

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7127 PCB MVA 06-01 Disturbance of Assemblies

SPONSOR(S): Military & Veteran Affairs Committee, Jordan

TIED BILLS: IDEN./SIM. BILLS: CS/SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Military & Veteran Affairs Committee	8 Y, 0 N	Marino	Cutchins
1) Criminal Justice Committee	6 Y, 0 N	Ferguson	Kramer
2) State Administration Council		Marino	Bussey
3) _____			
4) _____			
5) _____			

SUMMARY ANALYSIS

House Bill 7127 amends Florida’s current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran.

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

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families – This bill serves to benefit families of certain deceased veterans by providing protection for a disturbance-free, dignified funeral service.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Section 871.01: Disturbances Statute Upheld

Section 871.01, F.S., reads, “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...” The Supreme Court of Florida upheld the law’s constitutionality in S.H.B. v. State of Florida¹.

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.

In its decision, before it spoke to the two points concerning constitutionality, the Court addressed another one of the appellant’s arguments that s. 871.01, F.S., and 877.03, F.S.², 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,

¹ S.H.B. v. State of Florida, 355 So.2d 1176 (Fla. 1978)

² 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).

“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 basis³.”

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 though 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.

Regarding certain functions that may currently fall under the protection of s. 871.01, F.S., funerals appear to fall under the provisions of this statute, and two considerations need to be addressed. First, since s. 871.01, F.S., protects “any assembly of people met...for any lawful purpose,” it appears funerals fit this description. Second, in its decision in S.H.B. v. Florida, the Court noted the “fragile...nature” of such assemblages, and again, funerals appear to suit this consideration.

Military Funeral Honors for Any Veteran

The United States created a 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 Honors⁴ for any⁵ deceased veteran⁶ 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 requirements⁷ 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 force⁸; 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.

³ 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.

⁴ Title 10 U.S.C. s. 1491(a).

⁵ 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.

⁶ 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.”

⁷ Title 10 U.S.C. s. 1491(b) and (c).

⁸ The other members of the funeral detail may be retired military persons or members of veterans organizations.

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) to assist the public with Military Funeral Honors.

Over the last few years, according to numerous news accounts, 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, such as Oklahoma, Missouri, Indiana, Nebraska, South Dakota, Illinois, Kansas, Iowa, Mississippi, Virginia, Wisconsin, Tennessee, Kentucky, and West Virginia, to name a few, to enact or propose legislation to address protests at funerals.

Effect of Proposed Changes:

House Bill 7127 amends Florida's current prohibition against disturbing lawful assemblies by providing a higher level of penalty for disturbing the particularly sensitive assembly of individuals gathered to give military honors to a fallen veteran. This bill 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 it necessary to codify such honors for any⁹ veteran in recognition of his or her defense of the nation. The provisions of this bill 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.

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

C. SECTION DIRECTORY:

Section 1. 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.

Section 2. Reenacts s. 871.02, F.S., to extend the prosecutorial mechanisms of this section to the amended version of s. 871.01, F.S., through the continuance of a reference.

Section 3. Provides that this act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on state government expenditures.

⁹ 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There are no known or expected economic impacts on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

Section 871.01, F.S., which this PCB amends, is constitutional according to the Florida Supreme Court's decision in S.H.B. v. Florida¹⁰. This bill does not appear to take the statute outside the constitutional parameters laid forth in the Court's decision.

B. RULE-MAKING AUTHORITY:

This bill does not appear to grant any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

¹⁰ See Present Situation above.