

BILL ANALYSIS

C.S.H.B. 616
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The James Byrd Jr. Hate Crimes Act was passed in the 77th Legislature, Regular Session, 2001, and took effect on September 1, 2001.

C.S.H.B. 616 requires the attorney general to conduct a study to determine the success of the Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 616 amends the Code of Criminal Procedure to add a temporary provision, set to expire February 1, 2011, to require the attorney general to conduct a study examining the success of the James Byrd Jr. Hate Crimes Act. The bill requires the attorney general to perform the following actions to accumulate data for purposes of conducting the study:

- conduct the study so that it identifies successful strategies for prosecuting crimes of bias or prejudice and any obstacles or barriers to use of the hate crimes law;
- examine the characteristics of crimes reported as hate crimes and categorize each by type, severity, year of commission, any protected class status of the victim, any protected class status of the alleged perpetrator, and any other factor that would assist in improving the effectiveness of the hate crimes law;
- examine for each of those crimes whether an affirmative finding under the hate crimes law was requested and obtained, whether a protective order was requested and obtained, whether other charges related to the incident were filed, whether any charging instrument for the crime included an enhancement of punishment based on an affirmative finding under the hate crimes law, whether other convictions were obtained, and, if no affirmative finding under the hate crimes law was requested, whether the alleged perpetrator was ever identified, whether there was any basis found for the affirmative finding or other charge, and whether a victim declined to participate in the investigation;
- interview the attorneys representing the state in the prosecution of a representative sample of crimes identified as hate crimes to determine whether plea negotiations were influenced by the possibility of an enhancement of punishment based on an affirmative finding under the hate crimes law;
- survey attorneys representing the state in whose jurisdictions complaints of hate crimes have been made and determine the characteristics of crimes leading to requests for affirmative findings under the hate crimes law, whether there are barriers or disincentives

discouraging requests for affirmative findings, and whether the availability of additional resources would lead to a greater number of requests for affirmative findings;

- interview a representative sample of hate crime victims and examine their experiences with the hate crimes prosecution process to determine problems, burdens, or disincentives to the prosecution of hate crimes;
- examine, for training for prosecutors related to punishment enhancement for hate crimes required under state law, the amount of money appropriated for the training, how many training sessions were provided and requested, and the number of attendees of any training sessions provided;
- examine, for the reimbursement of counties for extraordinary costs of prosecution, the amount of money appropriated, the number of requests made for money and the amounts requested, and the total amount of money distributed;
- examine, for the community education program on Texas hate crimes law required under state law, the amount of money appropriated for community and public curricula, the results of any curriculum feedback model, the number of requests for a curriculum, when a curriculum was developed, and the amount of actual instruction under a curriculum; and
- compare data regarding hate crimes under state law, federal law, and the law of other states, including reporting requirements, the number of complaints made, the number of prosecutions, money available for prosecutions, money available for education, and other models for prosecution of or education about hate crimes.

C.S.H.B. 616 requires the attorney general to deliver a report on the data collected for the study to each house of the legislature not later than January 1, 2011.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 616 adds provisions not in the original requiring the attorney general to examine for each crime reported as a hate crime whether any charging instrument for the crime included an enhancement of punishment based on an affirmative finding under the hate crimes law, and requiring the attorney general to interview the attorneys representing the state in the prosecution of a representative sample of hate crimes to determine whether plea negotiations were influenced by the possibility of such an enhancement of punishment. The substitute differs from the original by requiring the attorney general to survey attorneys representing the state rather than county attorneys, district attorneys, and criminal district attorneys, in whose jurisdictions complaints of hate crimes have been made to make certain determinations.