



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536


 BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1171 (as enrolled)
Senate Bill 1199 (as enrolled)
Senate Bill 1229 (as enrolled)
House Bills 5887 and 5888 (as enrolled)
Sponsor: Senator Raymond E. Basham (S.B. 1171)
Senator Jud Gilbert, II (S.B. 1199)
Senator Laura M. Toy (S.B. 1229)
Representative Judy Emmons (H.B. 5887)
Representative John Gleason (H.B. 5888)
Senate Committee: Senior Citizens and Veterans Affairs
House Committee: Veterans Affairs and Homeland Security

PUBLIC ACT 150 of 2006
PUBLIC ACT 152 of 2006
PUBLIC ACT 151 of 2006
PUBLIC ACTS 148 & 149 of 2006

Date Completed: 2-6-07

CONTENT

Senate Bill 1171 and House Bill 5887 amended the Michigan Penal Code to prohibit and prescribe criminal penalties for engaging in certain disruptive actions within 500 feet of a funeral, memorial service, viewing of a deceased body, funeral procession, or burial. Senate Bill 1229 and House Bill 5888 amended the Code of Criminal Procedure to include that offense in the sentencing guidelines.

Senate Bill 1199 created a new act to authorize a local unit of government (a city, village, township, or county) to pass ordinances requiring a permit to demonstrate at a funeral or memorial service and prohibiting certain disruptive conduct within 500 feet of a funeral, memorial service, viewing, procession, or burial.

Senate Bills 1171 and 1229 and House Bills 5887 and 5888 were tie-barred and took effect on August 22, 2006. Senate Bill 1199 took effect on May 24, 2006.

House Bill 5887

The bill prohibits a person from doing any of the following within 500 feet of a building or other location where a funeral, memorial service, or viewing of a deceased person is

being conducted, or within 500 feet of a funeral procession or burial:

- Making loud and raucous noise and continuing to do so after being asked to stop.
- Making any statement or gesture that would make a reasonable person under the circumstances feel intimidated, threatened, or harassed.
- Engaging in any other conduct that the person knows or reasonably should know will disturb, disrupt, or adversely affect the funeral, memorial service, viewing, funeral procession, or burial.

Senate Bill 1171

The bill prescribes penalties for the conduct prohibited under House Bill 5887. A person convicted of the offense is guilty of a felony punishable by up to two years' imprisonment, a maximum fine of \$5,000, or both. If an offender has a previous conviction for this offense, the penalty is up to four years' imprisonment, a maximum fine of \$10,000, or both.

House Bill 5888

The bill includes disorderly conduct at a funeral in the sentencing guidelines. A violation is a Class G felony against the

public order with a statutory maximum sentence of two years' imprisonment.

750.167d (H.B. 5887)
777.16i (H.B. 5888)

Senate Bill 1229

The bill includes in the sentencing guidelines a subsequent offense of disorderly conduct at a funeral. A violation is a Class F felony against the public order with a statutory maximum of four years' imprisonment.

Senate Bill 1199

The bill allows a local unit of government to pass ordinances it considers "necessary to protect and preserve the peace and respect toward those attending or conducting a funeral or memorial service". A local unit must impose reasonable fines for violations of an ordinance adopted under the bill.

An ordinance authorized under the bill may require a permit before a person may demonstrate on public property outside of a funeral home, church, synagogue, mosque, or any other place of worship, cemetery, or other location at which a funeral or memorial service is being held. The local unit may assess a reasonable fee for processing and granting a permit.

An ordinance also may include other provisions the local unit considers necessary, including prohibiting any person from doing any of the following within 500 feet of a building or other location where a funeral, memorial service, or viewing of a deceased person is being conducted, or within 500 feet of funeral procession or burial in the hour immediately before, or during, or in the two hours immediately after:

- Making loud and raucous noise and continuing to do so after being asked to stop.
- Making any statement or gesture that would make a reasonable person, under the circumstances, feel intimidated, threatened, or harassed.
- Engaging in any other conduct that the person knows or reasonably should know will disturb, disrupt, or adversely affect the funeral, service, viewing of the deceased person, procession, or burial.

MCL 750.168 (S.B. 1171)
123.1111-123.1115 (S.B. 1199)
777.16i (S.B. 1229)

BACKGROUND

Widely publicized protests at funerals of soldiers killed in Iraq and Afghanistan have spurred many states and the U.S. Congress to pass laws restricting such activity. According to an article published by the First Amendment Center, as of October 2006, 34 states had introduced legislation to limit protests near funerals, and 27 of them had passed those measures ("Funeral Protests", by David L. Hudson Jr., the First Amendment Center, <http://www.firstamendmentcenter.org>).

In May 2006, President George W. Bush signed into law the Respect for America's Fallen Heroes Act (Public Law 109-228), which prohibits certain demonstrations during the period beginning 60 minutes before and ending 60 minutes after a funeral, memorial service, or ceremony at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery. In December 2006, the President signed Public Law 109-464, which enacted similar restrictions for any funeral of a member or former member of the U.S. Armed Forces that is not located at a cemetery under the control of the National Cemetery Administration or part of Arlington National Cemetery.

According to the First Amendment Center article, lawsuits challenging the constitutionality of state measures were filed in Kentucky, Missouri, and Ohio. As of October 2006, one court had issued a decision. In *McQueary v Stumbo*, the United States District Court for the Eastern District of Kentucky issued a preliminary injunction on September 26, 2006, preventing the state from enforcing its funeral protest restriction law because of First Amendment concerns.

Among other things, the Kentucky statute provides that a person is guilty of interference with a funeral if he or she, at any time on any day, congregates, pickets, patrols, demonstrates, or enters on a public right-of-way or private property that is within 300 feet of a funeral, wake, memorial service, or burial that is being conducted. It also prohibits a person, without authorization from the family of the

deceased or person conducting the service, from doing any of the following during a funeral, wake, memorial service, or burial:

- Singing, chanting, whistling, shouting, yelling, or using a bullhorn, auto horn, sound amplification equipment, or other sounds or images observable to or within earshot of participants in the funeral, wake, memorial service, or burial.
- Distributing literature or any other item.

The U.S. District Court ruled that those measures "restrict substantially more speech than that which would interfere with a funeral or that which would be so obtrusive that funeral participants could not avoid it". The Court also stated, "The 300-foot zone would encompass public sidewalks and streets and would restrict private property owners' speech on their own property. The zone is large enough that it would restrict communications intended for the general public on a matter completely unrelated to the funeral as well as messages targeted at funeral participants." The Court concluded, "Accordingly, the provisions are not narrowly tailored to serve a significant government interest but are instead unconstitutionally overbroad."

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 1171 & 1229 and House Bills 5887 & 5888

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders are likely to be convicted of being a disorderly person within 500 feet of a funeral, funeral procession, or burial. An offender convicted of the Class G offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. An offender convicted of the Class F offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments incur the costs of incarceration in local facilities, which vary by county. The State incurs the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000.

Additional penal fine revenue will benefit public libraries.

Senate Bill 1199

The bill will likely have a negligible impact on local unit revenue and expenses. It is unknown how many local units will choose to enact ordinances under the bill. Enforcement of the ordinances will likely have a negligible impact on local unit expenses. Similarly, it is unknown how many fines will be levied or how many permits will be purchased, but the amount is expected to be minimal.

Fiscal Analyst: Lindsay Hollander
David Zin

S0506\s1171es

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.