

Assembly Bill No. 2428

CHAPTER 809

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.

[Approved by Governor September 27, 2004. Filed with Secretary of State September 27, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2428, 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.

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

SECTION 1. Section 422.865 is added to the Penal Code, to read:
422.865. (a) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 for any offense against the person or property of another individual, private institution, or public agency because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court or community program director may order that the defendant be required as a condition of outpatient status or conditional release to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was



developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

(b) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 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, including, but not limited to, offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court, absent compelling circumstances stated on the record, shall make an 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 defendant, including any stay-away conditions as the court deems appropriate, and shall make obedience of that order a condition of the defendant's outpatient status or conditional release.

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

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

422.95. (a) In the case of any person who is granted 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, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the court, absent compelling circumstances stated on the record, shall make an 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 defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant's probation. In these cases, the court may also order that the defendant be required to do one or more of the following as a condition of probation:

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



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

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

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

(c) 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.

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

422.85. (a) In the case of any person who is convicted of 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, including, but not limited to offenses defined in Section 302, 423.2, 594.3, 11411, 11412, or 11413, or for any hate crime, the court, absent compelling circumstances stated on the record, shall make an 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 defendant, including any stay-away conditions the court deems appropriate, and shall make obedience of that order a condition of the defendant's probation. In these cases the court may also order that the defendant be required to do one or more of the following as a condition of probation:

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

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

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



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

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

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

(b) In the case of any person who is committed to a state hospital or other treatment facility under the provisions of Section 1026 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, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, and then is either placed on outpatient status or conditional release from the state hospital or other treatment facility, the court, absent compelling circumstances stated on the record, shall make an 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 defendant, including any stay-away conditions as the court deems appropriate, and shall make obedience of that order a condition of the defendant's outpatient status or conditional release.

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

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

3053.4. In the case of any person who is released from prison on parole or after serving a term of imprisonment for any felony offense committed against the person or property of another individual, private



institution, or public agency because of the victim's actual or perceived race, color, ethnicity, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, including, but not limited to, offenses defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the parole authority, absent compelling circumstances, shall order the defendant as a condition of parole to refrain from further acts of violence, threats, stalking, or harassment of the victim, or known immediate family or domestic partner of the victim, including stay-away conditions when appropriate. In these cases, the parole authority may also order that the defendant be required as a condition of parole to complete a class or program on racial or ethnic sensitivity, or other similar training in the area of civil rights, or a one-year counseling program intended to reduce the tendency toward violent and antisocial behavior if that class, program, or training is available and was developed or authorized by the court or local agencies in cooperation with organizations serving the affected community.

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

(b) Section 2.1 of this bill incorporates amendments to Section 422.95 of the Penal Code proposed by both this bill and SB 1234. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) this bill amends, and SB 1234 amends and renumbers Section 422.95 of the Penal Code, and (3) this bill is enacted after SB 1234, in which case Section 2 of this bill shall not become operative.

