

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Chris Holden, Chair
AB 2282 (Bauer-Kahan) – As Amended March 30, 2022

Policy Committee: Public Safety

Vote: 7 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill equalizes the penalties for specified hate crimes such as hanging a noose, displaying a symbol of hate, including a Nazi swastika and burning or desecrating a religious symbols for purposes of terrorizing a victim. Specifically, this bill:

- 1) Makes the first conviction of any of the three crimes an alternate misdemeanor-felony punishable by a maximum of 16 months or two or three years in county jail and a fine of not more than \$10,000.
- 2) Makes a subsequent conviction of any of the three crimes punishable by an enhanced fine of up to \$15,000 for a felony conviction and up to \$10,000 for a misdemeanor conviction.
- 3) Makes all three crimes applicable in the same way to the following properties: schools, generally, a college campus, a public place, a place of worship, a cemetery and a place of employment.
- 4) Deletes the provision making a “pattern of conduct” of displaying a symbol for the purpose of terrorizing subject to increased punishment of 16 months or two or three years in a county jail under realignment, a fine not to exceed \$10,000, or both.

FISCAL EFFECT:

- 1) Costs (General Fund (GF)) in the mid-hundreds of thousands of dollars annually to the California Department of Corrections and Rehabilitation (CDCR) in increased incarceration. Burning or desecrating a religious symbol on school property with the intent to terrorize is punishable as an alternate felony-misdemeanor and up to three years in the county jail or state prison depending on the defendant’s criminal record. However, hanging a noose or displaying a symbol of hate with the intent to terrorize on private property, school property, in a public park or in a place of employment is a misdemeanor punishable by up to one year in the county jail. This bill equalizes the penalties for all three crimes by elevating the penalty for hanging a noose or displaying a symbol of hate to an alternate felony-misdemeanor punishable by up to three years in the county jail or in state prison, depending on the defendant’s criminal history. The cost of housing an inmate in state prison per year is approximately \$103,498. If four defendants are sentenced to an average of two years in state prison, the cost would total approximately \$827,984.

This bill may also result in cost savings to CDCR to the extent it eliminates an existing alternate felony-misdemeanor for engaging in a “pattern of conduct” related to specified hate crimes. If this bill results in two fewer people being sentenced to two years in state prison, the annual cost savings would be approximately \$438,000.

- 2) Likely significant non-reimbursable annual costs in the hundreds of thousands of dollars to counties for increased incarceration, given this bill increases the penalties for hanging a noose or displaying a symbol of hate with the intent to terrorize from a one year misdemeanor to an alternate misdemeanor-felony punishable by up to three years in county jail – again, depending on the defendant’s criminal history. County jails are increasingly overcrowded since the enactment of the Public Safety Realignment Act of 2011 (Realignment Act). Jail overcrowding has resulted in additional state funding for new jail space, court-mandated population caps and increased rates of inmate violence and death. Although new crimes are not considered reimbursable state mandates, overcrowding in county jails creates cost pressure on the GF because the state has historically granted new funding to counties to offset overcrowding caused by the Realignment Act.

COMMENTS:

- 1) **Purpose.** According to the author:

AB 2282 makes the criminal penalties the same for using each symbol and increases the locations where they are banned to include K-12 schools, colleges, cemeteries, places of worship, places of employment, private property, public parks, public spaces, and public facilities. By updating this code, we ensure that individuals who spread terror are punished to the proper and full extent of the law, regardless of the symbol they may choose to demonstrate hate.

- 2) **Hate Crimes.** Existing law punishes specified hate crimes in a haphazard manner. Certain conduct is punishable as a misdemeanor whereas other conduct is punishable as an alternate felony-misdemeanor even where the underlying intent is the same. For instance, a person may hang a noose or display a symbol of hate on private property with the intent to terrorize another person and the maximum penalty is one year in the county jail. However, if that same person desecrates a religious symbol on school property with the intent to terrorize, that person may be sentenced to up to three years in state prison, depending on the defendant. In both cases, the perpetrator’s intent is to terrorize a victim. This bill equalizes the penalties for hanging a noose, displaying a symbol of hate or desecrating a religious symbol regardless of whether the act is committed on school property, public property or private property.

- 3) **Argument in Support.** According to the Jewish Congregation of the San Geronimo Valley:

Those who seek to intimidate and terrorize racial, ethnic, and religious minorities consistently use the noose, burned cross, and swastika strategically. All three are symbols associated with white supremacist violence. In recent years, the appearance of these

symbols has increased in California's cities. ...These three symbols can cause panic in entire communities and prevent them from feeling safe. This legislation will ameliorate this significantly.

4) **Argument in Opposition.** According to the California Public Defenders Association:

AB 2282 is bad public policy because it increases punishment and does not deter hate symbols. California has rejected mass incarceration for non-violent offenses in the wake of decades of prison and jail expansion, while schools, hospitals and mental health facilities struggled without adequate funding. Only in the last year, due to the coronavirus pandemic has the state prison population finally been reduced below capacity.

5) **Related Legislation.** AB 1947 (Ting) requires each local law enforcement agency to adopt a hate crimes policy with specific parameters and requires the Commission on Peace Officers Standards and Training (POST) to develop a model hate crimes policy. AB 1947 is pending in this committee.

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