

---

## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

---

### AB 2282 (Bauer-Kahan) - Hate crimes: nooses, crosses, and swastikas

**Version:** May 19, 2022

**Urgency:** No

**Hearing Date:** August 1, 2022

**Policy Vote:** PUB. S. 4 - 0

**Mandate:** Yes

**Consultant:** Matthew Fleming

**Bill 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. AB 2282 would make each of these offenses punishable as an alternate felony-misdemeanor (a “wobbler”).

**Fiscal Impact:** Unknown, potentially significant incarceration costs to CDCR and county jails (General Fund, Local Funds).

**Background:** Existing law considers the symbol of the Nazi party (commonly referred to as a “swastika”), the noose, and the desecrated cross as hate symbols and criminalizes their use to terrorize others. However, the law has different rules both in terms of punishment and the location in which such symbols are expressly prohibited. This bill seeks to equalize the rules surrounding the use of these three hate symbols to terrorize others.

Reports indicate that hate crimes have been on the rise in recent years. Hate crimes severely impact victims. The emotional effect can be significant, with victims experiencing more psychological distress than victims of other violent crimes. The author and sponsor believe that the emotional effect is not more or less significant for hanging a noose, displaying a symbol of hate, including a Nazi swastika, and burning or desecrating religious symbols for the purpose of terrorizing, and therefore it makes no sense to have different penalties for these offenses as is the case under the current statute. This bill equalizes those penalties.

#### **Proposed Law:**

- 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.
- 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.
- 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.

- 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.

**Related Legislation:** AB 1947 (Ting) would require 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.

**Staff Comments:** To the extent this bill expands felony liability, it is likely to result in incarceration costs to the state. 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 prescribed punishment for each of these offenses would be 16 months, two, or three years in county jail. However, depending on the criminal history of the defendant, they could be required to do their time in state prison. Per the 2022-23 budget, the estimated per captia cost of incarcerating one person for one year in a state prison was \$118,221 in Fiscal Year (FY) 2021-2022, and the proposed rate for FY 2022-23 is \$114,446.

There may also be significant costs to the counties as a result of an increase in jail population. These costs are likely not reimbursable, however, county jails are increasingly overcrowded since the enactment of the Public Safety Realignment Act of 2011. 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 General Fund because the state has historically granted new funding to counties to offset overcrowding caused by Realignment.

-- END --