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BILL ANALYSIS

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Senate Bill 600 (Substitute S-3 as passed by the Senate)
Senate Bill 601 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Sylvia Santana
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 4-1-24

CONTENT

Senate Bill 601 (S-1) would amend Chapter XXI (Civil Rights) of the Michigan Penal Code to do the following:

- **Modify the prohibition against ethnic intimidation to instead prohibit a hate crime and prescribe the actions that constitute a hate crime, including the use of force or the true threat of force against an individual based on an identity or attribute of that individual.**
- **Prescribe misdemeanor and felony penalties for a violation of the bill.**
- **Allow the court to impose an alternative sentence on a defendant for a first violation or, for a second or subsequent violation, reduce a penalty by up to 20% and impose an additional alternative sentence if the defendant consented.**
- **Specify that the bill would not prohibit an individual's exercise of the constitutional right to free speech.**

Senate Bill 600 (S-3) would amend the Code of Criminal Procedure to replace the current felony for ethnic intimidation with certain hate-crime related violations and add sentencing guidelines for other felony penalties proposed by Senate Bill 601 (S-1).

Senate Bill 600 is tie-barred to Senate Bill 601.

Senate Bill 601 (S-1)

Definition of "Hate Crime"

Among other things, the Code prohibits ethnic intimidation and prescribes penalties for a violation of the prohibition. An individual is guilty of ethnic intimidation if that individual maliciously, and with specific intent to intimidate or harass based on a person's race, color, religion, gender, or national origin, does any of the following:

- Causes physical contact with another person.
- Damages, destroys, or defaces another person's real or personal property.
- Threatens, by word or act, to do one of the prior acts, if there is reasonable cause to believe that such an act will occur.

The bill would modify this concept to instead prohibit and penalize a hate crime. Under the bill, an individual would be guilty of a hate crime if that individual, based in whole or in part on another individual's actual or perceived race, color, religion, gender, sexual orientation, gender identity or expression, ethnicity, physical or mental disability, age, national origin, or association or affiliation with any such individuals, maliciously and intentionally did any of the following:

- Used force or violence against another individual.
- Caused bodily injury to another individual
- Stalked another individual.¹
- Damaged, destroyed, or defaced another person's real, personal, digital, or online property without the individual's consent.
- Made a true threat to engage in conduct described above.

Under the bill, "true threat" would mean a statement in which the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, including unlawful property damage to the property of a particular individual or group of individuals. This would include a statement made with reckless disregard.

The act of intentionally or unintentionally referencing or referring to another individual by using pronouns that were perceived to be incorrect or nonpreferred by that individual would not constitute a hate crime.

An individual who suffers injury or property damage because of ethnic intimidation may bring a civil cause of action against the perpetrator to secure an injunction, actual damages, or other appropriate relief. The bill would replace reference to "ethnic intimidation" with "hate crime".

Penalties

An individual who made a true threat to another individual as described above would be guilty of a misdemeanor punishable by up to one year's imprisonment or a maximum fine of \$1,000, or both. For a second or subsequent violation, an individual would be guilty of a felony punishable by up to two years' imprisonment or a maximum fine of \$2,000, or both.

An individual who used force or violence against, caused bodily injury to, stalked another individual, or who damaged, destroyed, or defaced another person's real, personal, digital, or online property without the individual's consent as described above would be guilty of a felony punishable by up to two years' imprisonment or a maximum fine of \$2,000, or both. For a second or subsequent violation, an individual would be guilty of a felony punishable by up to four years' imprisonment or a maximum fine of \$5,000, or both.

An individual who used force or violence against, caused bodily injury to, or stalked another individual as described above while possessing a firearm or other dangerous weapon would be guilty of a felony punishable by up to six years' imprisonment or a maximum fine of \$7,500, or both.

If an individual violated any of the prohibitions prescribed by the bill in concert with one or more individuals, or if the individual were over the age of 18 and committed such an action against an individual under the age of 18, or if the individual possessed a firearm or other dangerous weapon while making a true threat, the individual would be guilty of a felony punishable by up to four years' imprisonment or a maximum fine of \$5,000, or both.

If the prosecuting attorney intended to seek an enhanced sentence based on the defendant having one or more prior convictions that constituted a hate crime, the prosecuting attorney would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions would have to

¹ "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

Alternative Penalties

Instead of, or in addition to, the penalties described above, the court could, if the defendant consented, impose an alternative sentence for a first violation. For second or subsequent violations, a court could reduce penalties by up to 20% and impose an alternative sentence if the defendant consented.

In determining the suitability of an alternative sentence, the court would have to consider the following:

- The criminal history of the offender.
- The impact of the offense on the victim and wider community.
- The availability of the alternative sentence.
- The nature of the violation.

An alternative sentence could, if the entity chosen for community service were amenable, include an order requiring the offender to complete a period of community service intended to enhance the offender's understanding of the impact of the offense on the victim and wider community.

Other Provisions

Currently, a person who suffers injury or property damage because of ethnic intimidation may bring a civil cause of action against the person who commits the offense to secure an injunction, actual damages, or other appropriate relief. A plaintiff who prevails in a civil action may recover, in addition to reasonable attorney fees and costs, damages in the amount of three times the actual damages or \$2,000, whichever is greater. The bill would increase this amount to \$5,000.

Under the bill, the court could order a sentence imposed for a violation of the bill to be served consecutively to a sentence imposed for any other crime, including any other violation of law arising out of the same transaction as the violation.

The bill specifies that it would not prohibit an individual's exercise of the constitutional right to free speech.

Senate Bill 600 (S-3)

The bill would amend the Code of Criminal Procedure to replace the current felony for ethnic intimidation with certain hate-crime related violations. It would make a second or subsequent hate-crime related violation a Class F felony with a statutory maximum four years' imprisonment. It also would make certain hate-crime related violations committed while in possession of a firearm or other dangerous weapon a Class E felony with a statutory maximum six years' imprisonment.

MCL 777.16g (S.B. 600)
750.147b (S.B. 601)

BRIEF RATIONALE

Currently, the Michigan Penal Code prohibits ethnic intimidation, which is generally the act of harassing another person because of that person's race, religion, gender, or national origin. Some people believe that the prohibition against ethnic intimidation does not do enough to protect against intimidation based on other identities or attributes of individuals. Accordingly, it has been suggested that the prohibition be expanded to prohibit intimidation based on sexual orientation, gender identity, and age, among other attributes and identities.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

Senate Bill 601 (S-1)

The bill's criminal penalties could have a negative fiscal impact on the State and local government. Violations would be punishable as misdemeanors and felonies of different severity. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. Misdemeanor convictions could increase county jail and local probation supervision costs, which vary by jurisdiction and are thus indeterminate. Based on 2022 data, the average cost to State government for felony probation supervision is approximately \$4,800 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates for housing a prisoner in a state correctional facility range from \$98 to \$192 per day, depending on the security level of the facility. Additionally, any associated fine revenue would increase funding to public libraries.

Senate Bill 600 (S-3)

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, considering the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Fiscal Analyst: Joe Carrasco, Jr.
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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.