

Introduced by Senators Steinberg, Kuehl, and YeeJanuary 22, 2007

An act to amend Sections 422.55 and 422.56 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as introduced, Steinberg. Hate crimes: homelessness.

Existing law defines the term "hate crime" as a criminal act committed, in whole or in part, because of one or more specified actual or perceived characteristics of the victim. Existing law prohibits a person from willfully injuring, intimidating, interfering with, oppressing, or threatening any other person in the free exercise or enjoyment of any legal right because the victim has, or is perceived to have, one of those specified characteristics. Existing law also prohibits a person from knowingly defacing, damaging, or destroying the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any legal right because the victim has, or is perceived to have, one of those characteristics.

This bill would add "homeless status" to the list of actual or perceived characteristics qualifying as a hate crime. The bill would also define "homeless status" for purposes of those provisions.

Existing law makes a violation of the hate crime provisions punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that fine and imprisonment. Existing law also imposes enhanced penalties for a hate crime with specified aggravating factors and circumstances.

Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

Existing law requires every state and local law enforcement agency in the state to make a brochure on hate crimes available to victims of these crimes and to the public. Existing law further requires the Department of Fair Employment and Housing to provide existing brochures to local law enforcement agencies upon request for reproduction and distribution to victims of hate crimes and other interested parties, as specified.

By imposing new duties on local law enforcement agencies with regard to providing hate crime brochures, the bill would constitute 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so 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. Section 422.55 of the Penal Code is amended to
- 2 read:
- 3 422.55. For purposes of this title, and for purposes of all other
- 4 state law unless an explicit provision of law or the context clearly
- 5 requires a different meaning, the following shall apply:
- 6 (a) "Hate crime" means a criminal act committed, in whole or
- 7 in part, because of one or more of the following actual or perceived
- 8 characteristics of the victim:
- 9 (1) Disability.
- 10 (2) Gender.
- 11 (3) *Homeless status.*
- 12 ~~(3)~~
- 13 (4) Nationality.
- 14 ~~(4)~~
- 15 (5) Race or ethnicity.
- 16 ~~(5)~~

1 (6) Religion.

2 ~~(6)~~

3 (7) Sexual orientation.

4 ~~(7)~~

5 (8) Association with a person or group with one or more of these
6 actual or perceived characteristics.

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

9 SEC. 2. Section 422.56 of the Penal Code is amended to read:
10 422.56. For purposes of this title, the following definitions
11 shall apply:

12 (a) “Association with a person or group with these actual or
13 perceived characteristics” includes advocacy for, identification
14 with, or being on the ground owned or rented by, or adjacent to,
15 any of the following: a community center, educational facility,
16 family, individual, office, meeting hall, place of worship, private
17 institution, public agency, library, or other entity, group, or person
18 that has, or is identified with people who have, one or more of
19 those characteristics listed in the definition of “hate crime” under
20 paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

21 (b) “Disability” includes mental disability and physical disability
22 as defined in Section 12926 of the Government Code.

23 (c) “Gender” means sex, and includes a person’s gender identity
24 and gender related appearance and behavior whether or not
25 stereotypically associated with the person’s assigned sex at birth.

26 (d) *“Homeless status” means an individual’s lack of a fixed,
27 regular, and adequate nighttime residence, or an individual’s use
28 of a primary nighttime residence that is one of the following:*

29 (1) *A supervised shelter, either publicly or privately operated,
30 that is designed to provide temporary living accommodations,
31 including, but not limited to, welfare hotels, congregate shelters,
32 and transitional housing for the mentally ill.*

33 (2) *An institution that provides a temporary residence for
34 individuals intended to be institutionalized.*

35 (3) *A public or private place not designed for, or ordinarily
36 used as, a regular sleeping accommodation for human beings.*

37 *The term “homeless status” does not refer to any individual
38 imprisoned or otherwise detained pursuant to state or federal law.*

39 ~~(d)~~

1 (e) “In whole or in part because of” means that the bias
 2 motivation must be a cause in fact of the offense, whether or not
 3 other causes also exist. When multiple concurrent motives exist,
 4 the prohibited bias must be a substantial factor in bringing about
 5 the particular result. There is no requirement that the bias be a
 6 main factor, or that the crime would not have been committed but
 7 for the actual or perceived characteristic. This subdivision does
 8 not constitute a change in, but is declaratory of, existing law under
 9 ~~In re M.S. (1995) 10 Cal. 4th 698~~ *M.S. (1995) 10 Cal.4th 698* and *People*
 10 *v. Superior Court (Aishman) (1995) 10 Cal. 4th 735*.

11 (e)
 12 (f) “Nationality” includes citizenship, country of origin, and
 13 national origin.

14 (f)
 15 (g) “Race or ethnicity” includes ancestry, color, and ethnic
 16 background.

17 (g)
 18 (h) “Religion” includes all aspects of religious belief,
 19 observance, and practice and includes agnosticism and atheism.

20 (h)
 21 (i) “Sexual orientation” means heterosexuality, homosexuality,
 22 or bisexuality.

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

28 SEC. 3. No reimbursement is required by this act pursuant to
 29 Section 6 of Article XIII B of the California Constitution for certain
 30 costs that may be incurred by a local agency or school district
 31 because, in that regard, this act creates a new crime or infraction,
 32 eliminates a crime or infraction, or changes the penalty for a crime
 33 or infraction, within the meaning of Section 17556 of the
 34 Government Code, or changes the definition of a crime within the
 35 meaning of Section 6 of Article XIII B of the California
 36 Constitution.

37 However, if the Commission on State Mandates determines that
 38 this act contains other costs mandated by the state, reimbursement
 39 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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