

HOUSE BILL REPORT

HB 2497

As Reported by House Committee On:
Public Safety & Emergency Preparedness

Title: An act relating to victimization of homeless persons.

Brief Description: Concerning the victimization of homeless persons.

Sponsors: Representatives White, Orwall, Goodman, Kenney, Kessler and Darneille.

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 1/12/10, 1/22/10 [DPS].

Brief Summary of Substitute Bill

- Makes it an aggravating circumstance if an offense was intentionally committed because the defendant perceived the victim to be homeless.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Yvonne Walker (786-7841).

Background:

Generally, the standard sentencing range is presumed to be appropriate for the typical felony case. However, the law provides that, in exceptional cases, a court has the discretion to depart from the standard range and may impose an exceptional sentence below the standard range (with a mitigating circumstance) or above the range (with an aggravating circumstance). The Sentencing Reform Act (SRA) provides a list of factors that a court may consider in deciding whether to impose an exceptional sentence outside of the standard range. Some of the aggravating factors provided by the SRA include: behavior that

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manifested deliberate cruelty to a victim; vulnerability of a victim; sexual motivation on the part of the defendant; and an ongoing pattern of multiple incidents of abuse to a victim.

Prior to 2004 a court could sentence, on its own initiative, an offender above or below the standard range if it found, by a preponderance of the evidence, that aggravating or mitigating circumstances existed. In 2004 the U.S. Supreme Court (court) ruled that sentencing an offender above the standard range in this manner is unconstitutional. *Blakely v. Washington*, 542 U.S. 296 (2004). According to the court, any factor that increases an offender's sentence above the standard range, other than the fact of a prior conviction, must be proved to a jury beyond a reasonable doubt. *Blakely* did not affect a court's ability to impose an exceptional sentence below the standard range. In 2005 the Legislature amended the procedure for imposing exceptional sentences in light of *Blakely*. Under this new procedure, the court no longer has the authority to impose an aggravated exceptional sentence on its own initiative in most circumstances. Instead, the prosecutor must provide notice that he or she is seeking a sentence above the standard range. The prosecutor must then prove the aggravating circumstances justifying such a sentence to a jury beyond a reasonable doubt.

Summary of Substitute Bill:

A new aggravating circumstance is added to the list of circumstances that may lead to an exceptional sentence above the standard range. An offense that was intentionally committed because the defendant perceived the victim to be homeless is a new aggravating circumstance. This aggravating circumstance, must be found by a jury beyond a reasonable doubt before an exceptional sentence can be imposed.

"Homelessness" or "homeless" is defined as a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is: (1) a supervised, publicly or privately operated shelter designed to provide temporary living accommodations; (2) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or (3) a private residence where the individual stays as a transient invitee.

Substitute Bill Compared to Original Bill:

The language of the original bill is deleted that: (1) expanded the Malicious Harassment (hate crime) statute to include certain offenses that were intentionally committed against a person because of the victim's homelessness; and (2) imposed a two-year sentencing enhancement for specified offenses that were committed because the offender perceived the victim to be homeless. The original bill is replaced with a new provision to make it an aggravating circumstance if an offense was intentionally committed against a victim because the defendant perceived such victim to be homeless.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) A hate crime is an attack that is intended to terrorize a group of people.

Approximately 10 years ago, three teenagers brutally murdered a homeless Vietnam veteran in north Seattle. Just months earlier, a homeless man was beaten to death by a 14-year-old boy with a skateboard. There is not a woman who becomes homeless who is on the streets more than two days before being sexually assaulted.

It is estimated that Washington has over 23,000 homeless persons on any given night. Homeless people are approximately 1 percent of the population of Seattle. The National Coalition for the Homeless has documented 880 attacks on homeless persons between 1999 and 2008. The number of fatal attacks on homeless persons was more than twice the total number of hate motivated homicides that target victims because of their perceived race, ethnicity, religion, or sexual orientation combined.

Truly the best way to end the problem of homelessness is to fully fund programs to get them off the street. The Jewish Federation helps provide services for people who are homeless and this bill represents a key principle that is a key to what the Jewish Federation represents. Today's economy has put many homeless people on the street, but just because a person is homeless does not mean that crimes can be committed against them. It is nice that this bill not only adds homeless status and its definition, under the state's malicious harassment law, but also adds homeless status as a sentencing enhancement. This bill sends a message to homeless people that these crimes will be taken seriously.

(With concerns) The malicious harassment statute should be reserved for religion and conditions that are immutable. There are concerns about adding additional categories to the hate crime/malicious harassment statute and homeless status should not be a new category. There is also concern about the 24-month sentence enhancement. An alternative to the sentence enhancement is to provide judicial discretion and instead add an additional aggravating circumstance in statute.

(Opposed) The cost to incarcerate an offender is around \$30,000 per year, but the cost to provide services to a homeless person would cost around \$11,000 per year. More funding should be provided to get the homeless population off of the streets. In addition, the Legislature should not be adding categories to the hate crime statute as that statute is supposed to only cover specific categories such as race, color, religion, and sexual orientation.

Persons Testifying: (In support) Representative White, prime sponsor; Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs; Zach Carstensen, Jewish Federation; Anitra Freeman, SHARE/WHEEL, Women In Black; and Nick Federici, Washington Low-Income Housing Alliance and United Way of King County.

(With concerns) Shankar Narayan, American Civil Liberties Union of Washington; and Hilary Bernstein, Anti-Defamation League.

(Opposed) Don Pierce, Washington Association of Sheriffs and Police Chiefs; and Travis Stearns, Washington Defender Association.

Persons Signed In To Testify But Not Testifying: None.