

HOUSE BILL REPORT

HB 1071

As Reported by House Committee On:
Public Safety

Title: An act relating to bias-based criminal offenses.

Brief Description: Concerning bias-based criminal offenses.

Sponsors: Representatives Valdez, Lekanoff, Leavitt, Fitzgibbon, Kloba, Ramel, Senn, Ortiz-Self, Gregerson, Goodman, Ryu, Ormsby, Santos, Macri, Johnson, J., Davis, Pollet and Bergquist.

Brief History:

Committee Activity:

Public Safety: 1/21/21, 1/28/21 [DP].

Brief Summary of Bill

- Includes Hate Crime Offense in the list of crimes against persons.
- Creates a new statutory aggravating circumstance applicable when an offense other than a Hate Crime Offense was motivated by the defendant's perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 11 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Griffey, Hackney, Lovick, Orwall, Ramos and Simmons.

Minority Report: Without recommendation. Signed by 2 members: Representatives Graham and Young.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Omeara Harrington (786-7136).

Background:

Hate Crime Offenses.

A person is guilty of a Hate Crime Offense if the person maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability:

- causes physical injury to the victim or another person;
- causes physical damage to or destruction of the property of the victim or another person; or
- threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under the same circumstances, and threatening words do not constitute a Hate Crime Offense if it is apparent to the victim that the person does not have the ability to carry out the threat.

In any prosecution for a Hate Crime Offense, absent evidence that the person did not intend to threaten the victim, the trier of fact may infer that a threat was intended if the person:

- burns a cross on the property of a victim who is, or whom the actor perceives to be, of African American heritage;
- defaces with a swastika the property of a victim who is, or whom the actor perceives to be, of Jewish heritage;
- defaces religious real property with words, symbols, or items that are derogatory to persons of the faith associated with the property;
- places a vandalized or defaced religious item or scripture on the property of a victim who is, or whom the actor perceives to be, of the faith with which that item or scripture is associated;
- damages, destroys, or defaces religious garb or other faith-based attire belonging to the victim, or removing or attempting to remove religious garb or other faith-based attire from the victim's person without the victim's authorization; or
- places a noose on the property of a victim who is, or whom the actor perceives to be, of a racial or ethnic minority group.

A Hate Crime Offense is a class C felony carrying a maximum sentence of five years of imprisonment and/or a \$10,000 fine. Hate Crime Offense is ranked as a seriousness level IV offense on the sentencing grid, carrying a standard range sentence of three to nine months of imprisonment for a first offense.

Crimes Against Persons.

Statute designates a subset of crimes as crimes against persons. Crimes against persons are subject to certain guidelines and restrictions. For example, the guidelines for when prosecution should be pursued suggest that charges for a crime against persons should be

brought whenever sufficient admissible evidence exists, that, when considered with the most plausible, reasonably foreseeable defense, would justify conviction by a reasonable and objective factfinder. Heightened victim notification standards also apply when the crime at issue is a crime against persons.

Additionally, upon conviction of a crime against persons, the court must order one year of community custody if the offender is receiving a prison sentence, and may order community custody for up to one year if the offender is receiving a jail sentence. Community custody is a portion of a criminal sentence that follows the term of confinement and is served in the community subject to controls placed on the offender's movement and activities by the court and the Department of Corrections (DOC). The DOC is required to supervise any offender ordered to community custody who is assessed as a high risk for reoffense.

Aggravating Circumstances.

When a person is convicted of a felony, the Sentencing Reform Act (SRA) applies and determines a specific sentence range within the statutory maximum. Sentence ranges are calculated using both a statutory severity designation for the offense, or its "seriousness level," and the convicted person's "offender score," which is based on the offender's criminal history.

In a typical felony case, the standard sentence range is presumed to be appropriate. However, the SRA provides that the court may impose a determinate sentence outside the standard sentence range for an offense if it finds that there are substantial and compelling reasons justifying an exceptional sentence. An exceptional sentence may either be below the standard range (with a mitigating circumstance) or above the standard range (with an aggravating circumstance).

The SRA provides an exclusive list of aggravating circumstances that may support a sentence above the standard range. With some exceptions, the facts supporting an aggravating circumstance must be proven to a jury beyond a reasonable doubt.

Summary of Bill:

Hate Crime Offense is included in the list of crimes against persons.

A new statutory aggravating circumstance is created, applicable when an offense other than a Hate Crime Offense was motivated by the defendant's perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, gender expression or identity, or mental, physical, or sensory disability.

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) Legislation two years ago defined hate crimes as what they are by renaming the offense from its former name of "malicious harassment." It also increased penalties and created a working group to make recommendations to address the alarming rate of hate crimes. That year, Washington had the most hate crimes per capita in the nation, other than Washington DC, and was third in terms of raw numbers. The changes in this bill represent two of the over 20 recommendations of the working group. Hate crimes are a complex problem and require a complex and multifaceted approach. The changes in this bill will assist prosecutors in addressing this problem. The bill will identify these crimes as crimes against persons, which allows for imposition of 12 months of community custody that may include conditions such as counseling and substance abuse treatment. Victims will know their attackers are being monitored. Prosecutors are currently constrained in terms of the ability to designate when a crime is hate-motivated. The hate crime offense is limited, and if a different type of offense is motivated by affiliation with a specific group, it cannot be charged as a hate crime. The addition of the aggravator will help identify these crimes for what they are.

There is a deep and daily concern for safety in some communities, and fear of an attack is a reality. One Jewish organization was the site of a fatal attack and now has to have an unlisted address, a camera and intercom system at the entrance, steel doors, and bulletproof glass. People who are Latino are being attacked, particularly in rural areas, and are afraid to report because they live in close proximity to their attackers and nothing is done when they do report. A violent assault was taped and put on social media. Asian communities have experienced discrimination and increased attacks related to COVID-19, including one person being lit on fire. Victims feel deep pain.

(Opposed) None.

Persons Testifying: Representative Javier Valdez, prime sponsor; Max Patashnik, Jewish Federation of Greater Seattle; Nina Martinez, Latino Civic Alliance; Doan Nguyen; Leandra Craft, King County Prosecutor's Office; and Jacqueline Lawrence, Snohomish County Prosecutor's Office.

Persons Signed In To Testify But Not Testifying: None.