

S T A T E O F N E W Y O R K

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I N S E N A T E

March 9, 2011

Introduced by Sens. GRIFFO, ZELDIN, BALL, SKELOS, ALESİ, AVELLA, BONACIC, DeFRANCISCO, FARLEY, FLANAGAN, FUSCHILLO, GALLIVAN, GOLDEN, GRISANTI, HANNON, JOHNSON, KLEIN, LANZA, LARKIN, LAVALLE, LIBOUS, LITTLE, MARCELLINO, MARTINS, MAZIARZ, McDONALD, NOZZOLIO, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SALAND, SEWARD, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Veterans, Homeland Security and Military Affairs -- reported favorably from said committee and committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the military law and the penal law, in relation to criminal interference with funeral services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The military law is amended by adding a new section 255 to
2 read as follows:
3 S 255. PROTESTS AT MILITARY FUNERALS. 1. LEGISLATIVE INTENT. THE
4 LEGISLATURE FINDS AND DETERMINES THAT CERTAIN INDIVIDUALS AND GROUPS
5 HAVE BEEN DISRUPTING THE FUNERALS OF MILITARY PERSONNEL WHO DIED WHILE
6 SERVING IN THE ACTIVE MILITARY SERVICE OF THE UNITED STATES OR THE FORCE
7 OF THE ORGANIZED MILITIA.
8 THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT ALTHOUGH IT IS
9 IMPORTANT FOR OUR STATE'S CITIZENS TO BE ABLE TO EXERCISE THEIR CONSTITUTIONALLY
10 PROTECTED RIGHT TO FREE SPEECH, THERE IS ALSO A COMPELLING
11 STATE INTEREST IN PRESERVING AND PROTECTING THE FAMILIES AND FRIENDS OF
12 SUCH DECEASED MILITARY PERSONNEL, ESPECIALLY AT SUCH A SOLEMN TIME AS
13 THE DECEASED MILITARY PERSONNEL'S FUNERAL, MEMORIAL SERVICE, WAKE, BURIAL
14 OR PROCESSION TO OR FROM THE SAME.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT IN ORDER TO BALANCE
2 THE CONSTITUTIONALLY PROTECTED RIGHT TO FREE SPEECH, AND THE COMPELLING
3 STATE INTEREST IN PRESERVING AND PROTECTING THE MOURNING FAMILIES AND
4 FRIENDS OF DECEASED MILITARY PERSONNEL, THE STATE POLICE POWERS, AND
5 THOSE OF ITS LOCALITIES, MAY BE EMPLOYED TO PROVIDE SUFFICIENT
6 PROTECTION OF THE FAMILIES AND FRIENDS OF SUCH DECEASED MILITARY PERSON-
7 NEL, AT SUCH A SOLEMN TIME AS THE DECEASED MILITARY PERSONNEL'S FUNERAL,
8 MEMORIAL SERVICE, WAKE, BURIAL OR PROCESSION TO OR FROM THE SAME.

9 2. THE DIVISION OF MILITARY AND NAVAL AFFAIRS SHALL PROVIDE AND MAKE
10 AVAILABLE AN INFORMATIONAL GUIDE WHICH SHALL DETAIL THE PUBLIC
11 PROTECTIONS AND PROTEST RESTRICTIONS CONCERNING THE FUNERAL, MEMORIAL
12 SERVICE, WAKE, BURIAL, OR PROCESSION TO OR FROM THE SAME OF A DECEASED
13 MILITARY PERSONNEL MEMBER.

14 S 2. The section heading, subdivision 1 and the closing paragraph of
15 section 240.70 of the penal law, as added by chapter 635 of the laws of
16 1999, are amended to read as follows:

17 Criminal interference with health care services, FUNERAL SERVICES, or
18 religious worship in the second degree.

19 1. A person is guilty of criminal interference with health services,
20 FUNERAL SERVICES, or religious worship in the second degree when:

21 (a) by force or threat of force or by physical obstruction, he or she
22 intentionally injures, intimidates or interferes with, or attempts to
23 injure, intimidate or interfere with, another person because such other
24 person was or is obtaining or providing reproductive health services; or

25 (b) by force or threat of force or by physical obstruction, he or she
26 intentionally injures, intimidates or interferes with, or attempts to
27 injure, intimidate or interfere with, another person in order to
28 discourage such other person or any other person or persons from obtain-
29 ing or providing reproductive health services; or

30 (c) by force or threat of force or by physical obstruction, he or she
31 intentionally injures, intimidates or interferes with, or attempts to
32 injure, intimidate or interfere with, another person because such person
33 was or is seeking to exercise the right of religious freedom at a place
34 of religious worship; or

35 (d) he or she intentionally damages the property of a health care
36 facility, or attempts to do so, because such facility provides reproduc-
37 tive health services, or intentionally damages the property of a place
38 of religious worship; OR

39 (E) WITH INTENT TO PREVENT OR DISRUPT A FUNERAL OR BURIAL, FUNERAL
40 HOME VIEWING OF A DECEASED PERSON, FUNERAL PROCESSION, OR FUNERAL OR
41 MEMORIAL SERVICE FOR A DECEASED PERSON, WHEN HE OR SHE:

42 (I) BLOCKS, IMPEDES, INHIBITS, OR IN ANY OTHER MANNER OBSTRUCTS OR
43 INTERFERES WITH ACCESS INTO OR FROM ANY BUILDING OR PARKING LOT OF A
44 BUILDING IN WHICH A FUNERAL, WAKE, MEMORIAL SERVICE, OR BURIAL IS BEING
45 CONDUCTED, OR ANY BURIAL PLOT OR THE PARKING LOT OF THE CEMETERY IN
46 WHICH A FUNERAL, WAKE, MEMORIAL SERVICE, OR BURIAL IS BEING CONDUCTED;
47 OR

48 (II) CONGREGATES, PICKETS OR DEMONSTRATES WITHIN FIVE HUNDRED FEET OF
49 AN EVENT SPECIFIED IN THIS SUBDIVISION; OR

50 (III) WITHOUT AUTHORIZATION FROM THE FAMILY OF THE DECEASED OR PERSON
51 CONDUCTING THE SERVICE, DURING A FUNERAL, WAKE, MEMORIAL SERVICE, OR
52 BURIAL:

53 (1) SINGS, CHANTS, WHISTLES, SHOUTS, YELLS, OR USES A BULLHORN, AUTO
54 HORN, SOUND AMPLIFICATION EQUIPMENT, OR OTHER SOUNDS OR IMAGES OBSERVA-
55 BLE TO OR WITHIN EARSHOT OF PARTICIPANTS IN THE FUNERAL, WAKE, MEMORIAL
56 SERVICE, OR BURIAL; OR

1 (2) DOES OR MAKES ANY UTTERANCE, GESTURE, OR DISPLAY DESIGNED TO
2 OUTRAGE THE SENSIBILITIES OF THE GROUP ATTENDING THE FUNERAL OR BURIAL,
3 FUNERAL HOME VIEWING OF A DECEASED PERSON, FUNERAL PROCESSION, OR FUNER-
4 AL OR MEMORIAL SERVICE FOR A DECEASED PERSON; OR

5 (3) DISTRIBUTES LITERATURE OR ANY OTHER ITEM.

6 Criminal interference with health care services, FUNERAL SERVICES, or
7 religious worship in the second degree is a class A misdemeanor.

8 S 3. Section 240.71 of the penal law, as amended by chapter 493 of the
9 laws of 2009, is amended to read as follows:

10 S 240.71 Criminal interference with health care services, FUNERAL
11 SERVICES or religious worship in the first degree.

12 A person is guilty of criminal interference with health care services,
13 FUNERAL SERVICES or religious worship in the first degree when he or she
14 commits the crime of criminal interference with health care services,
15 FUNERAL SERVICES or religious worship in the second degree and has been
16 previously convicted of the crime of criminal interference with health
17 care services, FUNERAL SERVICES or religious worship in the first or
18 second degree or aggravated interference with health care services in
19 the first or second degree.

20 Criminal interference with health care services, FUNERAL SERVICES or
21 religious worship in the first degree is a class E felony.

22 S 4. This act shall take effect immediately.