

HOUSE BILL REPORT

SHB 3293

As Passed House:

March 3, 2006

Title: An act relating to disorderly conduct.

Brief Description: Regarding disorderly conduct.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Roach, Chase, Takko, Shabro, Rodne, Simpson, Serben, Nixon, Williams, Morrell, Sells, Haler, Campbell and Ahern).

Brief History:

Committee Activity:

Judiciary: 2/22/06 [DPS].

Floor Activity:

Passed House: 3/3/06, 98-0.

Brief Summary of Substitute Bill

- Makes engaging in certain disruptive behavior within 500 feet of a funeral or memorial service subject to prosecution for disorderly conduct.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Kirby, Serben, Springer and Wood.

Staff: Elisabeth Frost (786-5793).

Background:

In recent years, there have been media reports of funerals being disrupted by groups who have sought to utilize the funeral services as a forum for protest. Many of these incidents have taken place in Kansas, and in 1992 that state 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.

In February 2006, South Dakota and Wisconsin also passed laws banning protests around funerals. The South Dakota law bans picketing within 1,000 feet of a funeral, memorial

service, burial, or other ceremony from one hour before the service until one hour after the service. The Wisconsin law bans protests within 500 feet of the entrance of a memorial service or funeral.

At least 12 other states are currently considering legislation that would put limits on a variety of behavior in the vicinity of funeral or memorial services. The proposed legislation varies widely, with some barring noisy, disruptive behavior, or signs with "fighting words." Some bills bar the proscribed behavior within one or two hours before or after a funeral, others specify distances ranging from 10 car lengths to five blocks away, and some include both temporal and physical limitations.

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 state regulation of "expression" (whether written, oral, or symbolized by conduct), but it is not an absolute right and some expression falls outside of its protection, such as "fighting words." 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 entitled to First Amendment protection, a state may still regulate 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-neutral

The constitutional test that will apply to a regulation of expression will depend on whether the regulation targets the content of the expression, or is "content-neutral." 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 is "content-neutral," the next inquiry is whether the location where the state seeks to restrict the expression is considered to be a "public forum."

Expression in non-public forums 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.

Expression in a traditional public forum may also be subject to content-neutral, time, place and manner restrictions, provided that the restriction:

- is narrowly tailored to serve a *significant* government interest; and
- leaves open ample alternative channels of communication.

In determining whether a particular location is a traditional public forum, the United States Supreme Court (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 qualify as public forums.

It should also be noted that under the Washington State Constitution, a restriction on expression in a public forum may have to 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 1988 the Washington Supreme Court, upholding a disorderly conduct ordinance against a vagueness challenge, 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 Substitute Bill:

The disorderly conduct statute is amended to include intentionally engaging in fighting or tumultuous conduct, or making unreasonable noise, within 500 feet of:

- the location where a funeral or burial is being performed;
- a funeral home during the viewing of a deceased person;
- a building in which a funeral or memorial service is being conducted; or

- a funeral procession, if the person engaging in the proscribed conduct knows that the procession is taking place.

In order for a person to be found guilty of disorderly conduct for engaging in the above behavior, it must be shown that the person engaging in the proscribed conduct knew that the activity adversely affected the funeral, burial, viewing, funeral procession, or memorial services.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (In support) Protests have occurred across the country at military funerals, the funerals of miners, Coretta Scott King's funeral and funerals of people who have died of AIDS. At least four protests like this have taken place in this state. Loved ones have had people in their face yelling obscenities, praising the bombs that killed their sons, and other awful things. The bill was carefully crafted to not tread on the right to assemble, but we also wanted to make sure to protect the basic human right to be able to mourn one's loved one in a private manner during a funeral. This has nothing to do with anti-war protests. This bill is a non-partisan issue. It's an issue of civil dignity and people of this state want positive action taken against hate groups like this. It's important that we pass this bill and do it as soon as possible. Failure to do so means that families that lose their loved ones in the next year are subject to harassment until the next session. I am not interested in the signs or the banners or the shouting of the vile obscenities. Veterans defended the Constitution and all that it represents including freedom of assembly and freedom of expression. But there has to be a line drawn. A distance barrier is appropriate. People may still show up and engage in their contemptible conduct, but they have to do it from a distance. The bottom line is to keep that space between the conduct and the mourners. Under disorderly conduct the people can be individually fined and potentially serve a little jail time. Civil sanctions could be something we could look into next session. If other states pass this and we don't do anything we will have more of this activity in this state. These people try to promote violence so that if they are assaulted they can sue and raise funds through civil damage awards. Personally if anyone showed up to disrespect my wife's services I would have been violent. This doesn't just protect families, it also protects funeral directors.

(Neutral) The ACLU is neutral on this bill because it involves the interests of free exercise of religion and also free speech. Nationally the ACLU has been addressing bills like this. Some of these bills have a huge impact on free speech, but in the ACLU's opinion this one does not. The ACLU doesn't oppose this legislation because it has very clear language that says what disorderly conduct is and what kind of conduct is disorderly, and it does not address the speech issue. If someone is not disorderly, they can protest for example by holding up a sign. What they can't do is to interfere with the funeral, start a fight, interrupt that funeral or in any way interact with the people that are part of that. This is intentional conduct, so this isn't

someone who gets drunk at a funeral and starts a fight. The ACLU believes that this language is tight enough that it doesn't have free speech impact and if there were to be a constitutional challenge, the bill would survive it. There is always a risk that language like this could be misused by overzealous law enforcement, such as where someone is standing outside the buffer zone and has a sign but isn't saying anything or being physically disruptive. It's possible that an officer could think that was disrespectful, although it doesn't meet the definition of disorderly conduct, and could then harass someone. The ACLU would not support including temporal language, such as barring this activity for one hour before and one hour after a funeral, because that language may end up expanding what is now very specific language about disorderly conduct.

Testimony Against: None.

Persons Testifying: Representative Roach, prime sponsor; Chuck Lawrence, Vietnam Veterans of America; T.K. Bentler, Washington State Funeral Director's Association; and Sam Goulet.

(Neutral) Jennifer Shaw, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.