

SUBJECT: Expanding buffer zone for prohibited protests near funerals to 1,000 feet

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Pena, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton

0 nays

1 absent — Moreno

WITNESSES: For — None

Against — Will Harrell, American Civil Liberties Union.

BACKGROUND: HB 97 by McCall, enacted during the third called session of the 79th Legislature in 2006, added Penal Code, sec. 42.055, defining and creating an offense for a funeral protest. Disruptions within 500 feet of a cemetery or facility hosting a funeral during the service, as well as during the hour preceding and following the event, are subject to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). Disruptions banned under this section include carrying a placard or banner, engaging in loud singing or chanting (with or without a bullhorn), and blocking access to a facility or cemetery at which a funeral service is taking place.

Under Penal Code, ch. 42.04, if the violator has yet to harm intentionally the interests of those protected under the funeral disruption section, that person must be ordered to disperse or remedy the violation prior to arrest. It is a defense to prosecution if no order was given, the order was obeyed, or the order was unreasonable in its scope.

In May 2006, President Bush signed into law H.R. 5037, the federal Respect for America's Fallen Heroes Act, which bars protests within 300 feet of the entrance or 150 feet of any road leading to a national cemetery from an hour before a military funeral to an hour after its conclusion. Violators can be punished with a fine of up to \$100,000 and one year in prison. Texas has six national cemeteries that are covered under this law.

DIGEST: HB 1093 would expand to 1,000 feet the zone around a cemetery or facility hosting a funeral in which protests would be banned from the hour preceding the event through the hour following the event.

The bill would take effect September 1, 2007, and would apply to offenses occurring on or after that date.

**SUPPORTERS
SAY:**

Although the Legislature acted last year to ensure the sanctity of funerals by enacting HB 97, banning protests within 500 feet of the funerals has not effectively protected the right to grieve and mourn in peace. Recent funeral protests have shown that 500 feet does not afford as much protection from potential disruption as initially thought. Expanding the buffer zone to 1,000 feet would ensure people already enduring the pain of a lost loved one did not have to face further suffering.

Texas became the 15th state to enact legislation creating some sort of buffer zone against funeral protests when the governor signed HB 97 into law in May 2006. Several other states also have taken action since then. The bills were prompted by the protests of the Westboro Baptist Church, a religious congregation from Kansas that has spent the last several years protesting funerals to share its disdain for tolerance of homosexuality in America. At first the group targeted funerals of those who had died from AIDS, but has since spread the practice to military funerals. The group has protested at least 10 military funerals across Texas since the start of 2006, including a February protest in El Paso and one last November in Canadian. The latter protest, at which Westboro group members picketed with signs stating "Thank God for 9/11" and "Thank God for Dead Soldiers," prompted concerns about the buffer zone not being large enough because funeral goers still were disturbed by the protestors' presence.

HB 1093 would continue to respect the First Amendment rights of citizens to protest while providing additional protection to the rights of mourners. It would not ban speech outright, but simply would expand the small sanctuary from protest for people in special circumstances. Government has seen fit to establish or protect buffer zones in which certain types of speech are prohibited in certain situations. State law bans electioneering within 100 feet of a polling place during an election, and the Supreme Court has upheld several state laws banning demonstrations within a certain area around abortion clinics.

Funerals are solemn occasions in which every person can be mourned. These events certainly deserve a special protection from unnecessary disturbances, allowing family members and friends of the deceased the opportunity to mourn and reflect without distraction. The law cannot single out one group of actors, nor should it in this case, because this activity is indefensible regardless of who does it. Military members who gave their lives in defense of their country deserve a proper memorial service, as do others, regardless of what they may have done in their lives. Many people whose professions or actions in life were controversial could be subject to protests at their funerals, and this bill would draw the line on where that activity could take place.

Prosecutors and police would continue to have discretion to cite or not cite someone for violating these provisions. The intent of the Legislature here would be clear – that people protesting funerals must give mourners more space – and current law would provide a defense if law enforcement did not police this statute in that spirit.

**OPPONENTS
SAY:**

Expanding the buffer zone for funerals is unnecessary because other laws covering disorderly conduct and harassment can be applied to the actions of the group that inspired this section in the Penal Code. Free speech must be protected unless it is being used to incite immediate unlawful conduct, such as a riot. Few people defend the vile comments and inappropriate forum used by the Westboro Baptist Church, but many still believe in their right to say it.

In the Penal Code section on disorderly conduct and related offenses, the section governing funeral service disruption is the only one that does not mention intent in criminalizing the activity to which it applies. A person protesting something other than the funeral could be violating the law simply because of proximity to a funeral service, so with the expansion of the buffer zone, the number of people unintentionally violating the law could be significant. Peaceful demonstrators at the state Capitol who were unaware of a nearby funeral might be violating this law if a memorial service were being conducted inside or if a funeral were being conducted at the First United Methodist Church of Austin, from which 1,000 feet covers virtually the entire Capitol grounds. Also, activities short of protesting could be criminalized if they were occurring within 1,000 feet of any type of funeral or memorial service. In the code, "picketing" near a funeral is a prohibited activity.

In September 2006, a federal judge temporarily suspended Kentucky's law forbidding protests within 300 feet of military funerals and memorial services, saying the buffer zone was so large that it would restrict speech meant for the general public that was unrelated to the funeral. The judge took particular issue with the idea that activity was prohibited regardless of whether a funeral attendee could see or hear it.

NOTES:

SB 521 by Harris, the identical companion bill, has been referred to the Senate Criminal Justice Committee.