
Public Safety Committee

HB 1071

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 Summary of Bill
<ul style="list-style-type: none">• 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.

Hearing Date: 1/21/21

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

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- 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: Requested on January 13, 2021.

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