SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	AB 352	**Hearing Date:**	June 24, 2025
Author:	Pacheco		
Version:	June 12, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SU		

Subject: ***Crimes: criminal threats***

HISTORY

Source: California Judges Association

Prior Legislation: SB 567 (Bradford), Ch. 731, Stats. of 2021

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association

Opposition: Initiate Justice

Assembly Floor Vote: 77 - 0

AS PROPOSED TO BE AMENDED IN COMMITTEE

PURPOSE

The purpose of this bill is to explicitly recognize the fact that a defendant knowingly and willfully threatened to commit a crime that would result in the death or great bodily injury of a constitutional officer, member of the Legislature, judge or court commissioner as a factor in aggravation for purposes of sentencing a defendant convicted of a criminal threat.

Existing law states 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 (either verbally, in writing, or by means of an electronic device) is to be taken as a threat, even if there is no intent of 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, and which thereby

causes the person reasonably to be in sustained fear for their own safety or that of their family, is guilty of criminal threats. (Pen. Code, § 422, subd. (a).)

Existing law provides that criminal threats is punishable either as a misdemeanor, or as felony with the sentence to be served in state prison. (Pen. Code, § 422, subd. (a).)

Existing law provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall in its sound discretion order imposition of a sentence not to exceed the middle term, except as specified. (Pen. Code, § 1170, subd. (b)(1).)

Existing law provides that the court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)

Existing law provides that notwithstanding the presumption for the middle term, and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

Existing law provides that sentencing choices requiring a statement of a reason include "[s]electing one of the three authorized prison terms referred to in section 1170(b) for either an offense or an enhancement." (Cal. Rules of Court, rule 4.406(b)(4).)

Existing law requires the sentencing judge to consider relevant criteria enumerated in the Rules of Court. (Cal. Rules of Court, rule 4.409.)

Existing law enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered in aggravation. (Cal. Rules of Court, rule 4.421.)

Existing law enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered. (Cal. Rules of Court, rule 4.423.)

This bill provides that for purposes of sentencing a person for a felony violation of criminal threats, the court may consider that the defendant knowingly and willfully threatened to commit a crime that would result in the death or great bodily injury of a constitutional officer, member of the Legislature, judge or court commissioner, as specified, as an aggravating factor.

This bill includes within the definition of "judge or court commissioner" a judge, court commissioner, state administrative law judge, or a judge of a federally recognized Indian tribe.

COMMENTS

1. Need for This Bill

According to the author:

> Rising threats and violence against California's judiciary endanger both court commissioner and litigant access to justice. Recent incidents include courthouse bomb threats, courtroom attacks on judges, and targeted threats against judicial officers across the state. AB 352 addresses this problem by adding a subdivision to Penal Code Section 422 to make threats against judges and court commissioners a factor in sentencing. This change enables the courts to impose the maximum three-year sentence for felony criminal threats when appropriate, providing necessary protection for judicial officers while maintaining sentencing discretion. This targeted approach helps to ensure that all Californians maintain safe access to justice.

2. Criminal Threat Prosecutions

In order to convict a person under the criminal threat statute, Penal Code section 422, the prosecutor must prove the following:

1) that the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;

2) that the defendant made the threat;

3) that the defendant intended that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;

4) that the threat was 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;

5) that the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and,

6) that the threatened person's fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Penal Code section 422 applies to all criminal threats which will result in death or great bodily injury regardless of the person threatened, the location, or the exact type of violence that is threatened.

The crime of criminal threats is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also becomes a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, 1192.7. subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally it triggers credit earning limitations. (Pen. Code, § 1170.12.) (See also *People v. Moore* (2004) 118 Cal.App.4th 74.)

3. Determinate Sentencing Triads and Factors in Aggravation

California's sentencing scheme is, for the most part, determinate, meaning there is a set amount of time specified for incarceration, and is referred to as the Determinate Sentencing Law (DSL). (Pen. Code, § 1170, subd. (b).) Any person convicted of a felony is sentenced to one of three sentences referred to as the "triad." For instance, a person convicted of a felony shall be sentenced to 16 months, two years, or three years in the county jail or state prison, unless the statute specifies another term. (Pen. Code, § 18, subd. (a).)

"The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)

Additionally, where certain factors contributed to the offense, the court is required to impose the low term unless aggravating circumstances outweigh mitigating circumstances. These factors are where the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

"In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council." (Pen. Code, § 1170, subd. (a)(3).) The California Rules of Court, rule 4.421 states that circumstances in aggravation include factors relating to the crime (12 enumerated criteria) and factors relating to the defendant (five enumerated criteria). Finally the rule notes that the court can consider "[a]ny other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed." (Cal. Rules of Court, rule 4.421(c).)

Similarly, rule 4.423 states circumstances in mitigation that a court should consider. There are 10 enumerated criteria in mitigation relating to the crime, 15 enumerated criteria related to the defendant, and a residual clause allowing the court to consider any other factors statutorily enumerated or that reasonably related to the defendant or the circumstances under which the crime was committed. (*Ibid*.)

This bill will create a statutorily enumerated factor in aggravation with regards to knowingly committing a criminal threat against a judge or court commissioner. As proposed to be amended in committee, the same aggravating factor will apply to criminal threats knowingly made against constitutional officers and members of the Legislature.

4. Sixth Amendment Right to a Jury Trial and Factors in Aggravation

The Sixth Amendment right to a jury applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.)

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California's Determinate Sentencing Law (DSL) violated a defendant's right to trial by jury by placing sentence-elevating fact finding within the judge's province. (*Id*. at p. 274.) The DSL

authorized the court to increase the defendant's sentence by finding facts not reflected in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the offender's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id*. at p. 293.)

The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities of the DSL:

> "As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of Apprendi and Blakely to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions." (*Cunningham*, *supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code sections 1170 and 1170.1, to make the choice of lower, middle, or upper prison terms one within the sound discretion of the court. (See SB 40 (Romero) - Chapter 3, Statutes of 2007 & SB 150 (Wright), Chapter 171, Statutes of 2009.) The procedure removed the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term. SB 40 contained a sunset provision so that the amendment to the DSL would be repealed on a certain date if further legislative action was not taken before that date. Following SB 40, several bills extended the sunset date on the amended DSL to continue allowing judges the discretion to impose the lower, middle or upper term of imprisonment authorized by statute.

Then in 2021, the Legislature passed SB 567 (Bradford), Chapter 731, Statutes of 2021, which made significant changes to the sentencing law, specifically to make the middle term presumptive and to limit the court's ability to impose the upper term. As noted above, now the upper term may be imposed only "when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial."[1] (Pen. Code, § 1170, subd. (b)(2.))

This bill explicitly provides that the court may consider as a factor in aggravation in sentencing a defendant for criminal threats that the defendant knowingly and willfully threatened to commit a crime that would result in the death or great bodily injury of a constitutional officer, member of the Legislature, judge or court commissioner. In order to consider this factor in aggravation, it

[1] There is an exception to this jury trial requirement for consideration of the defendant's prior convictions. (Pen. Code, § 1170, subd. (b)(3.))

will have to be either admitted by the defendant, or found to be true beyond a reasonable doubt by the jury, or by the judge in the case of a court trial.

5. Separation of Powers Issues in Sentencing Decisions

In California, as in the federal government, the power to govern is divided among three equal branches: the executive, the legislative, and the judicial. The California Constitution provides that the branch charged with the exercise of one power may not exercise any other. (Cal. Const., art. III, § 3.) With regards to criminal law, the legislative branch defines crimes that can be charged and fixes the penalties, the executive branch decides what crimes to charge, and the judicial branch decides whether to sustain those charges. (*Chavez Zepeda v. Superior Court* (2023) 97 Cal.App.5th 65, 78.)

Recently, in *Lovelace v. Superior Court* (2025) 108 Cal.App.5th 1081, the Court of Appeal held that the residual clause in California Rules of Court, rule 4.421(c) allowing unenumerated aggravating factors was "so vacuous as to be devoid of meaning." (*Id*. at p. 1089.) The court found it violated the separation of powers clause in the California Constitution, because "by granting prosecutors—and ultimately juries—an open-ended power to define sentencing criteria on an ad hoc basis, the residual clause exceeds the Judicial Council's delegated authority to adopt rules designed to 'promote uniformity in sentencing' under section 1170.3." (*Ibid*.)

Rather than rely on the now-questionable residual clause in rule 4.421(c), this bill statutorily declares that, for purposes of sentencing a defendant convicted of a criminal threat, it is a factor in aggravation that authorizing imposition of the upper term if a defendant knowingly and willfully threatened to commit a crime that would result in the death or great bodily injury of a constitutional officer, member of the Legislature, judge or court commissioner.

6. Related Legislation

AB 848 (Soria) explicitly allows the court to consider as a factor in aggravation for purposes of sentencing a defendant convicted of sexual battery that the defendant was employed at a hospital where the offense occurred and that victim was in the defendant's care or seeking medical care at the hospital. AB 848 is being heard in this Committee today.

7. Argument in Support

According to the California District Attorneys Association:

> Threats and intimidation tactics directed at judicial officers erode public confidence in our justice system and create an environment of fear that can compromise fair proceedings. As an example, threats to judicial officers often result in judicial recusals, forcing courts to rearrange personnel and causing delays in multiple cases.
>
> As amended, AB 352 will help ensure that individuals who attempt to intimidate members of the judiciary face appropriate consequences.

8. Argument in Opposition

According to Initiate Justice:

> While the safety of judicial officers is critically important, this bill is not the appropriate means to ensure it….
>
> California Penal Code § 422 already makes it a felony to willfully threaten to commit a crime that would result in death or great bodily injury, with the specific intent that the threat be taken seriously, regardless of whether there is any intention or ability to carry it out. This law applies broadly, protecting all individuals, including members of the judiciary.
>
> AB 352 would allow threats against judges to serve as an aggravating factor for sentencing, yet research shows that enhanced penalties do not improve public safety or deter threats. Even the U.S. Department of Justice has found that longer sentencing schemes have limited impact on crime prevention.
>
> Expanding § 422 raises additional concerns. The statute is already prone to overreach, particularly when applied to individuals experiencing mental health crises. It criminalizes statements without requiring intent or steps toward action, leading to disproportionate consequences—especially for youth and people with mental illness. These individuals may express delusional or paranoid thoughts that are misinterpreted as threats, even though they pose no real danger. Adding harsher penalties under such circumstances risks deepening the cycle of criminalization without addressing root causes.

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