

SUBSTITUTE FOR
SENATE BILL NO. 601

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 147b (MCL 750.147b), as added by 1988 PA 371.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 147b. (1) ~~A person~~**An individual** is guilty of ethnic
2 ~~intimidation~~**a hate crime** if that ~~person~~**individual**, based in whole
3 **or in part on another individual's actual or perceived race, color,**
4 **religion, gender, sexual orientation, gender identity or**
5 **expression, ethnicity, physical or mental disability, age, national**
6 **origin, or association or affiliation with any such individuals,**
7 ~~maliciously, and with specific intent to intimidate or harass~~
8 ~~another person because of that person's race, color, religion,~~
9 ~~gender, or national origin,~~**intentionally** does any of the

1 following:

2 (a) ~~Causes physical contact with~~ **Uses force or violence**
3 **against another person-individual.**

4 (b) **Causes bodily injury to another individual.**

5 (c) **Stalks another individual.**

6 (d) ~~(b)-Damages, destroys, or defaces any real, or personal,~~
7 **digital, or online** property of another ~~person-individual~~ **without**
8 **the consent of the individual.**

9 (e) ~~(c) Threatens, by word or act, to do an act described in~~
10 ~~subdivision (a) or (b), if there is reasonable cause to believe~~
11 ~~that an act described in subdivision (a) or (b) will occur.~~ **Makes a**
12 **true threat to engage in conduct described under subdivisions (a)**
13 **to (d).**

14 (2) ~~Ethnic intimidation~~ **An individual who violates this**
15 **section is guilty of a crime punishable as follows:**

16 (a) **An individual who commits a first violation of subsection**
17 **(1) (e) is guilty of a ~~felony-misdemeanor~~ punishable by imprisonment**
18 **for not more than ~~2 years,~~ 1 year or by a fine of not more than**
19 **~~\$5,000.00,~~ \$1,000.00, or both.**

20 (b) **An individual who commits either of the following**
21 **violations is guilty of a felony punishable by imprisonment for not**
22 **more than 2 years or a fine of not more than \$2,000,00, or both:**

23 (i) **A first violation of subsection (1) (a), (b), (c), or (d).**

24 (ii) **A second or subsequent violation of subsection (1) (e).**

25 (c) **An individual who commits any of the following violations**
26 **is guilty of a felony punishable by imprisonment for not more than**
27 **4 years or a fine of not more than \$5,000.00, or both:**

28 (i) **A second or subsequent violation of subsection (1) (a), (b),**
29 **(c), or (d).**

1 (ii) A violation of subsection (1) committed in concert with 1
2 or more individuals.

3 (iii) A violation of subsection (1) committed against a victim
4 who is less than 18 years of age by an individual who is more than
5 18 years of age.

6 (iv) A violation of subsection (1) (e) committed while the
7 individual is in possession of a firearm or other dangerous weapon.

8 (d) An individual who commits a violation of subsection
9 (1) (a), (b), or (c) while in possession of a firearm or other
10 dangerous weapon is guilty of a felony punishable by imprisonment
11 for not more than 6 years or a fine of not more than \$7,500.00, or
12 both.

13 (3) Regardless of the existence or outcome of any criminal
14 prosecution, ~~a person~~ **an individual** who suffers injury ~~to his or~~
15 ~~her person or damage to his or her property~~ **damage** as a result of
16 ~~ethnic intimidation~~ **a hate crime** may bring a civil cause of action
17 against the ~~person~~ **individual** who commits the offense to secure an
18 injunction, actual damages, including damages for emotional
19 distress, or other appropriate relief. A plaintiff who prevails in
20 a civil action brought pursuant to this section may recover both of
21 the following:

22 (a) Damages in the amount of 3 times the actual damages
23 described in this subsection or ~~\$2,000.00,~~ **\$5,000.00**, whichever is
24 greater.

25 (b) Reasonable attorney fees and costs.

26 (4) **If the prosecuting attorney intends to seek an enhanced**
27 **sentence based upon the defendant having 1 or more prior**
28 **convictions under subsection (2) (b) (ii) or (c) (i), the prosecuting**
29 **attorney shall include on the complaint and information a statement**

1 listing the prior conviction or convictions. The existence of the
2 defendant's prior conviction or convictions must be determined by
3 the court, without a jury, at sentencing or at a separate hearing
4 for that purpose before sentencing. The existence of a prior
5 conviction may be established by any evidence relevant for that
6 purpose, including, but not limited to, 1 or more of the following:

7 (a) A copy of the judgment of conviction.

8 (b) A transcript of a prior trial, plea-taking, or sentencing.

9 (c) Information contained in a presentence report.

10 (d) The defendant's statement.

11 (5) In lieu of or in addition to the penalties described in
12 subsection (2) (a) or (b) (i), the court may, if the defendant
13 consents, impose an alternative sentence described under this
14 subsection. In determining the suitability of an alternative
15 sentence described under this subsection, the court shall consider
16 the criminal history of the offender, the impact of the offense on
17 the victim and wider community, the availability of the alternative
18 sentence, and the nature of the violation. An alternative sentence
19 may, if the entity chosen for community service is amenable,
20 include an order requiring the offender to complete a period of
21 community service intended to enhance the offender's understanding
22 of the impact of the offense upon the victim and wider community.

23 (6) The court may, if the defendant consents, reduce any
24 penalty imposed under subsection (2) (b) (ii), (c), or (d) by not more
25 than 20%, and impose an alternative sentence described under this
26 subsection. In determining the suitability of an alternative
27 sentence described under this subsection, the court shall consider
28 the criminal history of the offender, the impact of the offense on
29 the victim and wider community, the availability of the alternative

1 sentence, and the nature of the violation. An alternative sentence
2 may, if the entity chosen for community service is amenable,
3 include an order requiring the offender to complete a period of
4 community service intended to enhance the offender's understanding
5 of the impact of the offense upon the victim and wider community.

6 (7) The court may order a sentence imposed for a violation of
7 this section be served consecutively to a sentence imposed for any
8 other crime, including any other violation of law arising out of
9 the same transaction as the violation of this section.

10 (8) A criminal penalty provided for under this section may be
11 imposed in addition to any penalty that may be imposed for any
12 other criminal offense arising from the same conduct or for any
13 contempt of court arising from the same conduct.

14 (9) This section does not enjoin any individual's exercise of
15 the constitutional right to free speech.

16 (10) The act of intentionally or unintentionally referencing
17 or referring to another individual by using pronouns that are
18 perceived to be incorrect or nonpreferred by that individual does
19 not constitute a hate crime.

20 (11) As used in this section:

21 (a) "Reckless disregard" means to consciously disregard a
22 substantial and unjustifiable risk that the conduct will cause harm
23 to another.

24 (b) "Stalk" means stalking as that term is defined in section
25 411h.

26 (c) "True threat" means a statement in which the speaker means
27 to communicate a serious expression of an intent to commit an act
28 of unlawful violence to a particular individual or group of
29 individuals, including unlawful property damage to the property of

- 1 a particular individual or group of individuals. A true threat also
- 2 includes a statement made with reckless disregard.