

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1571 Residential Picketing

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Maggard and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 3 N, As CS	Frost	Hall
2) Judiciary Committee	13 Y, 5 N	Frost	Kramer

SUMMARY ANALYSIS

In recent years, highly publicized events involving political figures, persons accused of committing crimes, and celebrities have often resulted in large public gatherings outside the homes of the persons of interest. Both Senators Marco Rubio and Rick Scott have experienced such gatherings outside their private residences, and the local Mayors of Chicago and Portland have likewise drawn large gatherings at their private homes. In Orlando, groups gathered outside a home owned by the officer later convicted of George Floyd's murder. In Brevard county, the home of a school board member was targeted, and in North Port, large groups of individuals gathered outside the homes of the parents and neighbors of murder suspect, Brian Landrie.

Florida law currently criminalizes a number of activities relating to trespassing on specified property and unlawful assemblies, but does not specifically prohibit a nonviolent gathering of persons in the public areas of a residential neighborhood, unless such gathering takes place during specified periods of time before or after a funeral or burial.

CS/HB 1571 provides that Florida has a significant interest in protecting the tranquility and privacy of the home and protecting citizens from the detrimental effect of targeted picketing, and that the Supreme Court of the United States has recognized this interest by upholding a challenged ordinance restricting residential picketing in *Frisby v. Schultz*, 487 U.S. 474 (1988). The bill creates s. 810.15, F.S., to prohibit a person from picketing or protesting before or about a person's dwelling with the intent to harass or disturb that person. An offense of residential picketing is punishable as a second degree misdemeanor.

Under the bill, "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.

The bill requires a law enforcement officer, prior to making any arrest for a residential picketing offense, to provide a warning to any person picketing or protesting outside of a person's dwelling to immediately and peaceably disperse. Under the bill, a law enforcement officer may arrest a person for residential picketing only if the person does not immediately and peaceably disperse after the required warning.

The bill may have a positive insignificant impact on jail beds by creating a new second degree misdemeanor offense.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In recent years, highly publicized events involving political figures, persons accused of committing crimes, and celebrities have often resulted in large public gatherings outside the homes of persons of interest. Both Senators Marco Rubio and Rick Scott have experienced such gatherings outside their private residences,¹ and the local Mayors of Chicago and Portland have likewise drawn large gatherings at their private homes.^{2, 3} In Florida, groups gathered outside an Orlando home owned by the officer later convicted of the murder of George Floyd,⁴ the home of a Brevard county school board member was targeted regarding mixed opinions on school mask mandates, and in North Port, large groups of individuals gathered outside the home of the parents and neighbors of suspected murderer, Brian Laundrie.⁵

Florida law currently criminalizes a number of activities relating to trespassing on specified property and unlawful assemblies, but does not specifically prohibit nonviolent gatherings of persons in public areas of residential neighborhoods, unless such gathering takes place during specified periods of time before or after a funeral or burial.⁶

Trespass

Chapter 810, F.S., prohibits a variety of acts relating to trespassing in or on the property of others. For example:

- Under s. 810.08, F.S., a person commits a second degree misdemeanor⁷ if he or she willfully enters or remains in any structure⁸ or conveyance,⁹ without being authorized, licensed, or invited, or, after having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and he or she refuses to do so.¹⁰
- Under s. 810.09, F.S., a person commits a first degree misdemeanor¹¹ if he or she willfully enters or remains on any property other than a structure or conveyance, without being authorized, licensed, or invited:

¹ Jacob Ogles, *Protesters to convene on Marco Rubio's, Rick Scott's homes to demand challenge to Joe Biden win*, Florida Politics (Jan. 1, 2021), <https://floridapolitics.com/archives/405357-protesters-to-convene-on-marco-rubios-rick-scotts-homes-to-demand-challenge-to-joe-biden-win/> (last visited Feb. 21, 2022). See also, Lautaro Grinspan, *Trump supporters gather in front of Marco Rubio's West Miami home. 'You work for us,'* The Miami Herald (Jan. 3, 2021) <https://www.spokesman.com/stories/2021/jan/03/trump-supporters-gather-in-front-of-marco-rubios-w/> (last visited Feb. 21, 2022).

² Madeline Holcombe, *Chicago protesters rally at mayor's house a day after clashes with police*, CNN (Jul. 19, 2020), <https://www.cnn.com/2020/07/19/us/chicago-protest-lori-lightfoot/index.html> (last visited Feb. 21, 2022).

³ Sources indicate that the Portland Mayor planned to move out of his apartment due to the targeted protests at his home. Andrew Hay, *Portland mayor to leave home targeted by protestors*, Reuters (Sept. 2, 2020) <https://www.reuters.com/article/us-global-race-usa-protests-portland/portland-mayor-to-leave-home-targeted-by-protesters-idUSKBN25T32R> (last visited Feb. 21, 2022).

⁴ *Protesters remain at Orlando-area home owned by officer connected to George Floyd's death*, Fox 35 Orlando (May 30, 2020), <https://www.fox35orlando.com/news/protesters-remain-at-orlando-area-home-owned-by-officer-connected-to-george-floyds-death> (last visited Feb. 21, 2022).

⁵ See Elisha Fieldstadt, *Florida school board member who supports masks says people told her to 'beg for mercy,'* NBC News (Oct. 13, 2021), <https://www.nbcnews.com/news/us-news/florida-school-board-member-who-supports-masks-classrooms-says-people-n1281408> (last visited Feb. 21, 2022); and Franklin White, *Protesters outside Laundrie's house demand answers from parents saying they knew more*, WSVN NEWS MIAMI (Oct. 22, 2021), <https://wsvn.com/news/local/protesters-outside-laundries-house-demand-answers-from-parents-saying-they-knew-more/> (last visited Feb. 21, 2022).

⁶ S. 871.015, F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

⁸ Section 810.011(1), F.S., defines "structure" as a building of any kind.

⁹ Section 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

¹⁰ This section increases the penalty for an offense to a first degree misdemeanor or a third degree felony in specified circumstances. See s. 810.08(2)(b) and (c), F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

- When he or she has been provided notice against entering or remaining either by actual communication or by posting, fencing, or cultivation;¹² or
- If the property is the unenclosed curtilage¹³ of a dwelling¹⁴ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, a trespass offense is a misdemeanor. However, the penalties relating to a trespass offense may be increased when the offense involves specified types of property. For example, it is a third degree felony¹⁵ to trespass on designated construction sites, commercial horticulture properties, agricultural chemical manufacturing facilities, and the operational area of an airport with specified intent.¹⁶ Such properties must have posted warnings that contain specific language identifying the property as a protected type of property.¹⁷

When used within ch. 810, F.S., the term “dwelling” means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.¹⁸

Unlawful Assembly

Section 870.02, F.S., prohibits three or more persons from meeting together to commit a breach of the peace or any other unlawful act.¹⁹ A violation for unlawful assembly is a second degree misdemeanor.²⁰

A person commits a breach of the peace by:

- Committing any act which may:
 - Corrupt the public morals,
 - Outrage the sense of public decency, or
 - Affect the peace and quiet of persons who may witness them; or
- Engaging in:
 - Brawling or fighting,
 - Conduct which constitutes a breach of the peace, or
 - Disorderly conduct.²¹

The Florida Supreme Court (FSC) has relied on the common law definition of an unlawful assembly to define which elements must be alleged for the offense to pass constitutional muster. Persons participating in an unlawful assembly commit a breach of the peace when: an assembly of three or more persons who, having a common unlawful purpose, assemble in such a manner as to give a reasonable person in the vicinity of the assembly a well-founded fear of a breach of the peace.²²

¹² Section 810.011(6), F.S., defines “cultivated land” as that land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation.

¹³ Section 810.09(1)(b), F.S., defines “curtilage” as the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

¹⁴ Section 810.011(2), F.S., defines “dwelling” as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

¹⁵ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁶ S. 810.09(2)(d)1., (e), (i), and (j), F.S.

¹⁷ S. 810.09(2), F.S.

¹⁸ S. 810.011(2), F.S.

¹⁹ Section 870.03, F.S., similarly prohibits an unlawful assembly from demolishing, pulling down or destroying, or beginning to pull down or destroy any dwelling house or other building, or any ship or vessel. A violation is a third degree felony punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

²⁰ Ss. 775.082 and 775.083, F.S.

²¹ S. 877.03, F.S.

²² *State v. Simpson*, 347 So.2d 414, 415 (Fla. 1977).

Applying this definition, the FSC has held that prohibiting an assembly whose purpose is to commit a breach of the peace is not a violation of the First Amendment.²³

Unlawful Protests at a Funeral or Burial

Section 871.015, F.S., prohibits a person from engaging in any protest activities or knowingly causing protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at such location. However, s. 871.015, F.S., specifies that the offense does not prohibit protest activities occurring adjacent to the portion of a funeral procession which extends beyond 500 feet of the property line of the location of the funeral or burial.

For purposes of unlawful protests, the term “protest activities” means any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.²⁴

Picketing

Picketing occurs when a person or a group of people stands, marches, or patrols inside, in front of, or about any premise with the intent to persuade an occupant or patron of the premise regarding some point of view or to protest an action, attitude, or belief.²⁵ The United States Supreme Court (USSC), in *Frisby v. Schultz*, 487 U.S. 474, 482 (1988), upheld a Brookfield, Wisconsin city ordinance which made it “unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.” The Court upheld the ordinance as constitutional and rejected claims that the ordinance prohibited constitutionally protected First Amendment activity. Specifically, the USSC held that the use of the words “dwelling” and “residence” in the ordinance suggested that such ordinance was appropriately limited to regulate certain conduct at particular residences and was not overbroad so as to unconstitutionally limit picketing through the whole residential area.

Constitutional Requirements

The First Amendment of the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”²⁶ The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.²⁷ The rights to acquire, possess, and protect private property are basic principles afforded under both the U. S. Constitution and the Florida Constitution. While the government has an interest in protecting private property rights, those interests must also coincide with other basic legal protections, such as the freedom to assemble. While First Amendment interests are broadly protected, courts have recognized that state and local authorities may broadly use their “police powers”²⁸ to protect the rights of individuals during confrontational protests.

The USSC has found, for example, that certain regulations, including a 36-foot buffer zone restricting protestors at the entrance to an abortion clinic were justified by the government’s interest in allowing the clinic to remain operational and allowing patients to walk in without close physical confrontations.²⁹ The Court has recognized that some protests effect the rights of others, specifically commenting that “if overamplified loudspeakers assault the citizenry, government may turn them down.”³⁰

²³ *Id.*

²⁴ S. 871.015(2), F.S.

²⁵ Clyde E. Willis, *Picketing*, Middle Tennessee State University First Amendment Encyclopedia (2009), <https://mtsu.edu/first-amendment/article/1136/picketing> (last visited Feb. 21, 2022).

²⁶ U.S. Const., amend. I.

²⁷ U.S. Const. amend. XIV. See also Article I, Fla. Const.

²⁸ Local and State officials have broad powers to create laws for the health, safety, morals, and general welfare of the public. See Cornell Law School, Legal Information Institute, *police powers*, https://www.law.cornell.edu/wex/police_powers (last visited Feb. 21, 2022).

²⁹ *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 768-71 (1994).

³⁰ *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972).

In summary, courts have recognized the government's ability to "to shut off discourse solely to protect others from hearing it depends upon whether a substantial privacy interest is being invaded in an essentially intolerable manner."³¹

Effect of Proposed Changes

CS/HB 1571 provides that Florida has a significant interest in protecting the tranquility and privacy of the home and protecting citizens from the detrimental effect of targeted picketing, and that the Supreme Court of the United States has recognized this interest by upholding a challenged ordinance restricting residential picketing in *Frisby v. Schultz*, 487 U.S. 474 (1988).

The bill creates s. 810.15, F.S., to prohibit a person from picketing or protesting before or about a person's dwelling with the intent to harass or disturb that person. An offense of residential picketing is punishable as a second degree misdemeanor.

The bill provides that, for the purposes of residential picketing, the term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.

The bill requires a law enforcement officer to provide a warning to any person picketing or protesting outside of a person's dwelling to immediately and peaceably disperse, prior to making any arrest for an offense. Under the bill, a law enforcement officer may arrest a person for residential picketing only if the person does not immediately and peaceably disperse after the required warning.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 810.015, F.S., residential picketing.

Section 2: Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive insignificant impact on jail beds by creating the new second degree misdemeanor offense of residential picketing.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³¹ *Cohen v. California*, 403 U.S. 15, 21 (1971).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The First Amendment of the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”³² The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.³³

Speech regulations are generally analyzed as to whether they are content-based or content-neutral. A content-based law targets speech based on its content and is subject to strict scrutiny, while a content-neutral law regulates the time, place, and manner of expression, without regard to the substance or message, and is subject to intermediate scrutiny. Content-based laws are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve a compelling state interest.³⁴ Whereas, content-neutral laws need only be tailored to serve a significant government interest, and leave open alternative channels of communication.

CS/HB 1571 may impose place and manner restrictions by prohibiting a person from picketing or protesting before or about a person’s dwelling with the intent to harass or disturb that person. However, the restrictions are content-neutral and would likely be found to be narrowly tailored to serve the government’s interest in protecting the tranquility and privacy of the home and protecting citizens from the detrimental effect of targeted picketing, in line with the USSC’s ruling in *Frisby v. Schultz*, 487 U.S. 474 (1988).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that a person only commits an offense of residential picketing if he or she intends to harass or disturb the specific person who’s dwelling the picketing or protesting takes place before or about, rather than any person;
- Provided a definition of the term “dwelling”;
- Provided that any violation for residential picketing is a second degree misdemeanor;
- Required a law enforcement officer to provide a warning to any person picketing or protesting outside of a person’s dwelling to immediately and peaceably disperse; and

³² U.S. Const., amend. I.

³³ U.S. Const. amend. XIV. See also Article I, Fla. Const.

³⁴ *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015).

- Authorized a law enforcement officer to arrest a person for residential picketing only if the person fails to peaceably disperse after the required warning.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.