

SENATE BILL REPORT

ESHB 1338

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, APRIL 1, 1993

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

SPONSORS: 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)

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Niemi, Rinehart, and Spanel.

Staff: Tom McBride (786-7448)

Hearing Dates: March 29, 1993; April 1, 1993

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.

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:

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.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Prohibited acts are placed in a single section, violations of which are gross misdemeanors. The exemptions section is stricken. Language is placed in the bill to clarify that acts currently lawful are not meant to be prohibited by this bill.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

This bill is desperately needed to protect access to health care. Concerns have been raised about its application to labor demonstrations.

TESTIMONY AGAINST: None

TESTIFIED: Representative Thibaudeau, prime sponsor; Judy Turpin, NW Women's Law Center; Susan Johnson, SEIU; Cheryl French, Schewerin, Burns, Campbell, etc.; Sharon Foster, NARAL; Theresa Connor, Planned Parenthood; Richard Kirton, WA Freedom Coalition