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## HATE CRIMES BASED ON SEXUAL ORIENTATION

### House Bill 4674 as introduced First Analysis (6-11-98)

**Sponsor: Rep. Lynn Martinez**  
**Committee: Constitutional and Civil  
Rights**

#### ***THE APPARENT PROBLEM:***

Over the past decade, a number of state and federal laws have been adopted that address the problem of "hate" or "bias" crimes, crimes against people (or their property) based on who the individuals are or are perceived by the attacker to be. In 1988, the Michigan legislature enacted an amendment to the Michigan Penal Code (Public Act 371 of 1988) that is known as the "ethnic intimidation act." The amendment added the new crime of "ethnic intimidation," a felony punishable by imprisonment for up to two years, or a fine of up to \$5,000, or both, and allows a civil cause of action against those who commit such crimes. Two years later, in 1990, Congress enacted the Hate Crimes Statistics Act (Public Law 101-275), which requires the attorney general (who has delegated this task to the Federal Bureau of Investigation) to acquire data "about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property." As used in the federal law, "sexual orientation" means consensual homosexuality or heterosexuality. Although the federal law did not require participation by states, in 1991, the Michigan legislature amended the Uniform Crime Reporting Act (Public Act 172 of 1991) to require local police chiefs and county sheriffs to report information on crimes motivated by prejudice or bias based upon race, ethnicity, religion, gender, or sexual orientation. In the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), Congress expanded coverage of the Hate Crime Statistics Act to require reporting of crimes based on "disability." This act also includes a provision, originally introduced as separate legislation, that requires sentencing enhancement "for offenses that the finder of fact at trial determines beyond a reasonable doubt are hate crimes," defined as "a crime in which the defendant intentionally selects a victim, or in the

case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person."

Legislation has been introduced that would criminalize violence against individuals that was based on prejudice against sexual orientation.

#### ***THE CONTENT OF THE BILL:***

Public Act 371 of 1988 added the crime of "ethnic intimidation" to the Michigan Penal Code. Under this provision of the penal code (Section 147b), a person is guilty of the crime of ethnic intimidation if he or she maliciously -- and with specific intent to intimidate or harass another person because of that person's race, religion, gender, or national origin -- does any of the following: (a) causes physical contact with another person, (b) damages, destroys, or defaces any real or personal property of another person, or (c) threatens (by word or act) to make physical contact or damage property, if there is reasonable cause to believe that the threatened act will occur.

The bill would amend the code to add "sexual orientation" to the list of categories protected under the ethnic intimidation law, and would change references to "ethnic intimidation" to "felonious assault."

MCL 750.147b

#### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would not have any fiscal impact on the state or local level. (10-13-98)

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**ARGUMENTS:****For:**

Michigan law currently criminalizes violent behavior against individuals when that behavior is based on the victim's race, color, religion, gender, or national origin -- but it does not criminalize violence against individuals that is based on the offender's prejudice or bias against a particular sexual orientation, despite ample evidence that such violence against gays and lesbians clearly exists and may even be increasing. At the same time, Michigan law also requires that crimes "motivated by prejudice or bias based upon race, ethnic origin, religion, gender, or sexual orientation" be reported, which has the odd result of requiring the reporting of crimes that the Michigan Penal Code does not recognize. Violence against gays and lesbians should be criminalized, just as violence against people based on other identifying characteristics such as race, color, religion, gender, or national origin has been criminalized. "Violent bigotry" based on sexual orientation is just as reprehensible as violent bigotry based on race, ethnicity, religion, ethnicity, or gender, and should be just as criminal. As of last year, 19 states (and the federal government) included sexual orientation in their hate crimes laws. The 1997 figure was up from 16 states the year before, and is a trend that clearly will continue. In 1996, according to the federal Justice Department, 12 percent of all hate crimes reported nationwide (a total of 1,258 crimes) were motivated by sexual orientation bias. Hate crimes injure not just the victims of such crimes, but the minority community to which the victim belongs and the entire community in general. In the interest of fairness and justice to all of its citizens, it is time for Michigan, too, to include sexual orientation in its "hate crimes" provisions. Inclusion of "sexual orientation" in the state penal code would furnish guidance to law enforcement agencies in setting their priorities, would provide a tool for prosecutors in the legal process, and would indicate the state's public commitment to the safety of all citizens.

**Against:**

Opponents of the bill argue that gays and lesbians already are adequately protected under the state's general laws prohibiting violence against individuals. Some people further argue that including "sexual orientation" in the penal code's ethnic intimidation provisions would be to sanction, if not promote, a lifestyle that some people find morally reprehensible or against their religious beliefs. Some people also argue that the bill would give gays and lesbians

"special rights," over and above those held by everyone else, and that this is unfair.

**Response:**

As the statistics about violence against gays and lesbians show, such violence is both increasing and increasingly vicious. Gays and lesbians are not adequately protected under existing law, and including "sexual orientation" in the penal code's "ethnic intimidation" provisions (which the bill would rename "felonious assault") would no more endorse or promote homosexuality than the current provisions endorse or promote one race, religion, ethnic group, or gender over another. Nor would the bill give gays and lesbians any "special rights" not held by heterosexual people; the bill would protect all people regardless of their sexual orientation. Finally, in a pluralistic democracy, the law must protect all of its citizens and not implement particular religious doctrines.

**POSITIONS:**

The Triangle Foundation supports the bill. (6-9-98)

The Anti-Defamation League (ADL) -- Michigan Regional Office supports the bill. (10-14-97)

The Jewish Community Council of Metropolitan Detroit (which represents over 200 Jewish civic, religious, social and fraternal organizations throughout Metro Detroit) supports the bill. (10-14-97)

The Michigan Jewish Conference supports the bill. (6-9-98)

The Michigan Police Legislative Coalition supports the bill. (6-9-98)

The National Association of Social Workers supports the bill. (10-13-97)

The National Organization for Women/Michigan Conference supports the bill. (10-14-97)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

