

HOUSE BILL REPORT

HB 1338

As Reported By House Committee On:
Judiciary

Title: An act relating to prohibiting interference with access to health care, health care providers, and health care service delivery.

Brief Description: Prohibiting interference with access to or from a health care facility.

Sponsors: Representatives Thibaudeau, Appelwick, Ballasiotes, H. Myers, Flemming, Dyer, Eide, Cooke, Zellinsky, Johanson, Romero, Forner, Reams, Rust, Schmidt, Riley, Dunshee, Brough, Ogden, J. Kohl, Locke, Anderson, Ludwig, Edmondson, Horn, Heavey, Cothorn, R. Johnson, King, Voloria, Rayburn, Bray, Orr, Pruitt, Karahalios, Lemmon, Carlson, Kessler, Wolfe, R. Fisher, Hansen, Jacobsen, Morris, Quall, Franklin, L. Johnson, Leonard, Jones, Valle, G. Cole, Holm, Wang, Grant, Dorn, Sheldon, Sommers, Miller, Finkbeiner, Brown, Scott, Roland, Shin, R. Meyers, Springer, Basich, Campbell, Wood, Long, Wineberry and Dellwo.

Brief History:

Reported by House Committee on:
Judiciary, February 23, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; and Wineberry.

Minority Report: Do not pass. Signed by 2 members: Representatives Padden, Ranking Minority Member; and Tate.

Staff: Bill Perry (786-7123).

Background: In recent years, contentious and sometimes long running demonstrations have been conducted at health care facilities in this state and elsewhere. Usually, these demonstrations have been at facilities that perform abortions. These demonstrations have ranged from peaceful

picketing to physical confrontations between demonstrators and health care personnel or their patients.

In some instances, these demonstrations may lead to criminal prosecutions for crimes such as assault, trespass or disorderly conduct. Civil lawsuits may also be filed, sometimes resulting in the issuance of restraining orders against further demonstrations.

A 1986 Washington Supreme Court decision, Bering v. Share, 106 Wn.2d 212, generally upheld the issuance of a permanent injunction against a group who had demonstrated at a health care center in Spokane. The center offered a variety of health care services, including abortion. The injunction prohibited several activities, including: (1) picketing, demonstrating or counseling at the center, except at designated locations; (2) threatening, assaulting, intimidating or coercing anyone entering or leaving the center; (3) interfering with ingress or egress at the center or its parking lot; (4) trespassing on the premises; (5) engaging in any unlawful activity directed at the center's doctors or patients; and (6) making specific oral statements.

The state Supreme Court concluded in a six-to-three opinion that these restrictions on First Amendment rights of speech were justified by the state's compelling interest in assuring reasonable access to health care for its citizens. The dissenters would have held unconstitutional those portions of the injunction that limited the demonstrators to one side of the center's property and that prohibited specific oral statements.

In some cases, health care providers have sought injunctive relief from demonstrations under federal civil rights legislation. However, in a split decision in Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993), the United States Supreme Court has recently held that the Civil Rights Act of 1871 does not afford grounds for injunctive relief in federal courts against health care facility demonstrators.

Summary of Substitute Bill: Criminal and civil sanctions are imposed for certain activities that interfere with access to a health care facility, or that disrupt the normal functioning of the facility.

Prohibited activities include reckless interference or disruption by:

- (1) physically obstructing or impeding;
- (2) making noise;

- (3) trespassing;
- (4) violating the telephone harassment law; and
- (5) threatening injury to persons or property.

The crime of engaging in any of these activities is a gross misdemeanor, with a maximum penalty of one year in jail and a \$5,000 fine.

A party injured by a violation of this act may bring a civil lawsuit. A civil suit is not dependent on there also being a criminal prosecution. Actual damages and all costs, including attorney fees, may be recovered.

The provisions of the act do not apply to law enforcement personnel or to health care personnel acting within the scope of their employment.

Courts are directed to "take all steps reasonably necessary" in protecting the privacy of patients and health care providers. A patient, upon a showing of good cause, may bring a civil suit under a false name.

Substitute Bill Compared to Original Bill: The substitute removes the following provisions from the bill:

- o Escalating mandatory minimum criminal penalties for successive violations;
- o A requirement that the court impose pretrial release conditions on defendants;
- o Authority for police to arrest without a warrant and without witnessing an offense;
- o Punitive civil damages;
- o A prohibition against asserting the defense of necessity;
- o A requirement that police release criminal investigation information to civil plaintiffs; and
- o "Hindering" as one of the ways of physically obstructing access in violation of the act.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Demonstrations have sometimes seriously threatened the health of patients. The danger is often to

persons seeking health care unrelated to abortion. The sanctions in the bill will act as a deterrent. The recent United States Supreme Court decision makes this bill even more necessary. The bill will not prevent peaceful demonstrations.

Testimony Against: This bill is unfairly aimed at restricting the freedom of expression of one specific group. There are already plenty of criminal laws and civil remedies available to deal with illegal activity. Moral principles beyond those represented by state law compel demonstrations against inhumane actions.

Witnesses: Jerry Sheehan, American Civil Liberties Union (pro); Reverend Tim Robinson, Lifestream Christian Fellowship (con); Robb Menaul, Washington State Hospital Association (pro); Gwen Chaplin and Pat Shivley, Planned Parenthood (pro); Susie Tracy, Washington State Medical Association (pro); Belynda Hobbs (con); Susan Mischel (con); Chris Cimino (con); Ken Bertrand, Group Health (pro); Richard Kirton, Washington Freedom Coalition (pro); and Lee Carpenter, League of Women Voters (pro).