



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB4725

Introduced 2/3/2012, by Rep. Kelly M. Cassidy

#### SYNOPSIS AS INTRODUCED:

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

from Ch. 38, par. 12-7.1

Amends the Criminal Code of 1961. Provides that in addition to other factors defining the offense of hate crime, includes committing certain specified offenses by reason of the victim's gender identity, military status, or immigration status. Amends the Unified Code of Corrections. Provides that committing an offense against (1) the person or property of that individual; (2) the person or property of a person who has an association with, is married to, or has a friendship with the other individual; or (3) the person or property of a relative (by blood or marriage) of a person by reason of the person's actual or perceived gender identity, military status, or immigration status shall be accorded weight in favor of imposing a term of imprisonment or may be considered by the court as reasons to impose a more severe sentence. Defines "gender identity". Effective immediately.

LRB097 14460 RLC 59462 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, gender identity, military status, immigration status,  
11 sexual orientation, physical or mental disability, or national  
12 origin of another individual or group of individuals,  
13 regardless of the existence of any other motivating factor or  
14 factors, he commits assault, battery, aggravated assault,  
15 misdemeanor theft, criminal trespass to residence, misdemeanor  
16 criminal damage to property, criminal trespass to vehicle,  
17 criminal trespass to real property, mob action or disorderly  
18 conduct as these crimes are defined in Sections 12-1, 12-2,  
19 12-3(a), 16-1, 19-4, 21-1, 21-2, 21-3, 25-1, and 26-1 of this  
20 Code, respectively, or harassment by telephone as defined in  
21 Section 1-1 of the Harassing and Obscene Communications Act, or  
22 harassment through electronic communications as defined in  
23 clauses (a)(2) and (a)(4) of Section 1-2 of the Harassing and

1 Obscene Communications Act.

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 a church, synagogue, mosque, or other building,  
9 structure, or place used for religious worship or other  
10 religious purpose;

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

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

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

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

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

25 (b-10) Upon imposition of any sentence, the trial court  
26 shall also either order restitution paid to the victim or

1 impose a fine up to \$1,000. In addition, any order of probation  
2 or conditional discharge entered following a conviction or an  
3 adjudication of delinquency shall include a condition that the  
4 offender perform public or community service of no less than  
5 200 hours if that service is established in the county where  
6 the offender was convicted of hate crime. In addition, any  
7 order of probation or conditional discharge entered following a  
8 conviction or an adjudication of delinquency shall include a  
9 condition that the offender enroll in an educational program  
10 discouraging hate crimes if the offender caused criminal damage  
11 to property consisting of religious fixtures, objects, or  
12 decorations. The educational program may be administered, as  
13 determined by the court, by a university, college, community  
14 college, non-profit organization, or the Holocaust and  
15 Genocide Commission. Nothing in this subsection (b-10)  
16 prohibits courses discouraging hate crimes from being made  
17 available online. The court may also impose any other condition  
18 of probation or conditional discharge under this Section.

19 (c) Independent of any criminal prosecution or the result  
20 thereof, any person suffering injury to his person or damage to  
21 his property as a result of hate crime may bring a civil action  
22 for damages, injunction or other appropriate relief. The court  
23 may award actual damages, including damages for emotional  
24 distress, or punitive damages. A judgment may include  
25 attorney's fees and costs. The parents or legal guardians,  
26 other than guardians appointed pursuant to the Juvenile Court

1 Act or the Juvenile Court Act of 1987, of an unemancipated  
2 minor shall be liable for the amount of any judgment for actual  
3 damages rendered against such minor under this subsection (c)  
4 in any amount not exceeding the amount provided under Section 5  
5 of the Parental Responsibility Law.

6 (d) In this Section:

7 "Gender identity" means a person's gender-related  
8 preference, appearance, expression, or behavior whether or  
9 not traditionally associated with the person's assigned  
10 sex at birth.

11 "Sexual orientation" means heterosexuality,  
12 homosexuality, or bisexuality.

13 (Source: P.A. 96-1551, eff. 7-1-11; 97-161, eff. 1-1-12;  
14 revised 9-19-11.)

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

17 (730 ILCS 5/5-5-3.2)

18 Sec. 5-5-3.2. Factors in Aggravation and Extended-Term  
19 Sentencing.

20 (a) The following factors shall be accorded weight in favor  
21 of imposing a term of imprisonment or may be considered by the  
22 court as reasons to impose a more severe sentence under Section  
23 5-8-1 or Article 4.5 of Chapter V:

24 (1) the defendant's conduct caused or threatened

1 serious harm;

2 (2) the defendant received compensation for committing  
3 the offense;

4 (3) the defendant has a history of prior delinquency or  
5 criminal activity;

6 (4) the defendant, by the duties of his office or by  
7 his position, was obliged to prevent the particular offense  
8 committed or to bring the offenders committing it to  
9 justice;

10 (5) the defendant held public office at the time of the  
11 offense, and the offense related to the conduct of that  
12 office;

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

16 (7) the sentence is necessary to deter others from  
17 committing the same crime;

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

20 (9) the defendant committed the offense against a  
21 person who is physically handicapped or such person's  
22 property;

23 (10) by reason of another individual's actual or  
24 perceived race, color, creed, religion, ancestry, gender,  
25 gender identity, military status, immigration status,  
26 sexual orientation, physical or mental disability, or

1 national origin, the defendant committed the offense  
2 against (i) the person or property of that individual; (ii)  
3 the person or property of a person who has an association  
4 with, is married to, or has a friendship with the other  
5 individual; or (iii) the person or property of a relative  
6 (by blood or marriage) of a person described in clause (i)  
7 or (ii). For the purposes of this Section, "sexual  
8 orientation" means heterosexuality, homosexuality, or  
9 bisexuality; and "gender identity" means a person's  
10 gender-related preference, appearance, expression, or  
11 behavior whether or not traditionally associated with the  
12 person's assigned sex at birth;

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

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

26 (13) the defendant committed or attempted to commit a

1 felony while he was wearing a bulletproof vest. For the  
2 purposes of this paragraph (13), a bulletproof vest is any  
3 device which is designed for the purpose of protecting the  
4 wearer from bullets, shot or other lethal projectiles;

5 (14) the defendant held a position of trust or  
6 supervision such as, but not limited to, family member as  
7 defined in Section 11-0.1 of the Criminal Code of 1961,  
8 teacher, scout leader, baby sitter, or day care worker, in  
9 relation to a victim under 18 years of age, and the  
10 defendant committed an offense in violation of Section  
11 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-6, 11-11,  
12 11-14.4 except for an offense that involves keeping a place  
13 of juvenile prostitution, 11-15.1, 11-19.1, 11-19.2,  
14 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14, 12-14.1, 12-15  
15 or 12-16 of the Criminal Code of 1961 against that victim;

16 (15) the defendant committed an offense related to the  
17 activities of an organized gang. For the purposes of this  
18 factor, "organized gang" has the meaning ascribed to it in  
19 Section 10 of the Streetgang Terrorism Omnibus Prevention  
20 Act;

21 (16) the defendant committed an offense in violation of  
22 one of the following Sections while in a school, regardless  
23 of the time of day or time of year; on any conveyance  
24 owned, leased, or contracted by a school to transport  
25 students to or from school or a school related activity; on  
26 the real property of a school; or on a public way within



1 1,000 feet of the real property comprising any school:  
2 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,  
3 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,  
4 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
5 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,  
6 18-2, or 33A-2, or Section 12-3.05 except for subdivision  
7 (a) (4) or (g) (1), of the Criminal Code of 1961;

8 (16.5) the defendant committed an offense in violation  
9 of one of the following Sections while in a day care  
10 center, regardless of the time of day or time of year; on  
11 the real property of a day care center, regardless of the  
12 time of day or time of year; or on a public way within  
13 1,000 feet of the real property comprising any day care  
14 center, regardless of the time of day or time of year:  
15 Section 10-1, 10-2, 10-5, 11-1.20, 11-1.30, 11-1.40,  
16 11-1.50, 11-1.60, 11-14.4, 11-15.1, 11-17.1, 11-18.1,  
17 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,  
18 12-6, 12-6.1, 12-6.5, 12-13, 12-14, 12-14.1, 12-15, 12-16,  
19 18-2, or 33A-2, or Section 12-3.05 except for subdivision  
20 (a) (4) or (g) (1), of the Criminal Code of 1961;

21 (17) the defendant committed the offense by reason of  
22 any person's activity as a community policing volunteer or  
23 to prevent any person from engaging in activity as a  
24 community policing volunteer. For the purpose of this  
25 Section, "community policing volunteer" has the meaning  
26 ascribed to it in Section 2-3.5 of the Criminal Code of

1 1961;

2 (18) the defendant committed the offense in a nursing  
3 home or on the real property comprising a nursing home. For  
4 the purposes of this paragraph (18), "nursing home" means a  
5 skilled nursing or intermediate long term care facility  
6 that is subject to license by the Illinois Department of  
7 Public Health under the Nursing Home Care Act, the  
8 Specialized Mental Health Rehabilitation Act, or the ID/DD  
9 Community Care Act;

10 (19) the defendant was a federally licensed firearm  
11 dealer and was previously convicted of a violation of  
12 subsection (a) of Section 3 of the Firearm Owners  
13 Identification Card Act and has now committed either a  
14 felony violation of the Firearm Owners Identification Card  
15 Act or an act of armed violence while armed with a firearm;

16 (20) the defendant (i) committed the offense of  
17 reckless homicide under Section 9-3 of the Criminal Code of  
18 1961 or the offense of driving under the influence of  
19 alcohol, other drug or drugs, intoxicating compound or  
20 compounds or any combination thereof under Section 11-501  
21 of the Illinois Vehicle Code or a similar provision of a  
22 local ordinance and (ii) was operating a motor vehicle in  
23 excess of 20 miles per hour over the posted speed limit as  
24 provided in Article VI of Chapter 11 of the Illinois  
25 Vehicle Code;

26 (21) the defendant (i) committed the offense of

1 reckless driving or aggravated reckless driving under  
2 Section 11-503 of the Illinois Vehicle Code and (ii) was  
3 operating a motor vehicle in excess of 20 miles per hour  
4 over the posted speed limit as provided in Article VI of  
5 Chapter 11 of the Illinois Vehicle Code;

6 (22) the defendant committed the offense against a  
7 person that the defendant knew, or reasonably should have  
8 known, was a member of the Armed Forces of the United  
9 States serving on active duty. For purposes of this clause  
10 (22), the term "Armed Forces" means any of the Armed Forces  
11 of the United States, including a member of any reserve  
12 component thereof or National Guard unit called to active  
13 duty;

14 (23) the defendant committed the offense against a  
15 person who was elderly, disabled, or infirm by taking  
16 advantage of a family or fiduciary relationship with the  
17 elderly, disabled, or infirm person;

18 (24) the defendant committed any offense under Section  
19 11-20.1 of the Criminal Code of 1961 and possessed 100 or  
20 more images;

21 (25) the defendant committed the offense while the  
22 defendant or the victim was in a train, bus, or other  
23 vehicle used for public transportation;

24 (26) the defendant committed the offense of child  
25 pornography or aggravated child pornography, specifically  
26 including paragraph (1), (2), (3), (4), (5), or (7) of

1 subsection (a) of Section 11-20.1 of the Criminal Code of  
2 1961 where a child engaged in, solicited for, depicted in,  
3 or posed in any act of sexual penetration or bound,  
4 fettered, or subject to sadistic, masochistic, or  
5 sadomasochistic abuse in a sexual context and specifically  
6 including paragraph (1), (2), (3), (4), (5), or (7) of  
7 subsection (a) of Section 11-20.3 of the Criminal Code of  
8 1961 where a child engaged in, solicited for, depicted in,  
9 or posed in any act of sexual penetration or bound,  
10 fettered, or subject to sadistic, masochistic, or  
11 sadomasochistic abuse in a sexual context; or

12 (27) the defendant committed the offense of first  
13 degree murder, assault, aggravated assault, battery,  
14 aggravated battery, robbery, armed robbery, or aggravated  
15 robbery against a person who was a veteran and the  
16 defendant knew, or reasonably should have known, that the  
17 person was a veteran performing duties as a representative  
18 of a veterans' organization. For the purposes of this  
19 paragraph (27), "veteran" means an Illinois resident who  
20 has served as a member of the United States Armed Forces, a  
21 member of the Illinois National Guard, or a member of the  
22 United States Reserve Forces; and "veterans' organization"  
23 means an organization comprised of members of which  
24 substantially all are individuals who are veterans or  
25 spouses, widows, or widowers of veterans, the primary  
26 purpose of which is to promote the welfare of its members

1 and to provide assistance to the general public in such a  
2 way as to confer a public benefit.

3 For the purposes of this Section:

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

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

10 "Public transportation" means the transportation or  
11 conveyance of persons by means available to the general public,  
12 and includes paratransit services.

13 (b) The following factors, related to all felonies, may be  
14 considered by the court as reasons to impose an extended term  
15 sentence under Section 5-8-2 upon any offender:

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

23 (2) When a defendant is convicted of any felony and the  
24 court finds that the offense was accompanied by  
25 exceptionally brutal or heinous behavior indicative of  
26 wanton cruelty; or

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

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

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

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

9           (4) When a defendant is convicted of any felony and the  
10 offense involved any of the following types of specific  
11 misconduct committed as part of a ceremony, rite,  
12 initiation, observance, performance, practice or activity  
13 of any actual or ostensible religious, fraternal, or social  
14 group:

15           (i) the brutalizing or torturing of humans or  
16 animals;

17           (ii) the theft of human corpses;

18           (iii) the kidnapping of humans;

19           (iv) the desecration of any cemetery, religious,  
20 fraternal, business, governmental, educational, or  
21 other building or property; or

22           (v) ritualized abuse of a child; or

23           (5) When a defendant is convicted of a felony other  
24 than conspiracy and the court finds that the felony was  
25 committed under an agreement with 2 or more other persons  
26 to commit that offense and the defendant, with respect to

1 the other individuals, occupied a position of organizer,  
2 supervisor, financier, or any other position of management  
3 or leadership, and the court further finds that the felony  
4 committed was related to or in furtherance of the criminal  
5 activities of an organized gang or was motivated by the  
6 defendant's leadership in an organized gang; or

7 (6) When a defendant is convicted of an offense  
8 committed while using a firearm with a laser sight attached  
9 to it. For purposes of this paragraph, "laser sight" has  
10 the meaning ascribed to it in Section 24.6-5 of the  
11 Criminal Code of 1961; or

12 (7) When a defendant who was at least 17 years of age  
13 at the time of the commission of the offense is convicted  
14 of a felony and has been previously adjudicated a  
15 delinquent minor under the Juvenile Court Act of 1987 for  
16 an act that if committed by an adult would be a Class X or  
17 Class 1 felony when the conviction has occurred within 10  
18 years after the previous adjudication, excluding time  
19 spent in custody; or

20 (8) When a defendant commits any felony and the  
21 defendant used, possessed, exercised control over, or  
22 otherwise directed an animal to assault a law enforcement  
23 officer engaged in the execution of his or her official  
24 duties or in furtherance of the criminal activities of an  
25 organized gang in which the defendant is engaged.

26 (c) The following factors may be considered by the court as

1 reasons to impose an extended term sentence under Section 5-8-2  
2 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

3 (1) When a defendant is convicted of first degree  
4 murder, after having been previously convicted in Illinois  
5 of any offense listed under paragraph (c)(2) of Section  
6 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred  
7 within 10 years after the previous conviction, excluding  
8 time spent in custody, and the charges are separately  
9 brought and tried and arise out of different series of  
10 acts.

11 (1.5) When a defendant is convicted of first degree  
12 murder, after having been previously convicted of domestic  
13 battery (720 ILCS 5/12-3.2) or aggravated domestic battery  
14 (720 ILCS 5/12-3.3) committed on the same victim or after  
15 having been previously convicted of violation of an order  
16 of protection (720 ILCS 5/12-30) in which the same victim  
17 was the protected person.

18 (2) When a defendant is convicted of voluntary  
19 manslaughter, second degree murder, involuntary  
20 manslaughter, or reckless homicide in which the defendant  
21 has been convicted of causing the death of more than one  
22 individual.

23 (3) When a defendant is convicted of aggravated  
24 criminal sexual assault or criminal sexual assault, when  
25 there is a finding that aggravated criminal sexual assault  
26 or criminal sexual assault was also committed on the same



1 victim by one or more other individuals, and the defendant  
2 voluntarily participated in the crime with the knowledge of  
3 the participation of the others in the crime, and the  
4 commission of the crime was part of a single course of  
5 conduct during which there was no substantial change in the  
6 nature of the criminal objective.

7 (4) If the victim was under 18 years of age at the time  
8 of the commission of the offense, when a defendant is  
9 convicted of aggravated criminal sexual assault or  
10 predatory criminal sexual assault of a child under  
11 subsection (a)(1) of Section 11-1.40 or subsection (a)(1)  
12 of Section 12-14.1 of the Criminal Code of 1961 (720 ILCS  
13 5/11-1.40 or 5/12-14.1).

14 (5) When a defendant is convicted of a felony violation  
15 of Section 24-1 of the Criminal Code of 1961 (720 ILCS  
16 5/24-1) and there is a finding that the defendant is a  
17 member of an organized gang.

18 (6) When a defendant was convicted of unlawful use of  
19 weapons under Section 24-1 of the Criminal Code of 1961  
20 (720 ILCS 5/24-1) for possessing a weapon that is not  
21 readily distinguishable as one of the weapons enumerated in  
22 Section 24-1 of the Criminal Code of 1961 (720 ILCS  
23 5/24-1).

24 (7) When a defendant is convicted of an offense  
25 involving the illegal manufacture of a controlled  
26 substance under Section 401 of the Illinois Controlled

1 Substances Act (720 ILCS 570/401), the illegal manufacture  
2 of methamphetamine under Section 25 of the Methamphetamine  
3 Control and Community Protection Act (720 ILCS 646/25), or  
4 the illegal possession of explosives and an emergency  
5 response officer in the performance of his or her duties is  
6 killed or injured at the scene of the offense while  
7 responding to the emergency caused by the commission of the  
8 offense. In this paragraph, "emergency" means a situation  
9 in which a person's life, health, or safety is in jeopardy;  
10 and "emergency response officer" means a peace officer,  
11 community policing volunteer, fireman, emergency medical  
12 technician-ambulance, emergency medical  
13 technician-intermediate, emergency medical  
14 technician-paramedic, ambulance driver, other medical  
15 assistance or first aid personnel, or hospital emergency  
16 room personnel.

17 (d) For the purposes of this Section, "organized gang" has  
18 the meaning ascribed to it in Section 10 of the Illinois  
19 Streetgang Terrorism Omnibus Prevention Act.

20 (e) The court may impose an extended term sentence under  
21 Article 4.5 of Chapter V upon an offender who has been  
22 convicted of a felony violation of Section 12-13, 12-14,  
23 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 when the  
24 victim of the offense is under 18 years of age at the time of  
25 the commission of the offense and, during the commission of the  
26 offense, the victim was under the influence of alcohol,

1 regardless of whether or not the alcohol was supplied by the  
2 offender; and the offender, at the time of the commission of  
3 the offense, knew or should have known that the victim had  
4 consumed alcohol.

5 (Source: P.A. 96-41, eff. 1-1-10; 96-292, eff. 1-1-10; 96-328,  
6 eff. 8-11-09; 96-339, eff. 7-1-10; 96-1000, eff. 7-2-10;  
7 96-1200, eff. 7-22-10; 96-1228, eff. 1-1-11; 96-1390, eff.  
8 1-1-11; 96-1551, Article 1, Section 970, eff. 7-1-11; 96-1551,  
9 Article 2, Section 1065, eff. 7-1-11; 97-38, eff. 6-28-11,  
10 97-227, eff. 1-1-12; 97-333, eff. 8-12-11; revised 9-14-11.)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.