

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.387 Willful destruction of property; memorials of dead; protective or ornamental structures; trees, shrubs, or plants; violation as misdemeanor or felony; penalties; enhanced sentence based on prior convictions.

Sec. 387. (1) A person, other than the burial right owner or his or her representative, heir at law, or a person having care, custody, or control of a cemetery pursuant to law, a contract, or other legal right, shall not willfully destroy, mutilate, deface, injure, or remove a tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead, or a fence, railing, curb, or other thing intended for the protection or for the ornament of any tomb, monument, gravestone, or other structure described in this subsection or any other enclosure for the burial of the dead and shall not willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant, placed or being within such an enclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

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

History: 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.387;—Am. 1974, Act 166, Eff. Apr. 1, 1975;—Am. 1998, Act 311, Eff. Jan. 1, 1999.

Former law: See section 22 of Ch. 158 of R.S. 1846, being CL 1857, § 5877; CL 1871, § 7712; How., § 9298; CL 1897, § 11711; CL 1915, § 15485; and CL 1929, § 16837.