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SUBSTITUTE FOR
HOUSE BILL NO. 4474

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:

Sec. 147b. (1) A person is guilty of ~~ethnic intimidation~~ **a hate crime** if that person maliciously ~~, and with specific intent to intimidate or harass another person because of that person's race, color, religion, gender, or national origin,~~ does any of the following:

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

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

~~(c) Threatens, by word or act, to do an act described in subdivision (a) or (b), if there is reasonable cause to believe that an act described in subdivision (a) or (b) will occur.~~ **and intentionally does any of the following to an individual based in whole or in part on an actual or perceived characteristic of that**

individual listed under subsection (2), regardless of the existence of any other motivating factors:

- (a) Uses force or violence on another individual.
- (b) Causes bodily injury to another individual.
- (c) Intimidates another individual.

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

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

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

- (a) Race or color.
- (b) Religion.
- (c) Sex.
- (d) Sexual orientation.
- (e) Gender identity or expression.
- (f) Physical or mental disability.
- (g) Age.
- (h) Ethnicity.
- (i) National origin.

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

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

(4) If any of the following conditions apply, a person who violates subsection (1) is guilty of a felony punishable by imprisonment for not more than 5 years, or by a fine of not more than \$10,000.00, or both:

- (a) The violation results in bodily injury.
- (b) The person has 1 or more prior convictions for violating subsection (1).

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

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

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

(5) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions under subsection (4) (b), the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions must 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 may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

(6) In lieu of or in addition to the penalties described in subsection (3), the court may, if the defendant consents, impose an alternative sentence described under this subsection. In determining the suitability of an alternative sentence described under this subsection, the court shall 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 may, if the entity chosen for community service is 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 upon the victim and wider community.

(7) The court may, if the defendant consents, reduce any penalty imposed under subsection (4) by not more than 20%, and impose an alternative sentence described under this subsection. In

determining the suitability of an alternative sentence described under this subsection, the court shall 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 may, if the entity chosen for community service is 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 upon the victim and wider community.

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

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

(b) Reasonable attorney fees and costs.

(9) **As used in this section:**

(a) **"Gender identity or expression"** means 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.

(b) **"Intimidate"** means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable individual to feel terrorized, frightened, or threatened, and that actually causes the victim to feel terrorized, frightened, or threatened. Intimidate does not include constitutionally protected activity or conduct that serves a legitimate purpose.