

## SENATE BILL No. 12

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-3; IC 35-31.5-2-260.2; IC 35-38-1-7.1.

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

**Effective:** July 1, 2019.

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## Bohacek, Alting

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

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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. 12

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 **against an**  
4 **individual or a group of individuals** in which the person who  
5 commits the offense knowingly or intentionally:  
6 (1) selected the ~~person~~ **individual or group of individuals** who  
7 was injured; or  
8 (2) damaged or otherwise affected property;  
9 ~~by the offense in whole or in part~~ because of the **individual's or**  
10 **group of individuals' perceived or actual** color, ~~creed~~, disability,  
11 national origin, **ancestry**, race, religion, **gender identity**, **sex**, or sexual  
12 orientation, **political affiliation**, **status as a public safety official (as**  
13 **defined in IC 35-42-2-1(a))**, **status as a relative of a public safety**  
14 **official (as defined in IC 35-42-2-1(b))**, or **service in the armed**  
15 **forces of the United States (as defined in IC 5-9-4-3)**, ~~of the injured~~  
16 ~~person or of the owner or occupant of the affected property~~, **whether**  
17 **or not the person's belief or perception was correct**, or because the



1 ~~injured person or owner or occupant of the affected property~~ **individual**  
 2 **or group of individuals** was associated with any other recognizable  
 3 group or affiliation.

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

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

10 (1) the Indiana central repository for criminal history information,  
 11 ~~information shall be reported~~ in the manner and form prescribed  
 12 by the department; **and**

13 (2) **the Federal Bureau of Investigation, in accordance with**  
 14 **the guidelines established under 28 U.S.C. 534, and using the**  
 15 **national incident based reporting system.**

16 (c) At least one (1) time each year, the Indiana central repository for  
 17 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) Except as provided in subsection (e), information collected,  
 28 submitted, and reported under this section must be consistent with  
 29 guidelines established for the acquisition, preservation, and exchange  
 30 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) Information submitted under subsection (b) and reports issued  
 36 under subsection (c) shall, in conformity with guidelines prescribed by  
 37 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 35-31.5-2-260.2, AS ADDED BY P.L.238-2015,  
 3            SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 4            JULY 1, 2019]: Sec. 260.2. "Public safety official", for purposes of  
 5            **IC 35-38-1-7.1 and IC 35-42-2-1**, has the meaning set forth in  
 6            IC 35-42-2-1.

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

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

14                  (A) significant; and

15                  (B) greater than the elements necessary to prove the  
 16           commission of the offense.

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

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

21           (4) The person:

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

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

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

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

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

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

36           (7) The victim of the offense was:

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

40                  (B) mentally or physically infirm.

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



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

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

5 (11) The person:

6 (A) committed trafficking with an inmate under  
7 IC 35-44.1-3-5; and

8 (B) is an employee of the penal facility.

9 **(12) The person committed the offense, including an offense**  
10 **involving an individual's or a group of individuals' property,**  
11 **with the intent to harm or intimidate an individual or a group**  
12 **of individuals because of the individual's or group of**  
13 **individuals' perceived or actual:**

14 (A) race;

15 (B) religion;

16 (C) color;

17 (D) sex;

18 (E) gender identity;

19 (F) disability;

20 (G) national origin;

21 (H) ancestry;

22 (I) sexual orientation;

23 (J) political affiliation;

24 (K) status as a public safety official;

25 (L) status as a relative of a public safety official;

26 (M) service in the armed forces of the United States (as  
27 defined in IC 5-9-4-3); or

28 (N) association with any recognizable group or affiliation;  
29 whether or not the person's belief or perception was correct.

30 (b) The court may consider the following factors as mitigating  
31 circumstances or as favoring suspending the sentence and imposing  
32 probation:

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

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

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

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

40 (5) The person acted under strong provocation.

41 (6) The person has no history of delinquency or criminal activity,  
42 or the person has led a law-abiding life for a substantial period



- 1 before commission of the crime.
- 2 (7) The person is likely to respond affirmatively to probation or
- 3 short term imprisonment.
- 4 (8) The character and attitudes of the person indicate that the
- 5 person is unlikely to commit another crime.
- 6 (9) The person has made or will make restitution to the victim of
- 7 the crime for the injury, damage, or loss sustained.
- 8 (10) Imprisonment of the person will result in undue hardship to
- 9 the person or the dependents of the person.
- 10 (11) The person was convicted of a crime involving the use of
- 11 force against a person who had repeatedly inflicted physical or
- 12 sexual abuse upon the convicted person and evidence shows that
- 13 the convicted person suffered from the effects of battery as a
- 14 result of the past course of conduct of the individual who is the
- 15 victim of the crime for which the person was convicted.
- 16 (12) The person was convicted of a crime relating to a controlled
- 17 substance and the person's arrest or prosecution was facilitated in
- 18 part because the person:
- 19 (A) requested emergency medical assistance; or
- 20 (B) acted in concert with another person who requested
- 21 emergency medical assistance;
- 22 for an individual who reasonably appeared to be in need of
- 23 medical assistance due to the use of alcohol or a controlled
- 24 substance.
- 25 (13) The person has posttraumatic stress disorder, traumatic brain
- 26 injury, or a postconcussive brain injury.
- 27 (c) The criteria listed in subsections (a) and (b) do not limit the
- 28 matters that the court may consider in determining the sentence.
- 29 (d) A court may impose any sentence that is:
- 30 (1) authorized by statute; and
- 31 (2) permissible under the Constitution of the State of Indiana;
- 32 regardless of the presence or absence of aggravating circumstances or
- 33 mitigating circumstances.
- 34 (e) If a court suspends a sentence and orders probation for a person
- 35 described in subsection (b)(13), the court may require the person to
- 36 receive treatment for the person's injuries.

