

# HOUSE BILL REPORT

## HB 1168

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### As Passed Legislature

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

**Brief Description:** Regarding disorderly conduct.

**Sponsors:** By 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:**

**Committee Activity:**

Judiciary: 1/17/07 [DP].

**Floor Activity:**

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

Passed Senate: 1/26/07, 42-1.

Passed Legislature.

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| <h3>Brief Summary of Bill</h3> |
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- Makes engaging in certain disruptive behavior within 500 feet of a funeral or burial, funeral procession, or memorial service subject to prosecution for disorderly conduct.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Ross and Williams.

**Minority Report:** Do not pass. Signed by 1 member: Representative Pedersen.

**Staff:** Edie Adams (786-7180).

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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.*

## **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.

Disorderly Conduct: In Washington, a person is guilty of disorderly conduct, a misdemeanor offense, if he or she engages in any of the following:

- 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.

Under the First Amendment, expression in a traditional public forum may 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 "immemorially been held in trust" for "communicating thoughts between citizens." For example, the Court has found that public streets, parks, and sidewalks are 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.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill is extremely important to help protect families and others from the abhorrent and uncivilized conduct of those that disrupt funeral services. There is a time and a place for people to express themselves, but a funeral is not one of them.

Funerals are a time of reverence when we comfort each other in our grief as we pay tribute to the person we lost. Families and friends who are mourning the loss of a loved one are suffering extreme grief and torment and the impact of this conduct is horrible. To have organizations and groups hide behind the guise of religion to add to that grief and torment is abominable.

It is appalling that a person would disrupt a funeral service for anyone, let alone our noble military. These people abuse the right to freedom of speech by disrespecting the ones who sacrificed themselves so that we have that freedom and so many others. We all have a duty to ensure that honor and dignity are provided to our fallen soldiers.

A number of other states have passed laws limiting funeral protests, but this bill is distinguished from those laws in that it is not being opposed by the American Civil Liberties Union. The language in the bill is crafted to allow our families to mourn in peace without trampling on the rights granted by our Constitution.

(Opposed) None.

**Persons Testifying:** Representative Roach, prime sponsor; Representative Hurst; Charles Lawrence, Vietnam Veterans of America; and Teresa LaBouff, Gold Star Family Member.

**Persons Signed In To Testify But Not Testifying:** None.