

AMENDED IN SENATE AUGUST 11, 2008
AMENDED IN SENATE AUGUST 4, 2008
AMENDED IN SENATE JULY 2, 2008
AMENDED IN SENATE JUNE 17, 2008
AMENDED IN ASSEMBLY MAY 15, 2008
AMENDED IN ASSEMBLY APRIL 23, 2008
AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2296

Introduced by Assembly Member Mullin
(Principal coauthor: Assembly Member Volk)
(Principal coauthor: Senator Simitian)

February 21, 2008

An act to add ~~Section~~ *Sections 422.4 and 602.12* to the Penal Code, relating to ~~trespass crimes~~, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2296, as amended, Mullin. Academic research: ~~trespass~~.

Existing law makes it unlawful for any person to willfully engage in threats to commit a crime resulting in death or great bodily injury to another person, as specified.

This bill would make it a misdemeanor, punishable as specified, for any person to publish information, as defined, describing or depicting an academic researcher or his or her immediate family member, or the

location or locations where an academic researcher or his or her immediate family member may be found, with the intent that another person imminently use the information to commit a crime involving violence or a threat of violence against the academic researcher or his or her immediate family member, and the information is likely to aid in the imminent commission of such a crime.

Existing law makes it unlawful for persons to engage in certain acts of trespass and punishes most trespasses by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment.

This bill would make a person who enters the residential real property of an academic researcher, as defined, for the purpose of chilling, *preventing the exercise of*, or interfering with the researcher’s academic freedom guilty of the crime of trespass, a misdemeanor. By creating a ~~new crime~~ *new crimes*, the 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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature hereby finds and declares that
2 while individuals are entitled to express their views on animal use
3 in research and to mount protests that are protected under the First
4 Amendment to the United States Constitution, the use of physical
5 threats, violence, or destruction of property is unacceptable and
6 should not be tolerated. Unlawful acts that threaten and intimidate
7 researchers or their families at their personal residences are not
8 protected by the First Amendment to the United States Constitution,
9 and are a direct threat to the academic researcher’s constitutional
10 right to academic freedom.

11 SEC. 2. Section 422.4 is added to the Penal Code, to read:

1 422.4. (a) Any person who publishes information describing
2 or depicting an academic researcher or his or her immediate family
3 member, or the location or locations where an academic researcher
4 or immediate family of an academic researcher may be found, with
5 the intent that another person imminently use the information to
6 commit a crime involving violence or a threat of violence against
7 an academic researcher or his or her immediate family member,
8 and the information is likely to aid in the imminent commission of
9 such a crime, is guilty of a misdemeanor, punishable by
10 imprisonment in a county jail for not more than one year, a fine
11 of not more than one thousand dollars (\$1,000), or by both a fine
12 and imprisonment.

13 (b) For the purposes of this section, all of the following apply:

14 (1) "Publishes" means making the information available to
15 another person through any medium, including, but not limited to,
16 the Internet, the World Wide Web, or e-mail.

17 (2) "Academic researcher" has the same meaning as in Section
18 602.12.

19 (3) "Immediate family" means any spouse, whether by marriage
20 or not, domestic partner, parent, child, any person related by
21 consanguinity or affinity within the second degree, or any other
22 person who regularly resides in the household, or who, within the
23 prior six months, regularly resided in the household.

24 (4) "Information" includes, but is not limited to, an image,
25 film, filmstrip, photograph, negative, slide, photocopy, videotape,
26 video laser disc, or any other computer-generated image.

27 (c) Any academic researcher about whom information is
28 published in violation of subdivision (a) may seek a preliminary
29 injunction enjoining any further publication of that information.

30 (d) This section shall not apply to any person who is lawfully
31 engaged in labor union activities that are protected under state
32 or federal law.

33 (e) This section shall not preclude prosecution under any other
34 provision of law.

35 ~~SEC. 2.~~

36 SEC. 3. Section 602.12 is added to the Penal Code, to read:

37 602.12. (a) Any person who enters the residential real property
38 of an academic researcher for the purpose of chilling, preventing
39 the exercise of, or interfering with the researcher's academic
40 freedom is guilty of trespass, a misdemeanor.

1 (b) For the purposes of this section, the following definitions
2 apply:

3 (1) "Academic researcher" means any person lawfully engaged
4 in academic research who is a student, trainee, or employee of an
5 accredited California community college, a campus of the
6 California State University or the University of California, or a
7 Western Association of Schools and Colleges accredited, degree
8 granting, nonprofit institution.

9 (2) "Academic freedom" means the lawful performance,
10 dissemination, or publication of academic research or instruction.

11 (c) This section shall not apply to any person who is lawfully
12 engaged in labor union activities that are protected under state or
13 federal law.

14 (d) *This section shall not preclude prosecution under any other*
15 *provision of law.*

16 ~~SEC. 3.~~

17 *SEC. 4.* No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

26 ~~SEC. 4.~~

27 *SEC. 5.* This act is an urgency statute necessary for the
28 immediate preservation of the public peace, health, or safety within
29 the meaning of Article IV of the Constitution and shall go into
30 immediate effect. The facts constituting the necessity are:

31 In order to provide protection against escalating acts of violence
32 against researchers as soon as possible, it is necessary that this act
33 take effect immediately.