

# HB3832



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3832

by Rep. Jerry Costello, II

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-7.1  
720 ILCS 5/21-3

from Ch. 38, par. 12-7.1  
from Ch. 38, par. 21-3

Amends the Criminal Code of 2012. Creates the offense of aggravated criminal trespass to real property. Provides that a person commits the offense when he or she commits criminal trespass to real property while he or she possesses a firearm. Provides that a violation is a Class A misdemeanor. Effective immediately.

LRB100 10386 RLC 20583 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 2012 is amended by changing  
5 Sections 12-7.1 and 21-3 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, sexual orientation, physical or mental disability, or  
11 national origin of another individual or group of individuals,  
12 regardless of the existence of any other motivating factor or  
13 factors, he commits assault, battery, aggravated assault,  
14 misdemeanor theft, criminal trespass to residence, misdemeanor  
15 criminal damage to property, criminal trespass to vehicle,  
16 criminal trespass to real property, aggravated criminal  
17 trespass to real property, mob action, disorderly conduct,  
18 harassment by telephone, or harassment through electronic  
19 communications as these crimes are defined in Sections 12-1,  
20 12-2, 12-3(a), 16-1, 19-4, 21-1, 21-2, 21-3, 25-1, 26-1,  
21 26.5-2, and paragraphs (a) (2) and (a) (5) of Section 26.5-3 of  
22 this Code, respectively.

23 (b) Except as provided in subsection (b-5), hate crime is a

1 Class 4 felony for a first offense and a Class 2 felony for a  
2 second or subsequent offense.

3 (b-5) Hate crime is a Class 3 felony for a first offense  
4 and a Class 2 felony for a second or subsequent offense if  
5 committed:

6 (1) in a church, synagogue, mosque, or other building,  
7 structure, or place used for religious worship or other  
8 religious purpose;

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

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

15 (4) in a public park or an ethnic or religious  
16 community center;

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

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

23 (b-10) Upon imposition of any sentence, the trial court  
24 shall also either order restitution paid to the victim or  
25 impose a fine up to \$1,000. In addition, any order of probation  
26 or conditional discharge entered following a conviction or an

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

17 (c) Independent of any criminal prosecution or the result  
18 thereof, any person suffering injury to his person or damage to  
19 his property as a result of hate crime may bring a civil action  
20 for damages, injunction or other appropriate relief. The court  
21 may award actual damages, including damages for emotional  
22 distress, or punitive damages. A judgment may include  
23 attorney's fees and costs. The parents or legal guardians,  
24 other than guardians appointed pursuant to the Juvenile Court  
25 Act or the Juvenile Court Act of 1987, of an unemancipated  
26 minor shall be liable for the amount of any judgment for actual

1 damages rendered against such minor under this subsection (c)  
2 in any amount not exceeding the amount provided under Section 5  
3 of the Parental Responsibility Law.

4 (d) "Sexual orientation" has the meaning ascribed to it in  
5 paragraph (0-1) of Section 1-103 of the Illinois Human Rights  
6 Act.

7 (Source: P.A. 99-77, eff. 1-1-16.)

8 (720 ILCS 5/21-3) (from Ch. 38, par. 21-3)

9 Sec. 21-3. Criminal trespass to real property; aggravated  
10 criminal trespass to real property.

11 (a) A person commits criminal trespass to real property  
12 when he or she:

13 (1) knowingly and without lawful authority enters or  
14 remains within or on a building;

15 (2) enters upon the land of another, after receiving,  
16 prior to the entry, notice from the owner or occupant that  
17 the entry is forbidden;

18 (3) remains upon the land of another, after receiving  
19 notice from the owner or occupant to depart;

20 (3.5) presents false documents or falsely represents  
21 his or her identity orally to the owner or occupant of a  
22 building or land in order to obtain permission from the  
23 owner or occupant to enter or remain in the building or on  
24 the land;

25 (3.7) intentionally removes a notice posted on

1 residential real estate as required by subsection (1) of  
2 Section 15-1505.8 of Article XV of the Code of Civil  
3 Procedure before the date and time set forth in the notice;  
4 or

5 (4) enters a field used or capable of being used for  
6 growing crops, an enclosed area containing livestock, an  
7 agricultural building containing livestock, or an orchard  
8 in or on a motor vehicle (including an off-road vehicle,  
9 motorcycle, moped, or any other powered two-wheel vehicle)  
10 after receiving, prior to the entry, notice from the owner  
11 or occupant that the entry is forbidden or remains upon or  
12 in the area after receiving notice from the owner or  
13 occupant to depart.

14 For purposes of item (1) of this subsection, this Section  
15 shall not apply to being in a building which is open to the  
16 public while the building is open to the public during its  
17 normal hours of operation; nor shall this Section apply to a  
18 person who enters a public building under the reasonable belief  
19 that the building is still open to the public.

20 (a-5) A person commits aggravated criminal trespass to real  
21 property when he or she commits criminal trespass to real  
22 property in violation of subsection (a) while he or she  
23 possesses a firearm.

24 (b) A person has received notice from the owner or occupant  
25 within the meaning of subsection ~~Subsection~~ (a) if he or she  
26 has been notified personally, either orally or in writing

1 including a valid court order as defined by subsection (7) of  
2 Section 112A-3 of the Code of Criminal Procedure of 1963  
3 granting remedy (2) of subsection (b) of Section 112A-14 of  
4 that Code, or if a printed or written notice forbidding such  
5 entry has been conspicuously posted or exhibited at the main  
6 entrance to the land or the forbidden part thereof.

7 (b-5) Subject to the provisions of subsection (b-10), as an  
8 alternative to the posting of real property as set forth in  
9 subsection (b), the owner or lessee of any real property may  
10 post the property by placing identifying purple marks on trees  
11 or posts around the area to be posted. Each purple mark shall  
12 be:

13 (1) A vertical line of at least 8 inches in length and  
14 the bottom of the mark shall be no less than 3 feet nor  
15 more than 5 feet high. Such marks shall be placed no more  
16 than 100 feet apart and shall be readily visible to any  
17 person approaching the property; or

18 (2) A post capped or otherwise marked on at least its  
19 top 2 inches. The bottom of the cap or mark shall be not  
20 less than 3 feet but not more than 5 feet 6 inches high.  
21 Posts so marked shall be placed not more than 36 feet apart  
22 and shall be readily visible to any person approaching the  
23 property. Prior to applying a cap or mark which is visible  
24 from both sides of a fence shared by different property  
25 owners or lessees, all such owners or lessees shall concur  
26 in the decision to post their own property.

1           Nothing in this subsection (b-5) shall be construed to  
2 authorize the owner or lessee of any real property to place any  
3 purple marks on any tree or post or to install any post or  
4 fence if doing so would violate any applicable law, rule,  
5 ordinance, order, covenant, bylaw, declaration, regulation,  
6 restriction, contract, or instrument.

7           (b-10) Any owner or lessee who marks his or her real  
8 property using the method described in subsection (b-5) must  
9 also provide notice as described in subsection (b) of this  
10 Section. The public of this State shall be informed of the  
11 provisions of subsection (b-5) of this Section by the Illinois  
12 Department of Agriculture and the Illinois Department of  
13 Natural Resources. These Departments shall conduct an  
14 information campaign for the general public concerning the  
15 interpretation and implementation of subsection (b-5). The  
16 information shall inform the public about the marking  
17 requirements and the applicability of subsection (b-5)  
18 including information regarding the size requirements of the  
19 markings as well as the manner in which the markings shall be  
20 displayed. The Departments shall also include information  
21 regarding the requirement that, until the date this subsection  
22 becomes inoperative, any owner or lessee who chooses to mark  
23 his or her property using paint, must also comply with one of  
24 the notice requirements listed in subsection (b). The  
25 Departments may prepare a brochure or may disseminate the  
26 information through agency websites. Non-governmental



1 organizations including, but not limited to, the Illinois  
2 Forestry Association, Illinois Tree Farm and the Walnut Council  
3 may help to disseminate the information regarding the  
4 requirements and applicability of subsection (b-5) based on  
5 materials provided by the Departments. This subsection (b-10)  
6 is inoperative on and after January 1, 2013.

7 (b-15) Subsections (b-5) and (b-10) do not apply to real  
8 property located in a municipality of over 2,000,000  
9 inhabitants.

10 (c) This Section does not apply to any person, whether a  
11 migrant worker or otherwise, living on the land with permission  
12 of the owner or of his or her agent having apparent authority  
13 to hire workers on this land and assign them living quarters or  
14 a place of accommodations for living thereon, nor to anyone  
15 living on the land at the request of, or by occupancy, leasing  
16 or other agreement or arrangement with the owner or his or her  
17 agent, nor to anyone invited by the migrant worker or other  
18 person so living on the land to visit him or her at the place he  
19 is so living upon the land.

20 (d) A person shall be exempt from prosecution under this  
21 Section if he or she beautifies unoccupied and abandoned  
22 residential and industrial properties located within any  
23 municipality. For the purpose of this subsection, "unoccupied  
24 and abandoned residential and industrial property" means any  
25 real estate (1) in which the taxes have not been paid for a  
26 period of at least 2 years; and (2) which has been left

1 unoccupied and abandoned for a period of at least one year; and  
2 "beautifies" means to landscape, clean up litter, or to repair  
3 dilapidated conditions on or to board up windows and doors.

4 (e) No person shall be liable in any civil action for money  
5 damages to the owner of unoccupied and abandoned residential  
6 and industrial property which that person beautifies pursuant  
7 to subsection (d) of this Section.

8 (e-5) Mortgagee or agent of the mortgagee exceptions.

9 (1) A mortgagee or agent of the mortgagee shall be  
10 exempt from prosecution for criminal trespass for  
11 entering, securing, or maintaining an abandoned  
12 residential property.

13 (2) No mortgagee or agent of the mortgagee shall be  
14 liable to the mortgagor or other owner of an abandoned  
15 residential property in any civil action for negligence or  
16 civil trespass in connection with entering, securing, or  
17 maintaining the abandoned residential property.

18 (3) For the purpose of this subsection (e-5) only,  
19 "abandoned residential property" means mortgaged real  
20 estate that the mortgagee or agent of the mortgagee  
21 determines in good faith meets the definition of abandoned  
22 residential property set forth in Section 15-1200.5 of  
23 Article XV of the Code of Civil Procedure.

24 (f) This Section does not prohibit a person from entering a  
25 building or upon the land of another for emergency purposes.  
26 For purposes of this subsection (f), "emergency" means a

1 condition or circumstance in which an individual is or is  
2 reasonably believed by the person to be in imminent danger of  
3 serious bodily harm or in which property is or is reasonably  
4 believed to be in imminent danger of damage or destruction.

5 (g) Paragraph (3.5) of subsection (a) does not apply to a  
6 peace officer or other official of a unit of government who  
7 enters a building or land in the performance of his or her  
8 official duties.

9 (h) Sentence. A violation of subdivision (a)(1), (a)(2),  
10 (a)(3), or (a)(3.5) is a Class B misdemeanor. A violation of  
11 subdivision (a)(4) is a Class A misdemeanor. A violation of  
12 subsection (a-5) is a Class A misdemeanor.

13 (i) Civil liability. A person may be liable in any civil  
14 action for money damages to the owner of the land he or she  
15 entered upon with a motor vehicle as prohibited under paragraph  
16 (4) of subsection (a) of this Section. A person may also be  
17 liable to the owner for court costs and reasonable attorney's  
18 fees. The measure of damages shall be: (i) the actual damages,  
19 but not less than \$250, if the vehicle is operated in a nature  
20 preserve or registered area as defined in Sections 3.11 and  
21 3.14 of the Illinois Natural Areas Preservation Act; (ii) twice  
22 the actual damages if the owner has previously notified the  
23 person to cease trespassing; or (iii) in any other case, the  
24 actual damages, but not less than \$50. If the person operating  
25 the vehicle is under the age of 16, the owner of the vehicle  
26 and the parent or legal guardian of the minor are jointly and

1 severally liable. For the purposes of this subsection (i):

2 "Land" includes, but is not limited to, land used for  
3 crop land, fallow land, orchard, pasture, feed lot, timber  
4 land, prairie land, mine spoil nature preserves and  
5 registered areas. "Land" does not include driveways or  
6 private roadways upon which the owner allows the public to  
7 drive.

8 "Owner" means the person who has the right to  
9 possession of the land, including the owner, operator or  
10 tenant.

11 "Vehicle" has the same meaning as provided under  
12 Section 1-217 of the Illinois Vehicle Code.

13 (j) This Section does not apply to the following persons  
14 while serving process:

15 (1) a person authorized to serve process under Section  
16 2-202 of the Code of Civil Procedure; or

17 (2) a special process server appointed by the circuit  
18 court.

19 (Source: P.A. 97-184, eff. 7-22-11; 97-477, eff. 8-22-11;  
20 97-813, eff. 7-13-12; 97-1108, eff. 1-1-13; 97-1164, eff.  
21 6-1-13.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.