

Legislative Analysis



DESTRUCTION OF WAR MEMORIAL: INCREASE PENALTIES

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House Bill 4269 (Substitute H-1)
Sponsor: Rep. Rick Jones

House Bill 4270 (Substitute H-1)
Sponsor: Rep. Jeff Mayes
Committee: Judiciary

First Analysis (9-13-10)

BRIEF SUMMARY: The bills would make it a felony offense to vandalize a war memorial, and would establish penalties, and place the maximum term of imprisonment within the sentencing guidelines.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governmental units, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

The Iraqi Freedom Memorial in Mt. Pleasant's Island Park was vandalized twice in 2007 and again in 2009. Like many war memorials, which are often dedicated to one or more soldiers who died during a specific war or conflict, this one was dedicated to the memory of Justin Ellsworth, a lance corporal in the Marine Corps who had attended high school in Mt. Pleasant and died on Nov. 13, 2004 while serving in Iraq. War memorials and monuments around the state have also been damaged. Other states and countries have also seen increases of vandalism and damage to war monuments and memorials.

To many, attacks on these types of memorials are particularly offensive and upsetting. Monuments and memorials can be expensive to construct and maintain. Fundraising may involve an entire community, and the memorials often pay tribute to the sacrifices of local men and women. Thus, desecration of a war memorial can affect an entire community.

Recently, a Member of Parliament in the United Kingdom wrote a poignant and universally applicable opinion piece about the surge in vandalism of war memorials in England – in 2009, some 50 incidents were reported to police. In describing the role that such memorials play in society, David Burrowes, MP, wrote:

War memorials are a central part of our acts of remembrance. Every Remembrance Sunday, War Memorials up and down the country become the focal point for our national ceremony of remembrance. From the plainest monuments to the grand Cenotaph in Whitehall people gather to remember the glorious dead. For the rest of the year, war memorials fade from the public consciousness into the background of our lives. But they

are still there exuding a quite (sic) dignity tinged with sadness for the many men and women who have died for our country. They are more than rock and stone. They have embedded themselves into our national life and heritage, and have come to represent not only the lives lost but the values of freedom and democracy for which they fought. "Ensuring Protection for war memorials", David Burrowes MP, *ePolitix.com*, Feb. 3, 2010.

Currently, it is a crime in Michigan to vandalize a gravestone, tomb, or monument with penalties ranging from a misdemeanor punishable by up to 93 days in jail to a ten-year felony. Fines may also be imposed. The level of the penalty is based upon the amount of damage that is caused by the attack. However, considering the role that war memorials play in society, as articulated in Mr. Burrowes editorial, some believe that any intentional damage to a war memorial should be a felony, regardless of the monetary value of the damage. To that end, legislation has been introduced.

THE CONTENT OF THE BILLS:

Together, House Bills 4269 and 4270 would revise the current four-tier structure as it pertains to the destruction of war memorials or war monuments. Instead of the penalty being based on the amount of damage, any amount of damage of a war monument or war memorial up to \$20,000 would be a five-year felony and/or a fine of not more than \$10,000, or treble damages, whichever was greater. An offense involving damage greater than \$20,000 would be punishable by up to 10 years' imprisonment and/or a fine up to \$15,000 or treble damages, whichever was greater. The bills are tie-barred to each other, meaning that neither can take effect unless the other is also enacted. Both bills would take effect January 1, 2011.

Current Penalties

In 1998, legislation was enacted that created penalties for 13 different larceny offenses by replacing the existing approach (which carried misdemeanor/felony thresholds ranging from \$5 to \$500) with a four-tier structure that set the felony threshold at \$1,000. The larceny offenses affected included the malicious destruction of tombs, monuments, gravestones, or other structures designed for a memorial of the dead.

Under the four-tier structure, if the damage to a tomb, monument, gravestone, etc. involved less than \$200, the offense is a misdemeanor punishable by up to 93 days in jail, and/or a maximum fine of \$500 or three times the amount of damage, whichever is greater. If the damage is at least \$200 but less than \$1,000, the offense is a misdemeanor punishable by up to one year in jail, and/or a maximum fine of up to \$2,000 or three times the amount of damage, whichever is greater. If the damage is \$1,000 or more but less than \$20,000, the offense is a felony punishable by up to five years in prison, and/or a maximum fine of \$10,000 or three times the amount of damage, whichever is greater. If the damage is \$20,000 or more, the offense is a felony punishable by up to ten years in prison and/or a fine of up to \$15,000 or three times the amount of damage, whichever is greater. In addition, repeat offenses are subject to enhanced penalties.

House Bill 4269 would amend Section 387 of the Michigan Penal Code (MCL 750.387). Section 387 prohibits a person (other than the burial right owner, heirs, or cemetery caretakers) to willfully destroy, mutilate, deface, injure, or remove a tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead. The provision prohibits the same unlawful actions taken against fences, railings, and curbs placed as protection around the grave or monument as well as the intentional destruction or removal of plants, trees, and shrubs within the enclosure. Penalties for violations follow the four-tier structure described above.

The bill would specify that if the item or structure damaged or destroyed was a war memorial or a war monument, the penalty would be a felony punishable by imprisonment for not more than five years or a fine of not more than \$10,000 or three times the amount of damage, whichever was greater. (This is the same penalty for actions in which the total damage is at least \$1,000 but less than \$20,000.)

House Bill 4270 would amend the Code of Criminal Procedure (MCL 777.16s) to specify that malicious destruction of a tomb or memorial or involving \$1,000 to \$20,000 or with prior convictions of a war memorial or war monument would carry a maximum term of imprisonment of five years. (Underlining denotes changes.)

FISCAL INFORMATION:

The bills revise current law to increase the minimum punishment for damaging or destroying a war memorial or war monument. Under current law, punishment for damaging or destroying a tomb, monument, gravestone or other structure (including a war memorial or war monument) is based on the cost of the damage done to the structure and any prior conviction for this offense by the violator. If the amount of damage is less than \$200, the violator would be guilty of a misdemeanor punishable by imprisonment of not more than 93 days or a fine of not more than \$500.00 or three times the amount of damage, whichever is greater, or both.

Under the bill any damage or destruction to a war memorial or war monument would make the violator guilty of a Class E felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or three times the amount of the damage, whichever is greater, or both.

Data is not available to determine how many persons have or will be convicted for damaging or destroying a war monument or war memorial. To the extent that the bills increase incarceration time for offenders beyond that authorized in current law, the bills would increase state and/or local incarceration costs. Local incarceration costs at local jails vary by county. The average cost of incarceration in a state prison is roughly \$34,000 per prisoner per year. However, the incremental cost of adding a one or more prisoners to the system can vary significantly around this average depending on the availability of open beds. Costs of parole and probation supervision, exclusive of the cost of electronic tether, average about \$2,100 per supervised offender per year. Any increase

in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

Some maintain that desecrating a war memorial should be a protected right of speech like flag burning. Others would disagree. War memorials and war monuments play an important role in societies and in the lives of survivors. These memorials represent the nation's heritage and values of freedom and democracy and often pay homage to the sacrifices of local men and women who served in those conflicts. Communities generally raise the funds needed to commission a memorial and to pay for the annual upkeep and repairs. Thus, when a war memorial is vandalized, it is the local community most impacted – emotionally and financially. Long after the last participant in a war dies, a memorial or monument continues to remind the living of the nation's history and that freedom often takes sacrifice.

Memorials can also help surviving family members and veterans to heal. A recent Washington Post article highlighted the impact that visiting Vietnam war memorials around the nation has had on one vet. Present at the dedication of the Vietnam Veterans Memorial in 1982, one isolated vet was struck by how the memorial "showed that thousands of people cared." As Jeffrey Walsh told the author, "Somebody had to plan this . . . Somebody had to fundraise. Somebody had to find the space." Believing that other veterans could find solace in how much care went into the design of each memorial, Mr. Walsh has so far sought out and visited local Vietnam memorials in at least 27 states, posting entries of each on his blog. ("The nation's Vietnam War memorials help vet revisit a past he tried to bury", Monica Hesse, *Washington Post*, 5-31-10.)

Currently, it is a crime to damage a monument or other structure placed or designed as a memorial of the dead. However, penalties are based on the monetary amount of the damage, with penalties as low as a misdemeanor charge with minimal jail time and fines less than \$600. Instead, the bill would make an attack on a war memorial or war monument a five-year felony with a fine up to \$60,000 (if treble damages were imposed). Damage to a monument that exceeded \$20,000 would fall under existing penalties provided by law – up to 10 years in prison and/or a fine that equaled three times the cost of the damage. Enactment of the bill would send a strong message that citizens of this state honor the sacrifices of their veterans and should act as deterrent to anyone contemplating desecrating or damaging a war memorial. The bill would apply only to intentional acts and not to accidental or unintentional incidents.

Against:

The bill doesn't define the term "war memorial or war monument," thus it is not clear which structures would trigger the automatic felony penalty if intentionally damaged. Memorials, in particular, can take many forms. For example, a military jeep of the type manufactured for service in Vietnam and owned by a Vietnam vet, now deceased, has been signed by hundreds of veterans or their survivors. Known as the Tom Giesken

memorial, the jeep continues to be driven in parades and other events as a memorial to Tom, who died in 2007 from exposure to Agent Orange, and to other Vietnam veterans. In addition, at parade sites and cemeteries, makeshift memorials are often constructed. It is not clear if intentional damage to these types of memorials would trigger the felony penalties under the bill. In light of the impact a felony conviction can have on a person, such as being ineligible for student loans, certain jobs, and housing, it is important that the public and law enforcement alike know to which structures the bill pertains.

In addition, some people, including veterans, believe that an automatic five-year penalty is too harsh. Further, Senate Bill 950, which would create the Stolen Valor Law to prohibit certain acts that misrepresent a person's military service, took a novel approach to educating offenders about military service by requiring, as part of the sentence, that the offender serve at least 100 hours of community service in a veterans home or veterans organization. Taking a similar approach in the bill under consideration may give offenders a new appreciation of the valor and sacrifice that war memorials and monuments represent.

POSITIONS:

The Michigan Department of Civil Rights indicated a neutral position on the bills. (8-25-10)

The Michigan Department of Corrections indicated a neutral position on the bills. (8-25-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.