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BILL ANALYSIS

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House Bill 4113 (Substitute S-2 as reported)

Sponsor: Representative David Honigman

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 12-8-88

RATIONALE

Reportedly, the expression of bigotry in the form of criminal acts against certain segments of the population is on the rise. According to the Anti-Defamation League of B'nai B'rith, reports of anti-Semitic vandalism in Michigan in 1986 were nearly triple what they were in 1985. Incidents against other minority groups, including Hispanics, blacks, and Asians, also appear to have increased. To give more force to the State's opposition to such incidents, some have suggested imposing additional criminal penalties, as well as allowing victims of bigotry to sue the offenders for increased damages.

CONTENT

The bill would amend the Michigan Penal Code to provide that a person would be guilty of "ethnic intimidation" if he or she did any of the following "maliciously, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin":

- Caused physical contact with another person.
- Damaged, destroyed, or defaced any real or personal property of another person.
- Threatened, by word or act, to cause physical contact or to damage, destroy, or deface property, if there were reasonable cause to believe that the act would occur.

Ethnic intimidation would be a felony punishable by imprisonment for not more than two years, a maximum fine of \$5,000, or both. Regardless of the existence or outcome of any criminal action, a person who was a victim of ethnic intimidation could bring a civil action against the person who committed the offense. Such an action could be to secure an injunction, to recover actual damages including damages for emotional distress, or to obtain other appropriate relief. A plaintiff who prevailed in a civil suit could recover treble damages or \$2,000, whichever was greater, and reasonable attorney fees and costs.

Proposed MCL 750.147b

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute that refers to the offense as "ethnic intimidation"; would require the action to be done maliciously and with specific intent to intimidate or harass, rather than simply motivated by the victim's race, religion, etc.; specified that the offender would have to have caused physical contact, damaged property, or threatened physical contact or damage; and deleted the characteristics of mental or physical disability, and sexual orientation, from those covered by the bill.

FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. Costs would be dependent on the number of violations and convictions.

ARGUMENTS**Supporting Argument**

By creating a separate offense of ethnic intimidation that would be punishable by stiff penalties, and offering crime victims a new avenue for redress, the bill would make it clear that bigotry-motivated violence is especially repugnant to society and not to be countenanced. The bill also would demonstrate the State's sensitivity to minorities who are victimized because of their race but may be reluctant to report a crime and deal with law enforcement agencies. The bill is similar to a Federal civil rights law, and would bring Michigan into line with a number of other states that have enacted this type of statute.

Opposing Argument

Unlike the House-passed version of the bill, the Senate substitute would fail to protect members of the homosexual community who are victimized because of their sexual preference. One can argue that a person's sexual orientation is no more volitional than his or her race, and crimes motivated by either characteristic are equally reprehensible.

Opposing Argument

Some have raised the concern that creating a crime of "ethnic intimidation" could lead to prosecutions based merely on the suspicion that a person had done something illegal.

Response: Under the Senate substitute, the defendant actually would have to have caused physical contact, damaged property, or threatened physical contact or damage — all actions that could give rise to a separate prosecution. In addition, the prosecutor would have to prove that the defendant acted with malice and specific intent to intimidate or harass the victim.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

H.B. 4113 (12-8-88)