

HOUSE BILL No. 1159

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 35-38-1-7.1.

Synopsis: Bias motivated crimes. Provides that a bias motivated crime is a crime in which the person who commits the crime knowingly or intentionally selects: (1) the individual against whom the crime was committed; or (2) any property damaged or otherwise affected by the crime; in whole or in part because of the actual or perceived race, color, religion, ethnicity, national origin, sexual orientation, gender, gender identity or expression, or disability of the individual or a group of individuals, whether or not the person's belief or perception was correct. Amends the law that requires law enforcement agencies to collect and report information concerning bias motivated crimes. Makes it an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for a crime if the crime is a bias motivated crime.

Effective: July 1, 2019.

Porter, Clere

January 7, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1159

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 10-13-3-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. As used in this
3 chapter, "bias **motivated crime**" means ~~an offense a crime~~ in which
4 the person who commits the ~~offense crime~~ knowingly or intentionally
5 (1) ~~selected the person who was injured; or~~
6 (2) ~~damaged or otherwise affected property;~~
7 ~~by the offense because of the color, creed, disability, national origin,~~
8 ~~race, religion, or sexual orientation of the injured person or of the~~
9 ~~owner or occupant of the affected property or because the injured~~
10 ~~person or owner or occupant of the affected property was associated~~
11 ~~with any other recognizable group or affiliation: selects:~~
12 (1) **the individual against whom the crime was committed; or**
13 (2) **any property damaged or otherwise affected by the crime;**
14 **in whole or in part because of the actual or perceived race, color,**
15 **religion, ethnicity, national origin, sexual orientation, gender,**
16 **gender identity or expression, or disability of the individual or a**
17 **group of individuals, whether or not the person's belief or**



1 **perception was correct.**

2 SECTION 2. IC 10-13-3-38 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 38. (a) ~~A~~ **Each** law
4 enforcement agency shall collect information concerning bias
5 **motivated** crimes.

6 (b) At least two (2) times each year, ~~a~~ **each** law enforcement agency
7 shall submit information collected under subsection (a) to the Indiana
8 central repository for criminal history information ~~information shall be~~
9 ~~reported in the manner and form prescribed~~ **using the National**
10 **Incident Based Reporting System (NIBRS) format as required by**
11 the department.

12 (c) **Each law enforcement agency shall submit data regarding**
13 **the commission of bias motivated crimes to the Federal Bureau of**
14 **Investigation in accordance with guidelines established under 28**
15 **U.S.C. 534.**

16 ~~(e)~~ **(d)** At least one (1) time each year, the Indiana central repository
17 for criminal history information shall submit a report that includes a
18 compilation of information obtained under subsection (b) to each law
19 enforcement agency and to the legislative council. A report submitted
20 to a law enforcement agency and the legislative council under this
21 subsection may not contain the name of a person who:

- 22 (1) committed or allegedly committed a bias **motivated** crime; or
23 (2) was the victim or the alleged victim of a bias **motivated**
24 crime.

25 A report submitted to the legislative council under this subsection must
26 be in an electronic format under IC 5-14-6.

27 ~~(d)~~ **(e)** Except as provided in subsection ~~(e)~~; **(f)**, information
28 collected, submitted, and reported under this section must be consistent
29 with guidelines established for the acquisition, preservation, and
30 exchange of identification records and information by:

- 31 (1) the Attorney General of the United States; or
32 (2) the Federal Bureau of Investigation;
33 under 28 U.S.C. 534 and the Hate Crime Statistics Act, as amended (28
34 U.S.C. 534 note).

35 ~~(e)~~ **(f)** Information submitted under subsection (b) and reports
36 issued under subsection ~~(e)~~ **(d)** shall, in conformity with guidelines
37 prescribed by the department,

38 ~~(1)~~ be separated in reports on the basis of whether it is an alleged
39 crime, a charged crime, or a crime for which a conviction has
40 been obtained. ~~and~~

41 ~~(2)~~ be divided in reports on the basis of whether, in the opinion of
42 the reporting individual and the data collectors, bias was the



1 primary motivation for the crime or only incidental to the crime.

2 SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2015,
3 SECTION 261, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2019]: Sec. 7.1. (a) In determining what
5 sentence to impose for a crime, the court may consider the following
6 aggravating circumstances:

7 (1) The harm, injury, loss, or damage suffered by the victim of an
8 offense was:

9 (A) significant; and

10 (B) greater than the elements necessary to prove the
11 commission of the offense.

12 (2) The person has a history of criminal or delinquent behavior.

13 (3) The victim of the offense was less than twelve (12) years of
14 age or at least sixty-five (65) years of age at the time the person
15 committed the offense.

16 (4) The person:

17 (A) committed a crime of violence (IC 35-50-1-2); and

18 (B) knowingly committed the offense in the presence or within
19 hearing of an individual who:

20 (i) was less than eighteen (18) years of age at the time the
21 person committed the offense; and

22 (ii) is not the victim of the offense.

23 (5) The person violated a protective order issued against the
24 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
25 IC 34-4-5.1 before their repeal), a workplace violence restraining
26 order issued against the person under IC 34-26-6, or a no contact
27 order issued against the person.

28 (6) The person has recently violated the conditions of any
29 probation, parole, pardon, community corrections placement, or
30 pretrial release granted to the person.

31 (7) The victim of the offense was:

32 (A) a person with a disability (as defined in IC 27-7-6-12), and
33 the defendant knew or should have known that the victim was
34 a person with a disability; or

35 (B) mentally or physically infirm.

36 (8) The person was in a position having care, custody, or control
37 of the victim of the offense.

38 (9) The injury to or death of the victim of the offense was the
39 result of shaken baby syndrome (as defined in IC 16-41-40-2).

40 (10) The person threatened to harm the victim of the offense or a
41 witness if the victim or witness told anyone about the offense.

42 (11) The person:



- 1 (A) committed trafficking with an inmate under
 2 IC 35-44.1-3-5; and
 3 (B) is an employee of the penal facility.
- 4 **(12) The person knowingly or intentionally selected:**
 5 **(A) the individual against whom the crime was committed;**
 6 **or**
 7 **(B) any property damaged or otherwise affected by the**
 8 **crime;**
 9 **in whole or in part because of the actual or perceived race,**
 10 **color, religion, ethnicity, national origin, sexual orientation,**
 11 **gender, gender identity or expression, or disability of the**
 12 **individual or a group of individuals, whether or not the**
 13 **person's belief or perception was correct.**
- 14 (b) The court may consider the following factors as mitigating
 15 circumstances or as favoring suspending the sentence and imposing
 16 probation:
- 17 (1) The crime neither caused nor threatened serious harm to
 18 persons or property, or the person did not contemplate that it
 19 would do so.
 20 (2) The crime was the result of circumstances unlikely to recur.
 21 (3) The victim of the crime induced or facilitated the offense.
 22 (4) There are substantial grounds tending to excuse or justify the
 23 crime, though failing to establish a defense.
 24 (5) The person acted under strong provocation.
 25 (6) The person has no history of delinquency or criminal activity,
 26 or the person has led a law-abiding life for a substantial period
 27 before commission of the crime.
 28 (7) The person is likely to respond affirmatively to probation or
 29 short term imprisonment.
 30 (8) The character and attitudes of the person indicate that the
 31 person is unlikely to commit another crime.
 32 (9) The person has made or will make restitution to the victim of
 33 the crime for the injury, damage, or loss sustained.
 34 (10) Imprisonment of the person will result in undue hardship to
 35 the person or the dependents of the person.
 36 (11) The person was convicted of a crime involving the use of
 37 force against a person who had repeatedly inflicted physical or
 38 sexual abuse upon the convicted person and evidence shows that
 39 the convicted person suffered from the effects of battery as a
 40 result of the past course of conduct of the individual who is the
 41 victim of the crime for which the person was convicted.
 42 (12) The person was convicted of a crime relating to a controlled



1 substance and the person's arrest or prosecution was facilitated in
2 part because the person:
3 (A) requested emergency medical assistance; or
4 (B) acted in concert with another person who requested
5 emergency medical assistance;
6 for an individual who reasonably appeared to be in need of
7 medical assistance due to the use of alcohol or a controlled
8 substance.
9 (13) The person has posttraumatic stress disorder, traumatic brain
10 injury, or a postconcussive brain injury.
11 (c) The criteria listed in subsections (a) and (b) do not limit the
12 matters that the court may consider in determining the sentence.
13 (d) A court may impose any sentence that is:
14 (1) authorized by statute; and
15 (2) permissible under the Constitution of the State of Indiana;
16 regardless of the presence or absence of aggravating circumstances or
17 mitigating circumstances.
18 (e) If a court suspends a sentence and orders probation for a person
19 described in subsection (b)(13), the court may require the person to
20 receive treatment for the person's injuries.

