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Bill Analysis
Legislative Service Commission

S.B. 22

124th General Assembly
(As Introduced)

Sens. Fingerhut, Brady, Oelslager, Furney, McLin, Ryan

BILL SUMMARY

- Establishes the Center for the Study of Hate Crimes in Ohio to collect and maintain specified information and data related to hate crimes in Ohio and the activities in Ohio of organizations that encourage individuals to commit hate crimes or that make or use documents that attempt to justify the commission of hate crimes, and to promote education and training of interested individuals and groups regarding hate crimes.
- Requires the Center to send to the Governor, the President of the Senate, and the Speaker of the House of Representatives an annual report regarding hate crimes in Ohio and the activities in Ohio of organizations that encourage individuals to commit hate crimes or that make or use documents that attempt to justify the commission of hate crimes, and regarding the Center's recommendations for changes in the law to address those matters.
- Provides for the collection of information and data regarding hate crimes in Ohio from judicial and law enforcement entities, through the Bureau of Criminal Identification and Investigation, and requires the Bureau to provide that information and data monthly to the Center and, in an annual report, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.
- Establishes the Advisory Committee for the Center for the Study of Hate Crimes in Ohio, to oversee the Center's work and to perform other specified duties.

CONTENT AND OPERATION

Center for the Study of Hate Crimes

The bill establishes the Center for the Study of Hate Crimes in Ohio. It requires the Ohio Board of Regents to establish the Center at a state university on or after the bill's effective date and specifies that the Center is to be housed at that state university. The Center is to be independent of all state offices and agencies, but the Attorney General (the AG) and all other state offices and agencies must cooperate with the Center in the performance of its duties. The Center must seek, and be funded by, both private and public sources of funding.

The bill requires the Center to develop a system for collecting information and data from public and private sources regarding the occurrence of "hate crimes" (see "Definition of hate crime," below) in Ohio, including, but not limited to, the information the Bureau of Criminal Identification and Investigation (the BCII) is required to provide to the Center (see "Monthly report of the Bureau of Criminal Identification and Investigation," below), and regarding the activities in Ohio of organizations that encourage individuals to commit hate crimes or that produce, promote, or disseminate documents that attempt to justify the commission of hate crimes. The Center must collect and maintain information and data of that nature in accordance with the system so developed and must analyze the information and data, make the information and data available to the public, and promote education and training of interested individuals and groups regarding hate crimes.

The Center must analyze the information and data it receives from the BCII and develop reports and databases from its analysis. The Center must merge the information and data it receives from the BCII with the information and data it receives from all other public and private sources that pertain to known hate crimes and to the specified types of organizational activities. The Center also must prepare and distribute an annual report, as described below in "Annual report of the Center for the Study of Hate Crime in Ohio."

The Center must work with governmental entities from other states, and with private entities in Ohio or any other state, in obtaining information and data regarding known hate crimes and the specified types of organizational activities, and to work in conjunction with the BCII and cooperate with, and support the efforts of, the BCII, the office of the Attorney General, and "prosecutors" (see **COMMENT**) in the prosecution of criminal cases. (R.C. 3345.52.)

Advisory Committee for the Center for the Study of Hate Crimes in Ohio

The bill establishes the Advisory Committee for the Center for the Study of Hate Crimes in Ohio, consisting of nine members, to oversee the work of the

Center for the Study of Hate Crimes in Ohio and to perform specified duties. The Committee is independent of the Center and of all state offices and agencies, but the Center, the Attorney General, and all other state offices and agencies are required to cooperate with the Committee in the performance of its duties. The Governor, the President of the Senate, and the Speaker of the House of Representatives must each appoint three members of the Committee, and not more than two of each group of three appointees may be from the same political party. All members must be experienced in the monitoring, investigation, or prosecution of hate crimes and must represent groups that are targets of hate crimes.

The Governor, the Senate President, and the House Speaker must make the initial appointments of members to the Committee not later than 30 days after the bill's effective date. Of those initial appointments, one member appointed by the Governor, the Senate President, and the House Speaker will serve a term ending two years after the bill's effective date; one member appointed by each will serve a term ending three years after the bill's effective date, and one member appointed by each will serve a term ending four years after the bill's effective date. The person making the appointment must specify the length of the term of each initial appointee. Thereafter, terms of office of the members will be for four years, with each term ending on the same day of the same month as did the term that it succeeds. Members may be reappointed. Vacancies will be filled in the same manner provided for original appointments. A member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed will hold office as a member for the remainder of the predecessor's term. A member will continue in office subsequent to the expiration date of that member's term until that member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

The Committee must meet within two weeks after all members have been appointed, select a Chairperson and Vice-chairperson, and organize as necessary. After the initial meeting, the Committee must meet at least once every three months or more often upon the call of the Chairperson or the written request of three or more members. The members will serve without compensation, but each member will be reimbursed for actual and necessary expenses incurred in the performance of official duties as a Committee member.

The Center must provide the Advisory Committee all information the Center collects. The Committee must review all information it receives from the Center and all other relevant information the Committee obtains from any other source. (R.C. 3345.53.)

Annual report of the Center for the Study of Hate Crimes in Ohio

The Center for the Study of Hate Crimes in Ohio annually must prepare a report that: (1) reviews and summarizes the status of hate crimes in Ohio and the activities in Ohio of organizations that encourage individuals to commit hate crimes or that produce, promote, or disseminate documents that attempt to justify the commission of hate crimes, and (2) contains the Center's recommendations for changes in the law regarding, and for other ways to address, hate crimes in Ohio and the specified types of organizational activities. The Center must send a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives and must provide copies of the report to any other interested person. The report is a public record open for inspection and copying under the state's existing Public Records Law. (R.C. 3345.54.)

Limitations on availability of information

Any information that BCII provides to the Center for the Study of Hate Crimes in Ohio, the Governor, the President of the Senate, or the Speaker of the House of Representatives and that BCII identifies as an item that should be kept confidential in accordance with this provision, and any information of that nature that the Center provides to the Advisory Committee for the Center for the Study of Hate Crimes in Ohio, while in the Center's, Governor's, President's, Speaker's, or Committee's possession, is not a public record open for inspection and copying under the state's existing Public Records Law.

In addition to the information described in the preceding paragraph, the Center or Committee may keep confidential any information in its possession that it believes would affect an ongoing investigation. (R.C. 3345.55.)

Bureau of Criminal Identification and Investigation--procurement of information regarding criminal activity in Ohio

BCII's procurement of information in general, and provision of information by jailers and clerks of court

Existing law. Existing law contains a number of provisions that pertain to BCII's general procurement, maintenance, and use of information pertaining to criminal activity in Ohio, and to jailers' and clerk of courts' provision of information to BCII:

(1) R.C. 109.57(A)(1) requires BCII's Superintendent to procure from wherever procurable and file for record photographs, pictures, descriptions, fingerprints, measurements, and other information that may be pertinent of all persons who have been convicted of committing within Ohio a felony, any crime

constituting a misdemeanor on the first offense and a felony on subsequent offenses, or any misdemeanor described in R.C. 109.572(A)(1)(a), of all children under 18 years of age who have been adjudicated delinquent children for committing within Ohio an act that would be a felony or an offense of violence if committed by an adult or who have been convicted of committing within Ohio a felony or an offense of violence, and of all well-known and habitual criminals.

(2) R.C. 109.57(A)(1) also requires the person in charge of any state or local detention or correctional facility having custody of a person suspected of having committed any offense described in paragraph (1) or having custody of a child under 18 years of age with respect to whom there is probable cause to believe that the child may have committed an act that would be a felony or an offense of violence if committed by an adult to furnish material of the type described in paragraph (1) to the BCII's Superintendent.

(3) R.C. 109.571(A)(1) also provides that fingerprints, photographs, or other descriptive information of a child who is under 18 years of age, who has not been arrested or otherwise taken into custody for committing, has not been adjudicated a delinquent child for committing, and has not been convicted of committing a felony or an offense of violence, and is not a child with respect to whom there is probable cause to believe may have committed a felony or an offense of violence cannot be procured by BCII's Superintendent or furnished by any person identified in paragraph (2) except as authorized in R.C. 2151.313.

(4) R.C. 109.57(A)(2) requires every clerk of a court of record in Ohio, other than the Supreme Court or a court of appeals, to send to the BCII's Superintendent a weekly report containing a summary of each case involving an offense or act described in paragraph (1), (2), or (3). The report and summary must include certain specified information pertaining to the offense or act in question. The clerk of the court of common pleas must include in the report and summary the specified information regarding cases before the court of appeals that is served by that clerk. The summary must be written on standard forms furnished by the Superintendent.

(5) R.C. 109.57(A)(3) requires BCII's Superintendent to cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete system of criminal identification and in obtaining fingerprints and other means of identification of all persons arrested for an offense or act described in paragraph (1), (2), or (3). It also requires the Superintendent to file for record the fingerprint impressions of all persons confined in specified local or state detention facilities for the violation of state laws and of all children under 18 years of age who are confined in specified local or state detention facilities or in any facility for delinquent children for committing an act that would be a felony or an offense of violence if committed by an adult, and any other information that

the Superintendent may receive from law enforcement officials of the state and its political subdivisions.

(6) R.C. 109.57(D) specifies that the information and materials furnished to BCII's Superintendent pursuant to the provisions described above in paragraphs (1) to (5) are not public records under the state's Public Records Law.

(7) R.C. 109.57(E) requires the Attorney General to adopt rules, in accordance with the Administrative Procedure Act, setting forth the procedure by which a person may receive or release information gathered by the Superintendent pursuant to the provisions described above in paragraphs (1) to (5). A reasonable fee may be charged for this service.

Operation of the bill. The bill expands the provisions described above in paragraphs (1) to (5) of "**Existing law**" that require the provision of information to the BCII so that they also require the provision of the information regarding persons who are convicted of or adjudicated delinquent for committing a hate crime, in custody for being suspected of committing a hate crime, or before a court of record in a criminal or delinquency case involving a hate crime (R.C. 109.57(A)(1)(a) and (b), (A)(2), and (A)(3)).

The bill also clarifies that the provision described above in paragraph (7) of "**Existing law**" that requires the Attorney General to adopt rules setting forth the procedure by which a person may receive or release information gathered under the provisions described above in paragraphs (1) to (5) of "**Existing law**" is subject to any provision of law that specifies another procedure (R.C. 109.57(E)).

Provision of fingerprints by sheriffs and police chiefs

Existing law. R.C. 109.60 requires the sheriffs of the several counties and the chiefs of police of cities, immediately upon the arrest of any person for any felony, on suspicion of any felony, for a crime constituting a misdemeanor on the first offense and a felony on subsequent offenses, or for any misdemeanor described in R.C. 109.572(A)(1)(a), and immediately upon the arrest or taking into custody of any child under 18 years of age for committing an act that would be a felony or an offense of violence if committed by an adult or upon probable cause to believe that a child of that age may have committed an act that would be a felony or an offense of violence if committed by an adult, to take the person's or child's fingerprints, or cause the same to be taken, according to the fingerprint system of identification on the forms furnished by BCII's Superintendent. The sheriff or chief immediately must forward copies of the completed forms, any other description that may be required, and the history of the offense committed to BCII to be classified and filed and to the clerk of the court with jurisdiction over the prosecution of the offense or over the adjudication relative to the act.

If an accused is found not guilty of the offense charged or a *nolle prosequi* is entered in any case, or if any accused child under 18 years of age is found not to be a delinquent child for committing an act that would be a felony or an offense of violence if committed by an adult or not guilty of the felony or offense of violence charged or a *nolle prosequi* is entered in that case, the fingerprints and description must be given to the accused upon the accused's request.

The section requires the Superintendent to compare the description received with those already on file with BCII, and, if the Superintendent finds that the person arrested or taken into custody has a criminal record or a record as a delinquent child for having committed an act that would be a felony or an offense of violence if committed by an adult or is a fugitive from justice or wanted by any jurisdiction for any offense, the Superintendent at once must inform the arresting officer, the officer taking the person into custody, or the chief administrative officer of the state or local detention or correctional facility in which the person or child is in custody of that fact and give appropriate notice to the proper authorities in the jurisdiction in which the person is wanted.

Operation of the bill. The bill expands the provisions described above in "**Existing law**" that require the provision of fingerprints to the BCII so that they also require the provision of fingerprints regarding persons who are arrested or taken into custody for committing a hate crime. It makes conforming changes in the existing provisions that pertain to the Superintendent's checking of records for existing charges against the person (R.C. 109.60(A)(1) and (A)(6)).

The bill requires the sheriffs of the several counties and the chiefs of police of municipal corporations to send to BCII's Superintendent a monthly report containing a summary of all hate crimes occurring in the sheriff's or chief's jurisdiction within the month covered by the report. The summary must be on standard forms furnished by the Superintendent (see below) and must include the number of hate crimes occurring during the period covered by the report, a detailed description of each of the hate crimes occurring during that period, the community in which each of the hate crimes occurred, the individual or group that was the target or victim of the hate crime, any other information required by the Bureau on the form, and any other information the sheriff or chief of police believes is relevant.

The Superintendent must prepare and furnish to every sheriff and to every municipal police chief standard forms for reporting the information required under the provisions described in the preceding paragraph. The standard forms may be in a tangible format, in an electronic format, or in both tangible formats and electronic formats. The Superintendent also must compile and distribute to each sheriff and each municipal police chief a listing of all criminal and delinquent acts that, for purposes of those provisions, constitute hate crimes.

The information sent to the Bureau under the provisions described in the two preceding paragraphs, while in the Bureau's possession, is not a public record open for inspection or copying under the state's Public Records Law. BCII may keep confidential any information sent to it under those provisions that it believes would affect an ongoing investigation into criminal activity. (R.C. 109.60(C).)

Reports of the Bureau of Criminal Identification and Investigation

The bill requires BCII's Superintendent to tabulate for each month all information regarding hate crimes that BCII receives pursuant to the bill's provisions, to prepare each month a report that contains the tabulated received during the preceding month, and, not later than the 15th day of each month, to provide a copy of the report prepared for the preceding month to the Center for the Study of Hate Crimes in Ohio. The report cannot identify, or enable the identification of, any individual involved in any hate crime that is described in the report. BCII must work in conjunction with the Center in the Center's transfer and dissemination of information and data regarding hate crimes.

Not later than February 1 of each year, BCII's Superintendent must provide to the Center, the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that contains all information of the type described in the preceding paragraph that pertains to the preceding calendar year.

The Superintendent may identify any item of information contained in a report prepared and provided as described in either of the two preceding paragraphs as an item that should be kept confidential in accordance with R.C. 3345.52, as described above in "**Limitations on availability of information.**" Any item so identified is not a public record to the extent described in that section. (R.C. 109.571.)

Definition of "hate crime"

As used in the bill, "hate crime" means a violation of existing R.C. 2927.12, which is not in the bill (R.C. 109.57(A)(1), 109.60(A)(1)(a)(i), and 3345.51(A)). Existing R.C. 2927.12 prohibits a person from violating R.C. 2903.21 (the offense of "aggravated menacing"), 2903.22 ("menacing"), 2909.06 ("criminal damaging or endangering"), or 2909.07 ("criminal mischief"), or division (A)(3), (4), or (5) of R.C. 2917.21 (certain aspects of "telecommunications harassment") by reason of the race, color, religion, or national origin of another person or group of other persons. A violation of the prohibition is the offense of "ethnic intimidation." Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation.

COMMENT

As used in the bill's provisions regarding the Center for the Study of Hate Crimes in Ohio, "prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case (R.C. 3345.51(B) and, by reference, existing R.C. 2935.01--not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-30-01	p. 93

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