



# Indiana Bias Crimes Legislation Rationale & Background

## Rationale:

When criminals target people on the basis of immutable characteristics (including, but not limited to, race, religion, national origin, gender, disability, gender identity, or sexual orientation), they harm their victim but also threaten the larger community, of which the targeted person is a part. The prejudice and hate that motivate these crimes are incredibly harmful to our state and nation's fundamental democratic values. A broad alliance of more than 90 organizations, businesses, groups, and more have come together to support passage of an Indiana bias crimes statute that addresses crimes in which a person is selected because of these aforementioned characteristics, or because they are associated with an individual or community sharing any of these characteristics, and as a result, are perceived to belong to one of these characteristics.

## What constitutes a "bias crime?"

- A criminal act must take place and must be able to be properly prosecuted.
- The perpetrator of the crime specifically targets an individual, or group of individuals, because of an actual or perceived bias motivator, such as race, religion, gender, disability, national origin, sexual orientation, or gender identity.

## Why do we need a bias crimes statute?

- Hate crimes happen everywhere. According to the FBI, from 2008 to 2015, Indiana cities, towns, and universities reported nearly 400 bias crimes. The actual number is likely higher since many major cities, including Indianapolis, failed to report incidents for multiple years.
- The top two reported bias motivators in Indiana were race and religion.
- Indiana is only one of five states without a comprehensive bias crimes statute. (The others include Arkansas, Georgia, South Carolina, and Wyoming.)
- The federal government has very limited capacity to prosecute bias crimes in states.

## What you should know and what we're asking for:

Bias crimes statutes are Constitutional.

- The U.S. Supreme Court ruled unanimously in *Mitchell v. Wisconsin* (1993).
- In this case, the Rehnquist Court emphatically stated that bias crime statutes punished action, not thought, and in no way "cooled" or limited free and constitutional speech or religious practices.
- 44 out of 45 states who have a bias crime statute utilize some sort of "protected classes" such as race, religion, national origin, etc. The 45th state - Utah - is unable to effectively utilize their statute because it is too broad.
- We would like legislation to include three things:
  - Define what constitutes a bias motivated crime in statute, which should include specific "protected classes," and create a sentencing tool, such as an aggravator or enhancement, for prosecutors and judges to fully address the bias motivation behind the crime.
  - Update and enhance current reporting requirements, which will require Indiana bias-crime data to be reported to the FBI for the first time.
  - Establish uniform law enforcement education standards to ensure agencies and officers are properly trained on how to recognize and respond to bias motivated crimes.

**Have you (or someone you know) been a target of a hate crime in Indiana?**

**Have you witnessed one?**

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**to help us track hate in Indiana and confidentially report these hateful acts.**



# Frequently Asked Questions

## Does current law already allow "bias motivation" to be considered as an aggravating sentencing circumstance?

While it is correct that current sentencing laws (I.C. 35-38-1-7.1) do give judges the ability to aggravate or mitigate a sentence, based on any issue they deem appropriate, clear language adding bias as an aggravator circumstance is needed because:

- without a clear reference to bias motivation in the statute, a sentence that is increased based on this factor could be subject to appeal, which would then throw this matter into high-profile litigation, highlighting Indiana's position as one of five states to not have a hate crimes law;
- we should bring consistency to the state's judicial system so that judges have a base-level definition and reference from which to draw;
- with eleven specific aggravating circumstances currently in Indiana law, the General Assembly has issued de facto policy statements that these are factors that the judicial branch should consider in sentencing. The absence of a specific reference to bias motivation, coupled with the consistent defeat of legislation in years past to add it, could certainly send a message to judges that bias is specifically something that the General Assembly does not want them to consider in sentencing determinations. Clarity is key; and/or
- adding the specific bias motivation language will send a message that Indiana is a safe state that won't tolerate hate-based crimes.

## What about the use of "protected classes?"

The concept of "protected" or "suspect" classes is a well-defined legal concept. They do not divide or offer special protection to certain groups, but rather identify specific immutable characteristics (i.e. things we cannot change about ourselves, such as race, gender, national origin, disability, etc.) that have historically been motivating factors in the commission of crimes or acts of discrimination. (Classes such as law enforcement officers or veteran status are not immutable but have been included by other states in their bias crimes definitions.) The reason we know they don't provide any special protections is because they are generically identified. We say "race," "national origin," or "gender." We do not say "black," "Mexican," or "female." Every single person exhibits an immutable characteristic that falls into each one of the "protected classes" we seek to identify in any hate-crimes legislation.

There are currently three provisions in Indiana law that identify a specific list of "protected classes":

- 1) The Indiana Civil Rights Act identifies "race, religion, color, sex, disability, and national origin or ancestry." This list is consistent in concept\* to our draft bias crime bill's definition except for the addition of sexual orientation and gender identity.
- 2) The bias crimes reporting provision (I.C. 10-13-3-1) identifies "color, creed, disability, national origin, race, religion, or sexual orientation." This list is consistent in concept\* to the draft bias crime bill's definitions except for gender identity.
- 3) The "RFRA fix" enacted in 2015 (I.C. 34-13-9-0.7) identifies "race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, and gender identity." This list is entirely consistent with the draft bias crime bill's definition.

*\*List is consistent in concept but draft bias crimes legislation would update outdated terminology for certain identified classes.*

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