

Legislative Analysis



BIAS-MOTIVATED CRIMES

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House Bill 4835

Sponsor: Rep. Woodrow Stanley

House Bill 4836

Sponsor: Rep. Robert Jones

Committee: Judiciary

Complete to 5-12-09

A SUMMARY OF HOUSE BILLS 4835 & 4836 AS INTRODUCED 4-28-09

House Bill 4836 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 4835 would place the new penalties within the sentencing guidelines. The bills are tie-barred to each other, meaning neither can take effect unless both are enacted.

Under provisions of the Michigan Penal Code, ethnic intimidation is a felony punishable by up to two years' imprisonment and/or a fine of up to \$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 4836 would amend the Michigan Penal Code (MCL 750.147b and 750.377d) 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, in whole or in part, 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, gender identity, or expression of gender, defined to mean a person's actual or perceived gender or gender-related appearance, self-image, behavior, or expression, whether or not traditionally associated with the person's assigned sex at birth.
- National origin or ancestry.
- Race, color, or ethnicity.

- Religion.
- Sexual orientation, defined to mean an orientation for heterosexuality, homosexuality, or bisexuality or a history of or identification with that orientation.
- Status as a veteran.
- 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 – with intent to intimidate and without the express permission of the property owner – hung, affixed, or otherwise displayed a noose on property; or, burned, or placed with intent to burn, a cross or cross-shaped object 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 lesser included 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 4835 would amend the Code of Criminal Procedure (MCL 777.16g and 777.21) 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.

Further, if the offender were being sentenced for a bias-motivated crime, the offense category, offense class, and prior record variable level would be based on the predicate crime. To determine the recommended minimum sentence range, both the lower and the upper limit of the recommended minimum sentence range for the predicate crime would be increased by 50 percent.

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 \$33,000 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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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.