

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 982 (Senator Simonaire)
Judicial Proceedings

**Criminal Law - Funerals, Burials, Memorial Services, and Funeral Processions -
Picketing and Penalties**

This bill increases the distance within which a person is prohibited from engaging in picketing activities at a funeral, burial, memorial service, or funeral procession from 100 feet to 1,000 feet. The bill also increases the penalties for violations of the State's funeral picketing laws. Under the bill, a first-time violation is subject to maximum penalties of imprisonment for one year and/or a \$5,000 fine. A second or subsequent violation is subject to maximum penalties of imprisonment for three years and/or a \$15,000 fine.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing State resources.

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions. Enforcement can be handled with existing local resources.

Small Business Effect: None.

Analysis

Current Law: Chapter 357 of 2006 enacted several restrictions on protests and related activities at a funeral, memorial service, burial, or funeral procession. Under the statute, a person may not engage in picketing activity within 100 feet of a funeral, burial, memorial service, or funeral procession that is targeted at one or more persons attending

the funeral, burial, memorial service, or funeral procession. The prohibition does not apply to a person who conducts a funeral, burial, memorial service, or funeral procession.

A person is also prohibited from (1) knowingly obstructing, hindering, impeding, or blocking another person's entry to or exit from a funeral, burial, memorial service, or funeral procession; or (2) addressing speech to a person attending a funeral, burial, memorial service, or funeral procession that is likely to incite or produce an imminent breach of the peace.

Violators are guilty of a misdemeanor and subject to maximum penalties of imprisonment for 90 days and/or a \$1,000 fine.

Background: Marine Lance Corporal Matthew Snyder died in Iraq in 2006. Members of the Westboro Baptist Church picketed outside of his military funeral at St. John's Catholic Church in Westminster. The Westboro protesters picketed on a plot of land approximately 1,000 feet from St. John's, but within 200-300 feet of the funeral procession.

Westboro Baptist Church, which is based in Kansas, is led by the Reverend Fred Phelps and mostly consists of members of the Phelps family. Members of the church have mounted anti-gay protests at military funerals for several years based on their belief that military deaths in Iraq and Afghanistan are the result of the nation's tolerance of homosexuality. Albert Snyder sued the church and its members over their actions at his son's funeral. A trial court awarded him \$11 million for various tort claims, including intentional infliction of emotional distress. The award was later reduced to \$5 million. A federal appeals court threw out the verdict and said that the U.S. Constitution shielded the members of Westboro Baptist from tort liability.

In March 2, 2011, the United States Supreme Court held in an 8-1 ruling that the Westboro protesters are shielded from tort liability and that their words and actions fall under the purview of constitutionally protected free speech. Chief Justice Roberts noted that the picketing is protected free speech when the disputed words "address matters of public import on public property" and when the protest is conducted "in a peaceful manner, in full compliance with the guidance of local officials." While the court has previously held that the location of targeted picketing can be regulated under content-neutral provisions, the court did not address the validity of Maryland's funeral picketing law since it was enacted after the funeral.

Forty-eight states, 42 United States Senators, and several veterans groups sided with the Snyder family and asked the court to protect military funerals from "psychological terrorism." News agencies asked the court to side with Westboro Baptist, fearing restrictions on free speech.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,920 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a

local facility. Per diem operating costs of local detention facilities have ranged from \$57 to \$157 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, St. Mary's, and Worcester counties; Commission on Criminal Sentencing Policy; United States Supreme Court, *Los Angeles Times*, *Maryland Daily Record*, Department of Legislative Services

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