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Chapter 955: California's Response to Rising Hate Crimes Among California's Youth

Daniel R. Clark

Code Sections Affected

Education Code §§ 233, 32228, 32228.1, 44253.2, 44253.3 (amended);
Penal Code §§ 628, 628.1, 628.2, 628.5 (amended).
AB 1785 (Villaraigosa); 2000 STAT. Ch. 955

*"There is no hate without fear. Hate is crystallized fear, fear's dividend, fear objectivized . . . We hate what we fear and so where hate is, fear is lurking . . . If we can isolate this element in what we hate we may be able to cease from hating."*¹

I. INTRODUCTION

Jamie Nabozny testified that his parents called and met with school officials, but they were told that if he was gay, then he should expect to be treated in a harassing way by other students.² Jamie claimed that the school did nothing to stop the boys who were harassing him, and that, in effect, sent the message that it was acceptable.³ Jamie was led by the school to believe that if he was different, then he must be the one singled out and hidden from the other students.⁴ Alana Flores, a student in Northern California, received death threats because another student thought she was gay.⁵ Another California student was brutally beaten in his high school as his attackers carved the word "fag" into his skin.⁶

Sixty-two Asian American students at the University of California at Irvine were greeted back for another year of school by an e-mail from a person that called himself "Asian Hater," stating that he hated Asians and that he blamed all Asians for

1. Cyril Connolly, *The Unquiet Grave*, pt. 3 (1944, rev. 1951) available in Microsoft Bookshelf, Microsoft Corporation 1999 (search for records containing "Hate" "Quotations").

2. Vanessa H. Eisemann, *Protecting the Kids in the Hall: Using Title IX To Stop Student-on-Student Anti-Gay Harassment*, 15 BERKELEY WOMEN'S L.J. 125 (2000). Prepared testimony submitted to Congress by Jamie Nabozny, the plaintiff in the groundbreaking case, *Nabozny v. Podolzny*, 92 F.3d 446 (7th Cir. 1996), in which the Seventh Circuit held that public school officials could be liable for ignoring a gay student's plea for help. *Id.* at 125.

3. *Id.*

4. *Id.*

5. *Id.* at 126.

6. *Id.*

the problems on the school campus.⁷ He threatened that if they did not leave the campus, “he would make it his personal career to hunt down and kill each one of them.”⁸

Hate crimes⁹ and hate-motivated incidents¹⁰ are increasing in our schools and communities and are jeopardizing the safety of our society.¹¹ An increasing number of our nation’s hate crimes are committed by youth, lashing out against people of other races, ethnicities, religions or sexual orientations.¹² The number of hate crimes has generally declined in the past years,¹³ however, the number of hate crimes committed in our schools, and by school aged youth, has increased dramatically.¹⁴ In 1998, 144 hate crimes were reported at California “schools and colleges, making educational institutions the third most likely place for a hate crime to occur in” California.¹⁵ This sharp increase in hate crimes committed by youth is a strong indication that our focus and attention must be placed on young people in the school

7. Michael J. Gennaco, *Hate on the Internet*, 21 CHICANO-LATINO L. REV. 1 (Spring 2000).

8. *Id.*

9. See CAL. PENAL CODE § 628.1(b)(2) (amended by Chapter 955) (defining a hate crime as: an act or attempted act against the person or property of another individual or institution which in any way manifest evidence of hostility toward the victim because of his or her actual or perceived race, religion, disability, gender, nationality, or sexual orientation [which] includes, but is not limited to, threatening telephone calls, hate mail, physical assault, vandalism, cross burning, destruction of religious symbols, or fire bombings).

10. See *id.* § 628.1(b)(1) (amended by Chapter 955) (defining a hate motivated incident as: an act or attempted act which constitutes an expression of hostility against a person or property or institution because of the victim’s real or perceived race, religion, disability, gender, nationality or sexual orientation [which] may include using bigoted insults, taunts, or slurs, distributing or posting hate group literature or posters, defacing, removing, or destroying posted materials or announcements, posting or circulating demeaning jokes or leaflets).

11. GOVERNOR’S ADVISORY PANEL ON HATE GROUPS, MISSION STATEMENT (Jan. 2000) [hereinafter ADVISORY PANEL] (on file with the *McGeorge Law Review*).

12. Karen Joseph, *Education Called Cure for Teen Hate Crimes: Experts at a Cal State San Bernardino Forum Say Teaching Tolerance at an Early Age is a Key to Stopping Youth Violence*, THE PRESS-ENTERPRISE, May 25, 1999, at B3; see Hilary E. MacGregor, *Ventura Police Get Tough on Hate Crimes Racism: As White Supremacist Gangs Grow and Become More Violent, Authorities Step Up Law Enforcement and Prosecution Efforts*, L.A. TIMES, Mar. 1, 1999, at B1 (reporting that “most hate crimes are committed by juveniles against other youths” in Ventura). See generally Michael Stetz, *Battle Against Hate Crimes is Stepped Up, Campaign Aims to Teach Youth a Message: ‘Say No To Hate,’* THE SAN DIEGO UNION-TRIB., Feb. 2, 1999, at B3 (observing that most acts of vandalism against churches and synagogues are committed by people 21 years of age and younger).

13. See Michael Coit, *Campus Hate Crimes on Rise Countywide*, L.A. DAILY NEWS, May 5, 1999, at N1 (reporting that there were 769 hate crimes reported in Los Angeles County in 1998, compared with 820 in 1997, a 6.2% decline); Jody Kleinberg, *Teen Faces up to 7 Years in Stabbing: Group-Home Attack Called Hate Crime*, THE PRESS DEMOCRAT, Oct. 26, 1999, at B1 (positing that the numbers which show a decrease in hate crimes overall “are probably the result of a more careful scrutiny as to what gets classified as a hate crime”).

14. See Coit, *supra* note 13 (reporting that hate crimes in schools in Los Angeles County rose from 40 to 46 from 1997 to 1998, a 15% increase).

15. Letter from Joyce Greenspan et al., Pacific Southwest Region, Anti-Defamation League, to Assembly Member Antonio Villaraigosa, Author of AB 1785 (Feb. 10, 2000) [hereinafter ADL Letter] (on file with the *McGeorge Law Review*).

environment.¹⁶ Thus, the legislative intent under the existing law, to foster an appreciation of the ethnic diversity of California's population,¹⁷ has proven inadequate to stifle the rift of biased attitudes which envelops youths affiliated with hate groups.

In addition to combating this increased trend, through building respect for diversity and uniting California residents, the California State Legislature, in a seemingly offensive maneuver, has announced a supplemental intent to "combat bias" through the provisions of Chapter 955.¹⁸ Chapter 955 requires the collection of statistics on hate crimes and hate motivated incidents occurring on California school campuses.¹⁹ The collection of these statistics will aid in responding to hate crime "hot spots,"²⁰ and will allow for a "better understanding of where and why these crimes are occurring."²¹

Specifically, Chapter 955 requires the Department of Education to "identify guidelines for reporting and documentation for validating the incidence of hate crimes, as it currently does for other school crimes."²² Thus, Chapter 955 is a focused effort to help "combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation."²³ In an effort to abridge the division among the various factions of California youth, this bill also requires teacher training and credentialing in focused areas to help promote tolerance for the diversity of California.²⁴

This Legislative Note presents the existing California law,²⁵ the changes made by Chapter 955,²⁶ and the implications of these changes.²⁷ If Chapter 955 achieves its pronounced premise, to combat the bias of hate groups among California's youth, then the rising level of hate crimes in our schools should begin to decrease. However, if the educators charged with the implementation of Chapter 955 do not harmonize with its stated purpose, or if it extends beyond its constitutional limits,

16. See Coit, *supra* note 13 (noting that effective law enforcement efforts are being deployed against hate crimes on a wide scale, but with the rise of hate crimes committed by youths, governmental and societal efforts need to be channeled toward the youth).

17. CAL. EDUC. CODE § 233(a)(2) (West Supp. 2000); see *id.* § 32228 (West Supp. 2000) (declaring the Legislature's intent to provide the California school system with the resources and strategies to "emphasize violence prevention among children" and to promote a safe school environment).

18. *Id.* § 32228(b) (amended by Chapter 955).

19. CAL. PENAL CODE § 628.1 (a)(1) (amended by Chapter 955).

20. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1785, at 2 (Feb. 29, 2000).

21. *Id.*

22. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1785, at 3 (Aug. 29, 2000) CAL. PENAL CODE § 628.1(a)(1) (amended by Chapter 955).

23. CAL. EDUC. CODE § 32228(b) (amended by Chapter 955).

24. *Id.* § 44253.3 (amended by Chapter 955).

25. See *infra* Part II (discussing the relevant sections affected by Chapter 955 as to the law before the implementation of Chapter 955).

26. See *infra* Part III (detailing the specific amendments to the Education and Penal Codes, pointing out the specific changes of the existing law).

27. See *infra* Part IV (analyzing the constitutional restraints placed on the Legislature regarding this type of legislation, the need for such legislation, and the issues raised by Chapter 955).

or is analogized as a gay bill,²⁸ then the passions which inflame the members of hate groups, and perhaps others not currently active in a hate group, might be fueled, and Chapter 955 will be destined for failure.

II. EXISTING CALIFORNIA LAW

Steps have been taken in the recent past to increase tolerance and combat hate crimes in our schools.²⁹ Existing law requires civic education curricula to include human relations education aimed at “fostering an appreciation of people of different ethnicities,”³⁰ with the specific intent of promoting school tolerance and violence prevention.³¹ Teachers, after meeting certain requirements,³² are awarded certificates which authorize them to provide services to “limited-English proficient-pupils.”³³ This program helps develop the skills of students in the areas of “listening, speaking, reading, and writing skills in English,” in an effort to bridge the gap between persons of different races, nationalities, or creeds and to reduce the chasm between the various factions of California youth.³⁴

California law also requires the Department of Education to “develop a standard school crime reporting form” requiring a description of the crime committed, the victim’s characteristics, and the suspect’s characteristics.³⁵ In addition, each school principal is required to “forward a completed report of crimes committed on school grounds” to the district superintendent,³⁶ who in turn is required to submit all aggregate data to the Department of Education.³⁷ The data must then be compiled and distributed to the Legislature with a summary of the specific trends in school crimes.³⁸ The Department of Education is also required to establish guidelines for

28. See Telephone Interview with Laurie McBride, Staff Member, Assemblymember Villaraigosa’s Office (Sept. 20, 2000) [hereinafter McBride Interview] (notes on file with the *McGeorge Law Review*) (explaining that phone calls and electronic mail received by Assemblyman Villaraigosa’s Office from those opposing Chapter 955 have repeatedly referred to this bill as a “gay bill,” purporting to promote and encourage acceptance of homosexual behavior under the guise of hate crime education); *infra* Part IV.D (analyzing the position of groups opposed to Chapter 955).

29. See CAL. EDUC. CODE § 32228.1(a) (West Supp. 2000) (enacting the School Safety and Violence Prevention Act, and appropriating one hundred million dollars for its purposes). This money is specifically earmarked to combat hate crimes in California schools. *Id.*

30. *Id.* § 233(a)(2) (West Supp. 2000).

31. CAL. EDUC. CODE § 32228(a) (West Supp. 2000); *id.*

32. *Id.* § 44253.3(b) (West 1993).

33. *Id.* § 44253.3(a) (West 1993).

34. *Id.* § 44253.2(a) (West 1993).

35. CAL. PENAL CODE § 628.1 (West 1999).

36. *Id.* § 628.2(a) (West 1999).

37. *Id.* § 628.2(b); see ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1785, at 2 (Feb. 29, 2000) (explaining that the Department of Education receives crimes statistics from schools twice a year).

38. CAL. PENAL CODE § 628.2(d) (West 1999).

reporting and validating certain crime descriptions.³⁹ Hate crimes and hate motivated incidents, as defined by the Legislature, are not specifically required to be reported to the Department of Education.⁴⁰

California law fails to adequately confront the current trend of rising hate crimes in our school environment because it is not known where or when these crimes are occurring.⁴¹ Thus, the need for a change is imminent.⁴² One young student who took part in a school trip to Littleton, Colorado, the site of the infamous Columbine High School shooting tragedy said, "I learned not to take life for granted [because] you never know when you are going to have a person come to school and shoot you."⁴³ It is disheartening to conclude that fear for a student's safety at school, that if they make it through one day at school without being the victim of violence, is the best that any student hopes for or expects from their educational experience. This glaring illustration exemplifies the inadequacy of existing California law, and the need for our school system to take an active role in opposing hate bias to a greater degree than it has under the current framework.⁴⁴

III. CHAPTER 955

In the Fall of 1999, Governor Gray Davis established a blue ribbon advisory panel "to conduct a comprehensive study of current and potential laws relating to combating 'hate groups' operating in California."⁴⁵ The Governor empowered the Advisory Panel, co-chaired by Warren Christopher and George Deukmejian,⁴⁶ to: (1) review the existing laws relating to the criminal and civil liability of hate groups; (2) discuss laws and other measures that could be amended, enacted, or implemented to minimize the influence of hate groups in California; and (3) recommend any other

39. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1785, at 2 (Feb. 29, 2000) (explaining that certain crimes are to be specifically reported "including, but not limited to, battery, assault with a deadly weapon, graffiti, homicide, sex offenses, robbery, extortion, drug and alcohol offenses, possession weapons, destructive devices, arson, burglary, theft and vandalism"). The specific crimes regarded as "hate crimes" were not specifically required to be reported prior to Chapter 955. *Id.*

40. CAL. PENAL CODE § 628.1 (West 1999).

41. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1785, at 2 (Feb. 29, 2000) (noting that one of downfalls of the existing law is that it is unknown where hate crimes hot spots are, and therefore the police and the education system have been unsuccessful in responding to this type of violence).

42. ADL Letter, *supra* note 15.

43. Edgar Sandoval, *Teacher, Students Hope Congress Will Give 'Peace Day' a Chance Education: Bill Written by Lake Los Angeles Group Would Commemorate April 20, the day of the Columbine shooting*, L.A. TIMES, May 25, 2000, at B5.

44. Letter from Peggy Dial, Advocate, California State PTA Legislative Action Committee, to Assemblymember Antonio Villaraigosa (Mar. 31, 2000) [hereinafter PTA Letter] (on file with the *McGeorge Law Review*).

45. ADVISORY PANEL, *supra* note 11, at A-1.

46. Warren Christopher, former Secretary of State of the United States; George Deukmejian, former Governor of California and former Attorney General of California. For a complete list of Panel members, see ADVISORY PANEL, Letter from the Panel to the Governor, *supra* note 11.

actions to deal with hate violence.⁴⁷ Chapter 955 is a culmination of legislative changes stemming from this Advisory Panel's investigation and specific recommendations.⁴⁸

Chapter 955 proposes to more efficiently target hate crime areas in order to better understand where and why these crimes are occurring, with the ultimate goal of breaking the cycle of intolerance.⁴⁹ The Legislature declares that schools not only "establish programs and strategies that promote school safety and emphasize violence prevention,"⁵⁰ but that schools also provide "access to supplemental resources" to actively combat class-based biases and effectively respond to hate crime acts in California schools.⁵¹ The State Board of Education, through its curricula, is charged not only with fostering an appreciation of the diversity of California's population,⁵² but also with specifically discouraging "the development of discriminatory attitudes and practices."⁵³ Members of the Advisory Panel have expressed concern that teachers and schools were not adequately responding to hate-related incidents on their campuses.⁵⁴

Chapter 955 requires teachers seeking to obtain a Cross-cultural, Language and Academic Development (CLAD) credential, to complete a course in human relations⁵⁵ as a prerequisite to teaching courses concentrating on culture and cultural diversity.⁵⁶ This provision requires teachers with this credential to provide instruction to the diverse student population, recognizing and responding to behavior-related biases, and to provide techniques for peaceful resolution.⁵⁷ Proponents believe that this will effectively help train teachers and administrators to handle hate-biased views.⁵⁸

47. ADVISORY PANEL, *supra* note 11, at A-1.

48. Letter from Susan K. Burr, Interim Secretary for Education, Office of the Secretary for Education, to Assemblymember Antonio Villaraigosa (May 22, 2000) [hereinafter Burr Letter] (on file with the *McGeorge Law Review*).

49. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1785, at 2-3 (Feb. 29, 2000) (presenting the author's view of this bill when introduced to the State Assembly).

50. CAL. EDUC. CODE § 32228(a) (West Supp. 2000).

51. See *id.* § 32228(b) (amended by Chapter 955) (emphasizing specific goals "to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation . . . and to prevent and respond to acts of hate violence and bias related incidents").

52. CAL. EDUC. CODE § 233(a)(2) (West Supp. 2000).

53. *Id.* § 233(a)(2) (amended by Chapter 955).

54. See *supra* note 11, at A-19 (noting that, among other things, the Cross-cultural, Language and Academic Development ("CLAD") certificate does not require training in the techniques of peaceful conflict resolution).

55. CAL. EDUC. CODE § 44253.3(c) (amended by Chapter 955).

56. See *id.* § 44253.2(e) (amended by Chapter 955) (defining cultural diversity to be an understanding of human relations such as "[t]he nature and content of culture," "[c]ross cultural contact and interactions," and "[a]pproaches to providing instruction responsive to the diversity of the student population").

57. See *id.* § 44253.3(c) (amended by Chapter 955) (outlining the course work required for teachers seeking CLAD credentials).

58. Letter from Eric-Joseph C. Astacaan, Legislative Advocate, California Alliance for Pride and Equality (CAPE), to Senator Dede Alpert (June 30, 2000) (on file with the *McGeorge Law Review*).

Chapter 955 requires schools, school districts, and the Legislature to compile sufficient data and information to effectively combat such crimes on school campuses.⁵⁹ This bill specifically requires the reporting of hate crimes and hate related incidents,⁶⁰ as defined,⁶¹ on the standard school crime reporting form.⁶² In the past, concerns were raised because schools reporting hate crimes could potentially be singled out as problem schools by their districts, thus deterring reports of such crimes, resulting in the vast majority of hate crimes going unreported.⁶³ Therefore, in requiring all schools to report hate crimes, proponents feel that government institutions, schools, and police will be better able to recognize hate crime “hot spots” and take measures to prevent or discourage such practices.⁶⁴

IV. THE EFFICACY OF CHAPTER 955

The Governor’s Advisory Panel sought exhaustively to recommend and construct amendments to existing laws that would reflect the direction and goals of the California Legislature and citizenry, and withstand constitutional scrutiny.⁶⁵ This Legislative Note addresses four main issues raised by this legislation: hate crime classification;⁶⁶ the involvement of the school system;⁶⁷ First Amendment freedoms of speech and expression;⁶⁸ and the possibility of a hidden agenda.⁶⁹

A. Categorization of “Hate Crimes”

As one commentator has asked, aren’t all crimes hate crimes?⁷⁰ The Legislature has answered this question in the negative because the past twenty years have produced a greater legal response to bias-motivated violence than ever before.⁷¹ Hate crimes are distinguished from parallel crimes by the bias motivation of the

59. CAL. PENAL CODE § 628 (amended by Chapter 955).

60. *Id.* § 628.1(a)(1) (amended by Chapter 955).

61. *Id.* § 628.1(b)(1)-(2) (amended by Chapter 955).

62. *Id.* § 628.2(a) (amended by Chapter 955).

63. ADL Letter, *supra* note 15.

64. *Id.*; PTA Letter, *supra* note 44.

65. See ADVISORY PANEL, *supra* note 11, at 9-16 (noting the Constitutional boundaries set forth in prior case law, distinguishing “speech” from “conduct,” as set forth in those cases, and considering a state government’s and school system’s proper and legal presence regarding such issues).

66. See *infra* Part IV.A and accompanying text (discussing the dissimilarity between crimes of a general nature and hate crimes).

67. See *infra* Part IV.B (discussing the relevant role the educational system is confronted with as well as its overwhelming support and possible encumbrances placed on school administrators).

68. See *infra* Part IV.C (analyzing the constitutional boundaries set forth in prior case law regarding the freedom of speech and association and the likely issues raised by Chapter 955).

69. See *infra* Part IV.D (discussing the opposition’s view that this bill is an attempt to teach the acceptance of homosexual behavior, their argument, and why it is unjustified).

70. *Taking on Hate Crime*, S.F. CHRON., Aug. 18, 1999, at A20.

71. Frederick M. Lawrence, *The Case for a Federal Bias Crime Law*, 16 NAT’L BLACK L.J. 144 (1999-2000).

perpetrator.⁷² “A ‘gay bashing’ is the parallel crime of assault with a bias-motivation [based on the victim’s] sexual orientation.”⁷³ A cross burning on the lawn of a black family is a parallel crime of vandalism that is fueled by racial hate motivation.⁷⁴ A person convicted of first-degree murder for a hate crime is given a sentence of life in prison without possibility of parole,⁷⁵ and there are other analogous penalty enhancements for someone convicted of a hate crime.⁷⁶

Perhaps on a more illustrative level:

A brick tossed through a window as a random act of vandalism is not the same as a brick tossed through the window of the first African American family in a neighborhood, especially if a racial epithet is scrawled on a note with the brick. The latter crime is more than a property crime, it is an assault on the fundamental rights of a larger group, a suppression of freedom. It is an assault on important American values.⁷⁷

Hate crimes can be distinguished from parallel crimes because of the “particular emotional and psychological impact [that it has] on the victim.”⁷⁸ The random act of a shooting spree or alley mugging are most often targeted at happenstance individuals, whereas the victim of a hate crime “is attacked for a [very] specific, personal reason.”⁷⁹ In the case of a mugging, the victim has the ability to minimize his risk of an attack by avoiding areas where such crimes are frequent or to take other precautionary measures.⁸⁰ However, in the case of a hate crime, the “victim cannot reasonably minimize the risk of future attacks” because he cannot change the circumstances that made him the victim of the crime.⁸¹ Hence, “[i]t is an attack from which there is no escape.”⁸²

There are certain circumstances in which hate crime allegations have little constructive accomplishment.⁸³ However, in many cases, the courts have the ability

72. *Id.* at 50.

73. *Id.*

74. *Id.*

75. CAL. PENAL CODE § 190.03 (West Supp. 2000).

76. *Id.* § 666.7 (West Supp. 2000).

77. *Taking on Hate Crime*, *supra* note 70.

78. Lawrence, *supra* note 71, at 150.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *See Taking on Hate Crime*, *supra* note 70 (noting that Buford Furrow, suspect in the shooting of young children at a Los Angeles community center, should go to jail for life if convicted of one count of first-degree murder and five counts of attempted murder regardless of hate crime sentence enhancements); *see also* Investigative Reports: *The Hate Network* (A & E television broadcast, Oct. 21, 2000) [hereinafter Investigative Reports] (reporting that Buford Furrow was formerly a member of the Aryan Nation, a white supremacist group, based in northern Idaho).

to demonstrate the “cost to civilized society when people become targets of violence” based on their classification.⁸⁴

The law should make distinctions between a hate crime and its accompanying parallel crime.⁸⁵ The very nature of a hate crime “triggers the historical and social prejudice” that has accompanied many minority groups that results in a wide-spread impact on a large class of people, much more so than a parallel crime equal in nature.⁸⁶ This additional harm felt by persons other than the immediate victim is what differentiates a hate crime from its parallel crime and makes the former much more harmful to society.⁸⁷ In an effort to increase the public consciousness about violence committed against individual members of subordinated groups,⁸⁸ Chapter 955 proposes to adopt this view of bias crime motivation, which recognizes the difference between bias-motivated crimes from their parallel counterpart, and specifically combat the persons or groups that promote hate crime violence within California’s schools.⁸⁹

B. *The Role of the Educational System*

The single theme that repeatedly emerged throughout the Advisory Panel study was education.⁹⁰ Most hate crimes and hate-motivated incidents are performed by people under the age of twenty-one,⁹¹ and some are performed by perpetrators as young as grade school-aged children.⁹² Many members of hate groups are “wannabes;” persons that would not have hate bias views except for the exposure given to them by hate group messages.⁹³ Yet, for all individuals put into the juvenile court system for hate crimes, there are always more, ready to take their place.⁹⁴

The Internet has proven to be one of the most powerful avenues for “hate groups to spread their messages” and “influence throughout California,” as well as the rest

84. *Taking on Hate Crime*, *supra* note 70.

85. *Infra* Part IV.A and accompanying text.

86. Lawrence, *supra* note 71, at 151.

87. *Id.* at 152.

88. See Jane Spade & Craig Willse, *Confronting the Limits of Gay Hate Crime Activism: A Radical Critique*, 21 CHICANO-LATINO L. REV. 38, 39 (Spring 2000) (deducing that hate crime activism can be understood to accomplish two specific goals: to increase public consciousness about violence committed against members of subordinate groups and to provide specific legal protection to these subordinate groups).

89. CAL. EDUC. CODE § 32228(b) (amended by Chapter 955).

90. ADVISORY PANEL, *supra* note 11, at 30.

91. Stetz, *supra* note 12.

92. Anna Gormon, *County Report/ The White Power Movement Exposing the Hatred White Power Movement Among Area Youths a Source of Increasing Concern*, L.A. TIMES, Nov. 7, 1999, at B1; see MacGregor, *supra* note 12 (noting that most “skinheads” range in age from thirteen to early twenties).

93. MacGregor, *supra* note 12; see ADVISORY PANEL, *supra* note 11, at 2 (estimating that over one thousand hate group sites are located on the Internet, not including the countless chat rooms and electronic mail that permeate the Internet).

94. MacGregor, *supra* note 12.

of the nation and world.⁹⁵ It has given hate groups a platform to disseminate their messages to a large audience of people faster than any medium in history.⁹⁶ Messages of hatred are carried to impressionable youth, who, in many instances, may never have developed such extreme hatred but for the message instilled in them by these groups.⁹⁷

The Advisory Panel has recognized that children spend a significant amount of their time at school, where many of their basic social skills are formed.⁹⁸ They have concluded that “[n]o serious effort to stem the influence of hate groups in California can be made without an educational component designed to teach an appreciation of diversity, tolerance, and respect.”⁹⁹ Therefore, in order to combat views that are considered biased and hate-forming, the Legislature must address these concerns while children are in our educational system, at an age when they are both impressionable, and constantly bombarded by hate group propaganda.¹⁰⁰

The burden on our educational system to specifically report hate crime occurrences in schools is most likely minor because schools are already required to report other crimes that occur on school campuses.¹⁰¹ In this respect, Chapter 955 merely requires reporting of additional empirical data regarding hate crime occurrences in an already required standard reporting form.¹⁰²

If the teachers commissioned with the implementation of Chapter 955 are hesitant to make these assertions in our school system, the effectiveness of this legislation remains to be seen. Most assuredly, there will be a number of teachers begrudgingly required to take this type of a stance, believing that the constitutional right to free flowing ideas ought not be infringed upon.¹⁰³ In all likelihood, their view will be equally impressed upon students in a classroom setting. Chapter 955 has received overwhelmingly positive support from California school teachers and

95. ADVISORY PANEL, *supra* note 11, at 6; *see* Investigative Reports, *supra* note 83 (interviewing Matt Hale, member of the World Church of the Creator, a religious affiliation promoting white supremacy, reporting that approximately five hundred people visit their web site each day).

96. *See* ADVISORY PANEL, *supra* note 11, at 30 (noting that twenty years ago, high school students would seldom come into contact with hate groups and hate group propaganda, whereas today, by the time a teenager leaves high school, most students, in one form or another, will have had some contact with a hate group).

97. Craig L. Uhrich, *Hate Crime Legislation: A Policy Analysis*, 36 HOUS. L. REV. 1467, 1472 (Winter 1999); *see* Investigative Reports, *supra* note 84 (reporting that many upper-middle class youth, who might never attend a Klu Klux Klan (KKK) rally or the like, are exposed to hate group propaganda initially through innocent web surfing, which plants a seed that has the ability to grow where it never would have before).

98. ADVISORY PANEL, *supra* note 11, at 30.

99. *Id.*

100. *Id.* at 31.

101. CAL. PENAL CODE § 628.2(a) (West Supp. 2000).

102. *Id.* § 628.1(a) (West 1999). However, it must be noted that the burden on our teachers in implementing policies and guidelines of the Legislature and the educational administration might be great, given the possible forced acquiescence of teachers in promoting the policies of absentee administrators.

103. *Infra* Part IV.C and accompanying text.

administrators alike.¹⁰⁴ At its core, Chapter 955's promotion of anti-biased views and discouragement of intolerance is effectuated by our teachers in the classroom setting,¹⁰⁵ and they are seemingly up to the task.¹⁰⁶

C. Constitutional Limitations and Restraints

Freedom of speech is expressly protected by the First Amendment.¹⁰⁷ The United States Supreme Court has held that “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association [and that] freedom to engage in association for the advancement of beliefs and ideas” is constitutionally protected.¹⁰⁸ Even so, the Court has made the distinction between the mere association of hate groups and that of incitement to violence¹⁰⁹ or their conduct.¹¹⁰ The Court has stated that the First Amendment does not protect against violent conduct.¹¹¹ Thus, the First Amendment does not bar carefully tailored regulation aimed at thwarting the violent effects that speech may lead to.¹¹² Therefore, state governments have been given greater latitude in regulating the conduct of hate groups, as compared to regulating their speech.¹¹³

The issue is centered around whether Chapter 955 regulates constitutionally protected speech of certain groups,¹¹⁴ or their conduct, which the government may regulate if the regulation is carefully tailored to achieve a compelling governmental

104. Burr Letter, *supra* note 48; Letter from Mike Weimer, Legislative Representative, California Federation of Teachers, to Senator Dede Alpert (June 27, 2000) [hereinafter Weimer Letter] (on file with the *McGeorge Law Review*); Letter from Dave Low, Assistant Director, Governmental Relations, California School Employees Ass'n., to Assemblymember Antonio Villaraigosa, Author of AB 1785 (Jan. 28, 2000) [hereinafter Low Letter] (on file with the *McGeorge Law Review*); Letter from Lynne Faulks, Legislative Advocate, California Teachers Ass'n., to Senator Patrick Johnson (Aug. 11, 2000) [hereinafter Faulks Letter] (on file with the *McGeorge Law Review*); Letter from Toni Trigueiro, Legislative Advocate, California Teachers Ass'n., to Assemblymember Antonio Villaraigosa [hereinafter Trigueiro Letter] (on file with the *McGeorge Law Review*); PTA Letter, *supra* note 44.

105. See CAL. EDUC. CODE § 233(a) (amended by Chapter 955) (pronouncing that the State Board of Education is to specifically discourage the development of discriminatory attitudes and practices); see also *id.* § 32228(b) (amended by Chapter 955) (pronouncing the Legislature's intent to combat bias on specified classes).

106. Weimer Letter, *supra* note 104; Low Letter, *supra* note 104; Faulks Letter, *supra* note 104.

107. See U.S. CONST. amend. I (stating that “Congress shall make no law . . . abridging the freedom of speech, or of the press”).

108. NAACP v. Alabama, 357 U.S. 449, 460 (1958).

109. See Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (distinguishing mere advocacy of the use of force or violence from advocacy that is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action”).

110. See R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992) (reaffirming that although this particular statute was aimed at speech, government remains constitutionally free to regulate such speech if the statute is directed at the conduct rather than the speech).

111. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 916 (1982).

112. ADVISORY PANEL, *supra* note 11, at 11.

113. *Id.*

114. NAACP, 357 U.S. at 460.

interest.¹¹⁵ In this sensitive arena of fundamental liberties, a state may not employ regulations that are drawn broadly when the end can be more narrowly achieved.¹¹⁶ The recommendations given to the Governor by the Advisory Panel reflect the notion that even though the government cannot regulate speech that is from free-flowing ideas, it may regulate violent conduct that is directed at particular groups, and “use the power of public education and persuasion to combat and discourage such ideas.”¹¹⁷ Chapter 955 pronounces the Legislature’s intent to combat bias based on membership in specific groups and to “[discourage] the development of discriminatory *attitudes* and *practices*.”¹¹⁸ The Supreme Court has given the Legislature freedom to regulate the *practices* of certain groups, but it has fallen short of allowing regulation of *attitudes*, which may be classified as speech that is constitutionally protected.¹¹⁹

However, certain conduct of school-aged youth, akin to the attitudes and practices sought to be circumvented by Chapter 955, may be classified as “pure speech,” exempting it from infringement by school regulatory schemes.¹²⁰ The extent to which the California school system is willing to go in order to discourage bias-motivated actions remains to be seen. School officials are not permitted to suppress the expression of feelings of their students¹²¹ and a state is not permitted to conduct its schools so “as to foster a homogeneous people.”¹²² The Court has repeatedly held that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”¹²³ The permissible exercise of First Amendment rights are not confined to “a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.”¹²⁴ A statute will be held invalid if it is drawn so that “men of common intelligence must necessarily guess at its meaning.”¹²⁵ The Court has said that the First

115. *R.A.V.*, 505 U.S. at 389; see *Widmar v. Vincent*, 454 U.S. 263, 270 (1981) (stating that a regulation which invokes First Amendment guarantees must be necessary to serve a compelling state interest and is narrowly drawn to achieve that end).

116. *Claiborne Hardware*, 458 U.S. at 920.

117. ADVISORY PANEL, *supra* note 11, at 9-10.

118. CAL. EDUC. CODE § 233(a)(2) (amended by Chapter 955) (emphasis added).

119. See *R.A.V.*, 505 U.S. at 389 (distinguishing constitutionally protected speech from conduct, which government is free to regulate if narrowly drawn to achieve a compelling state interest).

120. *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 505-06 (1969). School children wore black arm bands to school to protest the Vietnam Conflict which was in violation of a school regulatory scheme to prohibit such activity. The Court held that the conduct of wearing armbands was “closely akin to ‘pure speech’ which . . . was entitled to comprehensive protection under the First Amendment.” *Id.*

121. *Id.* at 511 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (1966)).

122. *Id.* (quoting *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923)). In *Meyer*, the Court stated that to allow the legislature to impose certain restrictions on the people by a state would by doing “violence to both the letter and spirit of the Constitution.” *Id.*

123. *Id.* at 512 (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

124. *Id.* at 513.

125. *Broadrick v. Oklahoma*, 413 U.S. 601, 607 (1973).

Amendment needs breathing space,¹²⁶ and that in certain cases the possible harm to society in permitting certain speech to go unpunished is outweighed by the possibility that protected speech may be muted.¹²⁷ Chapter 955, with its intent to discourage “discriminatory attitudes and practices,”¹²⁸ may be overly broad because it is unclear what discriminatory attitudes and practices are, and is left to local school officials to determine what is worthy of discouragement, and what is not.¹²⁹ This could likely lead to differentiating treatment of particular groups at various schools throughout California.

Challengers believe that Chapter 955 is a part of an unfortunate trend of criminalizing what people think.¹³⁰ In their view, “[i]f we go down the road of punishing thoughts instead of focusing on the action[] the result is a violation of the freedom of conscience.”¹³¹ They duly note that once regulations are in place to suppress freedom of thought, the long term negative impacts may be great.¹³² In many aspects, the State government recognizes their limited ability to curb this freedom and distinguishes between attitudes and practices, regardless of the loose wording used by the Legislature in the text of Chapter 955.¹³³ As one prosecutor has noted, “we can’t change the way they think, violate their First Amendment rights. But when it edges over into action, we will hammer them as hard as we can.”¹³⁴

126. *Id.* at 611 (stating that “states attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society”).

127. *Id.* at 612 (noting that certain speech, if not allowed to be voiced may fester, culminating in the eruption of violent activities).

128. Cal. Educ. Code § 233(a)(2) (amended by Chapter 955).

129. Chapter 955 is silent on what it determines to be “discriminatory attitudes and practices.” Therefore, its implementation may vary in different parts of California resulting in the unequal treatment of differing group associations.

130. See Letter from Natalie Williams, Vice President, Capitol Resource Institute, to Assemblymember Carol Migden (May 19, 2000) (on file with the *McGeorge Law Review*) (asking Migden to consider the long-term impact that this legislation will have).

131. *Id.*

132. *Id.*

133. CAL. EDUC. CODE § 233(a)(2) (amended by Chapter 955).

134. See MacGregor, *supra* note 12 (quoting Deputy District Attorney Chrystina Jenson of Ventura, California).

D. Voices of Opposition: A Hidden Agenda?

Opponents¹³⁵ to Chapter 955 refer to it as a “stealth¹³⁶ bill.”¹³⁷ They oppose Chapter 955 because, in their view, while it purports to discourage the development of discriminatory attitudes and practices,¹³⁸ it, in actuality, is a “gay bill,”¹³⁹ promoting the acceptance of homosexual behavior to children in public schools “under the guise of hate crime education.”¹⁴⁰ Opponents of Chapter 955 acknowledge that the existing law requiring schools to teach an appreciation of different ethnicities is a “noble goal,”¹⁴¹ which promotes the golden rule of doing unto others as you would have them do unto you.¹⁴² However, they claim that “teaching young students to respect diversity,” especially with respect to sexual orientation, is unwise.¹⁴³ They claim that the existing California law already protects all people and students alike from violence and threats.¹⁴⁴ Additionally, they argue that because teachers are already responsible for “impress[ing] upon the minds of pupils the principles of morality, truth, [and] justice,”¹⁴⁵ there is no need to burden the school system with instructions to recognize “unnatural behaviors.”¹⁴⁶ The question remains whether Chapter 955 is premised to combat bias of all categorically based classes,¹⁴⁷ or whether it is a pretext for teaching the acceptance and tolerance of homosexuality.¹⁴⁸ It is possible that this bill does an ineffective job

135. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1785, at 5 (Aug. 29, 2000) (reporting that among those opposed to Chapter 955 are Campaign for California Families, Capitol Resource Institute, Committee on Moral Concerns, and Traditional Values Coalition).

136. See BLACK’S LAW DICTIONARY 1413 (6th ed. 1990) (defining stealth as “[t]he quality or condition of being secretive or furtive). Stealth is also defined as “the act of stealing when the victim is unaware . . . [a]ny secret, sly or clandestine act to avoid discovery.” *Id.*

137. McBride Interview, *supra* note 28.

138. See CAL. EDUC. CODE § 233(a)(2) (amended by Chapter 955) (including the additional intent of the Legislature).

139. See McBride Interview, *supra* note 28 (explaining that the phone calls and electronic mail that Assemblyman Villaraigosa’s office has received by those in opposition to Chapter 955 have repeatedly referred to this bill as a “gay bill,” purporting to promote and encourage the acceptance of homosexual behavior).

140. Letter from Erik Hartstrom, Legislative Advocate, Campaign for California Families, to Senator Dede Alpert (June 28, 2000) [hereinafter Hartstrom Letter] (on file with the *McGeorge Law Review*).

141. Letter from Art Croney, Executive Director, Committee on Moral Concerns, to Senate Education Committee (June 2, 2000) [hereinafter Croney Letter] (on file with the *McGeorge Law Review*).

142. *Id.*; Matthew 7:12 (King James).

143. Croney Letter, *supra* note 141.

144. *Id.*; see CAL. EDUC. CODE § 48900(a)(1) (West Supp 2000) (noting the various provisions which may lead to a student’s suspension or expulsion).

145. CAL. EDUC. CODE § 233.5 (West Supp. 2000); Croney Letter, *supra* note 141.

146. Croney Letter, *supra* note 141.

147. CAL. PENAL CODE § 628.1(b)(1) (amended by Chapter 955). As defined by the Legislature, a “hate motivated incident” is an act or attempted act of hostility toward a person or property based on race, religion, disability, gender, nationality, or sexual orientation. *Id.* Opponents of Chapter 955 focus wholly on the “sexual orientation” language. *Id.* No empirical data suggests opposition toward other facets of this legislation, based on race, religion, disability, gender or nationality, aside from the recognized hate organizations that would obviously object to such legislation. *Id.*

148. Hartstrom Letter, *supra* note 140.

of distinguishing between unfair discrimination and legitimate selectivity. However, California's youth need to be instructed on the difference.¹⁴⁹ Bias, discrimination, and hate violence have no place in California schools, and if Chapter 955 can attain such an outcome, then the inclusion of sexual orientation in its definition of a hate crime is perhaps a small price to pay to achieve such a goal.¹⁵⁰

"The debate over the inclusion of sexual orientation in hate crime laws turns primarily on [whether homosexuality deserves hate crime protection]."¹⁵¹ Even though opponents may not embrace the inclusion of sexual orientation within the definition of a hate crime, this should not condone the violent beating of someone based on this classification.¹⁵² The focal point of concern should be that which is best for California's children.¹⁵³ The Legislature intended Chapter 955 to provide an environment free from hostility and violence, by using the California school system to discourage discriminatory attitudes and practices.¹⁵⁴

V. CONCLUSION

In an effort to stem the rising number of hate crime acts committed in California schools and by school-aged youth, Chapter 955 reflects the value that the Legislature and private citizens alike place on a child's ability to learn in an environment free from biased views, and to promote tolerance for all people.¹⁵⁵ According to Assemblymember Villaraigosa, "[w]e owe it to our kids, for their future success, to do everything in our power to provide a school environment conducive to learning and free from hate."¹⁵⁶ Chapter 955 requires the California school system to take an active role in combating bias-based hate group ideologies.¹⁵⁷ Human relations education will play an integral role in bridging social gaps that promote the bias views of hate groups.¹⁵⁸ This effort will allow for a better understanding of people from all classes and promote an environment of tolerance.¹⁵⁹ Schools are required to report the specific occurrences of hate crimes

149. Croney Letter, *supra* note 141.

150. Weimer Letter, *supra* note 104.

151. Lawrence, *supra* note 72, at 160; *see generally* Advisory Panel, *supra* note 11, at 1 (reporting that of the hate crimes reported in 1998, 22% of the crimes were motivated by the victim's sexual orientation).

152. Investigative Reports, *supra* note 83.

153. *See* Trigueiro Letter, *supra* note 104 (stating that "all students should have the right to participate fully in the educational process free from discrimination and harassment.").

154. CAL. EDUC. CODE § 233(a)(2) (amended by Chapter 955).

155. Faulks Letter, *supra* note 104.

156. Antonio Villaraigosa, *Speaker's Bill to Improve Tracking of Hate Crimes at School Clears First Committee*, Press Release, available at <http://www.democrats.assembly.ca.gov/members/a45/default.htm> (Feb. 29, 2000) [hereinafter *Assemblymember Villaraigosa Press Release*].

157. CAL. EDUC. CODE § 32228(b) (amended by Chapter 955).

158. *Id.* § 44253.3(c) (amended by Chapter 955).

159. *Id.*

on school campuses, thereby allowing the government to better track and effectively respond to hate crime “hot spots.”¹⁶⁰

Chapter 955 pushes a critical issue beyond mere awareness of people of other classes into a focused spotlight.¹⁶¹ It focuses on working toward the elimination of hate crime violence in our schools, and as a future repercussion, in all of California.¹⁶² It is imperative that school administrators are very serious in fulfilling their responsibilities to promote the free-flowing ideas of their students¹⁶³ while encouraging and promoting tolerance of all people.¹⁶⁴ Likewise, it is not the function of teachers to suggest whether homosexuality is acceptable or unacceptable, but to teach tolerance of those who choose that lifestyle, as their right.¹⁶⁵ Chapter 955 endeavors to provide that all students have the right to learn in an environment free from hostility, intimidation, and discrimination, and is a resolution that should be supported by all of California.¹⁶⁶

160. CAL. PENAL CODE § 628.1(a)(1) (amended by Chapter 955).

161. Weimer Letter, *supra* note 104.

162. *Assemblymember Villaraigosa Press Release*, *supra* note 156 (stating that this bill will “more effectively teach young people to appreciate and respect our differences so they can get along better, today and in the future”).

163. *See supra* Part IV.C and accompanying text (describing the various limitations that a government must adhere to regarding freedom of speech and the importance of free speech in our school system).

164. CAL. EDUC. CODE § 233 (b)(1) (West Supp. 2000).

165. *See supra* Part IV.D (expressing opponents’ view that Chapter 955 teaches the acceptance of homosexual behavior).

166. Trigueiro Letter, *supra* note 104.