



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB4376

Introduced 02/03/04, by Larry McKeon

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.1
730 ILCS 5/5-5-3.2

from Ch. 38, par. 12-7.1
from Ch. 38, par. 1005-5-3.2

Amends the Criminal Code of 1961. In the hate crime statute, defines sexual orientation to also include transgender status. Amends the Unified Code of Corrections. In the provision permitting the court to impose a more severe sentence upon a defendant who committed a crime against an individual or the individual's relatives, spouse, friends, or associates or their property because of the individual's actual or perceived sexual orientation, includes in the definition of sexual orientation, transgender status.

LRB093 18530 RLC 44250 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 1961 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, 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 commits assault, battery, aggravated assault,
14 misdemeanor theft, criminal trespass to residence, misdemeanor
15 criminal damage to property, criminal trespass to vehicle,
16 criminal trespass to real property, mob action or disorderly
17 conduct as these crimes are defined in Sections 12-1, 12-2,
18 12-3, 16-1, 19-4, 21-1, 21-2, 21-3, 25-1, and 26-1 of this
19 Code, respectively, or harassment by telephone as defined in
20 Section 1-1 of the Harassing and Obscene Communications Act, or
21 harassment through electronic communications as defined in
22 clause (a)(4) of Section 1-2 of the Harassing and Obscene
23 Communications Act.

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

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

30 (1) in a church, synagogue, mosque, or other building,
31 structure, or place used for religious worship or other
32 religious purpose;

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

3 (3) in a school or other educational facility;

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

6 (5) on the real property comprising any location
7 specified in clauses (1) through (4) of this subsection
8 (b-5); or

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

12 (b-10) Upon imposition of any sentence, the trial court
13 shall also either order restitution paid to the victim or
14 impose a fine up to \$1,000. In addition, any order of probation
15 or conditional discharge entered following a conviction or an
16 adjudication of delinquency shall include a condition that the
17 offender perform public or community service of no less than
18 200 hours if that service is established in the county where
19 the offender was convicted of hate crime. The court may also
20 impose any other condition of probation or conditional
21 discharge under this Section.

22 (c) Independent of any criminal prosecution or the result
23 thereof, any person suffering injury to his person or damage to
24 his property as a result of hate crime may bring a civil action
25 for damages, injunction or other appropriate relief. The court
26 may award actual damages, including damages for emotional
27 distress, or punitive damages. A judgment may include
28 attorney's fees and costs. The parents or legal guardians,
29 other than guardians appointed pursuant to the Juvenile Court
30 Act or the Juvenile Court Act of 1987, of an unemancipated
31 minor shall be liable for the amount of any judgment for actual
32 damages rendered against such minor under this subsection (c)
33 in any amount not exceeding the amount provided under Section 5
34 of the Parental Responsibility Law.

35 (d) "Sexual orientation" means heterosexuality,
36 homosexuality, ~~or~~ bisexuality, or transgender status.

1 (Source: P.A. 92-830, eff. 1-1-03; 93-463, eff. 8-8-03.)

2 Section 10. The Unified Code of Corrections is amended by
3 changing Section 5-5-3.2 as follows:

4 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

5 Sec. 5-5-3.2. Factors in Aggravation.

6 (a) The following factors shall be accorded weight in favor
7 of imposing a term of imprisonment or may be considered by the
8 court as reasons to impose a more severe sentence under Section
9 5-8-1:

10 (1) the defendant's conduct caused or threatened
11 serious harm;

12 (2) the defendant received compensation for committing
13 the offense;

14 (3) the defendant has a history of prior delinquency or
15 criminal activity;

16 (4) the defendant, by the duties of his office or by
17 his position, was obliged to prevent the particular offense
18 committed or to bring the offenders committing it to
19 justice;

20 (5) the defendant held public office at the time of the
21 offense, and the offense related to the conduct of that
22 office;

23 (6) the defendant utilized his professional reputation
24 or position in the community to commit the offense, or to
25 afford him an easier means of committing it;

26 (7) the sentence is necessary to deter others from
27 committing the same crime;

28 (8) the defendant committed the offense against a
29 person 60 years of age or older or such person's property;

30 (9) the defendant committed the offense against a
31 person who is physically handicapped or such person's
32 property;

33 (10) by reason of another individual's actual or
34 perceived race, color, creed, religion, ancestry, gender,

1 sexual orientation, physical or mental disability, or
2 national origin, the defendant committed the offense
3 against (i) the person or property of that individual; (ii)
4 the person or property of a person who has an association
5 with, is married to, or has a friendship with the other
6 individual; or (iii) the person or property of a relative
7 (by blood or marriage) of a person described in clause (i)
8 or (ii). For the purposes of this Section, "sexual
9 orientation" means heterosexuality, homosexuality, ~~or~~
10 bisexuality, or transgender status;

11 (11) the offense took place in a place of worship or on
12 the grounds of a place of worship, immediately prior to,
13 during or immediately following worship services. For
14 purposes of this subparagraph, "place of worship" shall
15 mean any church, synagogue or other building, structure or
16 place used primarily for religious worship;

17 (12) the defendant was convicted of a felony committed
18 while he was released on bail or his own recognizance
19 pending trial for a prior felony and was convicted of such
20 prior felony, or the defendant was convicted of a felony
21 committed while he was serving a period of probation,
22 conditional discharge, or mandatory supervised release
23 under subsection (d) of Section 5-8-1 for a prior felony;

24 (13) the defendant committed or attempted to commit a
25 felony while he was wearing a bulletproof vest. For the
26 purposes of this paragraph (13), a bulletproof vest is any
27 device which is designed for the purpose of protecting the
28 wearer from bullets, shot or other lethal projectiles;

29 (14) the defendant held a position of trust or
30 supervision such as, but not limited to, family member as
31 defined in Section 12-12 of the Criminal Code of 1961,
32 teacher, scout leader, baby sitter, or day care worker, in
33 relation to a victim under 18 years of age, and the
34 defendant committed an offense in violation of Section
35 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,
36 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961

1 against that victim;

2 (15) the defendant committed an offense related to the
3 activities of an organized gang. For the purposes of this
4 factor, "organized gang" has the meaning ascribed to it in
5 Section 10 of the Streetgang Terrorism Omnibus Prevention
6 Act;

7 (16) the defendant committed an offense in violation of
8 one of the following Sections while in a school, regardless
9 of the time of day or time of year; on any conveyance
10 owned, leased, or contracted by a school to transport
11 students to or from school or a school related activity; on
12 the real property of a school; or on a public way within
13 1,000 feet of the real property comprising any school:
14 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
15 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
16 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
17 33A-2 of the Criminal Code of 1961;

18 (16.5) the defendant committed an offense in violation
19 of one of the following Sections while in a day care
20 center, regardless of the time of day or time of year; on
21 the real property of a day care center, regardless of the
22 time of day or time of year; or on a public way within
23 1,000 feet of the real property comprising any day care
24 center, regardless of the time of day or time of year:
25 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
26 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
27 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
28 33A-2 of the Criminal Code of 1961;

29 (17) the defendant committed the offense by reason of
30 any person's activity as a community policing volunteer or
31 to prevent any person from engaging in activity as a
32 community policing volunteer. For the purpose of this
33 Section, "community policing volunteer" has the meaning
34 ascribed to it in Section 2-3.5 of the Criminal Code of
35 1961;

36 (18) the defendant committed the offense in a nursing

1 home or on the real property comprising a nursing home. For
2 the purposes of this paragraph (18), "nursing home" means a
3 skilled nursing or intermediate long term care facility
4 that is subject to license by the Illinois Department of
5 Public Health under the Nursing Home Care Act; or

6 (19) the defendant was a federally licensed firearm
7 dealer and was previously convicted of a violation of
8 subsection (a) of Section 3 of the Firearm Owners
9 Identification Card Act and has now committed either a
10 felony violation of the Firearm Owners Identification Card
11 Act or an act of armed violence while armed with a firearm.
12 For the purposes of this Section:

13 "School" is defined as a public or private elementary or
14 secondary school, community college, college, or university.

15 "Day care center" means a public or private State certified
16 and licensed day care center as defined in Section 2.09 of the
17 Child Care Act of 1969 that displays a sign in plain view
18 stating that the property is a day care center.

19 (b) The following factors may be considered by the court as
20 reasons to impose an extended term sentence under Section 5-8-2
21 upon any offender:

22 (1) When a defendant is convicted of any felony, after
23 having been previously convicted in Illinois or any other
24 jurisdiction of the same or similar class felony or greater
25 class felony, when such conviction has occurred within 10
26 years after the previous conviction, excluding time spent
27 in custody, and such charges are separately brought and
28 tried and arise out of different series of acts; or

29 (2) When a defendant is convicted of any felony and the
30 court finds that the offense was accompanied by
31 exceptionally brutal or heinous behavior indicative of
32 wanton cruelty; or

33 (3) When a defendant is convicted of voluntary
34 manslaughter, second degree murder, involuntary
35 manslaughter or reckless homicide in which the defendant
36 has been convicted of causing the death of more than one

1 individual; or

2 (4) When a defendant is convicted of any felony
3 committed against:

4 (i) a person under 12 years of age at the time of
5 the offense or such person's property;

6 (ii) a person 60 years of age or older at the time
7 of the offense or such person's property; or

8 (iii) a person physically handicapped at the time
9 of the offense or such person's property; or

10 (5) In the case of a defendant convicted of aggravated
11 criminal sexual assault or criminal sexual assault, when
12 the court finds that aggravated criminal sexual assault or
13 criminal sexual assault was also committed on the same
14 victim by one or more other individuals, and the defendant
15 voluntarily participated in the crime with the knowledge of
16 the participation of the others in the crime, and the
17 commission of the crime was part of a single course of
18 conduct during which there was no substantial change in the
19 nature of the criminal objective; or

20 (6) When a defendant is convicted of any felony and the
21 offense involved any of the following types of specific
22 misconduct committed as part of a ceremony, rite,
23 initiation, observance, performance, practice or activity
24 of any actual or ostensible religious, fraternal, or social
25 group:

26 (i) the brutalizing or torturing of humans or
27 animals;

28 (ii) the theft of human corpses;

29 (iii) the kidnapping of humans;

30 (iv) the desecration of any cemetery, religious,
31 fraternal, business, governmental, educational, or
32 other building or property; or

33 (v) ritualized abuse of a child; or

34 (7) When a defendant is convicted of first degree
35 murder, after having been previously convicted in Illinois
36 of any offense listed under paragraph (c)(2) of Section

1 5-5-3, when such conviction has occurred within 10 years
2 after the previous conviction, excluding time spent in
3 custody, and such charges are separately brought and tried
4 and arise out of different series of acts; or

5 (8) When a defendant is convicted of a felony other
6 than conspiracy and the court finds that the felony was
7 committed under an agreement with 2 or more other persons
8 to commit that offense and the defendant, with respect to
9 the other individuals, occupied a position of organizer,
10 supervisor, financier, or any other position of management
11 or leadership, and the court further finds that the felony
12 committed was related to or in furtherance of the criminal
13 activities of an organized gang or was motivated by the
14 defendant's leadership in an organized gang; or

15 (9) When a defendant is convicted of a felony violation
16 of Section 24-1 of the Criminal Code of 1961 and the court
17 finds that the defendant is a member of an organized gang;
18 or

19 (10) When a defendant committed the offense using a
20 firearm with a laser sight attached to it. For purposes of
21 this paragraph (10), "laser sight" has the meaning ascribed
22 to it in Section 24.6-5 of the Criminal Code of 1961; or

23 (11) When a defendant who was at least 17 years of age
24 at the time of the commission of the offense is convicted
25 of a felony and has been previously adjudicated a
26 delinquent minor under the Juvenile Court Act of 1987 for
27 an act that if committed by an adult would be a Class X or
28 Class 1 felony when the conviction has occurred within 10
29 years after the previous adjudication, excluding time
30 spent in custody; or

31 (12) When a defendant commits an offense involving the
32 illegal manufacture of a controlled substance under
33 Section 401 of the Illinois Controlled Substances Act or
34 the illegal possession of explosives and an emergency
35 response officer in the performance of his or her duties is
36 killed or injured at the scene of the offense while

1 responding to the emergency caused by the commission of the
2 offense. In this paragraph (12), "emergency" means a
3 situation in which a person's life, health, or safety is in
4 jeopardy; and "emergency response officer" means a peace
5 officer, community policing volunteer, fireman, emergency
6 medical technician-ambulance, emergency medical
7 technician-intermediate, emergency medical
8 technician-paramedic, ambulance driver, other medical
9 assistance or first aid personnel, or hospital emergency
10 room personnel.

11 (b-1) For the purposes of this Section, "organized gang"
12 has the meaning ascribed to it in Section 10 of the Illinois
13 Streetgang Terrorism Omnibus Prevention Act.

14 (c) The court may impose an extended term sentence under
15 Section 5-8-2 upon any offender who was convicted of aggravated
16 criminal sexual assault or predatory criminal sexual assault of
17 a child under subsection (a)(1) of Section 12-14.1 of the
18 Criminal Code of 1961 where the victim was under 18 years of
19 age at the time of the commission of the offense.

20 (d) The court may impose an extended term sentence under
21 Section 5-8-2 upon any offender who was convicted of unlawful
22 use of weapons under Section 24-1 of the Criminal Code of 1961
23 for possessing a weapon that is not readily distinguishable as
24 one of the weapons enumerated in Section 24-1 of the Criminal
25 Code of 1961.

26 (Source: P.A. 91-119, eff. 1-1-00; 91-120, eff. 7-15-99;
27 91-252, eff. 1-1-00; 91-267, eff. 1-1-00; 91-268, eff. 1-1-00;
28 91-357, eff. 7-29-99; 91-437, eff. 1-1-00; 91-696, eff.
29 4-13-00; 92-266, eff. 1-1-02.)