

HOUSE BILL REPORT

ESHB 1338

As Amended by the Senate

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: By House Committee on Judiciary (originally sponsored by 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, Veloria, 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;
Passed House, March 16, 1993, 84-14;
Amended by Senate.

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 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.

Two crimes are created. One is a misdemeanor and one is a gross misdemeanor:

MISDEMEANOR OFFENSE. Prohibited activities include reckless interference or disruption by:

- (1) Impeding entry or departure to or from a facility;
- (2) Making noise that unreasonably disturbs the peace within a facility;
- (3) Trespassing; or
- (4) Telephoning a facility repeatedly, or allowing someone to use a phone to call repeatedly;

GROSS MISDEMEANOR OFFENSE. Prohibited activities include reckless interference by:

- (1) Physically preventing entry or departure to or from a facility;
- (2) Using words or conduct to create a reasonable fear of serious harm to person or property; or
- (3) Allowing someone to use a phone to create a reasonable fear of harm to person or property.

The gross misdemeanor offense carries minimum penalties of at least \$250 and a day in jail for a first offense, \$500 and seven days in jail for a second offense, and \$1,000 and 30 days in jail for a third or subsequent offense.

Exemptions are provided from the misdemeanor offense. These exemptions are for:

- (1) Actions of employees of a facility when within the scope of employment;
- (2) Actions of law enforcement personnel when within the scope of their duties;
- (3) Expressive conduct protected by the state or federal constitution;
- (4) Conduct by a party to a labor dispute; and
- (5) Lawful picketing or other publicity.

Police officers are given the authority to arrest a person without a warrant and without having witnessed the crime, if there is probable cause to believe the person committed the crime within the past 24 hours.

A party "aggrieved" by a violation of this act may bring a civil lawsuit. An aggrieved party includes persons whose access is impeded or whose care is disrupted, the facility and its employees, and the owner of the facility.

A civil suit is not dependent on there also being a criminal prosecution. Actual damages, punitive damages and all costs, including attorney fees may be recovered. An individual plaintiff may recover punitive damages of \$500

per day for each day of violation. A health care facility plaintiff may recover punitive damages of \$5,000 per day.

Courts are directed to "take all steps reasonably necessary" in protecting the privacy of patients and health care providers.

Criminal justice agencies are directed to release to civil litigants any information they may have about violations of the act, including photographs, unless the release would jeopardize a criminal investigation.

EFFECT OF SENATE AMENDMENT(S): The Senate striking amendment differs from ESHB 1338 in two areas having to do with: (1) The elements of the criminal prohibitions; and (2) Exemptions from the coverage of the bill.

With respect to the elements of the criminal prohibitions, the amendment consolidates the offense into one crime, a gross misdemeanor. Three of the ways of committing that crime under the Senate version are the same as three of the ways of committing the misdemeanor crime under the House version. Those three ways relate to making noise, trespassing, and telephoning repeatedly. There are two additional ways of committing the crime under the Senate version that are modifications of parts of the misdemeanor and gross misdemeanor provisions of the House version. These two ways under the Senate version are: (1) "Physically obstructing or impeding the free passage of a person seeking to enter or depart;" and (2) "Threatening to inflict injury" or permitting use of a telephone to threaten.

With respect to the exemptions from the bill, the Senate version replaces the enumerated exemptions in the House version with two provisions: (1) The crime does not apply to acts "otherwise protected by state or federal law;" and (2) The bill does not apply to "lawful picketing or other publicity for the purpose of providing the public with information."

Fiscal Note: Not requested.

Effective Date: 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).

VOTE ON FINAL PASSAGE:

Yeas 84; Nays 14

Nays: Representatives Ballard, Casada, Chandler, Fuhrman, Mielke, Morton, Padden, Schoesler, Sheahan, Silver, Stevens, Talcott, Tate, Van Luven