

## **BILL ANALYSIS**

Senate Research Center  
77R1397 GWK-D

S.B. 87  
By: Ellis  
Criminal Justice  
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### **DIGEST AND PURPOSE**

Hate crimes are acts committed primarily because of the actor's bias or prejudice against the victim. Even though hate crimes are not always reported and some counties do not keep such statistics, not fewer than 2,300 hate crimes were reported in Texas between 1992 and 1997. As proposed, S.B. 87 enhances penalties for crimes motivated by hate, prejudice, or bias and provides the means for obtaining resources and assistance for the investigation and prosecution of hate crimes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the criminal justice division of the governor's office in ARTICLE 2, SECTION 2.01 (Article 104.005, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1

SECTION 1.01. Amends Section 12.47, Penal Code, as follows:

(a) Provides 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 (Finding that Offense was Committed Because of Bias or Prejudice), Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled.

(b) Authorizes the attorney general, if requested to do so 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 the prosecution of criminal cases to coordinate responses to requests made under this subsection.

SECTION 1.02. Amends Article 42.014, Code of Criminal Procedure, to require the court, in the punishment phase of the trial of an offense under Title 5 or Section 28.02 or 28.03 (Offenses Against the Person, Arson; Criminal Mischief), Penal Code, if the court determines beyond a reasonable doubt 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 race, color, disability, religion, national origin or ancestry, or sexual orientation of the person against whom the offense was committed or the owner or the occupant of the property, to make an affirmative finding of that fact and enter the affirmative finding in the judgment of that case. Deletes existing text pertaining to defendant's bias or prejudice. Makes a nonsubstantive change.

SECTION 1.03. Makes application of this article of this Act, prospective.

#### ARTICLE 2

SECTION 2.01. Amends Chapter 104, Code of Criminal Procedure, by adding Article 104.005, as follows:

Art. 104.005. EXTRAORDINARY PROSECUTION COSTS. (a) Requires the criminal justice division of the governor's office (division) to distribute grants as provided by this article.

(b) Provides that a county with a population of less than 50,000 is eligible to apply to the division for a grant under this article if, during the preceding fiscal year:

- the total amount of expenditures of the county exceed the total amount of funds received by the county from all sources and the county incurred expenses for the investigation or prosecution of certain offenses; or
- the total amount of funds received by the county from all sources exceeded the total amount of expenditures of the county and the county incurred expenses for the investigation or prosecution of an offense described by Subsection (b)(1) that exceed five percent of the amount of that excess.

(c) Requires the commissioners court to submit with an application under Subsection (b) a financial statement of the county that shows for the fiscal year for which application is made:

- the total amount of funds received by the county from all sources;
- the total amount of expenditure of the county; and
- the total amount of expenses incurred by the county for the investigation or prosecution of an offense described by Subsection (b)(1).

(d) Authorizes the division to make a grant under this article only to an eligible county for the reimbursement of expenses incurred by the county during the fiscal year for which application is made for the investigation or prosecution of an offense described by Subsection (b)(1). Prohibits the amount of the grant to a county eligible under Subsection (b)(2) from exceeding an amount equal to five percent of the difference between the total amount of funds received by the county and the total amount of expenditures of the county during the fiscal year for which application is made.

(e) 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.

(f) Prohibits a county from making an application under this article and Article 104.004 for reimbursement for expenses incurred in the same fiscal year.

SECTION 2.02. Authorizes the commissioners court of a county to apply to the division for a grant, as provided by Article 104.005, Code of Criminal Procedure, as added by this Act, on or after September 1, 2001.

### 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 an individual in this state has the right to be free from an act of violence, or intimidation by threat of violence, committed against the person or property of the individual because:

- of the individual’s race, color, disability, religion, national origin or ancestry, or sexual orientation; or
- another person perceives the individual to have one or more of the characteristics listed under Subsection (1).

Sec. 140.003. ACTION BY INDIVIDUAL. (a) Authorizes an individual whose exercise or enjoyment of the right secured by Section 140.002 is interfered with by a person, whether or not acting under color of law, by threat, intimidation, or coercion, or by an attempt to interfere by threat, intimidation, or coercion, to commence, in the individual’s own name, an action for:

- damages to the individual arising from the actions of the defendant in violating the peaceable exercise or enjoyment by the individual of the right secured by Section 140.002;
- exemplary damages as provided under Chapter 41; and
- injunctive relief or any other appropriate relief to protect the peaceable exercise or enjoyment of the right secured by Section 140.002.

(b) Requires a court to award a claimant who prevails in an action under this chapter reasonable attorney’s fees incurred in bringing the action.

Sec. 140.004. ACTION BY STATE OR LOCAL ATTORNEY. Authorizes the attorney general, a district attorney, a criminal district attorney, a county attorney, or a municipal attorney to bring an action for injunctive relief or other appropriate relief, including attorney’s fees, to protect the peaceable exercise or enjoyment by an individual of the right secured by Section 140.002.

Sec. 140.005. CONTENT OF SPEECH. (a) Prohibits an action under this chapter from being based solely on the content of the speech of the defendant unless it is shown that:

- the speech itself threatens violence against a specific individual or group of individuals;
- the individual or group against whom the threat is directed reasonably fears that, because of the content of the speech, violence will be committed against the individual or the group, or the property of the individual or group; and
- the defendant threatening violence had the apparent ability to carry out the threat.

(b) Prohibits a court from issuing an order under this chapter that restricts the content of any defendant’s speech.

(c) Authorizes the court to issue an order that restricts the time, place, or manner or the defendant’s speech only to the extent:

- reasonably necessary to protect the peaceable exercise or enjoyment by an individual of the right secured by Section 140.002; and
- consistent with the constitutional rights of the defendant.

Sec. 140.006. FORUM. Authorizes an action under this chapter to be brought in a district or county court.

Sec. 140.007. ENFORCEMENT. Provides that an order issued under this chapter is enforceable by contempt, prosecution under Section 22.12, Penal Code, or both.

Sec. 140.008. WARNING. Requires an order for temporary or permanent relief under this chapter to include a certain statement.

Sec. 140.009. NOTIFICATION OF LAW ENFORCEMENT AGENCIES. (a) Requires a court that issues an order for temporary or permanent relief under this chapter to order the claimant or the attorney for the claimant to deliver, or the clerk of the court to mail, two copies of the order before the end of the day on which the order was granted to:

- each local law enforcement agency designated by the claimant or the attorney for the claimant as having jurisdiction over the residence of the claimant; and
- any other location in which the court determines that hateful acts against the claimant are likely to occur.

(b) Requires a law enforcement agency that receives an order under this section to serve a copy on the defendant, and provide to any law enforcement officer responding to the scene of a reported hateful act against the claimant information relating to the existence of, terms of, and current status of the order.

(c) Provides that, in this section, “order” includes any extension, modification, or termination of the order.

Sec. 140.010. INDEPENDENT REMEDY. Provides that an action under this chapter is independent of any other remedy or procedure that may be available to the claimant.

SECTION 3.02. Amends Chapter 22, Penal Code, by adding Section 22.12, as follows:

Sec. 22.12. VIOLATION OF ORDER ENJOINING HATEFUL ACTS. (a) Provides that a person commits an offense if, in violation of an order for temporary or permanent injunctive relief issued under Chapter 140, Civil Practice and Remedies Code, the person knowingly violates the order.

(b) Provides that an offense under this section is a Class B 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, in which event the offense is a Class A misdemeanor.

SECTION 3.03. Makes application of Chapter 140, Civil Practice and Remedies Code, as added by this Act, prospective.

#### ARTICLE 4

SECTION 4.01. Effective date: September 1, 2001.

