

# Legislative Analysis

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## **DESTRUCTION OF WAR MEMORIAL: INCREASE PENALTIES**

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### **House Bill 4269**

**Sponsor: Rep. Rick Jones**

### **House Bill 4270**

**Sponsor: Rep. Jeff Mayes**

**Committee: Judiciary**

**Complete to 8-24-10**

## **A SUMMARY OF HOUSE BILLS 4269-4270 AS INTRODUCED 2-17-09**

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.

Public Act 311 of 1998 was part of a legislative package 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 property involved was valued at 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 value of the property, whichever is greater. If the property is worth 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 value of the property, whichever is greater. If the property is worth more than \$1,000 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 value of the property, whichever is greater. If the property is worth \$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 value of the property, whichever is greater. In addition, repeat offenses are subject to enhanced penalties.

House Bill 4269 would amend 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 of a war memorial or war monument involving \$1,000 to \$20,000 or with prior convictions would carry a maximum term of imprisonment of five years. (Underlining denotes changes.) The bill is tie-barred to House Bill 4269.

### **FISCAL IMPACT:**

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.

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