

2 **ESHB 1338** - S COMM AMD

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

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

21 (3) "Aggrieved" means:

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

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

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

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

31 NEW SECTION. **Sec. 3.** It is unlawful for a person except as
32 otherwise protected by state or federal law, alone or in concert with
33 others, to willfully or recklessly interfere with access to or from a

1 health care facility or willfully or recklessly disrupt the normal
2 functioning of such facility by:

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

6 (2) Making noise that unreasonably disturbs the peace within the
7 facility;

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

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

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

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

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

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

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

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

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

34 (1) Any police officer having probable cause to believe that a
35 person has committed or is committing a misdemeanor or gross
36 misdemeanor, involving physical harm or threats of harm to any person
37 or property or the unlawful taking of property or involving the use or

1 possession of cannabis, or involving the acquisition, possession, or
2 consumption of alcohol by a person under the age of twenty-one years
3 under RCW 66.44.270 shall have the authority to arrest the person.

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

7 (a) An order has been issued of which the person has knowledge
8 under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26
9 RCW, or chapter 26.50 RCW restraining the person and the person has
10 violated the terms of the order restraining the person from acts or
11 threats of violence or excluding the person from a residence or, in the
12 case of an order issued under RCW 26.44.063, imposing any other
13 restrictions or conditions upon the person; or

14 (b) The person is eighteen years or older and within the preceding
15 four hours has assaulted that person's spouse, former spouse, or a
16 person eighteen years or older with whom the person resides or has
17 formerly resided and the officer believes: (i) A felonious assault
18 has occurred; (ii) an assault has occurred which has resulted in bodily
19 injury to the victim, whether the injury is observable by the
20 responding officer or not; or (iii) that any physical action has
21 occurred which was intended to cause another person reasonably to fear
22 imminent serious bodily injury or death. Bodily injury means physical
23 pain, illness, or an impairment of physical condition. When the
24 officer has probable cause to believe that spouses, former spouses, or
25 other persons who reside together or formerly resided together have
26 assaulted each other, the officer is not required to arrest both
27 persons. The officer shall arrest the person whom the officer believes
28 to be the primary physical aggressor. In making this determination,
29 the officer shall make every reasonable effort to consider: (i) The
30 intent to protect victims of domestic violence under RCW 10.99.010;
31 (ii) the comparative extent of injuries inflicted or serious threats
32 creating fear of physical injury; and (iii) the history of domestic
33 violence between the persons involved.

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

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

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

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

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

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

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

11 (4) A law enforcement officer investigating at the scene of a motor
12 vehicle accident may arrest the driver of a motor vehicle involved in
13 the accident if the officer has probable cause to believe that the
14 driver has committed in connection with the accident a violation of any
15 traffic law or regulation.

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

19 (6) An officer may act upon the request of a law enforcement
20 officer in whose presence a traffic infraction was committed, to stop,
21 detain, arrest, or issue a notice of traffic infraction to the driver
22 who is believed to have committed the infraction. The request by the
23 witnessing officer shall give an officer the authority to take
24 appropriate action under the laws of the state of Washington.

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

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

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

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

1 (~~(10)~~) (11) No police officer may be held criminally or civilly
2 liable for making an arrest pursuant to RCW 10.31.100(2) or (8) if the
3 police officer acts in good faith and without malice.

4 NEW SECTION. **Sec. 6.** (1) A person or health care facility
5 aggrieved by the actions prohibited by section 3 of this act may seek
6 civil damages from those who committed the prohibited acts and those
7 acting in concert with them. A plaintiff in an action brought under
8 this chapter shall not recover more than his or her actual damages and
9 additional sums authorized in section 7 of this act. Once a plaintiff
10 recovers his or her actual damages and any additional sums authorized
11 under this chapter, additional damages shall not be recovered. A
12 person does not have to be criminally convicted of violating section 3
13 of this act to be held civilly liable under this section. It is not
14 necessary to prove actual damages to recover the additional sums
15 authorized under section 7 of this act, costs, and attorneys' fees.
16 The prevailing party is entitled to recover costs and attorneys' fees.

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

20 In appropriate circumstances, any superior court having personal
21 jurisdiction over one or more defendants may issue injunctive relief
22 that shall have binding effect on the original defendants and persons
23 acting in concert with the original defendants, in any county in the
24 state.

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

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

31 NEW SECTION. **Sec. 7.** In a civil action brought under this
32 chapter, an individual plaintiff aggrieved by the actions prohibited by
33 section 3 of this act may be entitled to recover up to five hundred
34 dollars for each day that the actions occurred, or up to five thousand
35 dollars for each day that the actions occurred if the plaintiff
36 aggrieved by the actions prohibited under section 3 of this act is a
37 health care facility.

1 NEW SECTION. **Sec. 8.** Nothing in section 3 of this act shall
2 prohibit either lawful picketing or other publicity for the purpose of
3 providing the public with information.

4 NEW SECTION. **Sec. 9.** A court having jurisdiction over a criminal
5 or civil proceeding under this chapter shall take all steps reasonably
6 necessary to safeguard the individual privacy and prevent harassment of
7 a health care patient or health care provider who is a party or witness
8 in a proceeding, including granting protective orders and orders in
9 limine.

10 **Sec. 10.** RCW 10.97.070 and 1977 ex.s. c 314 s 7 are each amended
11 to read as follows:

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

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

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

32 NEW SECTION. **Sec. 11.** Nothing in this chapter shall be construed
33 to limit the right to seek other available criminal or civil remedies.
34 The remedies provided in this chapter are cumulative, not exclusive.

1 NEW SECTION. **Sec. 12.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 13.** Sections 2 through 4, 6 through 9, and 11
6 of this act shall constitute a new chapter in Title 9A RCW.

7 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect immediately."

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14 On page 1, line 2 of the title, after "delivery;" strike the
15 remainder of the title and insert "amending RCW 10.31.100 and
16 10.97.070; adding a new chapter to Title 9A RCW; creating a new
17 section; prescribing penalties; and declaring an emergency."

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