

AMENDED IN ASSEMBLY MARCH 24, 2022

AMENDED IN ASSEMBLY MARCH 16, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1947

Introduced by Assembly Members Ting and Bloom

February 10, 2022

An act to amend Sections 422.55, 422.87, 422.9, 13023, and 13519.6 of the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1947, as amended, Ting. Hate crimes: law enforcement policies. Existing law defines a “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 requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines and a course of instruction and training for law enforcement officers addressing hate crimes. Existing law requires state law enforcement agencies to adopt a framework or other formal policy created by POST regarding hate crimes. Existing law requires any local law enforcement agency that adopts or updates a hate crime policy to include specified information in that policy, including information on bias motivation. Existing law requires the Department of Justice to collect specified information relative to hate crimes and to post that information on its internet website.

This bill would require each local law enforcement agency to adopt a hate crimes policy. The bill would require those policies to, among other things, include instructions on considering the relevance of specific

dates and phrases when recognizing whether an incident is a hate crime, to include a supplemental suspected hate crime form. The bill would require every state and local agency to use specified definitions for the term “protected characteristics.” The bill would require each law enforcement agency to report their hate crime policy to the Department of Justice, as specified. The bill would require the department to post information regarding the compliance and noncompliance of agencies that are required to provide information relative to hate crimes to the department. The bill would require POST to develop a model hate crime policy, as specified. The bill would additionally make specified findings regarding state-mandated local programs in its provisions. By imposing additional duties on local law enforcement agencies, this bill would create a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Freedom from Hate Crimes Act.
- 3 SEC. 2. Section 422.55 of the Penal Code is amended to read:
- 4 422.55. For purposes of this title, and for purposes of all other
- 5 state law unless an explicit provision of law or the context clearly
- 6 requires a different meaning, the following shall apply:
- 7 (a) “Hate crime” means a criminal act committed, in whole or
- 8 in part, because of one or more of the following actual or perceived
- 9 characteristics of the victim:
- 10 (1) Disability.
- 11 (2) Gender.
- 12 (3) Nationality.
- 13 (4) Race or ethnicity.
- 14 (5) Religion.
- 15 (6) Sexual orientation.

1 (7) Association with a person or group with one or more of these
2 actual or perceived characteristics.

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

5 (c) “Subject matter experts” includes, but is not limited to,
6 representatives of communities most victimized by hate crimes,
7 academic experts, and law enforcement agencies.

8 SEC. 3. Section 422.87 of the Penal Code is amended to read:

9 422.87. (a) Each state and local law enforcement agency shall
10 adopt a hate crimes policy that shall include, but not be limited to,
11 all of the following:

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

13 (2) The content of the framework and model policy that the
14 Commission on Peace Officer Standards and Training developed
15 in 2019 pursuant to Section 13519.6, and any content that the
16 commission has revised or added or may revise or add in the future,
17 including, but not limited to, any policy, definitions, response and
18 reporting responsibilities, training resources, and planning and
19 prevention methods.

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

21 (B) For the purposes of this paragraph, “bias motivation” is a
22 preexisting negative attitude toward actual or perceived
23 characteristics referenced in Section 422.55. Depending on the
24 circumstances of each case, bias motivation may include, but is
25 not limited to, hatred, animosity, discriminatory selection of
26 victims, resentment, revulsion, contempt, unreasonable fear,
27 paranoia, callousness, thrill-seeking, desire for social dominance,
28 desire for social bonding with those of one’s “own kind,” or a
29 perception of the vulnerability of the victim due to the victim being
30 perceived as being weak, worthless, or fair game because of a
31 protected characteristic, including, but not limited to, disability or
32 gender.

33 (C) (i) In recognizing suspected disability-bias hate crimes, the
34 policy shall instruct officers to consider whether there is any
35 indication that the perpetrator was motivated by hostility or other
36 bias, occasioned by factors such as, but not limited to, dislike of
37 persons who arouse fear or guilt, a perception that persons with
38 disabilities are inferior and therefore “deserving victims,” a fear
39 of persons whose visible traits are perceived as being disturbing

1 to others, or resentment of those who need, demand, or receive
2 alternative educational, physical, or social accommodations.

3 (ii) In recognizing suspected disability-bias hate crimes, the
4 policy also shall instruct officers to consider whether there is any
5 indication that the perpetrator perceived the victim to be vulnerable
6 and, if so, if this perception is grounded, in whole or in part, in
7 antidisability bias. This includes, but is not limited to, if a
8 perpetrator targets a person with a particular perceived disability
9 while avoiding other vulnerable-appearing persons such as
10 inebriated persons or persons with perceived disabilities different
11 than those of the victim, those circumstances could be evidence
12 that the perpetrator's motivations included bias against persons
13 with the perceived disability of the victim.

14 (D) In recognizing suspected religion-bias hate crimes, the
15 policy shall instruct officers to consider whether there were targeted
16 attacks on, or biased references to, symbols of importance to a
17 particular religion or articles considered of spiritual significance
18 in a particular religion. Examples of religions and such symbols
19 and articles include, but are not limited to:

20 (i) In Buddhism, statutes of the Buddha.

21 (ii) In Christianity, crosses.

22 (iii) In Hinduism, forehead markings, known as bindis and tilaks,
23 Aum/Om symbols, and images of deities known as murtis.

24 (iv) In Islam, hijabs.

25 (v) In Judaism, Stars of David, menorahs, and yarmulke.

26 (vi) In Sikhism, turbans, head coverings, and unshorn hair,
27 including beards.

28 (E) In recognizing suspected hate crimes committed against a
29 victim or victims with a particular known, evident, or perceived
30 protected characteristic, the policy shall instruct officers to consider
31 whether the crimes occurred on a day of actual or perceived
32 significance to, or concerning, the victim or victims or to persons
33 of the same actual or perceived protected characteristic as the
34 victim or victims. Examples of such days may include, but are not
35 limited to, Lunar New Year, Cinco de Mayo, Easter, Martin Luther
36 King Day, and Yom Kippur.

37 (F) In recognizing any multiple suspected hate crimes, the policy
38 shall instruct officers to consider whether the victim or victims of
39 the crimes were one or more persons or properties with a particular
40 actual or perceived protected characteristic when other, at least

1 equally available and vulnerable potential victims were not
2 targeted. Examples of such discriminatory selection may include,
3 but are not limited to, the following:

4 (i) A series of sexual assaults of women and girls.

5 (ii) A series of crimes against actual or perceived transgender
6 women, against actual or perceived noncitizens of the United
7 States, or against persons demonstrating on behalf of a particular
8 race or ethnicity and any observers or bystanders.

9 (iii) A series of attacks on one or more places of worship of a
10 particular religion.

11 (iv) A series of attacks on one or more businesses, community
12 centers, or other gathering places operated, staffed, or frequented
13 by a person or persons with a particular known, evident, or
14 perceived protected characteristic.

15 (G) In recognizing any suspected hate crime, the policy shall
16 instruct officers to consider whether the victim is either of the
17 following:

18 (i) A person with an actual or perceived disability that is known
19 or evident to the perpetrator.

20 (ii) A person with any other actual or perceived protected
21 characteristic that is known or evident to the perpetrator and that,
22 under the existing facts and circumstances, is likely to make the
23 victim the target of a hate crime.

24 (H) In recognizing a suspected anti-immigrant or antirace hate
25 crime, the policy shall instruct officers to consider whether persons
26 who are part of the victim's community in the victim's actual or
27 perceived country of origin are commonly subject to hate or other
28 bias there because of one or more of the protected characteristics
29 and whether the perpetrator may have been motivated by such
30 bias.

31 (I) In any case described in subparagraphs (C) through (H) or
32 a similar case, and in every case in which a crime victim or witness
33 believes that the crime was a hate crime or motivated by bias
34 against an actual or perceived protected characteristic, the policy
35 shall instruct officers to include such statements in any report
36 generated as a result of the incident. The policy shall instruct
37 officers to not argue with a victim or witness who believes it was
38 a hate crime, regardless of the initial opinion of the officer. The
39 policy shall instruct supervising officers who review reports of
40 incidents in which the victim believed the crime was a hate crime

1 to carefully consider whether additional investigation is necessary,
2 consistent with this section.

3 (4) Information regarding the general underreporting of hate
4 crimes to, and by, law enforcement and the more extreme
5 underreporting of antidisability, antigender, and a plan for the
6 agency to remedy this underreporting.

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

9 (6) A checklist of first responder responsibilities, including, but
10 not limited to, being sensitive to effects of the crime on the victim,
11 determining whether any additional resources are needed on the
12 scene to assist the victim or whether to refer the victim to
13 appropriate community and legal services, and giving the victims
14 and any interested persons the agency's hate crimes brochure, as
15 required by Section 422.92.

16 (7) A specific procedure for transmitting and periodically
17 retransmitting the policy and any related orders to all officers,
18 including a simple and immediate way for officers to access the
19 policy in the field when needed.

20 (8) The title or titles of the officer or officers responsible for
21 ensuring that the department has a hate crime brochure as required
22 by Section 422.92 and ensuring that all officers are trained to
23 distribute the brochure to all suspected hate crime victims,
24 regardless of whether they specifically request it, and to all other
25 interested persons upon request.

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

31 (10) A supplemental suspected hate crime report form providing
32 the information necessary for the law enforcement agency or the
33 prosecution agency to determine whether a hate crime has occurred
34 or whether to conduct a further investigation to make that
35 determination, and an instruction that responding officers complete
36 the form when the officers have a reasonable belief based upon
37 the available evidence and information, including the circumstances
38 in subparagraphs (C) through (H) of paragraph (3), that a hate
39 crime may have been committed.

1 (11) A schedule for providing the hate crime training, including,
2 but not limited to, that required by Section 13519.6 and any other
3 hate crime training certified by the Commission on Peace Officer
4 Standards and Training that the law enforcement agency selects.

5 ~~(12) A requirement that, when an officer has reported a~~
6 ~~suspected hate crime and has identified a suspect, the person or~~
7 ~~unit of the agency responsible for determining whether the crime~~
8 ~~was a hate crime shall contact the Federal Bureau of Investigation~~
9 ~~and ask the bureau's assistance in searching publicly available~~
10 ~~records concerning the suspect for any relevant evidence.~~

11 ~~(13)~~

12 (12) A requirement that, when an officer suspects multimission
13 criminal extremism, they report it to their agency's terrorism liaison
14 officers.

15 ~~(14)~~

16 (13) In adopting a hate crimes policy, each state and local law
17 enforcement agency shall seek to incorporate examples of
18 terminology that is specific to the communities they serve. For
19 example, given the nationwide surge of anti-Asian American and
20 Pacific Islander hate crimes beginning in 2020 and resulting from
21 rhetoric blaming China for COVID-19, agencies that serve Asian
22 American and Pacific Islander communities may include
23 terminology and slurs relating to the coronavirus as part of a hate
24 crime investigation.

25 (b) (1) A law enforcement agency shall be deemed in
26 compliance with subdivision (a) if it adopts a policy including, but
27 not limited to, all the provisions of the Commission on Peace
28 Officer Standards and Training framework and model hate crime
29 policy, including the supplemental suspected hate crime report
30 form, called the "hate crime checklist" in the 2019 update, by April
31 1, 2023, and updates the agency's policy within six months of each
32 time the commission updates the framework and model policy.

33 (2) Any law enforcement agency that updates an existing hate
34 crimes policy or adopts a new hate crimes policy may include any
35 of the provisions of a model hate crime policy and other relevant
36 documents developed by the International Association of Chiefs
37 of Police that are relevant to California and consistent with state
38 law.

1 (c) This section is intended to establish statewide minimum
2 practices, and shall not be construed to restrict a law enforcement
3 agency from implementing more precise or more stringent policies.

4 SEC. 4. Section 422.9 of the Penal Code is amended to read:

5 422.9. Except as other provisions of state or federal law require:

6 (a) Every law enforcement agency and each state and local
7 agency shall use the definition of “hate crime” set forth in
8 subdivision (a) of Section 422.55 exclusively.

9 (b) Every law enforcement agency and each state and local
10 agency shall use the terms “characteristics” or “protected
11 characteristics” as defined in Section 422.55 exclusively and shall
12 not use misleading terms such as “protected classes” or “protected
13 groups.”

14 SEC. 5. Section 13023 of the Penal Code is amended to read:

15 13023. (a) Subject to the availability of adequate funding, the
16 Attorney General, in consultation with subject matter experts, as
17 defined in Section 422.55, shall direct law enforcement agencies
18 to report to the Department of Justice, in a manner to be prescribed
19 by the Attorney General, any information that may be required
20 relative to hate crimes.

21 (b) In 2023, and whenever changes in law or in the Commission
22 on Peace Officer Standards and Training framework and model
23 policy require it, or whenever the Attorney General in consultation
24 with subject matter experts deems it prudent, the information
25 required by subdivision (a) shall include the agency’s hate crime
26 policy and the hate crime pamphlet required pursuant to Section
27 422.92.

28 (c) In every year, information required by subdivision (a) shall
29 also include any of the following that the agency failed to submit
30 in the previous year:

- 31 (1) Hate crime policies.
- 32 (2) Hate crime pamphlets.
- 33 (3) Any other information required by the Attorney General in
34 the previous year.

35 (d) On or before July 1 of each year, the Department of Justice
36 shall update the OpenJustice Web portal with the information
37 obtained from law enforcement agencies pursuant to this section.
38 The information shall include the names of agencies that have
39 complied with subdivision (a) and other relevant laws in the report
40 year and the names of any agencies that have failed to comply with

1 those laws. The information also shall include the names of any
2 agencies that failed to comply in the both the report year and the
3 previous year, regardless of whether any information is required
4 of compliant agencies in the report year. The department shall
5 submit its analysis of this information to the Legislature in the
6 manner described in subdivision (g) of Section 13010.

7 (e) For purposes of this section, “hate crime” has the same
8 meaning as in Section 422.55.

9 SEC. 6. Section 13519.6 of the Penal Code is amended to read:

10 13519.6. (a) The commission, in consultation with subject
11 matter experts, as defined in Section 422.55, shall develop
12 guidelines and a course of instruction and training for law
13 enforcement officers who are employed as peace officers, or who
14 are not yet employed as a peace officer but are enrolled in a training
15 academy for law enforcement officers, addressing hate crimes.
16 “Hate crimes,” for purposes of this section, has the same meaning
17 as in Section 422.55.

18 (b) The course shall make maximum use of audio and video
19 communication and other simulation methods and shall include
20 instruction in each of the following:

21 (1) Indicators of hate crimes.

22 (2) The impact of these crimes on the victim, the victim’s family,
23 and the community, and the assistance and compensation available
24 to victims.

25 (3) Knowledge of the laws dealing with hate crimes and the
26 legal rights of, and the remedies available to, victims of hate
27 crimes.

28 (4) Law enforcement procedures, reporting, and documentation
29 of hate crimes.

30 (5) Techniques and methods to handle incidents of hate crimes
31 in a professional manner.

32 (6) Multimission criminal extremism, which means the nexus
33 of certain hate crimes, antigovernment extremist crimes,
34 anti-reproductive-rights crimes, and crimes committed in whole
35 or in part because of the victim’s actual or perceived ~~homelessness,~~
36 ~~or status as a journalist.~~ *homelessness.*

37 (7) The special problems inherent in some categories of hate
38 crimes, including gender-bias crimes, disability-bias crimes,
39 including those committed against homeless persons with
40 disabilities, anti-immigrant crimes, anti-Sikh crimes, and anti-Arab

1 and anti-Islamic crimes, and techniques and methods to handle
2 these special problems.

3 (8) Preparation for, and response to, possible future anti-Asian,
4 anti-Hindu, anti-Sikh, anti-Arab/Middle Eastern, and anti-Islamic
5 hate crimewaves, and any other future hate crime waves that the
6 Attorney General, in consultation with subject matter experts,
7 determines are likely, and for which the Attorney General has
8 notified law enforcement agencies.

9 (c) The guidelines developed by the commission shall
10 incorporate the procedures and techniques specified in subdivision
11 (b), and shall include a framework and model hate crime policy.
12 The elements of the framework and model policy shall include,
13 but not be limited to, the following:

14 (1) A message from the law enforcement agency's chief
15 executive officer to the agency's officers and staff concerning the
16 importance of hate crime laws and the agency's commitment to
17 enforcement.

18 (2) The definition of "hate crime" in Section 422.55.

19 (3) References to hate crime statutes including Section 422.6.

20 (4) A title-by-title specific protocol that agency personnel are
21 required to follow, including, but not limited to, the following:

22 (A) Preventing and preparing for likely hate crimes by, among
23 other things, establishing contact with persons and communities
24 who are likely targets, and forming and cooperating with
25 community hate crime prevention and response networks.

26 (B) Responding to reports of hate crimes, including reports of
27 hate crimes committed under the color of authority.

28 (C) Accessing assistance, by, among other things, activating
29 the Department of Justice hate crime rapid response protocol when
30 necessary.

31 (D) Providing victim assistance and followup, including
32 community followup.

33 (E) Reporting.

34 (F) Each of the items Section 422.87 requires law enforcement
35 agencies to include in their hate crime policies.

36 (d) (1) The commission shall adopt revisions of, or additions
37 to, the framework and model policy only by a vote of the
38 commission following consultation with subject matter experts
39 and a public hearing before the commission.

1 (2) The framework and model policy are not regulations as
2 defined in Section 11342.600 of the Government Code.

3 (e) (1) The course of training leading to the basic certificate
4 issued by the commission shall include the course of instruction
5 described in subdivision (a).

6 (2) Every state law enforcement and correctional agency, and
7 every local law enforcement and correctional agency to the extent
8 that this requirement does not create a state-mandated local
9 program cost, shall provide its peace officers with the basic course
10 of instruction as revised pursuant to the act that amends this section
11 in the 2003–04 session of the Legislature, beginning with officers
12 who have not previously received the training. Correctional
13 agencies shall adapt the course as necessary.

14 (f) (1) The commission shall, subject to an appropriation of
15 funds for this purpose in the annual Budget Act or other statute,
16 for any basic course, incorporate the November 2017 video course
17 developed by the commission entitled “Hate Crimes: Identification
18 and Investigation,” as updated in August of 2020, and as updated
19 thereafter, or any successor video, into the basic course curriculum.

20 (2) The commission shall make the video course described in
21 paragraph (1) available to stream via the learning portal.

22 (3) Each peace officer shall, within one year of the commission
23 making the course available to stream via the learning portal, be
24 required to complete the November 2017 video facilitated course
25 developed by the commission entitled “Hate Crimes: Identification
26 and Investigation,” the course identified in paragraph (4), or any
27 other POST-certified hate crimes course via the learning portal or
28 in-person instruction.

29 (4) The commission, in consultation with subject matter experts
30 as defined in Section 422.55, shall develop and periodically update
31 an interactive course of instruction and training for in-service peace
32 officers on the topic of hate crimes and make the course available
33 via the learning portal. The course shall cover the fundamentals
34 of hate crime law and preliminary investigation of hate crime
35 incidents, and shall include updates on recent changes in the law,
36 hate crime trends, and best enforcement practices.

37 (5) The commission shall require the course described in
38 paragraph (3) to be taken by in-service peace officers every six
39 years.

1 (g) As used in this section, “peace officer” means any person
2 designated as a peace officer by Section 830.1 or 830.2.

3 SEC. 7. (a) The Legislature finds and declares all of the
4 following:

5 (1) Section 422.87 of the Penal Code, as amended by this act,
6 creates no costs to state law enforcement agencies because it is
7 declaratory of existing law in subdivision (c) of Section 13519.6
8 of the Penal Code.

9 (2) Section 422.87 of the Penal Code, as amended by this act,
10 minimizes state-mandated local costs to local law enforcement
11 agencies by allowing them to meet the requirements of that section
12 by adopting the Commission on Peace Officer Standards and
13 Training model hate crime policy and any updates of that policy
14 that the commission develops in the future.

15 (3) Section 13023 of the Penal Code, as amended by this act,
16 creates no state-mandated local costs to local law enforcement
17 agencies because all of the requirements of the amendments to
18 that section were within the authority of the Attorney General to
19 require prior to enactment of those amendments.

20 (4) As concerning the supplemental report form requirements,
21 this act creates no state-mandated local cost to any local law
22 enforcement agency that has adopted or revised a hate crime policy
23 on or after January 1, 2019.

24 (b) If the Commission on State Mandates determines that this
25 act contains costs mandated by the state, reimbursement to local
26 agencies and school districts for those costs shall be made pursuant
27 to Part 7 (commencing with Section 17500) of Division 4 of Title
28 2 of the Government Code.