

# SENATE BILL REPORT

## HB 1168

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As of January 23, 2007

**Title:** An act relating to disorderly conduct.

**Brief Description:** Regarding disorderly conduct.

**Sponsors:** Representatives Roach, Hurst, Newhouse, Santos, Orcutt, Pettigrew, Moeller, Morrell, Priest, Armstrong, Curtis, Haler, Condotta, Buri, Kristiansen, Alexander, Warnick, Strow, Ericksen, Dunshee, Kirby, Chase, Bailey, Springer, McDonald, Ross, Blake, Kenney, Lovick, Appleton, Darneille, McCoy, O'Brien, Sells, Takko, Williams, VanDeWege, Hunter, Ormsby, Schual-Berke, Pearson, Fromhold, Hinkle, Simpson, Clibborn, Lantz, Linville, Campbell, Kelley, Green, Eddy and McCune.

**Brief History:** Passed House: 1/22/07, 89-5.

**Committee Activity:**

**Staff:** Lidia Mori (786-7755)

**Background:** In recent years, there have been media reports of funerals being disrupted by groups who have sought to utilize funeral services as a forum for protest. In 1992, Kansas passed the Kansas Funeral Picketing Act, which makes it a misdemeanor for persons to engage in picketing activities before or about any cemetery, church, or mortuary within one hour prior to, during, and two hours following a funeral. Since that time, 27 other states have passed laws banning or limiting protests around funerals. These laws put limits on a variety of behavior in the vicinity of funeral or memorial services.

The laws vary widely, with some barring noisy, disruptive behavior, abusive epithets and threatening gestures, or signs with "fighting words." Some laws bar the proscribed behavior within one or two hours before or after a funeral, others specify distances ranging from 100 feet to 1,000 feet, and some include both temporal and physical limitations.

In the state of Kentucky, a federal district court issued a preliminary injunction against enforcement of two provisions of the Kentucky funeral protest law. One provision prohibits all demonstrations within 300 feet of a funeral event. The other prohibits, during a funeral, all sounds or images perceptible to funeral attendees, or the distribution of literature or other items, without the authorization of the family. The court determined that the Kentucky statute was content neutral and that funeral attendees have an important interest in avoiding unwanted, obtrusive communications. However, the court found the challenged provisions were not narrowly-tailored and burdened substantially more speech than necessary to achieve the state's objectives.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Disorderly Conduct: In Washington, a person is guilty of disorderly conduct, a misdemeanor, if he or she uses abusive language and thereby intentionally creates a risk of assault; intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or intentionally obstructs vehicular or pedestrian traffic without lawful authority. In unpublished opinions addressing the disorderly conduct statute, Washington courts have cited the United States Supreme Court for the proposition that the United States Constitution limits the application of disorderly conduct statutes to "fighting words."

Fighting Words: The First Amendment of the United States Constitution protects a person's right to engage in expressive activity, whether written, oral, or symbolized by conduct. Freedom of expression, however, is not an absolute right and some expression, such as "fighting words," falls outside of the protection of the First Amendment. Washington courts have applied the following three-part test in determining whether a statement constitutes "fighting words": the words must be directed at a particular person or groups of persons; the words must be personally abusive to the ordinary citizen and commonly known to be inherently likely to provoke violent reaction; and consideration must be given to the context or situation in which the words were expressed.

If the expression at issue is not deemed to be "fighting words," and thus is entitled to First Amendment protection, a state may still regulate the expression in certain situations. The constitutional permissibility of a state regulation of protected expression will depend on a number of factors, including whether the regulation targets the content of the expression rather than the expression itself, the location where the expression is taking place, the amount of expression inhibited, and the nature of the state's interest in regulating that expression.

Content-Based Restrictions: The constitutional test that will apply to a regulation of expression will depend on whether or not the regulation targets the content of the expression. Content-based restrictions on expression are valid only if they are necessary to serve a compelling state interest and narrowly drawn to achieve that end.

Public Forum vs. Non-Public Forum: If the restriction on expression is "content-neutral," the next inquiry is whether the location where the state seeks to restrict the expression is considered to be a public or a non-public forum. Expression in a non-public forum may be subject to content-neutral, time, place, and manner restrictions by the state if the restrictions are reasonable in light of the purpose served by the forum. In addition to reasonable time, place, and manner regulations, the state may impose restrictions that ensure the forum will be reserved for its governmentally intended purpose. Under the First Amendment, expression in a traditional public forum may also be subject to content-neutral, time, place, and manner restrictions, provided that the restrictions are narrowly tailored to serve a significant government interest and leave open ample alternative channels of communication. In determining whether a particular location is a traditional public forum, the United States Supreme Court has evaluated whether the location is of the type that has "immemorably been held in trust" for "communicating thoughts between citizens." For example, the Court has found that public streets, parks, and sidewalks qualify as public forums.

The Washington Supreme Court has held that Article 1, Section 5 of the Washington Constitution provides greater protection for speech than the First Amendment. Under the Washington Constitution, a restriction on expression in a public forum must advance a

compelling (rather than significant) state interest, in order to be upheld as a valid time, place, and manner restriction.

Void for Vagueness: Disorderly conduct statutes have also been challenged on "void for vagueness" grounds. A statute is void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. The purpose of the vagueness doctrine is two-fold: first, it ensures fair notice to citizens as to what conduct is proscribed; and second, it protects against arbitrary enforcement of the law. In a 1988 Washington Supreme Court decision upholding a disorderly conduct ordinance against a vagueness challenge, the Court held that the following terms were not impermissibly vague: "loud and raucous," "unreasonably disturbs others," and "disturb." Further, the Court stated that the Constitution does not foreclose restrictions on volume, even when the speech occurs in an area traditionally set aside for public debate.

**Summary of Bill:** The disorderly conduct statute is amended to include certain disruptive behavior at or near a funeral, funeral procession, or memorial service. Specifically, a person is guilty of disorderly conduct if the person:

- intentionally engages in fighting or tumultuous conduct, or makes unreasonable noise, within 500 feet of: (a) a funeral or burial; (b) a funeral home during the viewing of a deceased person; (c) the location of a memorial service; or (d) a funeral procession if the person knows that the procession is taking place; and
- knows that the activity adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.