

SENATE BILL No. 497

April 30, 2009, Introduced by Senator CLARKE 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~~
 9 ~~subdivision (a) or (b), if there is reasonable cause to believe~~

1 ~~that an act described in subdivision (a) or (b) will occur.~~

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

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

10 (A) DISABILITY.

11 (B) GENDER.

12 (C) NATIONAL ORIGIN OR ANCESTRY.

13 (D) RACE, COLOR, OR ETHNICITY.

14 (E) RELIGION.

15 (F) SEXUAL ORIENTATION, GENDER IDENTITY, OR EXPRESSION OF
16 GENDER.

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

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

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

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

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

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

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

15 (6) ~~(3)~~—Regardless of the existence or outcome of any criminal
16 prosecution, a person who suffers injury to his or her person or
17 damage to his or her property as a result of ~~ethnic intimidation~~
18 **BIAS-MOTIVATED CRIME** may bring a civil cause of action against the
19 person who commits the offense to secure an injunction, actual
20 damages, including damages for emotional distress, or other
21 appropriate relief. A plaintiff who prevails in a civil action
22 brought pursuant to this section may recover both of the following:

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

25 (b) Reasonable attorney fees and costs.

26 (7) AS USED IN THIS SECTION:

27 (A) "DISABILITY" MEANS A DETERMINABLE PHYSICAL OR MENTAL

1 CHARACTERISTIC OF AN INDIVIDUAL THAT MAY RESULT FROM DISEASE,
2 INJURY, CONGENITAL CONDITION, OR FUNCTIONAL DISORDER THAT
3 SUBSTANTIALLY LIMITS 1 OR MORE OF THE INDIVIDUAL'S MAJOR LIFE
4 ACTIVITIES.

5 (B) "PREDICATE CRIME" MEANS A VIOLATION OF ANY OF THE
6 FOLLOWING, BUT NOT IF PROOF OF A CHARACTERISTIC IDENTIFIED IN
7 SUBSECTION (1) (A) TO (F) IS AN ELEMENT OF THE VIOLATION:

8 (i) CHAPTER X.

9 (ii) CHAPTER XI.

10 (iii) CHAPTER XXXIII.

11 (iv) CHAPTER XLV.

12 (v) CHAPTER LVI.

13 (vi) CHAPTER LXIV.

14 (vii) CHAPTER LXXVI.

15 (viii) CHAPTER LXXXIII-A.

16 (ix) SECTIONS 223 TO 234C.

17 (x) SECTION 240.

18 (xi) SECTION 411A(2).

19 (xii) SECTION 411H OR 411I.

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

23 SEC. 377D. FOR PURPOSES OF SECTIONS 377A TO 377C, 380, 383,
24 AND 387, A PERSON WHO DOES ANY OF THE FOLLOWING ON THE PROPERTY OF
25 ANOTHER PERSON WITHOUT THAT PERSON'S CONSENT IS CONSIDERED TO HAVE
26 INJURED OR ALTERED THAT PROPERTY, WHETHER OR NOT ANY PHYSICAL
27 DAMAGE IS CAUSED:

1 (A) HANGS OR OTHERWISE DISPLAYS A NOOSE ON THE PROPERTY.

2 (B) BURNS, OR ERECTS WITH INTENT TO BURN, A CROSS OR CROSS-
3 SHAPED OBJECT ON THE PROPERTY.

4 (C) PLACES OR DISPLAYS ON THE PROPERTY AN OBJECT OR SYMBOL
5 THAT IS HISTORICALLY OR GENERALLY UNDERSTOOD AS INTENDED TO
6 INTIMIDATE, THREATEN, OR HARASS.