

# SENATE BILL No. 478

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-2-5-14; IC 34-4-45; IC 35-50-2.

**Synopsis:** Hate crimes. Requires law enforcement agencies to collect information concerning crimes that are apparently directed at an individual or a group because of the individual's or group's race, color, religion, sexual orientation, or national origin and to submit the information to the Indiana central repository for criminal history information. Requires the Indiana central repository for criminal history information to submit a compiled report of this information to each law enforcement agency. Allows an individual who suffers a pecuniary loss as a result of: (1) being injured; or (2) having property damaged or destroyed by another individual because of the individual's race, color, religion, sexual orientation, or national origin to bring a  
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**Effective:** July 1, 1998.

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**Howard**

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January 14, 1998, read first time and referred to Committee on Judiciary.

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Digest Continued

civil action against the individual who caused the loss. Defines bias crime offender. Requires a court, when sentencing an individual who has committed a crime motivated by a bias against another individual's race, color, religion, sexual orientation, or national origin, to impose an additional fixed term of imprisonment not to exceed five years.

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Introduced

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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## SENATE BILL No. 478

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-5-14 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 1998]: **Sec. 14. (a) A law enforcement agency shall collect  
4 information concerning crimes that are apparently directed at an  
5 individual or a group because of the individual's or group's race,  
6 color, religion, sexual orientation, or national origin.**  
7 **(b) At least two (2) times each year, a law enforcement agency  
8 shall submit information collected under subsection (a) to the  
9 Indiana central repository for criminal history information.**  
10 **(c) At least one (1) time each year, the Indiana central  
11 repository for criminal history information shall submit a report  
12 that includes a compilation of information obtained under  
13 subsection (b) to each law enforcement agency.**  
14 **(d) Information collected, submitted, and reported under this  
15 section must be consistent with guidelines established for the**



1 **acquisition, preservation, and exchange of identification records**  
 2 **and information by:**

3 **(1) the Attorney General of the United States; or**

4 **(2) the Federal Bureau of Investigation under 28 U.S.C. 534.**

5 SECTION 2. IC 34-4-45 IS ADDED TO THE INDIANA CODE  
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 1998]:

8 **Chapter 45. Civil Action for Victims of Bias Crime Offenders**

9 **Sec. 1. If an individual suffers a pecuniary loss because of the**  
 10 **commission of an offense by another individual who was sentenced**  
 11 **for the offense as a bias crime offender under IC 35-50-2-14, the**  
 12 **individual may bring a civil action against the individual who**  
 13 **caused the loss.**

14 **Sec. 2. In an action brought under section 1 of this chapter, the**  
 15 **plaintiff may seek to recover the following:**

16 **(1) Actual, consequential, or incidental damages.**

17 **(2) The costs of the action.**

18 **(3) Reasonable attorney's fees.**

19 SECTION 3. IC 35-50-1-2, AS AMENDED BY P.L.219-1997,  
 20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 21 JULY 1, 1998]: Sec. 2. (a) As used in this section, "crime of violence"  
 22 means:

23 (1) murder ( IC 35-42-1-1);

24 (2) voluntary manslaughter ( IC 35-42-1-3);

25 (3) involuntary manslaughter ( IC 35-42-1-4);

26 (4) reckless homicide ( IC 35-42-1-5);

27 (5) aggravated battery ( IC 35-42-2-1.5);

28 (6) kidnapping ( IC 35-42-3-2);

29 (7) rape ( IC 35-42-4-1);

30 (8) criminal deviate conduct ( IC 35-42-4-2);

31 (9) child molesting ( IC 35-42-4-3);

32 (10) robbery as a Class A felony or a Class B felony  
 33 (IC 35-42-5-1);

34 (11) burglary as a Class A felony or a Class B felony  
 35 (IC 35-43-2-1); or

36 (12) causing death when operating a motor vehicle  
 37 (IC 9-30-5-5).

38 (b) As used in this section, "episode of criminal conduct" means  
 39 offenses or a connected series of offenses that are closely related in  
 40 time, place, and circumstance.

41 (c) Except as provided in subsection (d) or (e), the court shall  
 42 determine whether terms of imprisonment shall be served concurrently



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1 or consecutively. The court may consider the aggravating and  
 2 mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c)  
 3 in making a determination under this subsection. The court may order  
 4 terms of imprisonment to be served consecutively even if the sentences  
 5 are not imposed at the same time. However, except for crimes of  
 6 violence, the total of the consecutive terms of imprisonment, exclusive  
 7 of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to  
 8 which the defendant is sentenced for felony convictions arising out of  
 9 an episode of criminal conduct shall not exceed the presumptive  
 10 sentence for a felony which is one (1) class of felony higher than the  
 11 most serious of the felonies for which the person has been convicted.  
 12 **If a court determines under IC 35-50-2-14 that a person was a bias**  
 13 **crime offender when the person committed the offense for which**  
 14 **the person was convicted, the term of imprisonment for the**  
 15 **underlying offense and the additional term of imprisonment**  
 16 **imposed under IC 35-50-2-14 may be served consecutively or**  
 17 **concurrently.**

18 (d) If, after being arrested for one (1) crime, a person commits  
 19 another crime:

- 20 (1) before the date the person is discharged from probation,  
 21 parole, or a term of imprisonment imposed for the first crime; or  
 22 (2) while the person is released:  
 23 (A) upon the person's own recognizance; or  
 24 (B) on bond;

25 the terms of imprisonment for the crimes shall be served consecutively,  
 26 regardless of the order in which the crimes are tried and sentences are  
 27 imposed.

28 (e) If a court determines under IC 35-50-2-11 that a person used  
 29 a firearm in the commission of the offense for which the person was  
 30 convicted, the term of imprisonment for the underlying offense and the  
 31 additional term of imprisonment imposed under IC 35-50-2-11 must be  
 32 served consecutively.

33 SECTION 4. IC 35-50-2-2, AS AMENDED BY P.L.220-1997,  
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 1998]: Sec. 2. (a) The court may suspend any part of a  
 36 sentence for a felony, except as provided in this section or in section  
 37 2.1 of this chapter. **The court may suspend any part of an additional**  
 38 **term of imprisonment imposed under section 14 of this chapter.**

39 (b) With respect to the crimes listed in this subsection, the court  
 40 may suspend only that part of the sentence that is in excess of the  
 41 minimum sentence:

- 42 (1) The crime committed was a Class A or Class B felony and



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- 1 the person has a prior unrelated felony conviction.
- 2 (2) The crime committed was a Class C felony and less than  
3 seven (7) years have elapsed between the date the person was  
4 discharged from probation, imprisonment, or parole, whichever  
5 is later, for a prior unrelated felony conviction and the date the  
6 person committed the Class C felony for which the person is  
7 being sentenced.
- 8 (3) The crime committed was a Class D felony and less than  
9 three (3) years have elapsed between the date the person was  
10 discharged from probation, imprisonment, or parole, whichever  
11 is later, for a prior unrelated felony conviction and the date the  
12 person committed the Class D felony for which the person is  
13 being sentenced. However, the court may suspend the minimum  
14 sentence for the crime only if the court orders home detention  
15 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum  
16 sentence specified for the crime under this chapter.
- 17 (4) The felony committed was:
- 18 (A) murder ( IC 35-42-1-1);
  - 19 (B) battery ( IC 35-42-2-1) with a deadly weapon;
  - 20 (C) sexual battery ( IC 35-42-4-8) with a deadly weapon;
  - 21 (D) kidnapping ( IC 35-42-3-2);
  - 22 (E) confinement ( IC 35-42-3-3) with a deadly weapon;
  - 23 (F) rape ( IC 35-42-4-1) as a Class A felony;
  - 24 (G) criminal deviate conduct ( IC 35-42-4-2) as a Class A  
25 felony;
  - 26 (H) child molesting ( IC 35-42-4-3) as a Class A or Class B  
27 felony;
  - 28 (I) robbery ( IC 35-42-5-1) resulting in serious bodily injury  
29 or with a deadly weapon;
  - 30 (J) arson ( IC 35-43-1-1) for hire or resulting in serious  
31 bodily injury;
  - 32 (K) burglary ( IC 35-43-2-1) resulting in serious bodily  
33 injury or with a deadly weapon;
  - 34 (L) resisting law enforcement ( IC 35-44-3-3) with a deadly  
35 weapon;
  - 36 (M) escape ( IC 35-44-3-5) with a deadly weapon;
  - 37 (N) rioting ( IC 35-45-1-2) with a deadly weapon;
  - 38 (O) dealing in cocaine or a narcotic drug ( IC 35-48-4-1) as  
39 a Class A felony;
  - 40 (P) dealing in a schedule I, II, or III controlled substance  
41 (IC 35-48-4-2) if the amount of controlled substance  
42 involved has an aggregate weight of three (3) grams or

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1 more;

2 (Q) an offense under IC 9-30-5 (operating a vehicle while  
3 intoxicated) and the person who committed the offense has  
4 accumulated at least two (2) prior unrelated convictions  
5 under IC 9-30-5; or

6 (R) aggravated battery ( IC 35-42-2-1.5).

7 (c) Except as provided in subsection (e), whenever the court  
8 suspends a sentence for a felony, it shall place the person on probation  
9 under IC 35-38-2 for a fixed period to end not later than the date that  
10 the maximum sentence that may be imposed for the felony will expire.

11 (d) The minimum sentence for a person convicted of voluntary  
12 manslaughter may not be suspended unless the court finds at the  
13 sentencing hearing that the crime was not committed by means of a  
14 deadly weapon.

15 (e) Whenever the court suspends that part of an offender's (as  
16 defined in IC 5-2-12-4) sentence that is suspendible under subsection  
17 (b), the court shall place the offender on probation under IC 35-38-2 for  
18 not more than ten (10) years.

19 (f) An additional term of imprisonment imposed under  
20 IC 35-50-2-11 may not be suspended.

21 (g) A term of imprisonment imposed under IC 35-47-10-6 or  
22 IC 35-47-10-7 may not be suspended if the commission of the offense  
23 was knowing or intentional.

24 SECTION 5. IC 35-50-2-14 IS ADDED TO THE INDIANA  
25 CODE AS A NEW SECTION TO READ AS FOLLOWS  
26 [EFFECTIVE JULY 1, 1998]: **Sec. 14. (a) As used in this section,**  
27 **"bias crime offender" means an individual described in subsection**  
28 **(b).**

29 **(b) The state may seek to have an individual sentenced as a**  
30 **bias crime offender by alleging, on a page separate from the rest of**  
31 **the charging instrument, that the individual knowingly or**  
32 **intentionally:**

33 **(1) selected another individual injured; or**

34 **(2) damaged or otherwise affected property;**

35 **by an offense committed by the individual named as defendant in**  
36 **the charging instrument because of the race, color, religion, sexual**  
37 **orientation, or national origin of the injured individual or of the**  
38 **owner or occupant of the affected property.**

39 **(c) If an individual alleged to be a bias crime offender under**  
40 **subsection (b) is convicted of an offense, the court, at the**  
41 **sentencing hearing for the offense, shall determine whether the**  
42 **individual is a bias crime offender.**



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1           (d) If, after the sentencing hearing, the court finds that the  
 2 individual convicted of the offense that is the subject of the hearing  
 3 is a bias crime offender based on proof beyond a reasonable doubt,  
 4 the court shall sentence the individual to an additional fixed term  
 5 of not more than five (5) years to be added to the term of  
 6 imprisonment imposed under this chapter or IC 35-50-3.

7           SECTION 6. [EFFECTIVE JULY 1, 1998] IC 5-2-5-14,  
 8 IC 34-4-45, and IC 35-50-2-14, all as added by this act, and  
 9 IC 35-50-1-2 and IC 35-50-2-2, both as amended by this act, apply  
 10 only to:

- 11           (1) crimes committed; and  
 12           (2) civil causes of action accruing;  
 13 after June 30, 1998.

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