

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 528

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
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:

1 Sec. 115. (1) ~~Any person~~ **An individual** who breaks and enters
2 or enters without breaking, any dwelling, house, tent, hotel,
3 office, store, shop, warehouse, barn, granary, factory or other
4 building, boat, ship, railroad car or structure used or kept for

1 public or private use, or any private apartment therein, or any
2 cottage, clubhouse, boat house, hunting or fishing lodge, garage or
3 the out-buildings belonging thereto, any ice shanty with a value of
4 \$100.00 or more, or any other structure, whether occupied or
5 unoccupied, without first obtaining permission to enter from the
6 ~~owner or occupant, agent, or person~~ having immediate control
7 thereof, is guilty of a misdemeanor.

8 **(2) If an individual violates subsection (1) and the person**
9 **having immediate control thereof is the individual's spouse or**
10 **former spouse, an individual with whom the individual has or has**
11 **had a dating relationship, an individual with whom the individual**
12 **has or has had a child in common, or a resident or former resident**
13 **of the individual's household, the individual is guilty of a**
14 **misdemeanor.**

15 **(3) ~~(2) Subsection (1)~~This section** does not apply to entering
16 without breaking, any place which at the time of the entry was open
17 to the public, unless the entry was expressly denied. ~~Subsection~~
18 ~~(1)~~**This section** does not apply if the breaking and entering or
19 entering without breaking was committed by a peace officer or an
20 individual under the peace officer's direction in the lawful
21 performance of ~~his or her~~ **the peace officer's** duties as a peace
22 officer.

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

28 Sec. 145n. (1) A caregiver is guilty of vulnerable adult abuse
29 in the first degree if the caregiver intentionally causes serious

1 physical harm or serious mental harm to a vulnerable adult.
2 Vulnerable adult abuse in the first degree is a felony punishable
3 by imprisonment for not more than 15 years or a fine of not more
4 than \$10,000.00, or both.

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

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

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

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

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

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

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

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

17 (6) A violation of subsection (5) is a misdemeanor punishable
18 by imprisonment for not more than 1 year or a fine of not more than
19 \$1,000.00, or both.

20 (7) ~~(5)~~—This section does not prohibit a caregiver or other
21 person with authority over a vulnerable adult from taking
22 reasonable action to prevent a vulnerable adult from being harmed
23 or from harming others.

24 (8) ~~(6)~~—This section does not apply to an act or failure to
25 act that is carried out as directed by a patient advocate under a
26 patient advocate designation executed in accordance with sections
27 5506 to 5515 of the estates and protected individuals code, 1998 PA
28 386, MCL 700.5506 to 700.5515.

29 (9) As used in this section, "dating relationship" means

1 frequent, intimate associations primarily characterized by the
2 expectation of affectional involvement. This term does not include
3 a casual relationship or an ordinary fraternization between 2
4 individuals in a business or social context.

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

8 (a) If any of the following apply, the person is guilty of a
9 felony punishable by imprisonment for not more than 10 years or a
10 fine of not more than \$15,000.00 or 3 times the amount of the
11 destruction or injury, whichever is greater, or both imprisonment
12 and a fine:

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

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

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

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

27 (ii) The person violates subdivision (c) (i) and has 1 or more
28 prior convictions for committing or attempting to commit an offense
29 under this section. For purposes of this subparagraph, however, a

1 prior conviction does not include a conviction for a violation or
2 attempted violation of subdivision (c) (ii), ~~or (d)~~, **(e), or (f)**.

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

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

10 (ii) The person violates subdivision ~~(d)~~ **(e) or (f)** and has 1
11 or more prior convictions for committing or attempting to commit an
12 offense under this section or a local ordinance substantially
13 corresponding to this section.

14 **(d) If the person and the property owner are spouses or former**
15 **spouses, have or have had a dating relationship, have or have had a**
16 **child in common, or are residents or former residents of the same**
17 **household, and any of the following apply, the person is guilty of**
18 **a misdemeanor punishable by imprisonment for not more than 1 year**
19 **or a fine of not more than \$2,000.00 or 3 times the amount of the**
20 **destruction or injury, whichever is greater, or both imprisonment**
21 **and a fine:**

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

24 (ii) The person violates subdivision **(e) or (f)** and has 1 or
25 more prior convictions for committing or attempting to commit an
26 offense under this section or a local ordinance substantially
27 corresponding to this section.

28 **(e) ~~(d)~~** If the amount of the destruction or injury is less
29 than \$200.00, the person is guilty of a misdemeanor punishable by

1 imprisonment for not more than 93 days or a fine of not more than
2 \$500.00 or 3 times the amount of the destruction or injury,
3 whichever is greater, or both imprisonment and a fine.

4 **(f) If the person and the property owner are spouses or former**
5 **spouses, have or have had a dating relationship, have or have had a**
6 **child in common, or are residents or former residents of the same**
7 **household and the amount of the destruction or injury is less than**
8 **\$200.00, the person is guilty of a misdemeanor punishable by**
9 **imprisonment for not more than 93 days or a fine of not more than**
10 **\$500.00 or 3 times the amount of the destruction or injury,**
11 **whichever is greater, or both imprisonment and a fine.**

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

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

- 26 (a) A copy of the judgment of conviction.
27 (b) A transcript of a prior trial, plea-taking, or sentencing.
28 (c) Information contained in a presentence report.
29 (d) The defendant's statement.

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

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

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

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

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

22 (b) The person violates subsection (3) (a) and has 2 or more
23 prior convictions for committing or attempting to commit an offense
24 under this section. For purposes of this subdivision, however, a
25 prior conviction does not include a conviction for a violation or
26 attempted violation of subsection (4) (b), ~~or (5)~~**(5) (b), (6), or**
27 **(7).**

28 (3) If any of the following apply, a person who violates
29 subsection (1) is guilty of a felony punishable by imprisonment for

1 not more than 5 years or a fine of not more than \$10,000.00 or 3
2 times the amount of the destruction or injury, whichever is
3 greater, or both imprisonment and a fine:

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

6 (b) The person violates subsection (4) (a) and has 1 or more
7 prior convictions for committing or attempting to commit an offense
8 under this section. For purposes of this subdivision, however, a
9 prior conviction does not include a conviction for a violation or
10 attempted violation of subsection (4) (b), ~~or (5)~~. **(5) (b), (6), or**
11 **(7).**

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

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

19 (b) The person violates subsection ~~(5)~~ **(6) or (7)** and has 1 or
20 more prior convictions for committing or attempting to commit an
21 offense under this section or a local ordinance substantially
22 corresponding to this section.

23 **(5) If the person and the property owner are spouses or former**
24 **spouses, have or have had a dating relationship, have or have had a**
25 **child in common, or are residents or former residents of the same**
26 **household and if any of the following apply, the person who**
27 **violates subsection (1) is guilty of a misdemeanor punishable by**
28 **imprisonment for not more than 1 year or a fine of not more than**
29 **\$2,000.00 or 3 times the amount of the destruction or injury,**

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

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

4 (b) The person violates subsection (6) or (7) and has 1 or
5 more prior convictions for committing or attempting to commit an
6 offense under this section or a local ordinance substantially
7 corresponding to this section.

8 (6) ~~(5)~~—If the amount of the destruction or injury is less
9 than \$200.00, a person who violates subsection (1) is guilty of a
10 misdemeanor punishable by imprisonment for not more than 93 days or
11 a fine of not more than \$500.00 or 3 times the amount of the
12 destruction or injury, whichever is greater, or both imprisonment
13 and a fine.

14 (7) If the person and the property owner are spouses or former
15 spouses, have or have had a dating relationship, have or have had a
16 child in common, or are residents or former residents of the same
17 household and if the amount of the destruction or injury is less
18 than \$200.00, the person who violates subsection (1) is guilty of a
19 misdemeanor punishable by imprisonment for not more than 93 days or
20 a fine of not more than \$500.00 or 3 times the amount of the
21 destruction or injury, whichever is greater, or both imprisonment
22 and a fine.

23 (8) ~~(6)~~—The amounts of the destruction or injury in separate
24 incidents pursuant to a scheme or course of conduct within any 12-
25 month period may be aggregated to determine the total amount of the
26 destruction or injury.

27 (9) ~~(7)~~—If the prosecuting attorney intends to seek an
28 enhanced sentence based upon the defendant having 1 or more prior
29 convictions, the prosecuting attorney shall include on the

1 complaint and information a statement listing the prior conviction
2 or convictions. The existence of the defendant's prior conviction
3 or convictions ~~shall~~**must** be determined by the court, without a
4 jury, at sentencing or at a separate hearing for that purpose
5 before sentencing. The existence of a prior conviction may be
6 established by any evidence relevant for that purpose, including,
7 but not limited to, 1 or more of the following:

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

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

10 (c) Information contained in a presentence report.

11 (d) The defendant's statement.

12 **(10)** ~~(8)~~—If the sentence for a conviction under this section
13 is enhanced by 1 or more prior convictions, those prior convictions
14 ~~shall~~**must** not be used to further enhance the sentence for the
15 conviction pursuant to section 10, 11, or 12 of chapter IX of the
16 code of criminal procedure, 1927 PA 175, 769.10, 769.11, and
17 769.12.

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

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

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

27 (b) "Dating relationship" means frequent, intimate
28 associations primarily characterized by the expectation of
29 affectional involvement. This term does not include a casual

1 **relationship or an ordinary fraternization between 2 individuals in**
2 **a business or social context.**

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

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

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

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

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

25 (ii) Approaching or confronting that individual in a public
26 place or on private property.

27 (iii) Appearing at that individual's workplace or residence.

28 (iv) Entering onto or remaining on property owned, leased, or
29 occupied by that individual.

1 (v) Contacting that individual by telephone.

2 (vi) Sending mail or electronic communications to that
3 individual.

4 (vii) Placing an object on, or delivering an object to,
5 property owned, leased, or occupied by that individual.

6 **(g)** ~~(f)~~—"Victim" means an individual who is the target of a
7 willful course of conduct involving repeated or continuing
8 harassment.

9 (2) An individual who engages in stalking is guilty of a crime
10 as follows:

11 (a) Except as provided in subdivision (b), a misdemeanor
12 punishable by imprisonment for not more than 1 year or a fine of
13 not more than \$1,000.00, or both.

14 (b) If the victim was less than 18 years of age at any time
15 during the individual's course of conduct and the individual is 5
16 or more years older than the victim, a felony punishable by
17 imprisonment for not more than 5 years or a fine of not more than
18 \$10,000.00, or both.

19 **(c) If the victim and the individual are spouses or former**
20 **spouses, have or have had a dating relationship, have or have had a**
21 **child in common, or are residents or former residents of the same**
22 **household, a misdemeanor punishable by imprisonment for not more**
23 **than 1 year or a fine of not more than \$1,000.00, or both.**

24 (3) The court may place an individual convicted of violating
25 this section on probation for a term of not more than 5 years. If a
26 term of probation is ordered, the court may, in addition to any
27 other lawful condition of probation, order the defendant to do any
28 of the following:

29 (a) Refrain from stalking any individual during the term of

1 probation.

2 (b) Refrain from having any contact with the victim of the
3 offense.

4 (c) Be evaluated to determine the need for psychiatric,
5 psychological, or social counseling and if, determined appropriate
6 by the court, to receive psychiatric, psychological, or social
7 counseling at ~~his or her~~**the individual's** own expense.

8 (4) In a prosecution for a violation of this section, evidence
9 that the defendant continued to engage in a course of conduct
10 involving repeated unconsented contact with the victim after having
11 been requested by the victim to discontinue the same or a different
12 form of unconsented contact, and to refrain from any further
13 unconsented contact with the victim, gives rise to a rebuttable
14 presumption that the continuation of the course of conduct caused
15 the victim to feel terrorized, frightened, intimidated, threatened,
16 harassed, or molested.

17 (5) A criminal penalty provided for under this section may be
18 imposed in addition to any penalty that may be imposed for any
19 other criminal offense arising from the same conduct or for any
20 contempt of court arising from the same conduct.

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

27 (a) Threatening physical harm or damage to any person or
28 property in the course of a conversation or message through the use
29 of a telecommunications service or device.

1 (b) Falsely and deliberately reporting by message through the
2 use of a telecommunications service or device that a person has
3 been injured, has suddenly taken ill, has suffered death, or has
4 been the victim of a crime or an accident.

5 (c) Deliberately refusing or failing to disengage a connection
6 between a telecommunications device and another telecommunications
7 device or between a telecommunications device and other equipment
8 provided for the transmission of messages through the use of a
9 telecommunications service or device.

10 (d) Using vulgar, indecent, obscene, or offensive language or
11 suggesting any lewd or lascivious act in the course of a
12 conversation or message through the use of a telecommunications
13 service or device.

14 (e) Repeatedly initiating a telephone call and, without
15 speaking, deliberately hanging up or breaking the telephone
16 connection as or after the telephone call is answered.

17 (f) Making an unsolicited commercial telephone call that is
18 received between the hours of 9 p.m. and 9 a.m. ~~For the purpose of~~
19 **As used in** this subdivision, "an unsolicited commercial telephone
20 call" means a call made by a person or recording device, on behalf
21 of a person, corporation, or other entity, soliciting business or
22 contributions.

23 (g) Deliberately engaging or causing to engage the use of a
24 telecommunications service or device of another person in a
25 repetitive manner that causes interruption in telecommunications
26 service or prevents the person from utilizing ~~his or her~~ **the**
27 **person's** telecommunications service or device.

28 (h) **Engaging in any of the conduct prohibited under**
29 **subdivisions (a) to (g) if the person and the other person are**

1 spouses or former spouses, have or have had a dating relationship,
2 have or have had a child in common, or are residents or former
3 residents of the same household. As used in this subdivision,
4 "dating relationship" means frequent, intimate associations
5 primarily characterized by the expectation of affectional
6 involvement. This term does not include a casual relationship or an
7 ordinary fraternization between 2 individuals in a business or
8 social context.

9 (2) A ~~person violating~~ **person who violates** this section may be
10 imprisoned for not more than 6 months or fined not more than
11 \$1,000.00, or both. An offense is committed under this section if
12 the communication either originates or terminates in this state and
13 may be prosecuted at the place of origination or termination.

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

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