

Act No. 199
Public Acts of 2023
Approved by the Governor
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**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Shink and Chang

ENROLLED SENATE BILL No. 528

AN ACT to amend 1931 PA 328, entitled “An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act,” by amending sections 115, 145n, 377a, 380, 411h, and 540e (MCL 750.115, 750.145n, 750.377a, 750.380, 750.411h, and 750.540e), section 115 as amended by 2000 PA 148, section 145n as amended by 2016 PA 480, sections 377a and 380 as amended by 1998 PA 311, section 411h as amended by 1997 PA 65, and section 540e as amended by 2002 PA 577.

The People of the State of Michigan enact:

Sec. 115. (1) An individual who breaks and enters or enters without breaking, any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, railroad car or structure used or kept for public or private use, or any private apartment therein, or any cottage, clubhouse, boat house, hunting or fishing lodge, garage or the out-buildings belonging thereto, any ice shanty with a value of \$100.00 or more, or any other structure, whether occupied or unoccupied, without first obtaining permission to enter from the person having immediate control thereof, is guilty of a misdemeanor.

(2) If an individual violates subsection (1) and the person having immediate control thereof is the individual’s spouse or former spouse, an individual with whom the individual has or has had a dating relationship, an individual with whom the individual has or has had a child in common, or a resident or former resident of the individual’s household, the individual is guilty of a misdemeanor.

(3) This section does not apply to entering without breaking, any place which at the time of the entry was open to the public, unless the entry was expressly denied. This section does not apply if the breaking and entering or entering without breaking was committed by a peace officer or an individual under the peace officer’s direction in the lawful performance of the peace officer’s duties as a peace officer.

(4) As used in this section, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Sec. 145n. (1) A caregiver is guilty of vulnerable adult abuse in the first degree if the caregiver intentionally causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the first degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(2) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the second degree if the reckless act or reckless failure to act of the caregiver or other person with authority over the vulnerable adult causes serious physical harm or serious mental harm to a vulnerable adult. Vulnerable adult abuse in the second degree is a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$5,000.00, or both.

(3) A caregiver is guilty of vulnerable adult abuse in the third degree if the caregiver intentionally causes physical harm to a vulnerable adult. Vulnerable adult abuse in the third degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,500.00, or both.

(4) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to the vulnerable adult or the caregiver or other person with authority over the vulnerable adult knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results. Vulnerable adult abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) A caregiver or other person with authority over the vulnerable adult is guilty of vulnerable adult abuse in the fourth degree if the caregiver or other person with authority over the vulnerable adult violates subsection (4) and 1 or more of the following circumstances apply:

(a) The caregiver or other person with authority over the vulnerable adult is the spouse or former spouse of the victim.

(b) The caregiver or other person with authority over the vulnerable adult is an individual with whom the victim has or has had a dating relationship.

(c) The caregiver or other person with authority over the vulnerable adult is an individual with whom the victim has or has had a child in common.

(d) The caregiver or other person with authority over the vulnerable adult is a resident or former resident of the victim's household.

(6) A violation of subsection (5) is a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(7) This section does not prohibit a caregiver or other person with authority over a vulnerable adult from taking reasonable action to prevent a vulnerable adult from being harmed or from harming others.

(8) This section does not apply to an act or failure to act that is carried out as directed by a patient advocate under a patient advocate designation executed in accordance with sections 5506 to 5515 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506 to 700.5515.

(9) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Sec. 377a. (1) A person who willfully and maliciously destroys or injures the personal property of another person is guilty of a crime as follows:

(a) If any of the following apply, the person 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:

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

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

(b) If any of the following apply, the person 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 the destruction or injury, whichever is greater, or both imprisonment and a fine:

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

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

(c) If any of the following apply, the person 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 the destruction or injury, whichever is greater, or both imprisonment and a fine:

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

(ii) The person violates subdivision (e) or (f) and 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.

(d) If the person and the property owner are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household, and any of the following apply, the person 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 the destruction or injury, whichever is greater, or both imprisonment and a fine:

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

(ii) The person violates subdivision (e) or (f) and 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.

(e) If the amount of the destruction or injury is less than \$200.00, the person 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 the destruction or injury, whichever is greater, or both imprisonment and a fine.

(f) If the person and the property owner are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household and the amount of the destruction or injury is less than \$200.00, the person 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 the destruction or injury, whichever is greater, or both imprisonment and a fine.

(2) The amounts of destruction or injury 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 the destruction or injury.

(3) 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 must 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.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions must 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.

(5) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Sec. 380. (1) A person shall not willfully and maliciously destroy or injure another person's house, barn, or other building or its appurtenances.

(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 violation or attempted violation of subsection (4)(b), (5)(b), (6), or (7).

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

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

(b) The person violates subsection (4)(a) and 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 (4)(b), (5)(b), (6), or (7).

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

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

(b) The person violates subsection (6) or (7) and 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 the person and the property owner are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household and if any of the following apply, the 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 the destruction or injury, whichever is greater, or both imprisonment and a fine:

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

(b) The person violates subsection (6) or (7) and 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.

(6) If the amount of the destruction or injury 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 the destruction or injury, whichever is greater, or both imprisonment and a fine.

(7) If the person and the property owner are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household and if the amount of the destruction or injury is less than \$200.00, the 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 the destruction or injury, whichever is greater, or both imprisonment and a fine.

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

(9) 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 must 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.

(10) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions must 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, 769.10, 769.11, and 769.12.

(11) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Sec. 411h. (1) As used in this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(c) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(d) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(e) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(f) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

- (ii) Approaching or confronting that individual in a public place or on private property.
 - (iii) Appearing at that individual's workplace or residence.
 - (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
 - (v) Contacting that individual by telephone.
 - (vi) Sending mail or electronic communications to that individual.
 - (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.
 - (g) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.
- (2) An individual who engages in stalking is guilty of a crime as follows:
- (a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
 - (b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.
 - (c) If the victim and the individual are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- (3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:
- (a) Refrain from stalking any individual during the term of probation.
 - (b) Refrain from having any contact with the victim of the offense.
 - (c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at the individual's own expense.
- (4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
- (5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

Sec. 540e. (1) A person who maliciously uses any service provided by a telecommunications service provider with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person by doing any of the following is guilty of a misdemeanor:

- (a) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device.
- (b) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or an accident.
- (c) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.
- (d) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device.
- (e) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone call is answered.
- (f) Making an unsolicited commercial telephone call that is received between the hours of 9 p.m. and 9 a.m. As used in this subdivision, "an unsolicited commercial telephone call" means a call made by a person or recording device, on behalf of a person, corporation, or other entity, soliciting business or contributions.
- (g) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing the person's telecommunications service or device.

(h) Engaging in any of the conduct prohibited under subdivisions (a) to (g) if the person and the other person are spouses or former spouses, have or have had a dating relationship, have or have had a child in common, or are residents or former residents of the same household. As used in this subdivision, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(2) A person who violates this section may be imprisoned for not more than 6 months or fined not more than \$1,000.00, or both. An offense is committed under this section if the communication either originates or terminates in this state and may be prosecuted at the place of origination or termination.

(3) As used in this section, "telecommunications service" and "telecommunications device" mean those terms as defined in section 540c.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 471 of the 102nd Legislature is enacted into law.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor