

# SENATE BILL No. 10

January 8, 2003, Introduced by Senator JOHNSON and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 377a, 380, and 382 (MCL 750.377a, 750.380,  
and 750.382), sections 377a and 380 as amended by 1998 PA 311 and  
section 382 as amended by 1998 PA 344.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 377a. (1) A person who willfully and maliciously  
2 destroys or injures the personal property of another person, or  
3 who willfully and maliciously destroys or injures personal  
4 property that he or she jointly owns or jointly possesses with 1  
5 or more other persons, without the consent of that person or  
6 those persons, is guilty of a crime as follows:

7       (a) If any of the following apply, the person is guilty of a  
8 felony punishable by imprisonment for not more than 10 years or a  
9 fine of not more than \$15,000.00 or 3 times the amount of the

1 destruction or injury, whichever is greater, or both imprisonment  
2 and a fine:

3 (i) The amount of the destruction or injury is \$20,000.00 or  
4 more.

5 (ii) The person violates subdivision (b)(i) and has 2 or more  
6 prior convictions for committing or attempting to commit an  
7 offense under this section. For purposes of this subparagraph,  
8 however, a prior conviction does not include a conviction for a  
9 violation or attempted violation of subdivision (c)(ii) or (d).

10 (b) If any of the following apply, the person is guilty of a  
11 felony punishable by imprisonment for not more than 5 years or a  
12 fine of not more than \$10,000.00 or 3 times the amount of the  
13 destruction or injury, whichever is greater, or both imprisonment  
14 and a fine:

15 (i) The amount of the destruction or injury is \$1,000.00 or  
16 more but less than \$20,000.00.

17 (ii) The person violates subdivision (c)(i) and has 1 or more  
18 prior convictions for committing or attempting to commit an  
19 offense under this section. For purposes of this subparagraph,  
20 however, a prior conviction does not include a conviction for a  
21 violation or attempted violation of subdivision (c)(ii) or (d).

22 (c) If any of the following apply, the person is guilty of a  
23 misdemeanor punishable by imprisonment for not more than 1 year  
24 or a fine of not more than \$2,000.00 or 3 times the amount of the  
25 destruction or injury, whichever is greater, or both imprisonment  
26 and a fine:

27 (i) The amount of the destruction or injury is \$200.00 or

1 more but less than \$1,000.00.

2 (ii) The person violates subdivision (d) and has 1 or more  
3 prior convictions for committing or attempting to commit an  
4 offense under this section or a local ordinance substantially  
5 corresponding to this section.

6 (d) If the amount of the destruction or injury is less than  
7 \$200.00, the person is guilty of a misdemeanor punishable by  
8 imprisonment for not more than 93 days or a fine of not more than  
9 \$500.00 or 3 times the amount of the destruction or injury,  
10 whichever is greater, or both imprisonment and a fine.

11 (2) The amounts of destruction or injury in separate  
12 incidents pursuant to a scheme or course of conduct within any  
13 12-month period may be aggregated in determining the total amount  
14 of the destruction or injury.

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

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

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

(4) 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.

Sec. 380. (1) A person shall not ~~willfully~~ **do either of the following:**

**(a) Willfully** and maliciously destroy or injure another person's house, barn, or other building or its appurtenances.

**(b) Willfully and maliciously destroy or injure a house, barn, or other building or its appurtenances that he or she owns jointly with 1 or more other persons, without the consent of the other person or persons.**

(2) 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 the destruction or injury, whichever is greater, or both imprisonment and a fine:

(a) The amount of the destruction or injury is \$20,000.00 or more.

(b) The person violates subsection (3)(a) and 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

1 violation or attempted violation of subsection (4)(b) or (5).

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

7 (a) The amount of the destruction or injury is \$1,000.00 or  
8 more but less than \$20,000.00.

9 (b) The person violates subsection (4)(a) and has 1 or more  
10 prior convictions for committing or attempting to commit an  
11 offense under this section. For purposes of this subdivision,  
12 however, a prior conviction does not include a conviction for a  
13 violation or attempted violation of subsection (4)(b) or (5).

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

19 (a) The amount of the destruction or injury is \$200.00 or  
20 more but less than \$1,000.00.

21 (b) The person violates subsection (5) and has 1 or more  
22 prior convictions for committing or attempting to commit an  
23 offense under this section or a local ordinance substantially  
24 corresponding to this section.

25 (5) If the amount of the destruction or injury is less than  
26 \$200.00, a person who violates subsection (1) is guilty of a  
27 misdemeanor punishable by imprisonment for not more than 93 days

1 or a fine of not more than \$500.00 or 3 times the amount of the  
2 destruction or injury, whichever is greater, or both imprisonment  
3 and a fine.

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

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

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

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

21 (c) Information contained in a presentence report.

22 (d) The defendant's statement.

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

1 769.12.

2 Sec. 382. (1) A person ~~who~~ **shall not** willfully and  
3 maliciously, or wantonly and without cause, ~~cuts~~ **do either of**  
4 **the following:**

5 (a) **Cut** down, ~~destroys~~ **destroy**, or ~~injures~~ **injure** any  
6 tree, shrub, grass, turf, plants, crops, or soil of another that  
7 is standing, growing, or located on the land of another.

8 (b) **Cut down, destroy, or injure any tree, shrub, grass,**  
9 **turf, plants, crops, or soil he or she jointly owns with 1 or**  
10 **more other persons, without the consent of that person or those**  
11 **persons.**

12 (2) **A person who violates subsection (1) is guilty of a crime**  
13 **as follows:**

14 (a) If the value of the trees, shrubs, grass, turf, plants,  
15 crops, or soil cut down, destroyed, or injured is less than  
16 \$200.00, the person is guilty of a misdemeanor punishable by  
17 imprisonment for not more than 93 days or a fine of not more than  
18 \$500.00 or 3 times the value of the trees, shrubs, grass, turf,  
19 plants, crops, or soil, whichever is greater, or both  
20 imprisonment and a fine.

21 (b) If any of the following apply, the person is guilty of a  
22 misdemeanor punishable by imprisonment for not more than 1 year  
23 or a fine of not more than \$2,000.00 or 3 times the value of the  
24 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
25 greater, or both imprisonment and a fine:

26 (i) The value of the trees, shrubs, grass, turf, plants, or  
27 soil cut down, destroyed, or injured is \$200.00 or more but less

1 than \$1,000.00.

2 (ii) The person violates subdivision (a) and has 1 or more  
3 prior convictions for committing or attempting to commit an  
4 offense under this section or a local ordinance substantially  
5 corresponding to this section.

6 (c) If any of the following apply, the person is guilty of a  
7 felony punishable by imprisonment for not more than 5 years or a  
8 fine of not more than \$10,000.00 or 3 times the value of the  
9 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
10 greater, or both imprisonment and a fine:

11 (i) The value of the trees, shrubs, grass, turf, plants,  
12 crops, or soil cut down, destroyed, or injured is \$1,000.00 or  
13 more but less than \$20,000.00.

14 (ii) The person violates subdivision (b)(i) and has 1 or more  
15 prior convictions for committing or attempting to commit an  
16 offense under this section. For purposes of this subparagraph,  
17 however, a prior conviction does not include a conviction for a  
18 violation or attempted violation of subdivision (a) or (b)(ii).

19 (d) If any of the following apply, the person is guilty of a  
20 felony punishable by imprisonment for not more than 10 years or a  
21 fine of not more than \$15,000.00 or 3 times the value of the  
22 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
23 greater, or both imprisonment and a fine:

24 (i) The value of the trees, shrubs, grass, turf, plants,  
25 crops, or soil cut down, destroyed, or injured is \$20,000.00 or  
26 more.

27 (ii) The person violates subdivision (c)(i) and has 2 or more



1 prior convictions for committing or attempting to commit an  
2 offense under this section. For purposes of this subparagraph,  
3 however, a prior conviction does not include a conviction for a  
4 violation or attempted violation of subdivision (a) or (b)(ii).

5       **(3)** ~~—(2)—~~ The secretary of state shall suspend the operator's  
6 or chauffeur's license of a person convicted of a violation or  
7 attempted violation of subsection (1) who committed the offense  
8 with a vehicle, as provided in section 319 of the Michigan  
9 vehicle code, 1949 PA 300, MCL 257.319. As used in this  
10 subsection, "vehicle" means that term as defined in section 79 of  
11 the Michigan vehicle code, 1949 PA 300, MCL 257.79.

12       **(4)** ~~—(3)—~~ The values of trees, shrubs, grass, turf, plants,  
13 crops, or soil cut down, destroyed, or injured in separate  
14 incidents pursuant to a scheme or course of conduct within any  
15 12-month period may be aggregated to determine the total value of  
16 trees, shrubs, grass, turf, plants, crops, or soil cut down,  
17 destroyed, or injured.

18       **(5)** ~~—(4)—~~ If the prosecuting attorney intends to seek an  
19 enhanced sentence based upon the defendant having 1 or more prior  
20 convictions, the prosecuting attorney shall include on the  
21 complaint and information a statement listing the prior  
22 conviction or convictions. The existence of the defendant's  
23 prior conviction or convictions shall be determined by the court,  
24 without a jury, at sentencing or at a separate hearing for that  
25 purpose before sentencing. The existence of a prior conviction  
26 may be established by any evidence relevant for that purpose,  
27 including, but not limited to, 1 or more of the following:

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

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

4 (c) Information contained in a presentence report.

5 (d) The defendant's statement.

6 **(6)** ~~—(5)—~~ If the sentence for a conviction under this section  
7 is enhanced by 1 or more prior convictions, those prior  
8 convictions shall not be used to further enhance the sentence for  
9 the conviction pursuant to section 10, 11, or 12 of chapter IX of  
10 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,  
11 and 769.12.