
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 485 **Hearing Date:** May 31, 2022
Author: Nguyen
Version: March 25, 2021
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Hate crimes: reporting*

HISTORY

Source: Author

Prior Legislation: AB 2879 (Chu, 2020), not heard in Assembly Public Safety
AB 2235 (Gabriel, 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
SB 1234 (Kuehl), Ch. 700, Stats. of 2004

Support: Riverside County Sheriff's Association; California Police Chiefs Association;
Peace Officers Research Association of California (PORAC)

Opposition: None known

Assembly Floor Vote: 64 - 0

PURPOSE

The purpose of this bill is to require local law enforcement agencies to post specified hate crime information on their official websites on a monthly basis.

Existing law provides that subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice (DOJ), in a manner prescribed by the Attorney General, any information that may be required relative to hate crimes. This information may include any general orders or formal policies on hate crimes and the hate crime pamphlet required pursuant to existing law. (Penal Code §13023(a).)

Existing law provides that on or before July 1 of each year, the DOJ shall update the OpenJustice Web portal with the information obtained from local law enforcement pursuant to the provision above, and that the DOJ shall submit its analysis of this information to the Legislature. (Penal Code §13023(b).)

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
- Association with a person or group with one or more of these actual or perceived characteristics. (Penal Code §422.55(a).)

Existing law specifies that “hate crimes” include, but are not limited to, the following:

- Willfully injuring, intimidating, interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of this state or the United States in whole or in part because of one or more of the actual or perceived characteristics listed above.
- 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 right or privilege secured to them by the Constitution or laws of this state or the United States in whole or in part because of one or more of the actual or perceived characteristics listed above. (Penal Code §§ 422.55(b), 422.6(a), (b).)

Existing law authorizes a local law enforcement agency to adopt a hate crimes policy, and requires such a policy to include, among other things, a protocol for reporting suspected hate crimes to the DOJ. (Penal Code §422.87(a)(5).)

Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop 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 that POST shall encourage all local law enforcement agencies to adopt. (Penal Code §13519.6(c).)

This bill requires local law enforcement agencies to post information related to hate crimes to their internet websites on a monthly basis.

COMMENTS

1. Need for This Bill

According to the author:

According to a news report, hate crimes reported in California in have spiked by double digits. While there is data that demonstrates the unfortunate reality of these crimes, the data that is presented to the public is often outdated due to slow reporting or releasing of hate crime data.

Current law requires law enforcement agencies to annually report hate crime data to the Department of Justice. Historically, the Department of Justice is anywhere from 6

to 18 months behind on their reporting. This delay is problematic for Californians who would like to access accurate data in order to be informed about their communities or make informed decisions about their safety and that of their families.

AB 485 would require local law enforcement agencies to additionally report incidents and statistics related to hate crimes on their own websites on a monthly basis. Doing so would provide more transparency and facts on this type of crime and encourage victims to come forward and report hate crimes, which are severely underreported or never reported at all.

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 is can be indicated by the title/penal code section identifying the report as a hate crime.
- 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

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.

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>

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.

3. Deficiencies in Hate Crime Reporting

Similar to California, federal law requires the FBI to publish annual data on hate crimes. However, although the FBI statistics represent the most comprehensive national data set on hate crimes, these stats are likely a substantial undercount, in large part because law enforcement agencies are not required to submit data to the FBI. In 2020, for instance, out of 18,000 law enforcement agencies, more than 3,000 failed to submit any crime data to the FBI for 2020.⁷ In addition, more than 12,000 agencies that submitted data reported zero hate crimes, including Miami, Florida and Little Rock, Arkansas.⁸

California has also 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, referenced above. 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.⁹ 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.¹⁰

This bill requires law enforcement agencies to post to their internet website, on a monthly basis, all hate crime information that they are currently required to send to the DOJ. As the DOJ currently collects data from police, sheriffs, the CHP and local prosecutorial agencies, the requirement imposed by this bill would apply to all of these entities.

4. Related Legislation – AB 1947 (Ting)

Existing law authorizes local law enforcement agencies to adopt a hate crimes police and enumerates several mandatory components of that policy, should an agency choose to adopt one. AB 1947 (Ting) instead requires each law enforcement agency in the state to adopt a hate crimes

⁷ "FBI Reports Hate Crimes at Highest Level in 12 Years." 9 September 2021. Equal Justice Initiative. <https://eji.org/news/fbi-reports-hate-crimes-at-highest-level-in-12-years/>

⁸ "DOJ: More police departments declining to report hate crimes." 19 March 2022. Axios. [DOJ officials says non-hate crime reporting by police going up \(axios.com\)](https://www.axios.com/2022/03/19/doj-officials-says-non-hate-crime-reporting-by-police-going-up-axios-com)

⁹ "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.

¹⁰ *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.

policy and makes other changes to California law with regard to hate crime reporting. In relevant part, AB 1947:

- Requires the Attorney General to consult with subject matter experts in directing law enforcement agencies to report hate crime information to the DOJ.
- Beginning in 2023, requires agencies to submit information regarding their hate crimes policies to the DOJ.
- Requires agencies to include information that they previously failed to report to the DOJ in subsequent reports.
- Requires DOJ to include information on its OpenJustice Web portal regarding which agencies failed to comply with hate crime reporting requirements.

AB 1947 is currently pending in this committee.

5. Argument in Support

According to the Riverside County Sheriff's Association:

As we have all witnessed, hate crimes, especially among Asians, has increased significantly over the last two years. AB 485 seeks to assist residents in becoming better informed about the prevalence of hate crimes in their communities.

Currently, law enforcement agencies are required to provide hate crime statistics annually to the California Department of Justice. The DOJ copies this information and publishes an annual report which it posts on its website, making it available to the public. Unfortunately, by the time this information is collected, summarized and posted, it has already become outdated. For example, the most current hate crime report on the DOJ website is limited to information for the year 2020. This information is between 12-24 months old. As a result, the public is left without any current information to help inform their decisions about how to best protect themselves and reduce the likelihood of becoming a victim of a hate crime.

AB 485 will allow residents to become better informed about the frequency and locations of suspected hate crime activity. Armed with this current information, Californians will be able to better protect themselves and their communities. This bill will aid residents in becoming aware of local hate crimes, thereby allowing them to take appropriate steps to protect themselves and their families.

-- END --