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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 596                      **Hearing Date:** April 25, 2023  
**Author:** Portantino  
**Version:** March 30, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *School employees: protection*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 570 (Alarcon), Ch. 1013, Stats. of 1999

**Support:** California Association of Joint Powers Authorities; California School Employees Association; California Teachers Association; Glendale Teachers Association; Los Angeles County Office of Education; Torrance Unified School District

**Opposition:** Our Duty; One Individual

## PURPOSE

***The purpose of this bill is to make it a misdemeanor for any person to subject a school employee to threats or harassment, as defined, while the employee is away from a school site or after school hours for reasons related to the employee's course of duties.***

*Existing law* provides that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, as specified. (Pen. Code §646.9(a).)

*Existing law* provides that for the purposes of the crime above, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. (Pen. Code §646.9(e).)

*Existing law* provides that for the purposes of the crime of stalking, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose, excluding constitutionally protected conduct. (Pen. Code §646.9(f).)

*Existing law* provides that for the purpose of the crime of stalking, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her

family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.” (Pen. Code §646.9(g).)

*Existing law* provides that a judicial officer may issue an ex parte emergency protective order if a peace officer, as defined, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person’s allegation that he or she has willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family. (Pen. Code §646.91.)

*Existing law* provides that every person who, with intent to annoy, telephones or makes contact by means of an electronic communication device with another and addresses to or about the other person any obscene language or addresses to the other person any threat to inflict injury to the person or property of the person addressed or any member of his or her family, is guilty of a misdemeanor. (Pen. Code § 653m(a).)

*Existing law* provides that every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. (Pen. Code § 653m(b).)

*Existing law* provides 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 verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually 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 of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, is guilty of a misdemeanor or felony. (Pen. Code § 422.)

*Existing law* provides that a person who has suffered civil harassment, as defined, may seek a temporary restraining order and an order after hearing prohibiting harassment. Violation of the restraining order is punishable as a misdemeanor. (Code of Civil Procedure § 527.6, Pen. Code § 273.6.)

*Existing law* provides that every minor over 16 years of age or adult who is not a pupil of the school, including but not limited to any such minor or adult who is the parent or guardian of a pupil of the school, who comes upon any school ground or into any schoolhouse and there willfully interferes with the discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct or to inflict damage to property or bodily injury upon any person, is guilty of a misdemeanor. (Ed. Code §44810.)

*Existing law* provides that any parent, guardian, or other person whose conduct in a place where a school employee is required to be in the course of his or her duties materially disrupts classwork or extracurricular activities or involves substantial disorder is guilty of a misdemeanor. (Ed. Code §44811(a).)

*Existing law* that a violation of the above provision shall be punished per the following:

- For the first conviction, by a fine of between \$500 and \$1000 or by imprisonment in county jail for a maximum of one year, or by both the fine and imprisonment.
- For a second conviction, by imprisonment in a county jail for a period of not less than 10 days but not more than one year, or by both imprisonment and a fine not exceeding \$1000. The defendant shall not be released on probation, or for any other basis until the defendant has served not less than 10 days in county jail.
- For a third or subsequent conviction, by imprisonment in a county jail for a period of not less than 90 days but not more than one year, or by both imprisonment and a fine not exceeding \$1000. The defendant shall not be released on probation, or for any other basis until the defendant has served not less than 90 days in county jail. (Ed. Code §44811(b)(1)-(3).)

*Existing law* provides that upon a showing of good cause, the court may find that for any mandatory minimum imprisonment specified in punishments for a second or third or subsequent conviction of the prohibition above, the imprisonment shall not be imposed, and the court may grant probation, or the suspension of the execution or imposition of the sentence. (Ed. Code §44811(b)(4).)

*Existing law* provides that Education Code §44811 shall not apply to any otherwise lawful employee concerted activity, including, but not limited to, picketing and the distribution of handbills. (Ed. Code §44811(c).)

*This bill* makes it a misdemeanor for any person to subject a school employee to threats or harassment while the employee is away from a schoolsite or after school hours for reasons related to the employee's course of duties, including, but not limited to instruction, as specified.

*This bill* defines "harassment" as unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the person.

*This bill* defines "course of conduct" as a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."

## COMMENTS

### 1. Need for This Bill

According to the Author:

Actions that incite fear amongst educators who are teaching in accordance with state standards are counterproductive, unacceptable and potentially dangerous. Too many teachers are being intimidated and harassed for just doing their job. These incidents do not solely occur while teachers are at their respective school sites; some also receive threats in off campus settings. SB 596 will ensure that educators can continue to help their students thrive in supportive and inclusive classroom environments, unencumbered by fear and intimidation.

### 2. Politics in Schools – Perceptions and Reactions

The last several years have seen an increasing politicization of school curricula and the decisions of school governing bodies. One major driver of this phenomenon was the COVID pandemic, which led many schools to temporarily pause in-person instruction in favor of remote learning. Not only did remote learning negatively impact students’ academic performance, but it led to increased tension between students and teachers, some of which turned violent.<sup>1</sup> In addition, decisions of many local school boards related to COVID restrictions and, as the pandemic abated, certain curricula choices, has led to violence against educators and school employees.<sup>2</sup> For instance, in Sutter Creek, California, a parent was arrested after he verbally assaulted a school principal and struck a teacher over the school’s mask mandate.<sup>3</sup> In 2022, the Rand Corporation released the results of a survey of almost 4,000 teachers and principals nationwide, showing, among other things, that 61% of principals and 37% of teachers surveyed reported experiencing harassment about politicized topics, which contributed to burnout, frequent job-related stress, and symptoms of depression.<sup>4</sup>

Additionally, schools – and particularly teachers – have increasingly become targets of parents and other individuals and groups seeking to limit specific types of instruction, namely “critical race theory” and topics related to gender and sexuality. According to the Author:

In 2022, the UCLA Institute for Democracy, Education and Access and the UC Riverside Civic Engagement Research Group conducted a study surveying 682 high school principals across the country. According to the study, 50% of principals

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<sup>1</sup> “Every Child Left Behind: How California is Failing Students During The Pandemic.” 10 March 2021. The Stanford Review. [Every Child Left Behind: How California is Failing Students During The Pandemic \(stanfordreview.org\)](https://stanfordreview.org/) ; “Teachers, other school personnel, experience violence, threats, harassment during pandemic.” 17 March 2022. American Psychological Association. [Teachers, other school personnel, experience violence, threats, harassment during pandemic \(apa.org\)](https://apa.org/)

<sup>2</sup> “Educators Under Immediate Threat in Culture of Fear and Violence.” National Education Association. 15 October, 2021. [Educators 'Under Immediate Threat' in Culture of Fear and Violence | NEA](https://www.nea.org/)

<sup>3</sup> “School parent faces charges after hitting teacher over mask mandate.” Fox 40 New. 23 August 2021. [Sutter Creek Elementary School parent faces charges after hitting teacher over mask mandate \(fox40.com\)](https://www.fox40.com/)

<sup>4</sup> Woo, Ashley, et al. “Walking a Fine Line – Educators’ Views on Politicized Topics in Schooling.” Rand Corporation, 2022. [Walking a Fine Line—Educators' Views on Politicized Topics in Schooling: Findings from the State of the American Teacher and State of the American Principal Surveys | RAND](https://www.rand.org/pubs/working_papers/20220701/)

reported that parents or community members tried to challenge or limit instruction on topics of race and racism. Similarly, 48% of principals reported that parents or community members tried to challenge or limit policies promoting the rights of LGBTQ+ students.<sup>5</sup> Educators providing instruction on topics pursuant to the Fair, Accurate, Inclusive and Respectful (FAIR) Education Act and the CA Healthy Youth Act also report being threatened or harassed. These incidents do not solely occur while teachers are at their respective school sites; some receive threats in off campus settings. Last year, a local elementary school teacher received threats of violence, one of which was left on her answering machine, after talking to students about LGBTQ Pride Month. The teacher was ultimately transferred to another campus due to safety concerns.

This bill seeks to strengthen deterrents to this behavior by making it a crime to threaten or harass school employees off of school grounds.

### **3. This Bill Creates a Misdemeanor for Specific Threats or Harassment to A School Employee**

An existing provision of the Education Code make it a misdemeanor for a minor over 16 or an adult to come onto school ground and interfere with a school activity, including classroom instruction, with the intent to disrupt, obstruct or inflict property or bodily damage. Another Education Code provision provides that any parent, guardian or other person whose conduct in a place where a school employee is required to be in the course of his or her duties materially disrupts classwork or extracurricular activities or involves substantial disorder is guilty of a misdemeanor. According to the Author, while these provisions in the Education Code “aim to deter substantial disruption at a school site, the protections in place do not clearly apply to incidents that occur off-campus.” Consequently, this bill makes it a misdemeanor for any person to subject a school employee to threats or harassment, as defined, while the employee is away from a schoolsite or after school hours for reasons related to the employee’s course of duties, including, but not limited to, instruction.

While this new crime does achieve the Author’s objective in criminalizing threats to and harassment of school employees away from school grounds, so do many existing criminal laws. For instance, the crime of stalking, is defined as willfully, maliciously, and repeatedly harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family. The statute for stalking defines terms used therein, such as “harasses,” “course of conduct,” and “credible threat.” This bill uses these terms as well, and its definitions of “harassment” and “course of conduct” are almost identical to those used in the crimes of stalking, with slight variation. Overall, it appears that this bill has narrower application than the crime of stalking, since the threats or harassment committed under this bill must be done for reasons related to the employee’s course of duties. Given this fact and the general similarity between the crime created by this bill and the existing crime of stalking, it is unclear when a prosecutor would elect to file charges under this bill as opposed to the stalking statute.<sup>6</sup> Thus, the Committee may wish to consider whether this bill is

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<sup>5</sup> Rogers, John and Joseph Kahne. “Educating Diverse Democracy for a The Chilling Role of Political Conflict in Blue, Purple, and Red Communities.” November 2022. [diverse-democracy-report \(ucla.edu\)](https://diverse-democracy-report.ucla.edu)

<sup>6</sup> The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution protects against imposition of multiple punishment for the same conduct; see also Penal Code §§654, 687.

truly necessary and whether it will in fact provide additional protection to school employees and deterrent to potential harassers.

#### **4. Prior Committee**

This bill was also referred to the Senate Committee on Education, where it was heard on April 12 and received a vote of 5-0. This analysis only covers provisions of this bill within the Committee's jurisdiction. For an analysis of school safety issues that fall more squarely into the jurisdiction of the Senate Education Committee, see the analysis prepared by that committee's staff.

#### **5. Argument in Support**

According to the California Teachers Association:

Our CTA members believe school employees should be safe from aggressive and violent behaviors as well as physical, verbal, and psychological abuse. There are documented increases in the number of confrontational activities faced by school employees. We believe all efforts to establish practices and protocols guaranteeing the safety of school employees must be immediate and far-reaching. Such efforts benefit the school community by impacting teacher retention and recruitment and ensuring appropriate conduct within the community-at-large.

#### **6. Argument in Opposition**

According to Our Duty, a parental advocacy organization opposed to the bill:

California is consistently eroding both parents' rights and first amendment rights. SB 596 is another expansion of law designed to stifle public discourse. This bill will not withstand judiciary scrutiny. First Amendments rights are the cornerstone of democracy and California is leading the charge to use its legislative power to threaten parents from voicing their dissent as California schools take over their parenting rights.

There are extant laws protecting all persons from harassment and violence. This bill contains overbroad and vague language that will serve to chill speech. The term "harassment" is absurdly defined. It includes any communications that "seriously alarms" or "annoys" a school employee. Neither of these terms are defined and will open a Pandora's Box of claims - all designed to shut those pesky parents up, and let the state decide what is best for our children. Anything dissention can be determined – or at least – alleged to be harassment. The overbroad language is not saved by the "reasonable person" standard because the entire bill will serve to scare parents into silence.

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