

SENATE BILL REPORT

ESHB 1569

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 29, 1993

Brief Description: Changing provisions relating to malicious harassment.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Appelwick, Voloria, Wineberry, Romero, Wang, Locke, Thibaudeau, Wolfe, Brough, Miller, Leonard, Campbell, Cothorn, L. Johnson, J. Kohl and Anderson)

HOUSE COMMITTEE ON JUDICIARY

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Niemi, Rinehart, and Spanel.

Minority Report: Do not pass.

Signed by Senators Hargrove, McCaslin, Nelson, and Roach.

Staff: Tom Fender (786-7414)

Hearing Dates: March 26, 1993; March 29, 1993

BACKGROUND:

The malicious harassment statute is a criminal statute which 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.

In 1989, the malicious harassment statute was amended in two significant ways. First, language was added to provide that "words or conduct" that could place a victim in reasonable fear included cross burnings and defacement of a victim's property with symbols that historically or traditionally have connoted hatred towards the class of which the victim is a member. Second, cross burnings and defacement of the property of the victim or a third person with hate symbols became **per se** violations of the statute.

In 1991, two separate incidents involving cross burnings occurred in King County. Two Superior Court judges heard the different cases. Prior to going to trial in both cases, the defendants made motions to dismiss the cases alleging the malicious harassment statute is unconstitutional. One Superior Court judge held that the **per se** provision is unconstitutional but that the rest of the statute is

constitutional. The other Superior Court judge held that the entire statute is unconstitutional. Those cases were consolidated on appeal. The Washington State Supreme Court heard oral argument on the cases on February 17, 1993. It is unlikely that the court will render a decision before the end of the legislative session. The Washington State Supreme Court will also consider the impact of a United States Supreme Court decision invalidating another state's hate crimes statute.

SUMMARY:

Changes are made to the malicious harassment statute to address constitutional concerns and new policy considerations.

The Legislature makes findings concerning the seriousness of hate crimes. The Legislature finds that the state interest in preventing hate crimes extends beyond the state interest in preventing felonies and misdemeanors that are not motivated by hatred, and that prosecution of those crimes is inadequate to protect citizens from hate crimes.

The current definition is revised to strike reference to "the intent to intimidate or harass ... by words or conduct." The list of words or conduct that may violate the statute is deleted. Instead, the state must prove that the defendant maliciously and intentionally threatened the victim. The victim must be placed in reasonable fear of harm. "Reasonable fear" is defined to mean the fear that a reasonable person would experience under all the circumstances. A "reasonable person" is a person who is a member of the class of which the victim is a member.

The "per se" language is stricken and replaced with a provision that the trier of fact may draw a reasonable inference that the defendant intended to threaten the victim if the defendant:

- (1) Burns a cross on the property of a victim who is or who the actor perceives to be of African American heritage; or
- (2) Defaces the property of a victim who is or who the defendant perceives to be of Jewish heritage by defacing the property with a swastika.

The state will continue to bear the burden of proof beyond a reasonable doubt on all elements of the crime.

Gender and sexual orientation are added to the list of protected categories under the act. Sexual orientation means heterosexuality, homosexuality, or bisexuality.

In a civil action, the plaintiff may be awarded reasonable attorneys' fees and costs, as well as actual damages, and punitive damages up to \$10,000.

The Washington Association of Sheriffs and Police Chiefs must establish a central repository of information regarding malicious harassment.

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 Juvenile Offender Code is amended to expressly rank the crime of malicious harassment at a seriousness level of a "C" for a completed crime and a "D+" for an attempted crime.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Every citizen has a right not to sustain criminal actions based on their personal characteristics. Overt actions based on hate cannot be tolerated and it is the duty of a just society to protect all citizens from crime regardless of their political power. The safety of neighborhoods and citizens in general is based on the premise that no one is free when another is victimized. Organized religion has a duty to advocate for basic legal justice free of discrimination. It is imperative that the state send a clear message regarding intolerance.

TESTIMONY AGAINST:

These crimes are assaults and current law is adequate. No minority should be granted extra rights based on their choice. Biological determinism remains an unproven theory as to sexual orientation. It is possible to change sexual orientation. Sexual preference unstated remains unknown. Employee and school educational programs advocating tolerance of alternative lifestyles should be terminated.

TESTIFIED: PRO: Representative Cal Anderson; Christine Gregoire, Attorney General; Merritt Long, Human Rights Commission; John Boonstra; Rabbi Sapsowitz; Rosemary Strunk; Larry Stone; Paul Beeman, United Methodist Church; Judy Beeman; CON: Dr. John Atkinson; Greg Byler; Geoff Swindler; Gail Yenne; Kaz Griffin; Kurt Mach; Dr. Dorcett Smith; Dennis Leahman; Helen Johnson; Barbara Roper; Vick Santes