

SENATE BILL REPORT

2ESHB 1037

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 28, 1992

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

SPONSORS: 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).

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; M. Kreidler, Madsen, and A. Smith.

Staff: Jack Brummel (786-7428)

Hearing Dates: March 21, 1991; February 26, 1992; February 28, 1992

BACKGROUND:

The Legislature passed a malicious harassment statute in 1981. The statute is intended to prevent and punish intimidation, harassment, or injury motivated by the victim's race, color, religion, ancestry, national origin, or mental, physical, or sensory handicap. Malicious harassment is a class C felony, punishable by a fine of up to \$10,000 and/or five years in prison. In addition to the criminal penalty, a person may also be liable in a civil action for actual damages to the victim and punitive damages of up to \$10,000. 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 crimes. They currently operate a uniform crime reporting system and an incident based reporting system. A repository for monitoring crimes of bigotry and bias is not yet established.

Two superior court judges in King County have held that the statute is unconstitutional. One court invalidated Section 2, which provides that cross burning is per se a violation, which means that the state does not have to prove that the person who burned the cross intended to maliciously harass anyone or that in fact anyone was harassed. The second court

invalidated Section 1 as constitutionally overbroad. Both decisions are on appeal.

SUMMARY:

The malicious harassment statute is amended. Sexual orientation is added to the list of attributes which designate a protected class. Sexual orientation means heterosexuality, homosexuality, or bisexuality. The perception that a person is a member of a protected class is sufficient to invoke the statute. The per se language in Section 2 is stricken and replaced with a provision that cross burning on the victim's property or defacement of the victim's property with hate symbols is prima facie evidence of malicious harassment.

The act does not confer or expand any civil rights or projections beyond those currently existing under the law.

The Washington Association of Sheriffs and Police Chiefs is to establish a central repository on information relating to crimes of malicious harassment and other crimes of bigotry or bias. Local law enforcement agencies are to report monthly on such crimes. The association is to prepare annual reports for the Governor and the Legislature. If funding is provided in the budget, the Criminal Justice Training Commission is to provide training for law enforcement on their responsibilities under the act.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENT:

Gender is added to the protected classes under the statute. Per se violations of the statute are eliminated. Cross burning and defacement of property with symbols of hate create a rebuttable presumption of the violation of the statute.

Crime reports by the Washington Association of Sheriffs and Police Chiefs on malicious harassment must comply with federal guidelines.

TESTIMONY FOR:

An attack against one member of a closely knit community can devastate and cause fear in the whole community. The training and monitoring provisions in the bill are important to fully understand the size of the problem with hate crimes. Crimes against gays and lesbians are increasing and this bill will help send a clear message that such behavior will not be tolerated. Washington may lose its malicious harassment statute if it doesn't act now to correct constitutional problems pointed out by superior court decisions.

TESTIMONY AGAINST:

Sexual orientation is a choice that doesn't deserve special protection. Once we accept a particular behavior through statute it becomes the norm. This is not a good law because it discriminates in order to confer protection.

TESTIFIED: PRO: Representatives Cal Anderson and Jesse Wineberry; John Turner, WASPC; R. G. Bakan, Seattle Gay News; Karen Narasaki, Asian Bar Association; Michael Davidson, PDD; Denise Harnley, Neighborhood Crime and Justice Center; Ernest Paul; Edward Murray, Privacy Fund; Terry Kennedy; James Peters; Patrick Hogan; Scott Plys; Richard Reid, Queer Nation; Paul Cowles, Mayor of Bothell; Leonard Elion; Steve Tomson, Whitman County Sheriff; Nora Fast, Kitsap County Human Rights Commission; Mike Leigh; Alex Cleghorn, Q Patrol; Jerry Sheehan, ACLU; Adam Gravley; Preston Thorgrimson; Peggy Tlapak; Peter Thrush; Michele George, Western Washington University Associated Students; Richard Kirton, Washington Freedom Coalition; Sharon Glatzmaiermace; Deni Yamauchi, Center for Democratic Renewal; CON: Glen Dake; Jim Galbraith, Facts for Freedom; Kirk Fowler; Zorka Fowler; Tim Robinson; Kurt Mach, Pastor, Narrows Community Bible Church; Doug Burman; Pamela Wunderlich; Chris Webb; Pat Henderson, Veritas Truth; Gene Goosman, Equal Justice for All; George Wunderlich; Brooke Ann Miller; Bill Valley