

MICROFILM DIVIDER

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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

10440

2007 HOUSE JUDICIARY

HB 1040

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/8/07

Recorder Job Number: 717, 751

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1040.

Rep. Grande: (prime sponsor) Introduced the bill (see attached testimony).

Chairman DeKrey: Thank you. Any questions for Rep. Grande?

Rep. Kretschmar: How did you determine the 300 ft., that's kind of an arbitrary figure.

Rep. Grande: The 300 ft was chosen, I had LC research other states proposals and what has worked and what had problems. Three hundred ft. was what I was told that they use in Fargo on the abortion area of protests and that has held well and I feel that that would work the best.

Rep. Onstad: You have a Class B misdemeanor for disorderly conduct. Does disorderly conduct in any other functions, is that also 300 ft.

Rep. Grande: I do not know if these are further. I do have written testimony from the sheriff of Cass Co. Paul Laney, he was unable to come (see attached testimony). On a personal note, tragedy came into my family on July 23, 2005 when Sgt. Ryan Opskar, a marine from the Minnesota area, whose family lives in Fargo, part of the family lives in Fargo. My son knew him (see attached testimony). This has a great affect locally and personally to many people in this room. As they planned the funeral for this young man, who had given his life as the ultimate sacrifice, a group came forward that wished to protest his funeral. This bear's outfit

was made from Marine Opskar's uniform, as his family could not be here today, they offered this as their token and this information. The protestors didn't make it to the funeral but they came to the grave. It was a very difficult time. A young lady made this bear's outfit. I hope this committee can move forward on this bill.

Chairman DeKrey: Thank you for appearing before the committee this morning.

Rep. Ralph Metcalf: I am also a sponsor of this bill. I would like to thank Rep. Grande for the job she did in presenting this bill. We can depend on the information she gave to be very heartfelt and very factual. I hope we can accept it in that spirit. I guess my only thing that I would like to bring to your attention is my extensive membership in the National Guard and the active Army. This brings me back to the area of the 1960's and 1970's, which I think was probably the hardest time to belong to any military organization. There was a complete disregard for authority. In fact, it got to the point where we couldn't even leave the Post without changing into civilian clothes, because the military was thought of in such high disregard, they didn't want to see military uniforms anywhere in this country; drugs and alcohol were involved and there was a very serious problem and a lot of that was brought on, I believe, by the fact that I really wonder if the people that were protesting at that time knew exactly what they were doing and how this country was being affected. If we allow this to continue, we would be building up to the position again, where the military would be in strong disrespect and I encourage that you take every effort that you can to pass this bill. The only reason for its existence, and it's too bad that this country has to have laws like this, is that you would think that our people that have the benefit of these soldiers dying for them, that they would realize the importance of them being out there. There is one other reason I wanted to make a presentation here is because I have three grandchildren that are in the National Guard. One of them has been in Iraq and has returned. Number 2 is scheduled to go in June, June 14th to be

exact. Number 3 has not been scheduled, but he is in a unit that has been placed on alert. So I will have three grandchildren that will have served. Now I would hope that if anything would ever happen to one of these three grandchildren, that there would be something to protect them when it comes to the last rites that we would want to offer. I think that's very important. Thank you very much for listening to me and I will be happy to answer any questions.

Chairman DeKrey: Thank you.

Sen. Dick Dever: (see attached testimony).

Chairman DeKrey: Thank you for appearing.

Sen. Stan Lyson: Support. I am a sponsor of this bill, and I won't take long. Everything that needed to be said has been said. I am a veteran of the United States Army and I served as commander of the Honor Guard for veterans' funerals. I'm really interested in this bill, so I can control my people in case something like this would happen. I mean that with all my heart. Please give this a Do Pass.

Chairman DeKrey: Thank you for appearing this morning.

Rep. Bill Amerman: As you might know, I do have a bill, HB 1163, but I do stand in support of Rep. Grande's bill today. There were some differences in the bill; like there are in a lot of sessions when you have legislation in a similar bill but a little different. I put mine in the hopper to make sure that the right thing is done. In talking to Rep. Grande and other entities and people, I believe we are on the right track. Mine was a little different, I had 500 ft. and there is a little difference in the penalty area, but after talking with several people I think that is pretty much ironed out. What I ask is that if it does come before this committee, is that you bring it to the floor for purposes of being withdrawn. The reason I ask this is because this is too important legislation to be tied in a couple different bills and it needs to go through the Senate. That's not the purpose. I don't care whose name is on the top. I am a Vietnam Veteran and I

want this done on the fast track. I want the Governor to sign and get this done and out of here, and let's keep these people out of here as best we can.

Chairman DeKrey: Thank you for appearing and clearing this matter up. We are going to act swiftly on this bill but not so swiftly that we can't work with you on your bill and then we'll take care of whatever your wishes are at that time. I appreciate your bringing it forward and we'll see to it that we try to make everybody happy. Thank you. Further testimony in support.

Lt. Col. Dave Thiele, National Guard: I am appearing on behalf of Adj. General Sprynczynatyk, who sincerely regrets that he can't be here personally, he is on his way to Ft. Hood, TX to see off 39 men and women. I think everybody has said everything we need to. In discussing this with Gen. Sprynczynatyk the other day, he was discussing his mission, his goals at Adj. General; in taking care of families of service members. That's what this bill is doing. The First Amendment is very important, but it doesn't say that you can say whatever you want whenever you want, wherever you want. There are reasonable restrictions that can be put in place and that's what this bill does. This was on our number one priority list. Rep. Grande put this in early. We've been working with her on this legislation and certainly would encourage a Do Pass. I would like to make a personal observation, sometimes out of bad comes good. This bill, I would suggest, has done something unintended; to shield families from this type of thing, but it's also to pay respect. If you have been to a serviceman's funeral, I would suggest that it becomes so much bigger than that. To see hundreds of riders of every shape, form, everybody. I've been trying for 3 days to figure out my emotions and I can't. I think that sums it up. Rep. Amerman, coming to you saying, you know what, we're coming together. We're not fighting about this, that's not the code spirit. That's what this is all about.

Rep. Meyer: Would you prefer 500 ft. instead of 300 ft. What is your personal preference.

Lt. Col. Thiele: My preference is whatever will stand constitutional scrutiny. I think what the courts are looking at is what the minimum necessary to accomplish this goal is. I think what we've determined is it is arbitrary, as has been brought up; 300 or 500 ft, which is correct? The court's have generally looked at it, and have said that 300 ft seems reasonable. I think that if we went 500 ft. that they would immediately be looking and asking why didn't you take 300 ft. We have other legislation that says 300 ft is sufficient, it's a football field length. I will tell you, that being involved with funerals and the process of dealing with these protestors, local law enforcement works very well with us. Everybody came together, and it worked out fine. I'll be honest with you, we had a situation where people were literally saying, well they didn't even show up. They did, they were there; between the activities of the local law police department and the Patriot Guard riders, people were unaware that they were there.

Chairman DeKrey: I have a question. Would it be better not to have a distance in the bill completely. The reason I say that, at the funerals I've attended, they've been more than 300 ft. away which is just fine with me. But my question would be, if we put 300 ft into this bill, is that going to give them an absolute right to where we are going to have to determine what 300 ft away from is, and we're going to have to let them be that close.

Lt. Col. Thiele: I hadn't considered that, but I think it's probably better to specify the distance in there. Could it mean that they could be closer than they might have been otherwise. You have to understand that this group is very specific in their activities. They contact local law enforcement, they say this is where we're at. They don't care where they are placed, they have not made that an issue; but of course, this bill means any funeral, any group that they intend to disrupt. Three hundred feet, a football field away from the area, I'm comfortable with it personally.

Rep. Klemin: As you are aware, there's two ways that the courts look at constitutionality of a provision, and one of those is how it's applied and having a specific foot limitation, do you think that might alleviate any possibility that the courts may say that it's unconstitutional, as applied if in a specific circumstance a local law enforcement set it at a distance much further than 300 ft.

Lt. Col. Thiele: I don't know if that would affect the constitutionality, it could, because as you point out, how it's applied. I would think that part of that would be educating law enforcement on how to work through this legislation. I visited with the AG today, and he is probably better qualified than I to comment on that.

Chairman DeKrey: Seeing no further questions, thank you for appearing.

Wayne Stenehjem, Attorney General: I have a personal interest for reasons that I think everybody on this committee knows; the soldiers that Gen. Sprynczynatyk is going down to see off to Afghanistan will be the replacements for my son, who is currently in Afghanistan, somewhere along the Pakistan border. So I hope that you'll understand that this is legislation that I've given probably more thought to, than to any other piece of legislation that we had before. I think on one hand that it is unfortunate that that ND legislature has to be involved in an issue where we have one group of bizarre cultists who are making it necessary for us and other states to change the statute so that families, who simply have a funeral for their relatives who have fallen in combat, that is indeed unfortunate. Nonetheless, we are at the situation where we are, and it seems to me, it is entirely appropriate legislation that you have before you be approved. My office stands ready to fully and vigorously defend this session, if and when this is challenged in court. I think that the bill you pass is one that is carefully tailored to meet the requirements that will withstand a first amendment challenge. The US Supreme Court has held that the government may regulate the time, place or manner of expressive activity, so

long as the restrictions are content neutral, narrowly tailored to serve a significant government interest and leave open ample alternatives for expression of ideas. It seems to me that the bill that you have in front of you does all of those things. The number of feet that you have provided for the prohibited activity, does make a difference. The shorter that it is, obviously makes it much more likely that it will withstand a challenge; I think the 300 ft I would be very comfortable with, but even 500 ft, I think is not something that would make a much more difficult case. But, obviously, the further you get from the actual site, the more difficult it becomes to defend, so please keep that in mind. There are some differences between this bill and HB 1163 that you should know. HB 1163 may not be as sufficient in promoting content neutrality, because this statute you have before you, HB 1040, simply prevents unreasonable noise that disrupts a funeral. HB 1163 is different, it prohibits protesting and picketing. So a challenge on content neutrality might be more successful with HB 1163. The other bill, HB 1163 provides for a private cause of action for family members whose services are interrupted. You may want to look at that, as something you should consider. I am pleased that you have the Emergency Clause on the bill.

Rep. Delmore: One question, Mr. AG, are they going to make that federal law legislation while we are trying to do this statewide as well. If so, is it still to our benefit to have our own law.

AG: I don't know what the federal law would do it, but that would probably apply to federal property in order to require prosecution if there was something to be done in federal courts. That's why I think that it makes sense to have a North Dakota law that will be enforced, prosecuted right here in the state.

Chairman DeKrey: Thank you for appearing.

AG: If there are any other issues or questions, or something that I can work with the committee on this bill, or any other bill, please let me know.

Chairman DeKrey: Further testimony in support of HB 1040.

Maureen Wanner: (see attached testimony).

Chairman DeKrey: Thank you for appearing. Further testimony in support.

Dan Biesheuvel, member of Patriot Guard Riders: I will keep my comments short. I do have some concerns about this bill. My main concern is that there is no definition of uninvited guests (see attached testimony).

Chairman DeKrey: I have talked to the sponsor about your concern, so I was aware of them, and before we pass it out of this committee, we will satisfy that to our satisfaction that we're not doing that. I don't think there is anybody here that's not really grateful for what the Patriot Riders are doing and we want to see to it that we don't create a problem for you by trying to fix another problem. Thank you for appearing this morning.

Rep. Charging: I want to share an experience that we had on the Three Affiliated Tribes, Ft. Berthold Indian Reservation, when we laid to rest, Cpl. Nathan Goodiron who lost his life on Thanksgiving (see attached testimony). I urge a Do Pass on this bill. I also want to thank the Patriot Riders who did come and did stand guard, on the coldest day we've had so far. They also stood guard along the route. All law enforcement agencies worked together. There are a lot of resources expended for the protection everyone.

Rep. Kretschmar: Were there protests at this funeral.

Rep. Charging: We had received word that they had arrived, but apparently we had gotten word out that they would be removed. They sent an official notice that said they would not come upon private lands, which the reservation is private land; and then there would be penalties. Under penalties, each mourner shall be entitled to recover reasonable damages, of

not less than \$1,000 together with reasonable attorney fees and costs from each person who violates.

Chairman DeKrey: Thank you. Further testimony in support of HB 1040.

Paul Sannes, President of ND Funeral Directors Association, manager of Myers Funeral Home in Linton: (see attached testimony).

Chairman DeKrey: Thank you for appearing.

John Jacobson, ND Veteran Coordinating Council, legislative committee: I served 30 years in the ND National Guard, Army reserve, retiring in 1995. I also served on active duty in 1991 during the Persian Gulf War. The ND Veterans Coordinating Council membership is comprised of 15 members: 5 from each of the veteran's organizations in the state; American Legion, Amvets, Disabled American Veterans, Veterans of Foreign Wars and the Vietnam Veterans of America. These organizations represent approx. 60,000 veterans currently living in ND. I have been instructed by the Coordinating Council to ask that this committee put a Do Pass on this bill.

Chairman DeKrey: Thank you for appearing this morning. Further testimony in support.

Randy Lindborg, State Captain for the Patriot Guard Riders: We participated, by invitation of the families, for the final send-offs for seven courageous ND soldiers over the course of the last eight months. We are truly privileged to be allowed the honor of bestowing respect, dignity, and gratitude on these heroes and families. The first funeral we attended was that of Sp. Mike Hermanson of Fargo. Mike was my son's roommate prior to his departure for Iraq. Mike was also the first military funeral in our state that members of the Westboro Baptist church showed up at. They subsequently made appearances at the funerals of Sgt. Travis Van Zoot, Cpl. Paul Byer of Jamestown. The display of disrespect that was then shown by the WBC was beyond description. In each instance, they were well closer than 300 ft. to the

church property. The family and community deserved the basic decency of burying their loved ones in peace, uninterrupted by any disgusting behavior, such as that exhibited by this group. It is our hope that this bill passes into law and to include consideration for the amendments submitted by Dan Bueshevel. The future may hold challenges to this proposed law, regardless of that possibility, what's crucial here is the message being sent. By passing this bill into law, you are making a statement. You are reinforcing the fact that these people in ND have a moral compass that we abide by. We have proven that no matter what may be permissible anywhere else in the world or country, we have standards that we adhere to and certain types of behavior are just plain unacceptable. Thank you for your time.

Chairman DeKrey: Thank you for your testimony. Further testimony in support of HB 1040.

Joyce Mehrer: My son was killed with Travis Van Oorst. I support this bill.

Chairman DeKrey: Thank you for appearing this morning. On behalf of the committee, I certainly want to offer you our respect and condolences as a whole to what you and your family have gone through and very appreciative that you did come this morning, so that the committee could see the results of this group's actions.

Michael Jay, Executive Director of ABATE: On behalf of 2,000+ members, we strongly urge that you Do Pass on this bill.

Chairman DeKrey: Thank you.

Bob Hanson, Commissioner of Veteran Affairs: Support this bill. We hear in our office, why can't we do something to protect our families and you are addressing that, and I want to thank Rep. Grande for what she is doing, and Rep. Amerman, for his bill as well. Passing this legislation will bring a bit of peace to some. I don't know how many of you have attended a funeral or have attending an event where the Patriot Riders were there. The Patriot Riders deserve a large amount of respect for what they do. I was asked how I did I feel about the

signs. I could not express what they said. I've never seen anybody with those types of signs, protesting that. On behalf of the veterans of this state, I urge a Do Pass.

Chairman DeKrey: Thank you for appearing.

Mark Landis, Burleigh County Veteran Service officer: I am a military retiree myself. My wife is a military retiree. My son is in the National Guard. He hasn't been called yet, but we know he can be. They protect our precious freedoms, our constitution, our government. I also believe that this bill, that you've introduced, does not limit anyone's right to free speech. They are welcome to take their speech somewhere else as far as I'm concerned. I wonder if the bill goes far enough; 300 ft is not very far. It may seem like a long way in an urban area, if you're standing in a rural cemetery, or a veteran cemetery, I can see those signs 300 ft away. I can hear them chanting 300 ft away, on a cool, crisp ND morning. I am also concerned that there doesn't appear to be anything in the bill concerning the procession route. So protestors could be lining up along the procession route and chanting, and showing their vile signs and I would like to see that as part of the legislation. Thank you for your time.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1040; testimony in opposition, seeing no testimony in opposition to HB 1040, we will take neutral testimony.

John Val Emter: I am not in opposition, but I'm not for it either. The reason I'm neutral is I'm a veteran also; I have 4 years in the United States Navy. We don't know why we are over in those other countries any longer. These people who are protesting these funerals are looking at our citizens, knowing that they are going to get excited and mad, and start taking away constitutional rights. They are winning, once you pass a constitutional change, they've won. I can't talk about God here either. Once you let people, protestors, get you to sympathize to the point where you break the constitution, that isn't right.

Chairman DeKrey: Thank you for appearing. Further testimony, we will close the meeting.

(Continued later in the same session)

Chairman DeKrey: We will take up the Grande amendment. She gave me a proposed amendment. I talked to Rep. Amerman. Basically what this amendment does, is replace on the 2nd offense would replace an A misdemeanor with a C felony. So I would be interested to know what the committee thinks of that. What do you think of that, Bill. In the penalty section, it would replace on the second subsequent violation in the section, it would replace the A misdemeanor with a C felony. That was the Grande amendment.

Rep. Amerman: No, it probably came out of discussion, my wording in the penalty phase is different, she said she was working on something like this.

Rep. Delmore: Can we get our cheat sheets on the penalties.

Chairman DeKrey: The AG gave us an excellent sheet that was on our desks and I forgot to bring it up. That was the best one I've seen. It's got the intent and it's got the different violations. Does anyone in the committee have strong feelings on the amendment, one way or the other.

Rep. Kretschmar: An A misdemeanor is a year in jail and up to \$2,000 fine. The C felony is 5 years in prison and up to \$5,000 fine, that's the maximum.

Chairman DeKrey: A B misdemeanor is 30 days or \$1,000 fine.

Rep. Kretschmar: I would be a little reluctant to go for a C felony. I think an A misdemeanor is sufficient.

Chairman DeKrey: Okay, we will ignore that. The other suggestion we got was on Rep. Amerman's bill, he's got it at 500 ft. And with our discussion with the AG, his suggestion was that we leave it at 300 ft in town and go to 500 ft when we got outside of city limits where it's

more spread out. He thought that would be defensible. I like that idea, so should we have that amendment drawn up.

Rep. Kingsbury: What about the procession, would that be 500 ft.

Chairman DeKrey: I just wonder if we could have it tied to any activity normally included in a funeral, if they have to stay that amount away.

Rep. Koppelman: I think in Rep. Amerman's bill it means the procession.

Chairman DeKrey: So that is already covered then.

Rep. Koppelman: So what I'm wondering if you went with 500 ft. in the rural areas, that would probably include then, depending how you defined it, if it were outside the city limits, if you had a funeral in town, the procession in town and bury someone in the country, you would be away.

Chairman DeKrey: I would assume that too,

Rep. Klemin: I'm not sure that processions are actually covered that way here; because section 1a on page 1, talks about ceremonies, rituals, processions and memorial services held at a funeral site, and it doesn't say on the way to a funeral site which is what you're talking about I think, about a procession.

Rep. Koppelman: Could you say at or enroute to.

Rep. Klemin: There again, if we are talking about going from the place of the funeral maybe to the cemetery, so there's two, that's a procession.

Rep. Koppelman: So if you have say at or enroute to a funeral site, in connection with a burial, etc.

Rep. Klemin: The difficulty I'm having here is trying to look at it from the standpoint of being sure we have something that's going to survive a constitutional challenge. One of the problems that you see frequently, if something becomes constitutionally vague. If we say

procession, to include the route, now what is the route and does one of these protestors know in advance what route you are going to take; and if you go down the only highway in town and they have to be 300 or 500 ft away from that street or road, are they going to know that you are going to be there. I'm just raising some questions here that I'm hoping won't jeopardize this statute.

Rep. Amerman: I'll just give you a for instance in my home area, you go outside the city limits to a cemetery, about ¼ mile. Either 300 or 500 ft, I don't want to make it any easier for the demonstrators, I'm not sure how much with the highway, and ditches, and then you're on private lands. If you're on private lands, you're probably not 300 ft. so they would have to ask permission from whoever owns that property, if they wanted to demonstrate along that area. In my neck of the woods, you wouldn't get that permission.

Chairman DeKroy: Not anywhere in the state.

Rep. Klemin: There's a very highly publicized situation involving this woman, who's son was killed in Iraq, who's been camped out near President Bush's home in Texas and she got permission from the landowner who lives right there to do that. She's been very vocal and doing various protests. I'm wondering if we might find some of that here, too, I don't know.

Rep. Amerman: I don't know either. I know this committee is going to do the work. I'm just here to answer any questions.

Chairman DeKroy: I want you included in this, because we are trying to do the right thing here and you've got a bill here too. The other issue you bring out in your bill, that I think we should talk about, is the civil penalty. I would be interested to know what the committee thinks about that. I've been told, and I don't know if it's true or not, that you already could take action against a person, anytime you are harmed or you feel you are harmed, you have the right to take action already, so do we need to spell it out in the bill or not.

Rep. Delmore: The other thing that one of the guardsmen mentioned today was, he wasn't sure that they wouldn't have to be preinvited. I just wonder if we don't need a subcommittee to look at this. There were several concerns that I wrote down from people who were giving testimony and this is an important bill, I think we want to do the right thing by it.

Rep. Meyer: They have an amendment defining invited and uninvited guests.

Chairman DeKrey: I will appoint a subcommittee of Rep. Kretschmar, Rep. Klemin, and Rep. Griffin. I ask the committee to include Rep. Amerman in their discussions, although the official committee is out of this committee. Once the subcommittee gets back to us, we'll decide when we take up work on the bill again. I guess the rush is, is that everybody believes this is an important bill and we want to get something in place and we would, God forbid, we get another one come home in a box, we would like to have something in place in case that does happen. I can tell you that I drilled this weekend, and they are sending another big group, an Engineer brigade over to Iraq. A lot of those guys are my personal friends and I've served in the unit with them and I think this is the least we can do for them. We want to get it right and want everybody to be happy when we get it right. We want to get it over to the Senate and get it through. Rep. Kretschmar will chair the subcommittee.

Rep. Amerman: I would like to thank you for inviting me back up and including me in your discussions and by all means, I'm not going to hinder. Whatever comes, will be fine.

Chairman DeKrey: You're doing a noble thing here, and we want that to be recognized because so oftentimes things get mired in politics and we start worrying about who's name is one what, and who's going to get credit and so we conscious of what you are doing for us here.

Rep. Amerman: I appreciate that. I'm sure you are going to come up with the right thing. I will just leave it up to your judgment.

 **Chairman DeKrey:** We will keep in touch with you.

Meeting closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1040

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/10/07

Recorder Job Number: 848

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at HB 1040.

Rep. Kretschmar: The subcommittee on HB 1040 met yesterday and we were unanimous in our decision to amend this bill. We are proposing one amendment, to page 2, to remove lines 3, 4 and 5 of subsection c. That seemed to give some concern to the groups called Patriot Riders. We did consider other changes in the bill; but left the bill as it was. We left the 300 ft distance because we thought that was reasonable and it has been upheld in the ND under other circumstances. We wanted to try to get the bill that would withstand constitutional challenges. Further we left the penalties alone; first offense, A misdemeanor and second offense, B misdemeanor, rather than make one of those a felony. We thought there was some discussion in the committee at the hearing about funeral processions, and that is part of the definition; we left it alone because we thought it would get too complicated for people involved in the funeral process. We adopted the one amendment and are proposing that to the committee. I move the amendment.

Rep. Klemin: Second.

Rep. Dahl: Under the amendment, you could obstruct the funeral as long as you were 300 ft. away.

Rep. Kretschmar: Anybody could do that.

Rep. Dahl: Including obstruction.

Rep. Klemin: Yes.

Rep. Charging: I talked with Rep. Klemin about Rep. Grande's, in dealing with law enforcement and setting up a designated place to be.

Rep. Klemin: We did talk about that briefly, they can do that anyway. They can designate where you can be if they wanted to. You don't want to say that they have to designate a spot, it wouldn't be appropriate and to say that they may designate a spot is unnecessary.

Chairman DeKrey: I would think that would open up some law enforcement issues, if they didn't designate a spot, then the protestors could say, there isn't a spot designated so we can choose where we want to be.

Rep. Klemin: One other comment, on the procession route. We discussed that and to say that they had to be 300 ft. away from the procession route, could mean that the people handling the funeral would have to give advance notice of where the procession route was going to go. That's not only going to be complex but maybe they don't want them to know.

Chairman DeKrey: You get out into a rural area and already they're limited to less than that, because a driveway is only 60 ft.

Rep. Klemin: The 300 ft. vs. 500 ft or any other restrictions, you stand on the end of the football field and look down to the other end, that's a long ways away; 300 ft has already been upheld by the courts.

Rep. Charging: Rep. Grande had also talked about to this committee about how drastic it was in the amendment to turn it into from an A misdemeanor to a felony. The reason was they wanted a stiffer penalty.

Rep. Dahl: Was there discussion regarding the private cause of action.

Rep. Kretschmar: We did discuss that in the subcommittee, and people already have a cause of action available in the statute, if there was harassment or emotional distress. They can already pursue that.

Rep. Griffin: To answer Rep. Charging's question regarding the A misdemeanor, it wouldn't be just a slap on the wrist, it could be up to a year in prison.

Rep. Wolf: In Rep. Ammerman's bill, he says that within the next hour or has been conducted within the last hour, and in Rep. Ammerman's bill, he also includes the word "during". Is that included in that timeframe.

Rep. Klemin: The Grande bill doesn't have a time limit. During is encompassed within that timeframe.

Rep. Wolf: The other bill also dealt with picketing at the residence.

Chairman DeKroy: The discussion I had with Rep. Grande and her husband, who is an attorney, was that when determining the constitutionality of an act, at some point, if you can keep putting stuff into it, it becomes vague. We will take a voice vote on the amendment.

Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Koppelman: Second.

14 YES 0 NO 0 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Kretschmar

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 2, line 6, replace "B" with "A"

Page 2, line 7, replace "A misdemeanor" with "C felony"

Renumber accordingly

Kretschmar
Subcomm

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1040

Page 2, remove lines 3 through 5
Renumber accordingly

