

1998 PUBLIC AND LOCAL ACTS

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[No. 344]

(HB 5953)

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 therefor; 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 such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 367c, 382, and 479a (MCL 750.367c, 750.382, and 750.479a), section 367c as added by 1982 PA 63, section 382 as amended by 1998 PA 311, and section 479a as amended by 1996 PA 586.

*The People of the State of Michigan enact:*

750.367c Theft of motor vehicle fuel. [M.S.A. 28.599(3)]

Sec. 367c. The secretary of state shall suspend the operator's or chauffeur's license of a person convicted of an offense or attempted offense under this chapter involving the theft of motor vehicle fuel that occurred by pumping the fuel into a motor vehicle, as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

750.382 Maliciously destroying or injuring trees, shrubs, grass, turf, plants, crops, or soil. [M.S.A. 28.614]

Sec. 382. (1) A person who willfully and maliciously, or wantonly and without cause, cuts down, destroys, or injures any tree, shrub, grass, turf, plants, crops, or soil of another that is standing, growing, or located on the land of another is guilty of a crime as follows:

(a) If the value of the trees, shrubs, grass, turf, plants, crops, or soil cut down, destroyed, or injured 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 value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine.

(b) 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 value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine:

(i) The value of the trees, shrubs, grass, turf, plants, or soil cut down, destroyed, or injured is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) 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.

(c) 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 value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine:

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

(ii) The person violates subdivision (b)(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 (a) or (b)(i).

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(d) 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 value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine:

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

(ii) The person violates subdivision (c)(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 (a) or (b)(ii).

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

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

(4) 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.

(5) 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.

750.479a Failure to obey direction of police or conservation officer to stop motor vehicle; applicability of subsection (1); fleeing and eluding as felony; penalty; assaulting or injuring peace or police officer; suspension of license; revocation; conviction and sentence under other provision; "serious injury" defined. [M.S.A. 28.747(1)]

Sec. 479a. (1) A driver of a motor vehicle who is given by hand, voice, emergency light, or siren a visual or audible signal by a police or conservation officer, acting in the lawful performance of his or her duty, directing the driver to bring his or her motor vehicle to a stop shall not willfully fail to obey that direction by increasing the speed of the vehicle, extinguishing the lights of the vehicle, or otherwise attempting to flee or elude the police or conservation officer. This subsection does not apply unless the police or conservation officer giving the signal is in uniform and the officer's vehicle is identified as an official police or department of natural resources vehicle.

(2) Except as provided in subsection (3), (4), or (5), an individual who violates subsection (1) is guilty of fourth-degree fleeing and eluding, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

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(3) Except as provided in subsection (4) or (5), an individual who violates subsection (1) is guilty of third-degree fleeing and eluding, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$1,000.00, or both, if 1 or more of the following circumstances apply:

(a) The violation results in a collision or accident.

(b) A portion of the violation occurred in an area where the speed limit is 35 miles an hour or less, whether that speed limit is posted or imposed as a matter of law.

(c) The individual has a prior conviction for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(4) Except as provided in subsection (5), an individual who violates subsection (1) is guilty of second-degree fleeing and eluding, a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if 1 or more of the following circumstances apply:

(a) The violation results in serious injury to an individual.

(b) The individual has 1 or more prior convictions for first-, second-, or third-degree fleeing and eluding, attempted first-, second-, or third-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(c) The individual has any combination of 2 or more prior convictions for fourth-degree fleeing and eluding, attempted fourth-degree fleeing and eluding, or fleeing and eluding under a current or former law of this state prohibiting substantially similar conduct.

(5) If the violation results in the death of another individual, an individual who violates subsection (1) is guilty of first-degree fleeing and eluding, a felony punishable by imprisonment for not more than 15 years or a fine of not more than \$10,000.00, or both.

(6) An individual who forcibly assaults or commits a bodily injury requiring medical care or attention upon a peace or police officer of this state while the peace or police officer is engaged in making a lawful arrest, knowing him or her to be a peace or police officer, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 2 years, or both.

(7) Upon a conviction for a violation or attempted violation under subsection (2) or (3), the secretary of state shall suspend the individual's operator's or chauffeur's license as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(8) Upon a conviction for a violation or attempted violation under subsection (4) or (5), the secretary of state shall revoke the individual's operator's or chauffeur's license as provided in section 303 of the Michigan vehicle code, 1949 PA 300, MCL 257.303.

(9) Except as otherwise provided, a conviction under this section does not prohibit a conviction and sentence under any other applicable provision for conduct arising out of the same transaction. A conviction under subsection (2), (3), (4), or (5) prohibits a conviction under section 602a of the Michigan vehicle code, 1949 PA 300, MCL 257.602a, for conduct arising out of the same transaction.

(10) As used in this section, "serious injury" means a physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb. Serious injury includes, but is not limited to, 1 or more of the following:

(a) Loss of a limb or of use of a limb.

(b) Loss of a hand, foot, finger, or thumb or of use of a hand, foot, finger, or thumb.

(c) Loss of an eye or ear or of use of an eye or ear.

(d) Loss or substantial impairment of a bodily function.

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- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain damage or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or hematoma.

Effective date.

Enacting section 1. This amendatory act takes effect October 1, 1999.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 268.
- (b) Senate Bill No. 269.
- (c) Senate Bill No. 625.
- (d) Senate Bill No. 627.
- (e) Senate Bill No. 869.
- (f) Senate Bill No. 870.
- (g) Senate Bill No. 953.
- (h) House Bill No. 4210.
- (i) House Bill No. 4576.
- (j) House Bill No. 4959.
- (k) House Bill No. 4960.
- (l) House Bill No. 4961.
- (m) House Bill No. 5122.
- (n) House Bill No. 5123.
- (o) House Bill No. 5951.
- (p) House Bill No. 5952.
- (q) House Bill No. 5954.
- (r) House Bill No. 5955.
- (s) House Bill No. 5956.

Approved October 16, 1998.

Filed with Secretary of State October 16, 1998.

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**Compiler's note:** The bills referred to in enacting section 2 were enacted into law as follows:

Senate Bill No. 268 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 355, Eff. Oct. 1, 1999.  
Senate Bill No. 269 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 345, Eff. Oct. 1, 1999.  
Senate Bill No. 625 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 346, Eff. Oct. 1, 1999.  
Senate Bill No. 627 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 347, Eff. Oct. 1, 1999.  
Senate Bill No. 869 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 348, Eff. Oct. 1, 1999.  
Senate Bill No. 870 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 350, Eff. Oct. 1, 1999.  
Senate Bill No. 953 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 351, Eff. Oct. 1, 1999.  
House Bill No. 4210 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 340, Eff. Oct. 1, 1999.  
House Bill No. 4576 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 357, Eff. Oct. 1, 1999.  
House Bill No. 4959 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 349, Eff. Oct. 1, 1999.  
House Bill No. 4960 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 359, Eff. Oct. 1, 1999.  
House Bill No. 4961 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 358, Eff. Oct. 1, 1999.  
House Bill No. 5122 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 342, Eff. Oct. 1, 1999.  
House Bill No. 5123 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 341, Eff. Oct. 1, 1999.  
House Bill No. 5951 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 356, Eff. Oct. 1, 1999.  
House Bill No. 5952 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 343, Eff. Oct. 1, 1999.  
House Bill No. 5954 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 352, Eff. Oct. 1, 1999.  
House Bill No. 5955 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 353, Eff. Oct. 1, 1999.  
House Bill No. 5956 was filed with the Secretary of State October 16, 1998, and became P.A. 1998, No. 354, Eff. Oct. 1, 1999.

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