
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1985 **Hearing Date:** May 15, 2018
Author: Ting
Version: April 30, 2018
Urgency: No **Fiscal:** No
Consultant: EC

Subject: *Hate Crimes: Law Enforcement Policies*

HISTORY

Source: Equality California
The Arc California

Prior Legislation: AB 1161 (Ting), 2017, died in Assembly Appropriations
SR 55 (Skinner), 2017, adopted by the Senate

Support: California Association of Human Relations Organization; California Commission on Aging; California Church IMPACT; California NAACP; Center for the Study of Hate & Extremism at California State University, San Bernardino; Coalition for Humane Immigrant Rights; Council on American-Islamic Relations, California; Feminist Majority Foundation; Sikh American Legal Defense and Education Fund

Opposition: None known

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to clarify that temporary, permanent, congenital disabilities or disabilities acquired by heredity, accidents, injuries, advanced age, or illness are protected under hate crime laws and to require law enforcement agencies to update or adopt existing hate crime policies.

Existing law defines “hate crime” as a criminal act committed, in part or in whole, because of one or more of the following actual or perceived characteristics of the victim. (Pen. Code, § 422.55, subd. (a).):

- Disability
- Gender
- Nationality
- Race or ethnicity
- Religion
- Sexual orientation
- Association with a person or group with one or more of these actual or perceived characteristics

Existing law defines “disability” to include mental disability and physical disability. (Pen. Code, § 422.56, subd. (b)).

Existing law specifies that “hate crime” includes a violation of statute prohibiting interference with a person’s exercise of civil rights because of actual or perceived characteristics, as listed above. (Pen. Code, § 422.55, subd. (b).)

This bill clarifies that the definition of “disability” includes those disabilities that are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.

Existing law requires the Commission on Peace Officer Standards and Training shall develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, §13519.6, subd. (a).)

Existing law requires the commission to include instruction in each of the following (Pen. Code, § 13519.6, subd. (b)(1)-(7)):

- Instruction on indicators of hate crimes
- The impact on victims
- Knowledge of the laws and remedies
- Law enforcement procedures, reporting, and documentation of hate crimes
- Techniques and methods to handle incidents in a non-combative manner
- Multi-mission criminal extremism
- The special problems inherent in some categories of hate crimes

This bill states that each local law enforcement agency may adopt a hate crimes policy. Any local law enforcement agency that updates or adopts a new hate crimes policy shall include, but not be limited to, all of the following:

- The definitions of “hate crime” and associated factors, as specified;
- The content of the model policy framework that the Commission on Peace Officer Standards and Training developed, and any content that the commission may revise or add in the future;
- Information regarding bias motivation;
- Information regarding the general underreporting of hate crimes, particularly of anti-disability and anti-gender hate crimes;
- A protocol for reporting suspected hate crimes to the Department of Justice;
- A checklist of first responder responsibilities;
- A specific procedure for transmitting and periodically retransmitting the policy to all officers;
- The title or titles of the officer or officers responsible for the department’s hate crime brochure;
- A requirement that all officers be familiar and carry out the policy unless directed otherwise; and
- Any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy may include any of the provisions of a model hate crime policy and other relevant documents developed by the International Association of Chiefs of Police that are relevant to California.

This bill defines “bias motivation” as a preexisting negative attitude toward actual or perceived characteristics.

COMMENTS

1. Need for This Bill

The author states:

Hate crimes are on the rise in California. The 2017 Hate Crime in California report by the Attorney General found that from 2015 to 2016, hate crime events increased by 11.2% and violent hate crime offenses increased by 5.5% in the same year. With the rise in hate and intolerant rhetoric coming from the federal government, we must prepare our law enforcement agencies to respond to the growing number of hate crimes. AB 1985 provides a framework on how law enforcement agencies should update their hate crime policy protocols, resources, and responsibilities in order to help prevent future incidents.

2. Hate Crimes

Journalists and policy advocates popularized the term “hate crime” in the 1980’s to describe incidents directed at Jewish, Asian, and Black individuals. Referred to in some jurisdictions as “bias crimes,” hate crimes are generally defined as crimes that are, “committed not out of animosity toward the victim as an individual, but out of hostility toward the group to which the victim belongs”.¹

Hate crime perpetrators target their victims based on discrimination against immutable characteristics such as *actual or perceived* age, color, disability, gender, gender identity, national origin, race, sex, and sexual orientation. Immutability can be characterized in one of two ways. Some characteristics, such as age, disability, and race, cannot be altered by an individual's voluntary act. However, other characteristics, such as religion and gender, can only be altered with substantial cost or difficulty to the individual. Although not literally immutable, scholars contend that, “the power of a constructed category can be so overwhelming, and its terms, assumptions, and normative social requirements so deeply ingrained into the members of society, that it is experienced at the individual level as immutable”.² This implies that some characteristics that are entirely possible for individuals to change, such as religion, have such a powerful impact on the construction of individual identity that they effectively operate as if they were unchangeable.

3. Hate Crimes on the Rise in California

Today, 49 states have hate crime statutes that vary in regard to the groups protected under hate crime laws.³ The Department of Justice (DOJ) published a 2016 study on the prevalence of hate crimes. From 2007 to 2016, hate crimes have overall decreased by 34.7%. However, there was

¹ Beverly A. McPhail and Diana M. DiNitto, “Prosecutorial Perspectives on Gender-Bias Hate Crimes,” *Violence Against Women* 11, no. 9 (September 1, 2005): 1162–85, <https://doi.org/10.1177/1077801205277086>.

² Samuel Marcossou, “Constructive Immutability,” *University of Pennsylvania Journal of Constitutional Law* 3, no. 2 (April 1, 2001): 646.

³ “Hate Crime,” National Institute of Justice, accessed April 27, 2018, <https://www.nij.gov:443/topics/crime/hate-crime/pages/welcome.aspx>.

an 11.2% increase in number of hate crime events from 2015 to 2016 or 837 to 931 cases respectively.

Racism driven hate crimes are the most common accounting for 57% of all cases since 2007. Hate crimes with an anti-Black bias motivation continue to be the most common hate crime, accounting for 31.3% of all hate crime events since 2007. Sexual orientation bias driven hate crimes comprise of 22.5% of all causes and religion bias driven hate crimes account for 17.9% of hate crimes. In 2016, 64.5% of hate crimes were violent crime offenses and 35% were property crime offenses.⁴

4. Hate Crimes against People with Disabilities

The US DOJ published a National Crime Victimization Survey estimating the nonfatal violent crime against persons age 12 or older with disabilities. Disabilities were classified according to six categories: hearing, vision, cognitive, ambulatory, self-care, and independent living.

During the 5-year aggregate period from 2011 to 2015, the rate of violent victimization against persons with disabilities was at least 2.5 times the rate for those without disabilities.⁵ A study in 2012 revealed that there were a total of 92 anti-disability hate crimes reported to law enforcement. Eighteen of those cases were motivated by bias against persons with physical disabilities and 74 by bias against those with mental disabilities.⁶ The rates of their victimization may be higher because individuals may report crime less frequently, often because of the nature of their cognitive or physical disabilities.

This bill specifies that temporary, permanent, congenital disabilities or disabilities acquired by heredity, accidents, injuries, advanced age, or illness are protected under hate crime laws.

5. Peace Officer Hate Crime Training

The author indicated that Sacramento, the San Francisco Bay Area, and Los Angeles have the greatest concentrations of hate crimes. Sacramento established general orders on bias motivated crimes detailing the definition of hate crimes, how to assess motivation behind a possible incident, and law enforcement response procedures. The initial response should entail stabilizing the scene, ensuring victims and witnesses are safe, securing all potential evidence, etc. There should be a follow up investigation delegated to the Felony Assaults Unit. The unit shall conduct a second-tier review of all crime and incident reports marked “bias” to ensure proper classification. The reports should then be sent to the DOJ each month.⁷

The San Francisco or Los Angeles hate crimes policy was inaccessible online however; San Francisco published information on their Hate Crimes Unit. The Unit was formed in December 1990 and currently, there are two full-time investigators assigned to the Unit. The investigator’s responsibilities are investigating incidents, interact with community-

⁴ “State of California Department of Justice - OpenJustice,” accessed April 27, 2018, <https://openjustice.doj.ca.gov/2016/hate>.

⁵ “Bureau of Justice Statistics (BJS) - Crime Against Persons with Disabilities, 2009-2015 - Statistical Tables,” accessed April 27, 2018, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5986>.

⁶ Michael R. Rand, “Crimes Against Persons with Disabilities,” in *Encyclopedia of Crime and Punishment*, by David Levinson (2455 Teller Road, Thousand Oaks California 91320 United States: SAGE Publications, Inc., 2002), <https://doi.org/10.4135/9781412950664.n102>.

⁷ “GO-52404-Bias-Motivated-Crimes.Pdf,” accessed April 27, 2018, <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO-52404-Bias-Motivated-Crimes.pdf?la=en>.

based organizations concerned with civil rights issues, investigate civil bias motivated complaints, and provide training to law enforcement officers in the area. Los Angeles assembled a Hate Crime Task Force responsible for reviewing reporting methods, training, and actions taken by the Department anytime a hate crime is involved.⁸

This bill states that local law enforcement agencies may adopt new hate crimes policies. Those agencies that updates or adopts hate crime policies shall include information on bias motivation, procedures, and responsibilities.

6. Argument in Support

According to Equality California:

Hate crimes have unique repercussions, extending beyond the individual targeted to others in their community, creating a sense of isolation and vulnerability to harm among people with shared core characteristics. In addition, hate crimes are significantly more likely to be violent compared to other crimes and often cause longer-lasting trauma. They can also spark retaliatory hate crimes, perpetuating the cycle of hate violence.

California's hate crime laws provide protection based on a person's actual or perceived race or ethnicity, nationality, religion, disability, gender identity and expression, and sexual orientation. Enumerating each of these groups raises awareness of the impact of hate crimes on each of these communities, and on the broader communities of which they are a part.

AB 1985 provides guidance for local law enforcement agencies to update and strengthen their policies on hate crimes, focusing on recognizing hate crimes when they have occurred, engaging in appropriate response given the targeted community and the broader community, and fostering a community environment that prevents future hate crimes and incidents from occurring.

-- END --

⁸ "What LAPD Is Doing to Fight Hate Crimes - Los Angeles Police Department," accessed April 27, 2018, http://www.lapdonline.org/get_informed/content_basic_view/8812.