, or who has a sentence~~  
9 ~~enhancement imposed pursuant to Section 422.75, in the following~~  
10 ~~amount:~~

11 ~~(1) For a violation of Section 422.6, a fine in the amount of five~~  
12 ~~thousand dollars (\$5,000).~~

13 ~~(2) For a violation of Section 422.7, a fine in the amount of ten~~  
14 ~~thousand dollars (\$10,000).~~

15 ~~(3) For a sentence enhancement imposed pursuant to Section~~  
16 ~~422.75, a fine in the amount of ten thousand dollars (\$10,000).~~

17 ~~(b) Fines received pursuant to this section shall be placed in the~~  
18 ~~Trial Court Trust Fund and may be used, upon appropriation of~~  
19 ~~the Legislature, to fund classes or programs on racial or ethnic~~  
20 ~~sensitivity, or other similar training in the area of civil rights, as~~  
21 ~~provided in paragraph (1) of subdivision (a) of Section 422.85.~~

22 ~~SEC. 3. Section 422.7 of the Penal Code is amended to read:~~

23 ~~422.7. (a) Except in the case of a person punished under~~  
24 ~~Section 422.6, any a hate crime that is not made punishable by~~  
25 ~~imprisonment in the state prison shall be punishable by~~  
26 ~~imprisonment in a county jail not to exceed one year, or by~~  
27 ~~imprisonment pursuant to subdivision (h) of Section 1170, or by~~  
28 ~~a fine not to exceed ten twelve thousand five hundred dollars~~  
29 ~~(\$10,000); (\$12,500), or by both that imprisonment and fine, if the~~  
30 ~~crime is committed against the person or property of another for~~  
31 ~~the purpose of intimidating or interfering with that other person's~~  
32 ~~free exercise or enjoyment of any right secured to him or her by~~  
33 ~~the Constitution or laws of this state or by the Constitution or laws~~  
34 ~~of the United States under any of the following circumstances,~~  
35 ~~which shall be charged in the accusatory pleading:~~

36 ~~(a)~~

37 ~~(1) The crime against the person of another either includes the~~  
38 ~~present ability to commit a violent injury or causes actual physical~~  
39 ~~injury.~~

40 ~~(b)~~

1 (2) The crime against property causes damage in excess of nine  
 2 hundred fifty dollars (\$950).

3 (e)

4 (3) The person charged with a crime under this section has been  
 5 convicted previously of a violation of subdivision (a) or (b) of  
 6 Section 422.6, or has been convicted previously of a conspiracy  
 7 to commit a crime described in subdivision (a) or (b) of Section  
 8 422.6.

9 (b) *Up to two thousand five hundred dollars (\$2,500) of any*  
 10 *fine received pursuant to subdivision (a) shall be placed in the*  
 11 *Trial Court Trust Fund and may be used, upon appropriation of*  
 12 *the Legislature, to fund classes or programs on racial or ethnic*  
 13 *sensitivity, or other similar training in the area of civil rights, as*  
 14 *provided in paragraph (1) of subdivision (a) of Section 422.85.*

15 ~~SEC. 6.~~

16 *SEC. 4.* Section 422.87 of the Penal Code is amended to read:

17 422.87. (a) Each local law enforcement agency may adopt a  
 18 hate crimes policy. A local law enforcement agency that updates  
 19 an existing hate crimes policy or adopts a new hate crimes policy  
 20 shall include, but not be limited to, all of the following:

21 (1) The definitions in Sections 422.55 and 422.56.

22 (2) The content of the model policy framework that the  
 23 Commission on Peace Officer Standards and Training developed  
 24 pursuant to Section 13519.6, and any content that the commission  
 25 may revise or add in the future, including any policy, definitions,  
 26 response and reporting responsibilities, training resources, and  
 27 planning and prevention methods.

28 (3) (A) Information regarding bias motivation.

29 (B) (i) In recognizing suspected disability-bias hate crimes, the  
 30 policy shall advise officers to consider whether there is any  
 31 indication that the perpetrator was motivated by hostility or other  
 32 bias, occasioned by factors such as, but not limited to, dislike of  
 33 persons who arouse fear or guilt, a perception that persons with  
 34 disabilities are inferior and therefore “deserving victims,” a fear  
 35 of persons whose visible traits are perceived as being disturbing  
 36 to others, or resentment of those who need, demand, or receive  
 37 alternative educational, physical, or social accommodations.

38 (ii) In recognizing suspected disability-bias hate crimes, the  
 39 policy also shall advise officers to consider whether there is any  
 40 indication that the perpetrator perceived the victim to be vulnerable

1 and, if so, if this perception is grounded, in whole or in part, in  
2 antidisability bias. This includes, but is not limited to, if a  
3 perpetrator targets a person with a particular perceived disability  
4 while avoiding other vulnerable-appearing persons such as  
5 inebriated persons or persons with perceived disabilities different  
6 than those of the victim, those circumstances could be evidence  
7 that the perpetrator’s motivations included bias against persons  
8 with the perceived disability of the victim and that the crime must  
9 be reported as a suspected hate crime and not a mere crime of  
10 opportunity.

11 (4) Information regarding the general underreporting of hate  
12 crimes, the more extreme underreporting of antidisability and  
13 antigender hate crimes, and a plan for the agency to remedy this  
14 underreporting.

15 (5) A protocol for reporting suspected hate crimes to the  
16 Department of Justice pursuant to Section 13023.

17 (6) A checklist of first responder responsibilities, including, but  
18 not limited to, being sensitive to effects of the crime on the victim,  
19 determining whether additional resources are needed on the scene  
20 to assist the victim or whether to refer the victim to appropriate  
21 community and legal services, and giving the victims and any  
22 interested persons the agency’s hate crimes brochure, as required  
23 by Section 422.92.

24 (7) A specific procedure for transmitting and periodically  
25 retransmitting the policy and any related orders to all officers,  
26 including a simple and immediate way for officers to access the  
27 policy in the field when needed.

28 (8) The title or titles of the officer or officers responsible for  
29 ensuring that the department has a hate crime brochure, as required  
30 by Section 422.92, and ensuring that all officers are trained to  
31 distribute the brochure to all suspected hate crime victims and all  
32 other interested persons.

33 (9) A requirement that all officers be familiar with the policy  
34 and carry out the policy at all times unless directed by the chief,  
35 sheriff, director, or other chief executive of the law enforcement  
36 agency or other command-level officer to whom the chief executive  
37 officer formally delegates this responsibility.

38 (b) A local law enforcement agency that updates an existing  
39 hate crimes policy or adopts a new hate crimes policy may include  
40 any of the provisions of a model hate crime policy and other

1 relevant documents developed by the International Association of  
2 Chiefs of Police that are relevant to California and consistent with  
3 this chapter.

4 ~~SEC. 7. No reimbursement is required by this act pursuant to~~  
5 ~~Section 6 of Article XIII B of the California Constitution because~~  
6 ~~the only costs that may be incurred by a local agency or school~~  
7 ~~district will be incurred because this act creates a new crime or~~  
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
10 ~~the Government Code, or changes the definition of a crime within~~  
11 ~~the meaning of Section 6 of Article XIII B of the California~~  
12 ~~Constitution.~~