

Legislative Analysis



HATE CRIMES

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House Bill 5400 (proposed substitute H-1)
Sponsor: Rep. Noah Arbit

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

House Bill 5401 (proposed substitute H-1)
Sponsor: Rep. Kristian C. Grant

House Committee: Criminal Justice
Complete to 4-22-24

SUMMARY:

House Bill 5400 would amend the Michigan Penal Code to revise its hate crime provisions. The bill would add attributes (such as age, sex, sexual orientation, or disability) that violent or threatening behavior would be a hate crime if based on, distinguish between conduct and threatened conduct in prescribing penalties, provide enhanced penalties for specified elements such as prior convictions, allow a court to impose alternative sentences in certain cases, and increase the cap on damages in a civil cause of action. House Bill 5401 would make complementary changes to the sentencing guidelines in the Code of Criminal Procedure.

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. A person who suffers personal injury or property damage as a result of ethnic intimidation may 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.

House Bill 5400 would provide that an individual (instead of 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 other individual, regardless of whether any other motivating factors exist:

- Use force or violence against that other individual.
- Cause bodily injury to that other individual.
- **Stalk** that other individual.
- Damage, destroy, or deface any real or personal property of that other individual without that individual's consent.
- Make a **true threat** to engage in conduct described above.

The *actual or perceived characteristics* of another individual referenced above would include all 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 based, in whole or in part, on a characteristic described above.

Stalk would mean to engage in stalking, which under section 411h of the code means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

True threat would mean a statement in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, including unlawful property damage to the property of a particular individual or group, and would include such a communication made with *reckless disregard*. However, a speaker would not be liable for communicating a true threat if they were unaware that the individual or group could regard the statement as threatening violence.

To make such a communication with *reckless disregard* would mean to consciously disregard a substantial and unjustifiable risk that a statement will be viewed as threatening violence.

Penalty and alternative sentence for first offense of making a true threat

An individual who commits a first violation of the above prohibition against making a true threat (i.e., the last bulleted offense above) would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$5,000, or both. However, 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.

Other penalties

An individual who commits a second or subsequent violation¹ of the prohibition against making a true threat, or who commits a first violation of any of the other prohibitions, would

¹ A prosecuting attorney intending to seek an enhanced sentence based on a defendant's prior conviction or convictions under the bill would have to include on the complaint and information a statement listing the prior convictions. The

be guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both.

For a second or subsequent violation of any prohibition except the one against making a true threat, or if any of the following apply, an individual would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$15,000, or both:

- A violation of any of the above prohibitions was committed in concert with one or more other individuals.
- A violation of any of the above prohibitions was committed against a victim who is 17 years old or younger by an individual who is 19 years old or older.
- A violation of any of the above prohibitions was committed while the individual was in possession of a firearm or other dangerous weapon.

Alternative sentence for other penalties

If the defendant consents, the court could reduce any penalty described above under “Other penalties” 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.

Sentencing

A criminal penalty for violation of the bill could be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct. The court could order a sentence imposed for a violation of the above prohibitions to be served consecutively to a sentence imposed for any other crime, include another violation of law arising out of the same transaction as the violation of the above.

Civil cause of action

An individual who suffers injury or property damage as a result of a hate crime could 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.

Other provisions

The bill would not enjoin any individual’s exercise of the constitutional right to free speech.

MCL 750.147b

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.

House Bill 5401 would amend the sentencing guidelines provisions of the Code of Criminal Procedure to provide that a first offense of making a hate crime threat is a class G crime against a person with a maximum term of imprisonment of two years. A first offense of violating another hate crime provision, or a second or subsequent offense of making a hate crime threat, would be a class E crime against a person with a maximum term of five years. A second or subsequent offense of violating a hate crime provision other than that of making a threat, or a violation committed with aggravating factors (in concert with others, by an adult 19 or older against a minor, or while possessing a firearm or dangerous weapon), would be a class D crime against a person with a maximum of 10 years.

The bill cannot take effect unless House Bill 5400 is also enacted.

MCL 777.16g

FISCAL IMPACT:

House Bill 5400 would have an indeterminate fiscal impact on the state and on local units of government. To the extent provisions of the bill result in an increase in felony convictions, the bill would result in increased costs related to state prisons and state probation supervision. In fiscal year 2022-23, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect 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 5401 is a companion bill to HB 5400 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the new felonies proposed by HB 5400. The bill would not have a direct fiscal impact on the state or on local units of government.

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■ 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.