

SUBSTITUTE FOR
HOUSE BILL NO. 5400

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**, maliciously ~~r~~
3 ~~and with specific intent to intimidate or harass another person~~
4 ~~because of that person's race, color, religion, gender, or national~~
5 ~~origin, does any of the following:~~**intentionally does any of the**
6 **following to an individual based in whole or in part on an actual**
7 **or perceived characteristic of that individual listed under**
8 **subsection (2), regardless of the existence of any other motivating**
9 **factors:**

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

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

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

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

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

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

16 (a) **Race or color.**

17 (b) **Religion.**

18 (c) **Sex.**

19 (d) **Sexual orientation.**

20 (e) **Gender identity or expression.**

21 (f) **Physical or mental disability.**

22 (g) **Age.**

23 (h) **Ethnicity.**

24 (i) **National origin.**

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

28 (3) ~~(2) Ethnic intimidation~~ **An individual who violates this**
29 **section is guilty of a crime punishable as follows:**

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

(b) An individual who commits either of the following violations is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both:

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

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

(c) An individual who commits any of the following violations is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both:

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

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

(iii) A violation of subsection (1) committed against a victim who is less than 18 years of age by an individual who is 19 years of age or older.

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

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

1 the following:

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

5 (b) Reasonable attorney fees and costs.

6 (5) If the prosecuting attorney intends to seek an enhanced
7 sentence based upon the defendant having 1 or more prior
8 convictions under subsection (3) (b) (ii) or (c) (i), the prosecuting
9 attorney shall include on the complaint and information a statement
10 listing the prior conviction or convictions. The existence of the
11 defendant's prior conviction or convictions must be determined by
12 the court, without a jury, at sentencing or at a separate hearing
13 for that purpose before sentencing. The existence of a prior
14 conviction may be established by any evidence relevant for that
15 purpose, including, but not limited to, 1 or more of the following:

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

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

18 (c) Information contained in a presentence report.

19 (d) The defendant's statement.

20 (6) In lieu of or in addition to the penalties described in
21 subsection (3) (a), the court may, if the defendant consents, impose
22 an alternative sentence described under this subsection. In
23 determining the suitability of an alternative sentence described
24 under this subsection, the court shall consider the criminal
25 history of the offender, the impact of the offense on the victim
26 and wider community, the availability of the alternative sentence,
27 and the nature of the violation. An alternative sentence may, if
28 the entity chosen for community service is amenable, include an
29 order requiring the offender to complete a period of community

1 service intended to enhance the offender's understanding of the
2 impact of the offense upon the victim and wider community.

3 (7) The court may, if the defendant consents, reduce any
4 penalty imposed under subsection (3)(b) or (c) by not more than 20%
5 and impose an alternative sentence described under this subsection.
6 In 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 (8) The court may order a sentence imposed for a violation of
16 this section be served consecutively to a sentence imposed for any
17 other crime, including any other violation of law arising out of
18 the same transaction as the violation of this section.

19 (9) A criminal penalty provided for under this section may be
20 imposed in addition to any penalty that may be imposed for any
21 other criminal offense arising from the same conduct or for any
22 contempt of court arising from the same conduct.

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

25 (11) As used in this section:

26 (a) "Reckless disregard" means to consciously disregard a
27 substantial and unjustifiable risk that a statement will be viewed
28 as threatening violence.

29 (b) "Stalk" means stalking as that term is defined in section

1 411h.

2 (c) "True threat" means a statement in which the speaker means
3 to communicate a serious expression of an intent to commit an act
4 of unlawful violence to a particular individual or group of
5 individuals, including unlawful property damage to the property of
6 a particular individual or group of individuals. A true threat
7 includes such a communication made with reckless disregard. A
8 speaker is not liable for communicating a true threat if the
9 speaker was unaware that the individual or the group of individuals
10 could regard the statement as threatening violence.