

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.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 218

INTRODUCER: Community Affairs Committee and Senator Bennett

SUBJECT: Disturbance of Assemblies

DATE: April 5, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>JU</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>GE</u>	<u>Withdrawn</u>
4.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>Withdrawn</u>
5.	<u>_____</u>	<u>_____</u>	<u>RC</u>	<u>Withdrawn</u>
6.	<u>Davis</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>

I. Summary:

This bill establishes a first degree misdemeanor penalty for anyone who willfully interrupts or disturbs an assembly of people who have gathered to acknowledge the death of an individual with a military funeral honors detail.

This bill amends section 871.01, Florida Statutes, renumbering it as section 871.01(1), Florida Statutes. The bill creates section 871.01(2), Florida Statutes.

II. Present Situation:

Current Demonstrations at Military Funerals

Approximately 14 years ago Rev. Fred Phelps, a minister from Topeka, Kansas, began picketing the funerals of AIDS victims across America.¹ He and family members of his congregation now often appear at military funerals with signs stating "God Hates You," and "Thank God for Dead Soldiers."² The Phelps family's premise for its protests is that the American war casualties are divine punishment for the country tolerating homosexuality.³ The family began protesting the funerals of soldiers in June 2005 and has now traveled to approximately 35 states with their protests.⁴

In response to the numerous protests the Phelps family has conducted at military funerals, Congress and state legislatures have begun drafting and enacting legislation that would

¹ "Targeting Protests at Military Funerals" *Capitol Hill Blue* (March 15, 2006).

² "Military Funeral Protests Outrage Families, Lawmakers" ABC News (March 15, 2006).

³ "Constitutionality of Protest Ban At Issue" *Tallahassee Democrat* (April 7, 2006).

⁴ "Military Funeral Protests Outrage Families, Lawmakers" ABC News (March 15, 2006).

criminalize protests at military funerals.⁵ According to newspaper accounts, at least seven states, South Dakota, Kansas, Oklahoma, Indiana, Minnesota, Wisconsin, and Kentucky have passed legislation prohibiting military funeral demonstrations.⁶ At least 12 other states are considering similar legislation.

Current Florida Law Prohibiting Disturbances at Assemblies

If someone were charged with disrupting a funeral in Florida he or she would most likely be prosecuted, not for breach of the peace, but for disrupting an assembly, s. 871.01, F.S.⁷

Section 871.01, F.S., provides that:

Whoever willfully interrupts or disturbs any school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

The Florida Supreme Court upheld the constitutionality of this statute in 1978.⁸ Although it was challenged on appeal as being overly broad and therefore void, the Court held that the statute was not unconstitutional or overbroad.

Military Funeral Honors for Veterans

Under federal law the Secretary of Defense is directed to provide special military funeral honors for any deceased veteran⁹ when so requested by the veteran's family. The funeral honors detail must consist of at least two uniformed members of the armed forces, one of whom must be a member of the armed force of which the veteran was a member. At a minimum the detail shall perform the folding of the United States flag and its presentation to the family as well as the playing of Taps.¹⁰

III. Effect of Proposed Changes:

This bill establishes a first degree misdemeanor penalty for anyone who willfully interrupts or disturbs a group of people assembled for the purpose of acknowledging the death of a person

⁵ U.S. Rep. Mike Rogers of Michigan has filed H.R. 5037, "Respect for America's Fallen Heroes Act," which would prohibit demonstrations on certain cemetery property controlled by the National Cemetery Administration or at Arlington National Cemetery without prior approval of the property's director. The legislation also prohibits demonstrations within 500 feet of the cemetery for the period beginning one hour before and ending one hour after the service. Penalties for violation of the bill are punishable by fines up to \$100,000, imprisonment for not more than one year, or both. The bill was heard in the House Veteran's Affairs Committee on April 6, 2006, and is expected to be voted on by the House of Representatives in May.

Senator Evan Bayh of Indiana has also introduced legislation, S. 2452, in the U.S. Senate. The Senate Bill prohibits picketing within 300 feet of a service for an armed service member within one hour before, during, and after a funeral.

⁶ "Lawmaker Proposes Bill to Ban Protests at Military Funerals," *Stars and Stripes*, (March 18, 2006); "Burying Funeral Protests – What Does the Law Say?" *National Review Online*. March 26, 2006.

⁷ *S.H.B. v. State*, 355 So. 2d 1176 (Fla. 1978).

⁸ *Id.*

⁹ A veteran is defined in Title 10 U.S.C. s. 1491(h) 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 there from 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.

¹⁰ Title 10 U.S.C. section 1491(b), (c).

with a military funeral honors detail. The military funeral honors detail is set forth in 10 U.S.C. s. 1491.

A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and by a fine not exceeding \$1,000.

The existing penalty for disturbing a lawful assembly is a second degree misdemeanor.

In Section 2 of the bill s. 871.02, F.S., is reenacted for purposes of incorporating the amendment made to s. 871.01, F.S.

The bill takes effect upon becoming a law.

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.

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

VIII. Summary of Amendments:

None.

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