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AB-449 Hate crimes: law enforcement policies. (2023-2024)

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Assembly Bill No. 449

CHAPTER 524

An act to amend Sections 422.87, 13023, and 13519.6 of the Penal Code, relating to hate crimes.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 449, Ting. Hate crimes: law enforcement policies.

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 state law enforcement agencies and authorizes local law enforcement agencies to adopt a framework or other formal policy on hate crimes created by the Commission on Peace Officer Standards and Training. Existing law requires any local law enforcement agency that adopts or updates a hate crime policy to include specified information in that policy, including the content of the model policy framework developed by the commission.

This bill would make adoption of a hate crimes policy by a state and local law enforcement agency mandatory by July 1, 2024. The bill would require those policies to include the supplemental hate crime report in the model policy framework developed by the commission and a schedule of hate crime or related trainings the agency conducts. By imposing requirements on local agencies, this bill would impose a state-mandated local program.

Existing law requires the Department of Justice to collect specified information from law enforcement agencies relative to hate crimes, including formal hate crimes policies, and requires the Department of Justice and local law enforcement agencies to post that information on their internet websites.

This bill would require the Attorney General to review the submitted materials from those that law enforcement agencies submit and would require the Department of Justice to instruct agencies that did not submit materials or submitted noncompliant materials to submit compliant materials. The bill would require law enforcement agencies to submit the specified materials by a specified date. The bill would also require the Department of Justice to post the names of agencies that submitted compliant materials on its internet website. By imposing these requirements on law enforcement agencies, this bill would impose a state-mandated local program.

Existing law requires the Commission on Peace Officer Standards and Training to develop guidelines for instruction and training of law enforcement officers addressing hate crimes.

This bill would require the commission to consult with specified subject matter experts if the commission updates the guidelines, and would state that the guidelines and course of instruction are not regulations for purposes of the Administrative Procedures Act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. Section 422.87 of the Penal Code is amended to read:

422.87. (a) Each state and local law enforcement agency shall, by July 1, 2024, adopt a hate crimes policy that 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, the supplemental hate crime report, 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 instruct 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 instruct 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.

(10) A schedule of the hate crime training required by Section 13519.6 and any other hate crime or related training the agency may conduct.

(b) A 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. 2. Section 13023 of the Penal Code is amended to read:

13023. (a) This section shall be subject to the availability of adequate funding.

(b) (1) The Attorney General shall direct state and local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes.

(2) The Attorney General shall review state and local agencies' formal policies on hate crimes required by Section 422.87 and the hate crime brochure required pursuant to Section 422.92. The department shall review the policies and brochures for compliance with law. The department shall instruct any agency that did not submit a policy or brochure, or that submitted a legally noncompliant policy or brochure, to submit compliant documents.

(c) (1) Law enforcement agencies are required to submit the hate crime documents required by the Attorney General as follows:

(A) On or before January 1, 2025, each law enforcement agency in the Counties of Los Angeles, Orange, San Luis Obispo, Santa Barbara, and Ventura shall produce their hate crime materials to the Department of Justice.

(B) On or before January 1, 2026, each law enforcement agency in the Counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma shall produce their hate crime materials to the Department of Justice.

(C) On or before January 1, 2027, each law enforcement agency in the Counties of Colusa, Glenn, Lassen, Modoc, Nevada, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yuba, Alpine, Amador, Calaveras, El Dorado, Placer, Sacramento, San Joaquin, Stanislaus, Tuolumne, and Yolo and the special districts of the San Francisco Bay Area Rapid Transit District, the Department of the California Highway Patrol, the Department of State Hospitals, and the state park system shall produce their hate crime materials to the Department of Justice.

(D) On or before January 1, 2028, each law enforcement agency in the Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced, Tulare, Imperial, Inyo, Mono, Riverside, San Bernardino, and San Diego shall produce their hate crime materials to the Department of Justice.

(2) The production of hate crime materials pursuant to paragraph (1) shall proceed on a four-year schedule and shall be ongoing. All law enforcement agencies, including special districts, shall produce to the Attorney General's office their hate crime materials on the specified date listed above, and then every four years thereafter in perpetuity.

(d) On or before July 1 of each year, the Department of Justice shall update the OpenJustice Web portal with the information obtained from law enforcement agencies pursuant to this section. The information shall include the names of agencies that submitted compliant policies and brochures, including any agency that submitted revised compliant documents. The department shall submit its analysis of this information to the Legislature in the manner described in subdivision (g) of Section 13010.

(e) Law enforcement agencies shall additionally post the information required in paragraph (1) of subdivision (b) to their internet websites on a monthly basis.

(f) For purposes of this section, "hate crime" has the same meaning as in Section 422.55.

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

13519.6. (a) (1) 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.

(2) The commission shall consult with the subject-matter experts in paragraph (1) if the guidelines or course of instruction are updated.

(3) The guidelines and course of instruction developed pursuant to this section are not regulations as that term is used in the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340 of Part 1 of Division 3 of the Government Code). This paragraph is declaratory of existing law.

(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 the model hate crimes policy framework for use by law enforcement agencies in adopting a hate crimes policy pursuant to Section 422.87. The elements of the model hate crimes policy framework shall include, but not be limited to, all of 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.

(5) A list of all requirements that Section 422.87 or any other law mandates a law enforcement agency to include in its hate crime policy.

(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 commission-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.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.