

Date of Hearing: June 30, 2026
Deputy Chief Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 239 (Arreguín) – As Amended June 17, 2026

As Proposed to be Amended in Committee

SUMMARY: Authorizes the court to consider, as a factor in aggravation in sentencing a person for making criminal threats, that the defendant willfully threatened to commit a crime that would result in the death or great bodily injury of an elections official of a city, county, city and county, or public district, or an elected local agency official.

EXISTING LAW:

- 1) States that any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for their own safety or for their immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison. (Pen. Code, § 422, subd. (a).)
- 2) Provides that in sentencing a person convicted of making felony criminal threats, the court may consider, as a factor in aggravation, that the defendant willfully threatened to commit a crime that would result in death or great bodily injury of a person the defendant knew was a state constitutional officer, a Member of the Legislature, or a judge or court commissioner. (Pen. Code, § 422, subd. (b).)
- 3) Makes a felony violation of Penal Code section 422 a "serious felony," and therefore a "strike" for purposes of Three Strikes sentencing. (Pen. Code, § 1192.7, subd. (c).)
- 4) States that any person who with intent to annoy, telephones another or contacts him or her by means of an electronic device, and threatens to inflict injury on the person or the person's family, or to the person's property is guilty of a misdemeanor. (Pen. Code, § 653m, subd. (a).)
- 5) Provides that every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable as an alternate felony-misdemeanor. (Pen. Code, § 69, subd. (a).)

- 6) States that every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense. (Pen. Code, § 76, subd. (a).)
- 7) States that no person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child, on the internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. Punishes the crime as a misdemeanor, or a felony depending on the circumstances. (Pen. Code, § 76.5.)
- 8) States that any person who commits assault upon specified public officials or attempts to commit murder against any of those specified officials in retaliation for or to prevent the performance of the victim's official duties, shall be punished by a felony, as specified. (Pen. Code, § 217.1.)
- 9) Provides that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall in its sound discretion order imposition of a sentence not to exceed the middle term, except as specified. (Pen. Code, § 1170, subd. (b)(1).)
- 10) Provides that the court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170, subd. (b)(2).)
- 11) States that notwithstanding the presumption for the middle term, and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances and that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)
- 12) Enumerates circumstances in aggravation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered in aggravation. (Cal. Rules of Court, rule 4.421.)
- 13) Enumerates circumstances in mitigation, relating both to the crime and to the defendant, as specified. In addition, any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed can be considered. (Cal. Rules of Court, rule 4.423.)

- 14) Defines “local agency official” to mean any member of a local agency legislative body and any elected local agency official. (Gov. Code, § 53237, subd. (b).)
- 15) Prohibits any state or local agency from publicly posting the home address, telephone number, or the name and assessor parcel number associated with the home address of any elected or appointed official on the internet without first obtaining the written permission of that individual. (Gov. Code, § 7928.205, subd. (a).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Sponsor:** Author-sponsored
- 2) **Author's Statement:** According to the author, “In recent years, election officials and elected local agency officials (County Supervisors, Mayors, Council members, special district board members) across the U.S. have reported increased threats, harassment, and intimidation. Sometimes these threats have sadly escalated to violence and death. Last year, the Legislature passed, and the Governor signed into law AB 352, which amended Penal Code Section 422. The bill allows the court to consider as part of felony sentencing of the criminal threats statute as a factor in aggravation, that the defendant willfully threatened to commit a crime that could result in the death or great bodily injury of a judge or court commissioner, a state constitutional officer, or member of the Legislature. The reason for this change was the increase in threats against judges and state elected officials and the fear and intimidation caused.

“SB 239 would amend Penal Code Section 422 to also include election officials and local agency officials. SB 239 recognizes that threats against election officials and local public officials are not just attacks on individuals, they are attacks on the democratic institutions and public services that Californians rely on every day. This bill promotes public safety, strengthens confidence in our democratic process and recognizes the unique harm caused when threats are used to interfere with the functioning of government.”

- 3) **Criminal Threats:** Existing law punishes criminal threats. (Pen. Code, § 422.) A law that restricts speech has First Amendment implications. The First Amendment to the United States Constitution states: “Congress shall make no law . . . abridging the freedom of speech. . . .” This fundamental right is applicable to the states through the due process clause of the Fourteenth Amendment. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 133-134, citing *Gitlow v. People of New York* (1925) 268 U.S. 652, 666.) Article I, section 2, subdivision (a) of the California Constitution provides that: “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”

While these guarantees are stated in broad terms, “the right to free speech is not absolute.” (*Aguilar v. Avis Rent A Car System, Inc.*, *supra*, 21 Cal.4th at p. 134, citing *Near v. Minnesota* (1931) 283 U.S. 697, 708; and *Stromberg v. California* (1931) 283 U.S. 359.) As the United States Supreme Court has acknowledged: “Many crimes can consist solely of spoken words, such as soliciting a bribe (Pen. Code, § 653f), perjury (Pen. Code, § 118), or making a terrorist threat (Pen. Code, § 422).”

Content-based restrictions on speech are presumptively invalid (*R.A.V. v. St. Paul* (1992) 505 U.S. 377, 382), however, courts have upheld restrictions on content-based speech when the speech is ““of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’ Thus, for example, a State may punish those words ‘which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’” (*In re J.M.* (2019) 36 Cal.App.5th 668, 674, citing *Virginia v. Black* (2003) 538 U.S. 343, 358–359.)

True threats are not protected by the First Amendment. (*In re M.S.* (1995) 10 Cal.4th 698.) Existing Penal Code section 422 has been found to be constitutional because it is narrowly tailored to apply only to true threats, which is defined as a threat “to commit a crime which will result in death or great bodily injury to another person . . . which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat.” (*People v. Toledo* (2001) 26 Cal.4th 221, 233.)

In order to convict a person under the criminal threat statute, Penal Code section 422, the prosecutor must prove the following:

- That the defendant willfully threatened to commit a crime which will result in death or great bodily injury to another person;
- That the defendant made the threat;
- That the defendant intended that the statement be taken as a threat, even if there is no intent of actually carrying it out;
- That the threat was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat;
- That the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family’s safety; and,
- That the threatened person’s fear was reasonable under the circumstances. (Pen. Code, §422; CALCRIM No. 1300; see also *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

Penal Code section 422 applies to all criminal threats which will result in death or great bodily injury regardless of the person threatened, the location, or the exact type of violence that is threatened.

The crime of criminal threats is punishable as either a misdemeanor or a felony. (Pen. Code, § 422.) When a criminal threats conviction is punished as a felony, it is also a serious felony for purposes of enhanced punishment under the Three Strikes Law (Pen. Code, 1192.7, subd. (c)(38)) and the five-year prison enhancement for prior serious felony convictions (Pen. Code, § 667). Additionally, it triggers credit earning limitations. (Pen. Code, § 1170.12.) (See also *People v. Moore* (2004) 118 Cal.App.4th 74.)

Last year, Penal Code section 422 was amended to add that in sentencing a person convicted of making felony criminal threats, the court may consider, as a factor in aggravation, that the defendant willfully threatened to commit a crime that would result in death or great bodily injury of a person the defendant knew was a state constitutional officer, a Member of the Legislature, or a judge or court commissioner. (AB 352 (Pacheco), Ch. 554, Stats. 2025; Pen. Code, § 422, subd. (b).) The new provision went into effect January 1 of this year. This bill would greatly expand who this provision applies to by adding an elections official of a city, county, city and county, or public district, or a local agency official, as defined in subdivision (b) of Government Code section 53237. That section defines “local agency official” to mean “any member of a local agency legislative body and any elected local agency official.”

Because the definition of “local agency official” includes such a broad category of persons, many of which may not be well-known to the public, this bill, as proposed to be amended in committee, will limit local agency officials to *elected* local agency officials, which would include mayors, city council members, county board of supervisors, and other local officials who are elected.

Notably, unlike some of the existing offenses that require specifically targeting or retaliating against judges or elected officials¹, the aggravating factor provision in Penal Code Section 422 only requires that the defendant knew the person threatened is a state constitutional officer, a Member of the Legislature, or a judge or court commissioner, not that they were motivated in any way by that person’s position.

- 4) **Determinate Sentencing and Factors in Aggravation:** California’s sentencing scheme is, for the most part, determinate – it is referred to as the determinate sentencing law (DSL). (Pen. Code, § 1170, subd. (b)(1).) Any person convicted of a felony is sentenced to one of three sentences referred to as the “triad.” For instance, a person convicted of a felony offense that may be charged as either a misdemeanor or felony (known as a “wobbler”) shall be sentenced to 16 months, two years, or three years in either county jail or state prison, unless the statute specifies another sentence. Burglary of a home or occupied residence, for example, may be sentenced to two, three, or four years. The court must consider factors in aggravation and those factors must be proven to the trier of fact beyond a reasonable doubt before imposing the upper term. (Pen. Code, § 1170, subd. (b)(2) & (6).)

The Sixth Amendment right to a jury trial applies to any factual finding, other than that of a prior conviction, necessary to warrant any sentence beyond the presumptive maximum. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490; *Blakely v. Washington* (2004) 524 U.S. 296, 301, 303-04.) Prior to 2007, the DSL required imposition of the middle term. However, the Supreme Court, following its ruling in *Blakely* upended the way California sentenced a defendant convicted of a felony.

In *Cunningham v. California* (2007) 549 U.S. 270, the United States Supreme Court held California’s Determinate Sentencing Law (DSL) violated a defendant’s right to trial by jury by placing sentence-elevating fact findings within the judge’s province. (*Id.* at p. 274.) The DSL authorized the court to increase the defendant’s sentence by finding facts not reflected

¹ See Penal Code §§ 69, 71, 76, 217.1.

in the jury verdict. Specifically, the trial judge could find factors in aggravation by a preponderance of evidence to increase the defendant's sentence from the presumptive middle term to the upper term and, as such, was constitutionally flawed. The Court stated, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the sentence cannot withstand measurement against our Sixth Amendment precedent." (*Id.* at p. 293.)

The Supreme Court provided direction as to what steps the Legislature could take to address the constitutional infirmities in the DSL:

"As to the adjustment of California's sentencing system in light of our decision, the ball . . . lies in [California's] court. We note that several States have modified their systems in the wake of *Apprendi* and *Blakely* to retain determinate sentencing. They have done so by calling upon the jury - either at trial or in a separate sentencing proceeding - to find any fact necessary to the imposition of an elevated sentence. As earlier noted, California already employs juries in this manner to determine statutory sentencing enhancements. Other States have chosen to permit judges genuinely to exercise broad discretion . . . within a statutory range, which, everyone agrees, encounters no Sixth Amendment shoal. California may follow the paths taken by its sister States or otherwise alter its system, so long as the State observes Sixth Amendment limitations declared in this Court's decisions." (*Cunningham, supra*, 549 U.S. at pp. 293-294.)

Following *Cunningham*, the Legislature amended the DSL, specifically Penal Code sections 1170 and 1170.1, to make the choice of the lower, middle, or upper prison term one within the sound discretion of the court. (See SB 40 (Romero), Ch. 3, Stats. 2007.) This approach was embraced by the California Supreme Court in *People v. Sandoval* (2007) 41 Cal.4th 825, 843-852. The new procedure removes the mandatory middle term and the requirement of weighing aggravation against mitigation before imposition of the upper term.

In 2021, the Legislature enacted SB 567 (Bradford), Chapter 731, Statutes of 2021 which requires that any aggravating factors, except for prior convictions, relied upon by the court to impose a sentence exceeding the middle term either for a criminal offense or for an enhancement be submitted to the trier of fact and found to be true, or be admitted by the defendant. "The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial." (Pen. Code, § 1170, subd. (b)(2).)

Additionally, where certain factors contributed to the offense, the court is required to impose the low term unless aggravating circumstances outweigh mitigating circumstances. These factors are where the defendant experienced psychological, physical, or childhood trauma, is a youth (under age 26), or is or has been a victim of domestic violence or human trafficking. (Pen. Code, § 1170, subd. (b)(6).)

“In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council.” (Pen. Code, § 1170, subd. (a)(3).) The California Rules of Court, rule 4.421 states that circumstances in aggravation include factors relating to the crime (12 enumerated criteria) and factors relating to the defendant (five enumerated criteria). Finally the rule notes that the court can consider “[a]ny other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed.” (Cal. Rules of Court, rule 4.421(c).)

Similarly, rule 4.423 states circumstances in mitigation that a court should consider. There are 10 enumerated criteria in mitigation relating to the crime, 15 enumerated criteria related to the defendant, and a residual clause allowing the court to consider any other factors statutorily enumerated or that reasonably related to the defendant or the circumstances under which the crime was committed. (*Ibid.*)

Existing law, enacted last year through AB 352 (Pacheco), Chapter 554, Statutes of 2025, added criminal threats against a state constitutional officer, a Member of the Legislature, or a judge or commissioner as a factor in aggravation that may authorize imposition of the upper term if the jury finds it true beyond a reasonable doubt. This bill would expand this newly created provision to add criminal threats against a city, county, city and county, or public district, or a local agency official. In order to consider this factor in aggravation, it will have to be either admitted by the defendant, or found to be true beyond a reasonable doubt by the jury, or by the judge in the case of a court trial.

- 5) **Argument in Support:** According to *California Contract Cities Associations*, “Over the past few years federal, state, and local elected officials have reported instances of grave threats, harassment, and intimidation at alarming levels. In 2025, the Legislature passed AB 352 (Pacheco) to address the issue, which allows for harsher sentencing when an individual is making threats against state officials that could result in death or great bodily injury. SB 239 expands upon AB 352, ensuring that offenders could face similar sentencing when threatening local elected officials, including County election officials, City election officials, and other local agency officials. We applaud Senator Arreguin for his leadership on this important issue, as it is critical that elected officials at all levels of government are given special recognition under this state law as a means of protecting their welfare and strengthening public safety.”
- 6) **Argument in Opposition:** No longer applicable.
- 7) **Related Legislation:** SB 73 (Cervantes), Chapter 10, Statutes of 2026, among other things, prohibited a peace officer from interfering in any manner with the administration of any election in this state and in the discharge of duties by the Secretary of State, a county elections official, an election official, or a volunteer performing required elections-related tasks prescribed by law except as necessary to respond to urgent threats to public health and safety.
- 8) **Prior Legislation:**
 - a) AB 352 (Pacheco), Chapter 554, Statutes of 2025, authorized the court to consider, as a factor in aggravation for purposes of a felony criminal threats violation, that the defendant willfully threatened to commit a crime that would result in the death or great

bodily injury of a person the defendant knew was a state constitutional officer, a Member of the Legislature, or a judge or court commissioner.

- b) AB 848 (Soria), Chapter 625, Statutes of 2025, explicitly allowed the court to consider as a factor in aggravation for purposes of sentencing a defendant convicted of sexual battery that the defendant was employed at a hospital where the offense occurred and that victim was in the defendant's care or seeking medical care at the hospital.
- c) SB 567 (Bradford), Chapter 731, Statutes of 2021, made the middle term presumptive and to limit the court's ability to impose the upper term. As noted above, now the upper term may be imposed only "when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term and the facts underlying those circumstances have been stipulated to by the defendant or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Joint Powers Authorities
California Contract Cities Association
California Municipal Clerks Association (CMCA)
California Special Districts Association
Valley Industry and Commerce Association (VICA)

Opposition

No longer applicable

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