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AB-57 Law enforcement: hate crimes. (2021-2022)

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Assembly Bill No. 57

CHAPTER 691

An act to amend Sections 422.87 and 13519.6 of the Penal Code, relating to law enforcement.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 57, Gabriel. Law enforcement: hate crimes.

Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines and a course of instruction and training for law enforcement officers addressing hate crimes. Existing law requires state law enforcement agencies to adopt a framework or other formal policy created by POST regarding hate crimes. Existing law requires any local law enforcement agency that adopts or updates a hate crime policy to include specified information in that policy, including information on bias motivation.

This bill would include a statement of legislative findings and declarations and require the basic course curriculum on the topic of hate crimes to be developed in consultation with subject matter experts, as specified. The bill would, subject to an appropriation of funds for this purpose in the annual Budget Act or other statute, require POST to update the basic course to include the viewing of a specified video course developed by POST. The bill would also require POST to make the video available via the online learning portal, and would require all peace officers to complete specified training materials no later than one year after the commission makes the updated course available. The bill would require POST to develop and periodically update an interactive course on hate crimes for in-service peace officers, and require officers to take the course every 6 years.

This bill would also require any local law enforcement agency that adopts or updates a hate crime policy to include specified information on recognizing religion-bias hate crimes, and would require those policies to include the discriminatory selection of victims as a form of bias motivation.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all the following:

(a) In 2018, the California State Auditor released a report entitled "Hate Crimes in California: Law Enforcement Has Not Adequately Identified, Reported, or Responded to Hate Crimes."

(b) The California State Auditor found that despite an increase in hate crimes in California since 2014, law enforcement has not been doing enough to identify, report, and respond to these crimes.

(c) According to the Department of Justice's annual report entitled "Hate Crime in California," law enforcement agencies reported 1,015 hate crimes statewide for 2019, a 4.8 percent decrease from 2018, but far from 2014's historic low of 758.

(d) In 2020, the Southern Poverty Law Center tracked 838 active hate groups.

(e) Hate crimes and incidents against Asian Americans and Pacific Islanders ("AAPIs") have surged in response to increased xenophobia and bigotry amidst the COVID-19 pandemic. The Stop AAPI Hate coalition has reported receiving 3,795 incidents nationwide of hate, violence, harassment, and discrimination against AAPIs, most of which targeted women, from March 19, 2020, to February 28, 2021. Similarly, the Center for the Study of Hate and Extremism released data in early March 2021 that showed the number of anti-Asian hate crimes reported to police in America's largest cities spiked 145 percent between 2019 and 2020. California in particular has seen a rise in hate-fueled violence against Asian Americans, including recent brutal attacks against elderly Asian Americans. The numbers that are being reported and the incidents that are being publicized reflect only a fraction of the number of hate crimes and incidents that actually occur because of insufficient data collection and underreporting. AAPI immigrant communities face particular barriers to reporting due to insufficient language access.

(f) Many of the estimated 9,000,000 Californians with disabilities, including disabilities caused by aging, are always at high risk of becoming hate crime victims, and antidisability hate crimes in California and nationally are justifiably called the invisible hate crimes. A 2017 United States Bureau of Justice Statistics survey of hate crime victims estimated 40,000 antidisability hate crimes per year. This figure is certainly an underestimation because antidisability hate crime victims often do not recognize that the crimes they suffered were hate crimes, those with serious disabilities often find it difficult or impossible to report the crimes, and the estimate omits crimes in hospices, nursing homes, group homes, prisons, jails, and other institutions. Yet in 2019, law enforcement agencies reported just 177 antidisability hate crimes to the Federal Bureau of Investigation (FBI), less than 0.5 percent of the earlier estimate. In California in 2019, law enforcement agencies reported just 10 antidisability hate crimes.

(g) According to the FBI's annual hate crime statistics, in 2019, California law enforcement agencies reported more hate crimes nationwide than any other state, accounting for almost 14 percent of all reported hate crimes nationwide, despite comprising only 12 percent of the population, and almost 40 percent more than the second highest reporting state, New York.

(h) Hate crimes are notoriously underreported, both by victims to law enforcement and by law enforcement to state departments of justice and the FBI, so the actual number of victims and cases is generally unknown.

(i) According to the FBI's 2019 statistics, 11 California cities with populations of at least 100,000 affirmatively reported zero hate crimes in their jurisdictions.

(j) Also according to the FBI's 2019 statistics, only 195 California law enforcement agencies reported at least one hate crime, out of the 692 law enforcement agencies listed on the Commission on Peace Officer Standards and Training's internet website.

(k) The California State Auditor's report found that out of the four law enforcement agencies reviewed, three failed to properly identify some hate crimes. For example, for the years 2014 to 2016, inclusive, the Los Angeles Police Department and the San Francisco State University Police Department failed to correctly identify 11 of the 30 cases the California State Auditor reviewed as hate crimes.

(l) The four law enforcement agencies the California State Auditor reviewed failed to report to the Department of Justice a total of 97 hate crimes—about 14 percent of hate crimes identified.

(m) The California State Auditor's report noted that better proactive guidance and oversight by the Department of Justice will result in improved reporting of hate crime information.

(n) The Department of Justice's current reporting process does not capture the geographic location where each hate crime occurred, but only reports the agency that reported the crime.

(o) Of the 245 law enforcement agencies the California State Auditor surveyed, more than 30 percent stated they do not use any methods to encourage the public to report hate crimes.

(p) The California State Auditor noted that the Department of Justice is "uniquely positioned to provide leadership for law enforcement agencies' response to hate crimes" because of its statutory responsibilities to collect, analyze, and report on hate crimes.

SEC. 2. Section 422.87 of the Penal Code is amended to read:

422.87. (a) Each local law enforcement agency may adopt a hate crimes policy. Any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy shall include, but not be limited to, all of the following:

(1) The definitions in Sections 422.55 and 422.56.

(2) The content of the model policy framework that the Commission on Peace Officer Standards and Training developed pursuant to Section 13519.6, and any content that the commission may revise or add in the future, including any policy, definitions, response and reporting responsibilities, training resources, and planning and prevention methods.

(3) (A) Information regarding bias motivation.

(B) For the purposes of this paragraph, "bias motivation" is a preexisting negative attitude toward actual or perceived characteristics referenced in Section 422.55. Depending on the circumstances of each case, bias motivation may include, but is not limited to, hatred, animosity, discriminatory selection of victims, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including, but not limited to, disability or gender.

(C) (i) In recognizing suspected disability-bias hate crimes, the policy shall advise officers to consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as, but not limited to, dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

(ii) In recognizing suspected disability-bias hate crimes, the policy also shall advise officers to consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in antidisability bias. This includes, but is not limited to, if a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons such as inebriated persons or persons with perceived disabilities different than those of the victim, those circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

(D) In recognizing suspected religion-bias hate crimes, the policy shall instruct officers to consider whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion or articles considered of spiritual significance in a particular religion. Examples of religions and such symbols and articles include, but are not limited to:

(i) In Buddhism, statues of the Buddha.

(ii) In Christianity, crosses.

(iii) In Hinduism, forehead markings, known as bindis and tilaks, Aum/Om symbols, and images of deities known as murtis.

(iv) In Islam, hijabs.

(v) In Judaism, Stars of David, menorahs, and yarmulke.

(vi) In Sikhism, turbans, head coverings, and unshorn hair, including beards.

(4) Information regarding the general underreporting of hate crimes and the more extreme underreporting of antidisability and antigender hate crimes and a plan for the agency to remedy this underreporting.

(5) A protocol for reporting suspected hate crimes to the Department of Justice pursuant to Section 13023.

(6) A checklist of first responder responsibilities, including, but not limited to, being sensitive to effects of the crime on the victim, determining whether any additional resources are needed on the scene to assist the victim or whether to refer the victim to appropriate community and legal services, and giving the victims and any interested persons the agency's hate crimes brochure, as required by Section 422.92.

(7) A specific procedure for transmitting and periodically retransmitting the policy and any related orders to all officers, including a simple and immediate way for officers to access the policy in the field when needed.

(8) The title or titles of the officer or officers responsible for ensuring that the department has a hate crime brochure as required by Section 422.92 and ensuring that all officers are trained to distribute the brochure to all suspected hate crime victims and all other interested persons.

(9) A requirement that all officers be familiar with the policy and carry out the policy at all times unless directed by the chief, sheriff, director, or other chief executive of the law enforcement agency or other command-level officer to whom the chief executive officer formally delegates this responsibility.

(b) Any local law enforcement agency that updates an existing hate crimes policy or adopts a new hate crimes policy may include any of the provisions of a model hate crime policy and other relevant documents developed by the International Association of Chiefs of Police that are relevant to California and consistent with this chapter.

SEC. 3. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The commission, in consultation with subject-matter experts, including, but not limited to, law enforcement agencies, civil rights groups, and academic experts, and the Department of Justice, shall develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, has the same meaning as in Section 422.55.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following:

- (1) Indicators of hate crimes.
- (2) The impact of these crimes on the victim, the victim's family, and the community, and the assistance and compensation available to victims.
- (3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.
- (4) Law enforcement procedures, reporting, and documentation of hate crimes.
- (5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.
- (6) Multiracial criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, anti-reproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness.
- (7) The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, anti-immigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems.
- (8) Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crimewaves, and any other future hate crime waves that the Attorney General determines are likely.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b), and shall include 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 the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:

- (1) A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.
- (2) The definition of "hate crime" in Section 422.55.
- (3) References to hate crime statutes including Section 422.6.
- (4) A title-by-title specific protocol that agency personnel are required to follow, including, but not limited to, the following:
 - (A) Preventing and preparing for likely hate crimes by, among other things, establishing contact with persons and communities who are likely targets, and forming and cooperating with community hate crime prevention and response networks.
 - (B) Responding to reports of hate crimes, including reports of hate crimes committed under the color of authority.
 - (C) Accessing assistance, by, among other things, activating the Department of Justice hate crime rapid response protocol when necessary.
 - (D) Providing victim assistance and followup, including community followup.
 - (E) Reporting.

(d) (1) The course of training leading to the basic certificate issued by the commission shall include the course of instruction described in subdivision (a).

(2) Every state law enforcement and correctional agency, and every local law enforcement and correctional agency to the extent that this requirement does not create a state-mandated local program cost, shall provide its peace officers with the basic course of instruction as revised pursuant to the act that amends this section in the 2003–04 session of the Legislature, beginning with officers who have not previously received the training. Correctional agencies shall adapt the course as necessary.

(e) (1) The commission shall, subject to an appropriation of funds for this purpose in the annual Budget Act or other statute, for any basic course, incorporate the November 2017 video course developed by the commission entitled “Hate Crimes: Identification and Investigation,” or any successor video, into the basic course curriculum.

(2) The commission shall make the video course described in paragraph (1) available to stream via the learning portal.

(3) Each peace officer shall, within one year of the commission making the course available to stream via the learning portal, be required to complete the November 2017 video facilitated course developed by the commission entitled “Hate Crimes: Identification and Investigation,” the course identified in paragraph (4), or any other POST-certified hate crimes course via the learning portal or in-person instruction.

(4) The commission shall develop and periodically update an interactive course of instruction and training for in-service peace officers on the topic of hate crimes and make the course available via the learning portal. The course shall cover the fundamentals of hate crime law and preliminary investigation of hate crime incidents, and shall include updates on recent changes in the law, hate crime trends, and best enforcement practices.

(5) The commission shall require the course described in paragraph (3) to be taken by in-service peace officers every six years.

(f) As used in this section, “peace officer” means any person designated as a peace officer by Section 830.1 or 830.2.