Guidance to Law Enforcement:
Expanded Hate Crimes Law

December 17, 2018

On January 1, 2018, new provisions in Illinois's hate crimes statute took effect. These provisions concern both criminal and civil liability for hate crimes in Illinois. In addition, the law now provides civil authority to the Office of the Attorney General to pursue injunctive relief and civil penalties for hate crimes. This guidance document provides a summary of the changes and explains the role of the Office of the Attorney General going forward in civil enforcement for hate crimes.

The Illinois Hate Crimes Act

The Illinois Hate Crimes Act, 720 ILCS 5/12-7.1, establishes criminal and civil liability for conduct that (1) involves a predicate offense that is (2) motivated by a protected characteristic, whether actual or perceived, of a person or group of people. The pre-2018 version of the law included the predicate offenses of assault, battery, aggravated assault, misdemeanor theft, criminal trespass to residence, vehicle, or real property, misdemeanor criminal damage to property, mob action, disorderly conduct, harassment by telephone, and harassment through electronic communications. The characteristics that can motivate a hate crime (both before 2018 and now) are race, color, creed, religion, ancestry, gender, sexual orientation, gender identity, physical or mental disability, and national origin. First offenses are Class 4 felonies, unless committed in certain circumstances such as in a religious building or in a school. In those cases, first offenses are Class 3 felonies. In addition to a sentence, criminal penalties in the pre-2018 version included restitution to victims or a fine of up to $1000, as well as completion of community service and educational programs. Civil relief in the pre-2018 version of the law included actual damages or punitive damages (but not both) in addition to attorney's fees and costs.

Changes to Criminal Liability for Hate Crimes

The Illinois Hate Crimes Act now includes four new predicate offenses in addition to those already in the law:

- stalking (720 ILCS 5/12-7.3);
- cyberstalking (720 ILCS 5/12-7.5);
- transmission of obscene messages (720 ILCS 5/26.5–1); and
- intimidation by means of (1) inflicting physical harm on a person, (2) subjecting any person to physical confinement or restraint, or (3) committing a felony or Class A misdemeanor. 720 ILCS 5/12-6(a)(1)–(3).

In addition, the law expands the area where a first-offense hate crime qualifies as a Class 3 felony to include the exterior and grounds of religious buildings. It also provides that such buildings need not be used exclusively for worship or other religious purposes, but need merely to be "identified or associated with a particular religion." As for criminal penalties, the new law has lifted the previous $1,000 cap on fines to any amount within a court's discretion. It further requires offenders to attend in-person educational programs that focus on the protected class targeted in the offense.

Changes to Civil Liability and Procedure for Hate Crimes

As of 2018, there are four new aspects of civil liability for hate crimes in Illinois.

(1) **Every act qualifying as a hate crime for criminal purposes now qualifies as a hate crime for civil purposes as well**. Previously, only an individual suffering damage to his or her person or property could pursue a civil hate crimes claim, excluding offenses that qualify as criminal hate crimes such as harassment by telephone and through electronic communications. Now, every predicate offense listed in 720 ILCS 5/12-7.1(a), which addresses criminal liability, can serve as the basis of a civil hate crimes claim.

(2) While previous versions of the law did not address civil penalties, **courts may now impose up to $25,000 in civil penalties** for each violation of the hate crimes law.

(3) Courts may now award **both punitive and actual damages**, and a judgment in favor of a person bringing a civil action under the law now **must include attorney's fees and costs**.

(4) **The Attorney General may bring a civil action for commission of a hate crime, but only after consultation with the local state's attorney**. The Attorney General is permitted to seek injunctive or other equitable relief in addition to civil penalties. In practice, before beginning any legal or investigative effort concerning the possible commission of a hate crime, the Office of the Attorney General will inquire with the relevant state's attorney about whether that state's attorney's office has learned of and/ or investigated the incident in question. If the relevant state's attorney has already investigated the incident in question and has determined not to pursue the matter, the Office of the Attorney General will seek information from the state's attorney to assist in its evaluation of the matter.

Please feel free to direct questions about any of the above to the Office of the Attorney General, Civil Rights Bureau, (312) 814-3400 or civilrights@atg.state.il.us.

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