

HOUSE BILL REPORT

ESHB 1338

As Passed Legislature

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;
Passed Legislature, April 19, 1993, 81-14.

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.

Prohibited activities include reckless interference or disruption by:

- (1) physically obstructing or impeding;
- (2) making noise that unreasonably disturbs;
- (3) trespassing;
- (4) telephoning the facility repeatedly; and
- (5) threatening injury to persons or property.

However, an exception from these prohibitions is provided for "lawful picketing or other publicity for the purpose of providing the public with information."

The crime of engaging in any of the prohibited activities is a gross misdemeanor, with a maximum penalty of one year in jail and a \$5,000 fine. Minimum penalties are also provided. For a first offense they are one day in jail and a \$250 fine; for a second offense, seven days in jail and a \$500 fine; and for a third offense, 30 days in jail and a \$1,000 fine.

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 may include a person whose access is impeded or whose care is disrupted at a facility, the facility and its employees, and the owner of the facility.

A civil suit is not dependent on there also being a criminal prosecution. An individual plaintiff may recover actual damages plus punitive damages of \$500 per day for each day of violation. A health care facility plaintiff may recover actual damages plus punitive damages of \$5,000 per day. The prevailing party in a civil suit is entitled to costs and attorneys' fees.

Courts are authorized to grant injunctive relief, and state and local governments are directed to cooperate in the enforcement of injunctions.

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.

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).