

# County of Nueces



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NUECES COUNTY COURTHOUSE  
CORPUS CHRISTI, TEXAS, 78401

August 14, 1978

Dr. Hector P. Garcia  
1315 Bright Street  
Corpus Christi, Texas

Dear Dr. Garcia:

In connection with your efforts to obtain a reform of the State law on the civil rights issues, and in particular as they relate to matters of official oppression, let me make the following suggestion: You will recall our discussion of Article 39.02. Official Oppression, Texas Penal Code. Stated in its entirety this statute provides as follows:

- (a) A public servant acting under color of his office or employment commits an offense if he:
  - (1) Intentionally subjects another to mistreatment or to arrest, detention, search, seizure, disposition, assessment, or lien that he knows is unlawful: or
  - (2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.
- (b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.
- (c) An offense under this section is a Class A misdemeanor.

This is in my opinion a very broad and useful statute. Although I of course do not have a working knowledge of the federal statute, I believe that as to its substantive content, it is broader in its content. It of course has a serious deficiency of not providing for any more serious penalties when the results of the conduct are more than a mere aggravation or temporary discomfort. This problem could be completely eliminated by providing for a classification of third degree felony for causing serious bodily injury as a result of conduct. A second degree felony for causing irreparable bodily harm and of course a first degree felony punishable by up to life in prison for a death resulting from such conduct.

*An Equal Opportunity Employer*

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As to general civil rights legislation dealing with discrimination against persons because of race, religion, color, sex, or national origin, I'm afraid the approach should be to begin from scratch. The present Article 6252-16 entitled Discrimination Against Persons Because of Race, Religion, Color, Sex, or National Origin, is in my opinion totally inadequate to deal with the problem of discrimination. First of all it only applies to State or political subdivisions doing the discriminating. But even within that realm which is of course important, in order for action to be taken, there must be a criminal prosecution. It is at least a tribute to our success in this area that today criminal prosecution would be next to impossible where the burden of proof is intentional rather than mere showing that the resulting conduct is discriminatory. The subtler forms of discrimination in use today require a civil rather than a criminal remedy such as provisions for back pay and other benefits in connection with reinstatement, promotion or hiring. I have a wealth in material on my efforts under this statute which I will be happy to share with you or any member of the legislature.

Trusting this information and suggestions will be of use to you,  
I am

Yours very truly,

  
Mike Westergren

MW:cb