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HOUSE BILL 1569

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State of Washington

53rd Legislature

1993 Regular Session

By Representatives Appelwick, Veloria, Wineberry, Romero, Wang, Locke, Thibaudeau, Wolfe, Brough, Miller, Leonard, Campbell, Cothorn, L. Johnson, J. Kohl and Anderson

Read first time 02/01/93. Referred to Committee on Judiciary.

1 AN ACT Relating to malicious harassment; amending RCW 9A.36.080;  
2 adding new sections to chapter 9A.36 RCW; adding a new section to  
3 chapter 36.28A RCW; adding a new section to chapter 43.101 RCW; adding  
4 a new section to chapter 28A.300 RCW; creating a new section; and  
5 prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 9A.36 RCW  
8 to read as follows:

9 The legislature finds that crimes and threats against persons  
10 because of their race, color, religion, ancestry, national origin,  
11 gender, sexual orientation, or mental, physical, or sensory handicaps  
12 are serious and increasing. The legislature also finds that crimes and  
13 threats are often directed against interracial couples and their  
14 children or couples of mixed religions, colors, ancestries, or national  
15 origins because of bias and bigotry against the race, color, religion,  
16 ancestry, or national origin of one person in the couple or family.  
17 The legislature finds that the state interest in preventing crimes and  
18 threats motivated by bigotry and bias goes beyond the state interest in  
19 preventing other felonies or misdemeanors such as criminal trespass,

1 malicious mischief, assault, or other crimes that are not motivated by  
2 hatred, bigotry, and bias, and that prosecution of those other crimes  
3 inadequately protects citizens from crimes and threats motivated by  
4 bigotry and bias. Therefore, the legislature finds that protection of  
5 those citizens from threats of harm due to bias and bigotry is a  
6 compelling state interest.

7 The legislature also finds that in many cases, certain discrete  
8 words or symbols are used to threaten the victims. Those discrete  
9 words or symbols have historically or traditionally been used to  
10 connote hatred or threats towards members of the class of which the  
11 victim or a member of the victim's family or household is a member. In  
12 particular, the legislature finds that cross burnings historically and  
13 traditionally have been used to threaten, terrorize, intimidate, and  
14 harass African Americans and their families. Cross burnings often  
15 preceded lynchings, murders, burning of homes, and other acts of  
16 terror. Further, Nazi swastikas historically and traditionally have  
17 been used to threaten, terrorize, intimidate, and harass Jewish people  
18 and their families. Swastikas symbolize the massive destruction of the  
19 Jewish population, commonly known as the holocaust. Therefore, the  
20 legislature finds that any person who burns or attempts to burn a cross  
21 or displays a swastika, if the act is directed towards a particular  
22 person, the person's family or household members, or a particular  
23 group, knows or reasonably should know that the act may create a  
24 reasonable fear of harm in the mind of the person, the person's family  
25 and household members, or the group.

26 **Sec. 2.** RCW 9A.36.080 and 1989 c 95 s 1 are each amended to read  
27 as follows:

28 (1) A person is guilty of malicious harassment if he or she  
29 maliciously and ~~((with the intent to intimidate or harass another~~  
30 ~~person because of, or in a way that is reasonably related to,~~  
31 ~~associated with, or directed toward, that person's))~~ intentionally  
32 commits one of the following acts because of his or her perception of  
33 the victim's race, color, religion, ancestry, national origin, gender,  
34 sexual orientation, or mental, physical, or sensory handicap:

35 (a) Causes physical injury to the victim or another person; ~~((or))~~

36 (b) ~~((By words or conduct places another person in reasonable fear~~  
37 ~~of harm to his person or property or harm to the person or property of~~  
38 ~~a third person. Such words or conduct include, but are not limited to,~~

1 ~~(i) cross burning, (ii) painting, drawing, or depicting symbols or~~  
2 ~~words on the property of the victim when the symbols or words~~  
3 ~~historically or traditionally connote hatred or threats toward the~~  
4 ~~victim, or (iii) written or oral communication designed to intimidate~~  
5 ~~or harass because of, or in a way that is reasonably related to,~~  
6 ~~associated with, or directed toward, that person's race, color,~~  
7 ~~religion, ancestry, national origin, or mental, physical, or sensory~~  
8 ~~handicap. However, it does not constitute malicious harassment for a~~  
9 ~~person to speak or act in a critical, insulting, or deprecatory way~~  
10 ~~unless the context or circumstances surrounding the words or conduct~~  
11 ~~places another person in reasonable fear of harm to his or her person~~  
12 ~~or property or harm to the person or property of a third person; or~~

13 ~~(e)) Causes physical damage to or destruction of the property of~~  
14 ~~the victim or another person; or~~

15 ~~(c) Threatens a specific person or group of persons and places that~~  
16 ~~person, or members of the specific group of persons, in reasonable fear~~  
17 ~~of harm to person or property. The fear must be a fear that a~~  
18 ~~reasonable person would have under all the circumstances. For purposes~~  
19 ~~of this section, a "reasonable person" is a reasonable person who is a~~  
20 ~~member of the victim's race, color, religion, ancestry, national~~  
21 ~~origin, gender, or sexual orientation, or who has the same mental,~~  
22 ~~physical, or sensory handicap as the victim. However, it does not~~  
23 ~~constitute malicious harassment for a person to use critical,~~  
24 ~~insulting, or deprecating words, unless the context or circumstances~~  
25 ~~surrounding the words indicate the words are a threat and the person~~  
26 ~~had the apparent ability to carry out the threat.~~

27 ~~(2) ((The following constitute per se violations of this section:~~

28 ~~(a) Cross burning; or~~

29 ~~(b) Defacement of the property of the victim or a third person with~~  
30 ~~symbols or words when the symbols or words historically or~~  
31 ~~traditionally connote hatred or threats toward the victim.~~

32 ~~(3)) In any prosecution for malicious harassment, unless evidence~~  
33 ~~exists which explains to the trier of fact's satisfaction that the~~  
34 ~~person did not intend to threaten the victim or victims, the trier of~~  
35 ~~fact may infer that the person intended to threaten a specific victim~~  
36 ~~or group of victims because of the person's perception of the victim or~~  
37 ~~victims' race, color, religion, ancestry, national origin, gender,~~  
38 ~~sexual orientation, or mental, physical, or sensory handicap if the~~  
39 ~~person commits one of the following acts:~~

1 (a) Burns a cross on property of a victim who is or who the actor  
2 perceives to be of African American heritage; or

3 (b) Defaces property of a victim who is or who the actor perceives  
4 to be of Jewish heritage by defacing the property with a swastika; or

5 (c) Defaces the victim's property with symbols or words that  
6 historically or traditionally connote hatred or threats toward the  
7 class of which the victim is a member.

8 This subsection only applies to the creation of a reasonable  
9 inference for evidentiary purposes. This subsection does not restrict  
10 the state's ability to prosecute a person under subsection (1) of this  
11 section when the facts of a particular case do not fall within (a),  
12 (b), or (c) of this subsection.

13 (3) It is not a defense that the accused was mistaken that the  
14 victim was a member of a certain race, color, religion, ancestry,  
15 national origin, gender, or sexual orientation, or had a mental,  
16 physical, or sensory handicap.

17 (4) Every person who commits another crime during the commission of  
18 a crime under this section may be punished and prosecuted for the other  
19 crime separately.

20 (5) "Sexual orientation" for the purposes of this section means  
21 heterosexuality, homosexuality, or bisexuality.

22 (6) Malicious harassment is a class C felony.

23 ~~((4) In addition to the criminal penalty provided in subsection~~  
24 ~~(3) of this section, there is hereby created a civil cause of action~~  
25 ~~for malicious harassment. A person may be liable to the victim of~~  
26 ~~malicious harassment for actual damages and punitive damages of up to~~  
27 ~~ten thousand dollars.~~

28 ~~(5))~~ (7) The penalties provided in this section for malicious  
29 harassment do not preclude the victims from seeking any other remedies  
30 otherwise available under law.

31 (8) Nothing in this section confers or expands any civil rights or  
32 protections to any group or class identified under this section, beyond  
33 those rights or protections that exist under the federal or state  
34 Constitution or the civil laws of the state of Washington.

35 NEW SECTION. Sec. 3. A new section is added to chapter 9A.36 RCW  
36 to read as follows:

37 In addition to the criminal penalty provided in RCW 9A.36.080 for  
38 committing a crime of malicious harassment, the victim may bring a

1 civil cause of action for malicious harassment against the harasser.  
2 A person may be liable to the victim of malicious harassment for actual  
3 damages, punitive damages of up to ten thousand dollars, and reasonable  
4 attorneys' fees and costs incurred in bringing the action.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 36.28A RCW  
6 to read as follows:

7 (1) The Washington association of sheriffs and police chiefs shall  
8 establish and maintain a central repository for the collection and  
9 classification of information regarding violations of RCW 9A.36.080.  
10 Upon establishing such a repository, the association shall develop a  
11 procedure to monitor, record, and classify information relating to  
12 violations of RCW 9A.36.080 and any other crimes of bigotry or bias  
13 apparently directed against other persons because the people committing  
14 the crimes perceived that their victims were of a particular race,  
15 color, religion, ancestry, national origin, gender, sexual orientation,  
16 or had a mental, physical, or sensory handicap.

17 (2) All local law enforcement agencies shall report monthly to the  
18 association concerning all violations of RCW 9A.36.080 and any other  
19 crimes of bigotry or bias in such form and in such manner as prescribed  
20 by rules adopted by the association. Agency participation in the  
21 association's reporting programs, with regard to the specific data  
22 requirements associated with violations of RCW 9A.36.080 and any other  
23 crimes of bigotry or bias, shall be deemed to meet agency reporting  
24 requirements. The association must summarize the information received  
25 and file an annual report with the governor and the senate law and  
26 justice committee and the house of representatives judiciary committee.

27 (3) The association shall disseminate the information according to  
28 the provisions of chapters 10.97 and 10.98 RCW, and all other  
29 confidentiality requirements imposed by federal or Washington law.

30 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101 RCW  
31 to read as follows:

32 The criminal justice training commission shall provide training for  
33 law enforcement officers in identifying, responding to, and reporting  
34 all violations of RCW 9A.36.080 and any other crimes of bigotry or  
35 bias.

1        NEW SECTION.    **Sec. 6.**    If specific funding for the purposes of  
2 implementing section 5 of this act, referencing this act by bill and  
3 section number, is not provided by June 30, 1993, in the omnibus  
4 appropriations act, section 5 of this act shall be null and void.

5        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 28A.300  
6 RCW to read as follows:

7        The superintendent of public instruction shall develop a program to  
8 be included in the curriculum of the public schools to educate children  
9 and teachers about crimes of bigotry and bias and the prevention of  
10 crimes of bigotry and bias committed by juveniles.

11       NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

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