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THIRD READING

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Bill No: AB 2282  
Author: Bauer-Kahan (D) and Levine (D), et al.  
Amended: 5/19/22 in Assembly  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 4-0, 6/21/22  
AYES: Bradford, Kamlager, Skinner, Wiener  
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 6-0, 8/11/22  
AYES: Portantino, Bates, Bradford, Jones, Laird, Wieckowski  
NO VOTE RECORDED: McGuire

ASSEMBLY FLOOR: 73-0, 5/26/22 - See last page for vote

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**SUBJECT:** Hate crimes: nooses, crosses, and swastikas

**SOURCE:** Name, Oppose & Abolish Hate (NOAH), Marin

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**DIGEST:** This bill 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.

**ANALYSIS:**

Existing law:

- 1) Provides that any person who hangs a noose, knowing it to be a symbol representing a threat to life, on the private property of another, for the purpose of terrorizing the owner or occupant of the property or in reckless disregard of the risk of terrorizing the owner or occupant of that property, or who hangs a noose, knowing it to be a symbol representing a threat to life on the property of a school, college campus, public park, or place of employment, for the purpose of terrorizing any person who attends or works at the school, park, or place of

employment or who is otherwise associated with school, park or place of employment is guilty of a misdemeanor

- 2) Provides that any person who hangs a noose, knowing it to be a symbol representing a threat to life, 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, or who hangs a noose, knowing it to be a symbol representing a threat to life, on the property of a primary school, junior high school, high school, college campus, public park or place of employment for the purpose of terrorizing any person who attends or works at the school, park or place of employment or who is otherwise associated with the school, park or place of employment, shall be punished by imprisonment in the county jail not to exceed one year, by a fine not to exceed five \$5,000, or by both the fine and imprisonment for the first conviction and by imprisonment in the county jail not to exceed one year, by a fine not to exceed \$15,000, or by both the fine and imprisonment for any subsequent conviction. (Penal Code § 11411 (b).)
- 3) Declares that any person who places or displays 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 shall be punished by imprisonment in the county jail not to exceed one year, by a fine not to \$5,000, or by both the fine and imprisonment for the first conviction and by imprisonment in the county jail not to exceed one year, by a fine not to exceed \$15,000, or by both the fine and imprisonment for any subsequent conviction. (Penal Code § 11411 (b).)
- 4) Provides that any person who engages in a pattern of conduct for the purpose of terrorizing the owner or occupant of private property or in reckless disregard of terrorizing the owner or occupant of that private property, by 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 on two or more occasions, shall be punished by imprisonment in the county jail for 16 months, 2 or 3 years under realignment, by a fine not to exceed \$10,000, or by both the fine and imprisonment; or by imprisonment in a county jail not to exceed one year, by a fine not to exceed \$5,000, or by both the fine and imprisonment. (Penal Code § 11411 (c).)

- 5) Provides that any person who burns or desecrates a cross or other religious symbol, knowing it to be a religious symbol, 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, or who burns, desecrates, or destroys a cross or other religious symbol, knowing it to be a religious symbol, on the property of a primary school, junior high school, or high school for the purpose of terrorizing any person who attends or works at the school or who is otherwise associated with the school, shall be punished by imprisonment in the county jail for 16 months, 2 or 3 years under realignment, by a fine of not more than \$10,000, or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed \$5,000, or by both the fine and imprisonment for the first conviction and by imprisonment in the state county jail for 16 months, 2 or 3 years under realignment, by a fine of not more than \$10,000, or by both the fine and imprisonment, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed \$15,000, or by both the fine and imprisonment for any subsequent conviction. (Penal Code § 11411 (d).)
- 6) Defines “terrorize” as meaning to cause a person of ordinary emotions and sensibilities to fear for personal safety. (Penal Code § 11411 (e).)
- 7) Defines “hate crime” as a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: Disability; Gender; Nationality; Race or ethnicity; Religion; Sexual orientation; or, Association with a person or group with one or more of these actual or perceived characteristics. (Penal Code, § 422.55.)
- 8) Provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to them by the Constitution or laws of California or by the Constitution or laws of the United States in whole or in part because of one or more of the actual or perceived characteristics of the victim as proscribed under existing law. However, no person may be convicted of violating this provision based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat. (Penal Code § 422.6 (a) & (c).)

- 9) States that no person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of California or by the Constitution or laws of the United States, in whole or in part because of one or more of the actual or perceived characteristics of the victim as proscribed under existing law. (Penal Code § 422.6 (b).)
- 10) Penalizes persons convicted of interfering with the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of California or by the Constitution or laws of the United states with imprisonment in a county jail not to exceed one year, by a fine not to exceed \$5,000, or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. (Penal Code § 422.6 (c).)

This bill:

- 1) Makes hanging expands the provision making hanging a noose on private property to terrorize another to include a public place, place of worship, and cemetery and increases the penalty from a misdemeanor to a wobbler and changes the fine to up to \$10,000, plus penalty assessments, for the felony or up to \$5,000, plus penalty assessments, for misdemeanor for a first conviction. eletes the existing provision criminalizing placing or displaying a sign, mark, or emblem including a “Nazi swastika” on the property of another and instead incudes placing such an item in the provision criminalizing engaging in a pattern of behavior for the purpose of terrorizing an individual. The penalty is a a wobbler and changes the fine to up to \$10,000, plus penalty assessments, for the felony or up to \$5,000, plus penalty assessments, for misdemeanor for a first conviction.
- 2) Makes subsequent conviction for any of the offenses in Penal Code 11411 punishable by an enhanced fine of up to \$15,000 for a felony conviction and up to \$10,000 for a misdemeanor conviction.
- 3) Includes codified legislative intent stating that t is 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 emblem of the Nazi party, for the purpose of terrorizing a person. This legislation is not intended to

criminalize the placement or display of the ancient swastika symbols that are 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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, unknown, potentially significant incarceration costs to CDCR and county jails (General Fund, Local Funds).

**SUPPORT:** (Verified 8/11/22)

Name, Oppose & Abolish Hate (NOAH), Marin (source)

California District Attorneys Association

California Faculty Association

California School Boards Association

California State Sheriffs' Association

Hindu American Foundation, Inc.  
Orange County District Attorney's Office  
Peace Officers Research Association of California  
The Arc and United Cerebral Palsy California Collaboration

**OPPOSITION:** (Verified 8/11/22)

Coalition of Hindus of North America  
ACLU California Action  
California Public Defenders Association

**ARGUMENTS IN SUPPORT:** The Hindu American Foundation, Inc. (HAF) supports this bill stating:

HAF is proud to support the decriminalization of the Hindu, Buddhist, and Jain communities' sacred swastika. HAF applauds the California Assembly in its endeavor for California to lead the nation as the first state to formally recognize the distinction between the Nazi Hakenkreuz ("hooked cross") and the Hindu, Buddhist, and Jain communities' sacred Swastika in its penal code, ensuring the California Penal Code is equitable and respectful of all Californians, regardless of race or religion.

AB.2282 aligns with the FBI Uniform Crime Reporting Hate Crime Training Manual, released March 2022, which explicitly defines the swastika as "*a holy symbol in the Hindu, Buddhist, and Jain faiths.*" The swastika has been a sacred symbol in the Hindu, Buddhist, and Jain faiths for +4,000 years, used in cultural and religious contexts to invoke peace and prosperity by more than one billion people worldwide. In addition to equalizing penalties against perpetrators of hate crimes, AB.2282 will also educate the public and law enforcement about the differences between the Nazi hakenkreuz white nationalists use to terrorize, and the Hindu, Buddhist, and Jain communities' sacred swastika, a Sanskrit word literally translated to "good existence."

**ARGUMENTS IN OPPOSITION:** The Coalition of Hindus of North America oppose unless amended. They object to the use of the word "swastika" in relation to the Nazi symbol stating:

...First, let me be clear that we fully support the intention of the bill to combat hate and stamp out bigotry. However, the bill also contains language that falsely associates our sacred and religious symbol of Swastika with hate and creates problems for Americans of Hindu, Buddhist, and Jain backgrounds.

The fact is that the Nazis never used the word "Swastika". They called it "Hakenkreuz." How "Hakenkreuz" got mistranslated to "Swastika" is an unfortunate chapter of post-WW2 history based on faulty scholarship and media coverage, which this bill can help correct. Currently, the words "Nazi Swastika" create the wrong idea that there is a "good Swastika" and a "bad Swastika."

So, I urge you to work on modifying the language of the existing bill.

- Remove the words "Nazi Swastika". Instead use generic words such as "Nazi emblem" or "Nazi hate symbol".
- If the bill must refer to the old Penal Code (which contains "Nazi Swastika"), it should add words such as – "incorrectly or falsely known as the Nazi Swastika."
- The word "Swastika" should only be used when referring to the sacred symbol used by Hindus, Buddhists, and Jains.
- For context -- The amended bill already inserts some new language with the phrase "...that was the official emblem of the Nazi party" to clarify reference to "Nazi Swastika."

If new language can be inserted here, it is also surely possible to clarify things further by adding the words "incorrectly or falsely known as the Nazi Swastika." – this is a simple demand. The above will ensure that the bill is more inclusive and doesn't trigger hate against our religious traditions and symbols. We must all condemn hate - so, let us condemn the Hakenkreuz or the "Nazi Hooked Cross". We urge you to support our simple demands.

ASSEMBLY FLOOR: 73-0, 5/26/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, Choi, Flora, O'Donnell, Villapudua

Prepared by: Mary Kennedy / PUB. S. /  
8/13/22 9:46:45

\*\*\*\* END \*\*\*\*