

(c) "Gender" means sex, and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

(d) "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under *In re M.S.*(1995) 10 Cal. 4th 698 and *People v. Superior Court (Aishman)*(1995) 10 Cal. 4th 735.

(e) "Nationality" includes citizenship, country of origin, and national origin.

(f) "Race or ethnicity" includes ancestry, color, and ethnic background.

(g) "Religion" includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(h) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

(i) "Victim" includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense.

(Added by Stats.2004, c. 700 (S.B.1234), § 6.)

Historical and Statutory Notes

Derivation: Former § 422.76, added by Stats.1998, c. 933 (A.B.1999), § 3.

Cross References

Fair employment and housing, additional definitions, see Government Code § 12926.

Sex defined with reference to this section, see Health and Safety Code § 1365.5 and Insurance Code § 10140.

Law Review and Journal Commentaries

Sexual harassment in public schools: Speeches from the 2000 HWLJ symposium. 12 *Hastings Women's L.J.* 123 (2001).

Research References

Treatises and Practice Aids

2 *Witkin Cal. Crim. L. 3d Crimes Against Peace Welf* § 17, (S 17) in General.

2 *Witkin Cal. Crim. L. 3d Crimes Against Peace Welf* § 20, (S 20) Arson or Explosives.

2 *Witkin Cal. Crim. L. 3d Crimes Against Peace Welf* § 23, (S 23) in General.

2 *Witkin Cal. Crim. L. 3d Crimes Against Peace Welf* § 410, (S 410) in General.

2 *Witkin Cal. Crim. L. 3d Crimes Against Peace Welf* § 411, (S 411) Validity of Statutes.

Notes of Decisions

In whole or in part because of 1 Reporting requirements 2

1. In whole or in part because of

If a perpetrator commits a sexual assault wholly or partly because of the victim's gender, a hate crime has not been committed unless the perpetrator also acts upon some animosity or other bias motivation toward the victim's gender. *Op.Atty.Gen. 04-1104 (August 18, 2005)*, 2005 WL 1996926.

If a perpetrator commits a crime wholly or partly because the perpetrator perceives that the victim's disability, gender, or other protected characteristic makes the victim more vulnerable to the commission of the crime, a hate crime has not been committed unless the perpetrator also acts upon some animosity or other bias motivation toward the victim's disability, gender, or other protected

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characteristics. *Op.Atty.Gen. 04-1104 (August 18, 2005)*, 2005 WL 1996926.

§ 422.57. "Gender" defined

For purposes this code, unless an explicit provision of law or the context clearly requires a different meaning, "gender" has the same meaning as in Section 422.56.

(Added by Stats.2004, c. 700 (S.B.1234), § 6.)

Historical and Statutory Notes

Derivation: Former § 422.76, added by Stats.1998, c. 933 (A.B.1999), § 3.

Cross References

Fair employment and housing, additional definitions, see Government Code § 12926.

Law Review and Journal Commentaries

Sexual harassment in public schools: Speeches from the 2000 HWLJ symposium. 12 *Hastings Women's L.J.* 123 (2001).

Chapter 2

CRIMES AND PENALTIES

Section		Section	
422.6.	Interference with exercise of civil rights because of actual or perceived characteristics of victim; damaging property; punishment; speech; charging and punishment for conduct violating multiple provisions of law.	422.77.	Violations; penalties.
422.7.	Aggravating factors for punishment.	422.78.	Responsibility for enforcement of orders.
422.75.	Enhanced penalties for hate crimes.	422.85.	Protective orders; conditions of probation.
422.76.	Aggravating circumstances.	422.86.	Sentencing goals.
		422.865.	State hospitals and treatment facilities; classes, programs, and counseling; protective orders; education and training programs.

Chapter 2 heading was added by Stats.2004, c. 700 (S.B.1234), § 7.

§ 422.6. Interference with exercise of civil rights because of actual or perceived characteristics of victim; damaging property; punishment; speech; charging and punishment for conduct violating multiple provisions of law

(a) 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 in whole or in part because of * * * one or more of * * * the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.

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

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both * * * the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person may be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech

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