

# HOUSE BILL REPORT

## SB 5011

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**As Passed House:**  
April 5, 2011

**Title:** An act relating to victimization of homeless persons.

**Brief Description:** Concerning the victimization of homeless persons.

**Sponsors:** Senators White, Kohl-Welles, Murray, Chase, Nelson and McAuliffe.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 3/16/11, 3/22/11 [DP].

**Floor Activity:**

Passed House: 4/5/11, 92-1.

**Brief Summary of Bill**

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

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 11 members: Representatives Hurst, Chair; Ladenburg, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Armstrong, Goodman, Hope, Kirby, Moscoso 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.

In the case of an aggravating circumstance, where there is an exceptional sentence imposed above the standard sentence range, 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 Bill:**

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

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This same bill was a compromise that passed out of the House of Representatives unanimously last year. This new version of the bill passed unanimously out of the Senate chamber this year. The bill focuses on the rise in crimes against homeless persons and provides judges, juries, and prosecutors with an additional prosecution tool. The passage of this bill is more than a symbolic gesture towards the state's homeless population and helps those that are least able to defend themselves.

(Opposed) Crimes against homeless persons are to a large degree committed by two groups of offenders. One group is juveniles and the other group is other homeless people. To the extent it is a juvenile offender committing this crime, adding an aggravating factor is going to have the intended deterrent effect. To the extent that the crime is committed by another homeless person, this bill is not helping the homeless by increasing the penalties against other homeless persons.

It costs approximately \$40 per day to take care of a homeless person. It costs over \$35,000 (or more than \$97 per day) to incarcerate a person in a state prison each year. This bill is not going to have the consequences intended.

**Persons Testifying:** (In support) Senator White, prime sponsor; Zach Carstensen, Jewish Federation; and Thomas Green.

(Opposed) Kim Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.