

# HOUSE BILL REPORT

## HB 1637

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to allowing a court to mitigate a criminal sentence when the defendant was experiencing mental illness at the time of the offense.

**Brief Description:** Allowing a court to mitigate a criminal sentence when the defendant was experiencing mental illness at the time of the offense.

**Sponsors:** Representatives Simmons, Taylor, Ryu, Bateman, Davis, Macri, Peterson, Pollet, Ormsby, Harris-Talley and Frame; by request of Administrative Office of the Courts.

**Brief History:**

**Committee Activity:**

Public Safety: 1/21/22, 1/27/22 [DPS].

**Brief Summary of Substitute Bill**

- Modifies the statutory mitigating circumstance that allows a judge to impose a sentence below the standard range based on the defendant's lack of capacity to include circumstances in which the defendant was impaired by a mental health condition at the time of the offense.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Davis, Hackney, Orwall, Ramos, Simmons and Thai.

**Minority Report:** Do not pass. Signed by 1 member: Representative Young.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Graham and Griffey.

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*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:**

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 person'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 above the standard range (with an aggravating circumstance) or below the standard range (with a mitigating circumstance). While aggravating circumstances must be proven before a jury, a judge retains the discretion to adjust a sentence downward based on mitigating circumstances.

The SRA provides a non-exhaustive list of mitigating circumstances upon which an exceptional sentence may be based. One such circumstance allows the court to mitigate the sentence when the defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is expressly excluded from this mitigating circumstance.

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**Summary of Substitute Bill:**

The mitigating circumstance that applies when a defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired, is modified to expressly include circumstances in which the defendant was impaired by a mental health condition at the time of the offense.

**Substitute Bill Compared to Original Bill:**

The stand-alone mitigating factor relating to circumstances in which the defendant's behavior was impacted by a mental health condition at the time of the offense is removed. Instead, the current law mitigating factor that applies when the defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired, is modified to expressly include circumstances in which the defendant was impaired by a mental health condition at the time of the offense.

**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) Suffering from mental illness can affect relationships and the ability to manage responsibilities and adhere to societal norms. People with mental illness may be more likely to have behavior that will bring them into contact with the criminal justice system. There is also intersection between persons experiencing mental illness and people of color, veterans, the LGBTQ community, and women. Diverting those with mental illness away from long sentences and into health care is a good thing. When people with mental illness are given long prison terms they decompensate and recidivism increases, which, in turn, reduces public safety. The Department of Corrections facilities attempt to provide mental health care, but some people refuse their medication in prison. The current law is not addressing the disproportionate representation of people with mental illness in the criminal justice system.

Under current law, judges may impose a sentence below the standard range when there are compelling reasons to do so. There is a mitigating factor related to capacity, but nothing in statute speaks explicitly to mental illness. Judges have expressed that adding this mitigating factor will be helpful and serve as a reminder that the person before them may be suffering from a condition that affects all aspects of life, including behavior. Mental illness is a disability under the Americans with Disabilities Act and should be considered a mitigating factor. Additionally, utilization of a mitigating factor will not require an official diagnosis and expert report, instead the judge can look to the record and the defendant's conduct. This does not mean that people should not be held accountable; the person will still be convicted and judges retain discretion with respect to applying the mitigating factor. An amendment could be brought to combine this factor with the existing mitigating factor related to capacity.

People have had bad interactions with law enforcement and the criminal justice system while dealing with the symptoms of mental illness. Law enforcement responded to one person who was having a manic episode. The person was provoked by officers and ultimately charged with assaulting an officer. This person experienced a mental health crisis over the next several months. He had no criminal history, and the judge in the case admitted that the person was a victim of the system. In another incident, a veteran was sentenced to nine years in prison for charges stemming from his attempt to commit suicide by cop. Mental health should not be considered only when a person pleads insanity. Many people with mental illness are not insane. Use of drugs and alcohol are a common way people with an untreated mental illness deal with their condition.

(Opposed) The language is too broad and open to interpretation. Determining if someone committed a crime due to mental illness is complex and usually done by an expert. People who sexually offend can be manipulative in explaining their behavior. People need to take responsibility for their behaviors and not blame a condition like attention-deficit hyperactivity disorder (ADHD) or a mood disorder. This is not restorative for victims or offenders.

(Other) There is already a current mitigating factor based on capacity. This new language is expansive and will result in two separate mental health provisions in the mitigating factors. The court will have to contemplate why there are two separate provisions. The current mitigator excludes voluntary use of drugs or alcohol. The omission of similar language in this new mitigator implies that such use is included. The language should be tightened. Having a diagnosis or medical information for the judge will enhance establishment of the mitigating factor.

**Persons Testifying:** (In support) Representative Tarra Simmons, prime sponsor; Brittany Gregory, Administrative Office of the Courts; Kari Reardon, Washington Defender Association; David Trieweler, Washington Association of Criminal Defense Lawyers; Theresa Doyle, Minority and Justice Commission; Tom Nordlie; Kathy Nordlie; Dana Raigrodski, Washington Supreme Court Gender and Justice Commission; and Shoshana Kehoe, Washington State Office of Public Defense.

(Opposed) Lorraine Lynch, King County Sexual Assault Resource Center.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** Ezra Alem; Karen Pillar, TeamChild; Victoria Harris; and Luvimae Omana, City of Spokane Office of the Police Ombudsman.