

AMENDED IN SENATE AUGUST 19, 2004
AMENDED IN SENATE AUGUST 18, 2004
AMENDED IN SENATE JUNE 22, 2004
AMENDED IN ASSEMBLY APRIL 20, 2004
AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2428

Introduced by Assembly Member Chu

February 19, 2004

An act to amend and renumber Section 422.95 of, and to add Sections 422.865, 422.96, and 3053.4 to, the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2428, as amended, Chu. Hate crimes: release conditions.

Under existing law, a court may grant probation upon conviction of an offense, except in specified circumstances, and may impose conditions of continued probation as it may determine are fitting and proper. If a probationer is found to be in violation of a condition of probation, sentence may be imposed, or other conditions of probation, including additional time in jail, may be added. In the case of a person granted probation for specified offenses or sentence enhancing allegations that relate to interference with civil rights, terrorism involving civil rights or symbols of hate, or attacks on religious structures, existing law specifically authorizes certain conditions of probation, including racial or ethnic sensitivity training, as provided.

This bill would additionally authorize these conditions of probation for any offense against the person or property of another individual, private institution, or public agency committed because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation. This bill would also require a court that grants probation under any of these circumstances, absent compelling circumstances stated on the record, to make a protective order protecting the victim, or known immediate family or domestic partner of the victim, from further acts of violence, threats, stalking, or harassment by the probationer, including any stay-away conditions, and to make obedience of that order a condition of probation.

Existing law provides for a period of parole following commitment to state prison for a felony offense.

This bill would authorize the parole authority to require, as to persons released to parole for felony violations of the same offenses or sentence enhancing allegations specified and described above, that they complete a class or program on ethnic or racial sensitivity. It would further require that the parole authority order a parolee as condition of parole in these cases, absent compelling circumstances, to refrain from further acts of violence, threats, stalking, or harassment of the victim or the known immediate family or domestic partner of the victim, including stay-away conditions when appropriate.

Existing law provides that a person may be committed to a state hospital after being found not guilty of an offense by reason of insanity, and provides a procedure for finding that a person so committed has been restored to sanity. That procedure generally involves a release to outpatient status on the recommendation of the director of the treatment facility to which the patient was committed with the concurrence of the community program director, or release to a forensic conditional release program for one year after a court finds at a hearing regarding restoration of sanity that the person will not be a danger to others, as specified.

This bill would authorize a court or community program director to require a person on outpatient status or conditional release from an insanity commitment for any violation of the offenses specified and described above to complete a class or program on ethnic or racial sensitivity. It would require the court, absent compelling circumstances stated on the record, to make an order protecting the victim or specified



related parties from harassing acts and contacts by the person as a condition of outpatient release, as specified.

This bill would incorporate additional changes to the Penal Code, including a change to Section 422.95 of the Penal Code proposed by SB 1234, contingent upon the prior enactment of that bill.

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

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

1 SECTION 1. Section 422.865 is added to the Penal Code, to
2 read:

3 422.865 (a) In the case of any person who is committed to a
4 state hospital or other treatment facility under the provisions of
5 Section 1026 for any offense against the person or property of
6 another individual, private institution, or public agency because of
7 the victim's actual or perceived race, color, ethnicity, religion,
8 nationality, country of origin, ancestry, disability, gender, or
9 sexual orientation, including, but not limited to, offenses defined
10 in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any
11 hate crime, and then is either placed on outpatient status or
12 conditional release from the state hospital or other treatment
13 facility, the court or community program director may order that
14 the defendant be required as a condition of outpatient status or
15 conditional release to complete a class or program on racial or
16 ethnic sensitivity, or other similar training in the area of civil
17 rights, or a one-year counseling program intended to reduce the
18 tendency toward violent and antisocial behavior if that class,
19 program, or training is available and was developed or authorized
20 by the court or local agencies in cooperation with organizations
21 serving the affected community.

22 (b) In the case of any person who is committed to a state
23 hospital or other treatment facility under the provisions of Section
24 1026 for any offense against the person or property of another
25 individual, private institution, or public agency committed
26 because of the victim's actual or perceived race, color, ethnicity,
27 religion, nationality, country of origin, ancestry, disability, gender,
28 or sexual orientation, including, but not limited to, offenses
29 defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or
30 for any hate crime, and then is either placed on outpatient status or



1 conditional release from the state hospital or other treatment
2 facility, the court, absent compelling circumstances stated on the
3 record, shall make an order protecting the victim, or known
4 immediate family or domestic partner of the victim, from further
5 acts of violence, threats, stalking, or harassment by the defendant,
6 including any stay-away conditions as the court deems
7 appropriate, and shall make obedience of that order a condition of
8 the defendant’s outpatient status or conditional release.

9 (c) It is the intent of the Legislature to encourage state agencies
10 and treatment facilities to establish education and training
11 programs to prevent violations of civil rights and hate crimes.

12 SEC. 2. Section 422.95 of the Penal Code is amended to read:

13 422.95. (a) In the case of any person who is granted probation
14 for any offense against the person or property of another
15 individual, private institution, or public agency, committed
16 because of the victim’s actual or perceived race, color, ethnicity,
17 religion, nationality, country of origin, ancestry, disability, gender,
18 or sexual orientation, including, but not limited to, offenses
19 defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the court,
20 absent compelling circumstances stated on the record, shall make
21 an order protecting the victim, or known immediate family or
22 domestic partner of the victim, from further acts of violence,
23 threats, stalking, or harassment by the defendant, including any
24 stay-away conditions the court deems appropriate, and shall make
25 obedience of that order a condition of the defendant’s probation.
26 In these cases, the court may also order that the defendant be
27 required to do one or more of the following as a condition of
28 probation:

29 (1) Complete a class or program on racial or ethnic sensitivity,
30 or other similar training in the area of civil rights, or a one-year
31 counseling program intended to reduce the tendency toward
32 violent and antisocial behavior if that class, program, or training
33 is available and was developed or authorized by the court or local
34 agencies in cooperation with organizations serving the affected
35 community.

36 (2) Make payments or other compensation to a
37 community-based program or local agency that provides services
38 to victims of hate violence.



1 (3) Reimburse the victim for reasonable costs of counseling
2 and other reasonable expenses that the court finds are the direct
3 result of the defendant's acts.

4 (b) Any payments or other compensation ordered under this
5 section shall be in addition to restitution payments required under
6 Section 1203.04, and shall be made only after that restitution is
7 paid in full.

8 (c) It is the intent of the Legislature to encourage counties,
9 cities, and school districts to establish education and training
10 programs to prevent violations of civil rights and hate crimes.

11 SEC. 2.1. Section 422.95 of the Penal Code is amended and
12 renumbered to read:

13 422.85. (a) In the case of any person who is convicted of any
14 offense against the person or property of another individual,
15 private institution, or public agency, committed because of the
16 victim's actual or perceived race, color, ethnicity, religion,
17 nationality, country of origin, ancestry, disability, gender, or
18 sexual orientation, including, but not limited to offenses defined
19 in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any
20 hate crime, the court, absent compelling circumstances stated on
21 the record, shall make an order protecting the victim, or known
22 immediate family or domestic partner of the victim, from further
23 acts of violence, threats, stalking, or harassment by the defendant,
24 including any stay-away conditions the court deems appropriate,
25 and shall make obedience of that order a condition of the
26 defendant's probation. In these cases the court may also order that
27 the defendant be required to do one or more of the following as a
28 condition of probation:

29 (1) Complete a class or program on racial or ethnic sensitivity,
30 or other similar training in the area of civil rights, or a one-year
31 counseling program intended to reduce the tendency toward
32 violent and antisocial behavior if that class, program, or training
33 is available and was developed or authorized by the court or local
34 agencies in cooperation with organizations serving the affected
35 community.

36 (2) Make payments or other compensation to a
37 community-based program or local agency that provides services
38 to victims of hate violence.



1 (3) Reimburse the victim for reasonable costs of counseling
2 and other reasonable expenses that the court finds are the direct
3 result of the defendant’s acts.

4 (b) Any payments or other compensation ordered under this
5 section shall be in addition to restitution payments required under
6 Section 1203.04, and shall be made only after that restitution is
7 paid in full.

8 SEC. 3. Section 422.96 is added to the Penal Code, to read:

9 422.96. (a) In the case of any person who is committed to a
10 state hospital or other treatment facility under the provisions of
11 Section 1026 for any offense against the person or property of
12 another individual, private institution, or public agency because of
13 the victim’s actual or perceived race, color, ethnicity, religion,
14 nationality, country of origin, ancestry, disability, gender, or
15 sexual orientation, including, but not limited to, offenses defined
16 in Section 422.6, 422.7, 422.75, 594.3, or 11411, and then is either
17 placed on outpatient status or conditional release from the state
18 hospital or other treatment facility, the court or community
19 program director may order that the defendant be required as a
20 condition of outpatient status or conditional release to complete a
21 class or program on racial or ethnic sensitivity, or other similar
22 training in the area of civil rights, or a one-year counseling
23 program intended to reduce the tendency toward violent and
24 antisocial behavior if that class, program, or training is available
25 and was developed or authorized by the court or local agencies in
26 cooperation with organizations serving the affected community.

27 (b) In the case of any person who is committed to a state
28 hospital or other treatment facility under the provisions of Section
29 1026 for any offense against the person or property of another
30 individual, private institution, or public agency committed
31 because of the victim’s actual or perceived race, color, ethnicity,
32 religion, nationality, country of origin, ancestry, disability, gender,
33 or sexual orientation, including, but not limited to, offenses
34 defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, and then
35 is either placed on outpatient status or conditional release from the
36 state hospital or other treatment facility, the court, absent
37 compelling circumstances stated on the record, shall make an
38 order protecting the victim, or known immediate family or
39 domestic partner of the victim, from further acts of violence,
40 threats, stalking, or harassment by the defendant, including any



1 stay-away conditions as the court deems appropriate, and shall
2 make obedience of that order a condition of the defendant's
3 outpatient status or conditional release.

4 (c) It is the intent of the Legislature to encourage state agencies
5 and treatment facilities to establish education and training
6 programs to prevent violations of civil rights and hate crimes.

7 SEC. 4. Section 3053.4 is added to the Penal Code, to read:

8 3053.4. In the case of any person who is released from prison
9 on parole or after serving a term of imprisonment for any felony
10 offense committed against the person or property of another
11 individual, private institution, or public agency because of the
12 victim's actual or perceived race, color, ethnicity, religion,
13 nationality, country of origin, ancestry, disability, gender, or
14 sexual orientation, including, but not limited to, offenses defined
15 in Section 422.6, 422.7, 422.75, 594.3, or 11411, the parole
16 authority, absent compelling circumstances, shall order the
17 defendant as a condition of parole to refrain from further acts of
18 violence, threats, stalking, or harassment of the victim, or known
19 immediate family or domestic partner of the victim, including
20 stay-away conditions when appropriate. In these cases, the parole
21 authority may also order that the defendant be required as a
22 condition of parole to complete a class or program on racial or
23 ethnic sensitivity, or other similar training in the area of civil
24 rights, or a one-year counseling program intended to reduce the
25 tendency toward violent and antisocial behavior if that class,
26 program, or training is available and was developed or authorized
27 by the court or local agencies in cooperation with organizations
28 serving the affected community.

29 SEC. 5. (a) Section 1 of this bill shall only become operative
30 if (1) both this bill and SB 1234 are enacted and become effective
31 on or before January 1, 2005, (2) this bill adds Section 422.96 to,
32 and SB 1234 amends and renumbers Section 422.95 of the Penal
33 Code, and (3) this bill is enacted after ~~AB 1234~~ SB 1234, in which
34 case Section 3 of this bill shall not become operative.

35 (b) Section 2.1 of this bill incorporates amendments to Section
36 422.95 of the Penal Code proposed by both this bill and SB 1234.
37 It shall only become operative if (1) both bills are enacted and
38 become effective on or before January 1, 2005, (2) this bill
39 amends, and SB 1234 amends and renumbers Section 422.95 of



- 1 the Penal Code, and (3) this bill is enacted after SB 1234, in which
- 2 case Section 2 of this bill shall not become operative.

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