

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 87
By: Ellis
Criminal Justice
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Committee Report (Substituted)

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, C.S.S.B. 87 enhances penalties for crimes motivated by hate, prejudice, or bias; provides the means for obtaining resources and assistance for the investigation and prosecution of hate crimes; and adds reporting requirements.

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 if an affirmative finding under Article 42.014 (Finding that Offense was Committed Because of Bias or Prejudice), Code of Criminal Procedure, is made in the trial of an offense other than certain offenses, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. Deletes existing text pertaining to assessment in the punishment phase of trial. 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, 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 judge, in the trial of an offense under Title 5 (Offenses Against the Person), Penal Code, or Sections 28.02, 28.03, or 28.08 (Arson, Criminal Mischief, and Graffiti), Penal Code, to make an affirmative finding of fact, rather than finding of that fact, and enter the affirmative finding in the judgement of the case, rather than judgement of that case, if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, 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 defendant's bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, or sexual orientation. Deletes existing text pertaining to the court's determination of the defendant's intention.

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 125,000 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 exceeds 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 Subdivision (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.

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

Sec. 140.006. ENFORCEMENT. Provides that an order issued under this chapter is enforceable by contempt, prosecution under Section 22.12, Penal Code, or both.

Sec. 140.007. WARNING. Requires an order for temporary or permanent relief under this chapter to include a certain statement.

Sec. 140.008. 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. 140.009. 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. Amends Chapter 6, Code of Criminal Procedure, by adding Article 6.08, as follows:

Art. 6.08. PROTECTIVE ORDER PROHIBITING OFFENSE CAUSED BY BIAS OR PREJUDICE. (a) Authorizes a person, at any proceeding in which the defendant appears in certain courts that is related to an offense under Title 5, Penal Code, or Sections 28.02, 28.03, or 28.08, Penal Code, in which it is alleged that the defendant committed the offense because of bias or prejudice as described by Article 42.014, to request the court to render a protective

order under Title 4 (Protective Orders and Family Violence), Family Code, for the protection of the person.

(b) Requires the court to render a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred and is likely to occur in the future as required by Section 85.001 (Required Findings and Orders), Family Code, the court finds that probable cause exists to believe that an offense under Title 5, Penal Code, or Sections 28.02, 28.03, or 28.08, Penal Code, occurred, that the defendant committed the offense because of bias or prejudice, and that the nature of the scheme or course of conduct engaged in by the defendant in the commission of the offense indicates that the defendant in the commission of the offense indicates that the defendant is likely to engage in the future in conduct prohibited by Title 5, Penal Code, or Sections 28.02, 28.03, or 28.08, Penal Code, and committed because of bias or prejudice.

(c) Provides that the procedure for the enforcement of a protective order under Title 4, Family Code, applies to the fullest extent practicable to the enforcement of a protective order under this article, including certain specific provisions, with certain specific exceptions.

SECTION 4.02. Amends Chapter 25, Penal Code, by adding Section 25.071, as follows:

Sec. 25.071. VIOLATION OF PROTECTIVE ORDER PREVENTING OFFENSE CAUSED BY BIAS OR PREJUDICE. (a) Provides that a person commits an offense if, in violation of an order issued under Article 6.08, Code of Criminal Procedure, the person knowingly or intentionally commits certain specific acts.

(b) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another section of this code, to be prosecuted under either section or under both sections.

(c) Prohibits a peace officer investigating conduct that may constitute an offense under this section for a violation of an order from arresting a person protected by that order for a violation of that order.

(d) Provides that an offense under this section is a Class A 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 or has violated the protective order by committing an assault, in which event the offense is a third degree felony.

ARTICLE 5

SECTION 5.01. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.211, as follows:

Art. 2.211. HATE CRIME REPORTING. Requires a clerk of a district or county court in which an affirmative finding under Article 42.014 is requested, in addition to performing duties required by Article 2.21, to report that request to the Texas Judicial Council (council), along with a statement as to whether the request was granted by the court and, if so, whether the affirmative finding was entered in the judgement in the case. Requires the clerk to make the report required by this article not later than the 30th day after the date the judgement is entered in the case.

SECTION 5.02. Amends Section 71.034, Government Code, by adding Subsection (e), as follows:

(e) Requires the council to also include in the report a summary of information provided to the council during the preceding year under Article 2.211, Code of Criminal Procedure.

ARTICLE 6

SECTION 6.01. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

ARTICLE 1

SECTION 1.01. Differs from the original to conform to new language added to Article 42.014, Code of Criminal Procedure, in the Substitute. Deletes text pertaining to assessment in the punishment phase of the trial.

SECTION 1.02. Differs from the original by amending and clarifying the requirement, in certain situations, that the judge make an affirmative finding of fact. Removes specific references to the punishment phase of trial.

SECTION 1.03. No change.

ARTICLE 2

SECTION 2.01. Differs from the original by increasing the limit of a county's eligibility for a grant under this article from those with populations of less than 50,000 to those with populations of less than 125,000. Amends certain criteria relating to expenditures of a county to include expenses for certain offences or (rather than and) certain other offenses. Amends to clarify certain cited offenses. Deletes proposed Article 104.005(f), Code of Criminal Procedure, relating to a county's application for reimbursement.

SECTION 2.02. No change.

ARTICLE 3

SECTION 3.01. Differs from the original by deleting proposed Section 140.004, Civil Practices and Remedies Code, relating to actions for injunctive or other relief by a state or local attorney. Redesignates proposed Sections 140.005 - 140.010 to Sections 140.004 - 140.009.

SECTION 3.02. No change.

SECTION 3.03. No change.

ARTICLE 4

Differs from the original by redesignating former ARTICLE 4 (effective date) to ARTICLE 6.

SECTION 4.01. Differs from the original by adding provisions relating to protective orders.

SECTION 4.02. Differs from the original by adding provisions relating to the violation of protective orders.

ARTICLE 5

Adds provisions relating to hate crime reporting and reporting to the Texas Judicial Council.

ARTICLE 6

Added by redesignation with no change.