
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 449 **Hearing Date:** June 27, 2023
Author: Ting
Version: May 18, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Hate crimes: law enforcement policies*

HISTORY

Source: The ARC California; California Asian American Bar Association

Prior Legislation: AB 1947 (Ting, 2022), died on Senate inactive file
AB 485 (Nguyen, Ch. 852, Stats. of 2022)
AB 2282 (Bauer-Kahan, Ch. 397, Stats. of 2022)
AB 2879 (Chu, 2020), not heard in Assembly Public Safety
SB 1165 (Jones, 2020), not heard in Senate Public Safety
AB 300 (Chu, 2019), held in Senate Appropriations
AB 301 (Chu, 2019), held in Assembly Appropriations
AB 1985 (Ting, Ch. 26, Stats. of 2018)
AB 39 (Bocanegra, 2017), held in Assembly Appropriations

Support: Anti-Defamation League; Asian Law Alliance; Autism Speaks; California Church Impact; California Community Living Network; California Faculty Association; California-Hawaii State Conference of the NAACP; Center for the Study of Hate & Extremism – California State University, San Bernardino; Coalition for Humane Immigrant Rights; Compassion in Oakland; Hindu American Foundation; Japanese-American Citizens League – San Jose Chapter; Not in Our Town; Pathpoint; The Arc of Ventura County; The Sikh Coalition

Opposition: California District Attorneys Association (unless amended)

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to require any state or local law enforcement agency to adopt a hate crime policy by July 1, 2024, and to report that policy to the Department of Justice, as provided. The bill also requires the Commission on Peace Officer Standards and Training to update its model hate crimes policy framework.

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:

- 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. (Pen. Code, § 422.55, subd. (a) (1)-(7).)

Existing law provides that all state and local agencies shall use the definition of “hate crime” stated above except as other explicit provisions of state or federal law may require otherwise. (Pen. Code, § 422.9.)

Existing law specifies that “hate crimes” include, but are not limited to, violating or interfering with the exercise of civil rights, or knowingly defacing, destroying, or damaging property because of actual or perceived characteristics of the victim that fit the definition of hate crime. (Pen. Code, §§ 422.55, subd. (b). & 422.6., subd. (a) and (b).)

Existing law provides that any person convicted for violating or interfering with the civil rights of another on the basis of actual or perceived characteristics of the victim that fit the hate crime definition shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5000, or by both imprisonment and fine. The court shall also order community service, not to exceed 400 hours. (Pen. Code, §, 422.6 subd. (c).)

Existing law authorizes each state law enforcement agency to adopt a hate crime policy, and that when such a policy is adopted, it must include, but not necessarily be limited to, all of the following:

- Definitions of hate crimes and associated terms;
- The content of the model policy framework developed by POST, as specified;
- Information regarding “bias motivation,” including disability-bias and religion bias, as specified;
- Information regarding the general underreporting of hate crimes and the more extreme underreporting of anti-disability and anti-gender hate crimes and a plan for the agency to remedy this underreporting;
- A protocol for reporting suspected hate crimes to the DOJ, as specified;
- A checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to

appropriate community and legal services, and giving the victims and any interested persons the agency's hate crimes brochure;

- A specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed;
- The title or titles of the officer or officers responsible for ensuring that the department has a hate crime brochure and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons; and,
- A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility. (Pen. Code, § 422.87, subd. (a).)

Existing law permits any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy to include any of the provisions of a model hate crime policy and other relevant documents developed by the International Association of Police Chiefs that are relevant to California and consistent with specified existing law. (Pen. Code, § 422.87, subd. (b).)

Existing law provides that every state and local law enforcement agency in this state shall make available a brochure on hate crimes to victims of these crimes and the public. (Pen. Code, § 422.92, subd. (a).)

Existing law requires local law enforcement agencies, upon adequate funding, to report to the DOJ in a timely manner prescribed by the Attorney General any information relative to hate crimes. (Pen. Code, § 13023, subd. (a).)

Existing law requires DOJ, on or before July 1 of each year, to update the OpenJustice Web portal with information obtained from local law enforcement agencies regarding hate crimes. (Pen. Code, § 13023, subd. (b).)

Existing law requires POST, in consultation with subject-matter experts including, but not limited to, law enforcement agencies, civil rights groups, academic experts, and the DOJ, to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. (Pen. Code, § 13519.6, subd. (a).)

Existing law requires the POST course on hate crimes to include instruction in each of the following:

- Indicators of hate crimes;
- The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims;

- Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes;
- Law enforcement procedures, reporting, and documentation of hate crimes;
- Techniques and methods to handle incidents of hate crimes in a non-combative manner;
- Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness;
- The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems; and
- Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the AG determines are likely. (Pen. Code, § 13519.6, subd. (b).)

Existing law requires POST guidelines to include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. (Pen. Code, § 13519.6, subd. (c).)

Existing law defines “anti-reproductive rights crime” and “subject matter experts” for purposes of POST training. (Pen. Code, § 13776.)

This bill makes the adoption of a hate crimes policy by law enforcement agencies mandatory rather than permissive.

This bill requires that state and local law enforcement agencies adopt a hate crimes policy, as specified, by July 1, 2024.

This bill specifies that the hate crimes policy adopted by a state and local law enforcement agency must include the supplemental hate crime report developed by the Commission on Peace Officer Standards and Training (POST), a schedule of POST's required hate crime training, as specified, and any other hate crime or related training the state or local law enforcement agency may conduct.

This bill extends to state law enforcement agencies the requirement to report to the DOJ, in a manner as prescribed and directed by the Attorney General, any information that may be required relative to hate crimes.

This bill requires the Attorney General to review state and local agencies' formal policies on hate crimes and the required hate crimes brochure for compliance with law, and shall instruct any

agency that did not submit a policy or brochure, or that submitted a legally noncompliant policy or brochure, to submit compliant documents.

This bill establishes a tiered schedule for the submission of hate crime documents to the DOJ, broken down by county, as follows:

- On or before January 1, 2025: each law enforcement agency in Los Angeles, Orange, San Luis Obispo and Ventura counties.
- On or before January 1, 2026: each law enforcement agency in Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma counties.
- On or before January 1, 2027: each law enforcement agency in Colusa, Glenn, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yuba, Alpine, Amador, Calaveras, El Dorado, Placer, Sacramento, San Joaquin, Stanislaus, Tuolumne, and Yolo counties, as well as the special districts of the San Francisco Bay Area Rapid Transit District, the Department of the California Highway Patrol, the Department of State Hospitals, and the state park system.
- On or before January 1, 2028: Fresno, Kern, Kings, Madera, Mariposa, Merced, Tulare, Imperial, Inyo, Mono, Riverside, San Bernardino, and San Diego counties.

This bill provides that the submission of hate crime materials pursuant to the above shall proceed on a four year schedule, beginning with the date above, and continuing every four years in perpetuity.

This bill requires DOJ, in its annual update to the OpenJustice Web portal, to include the names of agencies that submitted compliant policies and brochures, including any agency that submitted revised compliant documents.

This bill requires POST to consult with subject matter experts, as specified, when updating the guidelines or course of instruction for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes.

This bill provides that the guidelines and course of instruction POST develops are not regulations under the Administrative Procedures Act.

This bill requires guidelines developed by POST related to its course of instruction on hate crimes to include a model hate crimes policy framework for use by law enforcement agencies in adopting a hate crimes policy, as specified.

This bill adds to the required elements for POST's model hate crime policy framework the requirements for hate crime policies developed by state and local law enforcement agencies, as specified.

COMMENTS

1. Need for This Bill

According to the Author:

Unbelievably, California does not require law enforcement agencies to have a hate crimes policy. As we have seen the Asian Pacific Islander American community faced a major surge in violence and harassment solely based on their race, we must have guidelines that allow for consistent response by law enforcement across the State. AB 449 would resolve this issue by requiring all California law enforcement agencies to adopt a hate crimes policy and follow specific guidelines.

2. DOJ Hate Crime Data and Reporting

In 1995, the DOJ began collecting and annually reporting data regarding hate crimes in California, and beginning in 2017, the DOJ was further required to publish that data on its OpenJustice Web Portal.¹ The most recent DOJ hate crimes report, presenting data collected from local law enforcement agencies in 2020, revealed some disturbing trends. Although the number of hate crime vents has fluctuated over the last decade, overall, hate crime events have increased by 25.5 percent, with 1,060 reported in 2011 and 1,330 reported in 2020.² Since the prior year (2019), hate crime events had increased by 31 percent and the number of victims of reported hate crimes increased 23.2 percent.³ Additionally, the 2020 report found that anti-Black hate crime events were the most prevalent that year, and anti-Asian hate crime events saw the greatest overall increase, up 107 percent from the prior year.⁴

Generally, the DOJ's annual hate crime reports are accompanied by updated guidance for local law enforcement agencies and prosecutors on various topics related to hate crimes, including relevant state laws and best practices for hate crime investigation, training and reporting.⁵ The latest law enforcement bulletin issued by the DOJ included the following best practices for hate crime data reporting:

- Ensure that hate crimes are properly investigated, documented, and reported to the California Department of Justice, pursuant to Penal Code section 13023, so that they may be reported by the State to the federal government.
- When documenting incidents, ensure hate crimes are clearly flagged to allow for required reporting. This can be indicated by the title/penal code section identifying the report as a hate crime.

¹ AB 2524 (Irwin), Ch. 418, Stats. of 2016, the OpenJustice Data Act of 2016.

² "Hate Crime in California 2020." *California Department of Justice*. Published June 30, 2021. <https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/Hate%20Crime%20In%20CA%202020.pdf>

³ *Ibid.*

⁴ *Ibid.* Anti-Black hate crime events increased 87%, from 243 in 2019 to 456 in 2020; see the DOJ's special report on Anti-Asian Hate Crime Events During the COVID-19 Pandemic, here: [Anti-Asian Hate Crime Events During the COVID-19 Pandemic - Report - CJSC Publications - California Department of Justice](https://www.cdpr.ca.gov/docs/2021-05-11-anti-asian-hate-crime-events-during-the-covid-19-pandemic-report.pdf)

⁵ The law enforcement bulletin can be found here: <https://www.oag.ca.gov/system/files/media/2021-dle-05.pdf>; the guidance for prosecutors can be found here: <https://oag.ca.gov/system/files/media/hc-prosecutor-guidance.pdf>

- The agency head or their designee should make a final determination as to whether the incident should be classified as a hate crime by the agency.
- Agencies shall develop procedures to preserve hate crime reports, ensure timely communication of crimes to prosecutors' offices, and comply with legally mandated reporting.⁶

3. Deficiencies in Hate Crime Reporting and Response

California has experienced challenges regarding hate crime reporting by local law enforcement agencies. The DOJ requires law enforcement agencies (including police, sheriffs, CHP, and prosecutorial agencies) to submit information on all hate crimes occurring in their jurisdictions on a monthly basis, then transmits these data to the FBI and creates its annual report to the Legislature. However, a report published by the California State Auditor in 2018 found that several agencies had failed to report some hate crimes to the DOJ.⁷ Additionally, the audit found that although DOJ guidance requires agencies to submit information on a monthly basis, the DOJ had made no recent effort to ensure that all agencies complied with this requirement. According to the report:

When we asked DOJ to provide us with a list of agencies that it requires to report information to its hate crimes database, we found that it did not maintain a complete or accurate listing of all law enforcement agencies in the State. Specifically, a number of law enforcement agencies were not present on the list, and much of the contact information on the list was incorrect. Moreover, DOJ does not verify that all law enforcement agencies it requires to report do so, nor does it review the data that the agencies submit to ensure its accuracy. DOJ's lack of proactive guidance and oversight of law enforcement agencies is contributing to the underreporting of hate crime information that it provides to the public, the Legislature, and the FBI.⁸

The audit also found that local law enforcement agencies lacked the tools and training to identify hate crimes appropriately. The audit states:

Officers at...law enforcement agencies might have been better equipped to identify hate crimes if their agencies had implement better methods for doing so and provided periodic training. [...] At local law enforcement agencies we reviewed, a lack of hate crime training and protocols, in addition to little proactive guidance and oversight from DOJ, have contributed to the underreporting of hate crimes." [...] "Law enforcement agencies need to improve their response to hate crimes by providing outreach that encourages individuals to report hate crimes."⁹

Existing law authorizes, but does not require, local law enforcement agencies to adopt a hate crimes policy. Existing law also requires POST to develop a model policy on hate crimes, which must consist of several specified elements, and which all state law enforcement agencies must

⁶ "Information Bulletin: California Laws That Prohibit Hate Crimes and/or Provide Enhanced Penalties for Specific Hate Related Acts." Bulletin 2021-DLE-05. Published 30 June 2021. Page 13.

⁷ "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported or Responded to Hate Crimes." Report 2017-131. *California State Auditor*. Published May 2018. <https://www.auditor.ca.gov/pdfs/reports/2017-131.pdf>, page. 26.

⁸ *Ibid* at 3; it is unclear whether DOJ has taken steps since the publication of this audit to improve its data collection processes with regard to hate crimes.

⁹ *Id.* at 2, 9-10, 27.

adopt. If a *local* law enforcement agency does elect to adopt a hate crimes policy, existing law requires the policy to include a host of specific elements (laid out in Penal Code § 422.87), including existing statutory hate crime-related definitions, the elements of POST's model policy, information regarding bias motivation, a checklist of first responder responsibilities, and a protocol for reporting hate crimes to the DOJ, among others.

This bill requires all state and local law enforcement agencies, by July 1, 2024 to adopt a hate crimes policy that includes all the elements set forth in Penal Code §422.87, including a new element regarding the schedule of hate crime training required by existing law and any other hate crime training the agency may conduct. Additionally, the bill provides that if POST updates the hate crimes guidelines (of which the model policy is a part) and training that it is required to develop under existing law, it must consult certain subject matter experts.

As referenced above, existing law requires local law enforcement agencies to report relevant hate crimes information to the Department of Justice, and in turn requires the DOJ to post this information on its OpenJustice web portal. This bill requires both local *and* state agencies to report this information to DOJ, and requires the Attorney General to review agencies' formal hate crimes policies for compliance with the requirements outlined above. The bill also establishes a tiered reporting timeline, with various specified counties/agencies required to report on or before January 1 of each year beginning with 2025 through 2028, and then every 4 years on that date in perpetuity. So, for instance, under the bill, Santa Cruz County is required to report its hate crime materials to DOJ on or before January 1, 2026, and then would be required to report again in 2030, 2034, etc.

4. Prior legislation

This bill is substantially similar to AB 1947 (Ting, 2022), which passed out of this committee last year but died on the Senate Inactive file. As this committee's analysis of AB 1947 noted, that measure suffered from several flaws, including an unnecessarily truncated implementation timeline, confusingly interdependent provisions, and a policy framework that was overly prescriptive for law enforcement agencies. This measure has none of those problems, and sets forth its requirements in a much clearer, more realistic way.

5. Argument in Support

According to the Sikh Coalition:

By way of background, the Sikh religion, founded in India, is the fifth-largest organized religion in the world, with over 500,000 followers in the United States. Sikhs, who originated from Punjab, first entered California in 1899 through the Angel Island Immigration Station in San Francisco, California and by 1910, these pioneers turned to farming in the Sacramento, San Joaquin, and Imperial Valleys. On October 14, 1912, the first gurdwara (Sikh house of worship) in the United States, the Stockton Sikh Temple, was founded and there are now close to 300 known gurdwaras in the United States, 82 of which are in California.

While Sikhs have been an integral part of the American fabric for over 125 years, they remain disproportionately targeted in cases of bigotry, bias, bullying, and backlash. Relative to other vulnerable minorities, Sikhs are disproportionately targeted for discrimination because they wear turbans and maintain unshorn hair

(including facial hair) in accordance with their faith. In a post-9/11 climate, these identifiable characteristics make Sikhs vulnerable targets for hate crimes and bias-based incidents.

According to the most recent FBI data, Sikhs were among the top two most targeted faith groups for hate crimes across the country in 2021. At the same time, the data also shows that fewer law enforcement organizations are participating in reporting hate crimes to the FBI. Taken together, these two points underscore the urgent need for California to demonstrate greater leadership on policy solutions to combat hate in our country. According to media reports and legal intake cases that the Sikh Coalition receives directly, California remains one of the top states in the nation for Sikh hate crimes and bias-related incidents. [...] In the majority of these cases, law enforcement has not been unable to identify either a suspect or a motive, leaving the Sikh community with several unsolved cases. Based on our review of bias incidents involving Sikhs, California has been documented as one of the least welcoming states for Sikhs due to bias incidents, school bullying, and discrimination. This finding is not surprising given the large number of hate groups across the state.

California must continue to address the critical hate crime problem. We strongly believe this bill will improve how officers identify, respond to, and report hate crimes.

6. Argument in Opposition

According to the California District Attorneys Association, which has an oppose unless amended position:

[CDAA] must respectfully oppose your AB 449 unless it is amended to include the definition of ‘law enforcement agency’ set forth in Penal Code Section 13519 (b) or to otherwise exempt non-first-response agencies from the requirements.

Existing law provides that local law enforcement agencies may adopt a hate crimes policy, and that agencies that develop such a policy or update an existing policy must follow the POST framework. This flexibility allows specialized law enforcement agencies that do not respond to hate crimes or hate incidents (coroner’s offices, welfare fraud investigations agencies, arson investigation units, and district attorney bureaus of investigation) to opt-out.

Under AB 449, those agencies, along with many other specialized state law enforcement agencies (Alcoholic Beverage Control, Contractors State Licensing Board Investigations, Horse Racing Board Investigations, etc.) would be required to implement a policy framework that is clearly and solely applicable to law enforcement first-response agencies that are responsible for investigating hate crimes. Not only would this put an unnecessary operational burden on these agencies, but it would also do a disservice to victims by causing duplication of investigative steps and confusion around the process of reporting hate crimes.