



H.B. 277

123rd General Assembly
(As Introduced)

Reps. Beatty, Allen, Barnes, Barrett, Bender, Britton, Flannery, Hartnett, Healy, Jones, Logan, R. Miller, Opfer, Pringle, Sykes

BILL SUMMARY

- Broadens the scope of ethnic intimidation by also prohibiting the commission of specified offenses by reason of the gender, disability, sexual orientation, or ancestry of a person or group of persons.
- Designates the expanded offense of ethnic intimidation, when committed by an organization, as "domestic terrorism."
- Provides for enhanced penalties and increased fines for offenses in which the offender purposely selects the person or property that is the subject of the offense because of a person's race, color, religion, gender, disability, sexual orientation, national origin, or ancestry.
- Provides increased fines for offenses committed by organizations in which the organization purposely selects the person or property that is the subject of the offense because of a person's race, color, religion, gender, disability, sexual orientation, national origin, or ancestry.

CONTENT AND OPERATION

Ethnic intimidation and domestic terrorism

Existing law

Existing law prohibits a person from committing aggravated menacing, menacing, criminal damaging or endangering, criminal mischief, or certain types of telecommunications harassment (see **COMMENT**) by reason of the race, color, religion, or national origin of another person or group of persons. A person who violates the prohibition is guilty of ethnic intimidation, an offense of the next

higher degree than the offense the commission of which is a necessary element of ethnic intimidation. (Sec. 2927.12.)

Operation of the bill

Ethnic intimidation. The bill expands the scope of the offense of ethnic intimidation by prohibiting any person from committing the five specified offenses by reason of the race, color, religion, national origin (existing law), *gender*, *disability*, sexual orientation, or ancestry (added by bill) of another person or group of persons. It does not change the penalty for the offense. (Sec. 2927.12(A).)

Domestic terrorism. The bill prohibits an organization (see "**Definitions**," below) from committing ethnic intimidation if one or more of the following occurs (sec. 2927.12(B)):

(1) An officer, agent, or employee of the organization commits the offense and, in so doing, acts on behalf of the organization and within the scope of the officer's, agent's, or employee's office or employment in the organization.

(2) The board of directors, trustees, managers, or partners of the organization authorize, request, command, or tolerate an ethnic intimidation violation and, in so doing, act on behalf of the organization and within the scope of their employment or office.

(3) A high managerial officer, agent, or employee of the organization (see "**Definitions**," below) authorizes, requests, commands, or tolerates an ethnic intimidation violation and, in so doing, acts on behalf of the organization and within the scope of the officer's, agent's, or employee's office or employment.

An organization that violates the prohibition is guilty of domestic terrorism, an offense of the next higher degree than the offense the commission of which is a necessary element of the ethnic intimidation violation that is the basis for the domestic terrorism violation. A court must impose upon the organization a fine prescribed in existing law as an organizational penalty as follows (secs. 2927.12(C)(2) and 2929.31(A)):

Offense or degree of offense	Amount of fine
Aggravated murder	Not more than \$100,000
Murder	Not more than \$50,000
First degree felony	Not more than \$25,000
Second degree felony	Not more than \$20,000
Third degree felony	Not more than \$15,000
Fourth degree felony	Not more than \$10,000
Fifth degree felony	Not more than \$7,500
Unclassified felony	Not more than \$10,000
First degree misdemeanor	Not more than \$5,000
Second degree misdemeanor	Not more than \$4,000
Third degree misdemeanor	Not more than \$3,000
Fourth degree misdemeanor	Not more than \$2,000
Minor misdemeanor	Not more than \$1,000
Unclassified misdemeanor	Not more than \$2,000
Unclassified minor misdemeanor	Not more than \$1,000

Definitions

"Organization" is defined in existing law as a corporation for profit or not for profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a governmental program. (Sec. 2927.12(B)(3)(a) and sec. 2901.23(D), not in the bill.)

"High managerial officer, agent, or employee of an organization" is defined in the bill as an officer, agent, or employee of an organization who makes or formulates basic organizational policies (sec. 2927.12(B)(3)(b)).

Enhanced penalties for aggravated murder or murder

Existing law

Under existing law, the penalty for aggravated murder is either death, life imprisonment without parole, life imprisonment with parole eligibility after 20 years of imprisonment, life imprisonment with parole eligibility after 25 full years of imprisonment, or life imprisonment with parole eligibility after 30 full years of imprisonment. In addition, the offender may be fined an amount fixed by the court

of not more than \$25,000. The penalty for murder is an indefinite term of imprisonment of 15 years to life, except that, if the offender also is convicted of a sexual motivation specification and a sexually violent predator specification, the court must impose a term of life imprisonment without parole under the Sexual Predator Law. The offender may be fined an amount fixed by the court of not more than \$15,000. (Secs. 2929.02, 2929.022, and 2929.03.)

Operation of the bill

Under the bill, if an offender is convicted of or pleads guilty to aggravated murder or murder and also is convicted of a specification that the offender purposely selected the person against whom the offense was committed because of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of that person, the court is authorized to increase the minimum term of imprisonment imposed for the murder or the date of initial parole eligibility for the aggravated murder by an additional definite period of one, two, three, four, or five years and the maximum fine by not more than \$5,000. No person can be sentenced to the enhanced penalty unless the indictment, count in the indictment, or information charging aggravated murder or murder contains a specification as described in "**Specification regarding selection of victim**," below. (Sec. 2929.07.) The bill makes technical changes in the law regarding penalties for aggravated murder and murder and parole to conform to the enhanced penalties it provides (secs. 2929.02, 2929.022, 2929.03, 2929.06, and 2967.13).

Enhanced penalties for felonies

Under the bill, if an offender is convicted of or pleads guilty to a felony other than aggravated murder or murder and also is convicted of a specification that the offender purposely selected the person against whom the felony was committed or purposely selected the property that is damaged or affected by the felony because of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of that person or of the owner or occupant of that property, the court may impose the longest prison term authorized under existing law for the felony increased by an additional period of one, two, three, four, or five, years and may impose a fine consisting of the maximum fine permitted under existing law for the felony increased by an additional amount that does not exceed \$5,000. No person can be sentenced to the enhanced penalty unless the indictment, count in the indictment, or information charging the felony contains a specification as described in "**Specification regarding selection of victim**," below. The enhanced penalty does not apply to a felony if proof of race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of the victim is required for a conviction of the felony. (Secs. 2929.14(D)(5) and 2929.18(A)(3).)

Enhanced penalties for misdemeanors

Under the bill, if an offender is convicted of or pleads guilty to a misdemeanor and also a specification that the offender purposely selected the person against whom the misdemeanor was committed or purposely selected the property that was damaged or affected by the misdemeanor because of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of that person or of the owner or occupant of that property, either of the following applies:

(1) If the misdemeanor is a misdemeanor of the first degree, the court may impose a definite term of imprisonment of not more than two years and a fine of not more than \$10,000.

(2) If the misdemeanor is a misdemeanor of the second, third, or fourth degree or a minor misdemeanor, the court may impose a definite term of imprisonment of not more than one year and a fine of not more than \$10,000.

No person can be sentenced to the enhanced penalty unless the indictment, count in the indictment, or information charging the offense contains a specification as described in "**Specification regarding selection of victim**," below. The enhanced penalty does not apply to an offense if proof of race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of the victim is required for a conviction of the offense. (Sec. 2929.21(J).)

Enhanced penalties for organizations

Existing law

Under existing law, an organization may be convicted of an offense under any of the following circumstances:

(1) The offense is a minor misdemeanor committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions apply.

(2) A purpose to impose organizational liability plainly appears in the section defining the offense, and the offense is committed by an officer, agent, or employee of the organization acting in its behalf and within the scope of his office or employment, except that if the section defining the offense designates the officers, agents, or employees for whose conduct the organization is accountable or the circumstances under which it is accountable, those provisions apply.

(3) The offense consists of an omission to discharge a specific duty imposed by law on the organization.

(4) If, acting with the kind of culpability otherwise required for the commission of the offense, its commission was authorized, requested, commanded, tolerated, or performed by the board of directors, trustees, partners, or by a high managerial officer, agent, or employee acting in behalf of the organization and within the scope of his office or employment. (Sec. 2901.23, not in the bill.)

A court is required to fix a fine for an organization convicted of an offense as follows (sec. 2929.31(A)):

Offense or degree of offense	Amount of fine
Aggravated murder	Not more than \$100,000
Murder	Not more than \$50,000
First degree felony	Not more than \$25,000
Second degree felony	Not more than \$20,000
Third degree felony	Not more than \$15,000
Fourth degree felony	Not more than \$10,000
Fifth degree felony	Not more than \$7,500
Unclassified felony	Not more than \$10,000
First degree misdemeanor	Not more than \$5,000
Second degree misdemeanor	Not more than \$4,000
Third degree misdemeanor	Not more than \$3,000
Fourth degree misdemeanor	Not more than \$2,000
Minor misdemeanor	Not more than \$1,000
Unclassified misdemeanor	Not more than \$2,000
Unclassified minor misdemeanor	Not more than \$1,000

Operation of the bill

Under the bill, if an organization is convicted of an offense pursuant to the above-stated existing law and is convicted of a specification that the organization purposely selected the person against whom the offense was committed or purposely selected the property that was damaged or affected by the offense because of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of that person or of the owner or occupant of that property, the court may impose a fine that consists of the maximum fine permitted for the offense and an additional amount of not more than \$5,000. An organization cannot be fined the increased amount unless the indictment, count in the indictment, or information charging the organization with the offense contains a

specification as described in "*Specification regarding selection of victim*," below. The enhanced penalty does not apply to an offense if proof of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of the victim is required for a conviction of the offense. (Sec. 2929.31(E).)

The bill also provides that section 2929.31 does not prevent the imposition of available civil sanctions against an organization convicted of ethnic intimidation or domestic terrorism, in addition to a fine imposed pursuant to the above provisions (sec. 2929.31(D)).

Specification regarding selection of victim

The imposition of an enhanced penalty or increased fine under any of the bill's provisions is precluded unless the indictment, count in the indictment, complaint, or information charging the offense specifies that the offender purposely selected the person against whom the offense was committed or purposely selected the property that is damaged or affected by the offense because of the race, color, religion, gender, disability, sexual orientation, national origin, or ancestry of that person or of the owner or occupant of that property. The bill requires that the specification be stated at the end of the body of the indictment, count, complaint, or information and prescribes a form for the specification. (Sec. 2941.1411.)

COMMENT

The offense of telecommunications harassment may be a basis for the offense of ethnic intimidation when it is committed by a person who knowingly makes or causes to be made a telecommunication, or knowingly permits a telecommunication to be made from a telecommunications device under his control, if the caller does any of the following: (1) during the telecommunication, commits aggravated menacing, (2) knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the family of the recipient, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged, or (3) knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises has previously told the caller not to make a telecommunication to those premises or to any persons at those premises (sec. 2917.21(A)(3), (4), and (5)).

HISTORY

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