

ASSEMBLY BILL

No. 412

Introduced by Assembly Member Carter

February 23, 2009

An act to amend Section 422.6 of the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 412, as introduced, Carter. Hate crimes: nooses.

Existing law provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. Violation of these provisions is punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both the above imprisonment and fine, and a minimum of community service, not to exceed 400 hours, as specified.

This bill would additionally provide that no person, whether or not acting under color of law, shall maliciously either hang or refuse to remove a noose at any school, park, place of employment, or public venue. Violation of these provisions would be subject to the punishment specified above.

By changing the definition of an existing crime, this bill would impose 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 no reimbursement is required by this act for a specified reason.

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. The Legislature finds and declares the following:

2 (a) Hanging a noose is directly correlated with America's history
3 of racial hatred and murder, representing not only a threat to
4 African American life and safety, but causing further psychological
5 and emotional trauma as well, and noose hanging is still happening
6 now.

7 (b) There are 2,805 documented victims of lynch mob killings
8 between 1882 and 1930 in 10 southern states. The vast majority
9 of lynch victims were African American. Of these black victims,
10 94 percent died in the hands of white lynch mobs. The scale of
11 this carnage means that, on average, a black man, woman, or child
12 was murdered nearly once a week, every week, between 1882 and
13 1930 by a hate-driven lynch mob.

14 (c) The lynching era encompasses nearly five decades between
15 the end of Reconstruction and the beginning of the Great
16 Depression. Although lynchings and mob killings occurred before
17 1880, notably during early Reconstruction when blacks were
18 enfranchised, radical racism and mob violence peaked during the
19 1890s in a surge of terrorism that extended well into the 20th
20 century.

21 (d) In addition to the punishment of specific criminal offenders,
22 mob lynching atrocities against African Americans in the American
23 South served to maintain social control over the black population
24 through terrorism; suppress, eliminate, or neutralize black
25 competition for economic, political, and social rewards; stabilize
26 the white class structure and preserve the privileged status of the
27 white aristocracy; eradicate specific persons accused of crimes
28 against the white community; serve as a mechanism of
29 state-sanctioned terrorism designed to maintain a degree of leverage

1 over the African American population; and serve as a symbolic
2 manifestation of the unity of white supremacy.

3 (e) The documented reasons for African American lynchings
4 included, but were not limited to, acting suspiciously, gambling,
5 adultery, race hatred, race troubles, improper conduct with white
6 women, arguing with a white man, resisting a mob, inflammatory
7 language, informing, being obnoxious, spreading disease, insulting
8 a white man, insulting a white woman, suing a white man,
9 insurrection, courting white women, testifying against a white
10 man, living with a white woman, defending an alleged rapist,
11 demanding respect, miscegenation, trying to vote, disorderly
12 conduct, mistaken identity, unpopularity, eloping with a white
13 woman, unruly remarks, entering a white woman's room, using
14 obscene language, being a peeping Tom, violating quarantine,
15 voting for the wrong party, frightening white women, and
16 membership in a civil rights organization.

17 (g) Given this history, to a reasonable person, the display of a
18 noose at a school, park, place of employment, or other public venue
19 amounts to a direct and immediate threat of force that would
20 intimidate persons based on racial characteristics.

21 SEC. 2. Section 422.6 of the Penal Code is amended to read:

22 422.6. (a) No person, whether or not acting under color of law,
23 shall by force or threat of force, willfully injure, intimidate,
24 interfere with, oppress, or threaten any other person in the free
25 exercise or enjoyment of any right or privilege secured to him or
26 her by the Constitution or laws of this state or by the Constitution
27 or laws of the United States in whole or in part because of one or
28 more of the actual or perceived characteristics of the victim listed
29 in subdivision (a) of Section 422.55.

30 (b) No person, whether or not acting under color of law, shall
31 knowingly deface, damage, or destroy the real or personal property
32 of any other person for the purpose of intimidating or interfering
33 with the free exercise or enjoyment of any right or privilege secured
34 to the other person by the Constitution or laws of this state or by
35 the Constitution or laws of the United States, in whole or in part
36 because of one or more of the actual or perceived characteristics
37 of the victim listed in subdivision (a) of Section 422.55.

38 (c) *No person, whether or not acting under color of law, shall*
39 *maliciously either hang or refuse to remove a noose at any school,*
40 *park, place of employment, or public venue.*

1 ~~(e)~~

2 ~~(d)~~ Any person convicted of violating subdivision (a)~~-or~~, (b),
3 ~~or (c)~~ shall be punished by imprisonment in a county jail not to
4 exceed one year, or by a fine not to exceed five thousand dollars
5 (\$5,000), or by both the above imprisonment and fine, and the
6 court shall order the defendant to perform a minimum of
7 community service, not to exceed 400 hours, to be performed over
8 a period not to exceed 350 days, during a time other than his or
9 her hours of employment or school attendance. However, no person
10 may be convicted of violating subdivision (a) based upon speech
11 alone, except upon a showing that the speech itself threatened
12 violence against a specific person or group of persons and that the
13 defendant had the apparent ability to carry out the threat.

14 ~~(d)~~

15 ~~(e)~~ Conduct that violates this and any other provision of law,
16 including, but not limited to, an offense described in Article 4.5
17 (commencing with Section 11410) of Chapter 3 of Title 1 of Part
18 4, may be charged under all applicable provisions. However, an
19 act or omission punishable in different ways by this section and
20 other provisions of law shall not be punished under more than one
21 provision, and the penalty to be imposed shall be determined as
22 set forth in Section 654.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.