

HOUSE BILL NO. 5400

January 18, 2024, Introduced by Reps. Arbit and Grant and referred to the Committee on Judiciary.

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, sex, sexual orientation, gender identity or expression,**
5 **ethnicity, physical or mental disability, age, national origin, or**

1 **association or affiliation with any such individuals**, maliciously ~~and~~
 2 ~~and with specific intent to intimidate or harass another person~~
 3 ~~because of that person's race, color, religion, gender, or national~~
 4 ~~origin,~~ **intentionally** does any of the following:

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

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

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

9 (d) ~~(b)~~ **Damages, destroys, or defaces any real or personal**
 10 **property of another person-individual without the consent of the**
 11 **individual.**

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

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

19 (a) **An individual who commits a first violation of subsection**
 20 **(1) is guilty of a felony punishable by imprisonment for not more**
 21 **than 2 years, or by a fine of not more than \$5,000.00, \$2,000.00,**
 22 **or both.**

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

26 (i) **A second or subsequent violation of subsection (1).**

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

29 (iii) **A violation of subsection (1) committed against a victim**

1 who is less than 18 years of age by an individual who is more than
2 18 years of age.

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

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

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

19 (b) Reasonable attorney fees and costs.

20 (4) **If the prosecuting attorney intends to seek an enhanced**
21 **sentence based upon the defendant having 1 or more prior**
22 **convictions under subsection (2) (b) (i) , the prosecuting attorney**
23 **shall include on the complaint and information a statement listing**
24 **the prior conviction or convictions. The existence of the**
25 **defendant's prior conviction or convictions must be determined by**
26 **the court, without a jury, at sentencing or at a separate hearing**
27 **for that purpose before sentencing. The existence of a prior**
28 **conviction may be established by any evidence relevant for that**
29 **purpose, including, but not limited to, 1 or more of the following:**

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

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

3 (c) Information contained in a presentence report.

4 (d) The defendant's statement.

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

17 (6) The court may, if the defendant consents, reduce any
18 penalty imposed under subsection (2) (b) or (c) by not more than 20%
19 and impose an alternative sentence described under this subsection.
20 In determining the suitability of an alternative sentence described
21 under this subsection, the court shall consider the criminal
22 history of the offender, the impact of the offense on the victim
23 and wider community, the availability of the alternative sentence,
24 and the nature of the violation. An alternative sentence may, if
25 the entity chosen for community service is amenable, include an
26 order requiring the offender to complete a period of community
27 service intended to enhance the offender's understanding of the
28 impact of the offense upon the victim and wider community.

29 (7) The court may order a sentence imposed for a violation of

1 this section be served consecutively to a sentence imposed for any
2 other crime, including any other violation of law arising out of
3 the same transaction as the violation of this section.

4 (8) A criminal penalty provided for under this section may be
5 imposed in addition to any penalty that may be imposed for any
6 other criminal offense arising from the same conduct or for any
7 contempt of court arising from the same conduct.

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

10 (10) As used in this section:

11 (a) "Reckless disregard" means to consciously disregard a
12 substantial and unjustifiable risk that a statement will be viewed
13 as threatening violence.

14 (b) "Stalk" means stalking as that term is defined in section
15 411h.

16 (c) "True threat" means a statement in which the speaker means
17 to communicate a serious expression of an intent to commit an act
18 of unlawful violence to a particular individual or group of
19 individuals, including unlawful property damage to the property of
20 a particular individual or group of individuals. A true threat
21 includes such a communication made with reckless disregard. A
22 speaker is not liable for communicating a true threat if the
23 speaker was unaware that the individual or the group of individuals
24 could regard the statement as threatening violence.