



January 15, 2019

SENATE BILL No. 75

DIGEST OF SB 75 (Updated January 14, 2019 2:31 pm - DI 92)

Citations Affected: IC 10-13; IC 35-38.

Synopsis: Bias motivated crimes. Makes it an aggravating circumstance (for purposes of imposing a criminal sentence) that the crime was committed with the intent to harm or intimidate an individual because of certain perceived or actual characteristics of the individual. Requires law enforcement agencies to report bias motivated crimes to the Federal Bureau of Investigation.

Effective: July 1, 2019.

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January 3, 2019, read first time and referred to Committee on Rules and Legislative Procedure.
January 14, 2019, amended; reassigned to Committee on Rules and Legislative Procedure.

SB 75—LS 6148/DI 13



January 15, 2019

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.

SENATE BILL No. 75

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 in which the person
4 who commits the offense 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 **perceived or actual** color, ~~creed~~,
8 **religion**, disability, national origin, **ethnicity**, race, religion, **gender**
9 **identity**, or sexual orientation of the injured person or of the owner or
10 occupant of the affected property, **whether or not the person's belief**
11 **or perception was correct**, or because the injured person or owner or
12 occupant of the affected property was associated with any other
13 recognizable group or affiliation.

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

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1 (b) At least two (2) times each year, a law enforcement agency shall
2 submit information collected under subsection (a) to:

- 3 (1) the Indiana central repository for criminal history information,
4 ~~Information shall be reported~~ in the manner and form prescribed
5 by the department; **and**
6 (2) **the Federal Bureau of Investigation, in accordance with**
7 **the guidelines established under 28 U.S.C. 534, and using the**
8 **national incident based reporting system.**

9 (c) At least one (1) time each year, the Indiana central repository for
10 criminal history information shall submit a report that includes a
11 compilation of information obtained under subsection (b) to each law
12 enforcement agency and to the legislative council. A report submitted
13 to a law enforcement agency and the legislative council under this
14 subsection may not contain the name of a person who:

- 15 (1) committed or allegedly committed a bias **motivated** crime; or
16 (2) was the victim or the alleged victim of a bias **motivated**
17 crime.

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

20 (d) Except as provided in subsection (e), information collected,
21 submitted, and reported under this section must be consistent with
22 guidelines established for the acquisition, preservation, and exchange
23 of identification records and information by:

- 24 (1) the Attorney General of the United States; or
25 (2) the Federal Bureau of Investigation;

26 under 28 U.S.C. 534 and the Hate Crime Statistics Act, as amended (28
27 U.S.C. 534 note).

28 (e) Information submitted under subsection (b) and reports issued
29 under subsection (c) shall, in conformity with guidelines prescribed by
30 the department,

- 31 ~~(1) be separated in reports on the basis of whether it is an alleged~~
32 ~~crime, a charged crime, or a crime for which a conviction has~~
33 ~~been obtained. and~~
34 ~~(2) be divided in reports on the basis of whether, in the opinion of~~
35 ~~the reporting individual and the data collectors, bias was the~~
36 ~~primary motivation for the crime or only incidental to the crime.~~

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

- 42 (1) The harm, injury, loss, or damage suffered by the victim of an



- 1 offense was:
- 2 (A) significant; and
- 3 (B) greater than the elements necessary to prove the
- 4 commission of the offense.
- 5 (2) The person has a history of criminal or delinquent behavior.
- 6 (3) The victim of the offense was less than twelve (12) years of
- 7 age or at least sixty-five (65) years of age at the time the person
- 8 committed the offense.
- 9 (4) The person:
- 10 (A) committed a crime of violence (IC 35-50-1-2); and
- 11 (B) knowingly committed the offense in the presence or within
- 12 hearing of an individual who:
- 13 (i) was less than eighteen (18) years of age at the time the
- 14 person committed the offense; and
- 15 (ii) is not the victim of the offense.
- 16 (5) The person violated a protective order issued against the
- 17 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 18 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 19 order issued against the person under IC 34-26-6, or a no contact
- 20 order issued against the person.
- 21 (6) The person has recently violated the conditions of any
- 22 probation, parole, pardon, community corrections placement, or
- 23 pretrial release granted to the person.
- 24 (7) The victim of the offense was:
- 25 (A) a person with a disability (as defined in IC 27-7-6-12), and
- 26 the defendant knew or should have known that the victim was
- 27 a person with a disability; or
- 28 (B) mentally or physically infirm.
- 29 (8) The person was in a position having care, custody, or control
- 30 of the victim of the offense.
- 31 (9) The injury to or death of the victim of the offense was the
- 32 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 33 (10) The person threatened to harm the victim of the offense or a
- 34 witness if the victim or witness told anyone about the offense.
- 35 (11) The person:
- 36 (A) committed trafficking with an inmate under
- 37 IC 35-44.1-3-5; and
- 38 (B) is an employee of the penal facility.
- 39 **(12) The person committed the offense, including an offense**
- 40 **involving an individual's property, with the intent to harm or**
- 41 **intimidate an individual because of the individual's perceived**
- 42 **or actual:**



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



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



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 75, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Rules and Legislative Procedure.

(Reference is to SB 75 as introduced.)

BRAY, Chairperson

