

Date of Hearing: April 23, 2024
Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Kevin McCarty, Chair

AB 2603 (Low) – As Introduced February 14, 2024

SUMMARY: Expands the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show that certain misdemeanor hate crimes have occurred or are occurring.

EXISTING FEDERAL LAW: Provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (U.S. Const., Amend. IV.)

EXISTING LAW:

- 1) Provides that all people have an inalienable right to privacy. (Cal. Const., art. I, § 1.)
- 2) Provides that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. (Cal. Const., art. I, § 13.)
- 3) Provides that a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate. (Pen. Code, § 1523.)
- 4) Provides that a search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. (Pen. Code, § 1525.)
- 5) Provides that a search warrant may be issued when, among other reasons, the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, or possession of matter depicting sexual conduct of a person under 18 years of age, as specified. (Pen. Code, § 1524, subd. (a)(5).)
- 6) Defines “hate crime” as a criminal act committed, in part or in whole, because of actual or perceived characteristics of the victim, including: disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of the previously listed actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

- 7) Specifies that “hate crime” includes a violation of statutes prohibiting interference with a person’s exercise of civil rights because of the actual or perceived characteristics, as listed above. (Pen. Code, § 422.55, subd. (b).)
- 8) Provides that no person shall by threat of force, willfully injury, intimate, interfere with, oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured by the Constitution or laws of this state or the United States because of the actual or perceived characteristics of the victim; but that no person may be convicted of violating subdivision (a) 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. (Pen. Code, § 422.6, subd. (a) & (c).)
- 9) Provides 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 by the secured by the Constitution or laws of this state or the United States because of the actual or perceived characteristics of the victim. A violation is a misdemeanor (Pen. Code, § 422.6, subd. (b).)
- 10) Provides that a violation of either provision of Section 422.6 above is a misdemeanor punishable by imprisonment in county jail for up to one year, by a fine of up to \$5,000, or by both; and requires the court shall to the defendant to perform up to 400 hours of community service to be performed over a period not to exceed 350 days. (Pen. Code, § 422.6, subd. (c).)
- 11) Provides that all state and local agencies shall use the definition of “hate crime” stated above except as other explicit provisions of state or federal law may require otherwise. (Pen. Code, § 422.9.)
- 12) Specifies “hate crimes” include, but are not limited to violating or interfering with the exercise of civil rights, or knowingly defacing, destroying, or damaging property because of actual or perceived characteristics of the victim that fit the “hate crime definition.” (Pen. Code, §§ 422.55, subd. (b). & 422.6., subd. (a) and (b).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “The rise in Hate crimes towards Asian Americans, the elderly, and other groups has been cynical. California must adopt more robust laws to provide the best possible tools for law enforcement to protect communities against criminals that would target people based on race, gender, disability, age, or other characteristics. No criminal who targets Californians with hate should walk freely and escape prosecution and consequences as a result of inadequately written laws that currently protect criminals over the victims of hate crimes”
- 2) **Fourth Amendment and Search Warrant Requirements:** Both the United States Constitution and the California Constitution guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec.

13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

In California, Penal Code section 1524 provides the statutory grounds for the issuance of warrants. Under these provisions, a search warrant may be issued "[w]hen property or things were used as the means to commit a felony." (Pen. Code, § 1524, subd. (a)(2).) There are other enumerated circumstances that authorize a search warrant regardless of whether the crime was a felony or misdemeanor, such as "[w]hen the property subject to search was stolen or embezzled." (Pen. Code, § 1524, subd. (a)(1).) Additionally, Penal Code section 1524 provides that a search warrant may be issued "[w]hen the property or things are in the possession of any person with the intent to use them as a means of committing a public offense. . . ." (Pen. Code, § 1524, subd. (a)(3).) A "public offense" is defined as crimes which include felonies, misdemeanors, and infractions. (Pen. Code, § 16.)

This bill would expand that statutory authority for search warrants by allowing law enforcement to obtain a search warrant on the grounds that the property or things to be seized consists of evidence that tends to show that a violation of Penal Code Section 422.6 (interference with the civil rights of an individual because of their status in a protected class) has occurred or is occurring.

- 3) **Hate Crimes and Reporting:** The DOJ is required to report hate crime statistics on their website by July 1st of each year. The DOJ sources the report with data from local law enforcement agencies, which the DOJ receives on a monthly basis. Monthly reporting is required to comply with federal standards imposed by the Federal Bureau of Investigation (FBI).

Although hate crimes make a small percentage of total reported crimes, the number of reported hate crimes in California has increased. In 2020, the DOJ reported hate crime events increased 31.0 percent from 1,015 in 2019 to 1,330 in 2020. The report also found hate crime offenses increased 23.9 percent from 1,261 in 2019 to 1,563 in 2020. (DOJ, Hate Crime in California 2020 <<https://data-openjustice.doj.ca.gov/sites/default/files/2021-06/Hate%20Crime%20In%20CA%202020.pdf>> [as of Feb. 28, 2022].) According to DOJ's 2021 report on hate crimes, "hate crime events" reported to law enforcement "increased 32.6 percent from 1,330 in 2020 to 1,763 in 2021," and "hate crime offense increased 42.1 percent from 1,563 in 2020 to 2,221 in 2021." (DOJ, Hate Crime in California 2021 <[https://oag.ca.gov/system/files/attachments/press-docs/Hate Crime In CA 2021 FINAL.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Hate%20Crime%20In%20CA%202021_FINAL.pdf)> [last visited Mar. 7, 2023].) Specifically, the DOJ found that "[v]iolent [hate]

crime offenses increased 47.4 percent from 1,088 in 2020 to 1,604 in 2021.” (*Ibid.*)

A 2018 report by the California State Auditor found that law enforcement had not taken sufficient action to identify, report, and respond to hate crimes. According to the report, “Officers at...law enforcement agencies might have been better equipped to identify hate crimes if their agencies had implement better methods for doing so and provided periodic training.” (California State Auditor, *Hate Crimes in California* (May 2018) at p. 2 <<https://www.auditor.ca.gov/pdfs/reports/2017-131.pdf>> [last visited Mar. 15, 2022]) It added, “At local law enforcement agencies we reviewed, a lack of hate crime training and protocols, in addition to little proactive guidance and oversight from DOJ, have contributed to the underreporting of hate crimes.” (*Id.* at 26.)

- 4) **The Toll of Hate Crimes on Victims:** Hate crimes severely impact victims. The emotional effect can be significant, with victims experiencing “more psychological distress than victims of other violent crimes.” (*Id.* at p. 11.) Experts have observed that “[e]xperiences of hate are associated with poor emotional well-being such as feelings of anger, shame, and fear. Moreover, victims tend to experience poor mental health, including depression, anxiety, posttraumatic stress, and suicidal behavior.” (Cramer et al., *Hate-Motivated Behavior: Impacts, Risk Factors, and Interventions*, Health Affairs (Nov. 9, 2020) <<https://www.healthaffairs.org/doi/10.1377/hpb20200929.601434/>> [last visited Mar. 8, 2023].) The physical health of victims also suffers. The “impacts include poor overall physical health, physical injury, stress, and difficulty accessing medical care.” (Cramer et al., *supra.*)

Hate crimes also impact the victim’s community. According to the California State Auditor, “[T]hese crimes likely had a significant impact on the groups to which victims belonged... [by] communicat[ing] to members of the victims’ groups that they are unwelcome and unsafe in their communities.” (California State Auditor, *supra*, at p. 11; see e.g., Brown et al., *How hate crime affects a whole community*, BBC (Jan. 12, 2018) <<https://www.bbc.com/news/uk-42622767>> [last visited Mar. 8, 2023].) Indeed, “Entire communities can feel the impacts of victimization. Members of the targeted community may experience vicarious trauma symptoms resulting from witnessing others being victimized. In addition, a review of structural discrimination shows that for a targeted vulnerable group, long-standing, systemic inequalities can be seen in economic, housing, and educational disparities.” (Cramer et al., *supra.*)

- 5) **Argument in Support:** According to *California District Attorneys Association*, “There has been a shocking rise in hate crimes over the past several years in the past year. This is sadly no aberration but part of an on-going trend. Hate crimes are singularly damaging to our society as they target more than the immediate victim - they target an entire community. Sometimes, the greatest harm of the hate crime is its symbolic blow to the community which creates a climate of fear that effectively imprisons entire segments of our society as they fear walking at night or attending a campus or public event.

“An essential element when investigating any hate crime is determining the motive of the perpetrator. If the perpetrator was motivated by bias, then he is potentially guilty of a hate crime, but if the perpetrator was not motivated by bias, he may be guilty of assault but not a hate crime. It makes an extraordinary difference to the community, to the victim, and to the accused that the underlying motive is properly identified. For this reason, it is vital for us to

be able to accurately determine if a crime was motivated by bias, which can often only be done using a search warrant to examine a defendant's social media feeds and computer files.

“While the most important tool for determining motive is often a search warrant, state law currently does not allow for the issuance of a search warrant in misdemeanor hate crimes. Without this tool, those guilty of hate crimes evade responsibility and those wrongfully accused cannot clear their names. Allowing judges to issue search warrants when there has been a demonstration of probable cause will allow us to reach the truth, to respond appropriately to hate crimes, and ensure fewer misdemeanor hate crimes will go unprosecuted due to lack of definitive evidence that racial bias was the motivation. In this way, AB 2603 will increase public safety and justice.

“For example, recently in Santa Clara County there was an incident where a man of apparent Mideastern origin was attacked when he did not respond to a panhandler calling him a “terrorist”. The attack might have been motivated by anger over money or it might have been motivated by racial bias, but without a search warrant to allow further investigation, the motive could not be clearly determined. In another example, a man overheard a father talking to his sons in Hebrew next door. He asked what language they were speaking, asked if they were Jewish, and then sprayed them with his garden hose. A search warrant could have yielded valuable evidence confirming or denying previous, underlying racial animus by the defendant in this case.

“Similarly, in Ventura County, a white homeless woman drove to her usual parking spot and noticed it was occupied by two African American teenagers. An argument ensued that one of the teenagers filmed wherein she repeatedly called them the n-word, said very derogatory things about African Americans and other marginalized groups, and brandished a kitchen knife at the two teenagers. The woman also had a prior where she had run up to a Hispanic woman jogging near Ventura Pier, yelled ‘Go back to Mexico’ and punched her in the face. But there were other factors that made the case for a hate crime less clear cut.

“For example, the defendant was obviously mentally ill and the brandishing had a possible self-defense aspect to it, since she didn't brandish the knife until the victim took several steps towards her in a hostile manner. A search warrant would have allowed law enforcement to search the defendant's private social media page to see if she regularly made disparaging racial posts, thus clearly elevating the case to a hate crime.

“And, of course, sadly one need only read the newspaper on virtually any week to learn that yet another older Asian man or woman was punched, pushed or otherwise assaulted while minding their own business. (According to the LA Times, there has been a 177% rise in hate crimes against Asian Americans in California. Since many of these assaults qualify as misdemeanors, without a search warrant it is very hard to know if they were motivated by bias and therefore should be charged as hate crimes.

“AB 2063 will not create a new crime, nor will it increase punishments or give greater power to the police or prosecutors, but it will allow judges to issue search warrants in constitutionally appropriate cases. This will allow us to gather the best evidence to determine if a misdemeanor hate crime has been committed, and then exonerate the innocent and hold the guilty responsible. It will also allow us to effectively communicate with our communities

to let them know when a hate crime has been committed and when one has not.”

- 6) **Argument in Opposition:** According to the *San Francisco Public Defender*, “The author has not provided evidence that current laws are insufficient for law enforcement to make arrests for alleged hate crimes. AB 2603 would once again amend Penal Code section 1524 to expand the circumstances under which a search warrant may issue. This bill allows search warrants to issue for misdemeanor violations of Penal Code section 422.6. The continued amendments to Penal Code section 1524 are an example of how a limiting section, over the years, is continually weakened and expanded beyond its original intent.

“Not all that long ago, Penal Code section 1524 dealt with warrants issued for felonies and had only 6 categories under subdivision (a) In an example of the observation that if you give law enforcement an inch, they will take a mile (*People v. McKay* (2002) 27 Cal. 4th 601, 628, concurring and dissenting opinion of Brown, J.) this subdivision now has 20 categories covering many more circumstances. This bill adds yet another category related to misdemeanor conduct.

“The right to privacy is slowly being eroded, one amendment to Penal Code section 1524 at a time. Hate crimes are, of course, awful. That does not translate, however, into a need to once again broaden the ability of law enforcement to get search warrants for yet another misdemeanor.”

7) **Related Legislation:**

- a) SB 64 (Umberg), is identical to this bill. SB 64 is pending on the suspense file of the Senate Appropriations Committee.
- b) AB 1804 (Jim Patterson), would lower the requisite amount of fentanyl to support probable cause to obtain a wiretap order. AB 2419 is currently pending on the suspense file in the Assembly Appropriations Committee.
- c) AB 1892 (Flora), would authorize a judge, upon receipt of a valid application, to issue an ex parte order authorizing interception of wire or electronic communications initially intercepted within the territorial jurisdiction of the judge’s court if there is probable cause to believe that an individual is committing, has committed, or is about to commit a crime related to specified obscene matter involving minors. AB 1892 is currently pending hearing in this committee. AB 2419 is currently pending a hearing in the Assembly Appropriations Committee.
- d) AB 2419 (Gipson), would expand the grounds upon which a search warrant may be issued to include when the property or things to be seized consist of evidence that tend to show the crime of communications in furtherance of a solicitation of a minor, as specified, has occurred or is occurring. AB 2419 is currently pending a vote by the Assembly.
- e) AB 2309 (Muratsuchi), would authorize the city attorney of any general law city or chartered city to prosecute any misdemeanor committed within the city arising out of violation of state law, without consent of the district attorney. AB 2309 is currently

pending hearing in this committee.

8) Prior Legislation:

- a) AB 539 (Acosta), Chapter 342, Statutes 2017, expanded the grounds for issuance of a search warrant to include evidence of a misdemeanor violation of disorderly conduct, as specified.
- b) AB 539 (Levine), Chapter 118, Statutes of 2015, authorized the issuance of a search warrant to compel a blood draw from a person suspected of operating a boat while under the influence of alcohol or drugs.
- c) AB 1104 (Rodriguez), Chapter 124, Statutes of 2015, clarified that a search warrant may be issued when the property or things to be seized are controlled substances or any device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance, as provided in existing provisions of law in the Health and Safety Code.
- d) SB 178 (Leno), Ch. 651, Stats. 2015, created the California Electronic Communications Privacy Act (CalECPA), which generally requires law enforcement entities to obtain a search warrant before accessing data on an electronic device or from an online service provider.
- e) SB 717 (DeSaulnier), Chapter 317, Statutes of 2013, authorized a search warrant to allow officers to take a sample of the blood as evidence in misdemeanor driving under the influence (DUI) when a person refuses to consent, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers' Association
Brooke Jenkins, San Francisco District Attorney
Burbank Police Officers' Association
California Association of Highway Patrolmen
California District Attorneys Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles City Attorney's Office
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association

Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

Oppose

ACLU California Action
Buen Vecino
California Public Defenders Association
Californians United for A Responsible Budget
Communities United for Restorative Youth Justice (CURYJ)
Felony Murder Elimination Project
Oakland Privacy
San Francisco Public Defender
Silicon Valley De-bug
Team Justice
Uncommon Law
Young Women's Freedom Center

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