

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Community Affairs Committee

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BILL: CS/SB 218

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Disturbance of Assemblies

DATE: March 28, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Yeatman	CA	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	GE	_____
4.	_____	_____	WM	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

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## I. Summary:

This committee substitute (CS) amends Florida's current prohibition against disturbing lawful assemblies by providing an enhanced penalty for disturbing the assembly of individuals gathered to give military honors to a deceased veteran.

This CS substantially amends sections 871.01 and 871.02 of the Florida Statutes.

## II. Present Situation:

Section 871.01, F.S., currently provides that the willful interruption or disturbance of any school or any assembly of people meeting for the worship of God or any other lawful purpose constitutes a misdemeanor of the second degree, punishable by up to 60 days imprisonment and fine of up to \$500.

The constitutionality of s. 871.01, F.S., was considered by the Supreme Court of Florida in *S.H.B. v. State of Florida*<sup>1</sup>. In this case, the appellant, a juvenile, caused a disturbance at his junior high school when he ran through the hallways and yelled obscenities at a teacher who confronted him. Other students crowded the doors in their classrooms to see the activity in the hallways. The Court noted that the appellant's acts caused a disturbance and that "a disruption of the school's functions did, in fact, occur."

The appellant, however, challenged the law's constitutionality on two points: (1) that the statute was overbroad; and (2) that the First Amendment to the U.S. Constitution protected the appellant's activity.

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<sup>1</sup> *S.H.B. v. State of Florida*, 355 So.2d 1176 (Fla. 1978)

In its decision, before it spoke to the two points concerning constitutionality, the Court addressed another one of the appellant's arguments that ss. 871.01, F.S., and 877.03, F.S.<sup>2</sup>, the "breach of peace" statute, are analogous and that he should therefore be judged under the standards of s. 877.03, F.S. The Court disagreed and said that s. 871.01, F.S., is supplementary to and not a rephrasing of s. 877.03, F.S. The Court noted that, "Section 871.01 is a more explicit statute dealing with a particular kind of disturbance, i.e., the disturbance of a lawful assembly. ... It recognizes and provides penalties for the deliberate disruption of a peaceful and lawful assembly."

The Court continued and described the special character of these assemblies and said, "These functions are fragile by their nature. They generally require a degree of restraint and cooperation to produce the harmony necessary for their effectiveness. Thus, they are highly vulnerable to disturbance. A single person may cause havoc in a situation in which hundreds of others have sought a common purpose." Therefore, certain acts that may be tolerable in the general public realm may not be tolerable in situations involving these assemblies or functions.

The Court then segued into the first point made by the appellant, that the statute is overbroad and should be constitutionally void. Although s. 871.01, F.S., is widely protective, the Court stated, "Because of the innumerable situations and types of conduct involved, the question of what conduct [constitutes an interruption or disturbance] must be determined largely on a case-by-case basis<sup>3</sup>." The Court further held that, "Since it is impossible to predict the type of behavior a person might use to cause a disruption, the statute cannot be more specific." The Court decided that a jury should make an initial determination, based on the facts of a case, whether or not s. 871.01, F.S., was violated, and it affirmed that the statute was not overbroad.

Regarding the First Amendment issue raised by the appellant, the Court said, "As the appellant notes, mere words, when used as a tool of communication, are constitutionally protected. But the protection fails when, by the manner of their use, the words invade the right of others to pursue their lawful activities." The Court noted the appellant's conduct consisted of loud obscenities, running through the junior high while school was in session, and disobedience of lawful and reasonable requests of school officials for the conduct to stop. The Court concluded that the First Amendment did not protect the appellant's activities and that he did in fact violate s. 871.01, F.S.

The Court upheld s. 871.01, F.S., against the argument that the statute is analogous to the "breach of peace" statute, and against the constitutional challenges that the statute is overbroad and violates the First Amendment.

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<sup>2</sup> Section 877.03, F.S. -- Breach of the peace; disorderly conduct.—Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upheld in *White v. State of Florida*, 330 So.2d 3 (Fla. 1976).

<sup>3</sup> Next, the Court said that, generally, the case-by-case determination on whether or not a disturbance occurred would be made at the trial level.

The federal government has created a funeral program that provides special recognition for veterans upon their death. The “Honoring Those Who Served” Program directs the Secretary of Defense to provide special Military Funeral Honors<sup>4</sup> for any<sup>5</sup> deceased veteran<sup>6</sup> upon his or her family’s request. The codification of special funeral honors for deceased veterans by the United States Government recognizes both the special nature of their service and sacrifices while defending the country and the opportunity for such recognition at the time of their death.

The minimum requirements<sup>7</sup> for Military Funeral Honors under the law are:

- A funeral honors detail with at least two persons from the armed forces in proper uniform, with at least one of those persons from the deceased veteran’s armed force<sup>8</sup>; and
- A ceremony that includes the playing of Taps by a bugler or recorded version followed by the folding and presentation of a United States flag to the decedent’s family.

The Department of Defense (DOD) has additional honors, such as, but not limited to, a firing party, which may augment the minimum requirements.

An eligible deceased veteran’s family may request a funeral with military honors by contacting their funeral director or a local veterans’ organization. In addition, DOD maintains a website ([www.militaryfuneralhonors.osd.mil](http://www.militaryfuneralhonors.osd.mil)) to assist the public with Military Funeral Honors.

Recent news accounts have profiled incidents where protestors have been targeting certain high-profile funerals with pickets and sloganeering. More recently, these protestors have been organizing their protests at funerals honoring the nation’s fallen veterans. This has prompted many states, including Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to enact or propose legislation to address protests at funerals.

### III. Effect of Proposed Changes:

This CS amends Florida’s current prohibition against disturbing lawful assemblies by providing an enhanced penalty for disturbing the assembly of individuals to give military honors to a fallen veteran. The CS amends s. 871.01, F.S., by distinguishing funerals with military honors, as provided for in 10 U.S.C. s. 1491, in subsection (2) and by making it a first degree misdemeanor to willfully interrupt or disturb such a funeral.

A funeral conducted under Military Funeral Honors is provided for in 10 U.S.C. s. 1491. Due to the extraordinarily special nature of a deceased veteran’s funeral, the federal government deemed

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<sup>4</sup> Title 10 U.S.C. s. 1491(a).

<sup>5</sup> Title 10 U.S.C. s. 985(a) provides certain exceptions to “any” veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

<sup>6</sup> Title 10 U.S.C. s. 1491(h) defines veteran under this section as “a decedent who – (1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or (2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.”

<sup>7</sup> Title 10 U.S.C. s. 1491(b) and (c).

<sup>8</sup> The other members of the funeral detail may be retired military persons or members of veterans’ organizations.

it necessary to codify such honors for any<sup>9</sup> veteran in recognition of his or her defense of the nation. The provisions of the CS recognize that since such a funeral receives special recognition from the U.S. Government, it is more egregious to willfully interrupt or disturb such a funeral, and a higher penalty is warranted to deter such activity.

The CS also reenacts s. 871.02, F.S., which provides the mechanisms for prosecuting violators of s. 871.01, F.S.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>9</sup> Title 10 U.S.C. s. 985(a) provides certain exceptions to "any" veteran such as, but not limited to, a veteran convicted of a federal or state capital crime.

## **VIII. Summary of Amendments:**

None.

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