



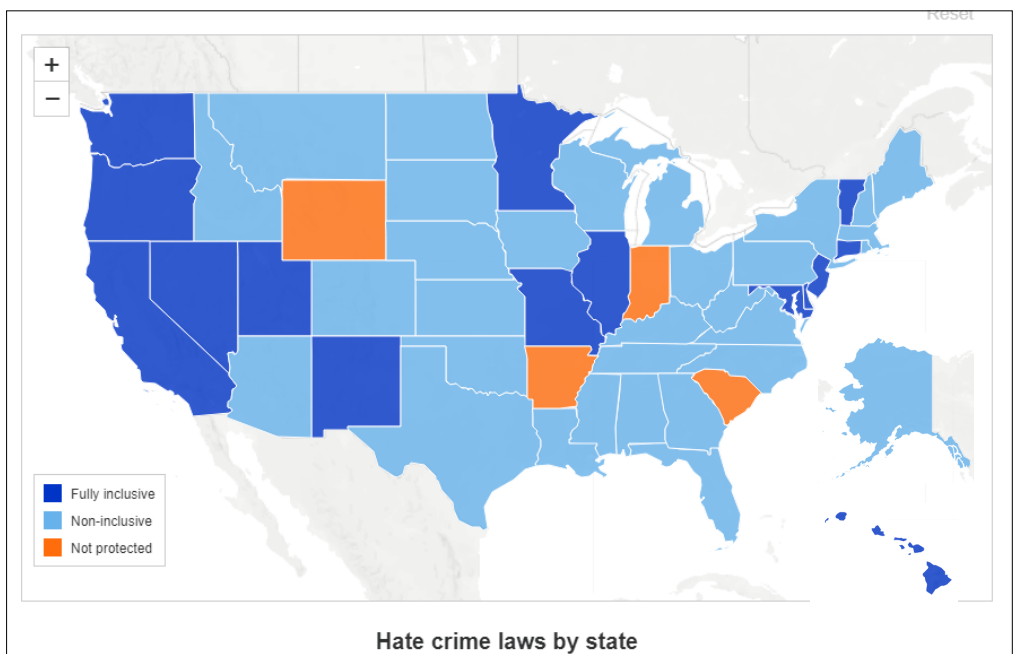
## Passing a Comprehensive and Inclusive Hate Crime Law

### FHCCI Policy Brief — July 2020

The Fair Housing Center of Central Indiana (FHCCI) urges Indiana lawmakers to pass a comprehensive and inclusive hate crime law. As of publication, Indiana is one of only four states without such a law. Victims deserve justice when targeted under such crimes, and deserve to have rights offered in 46 other states in our nation. Although state and federal fair housing laws may have some protections for persons targeted with hate at their residences, there are barriers. For instance, to file an administrative or court complaint, the victim would need to be able to identify the perpetrator(s) for the complaint to be jurisdictional for investigation. The perpetrator may not always be known and having the resources of federal or state law enforcement in assisting to identify is crucial.

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. We welcome all Hoosiers in demanding and supporting 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.

**Doesn't Indiana have a bias crime law?** No. In the 2019 Indiana General Assembly, [SB 12](#), a bill supported by businesses and advocates, was introduced and heard before the Senate Public Policy Committee. This comprehensive and inclusive bias crimes bill was passed by the Committee in a vote of 9-1 in bipartisan support. However, when the bill went to the Senate floor, the bill was amended to remove any references to any protected groups or classes targeted by hate or bias. Bills in other states who have removed those characteristics have been found to be unconstitutional, or unenforceable, due to the vagueness of the language. The FHCCI, and fellow advocates, could no longer support SB 12 in its amended version. Unfortunately, SB 12 was passed by the Indiana Senate 39-10 in a party line vote. Instead of SB 12 moving to a House Committee, however, House leadership then amended [SB 198](#), an unrelated sentencing bill, on the House floor after it had passed the House and Senate committees in its original sentencing language-only form. Public testimony was therefore not taken on this amended bill - only floor debate by legislators. Supporters of the bill claimed the floor amendment included alleged bias crimes language. However, the statute and/or the bill language did not include gender, gender identity, age, or ancestry in its list of personal characteristics and included language noting that offenses also included "bias due to the victim's or the group's real or perceived characteristic, trait, belief, practice, association, or other attribute the court chooses to consider." Advocates argued that this broad language would make the bill unenforceable and,



possibly, unconstitutional, due to rulings and actions in other states with similar language. The lack of inclusion of all groups commonly targeted by hate was also a critical flaw. The FHCCI, and many other advocates, could not support this bill with all its many problems. It was; however, signed into law by Governor Holcomb and touted as Indiana passing a hate crime law. We disagree to this day.

After the 2019 Indiana General Assembly ended, [ADL evaluated the passed legislative language](#) and determined that Indiana’s new law did NOT meet their definition of a hate crime/bias crime law. Since Indiana took this action in 2019, Georgia, in June 2020, passed a hate crime law leaving Indiana with Arkansas, South Carolina, and Wyoming as the remaining four states without comprehensive and inclusive protections for its residents.

**What constitutes a “bias crime”?** A criminal act must take place and must be able to be properly prosecuted. The perpetrator of the crime also 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 state bias crimes statute?** Unfortunately, federal law enforcement cannot cover all incidents of hate and federal authorities may not have the capacity of local enforcement, who are active in the community of the reported incident, to timely investigate. Hate crimes happen everywhere. According to the FBI, from 2000 to 2018, Indiana cities, towns, and universities reported over 1,000 bias crimes. The actual number is likely much higher since many major Indiana cities, including Indianapolis, failed to report incidents for multiple years. The top two reported bias motivators in Indiana were race and religion. The most recent data year, 2018, was the highest reported number of incidents since 2000.

**Are bias crimes statutes constitutional?** The U.S. Supreme Court ruled unanimously in *Mitchell v. Wisconsin* (1993) that bias crime statutes punished action, not thought, and in no way “cooled” or limited free and constitutional speech or religious practices. 45 of the 46 states with a bias crime statute utilize some sort of “protected classes” such as race, religion, national origin, etc. The only state that does not, Utah, is unable to effectively utilize their statute because it is too broad.

**What Indiana General Assembly action is needed for Hoosiers?** Define what constitutes a bias motivated crime in statute, which should include specific “protected classes” that are all groups commonly targeted with hate. 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.

Want to learn more? Visit the [FHCCI's Public Policy Page](#) or follow us on social media for alerts.

| FBI Statistics             |                    |                    |
|----------------------------|--------------------|--------------------|
| Indiana Reported Incidents |                    |                    |
| Year                       | Reporting Agencies | Incidents Reported |
| 2018                       | 24                 | 107                |
| 2017                       | 21                 | 55                 |
| 2016                       | 24                 | 78                 |
| 2015                       | 18                 | 63                 |
| 2014                       | 15                 | 50                 |
| 2013                       | 15                 | 75                 |
| 2012                       | 8                  | 37                 |
| 2011                       | 17                 | 100                |
| 2010                       | 17                 | 94                 |
| 2009                       | 17                 | 55                 |
| 2008                       | 17                 | 61                 |
| 2007                       | 13                 | 40                 |
| 2006                       | 15                 | 39                 |
| 2005                       | 18                 | 54                 |
| 2004                       | 13                 | 63                 |
| 2003                       | 19                 | 48                 |
| 2002                       | 25                 | 77                 |
| 2001                       | 28                 | 74                 |
| 2000                       | 31                 | 106                |
| <b>Totals</b>              | <b>286</b>         | <b>1,036</b>       |

