

ASSEMBLY THIRD READING
AB 2282 (Bauer-Kahan and Levine)
As Amended May 19, 2022
Majority vote

SUMMARY

Equalizes the penalty for the crimes of hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols, on specified property, for the purpose of terrorizing, and expands and aligns the places where this conduct is prohibited for each offense.

Major Provisions

- 1) Makes the first conviction of all three crimes punishable by imprisonment in a county jail for 16 months or two or three years under realignment (felony), by a fine of not more than \$10,000, or both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year (misdemeanor), by a fine not to exceed \$5,000, or by both the fine and imprisonment.
- 2) Makes a subsequent conviction of all 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 to the same property: 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.
- 5) States the intent of the Legislature to criminalize the placement or display of the Nazi Hakenkreuz (hooked cross), also known as the Nazi swastika that was the official symbol of the Nazi party, for the purpose of terrorizing a person, and not the placement or display of ancient swastika symbols associated with Hinduism, Buddhism, and Jainism and are symbols of peace.

COMMENTS

According to the Author

"Existing law treats the swastika, the noose, and the desecrated cross as symbols of terror, but metes out different criminal penalties for the use of each symbol. Right now, at least one of these three terror symbols can be used legally in cemeteries, places of worship, public spaces, and public facilities. Using a noose is penalized the most lightly of the three while a burning cross is the most penalized and is barred only from schools and private property.

"Those who seek to intimidate and terrorize racial, ethnic, and religious minorities use the noose, burning cross, and swastika strategically. The presence of any of these three symbols can cause an equal level of panic in entire communities and prevent them from feeling safe. When we punish a burning cross more than a swastika, we are negating the psychological impact on and

physical threat to a targeted group. With hate crimes increasing across the state, it's critical to recognize the power and destructiveness of these symbols, and restrict their use accordingly.

"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."

Arguments in Support

According to the *Jewish Congregation of the San Geronimo Valley*, "We have witnessed many incidents of anti-Semitism and other hate incidents in our county, which have increased in the past few years.

"Current law makes it illegal to post symbols of hate on private property for the purpose of terrorizing; however, it is currently legal to display hate symbols for the purpose of terrorizing in most public spaces. AB2282 expands locations where it would be illegal to display the swastika, hang the noose, or burn religious symbols.

"Current law makes the penalties for posting of three hate symbols unequal and needs to align penalties for using terror symbols for equity in punishments.

"This bill will accomplish this.

"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.

"Each of these symbols can traumatize and prevent entire communities from feeling safe. Until now the law has practically given tacit permission to their use.

"The rise in white supremacy and extremism is connected to increases in anti-democratic behavior in our state and reflected in the increased appearance of these symbols.

"We agree that any of these three symbols can cause panic in entire communities and prevent them from feeling safe. This legislation will ameliorate this significantly."

Arguments in Opposition

According to the *California Public Defenders Association*, "While sympathetic to the goal of deterring racial and religious animus, AB 2282 is overbroad, unnecessary and increases penalties with no concomitant benefit.

"AB 2282 is overbroad and vague in that it extends existing Penal Code section 11411(b) which prohibits a person from placing or displaying 'a sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika, on the private property of another, without authorization, for the purpose of terrorizing the owner or occupant of that private property or in reckless disregard of the risk of terrorizing the owner or occupant of that private property' to public property.

"There is no requirement that the individual have any knowledge that the '... sign, mark, symbol, emblem, or other physical impression, including, but not limited to, a Nazi swastika' is likely to produce terror.

"For example, an individual might fly a rainbow flag in the public square across the street from a QAnon gathering spot to let the QAnon members know that there are LGBTQ people everywhere. Unbeknownst to the LGBTQ flag carriers, QAnon members may be terrorized and believe that the LGBTQ flag symbolizes pedophiles coming for their children. Unfortunately given the national political debate, this is not a far-fetched example.

"Penal Code section 11411 already proscribes most of this conduct. Current law punishes these offenses with misdemeanors or felonies with increasing penalties for a pattern of conduct. Additionally, hate crimes resulting in violence or attempted violence are punished with a separate enhancement ranging from one to four years in state prison.

"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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES**ASM PUBLIC SAFETY: 7-0-0**

YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago, Seyarto

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

VERSION: May 19, 2022

CONSULTANT: Cheryl Anderson / PUB. S. / (916) 319-3744

FN: 0002743