



January 22, 2008

HOUSE BILL No. 1076

DIGEST OF HB 1076 (Updated January 16, 2008 4:46 pm - DI 69)

Citations Affected: IC 5-2; IC 34-24; IC 35-38; IC 35-41; noncode.

Synopsis: Bias crimes. Requires law enforcement officers to receive training in identifying, responding to, and reporting bias crimes. Allows an individual who suffers a personal injury or property damage caused by a criminal offense to bring a civil action to recover damages, including punitive damages, if the person who committed the offense knowingly or intentionally selected the victim because of the: (1) victim's actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, sex, or homelessness; or (2) actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of an individual affiliated or associated with the victim. Makes commission of a crime because of the: (1) victim's actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, sex, homelessness, or any other characteristic or belief; or (2) actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, sex, or any other characteristic or belief of an individual affiliated or associated with the victim; an aggravating circumstance that may be considered by a judge when the judge imposes a sentence for the crime.

Effective: July 1, 2008.

Porter, Foley, Kersey, Elrod

January 14, 2008, read first time and referred to Committee on Courts and Criminal Code.
January 22, 2008, amended, reported — Do Pass.

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January 22, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1076



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-2-1-9, AS AMENDED BY P.L.230-2007,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 9. (a) The board shall adopt in accordance with
4 IC 4-22-2 all necessary rules to carry out the provisions of this chapter.
5 The rules, which shall be adopted only after necessary and proper
6 investigation and inquiry by the board, shall include the establishment
7 of the following:

8 (1) Minimum standards of physical, educational, mental, and
9 moral fitness which shall govern the acceptance of any person for
10 training by any law enforcement training school or academy
11 meeting or exceeding the minimum standards established
12 pursuant to this chapter.

13 (2) Minimum standards for law enforcement training schools
14 administered by towns, cities, counties, law enforcement training
15 centers, agencies, or departments of the state.

16 (3) Minimum standards for courses of study, attendance
17 requirements, equipment, and facilities for approved town, city,

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- 1 county, and state law enforcement officer, police reserve officer,
- 2 and conservation reserve officer training schools.
- 3 (4) Minimum standards for a course of study on cultural diversity
- 4 awareness that must be required for each person accepted for
- 5 training at a law enforcement training school or academy.
- 6 (5) Minimum qualifications for instructors at approved law
- 7 enforcement training schools.
- 8 (6) Minimum basic training requirements which law enforcement
- 9 officers appointed to probationary terms shall complete before
- 10 being eligible for continued or permanent employment.
- 11 (7) Minimum basic training requirements which law enforcement
- 12 officers appointed on other than a permanent basis shall complete
- 13 in order to be eligible for continued employment or permanent
- 14 appointment.
- 15 (8) Minimum basic training requirements which law enforcement
- 16 officers appointed on a permanent basis shall complete in order
- 17 to be eligible for continued employment.
- 18 (9) Minimum basic training requirements for each person
- 19 accepted for training at a law enforcement training school or
- 20 academy that include six (6) hours of training in interacting with
- 21 persons with mental illness, addictive disorders, mental
- 22 retardation, and developmental disabilities, to be provided by
- 23 persons approved by the secretary of family and social services
- 24 and the board.
- 25 (10) Minimum standards for a course of study on human and
- 26 sexual trafficking that must be required for each person accepted
- 27 for training at a law enforcement training school or academy and
- 28 for inservice training programs for law enforcement officers. The
- 29 course must cover the following topics:
- 30 (A) Examination of the human and sexual trafficking laws
- 31 (IC 35-42-3.5).
- 32 (B) Identification of human and sexual trafficking.
- 33 (C) Communicating with traumatized persons.
- 34 (D) Therapeutically appropriate investigative techniques.
- 35 (E) Collaboration with federal law enforcement officials.
- 36 (F) Rights of and protections afforded to victims.
- 37 (G) Providing documentation that satisfies the Declaration of
- 38 Law Enforcement Officer for Victim of Trafficking in Persons
- 39 (Form I-914, Supplement B) requirements established under
- 40 federal law.
- 41 (H) The availability of community resources to assist human
- 42 and sexual trafficking victims.

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1 (b) Except as provided in subsection (l), a law enforcement officer
 2 appointed after July 5, 1972, and before July 1, 1993, may not enforce
 3 the laws or ordinances of the state or any political subdivision unless
 4 the officer has, within one (1) year from the date of appointment,
 5 successfully completed the minimum basic training requirements
 6 established under this chapter by the board. If a person fails to
 7 successfully complete the basic training requirements within one (1)
 8 year from the date of employment, the officer may not perform any of
 9 the duties of a law enforcement officer involving control or direction
 10 of members of the public or exercising the power of arrest until the
 11 officer has successfully completed the training requirements. This
 12 subsection does not apply to any law enforcement officer appointed
 13 before July 6, 1972, or after June 30, 1993.

14 (c) Military leave or other authorized leave of absence from law
 15 enforcement duty during the first year of employment after July 6,
 16 1972, shall toll the running of the first year, which shall be calculated
 17 by the aggregate of the time before and after the leave, for the purposes
 18 of this chapter.

19 (d) Except as provided in subsections (e), (l), (q), and (r), a law
 20 enforcement officer appointed to a law enforcement department or
 21 agency after June 30, 1993, may not:

- 22 (1) make an arrest;
- 23 (2) conduct a search or a seizure of a person or property; or
- 24 (3) carry a firearm;

25 unless the law enforcement officer successfully completes, at a board
 26 certified law enforcement academy or at a law enforcement training
 27 center under section 10.5 or 15.2 of this chapter, the basic training
 28 requirements established by the board under this chapter.

29 (e) This subsection does not apply to:

- 30 (1) a gaming agent employed as a law enforcement officer by the
 31 Indiana gaming commission; or
- 32 (2) an:
 - 33 (A) attorney; or
 - 34 (B) investigator;

35 designated by the securities commissioner as a police officer of
 36 the state under IC 23-2-1-15(i).

37 Before a law enforcement officer appointed after June 30, 1993,
 38 completes the basic training requirements, the law enforcement officer
 39 may exercise the police powers described in subsection (d) if the
 40 officer successfully completes the pre-basic course established in
 41 subsection (f). Successful completion of the pre-basic course authorizes
 42 a law enforcement officer to exercise the police powers described in

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1 subsection (d) for one (1) year after the date the law enforcement
2 officer is appointed.

3 (f) The board shall adopt rules under IC 4-22-2 to establish a
4 pre-basic course for the purpose of training:

5 (1) law enforcement officers;

6 (2) police reserve officers (as described in IC 36-8-3-20); and

7 (3) conservation reserve officers (as described in IC 14-9-8-27);

8 regarding the subjects of arrest, search and seizure, the lawful use of
9 force, and the operation of an emergency vehicle. The pre-basic course
10 must be offered on a periodic basis throughout the year at regional sites
11 statewide. The pre-basic course must consist of at least forty (40) hours
12 of course work. The board may prepare the classroom part of the
13 pre-basic course using available technology in conjunction with live
14 instruction. The board shall provide the course material, the instructors,
15 and the facilities at the regional sites throughout the state that are used
16 for the pre-basic course. In addition, the board may certify pre-basic
17 courses that may be conducted by other public or private training
18 entities, including postsecondary educational institutions.

19 (g) The board shall adopt rules under IC 4-22-2 to establish a
20 mandatory inservice training program for police officers. After June 30,
21 1993, a law enforcement officer who has satisfactorily completed basic
22 training and has been appointed to a law enforcement department or
23 agency on either a full-time or part-time basis is not eligible for
24 continued employment unless the officer satisfactorily completes the
25 mandatory inservice training requirements established by rules adopted
26 by the board. Inservice training must include training in interacting
27 with persons with mental illness, addictive disorders, mental
28 retardation, and developmental disabilities, to be provided by persons
29 approved by the secretary of family and social services and the board,
30 and training concerning human and sexual trafficking. The board may
31 approve courses offered by other public or private training entities,
32 including postsecondary educational institutions, as necessary in order
33 to ensure the availability of an adequate number of inservice training
34 programs. The board may waive an officer's inservice training
35 requirements if the board determines that the officer's reason for
36 lacking the required amount of inservice training hours is due to either
37 of the following:

38 (1) An emergency situation.

39 (2) The unavailability of courses.

40 (h) The board shall also adopt rules establishing a town marshal
41 basic training program, subject to the following:

42 (1) The program must require fewer hours of instruction and class

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1 attendance and fewer courses of study than are required for the
 2 mandated basic training program.
 3 (2) Certain parts of the course materials may be studied by a
 4 candidate at the candidate's home in order to fulfill requirements
 5 of the program.
 6 (3) Law enforcement officers successfully completing the
 7 requirements of the program are eligible for appointment only in
 8 towns employing the town marshal system (IC 36-5-7) and having
 9 not more than one (1) marshal and two (2) deputies.
 10 (4) The limitation imposed by subdivision (3) does not apply to an
 11 officer who has successfully completed the mandated basic
 12 training program.
 13 (5) The time limitations imposed by subsections (b) and (c) for
 14 completing the training are also applicable to the town marshal
 15 basic training program.
 16 (i) The board shall adopt rules under IC 4-22-2 to establish an
 17 executive training program. The executive training program must
 18 include training in the following areas:
 19 (1) Liability.
 20 (2) Media relations.
 21 (3) Accounting and administration.
 22 (4) Discipline.
 23 (5) Department policy making.
 24 (6) Lawful use of force.
 25 (7) Department programs.
 26 (8) Emergency vehicle operation.
 27 (9) Cultural diversity.
 28 (j) A police chief shall apply for admission to the executive training
 29 program within two (2) months of the date the police chief initially
 30 takes office. A police chief must successfully complete the executive
 31 training program within six (6) months of the date the police chief
 32 initially takes office. However, if space in the executive training
 33 program is not available at a time that will allow completion of the
 34 executive training program within six (6) months of the date the police
 35 chief initially takes office, the police chief must successfully complete
 36 the next available executive training program that is offered after the
 37 police chief initially takes office.
 38 (k) A police chief who fails to comply with subsection (j) may not
 39 continue to serve as the police chief until completion of the executive
 40 training program. For the purposes of this subsection and subsection
 41 (j), "police chief" refers to:
 42 (1) the police chief of any city;

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1 (2) the police chief of any town having a metropolitan police
2 department; and
3 (3) the chief of a consolidated law enforcement department
4 established under IC 36-3-1-5.1.
5 A town marshal is not considered to be a police chief for these
6 purposes, but a town marshal may enroll in the executive training
7 program.
8 (l) A fire investigator in the division of fire and building safety
9 appointed after December 31, 1993, is required to comply with the
10 basic training standards established under this chapter.
11 (m) The board shall adopt rules under IC 4-22-2 to establish a
12 program to certify handgun safety courses, including courses offered
13 in the private sector, that meet standards approved by the board for
14 training probation officers in handgun safety as required by
15 IC 11-13-1-3.5(3).
16 (n) The board shall adopt rules under IC 4-22-2 to establish a
17 refresher course for an officer who:
18 (1) is hired by an Indiana law enforcement department or agency
19 as a law enforcement officer;
20 (2) worked as a full-time law enforcement officer for at least one
21 (1) year before the officer is hired under subdivision (1);
22 (3) has not been employed as a law enforcement officer for at
23 least two (2) years and less than six (6) years before the officer is
24 hired under subdivision (1) due to the officer's resignation or
25 retirement; and
26 (4) completed a basic training course certified by the board before
27 the officer is hired under subdivision (1).
28 (o) An officer to whom subsection (n) applies must successfully
29 complete the refresher course described in subsection (n) not later than
30 six (6) months after the officer's date of hire, or the officer loses the
31 officer's powers of:
32 (1) arrest;
33 (2) search; and
34 (3) seizure.
35 (p) A law enforcement officer who:
36 (1) has completed a basic training course certified by the board;
37 and
38 (2) has not been employed as a law enforcement officer in the six
39 (6) years before the officer is hired as a law enforcement officer;
40 is not eligible to attend the refresher course described in subsection (n)
41 and must repeat the full basic training course to regain law enforcement
42 powers.

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1 (q) This subsection applies only to a gaming agent employed as a
 2 law enforcement officer by the Indiana gaming commission. A gaming
 3 agent appointed after June 30, 2005, may exercise the police powers
 4 described in subsection (d) if:

- 5 (1) the agent successfully completes the pre-basic course
 6 established in subsection (f); and
 7 (2) the agent successfully completes any other training courses
 8 established by the Indiana gaming commission in conjunction
 9 with the board.

10 (r) This subsection applies only to a securities enforcement officer
 11 designated as a law enforcement officer by the securities
 12 commissioner. A securities enforcement officer may exercise the police
 13 powers described in subsection (d) if:

- 14 (1) the securities enforcement officer successfully completes the
 15 pre-basic course established in subsection (f); and
 16 (2) the securities enforcement officer successfully completes any
 17 other training courses established by the securities commissioner
 18 in conjunction with the board.

19 (s) **This subsection applies to the following:**

- 20 (1) **Minimum basic training program required under**
 21 **subsection (d).**
 22 (2) **Mandatory inservice training program required under**
 23 **subsection (g).**
 24 (3) **Town marshal basic training program required under**
 25 **subsection (h).**
 26 (4) **Police chief executive training program required under**
 27 **subsection (j).**
 28 (5) **Any other training program for which the board adopts**
 29 **standards.**

30 **After December 31, 2008, the standards adopted by the board for**
 31 **each program described in this subsection must include**
 32 **requirements for mandatory training in identifying, responding to,**
 33 **and reporting bias crimes in which the person who committed the**
 34 **offense selected the victim who was injured or whose property was**
 35 **damaged or otherwise affected because of the color, creed,**
 36 **disability, national origin, race, religion, sexual orientation, gender**
 37 **identity, or sex of the victim or an individual affiliated or**
 38 **associated with the victim or because the victim was a homeless**
 39 **individual (as defined in IC 35-41-1-13.5).**

40 SECTION 2. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS
 41 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 2008]:

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Chapter 5. Civil Action for Victims of Bias Crime Offenders

Sec. 1. As used in this chapter, "bias crime offender" means a person:

(1) who:

(A) was convicted of committing a crime that injured an individual; and

(B) knowingly or intentionally selected the individual as the victim of the crime because:

(i) of the actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of the victim;

(ii) of the actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of an individual affiliated or associated with the victim; or

(iii) the victim was a homeless individual; or

(2) who:

(A) was convicted of committing a crime that damaged or otherwise affected property; and

(B) knowingly or intentionally damaged or otherwise affected the property because:

(i) of the actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of the individual who owned or occupied the property;

(ii) of the actual or perceived color, creed, disability, national origin, race, religion, sexual orientation, gender identity, or sex of an individual affiliated or associated with the individual who owned or occupied the property; or

(iii) the individual who owned or occupied the property was a homeless individual.

Sec. 2. (a) As used in this chapter, "homeless individual" means an individual who:

(1) lacks a fixed, regular, and adequate nighttime residence; or

(2) uses one (1) of the following as a primary nighttime residence:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including a motel, a hotel, a congregate shelter, or transitional housing.

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(B) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) The term does not include an individual imprisoned or otherwise detained under state or federal law.

Sec. 3. If an individual suffers a pecuniary loss because of the commission of a crime by a bias crime offender, the individual may bring a civil action against the person who caused the loss.

Sec. 4. An individual bringing an action under section 3 of this chapter may seek to recover the following:

- (1) Actual, compensatory, and consequential damages.**
- (2) Punitive damages in an amount not more than three (3) times the person's actual damages.**
- (3) The costs of the action.**
- (4) Reasonable attorney's fees.**

Sec. 5. (a) Except as provided in subsection (b), this chapter does not limit a person's rights or remedies under any other state or federal law.

(b) A person may not recover damages under IC 34-24-3 and this chapter for the same crime.

SECTION 3. IC 35-38-1-7.1, AS AMENDED BY P.L.213-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances:

- (1) The harm, injury, loss, or damage suffered by the victim of an offense was:
 - (A) significant; and
 - (B) greater than the elements necessary to prove the commission of the offense.
- (2) The person has a history of criminal or delinquent behavior.
- (3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.
- (4) The person:
 - (A) committed a crime of violence (IC 35-50-1-2); and
 - (B) knowingly committed the offense in the presence or within hearing of an individual who:
 - (i) was less than eighteen (18) years of age at the time the person committed the offense; and
 - (ii) is not the victim of the offense.
- (5) The person violated a protective order issued against the

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- 1 person under IC 34-26-5 (or IC 31-1-11.5, IC 34-26-2, or
- 2 IC 34-4-5.1 before their repeal), a workplace violence restraining
- 3 order issued against the person under IC 34-26-6, or a no contact
- 4 order issued against the person.
- 5 (6) The person has recently violated the conditions of any
- 6 probation, parole, pardon, community corrections placement, or
- 7 pretrial release granted to the person.
- 8 (7) The victim of the offense was mentally or physically infirm.
- 9 (8) The person was in a position having care, custody, or control
- 10 of the victim of the offense.
- 11 (9) The injury to or death of the victim of the offense was the
- 12 result of shaken baby syndrome (as defined in IC 16-41-40-2).
- 13 (10) The person threatened to harm the victim of the offense or a
- 14 witness if the victim or witness told anyone about the offense.
- 15 (11) The person:
- 16 (A) committed trafficking with an inmate under IC 35-44-3-9;
- 17 and
- 18 (B) is an employee of the penal facility.
- 19 **(12) The person who committed the offense knowingly or**
- 20 **intentionally selected the victim who was injured by the**
- 21 **offense or whose property was damaged or otherwise affected**
- 22 **by the offense because:**
- 23 **(A) of the actual or perceived color, creed, disability,**
- 24 **national origin, race, religion, sexual orientation, gender**
- 25 **identity, sex, or any other characteristic or belief of the**
- 26 **injured individual or of the owner or occupant of the**
- 27 **property;**
- 28 **(B) of the actual or perceived color, creed, disability,**
- 29 **national origin, race, religion, sexual orientation, gender**
- 30 **identity, sex, or any other characteristic or belief of an**
- 31 **individual affiliated or associated with the injured**
- 32 **individual or of the owner or occupant of the property; or**
- 33 **(C) the injured individual or the owner or occupant of the**
- 34 **property was a homeless individual.**
- 35 (b) The court may consider the following factors as mitigating
- 36 circumstances or as favoring suspending the sentence and imposing
- 37 probation:
- 38 (1) The crime neither caused nor threatened serious harm to
- 39 persons or property, or the person did not contemplate that it
- 40 would do so.
- 41 (2) The crime was the result of circumstances unlikely to recur.
- 42 (3) The victim of the crime induced or facilitated the offense.

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- 1 (4) There are substantial grounds tending to excuse or justify the
- 2 crime, though failing to establish a defense.
- 3 (5) The person acted under strong provocation.
- 4 (6) The person has no history of delinquency or criminal activity,
- 5 or the person has led a law-abiding life for a substantial period
- 6 before commission of the crime.
- 7 (7) The person is likely to respond affirmatively to probation or
- 8 short term imprisonment.
- 9 (8) The character and attitudes of the person indicate that the
- 10 person is unlikely to commit another crime.
- 11 (9) The person has made or will make restitution to the victim of
- 12 the crime for the injury, damage, or loss sustained.
- 13 (10) Imprisonment of the person will result in undue hardship to
- 14 the person or the dependents of the person.
- 15 (11) The person was convicted of a crime involving the use of
- 16 force against a person who had repeatedly inflicted physical or
- 17 sexual abuse upon the convicted person and evidence shows that
- 18 the convicted person suffered from the effects of battery as a
- 19 result of the past course of conduct of the individual who is the
- 20 victim of the crime for which the person was convicted.
- 21 (c) The criteria listed in subsections (a) and (b) do not limit the
- 22 matters that the court may consider in determining the sentence.
- 23 (d) A court may impose any sentence that is:
- 24 (1) authorized by statute; and
- 25 (2) permissible under the Constitution of the State of Indiana;
- 26 regardless of the presence or absence of aggravating circumstances or
- 27 mitigating circumstances.
- 28 SECTION 4. IC 35-41-1-13.5 IS ADDED TO THE INDIANA
- 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 30 [EFFECTIVE JULY 1, 2008]: **Sec. 13.5. (a) "Homeless individual"**
- 31 **means an individual who:**
- 32 **(1) lacks a fixed, regular, and adequate nighttime residence;**
- 33 **or**
- 34 **(2) uses one (1) of the following as a primary nighttime**
- 35 **residence:**
- 36 **(A) A supervised publicly or privately operated shelter**
- 37 **designed to provide temporary living accommodations,**
- 38 **including a motel, a hotel, a congregate shelter, or**
- 39 **transitional housing.**
- 40 **(B) A public or private place not designed for, or**
- 41 **ordinarily used as, a regular sleeping accommodation for**
- 42 **human beings.**

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1 **(b) The term does not include an individual imprisoned or**
2 **otherwise detained under state or federal law.**

3 SECTION 5. [EFFECTIVE JULY 1, 2008] **(a) IC 35-38-1-7.1, as**
4 **amended by this act, applies only to offenses committed after June**
5 **30, 2008.**

6 **(b) IC 34-24-5, as added by this act, applies only to causes of**
7 **action that accrue after June 30, 2008.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1076, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 10, line 25, delete "or sex" and insert "**sex, or any other characteristic or belief**".

Page 10, line 29, delete "or sex" and insert "**sex, or any other characteristic or belief**".

and when so amended that said bill do pass.

(Reference is to HB 1076 as introduced.)

HOY, Chair

Committee Vote: yeas 8, nays 3.

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