
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SR 55 **Hearing Date:** August 29, 2017
Author: Skinner
Version: August 21, 2017
Urgency: **Fiscal:**
Consultant: GC

Subject: *Prosecution of White Nationalist and Neo-Nazi Groups*

HISTORY

Source: Author Sponsored

Support: Alameda County District Attorney's Office; Los Angeles County District Attorney's Office

Opposition: None known

PURPOSE

This measure expresses that the Legislature stands in strong denunciation and opposition to the totalitarian impulses, violent terrorism, xenophobic biases, and bigoted ideologies that white nationalists and neo-Nazis promote. The measure further urges state and local law enforcement to use the full extent of the state laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalist and neo-Nazi individuals who come into our communities and commit violent and destructive acts.

Existing law provides that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code § 422.) *Existing law* 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: (Pen. Code § 422.55.)

- 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, as defined.

Existing law provides that 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. (Pen. Code § 422.6, subd. (a).)

Existing law provides that 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. (Pen. Code § 422.6, subd. (b).)

Existing law provides that 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 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. (Pen. Code § 422.6, subd. (c).)

Existing federal law provides that whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if death results from the offense; or the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill. These provisions apply when the offenses involve actual or perceived race, color, religion, or national origin. (18 U.S.C. § 249, subd. (a)(1).)

Existing federal law provides that whoever, whether or not acting under color of law, in any specified circumstance willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if death results from the offense; or the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill. These provisions apply when the specified conduct involves actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability. (18 U.S.C. § 249, subd. (a)(2).)

This resolution states that whereas, the tragic events that took place on August 12, 2017, in Charlottesville, Virginia prove that white nationalism and neo-Nazism remain very real threats to our nation’s social and racial progress.

This resolution states that whereas, throughout the course of our nation’s history, white nationalism has promoted intimidation and violent repression of individuals solely on the basis of their race, ethnicity, religion, sexual orientation, and immigration status.

This resolution states that whereas, today, white nationalism has attempted to reinvent itself, self-identifying as the “Alt-Right,” yet their present-day rhetoric and terrorism conjure painful memories of our nation’s past.

This resolution states that whereas, while free speech is a bedrock value for Americans, white nationalist and neo-Nazi groups promote agendas that are dangerous to public safety and the welfare of our communities because they incite and promote lawless actions and utilize language for the purpose of inciting an immediate breach of the peace by provoking fights and violence.

This resolution states that whereas, white nationalism and neo-Nazism are continuing to grow as menaces to societal order that seek to reignite social animosities, reverse improvements in race relations, divide the nation, and foment hatred, classism, and ethnic eradication; and

This resolution states that whereas, the white nationalist and neo-Nazi message of racial and social intolerance has led to senseless acts of violence that continue to terrorize individuals and communities.

This resolution resolves by the Senate of the State of California, that the Senate firmly denounces and opposes the totalitarian impulses, violent terrorism, xenophobic biases, and bigoted ideologies that are promoted by white nationalists and neo-Nazis.

This resolution resolves that the Legislature urges state and local law enforcement to use the full extent of the state laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalist and neo-Nazi individuals who come into our communities and commit violent and destructive acts.

This resolution resolves that the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

COMMENTS

1. Need for This Resolution

According to the author:

“The horrific events in Charlottesville and elsewhere prove that violent white nationalism and neo-Nazism remain very real threats. These groups’ intent is to terrorize our communities, so it makes sense to prosecute them as terrorists. SR 55 calls on state and local law enforcement to use the full extent of the state laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalist and neo-Nazi individuals who come into our communities and commit violent and destructive acts.”

2. California Terrorist Threats Law

California Penal Code § 422 defines “criminal threats” which were formerly known as “terrorist threats.” A criminal threat is when an offender threatens to physically harm or kill someone, and the all three of the following factors occur:

1. The person is placed in a state of reasonable fear for her or her safety or the safety of his or her immediate family.
2. The threat is specific and unequivocal.
3. The threat is communicated verbally, in writing, or electronically transmitted.

Criminal threats can be charged whether or not you have the ability to carry out the threat, and whether any action is taken in furtherance of the threat. California Penal Code § 422 is a “strike” under California’s three strikes law.

3. Hate Crimes

Hate crimes, more correctly referred to in some jurisdictions as "bias 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." (Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act* (1994) 17 Harv. Women's L.J. 157, 159.) Looking at a more specific definition, a hate crime is defined as "a crime in which the defendant intentionally selects a victim because of the *actual or perceived* race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." (Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 Section 280003 (1994) emphasis added (codified in part at 28 U.S.C. Section 994 (1994).)

Hate crime perpetrators target their victims based on discrimination against immutable characteristics such as 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." [Marcosson, *Constructive Immutability* (2001) 3 U. Pa. J. Const. L. 646, 650.] 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.

4. Hate Crimes on the Rise in California

According to the California Department of Justice, the number of hate crimes in California increased 11.2% from 2015 to 2016. This increase followed a marked decrease in the number of hate crimes over the previous decade. Hate crimes with a racial bias are the most common, accounting for 57% of all hate crime events since 2007, followed by hate crimes with a sexual orientation bias at 22.5%, and those with a religion bias at 17.9%. In 2016, 64.5% of hate crimes were violent crime offenses and 35% were property crimes.¹

¹ <https://openjustice.doj.ca.gov/2016/hate>

5. Argument in Support

According to the Alameda County District Attorney:

While free speech is a bedrock value for Americans, white nationalist and neo-Nazi groups promote agendas that are dangerous to public safety and welfare of our communities because they incite and promote lawless actions and utilize language for the purpose of inciting an immediate breach of the peace by provoking fights and violence. The current aggressive nature of hate speech and conduct has heightened the moral imperative to stand up for what is right.

-- END --