
**Public Safety & Emergency Preparedness
Committee**

HB 2497

Brief Description: Concerning the victimization of homeless persons.

Sponsors: Representative White.

Brief Summary of Bill

- Expands the Malicious Harassment statute to include certain offenses that are intentionally committed against a person because of the victim's homelessness.
- Imposes a two-year sentencing enhancement for specified offenses that are committed because the offender perceives the victim to be homeless.

Hearing Date: 1/12/10

Staff: Yvonne Walker (786-7841).

Background:

The Malicious Harassment offenses are often referred to as hate crimes. A person commits the crime of Malicious Harassment when he or she maliciously and intentionally causes physical injury to a victim, causes physical damage to the property of another, or threatens a specific group of persons, because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap. The fear must be a fear that a reasonable person would have under all circumstances. A reasonable person includes a person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim.

Malicious Harassment is a seriousness level IV, class C felony. A first-time offender with no previous criminal history would receive a sentence of three to nine months in jail. A victim of Malicious Harassment may also bring a civil suit against the harasser, in which the victim may

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collect actual damages, punitive damages of up to \$10,000, and reasonable attorney fees and costs.

Sentencing Enhancements.

Under the Sentencing Reform Act, the court must impose imprisonment in addition to the standard sentencing range if specific conditions for sentencing enhancements are met. Sentencing enhancements may apply if any of the following apply: (1) the offender was armed with a firearm while committing certain felonies; (2) the offender was armed with a deadly weapon while committing certain felonies; (3) the offender committed certain felonies while incarcerated; (4) the offender committed certain drug offenses; (5) the offender committed Vehicular Homicide while under the influence of alcohol or drugs; or (6) the offender committed a felony crime that was committed with sexual motivation. The U.S. Supreme Court, in *Blakely v. Washington*, ruled that any factor that increases a defendant's sentence above the standard range, other than the fact of a prior conviction, must be proven to a jury beyond a reasonable doubt. To do otherwise would violate the defendant's right to a jury trial under the Sixth Amendment.

The Washington Association of Sheriffs and Police Chiefs maintains a central repository for the collection and classification of all information relating to Malicious Harassment crimes and any other crimes of bigotry or bias directed against persons.

Summary of Bill:

A person is guilty of Malicious Harassment when he or she maliciously and intentionally causes physical injury to a victim, causes physical damage to the property of another, or threatens a specific group of persons, because of his or her perception of the victim's homelessness.

"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.

Sentencing Enhancements.

A procedure is established for determining whether specified crimes were intentionally committed because the victim was homeless and a new sentencing enhancement penalty is created for such offenses. In a criminal case where a special allegation has been made, if a court makes a finding of fact, or in a jury trial if the jury finds a special verdict, that: (1) an offender committed the crime of Assault in the first or second degree, Rape in the first or second degree, Rape of a Child in the first or second degree, homicide by abuse, Murder in the first or second degree, Manslaughter in the first or second degree, or Vehicular Homicide offense; and (2) the underlying offense was intentionally committed because he or she perceived the victim to be homeless then the court must impose a sentence enhancement. The sentence enhancement must include a sentence of 24 months of imprisonment that is added to the offender's presumptive sentence.

Appropriation: None.

Fiscal Note: Requested on January 5, 2010.

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