

SUBSTITUTE FOR
HOUSE BILL NO. 4474

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:~~
6 ~~(a) Causes physical contact with another person.~~
7 ~~(b) Damages, destroys, or defaces any real or personal~~
8 ~~property of another person.~~
9 ~~(c) Threatens, by word or act, to do an act described in~~

1 ~~subdivision (a) or (b), if there is reasonable cause to believe~~
2 ~~that an act described in subdivision (a) or (b) will occur.~~and
3 intentionally does any of the following to an individual based in
4 whole or in part on an actual or perceived characteristic of that
5 individual listed under subsection (2), regardless of the existence
6 of any other motivating factors:

7 (a) Uses force or violence on another individual.

8 (b) Causes bodily injury to another individual.

9 (c) Intimidates another individual.

10 (d) Damages, destroys, or defaces any real, personal, digital,
11 or online property of another individual without the consent of
12 that individual.

13 (e) Threatens, by word or act, to do any of the actions
14 described under subdivisions (a) to (d).

15 (2) The actual or perceived characteristics of another
16 individual referenced under subsection (1) include all of the
17 following:

18 (a) Race or color.

19 (b) Religion.

20 (c) Sex.

21 (d) Sexual orientation.

22 (e) Gender identity or expression.

23 (f) Physical or mental disability.

24 (g) Age.

25 (h) Ethnicity.

26 (i) National origin.

27 (j) Association or affiliation with an individual or group of
28 individuals in whole or in part based on a characteristic described
29 under subdivisions (a) to (i).

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

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

9 (a) The violation results in bodily injury.

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 and the offender is at least 19 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 (5) If the prosecuting attorney intends to seek an enhanced
19 sentence based upon the defendant having 1 or more prior
20 convictions under subsection (4) (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 (6) In lieu of or in addition to the penalties described in
4 subsection (3), the court may, if the defendant consents, impose an
5 alternative sentence described under this subsection. In
6 determining the suitability of an alternative sentence described
7 under this subsection, the court shall consider the criminal
8 history of the offender, the impact of the offense on the victim
9 and wider community, the availability of the alternative sentence,
10 and the nature of the violation. An alternative sentence may, if
11 the entity chosen for community service is amenable, include an
12 order requiring the offender to complete a period of community
13 service intended to enhance the offender's understanding of the
14 impact of the offense upon the victim and wider community.

15 (7) The court may, if the defendant consents, reduce any
16 penalty imposed under subsection (4) by not more than 20%, and
17 impose an alternative sentence described under this subsection. In
18 determining the suitability of an alternative sentence described
19 under this subsection, the court shall consider the criminal
20 history of the offender, the impact of the offense on the victim
21 and wider community, the availability of the alternative sentence,
22 and the nature of the violation. An alternative sentence may, if
23 the entity chosen for community service is amenable, include an
24 order requiring the offender to complete a period of community
25 service intended to enhance the offender's understanding of the
26 impact of the offense upon the victim and wider community.

27 (8) ~~(3)~~ Regardless of the existence or outcome of any criminal
28 prosecution, ~~a person~~ **an individual** who suffers **bodily** injury ~~to~~
29 ~~his or her person~~ or damage to ~~his or her~~ **the individual's** property

1 as a result of ~~ethnic intimidation~~**a hate crime** may bring a civil
2 cause of action against the person who commits the offense to
3 secure an injunction, actual damages, including damages for
4 emotional distress, or other appropriate relief. A plaintiff who
5 prevails in a civil action brought ~~pursuant to~~**under** this section
6 may recover both of the following:

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

10 (b) Reasonable attorney fees and costs.

11 **(9) As used in this section:**

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

16 (b) **"Intimidate" means a willful course of conduct involving**
17 **repeated or continuing harassment of another individual that would**
18 **cause a reasonable individual to feel terrorized, frightened, or**
19 **threatened, and that actually causes the victim to feel terrorized,**
20 **frightened, or threatened. Intimidate does not include**
21 **constitutionally protected activity or conduct that serves a**
22 **legitimate purpose.**