

BILL ANALYSIS

Senate Research Center

H.B. 587
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Criminal Justice
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Engrossed

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, according to the Texas Department of Public Safety report, "Crime in Texas 1997: The Texas Crime Report," the total number of hate crime incidents in 1997 was 331. These incidents involved 361 victims, 420 offenders, and resulted in a total of 360 offenses. H.B. 587 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 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, to provide 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 a first degree felony or a Class A misdemeanor the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. Deletes existing text regarding the punishment phase of the 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. 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 Section 28.02, 28.03, or 28.08 (Arson, Criminal Mischief, or Graffiti), Penal Code, to make an affirmative finding of fact, rather than of that fact, and enter the affirmative finding in the judgment of the 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, age, gender, or sexual preference. Deletes existing text regarding a certain court determination. Defines "sexual preference." Makes conforming changes.

SECTION 1.03. Makes application of this article 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, certain conditions exist.

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

(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 article, 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," "defendant," and "sexual preference."

Sec. 140.002. RIGHT TO BE FREE FROM HATEFUL ACTS. Provides that a person in this state has the right to be free from an act of violence committed against the person or the person's property because of the person's race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference.

Sec. 140.003. ACTION BY PERSON. (a) Authorizes a person whose exercise or enjoyment of the right secured by Section 140.002 is intentionally violated by another person to commence in the person's own name an action for certain damages and relief.

(b) Requires a court to award a party who prevails in an action under this section reasonable attorney's fees in bringing or defending the action.

Sec. 140.004. 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. Makes application of this article 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 constitutional county court, statutory county court, or district court that is related to an offense under Title 5, Penal Code, or Section 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 Section 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 is likely to engage in the future in conduct prohibited by Title 5, Penal Code, or Section 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 provisions relating to findings, contents, duration, warning, delivery, law enforcement duties, and modification, with certain specific exceptions.

(d) Requires a law enforcement agency, for an original or modified protective order rendered under this article, on receipt of the order from the clerk of the court, to immediately, but not later than the 10th day after the date the order is received, enter the information required by Section 411.042(b)(6) (relating to the bureau of identification and records), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

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 takes any of certain enumerated actions.

(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 judgment in the case. Requires the clerk to make the report required by this article not later than the 30th day after the date the judgment is entered in the case.

SECTION 5.02. Amends Section 71.034, Government Code, by adding Subsection (e), to require the council, in addition to the information described by Subsection (a), to 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. (a) Provides that this Act does not create any legal status or right not already existent in statute or common law for a group or a member of a group described by Article 42.014(a), Code of Criminal Procedure, as amended by this Act, and Section 140.002, Civil Practice and Remedies Code, as added by this Act.

(b) Requires this Act to be used only to protect individuals from being targets of hateful acts of violence simply because those individuals are members of a group described by Article 42.014(a), Code of Criminal Procedure, as amended by this Act, and Section 140.002, Civil Practice and Remedies Code, as added by this Act.

ARTICLE 7

SECTION 7.01. Effective date: September 1, 2001.