
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SJR 13 **Hearing Date:** August 29, 2017
Author: Skinner
Version: August 21, 2017
Urgency: **Fiscal:** No
Consultant: GC

Subject: *White Nationalist and Neo-Nazi Groups: Prosecution*

HISTORY

Source: Author sponsored

Support: Alameda County District Attorney's Office; Los Angeles County District Attorney's Office

Opposition: None known

PURPOSE

This measure expresses that the Legislature stands in strong denunciation and opposition to the totalitarian impulses, violent terrorism, xenophobic biases, and bigoted ideologies that white nationalists and neo-Nazis promote. The measure further urges federal law enforcement to use the full extent of the nation's laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalists and neo-Nazis who come into our communities and commit violent and destructive acts.

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, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code § 422.)

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: (Pen. Code § 422.55.)

- 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, as defined.

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 listed. (Pen. Code § 422.6, subd. (a).)

Existing law provides that no person, whether or not acting under color of law, shall knowingly deface, damage, or destroy 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 the other person 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. (Pen. Code § 422.6, subd. (b).)

Existing law provides that any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person may be convicted 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 federal law provides that whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if death results from the offense; or the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill. These provisions apply when the offenses involve actual or perceived race, color, religion, or national origin. (18 U.S.C. § 249, subd. (a)(1).)

Existing federal law provides that whoever, whether or not acting under color of law, in any specified circumstance willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if death results from the offense; or the

offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill. These provisions apply when the specified conduct involves actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability. (18 U.S.C. § 249, subd. (a)(2).)

This resolution states that whereas, the tragic events that took place on August 12, 2017, in Charlottesville, Virginia prove that white nationalism and neo-Nazism remain very real threats to our nation's social and racial progress.

This resolution states that whereas, throughout the course of our nation's history, white nationalism has promoted intimidation and violent repression of individuals solely on the basis of their race, ethnicity, religion, sexual orientation, and immigration status.

This resolution states that whereas, today, white nationalism has attempted to reinvent itself, self-identifying as the "Alt-Right," yet their present-day rhetoric and terrorism conjure painful memories of our nation's past.

This resolution states that whereas, while free speech is a bedrock value for Americans, white nationalist and neo-Nazi groups promote agendas that are dangerous to public safety and the welfare of our communities because they incite and promote lawless actions and utilize language for the purpose of inciting an immediate breach of the peace by provoking fights and violence.

This resolution states that whereas, white nationalism and neo-Nazism are continuing to grow as menaces to societal order that seek to reignite social animosities, reverse improvements in race relations, divide the nation, and foment hatred, classism, and ethnic eradication.

This resolution states that whereas, the white nationalist and neo-Nazi message of racial and social intolerance has led to senseless acts of violence that continue to terrorize individuals and communities.

This resolution resolves by the Senate and the Assembly of the State of California, jointly, that the Legislature strongly denounces and opposes the totalitarian impulses, violent terrorism, xenophobic biases, and bigoted ideologies that are promoted by white nationalists and neo-Nazis.

This resolution resolves that the Legislature urges federal law enforcement to use the full extent of the nation's laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalist and neo-Nazi individuals who come into our communities and commit violent and destructive acts.

This resolution resolves that the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the United States Senate, to each Senator and Representative from California in the Congress of the United States, to the Attorney General of the United States, and to the author for appropriate distribution.

COMMENTS

1. Need for This Resolution

According to the author:

“The horrific events in Charlottesville and elsewhere prove that violent white nationalism and neo-Nazism remain very real threats. These groups’ intent is to terrorize our communities, so it makes sense to prosecute them as terrorists. SJR 13 calls on federal law enforcement to use the full extent of the nation’s laws, including, but not limited to, statutes related to terrorism and hate crimes, to prosecute white nationalist and neo-Nazi individuals who come into our communities and commit violent and destructive acts.”

2. Federal Hate Crimes

Federal hate crimes were first passed in 1968 under the Johnson Administration. Originally, hate crimes made it a crime to use force, threaten force, to willfully interfere with any person because of race, color, religion, or national origin and because the person is participating in a federally protected activity (e.g. public education, employment, jury service, travel, enjoyment of public accommodations, etc.). Additionally, in 1968 Congress also criminalized the use of force, or threats to interfere with housing rights because of the victim’s race, color, religion, sex, or national origin. In 1988, protections on the basis of familial status were added. Congress passed the Church Arson Prevention Act of 1996. Under the Act, it is a criminal act to deface, damage, or destroy religious or real property, or to interfere with a person’s religious practice in situations affecting interstate commerce. The Act additionally bars the defacing, damaging, or destroying religious property because of the race, color, or ethnicity of persons associated with the property.

The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act was passed by Congress and signed into law by President Obama in 2009. This Act expanded the federal definition of hate crimes, and increasing cooperation between federal, state, and local law enforcement. The law removed jurisdictional obstacles and added new federal protections against crimes committed based on gender, disability, gender identity and sexual orientation.

3. Domestic Terrorism in the United States of America

According to an August 16, 2017 article published by Politifact¹:

The attack met the legal definition of domestic terrorism, said Attorney General Jeff Sessions in an interview with ABC News. After the Charlottesville events, we wondered about the latest numbers on domestic terrorism. How many attacks have there been, and who caused them?

¹ “A Look at the Data on Domestic Terrorism and Who’s Behind It.” By Miriam Valverde

A recent government report shows that from Sept. 12, 2001, to Dec. 31, 2016, there were 85 deadly attacks in the United States by violent extremists.

Most of the attacks were carried out by far-right violent extremists. But more people died during attacks connected with Islamic jihadist extremists.

Violent extremism is generally defined as supporting or committing violent acts to achieve political, ideological, religious or social goals, said an April 2017 report from the U.S. Government Accountability Office.

Perpetrators of violent extremism include white supremacists; anti-government groups; groups with extreme views on abortion, animal rights, the environment or federal ownership of public lands; and radical Islamist entities, such as the Islamic State of Iraq and Syria (ISIS).

The 9/11 terrorist attacks resulted in the largest number of deaths in the United States caused by violent extremism, the GAO report said. About 3,000 people were killed in the attacks.

Since then — from Sept. 12, 2001, to Dec. 31, 2016 — there have been 85 attacks in the country by violent extremists resulting in 225 deaths. GAO reported citing data from the U.S. Extremist Crime Database.

Of those 225 deaths:

- 106 individuals were killed by far-right violent extremists in 62 separate incidents;
- 119 individuals were killed by radical Islamist violent extremists in 23 separate incidents;
- The number of people killed in a given year ranged from one to 49.

GAO noted that 41 percent of the deaths caused by a radical Islamist during the reviewed period happened in one incident: the 2016 Orlando nightclub shooting. In June 2016, Omar Mateen, born in the United States to Afghan parents, killed 49 people at Pulse nightclub in Orlando.

The think tank New America has compiled information on terrorist activities in the United States after 9/11. It details data on deadly attacks by ideology up to the Aug. 12, 2017 Charlottesville attack.

Here's their breakdown on the number of deaths caused by individuals of different ideologies: 95 by jihadist, 68 by far-right, and eight by black separatist/national/supremacist.

Even individuals who carry out jihadist attacks, however, are sometimes American citizens or longtime residents.

"The terrorist threat in the United States is almost entirely homegrown, as no foreign terrorist organization has successfully directed and orchestrated an attack in the United States since 9/11," said Albert Ford, a program associate with the International Security and Fellows programs at New America.

Of 418 individuals tracked by New America who are accused of jihadist terrorism related crimes in the United States since 9/11, 85 percent of them were either U.S. citizens or U.S. legal residents, and about half were born American citizens, Ford said.

Until the Orlando nightclub shooting, "the number of deaths caused by far-right-wing attacks outnumbered those caused by jihadism-related attacks," Ford said.

The federal government has taken steps to address national threats from all groups by creating an interagency Countering Violent Extremism task force, GAO reported.

The task force' efforts include research and analysis, outreach and engagement with communities, and intervention for individuals who "appear to be moving toward violent action."

4. Argument in Support

According to the Alameda County District Attorney,

While free speech is a bedrock value for Americans, white nationalist and neo-Nazi groups promote agendas that are dangerous to public safety and welfare of our communities because they incite and promote lawless actions and utilize language for the purpose of inciting an immediate breach of the peace by provoking fights and violence. The current aggressive nature of hate speech and conduct has heightened the moral imperative to stand up for what is right.

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