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RESEARCH THAT MATTERS

INCLUSION OF GENDER IDENTITY AND EXPRESSION in California and Federal Hate Crime Laws

December 2025

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EXECUTIVE SUMMARY

California has over two dozen state statutes designed to combat hate crimes, including hate crimes against transgender and nonbinary people. Some of these statutes target hate crimes directly by increasing penalties for perpetrators who commit crimes based on the victim's perceived or actual personal characteristics, including gender identity and gender expression. Other statutes offer support to survivors of hate crimes, including transgender and nonbinary people, through grants and other programs. Similarly, federal laws provide for federal prosecution of certain crimes committed because of the victim's personal characteristics, including gender identity, and provide support for state and local tracking and enforcement of hate crime laws through grants.

This brief provides an overview of these state and federal laws. California criminal law, law enforcement policies, grant programs, hate violence at schools, and civil remedies are discussed first, followed by federal criminal law, data collection, grant programs, and hate violence at schools. Within each section, statutes are divided by whether they explicitly address or fail to address hate crimes motivated by gender identity bias. The laws discussed in this paper specifically address hate crimes and hate violence. While both California and federal statutes include other protections for transgender people, such as protections from discrimination and bullying, those laws are beyond the scope of this report and are not discussed here.

CALIFORNIA LAWS

Criminal Law

- California has one standalone hate crime statute, which prohibits injury, intimidation, or interference with another's rights. In addition, three other statutes provide sentencing enhancements for misdemeanors and felonies when perpetrators are motivated by bias against a victim's personal characteristics. All four hate crime laws apply when victims are targeted for their gender—defined as sex, gender identity, or gender expression—among other personal characteristics.

Law Enforcement Policies & Education

- Law enforcement agencies must adopt policies addressing hate crimes, including protocols for reporting and first responder responsibilities.
- Law enforcement officers must complete training on hate crimes. The training must include instruction on handling incidents in a non-combative manner, relevant hate crime laws, and preparing for future hate crime waves. Basic training must also include a course on the LGBTQ community, discussing terminology, creating an inclusive workplace for LGBTQ law enforcement staff, and responding effectively to hate crimes involving LGBTQ individuals. Law enforcement officers and staff can complete supplemental training that includes these LGBTQ topics.

Grant Programs

- Several grant programs in California provide funding to combat and address hate crimes and hate incidents,¹ including:
 - To heighten security around vulnerable buildings;
 - To facilitate prevention measures and support victims of hate crimes; and
 - To assist prosecutorial agencies in establishing vertical prosecution units that focus on serving victims and resolving hate crime cases.
- Because the state's definition of hate crimes includes gender identity and expression, these grant programs can be used to assist victims targeted for those characteristics.
- Hate Violence at Schools and Colleges
- California requires post-secondary institutions to compile records of criminal hate violence that happens on campus or that is reported to a campus official. This includes hate violence against victims targeted for their gender identity or expression.
- The State Board of Education is required to develop policies that ensure schools are free of discriminatory attitudes and hate violence. The State Department of Education must provide regional training to assist school district personnel in identifying hate violence in schools.

Civil Remedies

- Victims of certain forms of violence, including violence motivated by a victim's gender identity or gender expression, can seek civil remedies.

FEDERAL LAWS

Criminal Law

- The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act prohibits causing injury to another or attempting to do so through the use of fire, weapons, or an explosive device, because of the victim's gender or gender identity, among other protected characteristics. The statute also prohibits conspiracy to commit a hate crime where actual injury, attempted or actual killing, kidnapping, or aggravated sexual abuse occurs.

¹ A hate incident is defined as an expression or action that may be motivated by a person's actual or perceived characteristics. The CA Civil Rights Department demonstrates that there are two main kinds of hate incidents: acts of hate that are not crimes, but which violate civil rights laws and acts of hate that may not violate the law but significantly harm a community. *CA vs Hate*, State Cal. Civil Rights DEP'T, <https://calcivilrights.ca.gov/ca-vs-hate-page/> (last visited Dec. 4, 2025). A hate crime is a crime that is motivated by a person's actual or perceived characteristics. *Learn About Hate Crimes*, U.S. DEP'T JUST. (July 2, 2024), <https://www.justice.gov/hatecrimes/learn-about-hate-crimes>.

Data Collection and Reporting

- The Attorney General must acquire and publish hate crime statistics. The Matthew Shepard & James Byrd, Jr. Act of 2009 expanded data collection to include hate crimes involving gender and gender identity. Reporting hate crime statistics to the U.S. Attorney General is required for federal law enforcement agencies, but optional for states.

Grant Programs

- Congress established several grant programs designed to help states combat hate crimes, including:
 - Grants to state, local, and tribal programs designed to combat hate crimes committed by juveniles, including those targeting victims based on their gender;
 - Financial assistance for agencies investigating and prosecuting hate crimes with extraordinary expenses, including hate crimes targeting victims based on their gender and gender identity;
 - Grants for state or local governments to assist them in implementing the National Incident-Based Reporting system and running hate crime reporting hotlines, which can benefit victims targeted because of their gender and gender identity; and
 - Grants for eligible law enforcement agencies to establish hate crime units and provide hate crime training, including on hate crimes targeting victims based on their gender and gender identity.
 - None of these grants addresses hate crimes targeting gender expression.

Hate Violence at Schools and Colleges

- Federal law requires institutions of higher education to disclose their crime statistics, including hate crimes targeting victims because of their gender identity, to current and prospective students and employees each year.

CALIFORNIA LAWS

CRIMINAL LAW STATUTES EXPRESSLY ADDRESSING GENDER IDENTITY

The California Penal Code defines a hate crime as “a criminal act committed, in whole or in part, because of...” at least one “actual or perceived characteristic[] of the victim[.]”² The statute protects the following characteristics: disability, gender, nationality, race, ethnicity, religion, sexual orientation, and association with other persons who have at least one of the characteristics listed.³ The statute applies if a victim either has, or is perceived as having, a protected characteristic.⁴

Currently, under Penal Code § 422.56, “gender” is defined as sex, gender identity, and gender expression.⁵ Gender expression refers to “gender-related appearance and behavior, whether or not stereotypically associated with the person’s assigned sex at birth.”⁶ Historically, the statute included narrower definitions of gender, which offered less protection for transgender, gender nonconforming, and nonbinary people. Prior to 1991, the statute did not include sex or gender as a protected characteristic.⁷ California first passed legislation to include gender as a protected characteristic in 1991, though no definition was provided.⁸ In 2004, lawmakers enacted legislation defining gender as sex, “gender identity[,] and gender related appearance and behavior whether or not stereotypically associated with the person’s sex at birth.”⁹ In 2011, the definition of “gender” in California law was expanded to expressly include “gender expression.”¹⁰

Sections 422.6, 422.7, and 422.75 of the Penal Code prohibit hate crimes motivated by the characteristics contained in this definition of gender, among other protected characteristics, including race, ethnicity, nationality, disability, sexual orientation, religion, or association with another person with these characteristics.

Penal Code § 422.6 prohibits willfully injuring, intimidating, or interfering with a person or their enjoyment of rights by force or threat of force.¹¹ The statute also prohibits hate crimes, which deface or damage the property of another in order to interfere with the victim’s enjoyment of a right or to intimidate them.¹² Violating § 422.6 constitutes a misdemeanor and carries a penalty of imprisonment for no more than one year, a fine of no more than \$5,000, or both.¹³ Additionally, courts must order defendants to perform no more than 400 hours of community service.¹⁴

² CAL. PENAL CODE § 422.55 (Deering 2004).

³ *Id.*

⁴ *Id.*

⁵ CAL. PENAL CODE § 422.56 (Deering 2022).

⁶ *Id.*

⁷ A.B. 63, 1987-1988 Reg. Sess. (Cal. 1987).

⁸ S.B. 98, 1991 Reg. Sess. (Cal. 1991).

⁹ S.B. 1234, 2004 Reg. Sess. (Cal. 2004).

¹⁰ A.B. 887, 2011 Reg. Sess. (Cal. 2011).

¹¹ CAL. PENAL CODE § 422.6 (Deering 2005).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Compared to § 422.6, Penal Codes § 422.7, § 422.75, and § 422.76 are different in that they provide for penalty enhancements when perpetrators engage in criminal conduct that is motivated by hate. In other words, these statutes apply where the defendant engages in conduct that in itself carries criminal penalties, but can be penalized with a higher sentence because the defendant's actions were motivated by bias.

Penal Code § 422.7 provides for sentence enhancement when the underlying crime is a hate crime and is committed against another person or their property to intimidate or interfere with that person's exercise or enjoyment of rights. Additionally, at least one of three other conditions must be met: (a) the perpetrator has the "present ability to commit a violent injury or cause[] actual physical injury"¹⁵ to another person, (b) the crime is a property crime causing over \$950 in damages, or (c) the perpetrator must have previously been convicted of a charge under § 422.6.¹⁶ If any of these three conditions are proven true, and the defendant is also guilty of the underlying hate crime, the judge can sentence the perpetrator under § 422.7.¹⁷ The statute is a "wobbler," meaning it can elevate misdemeanor crimes to felonies. Possible punishment includes imprisonment for no more than a year, imprisonment under § 1170(h),¹⁸ a fine of no more than \$10,000, or a fine and imprisonment.¹⁹

Section 422.75 provides for sentence enhancements when the hate crime involved was a felony. For the enhancement to apply, prosecutors must charge the defendant with a felony hate crime.²⁰ Defendants may receive additional penalties where they acted with another person to commit a felony hate crime, used a firearm to commit the offense, or have prior felony hate crime convictions.²¹ Felony hate crimes can result in additional one-, two-, or three-year sentences.²² Where the defendant acted with another individual to commit a felony hate crime, the court may add two, three, or four years to the defendant's sentence.²³ An additional year is added for each prior felony hate crime conviction.²⁴

This statute has been used to enhance penalties. For example, in *People v. Shull* (2014), the defendant confronted a transgender woman by verbally harassing and assaulting her.²⁵ The defendant entered into a plea agreement, admitting that the crime was motivated by hate.²⁶ Because at least one § 422.75 condition was met, the defendant received an additional three years for committing a felony hate crime, resulting in a 12-year sentence.²⁷ Without the sentence enhancement, the defendant would have received a nine-year sentence.²⁸

¹⁵ In re M.S., 10 Cal. 4th 698, 714 (Cal. 1995).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Penal Code § 1170(h) states punishment for a crime should follow the specified term in the statute. If no term is provided, then punishable in county jail for sixteen months, two years, or three years. The term is served in state prison instead if the defendant is currently charged with a serious or violent felony, has a previous conviction for a serious or violent felony (in California or other jurisdiction), is a registered sex offender, or was convicted of a financial crime with a sentencing enhancement.

¹⁹ CAL. PENAL CODE § 422.7 (Deering 2011).

²⁰ CAL. PENAL CODE § 422.75 (Deering 2004).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *People v. Shull*, No. B251635, 2014 Cal. App. Unpub. LEXIS 4023, at *2 (2d Dist. 2014).

²⁶ *Id.* at *1, *4.

²⁷ *Id.* at *1, *2.

²⁸ *Id.* at *1, *2.

Similar to § 422.75, Penal Code § 422.76, passed in 1984, increases the penalty for felony hate crimes by making the attempted or successful commission of a felony hate crime an aggravating sentencing factor.²⁹ This statute only applies where the defendant has not already been sentenced under § 422.75. Because the statute uses the definition of hate crime under § 422.55, the statute applies where victims are targeted for their sex, gender, gender identity, and gender expression.

In 1985, California enacted Penal Code § 11413, prohibiting arson and the use of explosives against designated property for the purpose of or in reckless disregard of terrorizing others.³⁰ The statute applies to healthcare facilities, places of worship, organizations doing work on abortion issues, libraries, and private property targeted because of the victim's protected characteristics, including sex, gender, gender identity, and gender expression.³¹

Finally, in 1999, California enacted Penal Code § 190.03.³² This statute requires that first-degree murders committed as hate crimes must carry a sentence of life in prison without the possibility of parole.³³ While the original statute explicitly referenced hate crimes motivated by gender bias, a 2004 amendment expanded the definition of hate crime to include the protected characteristics under § 422.55, which include sex, gender, gender identity, and gender expression.³⁴

When defendants are convicted of hate crime offenses, in addition to penalty enhancements, courts must issue orders, such as orders to remain at least 100 yards away from a victim, to protect survivors from further victimization.³⁵ For defendants given probation, courts have the option to require completion of a program on civil rights or a one-year counseling program to reduce violent and anti-social behavior.³⁶ Courts may also require that the defendant pay compensation to a program or agency that provides services to survivors of hate crimes or to reimburse the victim for counseling and other costs incurred as a result of the hate crime.³⁷

CRIMINAL LAW STATUTES THAT DO NOT EXPRESSLY ADDRESS GENDER IDENTITY

Several other California criminal laws address hate crimes but lack specific protections for gender and gender identity.

An initiative measure in 1978 enacted one of the earliest hate crime laws in California.³⁸ The statute, still active today, elevates the penalty for murder because of the victim's race, color, religion, national origin,

²⁹ CAL. PENAL CODE § 422.76 (Deering 2004).

³⁰ CAL. PENAL CODE § 11413 (Deering 2012).

³¹ *Id.*; PENAL § 422.55.

³² A.B. 208, 1999 Reg. Sess. (Cal. 1999).

³³ CAL. PENAL CODE § 190.03 (Deering 2005).

³⁴ A.B. 208, 1999 Reg. Sess. (Cal. 1999); S.B. 1234, 2004 Reg. Sess. (Cal. 2004).

³⁵ CAL. PENAL CODE § 422.85 (Deering 2012); see *California Stay Away Order*, STEPHEN G. RODRIGUEZ & PARTNERS, <https://www.lacriminaldefenseattorney.com/legal-dictionary/s/stay-away-order/> (last visited Nov. 19, 2025).

³⁶ *Id.*

³⁷ *Id.*

³⁸ CAL. PENAL CODE § 190.2 (Deering 2019).

or country of origin.³⁹ The punishment for such a crime is death or life in prison without the possibility of parole.⁴⁰ Prosecutors still use this statute today, such as in the murder of Justin Peoples, a young Black man allegedly murdered because of his race.⁴¹

In 2018, a state lawmaker introduced an amendment that would have expanded Penal Code § 190.2 to include targeting victims based on sexual orientation and gender, as defined by § 422.56, as a reason to elevate the penalty for murder.⁴² The amendment was a response to the murder of Blaze Bernstein of Orange County, a Jewish student targeted for his sexual orientation by a former classmate turned Neo-Nazi.⁴³ However, the amendment died in April 2018 after reaching the Public Safety Committee in the Senate.⁴⁴

A California law enacted in 1982 prohibits the desecration of religious symbols and the placement of symbols or marks on property for the purpose of terrorizing others.⁴⁵ The statute explicitly protects property such as schools, colleges, public places, places of worship, cemeteries, places of employment, and private property.⁴⁶ The statute underwent various revisions throughout the years, including prohibiting cross burning in 1991, protecting victims from the placement of nooses on property in 2009, and clarifying the legislative intent to criminalize displays of the swastika in 2022.⁴⁷ The statute itself does not expressly reference sex, gender, gender identity, or gender expression; however, it is broadly written and could potentially be used to prosecute crimes involving anti-transgender symbols on property.

LAW ENFORCEMENT POLICIES AND EDUCATION

California law includes several provisions that address hate crime data collection and enforcement. Hate crimes motivated by bias against a victim's gender, gender identity, and gender expression are addressed by these statutes. Under these provisions:

- Subject to available funding, the Attorney General must request that all law enforcement departments within the state provide the Attorney General with information regarding hate crimes, including hate crimes motivated by gender identity or gender expression (enacted 1989).⁴⁸
- Subject to available funding, hate crime data provided to the Attorney General must be made publicly available (enacted 2016).⁴⁹

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Alisha Ebrahimji, *A White Couple Is Accused of Killing a Man Because He Was Black, a California District Attorney Says*, CNN (Mar. 22, 2022, 7:09 PM), <https://www.cnn.com/2022/03/22/us/california-justin-peoples-murder-hate-crime/index.html>.

⁴² *Remarks By District Attorney Tony Rackauckas*, ORANGE CNTY. DIST. ATT'Y (Feb. 2, 2018), <https://orangecountyda.org/press/remarks-by-district-attorney-tony-rackauckas-2/>.

⁴³ Jonathan Lloyd & Helen Jeong, *Orange County Man Convicted of Hate Crime Murder in Killing of Gay Ex-Classmate Blaze Bernstein*, NBC4 (July 3, 2024), <https://www.nbclosangeles.com/news/local/verdict-blaze-bernstein-murder-trial-samuel-woodward/3449743/>.

⁴⁴ *California Senate Bill 971*, LEGISCAN, <https://legiscan.com/CA/text/SB971/2017> (last accessed Nov. 18, 2024).

⁴⁵ CAL. PENAL CODE § 11411 (Deering 2023).

⁴⁶ *Id.*

⁴⁷ A.B. 1829, 1991 Reg. Sess. (Cal. 1991); A.B. 412, 2009 Reg. Sess. (Cal. 2009); A.B. 2282, 2022 Reg. Sess. (Cal. 2022).

⁴⁸ CAL. PENAL CODE § 13023 (Deering 2024).

⁴⁹ *Id.*

- State and local law enforcement agencies must adopt formal policies addressing hate crimes and produce a hate crimes brochure (enacted 2018).
 - The formal policies must include definitions, including the definition of “gender” (which includes gender identity and gender expression), information on bias motivation, protocols for reporting, first responder responsibilities, and information about hate crime trainings.⁵⁰
 - These policies and brochures must be submitted to the Attorney General for review every four years (enacted 2023).⁵¹ The initial year of submission varies by the county in which the law enforcement department is located.
- Law enforcement officers must receive training on hate crimes, including instruction on handling incidents in a non-combative manner, relevant hate crime laws, preparation for future hate crime waves, problems unique to some types of hate crime, and the impact of hate crimes on victims and the community.⁵² A separate provision requires that basic training include a course on LGBTQ people. The training must address the differences between sexual orientation and gender identity, terminology related to sexual orientation and gender identity, guidance for creating an inclusive workplace for LGBTQ law enforcement staff, a historical overview of the relationship between law enforcement and LGBTQ communities, and instructions for responding effectively to domestic violence calls and hate crimes involving LGBTQ individuals.⁵³ Law enforcement officers and other law enforcement staff can complete supplementary training that includes these LGBTQ topics.⁵⁴

GRANT PROGRAMS

The State of California has created various grant programs to improve building security, offer support and services to victims, and assist law enforcement in handling hate crimes. Because the state’s definition of hate crimes includes crimes committed because of the victim’s gender identity or gender expression, these programs would support victims impacted by anti-transgender hate crimes and those who help victims of such crimes.

California State Nonprofit Security Grant Program. In 2019, California established a grant program that provides up to \$500,000 to improve physical security at certain vulnerable buildings.⁵⁵ Eligible recipients include nonprofit organizations, schools, clinics, places of worship, and community centers with a high risk of victimization from violent attacks and hate crimes.⁵⁶ Recipients can use funds for reinforced doors, training fees, security personnel, and other security enhancements.⁵⁷ The continuation of the grant program is contingent on funding.⁵⁸

⁵⁰ CAL. PENAL CODE § 422.87 (Deering 2024); PENAL § 13023.

⁵¹ A.B. 449, 2023 Reg. Sess. (Cal. 2023).

⁵² CAL. PENAL CODE § 13519.6 (Deering 2025).

⁵³ CAL. PENAL CODE § 13519.41 (Deering 2019).

⁵⁴ *Id.*

⁵⁵ CAL. GOV’T CODE § 8588.9 (Deering 2024).

⁵⁶ *Id.*

⁵⁷ CAL. GOVERNOR’S OFF. EMERGENCY SERVS., REQUEST FOR PROPOSAL 4-5 (2025), <https://www.caloes.ca.gov/wp-content/uploads/Grants/Documents/RFP/FY-2025-CSNSGP-RFP.pdf>.

⁵⁸ *Id.*

“Stop the Hate” Program. The Department of Social Services, in consultation with the Commission on Asian and Pacific Islander American Affairs, administers a grant program aimed at addressing hate incidents and crimes.⁵⁹ These grants help support prevention measures and support services for victims of hate incidents and hate crimes and their families.⁶⁰ The law originally made grants available to programs and services that provided support, such as health care or legal services, to hate crime victims and their families.⁶¹ The program was enacted in 2021, and a subsequent 2021 amendment expanded the grant program to include services assisting survivors of hate incidents, which is defined as an “action or behavior motivated by hate but which, for one or more reasons, is not a crime.”⁶² The amendment also added that the program must “...prioritize victims, survivors, and vulnerable populations with high or increasing levels of hate incidents or hate crimes who have historically faced barriers to accessing appropriate care and services.”⁶³

Hate Crime Vertical Prosecution Pilot Program. In 2022, California created a grant program to help prosecutorial agencies establish “vertical prosecution units” that focus on how to serve victims and resolve hate crime cases.⁶⁴ Departments will report their fund use and results by 2028, and the California Department of Justice will report these results to the legislature in 2029.⁶⁵

HATE VIOLENCE AT SCHOOLS AND COLLEGES

Since 1990, California has required post-secondary institutions receiving public funds to compile records of criminal hate violence that occurs on campus and non-criminal hate violence reported to a designated campus official.⁶⁶ Records must include information such as a description of the act, victim characteristics, and offender characteristics.⁶⁷ While the state originally passed the law requiring data collection of violence, property crime, drugs, and intoxication in 1990, California amended the law in 1991 to require data collection on hate crimes.⁶⁸ The amendment also added a definition of hate violence, which included ethnicity, race, national origin, religion, sex, sexual orientation, disability, political beliefs, and religious beliefs as protected characteristics.⁶⁹ Gender identity and expression have been included as protected characteristics since 2012.⁷⁰

Additionally, the State of California conditions participation in the Cal Grant Program, California’s financial aid grant program for students pursuing higher education,⁷¹ on the development of policies and

⁵⁹ CAL. GOV’T CODE § 8260 (Deering 2021). See also *Stop the Hate Program Funding*, CAL. DEP’T SOC. SERVS., <https://cdss.ca.gov/inforesources/cdss-programs/civil-rights/care-funding> (last visited Nov. 18, 2025).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² A.B. 163, 2021 Reg. Sess. (Cal. 2021); *Hate Crimes*, STATE CAL. DEP’T JUST.: OFF. ATT’Y GEN., <https://oag.ca.gov/hatecrimes> (last visited Sept. 29, 2025).

⁶³ *Id.*

⁶⁴ Vertical prosecution programs keep the same prosecutor on the case from the initial investigation through the sentencing of the offender.; CAL. PENAL CODE § 422.94 (Deering 2023).

⁶⁵ *Id.*

⁶⁶ CAL. EDUC. CODE § 67380 (Deering 2023).

⁶⁷ *Id.*

⁶⁸ A.B. 1094, 1991 Reg. Sess. (Cal. 1991).

⁶⁹ *Id.*

⁷⁰ A.B. 3918, 1990 Reg. Sess. (Cal. 1990); A.B. 620, 2011 Reg. Sess. (Cal. 2011).

⁷¹ See Cal Grant Programs, CAL. STUDENT AID COMM’N, <https://www.csac.ca.gov/cal-grant> (last visited Dec. 2, 2025).

procedures to ensure that reports of violent crime, sexual assault, and hate crime are forwarded to the institution's law enforcement and the local law enforcement agency.⁷² California enacted this condition in 2014.⁷³

California requires the State Board of Education to adopt policies that ensure schools are free from discriminatory attitudes and hate violence.⁷⁴ This requirement was enacted in 1994.⁷⁵ The Board must also issue guidelines for teachers and administrators in promoting appreciation for diversity, discouraging discriminatory attitudes and practices, and raising awareness of potentially prejudicial behavior.⁷⁶ The California State Department of Education must prepare guidelines for local programs and curricula that promote understanding and appreciation of the contributions of people with diverse backgrounds.⁷⁷ Guidelines must include methods to evaluate program compliance.⁷⁸ The Department is also responsible for providing regional training in identifying hate violence at schools.⁷⁹ A grant accompanying this requirement enables students and teachers to attend programs on ethnic sensitivity, overcoming racism, and countering hatred.⁸⁰ While none of these provisions explicitly reference sex, gender, gender identity, or gender expression, the general reference to hate violence means these provisions can address all types of hate violence, including those motivated by gender identity and gender expression bias.

CIVIL REMEDIES

In 1976, California passed the Ralph Civil Rights Act. The act states that all persons in the state have the right to be free from violence or intimidation by threat of violence, including violence committed because of a person's characteristics, such as sex, race, religion, and citizenship.⁸¹ The act also prohibits the distribution of materials meant to terrorize others as "intimidation by threat of violence[.]" an amendment added in 2024.⁸² If victimized, a person can bring an action in civil court for \$25,000, attorneys' fees, and money necessary to cover losses resulting from the act, such as damaged property or medical bills.⁸³ In 2011, the definition of "sex" within the statute was amended to include gender, sex, gender identity, and gender expression.⁸⁴

In 1987, California passed the Tom Bane Civil Rights Act.⁸⁵ The act created a civil cause of action where an individual interferes with another's legal rights by threat, intimidation, or coercion.⁸⁶ The California Attorney General, a district attorney, a city attorney, or the victim themselves can bring an action for

⁷² CAL. EDUC. CODE § 67383 (Deering 2022).

⁷³ *Id.*

⁷⁴ CAL. EDUC. CODE § 233 (Deering 2000).

⁷⁵ A.B. 2543, 1994 Reg. Sess. (Cal. 1994).

⁷⁶ EDUC. § 233.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ CAL. EDUC. CODE § 233.8 (Deering 2000).

⁸⁰ *Id.*

⁸¹ CAL. CIV. CODE § 51.7 (Deering 2024).

⁸² A.B. 3024, 2024 Reg. Sess. (Cal. 2024).

⁸³ CAL. CIV. CODE § 52 (Deering 2022).

⁸⁴ S.B. 559, 2011 Reg. Sess. (Cal. 2011).

⁸⁵ A.B. 63, 1987-1988 Reg. Sess. (Cal. 1987).

⁸⁶ CAL. CIV. CODE § 52.1 (Deering 2022).

injunctive and equitable relief against a private party or a government entity, including law enforcement.⁸⁷ Regardless of who brings the action, the statute permits plaintiffs to seek a civil penalty of \$25,000 to be distributed to the victim.⁸⁸ While the statute itself does not mention hate violence or hate crimes, remedies under the Tom Bane Civil Rights Act are available to victims of hate crimes and victims of general violence.⁸⁹

Other civil rights statutes expressly allow individuals subjected to gender and sexual orientation violence to bring civil actions against private parties and government entities.⁹⁰ Gender violence is defined as a coercive physical or sexual intrusion or the threatened or actual use of force against persons or property committed because of the victim's sex, gender, gender identity, or gender expression.⁹¹ Relief available includes actual damages, compensatory damages, punitive damages, injunctive relief, attorney's fees and costs, and any other appropriate relief.⁹²

COMMISSION ON THE STATE OF HATE

In 2021, California passed a law establishing a nine-member Commission on the State of Hate.⁹³ The Commission provides resources and assistance to the California Department of Justice, the California Attorney General's Office, the Office of Emergency Services, law enforcement agencies, and the public.⁹⁴ The Commission engages in fact-finding, data collection, and the production of an annual report on hate and hate crimes.⁹⁵ They advise the legislature, governor, and other state agencies by providing policy recommendations on training state officials and staff, promoting intersocial education, and providing advice on related matters.⁹⁶ The Commission hosts four community forums per year, which are open to the public.⁹⁷ The statute establishing the Commission references hate crimes motivated by bias against sex, gender, gender identity, and gender expression.⁹⁸

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Tanya Taylor, *Differences Between the Ralph Act and the Bane Act*, PREMIER LEGAL GRP. (Dec. 2, 2024), <https://www.thepremierlegalgroup.com/blog/differences-between-ralph-act-and-bane-act/>.

⁹⁰ CAL. CIV. CODE § 52.4 (Deering 2016).

⁹¹ *Id.*; CAL. CIV. CODE § 51 (Deering 2025).

⁹² CIV. § 52.4.

⁹³ CAL. GOV'T CODE § 8010 (Deering 2023).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

FEDERAL LAWS

CRIMINAL LAWS EXPRESSLY ADDRESSING GENDER IDENTITY

In 2009, Congress passed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. As part of its findings, Congress stated that this law was enacted as a response to the inadequacy of federal law in addressing hate crimes.⁹⁹ The act prohibits “willfully caus[ing] bodily injury to any person...,” or attempting to do so “through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device...,” because of the victim’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.¹⁰⁰ Conduct causing bodily injury or attempted bodily injury is punishable by a maximum prison sentence of 10 years, a fine, or both.¹⁰¹ If attempted or actual killing, kidnapping, or aggravated sexual abuse occurs, the penalty is increased to imprisonment for any term of years or for life, a fine, or both.¹⁰² Because of the limited reach of federal law, the act only applies where the conduct 1) occurred during or because of travel “across a State line or national border”, 2) involved use of a “channel, facility, or instrumentality of interstate or foreign commerce”, 3) involved use of a “firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce”, or 4) interfered with “commercial or other economic activity...or otherwise affects interstate or foreign commerce.”¹⁰³ Additionally, the statute punishes lynching resulting in death or serious bodily injury, and conspiracy to commit a hate crime resulting in death, serious bodily injury, actual or attempted kidnapping, or actual or attempted sexual abuse.¹⁰⁴ The penalty for these offenses is imprisonment for no more than thirty years, a fine, or both.¹⁰⁵

CRIMINAL STATUTES THAT DO NOT EXPRESSLY ADDRESS GENDER IDENTITY

Congress enacted 42 U.S.C. § 3631 in 1968, prohibiting individuals from using force or threats of force to attempt to interfere, or successfully interfere, with another person (1) because of their “race, color, religion, sex, handicap [], familial status [], or national origin and (2) because they have “been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling[.]”¹⁰⁶ The statute does not define “sex.” Violations of the statute can result in fines, imprisonment for no more than a year, or both.¹⁰⁷ Sentence terms increase where there is bodily injury, attempted or actual killing, attempted or actual kidnapping, attempted or actual sexual abuse, or if there was the threatened, attempted, or actual use of a weapon, explosive, or fire.¹⁰⁸

Congress also enacted 18 USC § 245 in 1968, prohibiting individuals from attempting to interfere with, or actually interfering with, through force or threat of force, an individual enjoying their federally protected

⁹⁹ Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Pub. L. No. 111-84, Div. E §§ 4701, 123 Stat. 2190, 2835 (2009).

¹⁰⁰ 18 U.S.C. § 249.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 42 U.S.C. § 3631.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

rights because of their race, color, religion, or national origin. Examples of federally protected rights include attending public schools, participating in a state program, being employed, serving on a jury, traveling across state lines, and enjoying public accommodations, such as hotels, theatres, and restaurants.¹⁰⁹ Penalties for violating the statute are the same as under 42 U.S.C. § 3631, discussed above.¹¹⁰

Congress enacted two other statutes, 18 U.S.C. § 241 and 18 U.S.C. § 242, in 1948. Section 241 prohibits interfering with a person's enjoyment of rights and section 242 prohibits people acting under government authority from interfering with a person's enjoyment of rights.¹¹¹ While these provisions do not protect people targeted because of a protected characteristic, historically they have been used to prosecute hate crimes.¹¹² At least one case involved charges against a defendant who targeted their victim because of the victim was transgender.¹¹³

HATE CRIME REPORTING AND DATA COLLECTION LAWS

After the enactment of the Hate Crime Statistics Act in 1990, the Attorney General began acquiring hate crime data.¹¹⁴ The act requires that the Attorney General publish an annual summary and issue guidelines for the collection of hate crime data.¹¹⁵ The Matthew Shepard & James Byrd, Jr. Act of 2009 expanded data reporting requirements to crimes involving gender and gender identity.¹¹⁶ While the law does not provide specifics on how this process occurs, the Code of Federal Regulations indicates that the U.S. Attorney General delegated this responsibility to the Director of the Federal Bureau of Investigation.¹¹⁷ According to the FBI website, reporting statistics is voluntary and optional for state, local, and tribal law enforcement agencies, while reporting is required for federal law enforcement agencies.¹¹⁸

The COVID-19 Hate Crimes Act, passed in 2021, further directs the Attorney General to develop guidance for state, local, and tribal law enforcement on establishing online reporting mechanisms for hate crimes and incidents, expand education on hate crimes, and collect hate crime data.¹¹⁹ The act uses the definition of "hate crime" that includes gender and gender identity.¹²⁰

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ 18 U.S.C. § 241; 18 U.S.C. § 242.

¹¹² Peter G. Berris, *Overview of Federal Hate Crime Laws*, CONG. (Apr. 1, 2022), <https://www.congress.gov/crs-product/R47060>.

¹¹³ See *U.S. v. McRae*, 2009 U.S. Dist. LEXIS 32411 (Tenn. W. Dist. Ct. 2009).

¹¹⁴ 34 U.S.C. § 41305.

¹¹⁵ *Id.*

¹¹⁶ *Id.*; Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, § 4708.

¹¹⁷ 28 C.F.R. § 0.85 (2004).

¹¹⁸ *Hate Crime Statistics*, FED. BUREAU OF INVESTIGATION, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/hate-crime> (last visited Nov. 18, 2024).

¹¹⁹ COVID-19 Hate Crimes Act, Pub. L. No. 117-13, 135 Stat. 265, 266 (2021).

¹²⁰ *Id.* at 267.

GRANT PROGRAMS EXPRESSLY ADDRESSING GENDER IDENTITY

Congress has found that hate crimes pose serious problems, that existing federal law is inadequate to address the issue, and that prohibiting assaults based on bias is necessary to eliminate the relics of slavery.¹²¹ To address these issues, Congress established several grant programs under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in 2009 to assist states in combating hate crimes.

One such program allows state, local, and tribal law enforcement to request assistance from the U.S. Attorney General in handling crimes motivated by prejudice against a victim's perceived or actual characteristics.¹²² A grant through this program can provide support for many types of assistance, including technical, forensic, or prosecutorial help, among others.¹²³ The Attorney General may also provide financial assistance to agencies investigating and prosecuting hate crimes with extraordinary expenses.¹²⁴ This program expressly references hate crimes motivated by gender and gender identity.¹²⁵

Under the 2021 Jabara-Heyer National Opposition to Hate, Assault, and Threats to Equality Act, Congress acknowledged in its findings that a complete understanding of the national hate crime problem is hindered by incomplete data.¹²⁶ They attributed the problem to the quality and quantity of training for state and local law enforcement regarding the identification and reporting of suspected bias-motivated crimes.¹²⁷

To remedy the lack of data, the U.S. Attorney General can issue grants to state or local governments to assist them in implementing the National Incident-Based Reporting System.¹²⁸ States can also use grants to create state-run hate crime reporting hotlines.¹²⁹ Hotlines must direct callers to law enforcement, where appropriate, and local support services, keep personally identifiable information private, and maintain accessibility to those with limited English proficiency and disabilities.¹³⁰ Hotline operating staff must have knowledge of federal, state, and local hate crime laws, law enforcement resources, and local support services.¹³¹ Additionally, eligible law enforcement agencies may apply for grants to establish specialized hate crime units, institute policies to identify and investigate hate crimes, engage in community functions, and provide hate crime training for personnel.¹³² This statute uses the definition of hate crime that includes gender and gender identity.¹³³

¹²¹ 34 U.S.C. § 30501.

¹²² 34 U.S.C. § 30503.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ 34 U.S.C. § 30507.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*; 18 U.S.C. § 249.

GRANT PROGRAMS THAT DO NOT EXPRESSLY ADDRESS GENDER IDENTITY

The Office of Justice Programs can issue grants to state, local, and tribal programs designed to combat hate crimes committed by juveniles.¹³⁴ Grantees use these funds to train local law enforcement in identifying, prosecuting, and preventing hate crimes.¹³⁵ This grant uses a definition of hate crime that includes gender, though no definition of gender is provided.¹³⁶ The statute expressly includes sexual orientation in its definition of hate crime.¹³⁷

HATE VIOLENCE AT SCHOOLS AND COLLEGES¹³⁸

Like California, federal law requires institutions of higher education to disclose their campus security policies and crime statistics, including hate crimes, to current and prospective students and employees each year.¹³⁹ These include hate crimes against victims who were targeted because of their gender or gender identity.¹⁴⁰

¹³⁴ 34 U.S.C. § 30504.

¹³⁵ *Id.*

¹³⁶ 34 U.S.C. § 30502; Violent Crime Control & Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796, 2096 (1994).

¹³⁷ *Id.*

¹³⁸ While some federal laws address bullying and discrimination, those laws are beyond the scope of this piece and are not discussed.

¹³⁹ 20 U.S.C. § 1092.

¹⁴⁰ *Id.*

CONCLUSION

California state law and federal law address hate crimes in a variety of ways, including by mandating law enforcement training, providing for sentencing enhancements for hate crimes, offering grants to service providers assisting victims, and requiring institutions of higher education to report hate crimes on campus. Under California state law, all but two of these statutes expressly include gender identity and gender expression as protected characteristics or provide broad support for service providers and law enforcement departments to combat hate crimes and support hate crime victims, including transgender and nonbinary victims. One of these statutes could potentially be applied where victims are targeted with anti-transgender hate symbols. One California state statute, which elevates the penalty for first degree murder to death or imprisonment for life without the possibility of parole if the perpetrator intentionally targeted the victim because of their race, religion, nationality, or country of origin, does not include gender identity or gender expression nor could the statute be applied in cases where the victim is targeted for their gender identity or expression. Legislative efforts to add gender identity as a protected characteristic were unsuccessful.

At the federal level, all but four statutes include gender identity and gender expression as a protected characteristic or provide support for law enforcement in combating hate crimes. None of the federal statutes expressly includes gender expression. For a full list of the hate crime laws discussed here, see Appendix A.

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RESEARCH THAT MATTERS



APPENDIX A

STATUTES DISCUSSED IN REPORT, IN ORDER OF ENACTMENT

California Law

STATUTE	SUMMARY	INCLUSION OF GENDER, GENDER IDENTITY, AND GENDER EXPRESSION
Civil Code § 51 (1905)	Definitions	Includes gender/gender identity/gender expression under the definition of “sex”
Civil Code § 52 (1905)	Actions can be brought in civil court for \$25,000, attorney’s fees, and money to cover damaged property or medical bills	Includes crimes perpetrated because of the victim’s gender/gender identity/gender expression
Penal Code § 51.7 (1976)	Victims of violence or intimidation targeted because of their characteristics can bring suits to recover money for losses	Includes gender/gender identity/gender expression as protected characteristics
Penal Code § 190.2 (1978)	Penalty for first-degree murder is death or imprisonment for life without parole if perpetrator intentionally killed the victim because of race, color, religion, nationality, or country of origin	No express references to gender/gender identity/gender expression
Penal Code § 11411 (1982)	Crime to hang noose, burn cross or other religious symbol, or place sign or symbol on property of another without permission in order to terrorize, or in reckless disregard of terrorizing; Crime to place symbol at school, college campus, public place, place of worship, cemetery, or place of employment	No express references to gender/gender identity/gender expression but could be used to prosecute anti-transgender signs/symbols
Penal Code § 422.76 (1984)	Aggravating circumstance where felony committed because of specified belief or characteristics of victim	Includes gender/gender identity/gender expression as protected characteristics
Penal Code § 11413 (1985)	Felony where explosive device used to terrorize health facility, place of worship, libraries, courthouses, schools, or private property where person targeted because of protected characteristics	Includes gender/gender identity/gender expression as protected characteristics
Civil Code § 52.1 (1987)	Establishes civil cause of action for interference with enjoyment of rights by threat, intimidation, or coercion	No express references to gender/gender identity/gender expression, but can be used by victims to seek financial compensation

STATUTE	SUMMARY	INCLUSION OF GENDER, GENDER IDENTITY, AND GENDER EXPRESSION
Penal Code § 422.6 (1987)	Illegal to threaten or forcefully interfere with another's enjoyment of rights because of protected characteristics; Illegal to damage another's property in order to interfere with their enjoyment of rights because of their protected characteristics	Includes gender/gender identity/gender expression as protected characteristics
Penal Code § 422.7 (1987)	Elevates punishment for misdemeanor crimes motivated by bias against people with protected characteristics	Includes gender/gender identity/gender expression as protected characteristics
Cal. Penal Code. § 13023 (1989)	Agencies must send their formal policies to Attorney General and report hate crime information to Department of Justice	Hate crime data includes people targeted for gender/gender identity/gender expression
Education Code § 67380 (1990)	Post-secondary institutions must compile records relating to campus security, including hate crime statistics	Published data includes data on those targeted by gender/gender identity/gender expression
Penal Code § 422.75 (1991)	Additional years added to sentence where person commits felony hate crime, attempts to or does commit felony in concert with another, uses firearm in the commission of crime, or where defendant has prior felony conviction	Includes gender/gender identity/gender expression as protected characteristics
Penal Code § 422.92 (1992)	Agencies must make available a brochure on hate crimes to victims	Brochure is available for all victims of hate crime, including those targeted because of their gender/gender identity/gender expression
Penal Code § 13519.6 (1992)	Commission for Peace Officer Standards and Training must develop training for law enforcement on hate crimes and include a model hate crime policy for adoption by law enforcement agencies	- Requires training on hate crimes, including hate crimes targeting victims because of their gender/gender identity/gender expression - Requires education for problems specific to some hate crimes, such as gender-identity-based hate crimes
Education Code § 233 (1994)	State Board of Education and State Department of Education must create policies and prepare guidelines to prevent spread of hate at schools	May be used to address hate against people because of their gender/gender identity/gender expression
Penal Code § 190.03 (1999)	First-degree murders committed as hate crimes carry a sentence of life without parole	Includes gender/gender identity/gender expression as protected characteristics
Education Code § 233.8 (2000)	State Department of Education must provide training and grants for hate crime training for teachers and students	No express reference to gender/gender identity/gender expression

STATUTE	SUMMARY	INCLUSION OF GENDER, GENDER IDENTITY, AND GENDER EXPRESSION
Civil Code § 52.4 (2002)	Establishes civil cause of action for victims of gender violence	Gender violence includes violence perpetrated due to gender/gender identity/gender expression
Penal Code § 422.55 (2004)	Hate crime definition	Hate crime definition includes gender/gender identity/gender expression
Penal Code § 422.56	Definitions	- Clarifies that “gender” includes gender/gender identity/gender expression - Provides definition of “gender expression”
Penal Code § 422.85 (2012)	Judges issue orders to protect victims of hate crimes from further victimization; Judges can require defendants to complete education and pay compensation to victims or agencies helping victims	Includes gender/gender identity/gender expression hate crimes
Education Code § 67383 (2014)	Post-secondary educational institutions must report hate crimes to campus and local law enforcement	Requires reports to include hate crimes committed due to gender/gender identity/gender expression
Penal Code § 422.87 (2018)	Law enforcement agencies must adopt hate crimes policy that includes definitions, reporting protocol, schedule of hate crimes training, etc.	- Training includes information on gender/gender identity/gender expression hate crimes - Requires agencies to address underreporting regarding “antigender” hate crimes
Penal Code § 13519.41 (2018)	Commission on Police Officer Standards and Training must develop a training related to sexual orientation and gender identity	Requires training on gender identity, made in consultation with at least one transgender person
Government Code § 8588.9 (2019)	Grant program for increased security of nonprofit organizations, schools, places of worship, etc., at increased risk of attacks and hate crimes	Can be used for facilities at risk of gender/gender identity/gender expression hate crimes
Government Code § 8010 (2021)	Establishes Commission on the State of Hate, which issues recommendations to address hate in California	Requires that appointees to the Commission have experience/knowledge regarding hate crimes, including gender-based hate crimes
Government Code § 8260 (2021)	Grant program for support and services for hate crime victims and their families	Can be distributed to organizations helping victims of gender/gender identity/gender expression hate crimes
Penal Code § 422.94 (2022)	Grant program for law enforcement agencies to establish a vertical prosecution unit for hate crimes	Can be used to help prosecute gender/gender identity/gender expression hate crimes

Federal Law

STATUTE	SUMMARY	APPLICABILITY TO TRANSGENDER PEOPLE
18 U.S.C. § 241 (1948)	Prohibits interfering with another's rights	• No explicit reference to gender/gender identity/gender expression
18 U.S.C. § 242 (1948)	Prohibits people acting under government authority from interfering with another's rights	• No explicit reference to gender/gender identity/gender expression
20 U.S.C. § 1092 (1965)	Post-secondary institutions must disclose security policies and crime statistics each year	• Institutions must disclose hate crimes, including those based on gender/gender identity • No explicit reference to gender expression
42 U.S.C. § 3631 (1968)	Prohibits use of force or threat of force to interfere with an individual's right to sell or obtain a dwelling because of their protected characteristics	• No explicit reference to gender/gender identity/gender expression
34 U.S.C. § 41305 (1990)	Attorney General must publish hate crime data annually	• Published data include information about gender/gender identity hate crimes • No express reference to gender expression
18 U.S.C. § 249 (2009)	Illegal to willfully cause injury or to attempt to cause injury through use of fire, firearm, weapon, or explosive because of person's race, color, religion, national origin, gender, gender identity, sexual orientation, disability; Crime must interfere with or impact commerce; Gender identity means "actual or perceived gender-related characteristics"	• Includes gender/gender identity as a protected characteristic • No express reference to gender expression
34 U.S.C. § 30501 (2009)	Congressional findings regarding hate crimes	• States that hate crimes, including those motivated by gender/gender identity, pose a serious national problem • No express reference to gender expression
34 U.S.C. § 30503 (2009)	Attorney General may help agencies handle hate crimes	• States may request assistance with hate crimes motivated by gender/gender identity • No express reference to gender expression
34 U.S.C. § 30504 (2009)	Grants for combating hate crimes committed by juveniles	• No express reference to gender identity/ expression
34 U.S.C. § 30507 (2021)	Grants available to states to combat hate crimes	• Includes gender and gender identity • No express reference to gender expression