

**ASSEMBLY BILL**

**No. 2099**

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**Introduced by Assembly Members Bauer-Kahan and McCarty**

February 5, 2024

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An act to amend Section 6218.01 of the Government Code, and to amend Sections 422.6 and 423.3 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2099, as introduced, Bauer-Kahan. Crimes: reproductive health services.

Existing law makes it a crime to post personal information or an image of a reproductive health care services patient, provider, or assistant, or other individuals residing at the same home address with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against the reproductive health care services patient, provider, or assistant, or other individuals residing at the same home address. Existing law makes a violation of this provision punishable as a misdemeanor. If the violation leads to bodily injury of the person, existing law makes it a misdemeanor punishable by up to one year in a county jail, a fine of up to \$50,000, or both that fine and imprisonment.

This bill would make a violation of these provisions punishable as either a misdemeanor or as a felony, and would make a violation a felony if bodily injury occurs. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Existing law makes it a misdemeanor to, by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten another person in the free exercise or enjoyment of a right or privilege secured 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 specified actual or perceived characteristics of the victim, including disability, gender, religion, race, or sexual orientation.

This bill would make a violation of this provision punishable either as a misdemeanor or as a felony. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

Existing law, the California Freedom of Access to Clinic and Church Entrances Act (the Act), prohibits specified actions that, by force, threat of force, or physical obstruction, impede access to reproductive health services facilities, as defined. Existing law specifies the penalties for a violation of the Act, including imprisonment as a misdemeanor and specified fines.

This bill would increase the penalties for violations of the Act, including making specified violations punishable as either a misdemeanor or as a felony. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6218.01 of the Government Code is  
2 amended to read:

3 6218.01. (a) (1) A person shall not post on the internet or  
4 social media, with the intent that another person imminently use  
5 that information to commit a crime involving violence or a threat  
6 of violence against a reproductive health care services patient,  
7 provider, or assistant, or other individuals residing at the same  
8 home address, the personal information or image of a reproductive  
9 health care services patient, provider, or assistant, or other  
10 individuals residing at the same home address.

11 (2) A violation of this subdivision is a ~~misdemeanor~~ punishable  
12 by a fine of up to ten thousand dollars (\$10,000) per violation,  
13 imprisonment of *either* up to one year in a county ~~jail~~, *jail or*

1 *pursuant to subdivision (h) of Section 1170 of the Penal Code, or*  
2 *by both that fine and imprisonment.*

3 (3) A violation of this subdivision that leads to the bodily injury  
4 of a reproductive health care services patient, provider, or assistant,  
5 or other individuals residing at the same home address, is a  
6 ~~misdemeanor~~ *felony* punishable by a fine of up to fifty thousand  
7 dollars (\$50,000), imprisonment in a county jail not exceeding one  
8 year, *pursuant to subdivision (h) of Section 1170 of the Penal*  
9 *Code, or by both that fine and imprisonment.*

10 (b) Nothing in this section shall preclude prosecution under any  
11 other provision of law.

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

13 422.6. (a) ~~No~~A person, whether or not acting under color of  
14 law, shall *not*, by force or threat of force, willfully injure,  
15 intimidate, interfere with, oppress, or threaten any other person in  
16 the free exercise or enjoyment of ~~any~~ *a* right or privilege secured  
17 ~~to him or her~~ by the Constitution or laws of this state or by the  
18 Constitution or laws of the United States in whole or in part  
19 because of one or more of the actual or perceived characteristics  
20 of the victim listed in subdivision (a) of Section 422.55.

21 (b) ~~No~~A person, whether or not acting under color of law, shall  
22 *not* knowingly deface, damage, or destroy the real or personal  
23 property of any other person for the purpose of intimidating or  
24 interfering with the free exercise or enjoyment of ~~any~~ *a* right or  
25 privilege secured ~~to the other person~~ by the Constitution or laws  
26 of this state or by the Constitution or laws of the United States, in  
27 whole or in part because of one or more of the actual or perceived  
28 characteristics of the victim listed in subdivision (a) of Section  
29 422.55.

30 (c) ~~Any~~A person convicted of violating subdivision (a) or (b)  
31 shall be punished *either* by imprisonment in a county jail not to  
32 exceed one year, or by a fine not to exceed five thousand dollars  
33 (\$5,000), or by both the above imprisonment and fine, ~~and~~ *or*  
34 *pursuant to subdivision (h) of Section 1170. In addition to that*  
35 *punishment*, the court shall order the defendant to perform a  
36 minimum of community service, not to exceed 400 hours, to be  
37 performed over a period not to exceed 350 days, during a time  
38 other than ~~his or her~~ *the person's* hours of employment or school  
39 attendance. However, ~~no~~ *a* person ~~may~~ *shall not* be convicted of  
40 violating subdivision (a) based upon speech alone, except upon a

1 showing that the speech itself threatened violence against a specific  
2 person or group of persons and that the defendant had the apparent  
3 ability to carry out the threat.

4 (d) Conduct that violates this and any other ~~provision of law,~~  
5 including, but not limited to, an offense described in Article 4.5  
6 (commencing with Section 11410) of Chapter 3 of Title 1 of Part  
7 4, may be charged under all applicable provisions. However, an  
8 act or omission punishable in different ways by this section and  
9 ~~other provisions of another law~~ shall not be punished under more  
10 than one ~~provision, law,~~ and the penalty to be imposed shall be  
11 determined as set forth in Section 654.

12 SEC. 3. Section 423.3 of the Penal Code is amended to read:

13 423.3. (a) A first violation of subdivision (c), (d), (g), or (h)  
14 of Section 423.2 is a ~~misdemeanor,~~ punishable by imprisonment  
15 in a county jail for a period of not more than one ~~year, year or by~~  
16 *imprisonment pursuant to subdivision (h) of Section 1170*, or a  
17 fine not to exceed ten thousand dollars (\$10,000), or both that fine  
18 and imprisonment.

19 (b) A second or subsequent violation of subdivision (c), (d),  
20 (g), or (h) of Section 423.2 is a ~~misdemeanor, felony,~~ punishable  
21 by imprisonment ~~in a county jail for a period of not more than one~~  
22 *year, pursuant to subdivision (h) of Section 1170*, or a fine not to  
23 exceed twenty-five thousand dollars (\$25,000), or by both that  
24 fine and imprisonment.

25 (c) A first violation of subdivision (e) or (f) of Section 423.2 is  
26 a ~~misdemeanor, felony,~~ punishable by imprisonment ~~in a county~~  
27 *jail for a period of not more than one year, pursuant to subdivision*  
28 *(h) of Section 1170*, or a fine not to exceed twenty-five thousand  
29 dollars (\$25,000), or by both that fine and imprisonment.

30 (d) A first violation of subdivision (a) or (b) of Section ~~432.2~~  
31 423.2 is a misdemeanor, punishable by imprisonment in a county  
32 jail for a period of not more than one year, or a fine not to exceed  
33 twenty-five thousand dollars (\$25,000), or by both that fine and  
34 imprisonment.

35 (e) A second or subsequent violation of subdivision (a), (b), (e),  
36 or (f) of Section 423.2 is a ~~misdemeanor, felony,~~ punishable by  
37 imprisonment ~~in a county jail for a period of not more than one~~  
38 *year, pursuant to subdivision (h) of Section 1170*, or a fine not to  
39 exceed fifty thousand dollars (\$50,000), or by both that fine and  
40 imprisonment.

1 (f) In imposing fines pursuant to this section, the court shall  
2 consider applicable factors in aggravation and mitigation set out  
3 in Rules 4.421 and 4.423 of the California Rules of Court, and  
4 shall consider a prior violation of the federal Freedom of Access  
5 to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior  
6 violation of a statute of another jurisdiction that would constitute  
7 a violation of Section 423.2 or of the federal Freedom of Access  
8 to Clinic Entrances Act of 1994, to be a prior violation of Section  
9 423.2.

10 (g) This title establishes concurrent state jurisdiction over  
11 conduct that is also prohibited by the federal Freedom of Access  
12 to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which  
13 provides for misdemeanor penalties for first violations and  
14 felony-misdemeanor penalties for second and subsequent  
15 violations. State law enforcement agencies and prosecutors shall  
16 cooperate with federal authorities in the prevention, apprehension,  
17 and prosecution of these crimes, and shall seek federal prosecutions  
18 when appropriate.

19 (h) No person shall be convicted under this article for conduct  
20 in violation of Section 423.2 that was done on a particular occasion  
21 where the identical conduct on that occasion was the basis for a  
22 conviction of that person under the federal Freedom of Access to  
23 Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248).

24 SEC. 4. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.

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