Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Judiciary Committee

PSHB 3293

Title: An act relating to disorderly conduct.

Brief Description: Regarding disorderly conduct.

Sponsors: Representatives Roach, Chase, Takko, Shabro, Rodne, Simpson, Serben, Nixon, Williams, Morrell, Sells, Haler, Campbell and Ahern.

Brief Summary of Proposed Substitute Bill

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

Hearing Date: 2/22/06

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In unpublished opinions addressing the disorderly conduct statute, Washington courts have cited the United States Supreme Court for the proposition that the United States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 U.S. 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 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 Proposed 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 takes effect 90 days after adjournment of session in which bill is passed.