

BILL ANALYSIS

Senate Research Center

H.B. 938
By: Thompson (Ellis)
Criminal Justice
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Engrossed

DIGEST

Currently, the Texas hate crimes statute, which increases penalties by one level of offense if a crime is proven to be “motivated by bias or prejudice,” has not been widely used because prosecutors and legal experts have warned that the statute is too vague to be enforced properly and may not hold up to a constitutional challenge. H.B. 938 would establish conditions relating to the investigation and prosecution of an offense motivated by bias or prejudice and to other remedies for and prosecutions against certain hateful acts.

PURPOSE

As proposed, H.B. 938 establishes conditions and ramifications regarding the investigation and prosecution of an offense motivated by bias or prejudice and includes other remedies for and protections against certain hateful acts.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1

SECTION 1.01. Amends Section 12.47, Penal Code, to establish that this section does not apply to the trial of an offense of injury to a disabled individual under Section 22.04, if the affirmative finding in the case under Article 42.014, Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled. Authorizes the attorney general, upon request by a prosecuting attorney, to assist the prosecuting attorney in the investigation or prosecution of an offense committed because of bias or prejudice. Requires the attorney general to designate one individual in the division of the attorney general’s office that assists in prosecuting criminal cases to coordinate responses to requests made under this subsection. Makes a conforming change.

SECTION 1.02. Amends Article 42.014, Code of Criminal Procedure, to require the court to make an affirmative finding of the fact and enter the finding in the judgment of the case, in the punishment phase of a trial of an offense under Title 5 (offenses against the person) or Section 28.02 or 28.03, Penal Code, if the court determines by a preponderance of the evidence that the defendant intentionally selected the person against whom the offense was committed or intentionally selected property damaged or affected as a result of the offense because of the defendant’s bias or prejudice against a group, including race, color, disability, religion, national origin or ancestry, age, pregnancy status, or sexual orientation of the person against whom the offense was committed the court shall make and enter an affirmative finding in the judgment of the case. Defines “sexual preference.”

SECTION 1.03. Makes application of this article prospective.

ARTICLE 2

SECTION 2.01. Amends Chapter 104, Code of Criminal Procedure, by adding Article 104.004, as follows:

Art. 104.004. EXTRAORDINARY PROSECUTION COSTS. Requires the criminal justice division of the governor’s office (division) to distribute grants as provided by this article. Provides

that a county with a population of less than 125,000 is eligible to apply to the division for a grant under this article if, during the preceding fiscal year, the total amount of county expenditures or funds exceeded certain amounts. Requires the commissioners court to submit with an application a financial statement of the county that shows the total amount of funds, expenditures, and expenses of the county for the fiscal year for which the application is made. Authorizes the division to make a grant only to an eligible county for the reimbursement of expenses incurred by the county during the fiscal year for which the application is made for the investigation or prosecution of an offense described by Subsection(b)(1). Prohibits the amount of the grant to an eligible county from exceeding an amount equal to five percent of the difference between the total amount of funds received by the county and the total expenditures during the fiscal year for which the application is made. Authorizes the division to adopt a budget and rules for the making of grants under this article. Provides that all grants made to a county under this article and its expenditure by the county are subject to audit by the state auditor.

SECTION 2.02. Authorizes the commissioners court of a county to apply to the division for a grant, on or after September 1, 1999.

ARTICLE 3

SECTION 3.01. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 140, as follows:

CHAPTER 140. REMEDIES FOR AND PROTECTIONS AGAINST HATEFUL ACTS

Sec. 140.001. DEFINITIONS. Defines “claimant” and “defendant.”

Sec. 140.002. RIGHT TO BE FREE FROM HATEFUL ACTS. Provides that a person in this state has the right to be free from an act of violence, committed against the person or person’s property, because of certain personal characteristics. Defines “sexual preference.”

Sec. 140.003. ACTION BY PERSON. Authorizes an individual to commence certain legal actions, if the individual’s exercise or enjoyment of the rights secured by Section 140.002 is intentionally violated by another person. Requires a court to award a party who prevails in an action under this chapter reasonable attorney’s fees incurred in bringing the action.

Sec. 140.004. INDEPENDENT REMEDY. Establishes that an action under this chapter is independent of any other remedy or procedure that may be available to the claimant.

SECTION 3.02. Makes application of Article 3 of this Act prospective.

ARTICLE 4

SECTION 4.01. Amends Chapter 6, Code of Criminal Procedure, by adding Article 6.08, as follows:

Art. 6.08. PROTECTIVE ORDER PROHIBITING OFFENSE CAUSED BY BIAS OR PREJUDICE. Authorizes a person to request the court to render a protective order for the protection of the person, at any proceeding in which the defendant appears in certain courts regarding an offense under Title 5, Penal Code, or Section 28.02 or 28.03, Penal Code, in which it is alleged that the defendant committed the offense because bias or prejudice. Sets forth conditions by which the court is required to render a protective order. Establishes that the procedures for the enforcement of a protective order apply to the fullest extent practicable to the enforcement of a protective order, except that certain conditions must be fulfilled regarding the order and service of the order.

SECTION 4.02. Amends Chapter 25, Penal Code, by adding Section 25.071, as follows:

Sec. 25.071. VIOLATION OF PROTECTIVE ORDER PREVENTING OFFENSE CAUSED BY BIAS OR PREJUDICE. Provides that a person commits an offense if, in violation of a protective order, the person knowingly or intentionally commits certain offenses, communicates with certain individuals in a threatening way, or goes to or near the residence or place of employment or business of the protected individual. Authorizes the actor to be prosecuted, if the conduct constituting an offense also constitutes an offense under another section. Prohibits a peace officer investigating conduct that may constitute an offense from arresting a person protected by

that order for a violation of that order. Provides that an offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times or has violated the protective order by committing assault, in which event the offense is a third degree felony.

ARTICLE 5

SECTION 5.01. Amends Section 415.032(b), Government Code, to require the Commission on Law Enforcement Officer Standards and Education to require courses and programs to provide training in the investigation and documentation of cases that involve offenses committed because of bias or prejudice. Makes conforming changes.

SECTION 5.02. Amends Section 415.034, Government Code, by adding Subsection (j), to require the course provided to a peace officer to include education and training in the recognition of offenses that are committed because of bias or prejudice, unless the agency head determines that the education and training is inconsistent with the officer's assigned duties. Requires the agency to provide an officer the described education and training every 48 months.

ARTICLE 6

SECTION 6.01. Effective date: September 1, 1999.

SECTION 6.02. Emergency clause.