

HOUSE BILL No. 4836

April 28, 2009, Introduced by Reps. Robert Jones, Stanley, Warren, Donigan, Smith, Bauer, Geiss, Young, Durhal, Leland, Scripps, Gregory, Roy Schmidt and Cushingberry and referred to the Committee on Judiciary.

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,
and by adding section 377d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 147b. ~~(1) A person is guilty of ethnic intimidation if~~
2 ~~that person maliciously, and with specific intent to intimidate or~~
3 ~~harass another person because of that person's race, color,~~
4 ~~religion, gender, or national origin, does any of the following:~~
5 — (a) ~~Causes physical contact with another person.~~
6 — (b) ~~Damages, destroys, or defaces any real or personal~~
7 ~~property of another person.~~
8 — (c) ~~Threatens, by word or act, to do an act described in~~

1 ~~subdivision (a) or (b), if there is reasonable cause to believe~~
2 ~~that an act described in subdivision (a) or (b) will occur.~~

3 ~~—— (2) Ethnic intimidation is a felony punishable by imprisonment~~
4 ~~for not more than 2 years, or by a fine of not more than \$5,000.00,~~
5 ~~or both.~~

6 (1) A PERSON IS GUILTY OF A BIAS-MOTIVATED CRIME IF THE PERSON
7 SELECTS THE TARGET OF A PREDICATE CRIME BASED IN WHOLE OR IN PART
8 ON 1 OR MORE OF THE FOLLOWING CHARACTERISTICS, REGARDLESS OF
9 WHETHER OR NOT THE PERPETRATOR'S BELIEF OR PERCEPTION OF THE
10 CHARACTERISTIC IS CORRECT:

11 (A) DISABILITY.

12 (B) GENDER, GENDER IDENTITY, OR EXPRESSION OF GENDER.

13 (C) NATIONAL ORIGIN OR ANCESTRY.

14 (D) RACE, COLOR, OR ETHNICITY.

15 (E) RELIGION.

16 (F) SEXUAL ORIENTATION.

17 (G) STATUS AS A VETERAN.

18 (H) ASSOCIATION WITH A PERSON OR GROUP WITH 1 OR MORE OF THE
19 CHARACTERISTICS IN SUBDIVISIONS (A) TO (G).

20 (2) A PREDICATE CRIME AGAINST PRIVATE PROPERTY IS BIAS-
21 MOTIVATED IF THE PERPETRATOR TARGETS THE PROPERTY BECAUSE OF A
22 CHARACTERISTIC IN SUBSECTION (1) OF ANY INDIVIDUAL ASSOCIATED WITH
23 THE PROPERTY.

24 (3) A PREDICATE CRIME AGAINST PUBLIC PROPERTY IS BIAS-
25 MOTIVATED IF THE PERPETRATOR DEMONSTRATES THE SPECIFIC INTENT TO
26 INTIMIDATE OR HARASS 1 OR MORE INDIVIDUALS BECAUSE OF A LISTED
27 CHARACTERISTIC.

1 (4) A BIAS-MOTIVATED CRIME IS A FELONY PUNISHABLE AS FOLLOWS:

2 (A) IF THE PREDICATE CRIME IS A MISDEMEANOR, BY IMPRISONMENT
3 FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$5,000.00, OR
4 BOTH.

5 (B) IF THE PREDICATE CRIME IS A FELONY, BY IMPRISONMENT WITHIN
6 THE STATUTORY RANGE ESTABLISHED FOR THE PREDICATE CRIME EXCEPT THAT
7 THE MINIMUM AND MAXIMUM RECOMMENDED SENTENCING RANGE UNDER THE
8 SENTENCING GUIDELINES FOR THAT CRIME SHALL BE INCREASED BY 50% AS
9 PROVIDED IN SECTION 21 OF CHAPTER XVII OF THE CODE OF CRIMINAL
10 PROCEDURE, 1927 PA 175, MCL 777.21.

11 (5) A PERSON SHALL NOT BE CONVICTED OF BOTH THE LESSER
12 INCLUDED PREDICATE CRIME AND A BIAS-MOTIVATED CRIME CHARGED UNDER
13 THIS SECTION. THIS SECTION DOES NOT PROHIBIT A PERSON FROM BEING
14 CHARGED WITH, CONVICTED OF, OR SENTENCED FOR ANY OTHER VIOLATION OF
15 LAW ARISING OUT OF THE SAME CRIMINAL TRANSACTION.

16 (6) ~~(3)~~ Regardless of the existence or outcome of any criminal
17 prosecution, a person who suffers injury to his or her person or
18 damage to his or her property as a result of ~~ethnic intimidation~~ A
19 **BIAS-MOTIVATED CRIME** may bring a civil cause of action against the
20 person who commits the offense to secure an injunction, actual
21 damages, including damages for emotional distress, or other
22 appropriate relief. A plaintiff who prevails in a civil action
23 brought pursuant to this section may recover both of the following:

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

26 (b) Reasonable attorney fees and costs.

27 (7) AS USED IN THIS SECTION:

1 (A) "DISABILITY" MEANS A DETERMINABLE PHYSICAL OR MENTAL
2 CHARACTERISTIC OF AN INDIVIDUAL THAT MAY RESULT FROM DISEASE,
3 INJURY, CONGENITAL CONDITION, OR FUNCTIONAL DISORDER THAT
4 SUBSTANTIALLY LIMITS 1 OR MORE OF THE INDIVIDUAL'S MAJOR LIFE
5 ACTIVITIES.

6 (B) "GENDER, GENDER IDENTITY, OR EXPRESSION OF GENDER" MEANS A
7 PERSON'S ACTUAL OR PERCEIVED GENDER OR GENDER-RELATED APPEARANCE,
8 SELF-IMAGE, BEHAVIOR, OR EXPRESSION, WHETHER OR NOT TRADITIONALLY
9 ASSOCIATED WITH THE PERSON'S ASSIGNED SEX AT BIRTH.

10 (C) "PREDICATE CRIME" MEANS A VIOLATION OF ANY OF THE
11 FOLLOWING, BUT NOT IF PROOF OF A CHARACTERISTIC IDENTIFIED IN
12 SUBSECTION (1) (A) TO (G) IS AN ELEMENT OF THE VIOLATION:

13 (i) CHAPTER X.

14 (ii) CHAPTER XI.

15 (iii) CHAPTER XXXIII.

16 (iv) CHAPTER XLV.

17 (v) CHAPTER LVI.

18 (vi) CHAPTER LXIV.

19 (vii) CHAPTER LXXVI.

20 (viii) CHAPTER LXXXIII-A.

21 (ix) SECTIONS 223 TO 234C.

22 (x) SECTION 240.

23 (xi) SECTION 411A(2).

24 (xii) SECTION 411H OR 411I.

25 (xiii) ANY OTHER PROVISION OF THIS ACT THAT INCLUDES AS AN
26 ELEMENT OF THE OFFENSE THE SPECIFIC INTENT TO INTIMIDATE OR HARASS
27 ANOTHER PERSON OR PERSONS.

1 (D) "SEXUAL ORIENTATION" MEANS AN ORIENTATION FOR
2 HETEROSEXUALITY, HOMOSEXUALITY, OR BISEXUALITY OR A HISTORY OF OR
3 IDENTIFICATION WITH THAT ORIENTATION.

4 SEC. 377D. FOR PURPOSES OF SECTIONS 377A TO 377C, 380, 383,
5 AND 387, A PERSON WHO, WITH INTENT TO INTIMIDATE, DOES ANY OF THE
6 FOLLOWING ON PROPERTY WITHOUT THE EXPRESS PERMISSION OF THE
7 PROPERTY OWNER IS CONSIDERED TO HAVE INJURED OR ALTERED THAT
8 PROPERTY, WHETHER OR NOT ANY PHYSICAL DAMAGE IS CAUSED:

9 (A) HANGS, AFFIXES, OR OTHERWISE PLACES A NOOSE ON THE
10 PROPERTY.

11 (B) BURNS, OR PLACES WITH INTENT TO BURN, A CROSS OR CROSS-
12 SHAPED OBJECT ON THE PROPERTY.

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No.____ or House Bill No. 4835(request no.
15 01144'09 a) of the 95th Legislature is enacted into law.