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STATEMENT

OF

CARL H. SUMMERSON

PERMANENT HEARING EXAMINER

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BEFORE

THE

JUDICIARY COMMITTEE

PENNSYLVANIA HOUSE OF REPRESENTATIVES

CONCERNING

H.B. 1353, 1991 SESSION

APRIL 22, 1992

Mr. Chairman and Members of the House Judiciary Committee, my name is Carl H. Summerson, and I am the Permanent Hearing Examiner at the Pennsylvania Human Relations Commission. I am appearing on behalf of Homer C. Floyd, Executive Director of the Pennsylvania Human Relations Commission. The primary function of the Pennsylvania Human Relations Commission is to serve as Pennsylvania's State Civil Rights Enforcement Agency, which has been given jurisdiction over discrimination in the areas of Employment, Housing and Commercial Real Estate, Public Accommodations and Education.

Another mandate legislatively given to the PHRC is to address the development of tension in the Commonwealth. One of the PHRC's efforts in this regard is to participate on the Governor's Inter-Agency Task Force on Civil Tension. In fact, the Pennsylvania Human Relations Commission not only chairs monthly meetings of the Inter-Agency Task Force on Civil Tension, but in fiscal year 1991, Pennsylvania Human Relations Commission staff personally responded to 132 tension incidents.

On the issue of sexual orientation, although this is not a protected category under the Pennsylvania Human Relations Act, the Pennsylvania Human Relations Commission does receive regular inquiries from gays and lesbians who are concerned about incidents of discrimination against them because of their sexual orientation. Also, the Pennsylvania Human Relations Commission often interacts with Local Human Relations Commissions in Pennsylvania which do have sexual orientation as a protected category.

Another aspect of the Pennsylvania Human Relations Commission's involvement with the issue of tension has been a continuous relationship with Task Force

members in an effort to train primarily police, but also college personnel, district justices, fire departments, correction officials, and the general public about the §2710 offense of Ethnic Intimidation. It has been my opportunity and pleasure to have spoken to thousands of police officers and others throughout the Commonwealth on the subject of Ethnic Intimidation. This experience has given our Commission and me personally a familiarity with the crime of Ethnic Intimidation and some insight into the proposed legislation contained in H.B. 1353. Additionally, the experiences gained on the subject of Ethnic Intimidation prompt the Pennsylvania Human Relations Commission to present several additional items for consideration as possible additional amendments to §2710 Ethnic Intimidation.

The Pennsylvania Human Relations Commission stands in support of H.B. 1353 and we urge its passage. Currently, §2710 exposes perpetrators of certain offenses to more severe punishment if a listed crime manifests sufficient evidence of hatred for a victim's race, color, religion, or national origin. This bill is designed to add real or perceived sexual orientation as an additional category of victims that, if certain crimes are perpetrated against another person because of real or perceived sexual orientation, the perpetrator is exposed to the possibility of a greater amount of punishment. Of course, the issue of how much greater the exposure to punishment depends on the offense to which the separate charge of Ethnic Intimidation is added. As drafted, the grading of an offense of Ethnic Intimidation can range from a 3rd degree misdemeanor to a first degree felony because when Ethnic Intimidation is charged, it is to be graded the next degree higher than the underlying offense to which it

is attached. To many, an initial question posed by H.B. 1353 may be: Isn't a perpetrator of an offense motivated by a dislike of another's sexual orientation already exposed to punishment for the commission of the underlying offense? The answer of course is yes. The issue thus becomes: What value is there in enhancing the exposure to punishment when someone has been victimized simply because of their sexual orientation?

Generally, the Pennsylvania Human Relations Commission submits there are several answers to this question. First, to add sexual orientation to Ethnic Intimidation speaks to both perpetrators and victims. The message to prospective perpetrators is that their hatred and bigotry are not condoned. It is not alright to manifest one's dislike of another's sexual orientation in criminal behavior. To do so will expose the perpetrator to enhanced punishment. Crimes of hatred are ugly blotches of prejudice in a society which should not and will not tolerate acts which serve to intimidate members of groups who may appear controversial and even disliked by some misguided persons led by ignorance. The message to embattled and scarred victims would be that the real and growing victimization of gays and lesbians is condemned as a serious affront to law and order in this state. Passage of H.B. 1353 in no way either supports or promotes a homosexual lifestyle. Instead, this bill compassionately recognizes that there are a group of people in Pennsylvania who are being systematically singled out for acts of violence just because of their sexual orientation.

Second, during Ethnic Intimidation trainings, whenever police officers are asked if there are any groups others than race, color, religion or national origin which are frequently victimized because of a particular characteristic, invariably, the answer is either sexual preference or sexual orientation.

Third, it is not really important whether one believes homosexuality is engaged in either by choice or by psychological/physiological orientation. What is important here is that there are members of our society who are actively being singled out and victimized solely because of a group identification. Whenever this occurs, extra deterrence is both needed and justified.

Often members of groups singled out need do nothing more than appear to belong to a hated group to be victimized. Expressions of disapproval of others through criminal behavior is something our society can not afford to tolerate.

Through testimony presented today, you have heard first hand about the extent of this problem. Instances of violence against gays and lesbians depict not only the selective element of these incidents but the extent of cruelty which is often associated with acts of hatred.

Accordingly, the Pennsylvania Human Relations Commission stands in support of H.B. 1353.

In addition to the general support the PHRC gives to the proposed legislation, the PHRC submits that several additional amendments to the proposed change to §2710 of the Crimes Code would also be useful.

First, as currently drafted, it is unclear whether the crime of Ethnic Intimidation covers instances where a hate crime is perpetrated against an individual simply because of that individual's association with someone against whom the hatred is actually directed. For example, White realtors who have shown

a minority couple homes in predominantly White areas have been the targets of criminal activity motivated by the perpetrator's malicious intention towards minorities. Our Housing Division has received regular inquiries in which concerns have been expressed by persons in the Real Estate field that they may not be covered when acts of hatred are inflicted on them. Additionally, at numerous real estate seminars, similar concerns have been expressed by owners and managers of property. They note instances where a property is shown to a minority and the property is subsequently damaged.

Another example occurred recently in Upper Darby. In January, 1992, a group of "skinheads" attacked a group of White students allegedly because the White students associated with Black students. It is our understanding that since the hatred was of Blacks and the assaults were against Whites, Ethnic Intimidation was not added as an extra charge.

It is our opinion that any time a hate crime is inflicted upon someone simply because of their association or involvement with members of another race, color, religion, or national origin, (or sexual orientation if the proposed legislation is successful), the perpetrator should be equally exposed to the higher punishment provided when the crime of Ethnic Intimidation is added.

To add this factor to the proposed legislation, the language of §2710 could read in pertinent part:

"...with respect to such individual or his or her property or with respect to one or more members of such group or to their property or with respect to any individual because of any involvement, connection, or association with such individual or group of individuals." (proposed language underlined)

Another amendment which is submitted for consideration concerns the present limitation regarding which crimes code offenses can support an additional charge of Ethnic Intimidation. Currently, only Article B offenses, Chapter 33 offenses (with the exception of 3307), and two additional Sections, 3503 and 5504, can support the additional charge of Ethnic Intimidation when an underlying offense is alleged to have been committed with the requisite malicious intention.

Clearly, one can readily imagine instances where other offenses, not presently capable of use as an underlying offense, are motivated by the hatred of a victim's race, color, religion, national origin, or sexual orientation. Some states which address bias/hate crimes indicate that when any offense is committed with the requisite malicious intention, the perpetrator's exposure to punishment is enhanced. In Pennsylvania, we of course limit the crimes to which Ethnic Intimidation can be added.

Some examples of possible additional offenses include:

§3502 Burglary

§3701 Robbery

Chapter 30 Theft Offenses

§4592 Intimidation of Witnesses or Victims

§4953 Retaliation Against Witnesses or Victims

Chapter 55 Riot and Disorderly Conduct Offenses

(Presently only 5504, Harassment by Communication
or Address is listed as a possible underlying
offense.)

Chapter 65 Nuisances

Any or all of the above listed offenses could easily be motivated by hatred,
yet Ethnic Intimidation cannot be added to any of these listed offenses.

Finally, the Pennsylvania Human Relations Commission recommends that H.B.
1353 should take effect immediately rather than 60 days.

Thank you for the opportunity to submit this statement and to appear before
you today.