

TO: Honorable George Deukmejian
Governor, State of California

FROM: Thomas F. Coleman, Esq.
Commissioner, California Attorney General's Commission
on Racial, Ethnic, Religious and Minority Violence

RE: Assembly Bill 848: Legal Analysis & Commentary

DATE: September 2, 1984

Legislative Counsel's Digest:

Section 51.7 of the Civil Code provides that all persons within the State of California have the right to be free from violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, political affiliation, sex, or position in a labor dispute.

Assembly Bill 848 would add "age," "disability," and "sexual orientation" to the list of categories enumerated in Sec. 51.7.

Legislative History of the "Ralph Civil Rights Act:

Civil Code Sec. 51.7 is known as the Ralph Civil Rights Act of 1976. It was introduced into the California Legislature by then-Assemblyman Leon Ralph as Assembly Bill 2986. The bill passed the Assembly on a 76-1 vote. (See 1976 Assembly Journal, p. 21140.) The Senate passed the measure when then-Senator George Deukmejian and 23 of his Senate colleagues cast "yes" votes. Only four Senators dissented. (See 1976 Senate Journal, p. 16873.) The Ralph Civil Rights Act was approved by the Governor on September 28, 1976 and filed with the Secretary of State three days later. (See: Stats. 1976, Ch. 1293, p. 5778.)

The act amended Civil Code Sec. 52, added Sec. 51.7 to the Civil Code, and amended Sec. 1419 of the Labor Code.

Legal Significance of the Ralph Civil Rights Act:

Civil Code Sec. 51.7 imposes a civil penalty on a person who commits an act of violence, or who intimidates another with threats of violence, on account of the victim's race, color, religion, ancestry, national origin, political affiliation, sex, or position in a labor dispute. In addition to compensating the victim for any actual damages, Civil Code Sec. 52(b) requires the perpetrator of violence motivated by such bigotry to pay the victim a \$10,000 fine. In the case of multiple offenders, the \$10,000 fine is prorated among them.

The Attorney General is authorized to bring a civil action seeking injunctive relief whenever there is reasonable cause to believe that a person or group is engaged in a pattern or practice of violence motivated by such bigotry.

Government Code Sec. 12930(f)(2) authorizes the state Department of Fair Employment and Housing to receive, investigate, and conciliate complaints alleging violations of Civil Code Sec. 51.7.

The remedies provided by the Ralph Civil Rights Act are independent of any other remedies or procedures that may be available to an aggrieved party. (See: Civil Code Sec. 52(e); Government Code Sec. 12930(f)(2).)

An examination of general law on violence places the Ralph Civil Rights Act in perspective, thus providing a framework for understanding the legal significance of the act.

The bottom line of this analysis reveals that the Ralph Civil Rights Act articulates California's public policy that perpetrators of violence motivated by various enumerated forms of bigotry should be punished with a civil penalty. Would-be violators are placed on notice that such violent behavior will result in a \$10,000 fine, payable to the victim, over and above any other civil or criminal liability which may apply.

General Law Governing Violence:

California's Penal Code is replete with statutes prohibiting various forms of violence, such as murder, rape, robbery, and assault. The criminal law punishes offenses committed by individuals against the People of the State of California. A district attorney or city attorney initiates a criminal action by filing a complaint or an information with the appropriate court. The defendant in a criminal action is entitled to a jury trial and may not be convicted unless the prosecution proves each element of the crime beyond a reasonable doubt. A unanimous jury verdict is required in a criminal case. In the case of a felony, the crime is punishable by imprisonment in the state prison or a fine or both. Misdemeanor convictions are punishable by imprisonment in the county jail or a fine or both. In criminal cases, fines are paid to the government, not to the victim of the crime. The sentencing judge may order the defendant to make restitution to the victim for actual damages suffered by the victim as a direct result of the crime.

The fact that conduct is punishable as a crime does not affect any right of the victim to recover or enforce any civil remedies. (See: Penal Code Sec. 9.) The fact that a person has been punished criminally is no bar to recovery of punitive damages in a civil action. Bundy v. Maginess (1888) 76 Cal. 532.

A victim is authorized to file a civil suit to recover actual damages from the party at fault. Civil Code Sec. 3281 provides: "Every person who suffers detriment from the unlawful act or omission of another, may recovery from the person in fault a compensation therefor in money, which is called damages." Actual damages can be no greater than an amount which will compensate the injured party for all detriment proximately caused by the defendant's unlawful act. Zikratch v. Stillwell (1961) 196 Cal.App.2d 535. Damages cannot be recovered if evidence leaves them uncertain, speculative, or remote. Page v. Bakersfield Uniform & Towel Supply Co. (1966) 239 Cal.App.2d 762.

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A victim is authorized to file a civil suit to recover actual damages from the party at fault. Civil Code Sec. 3343 provides: "Every person who suffers detriment from the negligent act or omission of another, may recover from the person in fault a compensation thereof in money, which is called damages." Actual damages can be no greater than an amount which will compensate the injured party for all detriment proximately caused by the defendant's unlawful act. Kirchner v. Stillwell (1981) 115 Cal. App. 3d 555. Damages cannot be recovered if evidence leaves the question of causation speculative. Esquire v. Esquire (1987) 78 Cal. 4th 833. Esquire v. Esquire (1987) 78 Cal. 4th 833.

In addition to actual damages, a plaintiff in a civil action (other than breach of contract) may recover "exemplary damages" for the sake of example and by way of punishing the defendant, where the defendant has been guilty of "oppression, fraud, or malice." (See: Civil Code Sec. 3294.) To prove that a tort was maliciously perpetrated so as to authorize an award of exemplary damages, it is not necessary to establish that the defendant harbored a specific intent against the person wronged, but rather, the oppression or malice supplying such intent may be established by the conduct of the perpetrator. Farmy v. College Housing Inc. (1975) 48 Cal.App.3d 166. However, the evil motive factor is not satisfied by characterizing the wrongdoer's conduct as unreasonable, negligent, grossly negligent or even reckless. G. D. Searle & Co. v. Superior Court (1975) 49 Cal.App.3d 22.

The wealth of a defendant is a factor in determining the amount of an award of exemplary damages. Weisenburg v. Molina (1976) 58 Cal.App.3d 478. The amount it takes to punish a wealthy person may be greater than the amount necessary to punish a person of more modest means. Thus, evidence of the defendant's financial worth is admissible where exemplary damages are sought. A plaintiff may introduce evidence that the defendant is wealthy in an attempt to convince the jury to fix a high amount of punitive damages. A defendant may seek to have the award set at a low amount by introducing evidence of financial hardship.

Exemplary damages may be awarded for an oppressive or malicious assault on the person. Magliulo v. Superior Court (1975) 47 Cal.App.3d 760. Before a plaintiff may recover exemplary damages, he must prove actual damages. Birth Ranch & Oil Co. v. Campbell (1941) 43 Cal.App.2d 624. However, even when the plaintiff proves actual damages, exemplary damages are not a matter of right, but are awarded or withheld in the discretion of the jury, even on the clearest and most conclusive proof of oppression, fraud or malice. Pickwick Stages, Northern Division v. Board of Trustees (1921) 54 Cal.App. 730.

Exemplary damages must bear a reasonable relationship or proportion to actual damages sustained. Luke v. Mercantile Acceptance Corp. of Cal. (1952) 111 Cal.App.2d 431. The "reasonable relationship" rule exists for the purpose of guarding against excess. Finney v. Lockhart (1950) 35 Cal.2d 161.

A new trial may be ordered if the trial judge determines that the jury's award of punitive damages is excessive or inadequate. (See: Code of Civil Procedure Sec. 657.) The trial court exercises broad discretion in granting a new trial on the ground of excessive or inadequate damages. Myers v. King (1969) 272 Cal.App.2d 571. The court may induce a plaintiff to accept a reduced award of damages by making a conditional order, granting a new trial, unless the plaintiff remits a portion of the damages awarded. Duvall v. T.W.A. (1950) 98 Cal.App.2d 106.

Thus, it can be seen that the recovery of exemplary damages is speculative under existing law. If proof of actual damages is weak, exemplary damages probably won't be assessed. If a plaintiff can only prove minimal actual damages, any exemplary damages award must be relatively small so as not to be out of proportion. A defendant can seek to minimize an award of exemplary damages by pleading financial hardship. Finally, even if the jury awards sizeable punitive damages, a new trial may be ordered if the trial judge is of the opinion that the award was too great.

A discussion of general civil law governing violence would not be complete without mentioning the problem of attorneys fees. Under the so-called "American Rule," attorneys fees are not taxable as costs against the losing party in a civil action. Young v. Redman (1976) 128 Cal.Rptr. 86. In general, the prevailing party in a civil action may not recover attorneys fees from the losing party absent a contract or specific statutory authorization. (See: Code of Civil Procedure Sec. 1021). Thus, in civil actions, recovery of attorneys fees is the exception rather than the rule.

Practical Effect of the Ralph Civil Rights Act:

The primary result of the Ralph Civil Rights Act is to establish a minimum penalty for violence motivated by specific forms of bigotry, recoverable by the victim through a civil action. This penalty is mandatory once the motivation for the violence is proved. It is over and above any criminal liability or civil liability for actual or exemplary damages. (See: "Damages," 23 Cal.Jur.3d 239.)

The purpose of the \$10,000 fine imposed by the Ralph Civil Rights Act is clearly to punish the wrongdoer, not to compensate the victim. The fact that a statutory penalty is made recoverable in a civil action instead of a criminal prosecution does not change the penal character of the recovery. McDonald v. Hearst (1899) 95 F 656.

Without the Ralph Civil Rights Act, punishment is left to the discretion of the police, prosecutor and judge in a criminal case, on the one hand, and the discretion of the judge and jury through the imposition of exemplary damages in a civil case, on the other hand. A prosecutor might refuse to file a criminal complaint if he believes the evidence is insufficient to support a verdict of guilt beyond a reasonable doubt. A criminal jury must acquit a defendant in an assault or battery case (or other case involving violence) if it entertains a reasonable doubt as to the defendant's guilt. In a civil case, a jury might return a small punitive damages award after considering a wrongdoer's low income status, despite the outrageousness of his offense.

Through the passage of the Ralph Civil Rights Act, the Legislature has determined that a \$10,000 minimum penalty is appropriate if a victim can prove that the defendant's violence was motivated by one of the forms of bigotry enumerated in the act. Thus, in a civil action under the Ralph Civil Rights Act, the only question before the jury is whether the defendant committed such a bigotry-motivated act of violence. If such a

finding is supported by a preponderance of evidence, the court must impose a \$10,000 judgment against the defendant.

The Ralph Civil Rights Act encourages the civil prosecution of perpetrators of violence motivated by bigotry. Under general civil law governing violence, it is unlikely that a civil action would be instituted if evidence of actual damages is modest or marginal. In such cases, the victim is unlikely to find an attorney willing to prosecute the action on a contingent fee basis rather than demanding an hourly fee of \$100 per hour or more. When a factually strong case exists on the substantive offense, the Ralph Civil Rights Act increases the likelihood that a civil action will be brought against the aggressor even though evidence of actual damages is weak because the imposition of a \$10,000 minimum penalty enlarges the prospect of the victim finding an attorney who will take the case on a contingent fee basis. Thus, the public policy of the state to punish violence motivated by bigotry is enforced and implemented through a civil action even though the defendant might have escaped punishment under the state's penal law for one reason or another.

Conclusion:

The California Legislature has passed Assembly Bill 848. It passed the Assembly on a vote of 45-28. The Senate adopted the measure on a vote of 21-12. Thus, the People of the State of California, through their legislative representatives, have made a deliberate choice to impose a hefty civil penalty on persons who commit acts of violence on account of the age, disability or sexual orientation of the victim.

This law sends a clear message to bigots who are prone to act out their prejudices in a violent manner. It also provides some assurance to potential victims that redress is available despite any procedural weaknesses that may exist in our present civil or criminal justice systems.

Will passing another law stop "queer bashing?" Probably

not. After all, murder continues despite death penalty laws. But the persistence of such violence should not cause hesitation in the trend to expand our arsenal of legal weapons against violence.

A veto of this bill by the Governor would appear to contradict his support for the Ralph Civil Rights Act as a state Senator in 1976.

Soon after he became the state's chief executive officer in 1982, Governor Deukmejian publically stated that freedom from violence and the fear of violence is a basic human freedom and that it was the first responsibility of government to protect this freedom. The Legislature has acted to fulfill its responsibility by passing Assembly Bill 848. The bill has the strong support of California's chief law enforcement officer, Attorney General John Van de Kamp. The only remaining question is what action the Governor will take on the bill.

A veto of the bill could pose a clear and present danger to the physical safety and well being of elderly and disabled persons, as well as lesbians and gay men. A new wave of "gay bashing" and other senseless violence could be triggered by such an insensitive move. A veto would cause public confusion regarding the official policy of this state concerning such violence. The Governor should sign the measure into law as a signal that Californians are united in their resolve to curb violence.

The Legislature did not pass this law "for the sake of passing laws." It was passed in response to reports of increased violence against individuals because of their perceived "status." The existence of civil and criminal laws against violence in general has never discouraged the Legislature from taking a specific stand against specific forms of violence. The fact that one of the groups protected by Assembly Bill 848 is politically or socially unpopular is even more reason for the Governor to sign the bill into law.

