

SENATE BILL No. 949

October 28, 2009, Introduced by Senators RICHARDVILLE, HARDIMAN, ALLEN, PATTERSON, KAHN, ANDERSON, KUIPERS, BIRKHOLZ, JACOBS and PAPPAGEORGE and referred to the Committee on Senior Citizens and Veterans Affairs.

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~~ **BY** law, a contract,
4 or other legal right, shall not willfully destroy, mutilate,
5 deface, injure, or remove a tomb, monument, gravestone, **WAR**
6 **MEMORIAL, WAR MONUMENT**, or other structure or thing placed or
7 designed for a memorial of the dead, or a fence, railing, curb, or
8 other thing intended for the protection or for the ornament of any
9 tomb, monument, gravestone, or other structure described in this

1 subsection or any other enclosure for the burial of the dead and
2 shall not willfully destroy, mutilate, remove, cut, break, or
3 injure any tree, shrub, or plant, placed or being within such an
4 enclosure.

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

10 (3) If the total amount of damage is less than \$200.00, a
11 person who violates subsection (1) is guilty of a misdemeanor
12 punishable by imprisonment for not more than 93 days or a fine of
13 not more than ~~\$500.00~~ **\$1,000.00** or 3 times the amount of damage,
14 whichever is greater, or both imprisonment and a fine, **AND NOT MORE**
15 **THAN 100 HOURS OF COMMUNITY SERVICE. IF THE DAMAGED PROPERTY IS A**
16 **WAR MEMORIAL OR WAR MONUMENT, THE COMMUNITY SERVICE SHALL BE**
17 **PERFORMED IN A VETERANS HOME OR FOR A VETERANS SERVICE**
18 **ORGANIZATION.**

19 (4) If any of the following apply, a person who violates
20 subsection (1) is guilty of a misdemeanor punishable by
21 imprisonment for not more than 1 year or a fine of not more than
22 ~~\$2,000.00~~ **\$5,000.00** or 3 times the amount of damage, whichever is
23 greater, **AND NOT MORE THAN 200 HOURS OF COMMUNITY SERVICE. IF THE**
24 **DAMAGED PROPERTY IS A WAR MEMORIAL OR WAR MONUMENT, THE COMMUNITY**
25 **SERVICE SHALL BE PERFORMED IN A VETERANS HOME OR FOR A VETERANS**
26 **SERVICE ORGANIZATION, or both imprisonment and a fine:**

27 (a) The total amount of damage is \$200.00 or more but less

1 than \$1,000.00.

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

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

11 (a) The total amount of damage is \$1,000.00 or more but less
12 than \$20,000.00.

13 (b) The total amount of damage is \$200.00 or more but less
14 than \$1,000.00 and the person has 1 or more prior convictions for
15 committing or attempting to commit an offense under this section.
16 For purposes of this subdivision, however, a prior conviction does
17 not include a conviction for a violation or attempted violation of
18 subsection (3) or (4)(b).

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

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

25 (b) The total amount of damage is \$1,000.00 or more but less
26 than \$20,000.00 and the person has 2 or more prior convictions for
27 committing or attempting to commit an offense under this section.

1 For purposes of this subdivision, however, a prior conviction does
2 not include a conviction for a violation or attempted violation of
3 subsection (3) or (4)(b).

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

7 (8) If the prosecuting attorney intends to seek an enhanced
8 sentence based upon the defendant having 1 or more prior
9 convictions, the prosecuting attorney shall include on the
10 complaint and information a statement listing the prior conviction
11 or convictions. The existence of the defendant's prior conviction
12 or convictions shall be determined by the court, without a jury, at
13 sentencing or at a separate hearing for that purpose before
14 sentencing. The existence of a prior conviction may be established
15 by any evidence relevant for that purpose, including, but not
16 limited to, 1 or more of the following:

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

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

19 (c) Information contained in a presentence report.

20 (d) The defendant's statement.

21 (9) If the sentence for a conviction under this section is
22 enhanced by 1 or more prior convictions, those prior convictions
23 shall not be used to further enhance the sentence for the
24 conviction ~~pursuant to~~ **UNDER** section 10, 11, or 12 of chapter IX of
25 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
26 and 769.12.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.