

HOUSE BILL NO. 5288

November 01, 2023, Introduced by Reps. Arbit, Grant and Puri and referred to the Committee on Criminal Justice.

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 is guilty of ~~ethnic intimidation~~**a**
2 **hate crime** if that person maliciously ~~, and with specific intent to~~
3 ~~intimidate or harass another person because of that person's race,~~
4 ~~color, religion, gender, or national origin,~~ does any of the
5 ~~following:~~

1 ~~(a) Causes physical contact with another person.~~

2 ~~(b) Damages, destroys, or defaces any real or personal~~
3 ~~property of another person.~~

4 ~~(c) Threatens, by word or act, to do an act described in~~
5 ~~subdivision (a) or (b), if there is reasonable cause to believe~~
6 ~~that an act described in subdivision (a) or (b) will occur.~~**and**
7 **intentionally does any of the following to an individual based in**
8 **whole or in part on an actual or perceived characteristic of that**
9 **individual listed under subsection (2), regardless of the existence**
10 **of any additional motivating factors:**

11 (a) Uses force or violence on another individual.

12 (b) Causes bodily injury to another individual.

13 (c) Stalks another individual.

14 (d) Damages, destroys, or defaces any real, personal, digital,
15 or online property of another individual without the consent of
16 that individual.

17 (e) Threatens, by word or act, to do any of the actions
18 described under subdivisions (a) to (d).

19 (2) The actual or perceived characteristics of another
20 individual referenced under subsection (1) include all of the
21 following:

22 (a) Race or color.

23 (b) Religion.

24 (c) Sex.

25 (d) Sexual orientation.

26 (e) Gender identity or expression.

27 (f) Physical or mental disability.

28 (g) Age.

29 (h) Ethnicity.

1 (i) National origin.

2 (j) Association or affiliation with an individual or group of
3 individuals in whole or in part based on a characteristic described
4 under subdivisions (a) to (i).

5 (3) ~~(2) Ethnic intimidation~~ Except as provided in subsection
6 (4), a person who violates subsection (1) is guilty of a felony
7 punishable by imprisonment for not more than 2-5 years, or by a
8 fine of not more than \$5,000.00, or both.

9 (4) If any of the following conditions apply, a person who
10 violates subsection (1) is guilty of a felony punishable by
11 imprisonment for not more than 10 years, or by a fine of not more
12 than \$10,000.00, or both:

13 (a) The violation results in bodily injury.

14 (b) The person has 1 or more prior convictions for violating
15 subsection (1).

16 (c) A victim of the violation of subsection (1) is less than
17 18 years of age and the offender is at least 19 years of age.

18 (d) The person commits the violation of subsection (1) in
19 concert with 1 or more other individuals.

20 (e) The person is in possession of a firearm during the
21 commission of the violation of subsection (1).

22 (5) If the prosecuting attorney intends to seek an enhanced
23 sentence based upon the defendant having 1 or more prior
24 convictions under subsection (4) (b), the prosecuting attorney shall
25 include on the complaint and information a statement listing the
26 prior conviction or convictions. The existence of the defendant's
27 prior conviction or convictions must be determined by the court,
28 without a jury, at sentencing or at a separate hearing for that
29 purpose before sentencing. The existence of a prior conviction may

1 be established by any evidence relevant for that purpose,
2 including, but not limited to, 1 or more of the following:

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

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

5 (c) Information contained in a presentence report.

6 (d) The defendant's statement.

7 (6) In lieu of or in addition to the penalties described in
8 subsection (3), the court may, if the defendant consents, impose an
9 alternative sentence described under this subsection. In
10 determining the suitability of an alternative sentence described
11 under this subsection, the court shall consider the criminal
12 history of the offender, the impact of the offense on the victim
13 and wider community, the availability of the alternative sentence,
14 and the nature of the violation. An alternative sentence may, if
15 the entity chosen for community service is amenable, include an
16 order requiring the offender to complete a period of community
17 service intended to enhance the offender's understanding of the
18 impact of the offense upon the victim and wider community.

19 (7) The court may, if the defendant consents, reduce any
20 penalty imposed under subsection (4) by not more than 20%, and
21 impose an alternative sentence described under this subsection. In
22 determining the suitability of an alternative sentence described
23 under this subsection, the court shall consider the criminal
24 history of the offender, the impact of the offense on the victim
25 and wider community, the availability of the alternative sentence,
26 and the nature of the violation. An alternative sentence may, if
27 the entity chosen for community service is amenable, include an
28 order requiring the offender to complete a period of community
29 service intended to enhance the offender's understanding of the

1 impact of the offense upon the victim and wider community.

2 (8) The court may order a sentence imposed for a violation of
3 this section be served consecutively to a sentence imposed for any
4 other crime including any other violation of law arising out of the
5 same transaction as the violation of this section.

6 (9) ~~(3)~~ Regardless of the existence or outcome of any criminal
7 prosecution, ~~a person~~ **an individual** who suffers **bodily** injury ~~to~~
8 ~~his or her person~~ or damage to ~~his or her~~ **the individual's** property
9 as a result of ~~ethnic intimidation~~ **a hate crime** may bring a civil
10 cause of action against the person who commits the offense to
11 secure an injunction, actual damages, including damages for
12 emotional distress, or other appropriate relief. A plaintiff who
13 prevails in a civil action brought ~~pursuant to~~ **under** this section
14 may recover both of the following:

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

18 (b) Reasonable attorney fees and costs.

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

21 (11) As used in this section, "stalk" means stalking as that
22 term is defined in section 411h. Stalk does not include either of
23 the following:

24 (a) Constitutionally protected free speech.

25 (b) Any other constitutionally protected activity or conduct
26 not described under subdivision (a) that serves a legitimate
27 purpose.

28 (12) Absent the concurrent commission of conduct violating
29 subsection (1), the act of intentionally or unintentionally

- 1 referencing or referring to another individual by using pronouns
- 2 that are perceived to be incorrect or nonpreferred by that
- 3 individual does not constitute a hate crime.