

Legislative Analysis



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BIAS-MOTIVATED CRIMES

House Bill 6340

Sponsor: Rep. Paul Condino

House Bill 6341

Sponsor: Rep. Brenda Clack

Committee: Judiciary

Complete to 11-12-08

A REVISED SUMMARY OF HOUSE BILLS 6340 AND 6341 AS INTRODUCED 7-23-08

House Bill 6340 would replace the current prohibition on ethnic intimidation with a prohibition on bias-motivated crimes, expand the categories of groups for which a crime could be considered a bias-motivated crime, increase the penalties, and define terms. House Bill 6341 would place the new penalties within the sentencing guidelines.

Under provisions of the Michigan Penal Code, ethnic intimidation is a felony punishable by up to two years imprisonment and/or a maximum fine of \$5,000. A person is guilty of ethnic intimidation if he or she maliciously, and with specific intent to intimidate or harass another person because of that individual's race, color, religion, gender, or national origin, caused physical contact with another; damages, destroys, or defaces any real or personal property of another; and/or threatens, by word or act, to do one of the fore-mentioned acts.

House Bill 6340 would amend the Michigan Penal Code (MCL 750.147b) to delete the above provision relating to a crime of ethnic intimidation. Instead, the bill would specify that a person would be guilty of a bias-motivated crime if he or she selects the target of a predicate crime based on one or more of the following characteristics -- regardless of whether or not the perpetrator's belief or perception of the characteristic is correct:

- Disability, defined to mean a determinable physical or mental characteristic of an individual that may result from disease, injury, congenital condition, or functional disorder that substantially limits one or more of the individual's major life activities.
- Gender.
- National origin or ancestry.
- Race, color, or ethnicity.
- Religion.
- Sexual orientation, gender identity, or expression of gender.
- Association with a person or group with one or more of the characteristics listed above.

Predicate Crime

A predicate crime would mean a violation of any of the following prohibited acts, but not if proof of a characteristic identified above is an element of the violation:

- Arson and burning
- Assault
- Homicide
- Acts involving explosives and bombs, and harmful devices
- False report of a violation involving explosives, bombs, and harmful devices
- Malicious and wilful mischief and destruction
- Poisoning
- Rape
- Stalking and aggravated stalking
- Terrorism
- False alarm of fire
- A violation of Sections 223 to 234c of the penal code, which pertain to various firearm violations, stun guns and tazers, armor piercing ammunition, self-defense sprays, switchblades, body armor, and the sale to a minor of a flare gun approved for emergencies involving vessels or aircraft
- Any other provision of the act that includes as an element of the offense the specific intent to intimidate or harass another person or persons.

In addition, a person who hung or otherwise displayed a noose on property; burned, or erected with intent to burn, a cross or cross-shaped object; and/or placed or displayed an object or symbol that is historically or generally understood as intended to intimidate, threaten, or harass would be considered to have injured or altered property described in several sections of Chapter LVI pertaining to malicious and wilful mischief and destruction - whether or not any physical damage was caused. The sections listed in the bill pertain to malicious and wilful destruction of personal property; police or fire department property; school buses; a person's home; boundary markers, guard-rails, highway mile markers, municipal streetlights, etc.; lawfully posted notices; and headstones, flowers, shrubs, and other grave-markers.

A predicate crime against private property would be bias-motivated if the perpetrator targeted the property because of a listed characteristic of any individual associated with the property. A predicate crime against public property would be bias-motivated if the perpetrator demonstrated the specific intent to intimidate or harass one or more individuals because of a listed characteristic.

Penalties

If the predicate crime was a misdemeanor, the penalty would be a felony punishable by not more than two years imprisonment and/or a maximum fine of \$5,000. If the predicate crime was a felony, the penalty would be a felony punishable by imprisonment within the statutory range established for the predicate crime except that the minimum and

maximum recommended sentencing range under the sentencing guidelines for that crime would have to be increased by 50 percent.

A person could not be convicted of both the predicate crime and a bias-motivated crime charged under the bill. However, the bill would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same criminal transaction.

Civil Action

Currently, regardless of the existence or outcome of any criminal prosecution, a person who suffered personal injury or property damage as a result of ethnic intimidation may bring a civil suit against the perpetrator for an injunction, actual damages, or other appropriate relief. The bill would retain this provision, but would replace the term "ethnic intimidation" with "bias-motivated crime".

House Bill 6341 would amend the Code of Criminal Procedure (MCL 777.16g) to specify that a bias-motivated crime would have a variable crime class with a variable maximum term of imprisonment. It would also specify that the crime class, offense variable level, and prior record variable level would be based on the predicate crime.

The bill is tie-barred to House Bill 6340.

FISCAL IMPACT:

The bills' fiscal impact on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. In 2007, there were 28 sentences for ethnic intimidation, the offense that the bills would replace. Of those 28 sentences, 15 were to probation, 8 to jail, 3 to prison, and 2 to some other sanction such as Holmes Youthful Trainee Act. The average appropriated cost of incarceration in a state prison is about \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The state's average cost of parole and probation supervision is about \$2,100 per supervised offender per year. Costs of any jail incarceration would be borne by the county; those costs vary by county. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

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