



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5314

by Rep. Jerry Costello, II

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.1  
720 ILCS 5/21-3

from Ch. 38, par. 12-7.1  
from Ch. 38, par. 21-3

Amends the Criminal Code of 2012. Creates the offense of aggravated criminal trespass to real property. Provides that a person commits the offense when he or she knowingly enters upon the land of another without permission of the owner or occupant with the intent to take any game species regulated under the Wildlife Code. Provides that a violation is a Class A misdemeanor. Effective immediately.

LRB100 16874 RLC 32015 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing  
5 Sections 12-7.1 and 21-3 as follows:

6 (720 ILCS 5/12-7.1) (from Ch. 38, par. 12-7.1)

7 Sec. 12-7.1. Hate crime.

8 (a) A person commits hate crime when, by reason of the  
9 actual or perceived race, color, creed, religion, ancestry,  
10 gender, sexual orientation, physical or mental disability, or  
11 national origin of another individual or group of individuals,  
12 regardless of the existence of any other motivating factor or  
13 factors, he or she commits assault, battery, aggravated  
14 assault, intimidation, stalking, cyberstalking, misdemeanor  
15 theft, criminal trespass to residence, misdemeanor criminal  
16 damage to property, criminal trespass to vehicle, criminal  
17 trespass to real property, aggravated criminal trespass to real  
18 property, mob action, disorderly conduct, transmission of  
19 obscene messages, harassment by telephone, or harassment  
20 through electronic communications as these crimes are defined  
21 in Sections 12-1, 12-2, 12-3(a), 12-7.3, 12-7.5, 16-1, 19-4,  
22 21-1, 21-2, 21-3, 25-1, 26-1, 26.5-1, 26.5-2, paragraphs  
23 (a) (1), (a) (2), and (a) (3) of Section 12-6, and paragraphs

1 (a) (2) and (a) (5) of Section 26.5-3 of this Code, respectively.

2 (b) Except as provided in subsection (b-5), hate crime is a  
3 Class 4 felony for a first offense and a Class 2 felony for a  
4 second or subsequent offense.

5 (b-5) Hate crime is a Class 3 felony for a first offense  
6 and a Class 2 felony for a second or subsequent offense if  
7 committed:

8 (1) in, or upon the exterior or grounds of, a church,  
9 synagogue, mosque, or other building, structure, or place  
10 identified or associated with a particular religion or used  
11 for religious worship or other religious purpose;

12 (2) in a cemetery, mortuary, or other facility used for  
13 the purpose of burial or memorializing the dead;

14 (3) in a school or other educational facility,  
15 including an administrative facility or public or private  
16 dormitory facility of or associated with the school or  
17 other educational facility;

18 (4) in a public park or an ethnic or religious  
19 community center;

20 (5) on the real property comprising any location  
21 specified in clauses (1) through (4) of this subsection  
22 (b-5); or

23 (6) on a public way within 1,000 feet of the real  
24 property comprising any location specified in clauses (1)  
25 through (4) of this subsection (b-5).

26 (b-10) Upon imposition of any sentence, the trial court

1 shall also either order restitution paid to the victim or  
2 impose a fine in an amount to be determined by the court based  
3 on the severity of the crime and the injury or damages suffered  
4 by the victim. In addition, any order of probation or  
5 conditional discharge entered following a conviction or an  
6 adjudication of delinquency shall include a condition that the  
7 offender perform public or community service of no less than  
8 200 hours if that service is established in the county where  
9 the offender was convicted of hate crime. In addition, any  
10 order of probation or conditional discharge entered following a  
11 conviction or an adjudication of delinquency shall include a  
12 condition that the offender enroll in an educational program  
13 discouraging hate crimes involving the protected class  
14 identified in subsection (a) that gave rise to the offense the  
15 offender committed. The educational program must be attended by  
16 the offender in-person and may be administered, as determined  
17 by the court, by a university, college, community college,  
18 non-profit organization, the Illinois Holocaust and Genocide  
19 Commission, or any other organization that provides  
20 educational programs discouraging hate crimes, except that  
21 programs administered online or that can otherwise be attended  
22 remotely are prohibited. The court may also impose any other  
23 condition of probation or conditional discharge under this  
24 Section. If the court sentences the offender to imprisonment or  
25 periodic imprisonment for a violation of this Section, as a  
26 condition of the offender's mandatory supervised release, the

1 court shall require that the offender perform public or  
2 community service of no less than 200 hours and enroll in an  
3 educational program discouraging hate crimes involving the  
4 protected class identified in subsection (a) that gave rise to  
5 the offense the offender committed.

6 (c) Independent of any criminal prosecution or the result  
7 of a criminal prosecution, any person suffering injury to his  
8 or her person, damage to his or her property, intimidation as  
9 defined in paragraphs (a)(1), (a)(2), and (a)(3) of Section  
10 12-6 of this Code, stalking as defined in Section 12-7.3 of  
11 this Code, cyberstalking as defined in Section 12-7.5 of this  
12 Code, disorderly conduct as defined in paragraph (a)(1) of  
13 Section 26-1 of this Code, transmission of obscene messages as  
14 defined in Section 26.5-1 of this Code, harassment by telephone  
15 as defined in Section 26.5-2 of this Code, or harassment  
16 through electronic communications as defined in paragraphs  
17 (a)(2) and (a)(5) of Section 26.5-3 of this Code as a result of  
18 a hate crime may bring a civil action for damages, injunction  
19 or other appropriate relief. The court may award actual  
20 damages, including damages for emotional distress, as well as  
21 punitive damages. The court may impose a civil penalty up to  
22 \$25,000 for each violation of this subsection (c). A judgment  
23 in favor of a person who brings a civil action under this  
24 subsection (c) shall include attorney's fees and costs. After  
25 consulting with the local State's Attorney, the Attorney  
26 General may bring a civil action in the name of the People of

1 the State for an injunction or other equitable relief under  
2 this subsection (c). In addition, the Attorney General may  
3 request and the court may impose a civil penalty up to \$25,000  
4 for each violation under this subsection (c). The parents or  
5 legal guardians, other than guardians appointed pursuant to the  
6 Juvenile Court Act or the Juvenile Court Act of 1987, of an  
7 unemancipated minor shall be liable for the amount of any  
8 judgment for all damages rendered against such minor under this  
9 subsection (c) in any amount not exceeding the amount provided  
10 under Section 5 of the Parental Responsibility Law.

11 (d) "Sexual orientation" has the meaning ascribed to it in  
12 paragraph (O-1) of Section 1-103 of the Illinois Human Rights  
13 Act.

14 (Source: P.A. 99-77, eff. 1-1-16; 100-197, eff. 1-1-18;  
15 100-260, eff. 1-1-18; revised 10-5-17.)

16 (720 ILCS 5/21-3) (from Ch. 38, par. 21-3)

17 Sec. 21-3. Criminal trespass to real property; aggravated  
18 criminal trespass to real property.

19 (a) A person commits criminal trespass to real property  
20 when he or she:

21 (1) knowingly and without lawful authority enters or  
22 remains within or on a building;

23 (2) enters upon the land of another, after receiving,  
24 prior to the entry, notice from the owner or occupant that  
25 the entry is forbidden;

1           (3) remains upon the land of another, after receiving  
2 notice from the owner or occupant to depart;

3           (3.5) presents false documents or falsely represents  
4 his or her identity orally to the owner or occupant of a  
5 building or land in order to obtain permission from the  
6 owner or occupant to enter or remain in the building or on  
7 the land;

8           (3.7) intentionally removes a notice posted on  
9 residential real estate as required by subsection (1) of  
10 Section 15-1505.8 of Article XV of the Code of Civil  
11 Procedure before the date and time set forth in the notice;  
12 or

13           (4) enters a field used or capable of being used for  
14 growing crops, an enclosed area containing livestock, an  
15 agricultural building containing livestock, or an orchard  
16 in or on a motor vehicle (including an off-road vehicle,  
17 motorcycle, moped, or any other powered two-wheel vehicle)  
18 after receiving, prior to the entry, notice from the owner  
19 or occupant that the entry is forbidden or remains upon or  
20 in the area after receiving notice from the owner or  
21 occupant to depart.

22           For purposes of item (1) of this subsection, this Section  
23 shall not apply to being in a building which is open to the  
24 public while the building is open to the public during its  
25 normal hours of operation; nor shall this Section apply to a  
26 person who enters a public building under the reasonable belief

1 that the building is still open to the public.

2 (a-5) A person commits aggravated criminal trespass to real  
3 property when he or she knowingly enters upon the land of  
4 another without permission of the owner or occupant with the  
5 intent to take any game species regulated under the Wildlife  
6 Code.

7 (b) A person has received notice from the owner or occupant  
8 within the meaning of subsection ~~Subsection~~ (a) if he or she  
9 has been notified personally, either orally or in writing  
10 including a valid court order as defined by subsection (7) of  
11 Section 112A-3 of the Code of Criminal Procedure of 1963  
12 granting remedy (2) of subsection (b) of Section 112A-14 of  
13 that Code, or if a printed or written notice forbidding such  
14 entry has been conspicuously posted or exhibited at the main  
15 entrance to the land or the forbidden part thereof.

16 (b-5) Subject to the provisions of subsection (b-10), as an  
17 alternative to the posting of real property as set forth in  
18 subsection (b), the owner or lessee of any real property may  
19 post the property by placing identifying purple marks on trees  
20 or posts around the area to be posted. Each purple mark shall  
21 be:

22 (1) A vertical line of at least 8 inches in length and  
23 the bottom of the mark shall be no less than 3 feet nor  
24 more than 5 feet high. Such marks shall be placed no more  
25 than 100 feet apart and shall be readily visible to any  
26 person approaching the property; or



1           (2) A post capped or otherwise marked on at least its  
2           top 2 inches. The bottom of the cap or mark shall be not  
3           less than 3 feet but not more than 5 feet 6 inches high.  
4           Posts so marked shall be placed not more than 36 feet apart  
5           and shall be readily visible to any person approaching the  
6           property. Prior to applying a cap or mark which is visible  
7           from both sides of a fence shared by different property  
8           owners or lessees, all such owners or lessees shall concur  
9           in the decision to post their own property.

10          Nothing in this subsection (b-5) shall be construed to  
11          authorize the owner or lessee of any real property to place any  
12          purple marks on any tree or post or to install any post or  
13          fence if doing so would violate any applicable law, rule,  
14          ordinance, order, covenant, bylaw, declaration, regulation,  
15          restriction, contract, or instrument.

16          (b-10) Any owner or lessee who marks his or her real  
17          property using the method described in subsection (b-5) must  
18          also provide notice as described in subsection (b) of this  
19          Section. The public of this State shall be informed of the  
20          provisions of subsection (b-5) of this Section by the Illinois  
21          Department of Agriculture and the Illinois Department of  
22          Natural Resources. These Departments shall conduct an  
23          information campaign for the general public concerning the  
24          interpretation and implementation of subsection (b-5). The  
25          information shall inform the public about the marking  
26          requirements and the applicability of subsection (b-5)

1 including information regarding the size requirements of the  
2 markings as well as the manner in which the markings shall be  
3 displayed. The Departments shall also include information  
4 regarding the requirement that, until the date this subsection  
5 becomes inoperative, any owner or lessee who chooses to mark  
6 his or her property using paint, must also comply with one of  
7 the notice requirements listed in subsection (b). The  
8 Departments may prepare a brochure or may disseminate the  
9 information through agency websites. Non-governmental  
10 organizations including, but not limited to, the Illinois  
11 Forestry Association, Illinois Tree Farm and the Walnut Council  
12 may help to disseminate the information regarding the  
13 requirements and applicability of subsection (b-5) based on  
14 materials provided by the Departments. This subsection (b-10)  
15 is inoperative on and after January 1, 2013.

16 (b-15) Subsections (b-5) and (b-10) do not apply to real  
17 property located in a municipality of over 2,000,000  
18 inhabitants.

19 (c) This Section does not apply to any person, whether a  
20 migrant worker or otherwise, living on the land with permission  
21 of the owner or of his or her agent having apparent authority  
22 to hire workers on this land and assign them living quarters or  
23 a place of accommodations for living thereon, nor to anyone  
24 living on the land at the request of, or by occupancy, leasing  
25 or other agreement or arrangement with the owner or his or her  
26 agent, nor to anyone invited by the migrant worker or other

1 person so living on the land to visit him or her at the place he  
2 is so living upon the land.

3 (d) A person shall be exempt from prosecution under this  
4 Section if he or she beautifies unoccupied and abandoned  
5 residential and industrial properties located within any  
6 municipality. For the purpose of this subsection, "unoccupied  
7 and abandoned residential and industrial property" means any  
8 real estate (1) in which the taxes have not been paid for a  
9 period of at least 2 years; and (2) which has been left  
10 unoccupied and abandoned for a period of at least one year; and  
11 "beautifies" means to landscape, clean up litter, or to repair  
12 dilapidated conditions on or to board up windows and doors.

13 (e) No person shall be liable in any civil action for money  
14 damages to the owner of unoccupied and abandoned residential  
15 and industrial property which that person beautifies pursuant  
16 to subsection (d) of this Section.

17 (e-5) Mortgagee or agent of the mortgagee exceptions.

18 (1) A mortgagee or agent of the mortgagee shall be  
19 exempt from prosecution for criminal trespass for  
20 entering, securing, or maintaining an abandoned  
21 residential property.

22 (2) No mortgagee or agent of the mortgagee shall be  
23 liable to the mortgagor or other owner of an abandoned  
24 residential property in any civil action for negligence or  
25 civil trespass in connection with entering, securing, or  
26 maintaining the abandoned residential property.

1           (3) For the purpose of this subsection (e-5) only,  
2           "abandoned residential property" means mortgaged real  
3           estate that the mortgagee or agent of the mortgagee  
4           determines in good faith meets the definition of abandoned  
5           residential property set forth in Section 15-1200.5 of  
6           Article XV of the Code of Civil Procedure.

7           (f) This Section does not prohibit a person from entering a  
8           building or upon the land of another for emergency purposes.  
9           For purposes of this subsection (f), "emergency" means a  
10          condition or circumstance in which an individual is or is  
11          reasonably believed by the person to be in imminent danger of  
12          serious bodily harm or in which property is or is reasonably  
13          believed to be in imminent danger of damage or destruction.

14          (g) Paragraph (3.5) of subsection (a) does not apply to a  
15          peace officer or other official of a unit of government who  
16          enters a building or land in the performance of his or her  
17          official duties.

18          (h) Sentence. A violation of subdivision (a)(1), (a)(2),  
19          (a)(3), or (a)(3.5) is a Class B misdemeanor. A violation of  
20          subdivision (a)(4) is a Class A misdemeanor. A violation of  
21          subsection (a-5) is a Class A misdemeanor.

22          (i) Civil liability. A person may be liable in any civil  
23          action for money damages to the owner of the land he or she  
24          entered upon with a motor vehicle as prohibited under paragraph  
25          (4) of subsection (a) of this Section. A person may also be  
26          liable to the owner for court costs and reasonable attorney's

1 fees. The measure of damages shall be: (i) the actual damages,  
2 but not less than \$250, if the vehicle is operated in a nature  
3 preserve or registered area as defined in Sections 3.11 and  
4 3.14 of the Illinois Natural Areas Preservation Act; (ii) twice  
5 the actual damages if the owner has previously notified the  
6 person to cease trespassing; or (iii) in any other case, the  
7 actual damages, but not less than \$50. If the person operating  
8 the vehicle is under the age of 16, the owner of the vehicle  
9 and the parent or legal guardian of the minor are jointly and  
10 severally liable. For the purposes of this subsection (i):

11 "Land" includes, but is not limited to, land used for  
12 crop land, fallow land, orchard, pasture, feed lot, timber  
13 land, prairie land, mine spoil nature preserves and  
14 registered areas. "Land" does not include driveways or  
15 private roadways upon which the owner allows the public to  
16 drive.

17 "Owner" means the person who has the right to  
18 possession of the land, including the owner, operator or  
19 tenant.

20 "Vehicle" has the same meaning as provided under  
21 Section 1-217 of the Illinois Vehicle Code.

22 (j) This Section does not apply to the following persons  
23 while serving process:

24 (1) a person authorized to serve process under Section  
25 2-202 of the Code of Civil Procedure; or

26 (2) a special process server appointed by the circuit

1 court.

2 (Source: P.A. 97-184, eff. 7-22-11; 97-477, eff. 8-22-11;  
3 97-813, eff. 7-13-12; 97-1108, eff. 1-1-13; 97-1164, eff.  
4 6-1-13.)

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.