



Office of the Mayor

CONSENT CALENDAR

April 12, 2022

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison,
Councilmember Susan Wengraf, and Councilmember Ben Bartlett

Subject: Support of AB 1947 – Addressing Hate Crimes

RECOMMENDATION

Adopt a Resolution in support of Assembly Bill (AB) 1947 (Ting), which will require law enforcement agencies to adopt policies around how to identify, respond to, and report hate crimes. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Phil Ting.

BACKGROUND

According to statistics from the FBI, the year 2020 saw 7,759 hate crimes committed across the entire country. This data was collected by the FBI from over 15,000 law enforcement agencies. However, this is a voluntary process, so it does not portray a complete picture. In fact, according to the US Department of Justice, between 2005-2019, there were an average of 246,900 hate crimes per year. The most common types of hate crimes are based on race, ethnicity, or nationality, followed by sexual orientation and then religion. In recent years, hate crime trends have gone up, especially among the Asian American community during the COVID-19 pandemic. Yet clearly there is a disparity between such crimes being committed and being reported. As a result, less resources are made available to address hate crimes as the official statistics suggest it is not as widespread as it is in reality.

Addressing hate crime has been a priority of the Mayor and City Council. In 2020, Council approved a referral to implement new systems for reporting and response to hate incidents and crimes. This includes creating a hate crime reporting hotline, launching a public information campaign, and improving reporting on hate crimes by our Police Department. Implementation of these policies is currently underway.

AB 1947, introduced by Assemblymember Phil Ting, would require law enforcement agencies to adopt a policy on how officers identify, respond to, and report hate crimes. These policies would be submitted to the Department of Justice to ensure compliance. By having better protocols to address and report hate crimes, we will be in a better position to end hate crimes.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 1947
- 3: AB 1947 Factsheet

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF AB 1947

WHEREAS, hate crimes are on the rise across the country over the last few years, with a significant increase in hate crimes against Asian Americans since the start of the COVID-19 pandemic; and

WHEREAS, while data from the FBI shows that in calendar year 2020, 7,759 hate crimes were reported across over 15,000 law enforcement agencies, according to the US Department of Justice, between 2015-2019 an average of 246,900 hate crimes took place each year; and

WHEREAS, with a large disparity between such crimes being committed and being reported, less resources are made available to address hate crimes as the official statistics suggest it is not as widespread as it is in reality; and

WHEREAS, Berkeley is currently taking action to improve reporting of hate crimes; in 2020 the City Council passed a referral to implement new systems for reporting and response to hate incidents and crimes, including creating a hate crimes reporting hotline, launching a public information campaign, and improving reporting on hate crimes by our Police Department; and

WHEREAS, AB 1947, introduced by Assemblymember Phil Ting, would require law enforcement agencies to adopt a policy on how officers identify, respond to, and report hate crimes;

WHEREAS, by having better protocols to address and report hate crimes, we will be in a better position to end hate crimes.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 1947.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Phil Ting.

AMENDED IN ASSEMBLY MARCH 16, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1947

Introduced by Assembly Members Ting and Bloom

February 10, 2022

An act to amend Sections 422.55, 422.87, 422.9, 13023, and 13519.6 of the Penal Code, and to amend Section 1 of Chapter 691 of the Statutes of 2021, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1947, as amended, Ting. Hate crimes: law enforcement policies.

Existing law defines a “hate crime” as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation. Existing law requires the Commission on Peace Officer Standards and Training (POST) to develop guidelines and a course of instruction and training for law enforcement officers addressing hate crimes. Existing law requires state law enforcement agencies to adopt a framework or other formal policy created by POST regarding hate crimes. Existing law requires any local law enforcement agency that adopts or updates a hate crime policy to include specified information in that policy, including information on bias motivation. Existing law requires the Department of Justice to collect specified information relative to hate crimes and to post that information on its internet website.

This bill would require each local law enforcement agency to adopt a hate crimes policy. The bill would require those policies to, among other things, include instructions on considering the relevance of specific dates and phrases when recognizing whether an incident is a hate crime,

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to include a supplemental suspected hate crime form, and to include a requirement that, absent a more pressing violent crime emergency, officers respond immediately to a report of a hate crime in progress, as specified. *form*. The bill would require every state and local agency to use specified definitions for the terms “hate crime incident” and term “protected characteristics.” The bill would require each law enforcement agency to report their hate crime policy to the Department of Justice, as specified. The bill would require the department to post information regarding the compliance and noncompliance of agencies that are required to provide information relative to hate crimes to the department. The bill would require POST to develop a model hate crime policy, as specified. The bill would additionally make specified findings regarding state-mandated local programs in its provisions. By imposing additional duties on local law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Freedom from Hate Crimes Act.
- 3 SEC. 2. Section 422.55 of the Penal Code is amended to read:
- 4 422.55. For purposes of this title, and for purposes of all other
- 5 state law unless an explicit provision of law or the context clearly
- 6 requires a different meaning, the following shall apply:
- 7 (a) “Hate crime” means a criminal act committed, in whole or
- 8 in part, because of one or more of the following actual or perceived
- 9 characteristics of the victim:
- 10 (1) Disability.
- 11 (2) Gender.
- 12 (3) Nationality.
- 13 (4) Race or ethnicity.

- 1 (5) Religion.
- 2 (6) Sexual orientation.
- 3 (7) Association with a person or group with one or more of these
- 4 actual or perceived characteristics.
- 5 (b) “Hate crime” includes, but is not limited to, a violation of
- 6 Section 422.6.
- 7 ~~(c) “Hate crime incident” means an incident of a hate crime.~~
- 8 ~~(d) “Multimission criminal extremism” means the nexus of two~~
- 9 ~~or more of the following:~~
- 10 ~~(1) Hate crimes.~~
- 11 ~~(2) Antigovernment extremist crimes.~~
- 12 ~~(3) Anti-reproductive rights crimes, as defined in Section 13776.~~
- 13 ~~(4) Crimes committed in whole or in part because of the victims’~~
- 14 ~~actual or perceived homelessness.~~
- 15 ~~(5) Crimes committed in whole or in part because of the victims’~~
- 16 ~~actual or perceived status as journalists.~~
- 17 ~~(e) “Noncriminal hate incident” means an incident that is not a~~
- 18 ~~crime and that is motivated by hate or other bias against one or~~
- 19 ~~more of the protected characteristics listed in subdivision (a).~~
- 20 ~~(f)~~
- 21 (c) “Subject matter experts” includes, but is not limited to,
- 22 representatives of communities most victimized by hate crimes,
- 23 academic experts, and law enforcement agencies.
- 24 ~~(g) “Suspected hate crime” means a crime that a law~~
- 25 ~~enforcement agency is to investigate or is investigating as~~
- 26 ~~potentially being a hate crime.~~
- 27 SEC. 3. Section 422.87 of the Penal Code is amended to read:
- 28 422.87. (a) Each state and local law enforcement agency shall
- 29 adopt a hate crimes policy that shall include, but not be limited to,
- 30 all of the following:
- 31 (1) The definitions in Sections 422.55 and 422.56.
- 32 (2) The content of the framework and model policy that the
- 33 Commission on Peace Officer Standards and Training developed
- 34 in 2019 pursuant to Section 13519.6, and any content that the
- 35 commission has revised or added or may revise or add in the future,
- 36 including, but not limited to, any policy, definitions, response and
- 37 reporting responsibilities, training resources, and planning and
- 38 prevention methods.
- 39 (3) (A) Information regarding bias motivation.

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1 (B) For the purposes of this paragraph, “bias motivation” is a
2 preexisting negative attitude toward actual or perceived
3 characteristics referenced in Section 422.55. Depending on the
4 circumstances of each case, bias motivation may include, but is
5 not limited to, hatred, animosity, discriminatory selection of
6 victims, resentment, revulsion, contempt, unreasonable fear,
7 paranoia, callousness, thrill-seeking, ~~youthful pranks~~, desire for
8 social dominance, desire for social bonding with those of one’s
9 “own kind,” or a perception of the vulnerability of the victim due
10 to the victim being perceived as being weak, worthless, or fair
11 game because of a protected characteristic, including, but not
12 limited to, disability or gender.

13 (C) (i) In recognizing suspected disability-bias hate crimes, the
14 policy shall instruct officers to consider whether there is any
15 indication that the perpetrator was motivated by hostility or other
16 bias, occasioned by factors such as, but not limited to, dislike of
17 persons who arouse fear or guilt, a perception that persons with
18 disabilities are inferior and therefore “deserving victims,” a fear
19 of persons whose visible traits are perceived as being disturbing
20 to others, or resentment of those who need, demand, or receive
21 alternative educational, physical, or social accommodations.

22 (ii) In recognizing suspected disability-bias hate crimes, the
23 policy also shall instruct officers to consider whether there is any
24 indication that the perpetrator perceived the victim to be vulnerable
25 and, if so, if this perception is grounded, in whole or in part, in
26 antidisability bias. This includes, but is not limited to, if a
27 perpetrator targets a person with a particular perceived disability
28 while avoiding other vulnerable-appearing persons such as
29 inebriated persons or persons with perceived disabilities different
30 than those of the victim, those circumstances could be evidence
31 that the perpetrator’s motivations included bias against persons
32 with the perceived disability of the victim.

33 (D) In recognizing suspected religion-bias hate crimes, the
34 policy shall instruct officers to consider whether there were targeted
35 attacks on, or biased references to, symbols of importance to a
36 particular religion or articles considered of spiritual significance
37 in a particular religion. Examples of religions and such symbols
38 and articles include, but are not limited to:

39 (i) In Buddhism, statues of the Buddha.

40 (ii) In Christianity, crosses.

1 (iii) In Hinduism, forehead markings, known as bindis and tilaks,
2 Aum/Om symbols, and images of deities known as murtis.

3 (iv) In Islam, hijabs.

4 (v) In Judaism, Stars of David, menorahs, and yarmulke.

5 (vi) In Sikhism, turbans, head coverings, and unshorn hair,
6 including beards.

7 (E) In recognizing suspected hate crimes committed against a
8 victim or victims with a particular known, evident, or perceived
9 protected characteristic, the policy shall instruct officers to consider
10 whether the crimes occurred on a day of actual or perceived
11 significance to, or concerning, the victim or victims or to persons
12 of the same actual or perceived protected characteristic as the
13 victim or victims. Examples of such days may include, but are not
14 limited to, ~~Chinese Lunar New Year, Cinco de Mayo, Easter,~~
15 ~~Hitler's birthday (April 20), Martin Luther King Day, September~~
16 ~~11,~~ and Yom Kippur.

17 (F) In recognizing any multiple suspected hate crimes, the policy
18 shall instruct officers to consider whether the victim or victims of
19 the crimes were one or more persons or properties with a particular
20 actual or perceived protected characteristic when other, at least
21 equally available and vulnerable potential victims were not
22 targeted. Examples of such discriminatory selection may include,
23 but are not limited to, the following:

24 (i) A series of sexual assaults of women and girls.

25 (ii) A series of crimes against actual or perceived transgender
26 women, against actual or perceived noncitizens of the United
27 States, or against persons demonstrating on behalf of a particular
28 race or ethnicity and any observers or bystanders.

29 (iii) A series of attacks on one or more places of worship of a
30 particular religion.

31 (iv) A series of attacks on one or more businesses, community
32 centers, or other gathering places operated, staffed, or frequented
33 by a person or persons with a particular known, evident, or
34 perceived protected characteristic.

35 (G) In recognizing any suspected hate crime, the policy shall
36 instruct officers to consider whether the victim is either of the
37 following:

38 (i) A person with an actual or perceived disability that is known
39 or evident to the perpetrator.

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1 (ii) A person with any other actual or perceived protected
 2 characteristic that is known or evident to the perpetrator and that,
 3 under the existing facts and circumstances, is likely to make the
 4 victim the target of a hate crime. ~~Examples of such facts and~~
 5 ~~circumstances include, but are not limited to, the nationwide surge~~
 6 ~~of anti-Asian American and Pacific Islander hate crimes and~~
 7 ~~noncriminal hate incidents beginning in 2020 and resulting from~~
 8 ~~rhetoric blaming China for COVID-19.~~

9 (H) In recognizing a suspected anti-immigrant or antirace hate
 10 crime, the policy shall instruct officers to consider whether persons
 11 who are part of the victim's community in the victim's actual or
 12 perceived country of origin are commonly subject to hate or other
 13 bias there because of one or more of the protected characteristics
 14 and whether the perpetrator may have been motivated by such
 15 bias. ~~Examples include, but are not limited to, an~~
 16 ~~indigenous-language-speaking Mexican immigrant who is assaulted~~
 17 ~~by a perpetrator who uses racial slurs such as "Indio" or~~
 18 ~~"Oaxaquito."~~

19 ~~(I) In recognizing a suspected anti-immigrant hate crime, the~~
 20 ~~policy shall instruct officers to consider whether the perpetrator~~
 21 ~~used terms such as "go back to your country" or "build the wall."~~

22 ~~(J)~~

23 (I) In any case described in subparagraphs (C) through ~~(I)~~ (H)
 24 or a similar case, and in every case in which a crime victim or
 25 witness believes that the crime was a hate crime or motivated by
 26 bias against an actual or perceived protected characteristic, the
 27 policy shall instruct officers to *include such statements in any*
 28 ~~report the crime as a suspected hate crime and not a mere crime~~
 29 ~~of opportunity, and generated as a result of the incident. The policy~~
 30 ~~shall instruct officers to not argue with a victim or witness who~~
 31 ~~believes it was a hate crime, regardless of the initial opinion of the~~
 32 ~~officer prior to, during, or after completion of the supplemental~~
 33 ~~report form required by paragraph (10). officer. The policy shall~~
 34 ~~instruct supervising officers who review reports of incidents in~~
 35 ~~which the victim believed the crime was a hate crime to carefully~~
 36 ~~consider whether additional investigation is necessary, consistent~~
 37 ~~with this section.~~

38 (4) Information regarding the general underreporting of hate
 39 crimes to, and by, law enforcement and the more extreme

1 underreporting of antidisability, antigender, and ~~anti-Sikh hate~~
2 ~~crimes~~ and a plan for the agency to remedy this underreporting.

3 (5) A protocol for reporting suspected hate crimes to the
4 Department of Justice pursuant to Section 13023.

5 (6) A checklist of first responder responsibilities, including, but
6 not limited to, being sensitive to effects of the crime on the victim,
7 determining whether any additional resources are needed on the
8 scene to assist the victim or whether to refer the victim to
9 appropriate community and legal services, and giving the victims
10 and any interested persons the agency's hate crimes brochure, as
11 required by Section 422.92.

12 (7) A specific procedure for transmitting and periodically
13 retransmitting the policy and any related orders to all officers,
14 including a simple and immediate way for officers to access the
15 policy in the field when needed.

16 (8) The title or titles of the officer or officers responsible for
17 ensuring that the department has a hate crime brochure as required
18 by Section 422.92 and ensuring that all officers are trained to
19 distribute the brochure to all suspected hate crime ~~victims and all~~
20 ~~other interested persons~~; *victims*, regardless of whether they
21 specifically request ~~it~~, *it, and to all other interested persons upon*
22 *request*.

23 (9) A requirement that all officers be familiar with the policy
24 and carry out the policy at all times unless directed by the chief,
25 sheriff, director, or other chief executive of the law enforcement
26 agency or other command-level officer to whom the chief executive
27 officer formally delegates this responsibility.

28 (10) A supplemental suspected hate crime report form providing
29 the information necessary for the law enforcement agency or the
30 prosecution agency to determine whether a hate crime has occurred
31 or whether to conduct a further investigation to make that
32 determination, and an instruction that responding officers complete
33 the form when ~~either of the following apply~~: *the officers have a*
34 *reasonable belief based upon the available evidence and*
35 *information, including the circumstances in subparagraphs (C)*
36 *through (H) of paragraph (3), that a hate crime may have been*
37 *committed*.

38 ~~(A) The officers have a reasonable suspicion that a hate crime~~
39 ~~occurred.~~

1 ~~(B) When the circumstances in subparagraphs (C) through (I)~~
2 ~~of paragraph (3) indicate it may be a hate crime.~~

3 (11) A schedule for providing the hate crime training, including,
4 but not limited to, that required by Section 13519.6 and any other
5 hate crime training certified by the Commission on Peace Officer
6 Standards and Training that the law enforcement agency selects.

7 ~~(12) A procedure for officers to document noncriminal hate~~
8 ~~incidents for crime prevention, law enforcement planning, and~~
9 ~~potential evidentiary purposes.~~

10 ~~(13) A requirement that, absent a more pressing violent crime~~
11 ~~emergency, officers respond immediately to a report of a hate~~
12 ~~crime in progress or in which the perpetrator may escape without~~
13 ~~a rapid response, regardless of whether the report comes from a~~
14 ~~victim, witness, or other person.~~

15 ~~(14)~~

16 (12) A requirement that, when an officer has reported a
17 suspected hate crime and has identified a suspect, the person or
18 unit of the agency responsible for determining whether the crime
19 was a hate crime shall contact the Federal Bureau of Investigation
20 and ask the bureau's assistance in searching publicly available
21 records concerning the suspect for any relevant evidence.

22 ~~(15)~~

23 (13) A requirement that, when an officer suspects multimitigation
24 criminal extremism, they report it to their agency's terrorism liaison
25 officers.

26 (14) *In adopting a hate crimes policy, each state and local law*
27 *enforcement agency shall seek to incorporate examples of*
28 *terminology that is specific to the communities they serve. For*
29 *example, given the nationwide surge of anti-Asian American and*
30 *Pacific Islander hate crimes beginning in 2020 and resulting from*
31 *rhetoric blaming China for COVID-19, agencies that serve Asian*
32 *American and Pacific Islander communities may include*
33 *terminology and slurs relating to the coronavirus as part of a hate*
34 *crime investigation.*

35 (b) (1) A law enforcement agency shall be deemed in
36 compliance with subdivision (a) if it adopts a policy including, but
37 not limited to, all the provisions of the Commission on Peace
38 Officer Standards and Training framework and model hate crime
39 policy, including the supplemental suspected hate crime report
40 form, called the "hate crime checklist" in the 2019 update, by April

1 1, 2023, and updates the agency's policy within six months of each
2 time the commission updates the framework and model policy.

3 (2) Any law enforcement agency that updates an existing hate
4 crimes policy or adopts a new hate crimes policy may include any
5 of the provisions of a model hate crime policy and other relevant
6 documents developed by the International Association of Chiefs
7 of Police that are relevant to California and consistent with state
8 law.

9 *(c) This section is intended to establish statewide minimum
10 practices, and shall not be construed to restrict a law enforcement
11 agency from implementing more precise or more stringent policies.*

12 SEC. 4. Section 422.9 of the Penal Code is amended to read:

13 422.9. Except as other provisions of state or federal law require:

14 (a) Every law enforcement agency and each state and local
15 agency shall use the definition of "hate crime" set forth in
16 subdivision (a) of Section 422.55 exclusively.

17 ~~(b) Every law enforcement agency and each state and local
18 agencies shall use the terms "hate crime incident" and "noncriminal
19 hate incident" as defined in Section 422.55 exclusively and shall
20 not use inexact terms such as "hate incident."~~

21 (e)

22 (b) Every law enforcement agency and each state and local
23 agency shall use the terms "characteristics" or "protected
24 characteristics" as defined in Section 422.55 exclusively and shall
25 not use misleading terms such as "protected classes" or "protected
26 groups."

27 SEC. 5. Section 13023 of the Penal Code is amended to read:

28 13023. (a) Subject to the availability of adequate funding, the
29 Attorney General, in consultation with subject matter experts, as
30 defined in Section 422.55, shall direct law enforcement agencies
31 to report to the Department of Justice, in a manner to be prescribed
32 by the Attorney General, any information that may be required
33 relative to hate crimes.

34 (b) In 2023, and whenever changes in law or in the Commission
35 on Peace Officer Standards and Training framework and model
36 policy require it, or whenever the Attorney General in consultation
37 of *with* subject matter experts deems it prudent, the information
38 required by subdivision (a) shall include the agency's hate crime
39 policy and the hate crime pamphlet required pursuant to Section
40 422.92.

1 (c) In every year, information required by subdivision (a) shall
2 also include any of the following that the agency failed to submit
3 in the previous year:

4 (1) Hate crime policies.

5 (2) Hate crime pamphlets.

6 (3) Any other information required by the Attorney General in
7 the previous year.

8 (d) On or before July 1 of each year, the Department of Justice
9 shall update the OpenJustice Web portal with the information
10 obtained from law enforcement agencies pursuant to this section.
11 The information shall include the names of agencies that have
12 complied with subdivision (a) and other relevant laws in the report
13 year and the names of any agencies that have failed to comply with
14 those laws. The information also shall include the names of any
15 agencies that failed to comply in the both the report year and the
16 previous year, regardless of whether any information is required
17 of compliant agencies in the report year. The department shall
18 submit its analysis of this information to the Legislature in the
19 manner described in subdivision (g) of Section 13010.

20 (e) For purposes of this section, “hate crime” has the same
21 meaning as in Section 422.55.

22 SEC. 6. Section 13519.6 of the Penal Code is amended to read:

23 13519.6. (a) The commission, in consultation with subject
24 matter experts, as defined in Section 422.55, shall develop
25 guidelines and a course of instruction and training for law
26 enforcement officers who are employed as peace officers, or who
27 are not yet employed as a peace officer but are enrolled in a training
28 academy for law enforcement officers, addressing hate crimes.
29 “Hate crimes,” for purposes of this section, has the same meaning
30 as in Section 422.55.

31 (b) The course shall make maximum use of audio and video
32 communication and other simulation methods and shall include
33 instruction in each of the following:

34 (1) Indicators of hate crimes.

35 (2) The impact of these crimes on the victim, the victim’s family,
36 and the community, and the assistance and compensation available
37 to victims.

38 (3) Knowledge of the laws dealing with hate crimes and the
39 legal rights of, and the remedies available to, victims of hate
40 crimes.

1 (4) Law enforcement procedures, reporting, and documentation
2 of hate crimes.

3 (5) Techniques and methods to handle incidents of hate crimes
4 in a professional manner.

5 (6) ~~Multimission criminal extremism, as defined in Section~~
6 ~~422.55, which means the nexus of certain hate crimes,~~
7 ~~antigovernment extremist crimes, anti-reproductive-rights crimes,~~
8 ~~and crimes committed in whole or in part because of the victim's~~
9 ~~actual or perceived homelessness, or status as a journalist.~~

10 (7) The special problems inherent in some categories of hate
11 crimes, including gender-bias crimes, disability-bias crimes,
12 including those committed against homeless persons with
13 disabilities, anti-immigrant crimes, anti-Sikh crimes, and anti-Arab
14 and anti-Islamic crimes, and techniques and methods to handle
15 these special problems.

16 (8) Preparation for, and response to, possible future anti-Asian,
17 anti-Hindu, anti-Sikh, anti-Arab/Middle Eastern, and anti-Islamic
18 hate crimewaves, and any other future hate crime waves that the
19 Attorney General, in consultation with subject matter experts,
20 determines are likely, and for which the Attorney General has
21 notified law enforcement agencies.

22 (c) The guidelines developed by the commission shall
23 incorporate the procedures and techniques specified in subdivision
24 (b), and shall include a framework and model hate crime policy.
25 The elements of the framework and model policy shall include,
26 but not be limited to, the following:

27 (1) A message from the law enforcement agency's chief
28 executive officer to the agency's officers and staff concerning the
29 importance of hate crime laws and the agency's commitment to
30 enforcement.

31 (2) The definition of "hate crime" in Section 422.55.

32 (3) References to hate crime statutes including Section 422.6.

33 (4) A title-by-title specific protocol that agency personnel are
34 required to follow, including, but not limited to, the following:

35 (A) Preventing and preparing for likely hate crimes by, among
36 other things, establishing contact with persons and communities
37 who are likely targets, and forming and cooperating with
38 community hate crime prevention and response networks.

39 (B) Responding to reports of hate crimes, including reports of
40 hate crimes committed under the color of authority.

1 (C) Accessing assistance, by, among other things, activating
2 the Department of Justice hate crime rapid response protocol when
3 necessary.

4 (D) Providing victim assistance and followup, including
5 community followup.

6 (E) Reporting.

7 (F) Each of the items Section 422.87 requires law enforcement
8 agencies to include in their hate crime policies.

9 (d) (1) The commission shall adopt revisions of, or additions
10 to, the framework and model policy only by a vote of the
11 commission following consultation with subject matter experts
12 and a public hearing before the commission.

13 (2) The framework and model policy are not regulations as
14 defined in Section 11342.600 of the Government Code.

15 (e) (1) The course of training leading to the basic certificate
16 issued by the commission shall include the course of instruction
17 described in subdivision (a).

18 (2) Every state law enforcement and correctional agency, and
19 every local law enforcement and correctional agency to the extent
20 that this requirement does not create a state-mandated local
21 program cost, shall provide its peace officers with the basic course
22 of instruction as revised pursuant to the act that amends this section
23 in the 2003–04 session of the Legislature, beginning with officers
24 who have not previously received the training. Correctional
25 agencies shall adapt the course as necessary.

26 (f) (1) The commission shall, subject to an appropriation of
27 funds for this purpose in the annual Budget Act or other statute,
28 for any basic course, incorporate the November 2017 video course
29 developed by the commission entitled “Hate Crimes: Identification
30 and Investigation,” as updated in August of 2020, and as updated
31 thereafter, or any successor video, into the basic course curriculum.

32 (2) The commission shall make the video course described in
33 paragraph (1) available to stream via the learning portal.

34 (3) Each peace officer shall, within one year of the commission
35 making the course available to stream via the learning portal, be
36 required to complete the November 2017 video facilitated course
37 developed by the commission entitled “Hate Crimes: Identification
38 and Investigation,” the course identified in paragraph (4), or any
39 other POST-certified hate crimes course via the learning portal or
40 in-person instruction.

1 (4) The commission, in consultation with subject matter experts
2 as defined in Section 422.55, shall develop and periodically update
3 an interactive course of instruction and training for in-service peace
4 officers on the topic of hate crimes and make the course available
5 via the learning portal. The course shall cover the fundamentals
6 of hate crime law and preliminary investigation of hate crime
7 incidents, and shall include updates on recent changes in the law,
8 hate crime trends, and best enforcement practices.

9 (5) The commission shall require the course described in
10 paragraph (3) to be taken by in-service peace officers every six
11 years.

12 (g) As used in this section, “peace officer” means any person
13 designated as a peace officer by Section 830.1 or 830.2.

14 ~~SEC. 7. Section 1 of Chapter 691 of the Statutes of 2021 is~~
15 ~~amended to read:~~

16 ~~SECTION 1. The Legislature finds and declares all the~~
17 ~~following:~~

18 ~~(a) (1) In 2018, the California State Auditor released a report~~
19 ~~entitled “Hate Crimes in California: Law Enforcement Has Not~~
20 ~~Adequately Identified, Reported, or Responded to Hate Crimes.”~~

21 ~~(2) The California State Auditor found that despite an increase~~
22 ~~in hate crimes in California since 2014, law enforcement has not~~
23 ~~been doing enough to identify, report, and respond to these crimes.~~

24 ~~(3) According to the Department of Justice’s annual report~~
25 ~~entitled “Hate Crime in California,” hate crime events increased~~
26 ~~31 percent from 1,015 in 2019 to 1,330 in 2020.~~

27 ~~(4) In 2021, the Southern Poverty Law Center tracked 838 active~~
28 ~~hate groups and found increased hate activity by individuals~~
29 ~~unaffiliated with any groups, increased spread of hate ideology,~~
30 ~~and, in some cases, affinity for violence in a growing number of~~
31 ~~persons with antigovernment extremist views and more~~
32 ~~traditionally mainstream populations.~~

33 ~~(5) Hate crimes and incidents against Asian Americans and~~
34 ~~Pacific Islanders (“APIs”) have surged in response to increased~~
35 ~~xenophobia and bigotry amidst the COVID-19 pandemic. The Stop~~
36 ~~API Hate coalition has reported receiving 3,795 incidents~~
37 ~~nationwide of hate, violence, harassment, and discrimination~~
38 ~~against APIs, most of which targeted women, from March 19,~~
39 ~~2020, to February 28, 2021. Similarly, the Center for the Study of~~
40 ~~Hate and Extremism released data in early March 2021 that showed~~

1 the number of anti-Asian hate crimes reported to police in
2 America's largest cities spiked 145 percent between 2019 and
3 2020. California in particular has seen a rise in hate-fueled violence
4 against Asian Americans, including recent brutal attacks against
5 elderly Asian Americans. The Department of Justice figures
6 showed that anti-Asian hate crime events more than doubled in
7 2020, rising from 43 in 2019 to 89 in 2020. The numbers that are
8 being reported and the incidents that are being publicized reflect
9 only a fraction of the number of hate crimes and incidents that
10 actually occur because of insufficient data collection and
11 underreporting. AAPI immigrant communities face particular
12 barriers to reporting due to insufficient language access.

13 (6) Many of the estimated 9,000,000 Californians with
14 disabilities, including disabilities caused by aging, are always at
15 high risk of becoming victims of hate crimes, often including
16 extraordinary sadism, and antidisability hate crimes in California
17 and nationally are justifiably called the invisible hate crimes. A
18 2017 United States Bureau of Justice Statistics survey of hate crime
19 victims estimated 40,000 antidisability hate crimes per year. This
20 figure is certainly an underestimation because antidisability hate
21 crime victims often do not recognize that the crimes they suffered
22 were hate crimes, those with serious disabilities often find it
23 difficult or impossible to report the crimes, and the estimate omits
24 crimes in hospices, nursing homes, group homes, prisons, jails,
25 and other institutions. Yet in 2019, law enforcement agencies
26 reported just 177 antidisability hate crimes to the Federal Bureau
27 of Investigation (FBI), less than 0.5 percent of the earlier estimate.
28 In California in 2020, law enforcement agencies reported just five
29 antidisability hate crimes.

30 (7) According to the FBI's annual hate crime statistics, in 2019,
31 California law enforcement agencies reported more hate crimes
32 nationwide than any other state, accounting for almost 14 percent
33 of all reported hate crimes nationwide, despite comprising only
34 12 percent of the population, and almost 40 percent more than the
35 second highest reporting state, New York.

36 (8) Hate crimes are notoriously underreported, both by victims
37 to law enforcement and by law enforcement to state departments
38 of justice and the FBI, so the actual number of victims and cases
39 is generally unknown.

1 (9) According to the FBI's 2019 statistics, 11 California cities
2 with populations of at least 100,000 affirmatively reported zero
3 hate crimes in their jurisdictions.

4 (10) Also according to the FBI's 2019 statistics, only 195
5 California law enforcement agencies reported at least one hate
6 crime, out of the 692 law enforcement agencies listed on the
7 Commission on Peace Officer Standards and Training's internet
8 website.

9 (11) The California State Auditor's report found that out of the
10 four law enforcement agencies reviewed, three failed to properly
11 identify some hate crimes. For example, for the years 2014 to 2016,
12 inclusive, the Los Angeles Police Department and the San
13 Francisco State University Police Department failed to correctly
14 identify 11 of the 30 cases the California State Auditor reviewed
15 as hate crimes.

16 (12) The four law enforcement agencies the California State
17 Auditor reviewed failed to report to the Department of Justice a
18 total of 97 hate crimes—about 14 percent of hate crimes identified.

19 (13) The California State Auditor's report noted that better
20 proactive guidance and oversight by the Department of Justice
21 will result in improved reporting of hate crime information.

22 (14) The Department of Justice's current reporting process does
23 not capture the geographic location where each hate crime
24 occurred, but only reports the agency that reported the crime.

25 (15) Of the 245 law enforcement agencies the California State
26 Auditor surveyed, more than 30 percent stated they do not use any
27 methods to encourage the public to report hate crimes.

28 (16) The California State Auditor noted that the Department of
29 Justice is "uniquely positioned to provide leadership for law
30 enforcement agencies' response to hate crimes" because of its
31 statutory responsibilities to collect, analyze, and report on hate
32 crimes.

33 (17) The California State Auditor recommended better law
34 enforcement policies to guide officers. Section 422.87 of the Penal
35 Code, effective January 1, 2019, requires many local law
36 enforcement agencies to adopt hate crime policies with specified
37 content, and Section 422.92 of the Penal Code requires all state
38 law enforcement agencies to adopt such policies. Yet as of January
39 1, 2022, some agencies had no such policies, while some others
40 had policies that fell far short of the statutory guidelines.

1 ~~(b) (1) Section 422.92 of the Penal Code requires every law~~
2 ~~enforcement agency to have a hate crimes brochure and to provide~~
3 ~~it to hate crime victims and witnesses. As of January 1, 2022, it~~
4 ~~was unknown whether all agencies did so and there was no~~
5 ~~statutory accountability mechanism to ensure that agencies comply~~
6 ~~with this law.~~

7 ~~(2) Section 13519.6 of the Penal Code, contingent on future~~
8 ~~funding, requires all law enforcement agencies to conduct specific~~
9 ~~hate crime training. As of January 1, 2022, there was no statutory~~
10 ~~accountability mechanism to ensure that agencies comply with~~
11 ~~this law.~~

12 ~~(3) Section 422.9 of the Penal Code, enacted in 2004, requires~~
13 ~~all agencies to use the statutory definition of “hate crime”~~
14 ~~exclusively. Yet, as of January 1, 2022, some law enforcement~~
15 ~~agencies still used narrower, noncompliant decisions, and there~~
16 ~~was no statutory accountability mechanism to ensure that agencies~~
17 ~~comply with this law.~~

18 ~~(e) (1) Section 422.87 of the Penal Code, effective January 1,~~
19 ~~2019, requires that any local law enforcement agency that updates~~
20 ~~an existing hate crimes policy or adopts a new hate crimes policy~~
21 ~~shall include, but not be limited to, the content of the model policy~~
22 ~~framework that the Commission on Peace Officer Standards and~~
23 ~~Training developed pursuant to Section 13519.6 of the Penal Code,~~
24 ~~and any content that the commission may revise or add in the~~
25 ~~future, including any response and reporting responsibilities.~~

26 ~~(2) The California State Auditor in 2018 recommended that law~~
27 ~~enforcement agencies use supplemental hate crime report forms~~
28 ~~so that responding officers can conduct initial investigations on~~
29 ~~the scene.~~

30 ~~(3) The Commission on Peace Officer Standards and Training’s~~
31 ~~model policy framework, effective in May 2019, includes such a~~
32 ~~supplemental report form, which it calls a “hate crime checklist.”~~

33 ~~(4) The Los Angeles Police Department in 2021 reported that~~
34 ~~use of the form had “saved many officer/detective work hours,”~~
35 ~~in addition to improving public safety.~~

36 ~~(5) Many agencies, as of January 1, 2022, had updated or~~
37 ~~adopted hate crime policies in the three years since adoption of~~
38 ~~paragraph (2) of subdivision (a) of Section 422.87 of the Penal~~
39 ~~Code. Yet some had not included the form in their policies, and~~
40 ~~there was no statutory accountability mechanism to ensure that~~

1 agencies comply with this law. For such agencies, the requirement
2 of the act that amended that section in 2020 that their policies
3 include the form created no state-mandated local cost.

4 (d) It is the intent of the Legislature in enacting this act to do
5 all of the following:

6 (1) ~~Enact clear, specific language to apply the provisions of~~
7 ~~existing law and the highest priority recommendations of the audit~~
8 ~~to all law enforcement agencies throughout the state as quickly as~~
9 ~~feasible.~~

10 (2) ~~Establish an effective accountability mechanism.~~

11 (3) ~~Minimize costs to law enforcement agencies by allowing~~
12 ~~them to meet all of the requirements of this act by utilizing~~
13 ~~materials that the Commission on Peace Officer Standards and~~
14 ~~Training has produced and will update in the future.~~

15 ~~SEC. 8.~~

16 *SEC. 7.* (a) The Legislature finds and declares all of the
17 following:

18 (1) Section 422.87 of the Penal Code, as amended by this act,
19 creates no costs to state law enforcement agencies because it is
20 declaratory of existing law in subdivision (c) of Section 13519.6
21 of the Penal Code.

22 (2) Section 422.87 of the Penal Code, as amended by this act,
23 minimizes state-mandated local costs to local law enforcement
24 agencies by allowing them to meet the requirements of that section
25 by adopting the Commission on Peace Officer Standards and
26 Training model hate crime policy and any updates of that policy
27 that the commission develops in the future.

28 (3) Section 13023 of the Penal Code, as amended by this act,
29 creates no state-mandated local costs to local law enforcement
30 agencies because all of the requirements of the amendments to
31 that section were within the authority of the Attorney General to
32 require prior to enactment of those amendments.

33 (4) As concerning the supplemental report form requirements,
34 this act creates no state-mandated local cost to any local law
35 enforcement agency that has adopted or revised a hate crime policy
36 on or after January 1, 2019, for reasons including, but not limited
37 to, those stated in subdivision (e) of Section 7 of this act. 2019.

38 (b) If the Commission on State Mandates determines that this
39 act contains costs mandated by the state, reimbursement to local
40 agencies and school districts for those costs shall be made pursuant

AB 1947

— 18 —

- 1 to Part 7 (commencing with Section 17500) of Division 4 of Title
- 2 2 of the Government Code.

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AB 1947

Freedom from Hate Crimes

Assemblymember
Phil Ting
 19TH DISTRICT



SUMMARY

In 2018, the State Auditor found that "law enforcement has not adequately identified, reported, or responded to hate crimes." AB 1947 follows the auditor's recommendations by requiring each law enforcement agency to adopt a hate crimes policy, including specific guidelines for recognizing, reporting, and responding to these crimes.

BACKGROUND

Hate crimes have surged in California and nationally since 2015, escalating more since the start of the COVID-19 pandemic and still further in 2021.

The most commonly reported types of hate crimes are those committed with a racial, ethnic, or nationality bias, followed by sexual orientation and religious biases.

The Asian American Pacific Islander (AAPI) community has been largely targeted amidst the pandemic. California in particular has seen a rise in hate-fueled violence against Asian Americans, including recent brutal attacks against elderly Asian Americans.

The Center for the Study of Hate and Extremism's preliminary 2021 data shows large increases in anti-AAPI hate crimes in major cities nationally, including 173% in LA and an astonishing 567% in San Francisco. Overall nationally, hate crimes were reported up another 11%, with African Americans remaining the most targeted community and a resurgence in anti-Semitic hate crimes.

The national coalition Stop AAPI Hate noted at least 931 hate incidents in the Bay Area alone in 2021, and nearly 11,000 incidents nationwide.

Despite the spike in reported cases, hate crimes are still notoriously underreported. For instance, 11 California cities with populations of at least 100,000 reported zero hate crimes in 2019. Anti-female and anti-disability hate crimes remain the most underreported in California.

The numbers reported and the incidents publicized reflect only a fraction of the actual numbers because of insufficient data collection and underreporting. This results in a significant lack of support and services needed within our communities, and instills fear among Californians.

THIS BILL

AB 1947 requires every law enforcement agency to adopt a detailed, specific policy instructing officers on how to identify, respond to, and report hate crimes.

It also requires agencies to submit their hate crime policies, brochures, and training schedules to the Department of Justice to ensure compliance.

This bill does not create or expand the definition of any crime, increase penalties for any crime, or preclude restorative justice sentencing for any crime.

SUPPORT

- The Arc & United Cerebral Palsy California Collaboration (sponsor)
- Asian Law Alliance (sponsor)
- California Asian Pacific American Bar Association (sponsor)
- California Alliance for Retired Americans (sponsor)
- California Association of Human Relations Organizations (sponsor)
- California Council of Churches IMPACT (sponsor)

AB 1947

Freedom from Hate Crimes

Assemblymember
Phil Ting
 19TH DISTRICT



- California Hawaii State Conference of the NAACP (sponsor)
- California League of United Latin American Citizens (LULAC) (sponsor)
- California Women's Law Center (sponsor)
- Center for the Study of Hate and Extremism, CSU San Bernardino (sponsor)
- Feminist Majority Foundation (sponsor)
- Hindu American Foundation (sponsor)
- National Japanese American Citizens League (sponsor)
- Sikh Coalition (sponsor)
- Alpha Resource Center
- The Arc San Francisco
- Asian Pacific Islander Legal Outreach
- BeChinatown
- California Catholic Conference
- California Community Living Network
- California Council of Behavioral Health Agencies
- California Democratic Party Senior Caucus
- California Foundation for Independent Living Centers
- California In-Home Supportive Services Consumer Alliance
- California La Raza Lawyers Association
- California Nurses Association
- California Rural Legal Assistance Foundation
- California Women's Law Center
- Coalition for Humane Immigrant Rights (CHIRLA)
- Council on American-Islamic Relations, California Chapter
- Compassion in Oakland
- Consumer Federation of California
- Dolores Huerta Foundation
- Easterseals Southern California
- Gray Panthers of San Francisco
- Islamic Networks Group (ING)
- Japanese American Citizens League, NCWNP
- Japanese Cultural and Community Center of Northern California
- Korean American Community Services in San Jose
- LEAD Filipino
- National Asian Pacific American Bar Association
- National Japanese American Historical Society
- Not in Our Town
- PathPoint
- Sacramento LGBT Community Center
- Salvador E. Alvarez Institute for Non-Violence
- Services Immigrant Rights and Education Network
- Sikh American Legal Defense and Education Fund (SALDEF)
- Stand with Asian Americans
- UDW/AFSCME Local 3930

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