

California's Civil and Criminal Laws Pertaining to Hate Crimes

(Updated as of February 25, 1999 by Kathleen W. Mikkelson, Deputy Attorney General, Civil Rights Enforcement Unit, Oakland)

Civil Statutes

1) "The Ralph Act," Civil Code sections 51.7 and 52--provides that it is a civil right for a person to be free of violence or its threat against the person or his or her property, because of a person's race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age or disability or position in a labor dispute, or because a person is perceived to have one or more of these characteristics--(bases of discrimination are illustrative, rather than restrictive)

Enforced by the Department of Fair Employment and Housing, which prosecutes, and the Fair Employment and Housing Commission, which adjudicates, and by the Attorney General, any district or city attorney and by private attorneys

Provides for civil penalties of up to \$25,000 for perpetrators, civil remedies to victims of "hate violence," three times actual damages, but no less than \$1000, punitive damages, injunctive relief and attorney's fees

2) "The Bane Act," Civil Code section 52.1 --provides protection from interference by threats, intimidation, or coercion or for attempts to interfere with someone's state or federal statutory or constitutional rights (these include association, assembly, due process, education, employment, equal protection, expression, formation and enforcement of contracts, holding of public office, housing, privacy, speech, travel, use of public facilities, voting, worship, and protection from bodily restraint or harm, from personal insult, from defamation, and from injury to personal relations)-- proof of "hate motivation" required, according to a 1994 Court of Appeal decision in Boccatto v. City of Hermosa Beach

Enforced by Attorney General, any district attorney or city attorney, or a private attorney

Provides for civil penalties for perpetrators, civil remedies to victims of "hate violence," three times actual damages, but no less than \$1000, punitive damages, injunctive and other equitable relief (violation of the injunctive relief is punishable by a criminal contempt action, with a penalty of six months in jail and/or a fine not exceeding \$1000) and attorney's fees

Speech alone is not sufficient to support an action under the Bane Act, unless the speech itself threatens violence against a specific person or group of persons, and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening the violence had the apparent ability to carry out the threat

No order shall restrict the content of a person's speech

An order restricting the time, place or manner of any person's speech

shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined

Liability

Perpetrators

Conspirators

Acts of agents or employees

Standing to Sue

Victim has standing

So do associates of protected class, if also subjected to violence or threats of violence

Actual Damages

Include medical expenses, impaired earning capacity, lost property value, pain, suffering, emotional distress and loss of services

Punitive Damages

Available for violations of Civil Code sections 51.7 or 52.1

Must prove that defendant acted with malice, fraud or oppression

Courts will take into account how reprehensible the conduct was, the defendant's financial condition, and the amount of actual damages

Department of Fair Employment Housing complaints cannot seek punitive damages

Temporary Restraining Orders, Preliminary and Permanent Injunctions

Means of securing the attention and cooperation of police and law enforcement agencies

Bane Act's Civil Code section 52.1(e) requires that Bane Act injunctive orders be served on the law enforcement agencies having jurisdiction where the plaintiff resides and any other locations where the court determines that acts of violence against the plaintiff are likely to occur--two copies are served on law enforcement; law enforcement serves one on defendant--if officer called in response to violation of order, police agency is required to provide the responding officer a copy of the order

Permits enforcement in civil contempt or criminal prosecution

Applicable Penal Code Statutes (part of the Bane Act)

Penal Code section 422.6(a): Provides it is a misdemeanor to interfere by force or threat of force with a person's state or federal statutory or constitutional rights because of his or her race, color, religion, ancestry, national origin, disability, gender or sexual orientation or because the victim is perceived to have one or more of these characteristics. (Penalty: up to one year in jail, or \$5000, or both.)

Penal Code section 422.6(b): Provides it is a misdemeanor to damage a person's property because of his or her race, color, religion, ancestry, national origin, disability, gender or sexual orientation or because it is perceived that he or she has one or more of the above characteristics. (Penalty: up to one year in jail or \$5000 or both 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 of not to exceed 350 days, during a time other than his or her hours of employment or school attendance.)

Penal Code section 422.7: Provides that actions which are normally misdemeanors can become felonies if committed because of bigotry based on race, color, religion, ancestry, national origin, disability, gender, or sexual orientation or because the victim is perceived to have one or more of the above characteristics (with the exception of a person punished under section 422.6.) (Penalty: up to one year in jail or prison and/or a \$10,000 fine.)

Penal Code section 422.75: Provides for sentencing enhancements of one to three years for certain bias-motivated felonies against the aforementioned groups, or against persons perceived to belong to one or more of the aforementioned groups; for heightened penalties of two to four years if the felony hate crime was committed in concert with another; adds a year if the defendant had a prior hate crime conviction; provides that use of firearm can be aggravating factor; and provides that persons who commit or attempt to commit felonies against the property owned or rented by a public agency or private institution or the grounds adjacent thereto because the property is identified or associated with a member of or one of the aforementioned groups can be subject to a one-three year sentencing enhancement.

Penal Code section 422.76 defines gender for purposes of various hate crime statutes to mean the victim's actual sex or the defendant's perception of the victim's sex and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with the victim's sex at birth.

Penal Code section 422.8: Provides that nothing in sections 422.6 or 422.7 prevents or limits the prosecution of any person.

Penal Code section 422.9(a): Provides it is a misdemeanor punishable by up to six months in jail or \$1000 or both to violate an order issued pursuant to Civil Code

section 52.1(a) or (b).

Penal Code section 422.9(b): Provides up to one year in jail for a person previously convicted of violating an order issued pursuant to Civil Code section 52.1 (a) or (b) who is brought and tried upon separate charges.

Penal Code section 422.9(c): Mandates that county prosecuting agencies have the primary responsibility for enforcing orders issued pursuant to Civil Code section 52.1.

Penal Code section 422.95 (a) and (b): Provides that if a person is granted probation for any Penal Code section 422.6, 422.7, 422.75, 594.3 or 11411 offense, the court may order the defendant to complete a class or program on racial or ethnic sensitivity or other similar training in civil rights if such class or program is available as a condition of probation; to make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence; and to reimburse the victim for reasonable costs of counselling and other expenses. Any payments or compensation are in addition to restitution payments required under Penal Code section 1203.04.

Penal Code section 422.95(c): States that it is the intent of the Legislature to encourage counties, cities, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes.

Miscellaneous Penal Code provisions relating to hate crimes

Penal Code section 136.2 Protective orders
Some protections against further harm to, intimidation of, or dissuasion of hate crimes victims and witnesses by the accused perpetrator are available through the district attorney or city attorney who is prosecuting the hate crime.

Once criminal charges are filed under the Bane Civil Rights Act, or under any other criminal statute, hate crimes victims have the right to a court order prohibiting any additional harassment, or any communication or contact at all.

Once a section 136.2 order is issued, copies are distributed to each protected person, each defendant, and to the appropriate law enforcement agency.

Orders are immediately enforceable by law enforcement agencies.

Violation of order can be misdemeanor, or felony, if accompanied by force or threat of force.

Penal Code section 139: Creates a felony when someone already convicted of a felony communicates to witnesses, victims, informants or their immediate families a

credible threat to use force or violence. (Penalty: one year in jail or two-four years in prison.)

Penal Code section 140: Creates a misdemeanor when someone communicates to witnesses, victims, informants or their immediate families a credible threat to use force or violence but does not require that the perpetrator already be convicted of a related crime. (Penalty: One year in jail or two-four years in prison)

Penal Code section 185: Provides that it is a misdemeanor for any person to wear any mask, false whiskers or any personal disguise (whether complete or partial) for the purpose of evading or escaping discovery, recognition, or identification in the commission of any public offense.

Penal Code section 186.21: Legislature finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. (This is part of the "California Street Terrorism Enforcement and Prevention Act," enacted in 1988.)

Penal Code section 190.2(a)(16): Provides a death penalty or sentence of life in prison without possibility of parole for murder because of the victim's race, color, religion, nationality or national origin.

Penal Code section 302: Establishes a misdemeanor to intentionally disturb a group of people who have met to worship. (Penalty: \$1000 fine and/or one year in jail; court can also require community service.)

Penal Code section 538(c): Provides that any person who attaches or inserts an unauthorized advertisement in a newspaper offered for sale or made available for free and who redistributes it or has the intent to redistribute it to the public shall be guilty of a misdemeanor.

Penal Code section 594.1: Makes it unlawful for a minor to purchase or any person or entity other than a parent to provide a minor with aerosol paint containers in excess of six ounces. (Court can order community service, graffiti removal or counselling.)

Penal Code section 594.3: Provides that it is a felony or misdemeanor to knowingly vandalize a place of worship. (Penalty: one year in jail or prison.)

Penal Code section 640.2: Provides that any person who stamps, prints, places or inserts any writing in or on any box, package or other container containing a consumer product offered for sale is guilty of a misdemeanor.

Penal Code section 1170.75: Provides additional punishment for felonies committed because of a victim's race, color, religion, etc., or because the victim is perceived to have one or more of the above-mentioned characteristics unless already punished under Penal Code sections 422.75 or 1170.8.

Penal Code section 1170.8: Provides additional punishment for robbery or assault of persons within a place of worship.

Penal Code section 1170.85: Provides additional punishment for felonies committed against the aged or disabled.

Penal Code section 1547: Authorizes the Governor to offer a reward of not more than \$50,000 payable out of the General Fund for information leading to the arrest and conviction of any person who has committed or is charged with the commission of a felony that is punishable under Penal Code section 422.75 and that resulted in serious bodily injury or property damage of more than \$10,000; authorizes reward of up to \$100,000 from general fund for information leading to the arrest and conviction of a person committing arson upon a place of worship.

Penal Code section 11410: States that the urging of violence where harm is possible is conduct not protected by the California Constitution; in this section the Legislature finds that it is the right of every person, regardless of race, color, creed, religion, gender, or national origin to be secure and protected from fear, intimidation and physical harm caused by the activities of violent groups and individuals.

Penal Code section 11411: Provides that it is a misdemeanor to cause a person to fear for his or her safety by displaying racist signs 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 them; provides that it is a misdemeanor or a felony to engage 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 a racist symbol on that property on two or more occasions; and 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 or in reckless disregard of terrorizing them, 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, works at or is otherwise associated with the school shall be guilty of a felony or misdemeanor.

Penal Code section 11412: Provides that it is a felony to attempt to discourage religious activities by threats of violence.

Penal Code section 11413: Provides that it is a felony to use a bomb against or

to set on fire a place of worship or any private property if the property was targeted because of the race, color, religion, ancestry, national origin, disability, gender or sexual orientation of the owner or occupant of the property and the purpose was to terrorize another or was in reckless disregard of terrorizing another.

Penal Code section 13023 requires the Attorney General to collect statistical information on hate crimes and defines hate crimes as "any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damages where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability."

Penal Code section 13519.6 provides that the Peace Officer Standards and Training Commission within the California Department of Justice shall develop guidelines and a course of instruction and training in hate crimes for law enforcement officers who are employed as peace officers or enrolled in a training academy for law enforcement officers. Hate crime for the purpose of this section means any act of intimidation, harassment, physical force, or the threat of physical force, directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability or sexual orientation, of that person with the intention of causing fear and intimidation.

Education Code Provisions re Hate Crimes

In 1994 the Legislature enacted the California Schools Hate Violence Reduction Act of 1995. This Act requires the State Board of Education, if private funds are available, at the request of the Superintendent of Public Instruction, to do the following: 1) adopt policies and guidelines to prevent and respond to acts of violence;

2) revise existing state curriculum, frameworks and guidelines and the moral and civic education curricula to include human relations education;

3) establish guidelines for use in teacher and administrator in-service training programs: a) to promote an appreciation of diversity; b) to discourage discriminatory attitudes and practices among pupils, teachers, administrators, and counselors; and c) to enable teachers and administrators to prevent and respond to acts of hate violence;

4) revise guidelines previously adopted by the board to include procedures to prevent and respond to acts of hate violence; and,

5) encourage teachers to impress upon the minds of pupils the meaning of equality and human dignity and to foster an environment that is free from discriminatory attitudes, practices, events, or activities, in order to prevent acts of hate violence.

(Education Code sections 45, 33032.5 and 44806)

Among the grounds for the suspension or expulsion of a pupil in grades four through 12 is now the commission of acts of hate violence (See Education Code section 48900.3 and 48915.)

California's Victims of Crime Program

Under Government Code sections 13959-13969.4, some crime victims may be eligible for financial assistance for unreimbursed expenses resulting from the crime.

Important California Cases Interpreting California Hate Crime Statutes

California Supreme Court cases

In re M. S. (1995) 10 Cal. 4th 698 (California Supreme Court upheld the constitutionality of California's hate crime statutes, rejecting defense claims that the laws are overbroad, vague, or impermissible content-based regulation of speech; the court also ruled that when a defendant has multiple motives for committing a crime, the kind of bias prohibited by the hate crime law must be a substantial factor in bringing about the crime before the crime will be considered a hate crime.)

People v. Superior (Aishman) (1995) 10 Cal. 4th 735 (Penal Code section 422.75, which provides for imposition of a sentence enhancement for felonies committed because of the victim's actual or perceived race, color, nationality, country or origin, ancestry, disability or sexual orientation, does not need to be read to include a specific intent requirement; this section will also be interpreted to require that when multiple concurrent causes for the offense exist, if the bias motivation is a substantial factor in bringing about the offense, the perpetrator's sentence can be enhanced.)

California Court of Appeal Cases

Coon v. Joseph (1987) 192 Cal.App.3d 1269 (Plaintiff, who witnessed attack on male lover, was not allowed to bring suit under Ralph Act.)

J.R. Norton Co. v. General Teamsters, Warehousemen and Helpers Union, Local 890 (1989) 208 Cal.App.3d 430 (Violence by striking employees constituted a violation of section 51.7 and warranted a civil penalty.)

In re David L. (1991) 234 Cal.App.3d 1655, rev. den. 1992 (Penal Code section 422 does not require showing of gang membership; threat to intended victim can be conveyed through third party; person making threat must have specific intent that it be taken as a threat but need not have intent to carry out threat.)

People v. Lashley (1991), 1 Cal.App.4th 938 rev. den. 1992, cert. den., (1992) (court held that Penal Code sections 422.6 and 422.7 require proof that the defendant possessed a specific intent to deprive an individual of a right secured by federal or state law, and that the evidence supported the conclusion that defendant interfered with the victims in their exercise and enjoyment of the right to be free from violence.)

People v. Fisher (1993), 12 Cal.App.4th 1556 (court upheld constitutionality of Penal Code section 422 and rejected arguments that it was overbroad, criminalized protected

speech, and was intended to apply only to gang-related activity.)

In re Joshua H. (1993) 13 Cal.App.4th 1734, rev. den. (1993) (Penal Code section 422.7 does not violate the First Amendment; it does not proscribe expression, but it proscribes the conduct of selecting crime victims on the basis of race, color, religion, ancestry, national origin or sexual orientation.)

In re Steven S. (1994) 25 Cal. App. 4th 598, rev. den. (1994) (court upheld the constitutionality of a cross-burning statute)

Bocato v. City of Hermosa Beach (1994) 29 Cal. App. 4th 1797, reh. den. (1994) (In action against city by owners of two stores selling alcoholic beverages challenging the validity of an ordinance requiring them to obtain conditional use permits in order to continue to sell alcoholic beverages, plaintiffs did not state a Civil Code section 52.1 claim because they did not allege that they were among the protected classes specified in the statute; read together, Civil Code sections 51.7 and 52.1 require that a plaintiff claiming interference with his or her right must also allege that the interference was due to his or her race, color or other protected classification.)

Gates v. Superior Court (1995) 32 Cal.App.4th 481 (Defendant police officers were immune from Ralph Act claim for money damages because of immunity provided by Government Code section 845.)

People v. MacKenzie (1995) 34 Cal. App. 4th 1256, rev. den. (1995) (In prosecution for the hate crime of brandishing a firearm for the purpose of interfering with the civil rights of an African-American, court held that Penal Code section 422.7 was not void for vagueness; prosecution need not show that defendant acted with knowledge of particular provisions of state or federal law or that he was even thinking in those terms; it is sufficient if the right is clearly defined and the defendant intended to invade interests protected by constitutional or statutory authority; section 422.7 does not violate equal protection principles since it properly punishes the discriminatory violent offender more harshly than the random violent offender; the statute regulates conduct, not speech.)

Bay Area Rapid Transit Dist. v. Superior Court (1995) 38 Cal. App. 4th 141 (The Bane Act is not a wrongful death provision. It provides for a personal cause of action for the victim of a hate crime and is thus limited to plaintiffs who themselves have been the subject of violence or threats.)

Jones v. KMart Corp. (1998) 17 Cal.4th 329 (When a section 52.1 claim is based on a constitutional right that can only be violated by state action, an action only lies against parties whose conduct is chargeable to the state, not against store employees who engaged in aggressive search and seizure.)

California Federal Hate Crime Cases

Diem v. City and County of San Francisco (N.D. Cal. 1988) 686 F. Supp. 806 (Ralph Act claims for religious and other discrimination are not preempted by the Fair employment and Housing Act, Government Code section 12900, et seq.)

Rose v. City of Los Angeles (C.D. Cal. 1993) 814 F.Supp. 878 (A claim under the Ralph Act may not be brought when no violence or intimidation has been committed or threatened against the plaintiff.)

Burnette v. Godshall (N.D. Cal. 1993) 828 F.Supp. 1439 (An individual's Ralph Act rights are non-negotiable, and thus may not be preempted by collective bargaining agreements.)

Doe v. Petaluma City School Dist. (N.D.Cal. 1993) 830 F.Supp. 1560 (While several sections of the Government Code immunize school officials from claims of infliction of emotional distress, such immunity does not extend to Bane Act claims.)

Rabkin v. Dean (N.D. Cal. 1994) 856 F.Supp. 543, 552 (Interference with rights must rise to violence or threat of violence to be actionable under the Bane Act.)

Reynolds v. County of San Diego (S.D. Cal. 1994) 858 F.Supp. 1064, 1074 (Court dismissed plaintiff's section 52.1 claim for failure to allege the violation of a state right where defendant was immune from suit claiming violation of federal rights.)

Beliveau v. Caras (C.D.Cal. 1995) 873 F.Supp. 1393 (Plaintiff had a Ralph Act claim against the owner of her apartment building for the sexual battery committed by his employee, the resident manager, while he was in her apartment to fix a leaky faucet.)

Gaston v. Colio (S.D.Cal. 1995) 883 F.Supp. 508, 510 (No allegation of discrimination in the complaint, so no standing under Ralph Act or Bane Act.)

Important United States Supreme Court Hate Crime Cases

R.A.V. v. City of St. Paul (1992) 505 U.S. 377 (Supreme Court struck down city ordinance proscribing messages of racial, gender, or religious intolerance, because it made criminal only those types of expression which were disfavored by the city council; this was held to be impermissible content-based restriction of speech.)

Wisconsin v. Mitchell (1993) 508 U.S. 476 (Mitchell's First Amendment rights were not violated by the application of a penalty-enhancement provision for hate crimes in sentencing him; Wisconsin statute is aimed at conduct unprotected by the First Amendment; state's desire to redress greater individual and societal harm inflicted by bias-inspired conduct was motive for passing statute, not disagreement with offenders' beliefs or biases; statute has no chilling effect on free speech.)

