Bill No: AB 300   **Hearing Date:**   July 2, 2019
Author: Chu
Version: May 16, 2019
Urgency: No   **Fiscal:**   Yes
Consultant: JK

Subject: *Hate Crime and Incident Reporting*

HISTORY

Source: Author

Prior Legislation: AB 1757 (Weber and Chu), 2018, failed passage in Assembly
                         Appropriations
                         AB 158 (Chu), 2017, failed passage in Assembly Appropriations

Support: Anti-Defamation League; The Arc and United Cerebral Palsy California
Collaboration; Bill Wilson Center; California Asian Pacific American Bar
Association; California Association of Human Relations Commissions; California
State Conference of the NAACP; California Women's Law Center; Center for the
Study of Hate & Extremism - California State University, San Bernardino;
Equality California; Hindu American Foundation, Inc.; Japanese American
Citizens League, Northern California-W. Nevada-Pacific District; Jewish Public
Affairs Committee; Sikh Coalition; Silicon Valley FACES

Opposition: California Law Enforcement Association of Records Supervisors; California
Police Chiefs Association; California State Sheriffs' Association

Assembly Floor Vote: 74 - 3

PURPOSE

The purpose of this bill is to require law enforcement agencies to include in the agency's informational, incident, and crime reports a check box indicating whether the underlying incident in the report is a hate crime or hate incident, and complete for each hate crime or hate incident, a supplemental report.

Existing law defines "hate crime" as "a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics." (Pen. Code, § 422.55 (a).)

Existing law requires all state and local agencies to use the above definition when using the term "hate crime." (Pen. Code, § 422.9.)

Existing law defines "bias motivation" as a preexisting negative attitude toward actual or perceived characteristics. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender. (Pen. Code, § 422.87(a)(3)(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 (b).)

Existing law mandates the Commission on Peace Officer Standards and Training (POST) to include a law enforcement training course that, among other things, provides instructions on law enforcement procedures, reporting, and documentation of hate crimes. (Pen. Code, § 13519.6 (a) & (b).)

Existing law requires POST to develop a framework and possibly a general order or formal policy regarding hate crimes that all state law enforcement agencies must adopt. The elements of the framework shall include, among other things, a title-by-title specific protocol that agency personnel are required to follow regarding reporting. (Pen. Code, § 13519.6 (c)(4)(E).)

Existing law provides that POST must encourage local law enforcement agencies to adopt any such policies. (Pen. Code, § 13519.6 (c).)

Existing law directs the Department of Justice (DOJ) to collect, analyze, and make publicly available, information related to criminal statistics. (Pen. Code, § 13010 (a), (e), & (g).)

Existing law requires the DOJ to direct, subject to the availability of adequate funding, local law enforcement agencies to report information related to hate crimes to the DOJ in a manner so prescribed. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required by statute. (Pen. Code, § 13023 (a).)

This bill defines "hate incident" as an incident that has a bias motivation but does not meet the threshold of a hate crime.

This bill requires law enforcement agencies whose crime reporting systems, including reporting in electronic and paper forms, to meet applicable federal standards, including alignment with the federal National Incident-Based Reporting System, that shall comply with both of the following:

1) The law enforcement agency's informational, incident, and crime reports shall include a check box indicating whether the underlying incident in the report is a hate crime or hate incident, actual or perceived.

2) The law enforcement agency shall complete, for each hate crime or hate incident, a supplemental hate crime or hate incident report form that indicates the type of bias motivation and any other identifying information to assist in the prosecution of the hate crime or hate incident.

COMMENTS

1. **Need for this bill**

According to the author:

> In 2017, Assemblymember Kansen Chu along with other Members on the Select Committee on Hate Crimes requested an audit on the state of hate crimes in California. The results of the audit, titled *Hate Crimes in California* from the California State Auditor, showed that four major law enforcement agencies have not adequately identified, reported, or responded to hate crimes. This is concerning because the misidentification and underreporting of hate crimes obstructs the prosecution of hate crimes. The report also stated that prosecutors convict defendants of hate crimes at about half the rate at which they convict defendants for all other felonies in California. This issue with hate crime identification and reporting is further exacerbated by the fact that hate crimes across the country is increasing at an alarming rate. According to an annual report from the California Department of Justice, hate crime events in California have risen 17.4% from 931 in 2016 to 1,093 in 2017 in the year 2017. Therefore, the gap in accurate hate crime identification and reporting consequently creates challenges to address hate crimes in the state. AB 300 focuses on ensuring that our law enforcement agencies will accurately report and gather information about hate incidents and hate crimes.

2. **Hate Crimes in California**

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. 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.

According to the LA Times hate crimes have increased in the past three years.[1] In 2017, there were 1,093 reported incidents, reflecting a 17.4% increase. Los Angeles recently recorded its highest level of reports in a decade with a 13% increase.[2] Reporters have cited a number of reasons but nevertheless in the 2018 California Auditor's Report, titled "Hate Crimes in California", they had found that law enforcement were not trained to identify, report, or respond to hate crimes.[3] California State Auditors found in this report that hate crimes were difficult to prosecute due to lack of suspects and evidence. And to further exacerbate the difficulty of prosecuting these crimes, law enforcement agencies do not properly collect data on hate crimes and incidents making it difficult for all parties to identify hate crimes and to implement proper outreach policies to encourage witnesses and victims to report hate crimes.

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[1] https://www.latimes.com/local/lanow/la-me-ln-hate-crimes-surge-california-20180710-story.html
[2] https://www.latimes.com/local/lanow/la-me-ln-hate-crime-la-big-cities-20190131-story.html
[3] https://www.bsa.ca.gov/pdfs/factsheets/2017-131.pdf

This bill will mandate reporting of these crimes and in conjunction with AB 1052 (Chu) will teach law enforcement agencies to better identify hate crimes.

3. First Amendment Implications of definition of "Hate Incident"

This bill defines "Hate incident" as "an incident that has a bias motivation but does not meet the threshold of a hate crime." Bias motivation is defined as a preexisting negative attitude, which cannot be criminally prosecuted, nor can it be easily identifiable. Citizens of California are free to have discriminatory thoughts or speeches under the first amendment. According to the Anti-Defamation League, "It is only when an individual commits a crime because of those biased beliefs and intentionally targets another for violence or vandalism that a hate crime statute can be triggered."[4] A crime cannot be protected under the first amendment but a thought or word can be. Therefore, the definition of a "hate incident" could have possible first amendment conflicts when used for purposes of policing or prosecuting.

4. Possible Amendments

1) Potential definition of "Hate Incident" to "a *non*-criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics."

2) The Arc and United Cerebral Palsy California Collaboration recommend that the author:

   On Page 3, line 11 after "a" insert:

   Suspected

3) Strike "or hate incident" from page 3, line 18. After "hate crime.", add:

   > Hate incident reporting as required by this section is for informational, crime prevention, law enforcement planning, and potential evidentiary purposes and does not authorize any penalty merely for a hate incident

5. Argument in Support

According to the Anti-Defamation League:

> In its May 2018 report entitled *Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes*, the California State Auditor concluded that LEAs have fallen short in their response to and documentation of the rising number of hate crimes here. California has a comprehensive set of hate crime laws that is a model for other states. However, laws are only effective and impactful when they are implemented fully. The addition of the checkbox and the supplemental report will help ensure that LEAs capture key information about a crime or incident's bias motive, respond

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[4] https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/Hate-Crimes-Law-The-ADL-Approach.pdf

effectively to victims and communities, and then appropriately record and report accurate information.

To confront the increasing scourge of violent bigotry, we must first know its magnitude. Passage of AB 300 will move us closer to ensuring accurate investigations, reporting, and prosecutions of hate crimes at the local level. In addition, by including hate incidents, AB 300 will help LEAs keep track of trends in their communities, and so aid in preventing hate crimes from occurring in the first place.

6. Argument in Opposition

According to the California Police Chiefs Association

Currently, when peace officers file their reports there is an "incident detail" section which allows them to cite which code section was violated, describe the crime committed, and finally state which classification the crime falls under. The crime incident reports provide ample opportunity for an officer to state on the record whether an incident is a hate crime or not. By mandating each report include a check box for hate crimes would only increase the overburdening reporting requirements for local law enforcement agencies.

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