

House Bill 4476 (Substitute H-2 as passed by the House)
House Bill 4477 (Substitute H-3 as passed by the House)
Sponsor: Representative Noah Arbit (H.B. 4476)
Representative Ranjeev Puri (H.B. 4477)
House Committee: Criminal Justice
Senate Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

The bills would prohibit institutional desecration and prescribe misdemeanor or felony penalties for violations of the prohibition. Generally, a person would be guilty of institutional desecration if that person intentionally damaged or threatened to damage a specified institution because of the institution's association with an individual or group of individuals who may have a common identity or attribute; examples of institutions would include a religious institution, a school, a museum, or a community center, among others. The severity of penalties would depend on the amount of damages resulting from a violation and whether a perpetrator had previous institutional desecration convictions. Additionally, the bill would allow a court to impose an alternative sentence for an institutional desecration conviction based on specified criteria.

FISCAL IMPACT

House Bill 4476 (H-2) could have a negative fiscal impact on the State and local governments. Violations of its proposed criminal penalties 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. 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 \$47,500. 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. Any fiscal impact upon State or local courts is indeterminate.

House Bill 4477 (H-3) would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of 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 bill's additions to the guidelines 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.

Proposed MCL 750.147c (H.B. 4476)
MCL 777.16g (H.B. 4477)

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CONTENT

House Bill 4476 (H-2) would add Section 147c to the Michigan Penal Code to do the following:

- **Prohibit a person from committing institutional desecration against specified institutions because of the institutions' association with a group of individuals.**
- **Prescribe misdemeanor and felony penalties for violations of the bill.**

House Bill 4477 (H-3) would amend the sentencing guidelines in the Code of Criminal Procedure to include the felonies proposed by House Bill 4476 (H-2).

House Bill 4477 is tie-barred to House Bill 4476.

House Bill 4476 (H-2)

Specifically, under proposed Section 147c of the Michigan Penal Code, a person would be guilty of institutional desecration if that person maliciously and intentionally destroyed, damaged, defaced, or vandalized, or threatened to destroy, damage, deface, or vandalize any of the following, in whole or in part, because of the actual or perceived race, color, religion, sex, sexual orientation, gender identity or expression, physical or mental disability, age, ethnicity, or national origin of another individual or group of individuals, regardless of the existence of any additional motivating factors:

- A synagogue, mosque, church, temple, gurdwara, shrine, or other building, structure, or place used for religious worship or other religious purpose.
- A cemetery, mortuary, or other facility used for the purpose of burial or memorializing the dead.
- A school, educational facility, library, museum, community center, or campground.
- A business or charitable establishment, storefront, facility, office, or headquarters.
- The grounds adjacent to, and owned or rented by, any institution, facility, building, structure, or place described above.
- The digital or online assets maintained, authored, rented, or owned by any institution, facility, entity, or place described above.
- Any personal, communal, or institutional property contained in any institution, facility, building, structure, or place described above.

(The bill would define "gender identity or expression" as having or being perceived as having a gender-related self-identity or expression, whether or not associated with an individual's assigned sex at birth.)

The bill prescribes the following penalties for a violation of the prohibition against institutional desecration described above. The severity of penalties is based on the amount of destruction or injury and the number of prior convictions.

Amount of Destruction or Injury	Prior Convictions	Offense	Penalty
\$200 or less	Without prior convictions	Misdemeanor	Up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the amount of the destruction or injury, whichever was greater

\$200 or less	With one or more prior convictions	Misdemeanor	Up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the amount of the destruction or injury, whichever was greater
\$200 or more but less than \$1,000	Without prior convictions		
\$200 or more but less than \$1,000	With one or more prior convictions	Felony	Up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the amount of the destruction or injury, whichever was greater
\$1,000 or more but less than \$20,000	Without prior convictions		
\$1,000 or more but less than \$20,000	With two or more prior convictions	Felony	Up to 10 years' imprisonment and/or a maximum fine of \$15,000 or three times the amount of destruction or injury, whichever was greater
\$20,000 or more	Without prior convictions		

The bill specifies that a prior conviction would not include a misdemeanor penalty for institutional desecration resulting in destruction or injury that was \$200 or less. Additionally, the bill specifies that the amounts of the destruction or injury in separate incidents under a scheme or course of conduct within any 12-month period could be aggregated to determine the total amount of the destruction or injury.

Under the bill, if the prosecuting attorney intended to seek an enhanced sentence based on the defendant having one or more prior convictions, 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 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.

Instead of or in addition to the misdemeanor penalties prescribed by the bill, the court could, if the defendant consented, impose an alternative sentence as described below. In determining the suitability of an alternative sentence, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and wider community, the availability of the alternative sentence, and 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.

The court could, if the defendant consented, reduce a felony penalty punishable by up to five years' imprisonment and the specified fine described above by up to 20% and impose an alternative sentence. In determining the suitability of an alternative, the court would have to consider the criminal history of the offender, the impact of the offense on the victim and wider community, the availability of the alternative sentence, and the nature of the violation.

Regardless of the existence or outcome of any criminal prosecution, an entity or institution protected by the bill's prohibition that suffered damage or destruction to property could bring

a civil cause of action against the person who committed the offense to secure an injunction, actual damages, including damages for infliction of mental injury or emotional distress, or other appropriate relief. A plaintiff who prevailed in a civil action brought under the bill could recover damages in the amount of three times the actual damages or \$25,000, whichever was greater, and reasonable attorney fees.

House Bill 4477 (H-3)

The bill would add the following sentencing guidelines to the Code of Criminal Procedure, in agreement with the violations proposed under House Bill 4476 (H-2).

Violation	Category	Class	Stat Max
Institutional desecration – damages of \$20,000 or more, or \$1,000 to \$20,000 with prior convictions	Property	D	10
Institutional desecration – damages of \$1,000 to \$20,000, or \$200 to \$1,000 with prior convictions	Property	E	5

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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.