
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 796 **Hearing Date:** April 25, 2023
Author: Alvarado-Gil
Version: April 10, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Threats: schools and places of worship*

HISTORY

Source: California Police Chiefs Association
California District Attorneys Association

Prior Legislation: SB 1330 (Borgeas), failed passage Sen. Public Safety 2022
SB 522 (Borgeas), held in Sen. Public Safety, 2022
SB 1391 (Borgeas), held in Sen. Public Safety, 2020
AB 907 (Grayson), held Sen. Approps. suspense file, 2019
AB 2768 (Melendez), held Assembly Approps. suspense file, 2018
SB 110 (Fuller), vetoed, 2015
SB 456 (Block), vetoed, 2015

Support: Anti-Defamation League; California District Attorneys Association; California State Sheriff's Association; City of Whittier; Hindu American Foundation, INC.; National Asian Pacific Islander Prosecutors Association; San Francisco District Attorney's Office; Santa Clara County District Attorney's Office

Opposition: California Public Defenders Association; San Francisco Public Defender

PURPOSE

The purpose of this bill is to create a new crime of threatening to commit a crime that will result in death or great bodily injury at a school or place of worship, punishable as an alternate felony-misdemeanor, as specified.

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 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 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 provides that any person who with intent to cause, attempts to cause or causes, another to refrain from exercising his or her religion or from engaging in a religious service by means of a threat directly communicated to such a person to inflict an injury upon the person or property, and it reasonably appears to the recipient that such a threat could be carried out, is guilty of a felony. (Pen. Code, § 11412.)

Existing law provides that any person who knowingly threatens to use a weapon of mass destruction with the specific intent that the statement, as defined, or a statement made 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, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution, and thereby causes the person reasonably to be in sustained fear of for personal safety or that of their family is guilty of a crime, punishable as an alternate felony-misdemeanor. (Pen. Code, § 11418.5, subd. (a).)

Existing law defines a "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:

- 1) Disability;
- 2) Gender;
- 3) Nationality;
- 4) Race or ethnicity;
- 5) Religion;
- 6) Sexual orientation;
- 7) Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

Existing law provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim defined as a "hate crime." (Pen. Code, § 422.6, subd. (a).)

Existing law states that a person convicted of violating Penal Code section 422.6 is guilty of a misdemeanor punishable by up to one year in county jail, a fine not to exceed \$5,000 and community service, but specifies that no person shall be convicted of violating Penal Code section 422.6, subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat. (Pen. Code, § 422.6, subd. (c).)

Existing law provides that a person who commits a hate crime that is a felony shall receive an additional term of one, two, or three years in state prison, or an additional term of two, three, or four years if the act was committed in concert with another person. (Pen. Code, § 422.75.)

Existing law provides, except where the court imposes an enhancement for a hate crime, or imposes the upper sentencing term for committing robbery or assault with a deadly weapon or by means of any force likely to cause great bodily injury, the fact that a person committed or attempted to commit a felony that is a hate crime shall be considered a circumstance in aggravation. (Pen. Code, § 422.76.)

This bill creates a new crime for a person who willfully threatens to commit a crime that is reasonably likely to result in death or great bodily injury to any person who may be on the grounds of a school or places of worship, with specific intent that the statement is to be taken as a threat, even if there is no intent of carrying it out, if the threat on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat, and if the threat causes a person or persons reasonably to be in sustained fear for their own safety or the safety of another person.

This bill defines “place of worship” as any church, synagogue, temple, mosque, or other building where religious services are regularly conducted.

This bill defines “school” to mean a state preschool, a private or public elementary, middle, vocational, junior high, or high school, a community college, a public or private university, or a location where a school-sponsored event is or will be taking place and the threat is related to both the school-sponsored event and to the time period during which the school-sponsored event will occur.

This bill states that the new crime is an alternate felony-misdemeanor, punishable by imprisonment in county jail for a term not exceeding one year, or in county jail for 16 months, or 2 or 3 years.

This bill specifies that a person under 18 years of age who violates this section is guilty of a misdemeanor.

This bill provides that this section does not preclude prosecution under any other law, except that a person shall not be convicted for the same threat under both this section and existing Penal Code section 422.

COMMENTS

1. Need for This Bill

According to the author of this bill:

SB 796 would make it unlawful to threaten to commit a crime that is reasonably likely to cause death or great bodily injury at a school or place of worship, even though a specific victim of the crime is not named.

Those who receive threats like the ones described, especially those who are or will be at a school or place of worship, may suffer from the fear and trauma of the threatened crime. These threats cause extensive disruption to the community. These kinds of threats require immediate law enforcement response, often with specialized units, in order to gauge whether the threats are credible. This gap in the law makes it difficult to fully investigate and prosecute these cases, despite the damage caused to communities when an individual conveys a threat to kill or cause great bodily injury.

Given the reality in California and around the country of mass shootings at schools and religious centers, our laws must be updated to reflect the devastating impact of such threats. This statute fills a gap in the law, allowing clarity for investigating officers and prosecutors, who can now hold individuals accountable for the terror and disruption their words cause.

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.)

True threats are not protected by the First Amendment. (*In re M.S.* (1995) 10 Cal.4th 698. Existing Penal Code section 422 has been found to be constitutional because it is narrowly tailored to apply only to true threats which is defined as a threat "to commit a crime which will result in death or great bodily injury to another person . . . 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.” (*People v. Toledo* (2001) 26 Cal.4th 221, 233.)

3. Criminal Threat Prosecutions and Effect of this Legislation

In order to convict a person under the current criminal threat statute, Penal Code section 422, the prosecutor must prove the following:

- a) That the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;
- b) That the defendant made the threat;
- c) That the defendant intended that the statement is to be taken as a threat, even if there is no intent of actually carrying it out;
- d) That the threat was 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;
- e) That the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and,
- f) That the threatened person's fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also *People v. Toledo, supra*, 26 Cal.4th at 227-228.)

Penal Code section 422 applies to all criminal threats regardless of the location or the type of violence that is threatened. This bill seeks to create the specific crime of criminal threats when the threat is to take place on the grounds of a school or place of worship. Proponents of the bill argue that the current criminal threats statute, Penal Code section 422, does not 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.

Case law states that 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.) An example illustrating the existing criminal threat statute’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 *In re L.F.* (June 3, 2015, A142296) [nonpub. opn.], where 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 point out 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.)

Another example showing that the current law is applicable regardless whether the threat was made to an individual or a group of people is found in *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 criminal threats statute that an individual and a teacher saw the post and were in sustained fear. (*Id.* at pp. 656-657.)

This bill contains much of the same language as is currently in the existing criminal threats statute (Penal Code section 422). However, there are some differences; the new crime provides that a person who, by any means, willfully threatens to commit a crime that is *reasonably likely to* [as opposed to "will"] result in death or great bodily injury to any person who may be on the grounds of a school or places of worship, with specific intent that the statement is to be taken as a threat, even if there is no intent of carrying it out, if the threat on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and an immediate prospect of execution of the threat, and if the threat causes *a person or persons* [as opposed to "that person"] reasonably to be in sustained fear for their own safety or the *safety of another person* [as opposed to "immediate family's safety"].

As discussed above, true threats may be made to a specific person or group of persons and does not necessarily require that the other persons be immediate family members. However, a true threat that falls outside the protection of the First Amendment has been defined as a threat "to commit a crime which will result in death or great bodily injury to another person . . . 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... ."

Does using the term "reasonably likely to result in death or great bodily injury" instead of "will result in death or great bodily injury" meet the First Amendment's requirement for a true threat?

4. Punishment for Criminal Threats

The existing crime of criminal threats is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also becomes a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, 1192.7. subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally it triggers credits limitations. (Pen. Code, § 1170.12.) (See also

People v. Moore (2004) 118 Cal.App.4th 74.)

This bill does not add the newly-created crime of criminal threats directed at a school or place of worship to existing Penal Code section 422, rather it creates a new section. This bill specifies that a perpetrator can be prosecuted for a threat under the general criminal threats statute, Penal Code section 422, or any other law; but that the person cannot be convicted for both the general statute and this more particularized one.

5. Argument in Support

According to the Anti-Defamation League:

We are unfortunately living in a new era where school-based mass casualty events and threats of violent attacks against places of worship are increasingly common. For example, each year, hundreds of fake bomb threats are called in - targeting target synagogues and other Jewish communal institutions. This reality has resulted in a heightened fear among students throughout California and the nation that a deadly tragedy could occur in their own schools at any time. When a school or place of worship is threatened, it can and does cause reasonable and immediate fear for anyone on that institution's property.

Schools and places of worship across California have seen an uptick in threatening activity. When these threats occur, the upheaval can be enormous. Countless hours of lost education time, resource dedication by first-responders, and of course the chilling fear that no individual should have to feel just because they attend school or their place of worship.

6. Argument in Opposition

According to the San Francisco Public Defender's Office:

Making a criminal threat (in any setting) is conduct that is already covered by the Penal Code in Section 422. Nearly all of the conduct described in this bill falls well within the definition of that section. However, SB 796 does change the language from PC 422's "threaten to commit a crime that will produce death or great bodily injury" to "is reasonably likely to produce death or great bodily injury."

To the extent that SB 796 loosens the restrictions of Section 422, it is even more concerning. Penal Code Section 422 is a statute that is often misused to penalize conduct that does not truly belong in the criminal justice system. This is particularly true for indigent community members with mental health conditions, who often suffer from paranoia and delusions. The fear these clients experience can lead them to say things that are easily misinterpreted or are simply a product of their illness.

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