

HOUSE BILL NO. 4474

April 26, 2023, Introduced by Reps. Arbit, Puri, Grant, MacDonell, Tsernoglou, Wegela, Morgan, Paiz, Churches, Glanville, Hoskins, McFall, Andrews, Farhat, Coffia, Martus, Breen, McKinney, Wilson, Skaggs, Steckloff, Rogers, Tyrone Carter, Byrnes, Price, Rheingans, Weiss, Brenda Carter, Miller, Hope, Hood, Hill, Brabec, Scott, Conlin, Dievendorf, Young, O'Neal, Neeley, Morse, Brixie, Fitzgerald, Edwards, Aiyash and Whitsett and referred to the Committee on Criminal Justice.

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 is guilty of ~~ethnic intimidation~~**a**
2 **hate crime** if that person maliciously, ~~and with specific intent to~~
3 ~~intimidate or harass another person because of that person's race,~~
4 ~~color, religion, gender, or national origin,~~ does any of the
5 ~~following:~~

1 ~~(a) Causes physical contact with another person.~~

2 ~~(b) Damages, destroys, or defaces any real or personal~~
 3 ~~property of another person.~~

4 ~~(c) Threatens, by word or act, to do an act described in~~
 5 ~~subdivision (a) or (b), if there is reasonable cause to believe~~
 6 ~~that an act described in subdivision (a) or (b) will~~
 7 ~~occur.~~ **intimidates or harasses another individual; causes bodily**
 8 **injury or severe mental anguish to another individual; uses force**
 9 **or violence on another individual; damages, destroys, or defaces**
 10 **any real, personal, digital, or online property of another**
 11 **individual; or threatens, by word or act, to do any of the above-**
 12 **described actions, if the person, regardless of the existence of**
 13 **any other motivating factors, intentionally targets the individual**
 14 **or engages in the action based in whole or in part on any of the**
 15 **following actual or perceived characteristics of another**
 16 **individual:**

17 (a) Race or color.

18 (b) Religion.

19 (c) Sex.

20 (d) Sexual orientation.

21 (e) Gender identity or expression.

22 (f) Physical or mental disability.

23 (g) Age.

24 (h) Ethnicity.

25 (i) National origin.

26 (j) Association or affiliation with an individual or group of
 27 individuals with a characteristic described under subdivisions (a)
 28 to (i).

29 (2) ~~Ethnic intimidation~~ **Except as provided in subsection (3),**

1 a person who violates subsection (1) is guilty of a felony
2 punishable by imprisonment for not more than 2 years, or by a fine
3 of not more than ~~\$5,000.00~~, ~~\$2,000.00~~, or both.

4 (3) If any of the following conditions apply, a person who
5 violates subsection (1) is guilty of a felony punishable by
6 imprisonment for not more than 5 years, or by a fine of not more
7 than \$10,000.00, or both:

8 (a) The violation results in bodily injury or severe mental
9 anguish.

10 (b) The person has 1 or more prior convictions for violating
11 subsection (1).

12 (c) A victim of the violation of subsection (1) is less than
13 18 years of age.

14 (d) The person commits the violation of subsection (1) in
15 concert with 1 or more other individuals.

16 (e) The person is in possession of a firearm during the
17 commission of the violation of subsection (1).

18 (4) If the prosecuting attorney intends to seek an enhanced
19 sentence based upon the defendant having 1 or more prior
20 convictions under subsection (3)(b), the prosecuting attorney shall
21 include on the complaint and information a statement listing the
22 prior conviction or convictions. The existence of the defendant's
23 prior conviction or convictions must be determined by the court,
24 without a jury, at sentencing or at a separate hearing for that
25 purpose before sentencing. The existence of a prior conviction may
26 be established by any evidence relevant for that purpose,
27 including, but not limited to, 1 or more of the following:

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

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

1 (c) Information contained in a presentence report.

2 (d) The defendant's statement.

3 (5) In lieu of or in addition to the penalties described in
4 subsection (2), the court may impose an alternative sentence
5 described under this subsection. In determining the suitability of
6 an alternative sentence described under this subsection, the court
7 shall consider the criminal history of the offender, the impact of
8 the offense on the victim and wider community, the availability of
9 the alternative sentence, and the nature of the violation. An
10 alternative sentence may include an order requiring the offender to
11 complete a period of community service intended to enhance the
12 offender's understanding of the impact of the offense upon the
13 victim and wider community. Community service ordered under this
14 subdivision must be performed with the consent of and in support of
15 the community targeted in the violation.

16 (6) In addition to the penalties described in subsection (3),
17 the court may impose an alternative sentence described under this
18 subsection. In determining the suitability of an alternative
19 sentence described under this subsection, the court shall consider
20 the criminal history of the offender, the impact of the offense on
21 the victim and wider community, the availability of programs to
22 facilitate the alternative sentence, and the nature of the
23 violation. An alternative sentence may include an order requiring
24 the offender to complete a period of community service intended to
25 enhance the offender's understanding of the impact of the offense
26 upon the victim and wider community. Community service ordered
27 under this subsection must be performed with the consent of and in
28 support of the community targeted in the violation.

29 (7) ~~(3)~~—Regardless of the existence or outcome of any criminal

1 prosecution, ~~a person~~**an individual** who suffers **bodily injury**, ~~to~~
 2 ~~his or her person~~**severe mental anguish**, or damage to ~~his or her~~
 3 **the individual's** property as a result of ~~ethnic intimidation~~**a hate**
 4 **crime** may bring a civil cause of action against the person who
 5 commits the offense to secure an injunction, actual damages,
 6 including damages for ~~emotional distress~~**infliction of severe**
 7 **mental anguish**, or other appropriate relief. A plaintiff who
 8 prevails in a civil action brought ~~pursuant to~~**under** this section
 9 may recover both of the following:

10 (a) Damages in the amount of 3 times the actual damages
 11 described in this subsection or ~~\$2,000.00~~**\$25,000.00**, whichever is
 12 greater.

13 (b) Reasonable attorney fees and costs.

14 **(8) As used in this section:**

15 (a) **"Gender identity or expression"** means having or being
 16 **perceived as having a gender-related self-identity or expression**
 17 **whether or not associated with an individual's assigned sex at**
 18 **birth.**

19 (b) **"Intimidate or harass"** means a willful course of conduct
 20 **involving repeated or continuing harassment of another individual**
 21 **that would cause a reasonable individual to feel terrorized,**
 22 **frightened, intimidated, threatened, harassed, or molested and that**
 23 **actually causes the victim to feel terrorized, frightened,**
 24 **intimidated, threatened, harassed, or molested.**

25 (c) **"Severe mental anguish"** means a substantial change in
 26 **mental functioning that can be perceived by another individual and**
 27 **caused by a defendant in 1 or more of the following ways:**

28 (i) **Intentionally causing great bodily injury to another**
 29 **individual or threatening to cause great bodily harm to an**

1 individual.

2 (ii) Administering mind-altering substances or performing a
3 procedure that would disrupt another individual's senses or
4 personality, or threatening to do so.

5 (iii) Threatening another individual with imminent death.

6 (iv) Threatening that another individual will imminently be
7 killed, subjected to great bodily injury, or given a mind-altering
8 substance meant to disrupt the senses or personality.