



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB3640

by Rep. Delia C. Ramirez

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.1	from Ch. 38, par. 12-7.1
775 ILCS 5/1-101.1	
775 ILCS 5/1-102	from Ch. 68, par. 1-102
775 ILCS 5/1-103	from Ch. 68, par. 1-103
775 ILCS 5/3-103	from Ch. 68, par. 3-103
775 ILCS 5/3-106	from Ch. 68, par. 3-106

Amends the Illinois Human Rights Act. Deletes language from the definition of "sexual orientation" concerning gender identity. Provides that "gender identity" means a person's deeply felt, inherent sense of who the person is as a particular gender and that a person's gender identity may be the same or different from the sex of the person assigned at birth. Makes conforming changes. Amends the Criminal Code of 2012. Includes gender identity (rather than just gender) within the definition of a hate crime. Effective immediately.

LRB101 07370 LNS 52410 b

1 AN ACT concerning gender identity.

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 Section 12-7.1 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 identity, sexual orientation, physical or mental
11 disability, or national origin of another individual or group
12 of individuals, regardless of the existence of any other
13 motivating factor or factors, he or she commits assault,
14 battery, aggravated assault, intimidation, stalking,
15 cyberstalking, misdemeanor theft, criminal trespass to
16 residence, misdemeanor criminal damage to property, criminal
17 trespass to vehicle, criminal trespass to real property, mob
18 action, disorderly conduct, transmission of obscene messages,
19 harassment by telephone, or harassment through electronic
20 communications as these crimes are defined in Sections 12-1,
21 12-2, 12-3(a), 12-7.3, 12-7.5, 16-1, 19-4, 21-1, 21-2, 21-3,
22 25-1, 26-1, 26.5-1, 26.5-2, paragraphs (a)(1), (a)(2), and
23 (a)(3) of Section 12-6, and paragraphs (a)(2) and (a)(5) of

1 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. "Gender identity" has the meaning provided in Section
14 1-103 of the Illinois Human Rights Act.

15 (Source: P.A. 99-77, eff. 1-1-16; 100-197, eff. 1-1-18;
16 100-260, eff. 1-1-18; 100-863, eff. 8-14-18.)

17 Section 10. The Illinois Human Rights Act is amended by
18 changing Sections 1-101.1, 1-102, 1-103, 3-103, and 3-106 as
19 follows:

20 (775 ILCS 5/1-101.1)

21 Sec. 1-101.1. Construction. Nothing in this Act shall be
22 construed as requiring any employer, employment agency, or
23 labor organization to give preferential treatment or special
24 rights based on sexual orientation or gender identity or to

1 implement affirmative action policies or programs based on
2 sexual orientation or gender identity.

3 (Source: P.A. 93-1078, eff. 1-1-06.)

4 (775 ILCS 5/1-102) (from Ch. 68, par. 1-102)

5 Sec. 1-102. Declaration of Policy. It is the public policy
6 of this State:

7 (A) Freedom from Unlawful Discrimination. To secure for all
8 individuals within Illinois the freedom from discrimination
9 against any individual because of his or her race, color,
10 religion, sex, national origin, ancestry, age, order of
11 protection status, marital status, physical or mental
12 disability, military status, sexual orientation, gender
13 identity, pregnancy, or unfavorable discharge from military
14 service in connection with employment, real estate
15 transactions, access to financial credit, and the availability
16 of public accommodations.

17 (B) Freedom from Sexual Harassment-Employment and
18 Elementary, Secondary, and Higher Education. To prevent sexual
19 harassment in employment and sexual harassment in elementary,
20 secondary, and higher education.

21 (C) Freedom from Discrimination Based on Citizenship
22 Status-Employment. To prevent discrimination based on
23 citizenship status in employment.

24 (D) Freedom from Discrimination Based on Familial
25 Status-Real Estate Transactions. To prevent discrimination

1 based on familial status in real estate transactions.

2 (E) Public Health, Welfare and Safety. To promote the
3 public health, welfare and safety by protecting the interest of
4 all people in Illinois in maintaining personal dignity, in
5 realizing their full productive capacities, and in furthering
6 their interests, rights and privileges as citizens of this
7 State.

8 (F) Implementation of Constitutional Guarantees. To secure
9 and guarantee the rights established by Sections 17, 18 and 19
10 of Article I of the Illinois Constitution of 1970.

11 (G) Equal Opportunity, Affirmative Action. To establish
12 Equal Opportunity and Affirmative Action as the policies of
13 this State in all of its decisions, programs and activities,
14 and to assure that all State departments, boards, commissions
15 and instrumentalities rigorously take affirmative action to
16 provide equality of opportunity and eliminate the effects of
17 past discrimination in the internal affairs of State government
18 and in their relations with the public.

19 (H) Unfounded Charges. To protect citizens of this State
20 against unfounded charges of unlawful discrimination, sexual
21 harassment in employment and sexual harassment in elementary,
22 secondary, and higher education, and discrimination based on
23 citizenship status in employment.

24 (Source: P.A. 98-1050, eff. 1-1-15.)

25 (775 ILCS 5/1-103) (from Ch. 68, par. 1-103)

1 Sec. 1-103. General definitions. When used in this Act,
2 unless the context requires otherwise, the term:

3 (A) Age. "Age" means the chronological age of a person who
4 is at least 40 years old, except with regard to any practice
5 described in Section 2-102, insofar as that practice concerns
6 training or apprenticeship programs. In the case of training or
7 apprenticeship programs, for the purposes of Section 2-102,
8 "age" means the chronological age of a person who is 18 but not
9 yet 40 years old.

10 (B) Aggrieved party. "Aggrieved party" means a person who
11 is alleged or proved to have been injured by a civil rights
12 violation or believes he or she will be injured by a civil
13 rights violation under Article 3 that is about to occur.

14 (C) Charge. "Charge" means an allegation filed with the
15 Department by an aggrieved party or initiated by the Department
16 under its authority.

17 (D) Civil rights violation. "Civil rights violation"
18 includes and shall be limited to only those specific acts set
19 forth in Sections 2-102, 2-103, 2-105, 3-102, 3-102.1, 3-103,
20 3-104, 3-104.1, 3-105, 3-105.1, 4-102, 4-103, 5-102, 5A-102,
21 6-101, and 6-102 of this Act.

22 (E) Commission. "Commission" means the Human Rights
23 Commission created by this Act.

24 (F) Complaint. "Complaint" means the formal pleading filed
25 by the Department with the Commission following an
26 investigation and finding of substantial evidence of a civil

1 rights violation.

2 (G) Complainant. "Complainant" means a person including
3 the Department who files a charge of civil rights violation
4 with the Department or the Commission.

5 (H) Department. "Department" means the Department of Human
6 Rights created by this Act.

7 (I) Disability. "Disability" means a determinable physical
8 or mental characteristic of a person, including, but not
9 limited to, a determinable physical characteristic which
10 necessitates the person's use of a guide, hearing or support
11 dog, the history of such characteristic, or the perception of
12 such characteristic by the person complained against, which may
13 result from disease, injury, congenital condition of birth or
14 functional disorder and which characteristic:

15 (1) For purposes of Article 2, is unrelated to the
16 person's ability to perform the duties of a particular job
17 or position and, pursuant to Section 2-104 of this Act, a
18 person's illegal use of drugs or alcohol is not a
19 disability;

20 (2) For purposes of Article 3, is unrelated to the
21 person's ability to acquire, rent, or maintain a housing
22 accommodation;

23 (3) For purposes of Article 4, is unrelated to a
24 person's ability to repay;

25 (4) For purposes of Article 5, is unrelated to a
26 person's ability to utilize and benefit from a place of

1 public accommodation;

2 (5) For purposes of Article 5, also includes any
3 mental, psychological, or developmental disability,
4 including autism spectrum disorders.

5 (J) Marital status. "Marital status" means the legal status
6 of being married, single, separated, divorced, or widowed.

7 (J-1) Military status. "Military status" means a person's
8 status on active duty in or status as a veteran of the armed
9 forces of the United States, status as a current member or
10 veteran of any reserve component of the armed forces of the
11 United States, including the United States Army Reserve, United
12 States Marine Corps Reserve, United States Navy Reserve, United
13 States Air Force Reserve, and United States Coast Guard
14 Reserve, or status as a current member or veteran of the
15 Illinois Army National Guard or Illinois Air National Guard.

16 (K) National origin. "National origin" means the place in
17 which a person or one of his or her ancestors was born.

18 (K-5) "Order of protection status" means a person's status
19 as being a person protected under an order of protection issued
20 pursuant to the Illinois Domestic Violence Act of 1986, Article
21 112A of the Code of Criminal Procedure of 1963, the Stalking No
22 Contact Order Act, or the Civil No Contact Order Act, or an
23 order of protection issued by a court of another state.

24 (L) Person. "Person" includes one or more individuals,
25 partnerships, associations or organizations, labor
26 organizations, labor unions, joint apprenticeship committees,

1 or union labor associations, corporations, the State of
2 Illinois and its instrumentalities, political subdivisions,
3 units of local government, legal representatives, trustees in
4 bankruptcy or receivers.

5 (L-5) Pregnancy. "Pregnancy" means pregnancy, childbirth,
6 or medical or common conditions related to pregnancy or
7 childbirth.

8 (M) Public contract. "Public contract" includes every
9 contract to which the State, any of its political subdivisions,
10 or any municipal corporation is a party.

11 (N) Religion. "Religion" includes all aspects of religious
12 observance and practice, as well as belief, except that with
13 respect to employers, for the purposes of Article 2, "religion"
14 has the meaning ascribed to it in paragraph (F) of Section
15 2-101.

16 (O) Sex. "Sex" means the status of being male or female.

17 (O-1) Sexual orientation. "Sexual orientation" means
18 actual or perceived heterosexuality, homosexuality, or
19 bisexuality, ~~or gender related identity, whether or not~~
20 ~~traditionally associated with the person's designated sex at~~
21 ~~birth.~~ "Sexual orientation" does not include a physical or
22 sexual attraction to a minor by an adult.

23 (O-2) Gender identity. "Gender identity" means a person's
24 deeply felt, inherent sense of who the person is as a
25 particular gender. A person's gender identity may be the same
26 or different from the sex of the person assigned at birth.

1 (P) Unfavorable military discharge. "Unfavorable military
2 discharge" includes discharges from the Armed Forces of the
3 United States, their Reserve components, or any National Guard
4 or Naval Militia which are classified as RE-3 or the equivalent
5 thereof, but does not include those characterized as RE-4 or
6 "Dishonorable".

7 (Q) Unlawful discrimination. "Unlawful discrimination"
8 means discrimination against a person because of his or her
9 race, color, religion, national origin, ancestry, age, sex,
10 marital status, order of protection status, disability,
11 military status, sexual orientation, gender identity,
12 pregnancy, or unfavorable discharge from military service as
13 those terms are defined in this Section.

14 (Source: P.A. 100-714, eff. 1-1-19; revised 10-4-18.)

15 (775 ILCS 5/3-103) (from Ch. 68, par. 3-103)

16 Sec. 3-103. Blockbusting. It is a civil rights violation
17 for any person to:

18 (A) Solicitation. Solicit for sale, lease, listing or
19 purchase any residential real estate within this State, on the
20 grounds of loss of value due to the present or prospective
21 entry into the vicinity of the property involved of any person
22 or persons of any particular race, color, religion, national
23 origin, ancestry, age, sex, sexual orientation, gender
24 identity, marital status, familial status or disability.

25 (B) Statements. Distribute or cause to be distributed,

1 written material or statements designed to induce any owner of
2 residential real estate in this State to sell or lease his or
3 her property because of any present or prospective changes in
4 the race, color, religion, national origin, ancestry, age, sex,
5 sexual orientation, gender identity, marital status, familial
6 status or disability of residents in the vicinity of the
7 property involved.

8 (C) Creating Alarm. Intentionally create alarm, among
9 residents of any community, by transmitting communications in
10 any manner, including a telephone call whether or not
11 conversation thereby ensues, with a design to induce any owner
12 of residential real estate in this state to sell or lease his
13 or her property because of any present or prospective entry
14 into the vicinity of the property involved of any person or
15 persons of any particular race, color, religion, national
16 origin, ancestry, age, sex, sexual orientation, gender
17 identity, marital status, familial status or disability.

18 (Source: P.A. 97-877, eff. 8-2-12.)

19 (775 ILCS 5/3-106) (from Ch. 68, par. 3-106)

20 Sec. 3-106. Exemptions. Nothing contained in Section 3-102
21 shall prohibit:

22 (A) Private Sales of Single Family Homes.

23 (1) Any sale of a single family home by its owner so
24 long as the following criteria are met:

25 (a) The owner does not own or have a beneficial

1 interest in more than three single family homes at the
2 time of the sale;

3 (b) The owner or a member of his or her family was
4 the last current resident of the home;

5 (c) The home is sold without the use in any manner
6 of the sales or rental facilities or services of any
7 real estate broker or salesman, or of any employee or
8 agent of any real estate broker or salesman;

9 (d) The home is sold without the publication,
10 posting or mailing, after notice, of any advertisement
11 or written notice in violation of paragraph (F) of
12 Section 3-102.

13 (2) This exemption does not apply to paragraph (F) of
14 Section 3-102.

15 (B) Apartments. Rental of a housing accommodation in a
16 building which contains housing accommodations for not more
17 than 4 families living independently of each other, if the
18 owner resides in one of the housing accommodations. This
19 exemption does not apply to paragraph (F) of Section 3-102.

20 (C) Private Rooms. Rental of a room or rooms in a private
21 home by an owner if he or she or a member of his or her family
22 resides therein or, while absent for a period of not more than
23 twelve months, if he or she or a member of his or her family
24 intends to return to reside therein.

25 (D) Reasonable local, State, or Federal restrictions
26 regarding the maximum number of occupants permitted to occupy a

1 dwelling.

2 (E) Religious Organizations. A religious organization,
3 association, or society, or any nonprofit institution or
4 organization operated, supervised or controlled by or in
5 conjunction with a religious organization, association, or
6 society, from limiting the sale, rental or occupancy of a
7 dwelling which it owns or operates for other than a commercial
8 purpose to persons of the same religion, or from giving
9 preference to such persons, unless membership in such religion
10 is restricted on account of race, color, or national origin.

11 (F) Sex. Restricting the rental of rooms in a housing
12 accommodation to persons of one sex.

13 (G) Persons Convicted of Drug-Related Offenses. Conduct
14 against a person because such person has been convicted by any
15 court of competent jurisdiction of the illegal manufacture or
16 distribution of a controlled substance as defined in Section
17 102 of the federal Controlled Substances Act (21 U.S.C. 802).

18 (H) Persons engaged in the business of furnishing
19 appraisals of real property from taking into consideration
20 factors other than those based on unlawful discrimination or
21 familial status in furnishing appraisals.

22 (H-1) The owner of an owner-occupied residential building
23 with 4 or fewer units (including the unit in which the owner
24 resides) from making decisions regarding whether to rent to a
25 person based upon that person's sexual orientation or gender
26 identity.

1 (I) Housing for Older Persons. No provision in this Article
2 regarding familial status shall apply with respect to housing
3 for older persons.

4 (1) As used in this Section, "housing for older
5 persons" means housing:

6 (a) provided under any State or Federal program
7 that the Department determines is specifically
8 designed and operated to assist elderly persons (as
9 defined in the State or Federal program); or

10 (b) intended for, and solely occupied by, persons
11 62 years of age or older; or

12 (c) intended and operated for occupancy by persons
13 55 years of age or older and:

14 (i) at least 80% of the occupied units are
15 occupied by at least one person who is 55 years of
16 age or older;

17 (ii) the housing facility or community
18 publishes and adheres to policies and procedures
19 that demonstrate the intent required under this
20 subdivision (c); and

21 (iii) the housing facility or community
22 complies with rules adopted by the Department for
23 verification of occupancy, which shall:

24 (aa) provide for verification by reliable
25 surveys and affidavits; and

26 (bb) include examples of the types of

1 policies and procedures relevant to a
2 determination of compliance with the
3 requirement of clause (ii).

4 These surveys and affidavits shall be admissible in
5 administrative and judicial proceedings for the purposes
6 of such verification.

7 (2) Housing shall not fail to meet the requirements for
8 housing for older persons by reason of:

9 (a) persons residing in such housing as of the
10 effective date of this amendatory Act of 1989 who do
11 not meet the age requirements of subsections (1) (b) or
12 (c); provided, that new occupants of such housing meet
13 the age requirements of subsections (1) (b) or (c) of
14 this subsection; or

15 (b) unoccupied units; provided, that such units
16 are reserved for occupancy by persons who meet the age
17 requirements of subsections (1) (b) or (c) of this
18 subsection.

19 (3) (a) A person shall not be held personally liable
20 for monetary damages for a violation of this Article if
21 the person reasonably relied, in good faith, on the
22 application of the exemption under this subsection (I)
23 relating to housing for older persons.

24 (b) For the purposes of this item (3), a person may
25 show good faith reliance on the application of the
26 exemption only by showing that:

1 (i) the person has no actual knowledge that the
2 facility or community is not, or will not be,
3 eligible for the exemption; and

4 (ii) the facility or community has stated
5 formally, in writing, that the facility or
6 community complies with the requirements for the
7 exemption.

8 (J) Child Sex Offender Refusal to Rent. Refusal of a child
9 sex offender who owns and resides at residential real estate to
10 rent any residential unit within the same building in which he
11 or she resides to a person who is the parent or guardian of a
12 child or children under 18 years of age.

13 (Source: P.A. 95-42, eff. 8-10-07; 95-820, eff. 1-1-09.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.