

HATE CRIMES AND INSTITUTIONAL DESECRATION

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House Bills 4474 (H-3) and 4476 (H-2) as passed by the House
Sponsor: Rep. Noah Arbit

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4475 (H-2) as passed by the House
Sponsor: Rep. Kristian Grant

House Bill 4477 (H-3) as passed by the House
Sponsor: Rep. Ranjeev Puri

Committee: Criminal Justice
Complete to 9-4-23

SUMMARY:

House Bills 4474 and 4476 would amend the Michigan Penal Code to revise provisions that prohibit hate crimes and to define and prohibit institutional desecration, respectively. The bills would provide for enhanced penalties based on factors such as prior convictions, allow a court to impose alternative sentences under certain conditions, and respectively modify or allow for a civil cause of action. House Bills 4475 and 4477 would make complementary changes to the sentencing guidelines in the Code of Criminal Procedure.

House Bill 4474 would amend provisions of the code that now define and prohibit the crime of ethnic intimidation.

Under current law, a person is guilty of ethnic intimidation if they maliciously do any of the following with the specific intent to intimidate or harass another individual because of their race, color, religion, gender, or national origin:

- Cause physical contact with the other individual.
- Damage, destroy, or deface any real or personal property of the other individual.
- Threaten, by word or act, to do either of the above, if there is reasonable cause to believe that they will do so.

Ethnic intimidation is a felony punishable by imprisonment for up to two years or a fine of up to \$5,000, or both. The act also allows a person who suffers personal injury or property damage as a result of ethnic intimidation to bring a civil cause of action against the offender for an injunction, actual damages (including damages for emotional distress), or other appropriate relief. The civil action can be brought regardless of the existence or outcome of any criminal prosecution. A plaintiff prevailing in such an action can recover damages in the amount of three times the actual damages or \$2,000, whichever is greater, as well as reasonable attorney fees and costs.

The bill would provide that a person is guilty of a hate crime if they maliciously and intentionally do any of the following to another individual based in whole or in part on an *actual or perceived characteristic* of that individual, regardless of the existence of any other motivating factors:

- Use force or violence on the other individual.
- Cause bodily injury to the other individual.

- **Intimidate** the other individual.
- Damage, destroy, or deface any real, personal, digital, or online property of the other individual without that individual's consent.
- Threaten, by word or act, to do any of the above.

Intimidate would mean a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable individual to feel terrorized, frightened, or threatened, and that actually causes the victim to feel terrorized, frightened, or threatened. However, the term *intimidate* would not include constitutionally protected activity or conduct that serves a legitimate purpose.

For purposes of the above provisions, an *actual or perceived characteristic* would include any of the following:

- Race or color.
- Religion.
- Sex.
- Sexual orientation.
- **Gender identity or expression.**
- Physical or mental disability.
- Age.
- Ethnicity.
- National origin.
- Association or affiliation with an individual or group of individuals in whole or in part based on a characteristic described above.

For both HB 4474 and HB 4476, **gender identity or expression** would mean having or being perceived as having a gender-related self-identity or expression, whether or not associated with an individual's assigned sex at birth.

Penalties

Except as described under "Enhanced penalties," below, a hate crime would be a felony punishable by imprisonment for up to two years or a fine of up to \$5,000, or both. Instead of or in addition to those penalties, the court, if the defendant consents, could impose an alternative sentence that may, if the entity chosen for community service is amenable, include an order requiring the offender to complete a period of community service intended to enhance the offender's understanding of the impact of the offense upon the victim and the wider community. In determining the suitability of an alternative sentence, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and the wider community, the availability of the alternative sentence, and the nature of the violation.

Enhanced penalties

If any of the following apply, a person who commits a hate crime would be guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both:

- The hate crime results in bodily injury.
- The person has one or more prior convictions¹ for hate crimes.

¹ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction would have to include on the complaint and information a statement listing the prior conviction(s). The existence of the prior

- A victim of the hate crime is less than 18 years of age and the offender is at least 19 years of age.
- The person commits the hate crime in concert with one or more other individuals.
- The person is in possession of a firearm during the commission of the hate crime.

If the defendant consents, the court could reduce any penalty described above by up to 20% and impose an alternative sentence that may, if the entity chosen for community service is amenable, include an order requiring the offender to complete a period of community service intended to enhance the offender's understanding of the impact of the offense upon the victim and the wider community. In determining the suitability of an alternative sentence, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and the wider community, the availability of the alternative sentence, and the nature of the violation.

Civil cause of action

The bill would allow a person who suffers bodily injury or damage to their property as a result of a hate crime to bring a civil cause of action against the offender for an injunction, actual damages (including damages for emotional distress), or other appropriate relief. The civil action could be brought regardless of the existence or outcome of any criminal prosecution. A plaintiff prevailing in such an action could recover damages in the amount of three times the actual damages or \$25,000, whichever is greater, as well as reasonable attorney fees and costs.

MCL 750.147b

House Bill 4476 would add a new section to the Michigan Penal Code to provide that a person who maliciously and intentionally destroys, damages, defaces, or vandalizes any of the following, in whole or in part, or threatens by word or act to do so, because of the actual or perceived race, color, religion, sex, sexual orientation, gender identity or expression, physical or mental disability, age, ethnicity, or national origin of another individual or group of individuals (regardless of the existence of any additional motivating factors) is guilty of institutional desecration:

- A synagogue, mosque, church, temple, gurdwara, shrine, or other building, structure, or place used for religious worship or other religious purpose.
- A cemetery, mortuary, or other facility used for the purpose of burial or memorializing the dead.
- A school, educational facility, library, museum, community center, or campground.
- A business or charitable establishment, storefront, facility, office, or headquarters.
- The grounds adjacent to, and owned or rented by, any institution, facility, building, structure, or place described above.
- The digital or online assets maintained, authored, rented, or owned by any institution, facility, entity, or place described above.
- Any personal, communal, or institutional property contained in any institution, facility, building, structure, or place described above.

convictions would be determined by the court, without a jury, at sentencing or a separate presentencing hearing. A prior conviction could be established by any relevant evidence, such as a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information in a presentence report; or the defendant's statement.

Penalties

A person committing institutional desecration would be guilty of a crime, as shown in the table below, based on the dollar amount of the destruction or injury and whether the person has prior convictions for institutional desecration under either the section being added by the bill or a local ordinance corresponding to that section.

Amount of destruction or injury²	Prior convictions³	Offense and penalty
Less than \$200	With no prior convictions	Misdemeanor punishable by imprisonment for up to 93 days or a fine of up to the greater of three times the amount of the destruction or injury or \$500, or both imprisonment and a fine
Less than \$200	With one or more prior convictions	Misdemeanor punishable by imprisonment for up to one year or a fine of up to the greater of three times the amount of the destruction or injury or \$2,000, or both imprisonment and a fine
\$200 or more but less than \$1,000	With no prior convictions	
\$200 or more but less than \$1,000	With one or more prior convictions where the amount of the destruction or injury is \$200 or greater	Felony punishable by imprisonment for up to five years or a fine of up to the greater of three times the amount of the destruction or injury or \$10,000, or both imprisonment and a fine
\$1,000 or more but less than \$20,000	With no prior convictions	
\$1,000 or more but less than \$20,000	With two or more prior convictions where the amount of the destruction or injury is \$200 or greater	Felony punishable by imprisonment for up to 10 years or a fine of up to the greater of three times the amount of the destruction or injury or \$15,000, or both imprisonment and a fine
\$20,000 or more	Regardless of any prior convictions	

² The amounts of the destruction or injury in separate incidents under a scheme or course of conduct in any 12-month period could be aggregated to determine the total amount of the destruction or injury.

³ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction would have to include on the complaint and information a statement listing the prior conviction(s). The existence of the prior convictions would be determined by the court, without a jury, at sentencing or a separate presentencing hearing. A prior conviction could be established by any relevant evidence, such as a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information in a presentence report; or the defendant's statement.

Alternative sentence

For misdemeanor offenses, instead of or in addition to the above penalties, the court could, if the defendant consents, impose an alternative sentence that may, if the entity chosen for community service is amenable, include an order requiring the offender to complete a period of community service intended to enhance the offender's understanding of the impact of the offense on the victim and the wider community. In determining the suitability of an alternative sentence, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and the wider community, the availability of the alternative sentence, and the nature of the violation.

For felony offenses, the court could, if the defendant consents, reduce any penalty imposed as described above by up to 20% and impose an alternative sentence that may, if the entity chosen for community service is amenable, include an order requiring the offender to complete a period of community service intended to enhance the offender's understanding of the impact of the offense on the victim and the wider community. In determining the suitability of an alternative sentence, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and the wider community, the availability of the alternative sentence, and the nature of the violation.

Civil cause of action

The bill would allow an entity or institution that suffers damage or destruction to property to bring a civil cause of action against the offender for an injunction, actual damages (including damages for infliction of mental injury or emotional distress), or other appropriate relief. The civil action could be brought regardless of the existence or outcome of any criminal prosecution. A plaintiff prevailing in such an action could recover damages in the amount of three times the actual damages or \$25,000, whichever is greater, as well as reasonable attorney fees and costs.

Proposed MCL 750.147c

House Bills 4475 and 4477 would, taken together, amend the sentencing guidelines provisions of the Code of Criminal Procedure to provide the following:

- A hate crime is a class G crime against a person with a statutory maximum term of imprisonment of two years. (These are the classification and statutory maximum that now pertain to the felony of ethnic intimidation, which the bills would remove.)
- A hate crime with aggravating factors is a class E crime against a person with a statutory maximum of five years' imprisonment.
- Institutional desecration involving \$1,000 to \$20,000 or with prior convictions is a class E crime against property with a statutory maximum term of imprisonment of five years.
- Institutional desecration involving \$20,000 or more or with prior convictions is a class D crime against property with a statutory maximum term of imprisonment of 10 years.

House Bill 4475 could not take effect unless HBs 4474 and 4476 were both also enacted. (It includes the felonies from both those bills.) House Bill 4477 could not take effect unless HB 4476 were also enacted. (It includes the felonies from only that bill.)

MCL 777.16g

FISCAL IMPACT:

House Bill 4474 would have an indeterminate fiscal impact on the state and on local units of government. Expanded provisions that define and prohibit hate crimes, and expanded penalties, are likely to result in an increase in the number of convictions. Violations would be felonies, and new felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4476 would have an indeterminate fiscal impact on the state and on local units of government. Including institutional desecration as a punishable offense is likely to result in an increase in the number of felony and/or misdemeanors depending on the amount of destruction or injury caused by the desecration. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. New misdemeanor convictions would result in increased costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4475 and 4477 are companion bills to HB 4474 and 4476 and amend sentencing guidelines to revise the current category G offense of “ethnic intimidation” to “hate crime,” to include hate crimes with aggravating factors as a category E offense, and to include institutional desecration involving \$20,000 or more or with prior convictions and institutional desecration involving \$1,000 to \$20,000 or with prior convictions as category D and E offenses, respectively. The bills would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

The following individuals testified in support of the bills (6-6-23):

- Attorney General Dana Nessel
- The Wayne County prosecutor, representing the Prosecuting Attorneys Association of Michigan

The following entities indicated support for the bills:

- Stand with Trans (6-6-23)
- Washtenaw County Prosecutor (6-6-23)
- Jewish Community Relations Council (6-6-23)
- American Jewish Committee of Detroit (6-6-23)
- Chaldean American Chamber of Commerce (6-6-23)
- Michigan Coalition to End Domestic and Sexual Violence (6-6-23)
- The Arc Michigan (6-6-23)
- Disability Rights Michigan (6-6-23)
- HIV/AIDS Alliance of Michigan (6-6-23)
- Affirmations LGBTQ+ Community Center (6-13-23)
- Emgage Michigan (6-13-23)
- National Association of Social Workers (6-13-23)
- LGBT Detroit Mobilization (6-13-23)
- Fair Michigan (6-6-23)
- The Sikh Coalition (6-6-23)

AARP Michigan indicated support for House Bills 4474 and 4475. (6-6-23)

The Michigan Catholic Conference indicated support for House Bills 4476 and 4477. (6-6-23)

The following entities indicated a neutral position on the bills:

- Michigan Sheriffs' Association (6-13-23)
- ACLU of Michigan (6-6-23)

A representative of Michigan Initiatives testified in opposition to House Bill 4474. (6-13-23)

Citizens for Traditional Values indicated opposition to House Bills 4474 and 4475. (6-13-23)

Legislative Analyst: Rick Yuille
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.