
CHICAGO'S PARTNERSHIP FOR EQUAL JUSTICE

Illinois Hate Crime Act - Civil Issues

The Illinois Hate Crime Act (IHCA), 720 ILCS 5/12-7.1, provides that, independent of any criminal prosecution, anyone suffering personal injury or property damage as a result of a hate crime may bring a civil suit for actual damages, punitive damages, attorney fees, costs, and injunctive relief.

Sec. 12-7.1. Hate crime.

(a) A person commits hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he commits assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, harassment by telephone, or harassment through electronic communications as these crimes are defined in [the Criminal Code.] . . .

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

(d) "Sexual orientation" means heterosexuality, homosexuality, or bisexuality.

The following are some important issues arising in civil suits under the IHCA.

1. Mistake - Actual or Perceived

The Illinois Hate Crime Act defines a hate crime as certain enumerated crimes motivated by the following protected classes: race (and color), religion (and creed), sexual orientation, gender, physical or mental disability, and national origin (and ancestry). Importantly, the statute recognizes the perpetrator's perception of the status rather than the actual status. The Illinois Hate Crime Act uses the words "actual or perceived" before the list of protected classes to make clear that a mistake by an offender will not exonerate him or her. For example, the attacker erroneously believed that the victim was gay and used an anti-gay epithet, bias motivation is present. The Chicago Lawyers' Committee for Civil Rights Under Law, Inc. successfully advocated for this amendment in 1993.

2. Mixed Motives

The Illinois Hate Crime Act provides that the bias motive need not have been the sole motive, only that the protected class was a factor that motivated the crime in whole or in part. In People v. Davis, the court affirmed the conviction of a white defendant who uttered a racial slur and beat an African American male in a bar parking lot, even though there was credible evidence that the victim may have mocked the defendant, which also may have motivated the defendant. 674 N.E.2d 895, 898 (Ill. App. Ct. 1996). Two other Illinois cases support the rule that bias need not be the only motivating factor. See In re Vladimir P., 670 N.E.2d 839 (Ill. App. Ct. 1996); People v. Nitz, 674 N.E.2d 802 (Ill. App. Ct. 1996). In both cases, the defendants argued that the ICHA was impermissibly vague because the language "by reason of" made it unclear whether a "core" characteristic listed in the statute must be the sole motivating factor, or one of the motivating factors. Vladimir P., 670 N.E.2d at 844; Nitz, 674 N.E.2d at 806. The court in both cases rejected the void-for-vagueness argument. In Vladimir P., the court held that the statute clearly allows prosecution of a person with mixed motive, so long as there is a "causal connection" between the bias motive and the underlying criminal conduct. Id. After those decisions, the General Assembly amended the statute by adding the words "regardless of the existence of any other motivating factor or factors" to reinforce the holdings.

A recent Illinois hate crime case reinforces the point that a perpetrator may have mixed motives, and still be convicted of a hate crime. In the case, the perpetrator stated that he committed the crime out of animosity towards his coach, not racial bias. People v. Burton, 2014 IL App (2d) 120757-U, * 4 (Ill. App. Ct. 2014). The defendant explained that when he wrote "KKK," "Negro," and "We Hate Black [sic] People" on the window ledge of an African American's apartment he was showing his coach what a racist would do, but conceded that an African American "would probably get 'really mad' or 'really scared' upon reading them." Id. at *2. The court found that evidence of the words alone was enough to satisfy the state's burden of proving bias motivation and affirmed the hate crime conviction. Id. at *4.

3. Association

The Illinois Hate Crime Act applies when a person targets a victim because of the protected status of another that the victim is associated with. For example, if a white defendant physically attacks a white woman for bringing an African American into a neighborhood, it

would constitute a hate crime. In In re B.C., perpetrators showed violent depictions of African Americans to a white victim. 680 N.E.2d 1355, 1357 (Ill. 1997). The Illinois Supreme Court held that the act constituted disorderly conduct, and that targeting the victim because of the race of others, African Americans, was sufficient to constitute a hate crime. Id. The court reasoned that the ICHA does not require “the victim be an individual or of the group of individuals whose class provides reason for the underlying criminal offense.” Id. at 1362-63. In other words, there was a hate crime where the defendant targeted a victim because of the race of others.

4. Unnecessary to Prove Actual Hate or Prejudice; “By Reason Of”

Although the law is called the “Hate Crime Act,” the plaintiff does not need to prove that the defendant actually hates all members of the group targeted, or even the actual victim, only that the defendant committed the crime by reason of that protected class. For example, if a person robs an Asian American because he believes that Asian Americans in that community carry more money, it could constitute a theft motivated by national origin. The same would be true of an attack on a gay man by a defendant who believes that being gay makes that person more vulnerable to attack.

5. Defendant Can Commit a Hate Crime Against the Group to which the Defendant Belongs

In Vladmir P., a Jewish boy committed an anti-Semitic hate crime. 670 N.E.2d 839 (Ill. App. Ct. 1996). The defendant argued that he could not have committed a hate crime because he was also Jewish. The court disagreed because “immediately after hearing anti-Semitic shouts, respondent admittedly committed an assault.” Id. at 845. Therefore, it was reasonable to infer that the defendant’s underlying motive was “because of” the victim’s religion. Id.

6. Words Alone are not a Hate Crime

In 1993, the Supreme Court considered the constitutionality of Wisconsin’s hate crime statute, which, like the Illinois Hate Crime Act, increased the penalty for crimes motivated by bias. The unanimous court concluded that the law did not violate the First Amendment, and was not overbroad, in part because it targeted conduct unprotected by the First Amendment. Wisconsin v. Mitchell, 508 U.S. 476 (1993). However, it is important to note that hate speech alone, without an explicit or implied threat, is not enough to constitute a hate crime. In People v. Redwood, the court affirmed the dismissal of a hate crime and disorderly conduct charge for failure to state an offense. 780 N.E.2d 760 (Ill. App. Ct. 2002). The defendant, a white male, yelled across the street to the victim, an African American male, “how long are you going to be a shoe-shine boy.” The court concluded that the defendant’s words did not contain an explicit or implied threat and therefore his actions did not constitute disorderly conduct. Because disorderly conduct was the underlying crime for the hate crime charge, both charges failed to state an offense. Id. at 764.

Betsy Shuman-Moore
Taylor Whitten
Holly Pope

October 24, 2014