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ENGROSSED SUBSTITUTE SENATE BILL 5162

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State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Niemi, A. Smith, Prentice, McAuliffe, Drew, Spanel, Skratek, Loveland, Talmadge, Moore, Wojahn, Snyder, Fraser, Rinehart, Vognild, Williams, Bluechel, Bauer, Sheldon, Newhouse, Sutherland, Prince, Pelz, Jesernig and Gaspard)

Read first time 02/08/93.

1 AN ACT Relating to prohibiting interference with access to health  
2 care, health care providers, and health care service delivery; amending  
3 RCW 10.31.100 and 10.97.070; adding a new chapter to Title 9A RCW;  
4 creating a new section; prescribing penalties; and declaring an  
5 emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that seeking or  
8 obtaining health care is fundamental to public health and safety.

9 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
10 otherwise, the definitions in this section apply throughout this  
11 chapter.

12 (1) "Health care facility" means a facility that provides health  
13 care services directly to patients, including but not limited to, a  
14 hospital, clinic, health care provider's office, health maintenance  
15 organization, diagnostic or treatment center, neuropsychiatric or  
16 mental health facility, hospice, or nursing home.

17 (2) "Health care provider" has the same meaning as defined in RCW  
18 7.70.020 (1) and (2), and also means an officer, director, employee, or

1 agent of a health care facility who sues or testifies regarding matters  
2 within the scope of his or her employment.

3 (3) "Aggrieved" means:

4 (a) A person, physically present at the health care facility when  
5 the prohibited actions occur, whose access is or is about to be  
6 obstructed or impeded;

7 (b) A person, physically present at the health care facility when  
8 the prohibited actions occur, whose care is or is about to be  
9 disrupted;

10 (c) The health care facility, its employees, or agents;

11 (d) The owner of the health care facility or the building or  
12 property upon which the health care facility is located.

13 NEW SECTION. **Sec. 3.** It is unlawful for a person, alone or in  
14 concert with others, to willfully or recklessly interfere with access  
15 to or from a health care facility or willfully or recklessly disrupt  
16 the normal functioning of such facility by:

17 (1) Physically obstructing or impeding the free passage of a person  
18 seeking to enter or depart from the facility or from the common areas  
19 of the real property upon which the facility is located;

20 (2) Making noise that unreasonably disturbs the peace within the  
21 facility;

22 (3) Trespassing on the facility or the common areas of the real  
23 property upon which the facility is located;

24 (4) Telephoning the facility repeatedly, or knowingly permitting  
25 any telephone under his or her control to be used for such purpose; or

26 (5) Threatening to inflict injury on the owners, agents, patients,  
27 employees, or property of the facility or knowingly permitting any  
28 telephone under his or her control to be used for such purpose.

29 NEW SECTION. **Sec. 4.** A violation of section 3 of this act is a  
30 gross misdemeanor. A person convicted of violating section 3 of this  
31 act shall be punished as follows:

32 (1) For a first offense, a fine of not less than two hundred fifty  
33 dollars and a jail term of not less than twenty-four consecutive hours;

34 (2) For a second offense, a fine of not less than five hundred  
35 dollars and a jail term of not less than seven consecutive days; and

1 (3) For a third or subsequent offense, a fine of not less than one  
2 thousand dollars and a jail term of not less than thirty consecutive  
3 days.

4 **Sec. 5.** RCW 10.31.100 and 1988 c 190 s 1 are each amended to read  
5 as follows:

6 A police officer having probable cause to believe that a person has  
7 committed or is committing a felony shall have the authority to arrest  
8 the person without a warrant. A police officer may arrest a person  
9 without a warrant for committing a misdemeanor or gross misdemeanor  
10 only when the offense is committed in the presence of the officer,  
11 except as provided in subsections (1) through (~~(+8+)~~) (9) of this  
12 section.

13 (1) Any police officer having probable cause to believe that a  
14 person has committed or is committing a misdemeanor or gross  
15 misdemeanor, involving physical harm or threats of harm to any person  
16 or property or the unlawful taking of property or involving the use or  
17 possession of cannabis, or involving the acquisition, possession, or  
18 consumption of alcohol by a person under the age of twenty-one years  
19 under RCW 66.44.270 shall have the authority to arrest the person.

20 (2) A police officer shall arrest and take into custody, pending  
21 release on bail, personal recognizance, or court order, a person  
22 without a warrant when the officer has probable cause to believe that:

23 (a) An order has been issued of which the person has knowledge  
24 under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26  
25 RCW, or chapter 26.50 RCW restraining the person and the person has  
26 violated the terms of the order restraining the person from acts or  
27 threats of violence or excluding the person from a residence or, in the  
28 case of an order issued under RCW 26.44.063, imposing any other  
29 restrictions or conditions upon the person; or

30 (b) The person is eighteen years or older and within the preceding  
31 four hours has assaulted that person's spouse, former spouse, or a  
32 person eighteen years or older with whom the person resides or has  
33 formerly resided and the officer believes: (i) A felonious assault  
34 has occurred; (ii) an assault has occurred which has resulted in bodily  
35 injury to the victim, whether the injury is observable by the  
36 responding officer or not; or (iii) that any physical action has  
37 occurred which was intended to cause another person reasonably to fear  
38 imminent serious bodily injury or death. Bodily injury means physical

1 pain, illness, or an impairment of physical condition. When the  
2 officer has probable cause to believe that spouses, former spouses, or  
3 other persons who reside together or formerly resided together have  
4 assaulted each other, the officer is not required to arrest both  
5 persons. The officer shall arrest the person whom the officer believes  
6 to be the primary physical aggressor. In making this determination,  
7 the officer shall make every reasonable effort to consider: (i) The  
8 intent to protect victims of domestic violence under RCW 10.99.010;  
9 (ii) the comparative extent of injuries inflicted or serious threats  
10 creating fear of physical injury; and (iii) the history of domestic  
11 violence between the persons involved.

12 (3) Any police officer having probable cause to believe that a  
13 person has committed or is committing a violation of any of the  
14 following traffic laws shall have the authority to arrest the person:

15 (a) RCW 46.52.010, relating to duty on striking an unattended car  
16 or other property;

17 (b) RCW 46.52.020, relating to duty in case of injury to or death  
18 of a person or damage to an attended vehicle;

19 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
20 racing of vehicles;

21 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
22 influence of intoxicating liquor or drugs;

23 (e) RCW 46.20.342, relating to driving a motor vehicle while  
24 operator's license is suspended or revoked;

25 (f) RCW 46.61.525, relating to operating a motor vehicle in a  
26 negligent manner.

27 (4) A law enforcement officer investigating at the scene of a motor  
28 vehicle accident may arrest the driver of a motor vehicle involved in  
29 the accident if the officer has probable cause to believe that the  
30 driver has committed in connection with the accident a violation of any  
31 traffic law or regulation.

32 (5) Any police officer having probable cause to believe that a  
33 person has committed or is committing a violation of RCW 88.12.100  
34 shall have the authority to arrest the person.

35 (6) An officer may act upon the request of a law enforcement  
36 officer in whose presence a traffic infraction was committed, to stop,  
37 detain, arrest, or issue a notice of traffic infraction to the driver  
38 who is believed to have committed the infraction. The request by the

1 witnessing officer shall give an officer the authority to take  
2 appropriate action under the laws of the state of Washington.

3 (7) Any police officer having probable cause to believe that a  
4 person has committed or is committing any act of indecent exposure, as  
5 defined in RCW 9A.88.010, may arrest the person.

6 (8) A police officer may arrest and take into custody, pending  
7 release on bail, personal recognizance, or court order, a person  
8 without a warrant when the officer has probable cause to believe that  
9 an order has been issued of which the person has knowledge under  
10 chapter 10.14 RCW and the person has violated the terms of that order.

11 (9) Any police officer having probable cause to believe that a  
12 person has, within twenty-four hours of the alleged violation,  
13 committed a violation of section 3 of this act may arrest such person.

14 (10) Except as specifically provided in subsections (2), (3), (4),  
15 and (6) of this section, nothing in this section extends or otherwise  
16 affects the powers of arrest prescribed in Title 46 RCW.

17 (~~(10)~~) (11) No police officer may be held criminally or civilly  
18 liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the  
19 police officer acts in good faith and without malice.

20 NEW SECTION. **Sec. 6.** (1) A person or health care facility  
21 aggrieved by the actions prohibited by section 3 of this act may seek  
22 civil damages from those who committed the prohibited acts and those  
23 acting in concert with them. A plaintiff in an action brought under  
24 this chapter shall not recover more than his or her actual damages and  
25 additional sums authorized in section 7 of this act. Once a plaintiff  
26 recovers his or her actual damages and any additional sums authorized  
27 under this chapter, additional damages shall not be recovered. A  
28 person does not have to be criminally convicted of violating section 3  
29 of this act to be held civilly liable under this section. It is not  
30 necessary to prove actual damages to recover the additional sums  
31 authorized under section 7 of this act, costs, and attorneys' fees.  
32 The prevailing party is entitled to recover costs and attorneys' fees.

33 (2) The superior courts of this state shall have authority to grant  
34 temporary, preliminary, and permanent injunctive relief to enjoin  
35 violations of this chapter.

36 In appropriate circumstances, any superior court having personal  
37 jurisdiction over one or more defendants may issue injunctive relief  
38 that shall have binding effect on the original defendants and persons

1 acting in concert with the original defendants, in any county in the  
2 state.

3 Due to the nature of the harm involved, injunctive relief may be  
4 issued without bond in the discretion of the court, notwithstanding any  
5 other requirement imposed by statute.

6 The state and its political subdivisions shall cooperate in the  
7 enforcement of court injunctions that seek to protect against acts  
8 prohibited by this chapter.

9 NEW SECTION. **Sec. 7.** In a civil action brought under this  
10 chapter, an individual plaintiff aggrieved by the actions prohibited by  
11 section 3 of this act may be entitled to recover up to five hundred  
12 dollars for each day that the actions occurred, or up to five thousand  
13 dollars for each day that the actions occurred if the plaintiff  
14 aggrieved by the actions prohibited under section 3 of this act is a  
15 health care facility.

16 NEW SECTION. **Sec. 8.** (1) Section 3 of this act shall not be  
17 interpreted to apply to:

18 (a) The actions of any agent, officer, or employee of the health  
19 care facility, acting within the scope of his or her agency, office, or  
20 employment; or

21 (b) The actions of any law enforcement officer, acting within the  
22 scope of his or her agency; or

23 (c) Any expressive conduct protected from legal prohibition by the  
24 first article of amendment to the Constitution of the United States, or  
25 Article I, section 5 of the State Constitution; or

26 (d) Conduct by a party to a labor dispute in furtherance of labor  
27 or management objectives in that dispute.

28 (2) In the event that any of the exemptions contained within this  
29 section are ruled invalid, the legislature intends that the remainder  
30 of chapter . . . , Laws of 1993 (this act) should not be affected.

31 NEW SECTION. **Sec. 9.** Nothing in section 3 of this act shall  
32 prohibit picketing or other publicity for the purpose of providing the  
33 public with information.

34 NEW SECTION. **Sec. 10.** A court having jurisdiction over a criminal  
35 or civil proceeding under this chapter shall take all steps reasonably

1 necessary to safeguard the individual privacy and prevent harassment of  
2 a health care patient or health care provider who is a party or witness  
3 in a proceeding, including granting protective orders and orders in  
4 limine.

5 **Sec. 11.** RCW 10.97.070 and 1977 ex.s. c 314 s 7 are each amended  
6 to read as follows:

7 (1) Criminal justice agencies may, in their discretion, disclose to  
8 persons who have suffered physical loss, property damage, or injury  
9 compensable through civil action, the identity of persons suspected as  
10 being responsible for such loss, damage, or injury together with such  
11 information as the agency reasonably believes may be of assistance to  
12 the victim in obtaining civil redress. Such disclosure may be made  
13 without regard to whether the suspected offender is an adult or a  
14 juvenile, whether charges have or have not been filed, or a prosecuting  
15 authority has declined to file a charge or a charge has been dismissed.

16 (2) Unless the agency determines release would interfere with an  
17 ongoing criminal investigation, in any action brought pursuant to this  
18 chapter criminal justice agencies shall disclose identifying  
19 information, including photographs of suspects, if the acts are alleged  
20 by the plaintiff or victim to be a violation of section 3 of this act.

21 (3) The disclosure by a criminal justice agency of investigative  
22 information pursuant to subsection (1) of this section shall not  
23 establish a duty to disclose any additional information concerning the  
24 same incident or make any subsequent disclosure of investigative  
25 information, except to the extent an additional disclosure is compelled  
26 by legal process.

27 NEW SECTION. **Sec. 12.** Nothing in this chapter shall be construed  
28 to limit the right to seek other available criminal or civil remedies.  
29 The remedies provided in this chapter are cumulative, not exclusive.

30 NEW SECTION. **Sec. 13.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 14.** Sections 2 through 4, 6 through 10, and 12  
35 of this act shall constitute a new chapter in Title 9A RCW.

1        NEW SECTION.    **Sec. 15.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and shall take  
4    effect immediately.

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