

HOUSE BILL No. 1358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-5-14; IC 34-24-5; IC 35-38-1-7.1; IC 35-46-2; IC 35-50-2-9.

Synopsis: Hate crimes. Requires law enforcement agencies to collect and report information concerning crimes in which the victim was selected because of the victim's color, creed, disability, national origin, race, religion, sexual orientation, or sex. Requires the Indiana criminal justice institute to submit a compiled report of this information to each law enforcement agency. Allows a person who suffers a pecuniary loss to bring a civil action to recover damages, including punitive damages, if the loss occurred as a result of the actions of a person who knowingly or intentionally selected the victim because of the color, creed, disability, national origin, race, religion, sexual orientation, or sex of the victim. Makes commission of a crime because of the color, creed, (Continued next page)

Effective: July 1, 1999.

Crawford, Brown C, Hasler, Porter

January 12, 1999, read first time and referred to Committee on Courts and Criminal Code.



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Digest Continued

disability, national origin, race, religion, sexual orientation, or sex of the victim an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime. Expands the scope of the offenses relating to civil rights to include violations directed at a person because of the person's sexual orientation.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

HOUSE BILL No. 1358

A BILL FOR AN ACT to amend the Indiana Code concerning hate crimes.

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, 1999]: **Sec. 14. (a) A law enforcement agency shall collect
4 information concerning offenses that are apparently directed at an
5 individual or group because of the color, creed, disability, national
6 origin, race, religion, sexual orientation, or sex of the individual or
7 the members of the group.**
8 **(b) At least two (2) times each year, a law enforcement agency
9 shall submit information collected under subsection (a) to the
10 Indiana criminal justice institute.**
11 **(c) At least one (1) time each year, the Indiana criminal justice
12 institute shall submit a report that includes a compilation of
13 information obtained under subsection (b) to each law enforcement
14 agency.**
15 **(d) Information collected, submitted, and reported under this**



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1 section must be consistent with guidelines established for the
2 acquisition, preservation, and exchange of identification records
3 and information by:

- 4 (1) the Attorney General of the United States; or
- 5 (2) the Federal Bureau of Investigation under 28 U.S.C. 534.

6 SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 1999]:

9 **Chapter 5. Civil Action for Victims of Bias Crime Offenders**

10 **Sec. 1. As used in this chapter, "bias crime offender" means a**
11 **person who knowingly or intentionally:**

- 12 (1) selected another individual who was injured; or
- 13 (2) damaged or otherwise affected property;

14 **by an offense because of the color, creed, disability, national origin,**
15 **race, religion, sexual orientation, or sex of the injured individual or**
16 **of the owner or occupant of the affected property.**

17 **Sec. 2. If a person suffers a pecuniary loss because of the**
18 **commission of an offense by a bias crime offender, the person may**
19 **bring a civil action against the person that caused the loss.**

20 **Sec. 3. In an action brought under section 2 of this chapter, the**
21 **plaintiff may seek to recover the following:**

- 22 (1) Actual and consequential damages.
- 23 (2) Punitive damages in an amount not more than three (3)
- 24 times the person's actual damages.
- 25 (3) The costs of the action.
- 26 (4) Reasonable attorney's fees.

27 **Sec. 4. A person may not recover damages under IC 34-24-3 and**
28 **this chapter for the same offense.**

29 SECTION 3. IC 35-38-1-7.1 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7.1. (a) In determining
31 what sentence to impose for a crime, the court shall consider:

- 32 (1) the risk that the person will commit another crime;
- 33 (2) the nature and circumstances of the crime committed;
- 34 (3) the person's:
 - 35 (A) prior criminal record;
 - 36 (B) character; and
 - 37 (C) condition;
- 38 (4) whether the victim of the crime was less than twelve (12)
- 39 years of age or at least sixty-five (65) years of age;
- 40 (5) whether the person violated a protective order issued against
- 41 the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its
- 42 repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and

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- 1 (6) any oral or written statement made by a victim of the crime.
 2 (b) The court may consider the following factors as aggravating
 3 circumstances or as favoring imposing consecutive terms of
 4 imprisonment:
- 5 (1) The person has recently violated the conditions of any
 6 probation, parole, or pardon granted to the person.
 - 7 (2) The person has a history of criminal or delinquent activity.
 - 8 (3) The person is in need of correctional or rehabilitative
 9 treatment that can best be provided by commitment of the person
 10 to a penal facility.
 - 11 (4) Imposition of a reduced sentence or suspension of the
 12 sentence and imposition of probation would depreciate the
 13 seriousness of the crime.
 - 14 (5) The victim of the crime was less than twelve (12) years of age
 15 or at least sixty-five (65) years of age.
 - 16 (6) The victim of the crime was mentally or physically infirm.
 - 17 (7) The person committed a forcible felony while wearing a
 18 garment designed to resist the penetration of a bullet.
 - 19 (8) The person committed a sex crime listed in subsection (e) and:
 20 (A) the crime created an epidemiologically demonstrated risk
 21 of transmission of the human immunodeficiency virus (HIV)
 22 and involved the sex organ of one (1) person and the mouth,
 23 anus, or sex organ of another person;
 24 (B) the person had knowledge that the person was a carrier of
 25 HIV; and
 26 (C) the person had received risk counseling as described in
 27 subsection (g).
 - 28 (9) The person committed an offense related to controlled
 29 substances listed in subsection (f) if:
 30 (A) the offense involved:
 31 (i) the delivery by any person to another person; or
 32 (ii) the use by any person on another person;
 33 of a contaminated sharp (as defined in IC 16-41-16-2) or other
 34 paraphernalia that creates an epidemiologically demonstrated
 35 risk of transmission of HIV by involving percutaneous contact;
 36 (B) the person had knowledge that the person was a carrier of
 37 the human immunodeficiency virus (HIV); and
 38 (C) the person had received risk counseling as described in
 39 subsection (g).
 - 40 (10) The person committed the offense in an area of a
 41 consolidated or second class city that is designated as a public
 42 safety improvement area by the Indiana criminal justice institute

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1 under IC 36-8-19.5.

2 (11) The injury to or death of the victim of the crime was the
3 result of shaken baby syndrome (as defined in IC 16-41-40-2).

4 (12) Before the commission of the crime, the person administered
5 to the victim of the crime, without the victim's knowledge, a
6 sedating drug or a drug that had a hypnotic effect on the victim,
7 or the person had knowledge that such a drug had been
8 administered to the victim without the victim's knowledge.

9 **(13) The person who committed the offense knowingly or
10 intentionally:**

11 **(A) selected another individual who was injured; or**

12 **(B) damaged or otherwise affected property;**

13 **by the offense because of the color, creed, disability, national
14 origin, race, religion, sexual orientation, or sex of the injured
15 individual or of the owner or occupant of the affected
16 property.**

17 (c) The court may consider the following factors as mitigating
18 circumstances or as favoring suspending the sentence and imposing
19 probation:

20 (1) The crime neither caused nor threatened serious harm to
21 persons or property, or the person did not contemplate that it
22 would do so.

23 (2) The crime was the result of circumstances unlikely to recur.

24 (3) The victim of the crime induced or facilitated the offense.

25 (4) There are substantial grounds tending to excuse or justify the
26 crime, though failing to establish a defense.

27 (5) The person acted under strong provocation.

28 (6) The person has no history of delinquency or criminal activity,
29 or the person has led a law-abiding life for a substantial period
30 before commission of the crime.

31 (7) The person is likely to respond affirmatively to probation or
32 short term imprisonment.

33 (8) The character and attitudes of the person indicate that the
34 person is unlikely to commit another crime.

35 (9) The person has made or will make restitution to the victim of
36 the crime for the injury, damage, or loss sustained.

37 (10) Imprisonment of the person will result in undue hardship to
38 the person or the dependents of the person.

39 (11) The person was convicted of a crime involving the use of
40 force against a person who had repeatedly inflicted physical or
41 sexual abuse upon the convicted person and evidence shows that
42 the convicted person suffered from the effects of battery as a

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1 result of the past course of conduct of the individual who is the
2 victim of the crime for which the person was convicted.

3 (d) The criteria listed in subsections (b) and (c) do not limit the
4 matters that the court may consider in determining the sentence.

5 (e) For the purposes of this article, the following crimes are
6 considered sex crimes:

- 7 (1) Rape (IC 35-42-4-1).
- 8 (2) Criminal deviate conduct (IC 35-42-4-2).
- 9 (3) Child molesting (IC 35-42-4-3).
- 10 (4) Child seduction (IC 35-42-4-7).
- 11 (5) Prostitution (IC 35-45-4-2).
- 12 (6) Patronizing a prostitute (IC 35-45-4-3).
- 13 (7) Incest (IC 35-46-1-3).
- 14 (8) Sexual misconduct with a minor under IC 35-42-4-9(a).

15 (f) For the purposes of this article, the following crimes are
16 considered offenses related to controlled substances:

- 17 (1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 18 (2) Dealing in a schedule I, II, or III controlled substance (IC
19 35-48-4-2).
- 20 (3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- 21 (4) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 22 (5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- 23 (6) Possession of a controlled substance (IC 35-48-4-7).
- 24 (7) Dealing in paraphernalia (IC 35-48-4-8.5).
- 25 (8) Possession of paraphernalia (IC 35-48-4-8.3).
- 26 (9) Offenses relating to registration (IC 35-48-4-14).

27 (g) For the purposes of this section, a person received risk
28 counseling if the person had been:

- 29 (1) notified in person or in writing that tests have confirmed the
30 presence of antibodies to the human immunodeficiency virus
31 (HIV) in the person's blood; and
- 32 (2) warned of the behavior that can transmit HIV.

33 SECTION 4. IC 35-46-2-1 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. A person who
35 knowingly or intentionally denies to another person, because of color,
36 creed, disability, national origin, race, religion, **sexual orientation**, or
37 sex, the full and equal use of the services, facilities, or goods in:

- 38 (1) an establishment that caters or offers its services, facilities, or
39 goods to the general public; or
- 40 (2) a housing project owned or subsidized by a governmental
41 entity;

42 commits a civil rights violation, a Class B misdemeanor.



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1 SECTION 5. IC 35-46-2-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. A public servant
3 having the duty to select or summon persons for grand jury or trial jury
4 service who knowingly or intentionally fails to select or summon a
5 person because of color, creed, disability, national origin, race, religion,
6 **sexual orientation**, or sex commits discrimination in jury selection, a
7 Class A misdemeanor.

8 SECTION 6. IC 35-50-2-9 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The state may
10 seek either a death sentence or a sentence of life imprisonment without
11 parole for murder by alleging, on a page separate from the rest of the
12 charging instrument, the existence of at least one (1) of the aggravating
13 circumstances listed in subsection (b). In the sentencing hearing after
14 a person is convicted of murder, the state must prove beyond a
15 reasonable doubt the existence of at least one (1) of the aggravating
16 circumstances alleged. However, the state may not proceed against a
17 defendant under this section if a court determines at a pretrial hearing
18 under IC 35-36-9 that the defendant is a mentally retarded individual.

19 (b) The aggravating circumstances are as follows:

20 (1) The defendant committed the murder by intentionally killing
21 the victim while committing or attempting to commit any of the
22 following:

- 23 (A) Arson (IC 35-43-1-1).
- 24 (B) Burglary (IC 35-43-2-1).
- 25 (C) Child molesting (IC 35-42-4-3).
- 26 (D) Criminal deviate conduct (IC 35-42-4-2).
- 27 (E) Kidnapping (IC 35-42-3-2).
- 28 (F) Rape (IC 35-42-4-1).
- 29 (G) Robbery (IC 35-42-5-1).
- 30 (H) Carjacking (IC 35-42-5-2).
- 31 (I) Criminal gang activity (IC 35-45-9-3).
- 32 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

33 (2) The defendant committed the murder by the unlawful
34 detonation of an explosive with intent to injure person or damage
35 property.

36 (3) The defendant committed the murder by lying in wait.

37 (4) The defendant who committed the murder was hired to kill.

38 (5) The defendant committed the murder by hiring another person
39 to kill.

40 (6) The victim of the murder was a corrections employee,
41 probation officer, parole officer, community corrections worker,
42 home detention officer, fireman, judge, or law enforcement

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- 1 officer, and either:
 2 (A) the victim was acting in the course of duty; or
 3 (B) the murder was motivated by an act the victim performed
 4 while acting in the course of duty.
 5 (7) The defendant has been convicted of another murder.
 6 (8) The defendant has committed another murder, at any time,
 7 regardless of whether the defendant has been convicted of that
 8 other murder.
 9 (9) The defendant was:
 10 (A) under the custody of the department of correction;
 11 (B) under the custody of a county sheriff;
 12 (C) on probation after receiving a sentence for the commission
 13 of a felony; or
 14 (D) on parole;
 15 at the time the murder was committed.
 16 (10) The defendant dismembered the victim.
 17 (11) The defendant burned, mutilated, or tortured the victim while
 18 the victim was alive.
 19 (12) The victim of the murder was less than twelve (12) years of
 20 age.
 21 (13) The victim was a victim of any of the following offenses for
 22 which the defendant was convicted:
 23 (A) Battery as a Class D felony or as a Class C felony under
 24 IC 35-42-2-1.
 25 (B) Kidnapping (IC 35-42-3-2).
 26 (C) Criminal confinement (IC 35-42-3-3).
 27 (D) A sex crime under IC 35-42-4.
 28 (14) The victim of the murder was listed by the state or known by
 29 the defendant to be a witness against the defendant and the
 30 defendant committed the murder with the intent to prevent the
 31 person from testifying.
 32 (15) The defendant committed the murder by intentionally
 33 discharging a firearm (as defined in IC 35-47-1-5):
 34 (A) into an inhabited dwelling; or
 35 (B) from a vehicle.
 36 (16) The victim of the murder was pregnant and the murder
 37 resulted in the intentional killing of a fetus that has attained
 38 viability (as defined in IC 16-18-2-365).
 39 **(17) The defendant committed the murder by knowingly or**
 40 **intentionally selecting the victim of the murder because of the**
 41 **color, creed, disability, national origin, race, religion, sexual**
 42 **orientation, or sex of the victim.**

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1 (c) The mitigating circumstances that may be considered under this
2 section are as follows:

3 (1) The defendant has no significant history of prior criminal
4 conduct.

5 (2) The defendant was under the influence of extreme mental or
6 emotional disturbance when the murder was committed.

7 (3) The victim was a participant in or consented to the defendant's
8 conduct.

9 (4) The defendant was an accomplice in a murder committed by
10 another person, and the defendant's participation was relatively
11 minor.

12 (5) The defendant acted under the substantial domination of
13 another person.

14 (6) The defendant's capacity to appreciate the criminality of the
15 defendant's conduct or to conform that conduct to the
16 requirements of law was substantially impaired as a result of
17 mental disease or defect or of intoxication.

18 (7) The defendant was less than eighteen (18) years of age at the
19 time the murder was committed.

20 (8) Any other circumstances appropriate for consideration.

21 (d) If the defendant was convicted of murder in a jury trial, the jury
22 shall reconvene for the sentencing hearing. If the trial was to the court,
23 or the judgment was entered on a guilty plea, the court alone shall
24 conduct the sentencing hearing. The jury or the court may consider all
25 the evidence introduced at the trial stage of the proceedings, together
26 with new evidence presented at the sentencing hearing. The court shall
27 instruct the jury concerning the statutory penalties for murder and any
28 other offenses for which the defendant was convicted, the potential for
29 consecutive or concurrent sentencing, and the availability of good time
30 credit and clemency. The defendant may present any additional
31 evidence relevant to:

32 (1) the aggravating circumstances alleged; or

33 (2) any of the mitigating circumstances listed in subsection (c).

34 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
35 jury shall recommend to the court whether the death penalty or life
36 imprisonment without parole, or neither, should be imposed. The jury
37 may recommend:

38 (1) the death penalty; or

39 (2) life imprisonment without parole;

40 only if it makes the findings described in subsection (k). The court shall
41 make the final determination of the sentence, after considering the
42 jury's recommendation, and the sentence shall be based on the same

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1 standards that the jury was required to consider. The court is not bound
 2 by the jury's recommendation. In making the final determination of the
 3 sentence after receiving the jury's recommendation, the court may
 4 receive evidence of the crime's impact on members of the victim's
 5 family.

6 (f) If a jury is unable to agree on a sentence recommendation after
 7 reasonable deliberations, the court shall discharge the jury and proceed
 8 as if the hearing had been to the court alone.

9 (g) If the hearing is to the court alone, except as provided by
 10 IC 35-36-9, the court shall:

- 11 (1) sentence the defendant to death; or
 12 (2) impose a term of life imprisonment without parole;
 13 only if it makes the findings described in subsection (k).

14 (h) If a court sentences a defendant to death, the court shall order
 15 the defendant's execution to be carried out not later than one (1) year
 16 and one (1) day after the date the defendant was convicted. The
 17 supreme court has exclusive jurisdiction to stay the execution of a
 18 death sentence. If the supreme court stays the execution of a death
 19 sentence, the supreme court shall order a new date for the defendant's
 20 execution.

21 (i) If a person sentenced to death by a court files a petition for
 22 post-conviction relief, the court, not later than ninety (90) days after the
 23 date the petition is filed, shall set a date to hold a hearing to consider
 24 the petition. If a court does not, within the ninety (90) day period, set
 25 the date to hold the hearing to consider the petition, the court's failure
 26 to set the hearing date is not a basis for additional post-conviction
 27 relief. The attorney general shall answer the petition for post-conviction
 28 relief on behalf of the state. At the request of the attorney general, a
 29 prosecuting attorney shall assist the attorney general. The court shall
 30 enter written findings of fact and conclusions of law concerning the
 31 petition not later than ninety (90) days after the date the hearing
 32 concludes. However, if the court determines that the petition is without
 33 merit, the court may dismiss the petition within ninety (90) days
 34 without conducting a hearing under this subsection.

35 (j) A death sentence is subject to automatic review by the supreme
 36 court. The review, which shall be heard under rules adopted by the
 37 supreme court, shall be given priority over all other cases. The supreme
 38 court's review must take into consideration all claims that the:

- 39 (1) conviction or sentence was in violation of the:
 40 (A) Constitution of the State of Indiana; or
 41 (B) Constitution of the United States;
 42 (2) sentencing court was without jurisdiction to impose a



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1 sentence; and
 2 (3) sentence:
 3 (A) exceeds the maximum sentence authorized by law; or
 4 (B) is otherwise erroneous.
 5 If the supreme court cannot complete its review by the date set by the
 6 sentencing court for the defendant's execution under subsection (h), the
 7 supreme court shall stay the execution of the death sentence and set a
 8 new date to carry out the defendant's execution.
 9 (k) Before a sentence may be imposed under this section, the jury,
 10 in a proceeding under subsection (e), or the court, in a proceeding
 11 under subsection (g), must find that:
 12 (1) the state has proved beyond a reasonable doubt that at least
 13 one (1) of the aggravating circumstances listed in subsection (b)
 14 exists; and
 15 (2) any mitigating circumstances that exist are outweighed by the
 16 aggravating circumstance or circumstances.
 17 **SECTION 7. [EFFECTIVE JULY 1, 1999] IC 35-38-1-7.1,**
 18 **IC 35-46-2-1, IC 35-46-2-2, and IC 35-50-2-9, all as amended by**
 19 **this act, and IC 34-24-5, as added by this act, apply only to offenses**
 20 **committed and civil actions accruing after June 30, 1999.**

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