

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass
Vote: 5 - 0 - 0
Yeas: Courtney, Dingfelder, Kruse, Whitsett, Prozanski
Nays: 0
Exc.: 0
Prepared By: Bill Taylor, Counsel
Meeting Dates: 2/3

WHAT THE MEASURE DOES: Increases the penalty for disorderly conduct from a B to an A misdemeanor when a person commits disorderly conduct within 200 feet of real property on which the person knows a funeral service is being conducted. Removes from the disorderly conduct statute, ORS 166.025(1)(e), a provision that the Oregon Supreme Court found unconstitutional in *State v. Ausmus* (2004).

ISSUES DISCUSSED:

- Need not have a body present at the memorial service.
- Having an unconstitutional provision can be a trap for law enforcement officers who are unaware of the Oregon Supreme Court decision finding ORS 166.025(1)(e) unconstitutional.

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: A person commits the crime of disorderly conduct in the second degree if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating risk thereof, the person: (a) Engages in fighting or in violent, tumultuous or threatening behavior; (b) Makes unreasonable noise; (c) Disturbs any lawful assembly of persons without lawful authority; (d) Obstructs vehicular or pedestrian traffic on a public way; (e) Congregates with other person in a public place and refuses to comply with a lawful order of the police to disperse; (f) Initiatives or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency or (g) Creates a hazardous or physical offensive condition by any act which the person is not licensed or privileged to do. ORS 166.025. The Oregon Supreme Court, *State v. Ausmus*, found subsection (e) unconstitutional.

It is a Class A misdemeanor if a person circulates a false report about a fire, explosion, catastrophe or hazardous substance on school grounds. It is a Class A misdemeanor to be disorderly on public transit, ORS 166.116.