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SECOND ENGROSSED SUBSTITUTE HOUSE BILL 1037

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State of Washington

52nd Legislature

1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Prince, Wineberry, Belcher, Heavey, R. Meyers, Dorn, H. Myers, Phillips, Wang, Miller, Ludwig, Prentice, Leonard, Locke, Riley, Fraser, R. King, Nelson, Pruitt, G. Fisher, Jacobsen, Anderson and Brekke; by request of Governor Gardner).

Read first time February 12, 1991.

1 AN ACT Relating to crimes motivated by bigotry or bias; amending  
2 RCW 9A.36.080; adding a new section to chapter 36.28A RCW; and creating  
3 new sections.

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

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

7 (1) A person is guilty of malicious harassment if he or she  
8 perceives, accurately or inaccurately, that another person is of a  
9 particular race, color, religion, ancestry, national origin, sexual  
10 orientation, or has a mental, physical, or sensory handicap, and  
11 maliciously and with the intent to intimidate or harass ((another))  
12 that person because of, or in a way that is reasonably related to,  
13 associated with, or directed toward, that person's perceived race,  
14 color, religion, ancestry, national origin, sexual orientation, or  
15 mental, physical, or sensory handicap:

1 (a) Causes physical injury to another person; or

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

18 (c) Causes physical damage to or destruction of the property of  
19 another person.

20 (2) The words or conduct do not have to be communicated or  
21 conducted on the victim's property to violate subsection (1)(b) of this  
22 section.

23 (3) "Sexual orientation" for the purposes of this section, means  
24 heterosexuality, homosexuality, or bisexuality.

25 (4) The following constitute (~~per se~~) prima facie evidence of  
26 violations of this section:

27 (a) Cross burning on the victim's property; or

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

1 A judicial finding that conduct is not prima facie evidence of a  
2 violation of this section shall not preclude the state from prosecuting  
3 a person under subsection (1) of this section.

4 ~~((+3))~~ (5) Malicious harassment is a class C felony.

5 ~~((+4))~~ (6) In addition to the criminal penalty provided in  
6 subsection ~~((+3))~~ (5) of this section, there is hereby created a civil  
7 cause of action for malicious harassment. A person may be liable to  
8 the victim of malicious harassment for actual damages and punitive  
9 damages of up to ten thousand dollars.

10 ~~((+5))~~ (7) The penalties provided in this section for malicious  
11 harassment do not preclude the victims from seeking any other remedies  
12 otherwise available under law or preclude the state from prosecuting  
13 other applicable crimes.

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

18 NEW SECTION. Sec. 2. A new section is added to chapter 36.28A RCW  
19 to read as follows:

20 (1) The Washington association of sheriffs and police chiefs shall  
21 establish and maintain a central repository for the collection and  
22 classification of information regarding violations of RCW 9A.36.080.  
23 Upon establishing such a repository, the association shall develop a  
24 procedure to monitor, record, and classify information relating to  
25 violations of RCW 9A.36.080 and any other crimes of bigotry or bias  
26 apparently directed against other persons because the people committing  
27 the crimes perceived, accurately or inaccurately, that their victims  
28 were of a particular race, color, religion, ancestry, national origin,  
29 sexual orientation, or had a mental, physical, or sensory handicap.

1 (2) All local law enforcement agencies shall report monthly to the  
2 association concerning all violations of RCW 9A.36.080 and any other  
3 crimes of bigotry or bias in such form and in such manner as prescribed  
4 by rules adopted by the association. Agency participation in the  
5 association's reporting programs, with regard to the specific data  
6 requirements associated with violations of RCW 9A.36.080 and any other  
7 crimes of bigotry or bias, shall be deemed to meet agency reporting  
8 requirements. The association must summarize the information received  
9 and file an annual report with the governor and the senate law and  
10 justice committee and the house of representatives judiciary committee.

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

14 (4) The criminal justice training commission shall provide training  
15 for law enforcement officers in identifying, responding to, and  
16 reporting all violations of RCW 9A.36.080 and any other crimes of  
17 bigotry or bias.

18 NEW SECTION. **Sec. 3.** The provisions of this act shall be  
19 liberally construed in order to effectuate its purpose.

20 NEW SECTION. **Sec. 4.** If any provision of this act or its  
21 application to any person or circumstance is held invalid, the  
22 remainder of the act or the application of the provision to other  
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 5.** If specific funding for the purposes of  
25 implementing section 2(4) of this act, referencing this act by bill and  
26 section number, is not provided by June 30, 1992, in the supplemental  
27 omnibus appropriations act, section 2 of this act shall be null and

1 void.