
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 557 **Hearing Date:** June 28, 2022
Author: Muratsuchi
Version: June 21, 2022
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Hate crimes: vertical prosecution*

HISTORY

Source: Author

Prior Legislation: AB 600 (Arambula), Ch. 295, Stats. 2021
AB 1336 (Nguyen), held Assem. Approps. Comm., 2021
AB 959 (Melendez), held Assem. Approps. Comm., 2019
AB 2124 (Rubio), held Sen. Approps. Comm., 2018
AB 2359 (Maienschein), held Assem. Approps. Comm., 2018
AB 229 (Baker), held Sen. Approps Comm., 2017
AB 2202 (Baker), held Sen. Approps. Comm., 2016
AB 1234 (Kuehl), Ch. 700, Stats. 2004
AB 741 (Pacheco), held Sen. Approps. Comm., 1999

Support: Unknown

Opposition: None known

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ) to establish a grant program for the purpose of creating, supporting, or expanding vertical prosecution units for the prosecutions of hate crimes.

Existing law states that the Legislature finds and declares that it is the right of every person, regardless of actual or perceived race or ethnicity, religion, gender, gender identity, gender expression, nationality, disability, sexual orientation, or association with a person or group with these actual or perceived characteristics, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. (Pen. Code, § 11410.)

Existing law defines “hate crime” as any 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; and,
- Association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

Existing law defines “association with a person or group with these actual or perceived characteristics” as including advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of “hate crime.” (Pen. Code, § 422.56, subd. (a).)

Existing law defines “in whole or in part because of” to mean that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. (Pen. Code, § 422.56, subd. (d).)

Existing law provides that “victim” includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense. (Pen. Code, § 422.56, subd. (i).)

Existing law provides that it is a hate crime to violate or interfere with the exercise of civil rights, or knowingly deface, destroy, or damage property because of actual or perceived characteristics of the victim that fit the hate crime definition. (Pen. Code, § 422.6, subs. (a) and (b).)

Existing law provides that a conviction for violating or interfering with the civil rights of another on the basis of actual or perceived characteristics of the victim that fit the hate crime definition shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$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 their hours of employment or school attendance. (Pen. Code, § 422.6, subd. (c).)

Existing law makes any other crime that is not punishable by imprisonment in the state prison punishable as an alternate felony-misdemeanor, “wobbler,” if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person’s free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

- The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury;
- The crime against property causes damage in excess of nine hundred fifty dollars (\$950); or,

- The person charged with a crime under this section has been convicted previously of a hate crime or conspiracy to commit a hate crime, as specified. (Pen. Code, § 422.7.)

Existing law allows a court to impose a hate crime enhancement to add a term of one, two, or three years in state prison, at the court's discretion. (Pen. Code, § 422.75.)

Existing law specifies that except when the hate crime enhancement is imposed, the fact that a person committed a felony or attempted to commit a felony that is a hate crime shall be considered a circumstance in aggravation of the crime in imposing one of three terms specified in statute. (Pen. Code, § 422.76.)

Existing law authorizes each state law enforcement agency to adopt a hate crime policy. (Pen. Code, § 422.87, subd. (a).)

Existing law requires, subject to funding, the Attorney General to direct local law enforcement agencies to report to the DOJ information relative to hate crimes. (Pen. Code, § 13023)

This bill establishes the Hate crime Vertical Prosecution Pilot Grant Program (HCVP) to be administered by DOJ.

This bill requires DOJ, beginning January 1, 2023 and subject to an appropriation of funds by the Legislature, to award grants to prosecutorial agencies for the purpose of creating, supporting, or expanding vertical prosecution units for the prosecution of hate crimes. These units shall be primarily focused on better serving hate crime victims and achieving just, equitable, and appropriate resolutions to hate crime cases.

This bill provides that one-time HCVP grants shall be made on a competitive basis to selected applicants in a manner and in an amount determined by DOJ.

This bill requires DOJ to do all of the following to administer the grant program:

- Specify the form of the application and information required to be submitted by each applicant;
- Specify the criteria DOJ shall consider in selecting grant awardees; and,
- Select the number of awards to be granted.

This bill states that DOJ may use no more than 5 percent of the funds appropriated for HCVP for the costs of administering the program.

This bill prohibits grant awardees from using grant funds to supplant existing spending for vertical prosecutions of hate crimes.

This bill requires, by no later than July 1, 2028, each grant recipient to prepare and submit a report to DOJ, in a form prescribed by DOJ, that includes any relevant data requested by DOJ.

This bill requires, by not later than January 1, 2029, DOJ to prepare and submit a report to the Legislature summarizing the data provided by grant recipients and analyzing the effectiveness of vertical prosecution programs in better serving hate crime victims and achieving just, equitable,

and appropriate resolutions to hate crime cases, and making policy recommendations to the Legislature.

This bill states that DOJ shall make evaluations of the grant program available to the public.

This bill provides the following definitions:

- “Prosecutorial agency” means “a district attorney, city attorney, or other governmental entity responsible for the prosecution of crimes within a local jurisdiction.”
- “Vertical prosecution” refers to having the same individual prosecutor assigned to a case from the initial criminal investigation through the sentencing of the offender.

This bill contains a sunset date of July 1, 2029.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Anti-Asian rhetoric surrounding the COVID-19 pandemic has led to a dramatic spike in verbal and physical assaults against Asian Americans. According to the latest report from Stop AAPI Hate, over 10,000 anti-Asian hate incidents have occurred nationwide between March 2020 and December 2021 with over 4,000 of those occurring in California.

The California Attorney General’s Office recommends prosecuting hate crimes vertically – meaning a single prosecutor handles a case from start to finish – to both promote accurate and consistent prosecution and provide continuity for the victim.

This bill establishes a pilot grant program for District Attorney offices to create or expand vertical prosecution units for hate crimes. In addition to assigning a single prosecutor to each hate crime case, these units will also connect victims with victim advocates.

2. Hate Crimes

Hate crimes are generally defined as crimes that are “committed not out of animosity toward the victim as an individual, but out of hostility toward the group to which the victim belongs.” (Pendo, *Recognizing Violence Against Women: Gender and the Hate Crimes Statistics Act* (1994) 17 Harv. Women’s L.J. 157, 159.) Looking at a more specific definition, a hate crime is defined as “a crime in which the defendant intentionally selects a victim because of the *actual or perceived* race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.” (*Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 Section 280003 (1994) emphasis added (codified in part at 28 U.S.C. Section 994 (1994).)

According to Los Angeles County’s 2019 Hate Crime Report, hate crimes have been rising incrementally in the last several years. (<https://www.nbctlosangeles.com/news/local/la-county->

[report-hate-crimes-increase/2448765/](#) [as of June 20, 2022].) In 2019, the county had 524 reported hate crimes, compared to 523 in 2018. “This is the largest number reported since 2009. For the past 6 years, hate crimes have been trending upwards and since 2013 there has been a 36% rise.” (<https://hrc.lacounty.gov/wp-content/uploads/2020/10/2019-Hate-Crime-Report.pdf> at p. 8 [as of June 20, 2022].)

With the onset of the Covid-19 pandemic, there has been a rise in hate crimes targeting Asian Americans, in particular. In Los Angeles County, anti-Asian hate crimes increased by 76% in 2020. In 10 of 44 reported cases in Los Angeles County, the suspect explicitly blamed the victims for COVID-19. (<https://www.latimes.com/california/story/2021-10-20/l-a-county-sees-significant-increase-in-anti-asian-hate-crimes> [as of June 20, 2022].)

DOJ’s annual hate crime report found a 31% increase in hate crimes in California, from 1,015 to 1,330 in 2020, fueled mainly by a jump in crimes targeting Black people. While hate crimes involving racial bias overall increased 67.3 percent, hate crimes targeting Black increased 87.7% from the previous year. (DOJ, Hate Crime in CA 2020, <https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/Hate%20Crime%20In%20CA%202020.pdf> [as of June 20, 2022].)

3. Vertical Prosecution

“Vertical Prosecution” refers to a method in which a prosecutor is assigned to the case from the initial point of referral to the completion of the prosecution. Many argue this method of prosecution results in continuity and improved prosecution success, as well as benefits for crime victims, such as allowing prosecutors to build a rapport with victims by remaining with the case from intake to sentencing, which ensures that victims do not have to tell their story repeatedly to prosecutors at various stages of the case. The prosecutor may develop ongoing relationships with community organizations and be able to connect victims to appropriate resources.

It appears that several county prosecutors’ offices have special units to prosecute hate crimes through vertical prosecution, including Sacramento County and San Diego County. (See <https://www.sacda.org/in-the-courtroom/criminal-prosecutions/hate-crimes-unit/>; <https://www.sdcda.org/helping/hate-crimes> [as of June 20, 2022].)

This bill would establish, subject to an appropriation of funds by the Legislature, a vertical prosecution grant program to be administered by DOJ to award one-time grants to prosecutorial agencies for the purpose of creating, supporting, or expanding vertical prosecution units for the prosecution of hate crimes.

4. Grant Programs Administered by DOJ

DOJ administers several grant programs. For example, the Sexual Assault Evidence Submission Grant Program which was established in 2019 when the Legislature passed the budget act appropriating \$2 million in grant funding to assist local law enforcement agencies with the process of submitting and testing sexual assault forensic evidence. Grant funds were not designed to sustain a project but were intended to supplement existing funds in order to help agencies submit and test sexual assault evidence. Agencies who were interested in applying for funds requested an amount based on their need. Funds were available from the 2019-2020 state budget with a grant period beginning July 1, 2020, and ending June 30, 2022. (See <https://oag.ca.gov/saesg> [as of June 21, 2022].)

Also, the Tobacco Grant Program, established in 2017 to provide annual funds to local law enforcement agencies, including prosecutors, county sheriffs, and city and school police departments throughout California to reduce illegal sales and marketing of cigarettes and tobacco products, including e-cigarettes, to minors. Funding for the Tobacco Grant Program was a result of the passage of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (Proposition 56) increasing taxes on cigarettes and other tobacco products by \$2.00 starting in April 2017. The initiative allocates a portion of annual revenue to the California Department of Justice. (See <https://oag.ca.gov/tobaccogrants> [as of June 21, 2022].)

This bill would establish the HCVP grant program, subject to appropriation by the Legislature, to be administered by DOJ. The grants are to be made on a competitive basis to selected applicants in a manner and in an amount determined by DOJ. The bill would also require DOJ to provide a report to the Legislature summarizing the data provided by grant recipients and analyzing the effectiveness of vertical prosecution programs in better serving hate crime victims and achieving just, equitable, and appropriate resolutions to hate crime cases, and making policy recommendations to the Legislature. This bill's provisions would sunset on July 1, 2029.

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