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HATE CRIME FAQs CALIFORNIA

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Note: This guide is not exhaustive. Situations or inquiries may arise that are not answered below. In those circumstances, please call 844-9-NO-HATE.

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1. What is a hate crime or hate incident?

A hate crime is generally defined as a crime against a person or property that is motivated by bias, prejudice, or hatred toward the personal, or perceived personal, characteristics of a victim, including: race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.

The definition of a hate crime differs from state to state, but always includes an underlying crime.¹ Several states do not have separate statutes for crimes motivated by hate, but at a minimum, most states have enhanced penalties for crimes motivated by hatred based upon the above characteristics. Furthermore, if state and local authorities do not sufficiently protect victims of hate crimes, then the federal government may step in and prosecute hate crime violations.

California's hate crime definition closely resembles the general definition above. In California, a hate crime is defined as a "criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: (1) disability; (2) gender; (3) nationality; (4) race or ethnicity; (5) religion; (6) sexual orientation; or (7) association with a person or group with one or more of these actual or perceived characteristics."²

A hate incident is based on the same behaviors and motivations as a hate crime, but does not rise to the level of a crime. For example, you may be a victim of hate speech, which, depending on the circumstances, may not constitute a crime (and may be protected under the First Amendment), but which may constitute a hate incident.

2. I believe I was the victim of a hate crime or hate incident. What should I do?

If you think you may be a victim of a hate crime or hate incident, you should immediately take the following three steps:

STEP 1 - - REPORT IT

For emergencies:

- If you (or others) have been injured or fear for your safety, call 911 immediately.
- If you are uncomfortable calling 911 or local law enforcement, consider calling the local United States Attorney, the local FBI Field Office, or the State Attorney General's office to report the offense. Understand, however, that these authorities may not respond as quickly as local law enforcement responding to a 911 call.
- Obtain medical attention if necessary.

For non-emergencies:

- If a non-emergency, call your local police station, or visit your local police office or federal law enforcement office as soon as possible to report the offense.
- If you are not comfortable calling law enforcement, consider calling a trusted community or legal services organization. You can call 1-844-9-NO-HATE to be connected to a local organization.

Follow-up and key things to remember for both emergencies and non-emergencies:

- Ensure that a police report is filed regarding the offense and obtain a copy of the report (which should include the responding officer's name and badge number).
- Request that the police report indicate that the offense may have been a hate crime or a hate incident.
- File the report with local law enforcement, the State Attorney General's office, and federal law enforcement.
- For additional support and documentation, also report it to 844-9-NO HATE.

STEP 2 - - GATHER INFORMATION

- Preserve any evidence and take photographs of the evidence. For example, do not remove graffiti but instead, take photographs of the graffiti. Do not delete electronic correspondence (e.g., text messages, emails, social media posts, etc.), including your own. If you decide to involve law enforcement, you should preserve all evidence as directed by law enforcement.
- Document the experience in writing as soon as possible after the offense, including any specific words used during the offense. Record all your thoughts.
- Record any information you can remember about the perpetrator, including approximate age, height, weight, gender, race, clothing and any other distinguishing characteristics.
- Obtain contact information (names, addresses, and telephone numbers) of any other victims or witnesses to the offense.

STEP 3 - - GET ADDITIONAL SUPPORT

- Find support in the community -- through friends and family, victims' organizations, advocacy or community groups, religious organizations, legal groups, professional counseling, etc.

- Consider seeking legal representation.

Remember, you can always contact 1-844-9-NO-HATE.

3. Does California have a state hate crime law?

Yes, California does have a state hate crime law. Section 422.6 of the California Penal Code prohibits any person from interfering with the civil rights of another “because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.”³ In other words, if someone interferes with your civil rights by force, threat, or intimidation, or if someone knowingly defaces, damages or destroys your property because of your “disability, gender, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics,” then that person may be guilty of a hate crime under California law.

4. Who is protected under California’s hate crime law?

California’s hate crime law protects any person who is the victim of a crime because of his or her actual or perceived:

- Disability;
- Gender;
- Nationality;
- Race or ethnicity;
- Religion;
- Sexual Orientation; or
- Association with a person or group with one or more of these actual or perceived characteristics.

California law provides very specific definitions for each one of these characteristics.⁴ For example, “gender” is defined as a person’s “sex, and includes a person’s gender identity and gender expression. ‘Gender expression’ means a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.”⁵

5. Someone damaged my property and it appears to have been motivated by bias, prejudice, or hatred against a certain social group (e.g., a swastika, derogatory terms, etc). What are California’s relevant laws?

California has two laws that you may turn to if someone damages your property because of bias, prejudice, or hatred. First, California’s hate crime law, discussed under Question 3, provides wide protection to your real and personal property. The hate crime law prohibits any person from “knowingly defacing, damaging or destroying another’s real or personal property because of a person’s characteristics.”⁶

The second law, Cal. Penal Code § 11413, is much more specific. It applies only to certain protected places, and also only applies to a specific type of damage—damage

caused by destructive devices or explosives. Under this law, if someone “explodes, ignites, or attempts to explode or ignite any destructive device or any explosive, or commits arson” on your private property because of your personal characteristics and the person used the destructive device or explosive “for the purpose of terrorizing” you, then that person may be guilty of a felony.⁷

Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

6. Someone attacked me or a family member. The attack appears to have been motivated by bias, prejudice, or hatred against a certain social group (e.g., before attacking, the perpetrator shouted “Go home!”). What are California’s relevant laws?

California’s hate crime law, Cal. Penal Code § 422.6, described under Question 2, addresses attacks motivated by bias, prejudice, or hatred. Again, under this law, it is unlawful for any person to interfere with your civil rights by force, threat, or intimidation.

In addition, California has various penalty enhancement laws that provide increased punishments for perpetrators of common crimes motivated by bias, prejudice, or hatred. For example, if you were physically attacked by another individual, that would mostly likely be considered battery—a common crime. But, if you were attacked by another individual and that individual attacked you because of your race or nationality, then that battery may carry with it a hate crime penalty enhancement, and your attacker may face a longer than normal prison sentence. In California the following penalty enhancement laws may be used for hate crimes:

- Cal. Penal Code § 190.03 – Imposition of life without possibility of parole if person commits first-degree murder that is a hate crime

This section provides that “a person who commits first-degree murder that is a hate crime shall be punished by imprisonment in the state prison for life without the possibility of parole.”

- Cal. Penal Code § 190.2(a)(16) – Imposition of death or life without parole if victim was intentionally killed because of race, color, religion, nationality or country of origin.

This section provides that if a murder victim “was intentionally killed because of his or her race, color, religion, nationality, or country of origin” and the alleged killer is found guilty of murder in the first degree, the penalty shall be “death or imprisonment in the state prison for life without the possibility of parole.”

- Cal. Penal Code § 422.7 – Commission of Crime for Purpose of Interfering with Another’s Exercise of Civil Rights

This section states that for a person who commits a hate crime and is convicted under a section other than Section 422.6, the appropriate punishment shall be “by imprisonment in a county jail not to exceed one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine.”

- Cal Penal Code § 422.75 – Penalty Enhancements for Perpetrators of Hate Crimes

This section provides penalty enhancements for those found guilty of felony hate crimes or attempts to commit felony hate crimes. This section, however, does not apply to those punished under Section 422.7.

- Cal. Penal Code § 422.76 – Aggravating Circumstances of Hate Crime

This section states that the commission of “a felony or attempt to commit a felony that is a hate crime” shall be generally considered “a circumstance of aggravation.”

Note that this is a criminal law, and any claims under these sections of code for penalty enhancement must be brought by a prosecutor.

7. Someone defaced my place of worship (or otherwise targeted a religious institution). Does California have any special laws protecting religious groups from hate motivated acts?

California has a number of special laws that protect religious groups and places of worship from hate motivated acts. These laws include:

- Cal. Penal Code § 302 – Disorderly Conduct at Religious Service

This section punishes any person who “intentionally disturbs or disquiets any assemblage of people met for religious worship at a tax-exempt place of worship.” A violation of this section is a misdemeanor punishable by a fine not exceeding \$1,000, or by imprisonment in a county jail for a period not exceeding one year, or by both fine and imprisonment. As an alternative to imprisonment or a fine, a court may require anywhere from 50-80 hours of community service.

- Cal. Penal Code § 423.2 – Punishable Offenses under the California Freedom of Access to Clinic and Church Entrances Act

This section was intended to protect individuals against anti-reproductive rights crimes of violence. But, subsection (b) could be used to prosecute individuals who commit acts of violence against a person because of his or her religious beliefs.

- Cal. Penal Code § 594.3(b) – Vandalism of Place of Worship or Cemetery

This section prohibits any person from knowingly committing an “act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery.” Section 594.3(b) further states that if the vandalism is shown to be a “hate crime” and was “committed for the purpose of intimidating and deterring persons from freely exercising their religious beliefs,” the offender is guilty of a felony and should receive a more severe punishment.

- Cal. Penal Code § 11412 – Threats Obstructing Exercise of Religion

This section creates a felony conviction for anyone who obstructs the exercise of religion by use of “threats to inflict unlawful injury upon any person or property.”

- Cal. Penal Code § 11413 – Use of Destructive Device or Explosive in Specified Places

As explained under Question 5, this section protects certain places, including “any church, temple, synagogue, mosque or other place of worship,” from damage caused by destructive devices and explosives.

Note that these are criminal laws, and any claims under these sections of code must be brought by a prosecutor.

- 8. Someone hung a noose at my work, burnt a religious symbol by my home, or otherwise tried to intimidate me and members of my community with a symbol or message. Are there any special laws against intimidation or terrorism in California?**

Yes, California has one special law that directly addresses this type of unlawful conduct. The law, Cal. Penal Code § 11411, criminalizes a number of common hate tactics, including: (a) the hanging of a noose while knowing it to be a symbol representing a threat to life; (b) the display of signs, marks, symbols, emblems, or other physical impressions, including, but not limited to, a Nazi swastika; and (c) the burning or desecration of a cross or other religious symbol while knowing it to be a religious symbol. With that said, to be held criminally liable under this law, the person who performed the hateful act must have done so for the purpose of “terrorizing,” which is defined as “causing a person of ordinary emotions and sensibilities to fear for personal safety.”⁸

Note that this is a criminal law, and any claims under this code must be brought by a prosecutor.

9. The state is not investigating my case or bringing a lawsuit. How can I get in touch with an attorney with the state to discuss my case?

You can contact the State Attorney General's Victim Office of Victims' Services Telephone: (877) 433-9069; Your local District Attorney's Victim/ Witness Program (County listing online, or the United States Attorney's Office Victim/Witness Assistance Program in your district listing online. You can also contact the Stop Hate Hotline at 1-844-9-NO-HATE.

10. The state is not investigating my case or bringing a lawsuit, but I would like to explore bringing a case with a private attorney against the perpetrator (known as a "civil case"). Does California have civil laws relevant to hate crimes or hate incidents?

Yes, California has three civil laws relevant to hate crimes and hate incidents. These laws either provide a right to be free from violence, intimidation, or discrimination, or they provide a procedural tool that allows an individual to file a private lawsuit. The three laws are:

- The Unruh Civil Rights Act, Cal Civ. Code § 51, which established that all persons within California are free and equal. This law was enacted in 1959, in the midst of the Civil Rights era, and was primarily designed to protect the rights of Californians from arbitrary discrimination.
- The Ralph Civil Rights Act, Cal. Civ. Code § 51.7(a), which builds on the foundation set by the Unruh Civil Rights Act and prohibits violence or intimidation by threat of violence committed against a person or property because of a person's certain characteristics. Under the Ralph Civil Rights Act, victims of hate violence may seek specific civil and administrative remedies, as well as file a private lawsuit.
- The Bane Civil Rights Act, Cal Civ. Code § 52.1, which prohibits all interference or attempted interference with another's rights under federal and California law by "threats, intimidation, or coercion." The Bane Civil Rights Act grants victims of hate violence the power to bring a private lawsuit for injunctive relief (a court order requiring an individual or entity to stop a specified act or behavior) and damages (a monetary award to compensate for a loss or injury). The Bane Civil Rights Act also grants "the Attorney General, or any district attorney or city attorney" the power to bring a civil action for injunctive relief and civil penalties.

Note: Private citizens can bring these civil claims.

11. I have been attacked, put in fear of danger, intentionally made to suffer emotional distress, had my property vandalized, or harmed in another way due to an act motivated by hate. What other civil laws can I use to bring a case?

There are a number of other civil laws that you can use to bring a case against someone who physically or emotionally injures you. This is true even if the person's actions do not rise to the legal definition of a hate crime or hate incident. These other civil laws, or causes of action, are generally known as torts. A tort is a wrongful act that results in legal liability. All torts arise from the legal duty to "abstain from injuring the person or property of another."⁹

In California, if someone intentionally injures you or your property, you may be able to sue that person for damages using any of the following tort causes of action:

- Assault - An assault is defined as "an unlawful attempt, coupled with a present ability, to commit a violent injury upon the person of another."¹⁰ An example of an assault is when someone uses a toy gun to threaten another.
- Battery - Battery is defined as "any willful and unlawful use of force or violence upon the person of another." An example of a battery is when someone uses a real gun and shoots another. Another, less extreme, example of a battery is when someone punches or kicks another.
- False Imprisonment – False imprisonment is defined as "the unlawful violation of the personal liberty of another."¹¹ In other words, a person is falsely imprisoned if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another.¹² An example of false imprisonment would be if someone locked you in a room and you were unable to escape.
- Intentional Infliction of Emotional Distress ("IIED") - IIED is best defined by its elements. To bring an IIED claim, you must be able to show: (1) extreme and outrageous conduct by another who has the intent of causing, or at least has reckless disregard of the probability of causing, emotional distress; (2) that you suffered severe or extreme emotional distress; and (3) the other person's outrageous conduct caused your distress.¹³ An example of outrageous conduct that could lead to a successful IIED claim would be someone calling your home phone and leaving threatening messages of physical violence or death.¹⁴
- Trespass to Land & Conversion – Trespass to land and conversion are causes of action used when another damages your real or personal property. Trespass to land applies to real property and is defined as "an unauthorized or wrongful entry or intrusion onto land owned or occupied by another that disrupts the other's right to exclusive possession of the land."¹⁵ An example of trespass to land would be if someone vandalized, or otherwise damaged, your front lawn. Conversion, on the other hand, applies to personal property and is defined as "the wrongful exercise of dominion over the property of another."¹⁶ An example of conversion would be if someone damaged your car.

In addition, if it can be proven that the person injured you or your property because of bias, prejudice, or hatred, you may be able to recover punitive damages. Punitive

damages are damages awarded in addition to typical compensatory damages and they are generally considered to be a form of punishment. In California, if you can prove by “clear and convincing evidence” that your attacker acted with “malice,” meaning “conduct intended to cause injury or . . . despicable conduct carried out with a willful and conscious disregard of the rights or safety of other,” then you may recover additional damages.¹⁷

Note: Private citizens can bring these civil tort claims.

12. I would like to explore bringing a case with a private attorney against the perpetrator (known as a “civil case”), but I do not know any private attorneys. How can I find someone to represent me?

Contact your local bar association or 844-9-NO HATE.

13. What are some local and state organizations working on hate crimes and incidents?

The following organizations are key providers of legal assistance for victims of hate crimes and discrimination:

1. California Victim Compensation & Government Claims Board
Phone: 1-800-777-9229
<http://www.vcgcb.ca.gov>
2. Your local District Attorney’s Office
A directory of California’s District Attorney’s Offices can be found at:
<https://www.cdaa.org/district-attorney-roster>
3. California Association of Human Relations Organizations (“CAHRO”)
Phone: (213) 639-6089
www.cahoro.org

CAHRO provides directories for Human Relations Commissions by city and by county. Links to the directories are below:

By city: <http://www.cahro.org/network/hrc-cities/>

By county: <http://www.cahro.org/network/hrc-county/>

14. I need additional help. Where can I find additional information or get help?

If you would like additional information or need additional help, please visit the Communities Against Hate resource page at www.communitiesagainsthate.org. If the information you are seeking is not on the resource page or if you need immediate help, please contact 844-9-NO-HATE.

¹ Examples of underlying crimes include: assault, battery, destruction of property, threats, rape, murder, arson, robbery, and burglary. This list of criminal offenses is not exhaustive, however, and other criminal offenses may also be considered hate crimes.

² Cal. Penal Code § 422.55.

³ Cal. Penal Code § 422.6.

⁴ Cal. Penal Code § 422.56.

⁵ Cal. Penal Code § 422.56(c).

⁶ Cal. Penal Code § 422.6.

⁷ Cal. Penal Code § 11413.

⁸ Cal. Penal Code § 11411(e).

⁹ Cal. Civ. Code § 1708.

¹⁰ Cal. Penal Code § 240.

¹¹ Cal. Penal Code § 236.

¹² *Schanafelt v. Seaboard Fin. Co.*, 239 P.2d 42, 43 (Cal. Dist. Ct. App. 1951) (“A person is falsely imprisoned if he is wrongfully deprived of his freedom to leave a particular place by the conduct of another.”).

¹³ *Christensen v. Superior Court*, 820 P.2d 181, 202 (Cal. 1991) (“The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant’s outrageous conduct.”).

¹⁴ See *Kiseskey v. Carpenters’ Trust for So. California*, 192 Cal. Rptr. 492, 496 (Cal. Ct. App. 1983) (telephone threats of physical violence and death deemed to be outrageous conduct).

¹⁵ *Spinks v. Equity Residential Briarwood Apartments*, 90 Cal. Rptr. 3d 453, 484 (Cal. Ct. App. 2009).

¹⁶ *Avidor v. Sutter’s Place, Inc.*, 151 Cal. Rptr. 3d 804, 814 (Cal. Ct. App. 2013).

¹⁷ Cal. Civ. Code § 3294.