
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1330 **Hearing Date:** April 5, 2022
Author: Borgeas
Version: February 18, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Crimes: false reports*

HISTORY

Source: Fresno County District Attorney's Office

Prior Legislation: SB 522 (Borgeas), never heard by Sen. Public Safety, 2021
SB 1391 (Borgeas), never heard by Sen. Public Safety, 2020
AB 907 (Grayson), held in Sen. Approps. Suspense File, 2019
AB 2768 (Melendez), held in Assembly Approps. suspense file, 2018
SB 110 (Fuller), vetoed, 2015
SB 456 (Block), vetoed, 2015

Support: Anti-Defamation League; California District Attorneys Association; California Sheriffs' Association; Hindu American Foundation, Inc.; Los Angeles County Sheriff's Department; San Diego District Attorney's Office

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association; Ella Baker Center for Human Rights

PURPOSE

The purpose of this bill is to create a new crime for falsely reporting that a terror incident, as defined, will occur at a school or place of worship, punishable alternatively as a felony or misdemeanor.

Existing federal law provides that any person who transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both. (18 U.S.C. § 875.)

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 a crime punishable either as a misdemeanor or felony, as specified. (Pen. Code, § 422.)

Existing law states that any person who with intent to annoy, telephones another or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person's family, or to the person's property is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)

Existing law states that any person who with intent to cause, attempts to cause, or causes, any officer or employee of any public or private educational institution to do, or refrain from doing, any act in the performance of his or her duties, by means of a directly-communicated threat to the person, to inflict unlawful injury upon any person or property, and it reasonably appears to the recipient that such threat could be carried out, is guilty of a crime, punishable as an alternate felony-misdemeanor on a first offense, and a felony on a second or subsequent offense. (Pen. Code, § 71, subd, (a).)

Existing law states that any person who reports that a misdemeanor or felony has been committed knowing the report to be false is guilty of a misdemeanor. (Pen. Code, § 148.5.)

Existing law states that any person who maliciously informs any other person that a bomb or other explosive has been or will be placed or secreted in any public or private place, knowing that the information is false, is guilty of an alternate felony-misdemeanor punishable in county jail not to exceed one year, or as a county jail-eligible felony. (Pen. Code, § 148.1, subd. (c).)

This bill states that any person who maliciously informs any other person that a terror incident will occur at any school, any school-sponsored event, or any place of worship, knowing that the information is false, is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or county jail pursuant to realignment.

This bill provides the following definitions:

- “Informs another person” means “to communicate to another person directly, or via any communication device, including, without limitation, a telephone, text messaging device, or fax machine, or by means of a recorded message or message posted to any social media website, internet website, bulletin board, chatroom, or similar forum that is intended to be viewed by other persons.”
- “Place of worship” means “any church, synagogue, temple, mosque, or other building where religious services are regularly conducted.”
- “School” means any of the following:
 - Any public or private elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, or technical school or any public right-of-way situated immediately adjacent to school property or any other place if a teacher and one or more pupils are required to be at that place in connection with assigned school activities.
 - Any campus or property of the University of California, California State University or a California community college; or,
 - Any private postsecondary institution.

- “Terror incident” means “a violent criminal incident, the nature of which is commonly understood to result in mass casualties, including, without limitation, a mass shooting, mass stabbing, explosion, release of poisonous gas or substance, or attack with a vehicle.”

COMMENTS

1. Need for This Bill

According to the author of this bill:

Schools and places of worship all across California have seen an uptick in threat activity. The Sacramento area alone saw a major increase last year¹. While California has been very fortunate to avoid a major catastrophe like the tragedy that occurred at Stoneman Douglas High School in 2018, the mere threat of a shooting is still very detrimental to the lives of worshippers and school students. In our current culture, the vast majority of these “threats” are electronic social media postings directed at the entire school and not individuals. Sometimes the perpetrator does not even attend the school or place of worship they threatened. When these threats occur, the upheaval can be enormous-especially for school districts as 1. parents will keep their children home out of fear, 2. schools go into lock down which is traumatic for many students 3. lesson plan time is lost. This disruption to the school day has an unknown social and economical impact on our schools and the mental wellbeing of our students. In addition, these threats divert law enforcement resources and patrols leaving communities vulnerable. Similarly, threats could disrupt individuals right to worship and is a violation of our constitutional right.

There is a deficiency in the current criminal code as nothing adequately captures this type of threat at schools or places of worship. The closest current statute is Penal Code 422, however it is limited. The first limitation is having a named victim. If the perpetrator targets a school with a shooting without naming any individuals, prosecution will be difficult without an identifiable victim. Under existing law, an individual must be the target of the offense and the threatened individual must be in sustained fear. In addition, jury instructions, known as CALCRIM, are equally as restrictive². Without proving all the required elements beyond a reasonable doubt, the prosecution fails.

SB 1330 closes a loophole in current law that does not adequately capture threats made against schools and places of worship. SB 1330 seeks to clarify that a threat is treated the same whether it is against a person, an entity or building. The proposed legislation addresses these current limitations in the code and, more importantly, limits the punishment of a juvenile perpetrator. This is important as most are juvenile offenders who engage in this activity and without a true finding of violation of a criminal statute, that minor will not likely receive social services

¹<https://www.sacbee.com/news/local/education/article256488946.html>

² [CALCRIM No. 1300. Criminal Threat \(Pen. Code, § 422\) :: California Criminal Jury Instructions \(CALCRIM\) \(2020\) :: Justia](#)

or mental health assistance. These threats may be a cry for help and will continue to slip through the cracks of our current system.

2. First Amendment Considerations

A law that restricts speech has First Amendment implications. The First Amendment to the United States Constitution states: “Congress shall make no law . . . abridging the freedom of speech” This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal. 4th 121, 133-134, citing *Gitlow v. People of New York* (1925) 268 U.S. 652, 666.) Article I, section 2, subdivision (a) of the California Constitution provides that: “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”

While these guarantees are stated in broad terms, “the right to free speech is not absolute.” (*Aguilar v. Avis Rent A Car System, Inc.*, *supra*, 21 Cal. 4th at p. 134, citing *Near v. Minnesota* (1931) 283 U.S. 697, 708; and *Stromberg v. California* (1931) 283 U.S. 359.) As the United States Supreme Court has acknowledged: “Many crimes can consist solely of spoken words, such as soliciting a bribe (Pen. Code, § 653f), perjury (Pen. Code, § 118), or making a terrorist threat (Pen. Code, § 422).”

Content-based restrictions on speech are presumptively invalid (*R.A.V. v. St. Paul* (1992) 505 U.S. 377, 382), however, courts have upheld restrictions on content-based speech when the speech is “‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’” Thus, for example, a State may punish those words “‘which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’” (*In re J.M.* (2019) 36 Cal.App.5th 668, 674, citing *Virginia v. Black* (2003) 538 U.S. 343, 358–359.)

In *In re J.M.*, the defendant was convicted of maliciously making a false bomb report pursuant to subdivision (c) of Penal Code section 148.1, which the language of this bill is largely based upon. The defendant argued that the statute violated the First Amendment in that it punished false statements which were not intended to nor taken as a true threat. (*In re J.M.*, *supra*, 36 Cal.App.5th at p. 675.) The court disagreed on the application of a true threat analysis to the defendant’s crime. Rather, the court relied on prior case law to liken a false bomb report to yelling “fire” in a crowded theater which is a verbal act that is not protected by the First Amendment. (*Levin v. United Airlines* (2008) 15 Cal.App.4th 1002, 1022-1023.) The court concluded that “falsely uttered words still have the inherent potential to cause fear, alarm or disruption. That the official response might be less extensive or urgent if the false report is made to a private person or if the report is of a future placement of a bomb or explosive, does not change the fact such an utterance is a verbal act that does not enjoy First Amendment protection.” (*In re J.M.*, *supra*, 36 Cal.App.5th at p. 677.) The court further reasoned that the inclusion of the requirement that the report be made malicious “import[s] a wish to vex, annoy, or injure another person, or an intent to do a wrongful act . . .” (*Id.* at p. 678 citing Pen. Code, § 7) which may reflect “a legislative determination that false reports of bomb placement spoken maliciously to anyone are inherently matters to be taken seriously.” (*Ibid.*)

This bill adds language that is similar to subdivision (c) of Penal Code section 148.1 but applies it to a false report that a terrorist incident will occur at a school or place of worship, as defined. While provisions of Penal Code section 148.1 has been found to be consistent with the First

Amendment, the expansion in this bill could go beyond what is narrowly allowed for a content-based restriction on speech. This bill creates a much broader prohibition because actions covered under “terrorist incidents” could include less serious conduct that do not rise to the “inherently dangerous” level of bombs, which is what the statute intended to prohibit. “[B]ombs are commonly understood to be so ‘inherently dangerous’ that possession can be unlawful even when the device is not set to explode. Detonation can occur unexpectedly, while the object is concealed or if the bomber loses control over it, threatening intended and unintended victims alike.” (*People v. Turnage* (2012) 55 Cal. 4th 42, 71.) A knife or other weapons, even a gun, would not necessarily cause the same instantaneous or possible unintentional widespread destruction that may be caused by a bomb.

Additionally, the new definition of “terror incident” which is defined as “a violent criminal incident, the nature of which is commonly understood to result in mass casualties, including, without limitation, a mass shooting, mass stabbing, explosion, release of poisonous gas or substance, or attack with a vehicle” may face challenges for being unconstitutionally vague and overbroad.

3. Similar Prior Legislation and Existing Law

Violence at schools and places of worship has been the subject of several bills in the past few years. SB 1169, of the 2019-2020 Legislative Session, would have create a new crime for willfully threatening unlawful violence to occur on the grounds of a school, as provided, and that threat creates a disruption in the school, punishable as an alternate felony-misdemeanor. AB 907, of the same Legislative session, would have created a new criminal threat statute for threatening to commit a violent crime on the grounds of a school or place of worship. That bill was amended in this committee to specify that minor who commits the new offense is guilty of a misdemeanor rather than facing a potential felony. AB 907 was held in the Senate Appropriations’ suspense file.

The author of the bill argues that the current criminal threats statute, Penal Code section 422, does fit well into instances of threats of violence at schools or places of worship because often times the threats posted on social media do not specify who the target is. Rather, the threat oftentimes applies to anyone present at those locations.

An example illustrating the existing law's application to threats of violence made to a group of people rather than naming a specific person as the target can be found in case law. In *In re L.F.* (June 3, 2015, A142296) [nonpub. opn.], the adjudged minor was a Fairfield High School student who posted on her Twitter account that she planned to bring a gun to school and shoot people. While she did note specified areas of the school and one of the campus monitors by name in some of her posts, her Tweets were generally targeted at all of the students and staff at the school. The petition filed against the minor alleged that the minor had made criminal threats against "Fairfield High School students and staff" instead of listing specific persons. (*Id.* at p. 4.) The appellate court affirmed the juvenile court's ruling that the minor had violated the existing criminal threats statute. (*In re L.F.*, *supra*, A142296 at p. 8.) This interpretation of the law is consistent with older case law that says a true threat may be made to a particular individual or group of individuals.” (*Virginia v. Black* (2003) 538 U.S. 343, 359, citing *Watts v. United States* (1969) 394 U.S. 705, 708.)

Another example showing that the current law is applicable regardless whether the threat was made to an individual or a group of people is *In re A.G.* (2020) 58 Cal.App. 5th 647 where the

adjudged minor was convicted of criminal threats after a Snapchat image showed that he was going to bring a gun to school with a picture of a gun. The Snapchat image did not include the name of the school or any individuals and the minor later posted that it was all a joke, however the court found that it was sufficient under the law that an individual and a teacher saw the post and were in sustained fear. (*Id.* at pp. 656-657.)

Also illustrated in the cases above, Penal Code section 422 does not require the statement of deadly harm to be true, it can be used to prosecute false statements as well. Specifically, the statute states that the speaker need not have intent to carry out the act of violence. (Pen. Code, § 422.)

4. Return to School and Reports of Threats of Violence

Educators have reported a rise in behavioral problems in students and are pointing to isolation and continuing impact of the COVID-19 pandemic as the issue. According to a recent article:

While there is no current data that aggregates reports among educators and law enforcement about reported upticks in threats, school fights, assaults or behavior troubles, Howard and other educators said students are experiencing anxiety, suicidal ideation and depression, all signs that they are struggling.

“Young people don’t know how to cope when they’re depressed and angry,” Howard said. He added that children experiencing trauma often respond in one of three ways: they become aggressive, reclusive or tune the world out.

Communities In Schools of Los Angeles, a nonprofit that collaborates with several Los Angeles Unified School District schools to provide academic support, said staff at school sites have seen an increase in aggression and misbehavior among students. Students from second to fourth grade displaying behavior similar to kindergartners and younger students are having trouble acclimating to rules and cultural norms, likely due to the amount of time they were out of in-person school, said Elmer Roldan, executive director of the organization.

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U.S. Surgeon General Vivek H. Murthy issued a rare public health advisory this week about the crisis facing youth mental health. While children and adolescents have increasingly reported feeling distressed over the past years, the hardships brought on by the pandemic have compounded the pain, Murthy concluded.

“All those signs are telling us that children are not well and are dealing with the effects of the pandemic,” Howard said. “Just the disconnect from friends and social connections, even though they’re now reconnecting, just that absence can have a massive effect.”

(Gomez, *Educators report a rise in school threats, fights and misbehavior, and blame COVID*, Los Angeles Times (Dec. 9, 2021) < <https://www.latimes.com/california/story/2021-12-09/educators-report-rise-in-school-threats-fights-misbehavior>> [as of Mar. 28, 2022].) According to the article, threats posted on social media have led to investigations and arrests of the students that posted such comments. (*Ibid.*)

5. Argument in Support

According to California District Attorneys Association:

Schools and places of worship are especially vulnerable places. SB 1330 would close the loophole in current law by prohibiting a false report that a terror incident is going to take place at a school, school-sponsored event, or place of worship, even if the false report is posted on a social media website and not made directly to the school or place of worship. The bill would apply to the false report of a terror incident, whether it occurs by telephone, text, fax, social media post, or internet chatroom. These types of threats result in enormous disruption to schools and places of worship because they often must be evacuated or locked down, and they require significant law enforcement resources to determine that the threat is false.

6. Argument in Opposition

According to Ella Baker Center for Human Rights:

Existing Penal Code Section 422 is a statute that requires only words – no actions in furtherance of the threat – and it applies even if the person who is saying the words has “no intent of actually carrying it out.” We believe that creating a new offense will ensnare more people with mental health conditions who often suffer from crippling paranoia and delusions, and who do not regulate their words well. Their mental health condition can cause them to say things that are easily misinterpreted, or are simply a product of their illness. Creating a new crime is not the answer. It will end up causing more harm than it prevents.

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