Senate Bill No. 911

CHAPTER 876

An act to amend Section 50050 of the Government Code, and to amend Sections 422.75, 422.95, 1547, 2085.5, and 11413 of the Penal Code, relating to hate crimes.

[Approved by Governor October 13, 1995. Filed with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 911, Marks. Hate crimes: probation: rewards.

(1) Under existing law, it is an offense for a person to willfully injure, intimidate, interfere with, oppress, or threaten a person in the free exercise or enjoyment of any right or privilege secured to him or her, or to commit a crime against a person or property for one of those purposes, because of the person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. In addition, it is unlawful for any person to knowingly commit an act of vandalism to a religious institution. Further, it is unlawful for any person to place or display a sign, symbol, emblem, or other physical impression on the private property of another for the purpose of terrorizing the owner or occupant of that property. Each of these offenses is subject to specific fines and imprisonment terms.

This bill would specify that if probation is granted to a person convicted of committing any of the above acts, the court may require the defendant to complete a counseling program intended to reduce the tendency towards violent and anti-social behavior. The bill also would authorize a court to impose certain conditions of probation relating to restitution to the victim or community, in lieu of a fine. Because these provisions would impose additional costs on local government, the bill would create a state-mandated local program.

This bill would provide that a person who commits a felony or attempts to commit a felony against the property of a public agency or private institution or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group that has any of those characteristics shall receive an additional term of imprisonment of 1, 2, or 3 years, at the court's discretion. Because these provisions would create a new crime, the bill would impose a state-mandated local program.

(2) Under existing law, the Governor may offer a reward of not more than $50,000 for information leading to the arrest and conviction of persons who have committed any of several specified acts.

This bill would add to that list of acts a felony that is committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation if the act resulted in serious bodily injury or in property damage of more than $10,000, or the act of placing or displaying a sign, mark, symbol, emblem, or other physical impression on the private property of another for the purpose of terrorizing the owner or occupant of that property, under specified circumstances.

(3) Under existing law, any person who explodes, ignites, or attempts to explode or ignite any destructive device or explosive, or who commits arson on or about any of several specified places, for the purpose of terrorizing another, or in reckless disregard of terrorizing another, is guilty of a felony.

This bill would add to that list of places any private property, if the property is targeted because of the race, color, religion, ancestry, national origin, disability, gender, or sexual orientation of the owner or occupant of the property. Because the bill would expand the scope of an existing crime, it would impose a state-mandated local program.

(4) Existing law, which took effect as an urgency statute on August 3, 1995 (Ch. 313, Stats. 1995), authorizes the Director of Corrections to collect from a parolee any moneys owing on a restitution order or a restitution fine, and requires the director to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund. Existing law authorizes the director to deduct and retain from any money collected from parolees an administrative fee totaling 10% of any amount transferred to the State Board of Control.

SB 1095, which has been enacted (Ch. 377, Stats. 1995) and will supersede existing law on January 1, 1996, would require instead the director, in any case in which a prisoner owes a restitution order or a restitution fine, to deduct specified amounts from the wages and trust account deposits of the prisoner, and to transfer those amounts to the State Board of Control for direct payment to the victim or deposit in the Restitution Fund.

This bill would not make any changes to existing law. The bill would reenact Section 2085.5 of the Penal Code, as amended by Chapter 313 of the Statutes of 1995, and would thereby prevent the changes in Section 2085.5 of the Penal Code proposed by SB 1095 and described above from becoming operative.

(5) Existing law provides that money held by a local agency, excluding restitution to victims, becomes the property of the local agency if not claimed within 3 years. Existing law requires money representing restitution collected on behalf of victims to be deposited into the Restitution Fund after the expiration of the 3-year period.

This bill would require this money to be either deposited into the Restitution Fund or used by the local agency for purposes of victim

services. The bill also would incorporate additional changes in Section 50050 of the Government Code enacted by SB 481 (Ch. 105, Stats. 1995), but which were superseded by the enactment of AB 817, which took effect as an urgency statute on August 3, 1995 (Ch. 313, Stats. 1995).

(6) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains certain costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions. However, the bill would provide that no reimbursement is required by this act for other costs for a specified reason.

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

SECTION 1. Section 50050 of the Government Code, as amended by Chapter 313 of the Statutes of 1995, is amended to read:

50050. For purposes of this article, ‘‘local agency’’ includes all districts. Except as otherwise provided by law, money, excluding restitution to victims, that is not the property of a local agency that remains unclaimed in its treasury or in the official custody of its officers for three years is the property of the local agency after notice if not claimed or if no verified complaint is filed and served. At any time after the expiration of the three-year period, the treasurer of the local agency may cause a notice to be published once a week for two successive weeks in a newspaper of general circulation published in the local agency. Money representing restitution collected on behalf of victims shall be either deposited into the Restitution Fund or used by the local agency for purposes of victim services after the expiration of the three-year period. However, with respect to moneys deposited with the county treasurer pursuant to Section 7663 of the Probate Code, this three-year period to claim money held by a local agency is extended for an infant or person of unsound mind until one year from the date his or her disability ceases.

For purposes of this section, ‘‘infant’’ and ‘‘person of unsound mind’’ have the same meaning as given to those terms as used in Section 1441 of the Code of Civil Procedure.

SEC. 1.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim’s race, color, religion, nationality, country of

origin, ancestry, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

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 defined in Section 422.6, 422.7, 422.75, 594.3, or 11411, the court may order that the defendant be required to do one or all 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 anti-social 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) Be required to 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. 3. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than fifty thousand dollars ($50,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable by death.

(3) Any person engaged in the robbery or hijacking of, or any attempt to rob or hijack, any person upon or in charge of, in whole or in part, any public conveyance engaged at the time in carrying passengers within this state.

(4) Any person who attempts to murder either in the first or second degree, assaults with a deadly weapon, or inflicts serious bodily harm upon a peace officer or firefighter who is acting in the line of duty.

(5) Any person who has committed a crime involving the burning or bombing of public or private property, including any public hospital housed in a privately owned facility.

(6) Any person who has committed a crime involving the burning or bombing of any private hospital. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the hospital, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(8) Any person who commits a violation of Section 207.

(9) Any person who has committed a crime involving the burning or bombing of any bookstore or public or private library not subject to Section 11413. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the bookstore or library, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a bookstore or public or private library, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(10) Any person who commits a violation of Section 454 or 463.

(11) Any person who willfully and maliciously sets fire to, or who attempts to willfully and maliciously set fire to, any property that is included within a hazardous fire area designated by the State Board of Forestry pursuant to Section 4252 of the Public Resources Code or by the Director of Forestry and Fire Protection pursuant to Section 4253 of the Public Resources Code, if the fire, or attempt to set a fire, results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage.

(12) Any person who has committed, or is charged with the commission of, a felony that is punishable under Section 422.75 and

that resulted in serious bodily injury or in property damage of more than ten thousand dollars ($10,000).

(13) Any person who commits an act that violates Section 11411, if the Governor determines that the act is one in a series of similar or related acts committed in violation of that section by the same person or group.

(b) The Governor may offer a reward of not more than one hundred thousand dollars ($100,000) for information leading to the arrest and conviction of any person who kills a peace officer or firefighter who is acting in the line of duty.

(c) The reward shall be paid to the person giving the information, immediately upon the conviction of the person so arrested.

(d) As used in this section, ''hijacking'' means an unauthorized person causing, or attempting to cause, by violence or threat of violence, a public conveyance to go to an unauthorized destination.

SEC. 4. Section 2085.5 of the Penal Code, as amended by Chapter 313 of the Statutes of 1995, is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (f) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (a) or (b). The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law, and shall transfer that amount to the State Board of Control for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a restitution fine, subject to an order, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victims of Crime Program, the director shall transfer that amount to the State Board of Control for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victims of Crime Program. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the State Board of Control pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may

transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

(i) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

SEC. 4.5. Section 11413 of the Penal Code is amended to read:

11413. (a) Any person who explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or who commits arson, in or about any of the places listed in subdivision (b), for the purpose of terrorizing another or in reckless disregard of terrorizing another is guilty of a felony, and shall be punished by imprisonment in the state prison for three, five, or seven years, and a fine not exceeding ten thousand dollars ($10,000).

(b) Subdivision (a) applies to the following places:

(1) Any health facility licensed under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, or any place where medical care is provided by a licensed health care professional.

(2) Any church, temple, synagogue, or other place of worship.

(3) The buildings, offices, and meeting sites of organizations that counsel for or against abortion or among whose major activities are lobbying, publicizing, or organizing with respect to public or private issues relating to abortion.

(4) Any place at which a lecture, film-showing, or other private meeting or presentation that educates or propagates with respect to abortion practices or policies, whether on private property or at a meeting site authorized for specific use by a private group on public property, is taking place.

(5) Any bookstore or public or private library.

(6) Any building or facility designated as a courthouse.

(7) The home or office of a judicial officer.

(8) Any building or facility regularly occupied by county probation department personnel in which the employees perform official duties of the probation department.

(9) 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.

(c) As used in this section, ''judicial officer'' means a magistrate, judge, justice, commissioner, referee, or any person appointed by a court to serve in one of these capacities, of any state or federal court located in this state.

(d) As used in this section, ''terrorizing'' means to cause a person of ordinary emotions and sensibilities to fear for personal safety.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs that may be incurred by a local agency or school district because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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