

# Legislative Analysis



## MALICIOUS DESTRUCTION OF OR DAMAGE TO FIRE, SHERIFF, OR POLICE DEPARTMENT PROPERTY

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**House Bill 4185 (H-1) as reported from committee**  
**Sponsor: Rep. Diana Farrington**  
**Committee: Judiciary**  
**Complete to 3-20-19**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 4185 would add willfully and maliciously destroying or damaging the real property of a fire, sheriff, or police department to the current prohibition regarding a fire or police department's personal property.

**FISCAL IMPACT:** House Bill 4185 would have an indeterminate fiscal impact on the state and on local units of government. (See *Fiscal Information*, below, for a detailed discussion.)

### **THE APPARENT PROBLEM:**

Michigan law makes it a crime for a person to willfully and maliciously destroy personal property belonging to a fire department or a police department. Over 20 years ago, a criminal defendant escaped from a Michigan county jail. In making his escape, the prisoner broke a window in his cell. He was caught and later convicted of escaping from the jail, but the Michigan Court of Appeals (COA) vacated the trial court's conviction of malicious destruction of police property.<sup>1</sup> Whereas the trial court had considered the cell's window to be police property, the COA held instead that the window was *real property*, as opposed to *personal property*, and that the statute making it a crime to destroy police property only applied to *personal property*. The COA recognized at the time that its "decision leads to the anomalous result that the destruction of real property of a police or fire department is treated less seriously than the destruction of personal property," but pointed to the plain language of the statute as "dictating" its decision. "If a change is to be made," the court opined, "it must be done by the Legislature and not by the courts."

Legislation has been offered to address the disparity in the treatment of real vs. personal property of fire and police departments that has continued since the *Fox* decision.

### **THE CONTENT OF THE BILL:**

Currently, it is a felony punishable by up to four years' imprisonment or a fine of up to \$5,000, or both, to willfully and maliciously destroy or injure the personal property of any fire or police department, including the Department of State Police. The bill would amend Chapter LVI (Malicious and Wilful Mischief and Destruction) of the Michigan Penal Code to extend the prohibition and criminal penalty to include conduct that willfully and maliciously destroys or injures the *real property* of such an entity. (In general, *real property* refers to land and includes any buildings, structures, or equipment that is permanently attached or fixed to the land.) In addition, the bill would add *sheriff's department* to the entities for which the prohibition and penalty would apply. The bill would take effect 90 days after its enactment.

MCL 750.377b

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<sup>1</sup> *People v Fox*, 232 Mich App 541 (1998).

***FISCAL INFORMATION:***

House Bill 4185 would have an indeterminate fiscal impact on the state and on local units of government. The number of persons who might be convicted under provisions of the bill is unknown. The fine and/or term of imprisonment is not specified in the bill. Malicious destruction of fire and/or police property is classified as a Category F crime, which carries a statutory maximum sentence of four years. Felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

***ARGUMENTS:***

***For:***

House Bill 4185 would provide a legislative “fix” for the issue highlighted in the 1998 Court of Appeals case referenced earlier. Specifically, the bill would make it a crime to willfully and maliciously destroy any police or fire department property, whether real or personal. Further, the bill would expand the provision to include the property of a sheriff’s department. Although the 1998 case involved destruction of a window in a county jail, which is under the jurisdiction of the county sheriff, neither the trial court nor the appellate court addressed that issue. However, it is reasonable that there be parity, as well as clarity, in the law regarding the treatment of property owned by the different law enforcement agencies.

***Against:***

No arguments opposing the bill were presented in committee.

***POSITIONS:***

The following entities indicated support for the bill:

- Department of State Police (3-12-19)
- Michigan Association of Counties (3-19-19)
- Prosecuting Attorneys Association of Michigan (PAAM) (3-12-19)
- Michigan Townships Association (3-12-19)
- Michigan Municipal League (3-12-19)
- Michigan Sheriffs’ Association (3-12-19)

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