

HOUSE BILL REPORT

ESHB 1037

*As Passed House
February 18, 1991*

Title: An act relating to crime motivated by bigotry or bias.

Brief Description: Creating a procedure to monitor crimes of bigotry or bias.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Prince, Wineberry, Belcher, Heavey, R. Meyers, Dorn, H. Myers, Phillips, Wang, Miller, Ludwig, Prentice, Leonard, Locke, Riley, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, Anderson and Brekke; by request of Governor Gardner).

Brief History:

Reported by House Committee on:
Judiciary, February 8, 1991, DPS;
Passed House February 18, 1991, 77-21.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1037 be substituted therefor, and the substitute bill do pass.* Signed by 12 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Paris, Assistant Ranking Minority Member; Belcher; Forner; Locke; R. Meyers; H. Myers; Scott; D. Sommers; Vance; and Wineberry.

Minority Report: *Without recommendation.* Signed by 5 members: Representatives Broback; Hargrove; Mielke; D. Sommers; and Tate.

Staff: Pat Shelledy (786-7149).

Background: The malicious harassment statute is intended to prevent and punish harassment, motivated by bigotry and bias, against people of a certain race, color, religion, ancestry, or national origin, or against people with a mental, physical, or sensory handicap. A person is guilty of malicious harassment if the person maliciously and with intent to intimidate or harass the victim due to the victim's membership in a protected category, causes physical injury to the victim; or, by words or conduct, places the victim in reasonable fear of injury to the victim or the

victim's property or injury to another person or that person's property.

The malicious harassment statute does not explicitly state whether a person is guilty of malicious harassment if the person harasses someone due to a mistaken impression that the victim was a member of one of the protected classes. For example, in one celebrated case, it appears that a murderer mistakenly believed the family he murdered was Jewish.

Sexual orientation is not one of the classes protected by the statute.

The Washington Association of Sheriffs and Police Chiefs has the capability of monitoring various types of crime categories including malicious harassment or other specific crimes, such as murder or assault, that were motivated by bigotry and bias. A repository for monitoring crimes of bigotry and bias is not yet established.

Summary of Bill: The malicious harassment statute is amended to avoid a failure to charge, a dismissal, or a finding of not guilty because the defendant, who maliciously harassed a victim, was mistaken about the person's race, color, religion, ancestry, national origin, sexual orientation, or mental, physical, or sensory handicap. A defendant who maliciously harassed a victim because the defendant perceived, perhaps mistakenly, that the victim was a member of one of the protected classes, is guilty of malicious harassment.

Sexual orientation is added to the list of protected categories under the act. Sexual orientation means heterosexuality, homosexuality, or bisexuality.

The Washington Association of Sheriffs and Police Chiefs must establish a central repository for the collection, monitoring, and classification of information regarding violations of the malicious harassment statute and any other crimes of bigotry and bias. The procedure may be established within the association's reporting system. Local law enforcement must report monthly to the association about applicable violations. The association must abide by the rules governing confidentiality of criminal history information when disseminating the information.

The Criminal Justice Training Commission must train law enforcement officers to identify, respond to, and report crimes of malicious harassment and bigotry and bias.

The act is to be liberally construed.

The association must summarize the information and annually report to the governor, the Senate Law and Justice Committee, and the House Judiciary Committee.

Nothing in the act confers or expands any civil rights or protections to any group or class identified in the statute beyond those rights or protections that exist under the federal or state constitution or the civil laws of the state of Washington.

If specific funding for the repository and officer training is not provided in the 1991-93 operating budget, that section of the act will be null and void.

Fiscal Note: Requested January 19, 1991.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Hate crimes engender fear throughout a community. Hate crimes are on the rise. Officers need training to identify hate crimes. Collection of data on hate crimes will help law enforcement know how to respond and advise the community of the amount of hate crimes in the community. Sexual orientation should be included, because homosexuals and lesbians as a group are subjected to malicious harassment like the other identified groups. The law does not give special protection to homosexuals. The bill is an important symbolic statement that as a moral society we will not tolerate harassment of other people, even if we object to their lifestyle.

Testimony Against: Homosexuality is a chosen lifestyle that is immoral and a perversion. Most child molesters are homosexuals. The bill offers protection to immoral behavior, promotes the homosexual conspiracy, and protects homosexuals for what they do, not what they are.

Witnesses: Pro: George Tellevik, Chief, Washington State Patrol; Norm Maleng, King County Prosecutor; John Ladenburg, Pierce County Prosecutor; Jim Lynch, Mayor, City of Wenatchee; Karen Vialle, Mayor, City of Tacoma; Elaine Rose, City of Seattle on behalf of Mayor Norm Rice; Marvin Stern, Anti-defamation League; Patricia Lee, Asian American Affairs; Thomas Dixon, Tacoma Urban League; Joan Gaumer, Privacy Fund; Patrick Fitzimmons, Washington Association of Sheriffs and Police Chiefs; Larry Erickson, Spokane County Sheriff; Steve Harris, Chief of Police, City of Redmond; Mike Curtis, citizen; and Dwayne Evans, Minority Executive Directors Coalition. Con: Scott Staley, Council for Responsible Government; Billie Wright, citizen; Helen Donovan, citizen; Vivian Parsons, citizen; Kirk Fowler,

citizen; Jim McCune, 33rd District of Concerned Citizens;
and Carol Anne Weber, citizen.