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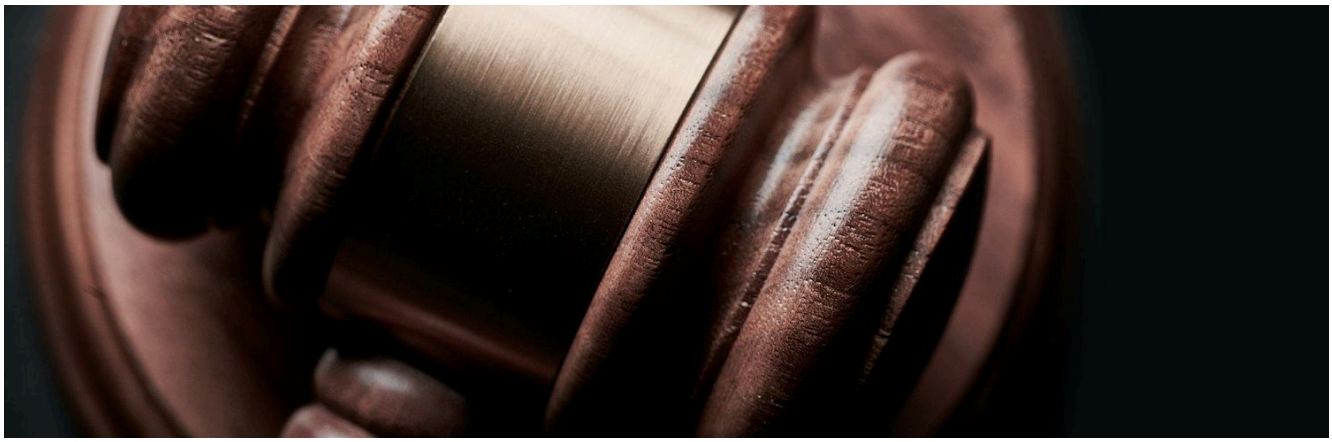
PRACTICE GUIDE · CIVIL RIGHTS

The California Bane Act — Civ. Code § 52.1

Grand Park Law Group · 2026



A. Elements After *Reese v. County of Sacramento*

The Bane Act creates a private cause of action where a defendant "interferes by threat, intimidation, or coercion" — or attempts to do so — with a person's exercise or enjoyment of any constitutional or statutory right. *See* Cal. Civ. Code § 52.1.

The statute was enacted in 1987 in response to a wave of hate-motivated attacks. For decades, courts struggled with whether "threat, intimidation, or coercion" had to be **independent of** the underlying constitutional violation, or whether the violation itself could supply the coercion. In *Reese v. County of Sacramento*, 888 F.3d 1030, 1043–45 (9th Cir. 2018), the Ninth Circuit — adopting the California Court of Appeal's reasoning in *Cornell* — held that **no independent coercion is required**: the underlying constitutional violation itself supplies the threat-intimidation-coercion element. The plaintiff must, however, separately establish the Bane Act's specific-intent prong (see § II.B).

This is a significant doctrinal point. It means that nearly every excessive-force case, false-arrest case, and unlawful-search case can be repackaged as a Bane Act claim, provided the specific-intent element is satisfied.

B. Specific-Intent Standard (*Cornell*)

The leading state authority on the Bane Act mens rea is *Cornell v. City & County of San Francisco*, 17 Cal. App. 5th 766, 801–04 (2017). *Cornell* holds that the Bane Act requires "a specific intent to violate the arrestee's right to freedom from unreasonable seizure." Reckless disregard suffices; the defendant need not be subjectively certain that the conduct is unconstitutional, but must act with "reckless disregard" of the right.

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The Ninth Circuit adopted *Cornell*'s standard in *Reese*, 888 F.3d at 1045. Plaintiffs satisfy the standard by showing the officer acted with the requisite mental state — for example, by escalating force after the suspect was subdued, by ignoring obvious medical distress, or by retaliating for protected speech.

C. Remedies Section 52.1 Actually Provides

The Bane Act's remedies are narrower than commonly advertised. The text of Civil Code § 52.1 provides:

1. **Damages.** An individual may sue "for damages, including, but not limited to, damages under Section 52," together with injunctive and other equitable relief (§ 52.1(c)).
2. **Attorney's fees.** The court "may award the petitioner or plaintiff reasonable attorney's fees" (§ 52.1(i)). The award is discretionary on its face.
3. **Civil penalty.** The $25,000 penalty may be sought only in an action "brought by the Attorney General, any district attorney, or any city attorney" (§ 52.1(b)). It is not available in a private action.

Whether the cross-reference to Civil Code § 52 imports its trebling formula is unresolved. Section 52(a), which contains the formula, applies by its terms to violations of sections 51, 51.5 and 51.6. Section 52(b), which governs sections 51.7 and 51.9, contains no multiplier. Plead damages under § 52.1(c) and fees under § 52.1(i), and treat any multiplier as contested.

D. Why the Bane Act Is Not Subject to Qualified Immunity

Federal qualified immunity is a defense to federal claims. State courts and federal courts sitting in supplemental jurisdiction over California law claims have repeatedly held that **qualified immunity does not apply to the Bane Act**. *See, e.g., Reese*, 888 F.3d at 1043 (analyzing Bane Act on its own terms without qualified-immunity defense). California Government Code § 820.2 provides a discretionary-act immunity, but it does not extend to the kind of operational misconduct typical in civil rights cases.

The result: a Bane Act claim will frequently survive summary judgment even where the parallel § 1983 claim is dismissed on qualified-immunity grounds. This is the single most important strategic reason to plead the Bane Act in every California civil rights case.

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