

# HOUSE BILL No. 5415

November 7, 2007, Introduced by Reps. Rick Jones, Gaffney, Palsrok, Hansen, Opsommer, Accavitti, Spade, LeBlanc, Steil, Polidori, Mayes, Rocca, Meekhof, Nitz, Nofs, Agema, Stahl, Huizenga, Pastor, Elsenheimer, Wojno, LaJoy, David Law, Wenke, Horn, Bieda, Sheltrown, Espinoza, Garfield, Calley, Moss, Ball, Booher, Walker and Moore and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 387 (MCL 750.387), as amended by 1998 PA 311.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 387. (1) A person, other than the burial right owner or  
2 his or her representative, heir at law, or a person having care,  
3 custody, or control of a cemetery pursuant to law, a contract, or  
4 other legal right, shall not willfully destroy, mutilate, deface,  
5 injure, or remove a tomb, monument, gravestone, or other structure  
6 or thing placed or designed for a memorial of the dead, or a fence,  
7 railing, curb, or other thing intended for the protection or for  
8 the ornament of any tomb, monument, gravestone, or other structure  
9 described in this subsection or any other enclosure for the burial  
10 of the dead and shall not willfully destroy, mutilate, remove, cut,

1 break, or injure any tree, shrub, or plant, placed or being within  
2 such an enclosure.

3 (2) Prosecution under subsection (1) may commence upon  
4 complaint by the burial right owner or his or her representative,  
5 heir at law, or person having care, custody, or control of a  
6 cemetery, tomb, monument, gravestone, or other structure or thing  
7 described in subsection (1).

8 (3) If the total amount of damage is less than \$200.00, a  
9 person who violates subsection (1) is guilty of a misdemeanor  
10 punishable by imprisonment for not more than 93 days or a fine of  
11 not more than \$500.00 or 3 times the amount of damage, whichever is  
12 greater, or both imprisonment and a fine.

13 (4) If any of the following apply, a person who violates  
14 subsection (1) is guilty of a misdemeanor punishable by  
15 imprisonment for not more than 1 year or a fine of not more than  
16 \$2,000.00 or 3 times the amount of damage, whichever is greater, or  
17 both imprisonment and a fine:

18 (a) The total amount of damage is \$200.00 or more but less  
19 than \$1,000.00.

20 (b) The total amount of damage is less than \$200.00 and the  
21 person has 1 or more prior convictions for committing or attempting  
22 to commit an offense under this section or a local ordinance  
23 substantially corresponding to this section.

24 (5) If any of the following apply, a person who violates  
25 subsection (1) is guilty of a felony punishable by imprisonment for  
26 not more than 5 years or a fine of not more than \$10,000.00 or 3  
27 times the amount of damage, whichever is greater, or both

1 imprisonment and a fine:

2 (A) THE ITEM OR STRUCTURE DAMAGED OR DESTROYED IS A WAR  
3 MEMORIAL OR A WAR MONUMENT.

4 (B) ~~(a)~~—The total amount of damage is \$1,000.00 or more but  
5 less than \$20,000.00.

6 (C) ~~(b)~~—The total amount of damage is \$200.00 or more but less  
7 than \$1,000.00 and the person has 1 or more prior convictions for  
8 committing or attempting to commit an offense under this section.  
9 For purposes of this subdivision, however, a prior conviction does  
10 not include a conviction for a violation or attempted violation of  
11 subsection (3) or (4)(b).

12 (6) If any of the following apply, a person who violates  
13 subsection (1) is guilty of a felony punishable by imprisonment for  
14 not more than 10 years or a fine of not more than \$15,000.00 or 3  
15 times the amount of damage, whichever is greater, or both  
16 imprisonment and a fine:

17 (a) The total amount of damage is \$20,000.00 or more.

18 (b) The total amount of damage is \$1,000.00 or more but less  
19 than \$20,000.00 and the person has 2 or more prior convictions for  
20 committing or attempting to commit an offense under this section.  
21 For purposes of this subdivision, however, a prior conviction does  
22 not include a conviction for a violation or attempted violation of  
23 subsection (3) or (4)(b).

24 (7) The amounts of damage in separate incidents pursuant to a  
25 scheme or course of conduct within any 12-month period may be  
26 aggregated in determining the total amount of damage.

27 (8) If the prosecuting attorney intends to seek an enhanced

1 sentence based upon the defendant having 1 or more prior  
2 convictions, the prosecuting attorney shall include on the  
3 complaint and information a statement listing the prior conviction  
4 or convictions. The existence of the defendant's prior conviction  
5 or convictions shall be determined by the court, without a jury, at  
6 sentencing or at a separate hearing for that purpose before  
7 sentencing. The existence of a prior conviction may be established  
8 by any evidence relevant for that purpose, including, but not  
9 limited to, 1 or more of the following:

10 (a) A copy of the judgment of conviction.

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

12 (c) Information contained in a presentence report.

13 (d) The defendant's statement.

14 (9) If the sentence for a conviction under this section is  
15 enhanced by 1 or more prior convictions, those prior convictions  
16 shall not be used to further enhance the sentence for the  
17 conviction pursuant to section 10, 11, or 12 of chapter IX of the  
18 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and  
19 769.12.