

FINAL BILL REPORT

HB 1168

C 2 L 07

Synopsis as Enacted

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.

House Committee on Judiciary

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 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.

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 First Amendment limits the application of disorderly conduct statutes to "fighting words," which are not entitled to First Amendment protection. 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 expression does not constitute 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.

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 Washington Supreme Court has held that the following terms in a disorderly conduct statute were not impermissibly vague: "loud and raucous," "unreasonably disturbs others," and "disturb."

Summary:

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.

Votes on Final Passage:

House	89	5
Senate	42	1

Effective: February 2, 2007